



FACULTY OF JURIDICAL SCIENCES

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FACULTY NAME: Mr JP Srivastava

Mitakshara Hindu Joint Family: composition Structure and Characteristics

A Hindu joint family consists of the common ancestor and all his lineal male descendants upon any generation together with the wife or wives (or widows) and unmarried daughters of the common ancestor and of the lineal male descendants. The existence of the common ancestor is necessary for bringing a joint family into existence, for its continuance common ancestor is not a necessity.

According to Sir **Dinshah Mulla**, "A joint Hindu family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. A daughter ceases to be a member of her father's family on marriage, and becomes a member of her husband's family. A joint and undivided family is the normal condition of Hindu society.

An undivided Hindu family is ordinarily joint not only in estate, but also in food and worship. The existence of joint estate is not an essential requisite to constitute a joint family and a family, which does not own any property, may nevertheless be joint. Where there is joint estate, and the members of the family become separate in estate, the family ceases to be joint. Mere severance in food and worship does not operate as a separation. The property of a joint family does not cease to be joint family property belonging to any such family merely because the family is represented by a single male member who possesses rights which an absolute owner of a property may possess. It may even consist of two females members. There must be at least two members to constitute Joint Hindu family. A single male or female cannot make a Hindu joint family even if the assets are purely ancestral. In *Narendranath v. Commissioner of Wealth Tax*, the Supreme Court held that the expression 'Hindu undivided family' in the wealth Tax Act used in the sense in which a Hindu joint family is understood in the personal law of Hindus and a joint family may consist of a single male member and his wife and daughters and there is nothing in the scheme of the Wealth Tax Act to suggest that a Hindu undivided family as assessable unit must consist of a least two male members. In *Commissioner of Income Tax v. Gomedalli Lakshminarayan* there was a joint family consisting of a father and his wife and a son and his wife, the son being the present assessee. On the death of father the Question raised is whether the assessee is to be assessed as an individual or as a member of the joint Hindu family, It was held that the son's right over the property is not absolute because two females in the family has right

of maintenance in the property, therefore the income of the assessee should be taxed as the income of a Hindu undivided family. In *Anant v. Shankar* it was held that on the death of a sole surviving coparcener, a Hindu Joint Family is not finally terminated so long as it is possible in nature or law to add a male member to it. Thus there can also be a joint family where there are widows only. a. Mitakshara and Dayabhaga

MITAKSHARA SCHOOL: The Mitakshara School exists throughout India except in the State of Bengal and Assam. The Yagna Valkya Smriti was commented on by Vigneshwara under the title Mitakshara. The followers of Mitakshara are grouped together under the Mitakshara School. Mitakshara school is based on the code of yagnavalkya commented by vigneshwara, a great thinker and a law maker from Gulbarga, Karnataka. The Inheritance is based on the principle or propinquity i.e. the nearest in blood relationship will get the property. The school is followed throughout India except Bengal state. Sapinda relationship is of blood. The right to Hindu joint family property is by birth. So, a son immediately after birth gets a right to the property. The system of devolution of property is by survivorship. The share of co-parcener in the joint family property is not definite or ascertainable, as their shares are fluctuating with births and deaths of the co-parceners. The co-parcener has no absolute right to transfer his share in the joint family property, as his share is not definite or ascertainable. Women could never become a co-parcener. But, the amendment to Hindu Succession Act of 2005 empowered the women to become a co-parcener like a male in ancestral property. A major change enacted due to western influence. The widow of a deceased co-parcener cannot enforce partition of her husband's share against his brothers.

There are four Sub-Schools under the Mitakshara School:

DRAVIDIAN SCHOOL OF THOUGHT : (MADRAS SCHOOL) It exists in South India. In the case of adoption by a widow it has a peculiar custom that the consent of the sapindas was necessary for a valid adoption. ('Sapindas' – blood relation) *Collector of Madura vs. Mootoo Ramalinga Sethupathy (Ramnad case)*: The zaminder of Ramnad died without sons and in such a condition, the zamindari would have escheated to the Government, the widow Rani Parvatha vardhani made an adoption of a son, with the consent of the sapindas of her husband. But on the death of the widow, the Collector of Madhura notified that the Zamindari would escheat to the State. The adopted son brought a suit for declaration of the validity of the adoption. It was a question whether a widow can make a valid adoption without her husband's consent but his

sapinda's consent. The Privy Council, after tracing the evolution of the various Schools of Hindu law, held that Hindu law should be administered from clear proof of usage which will outweigh the written text of law. Based on the Smriti Chandrika and Prasara Madhviya, the Privy Council concluded that in the Dravida School, in the absence of authority from the husband, a widow may adopt a son with the assent of his kindred.

MAHARASHTRA SCHOOL: (BOMBAY SCHOOL OF THOUGHT) It exists in Bombay (Mumbai), from the above four bases, there are two more bases. They are Vyavakara, Mayukha and Nimaya Sindhu. The Bombay school has got an entire work of religious and Civil laws.

BANARAS SCHOOL OF THOUGHT: It exists in Orissa and Bihar. This is a modified Mitakshara School.

MITHILA SCHOOL OF THOUGHT: It exists in Uttar Pradesh near the Jamuna river areas. Apart from the above schools, there are four more schools which are now existent today. They are Vyavakara, Mayukha Nimaya and Sindhu Schools.

MCQ

- 1). Existence of Hindu law was before the beginning of
A) British rule era. B) Monarchy era C) Existinity era D) Islam era
- 2). The oldest rule of law prevails as per Jurisprudence is
A) Christian B) Roman C) British D) Hindu
- 3) "Hindu law mostly depends on the customs"....says..
A) Main B) Austin C) Holend D) Salmond
- 4) "Dharma" means bundle of responsibilities of
A) Moral religions B) Social and legal responsibility C) A & B is correct D) None of these
- 5) During British rule in the certain aspects continue the law
A) English B) Hindu C) Roman D) Muslim