



Class –LL.B. I SEM.

Subject – Family Law (Hindu Law)

Hindu Law

UNIT-I Introduction

1. Nature of Hindu Law
2. Hinduism, Origin and Development, Definitions.
3. Schools and Sources.

UNIT-II Marriage and Divorce

1. Marriage
2. Kinds, nullity of marriage.
3. Hindu marriage Act, 1955.
4. Special marriage Act, 1954.
5. Divorce
6. Judicial separation, Restitution of conjugal rights.
7. Grounds for matrimonial remedies.

UNIT-III Hindu Undivided Family

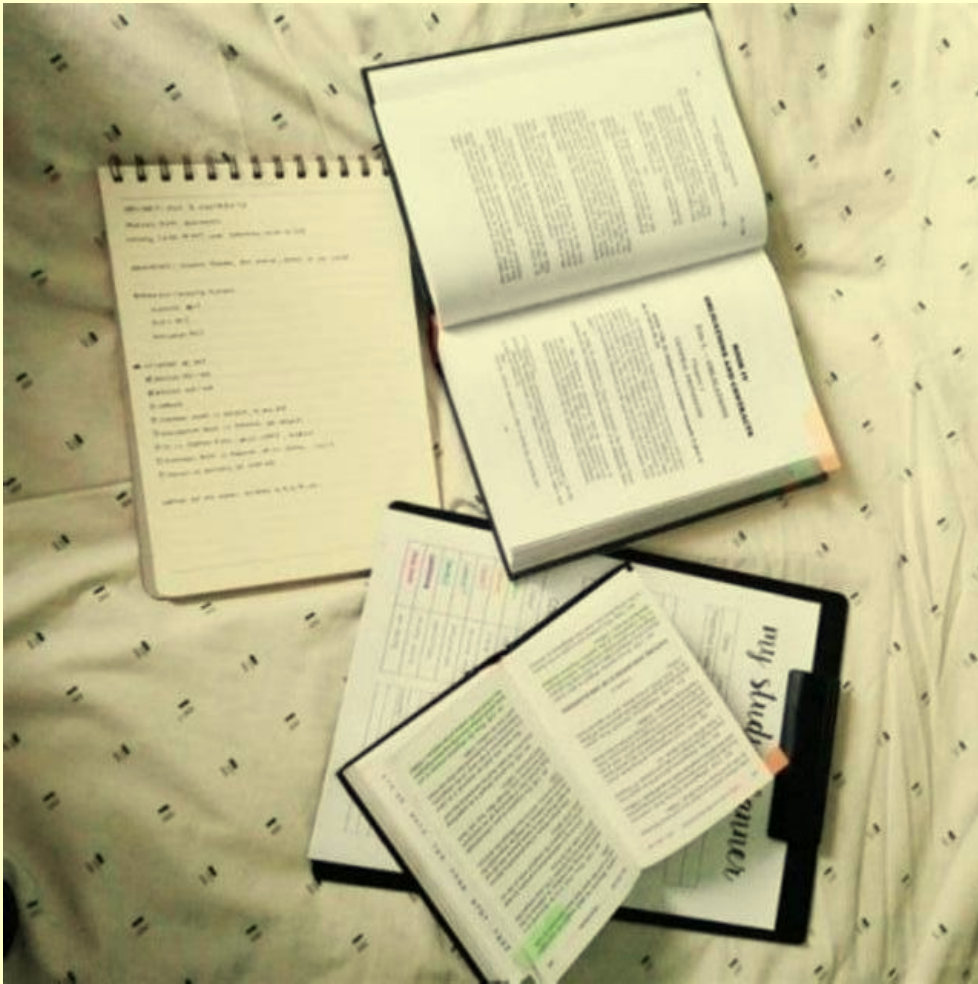
1. Joint family (Hindu undivided family)
2. Coparcenaries, property under *Mitakshara* and *Dayabhag*.
3. Partition and Re-union, women estate, stridhan.

UNIT-V Inheritance

1. General rules of Succession
2. Disqualification relating to Succession
3. Hindu Succession Act, 1956
4. Religious Endowment.

UNIT-IV Gift, Wills and Adoption

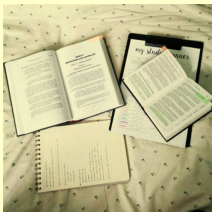
1. Gifts, wills.
2. Hindu adoption and maintenance Act, 1956.
3. Hindu Minority and Guardian Ship Act, 1956.



Law College Notes & Stuffs

Exclusive group for Law Students

Join Us Here for More Materials



Law College Notes & Stuffs

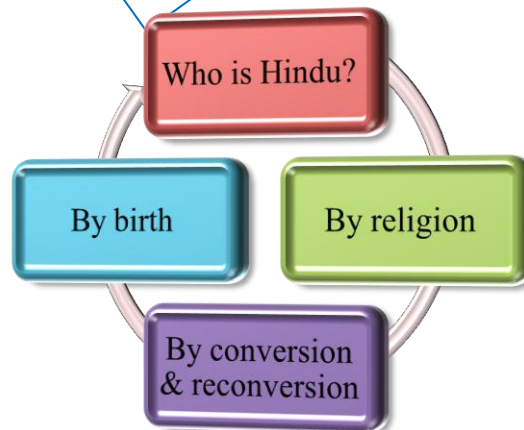
Introduction

- 1. Nature of Hindu Law**
- 2. Hinduism, Origin and Development, Definitions.**
- 3. Schools and Sources.**

From thousands of years people living in the Indian subcontinent have been leading their lives by following the guidelines and concepts given in the Vedas. These guidelines have evolved into rules followed by the people and enforced by the rulers and have thus become de facto law. In this modern time, the same laws have been retrofitted to suit present conditions and have been codified in the form of several acts of which the important ones are – Hindu Marriage Act 1955, Hindu Adoption and Maintenance Act 1956, Hindu Minority and Guardianship Act 1956, and Hindu Succession Act 1956.

