

# The Hindu Disposition Of Property Act, 1916

UNION OF INDIA

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### Act 15 of 1916

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The Hindu Disposition Of Property Act, 1916(15 of 1916)

#### 036.

Statement of Objects and Reasons.-The object of the Bill is to enable Hindus and Mussalmans to dispose of property by transfer inter vivos and by Will for the benefit of unborn persons within certain limits. According to the Hindu Law, as now administered in British India, a gift in favour of a person not in existence at the date of the gift is void; and so also a bequest in favour of a person not in existence at the time of the testator's death. The same is the rule of Mohammedan Law, except that, under the provisions of the Mussalmans Wakf Validating Act, 1913, it is competent to a Mohammedan to settle property for the benefit of unborn persons even in perpetuity, provided the ultimate disposition is for the benefit of charity. Every lawyer familiar with the Indian Courts must have come across a large number of settlements and Wills made by Hindus and Muhammadans for the benefit of their children and grand-children. The paramount object of the settlor in all these cases has been to provide not only for his children and grand-children then in existence, but also for those to be born hereafter, instead, however, of giving effect to the settlor's intention, the law as now administered completely defeats it. Even where a donor has only one child in existence at the date of the gift, and the gift is made in express terms for the benefit of all his children including those to be born hereafter, the law excludes from the benefit of the gift all children born subsequently to the date of the gift, to the entire subversion of the donor's intention. Similarly, the intention of testators to benefit by their Wills their children and grand-children not in existence at the death of the testators is also defeated. It is to remedy these evils, and to give effect to the settlor's or testator's intention, that the present Bill is proposed. The sole object of the Bill is to enable the Court to carry out settlor's or testator's intention, which, under the present state of the law, they are precluded from it. At the same time, it is recognised that this can only be done within the limits allowed by the rule against perpetuity, and these limits are prescribed in clauses 4 and 5. The effect of this Bill, if passed into law, will be to enable Hindus and Mohammedans to make dispositions of their property to the same extent, and subject to the same limitations as other communities in British India.[28th

September, 1916]An Act to remove certain existing disabilities in respect of the power of disposition of property by Hindus for the benefit of persons not in existence at the date of such disposition. Whereas it is expedient to remove certain existing disabilities in respect of the power of disposition of property by Hindus for the benefit of persons not in existence at the date of such disposition; It is hereby enacted as follows:

## **1. Short title and extent .(1) This Act may be called The Hindu Disposition of Property Act, 1916 .**

(2)[ It extends to the whole of India except the State of Jammu and Kashmir.] [Substituted by Act 48 of 1959, Section 3(w.e.f. 1.2.1960).]

This Act has been extended to the new Provinces and merged States by the Merged States (Laws) Act, 1949 and to the States of Manipur, Tripura and Vindhya Pradesh by the Union Territories (Laws) Act, 1950. It has also been extended to the Union Territories of Dadra and Nagar Haveli and Pondicherry by Regn. 6 of 1963 and Act 26 of 1968, respectively.

## **2. Dispositions for the benefit of persons not in existence**

.Subject to the limitations and provisions specified in this Act, no disposition of property by a Hindu, whether by transfer inter vivos or by Will, shall be invalid by reason only that any person for whose benefit it may have been made was not in existence at the date of such disposition.

## **3. Limitations and conditions**

.The limitations and provisions referred to in section 2 shall be the following, namely: (a) in respect of dispositions by transfer inter vivos, those contained in [Chapter II] [Substituted by the Act 21 of 1929, Section 12, for " sections 13, 14 and 20" .] of the Transfer of Property Act, 1882 (4 of 1882), and (b) in respect of dispositions by Will, those contained in [sections 113, 114, 115 and 116 of the Indian Succession Act, 1925 (39 of 1925).] [Substituted by the Act 21 of 1929, Section 12, for " sections 100 and 101 of the Indian Succession Act, 1865" .]

## **4. Failure of prior disposition**

.[Repealed by the Transfer of Property (Amendment) (Supplementary) Act, 1929 (21 of 1929), section 12.]

## **5. Application of this Act to the Khoja community**

.Where the [State Government] [Substituted by the Act 21 of 1929, Section 12, for " sections 100 and 101 of the Indian Succession Act, 1865" .] is of opinion that the Khoja community in [the State] [Substituted by A.O.1950.] or any part thereof desire that the provisions of this Act should be extended to such community, [it] [Substituted by A.O.1937, for " he" .] may, by notification in the [Official Gazette] [Substituted by A.O.1937.], declare that the provisions of this Act, with the

substitution of the word Khojas or Khoja, as the case may be, for the word Hindus or Hindu wherever those words occur, shall apply to that community in such area as may be specified in the notification, and this Act shall thereupon have effect accordingly.