



Hindu Joint Family: An Analysis

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Abstract

Family is the lynchpin of human societies. Primitive human societies moved about in communities which were just extended families. With the advent of modernisation and gradual acceptance of monogamy, family has become a more granular association that holds the institution of marriage which is both a legal entity as well as the building block of all human societies. In the Hindu societies, the concept of Hindu Joint Family has withstood the test of time in being relevant. Joint Hindu Family is not a legal entity like marriage but nevertheless affects all legal processes related to inheritance, property rights and the like. It is largely a patriarchal setup established by birth, marriage or adoption. A common ancestor is required for its formation but not for its continuation. Coparcenary and Karta are the important constituents of this concept which having been rooted in ancient texts have therefore caught onto certain ambiguities. Nevertheless, the regions of the country basically adhere to one of the two schools of Hindu Law: the Mitakshara school or the Dayabhaga school, propounded by Vigneshwara and Jimuthvahana respectively. These are basically commentaries on the same basic text – Yagnavalkya Smriti. The size of family might have drastically reduced but family as an institution has been a constant therefore, the concept of Hindu Joint Family are here to stay no matter how dynamic the times are.

Keywords: *Hindu Joint Family, Concept, Coparcenary, Karta, Relevance*

1. Introduction

In India, and particularly in the Hindu Society, Joint Hindu Family is the default condition of the society. A Joint Hindu Family is a unique feature of the Hindu jurisprudence, and its counterpart has not been found in any other system of jurisprudence, though several attempts have been made to establish a parallel between the Hindu Joint Family and a Corporation, Joint tenancy and Composite Family. Hindu Joint Family can be, simply, defined as a family arrangement consisting of all the lineal male descendants from a common ancestor including the wives and unmarried daughters of such descendants.

Hindu Joint Family is a very basic part of the Hindu society, whose origins date back to the Vedic era. A system that started out with an ardent patriarchal form, slowly through the years became the system that it is today. The features of a Hindu Joint Family include a common ancestor, which is a very fundamental element of all Joint Families, such that without it no Joint Family can come into existence, however the existence of a common ancestor is not necessary for its continuation. Other features include: It being a creature of law i.e., it comes into existence by the virtue of law and not by any agreement of the members; It having no separate legal existence, apart from the members of the Joint Family; It confers certain rights on its members; It has a presumption of jointness i.e., a family is considered to be joined, unless otherwise evidence of its partition has been brought before court.

Apart from the features, Hindu Joint Family has two very important concepts namely: The Coparcenary and The Karta. The coparcenary is a small body of male lineal descendants of the common ancestor which are not removed more than 4 degrees from him. The Coparceners have certain special rights with respect to the ancestral and other property. The two schools of Hindu Law: The Mitakshara School and The Dayabhaga School; basically, differ on the concept of coparcenary and their respective right towards the ancestral and other property. Karta is the manager of the Joint Family, and has been assigned with the task of taking care of the needs and wishes of the family and to manage the family property and other enterprises, and in that respect has been conferred with a large scale of powers.

The Concept of Hindu Joint Family has been, socially, very important because of its position in the Hindu society. But, as it has no legal existence, it does not have much importance in the legal field. However, in the recent years, a concept of Hindu Undivided Family has emerged that has been given legal recognition, and is based on the concept of Hindu Joint Family. Also, through judicial decisions the concepts of Coparcenary and Karta have been

changed to great extent. Therefore, the concept of Hindu Joint Family has succeeded in being relevant, even in the 21st century.

2. Hindu Joint Family: Concept and Culture

Joint Hindu Family is a unique component of both the Indian society as well as the Hindu Jurisprudence which has seen no other parallel in the ancient or the modern system of law.¹ It is a fundamental aspect and a characteristic feature of the Hindu life. It provides social security, while also playing a major role in other social, political and economic institutions.²

According to Sir Dinshah Mulla, “A joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A daughter ceases to be a member of her father's family on marriage, and becomes a member of her husband's family.” Therefore, a joint Hindu family is one which depends on a common ancestor for its conception and includes every male descendent, irrespective of the generation, the wives of such male descendants and their widows or unmarried daughters. Though a common descendent is required for the conception of Joint Family, but its continuance is not necessary.

[2.1] Origin and Development

Family, as per the Hindus, is the place from where the practice of Dharma begins.³ Good to others, compassion, gratitude, truthfulness, devotion etc., are some of the tenets on which family life is founded.⁴ However, even though the Dharmshastras, Puranas and the epics, which preach about Dharma in detail, have mentioned the importance of family life in great detail, the development of family is still ambiguous. There is no material evidence towards the beginning and development of family as it is a relation which is essentially psychic.

