BLOGS

Who Is A Hindu- Hindu Marriage Act 1955

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For any Hindu Law legislation like Hindu Marriage Act, Hindu Succession etc.to apply to any person, he/she must be a Hindu. Therefore, it is of ample importance to know who is a Hindu. Section 2 of Hindu Marriage Act, Section 2 of Hindu Succession Act and Section 3 of Hindu Minority and Guardianship Act 1956 talk about the applicability of these Acts.

Who is a Hindu?

In this article, we will understand who is a Hindu with respect to section 2 of the Hindu Marriage Act 1955 (hereinafter referred as HMA). A person can be considered to be a Hindu in following three ways:

1. As per Section 2(1)(a) of the HMA, any person who is a Hindu by religion in any of its form including Virashiva, Lingayat or a follower of Brahmo, Prarthana or Arya Samaj. The word 'including' suggests that the list is not exhaustive.
2. Section 2(1) (b) of HMA lays down that any person who is a Buddhist, Jain or Sikh is also considered to be a Hindu.
3. A person will be considered to be a Hindu if:

- The person is domiciled in the territories to which this Act extends.
- He/she must not be a Muslim, Christian, Parsi or Jew.

If the two conditions (a) and (b) are proved, the court presumes the person to be a Hindu. But the opposite party can rebut your claim to be Hindu in 3rd way if they are able to prove that the person claiming to be Hindu would not have been governed by Hindu Custom and Usage law, in case this Act was not passed by the legislature. If they succeed, you will not be considered to be a Hindu.
If the defendant is able to prove that during the time Act had not been there, the person would not have not undergone any of the customary ceremony, the defence will succeed.



Which Child will be considered to be a Hindu?

As per the explanation to section 2(1) of HMA, a child can be considered to be a Hindu in the following three ways:

1. If both the parents of the child are Hindu, Buddhist, Jain or Sikh then irrespective of the legitimacy of the child, the child will be considered to be Hindu by religion.
2. If one of the parent of the child are Hindu, Buddhist, Jain or Sikh and the child has been brought up as Hindu, Buddhist, Jain or Sikh, then irrespective of the legitimacy of the child, the child will be considered to be Hindu by religion. The belief in God is irrelevant in this case.

Not only this, any person who converts or reconverts to Hinduism, Buddhism, Jainism or Sikhism is considered to be a Hindu.

Who is not a Hindu?

Under Section 2(2) of HMA, the protection has been given to the schedule tribes from the application of Hindu Laws upon them. The main policy of the Constitution has been to preserve the rich cultural practice of the tribe and not to interfere with their practices unnecessarily. Such tribes are free to practice their own laws upon marriage, succession, adoption etc. However, if the Central Govt. finds it suitable that a particular tribe should be governed by Hindu Law, then a declaration has to be made in official gazette, for the application of such laws on these tribes.