

THE HINDU UNDIVIDED FAMILY

The HUF is a family structure that is prevalent in the Indian subcontinent. A HUF cannot come into existence through a contract. It automatically comes into being in a Hindu family. It consists of a Karta, who is the eldest male member of the family. The Karta manages the general affairs of the family. The descendants of the Karta are known as the coparceners. Often, the principal requirement for commencing a HUF is the existence of ancestral property.

The coparceners, by way of their rights, are entitled to a share of this property. A HUF is usually involved in any form of business and has an income disposable to it. Hence, under section 2(31) of the Income Tax Act[i] of 1961[ii], the HUF is considered to be a person. It is taxed as a separate entity as well. The Karta must obtain a Permanent Account Number (PAN) and a bank account in the name of the HUF. This way, the tax liability of the family comes down. The tax slab rates that apply to an individual income tax assesses, also bind a HUF.

Various shastric laws have contributed to the characteristics of the Hindu Undivided family. It is closely related to the provisions of the Hindu Succession Act (1956)[iii] and the Hindu Marriage Act (1955)[iv].

According to Hindu Law, all the people in a HUF are lineal descendants of a common ancestry which is compulsory. The family here includes their wives and unmarried daughters, who are living together and do common things such as eat food, worship together and have a common estate/business. The female members such as windowed daughters who have returned to their father's home, daughters-in-law are part of a HUF. The daughter after her marriage becomes a member of her husband's HUF and ceases to be a member of her father's HUF. Members of a HUF are related to each other by blood, marriage, or adoption.

In the case of *Surjit Lal Chabra vs CIT*, it was made clear by the apex court that a 'Joint Family' and 'Hindu Undivided Family' are synonymous. The court further went on to clarify that a joint Hindu family consists of persons lineally descended from a common ancestor and includes their wives and unmarried daughters also. The daughters once married stop being a member of their husband's family.

HUF is a creation of law and it can't be created by an act of the parties, except in the case of reunion (*BhagwanDayal vs Reoti Devi*) or adoption (*Surjit Lal Chhabra*), where it comes into existence by the act of the parties.

It is a constantly changing body, its size increases with the birth of a male member in the family and decreases on the death of a family member. Females go and come into Hindu Undivided Family on marriage. A HUF can't be created under a contract. It is automatically created in a Hindu family. People of other religions such as Buddhists, Jains, and Sikhs are not governed by the Hindu Law, but they are treated as a HUF under the Income-tax Act 1961.

DIFFERENT SCHOOLS UNDER THE HUF

The declassification of the HUF yields two different schools, namely Dayabhaga and Mitakshara. While the essence of a HUF remains rooted in these schools, there are minor differences.

There are two principal schools of Hindu Law. They are the Dayabhaga School and Mitakshara School. The Dayabhaga school of Hindu law runs in the area governed by the erstwhile state of Bengal i.e., Bengal, and Assam. The Mitakshara school of Hindu law prevails over the rest of India.

Unlike the Mitakshara law, in Dayabhaga law the HUF can't come into existence as an operation of law automatically, but it comes into existence by the voluntary decision of the legal heirs. In Mitakshara law the son/daughter (after the 2005 amendment to the Hindu Succession Act) gets a share in the family property on conception itself. In Dayabhaga law the son doesn't get a share in the family property by birth. As long as the father is alive, the son doesn't have any interest in the family property.

DAYABHAGA

He acquires it after the death of his father. The shares and responsibilities of each coparcener are well defined. The said property has to be divided physically, in case of a partition. However, an adult son cannot support or oppose any disposition of the property, as he does not exercise any control over it. The father has undeniable power over the property until his death. HUFs in Assam and Bengal follow this system.

In the Dayabhaga School, the allocation of property is extremely simple. If a man dies intestate, his sons get a proper part of his property. According to the Dayabhaga law, the sons do not acquire any interest by birth in ancestral property.

