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“HINDU ORIGIN AND PERSPECTIVE: INDIAN CONTEXT”

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Abstract:

There was an era, before the arrival of the Muslims, when the word 'Hindu' was not used for the followers of unanimity, but the word 'Hindu' was used in the form of territoriality. All the people living in India were called 'Hindu'. At that time the word 'Hindu' was also indicative of nationality. It appears that the word 'Hindu' came into use with the arrival of the Greeks. By the time the Muslim state was established, the word Hindu was neither indicative of nationalism nor of regionalism. It started being used for the followers of unanimity. All those who believe in Hinduism started being called Hindus. Today the situation is such that it is difficult to define 'Hindu'. No attempt has been made to define the word 'Hindu' in any of the codified Hindu Law Bills. But law is a practical subject, so no matter what the difficulty of definition is, it is necessary to know to whom Hindu law applies. It is easy to say that Hindu law applies to all Hindus, but the question remains as to who is called a Hindu. The answer is not by the definition of us but by the persons on whom the Hindu law applies. Almost the same has been adopted in the codified Hindu Law Bills.

A person who follows Hindu religion by profession or conduct is a Hindu by religion. On this, the followers of Swami narayan Mat sent a case of injunction against the Maha gujarat Dalit Sabha. The interesting thing about this case is that the promoters of the Swami narayan Sampradaya said in their case that the Swaminarayan Sampradaya being a non-Hindu sect, the Hindu Temple Entry Act does not apply to them. On appeal to the High Court, Justice Gajendra gadkar quoted freely from texts written by scholars of Hindu religion and philosophy.

The followers of Arya Samaj believe in the unity of God and in the Vedas. The promoters of all these movements claim to recover the Hindu religion so-called or in reality from its decline or for the revival of Hindu religion and this is the reason that the promoters of these movements cannot be called

anything other than Hindus. There are two branches of Brahmo Samajists – the non-ritualists, who follow the principles of Brahmo Samaj fanatically and who do not believe in idol worship, nor do they believe in the rituals performed on the occasions of birth, death, marriage etc. Ritualists believe in ancient Hindu rituals.

This is the situation in modern Hindu law also. At one time it was expressed that Jains are people who have deviated from Hinduism. The followers of Jainism do not believe in the Vedas and do not follow the rituals and customs of the Hindus. The followers of Sikhism are a sect of dissenters in Hinduism. In the absence of customs, Hindu law was applicable to them. In present Hindu law they are governed by Hindus only. Like Jainism, Buddhism is an extreme religion, which gives more importance to the negative aspects of life. Prior to 1955, it was a valid rules that the followers of Buddhism are also governed by Hindu law, although if they prove that a custom contrary to Hindu law prevails in them, they are governed by that custom.

The current position of Hindu law is that codified Hindu law applies equally to followers of the Jain, Sikh, and Buddhist religions. The uncodified Hindu law is applicable to them only in a modified form by the custom prevalent in them.

Keywords: Religion Hindu, Followers of Jainism, Buddhism, and Sikhism, Converted and counter converted Hindus, Hindu by declaration, Children of Intermarriage, Hindu by Birth, When the mother or the father is a Hindu, People who are neither Muslim nor Christian nor Jew nor Parsi, Tribes, Area of codified Hindu law

Today India is a country of diversity of personal law. Each religious sect is governed by its own separate personal law. Hindu law applies to Hindus, Muslim law applies to Muslims, Christian law applies to Christians and Zoroastrian law applies to Parsis, and Jewish law applies to Jews. Almost every community has some or the other religious component in its personal law. Hindus and Muslims consider their rituals as divine. Perhaps this is the main obstacle in the unification of personal law of Indians.

There was an era, before the arrival of the Muslims, when the word 'Hindu' was not used for the followers of unanimity, but the word 'Hindu' was used in the form of territoriality. All the people

living in India were called 'Hindu'. At that time the word 'Hindu' was also indicative of nationality. It appears that the word 'Hindu' came into use with the arrival of the Greeks. The Greeks used to call the people living in the valley of Sindh (Intum) river as 'Indoi'. Gradually, this word started being used for the people living beyond the Sindh river valley. The Muslims also gave the name of Hindu to the people living in the Sindh river valley. By the time the Muslim state was established, the word Hindu was neither indicative of nationalism nor of regionalism. It started being used for the followers of unanimity. All those who believe in Hinduism started being called Hindus. Even after the establishment of the British state, the word 'Hindu' continued to be used in this form.

