



WHO IS A 'HINDU' A LEGAL PERSPECTIVE

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Abstract:

Family law is a concoction of various personal laws, such as Muslim law, Christian law and Hindu law. But the primary focus of this research paper would be on the Hindu personal law. Every personal law begins with the phrase as to whom this particular act would apply to, but it has rather become a point of discussion as to whom the Hindu personal law would apply for. Section 2 of Hindu Marriage Act 1955 defines 'Who is a Hindu', however unlike other religions its application clause as given under section 2 is rather ambiguous and is still in need of delineation. Even the personal laws have failed to interpret the term Hindu duly. No one including the person from a theosophical society can fathom the appropriate meaning of the term Hindu. It is notable that the origin of Hinduism is still undivulged. This article seeks to trace back the origin of Hinduism, its relevance in relation to family law and to accentuate its distinctiveness that isolates it from other religions. When many seek to uncover the essence of this term, they often fail to consider its territorial significance, this term was never really coined to refer to a particular religion rather was coined to refer the set of people belonging to a particular region. This raises a question as to how this term acquired its religious significance. Hinduism always stood different from other religions in a way, when other religions focused on the manifestation of their belief on God, Hinduism believed in "Aham Brahmasmi" that sought to manifest one's belief in himself, as it is believed that each person is intrinsically divine and the purpose of life is to seek and realize the divinity in oneself. This article provides with a hermeneutical interpretation of Vedas and shed the light on who is a 'Hindu'.

1. Historical Significance:

‘Hinduism is not an ism but a way of life’ said Sadhguru, but for one to conceive what this phrase essentially indicates he must retrospect the origin of Hinduism or to be meticulous the origin of the term Hinduism. It is ironic that when the practice of Hinduism is ancient, the term used to describe it is a newly coined term. This term is coined mainly to constrict the broad ideology and philosophy of Hinduism into a narrow thought process called religion. The term ‘Hindu’ has been subjected to varied interpretation by diverse people around the world, in fact it is still a conundrum for some as to how the term really came to usage. It is important to note that none of the Hindu scriptures has ever mentioned this term explicitly. While some say that this term has no connection with the Vedic culture, some people has got a very contrasting hypothesis that this term might have some connection with the Vedic culture. Thereby making it a matter of unending esoteric debates. The origin of Hinduism can be traced back to the late 4500-5000 BCE, the time of Indus valley civilization. The word ‘Hindu’ did not achieve its relevance from any kind of religious practice instead has got geographical relevance to it. ¹With apropos to Sir Monier Monier-William’s introspection, the term ‘Hindu’ is an alien term used by the early travelers beginning with Persians and Europeans to refer to the people living in a particular geographical area. The etymology of this word is derived from the river that flows across the Indo-Pakistan boundaries named Indus (Indu). ²However, the substantiated findings of the late Indian epigraphist Iravatham Mahadevan who sought to manifest the Vedic link that has been bestowed upon the term ‘Hindu’ states otherwise. According to him this term enunciates the most powerful images of the soma chapter from Rig Veda and Brahmana. In brahmana the term Indu signifies moon and in the chapter of Nadistuti Sukta from Rig Veda, the river Indus has been named as Su-Soma which means good Soma. Soma essentially indicates the ancient religious ritual; hence he claims that there is a possibility that the term ‘Hindu’ might have been derived from this ancient religious ritual thereby indicating that anyone who performs the ritual were named as Hindus. Scholars seems to have differentiating opinion on the matter but the actual point of origin of this term still remains unknown. By passage of time rise of theocratic ideologies has led this term to lose its significance inevitable and has been named as a religion.

¹ <https://swarajyamag.com/culture/the-vedic-harappan-legacy-of-the-word-hindu>

² <https://www.harappa.com/script/mahadevantext3.html>

2.Enumerating the juxtaposition of Hinduism and other religions:

