

Introduction of Hindu Undivided Family (HUF)



The Hindu Joint family is a unique characteristic of Indian society. It is a group of relatives, tied together by kinship, marriage and descend from a common ancestor. It comprises of children, children's children and spouses. The joint families are the most important institutions that hold the social and cultural fabric of the society. Even from the economic perspective, it plays a very crucial role in jointly handling the economic resources of the family. Hence, a pioneering Indian Sociologist I P Desai rightly said "We call that household a joint family which has greater generation depth, than individual family and the members of which are related to one another by property, income and mutual rights and obligations."

Hindu Undivided Family (for short, the HUF) is nowhere defined in the Statute. HUF is purely a creature of the law or of the God almighty! HUF is a fluctuating body whose size increases with the birth and decreases on the death in the family. To constitute an HUF there should be a Hindu, Jain, Sikh or Buddhist family having more than one member. These members should be undivided, having a commonness. It is a body consisting of the persons lineally descended up to three generations or three degrees from a common ancestor and includes their wives and daughters. As against the HUF, Hindu coparcenary is a much narrower body within the HUF. Hindu coparcenary is the body of individuals who acquire interest by birth in the joint family property. Till the year 2005, the coparcenary used to consist of a common male ancestor (great grandfather) and his lineal descendants in the male line within 4 degrees, running from and including such ancestor. Now, after amendment to the Hindu Succession Act, 1956 in the year 2005 daughters too are treated as coparceners along with the sons. The essence of the coparcenary is community of interest and unity of possession, which is very useful in regard to determining its taxability.

Meaning of 'Hindu Undivided Family' (HUF)

The Hindu Undivided Family can best be defined as a family that consists of a common ancestor and all his lineal male descendants and their wives and unmarried daughters. The 'Hindu Undivided Family' (HUF) cannot be created by the acts of any party. The only exceptions are in the case of an adoption or a marriage when a stranger may become an HUF member. An undivided family, which is a normal condition of Hindu society, is ordinarily joint, not only in estate but also in food and worship.

Income Tax Act provides a special status to HUF under the Act and covers it in the definition of 'person' under section 2(31) of the Act. The Hindu Undivided Family (HUF) has not been defined under the Income-tax Act, 1961, however,

as per Hindu Law, 'Hindu Undivided Family' is a family which consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. A 'Hindu Undivided Family' is neither the creation of law nor of a contract but arises from status.

A Hindu Undivided Family (HUF) is ordinarily joint not only in estate but in food and worship. The members of a Hindu Family live in a State of union, unless the contrary is established. HUF is a creation of law and cannot be created by the act of parties, except in the case of adoption by member of HUF.

Even if the family is reduced to sole - surviving coparcener (male or female) with other family members, income-tax is leviable on the joint family and not on male members as individual.

A Hindu Undivided Family (HUF) is in addition to an individual as a separate taxable entity, it means that the same person can be assessed in two different capacities viz. as an individual and as Karta of his HUF.

Hindu Undivided Family (HUF) is a legal expression which has been employed in taxation laws as a separate taxable entity. It is the same thing as "Joint Hindu Family". It has not been defined under the Income-tax Act, as it has a well-defined connotation under Hindu Law.

Under the Hindu law the wife of the coparcener is certainly a member of the family. Whatever be the school of Hindu law by which a person is governed, the basic concept of a Hindu Undivided Family in the sense of who can be its members is just the same. Thus, in order to constitute a joint family it is not always necessary that there must be two male members. - [*CIT v. Parshottamdas K. Panchal* (2002) 257 ITR 96 (Guj.)]

Concept of an HUF as relevant to the Income-tax Act, 1961

The expression 'Hindu undivided family' has not been defined in the Income-tax Act, perhaps because the expression has a well-known connotation under the Hindu law. Therefore, the expression 'Hindu undivided family' must be construed in the sense in which it is understood under the Hindu law. Under the Direct Tax Laws, an HUF, and not a coparcenary, is a taxable unit. The Hindu coparcenary is a much narrower body than the joint family. A coparcenary includes those persons who acquire by birth an interest in the joint or coparcenary property and these are the sons, grandsons and great grandsons of the holder of the joint property for the time being. Females cannot be coparceners. A joint Hindu family consists of persons lineally descended from a common ancestor and includes their wives and unmarried daughters. The daughter, on marriage, ceases to be a member of her father's family and becomes a member of her husband's family. Generally speaking, the normal status of every Hindu family is joint and in absence of proof of division such is the legal presumption.

The definition of 'Hindu Undivided Family' is not found in the Income-tax Act. Therefore, the expression 'Hindu Undivided Family' must be construed in the sense in which it is understood under the 'Hindu Law'. - [*Surjit Lal Chhabda v. CIT* (1975) 101 ITR 776 (SC)]

HUF is a Joint Hindu Family consisting of:—

Male members lineally descended from a common male ancestor, together with their—

- (1) Mothers
- (2) Wives
- (3) Unmarried daughters, and
- (4) The Hindu coparcenary

[*CGT v. B.K. Sampangiram (1986) 160 ITR 188 (Karn.)*]

NOTE:

- (i) HUF cannot be created by the act of parties.
- (ii) STRANGER can be introduced only by adoption.

Differences between Hindu Undivided Family and Hindu Joint Family

The Income-tax Act uses the term “Hindu Undivided Family” instead of Hindu Joint family, which is used in common parlance. Though both seem to be one and the same and frequently used interchangeably, in reality there are differences between the two. From the taxation angle, it is very pertinent to understand the difference between the two.

