

Modern Hindu Law

HINDU LAW APPLIES IN THE FOLLOWING 3 CATEGORIES:

1. Hindu by religion i.e., any person who is a Hindu, Jain, Sikh or Buddhist by religion.
2. Hindu by birth i.e., any person who is born of Hindu parents when both the parents or one of them is a Hindu, Jain, Sikh or Buddhist by religion.
3. Any person who is not a Muslim, Christian, Parsi or Jew and who is not governed by any other law.

HINDU BY RELIGION

1. Two types:
 - a) Those who are originally Hindus, Jain, Sikhs or Buddhists by religion, and
 - b) Those who are converted or reconverted to Hindus, Jain, Sikhs or Buddhists religion
2. Who is Hindu
 - a) Any person, who follows Hindu religion in any of its form or development either by practicing it or by professing it, is a Hindu.
 - b) Whenever a saint or religious reformer attempted the task of reforming Hindu religion and fought the irrational or corrupt practices which crept in to it, a sect was born which was governed by its own tenets, but which basically subscribed to the fundamental notions of Hindu religion, the Hindu philosophy.
 - c) It was never been suggested that these sects are outside the Hindu brotherhood and the temples they honour are not Hindu Temples. **(Shastri Vs. Muldas SC)**
3. Various forms of Hindu religion.

In short, whatever form of Hinduism a person follows, practices or profess he is a Hindu
4. Developments of Hindu religion
 - a) The most remarkable feature of Hinduism is that it has always permitted religious innovations and thus time and again new dimensions are added to Hindu religion.
 - b) Movements have taken place sometimes discarding some old practices and rituals, some times reviving some old practices and rituals and sometimes making new innovations.
 - c) Example: Brahmas, Arya Samajists, Radhasaamis, Satsangis and Syamariyathais.
5. Converts and reconverts to Hinduism
 - a) The usual way of conversion is by undergoing the ceremonies of a conversion prescribed by the religion to which the conversion is sought.
 - b) The Dharmashastra did not prescribe any ceremony for conversion to Hinduism.
 - c) Hindu did not contemplate that followers of other religions would convert to Hinduism.
 - d) Among, the Hindus, it is only the Arya Samajists who prescribed a ceremony of conversion known as 'Sudhi'.
 - e) A person, who undergoes the ceremony of 'Sudhi', converts in to Hinduism but then he is "Arya Samajists Hindu".
 - f) A non – Hindu becomes a Hindu if he undergoes the ceremonies of conversion. **[Kusum Vs. Satya 1903 (CAL)]**
 - g) A person may also become a Hindu if after expressing an intention, expressly or impliedly, he lives as a Hindu. **[Peerumal Vs. Poonuswami (SC)]**

- h) In such case, one has to look to the intention and conduct of the convert, and if the consensus of the community in to which he was initiated is sufficiently indicative of his conversion, such case no formal ceremony of purification or expiation is necessary to effectuate conversion.
- i) A Hindu of a higher caste becomes a shareholder of the Kerala SC and ST Welfare Board dose not mean that he has been accepted as a member of the scheduled caste and thus has become a SC. **[J. Das Vs. State of Kearal (Ker)]**
- j) A person who is a reconvert to Hinduism, Jainism, Buddhism or Sikhism is also a Hindu both under the un-codified and codified Hindu law.
- k) Thus, a Jain who converted in to Islam will be a Hindu if he converts to Sikhism.
- l) However, technically, this is not a case of reversion but of double conversion.
- m) Where a person belonging to a scheduled caste who had converted to Christianity, reconverts to Hinduism, he and his children will belongs to the former scheduled caste only if the members of that caste admit him to their fold.
- n) For reversion to Hinduism, no particular ceremony or any expiatory rite is necessary, unless the practice of caste makes it mandatory.

HINDU BY DECLARATION

The Kerala High Court in Mohan Das vs. Dewaswan Board (1975) has gone a step further from the proposition propounded by the Supreme Court in Peerumal Case.

It held that, when a person declares that he is a follower of Hindus faith and if such a declaration is bona fide and not made with any ulterior motive or intention, it amounts to his having accepted the Hindu approach to God. He becomes a Hindu by conversion.

In this case, K. J. Yesudas a Catholic Christian by birth and a famous playback singer used to give devotional music in a Hindu temple and worshipped there like a Hindu.

He had also filed declaration, "I declare that, I am follower of Hindu faith". On these facts the court held that, Yesudas was a Hindu and could not be prevented from entering the temple.