Family is a biological necessity, which not only brings the sexes together but also strengthens the filial bonds.⁵ This is, however, the natural instinct of family and the others, such as co-operation and transmission of property and status which are due to it being an institution, has

¹ PARAS DEWAN, MODERN HINDU LAW 224 (1979)

² Prem Chand Bedwa, *Assessment of the Hindu Undivided Family and its members under the Income Tax Act, 1961*, SHODHGANGA, (Dec. 31st, 1982) <http://hdl.handle.net/10603/87558>

³ 1 P.V. KANE, HISTORY OF DHARMASTRA 1-4

⁴ Prem, *supra* note 2, at 80

⁵ *Id.* at 81

come through later developments. Family is a cultural super-structure on a biological foundation.⁶

To under the form of family, marriages and its forms have to be considered as “marriage is an institution and family is the association that embodies that institution.”⁷ The society which follows patriarchal form of marriage gives rise to patrilineal families and which follow matriarchal form of marriage gives rise to matrilineal families. Even though it is not clear what type of marriage existed at the emergence of human civilization, but the evidence of both the types of marriages and thus families have been found.⁸ However, at a very early period of human civilization, patriarchal family rose to ascendancy and was widely prevalent, throughout the world.⁹ And therefore, majority of the families are found to be patriarchal in nature.

The structure of a patriarchal family resembles closely with that of state with a head at its apex. Just like the head of a state, the head of such a patriarchal family enjoys vast powers and authority over the property and members of the family. He’s an unquestioned ruler, who makes rules for all the members which they have abide by, failing which he could punish them. At the root level was the general family welfare or promotion of family as a unit for which personal interests of the family members could be sacrificed. This means that though altogether they were a family or in other words they were called as a family together, the promotion of the whole unit of the family was important and individual interests served as minor preference in the long run of the concept of the Hindu Joint Family.¹⁰ After the death of the head, the family either broke up into several other joint families or remained together and the eldest male son became the new head, however his powers were greatly reduced in comparison to his father’s.

However, this patriarchal family system did not continue for long and gradually the joint family system took over. Though, there are no accurate causes to ascertain why the patriarchal system was abandoned or when the joint family system was adopted. Nevertheless,

⁶ *Id.* at 81

⁷ *Id.* at 81

⁸ *Id.* at 82

⁹ B.N. Sampath, *The Joint Hindu Family – Retrospect and Prospect*, BAN. L.J. 35 (1965).

¹⁰ Mayank Vats & Leepakshi Rajpal, *Legal Dimensions with Reference to a Hindu Joint Family*, 3 IERJ 51 (2017)

there are indicators of its transmissions found in the Vedic period¹¹ and in the village communities.¹²

[2.2] Composition of a Hindu Joint Family

As stated earlier, a Joint Hindu Family comprises of a common ancestor along with all the male lineal descended of the common ancestor, irrespective of the generation, and includes mothers, wives and unmarried daughters.¹³ As per the Indian culture, an unmarried daughter is considered to be a member of her father's Joint Family. However, after marriage she becomes the member of her husband's Joint Family. This is due to the patriarchal notion of our society which considers daughters to belong to her husband's family i.e., her original family is that of her husbands'. However, in case of divorce or the daughter becoming a widow or in any circumstance where she permanently leaves her husband's house and returns to her father's home, she would be counted as a member of her father's family, as long as she has permanently shifted from her husband's family to her father's family.¹⁴ In case the daughter returns with her kids, then the kids would not be considered as a part of her father's Joint Family and they would remain as the members of her husband's Joint Family. Even though a child in the womb of a daughter, who has returned to her father's home, is not considered a member for taxation purpose, it is still considered to exist and a member of the Joint Family for certain purposes under the Hindu Law.¹⁵

The Joint Family is a large body of people who are united to each other by congenial bond between them or the tie of sapinda ship which arises out of birth, marriage or adoption.¹⁶ The love that each one of them shares with each other and the whole family together, is the cord that connects them and keeps them together.¹⁷ However, it is the tie of sapinda ship which is fundamental in bringing about a Joint Family. Therefore, with the tie of sapinda ship and the family living together, it is almost impossible to not form a Joint Hindu Family.¹⁸ It is this very essence of sapinda relation, that Joint Hindu Family is called a creature of law which

¹¹ B.N., *supra* note 9, at 36

¹² R.C. MITRA, THE LAW OF JOINT PROPERTY AND PARTITION 22 (Tagore Law Lectures, 1913)

¹³ Gur Narain Dass v. Gur Tahal Das, AIR 1952 S.C. 225

¹⁴ *Id.*

¹⁵ Srinivasan v. Commissioner of Income Tax, AIR 1962 Mad 146.

¹⁶ Mayank, *supra* note 10, at 52

¹⁷ *Id.* at 52

¹⁸ Prem, *supra* note 2, at 85

cannot be formed or created by the acts of the parties.¹⁹ It confers a status on its members which can be acquired only by birth or by marriage to a male or through adoption.²⁰

The whole structure of the Joint Family highly resembles to that of a corporation. However, the two are very different. A Joint Family is not a juristic person,²¹ and it does not have any legal entity distinct and separate from its members. Addition of members through birth and removal of members through death does not affect the character of the family, it only affects the quantum of interest of the members which also cannot be ascertained until partition.²² Similarly, the Joint Hindu Family is also compared with the English Joint Tenancy and though both of them resemble in the unity of incidents, right of partition and rule of survivorship, they are very different in their character and conception.