- (i) First and foremost, Hindu joint family derives its roots from Hindu law, whereas the HUF is created for the purpose of taxation.
- (ii) As per Hindu law, every Hindu family is assumed to be Hindu joint family unless contrary is proved. Whereas no such assumptions are made in taxation laws. Until and unless the HUF is explicitly created, the income cannot be offered under the HUF.
- (iii) Under Hindu law, owning the joint family property is not a precondition for the existence of Hindu joint family. Whereas the HUF without any joint property is meaningless from the taxation point of view.
- (iv) According to Hindu law, the son in the womb in many aspects is treated as son in existence. But, no such privileges are given under taxation
- (v) The creation of the joint family is automatic and continuous whereas HUF requires to be explicitly created.

A Hindu Undivided Family is the normal condition of a Hindu society. It is a special feature of Hindu society. It is also called a Joint Hindu Family. It consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. There is neither limit to the number of persons who can compose it nor to their remoteness from the common ancestor and to their relationship with one another. It is defined as consisting of a common ancestor and all his lineal male descendants together with their wives and daughters.

This unique economic aspect of the Hindu Undivided Family is duly recognized by the Indian Taxation system and sanction of separate legal entity is given to HUF right from the inception of the Indian Income-tax Act, 1922.

A Hindu Undivided Family consists of males and females. Daughters born in a family are its members till their marriage and women married into the family are equally its members. The whole body of such a family, consisting of males and females, constitutes a sort of corporation.

The presumption is always that the members of a Hindu Undivided Family are living in a State of union unless the contrary is proved. The strength of the presumption may vary from case to case depending upon the degree of relationship of the members. The farther one goes from the founder of the family, the weaker may be presumption.

It is very pertinent to note that, even the Income-tax law of Pakistan recognizes the HUF as a business entity. However, it does not declare it as separate legal entity like in India but it is subsumed under the category "Association of Persons". Both India and Pakistan recognizing the economic importance of HUF and giving its right due in Income-tax law, date back to the 19th century colonial rule who recognized Indian customary laws in administration.

Concept of HUF is not only applicable to Hindus by religion but also to those professing Sikh, Jain or Buddhist religion - Statutes relating to marriage, succession, minority, guardianship, adoption and maintenance have accorded legislative recognition to fact that even though Jains may not be Hindus by religion they are to be governed by same law as Hindus and therefore, expression 'Hindu undivided family' would certainly include 'Jain undivided family' within meaning of section 3

For the assessment year 1957-58, the WTO assessed the family assets of the assessee who were Jains in the status of an HUF. On appeal the AAC rejected the assessee's contentions (a) that upon the description of the assessee in the notice of demand the assessment should be deemed to have been made in the status of AOP which was not a unit on which tax could be levied under the Act; and (b) that even if the assessee were to be treated as an HUF, the imposition of wealth-tax on such family was *ultra vires* of the Constitution. On second appeal, the Tribunal held that Jains were not Hindus and, therefore, the expression 'Hindu undivided family' in section 3 did not cover the case of a Jain family. It accordingly set aside the assessment on this ground alone.

On reference, the High Court held that in order to form an HUF its members must be Hindus; the assessee-family being Jains, were not Hindus and so its members could not form an HUF although it was 'capable of forming a unit of very much the same type and governed by the law applying to an HUF. Thus, the Tribunal's finding were upheld by the High Court. On special leave petition to the Supreme Court :

Held : The words "Hindu undivided family" are used in the income-tax statutes with reference not to one school of Hindu law only but to all schools. Indisputably, ever since income-tax laws have been in force no distinction has ever

been made between a Jain Undivided Family and an HUF and a Jain family has always been assessed as an HUF.

The real question for determination is whether the word 'Hindu' preceding the words 'undivided family' signifies that the Undivided Family should be of those: (i) who profess Hindu religion; or (ii) to whom Hindu law applies; or (iii) who though not professing Hindu religion have come to be regarded as HUF by judicial decisions and legislative practice. It may be mentioned that for a long time the courts and particularly the Privy Council seem to have taken the view that Jains are of Hindu origin; they are Hindu dissenters and although generally adhering to the ordinary Hindu law they do not recognise any divine authority of the Vedas nor do they practice a number of ceremonies observed by the Hindus. But the modern trend of authority is against the view that Jains are Hindu dissenters. As a result of comparative research in Hinduism, Jainism and Buddhism, it is being emphatically claimed that the theory that Jains are Hindu dissenters is based on misreading of the ancient authorities relating to these religions.

