

## HINDU LAW LECTURE SERIES PART 1

Yardsticks to determine one's religion

1. **first factor**- both parents has to be Hindu (**Religion of parents will enforce till he attains the age of majourity- after this he has a choice to follow or not**)

2. **second factor**- one parent is Hindu

- illegitimate child can claim the ancestral property or the property of father .
- the way the child is brought up a - particular religion that parent profess will be the religion of the child

3. **third factor** - one person is Atheist (if criticizing own religion, religion will not change till the conversion was done by the person)

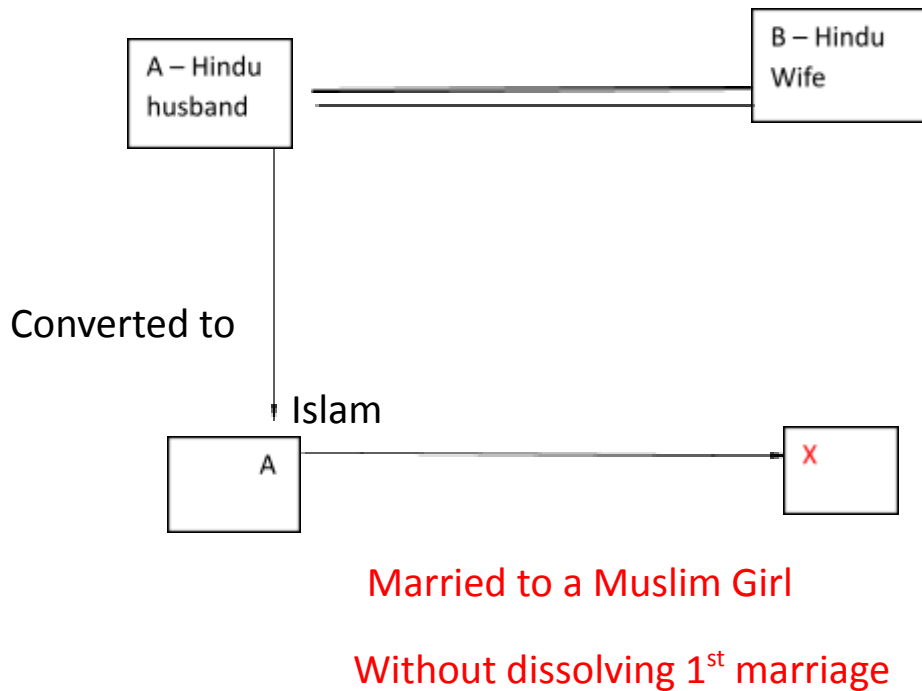
### 4. Re convert

- Date of Birth is Imp. in determing the religion of a child, not date of conception

when converts to another religion, the first caste remained suspended animation (it does not mean it gets deleted), & if again wanted to re convert to Hindu, can do there is no prohibition on this.

**CASE (1) Sarla Mudgal v. UOI**  
**(2) Lily Thomas v. UOI**

In this case there were two persons.



Converting for Marriage points to be determined-

1. Intention – there should be no guilty intention, as shown in the above case.

## ❓ **Difference between Mitakshara and Dayabhaga school of law**

1. Under Mitakshara, the basis for the law of Inheritance is the principal of propinquity, that is nearness in blood relationship or consanguinity of blood, which means that one who is nearer in blood relationship succeeds. This is purely a secular principal and means that sons and daughters should inherit equally as they are equally nearer to the deceased parents.
2. The law of succession under Dayabhaga is based on the principal of religious efficacy or spiritual benefit, a person who confers more religious benefit on the deceased is preferred to those who confers less spiritual benefit.
3. With respect to Joint Family under Mitakshara system, the doctrine of survivorship is applicable but under Dayabhaga no such concept is there after his death, property whether ancestral or separate devolves by inheritance or succession. It does not recognize the right of the son to ask for Partition during lifetime of the father.
4. Under Mitakshara law, the coparceners have community of interest and unity of possession while under the Dayabhaga coparceners have specified and ascertain shares in the joint family property. The interest do not

- fluctuate but the coparceners have a unity of possession.
5. While under the Mitakshara System, the brothers and even collaterals so long as they are joint do not have a right to dispose off their shares. Under dayabhaga the brothers or even collaterals hold their shares quasi-severe and while still undivided have a right to dispose off their shares.

