



HINDU UNDIVIDEDE FAMILY (HUF): An entity that emerges as a result of customary Law

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There are different entities which have separate legal existence some of them emerges naturally (like Humans), some of them emerges as a result of incorporation or in simple words registration under any statute (like Companies and Registered Firms) but there is one entity (HUF) which has separate existence and which emerges as a result of custom or social practice of a particular community (religion). Law can never be stay aloof of Rules which are pursued by a society. Written law always take care of practices and customs of society and changes there in. In fact there is branch of law which do this.

customary law is law consisting of customs that are accepted as legal requirements or. obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a. social and economic system that they are treated as if they were laws. These customary Laws later becomes acquires force of law. The HUF found legal recognition in the late 19th century, but it was the Income Tax Act under colonial rule in 1922 that gave it the status of a separate and distinct tax entity. The legal category of the HUF has existed in the tax code since then. "HINDU UNDIVIDED FAMILY" is topic of practical relevance for all Indians, more specifically who are dealing with this entity. Absence of any code (written systematic Law) on this topic adds to confusion, courts have interpreted prevailing Social Practices and text available in best possible way.

How Hindu Undivided Family is Created :- The term "Hindu undivided family" has been defined in the Hindu law and legislature wanted the meaning of the "Hindu undivided family" remain the same as that of the Hindu Law (Rules prevailing in the Hindu Society). Hindu law defines "Hindu undivided family" as – **HUF consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters.** Common ancestor is must. "Hindu undivided family" is purely a creature of law (Rules of Society) and cannot be created by an act of parties (except in case of adoption and reunion). A "Hindu undivided family" is a fluctuating body, its size increases with birth of a male member in the family and decreases on death of a member of the family. Females go and come into Hindu undivided family" on marriage. The daughters after the marriages cease to be a member of her father's.

Hypothetically, In case of a sole male Hindu, a Hindu undivided family" comes to existence automatically upon his marriage. It has been held in Gowli Buddanna v/s. CIT 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 "Hindu undivided family.

Coparcenary How formed :- Coparceners are the male members of the family who can claim division of it. Now coming on to law of coparcenary property. In state Bank of India Vs Ghamandiram [AIR 1969 Sc 1330] Apex court laid down special features of Mitakshara coparcenary.

Firstly they are male descendants upto 3 generation from the common ancestor who acquire interest in joint property by birth. **Secondly** members of coparcenary can demand partition. **Thirdly** till partition all the coparceners have control over entire property along with others. **Fourthly** no HUF property can be transferred unless there is necessity for such transfer proved and all other members give their consent to this effect. **Fifthly** on death of coparcener his share devolves on other coparceners by survivorship and not by succession. **Lastly** Mitakshara coparcenary is created by law and not by agreement. Adoption is an act of parties yet this provides entry in coparcenary. [Ram avadh Vs. Kedar Nath (AIR 1976 All 283)]. This is an exception to general Rule. People who are not members of coparcenary by virtue of birth or adoption, cannot be made member of Joint Family.

Mitakshara V/s Dayabhaga HUF :- The **Dayabhaga** school is prevalent mainly in West Bengal and Assam whereas the Mitakshara school is prevalent in most of the other parts of India. Main difference between these two schools is as follows :-

Firstly Under Mitakshara school right to ancestral property arises by birth. Hence the son becomes the co-owner of the property sharing similar rights as of fathers. While in Dayabhaga school the right to ancestral property is only given after the death of the last owner. It does not recognise the birth right of any individual over an ancestral property. **Secondly** Under the Mitakshara school the father does not possess the absolute right to alienate the property but in dayabhaga the father has absolute right of alienation of the ancestral property as he is the sole owner of that property during his lifetime. **Thirdly** Under Mitakshara school the son attains the right to become the co-owner of the property he can ask for the partition of the ancestral property even against the father and can demand for his share but in case of Dayabhaga school son has no right to ask for the partition of ancestral property against his father. **Fourthly** Under Mitakshara school the survivorship rule is prevalent. In case of the death of any member in the joint family, his interest shall pass to other members of the family. While in case of Dayabhaga school the interest of the member on their death shall pass on to their heirs like widow, son, daughters. **Lastly** Under the Mitakshara school the members can't dispose of their share of property while undivided while in dayabhaga the members of the family enjoys absolute right to dispose off their property.

What is property of HUF :- Property in the hands of a HUF can emerge in following ways :-

Firstly, It can be ancestral property, property inherited by a male Hindu from three immediate paternal ancestors. Any property inherited from maternal ancestor cannot be regarded as ancestral since one can not acquire interest in it by birth.

Secondly, It can be property jointly acquired by members of joint family, Property earned by joint labour with the aid of joint family property. This also becomes Family or coparcenary property. [Sidha Sahoo Jhuma Devi AIR 1977 Orissa 47]. Any acquisition in the name of all family members jointly does not constitute family property. Property acquired by brothers after severance in status cannot be clubbed as joint property.

