

Queen's Gambit: Femme In Karta's Ambit



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In India, family dynamics extend beyond the nuclear unit, encompassing the unique concept of the Hindu Undivided Family (HUF). HUF is recognized as a legal entity and is required to file taxes and can hold property.

Each member of HUF may have his/her say on each matter affecting the HUF, and thus the role of Karta becomes very important. Karta has a unique role in HUF. There are two schools of HUF namely Dayabhaga and Mitakshara. We will be referring to Mitakshara School for this article. The Mitakshara School of Law forms the foundation, emphasizing joint family principles where ancestral property is shared equally among male members.

Let's explore these concepts further to demystify their significance[1].

1. What is HUF?

HUF means Hindu Undivided Family. It consists of all persons lineally descended from a common ancestor, including their wives and unmarried daughters. It is treated as a person under Section 2(31) of the Income Tax Act, 1961.

2. How is HUF formed?

An HUF can be formed by two or more persons. Either one must be a coparcener[2]. Husband and wife can also form an HUF account wherein the wife would be the member and not the coparcener. Married daughters are members of husband's HUF account and coparceners of father's HUF account. It cannot be formed by a single individual. Though it is governed by the Hindu Law, it can be formed by Jains, Sikhs & Buddhists but not by Muslims and Christians. Generally, the necessary requirements for constituting an HUF are listed below:

- **Capital** – An HUF is established by using the ancestral property, assets gifted by relatives or friends, or through a Will.

[1] The article reflects the general work of the author on the date of publication and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] A coparcener is understood to be an individual who receives a legal interest to ancestral property by birth.

- **Members** – An HUF consists of Karta, members, and coparceners. All the male members of the family are referred to as coparceners and the female members as members. The senior most male in the family is the Karta.
- **PAN (Permanent Account Number)** – The registered HUF Deed needs to be submitted to Income Tax Department along with the Application Form 49A for formation of PAN of the HUF. PAN Card is required for the filing of IT Returns of the HUF.
- **Separate Bank Account** – HUF should have a different bank account wherein the funds associated with the HUF are maintained for business purposes[3].

3. Who is Karta?

- In HUF a Karta holds an important and unique sui generis position, as the manager of the family.
- The senior most male member of the joint family is considered as the Karta of the family provided he is fit to act as such and is not suffering from any physical or mental deficiency[4].
- The Karta of the joint family is certainly the manager of the family property but undoubtedly possesses powers which the ordinary manager does not possess. The Karta therefore cannot be just equated with the manager of the property. [5]
- The junior members of the family are bound by the decisions of a Karta in the matters of family business and property unless it can be pleaded and proved that the head of the family or Karta has acted fraudulently or for immoral purposes.[6]

4. Who can be a Karta?

1. **Eldes t male member:** - Usually, the senior or the eldest male member is the Karta of the joint family.
2. **Minor as Karta:** - The minor members cannot become a Karta as long as the major members of the family are alive.

[3] <https://cleartax.in/s/huf-hindu-undivided-family>

[4] C.M. Diwekar, Hindu Law – A critical commentary 56 (Hind Law House 2nd Ed. 2002.)

[5] Union of India v/s. Sree Ram Bohra & Ors. AIR 1965 SC 1531

[6] Rajni Sanghi v/s. Western India State Motors Ltd. & Ors. MANU / SC / 1376 2015



If the coparceners agree, the junior male member can become the Karta of the family, through an agreement or an understanding. Section 21 of the Guardians and Wards Act, 1890 allows a minor of the family to act as a Karta. In the absence of the father, the elder minor son could also act as a Karta of the family. Therefore, a minor can be managing member of the family.[7]

5. Can a woman be Karta?

- Pre-2005, Coparcenary rights were limited to male descendants. However, the 2005 Amendment broadened these rights to include daughters, granting them equal inheritance rights. This amendment ensures daughters enjoy the same privileges and responsibilities as sons within the HUF structure.
- The Delhi High Court in *Manu Gupta v/s. Sujata Sharma* [2023 SCC OnLine Del 7722] opined that neither the legislature nor the traditional Hindu Law in any way limited the rights of a woman to be Karta and also, cannot be a reason to deny the rights expressly conferred by the legislature. Thus, there were no impediment in Respondent no. 1 (Sujata Sharma) being the Karta of the HUF.

6. What is the position of the Karta?

- Karta is a manager of the family and sees that all reasonable wants of the members are satisfied.
- In *Sushil Kumar (Sunil) and Anr. v. Ram Prakash and Ors.* (AIR 2007 SC 1324) the Supreme Court has explained the position of Karta and stated that “as a general rule, the father of a family, if alive, and in his absence the senior member of the family, is alone entitled to manage the joint family property. The manager occupies a position superior to other members. He has greater rights and duties. He must look after the family interest. He is entitled to possession of the entire joint estate. He is also entitled to manage the family properties. In other words, the actual possession and management of the joint family property must vest in him. He may consult the members of the family and if necessary, take their consent to his action but he is not answerable to every one of them.”
- The position of Karta is sui generis i.e. unique[8].

