THE MARRIED WOMEN'S PROPERTY ACT, 1874

ARRANGEMENT OF SECTIONS

PREAMBLE

I.—PRELIMINARY

SECTIONS

1. Short title.
2. Extent and application.
3. [*Repealed.*].

II.—MARRIED WOMEN'S WAGES AND EARNINGS

4. Married women's earnings to be their separate property.

III.—INSURANCES BY WIVES AND HUSBANDS

5. Married woman may effect policy of insurance.
6. Insurance by husband for benefit of wife.

IV.—LEGAL PROCEEDINGS BY AND AGAINST MARRIED WOMEN

7. Married woman may take legal proceedings.
8. Wife's liability for postnuptial debts.

V.—HUSBAND'S LIABILITY FOR WIFE'S DEBTS

9. Husband not liable for wife's antenuptial debts.

VI.—HUSBAND'S LIABILITY FOR WIFE'S BREACH OF TRUST OR DEVASTATION

10. Extent of husband's liability for wife's breach of trust or devastation.

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THE MARRIED WOMEN'S PROPERTY ACT, 1874

ACT NO. 3 OF 1874[1]

[24*th February*, 1874].

An Act to explain and amend the law relating to certain married women, for other purposes.

Preamble.—WHEREAS it is expedient to make such provision as hereinafter appears for the enjoyment of wages and earnings by women married before the first day of January, 1866, and for insurances on lives by persons married before or after that day:

AND WHEREAS by the Indian Succession Act, 1865[2] (10 of 1865), section 4, it is enacted that no person shall by marriage acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property, which he or she could have done, if unmarried:

AND WHEREAS by force of the said Act all women to whose marriages it applies are absolute owners of all property vested in, or acquired by, them, and their husbands do not by their marriage acquire any interest in such property, but the said Act does not protect such husbands from liabilities on account of the debts of their wives contracted before marriage, and does not expressly provide for the enforcement of claims by or against such wives:

It is hereby enacted as follows:—

I.—PRELIMINARY

1. Short title.—This Act may be called the Married Women's Property Act, 1874.

2. Extent and application.—[3][It extends to the whole of India except the State of Jammu and Kashmir*.]

But nothing herein contained applies to any married woman who at the time of her marriage professed the Hindu, Muhammadan, Buddhist, Sikh or Jaina religion, or whose husband, at the time of such marriage, professed any of those religions.

And the [4][State Government] may from time to time, by order, either retrospectively from the passing of this Act or prospectively, exempt from the operation of all or any of the provisions of this Act the members of any race, sect or tribe or part of a race, sect or tribe, to whom it may consider it impossible or inexpedient to apply such provisions.

The [4][State Government] may also revoke any such order, but not so that the revocation shall have any retrospective effect.

All orders and revocations under this section shall be published in the Official Gazette.

[5]* * * * *

3. [*Commencement*.] *Rep. by the Repealing Act*, 1876 (12 *of* 1876), *s.* 1 *and Schedule*.

II.—MARRIED WOMEN'S WAGES AND EARNINGS

[6]4. Married women's earnings to be their separate property.—The wages and earnings of any married woman acquired or gained by her after the passing of this Act, in any employment, occupation or trade carried on by her and not by her husband,

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1. The Act has been extended to and brought into force in Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and the First Schedule (with modification) (w.e.f. 1-7-1965).
2. The relevant provision of the Indian Succession Act, 1925 (39 of 1925) may now be referred to.
3. Subs. by Act 61 of 1959, s. 2, for the former para. (w.e.f. 1-3-1960).
4. The original words "G.G. in C." have successively been amended by Act 38 of 1920, the A.O. 1937 and the A.O. 1950 to read as above.
5. The last paragraph rep. by Act 39 of 1925, s. 392 and the Ninth Schedule.
6. *Cf.* the Married Women's Property Act 1870 (33 and 34 Vict., c. 93), s. 1, now rep. by Married Women's Property Act, 1882 (45 and 46 Vict., c. 75).

*. *Vide* Notification No. S.O. 3912 (E), dated 30th October, 2019, this Act is made applicable to the Union territory of Jammu and Kashmir and the Union territory of Ladakh.

and also any money or other property so acquired by her through the exercise of any literary, artistic or scientific skill,

and all savings from and investments of such wages, earnings and property,

shall be deemed to be her separate property, and her receipts alone shall be good discharges for such wages, earnings and property.

III. —INSURANCES BY WIVES AND HUSBANDS

[1]**5. Married women may effect policy of insurance.**—Any married woman may effect a policy of insurance on her own behalf and independently of her husband; and the same and all benefit thereof, if expressed on the face of it to be so effected, shall ensure as her separate property, and the contract evidenced by such policy shall be as valid as if made with an unmarried woman.

[2]**6. Insurance by husband for benefit of wife.**—[3][(*1*) A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall ensure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long any object of the trust remains, be subject to the control of the husband or to his creditors, or form part of his estate.

When the sum secured by the policy becomes payable, it shall, unless special trustees are duly appointed to receive and hold the same, be paid to the Official Trustee of the [4][State] in which the office at which the insurance was effected is situated, and shall be received and held by him upon the trusts expressed in the policy, or such of them as are then existing.