Before the amendment and codification of major branches of Hindu law by the four statutes, viz., the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, the Hindu Adoption and Maintenance Act, 1956, the undisputed position was that the Jains were governed by the Hindu law modified by custom and a Jain joint family was a Hindu joint family with all the incidents attached to such a family under the Hindu law. The legislative practice also was to generally treat Jains as included in the term 'Hindu' in various statutory enactments. Wherever Jains were mentioned in addition it was by way of abundant caution. The new statutes did not change the situation. The fallacy underlying the reasoning of the High Court was that the artificial field of application of the law in those statutes shows that Jainism is not treated even as a form or a development of Hinduism. That is an erroneous approach. Even if the religions were different, what was common was that all those who were to be governed by the provisions of these enactments are included in the term 'Hindu'. They are to be governed by the same rules relating to marriage, succession, minority, guardianship, adoption and maintenance as Hindus. The statutes have thus accorded legislative recognition to the fact that even though Jains may not be Hindus by religion they are to be governed by the same laws as the Hindus. In this view of the matter the expression 'Hindu undivided family' will certainly include the 'Jain undivided family'. The latter class of family is not known to law. The Jains are governed by all the incidents relating to the Hindu joint family. HUF is a legal expression which has been employed in taxation laws. It has a definite connotation and embodies the meaning ascribed to the expression 'Hindu joint family'. For the above reasons the instant appeal was allowed. [In favour of revenue] (Related Assessment year : 1957-58) - [CWT v. Smt. Champa Kumari Singhi (1972) 83 ITR 720 (SC)]

Jain and Sikh undivided families are also treated as Hindu undivided families unless, under special circumstances, the assessee claims not to be treated as such. If such claim is made, the assessee shall have to prove that there is some such custom in his family on account of which it cannot be treated as a Hindu undivided family. Similarly, a Muslim family governed by the Marumakkathayam law constitutes

'Tarwad' or 'Thavazhi' and falls within the definition of an HUF.—[*V.K.P. Abdul Kadar Haji v. Ag. ITO (1967) 66 ITR173*].

In *Sastri Yagnapurushadji v. Muldas*, the Supreme Court accepted the working formula evolved by Tilak regarding Hindu religion that 'acceptance of vedas' with reverence, recognition of the fact that the number of Gods to be worshipped at large, that indeed is the distinguishing feature of Hindu religion. —[*Sastri Yagnapurushadji v. Muldas AIR 1966 (SC) 1119*].

Swaminarayan sect indeed falls under the Hindu religion due to its evident alignment in their philosophies and teachings

In *Sastri Yagnapurushadji v. Muldas AIR 1961 (SC)*, the Hon'ble Supreme Court had held that various sub-sects of Hindus such as Swami Narayan, Satsangis, Arya Samaj are also Hindus by religion because they follow the same basic concept of Hindu Philosophy. Converts and Reconverts are also Hindus.

A Hindu does not cease to be a Hindu merely because he declared for the purpose of the Special Marriage Act, 1872, that he does not profess Hindu Religion. Such a Hindu does form an HUF with his children from such a marriage. —[*CIT v. Partap Chand (1959) 36 ITR 262 (Pun)*]

Essentials of the HUF

The expression "Hindu Undivided Family" has not been defined under the Income Tax Act or in any other statute. When we dissect the essentials of the Hindu Undivided Families are:

- (i) One should be Hindu, Jains, Sikhs and Buddhists are considered as Hindus but not Muslims or Christians;
- (ii) There should be a family i.e. group of persons - more than one; and
- (iii) They should be undivided i.e., living jointly and having commonness amongst them.

All these three essentials are cumulative. It is a body consisting of persons lineally descended from a common ancestor and includes their wives and unmarried daughters, who are living together, joint in food and estate.

Existence of property is not a pre-requisite

A family which does not own any property may still have the character of HUF. The jointness is understood in terms of faith and food. It has been established now that since the HUF is a creature of Hindu law, it can exist even without any nucleus or ancestral joint family property.

Features of an HUF

Formation: To begin a Hindu Undivided Family there must be a minimum of two related family members. There must be some assets, business or ancestral property that they have inherited or will eventually inherit. The formation of an HUF does not require any documentation and admission of new members is by birth.

Liability: The liability of all the various co-parceners is only up to their share of the property or business. So they have limited liability. But the Karta being the head of the HUF has unlimited liability.

Control: The entire control of the entity lies with the Karta. He may choose to confer with the coparceners about various decisions, but his decision can be independent. His actions will be final and also legally binding.

Continuity: The HUF can be continued perpetually. At the death of the Karta, the next eldest member will become the Karta. However, keep in mind a Hindu Undivided Family can be dissolved if all members mutually agree.

Minority: As we saw earlier the members are eligible to be co-parceners by 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 organisation.

Characteristics of HUF

- (i) The Karta can function in Dual capacity and can claim remuneration and other benefits from the HUF. Hindu Undivided family may be composed of - Large or - Small or - Nuclear Joint Families.
- (ii) Every above said families may hold the property in its own RIGHT, may be assessed for its income as a separate unit.
- (iii) There need NOT be more than one MALE member to form HUF.
- (iv) If the family is reduced to Sole-Surviving coparcener with other family members, income-tax is leviable on the joint family and not on male members as individual.
- (v) There can be an HUF comprising only of FEMALE members.
- (vi) A member of the family can carry on any other business individually, it will be his individual income not of family even if he borrows requisite capital from the joint family fund.
- (vii) Mostly fees or salary earned by Karta as director or partner may be considered as his individual income.
- (viii) Salary income of the individual will not be assessed as income of the HUF merely by the reason that the person having been educated, maintained, supported wholly by joint family funds.

Essential requirements of an HUF

An assessee shall be assessed as HUF if the following conditions are satisfied:

(1) Joint family property:

There should be a joint family property, which consists of either ancestral property or any property acquired with the aid of ancestral property.

Ancestral Property

Any property which is bought from the income of the ancestral property is known as ancestral property. So anything purchased with the assistance of ancestral property is also called as ancestral property. The children, grand children, great-grand children possess an interest over the income and accretion even before their birth.

The property which is inherited up to three generations (i.e. his father; his grand father; and his great-grandfather) is referred to ancestral property.

