



Matrimonial Proceedings and Property Act 1970

1970 CHAPTER 45

PART I

PROVISIONS WITH RESPECT TO ANCILLARY AND OTHER RELIEF IN MATRIMONIAL CAUSES AND TO CERTAIN OTHER MATRIMONIAL PROCEEDINGS

Protection, custody, etc., of children

17 Restrictions on decrees for dissolution, annulment or separation affecting children

- (1) The court shall not make absolute a decree of divorce or of nullity of marriage, or make a decree of judicial separation, unless the court, by order, has declared that it is satisfied—
 - (a) that for the purposes of this section there are no children of the family to whom this section applies; or
 - (b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that—
 - (i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or
 - (ii) it is impracticable for the party or parties appearing before the court to make any such arrangements; or
 - (c) that there are circumstances making it desirable that the decree should be made absolute or should be made, as the case may be, without delay notwithstanding that there are or may be children of the family to whom this section applies and that the court is unable to make a declaration in accordance with paragraph (b) above.
- (2) The court shall not make an order declaring that it is satisfied as mentioned in subsection (1)(c) above unless it has obtained a satisfactory undertaking from either

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or both of the parties to bring the question of the arrangements for the children named in the order before the court within a specified time.

- (3) If the court makes absolute a decree nisi of divorce or of nullity of marriage, or makes a decree of judicial separation, without having made an order under subsection (1) above the decree shall be void but, if such an order was made, no person shall be entitled to challenge the validity of the decree on the ground that the conditions prescribed by subsections (1) and (2) above were not fulfilled.
- (4) If the court refuses to make an order under subsection (1) above in any proceedings for divorce, nullity of marriage or judicial separation, it shall, on an application by either party to the proceedings, make an order declaring that it is not satisfied as mentioned in that subsection.
- (5) This section applies to the following children of the family, that is to say—
 - (a) any minor child of the family who at the date of the order under subsection (1) above is—
 - (i) under the age of sixteen, or
 - (ii) receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also in gainful employment; and
 - (b) any other child of the family to whom the court by an order under that subsection directs that this section shall apply;

and the court may give such a direction if it is of opinion that there are special circumstances which make it desirable in the interest of the child that this section should apply to it.
- (6) In this section " welfare ", in relation to a child, includes the custody and education of the child and financial provision for him.

18 Orders for custody and education of children affected by matrimonial suits

- (1) The court may make such order as it thinks fit for the custody and education of any child of the family who is under the age of eighteen—
 - (a) in any proceedings for divorce, nullity of marriage or judicial separation, before, by or after the final decree ;
 - (b) where such proceedings are dismissed after the beginning of the trial, either forthwith or within a reasonable period after the dismissal;

and in any case in which the court has power by virtue of this subsection to make an order in respect of a child it may instead, if it thinks fit, direct that proper proceedings be taken for making the child a ward of court.
- (2) Where an order in respect of a child is made under this section, the order shall not affect the rights over or with respect to the child of any person, other than a party to the marriage in question, unless the child is the child of one or both of the parties to that marriage and that person was a party to the proceedings on the application for an order under this section.
- (3) Where the court makes or makes absolute a decree of divorce or makes a decree of judicial separation, it may include in the decree a declaration that either party to the marriage in question is unfit to have the custody of the children of the family.

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- (4) Where a decree of divorce or of judicial separation contains such a declaration as is mentioned in subsection (3) above, then, if the party to whom the declaration relates is a parent of any child of the family, that party shall not, on the death of the other parent, be entitled as of right to the custody or the guardianship of that child.
- (5) While the court has power to make an order in any proceedings by virtue of paragraph (a) of subsection (1) above, it may exercise that power from time to time; and where the court makes an order by virtue of paragraph (b) of that subsection with respect to a child it may from time to time until that child attains the age of eighteen make a further order with respect to his custody and education.
- (6) The court shall have power to discharge or vary an order made under this section or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended.

19 Orders for custody of children in cases of neglect to maintain

- (1) Where the court makes an order under section 6 of this Act, the court shall also have power from time to time to make such orders as it thinks fit with respect to the custody of any child of the family who is for the time being under the age of eighteen; but the power conferred by this section and any order made in exercise of that power shall have effect only as respects any period when an order is in force under that section and the child is under that age.
- (2) Section 18(2) and (6) of this Act shall apply in relation to an order made under this section as they apply in relation to an order made under that section.