

Question No. 1:- State the categories of persons to whom Hindu Law applies. Explain whether the members of any schedule tribe coming within the clause (25) of Article 366 of the constitution are governed by the codified Hindu Law?

ANSWER:- INTRODUCTION :- The word Hindu is extremely popular and famous term. Generally every person is known to it. But the term of Hindu has not been defined till now. A person may be called as Hindu, but only few knew why they are Hindu?

Sh. Radha Krishnan in his book 'Hindu View of Life' at one place said that there was a time when a person was identified as a Hindu on the basis of region i.e. a person who resided in India was called as Hindu, it also represented the nationality.

A time also came in the middle when a person was called Hindu who believed in Hindu religion or followed it. But this identity of Hindu also did not remained for too long, because it was not required for Hindu to believe in Hindu religion. It is said that though several codified Hindu Laws were enacted in 195 and 1956 but the term Hindu was not defined. Today it can be said broadly that a person who is not Muslim, Christian, Parsi or Jew shall be Hindu.

The Supreme Court in the case "Dr. Ramesh Yashwant Prabhu v/s Prabhakar Kashinath Kunta" -1996 and Manohar Joshi v/s Nitia Bhausher Patil-1996 explain the term Hinduism related to Hindu as the life style and mentality of this continent.

Now the term Hindu can be widely defined the person to whom Hindu Law applies shall be Hindu.

PERSON TO WHOM HINDU LAW APPLIES:-

The following person can be kept in categories mentioned against each :-

1. Those persons who are Hindu, Jain, Buddhist or Sikh by birth:-

i) A person is called Hindu by birth who is the child of Hindu Parents i.e. whose parents are Hindu but such person is also considered Hindu whose either of the parent is Hindu and has been brought up under Hindu traditions.

A case : Maya Devi v/s Uttram -1861, this view was proved. Another case of Sh Devavasan v/s Jaya Kumari -1991, Kerala High Court held that male of Nadar caste of Travancore marry any non-Hindu female and a child born out of such marriage shall be Hindu

Here pertinent to mention that according to ancient Dharamshashtras, a child born between Hindu parents only can be called Hindu, there was no such thing of Hindu conversion of religion. Therefore it was said that, "A Hindu is born not made"

Application of Hindu Law over Schedule tribes :

Several times a question arose that a codified Hindu Law does not apply to those persons which belongs to schedule tribe under article 366 clause (25) of the constitution. Section 2(2) of Hindu Marriage Act 1955 and the case of Dashrath v/s Guru -1972 Orrisa and Kadam v/s Jeetan -1973 of Patna given the answer of this question. According to them a codified Hindu Law shall apply to such persons only when the Central Government notifies in the official Gazette by a notification.

CHILD FROM HINDU FATHER & CHRISTAIN MOTHER

A question also arosed that whether such person shall be considered to be Hindu whose father is Hindu and mother is Christain? A case Commissioner of Income tax v/s Sridharan -1976 : a positive answer was given and said that if either of the parent is Hindu and child born out of them is brought up under Hindu traditions then that child shall be considered as Hindu. Also in our society the religion of father applies over the son

In a case Sapna v/s State of Kerala : 1993: It was held that if a child is brought up as a member of Christain famiy then in that situation the child shall be christain instead of being Hindu.

Those persons who are Hindu, Jain, Buddhist or Sikh by religion:-The Hindu Law also applies to those persons who are not Hindu by birth but have accepted Hindu religion by conversion.

Case: Abraham v/s Abraham, 1863, is an important case in this respect. It was held in this case that the Hindu Law applies not only to those who are Hindu by birth but also applies to those persons who have become Hindu by conversion. Another case Morarji vs Administrator General-1929 Madras: It was said that persons becoming Hindu by conversion are also Hindu and the Hindu Law applies over them too. Modern Hindu Law includes both Hindu by birth and Hindu by religion under the term Hindu.

Those persons who are not Mussalman, Chistain, Parsi Or Jew.

In wider sense Hindu Law applies to all those who are not Mussalman, Christain, Parsi or Jew. Case : Rajkumar v/s Warwara-1989: Calcutta: The Calcutta High Court held that this category includes all those person who donot believe in any religion. In

other words, it can be said that all persons different from Mussalman, Christain, Parsi or Jew are Hindu and the Hindu Law applies over them, who are i) atheist or ii) believes in all religion, or iii) believes in religion which is maximum of all.

Another case: Yagyapurushdasji v/s Mooldas -1966: The Supreme Court held that the followers of Narayan Swami section as Hindu because though they may be governed by their views or rules but finally are related to the Hindu religion.

APPLICATION OF ENACTED LAWS

The enacted laws applies over the following:-

- i) Who are the followers of Veer Shav, Lingayat or Braham samaj. Prathna Samaj or Arya Samaj and are Hindu by religion.
- ii) Who are Jain, Buddhist or Sikh by religion.
- iii) Who are resident of territory to which enacted law applies and are not mussalman, Christain, Parsi or Jew and has not been proved that in the absence of enactment, they would not have been governed by Hindu Law or a custom or practice of its part.

THE FOLLOWING PERSONS ARE HINDU, BUDDHIST OR SIKH BY RELIGION

- (a) Any child, legitimate or illegitimate, whose both parents are Hindu, Buddhist, Jain or Sikh by religion.
- (b) Any child legitimate or illegitimate whose either of parent is Hindu, Buddhist, Jain or Sikh by religion and has been brought up a member of that tribe community or group to which that parents was or is member.
- (c) Any person who has converted or reconverted to Hindu, Buddhist, Jain or Sikh religion : Cases : Perumal v/s Punnuswami-AIR-1971 & Durga Parsad v/s Sudarshan Swami AIR-1940 Madras. This was proved.
