

THE HINDU MARRIAGE ACT, 1955

- The Hindu Marriage Act, 1955 (HMA) received the assent of the President on 18 **May, 1955** and became law on that day.

Overriding effect of the Act

- The Act has an overriding effect and it abrogates all the rules of marriage previously applicable.
- **Section 4** provides that any text, rule or interpretation, custom or usage of Hindu Law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act.
- Any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

Extra-territorial application of the Act

- The Act will apply to Hindu domiciled in India even if they reside outside India.
- **Section 1(2)** provides for the extra-territorial application of the Act. It lays down that the Act extends to the whole of India. It also applies to Hindus domiciled in the territories to which the Act extends who are outside the said territories.
- It is based on the principle of law that personal relations are governed by the law of domicile.

Jammu and Kashmir Reorganization Act, 2019

- It was passed by both houses of Parliament and received the assent of the President on 9th August, 2019. The Central Government by a gazette notification appointed 31st October 2019 as the date on which this Act came into force.
- The Act bifurcated the State of Jammu and Kashmir into Union Territory of Ladakh and Union Territory of Jammu and Kashmir.
- **Section 95(1)** of the Act provides that All Central laws in Table -1 of the Fifth Schedule to the Act, on and from the appointed day, shall apply in the manner as provided therein, to the Union territory of Jammu and Kashmir and Union territory of Ladakh

- **Fifth Schedule, Table 1, S.No. 35** pertain to **The Hindu Marriage Act**. It provides that the words "except the State of Jammu and Kashmir" shall be omitted.

WHO IS A HINDU

- Under **Section 2 (1) of Hindu Marriage Act, 1955** any person would be considered a 'Hindu' for the purpose of law if he is:
 - ✓ A person who is Hindu by Religion in any of its forms or developments, which includes a Virashaiva, a Lingayat or a follower of the Brahma, Parthana or Arya Samaj.
 - ✓ A person professing the Hindu, Buddhist, Jain or Sikh religion.
 - ✓ A person who is not a Christian, Muslim, Parsi or Jew by religion will be governed by Hindu law unless it is proved that such person will not be governed by Hindu Law. It also applies to any person living outside the territory
 - ✓ Any Child legitimate or illegitimate both of whose parents are Hindus, Buddhists, Jains or Sikhs is Hindu.
 - ✓ Any person who is a covert to the Hindu, Buddhist, Jain or Sikh Religion.

- **Chandrashekar v. Kulandaivela, AIR 1963 SC 185**, held that any person who is a Hindu, Buddhist, Jain or Sikh by religion is a Hindu if:
 - a) He practices, professes or follows any of these religions; and
 - b) He remains a Hindu even if he does not practice, profess or follow the tenants of any of these religions.

- **Perumal v. Ponnuswami (1971)**

Perumal (Hindu man) married Annapazham (Christian lady), they were married as per Hindu ceremonies and rights and they also entered into an agreement that they shall be, henceforth, governed by Mitakshara Law. Later they got separated and Annapazham started living separately with their son (Ponnu Swami)

Ponnuswami later filed a suit for half of the property of his father perumal, Perumal contended that the marriage with Annapazham was illegal as she was Christian and Ponnuswami which was brought up by her can't claim Joint Family Rights.

Supreme Court said that Annapazaham and ponnuswami both are hindus because Annapazaham was still living as a Hindu after separation and Ponnuswami was also raised as a Hindu. Supreme Court held that Intention to become Hindu and further conduct shall be proof of conversion to Hinduism, no formal ceremonies are necessary for conversion.

- ✓ In case there is a difference of religion as between the spouses in the Indian patriarchal set-up, usually the father's religion is appended to the child.
- ✓ That however is not the requirement of law and it is merely a customary practice that is not obligatory.
- ✓ If only one of the parents of a child is a Hindu then the point for determination of his religion is not the time of birth but the upbringing of the child.
- ✓ If he is being brought up as a member of only his Hindu mother's tribe or community, then notwithstanding that his father was a non-Hindu, he will carry his mother's religion and Hindu law can be applied to him.