Their rights arise for the first time on the father's death. On the death, they take much of the

property as if left by him, whether separate or ancestral, as heirs and not by survivorship. Since the sons do not take any interest in an ancestral property in their father's lifetime, there can be no coparcenary in the strict sense of the word between a father and sons according to the Dayabhaga law.

The father can dispose off ancestral property, whether movable or immovable, by sale, gift, will or otherwise in the same way as he can dispose of his separate property. Since sons do not acquire any interest by birth in ancestral property, they cannot demand a partition of such property from the father. A coparcenary under the Dayabhaga law could thus consist of males as well as females. Every coparcener takes a defined share in the property, and he is the owner of that share. It does not fluctuate with birth and deaths.

MITAKSHARA

All parts of India except Assam and Bengal follows this system. Coparcenary rights are awarded to the son by birth. He has the right to demand the partition of the property as he has equal rights on it as his father. He has the right to oppose any unauthorized disposition of the said property. However, there is no physical separation of the property during a partition. The coparceners of the HUF are allowed to have a definite numerical share of the property. There are four classifications under the Mitakshara school.

They are as follows:

- Dravidian school - prevalent in south India
- Maharashtra/ Bombay school - exists in Bombay
- Banaras school- Followed in Orissa and Bihar
- Mithila school - Exists in Uttar Pradesh and neighbouring areas

In the Mitakshara School, the allocation of parental property is based on the rule of possession by birth. Moreover, a man can leave his property at his will. The joint family property goes to the group known as the group known as coparceners. They are the people who belong to the next three generations.

Hence, the joint family property by partition can be, at any time, converted into a separate

property. Therefore, in Mitakshara School, sons have an exclusive right by birth in the joint family property.

The Mitakshara concept of coparcenary is based on the notion of the son's birthright in the joint family property. Though every coparcenary must have a common ancestor to start with, it is not to be supposed that every extant coparcenary is limited to four degrees from the common ancestor.

IMPORTANT JUDGEMENTS

In the case of Attorney General of Ceylon v. Arunachalam Chettiar a father and his son constituted a joint family governed by the Mitakshara School. The father and the son were domiciled in India and had trading and other interests in India.

The undivided son died and father became the sole surviving coparcener in a Hindu undivided family to which a number of female members belonged. In this case, the court said that the widows in the family including the widow of the predeceased son had the power to introduce coparceners in the family by adoption and that power was exercised after the death of the son.

MITAKSHARA JOINT FAMILY

In Mitakshara Joint Family Property son has a right over the property since the birth, even an illegitimate son or a widowed daughter has a right over the property of their father's Joint Family Property. Another feature is the right to Maintenance and right of survivorship which will be given to the unmarried daughters and other members respectively in the Joint Family. Under Mitakshara only Joint Family property will be acquired by the coparcenary by the concept of succession and survivorship.

In case **Board of Revenue v. Muthu Kumar** it was observed that when a son inherits the father's separate property, he will acquire it as a separate property even if he has a son under Section 8 of Hindu Succession Act. Whereas in Dayabhaga Joint Family Property son has no right over the properties by birth. Even the concept of Survivorship is not given to son and therefore there is no joint family between the son and the father. Under Dayabhaga it includes all the properties both self-acquired and joint family property will be devolve by succession

The essence of a coparcenary under Mitakshara law is the unity of ownership. The ownership of the coparcenary property is in the whole body of coparceners. According to the true notion of an undivided family governed by Mitakshara law, no individual member of that family, whilst it remains undivided, can predicate, of the joint and undivided property, that he, that particular member, has a definite share. The most appropriate term to describe the interest of a coparcener in coparcenary property is “undivided coparcenary interest”.

If a Mitakshara coparcener dies immediately on his death his interest devolves on the surviving coparceners. The Supreme Court has summarised the position and observed that the coparcenary property is held in collective ownership by all the coparceners in a quasi-corporate capacity.

COPARCENARY AND THEIR PROPERTY:

The Coparcenary is a narrower institution and included under Joint Family. It only comprises a male member who had born in the family and acquires an interest in the Coparcenary property. To constitute a Coparcenary as a minimum two male members should be needed to start and continued for a longer time.