Today the situation is such that it is difficult to define 'Hindu'. The truth is that there is neither an exact definition nor is it possible to give it. No attempt has been made to define the word 'Hindu' in any of the codified Hindu Law Bills. But law is a practical subject, so no matter what the difficulty of definition is, it is necessary to know to whom Hindu law applies. It is easy to say that Hindu law applies to all Hindus, but the question remains as to who is called a Hindu. The answer is not by the definition of us (Hindu) but by the persons on whom the Hindu law applies. Can be known by their verification. This task is probably not that difficult. Almost the same has been adopted in the codified Hindu Law Bills.

We can divide the persons to whom Hindu law applies into three main categories.

- (1) Persons who are Hindus, Jains, Buddhists or Sikhs by religion;
- (2) Persons who are children of Hindu, Jain, Buddhist or Sikh parents (or either of them); And.
- (3) Persons who are not Muslims, Christians, Parsis or Jews.

- **Who is a "Hindu" [Hindu Marriage Act, 1955 - Applicability of section 2(2)] - Who is a 'Hindu' for the purpose of applicability of the Hindu Marriage Act, 1955? It is a question of law.**

- **Yajnapurush Das Ji Vs. Muldas [A.I.R. 1966 Sc. , pp. 1119-1128]**

Section 2 of the Act specifies the persons to whom the Act is applicable. Clauses (a), (b) and (c) of sub-section (1) of section 2 make the Act applicable to persons who are Hindus by religion in any of its forms or Vaishnavas, Lingayats, Brahmins, Prarthanas or Arya Samajs. Hindu in any forms of development and applies to a person who is a Buddhist, Jain or Sikh by religion. It is applicable to

any person resident in the territory of India who is not a Muslim, Christian, Parsi or Jew by religion. Therefore, the applicability of the Act is wide and is applicable to all persons residing in the territory of India who are not Muslims, Christians, Parsis or Jews by religion.

The word 'Hindu' has not been defined either under the Act or the Indian Succession Act or any other enactment of the Legislature. Earlier in 1903 the Privy Council had examined in *Bhagwan Kunwar v. J.C. Bose and others-*

Act is in force”-

- (1) To all Hindus, including Vir Shaivas, Lingayats, Brahmins, Prarthana Samajis, and Arya Samajis.
- (2) Buddhist,
- (3) Jain,
- (4) Sikh."

*** However, this section shall not apply to any Scheduled Tribe unless so directed by the Central Government by notification in the Official Gazette vides Article 366 of the Constitution.**

Religion: Hindu

We can divide the Hindus coming in the first category into the following two sub-categories

- (a) Who is a Hindu, Jain, Buddhist or Sikh by religion by birth; and
- (b) Who is a Sikh, Buddhist or Jain by conversion or reconversion?

A person who follows Hindu religion by profession or conduct is a Hindu by religion.

It is so full of diversity that it is very difficult to explain or define it precisely. Some time ago, Shri Gajendra Gadkar, Judge of the Supreme Court made a bold attempt to define Hinduism, although this attempt was made in a purely religious background. The question before the court was whether Harijans (Shudras) can enter the temple of satsangis under the Bombay Hindu Temple Entry Bill? Shri Muldas, President of Mahagujarat Dalit Sangh, gave a notice to the management of the temple for the entry of the promoters of Swami Narayan Mat, who are called as Satsangi, in the temple located in Ahmedabad. On this, the followers of Swaminarayan Mat sent a case of injunction against the Mahagujarat Dalit Sabha. The interesting thing about this case is that the promoters of the

Swaminarayan Sampradaya said in their case that the Swaminarayan Sampradaya being a non-Hindu sect, the Hindu Temple Entry Act does not apply to them. On appeal to the High Court, Justice Gajendragadkar quoted freely from texts written by scholars of Hindu religion and philosophy (such as Radhakrishnan, Tilak, Mooney William and Max Müller). He took the following quote from Tilak's 'Gita Rahasya'-

Notable features of Hinduism are the acceptance of the Vedas with respect, the belief that the paths to salvation are many and legal, and the understanding that the gods and goddesses to be worshiped are many.

