

Overview of Hindu Law

Joint Hindu Family

Consists of all persons lineally descendant from common male ancestor and includes their wives and unmarried daughters.

The daughter become the part of their husbands family after marriage.

Essentials

Not only joint in estate but also in food and place of worship

Ownership of any estate is not a precondition to a joint family.

If the family has joint estate and the estate is divided then the family no longer remains joint even if it is joint in food and place of worship.

Joint Hindu Family

A joint hindu family must have at least two members. An unmarried male member on partition does not himself alone constitute a Hindu family.

A joint family may consist of a male member and widow of deceased brother, or a male member and his wife or two female members.

A joint family property remains joint even if it is represented by a single male member. He possesses rights similar to the absolute owner of the family.

A fundamental principal of Joint Hindu family is tie of sapindaship without which it can not be formed.

Joint family property is purely a creature of law and those who own it are called coparceners.

Coparcenary

A Coparcenary is a much narrower body.

It includes only those persons who acquire by birth an interest in the joint or coparcenary property. These are sons, grand sons and great grand sons of the holder of the joint ancestral property.

Ancestral Property : Sons, Grand sons and Great grand sons acquire interest in it by birth . For e.g. If A acquires any property from his father on division or as his part after succession and A has no son than A becomes the absolute owner of the property.

Separate Property: Property self made or acquired by other relations.

Coparcenary

Formation of a Coparcenary Unit.

1. Common male ancestor with lineal descendants in male line within four degrees counting from and inclusive of an ancestor or three degrees exclusive of the male common ancestor.
2. No coparcenary can run without a common male ancestor.
3. A coparcenary is purely a creature of law and can not be created by acts of the parties.
4. Female members of the family can not become coparceners.



Sources of Hindu Law

Old Sources

- *Shruti*
- *Smriti*
- *Customs*

New Sources

- *Principles of equity*
- *Judicial decisions*
- *Commentaries*

Sources of Hindu Law

Shruti

Shruti means literally, that was heard. Shruti which strictly means vedas was in theory the root and original source of Dharma. The shruti was accepted as original utterings of the Divine and Great powers.

Smriti

Smritis literally means recollection. Smritis were accepted as precepts emanated from divine powers and couched in words by rishis and sages of antiquity, who saw or received revelations and proclaimed their recollection.

Sources of Hindu Law

Shruti & Smriti

The authority of above two primordial sources is described by Manu, " By Shruti or what was heard from above, is meant by veda.

"By Smriti or what was remembered from the beginning is the "Body of the law".

From these two proceeds the whole system of duty.

Where there is a conflict between Vedas and Smriti, the Veda should prevail.

However for all practical purposes Smritis were accepted as effective source of Hindu Law as there was not much of positive laws in Vedas.

Sources of Hindu Law

Customs

Three kinds of customs (i) Local, (ii) Class, (iii) family customs.

Essentials of valid customs

- A custom is a rule in a particular family, class or community, or in particular district has from long usage obtained the force of law.
- It must be reasonable, certain and in derogation of rules of law must be strictly construed.
- It should not be against morality and public policy and also should not be expressly forbidden by law.
- A custom derives its force from the long usage as force of law.
- It should be ancient, but that is not the essence of the rule. The only thing required is that its usage must be in application for a long time.

Sources of Hindu Law

New Sources

Principles of equity

Where there is no rule of Hindu law and no proof of existence of customs, rules of justice, equity and good conscience should be applied.

Judicial Decisions

Almost all the important points of Hindu law are now available in Law reports and journals. It can be said without argument that decisions of judicial courts have superseded the commentaries on law matters. The decisions of Privy councils and Supreme courts are binding on all the courts of India. The decisions of High courts are not binding on one another though binding on their subordinate courts.

Commentaries

The law of smritis was empiric and progressive and thus with passage of time it lead to an array of commentaries on various matters pertaining to society and law.

These commentaries varied in nature due to the diversity of language, vernacular and customs of their places of origin.

These varied commentaries lead to the schools of law which are now operative in different parts of the country now.

