

HINDU UNDIVIDED FAMILY

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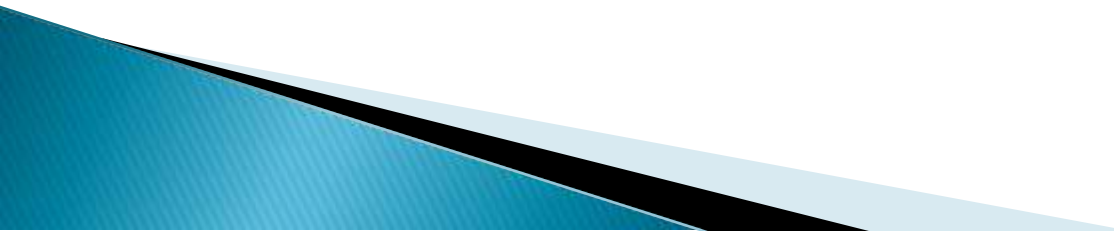
DEFINITION

- ▶ **Not Defined** in any law.
- ▶ Following are the **essentials required** for a family arrangement to be classified as a HUF:
 1. He should be **Hindu** (Sikh and Buddhists are included, Muslims and Sikhs are Excluded);
 2. There should be a **family**; and
 3. They should be living **jointly**.
- ▶ The 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.)**
- ▶ HUF can't be created by an act of the parties. To introduce a stranger into an HUF, adoption is required.

... **CIT vs. M.M. Khanna (1963) 49 ITR 232 (Bom)**
- ▶ HUF comes into existence by the virtue of marriage.
- ▶ It is not necessary to have a child.

Related Terms

- ▶ **Karta:** Karta is the head of the HUF. He is the senior most member of the family irrespective of his capabilities. If the senior most member gives up his right to a junior member, he becomes a Karta. There can be more than one Karta in HUF.
 - ▶ **Coparcener:** Individuals who acquires interest by birth in the joint family property. Ex. Son, Grandson, Great Grandsons, Daughters, Granddaughters and Great Granddaughters (daughters are included as coparceners after Hindu Succession (amendment) Act, 2005).
 - ▶ **Member:** It is a very basic unit of a HUF. Ex. Wife of the son is a member in Sons' HUF but a coparcener in her Fathers' HUF.
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Statement of Objects and Reasons of Amendments through Hindu Succession (Amendment) Act, 2005

- ▶ (1) “The Hindu Succession Act, 1956” has amended and codified the “law relating to intestate succession among Hindus”. The Act brought about changes in the law of succession among Hindus, and gave rights, which were till then unknown, in relation to women’s property. However, it does not interfere with the special rights (rule of survivorship) of those, who are members of Hindu Mitakshara coparcenary, except to provide rules for devolution of the interest of a deceased male, in certain cases. In the case of a testamentary disposition, this Act does not apply, and the interest of the deceased is governed by the “Indian Succession Act, 1925”.
- ▶ (2) Earlier Section 6 of the Act deals with devolution of interest of a male Hindu in coparcenary property, and recognises the rule of devolution by survivorship among the members of the coparcenary. The retention of system of the ‘Mitakshara coparcenary property’, without including the females in it, means that, the females cannot inherit in ancestral property, as their male counterparts do. The law, by excluding the daughter from participating in the coparcenary ownership, not only contributes to her discrimination on the ground of gender, but also has led to oppression and negation of her fundamental right of equality guaranteed by the Constitution.

- ▶ Having regard to the need to render social justice to women, the States of Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra have made necessary changes in the law, giving equal right to daughters in Hindu Mitakshara coparcenary property. The Kerala Legislature has enacted the Kerala Joint Hindu Family System (Abolition) Act, 1975.
- ▶ (3) It is proposed to remove the discrimination, as contained in (earlier) section 6 of the Hindu Succession Act, 1956, by giving equal rights to daughters in the 'Hindu Mitakshara coparcenary property' as the sons have. Section 23 of the Act disentitles 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 therein. It is also proposed to omit the said section, so as to remove the disability on female heirs contained in that section.
- ▶ (4) The above proposals are based on the recommendations of the ' Law Commission of India', as contained in its 174 Report on "Property Rights of Women: Proposed Reform under the Hindu Law".
- ▶ (5) The Bill seeks to achieve the above objects. (16 December, 2004)