The uniqueness of Hinduism is that it has always pioneered religious freedom. Its followers and followers are free to do new experiments and develop new principles and methods on new beliefs. After one movement, another movement has been born. New ideas, principles, beliefs and methods have been propounded, sometimes some old covers, beliefs and methods have been abandoned, sometimes old practices, beliefs and methods have been revived. The promoters of some movements have claimed the sanctification of Hinduism, some for its purification and some for making it more versatile. Prominent in these movements are Brahmasabhaji, Aryasamaji, Satsangi, Radhaswami. The followers of Arya Samaj believe in the unity of God and in the Vedas. They are against idol worship and do not even believe in caste-distinction. Proponents of satsangi school say that one should lead a pious and pious life, as described in the Vedas, is the path to liberation, Krga-bhakti was philosophically the disciple of its founder Swaminarayan Ramanuja. Brahmosamajis are reformers of Hinduism who claim to restore Hinduism to its original purity. In most of the forms, this movement is a rebellion against fundamentalism and orthodoxy. The promoters of all these movements claim to recover the Hindu religion so-called or in reality from its decline or for the revival of Hindu religion and this is the reason that the promoters of these movements cannot be called anything other than Hindus.

There are two branches of Brahmo Samajists – the non-ritualists, who follow the principles of Brahmo Samaj fanatically and who do not believe in idol worship, nor do they believe in the rituals performed on the occasions of birth, death, marriage etc. Ritualists believe in ancient Hindu rituals. See Rani Bhagwan Kaur v. Bose, (1903) 31 Cal. 11.

***Abraham vs. Abraham [MIA 199-243]**

Followers of Jainism, Buddhism, and Sikhism

Even before Hindu law was codified, it was the same rule that the followers of Jainism, Buddhism, and Sikhism were governed by Hindu law modified by custom. This is the situation in modern Hindu law also.

At one time it was expressed that Jains are people who have deviated from Hinduism. But now it is fully established that the history of Jainism is earlier than the Smritis. The followers of Jainism do not believe in the Vedas and do not follow the rituals and customs of the Hindus. According to him, by renunciation of the world and worldly life through penance, the soul can become divine and this is the attainment of salvation.

The followers of Sikhism are a sect of dissenters in Hinduism. According to the statement of the first Guru of Sikhs, Shri Nanak Dev, God is one. The principles of Sikhism are theistic. Before Hindu law was codified, the Sikhs were governed by their customs. In the absence of customs, Hindu law was applicable to them. Now the Sikhs are governed by codified law. Only a few subjects are left on which the conventions still apply. In present Hindu law they are governed by Hindus only. 1

Like Jainism, Buddhism is an extreme religion, which gives more importance to the negative aspects of life. Prior to 1955, it was a valid rule that the followers of Buddhism are also governed by Hindu law, although if they prove that a custom contrary to Hindu law prevails in them, they are governed by that custom. Now the codified law applies to them.

The current position of Hindu law is that codified Hindu law applies equally to followers of the Jain, Sikh, and Buddhist religions. The uncodified Hindu law is applicable to them only in a modified form by the custom prevalent in them.

Converted and counterconverted Hindus

A convert is one who renounces his religion and accepts another religion. A person will not become a follower of other religion just by renouncing Hinduism; Such a person may be an atheist, but not a

non-Hindu. Similarly, one does not become a Hindu merely by professing another religion or having faith in another religion. Take the example of an opposite situation, a Christian becomes so much an admirer of Hindu religion and philosophy that he starts following Hindu religion, starts doing Pravyanjana and starts worshipping in Hindu temples, even then he will not become a Hindu. He will be a Hindu only when he becomes a Hindu by conversion.