Hinduism always stood different from other religions in way due to its syncretical philosophy and ideologies. Unlike other religions Hinduism does not embolden one to seek allegiance from one particular God, in fact one of the distinctive features of Hinduism is the presence of multiple God or Goddesses. ³Unlike other religion that believes God has created us, Hinduism strongly believes that we created God and that is why we take the total liberty to create whatever kind of God we can relate to. An individual can worship a cow, stone, his mother or anything he can relate to, to reach the end goal of his apprehensive life that is to obtain ultimate liberation (Mukti). This just indicates that God is just a stepping stone for one to obtain Mukti. ⁴In Hinduism there is no concretized idea about God, according to Advaita Vedanta God is described as ‘Brahman’ which indicates that a God is neither a person nor anything that can be explained through words, he is beyond anything that is the infinite. God is everywhere, he is omnipresent, omnipotent, omniscient, infinite, all merciful, impersonally personal and he can be even within oneself. This is what the Upanishads meant to preach through the phrase “Anoraneeyan, mahato maheeyan”. There was an instance when Maha Shiva was asked with the question as to how many ways are there for one to obtain enlightenment for which he answered, there are only 112 ways if you are still in the realm of your physical system but if one transcends above the physical system then every atom is the doorway to obtain enlightenment. God is the stepping stone through which one can transcend the physical according to the Hindu ideology. Hinduism is an umbrella that embraces the ideologies of varied other religions right from Vedanta, Mimamsa, Yoga to even Zen Buddhism. It does not have a rigid set of rules like a single organized religion this is why this has always been referred to as a way of life.

3.Delineation of parallelistic feature of Savarkar’s view of ‘Who is a Hindu’ with Hindu law:

Vinayak Damodar Savarkar is an Indian political thinker who first coined the term Hindutva by appending the masculine ‘tva’ to ‘Hindu’ loosely translated into ‘Hinduness’. His perception about Hinduness that assuaged the thought process of many is the inception point of Hindu nationalism today. His most influential thought

³ <https://isha.sadhguru.org/in/en/wisdom/article/hinduism-not-religion>

⁴<https://vimokshananda.org/2013/08/>

process is his idea on 'Who is a Hindu'. It is paramount to notice that, today the term 'Hindutva' has been used by wide range of organizations to justify their ideologies there by leading to complete imprecision and obscurity of meaning.⁵ According to Savarkar there are three criterion that helps us to decide whether a person is of Hindu identity or not,

- The first criteria is geographical, by this he meant that an individual must be a citizen of Hindustan or India which is demarcated with oceans, mountains and river. He also states that it is not necessary for him to be a direct citizen, he can be a citizen through his forefathers also. This is to cover the foreigners under the ambit of Hindu identity as long as they fulfill the second criteria.
- The second criteria is common blood or Jati, which alludes that an individual is considered to be a Hindu if he is the descendant of Hindu parents and share with other Hindus a common blood traceable to Vedic fathers and mothers. This led to inclusion of other offshoots of Hinduism like Jainism, Buddhism and Sikh.
- The third criteria is perhaps the most important one which has a bit of modernity assorted in it is the tie of homage to Hindu culture or civilization. This means that an individual should share the same Hindu culture and tradition as that of their ancestors. This criterion led to inclusion of reconverts and exclusion of converts. Converts who no longer have any tie with the Hindu culture would no longer be considered Hindu and the reconverts who once used to have Hindu roots would come within the ambit of Hindu.

3.1 'Who is a Hindu' according to family law:

Section 2 of Hindu Marriage Act, Hindu Succession Act, Hindu Adoption and maintenance act and Hindu Minority and Guardianship Act seeks to enumerate the application of these acts. It provides with its perception of 'Who is a Hindu'. According to this section

⁵ https://www.irenees.net/bdf_fiche-analyse-878_en.html#:~:text=%E2%80%9Cof%20a%20Hindu%20is%20not,as%20indicative%20of%20religious%20belief

⁶1) This Act applies

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Vira Shaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation: The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and

(c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

The sub clause (a)and(b) of first clause of section 2 refers to the common culture which essentially indicates that any person who believes and follows Hindu practices or any other religious practices that comes under the umbrella of Hinduism shall be considered as a Hindu. Sub clause (c) of section 2 construes an individual's Hindu identity on the basis of territory. The main point which the explanation clause of section 2 seeks to extrapolate is deciding the Hindu identity of an individual on the basis of common blood which means that a person is considered a Hindu if he has forefathers and ancestors who follow Hinduism as religion.

