

CONCEPT OF HUF AND INSURANCE POLICY TAKEN

Dear Friends,

As you are aware that Joint Family is an ancient tradition and prevailing in India from ancient times. In a Joint Family all members descended from a common ancestor live together and enjoy all properties and incomes of the Joint Family. According to Hindu law, there is a presumption that each family will be regarded a joint family. In a Joint Hindu Family even though all members are living apart but enjoying a Joint Property and income are called members of Joint Family.

Before we get into the details of the Hindu Undivided Family, let's define what a joint family is in layman's terms.

A joint family, according to the Oxford Dictionary, is a living unit made up of two or more generations of a family and their spouses.

WHAT IS A HINDU JOINT FAMILY?

The Hindu Succession Act of 1956 governs the Hindu Joint Family nowadays. It is a common occurrence in Hindu civilization. As previously said, it is unavoidable for a Hindu to form a combined family. The idea behind this is that if one generation is brought to an end by a partition, it will immediately reappear in the next generation. This lends credence to the notion that every Hindu family is a Joint Hindu Family.

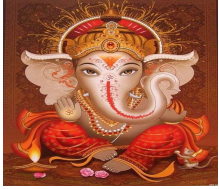
*In the cases of **Rukhmabai vs. Lala Laxminarayan and Rajagopal vs. Padmini**, it was determined that a family remains a joint family if it is united in matters of food, worship, and inheritance. Even though a family does not share food or worship, i.e., if they live apart, they might still be considered a Joint Hindu Family if they share an estate.*

*In the case of **Chhotey Lal & Ors. vs. Jhandey Lal & Anr.**, it was determined that a Joint Hindu Family is neither a company nor a juristic person because it lacks a separate legal entity from its members. A Joint Hindu Family is a unit that is represented in all affairs by the Karta of the family.*

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All family members make up a Hindu Undivided Family. In other words, all the male members descended from a common ancestor in a straight line up to any generation.

Even an illegitimate offspring of a male descendent is a part of his father's Joint Hindu Family, according to the case of Gur Narain Das vs. Gur Tahal Das. Their mothers, wives, widows, and unmarried daughters are all included. Until she marries, an unmarried daughter stays a member of the joint family. She becomes a member of her husband's Joint Hindu Family once they marry. However, if the daughter is abandoned by her husband or becomes a widow and permanently returns to her father's home, she re-joins the Joint Hindu Family, But her children remain a part of their father's joint family.

It is crucial to remember, however, that a Joint Hindu family cannot exist without a shared ancestor. Even after the death of the common ancestor, the family remains a Joint Hindu Family. Under section 2 of the Hindu Marriage Act , a person can leave a joint family if they convert to another faith or marry a non-Hindu. Even when a child is given in adoption to a third party by competent parents or a daughter is married off, one ceases to be a member of a joint family.

LAWS CONCERNING HINDU UNDIVIDED FAMILY

The Hindu Undivided Family is inextricably linked to the Hindu Succession Act, 1956 (Amended in 2005) and the Hindu Marriage Act,1955.

HINDU SUCCESSION ACT:

The Hindu Succession Act ,1956 governs Hindu succession regulations. When a Joint Hindu Family is involved, there is usually an ancestral property that the descendants would inherit. The Hindu Succession Act, 1956 regulates this.

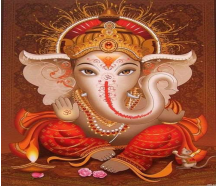
THE HINDU PROPERTY ACT, 2005:

Respects the Hindu Undivided Family idea. This means that this legislation governs the ancestral property inherited by a family of people who are lineally descended from a common ancestor and are linked to one another by birth or marriage.

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PLEASE NOTE THAT : The Hindu Succession (Amendment) Act, 2005 (39 of 2005) was enacted to remove gender discriminatory provisions in the Hindu Succession Act, 1956. Under the amendment, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. The daughter shall now have the same rights in the coparcenary property (ancestral property of the Hindu undivided family) as a son. This amendment also repeals Section 23 of the Hindu Succession Act which disentitled a female heir to ask for partition in respect of a dwelling house, wholly occupied by a joint family, until the male heirs choose to divide their respective shares.

Section 24 of the Act which denied rights of a widow to inherit her husband's property upon her re-marriage has been repealed. This Act has brought about a central amendment which is applicable to all the state governments.

