

DEWANG DESAI 20116A

Subject - Hindu law



SOURCES OF HINDU LAW

1) Ancient Sources :

- a) **Sruti** : Manu has defined Sruti as follows– “By *Sruti* or what was heard from above (from God) is meant the *Veda*”. *Sruti* or *Veda* are believed to contain the very words of Deity (God). They are supposed to be the divine utterances to be found in the four Vedas, the six vedangas and the eighteen Upanishads.

- b) **Smriti** : They are utterances and precepts of the Almighty, which have been heard and remembered and handed down by the Rishis (sages) from generation to generation. The smritis are divided into Primary and Secondary Smrities contained in Dharma Sutra (Prose) and Dharmashastras (Poetry).

- c) **Digests and Commentaries** : After the Smrities, the next step in the development of Hindu Law was the composition of a number of commentaries (tika) and Digests (Nibandha) based upon the Smrities. The commentaries are to interpret the law as laid down in the Smrities.

- d) **Custom** : When human beings came to live in groups, it was but natural that they should, for harmonious group life, conform to certain patterns of human behaviour.



2) Modern Sources :

- a) Judicial Decisions
- b) Legislation
- c) Equity, Justice and Good Conscience

APPLICATION OF HINDU LAW

1 .Hindu by Religion : In this category two types of persons fall –

- a) Those who are originally Hindus, Jains, Sikhs or Buddhist by religion, and
- b) Those who are converts or reconverts to Hindu, Jain, Sikhs or Buddhist religion
- c) Converts and Reconverts to Hinduism

2. Hindu by Birth : A child whose both the parents were Hindus, Sikhs, Jains or Buddhists at the time of his birth, is regarded as Hindu. A person will be Hindu if at the time of his birth one of the parents was Hindu and the child is brought up as a member of the tribe, community, group or family to which Hindu parent belonged at the time of his birth.

3. Who are not Muslims, Christians, Parsis or Jews : Any person who is



Explanation – The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be –

- a) any child, legitimate, or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;
 - b) any child, legitimate, or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion, and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
 - c) any person who is a convert or re-convert to the Hindu, Buddhist, Jain or Sikh religion.
2. Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Schedule Tribes within the meaning of clause (25) of Article 366 of the Constitution, *unless* the Central Government, by notification in the Official Gazette, otherwise directs.
3. The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.



- 1. Hindus by birth and also to Hindus by conversion in any of its forms or developments including Brahmans, Arya Samajists etc.**
- 2. Illegitimate children whose parents are Hindus.**
- 3. Illegitimate children born of a Christian father and a Hindu mother and brought up as Hindus.**
- 4. Buddhists, Jains, Sikhs and Nambudry Brahmans except, so far such law is varied by custom and to lingayats who are considered as Shudras.**
- 5. Sons of Hindu dancing girls of Naik caste converted to Mohammedanism where the sons are taken into the family of Hindu grandparents and are brought up as Hindus.**
- 7. Brahmos and Arya Samajists, and to Santhals of Chhota Nagpur, and also to Santhals of Manbhum except so far as it is not varied by custom.**
- 8. A Hindu who has made a declaration that he is not Hindu for the purpose of Special Marriage Act 1872, and**
- 9. A person who is born a Hindu and has not renounced the Hindu religion, does not cease to be a Hindu merely because he departs**
- 10. A Hindu by birth who having renounced Hinduism, has reverted to it after performing the religious rites of expiation and repentance, or even without a formal ritual or re-conversion when he was recognised as a Hindu by the community**



THE HINDU MARRIAGE ACT, 1955

Nature of Hindu Marriage - **Sacrament or a Contract** :

- It is believed among Hindus that every Hindu is under a religious obligation to discharge three debts— Pitri Rin, Dev Rin, and Rishi Rin.
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- Rishi Rin is discharged by getting education, Dev Rin is discharged by prayer and by making gift but for the discharge of Pitri Rin a Hindu must have his own son who is supposed to perform funeral rites and to give sacred obligations to the ancestors on their death for their salvation. Marriage is also necessary among Hindus because all the religious ceremonies and rites are to be performed in the companionship of his wife otherwise they will not bear any fruits.
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- From the Rig Vedic period marriage was considered as a sacramental union. A marriage is the union of flesh with flesh and bone with bone. It is a union which is indissoluble. As long as her husband is alive, the wife is enjoined to regard him as her God; likewise, the wife is declared to be half the body of her husband (Ardhangini) who shares with him equally the fruits of all his acts, good or bad. Man is only half, not complete until he marries. The wife is the source of *Dharma*, *Artha* and *Kama*, and she is also the source of *Moksha*.



- **According to Manu, the daughter is given in marriage only once and she remains the wife of that person to whom she is given in marriage for her whole life.**

- **According to Narada and Parasara, there are only five conditions in which a wife could abandon her husband and remarry –**
- **1.If the husband is lost; 2.dead; or 3.has renounced the world and has become a sanyasi; or 4. has become impotent; 5. has been ousted from his caste.**

- **But these conditions could be allowed only in the case of unapproved form of marriage. Marriage is a tie which once tied cannot be untied. It is sacramental union and continues to exist even after the enactment of the Hindu Marriage Act.**



- **1. The Act has declared that marriages amongst Hindus, Jains, Sikhs and Buddhists, are valid.**
- **2. Monogamy has been introduced and provided punishment for bigamy.**
- **3. The minimum age for marriage, 21 for boy and 18 for a girl.**
- **4. The Act does not recognise any particular form of marriage but prescribes some conditions.**
- **5. Registration of Hindu Marriage.**
- **6. Restitution of conjugal rights.**
- **7. The provision of judicial separation.**
- **8. The provision of divorce and the concept of divorce by mutual consent.**
- **9. The provision of re-marriage.**
- **10. Legitimacy of a child born out of either void or voidable marriage.**
- **11. Provision for the custody of children during the pendency of legal proceeding and even after the passing of decree.**



Section 5. Conditions for a Hindu marriage

A marriage may be solemnized between any **two Hindus**, if the following condition are fulfilled, namely:-

- (i) neither party **has a spouse living** at the time of the marriage

- (ii) at the time of marriage, neither party-
 - (a) is **incapable of giving a valid consent** to it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent, has been **suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children**; or
 - (c) has been subject to **recurrent attacks of insanity**

- (iii) the bridegroom has completed the age of **twenty one years** and the bride, the age of **eighteen years** at the time of marriage

- (iv) the parties are not within the degrees of **prohibited relationship**, unless the custom or usage governing each of them permits of a marriage between the two;

- (v) the parties are not **sapindas** of each other, unless the custom or usage governing each of them permits of a marriage between the two;



Sec.2 (g) degrees of prohibited relationship”

Two persons are said to be within the “degrees of prohibited relationship”

- (i) if one is **lineal ascendant** of the other; or
- (ii) if one was **the wife or husband of a lineal ascendant or descendant of the other**; or
- (iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or
- (iv) if the two are brother and sister, uncle and niece, aunt and nephew or children of brother and sister or of two brother or of two sister;

Explanation- For the purposes of clauses (f) and (g), relationship includes:-

- (i) relationship by **half or uterine blood** as well as by **full blood**;
 - (ii) **illegitimate blood relationship** as well as **legitimate** ;
 - (iii) relationship by **adoption as well as by blood** ;
- and all terms of relationship in those clauses shall be constructed accordingly