⁶ [https://www.indiacode.nic.in/show-](https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00004_195525_1517807318992§ionId=38568§ionno=2&orderno=2)

[data?actid=AC_CEN_3_20_00004_195525_1517807318992§ionId=38568§ionno=2&orderno=2](https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00004_195525_1517807318992§ionId=38568§ionno=2&orderno=2)

3.2 Analysis of both views on ‘Who is a Hindu’:

The quintessence of these criterion indicates the similitude it has with the Hindu law. ⁷⁸As according to Hindu law, a Hindu is defined as a person who follows Hinduism in any form, the main essence is that they shall be of common culture. Then it states that any person who is Hindu by birth and having a common Hindu root that is common blood will also be considered a Hindu. The Hindu law does not ostracize the inclusion of converts and reconverts under the ambit of Hindu. This leads to a conclusion that the definition of Hindu under Hindu law has been derived from Savarkar’s view because both seek to touch upon the cultural and ancestral aspect of an individual. However, it is important to note that the legal definition is formulated for specific legal purposes, such as regulating marriage and succession among Hindus, and may not necessarily align with the broader and more complex cultural and philosophical dimensions of Hinduism.

4. Swami Vivekananda’s perusal in determination of Hindu identity:

Swami Vivekananda had a more radical thought process when it came to Hinduism. Unlike Savarkar’s view which was more of a parochial identification, his view was more philosophical and explorative. His view was not just arrived from an analytical basis but was derived through continuous scrutiny of Advaita Vedanta at a world view. It can be seen that his ideology has dissipated all those demerits that Savarkar’s view has met with. Hinduism, for Vivekananda, is an umbrella embracing Vaishnavites, Shaivites, Shaktas, Vishishtadvaitins, Dvaitins and Advaitins. In one of his most prominent addresses entitled “Common basis of Hinduism” in Lahore, he presented with his perspective on determining Hindu identity. He was of view that one shall be considered as a Hindu not based on a bigoted notion that is according to his culture, geographical area or common blood but on basis of his Śraddhā (Sanskrit: श्रद्धा) which means belief. ⁹According to Vivekananda a Hindu is anyone who believes in the authority of Vedas, one who believes in God, one who believes in the cyclical order of creation, one who believes in immortality of ¹⁰atman (Sanskrit: “self,” “breath”) and one who believes in rebirth. His views instead of clinging to particulars like race, culture and territory

⁷ https://www.sevasadancollege.com/elearning/pdf_file/1520053996hindu%20law%20Unit%201-5.pdf

⁸ <https://www.indiacode.nic.in/handle/123456789/1560?locale=en>

⁹ <https://vivekavani.com/swami-vivekananda-quotes-hinduism-hindus/>

¹⁰ <https://www.britannica.com/topic/atman>

seek to transcend all those specifications so as to achieve a status of world religion. His views offer true possibility of achieving realization of Hinduism without boundaries. ¹¹He sought to advocate the principle of Aham Brahmasmi as given under Brihadaranyaka Upanishad 1.4. 10 of the Shukla Yajurveda: [1.4. 1]. This phrase means that each and everyone is the embodiment of God and one must seek salvation within himself and not from anything external. These are certain philosophies that has intrigued the interest of many towards Hinduism.

5. Legal perspective on Hinduism:

Apart from individual theories and philosophies about Hindu identity, the question of 'Who is a Hindu' has not only become a matter of political and religious discussions but there are circumstances when this question has been put forward to the judicial sector as well. Judiciary is the best interpreter of laws and it provides with reasoning that are made precedent in many other cases. There are some primary cases in which the question of Hindu identity has been raised. In this part a critical analysis of those judgements is bestowed. One of the most crucial landmark cases that has completely shifted an individual's perspective on Hindu law is ¹²**Sastri Yagnapurushadji case**. ¹³The judgement to this case was given by a five-judge constitution bench comprising of Chief Justice P B Gajendragadkar, K N Wanchoo, M Hidayatullah. The main point that this judgement scrutinized is about the etymological and historical aspect of the word 'Hindu' and about Hinduism as a religion. According to Justice Gajendragadkar the word Hindu as accepted by many scholars is derived from the word 'Sindhu' which is a river flowing across the Indo-Pakistan border, thereby indicating that this term is not religious but instead has a geographical significance. He also highlighted the unique feature of Hinduism as to how it has no single prophet, no single ideology, no single dogma and enumerated how it does not believe in any one philosophical concept. He says that it is for this reason that it is not just a religion but a way of life. Even though the question about Hinduism has been cleared out in the previous case still an ambiguity in defining it was seen in other cases like ¹⁴**Commissioner Wealth Tax, Madras vs Late R Sridharan**. In this case the bench was of opinion that Hinduism is the only religion that embraces diverse form of faith, beliefs and worships, this multifaceted quality of Hinduism makes it difficult for a layman to define it with precision. The next