That is, the property descends from father, father's father, and great-grandfather. Any property inherited other than the members/relations (e.g. father-in-law, uncle, etc.) are known as separate property.

Only male members have rights over the ancestral property. The Hindu Succession Act, amended in 2005 by Hindu Succession (Amendment) Act, 2005, allows women to enjoy equal rights to the property. Now women have the same right as men over the ancestral property. Once the division/partition happens, all members will get an equal share from the property.

All property inherited by a male Hindu from his father, father's father or father's father's father, is ancestral property. The essential feature of ancestral property according to Mitakshara Law is that the sons, grandsons and great-grandsons the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth. Thus, if 'A' inherits property, whether movable or immovable, from his father or father's father, or father's father's father, it is ancestral property, as regards his male issue.—(AIR 1936 (Orissa) 331).

What is the nature of property received by a Hindu from his father and having only a wife and daughters in his family

This will depend upon whether the property received by such Hindu from his father is father's individual property or property of father's HUF. In case of the former, such Hindu will be receiving the property as a legal heir of the father and the rules of succession as prescribed under Hindu Succession Act, 1956, will prevail. If the property is received from father's HUF, then it can form part of HUF of such a Hindu. But the share of the father in the HUF, upon his death, can go to his legal heirs, which will be their individual property, if the father has left behind him any female relative or a male relative claiming through such a female relative, as in Class I of the Schedule to that Act.

Section 26 of Hindu Succession Act, 1956 provides that, if a person is converted into other religion, he still has rights over ancestral property. The person has the birthright over such property, so the conversion cannot stop from claiming the property. The illegitimate child cannot claim any rights over ancestral property.

Text of Section 26 of the Hindu Succession Act, 1956

“26. Convert's descendants disqualified

Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.”

Classification of Ancestral Property

(i) PROPERTY FROM PATERNAL ANCESTORS

Here, the Hindu male inherits the property from his father, father's father, father's father's father. In other words, property acquired from any one of the three immediate paternal ancestors. Such property is considered as ancestral property.

(ii) PROPERTY FROM MATERNAL ANCESTORS

Any ancestral property inherited from the maternal ancestors is termed as separate property and not ancestral property.

(iii) PROPERTY FROM THE FEMALES

Any property inherited by the females of the house does not come under the ancestral property. The property brought by woman is considered as her separate property.

(iv) PROPERTY OBTAINED THROUGH GIFT/WILL FROM PATERNAL ANCESTORS

When a property is obtained by gift/Will from his ancestors, it can be either considered as ancestral or self-acquired property. It depends on the intention of the ancestors as mentioned in the deed/Will. If the ancestors make a condition that the inheritor should take the property for the benefit of the family, then it is ancestral property. If no conditions are made, it is considered as a separate property.

Properties which are generally accepted as joint family property

- (i) Ancestral property;
- (ii) Property allotted on partition;
- (iii) Property acquired with the aid of joint family property; and
- (iv) Separate property of a coparcener, blended with the family property.

The provisions of Section 64(2) of the Income-tax Act have superseded the principles of Hindu Law, in a case where the coparcener impresses his property with the character of joint family property.

Burden is on the member to establish the property is his individual-and not ancestral presumption continues to operate in family

It was held that as per settled principle of Hindu law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in absence of any proof of division, such legal presumption continues to operate in family. Burden lies upon member who after admitting existence of jointness in family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired property. On facts the appellants failed to adduce any kind of documentary evidence to prove their self-acquisition of properties nor they were able to prove source of its acquisition, order of High Court declaring property as joint property of family was upheld.—[*Adivappa v. Bhimappa* (2018) 300 CTR 124 : (2017) 250 Taxman476 : 160 DTR 401 (SC)]

Individual who receives ancestral property at partition and who-subsequently acquires a family, but had no male issues would hold that property only a property of the Hindu undivided family

In cases where the property held by the person who claims it to be his own, had in fact been held by a joint family earlier and is *ipso facto* capable of being held by other sharers as well in future if and when the family comes into existence and a son/daughter (after 01.09.2005), whether by birth or adoption, is added

thereto, such property continues to retain the character of joint family property, even when the family is reduced to a single male member as in the case of a sole surviving coparcener. Though such a sole surviving coparcener may be assessable as an individual as he cannot be said to have a family, unless there are, in fact, female joint family members in the family, the character of the property continues unaltered as joint family property though for the time being it is not shared with any other member of the family and may or may not be subject to any charge in favour of anyone else for any purpose. When the assessee got married and acquired a family that family constituted a Hindu Undivided Family and the ancestral property which the assessee had received at the partition, became the property of that Hindu undivided family. In cases where the property even at the time it vested in the hands of the family had the character of ancestral property, the absence of a son, who can claim partition, does not render what is joint family property, individual property. The test is not as to whether his issues are male or female. The test is whether the property was ancestral. Therefore an individual who receives ancestral property at a partition and who subsequently acquires a family, but had no male issues would hold that property only a property of the Hindu undivided family. (Related Assessment year : 1982-83)— [W. P. A. R. *Rajagopalan v. Commissioner of Wealth Tax (2000) 241 ITR 344 (Mad)*]

Share of a coparcener in his 'ancestral property' is ancestral property only as regards his male issue

In *Smt. Dipo v. Wassan Singh, AIR 1983 (SC) 846*, the Apex Court noticed the incidents of ancestral property as quoted in the Mulla's Hindu Law (15th Edition), pages 289 and 291 respectively, in the following words :

“..... if A inherits property, whether movable or immovable, from his father or father's father, father's father's father, it is ancestral property as regards his male issue. If A has no son, son's son, son's son's son, in existence at the time when he inherits the property, he holds the property as absolute owner thereof, and he can deal with it as he pleases..... A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's sons and son's son's sons, but as regards other relations, he holds it and is entitled to hold it, as his absolute property.