And in reference to such sum he shall stand in the same position in all respects as if he had been duly appointed trustee thereof by a High Court, under Act No. 17 of 1864 [5][to constitute an Office of Official Trustee], s.10.

Nothing herein contained shall operate to destroy or impede the right of any creditor to be paid out of the proceeds of any policy of assurance which may have been effected with intent to defraud creditors.

[6][(*2*) Notwithstanding anything contained in s. 2, the provisions of sub-section (*1*) shall apply in the case of any policy of insurance such as is referred to therein which effected—

(*a*) by any Hindu, Muhammadan, Sikh or Jain—

(*i*) in Madras, after the thirty-first day of December, 1913, or

(*ii*) in any other territory to which this Act extended immediately before the commencement of the Married Women's Property (Extension) Act, 1959 (61 of 1959), after the first day of April, 1923, or

(*iii*) in any territory to which this Act extends on and from the commencement of the Married Women's Property (Extension) Act, 1959 (61 of 1959);

(*b*) by a Buddhist in any territory to which this Act extends, on or after the commencement of the Married Women's Property (Extension) Act, 1959 (61 of 1959):

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1. *Cf.* the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s. 10, para. 1.
2. *Cf.* the Married Women's Property Act, 1870 (33 and 34 Vict., c. 93), s.10, para. 2.
3. S. 6 renumbered as sub-section (*1*) of that section by Act 13 of 1923, s. 2.
4. The word "Presidency" has been successively amended by the A.O. 1937, the A.O. 1950 and the Adaptation of Laws (No. 2) Order, 1956, to read as above.
5. The relevant provisions of the Official Trustees Act, 1913 (2 of 1913) may be referred to.
6. Subs. by Act 61 of 1959, s. 3 for sub-section (*2*), (w.e.f. 1-3-1960), Earlier inserted by 13 of 1923, s. 2.

Provided that nothing herein contained shall affect any right or liability which has accrued or been incurred under any decree of a competent court passed —

(*i*) before the first day of April, 1923, in any case to which sub-clause (*i*) or sub-clause (*ii*) of clause (*a*) applies; or

(*ii*) before the commencement of the Married Women's Property (Extension) Act, 1959 (61 of 1959), in any case to which sub-clause (*iii*) of clause (*a*) or clause (*b*) applies.]

IV.—LEGAL PROCEEDINGS BY AND AGAINST MARRIED WOMEN

[1]**7. Married women may take legal proceedings.**—A married woman may maintain a suit in her own name for the recovery of property of any description which, by force of the said Indian Succession Act, 1865[2] (10 of 1865) or of this Act, is her separate property; and she shall have, in her own name, the same remedies, both civil and criminal, against all persons, for the protection and security of such property, as if she were unmarried, and she shall be liable to such suits, processes and orders in respect of such property as she would be liable to if she were unmarried.

8. Wife's liability for postnuptial debts.—If a married woman (whether married before or after the first day of January, 1866) possesses separate property, and if any person enters into a contract with her with reference to such property, or on the faith that her obligation arising out of such contract will be satisfied out of her separate property, such person shall be entitled to sue her, and, to the extent of her separate property, to recover against her whatever he might have recovered in such suit had she been unmarried at the date of the contract and continued unmarried at the execution of the decree:

[3][Provided that nothing herein contained shall—

(*a*) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or her beneficial interest therein, or

(*b*) affect the liability of a husband for debts contracted by his wife's agency expressed or implied.]

V.—HUSBAND'S LIABILITY FOR WIFE'S DEBTS

[4]**9. Husband not liable for wife's antenuptial debts.**—A husband married after the thirty-first day of December, 1865 shall not by reason only of such marriage be liable to the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and shall, to the extent of her separate property, be liable to satisfy such debts as if he had continued unmarried:

Proviso.—Provided that nothing contained in this section shall [5]*** invalidate any contract into which a husband may, before the passing of this Act, have entered in consideration of his wife's ante-nuptial debts.

[6][VI.—HUSBAND'S LIABILITY FOR WIFE'S BREACH OF TRUST OR DEVASTATION

10. Extent of husband's liability for wife's breach of trust or devastation.—Where a woman is a trustee, executrix or administratrix, either before or after marriage, her husband shall not, unless he acts or intermeddles in the trust or administration, be liable for any breach of trust committed by her, or for any misapplication, loss or damage to the estate of the deceased caused or made by her, or for any loss to such estate arising from her neglect to get in any part of the property of deceased.]

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1. *Cf.* the Married Women's Property Act, 1870 (33 and 34 Vict., c.93), s. 11, rep. By the Married Women's Property Act, 1882 (45 and 46 Vict., c.75).
2. *See* now the Indian Succession Act, 1925 (39 of 1925).
3. Subs. by Act 21 of 1929, s. 2, for the proviso.
4. *Cf.* the Married Woman's Property Act, 1870 (33 and 34 Viet., c. 93), s. 12.
5. The words "affect any suit instituted before the passing of this Act, nor" rep. by Act 12 of 1891, s. 2 and the First Schedule.
6. Ins. by Act 18 of 1927, s. 3.