[2.3] Characteristics of a Joint Hindu Family

The characteristic features of a Hindu Joint Family are:

- **Common Ancestor:** A common ancestor is necessary for the conception of a Joint Family however; his existence is not necessary for the continuation of the family. This means that once a Joint Family is created it remains in existence even after the death of the common ancestor, with some other member filling in his role.
- **A Joint Family is creature of Law:** A Joint Family membership depends upon the sapinda relationship i.e., a person becomes a member either by birth or by marriage or by adoption. This means that a Joint Family cannot exist just by the mutual agreement of the parties. Therefore, a stranger cannot be made a member of a Joint Family by the mutual agreement of all the other members but only marriage or adoption. Here, marriage can only introduce female members into the family and male member has either to be born in the family or be adopted by the family to be a part of it.
- **No legal existence:** The Hindu Joint Family does not have a legal entity or have a distinct identity than from its members.²³ This indicates that the joint family is a single entity that is not a legal entity, does not have a legal identity as a unit, and is not recognised as a business or corporation. It is a unit that is represented in all family matters by the joint family's manager, known as the Karta.²⁴ It is unable to sue or be

¹⁹ *Id.* at 85

²⁰ Surjit Lal Chhabda v. Commissioner of Income Tax, AIR 1976 S.C. 109

²¹ Chhoteylal v. Jhandey Lal, AIR 1972 ALL. 424

²² Approver v. Ramasubbier, (1966) 11 M.I.A. 75

²³ Ram Kumar v. Commissioner of Income Tax, AIR 1953 All 150

²⁴ Suraj Bansi Koer v. Shoe Prasad, (1874) 14 Beng LR 188

sued on its own behalf. Because it is neither a legal person nor a business, it is unable to transfer or hold the property in its joint character. This means that the Joint Family Property is owned not only by the family as a unit but also by its members collectively.²⁵

- **Membership Status:** Conversion to another faith can result in the loss of the Hindu Joint Family member's status. This means that if a member of a Hindu joint family converts to a faith other than Hinduism, he or she loses his or her status as a member of the Hindu Joint Family and, as a result, loses the right to joint ownership of the property. If a family member marries a non-Hindu, he or she loses the privilege to be referred to be a member of the Hindu joint family.
- **Unequal Rights:** All the members of a Joint Hindu Family do not have the same rights with regards the family property. The Coparceners (as discussed in next section) are the only ones who have an interest in the property. Whereas, females and male (other than coparceners) members or disqualified members just have a right of residence and maintenance in the family property.
- **Existence of Joint Family:** The existence of Joint Family does not depend on the presence of male members. It depends on the plurality of the members,²⁶ even though there's only a single male²⁷ member present. Also, the Joint Family remains in existence even after no male members as long as it is possible in the nature of things to add a male member in the family either by birth or by adoption.²⁸ Also, in cases of partition, the Joint Family does not end as partition results in creation of several other joint families.²⁹ Therefore, it is considered that a Joint Family can go on indefinitely, till perpetuity until it ends.³⁰
- **Presumption of Jointness:** In the Indian Society, there is a presumption of jointness in the Hindu Family i.e., unless a contrary is proven, it is presumed that the family is living in a state of union. Here the presumption of jointness varies as per the degree of relation. If one goes farther from the common ancestor, the presumption is also less.³¹

²⁵ Chhoteylal v. Jhandey Lal, AIR 1972 ALL. 424

²⁶ Bhupatrai Him Chand v. CIT, (1977) 109 ITR 97 at 104 (Cal.)

²⁷ Commissioner of Income Tax v. Gomedalli Lakshminarayan, AIR 1935 Bom 412: the court observed that while for a coparcenary the presence of at least two male members in the joint family is a necessary requirement, a Hindu joint family can continue even with one male member, and accordingly in this case the son was competent to be assessed as the Karta of his joint family.

²⁸ Ceylon- Attorney-General of Ceylon v. A. R. Arunachalam Chettiar

²⁹ Mayank, *supra* note 10, at 52

³⁰ PARAS, *supra* note 1, at 224

³¹ Indra Narayan v. Roop Narayan, AIR 1971 S.C. 1962

Jointness is considered to be the normal state of the Hindu families. Therefore, if a man who is separated from his father and brother, but there is no proof of such division, then it is legally presumed that they are joint. It is considered that a normal Hindu family joint in food, worship or estate is presumed to be joint, unless otherwise proved. However, it is not necessary that if a family is not joint in any of them, then it is not a joint family.³² Similarly, if a family that is not joint in all the three, which provides as strong piece of evidence of separation, may still be joint.³³ Therefore, a family having a joint property but whose members stay away from each other due to their work, would still be considered to be Joint Family.³⁴ Also, existence of Joint family property is not an essential requisite for a family to be considered joint, there can still exist Joint families where there's no Joint family property.³⁵ However, where there is a joint estate and the members become separate in estate, then the Joint Family ceases to exist.³⁶

[2.4] Important Concept Related to Hindu Joint Family

1. Coparcenary

- **Origin and Development**

In the Hindu Law, two principal schools – Mitakshara and Dayabhaga, have almost authority with regards to principles followed by the Joint Family. Mitakshara school is followed in all the states of India except Bengal and Assam and is based on a book called “Mitakshara” which is a commentary on the YagnaValkya Smriti compiled by Vigneshwara. Dayabhaga school is followed in the States of Bengal and Assam and is based on a book called “Dayabhaga” which is also a commentary on YagnaValkya Smriti, but is compiled by Jimuthvahana.