HINDU SUCCESSION AMENDMENT ACT 2005 HAS BROUGHT ABOUT FOLLOWING IMPORTANT CHANGES:

- 1) Equal rights for daughters- After 2005 amendment daughter of a coparcener becomes by birth, a coparcener in her own right and has same rights and liabilities as a son.
- 2) Doctrine of pious obligation abolished;
- 3) Rights of a female in a joint family dwelling place- The earlier provision of Act under which a female heir could not demand a partition of a dwelling house wholly occupied by a joint family has now been deleted.
- 4) Restriction on Hindu widows in the matter of inheritance- Earlier Section 24 of Act barred certain widows who had remarried from inheriting. Now Section 24 has been deleted and this bar has been removed.
- 5) Addition of heirs in Class 1 – After 2005 amendment ,for more categories of heirs have been added in class 1 of schedule to the Act.

HINDU SUCCESSION (AMENDMENT) ACT, 2005 (39 OF 2005)

This Act 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:

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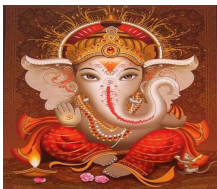
- i) *The daughter of a coparcener cell by birth become a coparcener in her own right in the same manner as the son;*
- ii) *The daughter has the same rights in the coparcenary property as she would have had if she had been a son;*
- iii) *The daughter shall be subject to the same liability in the said 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;*
- iv) *The daughter is allotted the same share as is allotted to a son;*
- v) *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;*
- vi) *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.*

After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognize any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt.

PROPERTIES WHICH ARE GENERALLY ACCEPTED AS JOINT FAMILY PROPERTY:

1. *Ancestral property;*
2. *Property allotted on partition;*
3. *Property acquired with the aid of joint family property;*
4. *Separate property of a co-parcener, blended with the family property.*

The provisions of S.64 (2) of the I.T. Act have superseded the principles of Hindu Law, in a case where the co-parcener impresses his property with the character of joint family property.



PLEASE NOTE THAT a female member cannot blend her property with the joint family property. However, she can make a gift of it to the HUF as was held in *Puspadevi vs. CIT 109 I.T.R. p. 730 (SC)*. A female member may also bequeath her property to an HUF– *C.I.T. vs. G.D. Mukim, 118 I.T.R. P. 930 (P&H)*.

LET'S CONSIDER CONCEPT OF HUF- HINDU UNDIVIDED FAMILY

WHAT IS AN HUF?

The abbreviation HUF stands for 'Hindu Undivided Family'. An HUF, under the Hindu law, is a family consisting of lineal descendants from a common ancestor. It includes their wives and unmarried daughters. A Hindu Undivided Family cannot be created under a contract. It is created automatically in a Hindu family. Apart from Hindus, Jain, Sikh and Buddhist families can also create an HUF.

WHAT DOES AN HUF CONSIST OF?

An HUF can include three generations of a family and all its members. It consists of the karta, typically the male head of the family, along with the coparceners. Daughters continue to be coparceners in their father's HUF even after marriage. They become a member of their husband's HUF, too.

TAXATION OF HUF

- i) Hindu Undivided Family ('HUF') is treated as a 'person' under section 2(31) of the Income-tax Act, 1961 (herein after referred to as 'the Act'). HUF is a separate entity for the purpose of assessment under the Act.
- ii) 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.
- iii) Jain and Sikh families even though are not governed by the Hindu Law, but they are treated as HUF under the Act.

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LET'S CONSIDER -INSURANCE UNDER HINDU UNDIVIDED FAMILY- it is defined as that consist of all persons lineally descended from a common ancestor , including wives and unmarried daughters.

An HUF is originally consisting of ;

1. **The Karta**
2. **Coparceners**
3. **Members.**

THE KARTA-

- i) *Initially, Karta had to be the Oldest Male Member of the Family;*
- ii) *After his death, his wife could not become Karta, his eldest son become Karta;*
- iii) *If eldest son gives up his right to become Karta of HUF after demise of his father, then next son become Karta of the Family;*
- iv) *The Karta is the person generally manages the Joint Property of the family and he is the representative of the family.*

ROLE OF WOMEN IN AN HUF

Daughters become the coparceners in an HUF since birth, just like sons. Consequently, they have the same rights and duties as the sons in an HUF. This means that they can demand their share of HUF properties. This change in daughter's rights was brought about by an amendment in the Hindu Succession Act in 2005. Before that, daughters were members of an HUF, but not coparceners.

It is important to note that women who join an HUF through matrimony are members and not coparceners e.g., the wives of male coparceners of HUF.