One way to become a Hindu by conversion is to convert to Hinduism through a conversion ceremony. This ritual will be of that caste, creed, community or sect in which the person who converts wants to join. For example, if a person wants to be an Arya Samaj Hindu, he has to undergo a ritual of purification. There is another way to become a Hindu by conversion or counter-conversion. Any person expresses his desire to become a Hindu and lives like a Hindu and the caste, creed, community or sect to which he has joined, has accepted him as its member, then he becomes a Hindu. In such a situation it is not necessary to perform any rituals of conversion or to do any purification.

- **Perumal v. Ponnuswamy [AIR 1917 SC 2352]**

Hindu by declaration

The Kerala High Court has taken the method of conversion to Hinduism a step further. In Mohandas v. Devasana Board, the court held that if a Hindu person declares that he has become a Hindu and lives as a Hindu, it would mean that he has converted to Hinduism and has become a Hindu. . In this case, a Catholic Christian named Jesudas used to give devotional music in a Hindu temple for many years. After some time, some Hindus stopped him from coming to the temple saying that he is not a Hindu, so he cannot sing near the altar.

Jesudas filed this declaration in the court, "I declare that I am a Hindu." On the basis of this fact the court decided that Jesudas is a Hindu.

So on the basis of judgments we can say that in the following situations any non-Hindu becomes a Hindu by conversion

- (a) if he embraces the Hindu religion by the ceremony of conversion.
- (b) if he sincerely desires that he has become a Hindu and that he lives and

the class, caste or community to which he has joined accepts him as its member.

(c) if he declares that he is a Hindu and that he is living as a Hindu.

Children of Inter-marriage

The child of inter-caste marriage is called Varna Shankar in traditional Hindu law and comes under the category of Shudras. Can we give them the benefits of Scheduled Castes by calling them Shudras in the modern law. This question arose in Sapna Vs. State of Kerala. In order to promote inter-caste marriages, the Kerala government passed an act, under which provision has been made that the children of inter-caste marriages will get all the benefits of the Scheduled Castes if either the mother or the father is a member of the Scheduled Caste. The Kerala High Court ruled that the children of such marriages could not be members of the Scheduled Castes. This author submits that if Varna Shankar cannot be a member of a higher caste then why should he not be considered a Shudra. Devadasis, no doubt Devadasis are Hindus.

Hindu by Birth

A person whose parents are both Hindus, he will generally be called a Hindu. Similarly, a person is also a Hindu whose mother or father is a Hindu, who has been brought up as a Hindu.

When both the parents are Hindus, the children of Hindu parents by religion are Hindus only. To be a born Hindu in this category, it is necessary that both the parents should be Hindu, Jain, Buddhist or Sikh by religion. If one of them is a Hindu, Jain, Buddhist or Sikh and the other is a Sikh, Buddhist, Jain or Hindu, his child will still be a Hindu. It is essential that both his parents should be followers of one or the other Hindu religion (ie: Hindu, Jain, Buddhist or Sikh religion). It is not necessary that the children of such parents follow Hindu religion. Even if the child is an atheist, completely irreligious or anti-religion, it will remain a Hindu. The mistake here is that he is a Hindu by birth, the question about whether he is a Hindu by religion or not is secondary. It is essential that both his parents should be Hindus at the time of his birth. If after his birth both the parents or one of the two become non-Hindu, even then that child will remain a Hindu, unless the father (or mother) has changed his religion under patrimonial right. This parental right can be exercised by the father on the legitimate child, after the death of the father by the mother. Only the mother can exercise this right

The codified Hindu law also has the same provision. Explanation (a) of section 2(1) of the Hindu Marriage Act, 1955 states that any child, illegitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion, is a Hindu..

When the mother or the father is a Hindu

The precedents of codified Hindu law in this regard are so clear that Hatabandh Hindu law states that any child, legitimate or illegitimate, either of whose parents is a Hindu, Buddhist, Jain or Sikh by religion and who is brought up as a member of that tribe, community, group or family of which that parent or parent is or was a member, shall be a Hindu. Thus the following two conditions must be fulfilled

- (1) at the time of the birth of the boy or girl child, one of the parents is a Hindu, and
- (2) The boy or girl child is brought up as a member of a tribe, community, group or family of which the Hindu mother (or father) is or was a member. Any man in the Nadar caste of Travancore can marry a non-Hind woman. After marriage, the child born from that woman and that woman is considered a Hindu.