Application of Hindu Law

A precise definition of Hinduism does not exist. Hence, it is impossible to define fixed criteria for determining who is a Hindu. So a negative definition of 'who is not a Hindu' is used. Further, in this land, several religions have been born and they follow the same customs and practices. So it cannot be said that Hindu Law can be applied only to people who are Hindus by religion. Due to these reasons, in general, the following people are considered to be Hindu with respect to application of Hindu Law.

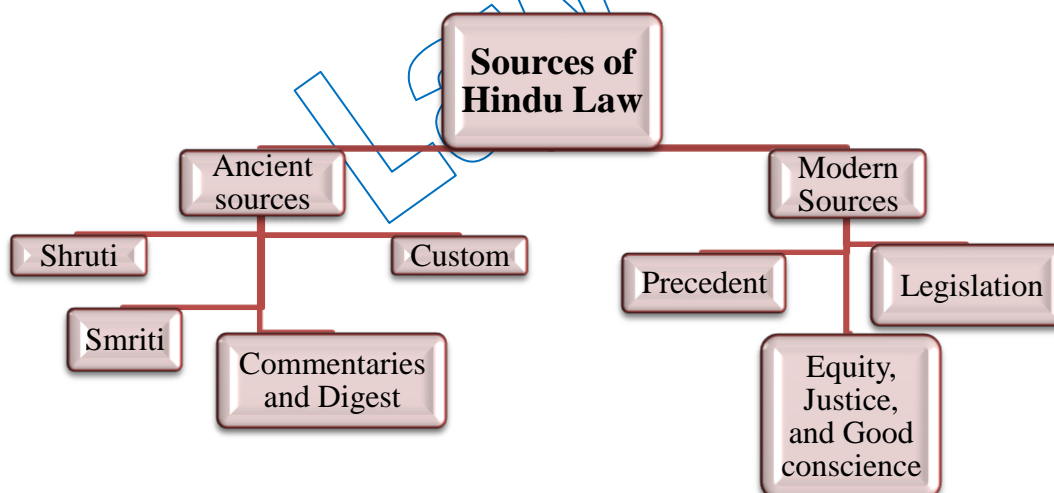


1. **Hindu by Birth** - A person who is born of Hindu parents. If only one parent is a Hindu, the person can be a Hindu if he/she has been raised as a Hindu. In **Sapna vs State of Kerala, Kerala HC**, the son of Hindu father and Christian mother was held to be a Christian. Persons who are not Muslim, Christian, Jew, or Parsee by religion are Hindu.
2. **Hindu by Religion** - A person who is Hindu, Jain, Bauddha, or Sikh by religion. In **Shastri v Muldas SC AIR 1961**, SC has held that various sub sects of Hindus such as Swaminarayan, Satsangis, Arya Samajis are also Hindus by religion because they follow the same basic concept of Hindu Philosophy.
3. **By conversion and reconversion** - Converts and Reconverts are also Hindus. SC, in the case of **Peerumal v Poonuswami AIR 1971**, has held that a person can be a Hindu if after expressing the intention of becoming a Hindu, follows the customs of the caste, tribe, or community, and the community accepts him. In **Mohandas vs Dewaswan board AIR 1975**, Kerala HC has held that a mere declaration and actions are enough for becoming a Hindu.

Origins of Hindu Law

It is believed that Hindu law is a divine law. It was revealed to the people by God through Vedas. Various sages and ascetics have elaborated and refined the abstract concepts of life explained in the Vedas.

Sources of Hindu Law can be divided into two parts - Ancient and Modern.





Class –LL.B. I SEM.

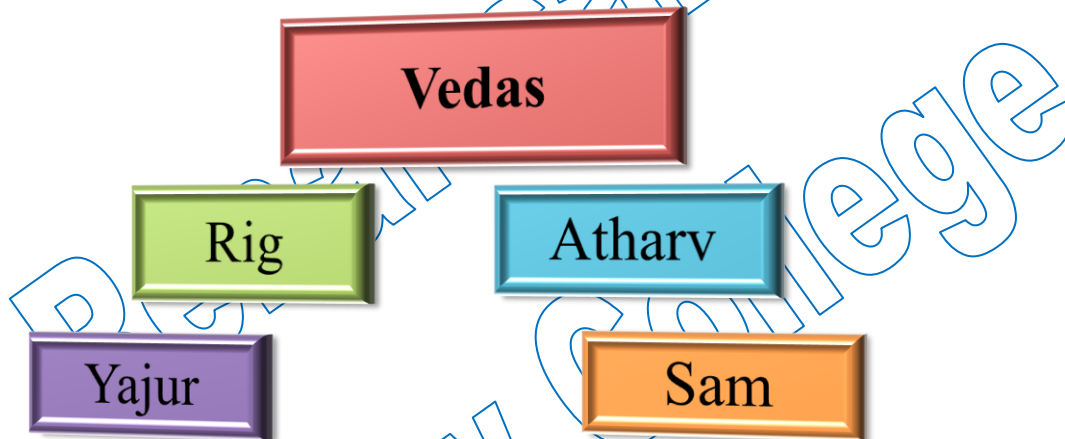
Subject – Family Law (Hindu Law)

1. Ancient Sources

Before the codification of Hindu Law, the ancient literature was the only source of the law. These sources can be divided into four categories:

a. Shruti

Shruti means "what is heard". It is believed that the rishis and munis had reached the height of spirituality where they were revealed the knowledge of Vedas. Thus, shrutis include the four Vedas, rig, yajur, sam, and atharva along with their brahmanas.