CAN A WOMAN BE THE KARTA OF AN HUF?

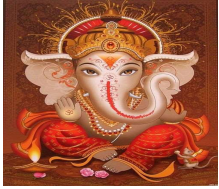
In a landmark judgement, the Delhi High Court in 2016 ruled that eldest members of an HUF can be its Karta. "If a male member of a Hindu Undivided Family by virtue of being the first born can be a Karta, so can a female member. The court finds no restriction in law preventing the eldest female co-parcener of an HUF from being its Karta," the HC said.

However, in the absence of a clear provision, income tax authorities continue to rule against women becoming the Karta of HUFs. The legal position is that the eldest son of a man becomes

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the Karta of an HUF after his father's demise. In case the son is a minor, his widow can oversee the HUF business till the sons come of age.

COPARCENERS

Coparcener is a term that dates back to the Late Middle English era and refers to a person who divides an undivided estate's inheritance equally with others.- According to Lexico.

A person who is a coheir who inherits an estate with others, according to the -Collins definition.

A coparcener is a person who has a legal right to his ancestral property through birth, according to Hindu law.

According to the Hindu Succession Act, 1956, an individual who is born in a Hindu Undivided Family (HUF) has a legal right over his ancestral property. Therefore, he is a coparcener (joint heir) by birth. A coparcenary has a lineal descending succession of up to four generations. A HUF is an entity where the eldest person of the family and his three generations remain undivided and all family members are coparceners who have a legal right over the ancestral property.

Assume Vikram is the Karta of a HUF, with coparceners Virat (son), Virat's son Manoj (grandson), and Manoj's son Mohan (great grandson). However, according to current legislation Mohan's son Rahul will not get coparcenary rights in the property until Vikram's death.

*A **married woman** can continue to be a member of both the Hindu Undivided Family (HUF) accounts. She can continue as a co-parcener in her father's HUF where her father is the karta and also as a member in her husband's HUF account.*

*A **wife does not** have any right to her husband's Ancestral Property. Only coparceners of Hindu joint family (Mitakshra) are entitled to inherit ancestral property, and since the wife is not a coparcener in her husband's joint family, she will not be entitled to the property.*

However, when the ancestral property is divided and her husband receives his share from the total, which he can hold as his separate property. The wife will have a claim over her husband's separate property if the husband dies interstate since she is a class 1 heir in

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accordance with section 8 of the Hindu succession act. If the husband leaves behind a will, then his property shall be divided in accordance with the will.

WIFE'S CLAIM IN THE JOINT FAMILY PROPERTY

In case of a joint family partition between her husband and children, the wife has a claim to the property, equal to the share of her children, this position is based on classic Hindu law (Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum). This property can be held by the wife individually from the husband, as her separate property. However, the wife does not have a right to demand a partition of the joint family property since she is not a coparcener in her husband's joint family.

WIFE'S CLAIM IN HUSBAND'S SELF ACQUIRED PROPERTY

The wife does not have any claim to her husband's self-Acquired property unless she inherits it from her husband after his death, however, she is only entitled to the property if the husband died interstate since she is a class 1 heir in accordance with section 8 of the Hindu succession act. If the husband leaves behind a will, then his property shall be divided in accordance with the will.

WHO HAS THE RIGHT TO DEMAND A PARTITION?

Any coparcener can demand a partition whether minor or adult. This list of coparceners includes:

- Father
- Son/grandson/great-grandson
- After the amendment of 2005, daughters are also coparceners and can demand a partition.
- On behalf of a minor coparcener, his/her guardian can demand a partition.

WHO THE DIFFERENCE BETWEEN A MEMBER AND A COPARCENER IN HINDU LAW?

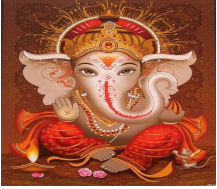
Under Hindu Law, the coparcener is a term to indicate those male members of a Hindu family who have an undivided interest over the ancestral property by birth. They are the head of the family or Karta and the three subsequent generations of the Karta which include his sons, grandsons, and great-grandsons.

After the 2005 amendment of the Hindu Succession Law, a daughter of the family is also considered a coparcener. Whereas all those people in a Hindu family who linearly descend

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from a common ancestor are called members including the wives and the unmarried daughters.

Therefore, coparceners are the members of a joint Hindu family but not all the members of a joint family are coparceners. Moreover, a married daughter is a coparcener but no anymore, a member of a HUF.