¹¹ <https://www.deccanherald.com/opinion/vivekananda-a-true-icon-of-hinduism-937959.html>

¹² <https://indiankanoon.org/doc/145565/> [1966 SCR (3) 242]

¹³ <https://theindianlaw.in/sastri-yagnapurushadji-vs-muldass-brudardas-vaishya/>

¹⁴

[https://indiankanoon.org/doc/1902100/#:~:text=Commissioner%20of%20Income%2Dtax\(I,tax%20Act%2C%20or%20Wealth%20Tax](https://indiankanoon.org/doc/1902100/#:~:text=Commissioner%20of%20Income%2Dtax(I,tax%20Act%2C%20or%20Wealth%20Tax)

question that arose was does Hinduism always have to be about religion, this was cleared in the landmark case of ¹⁵**Ramesh Yeshwant Prabhoo case**. This case is related to usage of the term Hinduism in election campaigns for seeking vote, many opposed to such action on justification that such act would derogate the basic notion of our constitution that is secularism. This case was dealt by a three judges bench headed by Justice JS Verma, and he recognized that the term ‘Hinduism’ or ‘Hindutva’ does not necessarily mean Hindu religion or its practices. Only a narrow outlook confined only to Hindu religious practices with no consideration to the culture and ethos of the people of India would result in intolerance and hostility among other religions. The judgement further highlighted the fact that any misuse of these terms would not change its meaning. Despite all the efforts of judiciary to comprehend the term Hindu and Hinduism still people found the term obscure. This could be seen in the case of¹⁶ **Birender Kaur and Another vs Union of India on 3 October, 2011** where a petition was filed against the inclusion of Buddhism, Jainism and Sikh under a common category of Hindu. The petitioner was of view that this common categorization is just an attempt to obliterate the separate faith of that religion. The petitioner further added that such inclusion if three separate religions under a common stratum would be unconstitutional. The petitioner further raised a question as to whether it would be acceptable if the Hindu marriage Act was to be called as Buddhist marriage Act. The SC bench after well consideration of facts held that the view propounded by the petitioner is fissiparous and uncalled for. It further concluded that ¹⁷“The Constitution makers were therefore fully conscious of the broad and comprehensive character of Hindu religion and its legendary tolerance. The arms of the Constitution warmly embrace all the citizens of India irrespective of caste, creed, sex, religion, denomination or religious dogma and theological beliefs. It respects all. Things will not fall apart merely because of the use of the word Hindu in the Statutes. India would not become less secular with the use of the word. Nothing depends on it. Sikhs, Jains and Buddhists live happily under the umbrella of the Acts subject to custom and usage. The clubbing of the group’s results in no prejudice; no hostile or invidious discrimination and no identity crisis within the range of selection. It is constitutionally recognized and protected. We do not for a moment countenance any argument in the present case questioning the vires of the word Hindu as employed in any of the four enactments or that it violates any constitutional provision.” Through this it is clear that Hinduism is a way of life that embraces the ideologies of diverse culture and religion

¹⁵ <https://indiankanoon.org/doc/925631/>

¹⁶ <https://indiankanoon.org/doc/198007352/>

¹⁷ https://drkharaksingh.org.in/wp-content/uploads/2017/02/book_the_word_hindu_case.pdf

and hence inclusion of Buddhism, Jainism and Sikh under a common stratum is not unconstitutional.

6. Conclusion:

The purpose of the research is to understand the concept of Hinduism and to examine the Hindu identity of an individual. Based on the research it can be construed that Hinduism is not just a religion that focuses on a single and fixed set of ideologies but is an umbrella that embraces diverse ideologies and is tolerant towards other religions and cultures, it is hence a way of life. As far as identity is involved, any person who believes in God, rebirth, the cyclic process of life and anyone who subscribes to the doctrines and practices of Vedas shall be considered as a Hindu. Ironically it is also a matter of fact that an individual is considered as a Hindu irrespective of the fact what he believes. In a family of five everyone is of liberty to worship any God of their choice, albeit a person chooses not to worship any God at all still he will be considered as a Hindu.