The brahmanas are like the appendices to the Vedas. Vedas primarily contain theories about sacrifices, rituals, and customs. Some people believe that Vedas contain no specific laws, while some believe that the laws have to be inferred from the complete text of the Vedas. Vedas do refer to certain rights and duties, forms of marriage, requirement of a son, exclusion of women from inheritance, and partition but these are not very clear cut laws.

During the vedic period, the society was divided into varns and life was divided into ashramas. The concept of karma came into existence during this time. A person will get rewarded as per his karma. He can attain salvation through "knowledge". During this period the varna system became quite strong. Since vedas had a divine origin, the society was governed as per the theories given in vedas and they are considered to be the fundamental source of Hindu law. Shrutis basically describe the life of the Vedic people.

The vedic period is assumed to be between 4000 to 1000 BC. During this time, several pre-smriti sutras and gathas were composed. However, not much is known about them today. It is believed that various rishis and munis incorporated local customs into Dharma and thus multiple "shakhas" came into existence.

b. Smriti

Smrit means "what is remembered". With smritis, a systematic study and teaching of Vedas started. Many sages, from time to time, have written down the concepts given in Vedas. So it can be said that Smritis are a written memoir of the knowledge of the sages. Immediately after the Vedic period, a need for the regulation of the society arose. Thus, the study of vedas and the incorporation of local culture and customs became important. It is believed that many smritis were composed in this period and some were reduced into writing, however, not all are known. The smritis can be divided into two - Early smritis (Dharmasutras) and Later smritis (Dharmashastras).

Smritis

Dharmasutra

Dharmshstra

Dharmasutras

The Dharmansutras were written during 800 to 200 BC. They were mostly written in prose form but also contain verses. It is clear that they were meant to be training manuals of sages for teaching students. They incorporate the teachings of Vedas with local customs. They generally bear the names of their authors and sometime also indicate the shakhas to which they belong. Some of the important sages whose dharmasutras are known are : Gautama, Baudhayan, Apastamba, Harita, Vashistha, and Vishnu.

They explain the duties of men in various relationship. They do not pretend to be anything other than the work of mortals based on the teachings of Vedas, and the legal decisions given by those who were acquainted with Vedas and local customs.

Dharmasutra

Gautama

Baudhayan

Apastamba

Vishnu

Vashistha



Class –LL.B. I SEM.

Subject – Family Law (Hindu Law)

Gautama - He belonged to Sam veda school and deals exclusively with legal and religious matter. He talks about inheritance, partition, and stridhan.

Baudhayana - He belonged to the Krishna Yajurved school and was probably from Andhra Pradesh. He talks about marriage, sonship, and inheritance. He also refers to various customs of his region such as marriage to maternal uncle's daughter.

Apastamba - His sutra is most preserved. He also belonged to Krishna Yajurveda school from Andhra Pradesh. His language is very clear and forceful. He rejected prajapatya marriage.

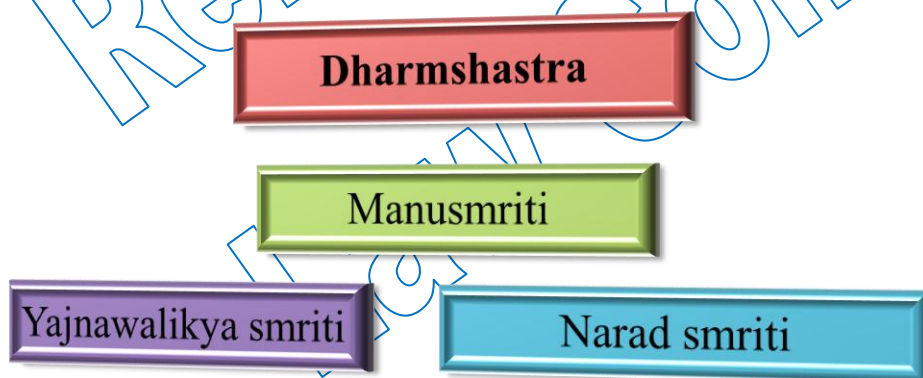
Vashistha - He was from North India and followed the Rigveda school. He recognized remarriage of virgin widows.

Dharmashastras

Dharmashastras were mostly in metrical verses and were based on Dharmasutras. However, they were a lot more systematic and clear. They dealt with the subject matter in three parts:

- Aachara : This includes the theories of religious observances,
- Vyavahar : This includes the civil law.
- Prayaschitta : This deals with penance and expiation.

While early smritis deal mainly with Aachara and Prayaschitta, later smritis mainly dealt with Vyavahar. Out of many dharmashastras, three are most important.



1. **Manusmriti**

This is the earliest and most important of all. It is not only defined the way of life in India but is also well known in Java, Bali, and Sumatra. The name of the real author is not known because the author has written it under the mythical name of Manu, who is considered to be the first human. This was probably done to increase its importance due to divine origin. Manusmriti compiles all the laws that were scattered in pre-smṛiti sutras and gathas.

He was a brahman protagonist and was particularly harsh on women and sudras. He holds local customs to be most important. He directs the king to obey the customs but tries to cloak the king with



Class –LL.B. I SEM.

