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E-Notes

HINDU LAW



Follow up@

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Adv. Tansukh Paliwal
(Linking Sir)



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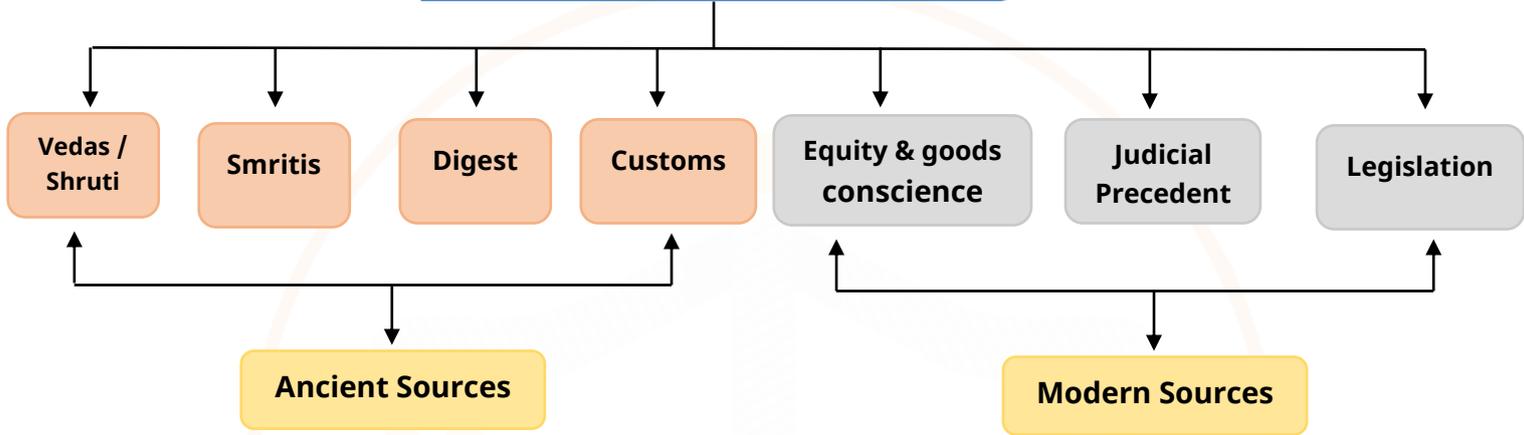




Hindu Law

- ❖ Law was equated as - "DHARM", with time it got modified.
- ❖ Hindu law is one of the oldest system of personal law.

Sources of Hindu Law



1. Vedas / Shruti

'Shru'- "to hear" i.e. what we heard from ancestors /god
 4 Vedas, 6 vedangas,
 18 Upanishads

Four types of Vedas

1. **Rig Veda**- earliest form of veda (oldest)
2. **Samaveda**- earliest reference for singing
3. **Yajurveda**- Called as book of prayers
4. **Atharvaveda**- Book of magic and charms

2. Smritis

'Smri'- means to remember/what was remembered

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Dharmasutras

Written in prose (sutre)

Dharma Shastras

Composed in poetry (shlokas)





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3. Digest & Commentaries

Nibandhs

Tikal Bhashya

Two Imp. Commentaries

Dayabhaga

By Jimutavahana

Mitakshara

By Yajanvalkyya

4. Customs

Also known as 'Sadachar' i.e. rules followed by particular family, class, district.

◆ Features of customs

- ✓ Ancient
- ✓ Used for long time
- ✓ Certain
- ✓ Free from ambiguity
- ✓ Reasonable, not against law
- ✓ Not immortal or against public policy
- ✓ Continuous & uniformly followed

5. Justice, equity & good conscience

Court apply the - a) basic value

b) Norms

c) Standard of fairplay

When case cannot be settled by application of existing law

6. Legislation

Acts of parliament (codified law)- e.g.

- HMA 1955
- HSA 1956
- HA & MA 1956
- HM & GA 1956





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7. Precedents

Case quoted by a court

TWO SCHOOLS OF HINDU LAW

Basis	Mitakshara	Dayabhaga
Quantum of Share	Uncertain and fluctuation with any birth/death of member in family.	Do not confer any birth right on son. It is fixed for every co-parcener.
Partition	Affected by irrevocable intention to separate.	Not affected unless there is a separation of shares.
Female Co-parcener	Initially not allowed for partition. But after 2005, daughters are also co-parcener.	Male / female, all entitled to property.
Prevail over	All over India, except: Bengal, Assam, Tripura, Manipur, Mizoram, Meghalaya, Arunachal Pradesh.	Bengal, Assam, Tripura, Manipur, Mizoram, Meghalaya, Arunachal Pradesh.
Principle	Survival ship	Succession
Right Conferred by	Conferred by birth	Conferred after death of father
Written by	It is a commentary written by 'Yajnavalkya'.	It is a digest, written by 'Jimutavahana'

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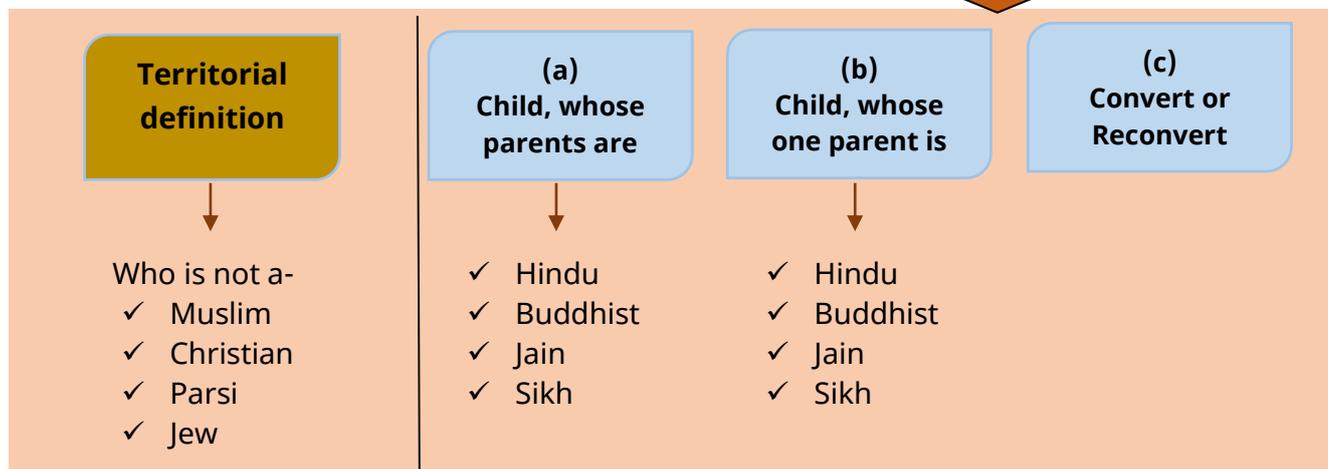




"Who Is A Hindu"

Hindu is derived from 'Indus or Sindhu'

It denotes people living-east of River Sindhu



Case Laws-

❖ Perumal V. Ponnuswamy- SC held-

- mere declaration by person that he is a hindu will not convert him into hindu.
- Person's bonafide intention in his conversion to hindu faith & his conduct as evidence is sufficient.
- No formal ceremony is required.

❖ Commissioner of Wealth Tax V. Sridharan- SC Held-

- Son of -Hindu father & Christian mother (Married under Sp. Marriage Act.)
- Was a Hindu,
- As father had bonafide intention and had declared family as 'Hindu undivided family.'



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