Joint Hindu family has unlimited members but Coparcenary is only limited to four generations of unlimited male members. The property acquired by a senior most male member is known as the last holder of the property. For E.g., the Coparcenary was consisting of father F, his son S1, and his son’s son S2. All these have form Coparcenary and if the son died the Coparcenary will continue between the father and his grandson.

Sometimes all the coparceners died leaving behind only one, the surviving Coparcenaries known as Sole Surviving coparcener. If it will be not possible to add another coparcener then the property in his hand becomes separate property. The right to maintenance has to given to female members if they have.

In earlier times women cannot become coparceners but after the amendment in the Hindu Succession Act, 2005, daughters also become coparceners just like their brother from birth. Under classical law, if a coparcener dies then his share in the property was shifted to surviving coparceners but this Doctrine of Survivorship has abolished under the 2005 amendment. And now the property has divided through the Doctrine of Notional partition and the property had given to the deceased’s legal heirs.

COPARCENARY UNDER MITAKSHARA SCHOOL OF JOINT FAMILY

Coparcenary idea under Hindu Law was mainly by the male member of the family where just children, grandsons and great-grandsons son who have a right by birth, who has an interest in the coparcenary property. No female of a Mitakshara coparcenary could be a coparcener but she will always be a part of the Joint Family. So under Mitakshara a son, son's son, son's son's son can a coparcenary i.e. father and his three lineal male descendants can be a coparcener.

FORMATION AND INCIDENT UNDER COPARCENARY PROPERTY

According to the Hindu Succession Act, 1956, the only son had a right to become a coparcener. The daughter had no right to enjoy the status as a coparcener.

Under Mitakshara School of Hindu Law, the concept of coparcenary based on the notion of birthright. It consists of four-generation: great grandfather, grandfather, father and son.

A major breakthrough towards eradicating the gender inequality and discrimination and to prevent the gender biases that have been prevalent in Indian families, to improve the adverse condition of women in the society has been ensured with the enactment of Hindu Succession Amendment Act, 2005.

In *Shreya Vidyarthi v. Ashok Vidyarthi and Ors.*, AIR 2016 SC

In this case, Apex Court held that of Hindu Succession Amendment Act, 2005 was done keeping in mind and respecting the position of a female member, the daughter shall by birth become the coparcener in the same way as a son.

Daughter as a coparcener under Mitakshara School: Yes, the daughter also enjoys the status of Coparcener after the 'Hindu Succession Amendment Act, 2005'. According to Sec 6(1), the 'Hindu Succession Amendment Act, 2005' daughter become the coparcener by birth.

SECTION 6 IN THE HINDU SUCCESSION AMENDMENT ACT, 2005

Devolution of interest in coparcenary property. —

- On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall-
- by birth become a coparcener in her own right in the same manner as the son;
- have the same rights in the coparcenary property as she would have had if she had been a son;

- be subject to the same liabilities in respect of the said coparcenary property as that of a son,

THE INCIDENTS OF COPARCENARY ARE:

1. The lineal male descendants of a person up to the third generation, acquire on birth ownership in the ancestral properties of such person
2. Such descendants can at any time work out their rights by asking for partition.
3. Till partition each member has got ownership extending over the entire property, conjointly enjoyment of the properties is common
4. As a result of such co-ownership, the possession and enjoyment of the properties is common
5. No alienation of the property is possible unless it is for necessity, without the concurrence of the coparceners
6. The interest of a deceased member passes on his death to the surviving coparceners.

PROPERTY UNDER BOTH THE SCHOOL

There is a lot of division and classification in Property. Before the enactment of Hindu law, there were two principal schools i.e. **Mitakshara** and **Dayabhaga**. Mitakshara School divides the property into two categories and the first one is Unobstructed Property and the second one is Obstructed Property. Further, after the enactment of Hindu law and the decline of both principal school, the Property is divided into two parts i.e. Joint Family Property and Separate Property under Hindu law.