The two schools differ in the principles of inheritance and Joint Family system;³⁷ with each of the authors using the various ancient texts and writings to fortify their scheme of thought. The main point of difference between the two schools is the doctrine of right to birth. Mitakshara follows the “Janma Swatwavad” or acquisition of right by birth, whereas

³² Chowdhry Ganesh Putt v. Jewach, (1904-) 31 I.A. 10.

³³ PARAS, *supra* note 1, at 225

³⁴ Kanthaperumal pillai v. Rajendra, AIR 1959 Mad 409

³⁵ Jankiram v. Nagamony, AIR 1926 Mad. 273

³⁶ Prem, *supra* note 2, at 90

³⁷ *Id.* at 91

Dayabhaga follows the theory of “Upamana Swatwavad” or acquisition of right on the demise of the previous owner.

The current doctrine of right to birth is derived from these ancient texts, but as it has been around for thousands of years, it has undergone several changes and as result there can be found several inconsistencies in these texts and a particular stance cannot be taken by simply relying on them. However, these texts can be classified into three types:

- a) Texts establishing absolute ownership with unfettered right of disposition of the property in the hands of the father, with the sons having no say or right in the property during their father’s lifetime.³⁸
- b) Texts that provide certain rights, such as right of restraining the father from dissipating the ancestral as well as self-acquired property from alienation, to the sons.³⁹
- c) Texts that establish co-ownership rights of the son, as soon as he is born, in the ancestral property as well as some interest in the self-acquired property of the father.⁴⁰

As per the ancient texts, there was no rights given to the son with regards to the property and father was the absolute owner in the earlier periods. Only in the Smriti period can the co-ownership of son can be found. During the earlier period, co-ownership of property and right to ask partition of property by sons was not a welcomed practice and people actively socially ostracised such a person.⁴¹ However, there were still instances of such things happening. It was only after the cases of misuse of the absolute power given to the father became increasingly frequent that a restraint on such power was considered by way of recognising the co-ownership of son.⁴²

Therefore, it is abundantly clear that there is a major conflict between the theories of absolutism of father and the birth right of son. Here, the important point is that the two authors have not propounded any novel theory, but they have just taken sides and paved the way for their general acceptance.⁴³

³⁸ SEN GUPTA, THE EVOLUTION OF ANCIENT INDIAN LAW 203

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Prem, *supra* note 2, at 95

⁴² B.N., *supra* note 9, at 39

⁴³ Prem, *supra* note 2, at 95

There have also been several differences in the writings of the texts and those that have been held by the courts. There are several judgements⁴⁴ which have held that the son has right to birth in only the ancestral property and not in the self-acquired property of the father. Therefore, father is free to dispose of his self-acquired property in any way necessary. However, as per the texts, the son has right in the ancestral property as well as some interest in the self-acquired property of his father. Though, this interest varies as per the category of the property.⁴⁵ Similarly, the courts have held that under Dayabhaga, the father can alienate both the ancestral and self-acquired property, as the coparcenary in devolved by succession, during his lifetime.⁴⁶ However, from the writings of Jimuthvahana, it has been found that he had never entirely endorsed the absolute power of the father and states that “an alienation of property that effects the maintenance of the family is not proper.”⁴⁷ Similarly, he has also conceded to some extent that the sons have some interest in the ancestral property.⁴⁸ Therefore, it is clear that he has backtracked his own theory by stating at one place that son has no absolute right in the property and the father is the absolute right holder.⁴⁹ And at another place that the father cannot unequally⁵⁰ divide the ancestral property or to alienate the said property to the detriment of the family.⁵¹

- **Nature**

Similar to the Joint Family, a coparcenary is also a creature of law and cannot be created by the acts of the parties or by an agreement,⁵² except in cases of adoption⁵³ or reunion.⁵⁴ It is considered as the corporate body or a family unit.⁵⁵ This family unit can acquire, hold and dispose the family property, which is done as per the provisions of law.⁵⁶ Here the manager (Karta) or by the permission of the members, a business can be done or property can be acquired and such business and property would be considered family property or business. However, this does not mean that the members lose their individual identity. They can still

⁴⁴ Arunachal Mudaliar v. Murugantha Mudaliar, AIR 1953 S.C. 495

⁴⁵ P.N. SEN, HINDU JURISPRUDENCE 129 (Tagore Law Lectures, 1909)

⁴⁶ Prem, *supra* note 2, at 100

⁴⁷ DAYABHAGA XXII 23-24

⁴⁸ “a father can divide his self-acquired property among his sons in any way he likes, but not so in regard to ancestral property because the rights of father and son are equal in it.” DAYABHAGA II, 15-16

⁴⁹ DAYABHAGA I, 4-5

⁵⁰ *Id.* at 65

⁵¹ DAYABHAGA XXII, 23-24

⁵² Bhagwan Dayal v. Reoti Devi, AIR 1962 S.C. 287

⁵³ Sitabai v. Ram Chandra, AIR 1970 S.C. 343

⁵⁴ Prankishan v. Mothooramohun, (1865) 10 M.I.A. 403

⁵⁵ Prem, *supra* note 2, at 102

⁵⁶ P.N. Venkatasubramania Iyer v. P.N. Easwara Iyer, AIR 1966 Mad. 266

acquire property and start a business that would remain exclusive to them, unless they blend it with the Joint Family property.

