

Hindu Undivided Family (HUF)

Meaning:

The Hindu Undivided Family (**HUF**) is a special feature of Hindu society. Hindu Undivided Family is defined as consisting of a common ancestor and all his lineal male descendants together with their wives and unmarried daughters. Therefore, a Hindu Undivided Family consists of males and females. Daughters born in the family are its members till their marriage and women married into the family are equally members of the undivided family. On the other hand at any given point of time a coparcenary is limited to only members in the four degrees of the common male ancestor. There are two school of Hindu Law viz. Dayabhaga prevailing in West Bengal & Assam and Mitakshara applicable to all other places.

- **Under the Dayabhaga system**, the **father is the sole owner** and the exclusive possessor of the joint family property. No member can enforce the partition of the HUF so long as the father lives.
- **But the Mitakshara law stipulates** that the **property vests in the HUF** itself and not in any individual member of the family and therefore can be partitioned within the lifetime of the father.
- A coparcener is one who has a right to demand that the family property be divided and they be handed over their share in the property (or whatever assets the HUF has) in case he or she decides to part ways with the HUF. Not all members of the HUF are its coparceners.

The coparcenary extends to four degrees down the family hierarchy in the following manner:

- **1st degree** :Holder of ancestral property for the first time.
- **2nd degree** : Sons and daughters(09.09.2005).
- **3rd degree**: Grandsons.
- **4th degree** : Great grandsons.

Basic criteria for an HUF:

There are some essential conditions that must be fulfilled to qualify as an HUF. These are outlined below:

- Only one member or co-parcener cannot form an HUF;
- The joint family continues even in the hands of females after the death of the sole male member;
- An HUF need not consist of two male members. One male member is enough. For example, a father and his unmarried daughters may form an HUF.

The Hindu Succession (Amendment) Act, 2005 (39 of 2005) comes into force from 9th September, 2005. The Government of India has issued notification to this effect. The Hindu Succession (Amendment) Act is to remove gender discriminatory provisions in the Hindu Succession Act, 1956 and gives the following rights to daughters under Section 6:

- The daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son;
- The daughter has the same rights in the coparcenary property as she would have had if she had been a son;

- The daughter shall be subject to the same liability in the said coparcenary property as that of a son; and any reference to a Hindu Mitakshara coparceners shall be deemed to include a reference to a daughter of a coparcener;
- The daughter is allotted the same share as is allotted to a son;
- The share of the pre-deceased son or a pre-deceased daughter shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter;
- The share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter.

Taxation under HUF:

- a. HUF is a separate entity for taxation under the provisions of S.2 (31) of the Income Tax Act, 1961. This is in addition to an individual as a separate taxable entity. This indicates that a person may be assessed in two different capacities- as an individual and as a Karta of his HUF.
- b. Any income that arises on the investment of HUF funds (like interest earned on loans given by an HUF) or on the utilisation of HUF assets (like rent earned on letting out HUF property) would be regarded as HUF income. It is important that the income be earned using HUF funds or property only. If the income arises on account of the personal exertions of the karta or any other member and not on investment of HUF funds, such income would generally be regarded as the individual income of the karta or the member.
- c. If an HUF contributes funds to the capital of a partnership firm, profit and interest received (from the firm) **by a partner who represents the HUF is regarded as HUF income.** This is because the income in the partner's hands arises on investment of the HUF's funds. However, if the karta is also paid a salary by the firm for efforts put in by him, such funds would be regarded as the karta's individual income. Speculative profit can be regarded as the income of an HUF, particularly in cases where the HUF has paid margin money or deposits for such transactions.
- d. Residential status of the HUF would depend upon where the control and management of the affairs of HUF is situated. HUF would be non-resident where whole of the control and management of its affairs is situated outside India. As such, the income earned by HUF will enjoy all exemptions and deductions; including the basic exemption under Income-tax & Wealth-tax Acts, so far as applicable. The total income of a HUF is determined on the similar lines of that of Individual, various deductions available to the individual is also available to the HUF.
- e. If the HUF has agricultural income, then due consideration to the rules so applicable is to be given to arrive at non-agricultural income. Thereafter deduction u/s 88E is allowed.