The main difference between the uncodified and the codified laws is that generally the father (or father) has the power to change the religion of the child while changing his religion, but under the codified Hindu law, if the child is raised If brought up like a Hindu, the child will remain a Hindu even after his father's conversion. This is what is meant by the word 'member' in Explanation (b) to Section 2(1) of the Hindu Marriage Act. Suppose, the child of a Hindu mother and a Christian father is brought up like a Hindu, after that the mother also becomes a Christian. The question arises whether the child is a Hindu at this time? Even if the parents are non-Hindu, the child is a Hindu. But both the parents of the child are non-Hindu, then still the child will not be a Hindu, even if he is brought up like a Hindu.

Explanation (b) to section 2(1) of the Hindu Marriage Act, 1955 provides that the child is brought up as a member of the tribe, community, group or family to which his mother or father belongs. Suppose the son of a Brahmin father is brought up like a Kshatriya, or the son of a Jain father is brought up like a Sikh, or the son of a Jat mother is brought up like a Jain priest, then what? Will the child not

be a Hindu? In the opinion of this author, the child must be a Hindu, because if the child is brought up as a Hindu, Sikh, Buddhist, Jain or any of their association, community, caste-sub-caste, then he will be a Hindu, whether his father (or mother) Be a follower of any religion of Hindus.

People who are neither Muslim nor Christian nor Jew nor Parsi

Prior to codified Hindu law, it was a valid rule of Hindu law that every Hindu was governed by Hindu law, whether he was an Arya Hindu or a non-Aryan Hindu. It was not necessary for a non-Aryan Hindu to establish that he had accepted the Shruti-Smriti. If he is a Hindu - what kind of Hindu. Why not - Hindu law will apply to him, so Hindu law was applicable to the members of the original Dravid, Chamar and many tribal castes. It was assumed that he was or had become a Hindu, and then it was not necessary to be a complete Hindu, it was sufficient to be a Hindu in part.

Codified Hindu law has made this rule somewhat more elaborate. Any other person who is not a Muslim, Christian, Parsi or Jew by religion shall be a Hindu unless it is proved that he was not governed by a Hindu before the passing of the codified law.

All those people who are not followers of any religion will come under this category. Any person who is an atheist, or who believes in all religions or who believes in a mixed religion, will be called a Hindu. It is only necessary that he is not a Muslim, a Christian, a Parsi or a Jew, and if he is not a Muslim, a Christian, a Parsi Jew, he is a Hindu, it is not necessary to prove positively that he is a Hindu. For example, an infant is found by a person lying on the road, it is not known who the parents of the infant are, and then the infant will be a Hindu. The same is true of refugees whose parentage is not known.

Tribes

Codified Hindu Law under Bills of Codified Hindu Law shall not apply to the members of any tribe which is a Scheduled Tribe under clause (25) of Article 366 of the Constitution, unless the Central Government, by notification in the Official Gazette, otherwise provides. Do not specify does this mean that those Scheduled Tribes, who were governed by Hindu law before Hindu law was codified, will no longer be governed by Hindu law? In the opinion of this author, they would not be governed by codified Hindu law in the absence of notification by the Central Government; but the codified

Hindu law will continue to apply to them as before. But if that caste has not been Hinduized then it will not be governed by Hindu law.

Area of codified Hindu law

Broadly speaking, we can say that the scope of codified Hindu law, so far as individuals are concerned, is as follows:

- (a) Those who are Hindus, Janis, Buddhists or Sikhs by religion or birth, and
- (b) Those who are not Muslims, Christians, Parses or Jews.

It is to be noted that although Janis, Buddhists and Sikhs are Hindus, they are not Hindus by religion. Similarly, those persons who are governed by Hindu law, who are neither Muslims, nor Jews, nor Christians, nor Parses, are not Hindus by religion, but are called Hindus because Hindu law is applicable to them. The Hindu codified law has earlier made a categorization of those persons to whom the Hindu law applies and termed them as Hindus. Under section 2(3), the expression 'Hindu' occurring in any section of this Act shall be construed as if it included a person who, although not a Hindu by religion, is a person to whom this Act applies under the provisions of this section. Applies on the basis of the provisions (By virtue of the provisions).

