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**E- Newsletter**  
**Trans India Law Associates**  
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**COMPILATION OF LEGAL PROVISIONS RELATED TO HINDU UNDIVIDED FAMILY**

**Law of Hindu Undivided Family (HUF)**

Under Hindu Law, there is a presumption that Hindu families are living in a state of union unless the contrary is established. Members of Hindu families are ordinarily joint and undivided in estate, food and worship. The concept is not as such defined in the law but is deeply entrenched in the custom of Hindu law.

According to the Income Tax Act, 1961 a HUF is treated as a 'person'. Therefore, HUF has a separate legal entity. Under Hindu Law, an HUF is a family which consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. An HUF cannot be created under a contract; it is created automatically in a Hindu Family. Jain and Sikh families even though are not governed by the Hindu Law, but they are treated as HUF under the Act.

After the amendment in the year 2005, "*Hindu Succession Act provided that daughters whether married or unmarried would be recognized as coparceners and would thus be entitled to an equal share in the family property. It was however silent as to a daughter's position as Karta*".

Verdict of Delhi High Court in 2016 has given a status to woman to be Karta of the family by stating that women can also become the Karta of the Hindu Undivided Family.

**Trans-India Law Associates, Advocates & Legal Consultants**

Office: TILA SUITE, JA-120, DLF Tower - A, Jasola District Centre, New Delhi-110025

Chamber: TILA Chamber No. 555, New Delhi Court Complex, New Delhi-110 001

Tel. :91-11-26943664, Fax.: 91-11-26970075, WhatsApp : +91 0910070075

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A partition suit the court has jurisdiction to amend which is inconsistent to morality.

### **Coparceners and Members**

Hindu law defines “Hindu undivided family” as all persons lineally descended from a common ancestor and includes the wives and unmarried daughters. Common ancestor is must.

A HUF can be formed with a minimum of 2 persons. In *Gowli Buddanna v/s. CIT*<sup>1</sup> it was held that to constitute a joint Hindu family, it is not necessary that there has to be more than one coparcener in the family; a husband and wife can validly constitute a HUF.

A coparcener is a person who acquires interest in the joint family property by birth. The essential difference between a 'coparcener' and a 'member' of an HUF is that a coparcener can enforce partition of the HUF, while a member cannot.

The 2005 Amendment to the Hindu Succession Act, 1956 brought about a vital change to the concept of an HUF. Prior to the Amendment of 2005, only lineal male descendants were regarded as coparceners whereas daughters merely attained the status of members on birth and not coparceners. The Amendment of 2005 however has conferred equal rights upon daughters. Daughters, just as sons, become coparceners of their father's HUFs on birth, with the result that they have equal rights as sons in the properties of the HUF.

### **Karta**

The eldest adult coparcener (head of the family) of an HUF is known as the *karta* who is responsible for handling the affairs of the family. He is entrusted with the power of managing all assets and other financial matters. All securities of an HUF are typically in the name of the *karta*. There is no prescribed formal procedure for appointment of the *karta* in an HUF.

### **Death of Karta**

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<sup>1</sup> AIR 1966 SC 1523.

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On the death of a *karta*, the next senior most member automatically becomes the new *karta* of the HUF but at times, statutory authorities may require a declaration from the members forming part of the HUF declaring the eldest coparcener as the new *karta* of the HUF. Further, a declaration from the members forming part of the HUF along with the death certificate of the old *karta* may be mandated by banks in order to give effect to the change of name of *karta* in the HUF's bank account. Further, in order to transmit securities in the account of the new *karta*, a joint application coupled with a set of prescribed documents should be filed with the depository participant.

**Powers:**

- **Power of Management:** Powers empowered to the “karta” of the Hindu Undivided family are absolute. He looks after the family affairs, property, and business, he has the authority to discriminate between the family members on the positive basis. He cannot deny maintenance to any member of the coparcenary.
- **Revenue and Expenditure Authority:** The income of the Joint family property is given to karta, it is the duty of karta to allot funds to the family members as their requirements. Karta manages the expenditure of the funds for the benefit of the family members.
- **Power to manage a joint family business:** The Karta of the family has authority to run the joint family business.
- **Power to contract the debt for family purposes:** The karta has power to contract debts which will bind other co- contractors for the interest of common family property.
- **Power of Alienation of Joint Property:** For the interest of the other coparceners, Karta alienates the common property of the family for the benefit of the state. Karta has authority to alienate the property even without the consent of other coparceners.