[7] *Budhi Jena v/s. Dhobai Naik And Anr* : AIR 1958 ORISSA 7

[8] *MAYNE'S Hindu Law* (12th Ed. Para 318)

- The relationship between him/her and the other members of the family is not that of principal/agent/partners. Being the head of family, he /she acts on behalf of the family, but he/she is not a partner, as his powers are almost unlimited. Though he stands in fiduciary relationship with other members, he/she is not a trustee.
- It is the duty of the Karta to see that all reasonable wants of the members in HUF are satisfied.[9]

7. What are the responsibilities of Karta?

i. Maintenance: -

It's the responsibility of the Karta in a Hindu Undivided Family (HUF) to take care of all the family members, including daughters. This means providing for their basic needs like food, shelter, and other essentials. If the Karta fails to fulfill this duty and doesn't provide maintenance for the family members, including daughters, they can take legal action against the Karta to claim the support they are entitled to.

ii. Marriage: -

In a HUF, every family member has the right to marry, and it's the duty of the Karta to ensure that all unmarried members, especially daughters, are married off. The Karta is responsible for covering the expenses of these marriages using funds from the family property. In the case of Chandra Kishore v. Nanak Chand, (AIR 1975 Del 175) it was ruled that if marriage expenses are initially paid from sources outside the family funds, they must be reimbursed from the joint family estate.

8. What are the Powers of Karta?

- **Powers of management of family affairs:** - In a joint family, the Karta holds absolute power. They can manage without question, decide where family members live, and even expel them if necessary. Coparceners must comply or seek partition as their only recourse.
- **Right to income:-** In an HUF, all earnings go to the Karta who distributes funds and decides expenses. They manage finances like a family manager, ensuring everyone's needs are met.

- **Right to representation:** - The Karta has the right to represent in all matters such as legal, social, religious, revenue etc. He acts on behalf of the family and his acts are binding on the members of the family. The Karta may sue or be sued in respect of any transaction entered into by him on behalf of the family.
- **Power of compromise:-** The Karta of a Hindu Undivided Family (HUF) can settle property disputes but not solely for personal gain. Decisions must benefit the whole family, shown in good faith during partitions. They can't waive significant debts without proper consideration, ensuring responsible use of authority for the family's benefit.
- **Power to contract debts:-** Karta has an implied authority to contract debts and pledge the credit of family for ordinary purposes of family business. Such debts are binding on the entire family.

9. Can Karta alienate the property?

Karta has the right to alienate/sell/dispose off an HUF property, even if minor of the family has an undivided interest, since the HUF is capable of acting through its Karta or an adult member of the family.[10]

The Supreme Court in **N.S.Balaji vs. Presiding Officer, Debt Recovery Tribunal and Ors. [2023 (II) OLR 876]** upheld the said judgment and opined that “a Karta of a Hindu Undivided Family (HUF) has the right to sell/dispose off/ alienate an HUF property, even if a minor of the family has an undivided interest. The reason is that an HUF is capable of acting through its Karta or an adult member of the family in the management of the HUF property. Other member(s) of the HUF need not be consenting parties to it. Post alienation, a coparcener may challenge the act of a Karta, if the alienation is not for legal necessity or for betterment of the estate.”

[10] Sri Narayan Bal vs Sridhar Sutar: AIR 1996 SC 2371

A joint family property can be alienated for three reasons: -

1. **Legal necessity (Apatkale):** - The Karta can sell or mortgage HUF property if it's necessary to fulfil a legal obligation, such as paying off debts incurred for family needs. The manager or Karta of the joint family has the power to alienate for value, joint family property, so as to bind the interest of both adult and minor coparceners in the property, provided that the alienation is made for legal necessity or for the benefit of the estate.[11]
2. **Benefit of estate (Kutumbarthe):** - Property can be alienated by the Karta if it's for the benefit of the HUF, like investing in a business or purchasing assets that will enhance the family's financial well-being. The Supreme Court in *Balmukund v/s. Kamala Wati and Ors.* [AIR 1964 SC 1385] held that anything which is done for positive benefit of the estate is included in the benefit of the estate.
3. **Indispensable duties (Dharmarthe):** - If the alienation serves a religious or charitable purpose that is considered beneficial to the family's spiritual or social welfare, the Karta may proceed with it. The term "indispensable duties" refers to performing religious, pious or charitable acts such as marriage, grihapravesham, shradha, upanayana, etc.

Conclusion

In short, HUF and the Karta's role are crucial in traditional Indian families and money matters. By sharing ownership and control of belongings, the HUF keeps family tied strong across generations. The Karta, like the family boss, has big duties in making choices and handling family matters. Even though laws and money systems have changed, the HUF stays important for many Hindu families, showing the lasting values of tradition, working together, and sticking together as a family. HUF also allows families to enjoy tax deductions under various sections of the Income Tax Act 1947.

[11] *Kiran Devi vs The Sunni Wakf Board and Ors*: AIR 2021 SC 1775

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