

The Punjab Custom (Power to Contest) Act, 1920

Act 2 of 1920

h1121

Received the assent of the Lieutenant Governor on the 6th April, 1920, and that of the Governor General on the 1st May, 1920, and was first published in the Punjab Gazette, dated the 28th May, 1920.

LEGISLATIVE HISTORY 6

- Amended by the Adaptation of Laws Order, 1948.
- Amended by the Adaptation of Laws Order, 1950.
- Haryana Adoption of laws Order 1968.

An Act to restrict the power of descendants or collaterals to contest an alienation of immoveable property or the appointment of an heir on the ground that such alienation or appointment is contrary to custom.

Whereas it is expedient to enact certain restrictions on the power of descendants or collaterals to contest alienation of immovable property or the appointment of an heir on the ground that such alienation or appointment is contrary to custom; And whereas the previous sanction of Governor General has been accorded under section 79(2) of the Government of India Act, 1915, to the passing of this Act it is hereby enacted as follows :-

1. Title and extent. - (1) This Act may be called the Punjab Custom (Power to Contest) Act, 1920.

(2) It extends to [Haryana].

Object & Reasons6

Statement of Objects and Reasons - "The object of the present Bill is as described in the preamble to enact certain restrictions in respect of suits in which the alienation of immovable property or the appointment of an heir is contested by descendants or collaterals on the ground that it is contrary to custom.

The Bill is the outcome of resolutions passed at the Conference that assembled in Simla in 1915 to consider the codification of Punjab customs. The Conference decided unanimously in favour of enacting rules:-

- (1) that no one should be enabled to sue to set aside an alienation unless -
 - (a) he is descended from the same great-great-grandfather as the alienor, and
 - (b) the alienation took place subsequent to his own birth;
- (2) that the principle underlying this rule should apply *mutatis mutandis* to suits -
 - (a) for the possession of land where the setting aside of an adoption is involved, and

(b) for a declaration that an adoption is invalid;

(3) that no one should be entitled to contest an alienation by a male of non-ancestral property

In 1917 the Local Government had appointed a Committee to investigate in detail the main problem of codification, and it referred to this committee the question of the form which this subsidiary measure to restrict the right to contest alienation should take. The Committee prepared a Draft Bill which was circulated for opinion in June, 1917. It invoked some criticisms which were considered by a small committee comprising a Judge of the Chief Court, the Revenue Secretary and the Legal Remembrancer, and a further draft was prepared. This was also circulated for opinion, with the result that a few further changes have been introduced.

The title of the Bill gave rise to much discussion.

In one draft the word "agricultural" was inserted before "Custom" but it has now been omitted as redundant. If the word is left undefined, it may form a loophole for discussion and argument, but if an attempt is made to obtain a satisfactory definition, the matter is bound to bristle with difficulties. Clause 4 does not call for any special comment, but whether clause 3 is really necessary having regard to the form of clauses 6 and 7 is a matter to which the attention of the Council will be directed. The intention of clause 5 is to exclude definitely from the scope of the Bill alienations or appointments by females. It is not the intention to confer on females additional powers of alienation beyond what they already possess.

The provisions of clause 6(2) are in the terms approved by the Conference, but they have called forth some hostile criticism and may require some modification.

Punjab Gazette, 1919 Part V, pages 24-25.

2. Definitions. - In this Act -

"Alienation" includes any testamentary disposition of property.

"Appointment of an heir" includes any adoption made or purporting to be made according to custom.

3. Scope of the Act. - The Act shall apply only in respect of alienations of immovable property or appointment of heirs made by persons who in regard to such alienations or appointments are governed by customs.

4. Savings. - This Act shall not affect any right to contest any alienation or appointment of an heir made before the date on which this Act comes into force.

5. Rights of females - Nothing in this Act shall apply to any alienation or appointment of an heir made by a female.

6. Limitation on the right to contest alienations and appointment of heirs. - Subject to the provisions contained in section 4 and notwithstanding anything to the contrary contained in section 5, Punjab Laws Act, 1872, no person shall contest any alienation of ancestral immovable property or any appointment of an heir to such property on the ground that such alienation or appointment is contrary to custom, unless such person is descended in male lineal descent from the great-great-grand-father of the person making the alienation or appointment.

7. Alienation of non-ancestral property. - Notwithstanding anything to the contrary contained in section 5, Punjab Laws Act, 1872, no person shall contest any alienation of non-ancestral immovably property or any appointment of an heir to such property on the ground that such alienation or appointment is contrary to custom.