FOLLOWING INDIVIDUALS BORN IN A JOINT FAMILY CAN BE A COPARCENER-

- Male members born in a joint family;
- Sons, grandsons and great-grandsons;
- Unmarried daughters;
- All members of the family descended from a common ancestor;
- Wives of male members;(Wives are member not coparcener)
- Married daughters (can be a coparcener but not a member of HUF).

MEMBERS OF HUFs

All the members in your family, including your wife, children, their wives and their children. While the male members are called coparceners, the females are referred to as members. The senior-most male member is called the karta (manager), and a typical HUF consists of a karta, his sons, grandsons, and great-grandsons (all of whom are coparceners), and their wives and unmarried daughters (all of whom are members).

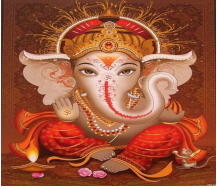
PLEASE NOTE THAT:

1. In earlier stage female members are simply called members of the HUF;
2. In earlier stage when a female member got married ,she become member of her husband's family and could not remain member of her father's family;
3. After amendment in Hindu Succession Act, in 2005 the whole concept of HUFs & Joint Family has been changed , a daughter of HUF has become coparcener of her father's HUF and member of her Husband HUF.
4. Even after being married a daughter retains right to co-parcenary and be a Karta of his father's HUF.
5. The oldest member of family whether male/ female can become Karta.

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6. In presence of Senior member a junior member cannot become Karta, but with the consent of all members it will be done.
7. After amendment daughters are also become co-parcener of HUF's property and demand partition same as Sons.
8. Children of Female Karta or her husband cannot be co-parceners of HUF in which their wife/mother is karta.
9. In case of the female Karta dies intestate , the HUF property shall devolve among HUF members , which does not include the children of female karta.

ASSESSMENT OF HUF :-

An HUF is recognized as a separate assessable entity under the Act. Its income may be assessed if following two conditions are satisfied:

- i) There should be a coparcener ship. In this connection, it is worthwhile to mention that once a joint family income is assessed as that of HUF, it continues to be assessed as such in subsequent assessment years till partition is claimed by coparceners.
- ii) There should be a joint family property which consists of ancestral property, property acquired with the aid of ancestral property and property transferred by its members.

Ancestral Property: Ancestral property may be defined as the property which a man inherits from any of his three immediate male ancestors, i.e. his father, grandfather and great grandfather. Therefore, property inherited from any other relation is not treated as ancestral property.

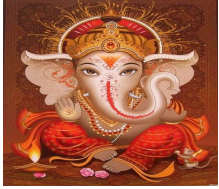
Income from ancestral property held by following families is taxable as income of HUF:

- a) A family of widow mother and sons (may be minor or major) ;
- b) Family of husband and wife, having no child ;
- c) Family of two widows of deceased brothers ;
- d) Family of two or more brothers ;
- e) Family of uncle and nephew ;
- f) Family of mother, son and son's wife ;
- g) Family of a male and his late brother's wife.

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PLEASE NOTE:

1. *Property obtained by daughter from joint family property would be her absolute property. Any income therefrom is chargeable to tax in her hands in the individual status only. This will also apply to any legal heir obtaining property in the capacity of a descendent.*
2. *The HUF is eligible for all deductions and exemptions as available for Individuals in Income Tax Act, 1961 except some specified deductions/exemptions available only for individuals.*
3. *The Insurance under HUF belong to HUF and become property of HUF.*
4. *Neither Karta nor any member of the HUF can take policies to be financed from the income of HUF, seeking benefits for himself and his immediate dependants.*
5. *An insurance policy issued on HUF does not has any provision of “Nominee”, since it is issued in the name of HUF and become property of HUF.*
6. *The Premium should always be paid from the fund of HUF.*
7. *Generally , a lower multiple e.g. 10 is applied to the income of an HUF to arrive at the total financial eligibility for policies sourced through HUF.*

TAXABILITY OF HUF

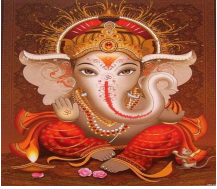
First, one has to determine the income of a HUF under the various heads of income (ignoring earnings exempted under Sections 10 to 13A of the Act). There are a few things to keep in mind when computing income:

- *HUF funds that are invested in a company or firm may be treated as family income if the member receives fees or remuneration from the company or firm (if the fees or remuneration are earned essentially as a result of the investment of funds).*
- *Nevertheless, if a member earns fees or remuneration for services rendered in his capacity, it will be considered to be his personal income.*
- *If any remuneration is paid by the HUF to Karta or any other member for services rendered, the payment is deductible from the income of HUF if it is genuine, not excessive, and paid under a valid and bona fide agreement.*

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The following incomes are NOT taxed as income of HUF:

- *If a member has converted or transferred his self-acquired property into the joint family property without due consideration, the income from such property is not taxable in the family's hands.*
 - *Income from impartible estates (although they belong to family) is taxed in the hands of the holder of the estate, not in those of the HUF.*
 - *The personal income of the members cannot be treated as the income of HUF.*
 - *Individual income cannot be included in HUF income. Due to the fact that "Stridhan" is an absolute property of a woman, her income from it is not taxable.*
 - *Income from the daughter's individual property is not taxable in the hands of HUF even if the daughter has transferred the property in the HUF.*
1. **Deduction from Gross Total Income:** *While calculating taxable income, HUFs can take advantage of deductions available under Chapter VI-A (as applicable).*
 2. **Rate of Tax:**
 - *HUFs are taxed at the same slab rates as individuals.*
 - *If the tax payable is less than 18.5% (including cess and surcharge) of "Adjusted Total Income" a HUF is subject to Alternate Minimum Tax.*

ADVANTAGES OF HUF

The advantages of HUF are:

- *Just like everyone else, members are also required to pay taxes. A member whose business turnover exceeds Rs. 25 lakhs or Rs 1 crore is required to perform a tax audit under the guidance of a CA as outlined in section 44AB of the Income Tax Act.*
- *The head of the HUF has full authority to sign pertinent documents on behalf of all the other members.*
- *A HUF can be broken into different taxable units. In the case of tax purposes, any assets or savings made or insurance premiums paid by the HUF will be subtracted from Net Income.*

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- *Most families form a HUF so that they can create two PAN cards and file taxes separately.*
- *As long as her husband is a Karta, a woman can be her husband's co-partner in the HUF. Her additional earnings cannot be included in the HUF.*
- *If the Karta or the last member of the family dies, the official status remains the same. As a result, the ancestral and acquired assets of the HUF will belong to the widow and need not be divided.*
- *Additionally, an adopted child can be added to the HUF.*
- *A woman in a family can gift a property owned by her or her family in her name. Loans are readily available to Hindu Undivided Family members.*
- *The act is recognized in all states except Kerala.*

DISADVANTAGES OF HUF

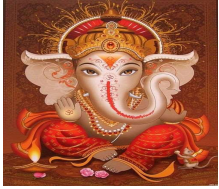
HUF has the following disadvantages:

- ***Equal Rights to Every Member of HUF*** - *All members of the HUF have an equal right to property, which is one of the greatest disadvantages. Property cannot be sold without all members' consent. Also, each member has equal rights upon birth or marriage.*
- ***Partition/ Splitting the HUF*** - *It is more difficult to close a HUF than to open one. If a family is split into smaller groups, the HUF may also be split. The asset needs to be distributed among all the members of the HUF once the HUF is closed, which is a challenging task.*
- ***Joint Families Are Losing Popularity*** - *The income tax department treats the HUF as a separate tax entity. Joint families are increasingly becoming unimportant in modern society. There have been a number of reports that HUF members have a dispute over property. Further, divorce cases have increased, so HUF has lost its appeal as a tax-saving tool.*
- ***HUF to Be Assessed As Such until Partition*** - *After a HUF is formed, it must continue to file its tax returns, unless it is partitioned. An assessment officer must approve any partition request. On receiving such a claim, the assessing officer must contact the members and give them notice. The member's income from the property that was*

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partitioned is taxable as individual income. In the event, the member forms another HUF with his wife and children, the income from the property which was transferred from the original HUF is taxed to the new HUF.

CONCLUSION: *HUF is a tool of tax planning , since it is assessed as a separate entity than the members of HUF. It is a concept of Joint Hindu Family running from ancient time to manage property of joint family for the benefit of its members. A HUF is generally assessed same as an Individual and majority of deductions and exemptions available to individuals are available to HUF. In case of an Insurance Policy brough from the funds of a HUF ,it become asset of a HUF . The insurance bought by a HUF is eligible for tax deductions.*

DISCLAIMER *the article presented here is only for sharing information with the readers. The views are personal, shall not be considered as professional advice. In case of necessity do consult with professionals for more understanding and clarity on subject matter.*

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