

# **LL.B. II Term**

## **Family Law-II Paper –LB-202**

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## Paper – LB – 202 : Family Law – II

*(Hindu Law of Joint Family, Partition and Debts, Gifts and Wills, Muslim Law of Gifts & Wills, Hindu Succession Act and Muslim General Principles of Inheritance)*

Hindu law has the most ancient pedigree of any known legal system. Where, not modified or abrogated by legislation, Hindu law may be described to be the ancient law of the Hindus rooted in the *Vedas* and enounced in the *Smritis* as explained and enlarged in recognized commentaries and digests and as supplemented and varied by approved usages. The concept of Hindu law is deeply rooted in Hindu philosophy and Hindu religion. Till this day, no precise definition of the word 'Hindu' is available in any statute or judicial pronouncement; it has defied all efforts at definition. There are two main schools of Hindu law; *viz.* the Mitakshara school and the Dayabhaga school or Bengal school. They have emerged in the era of Digests and Commentaries. The codified Hindu Law lays down uniform law for all Hindus. In the codified areas of Hindu Law, there is no scope for existence of schools. The schools of Hindu law have relevance only in respect of the un-codified areas of Hindu Law.

### **Prescribed Legislation:**

The Hindu Succession Act, 1956 as amended by The Hindu Succession (Amendment) Act, 2005 (No.39 of 2005)

### **Prescribed Books:**

1. Ranganath Misra, *Mayne's Treatise on Hindu Law & Usage* (16<sup>th</sup> ed., 2008)
2. Satyajeet A. Desai, *Mulla Principles of Hindu Law*, Vol. I & II (21<sup>ST</sup> ed., 2010)
3. Poonam Pradhan Saxena, *Family Law Lectures, Family Law– II*, (3<sup>rd</sup> ed., 2011)
4. Paras Diwan and Peeyushi Diwan, *Modern Hindu Law* (20<sup>th</sup> ed., 2009)
5. Duncan M. Derrett, *A Critique of Modern Hindu Law* (1970)
6. M. Hidayatullah and Arshad Hidayatullah, *Mulla, Principles of Mahomedan Law* (19<sup>th</sup> ed., 1990)(reprint 2008)
7. Asaf A.A. Fyzee, *Outlines of Muhammadan Law* (5<sup>th</sup> ed.2008)

## **PART - A : HINDU LAW OF JOINT FAMILY**

### **Topic 1 : Joint Hindu Family and Hindu Coparcenary**

The Mitakshara joint family is a unique contribution of Hindu law which has no parallel in any ancient or modern system of law. Whatever the sceptic may say about the future of the Hindu joint family, it has been, and still continues to be, the fundamental aspect of life of Hindus. In Hindu law, there is a presumption that every family is a joint Hindu family. The males in a joint Hindu

family up to four generations from the last holder of the property are known as coparceners and they acquire a right by birth in the joint Hindu family property. This group of males is known as coparcenary. Hindu Succession (Amendment) Act 2005, has Confers on daughter the same status as that of a son as coparcener in Hindu joint family.

**Kinds and Sources of property:** Coparcenary and separate property, Gift from paternal ancestor and property inherited from maternal ancestor.

**Karta** -The position of karta in a joint Hindu family is *sui-generis*. Karta in a joint family occupies a very important position. His position is so unique that there is no office or institution in any other system of the world which is comparable with it. The Judicial Committee of the Privy Council in *Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree* (1856) 6 Moore's I.A. 393 had discussed the extent of karta's power in relation to joint Hindu family property.

- (a) Concept of joint Hindu family and coparcenary under Mitakshara and Dayabhaga law and their incidents.
  - (b) Karta-(i) Position (ii) Power
  - (c) Judicial and Legislative Trends- Position Before 2005
  - (d) Daughter as a Coparcener – Position After 2005
  - (e) Property in Hindu Law
1. *Commissioner of Income- Tax v. Gomedalli Lakshminarayan*, AIR 1935 Bom. 412 01
  2. *Moro Vishwanath v. Ganesh Vithal* (1873) 10 Bom. 444 04
  3. *Muhammad Husain Khan v. Babu Kishva Nandan Sahai*, AIR 1937 PC 233 10
  4. *C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar*, AIR 1953 SC 495 13
  5. *Smt. Dipo v. Wassan Singh*, AIR 1983 SC 846 21
  6. *Commissioner of Wealth-Tax v. Chander Sen*, AIR 1986 SC 1753 23
  7. *M/s. Nopany Investments (P) Ltd. v. Santokh Singh (HUF)*, 2007 (13) JT 448 31
  8. *Mrs. Sujata Sharma v. Shri Manu Gupta* 226 (2016) DLT 647

## Topic 2 : Alienation of Joint Hindu Family Property

Ordinarily, neither karta nor any other coparcener singly possesses full power of alienation over the joint family property or over his interest in the joint family property. It is now settled that karta can alienate the joint Hindu family property in exceptional circumstances, i.e. legal necessity and benefit of estate.