HINDU BY BIRTH

When both the parents are Hindu

- Children born of Hindu parents are Hindus. It is necessary that both the parents should be Hindus, Sikhs, Jain or Buddhists.
- If after the birth of the child both or one of the parent become convert to another religion, the child will continue to be a Hindu child, unless, in the exercise of parental rights the child is also converted in to the religion in which the parent or parents have converted.

When on parent is Hindu

- ✓ Under the modern Hindu law, the child's religion is not necessarily that of the father.
- ✓ If the mother at the time of child's birth was a Hindu and the child was brought up as a Hindu, the child would be Hindu.
- ✓ A child is borne of Hindu mother and Muslim father. The child is brought up as Hindu.

Subsequently, mother converts to Islam. If at this point of time the question arises whether the child is Hindu. We find that neither of the parents is a Hindu but nonetheless the child is Hindu.

- ✓ The child of a Hindu father and Christian mother was held as to be Christian. **[Sapna Vs. State of Kerala (Ker) 1993]**
- ✓ Devdasis are Hindus. **[Bhaghyavathi Vs. Lakshmi (Mad) 1993]**
- ✓ Is it necessary that the child should be brought up as a member of tribe, community, caste, group or family to which the Hindu belonged at the time of the birth of the child?
It is submitted that, the bringing up of the child in any of the religions of Hindus is not necessary, the requirement being that the child should be brought up in the Hindu of life.

PERSON WHO ARE NOT MUSLIMS, CHRISTIANS, PARSI OR JEWS BY RELIGION

- i. Before the codified Hindu law, it was well established that the Hindu law applies to Aryan Hindus as well as to non-Aryan Hindus.
- ii. For non-Aryan Hindus it was not necessary to establish as to whether they have accepted the law as laid down in the Smritis and the Commentaries. Thus, Adi Dravidians and Chamaras were held to be Hindus.
- iii. Many aboriginal tribes were considered to be sufficiently Hinduised so as to be governed by Hindu law.
- iv. Complete Hinduisation is not necessary.
- v. The Khojahas, the Cutchi Memons, the Bohars, Mopals and the Halai Memons are Muslims but, subject to the provisions of Shariat Act, 1937, they are governed in matters of succession and inheritance by Hindu law or Custom.
- vi. The Vannia Tamil Christians of Chittur district is governed by Hindu law in matter of inheritance and succession, but Sec.14¹ of Hindu Succession Act, does not apply to them.
- vii. The codified Hindu law takes this principle a little further. It lays down that a person who is not Muslim, Christian, Parsi or Jew is governed by Hindu law, unless it is proved that Hindu law is not applicable to such a person.
- viii. Some times it may be difficult to prove whether a person is a Hindu, though negatively, it may be easier to prove that a person is not a Muslim, Christian, Parsi or Jew. If the negative is proved, such a person will be presumed to be a Hindu, unless this presumption is rebutted by proving that Hindu law is not applicable to such a person.
- ix. Those persons who believe in all faiths or in conglomeration of faiths may fall under this class. Such person may not be Muslims, Christian, Parsi or Jews and yet it may be difficult to prove that such persons are Hindus. Under the codified law such person will be Hindus for the purpose of application of Hindu law.

MARRIAGE WITH NON HINDU

Where a custom permits marriage of a Hindu with a non Hindu woman, his children and his wife will be Hindus. **[Devabalam vs. Jaya kumara (Ker) 1991]**

SCHEDULED TRIBES

- ❖ The codified Hindu law lays down that, its provisions do not apply to the members of the Scheduled Tribes coming within the meaning of Article 366 (25) of the Constitution of India unless the Central Government by notified in the Official Gazette directs that any of the enactments shall apply to them also.

i. ¹ Sec. 14 introduces fundamental changes in the concept of woman's property. It abolishes Hindu Woman's estate and converts existing woman's estate (existing prior to the coming in to force of the Act and over which Hindu female has possession) in to her absolute property.

- ❖ However, if before codification, any Scheduled Tribe was governed by Hindu law, it will continue to be governed by it.

HINDU UNDER CODIFIED HINDU LAW

Broadly speaking, the codified Hindu law is applicable to 2 types of persons:

1. Those who are Hindus, Sikh, Jain or Buddhists by religion or birth and
2. Those who are not Muslim, Christian, Parsi or Jew by religion.

A mere declaration under the Special Marriage Act, 1872 that a person was not a Hindu did not mean that he had ceased to be a Hindu. **CIT vs. Pratap 1959 Punjab High Court**. This is also the view taken by other High Courts.