Sources of Hindu Law

Mitakshara School of Law

Running commentary on code of Yagnyavalkya

Written by Vijnaneshwar in later part of 11th century.

It is of supreme authority through out the country except Bengal and Assam.

Orthodox school

Differs with Daybhaga school in terms of law of inheritance and joint family system.

Sources of Hindu Law

Daybhaga School of Law

Not a commentary on any particular code but purports to be a digest of all the codes.

Written by Jimootvahana, who flourished in beginning of twelfth century.
Of supreme authority in Bengal.

Reformed school or Bengal school.

Succession & Inheritance

Hindu Succession act 1956

Provisions for disqualifying certain persons from getting a share in succession

- Section 24 Any heir related to intestate as the widow of predeceased son, widow of predeceased son of a predeceased son or the widow of brother, shall not be entitled to succeed to the estate of intestate as such widow, if on the date the succession opens she has remarried, However
1. Step mother does succeed as widow of father
 2. Mother of intestate succeeds, not as the widow of father but in her own right
 3. Widow of intestate succeeds without any question of remarriage.

Succession & Inheritance

Section 25

A person who commits murder or abets the commission of murder is disqualified from inheriting their property of the person murdered or any other property in furtherance of the succession to which he or she has committed or abetted the commission of murder.

It can be understood as

(a) A murderer is disqualified from inheriting any interest in the property of the person murdered. (b) That a murderer in such a case to be treated as non-existent or dead and not as one who forms the stock for a fresh line of descent.

This disqualification is not general but confined to certain property. The murderer does not ipso facto his right to property in general or his right to inherit property of any other person, succession to whose estate is not in any matter altered or accelerated by the murder.

" It is necessary for application of this section that the person disqualified is should have been convicted of murder or abetment of murder.

Illustration : A has a brother B and a nephew C the son of a predeceased brother. C commits the murder of B. (B being the nearer heir would have been entitled on A's death to succeed to A's property to the exclusion of C), C becomes disqualified from inheriting the property of A.

Succession & Inheritance

Section 26

Where before or after the commencement of this act, a Hindu ceased or ceases to be Hindu by way of conversion to another religion, the children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time succession opens.

Succession to the property of the apostate shall be governed by the personal law applicable to the followers of the religion to which he has converted or by the provisions of Indian succession act.

It will be noticed that children born to apostate before his conversion are not affected by the rule, nor are the children or descendants of his children born after his conversion affected by the rule if they are Hindus at the time of succession.

Succession & Inheritance

Section 27

If any person disqualified from inheriting any property under this act, it shall devolve as if such person has died before the intestate. Thus if a disqualification occurs from any of the causes mentioned in group of section 24 to 26 and where an heir is disqualified, the next heir of the deceased succeeds as if the disqualified person had died before the intestate.

As a general rule disqualification from inheritance is purely personal and does not extend the issue of the disqualified heir unless there is any law to the contrary; e.g. the provisions related to the descendants of a convert from Hinduism.

Adoption

Legal effects of valid Adoption

1. Transfer of adoptive boy from his natural family to the adoptive family confers on adoptee same rights and privileges in the family of adopter as the legitimate son except in few cases.
2. The adoptee son loses all his rights and privileges as son in his natural family including the right of claiming any share in the estate of his natural father or natural relatives or any share in coparcenary property of his natural family.
3. Adoption does not sever the tie of blood between the adoptive son and his natural family. He can not marry in his natural family within the prohibited degrees, nor can he adopt from that family whom he could not have adopted if he had remained in that family.



Adoption

4. The only cases in which an adopted son is not entitled to the full rights of natural born son are:

- (I) Where a son is born to the adoptive father after the adoption.
- (ii) Where he has been adopted by a disqualified heir.

5. Where a married person with a son is given in adoption and the son does not want to become a part of adoption, then the person and his wife passes in to the adoptive families. In such case if the adoptee person dies the wife can not adopt her natural son, because she has lost the power to give, and she can not be both giver and taker.

6. Where a married person is given in adoption with his wife pregnant, the son subsequently born passes in to the adoptive families for the reason that such a son born in the adoptive family becomes a member of the family.