The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently. Such share, however, is ancestral property only as regards his male issue. As regards other relations, it is separate property, and if the coparcener dies without leaving male issue, it passes to his heirs by succession.” —[*Smt. Dipo v. Wassan Singh, AIR 1983 (SC) 846*]

A coparcenary under the Mitakshara School is a creature of law and cannot arise by act of parties except insofar that on adoption the adopted son becomes coparcener with his adoptive father as regards the ancestral properties of the latter.—[*State Bank of India v. Ghamandi Ram – AIR 1969 (SC) 1330*]

Accumulations of income of ancestral property, property purchased or acquired out of income or with assistance of ancestral property, the proceeds of sale of ancestral property, and property purchased out of such proceeds, or

obtained in lieu of such property, are ancestral property.—[*Maya Ram v. Satnam Singh*, AIR 1967 (Punj) 353].

It is well-established that sons, grandsons and great-grandsons acquire vested interest not only in the income and accretions of ancestral property, which accrued after their birth, but also in the income and accretions, which accrued prior to their birth.—[*Isree Persad v. Nasif Koover* AIR 2010 (Cal) 1017at 1021]

(2) Coparcener:

There should be a coparcener.

'Coparcener' means any person who satisfies two tests:

- (a) He/she acquires by birth an interest in joint family property; and
- (b) He/she has right to enforce partition.

A coparcener, according to the Hindu Succession Act, 1956, refers to an individual who receives a legal right to ancestral property by birth. A coparcener is also a member of a Hindu Undivided Family (HUF) and can call for the division of ancestral property.

A “coparcener” is a legal term used in the context of Hindu Law, particularly in India, to refer to a person who has a legal right to a share of an ancestral or joint family property. Coparcenary rights are associated with the Mitakshara system of Hindu Law, which governs property rights and inheritance among Hindu families.

Daughters are also coparceners in HUF

By virtue of the Hindu Succession (Amendment) Act, 2005, daughters are also coparceners in their own right in the same manner as sons.

Under Muslim law, there is no concept of coparcener property, so ancestral property does not exist. The Christian law is governed by the Indian Succession Act and there are no provisions for the ancestral property.

These both laws can inherit their property either by Will/gift or after their death the legal heir can inherit their property.

Minimum number of coparceners needed in HUF

An HUF can consist of just two members, one of whom is a coparcener. However, for tax purposes, the income of such an entity would not be taxed in the hands of the HUF; it would be taxed in the hands of the sole coparcener. For an entity to be taxed as an HUF, it should have at least two coparceners. Thus, the income of an HUF consisting of a husband and wife would not be taxed in the hands of the HUF, except in cases where the husband has received funds on the partition of a larger HUF.

Advantages of the HUF

- (i) A Hindu Undivided family is comprised of family members running business. Like any other organization, there is scope for disagreements and conflicts. But since the Karta has absolute power and takes all decisions by himself, it will lead to effective management.

- (ii) Just like a company, the existence of an HUF is perpetual. The death or retirement of one member or even the Karta will not affect it, and it will continue on.
- (iii) Since the coparceners do not have any effective control over the management of the HUF, and all powers lie with the Karta, the liability of the members has also been limited to only their share of the property. This keeps the balance between power and responsibility.
- (iv) Also since all members of the HUF are relatives and members of the same family, there is a sense of loyalty and cooperation. The trust among members is also there and leads to overall cooperation.
- (v) Because HUF is treated as a distinct taxable entity, the basic tax exemption of ₹ 2.5 lakh is available on the total taxable income. This is over and above the income-tax benefits you and your family members already enjoy individually.
- (vi) Further, the income from the below sources is excluded from HUF taxation.
 - Income from property transferred by a member to the HUF without adequate consideration.
 - Income from a woman's personal property ("stridhan").
 - Income from an impartible estate is taxable for the estate holder, not the HUF.
- (vii) HUF can claim deductions under Sections 80C, 80D, and other provisions of the Income-tax Act, 1961 just like an individual taxpayer.

Disadvantages of forming an HUF

Though HUF seems like the perfect way to save tax as a family, it comes with its own drawbacks.

- (i) **Equal rights of members**
The greatest disadvantage of forming an HUF is that its members have equal rights on the property. The common property cannot be sold without the concurrence of all the members. Any additions to the family, by way of birth or marriage, become a member of the HUF and get equal rights. An HUF can get too large to manage.
- (ii) **Partition**
Perhaps the worst nightmare of opening an HUF is closing it down. The only way an HUF can be dissolved is by a partition. All members have to agree to dissolve the HUF. Under a partition, assets are distributed to members which can lead to a lot of disputes and can be a lot of legal hassle.
- (iii) **Joint family system losing relevance**
HUF was recognised as a separate taxable entity by the income-tax department. However, in today's times, where nuclear families are the norm, HUF is losing relevance. Several cases have come to fore where

couples or families are fighting it out on common household expenses, forget to pool in of assets. Divorce rates are rising and therefore, HUF as a tax vehicle is losing importance.