- **Concept**

- Under Mitakshara Law

Coparcenary is a small body of persons within the Joint Family, which includes members who acquire an interest in the Joint Family Property by birth,⁵⁷ and includes father and his three male lineal descendants.⁵⁸ Similar to Joint Family, father-son relation continuation is not necessary, as long as the person is not removed more than **4 degrees** from the last holder of the property.⁵⁹ Therefore, they can also exist coparcenary between grandfathers, grandsons, uncles, nephews and so on.

- Under Dayabhaga

There is no coparcenary between the father and the son⁶⁰ or the grandfather and son or so on. This means that the son has no interest on either the ancestral property or the self-acquired property of his father. The coparcenary only comes in existence during the death of his father, when the brothers inherit from him.⁶¹ On the death, the property is shared equally among all the coparceners, further, in the shares of each of the coparceners, their children would have no right unless the coparcener dies. However, if a coparcener is dead before obtaining his share, then his children can take the same share from the property which they would have gotten, if their father was alive and had obtained his share from the property.⁶² An incredible point in the Dayabhaga coparcenary is that, it considers women as coparceners as well. Therefore, a daughter can inherit from his father and become a coparcener.⁶³

- **Incidence of Coparcenary**

- Under Mitakshara law

⁵⁷ Venugopala v. Union of India, AIR 1969 S.C. 1094

⁵⁸ MULLA, HINDU LAW 245 (1970)

⁵⁹ PARAS, *supra* note 1, at 226-227

⁶⁰ MULLA, *supra* note 58, at 314

⁶¹ Charan Dassi v. Kanai, AIR 1955 Cal. 206

⁶² Prem, *supra* note 2, at 112

⁶³ *Id.*

- a) All the male lineal descendants up to the 3rd generation, acquire on birth⁶⁴ ownership rights in the ancestral property of such person.⁶⁵
- b) Such descendants (coparceners) can ask for partition.⁶⁶
- c) Until partition, each member enjoys ownership over the whole of the property conjointly with the others.⁶⁷ (**Unity of ownership**)
- d) Since there is co-ownership of property, therefore, the possession and enjoyment of such property is also common.⁶⁸ (**Unity of possession**)
- e) No alienation of property can be done by anyone, except in necessity,⁶⁹ without the permission of the coparceners.⁷⁰
- f) Interest of a coparcener that has died, lapses on his death to the survivors.⁷¹ (**Doctrine of Survivorship**⁷²)

➤ Under Dayabhaga Law

- a) No “right by birth” in the property
- b) There is only “unity of possession” of defined shares and no “unity of ownership”
- c) Coparceners have defined shares in the joint family property and are considered as the owner of share⁷³ and considered to have absolute rights⁷⁴ in such shares.
- d) There is no devolution of property by survivorship, but only by succession.⁷⁵
- e) Could be male or female
- f) Every adult coparcener is entitled to enforce partition of coparcenary property.⁷⁶

⁶⁴ C.I.T. v. Laxminarayan, AIR 1935 Bom. 412

⁶⁵ Rajindra v. Shiv, AIR 1971 All. 488

⁶⁶ Raghavamma v. Chenchamma, AIR 1964 S.C. 136

⁶⁷ Appovier v. Rama Subha, (1866) 11 M.I.A. 75

⁶⁸ Katama Natchiar v. Rajah of Shivagunga, (1863) 9 M.I.A. 539

⁶⁹ Ram Villas v. Ramnand, (1970) P.L.J. 622

⁷⁰ Mahabeer Prasad v. Ramyad, (1874) 12 Beng.L.R. 90

⁷¹ Sheo Gopal v. Firm Ganesh Das Ram Gopal, AIR 1931 Oudh. 327

⁷² The concept basically states that, the property would be devolved upon the death of the coparcener to his next survivor, irrespective of who his heir is.

⁷³ C.W.T., West Bengal v. Gauri Shankar Bhar, (1972) 84 I.T.R. 699 (S.C.)

⁷⁴ Bageshwari Prasad v. Deopati Kuer, AIR 1961 Pat. 416

⁷⁵ MULLA, PRINCIPLES OF HINDU LAW 87 (1970)

⁷⁶ *Id.* at 704

➤ Status of embryo and illegitimate son as coparcener

For the purpose of inheritance, alienation and partition, it is considered that a male child becomes a member of the joint family and a coparcener as soon as he is conceived.⁷⁷

An Illegitimate child born to an exclusively and permanently kept concubine is not considered a coparcener,⁷⁸ though he could be considered a joint family member. However, an illegitimate son (of a sudra)⁷⁹ by a continuous concubine is a member of family and is given the status and share of inheritance as a son. But the son does not acquire this interest in his father's property by birth, till the lifetime of his father. On the death of the father, he succeeds as a coparcener along with the legitimate son with a right of survivorship and is entitled to enforce partition.⁸⁰

However, after the adoption of Hindu Succession Act, 1956, this right of inheritance of illegitimate son was removed and as a result they do not have any right to inherit.⁸¹

2. Karta

The management of the members and of the Joint Family Property is placed in the hands of a benevolent patriarch, called the "karta". Joint Family is considered to be connected by bonds of love and affection; therefore, the Karta is made responsible for guiding the affairs of the family and securing them welfare.