### **CASE-**

Dr. Surrajamni Stelle Kujur v. Durga Charan Hansdah, AIR 2001 SC 938.

### **DIVISION BENCH**

**FACTS-** In this case both the appellant and respondent are from tribal community, the appellant is Oraon and the (R) is a Santhal. They are deemed to be Hindus in the absence of notification or order under Art 342 of the Constitution.

Both the tribes to which the parties belong are specified in PART XII.

It is submitted that as the (R) has solemnized a second marriage during the 1<sup>st</sup> marriage with the appellant, the appellant contended that second marriage void, the (R)

is liable to be prosecuted for the offence under Sec. 494 of IPC.

### **ISSUE-**

Who is a Hindu for the purpose of the applicability of the Hindu Marriage Act,1955?

### **OBITER DICTA-**

1. Section 2 of Subsection 2 of the act specifies the persons to whom the act is applicable. It applies to a person who is a Hindu by religion in any of its forms or developments.
2. The act is applicable to (1) All hindus including a Virashaiva, a Lingayat, a Brahmo, Prarthana (2) Buddhist (3) Jains (3) Sikhs.
3. Applicable to any person who is not domiciled in India, who is not a Muslim, Christian, Parsi or Jew by religion.
4. The expression "custom and usage".

### **Ratio Decenti- (Held)**

In the absence of notification or order under Article 342 of the Const. of India, they are deemed to be Hindus.

Both the parties belong to which Tribes are specified in Part XII.

This is admitted by the appellant, the parties are tribals, but their marriage being out of the Hindu Marriage Act, 1955, are thus governed only by their Santhal Customs and usage. So, the appellant contended that custom having the force of law which prohibits the solemnisation of 2<sup>nd</sup> Marriage.

It may also be emphasized that mere pleading of a custom stressing for monogamy will be not sufficient itself unless it was further pleaded that 2<sup>nd</sup> marriage was void because of taking place during the life of 1<sup>st</sup> wife or husband.

Existence of custom in 2<sup>nd</sup> marriage is essential.

The complaint was dismissed by saying that there is no mention of any such custom in the complaint nor there is evidence of such custom.

## ❓ VIRASHIVA

- It flourished in the Kannada speaking areas, came into existence as a social reform movement in the middle of the 12<sup>th</sup> c. under the leadership of Basava
- Philosophy of this school is directly inspired by the 28 Sava Agamas.

- The movement strongly argued for the equality of all human beings.
- It was against Brahmanical ideas about Caste and the treatment of women.
- They were also against all forms of ritual and idol worship.
- They only worship Shiva and they can be found across India.
- Those who consume non-veg calls themselves Kshatriya Shahia while those who are vegetarian calls themselves Brahmana Shaiva.
- All sects follow 5 mutt Kashi mutt, Rameshwaram Mutt, Ujjaini Mutt, Rambhapura Mutt and Srishaila Mutt are the core holy places for the community.

## **CASE-**

**Mr. X v. Hospital Z, AIR 1999 SC**

**Right to marry case**

**Chnadrabhabgai Ganpati v. S.N Kanwar**

**Related to Customs**

### **HELD-**

Small instance of custom is sufficient to proof the marriage.

### **FACTS-**

A wife and has children. Her husband died leaving property behind B, Brother of (H) contended for property saying that marriage and child is void because marriage was not solemnized because no proper custom has been followed.

### **CASE-**

**Lata singh v. State of U.P,2006**

#### **Intercaste Marriage**

Girl's family threatens them after Inter caste marriage. Girl filed for issue of writs under Cerritiori and Mandamus.

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