(iv) **HUF continues to be assessed as such till partition**

Once an HUF is formed, you must continue to file its tax returns, unless a partition takes place. Any claim for partition is made to the assessing officer. The assessing officer, on receiving such a claim, must make an enquiry after giving due notice to the members. Income from the property which was partitioned is taxed as individual income of the member. If the member forms another HUF with his wife and children, the income of the property which was transferred from the original HUF is taxed in the hands of new HUF.

- (v) No outside members other than family members can be introduced to the HUF. This makes it very difficult to get additional capital from the market. With limited capital, the chances of expansion are very low. It limits the scope of the business.
- (vi) While the Karta has all the powers he also has the burden of unlimited liability. This may make him overly cautious and timid in his business dealings. In turn, the business could suffer. Another factor is that he may even be held responsible for the actions of other members.
- (vii) Also, the absolute dominance of the Karta overall business and financial decisions may cause conflict among the HUF. His decisions and business acumen may be questioned by other members, and cause issues within the HUF.
- (viii) Another issue may be that the Karta may not be the most qualified person to lead the business. The position is given to the senior most family member, whether he is the most qualified or not is not taken into consideration.

Chapter 2

Hindu Law

There is a general belief that HUF is a creation of Hindu law. It may be partly true in cases where the HUF emerges as a result of partition or re-union. In other cases, it may come out by the conduct, practices and customs of the members of a family without any distinction of religion, caste or creed.

The Income-tax Act is a taxing statute. The process under this Act has been termed as 'quasi-judicial'. For smooth working of the Act, certain powers are vested in the Assessing Officer, which are akin to the powers of a Civil Court. But such powers vested in the Assessing Officer are of machinery nature. For example, in case of disputes among the members of the family in respect of any matter relating to it, the verdict of a Civil Court will only have binding force subject to final decision by higher Courts in applicable cases. It is obvious that a detailed study of personal laws of the respective HUFs will be necessary in addition to the existing practice of dealing in 'Hindu laws' only.

The personal laws of any community, have been and will continue to be, amended, modified, deleted or supplemented by the Legislature. In popular sense, the Legislature represents the collective will and decision of the people. Thus, any changes, etc., in the personal laws of any community are deemed to have been carried out by that community itself, through the wisdom of its elected Legislature. Here it is important to note that, the Income-tax Act, like any other taxing statute, incorporates 'riders' and '*non obstante*' provisions, which will have an overriding effect over the provisions of other statutes or even over other provisions in the Act itself. However, in cases where the Act is silent (it is so in majority of the cases of HUFs) on matters concerning the personal laws, the provisions of personal laws will prevail in finalizing the process of taxation of income of such undivided families.

Origin of Hindu law

The Hindu system as modified through centuries has been in existence for over five thousand years and has continued to govern the social and moral patterns of Hindu life with harmonizing the diverse elements of Hindu cultural life. Magne says, "Hindu law has the oldest pedigree of any known system of Jurisprudence and even now it shows no signs of decrepitude".

Who are Hindus

- (i) The term 'Hindus' denotes all those persons who profess Hindu religion either by birth from Hindu parents or by conversion to Hindu faith.
- (ii) Any person, who follows Hindu religion in any of its form or development either by practicing it or by professing it, is a Hindu.

- (iii) Buddhists, Jains or Sikhs by religion are Hindus;
- (iv) Any child, legitimate or illegitimate, both of whose parents are Hindus Buddhist, Jain or Sikh by religion
- (v) Any child, legitimate or illegitimate, one of whose parents is Hindu Buddhist, Jain or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;
- (vi) Any person who is a convert or re-convert to Hindu Buddhist, Jain or Sikh by religion.
- (vii) Adoption - Any child, legitimate or illegitimate, who has been abandoned both by his father & mother or whose parentage is not known & who in either case is brought up as a Hindu Buddhist, Jain or Sikh by religion.
- (viii) Hindu Succession Act applies to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj, a Buddhist, Jain or Sikh.

Whenever a saint or religious reformer attempted the task of reforming Hindu religion and fought the irrational or corrupt practices which crept into it, a sect was born which was governed by its own tenets, but which basically subscribed to the fundamental notions of Hindu religion, the Hindu philosophy.

Hindu by Religion

Two types:

- (a) Those who are originally Hindus, Jain, Sikhs or Buddhists by religion, and
- (b) Those who are converted or reconverted to Hindus, Jain, Sikhs or Buddhists by religion.

Evolution of Hindu Laws in India

Till the 19th century, A.D., the ancient Hindu law, as laid down in the so called *Srutis*, the *Smritis* and other Hindu law scriptures and texts, followed its customary course without any interference of the lawmakers.

However, during the first half of the 20th century, some attempts were made by the lawmakers in India for legislative reforms in respect of the time-old Hindu laws, which were badly in need of amendments and reforms.

The first phase of the Hindu law reforms started with the enactment of the following Acts:

- (i) The Hindu Law of Inheritance Act, 1929;
- (ii) The Hindu Gains of Learning Act, 1930;
- (iii) The Hindu Women's Right to Property Act, 1937; and
- (iv) The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946

After the dawn of independence on 15th August, 1947, the legislative movement on codification of Hindu laws in India gained further momentum. Accordingly, the Indian Parliament proceeded to enact the following Acts:

- (i) The Hindu Marriage Act, 1955;
- (ii) The Hindu Succession Act, 1956;
- (iii) The Hindu Minority and Guardianship Act, 1956; and
- (iv) The Hindu Adoptions and Maintenance Act, 1956.