- **Position**

Karta occupies a very important position in the family and is considered a spokesperson of the family. He's neither the partner, nor an agent, nor a trustee,⁸² of the members, still he has some qualities of all of them. He acts as an agent as he can enter into business transactions of behalf of the family, as a trustee when he looks after the joint property kept with him for

⁷⁷ T.S. Srinivasan v. C.I.T., AIR 1966 S.C. 984

⁷⁸ PARAS, *supra* note 1, at 230

⁷⁹ Prem, *supra* note 2, at 109

⁸⁰ *Id.*

⁸¹ Venkataraman, *A study of Hindu Succession Act 1956*, II M.L.J 64 (1956)

⁸² Srikant Lal v. Sidheshwari Prasad, AIR 1937 Pat. 455

safekeeping and partner when he gets his share as a fellow coparcener. His position lies irrespective of the will of the other coparceners.⁸³

All the family income is deposited in the family chest, from where the Karta uses the money for purposes such as maintenance, education, marriage etc. He has a wide scope of management and his powers is that of a sovereign.⁸⁴ A Karta, as long as the family remains joint, is the master of all the affairs of the family and no one can question him or his authority.

The position of Karta is very unique to the Hindu Law and is not found in any other jurisprudence. He enjoys and possess very vast powers within the ambit of joint family, which is not found in any other part of the world.⁸⁵

- **Who can be a Karta?**

As per the principle of Hindu Law, only a coparcener can become a Karta of a Joint Family⁸⁶ and it is usually presumed that the senior most member of the family is regarded as the Karta.⁸⁷ A Karta's position is not due to an agreement or consent of the other coparceners,⁸⁸ however, the coparceners can also choose any other coparcener, even the junior most member, to be the Karta.⁸⁹ The factors that are taken into consideration are initiative, fitness and efficiency to manage the affairs, while making some other coparcener the Karta.⁹⁰

In the Hindu Law, there's no idea of two Kartas for a single Joint Family.⁹¹ However, there can be two or more coparceners representing on the behalf of the family in different business transactions. In this scenario, the powers of the representing coparceners are not from a principle of Hindu Law, as in the case of Karta, but from the authority bestowed upon them by the other coparceners.⁹²

- **Powers**

⁸³ Sri Raman v. Sri Gopal, (1897) 19 All. 428

⁸⁴ Prem, *supra* note 2, at 195

⁸⁵ PARAS, *supra* note 1, at 245

⁸⁶ C.I.T v. Seth Gobindram Sugar Mills, AIR 1966 S.C. 240

⁸⁷ Ram Ekbal v. Smt. Khira Devi, AIR 1971 Pat. 286

⁸⁸ Prem, *supra* note 2, at 195

⁸⁹ Narainder Kumar v. C.I.T, AIR 1976 S.C. 1953

⁹⁰ Prem, *supra* note 2, at 197

⁹¹ Union of India v. Shree Ram, AIR 1965 S.C. 1531

⁹² Shankar v. Shankar, AIR 1943 Bom. 487

Karta has the same proprietary interest in the family property as any other coparcener. However, due to his position, where his word is considered final,⁹³ there is an implied voluntary abdication of other coparceners' rights in favour of the Karta i.e., they cannot depose him. His powers can be effectively divided into two:

➤ General Powers

1. Power over income and expenditure: A Karta has possession and control over the entire family property,⁹⁴ income and expenditure, and is competent to allot or use any property or income.⁹⁵ His powers as to management is almost absolute.⁹⁶
2. Power to contract debts: He has the implied authority to pledge the family property for any family business⁹⁷ or purpose,⁹⁸ and such debts remain binding on all the family members.⁹⁹
3. Power to acknowledge or give discharge for debts: A Karta has power to acknowledge a debt, or pay interest on a debt or part pay the debt.¹⁰⁰ But he has no power to acknowledge a time-barred debt¹⁰¹ or relinquish a debt due to family.¹⁰²
4. Power to compromise: A Karta can enter into a compromise done with bona fide intent for the benefit of the whole family, then such compromise is binding on all the members of the family.¹⁰³
5. Power to refer disputes to arbitration: Karta can refer disputes to arbitration,¹⁰⁴ if done with a bona fide intent for the benefit of the whole family.
6. Power to represent family in suits: Karta, being the spokesperson, represents the whole family as well as the other members in a suit.¹⁰⁵ And

