

Quadrant II - Notes

Paper Code: FML0510

Module Name: Hindus. Historical perspective of traditional Hindu law as a background to the study of Hindu Succession Act 1956

Module No: 10

- Definition of Hindu - The term “Hindu” has been defined in the Constitution under Article 25(2)(b) Explanation II as “Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

THE HINDU SUCCESSION ACT, 1956 applies

- S.2 (a) to any person, who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;
- (b) to any person who is a Buddhist, Jaina or Sikh by religion; and
- (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

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, Jainas 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;
- (c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion

- (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe 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

- **Hindu Inheritance (pre codification)**

- “To the nearest sapinda the inheritance next belongs, after them the sakulyas, the preceptor of the vedas, or a pupil.” - Manu

- Systems of inheritance

- There are two main systems of inheritance, Mitakshara & Dayabhaga. Dayabhaga prevails in Bengal while Mitakshara prevails in the rest of India.

- General principles of inheritance

Vesting never in suspense – right of succession immediately vests in the heir on the death of the propositus.

- Divesting of vested estate does not take place except in case of son in womb and adopted son

- Modes of devolution of property

The modes of devolution are different under the different schools.

- Devolution under mitakshara school

Mitakshara recognized both succession and survivorship as modes of devolution. The nature of the property determines the mode of devolution

- Nature of property is of two main types.

- Joint family property and unobstructed heritage – this property devolves by survivorship.

- Separate property and obstructed heritage - this property devolves by succession.

- Devolution under dayabhaga school – recognizes only one mode of devolution, succession.
- Survivorship and succession – survivorship is the right to acquire a share in property to which one already has a birth right. Succession is acquiring new rights in property to which one did not earlier have rights.
- Inheritance under mitakshara
- General principles
- Inheritance never in abeyance
- Inheritance cannot be overridden by agreement
- Spes successionis is not recognized
- Males take absolutely, females take limited estate
- Doctrine of representation
- Joint tenants and tenants in common
- Division per stripes and per capita
- Whole blood preferred to half blood
- Propinquity and religious efficacy
- Devolution of property according to mitakshara law (pre act)
- Coparcenary property – survivorship
- Self acquired property – succession
- Sole surviving coparcener – succession
- Separated coparcener - succession
- Reunited coparcener – survivorship
- Order of succession of heirs
- Sapinda – man's six male descendants in the male line, with himself as the seventh

- Samanodaks – all the male descendants in the male line from the eighth to the fourteenth degree from and including the propositus

- Bandhus – sapindas related through a female, being within five degrees from and inclusive of common ancestor

- Spiritual preceptor

- Pupil

- Government

- Inheritance under dayabhaga law

- Religious efficacy – capacity to confer spiritual benefit on the deceased is the determining principle regulating the mode of succession – based on Parvanasraddha

- One mode of succession – no right by birth or survivorship -

- Exclusion from inheritance

- Unchaste

- Physical and mental defects

- Murder of the deceased

- Change of religion

- Renounced the world

- Changed by legislation