Adoption

Illustrations :

1. A gives C to X ; C can not inherit A
2. A&B have sons C&D respectively. A gives C to X. C loses all his coparcenary rights in his natural family. The coparcenary reduces to three members after C's adoption.
3. A has son C . A dies C becomes sole surviving coparcener of the family. C's mother gives him in adoption to X, C does not lose any of his right in coparcenary property by way of adoption.

Adoption

Conditions for valid adoption

- i. Giving and taking ceremony
- ii. 21 years gap in case of gender difference.
- iii. Free consent: Consent of natural guardian of adoptive boy.
- iv. Not invalid merely because a consideration is received by person giving in adoption, though the promise to pay consideration can not be enforced by law.
- v. Ceremony of *Dutta homam* may be performed by the parties or delegated to by them to others. *Dutta homam* not essential in twice born cases.

Dutta homam is the sacrifice of burning of clarified butter , which is offered as sacrifice by fire by way of religious oblation.



Adoption

Invalid adoption

- i. Adoptive son does not acquire any rights in the adoptive family and does not forfeit any rights in his natural family.
- ii. Gifts made to a person adopted but whose adoption is subsequently held invalid , the validity of the gift depends upon the intention of the donor or testator to be gathered from the language of the deed and the circumstances surrounding.

Hindu Marriage Act

S.9 Restitution of conjugal rights

Where one of the spouses has without reasonable excuse withdrawn from cohabitation from other, the aggrieved spouse can obtain from the court a decree pronouncing restitution of conjugal rights.

S.11 Marriage is void ipso jure.

S.12 Marriage may be annulled on grounds which render it voidable.

Hindu Marriage Act

S.11 Marriage is void ipso jure.

Void ipso jure

Marriage solemnized after commencement of HMA 1955 are void ipso jure if

In case of bigamy or where the parties are within the prohibited degrees of relationship, or were sapindas of each other unless in case of any of the last two mentioned conditions, the custom and usage governing both the parties to the marriage permits of a marriage between them.

Any marriage in contravention of any of these three conditions is null and void from its inception and either party to such marriage can obtain a decree of nullity from the court against the other party.

Hindu Marriage Act

S.12 Marriage may be annulled on grounds which render it voidable.

Voidable marriages

Marriage shall be voidable on following grounds

1. Impotency
2. Mental incapacity at the time of marriage
3. Consent of petitioner obtained by force,
4. respondent was pregnant by some other person at the time of marriage and petitioner was ignorant about the fact at the time of marriage.

Hindu Marriage Act

S.13 Grounds for decree of divorce

- 1. Any marriage solemnized whether before or after the commencement of this Act, may on a petition presented by either the wife or the husband, be dissolved by a decree of divorce on the ground that the other party**
 - i. A person has had voluntary intercourse with any person other than his or her spouse.
 - ii. Treated the petitioner with cruelty
 - iii. deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.
 - iv. has ceased to be Hindu by conversion to another religion.



Hindu Marriage Act

- v. has been of incurably unsound mind, or suffering from mental disorder of such a kind and to such an extent that the petitioner can not reasonably be expected to live with the respondent.
- vi. Suffering from a virulent and incurable form of leprosy.
- vii. Suffering from a venerable disease in a communicable form
- viii. has renounced the world by entering any religious order.
- ix. has not been heard of as alive for a period of seven years or more by those persons who would naturally had heard of it, had the party been alive.



Hindu Marriage Act

1A Petition of dissolution of marriage by a decree of divorce on the grounds

- I. That there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties.
- II. That there has been no restitution of conjugal rights as between the parties to the marriage for the period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

Hindu Marriage Act

2. A wife may also present a petition

- i. that the husband had married again or any other wife of the husband married before commencement of this Act was alive at the time of solemnization of the marriage of the petitioner
- ii. that the husband has since marriage, been guilty of rape , sodomy or bestiality.
- iii. that in a suit under sec 18 of Hindu Adoptions and Maintenance Act 1956, or in a proceeding under section 125 of criminal procedure code 1973, a decree or order has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order , cohabitation between the parties has not been resumed for one year or upwards
- iv. that her marriage whether consummated or not was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.