Subject – Family Law (Hindu Law)

divinity. He gives importance to the principle of 'danda' which forces everybody to follow the law. Manusmriti was composed in 200 BC.

There have been several commentaries on this smriti. The main ones are: Kalluka's Manavarthmuktavali, Meghthithi's Manubhashya, and Govindraja's Manutika.

2. Yajnavalkya Smriti

Though written after Manusmriti, this is a very important smriti. Its language is very direct and clear. It is also a lot more logical. He also gives a lot of importance to customs but hold the king to be below the law. He considers law to be the king of kings and the king to be only an enforcer of the law. He did not deal much with religion and morality but mostly with civil law. It includes most of the points given in Manusmriti but also differs on many points such as position of women and sudras. He was more liberal than Manu. Vijnaneshwar's commentary 'Mitakshara' on this smriti, is the most important legal treatise followed almost everywhere in India except in West Bengal and Orissa.

3. Narada Smriti

Narada was from Nepal and this smriti is well preserved and its complete text is available. This is the only smriti that does not deal with religion and morality at all but concentrates only on civil law. This is very logical and precise. In general, it is based on Manusmriti and Yajnavalkya smriti but differ on many points due to changes in social structure. He also gives a lot of importance to customs.

c. Commentaries and Digest

After 200 AD, most of the work was done only on the existing material given in Smrutis. The work done to explain a particular smriti is called a commentary. Commentaries were composed in the period immediately after 200 AD. Digests were mainly written after that and incorporated and explained material from all the smrutis. As noted earlier, some of the commentaries were manubhashya, manutika, and mitakshara. While the most important digest is Jimutvahan's Dayabag that is applicable in the Bengal and Orissa area.

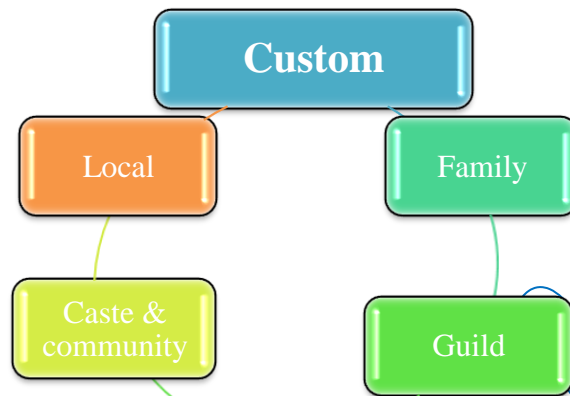
Mitakshara literally means 'New Word' and is paramount source of law in all of India. It is also considered important in Bengal and orissa where it relents only where it differs from dayabagha. It is a very exhaustive treaties of law and incorporates and irons out contradicts existing in smritis.

The basic objective of these texts was to gather the scattered material available in preceeding texts and present a unified view for the benefit of the society. Thus, digests were very logical and to the point in their approach. Various digests have been composed from 700 to 1700 AD.

d. Customs

Most of the Hindu law is based on customs and practices followed by the people all across the country. Even smrutis have given importance to customs. They have held customs as transcendent law and have

advised the Kings to give decisions based on customs after due religious consideration. Customs are of four types:



- 1.
2. **Local Customs** - These are the customs that are followed in a given geographical area. In the case of **Subbane vs Nawab**, Privy Council observed that a custom gets its force due to the fact that due to its observation for a long time in a locality, it has obtained the force of law.
3. **Family Customs** - These are the customs that are followed by a family from a long time. These are applicable to families where ever they live. They can be more easily abandoned than other customs. In the case of **Soorendranath vs Heeramonie** and **Bikal vs Manjura**, Privy Council observed that customs followed by a family have long been recognized as Hindu law.
4. **Caste and Community Customs** - These are the customs that are followed by a particular caste or community. It is binding on the members of that community or caste. By far, this is one of the most important source of laws. For example, most of the law in Punjab belongs to this type. Custom to marry brother's widow among the Jats is also of this type.
5. **Guild Customs** - These are the customs that are followed by traders.

Essentials of valid custom





Class –LL.B. I SEM.

Subject – Family Law (Hindu Law)

1. **Ancient** : Ideally, a custom is valid if it has been followed from hundreds of years. There is no definition of ancientness, however, 40yrs has been determined to be a ancient enough. A custom cannot come into existence by agreement. It has to be existing from long before. Thus, a new custom cannot be recognized. Therefore, a new form of Hindu marriage was not recognized in Tamil Nadu.

In the case of **Rajothi vs Selliah**, a Self Respector's Cult started a movement under which traditional ceremonies were substituted with simple ceremonies for marriage that did not involve Shastric rites. HC held that in modern times, no one is free to create a law or custom, since that is a function of legislature.

2. **Continuous**: It is important that the custom is being followed continuously and has not been abandoned. Thus, a custom may be 400 yrs old but once abandoned, it cannot be revived.
3. **Certain**: The custom should be very clear in terms of what it entails. Any amount of vagueness will cause confusion and thus the custom will be invalid. The one alleging a custom must prove exactly what it is.
4. **Reasonable**: There must be some reasonableness and fairness in the custom. Though what is reasonable depends on the current time and social values.
5. **Not against morality**: It should not be morally wrong or repugnant. For example, a custom to marry one's granddaughter has been held invalid. In the case of **Chitty vs. Chitty 1894**, a custom that permits divorce by mutual consent and by payment of expenses of marriage by one party to another was held to be not immoral. In the case of **Gopikrishna vs. Mst Jagoo 1936** a custom that dissolves the marriage and permits a wife to remarry upon abandonment and desertion of husband was held to be not immoral.
6. **Not against public policy**: If a custom is against the general good of the society, it is held invalid. For example, adoption of girl child by nautch girls has been held invalid. In the case of **Mathur vs Esa**, a custom among dancing women permitting them to adopt one or more girls was held to be void because it was against public policy.
7. **Not against any law**: If a custom is against any statutory law, it is invalid. Codification of Hindu law has abrogated most of the customs except the ones that are expressly saved. In the case of **Prakash vs Parmeshwari**, it was held that law mean statutory law.