These Hindu Acts, enacted by our Parliament are now the supreme authority as regards Hindu laws in India. These enactments, (which have overriding effect in case of inconsistency with the respective branch of law) hold good in the respective branch of Hindu law covered by them.

In this context, it is also true that these enactments have not touched many areas, where the ancient customary usages and exceptional provisions still hold sway.

Constitution of India and the Enactments under the Hindu Law

A codified Hindu Law (also known as Hindu Code Bill) was drafted by the B.N. Rau Committee. It was introduced in the provisional Parliament in 1947 but could not be passed before its dissolution and consequently, the Bill lapsed.

Presently, Hindu Law is applied through

- (i) The Hindu Marriage Act, 1955;
- (ii) The Hindu Succession Act, 1956;
- (iii) The Hindu Minority and Guardianship Act, 1956; and
- (iv) The Hindu Adoptions and Maintenance Act, 1956.

Constitutional enactments are:

- (i) Hindu Women's Rights to Property Act, 1937.
- (ii) Hindu Succession Act, 1956.

The Hindu Marriage Act of 1955 (with effect from 18.5.1955)

The Code was then split into four parts for facilitating discussion and passage in Parliament. The first of these was the Hindu Marriage Act of 1955 (with effect from 18.5.1955). The Hindu Marriage Act, 1955 has been extensively amended by Act 63 of 1976, which received the assent of the President on 27-5-1976.

The Hindu Succession Act, 1956 (with effect from 17.6.1956)

The Hindu Succession Act, 1956 (with effect from 17.6.1956) was the next part which came into effect. It treats sons and daughters as equals in the matter of succession.

The Hindu Minority and Guardianship Act, 1956 (with effect from 25.1.1956)

Later on, The Hindu Minority and Guardianship Act, 1956 (with effect from 25.1.1956) was passed. This Act is about natural guardians and testamentary guardians under Hindu Law. "*De facto*" guardianship has been abolished under it.

The Hindu Adoptions and Maintenance Act, 1956 (with effect from 21.12.1956)

The fourth Act is The Hindu Adoptions and Maintenance Act, 1956 (with effect from 21.12.1956). Owing to the equality of girls and boys emphasised in the Hindu Succession Act, it became easier to simplify the laws of adoption. It provides for adoption of both boys and girls. As per the law, a wife cannot be forbidden by her husband to adopt a child after his death. Hereafter, adoption shall not divest anyone of such property which been vested in him before the adoption. Also, a Hindu widow's adoption will be in her right, instead of her deceased husband's.

Sources of Hindu Law

There is no such law as Hindu Law. It is based on Shastras and Smritis. In this term are included all the persons who are Hindus by religion.

Presently, Hindu Law is applied through the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Adoptions and Maintenance Act, 1956.

Hindu law has not been made by legislature but it is the law made by the Divine Being and which has been re-built in the Vedas.

The sources of Hindu law can be classified under the following two heads:

(1) Ancient Sources

Before the codification of Hindu Law, the ancient literature was the only source of the law. These sources can be divided into four categories:

(i) Shruti (Vedas)

The primary and important source of Hindu law is Vedas. According to tradition the Vedas also called Shruti. Shruti means what is heard by the Sages (Rishis). The Vedas are the fountain head of Hindu religion and law. Veda means knowledge (from the root vid = to know). There are four Vedas. Rig Veda, Yajur Ved, Sama Ved and Atharva Ved.

It is believed that the rishis and munis had reached the height of spirituality where they revealed the knowledge of Vedas. Thus, shrutis include the four vedas - rig, yajur, sam, and athrava along with their brahmanas. The brahmanas are like the appendices to the Vedas. Vedas primarily contain theories about sacrifices, rituals, and customs.

(ii) Smritis

Next to the Vedas, the Smritis are the most important source of Hindu law. The word 'Smritis' literary means "what has been remembered". Shruti represents direct words of God as heard by sages (Rishis), while Smrities represent what was remembered from the word of God heard by Sages. Early Smritis were termed as Dharma Shastras (800-200B.C.) The oldest Smriti is Manusmriti.

With Smritis, a systematic study and teaching of Vedas started. Many sages, from time to time, have written down the concepts given in Vedas. So it can be said that Smritis are a written memoir of the knowledge of the sages. Immediately after the Vedic period, a need for

the regulation of the society arose. There is a further classification of the term 'Smrities' which are as follows:

- (a) DHARMASUTRAS (Prose): The Dharmasutras were written during 800 to 200 BC. They were mostly written in prose form but also contain verses. It is clear that they were meant to be training manuals of sages for teaching students.
- (b) DHARMASHASTRAS (Poetry): Dharmashastras were mostly in metrical verses and were based on Dharmasutras. However, they were a lot more systematic and clear.
- (c) MANUSMRITI: This is the earliest and most important of all. It is not only defined the way of life in India but is also well-known in Java, Bali, and Sumatra. The name of the real author is not known because the author has written it under the mythical name of Manu, who is considered to be the first human.
- (d) YAJNAVALKYA SMRITI: Though written after Manusmriti, this is a very important smriti. Its language is very direct and clear. It is also a lot more logical. He also gives a lot of importance to customs but hold the king to be below the law.
- (e) NARADA SMRITI: Narada was from Nepal and this smriti is well-preserved and its complete text is available. This is the only smriti that does not deal with religion and morality at all but concentrates only on civil law.

