

ACT No. XV OF 1856.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 25th July 1856).

AN ACT to remove all legal obstacles to the marriage of Hindoo Widows.

Preamble. WHEREAS it is known that, by the law as administered in the Civil Courts established in the territories in the possession and under the Government of the East India Company, Hindoo widows, with certain exceptions, are held to be, by reason of their having been once married, incapable of contracting a second valid marriage, and the offspring of such widows by any second marriage are held to be illegitimate and incapable of inheriting property: and whereas many Hindoos believe that this imputed legal incapacity, although it is in accordance with established custom, is not in accordance with a true interpretation of the precepts of their religion, and desire that the Civil law administered by the Courts of Justice shall no longer prevent those Hindoos who may be so minded from adopting a different custom, in accordance with the dictates of their own consciences: and whereas it is just to relieve all such Hindoos from this legal incapacity of which they complain; and the removal of all legal obstacles to the marriage of Hindoo widows will tend to the promotion of good morals and to the public welfare: It is enacted as follows:—

I. No marriage contracted between Hindoos shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindoo law to the contrary notwithstanding.

II. All rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without

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without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall, upon her re-marriage, cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same.

III. On the re-marriage of a Hindoo widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband the guardian of his children, the father or paternal grandfather, or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court having original jurisdiction in Civil cases in the place where the deceased husband was domiciled at the time of his death, for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who, when appointed, shall be entitled to have the care and custody of the said children, or of any of them, during their minority, in the place of their mother; and in making such appointment the Court shall be guided, so far as may be, by the laws and rules in force touching the guardianship of children who have neither father nor mother. Provided that, when the said children have not property of their own sufficient for their support and proper education whilst minors, no such appointment shall be made otherwise than with the consent of the mother, unless the proposed guardian shall have given security for the support and proper education of the children whilst minors.

IV. Nothing in this Act contained shall be construed to render any widow, who, at the time of the death of any person leaving any property, is a childless widow, capable of inheriting the whole or any share of such property, if, before the passing of this Act, she would have been incapable of inheriting the same by reason of her being a childless widow.

V. Except as in the three preceding Sections is provided, a widow shall not, by reason of her re-marriage, forfeit any property, or any right to which she would otherwise be entitled; and every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage.

VI. Whatever

VI. Whatever words spoken, ceremonies performed, or engagements made, on the marriage of a Hindoo female who has not been previously married, are sufficient to constitute a valid marriage, shall have the same effect, if spoken, performed, or made on the marriage of a Hindoo widow; and no marriage shall be declared invalid on the ground that such words, ceremonies, or engagements are inapplicable to the case of a widow.

Whatever ceremonies now constitute a valid marriage shall have the same effect on the marriage of a widow.

VII. If the widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father, or if she has no father, of her paternal grandfather, or if she has no such grandfather, of her mother, or failing all these, of her elder brother, or failing also brothers, of her next male relative. All persons knowingly abetting a marriage made contrary to the provisions of this Section shall be liable to imprisonment for any term not exceeding one year, or to fine, or to both. And all marriages made contrary to the provisions of this Section may be declared void by a Court of law. Provided that, in any question regarding the validity of a marriage made contrary to the provisions of this Section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void after it has been consummated. In the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her re-marriage lawful and valid.

Consent to re-marriage of a widow who is a minor.

Punishment for abetting marriage made contrary to this Section.

Effect of such marriage.

Proviso.