Thirdly, It can be property thrown in common stock. This happens when any member of HUF transfers his self earned property to HUF. However for Tax purposes this throwing will not create HUF property and all the taxes will be calculated as if no such transfer has been made. This right of throwing is only available to Male members of the Family who are called Coparceners.

Lastly, Property acquired with the aid of joint family funds, this property shall be joint in nature.

Rights of Karta to deal with HUF property :-

Firstly, Movable property

Although sons acquire by birth rights equal to those of a father in ancestral property both movable and immovable, so far as movable ancestral property is concerned, a gift out of affection may be made to a wife, to a daughter and even to a son, provided the gift is within reasonable limits. At the same time, a gift, for example, of the whole or almost the whole of the ancestral movable property cannot be upheld as a gift through affection. If the gifts are of excessive amounts and are not given for love and affection, these may be termed as voidable and not void which could be challenged by the sons, but not by a third party. In CIT v. Dwarka Das & Sons, a cash gift of Rs. 5,000 by the karta out of HUF property made to a stranger has been held not to be invalid as the same was within reasonable limit.

Secondly, Immovable property

So far as immovable ancestral property is concerned, the power of gift is much more circumscribed than in the case of movable ancestral property. A karta has power to make a gift within reasonable limits for "pious purposes", i. e., for charitable and/or religious purposes, or to a daughter in fulfillment of an antinuptial promise, etc. But the rule is firmly established that a karta has no power to make a gift of ancestral immovable property to his wife to the prejudice of his minor sons.

In CIT v. K.N. Shanmuga Sundaram, gifts of a reasonable portion of the joint family immovable properties to minor daughters by their father were held to be valid notwithstanding the fact that the gifts were made before their marriage. Even within the permissible limits, the power to make such gifts may be exercised by the karta. No other member of the family can do it

At the same time, a karta cannot make a gift to his minor sons or in favour of his daughter-in-law. Thus, a gift by a Jat Sikh (Karta) to his son of the ancestral property is not valid so as to attract the provisions of the gift-tax Act, 1958.

While a gift to a member of the family is merely voidable, a gift to a stranger is void. Similarly, where the gift is found to be not of a reasonable proportion and within the permissible limits, the same would be void ab initio, a gift of immovable property of the value of Rs. 4,00,000 by the karta to his wife has been held to be void and ineffective in law. In Balchand Malaiya (HUF) v. CWT, the Tribunal was held justified in holding that the gift of almost the entire assets of the HUF by the karta in favour of his five sons (two major alia three minor) was void. In R.C. Malpani v. CIT, it has been held that gift of an immovable property belonging to the HUF by its karta to his wife is voidable and not void. Income from such property cannot be assessed in the hands of the HUF.

Till when property is Joint in Nature :- True intent of prevailing social circumstances could be drawn In Binod Jena Vs. Abdul Hamid Khan [AIR 1976 orissa 159] where court could settle that in the absence of proof of division family is presumed to be joint in food, worship and estate. Creaser in commensality is no conclusive proof of separation. However for the limited purpose of section 171 partition has been defined under income tax Act, 1961 it self and general Hindu Law shall not apply. [ITOVs B.R.Talwar(Chd.)5SOT65]. In the state of Kerla HUF has been abolished by law in all other states this status is still prevailing. HUF property can be acquired through different sources.

Benefits of forming HUF :-

- The members are also liable to pay taxes just like other individuals. If the turnover of the business of a member exceeds Rs. 25 lakh or Rs.1 crore then an individual needs to perform tax audit under the guidance of CA as mentioned in the section 44AB of the income tax act.
- The head of the HUF has all rights to sign the pertinent documents on behalf of other members.
- You can form different taxable units of HUF. Any asset or savings made or insurance premium disbursed by the HUF will be subtracted from the net Income for the tax purpose.
- One of the major reason most family forms HUF is because they can create two PAN cards and file taxes separately.
- A woman can be a co-partner in the HUF as her husband is a Karta. So, the additional income earned by the woman cannot be added to this.
- The official stature remains the same if the Karta or the last member of the family is passed. Therefore, the ancestral and the acquired assets of the HUF will stay in the hands of the widow and need not be partitioned.
- An adopted child can also become a member of HUF family.
- Women in the family can gift a property in her name which is owned by her or her family.
- Members of Hindu Undivided Family can easily avail loans.
- This act is recognised in pan India except Kerala.

Disadvantages of forming HUF :-

- One of the greatest disadvantages of the HUF is that all members have equal rights on the property. The common property cannot be sold without the consent of all the members. In addition, by birth or by marriage a member gets equal rights.
- Closing a HUF is a tougher task as compared to opening a HUF. A partition of a family with a small group may lead to the partition of the HUF. Once the HUF is closed, then the asset needs to be distributed among all the members of HUF which can become a huge task.
- HUF is viewed as a separate tax entity by the income tax department. Nowadays, joint families are intensely losing their importance. Various cases have come out that HUF members are having a dispute over the property. In addition, divorce cases have augmented as a result, HUF is losing its amenity of a tax-saving tool