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- **Power to Refer a Dispute to Arbitration:** The Karta has authority to resolve a dispute to arbitration and hence it becomes binding to all other family members.
- **Power of Compromise:** *The Karta can compromise disputes regarding the family property and/or its management, family debts as well as other transactions. A mala fide compromise can be challenged in a partition. The Karta can even compromise a suit pending in court, and the members will be bound by it. However, minor coparceners can use Civil Procedure Code, whereby the compromise has to be approved by the court if one of the parties is a minor.*
- **Power to give discharge:** Karta has the authority to discharge the debts but according to sec 7 of the limitation act if the members of the common family are minors they cannot claim benefit.
- **Power to pay debts:** *The Karta has the power to recognize a debt or make a partial payment, in order to extend the limitation period. But he cannot execute a new promissory note or bond in order to revive a time debt.*

#### **Authorities and Functions:**

- **Maintenance:** Karta has the responsibility to maintain all the members of the family if he does not do so, he can be sued for that.
- **Marriage:** Karta has also responsibility for the marriage of the unmarried family members specifically in the case of daughters. The expenses of the marriage can be taken out from the joint property of the family.
- **Partition:** Under the Mitakshara Law, Karta is required to disclose the accounts only if there are charges of misappropriation, fraud or conversion of assets or property of the

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joint family against him. In the absence of proof of misappropriation, fraud or conversion against the Karta, the coparcener pursuing the partition cannot demand the disclosure of the past dealings of the Karta with the joint family assets and property.

- **Representation:** Karta is responsible for the all the debts of the family as he is the sole representative of the Joint Hindu Family.
- **Minority:** As we saw earlier the members are eligible to be co-parceners by the virtue of their birth into the family. So in this case, even minor members will be a part of the HUF. But they will enjoy only the benefits of the organization.

### **Partition in HUF**

Partition results in shares of (each or some, as the case may be) the coparceners being ascertained. Actual division of property by metes and bounds is not a necessary facet of such a partition. Division of properties by metes and bounds would involve allotment of separate properties towards ascertained shares of family members. After partition but till such time as the joint family property is divided by metes and bounds, the members of the erstwhile joint family will hold the properties as tenants-in-common. As a result, on the death of a coparcener, his/her share in the joint family property will devolve by testamentary / intestate succession, as the case may be, and not by survivorship.

Courts have observed that partition is really a process in which and by which a joint enjoyment of the property is transformed into enjoyment in severalty. Each of the sharers has an existing title and therefore no conveyance is involved in the process.

A partition does not confer title in property in favour of a coparcener. It only enables a coparcener to obtain what is his own in a definite and specific form for purposes of disposition, independent of wishes of the former co-sharers. It is not necessary that partition should be affected by a registered partition deed. Even a family arrangement is enough to effectuate a

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partition among coparceners and to confer right to a separate share in property and enjoyment thereof.

## **HUF and TAX**

Since, the Income Tax Act of 1961 gives separate legal entity to an HUF; the Karta, coparceners and the members are entirely separate from the HUF. Therefore, the HUF has a separate PAN. Unless otherwise provided in the Income Tax Act, 1961, income of an HUF is assessed in the hands of the HUF alone and not in the hands of any of its coparceners or members.

An HUF is capable of running its own business. An HUF may choose to deploy its initial corpus as also gifts that it may receive for the business that it may run. Profits generated from such business will be the separate income of the HUF. An HUF can also hold capital assets. Capital gains that may be generated from the sale / disposition of such capital assets would be separately assessed and taxed in the hands of the HUF. An HUF is also naturally capable of earning rental income. It also enjoys the deduction under Section 80C.

Where the business is carried out by Karta or members and draws salary from this business, then the salary is an allowable expenditure in the hand of HUF and it will be taxable in Individual capacity of Karta or members receiving the salary.

## **Conclusion**

The manager or Karta of the family envisages absolute power. Karta ensures to work for the benefit of Hindu Undivided Family sometimes Karta of the family rules despotically due to which law has made several remedies to the family members through which he/ she can be sued. Karta of the family should possess the ideal qualities which should be beneficial for its family members. Usually Karta possess all the absolute powers but there are certain limitations on power of alienation.

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Karta played fiduciary role in addition morally responsible to act in good faith for the welfare of the family and business. There is one of the major advantages of Hindu Undivided family is the tax benefits as it is a separate legal entity and there is no maximum number limit of family members in the family. It can also provide loans to other coparceners and members of the Hindu Undivided family and also it makes the payment easier in respect of life insurance policies for the members of the family.

In case of any further clarification/ information please contact-

**Raj Singh Niranjn**  
**Managing Partner**

Trans- India law Associates  
Mob-91 9810070075  
Email: rsn@tila.in

**Dr.Rajni Patel**

**Joint Managing Partner**

Trans- India law Associates  
Email: rajni@tila.in

**Ms. Puja Singha Roy**  
**Associate Advocate &**

**Corporate Relationship attorney**

Trans India Law Associatrs  
Mob: 8582984076  
Email- crm@tila.in

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