Usage and Custom

The term custom and usage is commonly used in commercial law, but "custom" and "usage" can be distinguished. A usage is a repetition of acts whereas custom is the law or general rule that arises from such repetition. A usage may exist without a custom, but a custom cannot arise without a usage accompanying it or preceding it. Usage derives its authority from the assent of the parties to a transaction and is applicable only to consensual arrangements. Custom derives its authority from its adoption into the law and is binding regardless of any acts of assent by the parties. In modern law, however, the two principles are often merged into one by the courts.

Modern Sources

Hindu law has been greatly influenced by the British rule. While it might seem that the British brought with them the modern concepts of equity and justice, these concepts existed even in dharamashastras



Class –LL.B. I SEM.

Subject – Family Law (Hindu Law)

albeit in a different form. Narada and Katyayana have mentioned the importance of dharma (righteousness) in delivering justice. However, we did not have a practice of recording the cases and judgments delivered. So it was not possible to apply stare decisis. This process started from the British rule.

The following are the modern sources of Hindu law:

1. Equity, Justice, and Good conscience

Equity means fairness in dealing. Modern judicial systems greatly rely on being impartial. True justice can only be delivered through equity and good conscience. In a situation where no rule is given, a sense of 'reasonableness' must prevail. According to Gautama, in such situation, the decision should be given that is acceptable to at least ten people who are knowledgeable in shastras. Yagyavalkya has said that where ever there are conflicting rules, the decision must be based on 'Nyaya'. This principle has been followed by the privy council while deciding cases.

2. Precedent

The doctrine of *stare decisis* started in India from the British rule. All cases are now recorded and new cases are decided based on existing case laws. Today, the judgment of SC is binding on all courts across India and the judgment of HC is binding on all courts in that state.

3. Legislation

In modern society, this is the only way to bring in new laws. The parliament, in accordance with the needs society, constitutes new laws. For example, a new way of performing Hindu marriages in Tamil Nadu that got rid of rituals and priests was rejected by the SC on the basis that new customs cannot be invented. However, TN later passed an act that recognized these marriages.

Also, most of the Hindu laws have now been codified as mentioned in the beginning.

Critical Comments

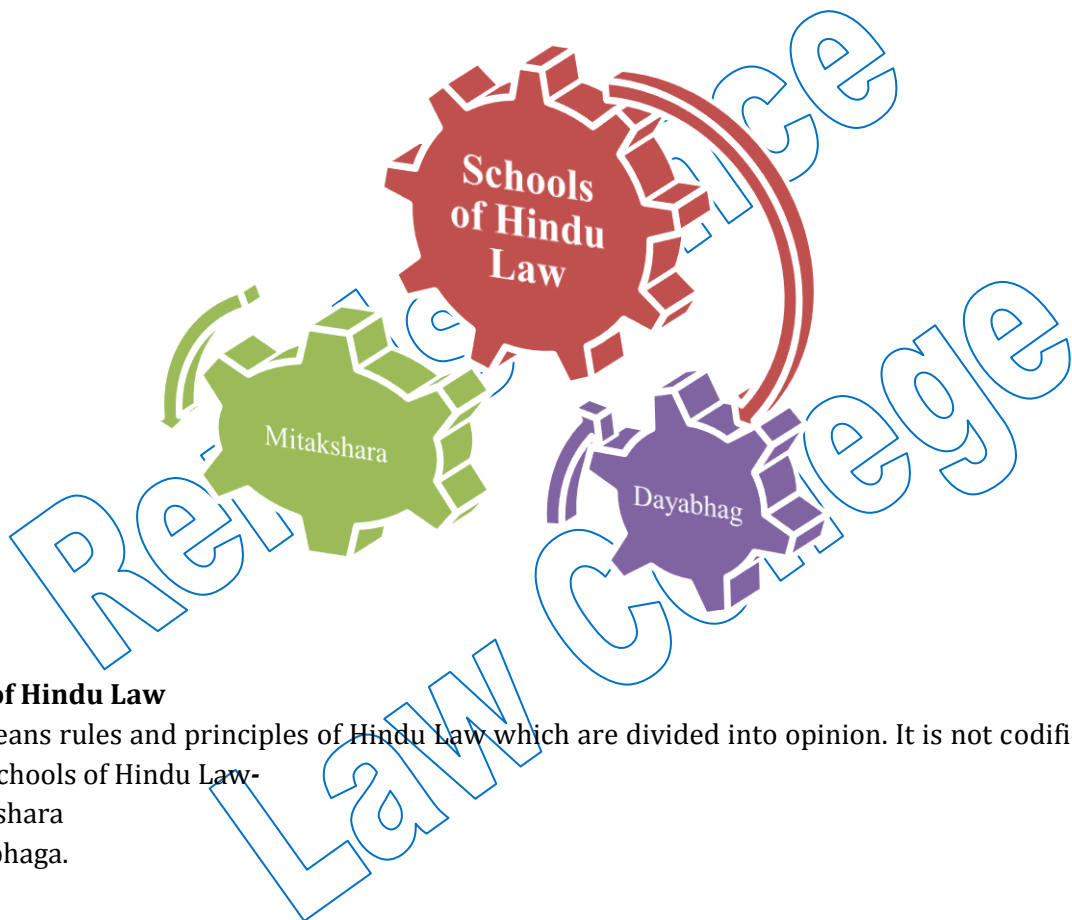
In the past, due to the vast size of the country, various kinds of customs prevailed. Further, due to lack of effective communication, there were several contradictions among the practices and the judgment



Class –LL.B. I SEM.