- (a) Alienation by karta - sale, mortgage, gifts and wills
- (b) Alienation by father
- (c) Alienee's rights duties and remedies
- (d) Pious obligations of the son

8. *Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree* (1854-1857) 6 Moore's IA 393 (PC) 36 36
9. *Sunil Kumar v. Ram Prakash* (1988) 2 SCC 77 51
10. *Dev Kishan v. Ram Kishan*, AIR 2002 Raj. 370 60
11. *Balmukand v. Kamla Wati*, AIR 1964 SC 1385 69
12. *Guramma Bhratar Chanbasappa Deshmukh v. Mallappa Chanbasappa*, 74

AIR 1964 SC 510	
13. <i>R. Kuppayee v. Raja Gounder</i> (2004) 1 SCC 295	81
14. <i>Arvind &amp; Abasaheb Ganesh Kulkarni v. Anna &amp; Dhanpal Parisa Chougule</i> , AIR 1980 SC 645	87

### **Topic 3 : Partition**

Partition means bringing the joint status to an end. On partition, the joint family ceases to be joint, and nuclear families or different joint families come into existence. There are members of the joint family who can ask for partition and are entitled to a share also. There is another category of the members of the joint family who have no right to partition but, if partition takes place, they are entitled to share. A reunion can be made only between the parties to partition.

- (a) What is partition
- (b) Subject matter of partition
- (c) Partition how effected
- (d) Persons who have a right to claim partition and who are entitled to a share
- (e) Rules relating to division of property

15. <i>A. Raghavamma v. A. Chenchamma</i> , AIR 1964 SC 136	89
16. <i>Puttrangamma v. M.S. Ranganna</i> , AIR 1968 SC 1018	99
17. <i>Kakumanu Pedasubhayya v. Kakumanu Akkamma</i> , AIR 1968 SC 1042	107

### **PART - B : THE HINDU SUCCESSION ACT, 1956**

The law of inheritance comprises rules which govern devolution of property, on the death of a person, upon other persons solely on account of their relationship to the former. The Hindu Succession Act came into force on 17 June 1956. It amends and codifies the law relating to intestate succession among Hindus and brings about some fundamental and radical changes in the law of succession. The Act lays down a uniform and comprehensive system of inheritance and applies *inter alia* to persons governed by Mitakshara and Dayabhaga schools, as also to those in certain parts of southern India who were previously governed by the Murumakkattayam, Alyasanatana and Nambudri systems of Hindu law. The Act was last amended in 2005, and has brought in major changes in the classical concept of coparcenary as also in the class I heirs to the property of a male intestate.

#### **Topic 4: General Introduction and the Application of the Hindu Succession Act, 1956**

(a) General principles of inheritance	
(b) Disqualifications of heirs	
18. <i>Vellikannu v. R. Singaperumal</i> (2005) 6 SCC 622	115
19. <i>Nirmala v. Government of NCT of Delhi</i> , 170(2010) DLT 577	122
20. <i>Revanasiddappa v. Mallikarjun</i> , (2011) 11 SCC 1	132
21. <i>Ganduri Koteshwaramma and another v. Chakiri Yanadi and another</i> (2011) 9SCC 788	141

22. *Prakash Vs. Phulavati*, 2015 SCC Online SC 1114 148

**Topic 5 : Succession to the Property of Male Intestate**

- (a) Mitakshara property  
(b) separate property

23. *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum*, AIR 1978 SC 1239 156

24. *Uttam v. Saubhag Singh* (2016) 4 SCC 68

**Topic 6: Succession to the Property of Female Intestate**

24. *Bhagat Ram v. Teja Singh*, AIR 2002 SC 1 161  
25. *Omprakash v. Radhacharan*, 2009(7) SCALE 51 164

**Topic 7 : Hindu Women's estate**

26. *Vaddeboyina Tulasamma v. Vaddeboyina Sessa Reddi*, AIR 1977 SC 1944 167

27. *Jagannathan Pillai v. Kunjithapadam Pillai*, AIR 1987 SC 1493 175  
*Jupudy Pardha Sarathy v. Pentapati Rama Krishna* (2016) 2 SCC 56

**PART – C : MUSLIM LAW**

**Topic 8 : Law Relating to Gifts**

- (a) Meaning and essentials of a valid gift  
(b) Gift of Mushaa  
(c) Gift made during Marz-ul-Maut  
28. *Mussa Miya walad Mahammed Shaffi v. Kadar Bax*, AIR 1928 PC 108 160 182  
29. *Valia Peedikakkandi Katheessa Umma v. Pathakkalan Narayanath Kunhamu*, AIR 1964 SCC 275 165 187  
30. *Hayatuddin v. Abdul Gani*, AIR 1976 Bom. 23 171 193  
31. *Abdul Hafiz Beg v. Sahebhi*, AIR 1975 Bom. 165 178 200

**Topic 9 : Law relating to Wills**

- (a). Capacity to make Will  
(b). Subject matter of Will  
(c) To whom Will can be made  
(d). Abatement of legacies

**Topic 10 : Law relating to Inheritance**

- (a) General rules of inheritance of Sunnis and Shias  
(b) Classification of heirs  
(c) Entitlement of primary heirs

**IMPORTANT NOTE:**

1. The students are advised to read the books prescribed above along with Legislations and cases.
2. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.
3. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.