⁹³ Prem, *supra* note 2, at 199

⁹⁴ Bhaskaran v. Bhaskaran, (1908) 31 Mad. 318

⁹⁵ Ramaya v. Kolanda, (1940) I.L.R. Mad. 222

⁹⁶ PARAS, *supra* note 1, at 247

⁹⁷ Ram Krishna v. Rattan Chand, AIR 1931 P.C. 136

⁹⁸ Mudit Narain Singh v. Ranglala Singh, (1902) 29 Cal. 797

⁹⁹ Ram Nath v. Chiranjilal, AIR 1935 All. 221

¹⁰⁰ Prem, *supra* note 2, at 202

¹⁰¹ Dassappa v. Vedarathamma, AIR 1972 Mys. 288

¹⁰² Dasaratharama v. Narasa, (1928) 51 Mad. 484

¹⁰³ Bhagwan Singh v. Behari Lal, AIR 1938 Nag. 237

¹⁰⁴ Shantilal v. Munshi Lal, AIR 1932 Bom. 498

¹⁰⁵ Baskari v. Bhasharam, (1908) 31 Mad. 318

any decree passed in such suit would be binding on all the members of the family.¹⁰⁶

7. Power to enter into contracts: Karta can represent and enter into contract on behalf of the joint family and such contract becomes enforceable against all the members of the family.¹⁰⁷

➤ **Special Powers**

Power of alienation: Karta possesses the power to alienate any or all the joint family for the purpose of: a) legal necessity, b) benefit of estate, c) act of indispensable duty; or if it is made by the consent of all the coparceners, all of them being adults.¹⁰⁸

3. Hindu Joint Family: Relevance and Development

[3.1] Relevance of Hindu Joint Family

As a system, the Hindu Joint Family strongly resembles and is in many aspects a patriarchal authority, and because of this very reason several scholars believed that with emergence of women rights, the members who are most vulnerable in a patriarchal authority, the concept of Hindu Joint Family would slowly fade away.¹⁰⁹ However, such is not the case, as the Hindu Joint Family remains highly functional and highly relevant in today's time.

With the enactment of different legislatures and the pronouncement of different Judicial Decisions, the system of Hindu Joint Family has been corrected off its lacunas. Women and other members, who previously suffered due to lack of rights under the Hindu Joint Family, have been provided with new rights to secure their interests. In short, the concept of Hindu Joint Family has been revamped to provide for an equal protection of rights and beneficial interests of all the members.

Hindu Joint Family system has also received helped by benefits associated with it under the personal taxation laws. A Hindu Undivided Family, which has been recognised within the

¹⁰⁶ Ram Nathan Chettiar v. S.Rm.M.Ct.M. Firm, AIR 1937 Mad. 345

¹⁰⁷ Bhagirath v. Bhagwan, AIR 1962 Pat. 391

¹⁰⁸ Kandasami v. Samakanda, (1912) 35 Mad. 177

¹⁰⁹ Promila Chung, *Hindu Undivided Family in Indian Tax Structure: A Critical Study*, SHODHGANGA, (Dec. 31st, 1996) <http://hdl.handle.net/10603/129380>

definitions of person under sec. 2(31) of the Income Tax Act, 1961¹¹⁰ and sec. 3 of Wealth Tax Act, 1957¹¹¹ have given it a separate legal existence as that from its members. A Hindu Undivided Family has not been effectively defined in under any of the legislations, as the lawmakers wanted to preserve the meaning of Hindu Joint Family as provided by the Hindu Law which has been provided for the meaning of Hindu Undivided Family. In the case of *Surjit Lal Chabra vs. CIT*,¹¹² it was held by the Supreme Court that Hindu Joint Family and Hindu Undivided Family are synonyms of each other.

The concept and creation of HUF is similar to that of a Hindu Joint Family. However, the main advantage or the purpose for which HUF has been recognised in the legislations is the tax benefits, which can be summarised as:

1. A HUF is a separate legal entity and is assessed and taxed differently from its members. Therefore, it also has a separate exemption limit under the Income Tax Act, also it enjoys deduction under sec. 80(g), 80(c), 80(d) and 80(d)(d).¹¹³
2. HUF can give salary to its members and karta.
3. HUF is eligible to have its separate PAN no and therefore, can help in cutting down the income tax into smaller amounts to save taxes.¹¹⁴
4. HUF can benefit from the exemption of capital gain.¹¹⁵
5. HUF can invest in Primary as well as Secondary markets through a different Demat account from its members.¹¹⁶
6. HUF can be managed and control from outside of India by having a non-resident HUF.¹¹⁷
7. A member of a HUF can be a member of different HUF, from which his income can be estimated under different assessments.¹¹⁸

Apart from these advantages of an HUF, it also, being similar in concept and conception to a Hindu Joint Family, provides other rights such as a right to maintenance, right to residence,

¹¹⁰ "Person" includes- ii) a Hindu Undivided Family

¹¹¹ Charge of Wealth-Tax, 1) subject to the other provisions contained in the Act, there shall be charged for every assessment year commencing on and from the first day of April, 1957 but before the first day of April, 1993, a tax (hereinafter referred to as wealthtax) in respect of the net wealth on the corresponding valuation date of every individual, Hindu Undivided Family and company at the rate or rates specified in (Schedule I)

¹¹² 1976 AIR S.C. 109

¹¹³ Ashutosh Singh, *Status of Hindu Undivided Family in India*, IPLEADERS (Sept 27th, 3:00 PM) <https://blog.ipleaders.in/status-hindu-undivided-family-india/>

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

right to ask for partition as well as right to represent the members in any type of suit. Therefore, from these aspects it could very well be considered that the system of Hindu Joint Family remains and will remain in future a very relevant concept.