Subject – Family Law (Hindu Law)

delivered. Thus, the country went on the way to being divided. Instead of becoming the law of the land (lex-loci), Hindu Law became the law of a person. However, this can only be an excuse for the past. Today, because of media and communication, judgment delivered in one place is felt in another. A practice or custom followed in a village can be repugnant to people in cities. We must take advantage of this situation and put the country on the course of a unified law. Instead of being a country of personal laws, we should truly have a single law of the land. Time is ripe for implementing article 44. This will ensure the future unity and integrity of our country.



Schools of Hindu Law

School means rules and principles of Hindu Law which are divided into opinion. It is not codified. There are two Schools of Hindu Law-

- (a) Mitakshara
- (b) Dayabhaga.

Mitakshara School prevails throughout India except in Bengal. It is a running commentary on the code of Yagnavalkya. Mitakshara is an orthodox School whereas the Dayabhaga is Reformist School.

The Mitakshara and Dayabhaga Schools differed on important issues as regards the rules of inheritance. However, this branch of the law is now codified by the Hindu Succession Act, 1956, which has dissolved the differences between the two. Today, the main difference between them is on joint family system.

Mitakshara- Rights in the joint family property is acquired by birth, and as a rule, females have no right of succession to the family property. The right to property passes by survivorship to the other male members of the family.

Dayabhaga- Rights in the joint family property are acquired by inheritance or by will, and the share of a deceased male member goes to his widow in default of a closed heir.



Class –LL.B. I SEM.

Subject – Family Law (Hindu Law)

Differences between the two Schools

Mitakshara	Dayabhaga
i) Right of a son by birth in the ancestral property equal to the interest of his father.	i) A son is entitled to his ancestral property only on the death of his father. The father is the absolute owner of his property in his lifetime.
ii) A son becomes coparcener right after his birth. His right is applicable to the property of his grandfather and grand-grandfather.	ii) A son becomes coparcener by death of his father. This right is not available within the property of his father, grandfather or grand-grandfather.
iii) Everyone is entitled to the property as a unit. Their shares are not defined. They have only the commodity of ownership. There is joint-tenancy.	iii) Everyone's share is defined. There is tenancy-in-common.
iv) One cannot transfer his share to the third party.	iv) One can transfer his share.
v) The joint-property can be partitioned. In that case, it will be partitioned as it was in case of the father.	v) As the shares are defined, one can easily partition with his share.

Differences between the two Schools in Succession

Mitakshara	Dayabhag
1. Property of a deceased Hindu is partitioned into two ways as the property is of two types- (a) Ancestor's property, (b) Separate property. Ancestor's property is partitioned in accordance to the Rules of Survivorship. But a Separate property is partitioned to the descendants.	1. Property is of two types- (a) Joint, (b) Separate. The descendants inherit the property whatever type it is.
2. In default of close heir, brother and immediate survivors inherit, the wife does not inherit.	2. If coparcener dies, his widow will get the property in default of a close heir but she cannot alienate.



Class –LL.B. I SEM.

Subject – Family Law (Hindu Law)

3. The order of heirs is decided by nearness of blood.

3. The order of heirs is decided by the competence to offer Pinda and Sraddho to the deceased.

Effect of migration

A person follows the school of his area. But if he migrates to another place, he will follow the School of that locality. This has been decided in various cases-

Gope v. Manjura Govalin- The burden of proving migration lies on him who pleads it. The original place of a family can be inferred from the chief characteristics of that family.

Keshavarao v. Swadeshrao, 1938- Migration means leaving to another place forever. But if a place is divided into two administrative area, that will not be regarded as migration.

Moolchand v. Mrs. Amrita Bai- A person migrates will all of his personal laws. Personal law unlike local law moves with whom he covers.

Notraz v. Subba Raya- A person can be given an option to give up the law of the old place and adopt the new one.

UNIT-II

1. Marriage
2. Kinds, nullity of marriage.
3. Hindu marriage Act, 1955.
4. Special marriage Act, 1954.
5. Divorce
6. Judicial separation, Restitution of conjugal rights.
7. Grounds for matrimonial remedies.

Concept of Marriage - Sacramental or Contractual?

Historical Perspective – According to Manu wife is ardhangini and marriage is an essential sanskara. Man is incomplete without wife. Once marriage is performed, it cannot be dissolved.

Modern Perspective – Marriage is a civil contract which can be dissolved. They cannot force to live together.

Why is it Sacramental?

The sacramental marriage among Hindus has 3 characteristics :

- it is a permanent & indissoluble union,
- it is an eternal union, and
- it is a holy union.