(iii) Commentaries and Digests

Several Digests and Commentaries were written on Smritis during the period Between 700 A.D. and 1700 A.D. Notable Digests are, namely:—

➤ ON MANUSMRITI

- Medhatithi has written Manubhashya (895-900 A.D).
- Govinda Raja has written Manutika (1100 A.D).
- Kulluka Bhatta had written Manavata Muktavali (1250 A.D).

➤ ON YAJNAVALKYA SMRITI

- Vigneshwara had written the famous commentary Mitakshara (1100 A.D).
- Visvarupa had returned Balakrida (900 A.D).
- Aparaka had written Aparaditya (1200 A.D).

(iv) Customs

Custom is the oldest form of lawmaking. Manu recognized custom to be transcendent law. Custom means "Achara or Usage", a Traditionally Followed long practice. Custom is a *Bona fide* practice being observed by people in general from generation to generations and the starting point of which is unknown. A custom to be valid, it must be ancient, continuous, reasonable, moral and not contrary to the statutory law in force.

There are different customs such as local custom, family custom and caste or community custom.

Most of the Hindu law is based on customs and practices followed by the people all across the country. Even smritis have given importance to customs. They have held customs as transcendent law and have advised the Kings to give decisions based on customs after due religious consideration. Customs are of four types:

- LOCAL CUSTOM: These are the customs that are followed in a given geographical area.
- FAMILY CUSTOM: These are the customs that are followed by a family from a long time. These are applicable to families wherever they live.
- CLASS OR CASTE CUSTOM: These are the customs that are followed by a particular cast or community. It is binding on the members of that community or caste. By far, this is one of the most important source of laws.
- GUILD CUSTOM: These are the customs that are followed by traders.

(2) Modern Sources of Hindu Law

Under this head would come:

(i) Judicial Decisions (Precedents)

Precedent means decision given by the superior courts is binding on inferior courts and to be followed in future in similar cases. Doctrine of Precedent bring certainty, predictability and uniformity in law.

Precedent is called to be a source of Hindu law in two senses—

FIRST - Practically all the important principles and rules of Hindu law have now been embodied in case law. In such matters, recourse to the original source is not necessary. Reference to leading decision is enough.

SECONDLY - Precedent is a source of law in the sense that by the purpose of judicial interpretation, doctrines, principles and rules of law stand modified or altogether new principles, doctrines and rules have been introduced in the body of Hindu law. For these principles doctrines and rules, the sources of authority is Precedent.

(ii) Legislatures/Statutes (Codification of Hindu Law)

Legislation is a vital source of modern Hindu law. During the British period, only very few legislations were passed touching personal laws of Hindus, in tune with the British policy of non-interference in the matters of personal status of native Indians.

In modern society, this is the only way to bring in new laws. The Parliament, in accordance with the needs of society, constitutes new laws. For example, a new way of performing Hindu marriages in Tamil Nadu that got rid of rituals and priests was rejected by the SC on the basis that new customs cannot be invented. However, TN later passed an Act that recognized these marriages.

(iii) Justice, Equity and Good Conscience

Equity, Justice and Good Conscience is the principle of English law. The common law tradition of applying the principle of "Justice, Equity and Good Conscience", when the law is silent on a given point was conveniently applied by Britishers in their administration of justice in India. Later the Supreme Court of India applied the principles of Justice, equity and good conscience in the absence of any rule of Hindu law.

Equity means fairness in dealing. Modern judicial systems greatly rely on being impartial. True justice can only be delivered through equity and good conscience. In a situation where no rule is given, a sense of 'reasonableness' must prevail. According to Gautama, in such situation, the decision should be given that is acceptable to at least ten people who are knowledgeable in shastras. Yagyavalkya has said that wherever there are conflicting rules, the decision must be based on 'Nyaya'. In *Gurunath v Kamlabai (1955) 1 SCR 1135*, the Supreme Court held that in the absence of any existing law the rule of justice, equity and good conscience was applied.

Person to whom Hindu Law Applied (Uncodified Law)

- (i) Hindus by birth and also to Hindus by conversion in any of its forms or developments including
- (ii) Brahmans, Arya Samajists, etc.
- (iii) Illegitimate children whose parents are Hindus.
- (iv) Illegitimate children born of a Christian father and a Hindu mother and brought up as Hindus.
- (v) Buddhists, Jains, Sikhs and Nambudry Brahmans except, so far such law is varied by custom and to lingayats who are considered as Shudras.
- (vi) Sons of Hindu dancing girls of Naik caste converted to Mohammedanism where the sons are taken into the family of Hindu grandparents and are brought up as Hindus.
- (vii) A Hindu by birth who having renounced Hinduism, has reverted to it after performing the religious rites of expiation and repentance, or even without a formal ritual or re-conversion when he was recognised as a Hindu by the community.
- (viii) Brahmos and Arya Samajists, and to Santhals of Chhota Nagpur, and also to Santhals of Manbhum except so far as it is not varied by custom.
- (ix) A Hindu who has made a declaration that he is not Hindu for the purpose of Special Marriage Act, 1872, and
- (x) A person who is born a Hindu and has not renounced the Hindu religion, does not cease to be a Hindu merely because he departs from the standard of orthodoxy in matters of diet and ceremonial observances.