The implication of the above provisions is that a formal method applies to all persons who are not Muslims, Christians, Parses and Jews, and to all those persons a name is given—they are all Hindus. Codified Hindu law is that branch of personal law that applies to followers of Sikh, Jain, Buddhist religions by religion and birth and to those who are not followers of any other religion (such as Muslims, Christians, Parses, Jews), to whom it applies happens, they are called Hindus.

As far as the territorial expansion of codified Hindu law is concerned, this law is applicable to the whole of India.

Area of uncodified Hindu law

We have seen above that even before 1955 the term 'Hindu' was taken in a wider sense which included not only Hindus, Janis, Buddhists and Sikhs by religion and birth but also many other castes and tribes who were not Hindu by religion. . All those persons so far as uncodified Hindu law is concerned, shall continue to be governed by uncodified Hindu law, whether or not they fall within

the categories of the codified Hindu law classification. The Tamil Baniyas and Christians of Kerala are still governed by Hindu law in matters of succession and partition. This is applicable to Ram Kabir followers of Jalandhar district.

Conclusion:

That before the arrival of the Muslims, the word 'Hindu' was used in the form of territoriality and was indicative of nationality. By the time the Muslim state was established, the word 'Hindu' was neither indicative of nationalism nor of regionalism. Today, it is difficult to define 'Hindu' in any of the codified Hindu Law Bills, but it is necessary to know to whom Hindu law applies. On appeal to the High Court, Justice Gajendra Gadkar quoted freely from texts written by scholars of Hindu religion and philosophy. The followers of Arya Samaj believe in the unity of God and in the Vedas. Brahma Samajists follow the principles of Brahma Samaj fanatically, while Ritualists believe in ancient Hindu rituals. The followers of Jainism and Sikhism are governed by Hindus only, while Buddhism is an extreme religion that gives more importance to the negative aspects of life. The current position of Hindu law is that codified Hindu law applies equally to followers of the Jain, Sikh, and Buddhist religions, while uncodified Hindu law is applicable to them only in a modified form.

India is a country of diversity of personal law, with Hindu law applied to Hindus, Muslim law applied to Muslims, Christian law applied to Christians, Zoroastrian law applied to Parsis, and Jewish law applied to Jews. Before the arrival of the Muslims, the word 'Hindu' was used in the form of territoriality and was indicative of nationality. After the establishment of the British state, the word 'Hindu' continued to be used in this form. It is difficult to define 'Hindu' as there is neither an exact definition nor is it possible to give it. The most important details in this text are the three main categories of persons to whom Hindu law applies: those who are Hindus, Jains, Buddhists or Sikhs by religion, those who are children of Hindu, Jain, Buddhist or Sikh parents, and those who are not Muslims, Christians, Parsis or Jews. Section 2 of the Hindu Marriage Act, 1955 specifies the persons to whom the Act is applicable, and the applicability of the Act is wide and is applicable to all persons residing in the territory of India.

Hinduism is a religion that is divided into two sub-categories: who is a Hindu by birth and who is a Sikh, Buddhist or Jain by conversion or reconversion. Shri Gajendra Gadkar, Judge of the Supreme

Court, attempted to define Hinduism by arguing that Harijans (Shudras) cannot enter the temple of satsangis under the Bombay Hindu Temple Entry Bill. He also quoted from texts written by scholars of Hindu religion and philosophy, such as Radhakrishnan, Tilak, Mooney William and Max Muller. Hinduism has always pioneered religious freedom and its followers are free to do new experiments and develop new principles and methods on new beliefs. Arya Samaj, Brahmosamajis, and Jainism, Buddhism, and Sikhism are all Hindu religions. Arya Samaj believes in the unity of God and the Vedas, while Brahmosamajis claim to restore Hinduism to its original purity. Ritualists believe in ancient Hindu rituals, while non-ritualizes follow the principles of Brahma Samaj fanatically.

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