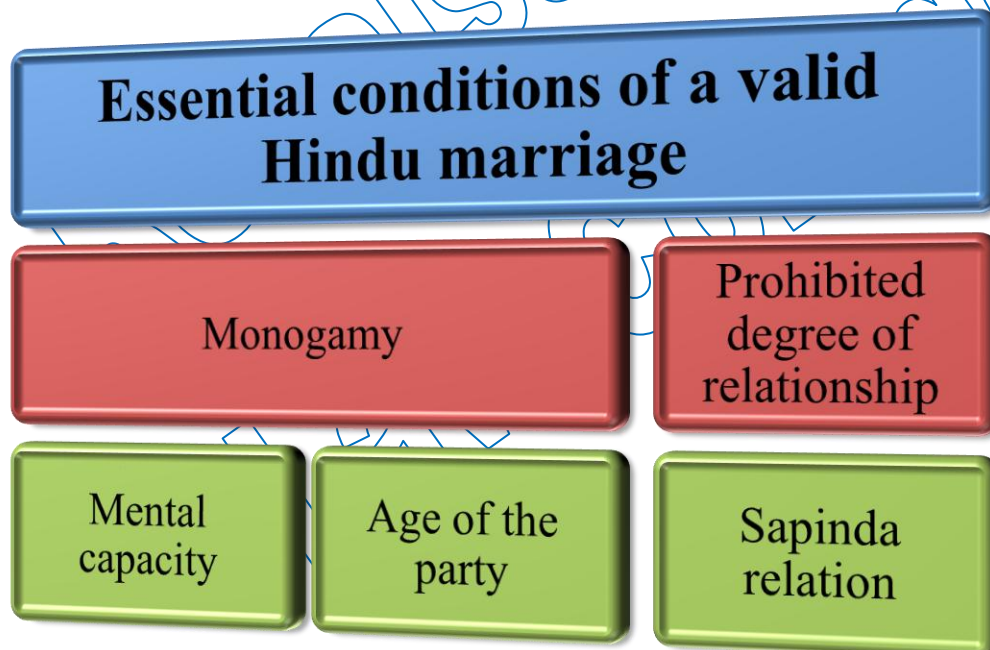
It is evident that the first element has been destroyed by the act since divorce is recognised. Second element was destroyed in 1856 by recognition of Widow Remarriage. Probably to some extent third element is still retained. In most of the Hindu Marriages a sacred or religious ceremony is still necessary. But the ceremonial aspect of the sacramental marriage is of least importance.

Section 7 of HMA 1955 requires that religious ceremonies are a must to complete a marriage. A marriage done without "saptapadi" is void. In the case of **Dr. A N Mukherji vs State 1969**, a person could not be convicted of bigamy because he performed 3 marriages without doing necessary ceremonies.

It has a unique blend of sacramental and contractual characteristics. Even now bachelors are not eligible to perform several religious ceremonies. Only married couples are allowed. Thus, it still retains its sacramental property. No-fault divorce, as available in western countries, is not available in HMA 1955. Thus, breaking up of a marriage is very difficult.

Why is it Contractual?

1. The fact that consent of the boy and the girl is required means that it is contractual. If the consent is obtained by force or fraud, the marriage is voidable.
2. Marriage is no more permanent since divorce is available by mutual consent.
3. Marriage is no more eternal since widow remarriage is permissible.
4. Marriage is no more holy because a marriage can be done without all the ceremonies such as vivah homam. Only saptapadi is required.



Under the Hindu Marriage Act, 1955 certain conditions are necessary for a valid Hindu Marriage. Those conditions have been laid down in Sec 5 and 7 of the Act. Section reads as follows.

By virtue of section 5 of the Hindu Marriage Act 1955, a marriage will be valid only if both the parties to the marriage are Hindus. If one of the parties to the marriage is a Christian or Muslim, the marriage will not be a valid Hindu marriage

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



Class –LL.B. I SEM.

Subject – Family Law (Hindu Law)

1. neither party has a spouse living at the time of the marriage
2. 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 or epilepsy
3. the bridegroom has completed the age of 21 years and the bride the age of 18 years at the time of marriage;
4. 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
5. the parties are not sapindas (one is a lineal ascendant of the other) of each other, unless the custom or usage governing each of them permits of a marriage between the two.

This section lays down five conditions for a valid marriage. They are:

1. **Monogamy** (Sec 5 Clause (1))

This provision prohibits bigamy. The marriage should be monogamous. Under the Hindu Law a person can validly marry if he or she is either unmarried or divorced or a widow or a widower. If at the time of the performance of the marriage rites and ceremonies either party has a spouse living or the earlier marriage had not already been set aside, the later marriage is void. A bigamous marriage is null and void and is made punishable.

2. **Mental Capacity** (Sec 5 Clause (2))

The parties to the marriage should not suffer from unsoundness of mind, mental disorder or insanity. In all the cases given in sec 5 clause (2) the party is regarded as not having the mental capacity to solemnize the marriage. So if a party who solemnizes the marriage suffers from unsoundness of mind, mental disorder or insanity, the marriage is voidable at the option of the other party.

It is to be noted that Sec 5(2) (c) of the Hindu Marriage Act 1955 has been amended by the Marriage Laws (Amendment) Act 1999 and the word 'epilepsy' is omitted. The result is that at present even if a party to the marriage is subject to recurrent attacks of epilepsy, the marriage is valid and the other party cannot seek for nullity of marriage.

3. **Age to the parties** (Sec 5 Clause (3))

At the time of marriage the bridegroom has completed the age of 21 years and the bride the age of 18 years. If a marriage is solemnized in contravention of this condition is neither void nor voidable.

Punishment :- By Section 18 of the Act, anyone who procures a marriage in violation of the condition is liable to be punished with simple imprisonment which may extend up to 15 days or with fine which may extend up to Rs. 1000/- or with both.