Common Questions:

- 1) **Can a female be the Karta?**
Yes. In the light of the amendment in the Hindu Succession Act in 2005, an unmarried daughter, in the unfortunate event of her father passing away, will become the Karta of the HUF if she has no brother.

- 2) **Can there be an all-female HUF?**

Yes, there can be. Where a couple has only one issue—a daughter—and the husband passes away, the mother-daughter duo can continue the HUF (although a problem may arise after she gets married and becomes a member of her husband's HUF). It has been held by the Allahabad High Court in CIT v. Sarwan Kumar 13 ITR 361 (All) **that there can be an HUF consisting of female members only**

3) Can an HUF be included as a Partner in a Partnership Firm?

The Karta can enter into partnership with a firm on behalf of the HUF. But the HUF itself, being not a legal person, can never be a partner in a firm. CIT v. Banaik Industries 119 ITR 282 (Pat.)

4) Whether partial partition is allowed under HUF?

Before 1972, partial partition was recognized but from 1/4/1972 only full and final partition among all the co parcners is only recognized, on partition the divided portion falls on smaller HUF and only if there is no family then it will be assessed in individual capacity till he gets a family.

The Landmark decisions on HUF:

(i) Krishna Prasad v. CIT, 97 ITR 493 (SC)

On partition between father and sons, the shares which sons obtained on partition of the HUF with their father, is the ancestral property. As regards his male issues who take interest in the said property on birth. Therefore one of the sons who was not married at the time of partition will receive the property as his HUF property, however income therefrom will be taxed as the HUF income from the date of his marriage.

(ii) A.G. v. A.R. Arunachalam Chettiar, 34 ITR 421 (PC)

A Mitakshara joint family consisted of father and son. On death of a son the father and the widow of the son constitute the HUF.

(iii) Gowli Buddanna v. CIT, 60 ITR 293 (SC)

A Joint family may consist of a single male member with his wife and daughter/ s and it is not necessary that there should be two male members to constitute a joint family.

(iv) N.V. Narendranath v. CWT, 74 ITR 190 (SC)

The property received by a coparcener on partition of the HUF is the HUF property in his hands vis-à-vis the members of his branch i.e. with his wife and a daughter.

(v) L. Hirday Narain v. ITO, 78 ITR 26 (SC)

After the partition between the father and his sons, the father and his wife constitute a Hindu Undivided Family which gets enlarged on the birth of a son.

(vi) CIT v. Veerappa Chettiar, 76 ITR 467 (SC)

Even when a joint family is reduced to female members only it continues to be a HUF.

(vii) CIT v. Sandhya Rani Dutta, 248 ITR 201 (SC)

Female members cannot create or form an HUF by their acts even under the Dayabhaga School of Hindu Law.

(viii) Pushpa Devi v. CIT, 109 ITR 730 (SC)

The right to blend the self-acquired property with HUF property is restricted to a coparcener (male member of HUF) and not available to a female member. However, there is no restriction on a female member gifting her property to the HUF of her son.

(ix) Surjit Lal Chhabda v. CIT, 101 ITR 776 (SC)

The property which was thrown into the common hotchpot was not an asset of a pre-existing joint family of which the assessee was a member. It became an item of joint family property for the first time when the assessee threw what was his separate property into the common family hotchpot. Therefore, the property may change its legal incidence on the birth of the son, but until that event happens, the property, in the eye of Hindu Law, is really the property of the assessee.

Conclusion:

The law commission also has rightly observed that although the Hindu Succession Amendment Act, 2005 has conferred upon the daughter of a coparcener status but there is still a reluctance to making her a Karta. This seems to be patently unfair as women are proving themselves equal to any task.

Since they can act as coparcenaries then they must also be given the powers of Karta. The shastra is clear that in the absence of senior member a junior member (if he has reached the age of legal competence) may incur debts for the needs of the family, and in the absence of a male member a female member may do so. The Sanskritic texts empower women to act as Karta in instances like when the husband is away or missing or the son is yet to attain majority.