[3.2] Recent Developments

The Joint Hindu Family and its different key concepts- coparcenary and karta, have undergone several changes through judicial decision and legislative changes so that they could provide for the rights of women and others more effectively. Some of the prominent changes brought about are:

1. Women and daughters as coparceners.

Women had several rights and privileges during the Vedic age, but they did not have any right to inheritance or succession. Under Hindu Law, sons have definite interest in the ancestral property, but the women only have interest in the share of his father.¹¹⁹ Therefore, to protect the rights of inheritance of women, Hindu Law of Inheritance Act, 1929 was passed, which conferred inheritance rights on son's daughter, daughter's daughter and on the sister.¹²⁰ Similarly, the Hindu Women's Right to Property Act, 1937 brought revolution in the women's right to property, as it allowed the widow of a deceased to take the same interest in the property which his husband would have gotten if he had been alive.¹²¹ She was entitled to claim partition as a male owner. Though, these legislations made major changes, still the women were not considered as a coparcenary.¹²² Therefore, the Hindu Succession Act, 1956 was passed which gave several new rights to the women. But still the daughters were not conferred the title of a coparcener. It was only after 15th Law Commission's 174th Report, that the Hindu Succession Act, 1956 was amended in 2005 to give daughters the title of coparceners. Therefore, the daughters and women were given equal rights as those of the son with respect to the property.

2. Women as Karta

¹¹⁹ Dr. KumKum Agarwal, *Hindu Daughter's Right as Coparcener: A Milestone Towards Gender Reform*, 11 IJAR, 1 (2021)

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

Karta is position of power, responsibilities and liabilities and therefore, as per Hindu Law, there is some hesitancy in making the women as the Karta of a Joint Family.¹²³ As per the Sastra's there's nothing to mitigate women's appointment as the Karta.¹²⁴ But the judicial decisions have stated otherwise. As per them, being a coparcener is an important condition for being a Karta.¹²⁵ However, in Commissioner of Income Tax vs. Laxmi¹²⁶ it was held that a women can be a coparcener, if she's the only member sui juris left in the family. However, in Radha Ammal vs. Commissioner of Income tax,¹²⁷ dissented from the earlier case and held otherwise.

The legislative acts such as the Hindu Women's Rights to Property Act, 1937 also did not help much as it did not confer coparcenary on the women. The Hindu Succession Act 1956, also did not provide much assistance. It was only after the 2005 amendment of the Hindu Succession Act, which conferred coparcenary on the women that woman could be considered to be appointed as Karta. In Mrs Sujata Sharma vs Shri Manu Gupta & Ors,¹²⁸ the Delhi high court held that an eldest female member of a family, being the coparcener in an HUF, may become the karta of an HUF.

3. Rights of an Illegitimate Son

As earlier stated, the Rights of an illegitimate son was devolved to a great extent by the Hindu Succession Act, 1956. However, the Supreme Court in Revanasiddappa vs. Mallikarjun¹²⁹, where they stated that, "A child born of an Illegitimate relationship/void marriage is innocent and is entitled to all rights of property that his parents are entitled, whether ancestral or self-acquired property."

4. Conclusion

The concept of Hindu Joint Family is one that has been in practice from the Vedic period and has remained functional and relevant in the 21st century also. It is a unique concept of the Hindu jurisprudence, the like of which is not found anywhere. It is the fundamental

¹²³ GUNTHER DIETZ SONTHEIMER, THE JOINT HINDU FAMILY: ITS EVOLUTION AS A LEGAL INSTITUTION 428 (ProQuest, 1965).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ AIR 1949 Nag. 128

¹²⁷ AIR 1950 Mad. 538

¹²⁸ (2016) 266 DLT 647

¹²⁹ AIR (26) ALR 450

orientation of the Hindu Society. It is basically a family setup in which all the lineal male members, their daughters and wives from a common ancestor are joined either in estate, worship or work, the membership of which is through birth, or adoption, and revocation can be through death or by professing any other religion.

The concept of Joint family is governed by certain principles that vary as per the school of thought, which is mainly two: Mitakshara and Dayabhaga. The main concepts of ancestral property, coparcenary and Karta are managed and governed by different rule which are exclusive to the schools.

The concept being followed through ancient times had a patriarchal touch with certain rights bestowed only upon the male members of the family, usually the coparcenary members. However, with changing times and a changed attitude of the society, these patriarchal rules have been changed through legislative and judicial process. The prominent changes including granting coparcenary rights to daughters as well as granting them with the opportunity to be the Karta, and providing certain rights to the illegitimate children of the family. However, still there's several room for improvement in the laws which basically govern the family setup from the maintenance of property to the welfare of the family members.

The concept has most relevance in the formation of the Hindu Undivided Family. As a Hindu Joint Family does not have any legal identity different from its members, the concept of Hindu Undivided Family, which is based on the concept of Hindu Joint Family, was brought about in the taxation field so as to provide certain relief to those business which are backed by and done by members of a Joint Family in the name of the family business.

The concept of Joint Hindu Family, which was once expected to slowly get unpopular and become discarded, has over the years remained in practice. But, with emergence of concepts such as Hindu Undivided Family, the concept will surely remain functional and relevant in the next century too.