4. **Degrees of Prohibited relationship** (Sec 5 Clause (4))

The parties to the marriage should not come within the degrees of prohibited relationship. Two persons are said to be within the degrees of prohibited relationship:-

- i) if one is a lineal ascendant of the other; or
- ii) if one was the wife or husband of lineal ascendant or descendant of the other; or



Class –LL.B. I SEM.

Subject – Family Law (Hindu Law)

- iii) if one was the wife of the brother or of the father's or mother's brother or of the grandfathers or grandmothers 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 brothers or of two sisters.

A marriage between two persons who come within the degrees of prohibited relationship shall be void. However, if there is a valid custom or usage governing both the parties allows they can marry even though they come within the degrees of prohibited relationship. All over India, there are such custom which validate marriage between persons who come within the degrees of prohibited relationship.

For instance, marriage between the children of brother and sister is common among the marumakathayam of kerala. In some parts of Tamil Nadu, Marriage between a person and his eldest sister's daughter is common. Here the parties though come within the degrees of prohibited relationship; they can validly marry by virtue of custom or usage. It is essential that the custom or usage should be certain, reasonable and not opposed to public policy.

Punishment :-According to Sec.18(b) A marriage solemnized between the parties within the degrees of prohibited relationship is null and void and the parties of such marriage are liable to be punished with simple imprisonment for a period of one month or fine or Rs. 10000/- or with both.

5. **Sapinda Relationship** (Sec 5 Clause (5))

The parties to the marriage should not be related to each other as Sapindas. A marriage between sapindas is void.

Under Section 3(f):-

- (i) "Sapinda relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation.
- (ii) Two persons are said to be "sapindas" of each other if one is a lineal ascendant of the other within the limits of "sapinda" relationship, or if they have a common lineal ascendant who is within the limits of "sapinda" relationship with reference to each of them.

No marriage is valid if it is made between parties who are related to each other as 'sapindas' unless such marriage is sanctioned by usage or custom governing both parties. The custom which permits of a marriage between people who are sapindas of each other must fulfil the requirements of a valid custom. The custom must be certain, reasonable and should not be opposed to public policy.

Punishment :-A marriage in contravention of this clause is void. Under Sec 18(b)A person contravening this provision are liable to be punished with simple imprisonment which may be extend to Rs. 1000/- or with both



Class –LL.B. I SEM.

Subject – Family Law (Hindu Law)

Nullification of Marriage - An Annulled Marriage

Marriage is necessarily the basis of social organization and the foundation of important legal rights and obligations. In Hindu Law, Marriage is treated as a Samaskara or a Sacrament. Divorce, however is a thorny question and Annulment is a very unusual remedy. In our modern world, an Annulment tends to be more a creature of religion than of law. Annulments are rarely granted and when they are, very specific circumstances must exist.

What Is Annulment of Marriage

In strict Legal terminology, annulment refers only to making a voidable marriage null; if the marriage is void ab initio, then it is automatically null, although a legal declaration of nullity is required to establish this.

Annulment is a legal procedure for declaring a marriage null and void. With the exception of bigamy and not meeting the minimum age requirement for marriage, it is rarely granted. A marriage can be declared null and void if certain legal requirements were not met at the time of the marriage. If these legal requirements were not met then the marriage is considered to have never existed in the eyes of the law. This process is called annulment. It is very different from divorce in that while a divorce dissolves a marriage that has existed, a marriage that is annulled never existed at all. Thus unlike divorce, it is retroactive: an annulled marriage is considered never to have existed.

Grounds for Annulment

The grounds for a marriage annulment may vary according to the different legal jurisdictions, but are generally limited to fraud, bigamy, blood relationship and mental incompetence including the following:

- 1) Either spouse was already married to someone else at the time of the marriage in question;
- 2) Either spouse was too young to be married, or too young without required court or parental consent. (In some cases, such a marriage is still valid if it continues well beyond the younger spouse's reaching marriageable age);
- 3) Either spouse was under the influence of drugs or alcohol at the time of the marriage;
- 4) Either spouse was mentally incompetent at the time of the marriage;
- 5) If the consent to the marriage was based on fraud or force;
- 6) Either spouse was physically incapable to be married (typically, chronically unable to have sexual intercourse) at the time of the marriage;
- 7) The marriage is prohibited by law due to the relationship between the parties. This is the "prohibited degree of consanguinity", or blood relationship between the parties. The most common legal



Class –LL.B. I SEM.

Subject – Family Law (Hindu Law)

relationship is 2nd cousins; the legality of such relationship between 1st cousins varies around the world.

8) Prisoners sentenced to a term of life imprisonment may not marry.

9) Concealment (e.g. one of the parties concealed a drug addiction, prior criminal record or having a sexually transmitted disease)

Basis of an Annulment

In Section 5 of the Hindu Marriage Act 1955, there are some conditions laid down for a Hindu Marriage which must be fulfilled in case of any marriage between two Hindus which can be solemnized in accordance with the requirements of this Act.

Section 5 Condition for a Hindu Marriage - A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

- (i) Neither party has a spouse living at the time of the marriage;
- (ii) At the time of the marriage, neither party,-
 - (a) is incapable of giving a valid consent of 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 or epilepsy;
- (iii) The bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the 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;

An annulment may be granted when a marriage is automatically void under the law for public policy reasons or voidable by one party when certain requisite elements of the marriage contract were not present at the time of the marriage

Void and Voidable marriage

Void Marriages

A marriage is automatically void and is automatically annulled when it is prohibited by law. Section 11 of Hindu Marriage Act, 1955 deals with:

Void marriages - Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party be so declared by a