Property is classified into two types: (1) **Joint Hindu Family Property** (2) **Separate Property**. Joint-family Property is also known as ‘Coparcenary Property and this property consists of (a) Ancestral Property (b) Property jointly acquired by the members of the Joint family. (c) Separate property of a member “thrown into the common stock.” (d) Property acquired by all or any of the coparcener with the aid of joint family funds.

OBSTRUCTED PROPERTY

The property to which right accrues not by birth but on the passing of the final owner is called obstructed property. It is called obstructed since the accrual of the right to it is obstructed by the existence of the final owner. Hence the property devolving on parents,

brothers, nephews, uncles, etc. upon the passing of the last owner, is obstructed property. These relatives are not vested intrigued by birth. Their right to it arises only on the passing of the last owner.

Obstructed property rights gained by the owner after the succession of the final owner but there are some exceptional cases where the ownership passes by survivorship. The exception cases were mentioned below:

- Two or more than two sons, grandsons, and great-grandsons succeeding as heirs to the separate property of their paternal ancestor take as joint tenants with survivorship.
- Two or more grandsons of a daughter who is a member of a joint family succeed as heirs to their maternal grandfather as joint tenants with the right of survivorship.
- Two or more widows succeeding as heirs of their husband take as joint tenants with survivorship rights.
- Two or more daughters succeeding as heirs of their father take as joint tenants.

These are the only 4 conditions or exceptional circumstances in which ownership of the obstructed property transfers to another before the succession of the previous owner.

Illustration

An acquired the certain property from his brother who passed on issueless. The acquired property within the hands of A will be a discouraging legacy for the children of A. The children of A will acquire the property from A as it were after his passing.

UNOBSTRUCTED PROPERTY

The property in which an individual secures and is intrigued by birth is called unobstructed property. It is called unobstructed since the accrual of the right to it isn't obstructed by the presence of the owner. Hence property inherited by a Hindu from his father, grandfather, and great grandfather is unobstructed heritage as regards his claim male issues, that is, his sons, son's and son's child. These rights arise on account of their birth in the family and the male

descendants in whom the property vests, are called coparceners. Thus, the hereditary property in the hands of the final male owner is unobstructed.

Illustration

'A' acquired certain property from his father. Two children born to A, M and N are coparceners with A. M and N will procure an interest by birth within the hereditary property of A. Thus the property within the hands of A is unhindered legacy, as the presence of the father is no obstacle or obstacle to his children procuring an intrigued by birth within the property.

ANCESTRAL PROPERTY

Ancestral Property is also known as Self-acquired Property after the partition in a Joint Hindu family. As the name suggests Ancestral Property this property is automatically inherited to next-generation people. This Ancestral property was inherited till 3 generations or it is also considered as a part of Coparcenary property as it also includes property descended from father, great grandfather. Self-acquired property and the ancestral property is part of Separate property as above discussed.

Separate Property is the second category of property under Hindu law in which the property is inherited by the other members of non-blood relations.

In the case, Gurdip Kaur vs. Ghamand Singh Dewa Singh, 1965, the dictionary meaning of Ancestral Property is "Property which has been inherited from the ancestors" was accepted by the Court. It was also held that a property inherited from a father, father's father or great grandfather is ancestral property.

JOINT FAMILY PROPERTY

Joint family or coparcenary property is that property in which every coparcener has a joint interest or right and over that property, the coparcener has a joint possession. Or we can also say that the joint family property is the property which is jointly acquired by the member of the family with the aid of ancestral property.

Joint family Property defines as if any member of joint family property acquired in his own name in the presence of an ancestral nucleus. In *V.D. Dhanwatey v. CIT, 1968*, it was held that “The general doctrine of Hindu law is that property acquired by a Karta or a coparcener with the aid or assistance of joint family assets is impressed with the character of joint family property. To put it differently, it is an essential feature of a self-acquired property that it should have been acquired without assistance or aid of the joint family property. It is therefore clear that before an acquisition can be claimed to be separate property, it must be shown that it was made without any aid or assistance from the ancestral or joint family property.”