Amendment to Section 6 of the Hindu Succession Act , 1956

Before Amendment	After Amendment
<p>When a male Hindu dies, after the commencement of this Act, having, at the time of his death, an interest in a Mitakshara coparcenary property, (then) his interest in the property shall devolve by survivorship, upon the surviving members of the coparcenary, and not in accordance with this Act:</p>	<p>(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,—</p> <ul style="list-style-type: none">(a) by birth, become a coparcener, in her own right, in the same manner as the son;(b) have the same rights, in the coparcenary property, as she would have had, if she had been a son;(c) be subject to the same liabilities, in respect of the said coparcenary property, as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Before Amendment	After Amendment
<p data-bbox="112 147 948 696">Provided that, if the deceased had left him surviving, a female relative, specified in Class I of the Schedule, or a male relative specified in that Class, who claims through such female relative, (then) the interest of the deceased, in the Mitakshara coparcenary property, shall devolve by testamentary or intestate succession, as the case may be, under this Act, and not by survivorship.</p> <p data-bbox="112 758 948 1203">Explanation I.—For the purposes of this section, the interest, of a Hindu Mitakshara coparcener, shall be deemed to be the share, in the property, that would have been allotted to him, if a partition of the property had taken place, immediately before his death, irrespective of whether he was entitled to claim partition or not.</p>	<p data-bbox="981 147 1808 489">Provided that, nothing, contained in this sub- section, shall affect or invalidate any disposition or alienation, including any partition or testamentary disposition of property, which had taken place before the 20th day of December, 2004 .</p> <p data-bbox="981 554 1808 1053">(2) Any property, to which a female Hindu becomes entitled, by virtue of sub- section (1), shall be held by her, with the incidents of coparcenary ownership, and shall be regarded, notwithstanding, anything contained in this Act, or any other law for the time being in force, as property, capable of being disposed of by her, by testamentary disposition.</p>

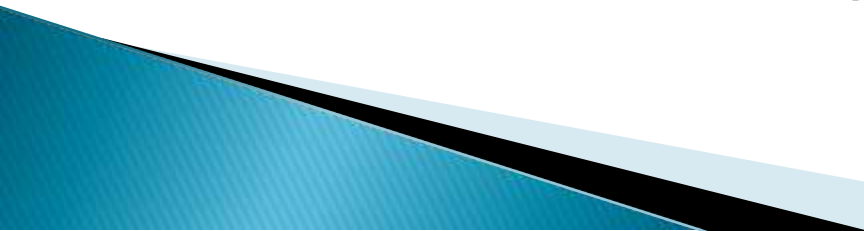
Before Amendment	After Amendment
	<p data-bbox="450 189 1804 539">(3) Where a Hindu dies, after the commencement of the Hindu Succession (Amendment) Act, 2005, (then) his interest, in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act, and not by survivorship, and the coparcenary property shall be deemed to have been divided, as if a partition had taken place, and,—</p> <p data-bbox="450 596 1731 689">(a) the daughter is allotted the same share, as is allotted to a son;</p> <p data-bbox="450 746 1779 946">(b) the share of the pre- deceased son or a pre- deceased daughter, as they would have got, had they been alive at the time of partition, shall be allotted to the surviving child of such pre- deceased son or of such pre- deceased daughter; and</p> <p data-bbox="450 1003 1760 1246">(c) the share of the pre-deceased child of a pre- deceased son or of a pre- deceased daughter, as such child would have got, had he or she been alive at the time of the partition, shall be allotted to the child of such pre- deceased child of the pre- deceased son or a predeceased daughter, as the case may be.</p>

Before Amendment	After Amendment
	<p data-bbox="450 191 1818 482">Explanation.—For the purposes of this section, the interest, of a Hindu Mitakshara coparcener, shall be deemed to be the share, in the property, that would have been allotted to him, if a partition of the property had taken place, immediately before his death, irrespective of whether he was entitled to claim partition or not.</p> <p data-bbox="450 546 1818 891">(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise 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:</p> <p data-bbox="450 901 1818 1043">Provided that, in the case of any debt, contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub- section shall affect-</p> <p data-bbox="450 1105 1818 1200">(a) the right of any creditor, to proceed against the son, grandson or great- grandson, as the case may be; or</p>

Before Amendment	After Amendment
	<p>(b) any alienation, made in respect of, or in satisfaction of, any such debt, and any such right or alienation shall be enforceable, under the rule of pious obligation, in the same manner and to the same extent, as it would have been enforceable, as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.</p> <p>Explanation.– For the purposes of clause (a), the expression ‘son’, ‘grandson’ or ‘greatgrandson’ shall be deemed to refer to the son, grandson or great– grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005 .</p> <p>(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.</p> <p>Explanation.– For the purposes of this section, ‘partition’ means any partition, made by execution of a deed of partition, duly registered under the Registration Act, 1908 (16 of 1908), or partition effected by a decree of a court.</p>

Vineeta Sharma vs. Rakesh Sharma

Civil Appeal No. 32601 of 2018

- ▶ Introduction
 - ▶ Hindu Law is Progressive
 - ▶ Joint Hindu Family and Coparcency
 - ▶ Undivided interest in Coparcency Property
 - ▶ Obstructed and Unobstructed Heritage
 - ▶ Retroactive Application of Amended Section 6
 - ▶ Relevance of the Day 20th December 2004
 - ▶ Abrogation of Rule of Survivorship
 - ▶ Fiction of Notional Partition
 - ▶ Partition contemplated by amended Section 6(5)
 - ▶ Maharashtra Amendment of 1994
 - ▶ Partition Suit : When Partition said to be complete
 - ▶ Final Verdict of the Supreme Court
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Thank You!

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