

LL.B. II Term

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, The Caste Disabilities Removal Act, 1850, The Indian Succession Act, 1925, The Hindu Inheritance (Removal of Disabilities) Act, 1928, The Hindu Law of Inheritance (Amendment) Act, 1929, The Hindu Women’s Right to Property Act, 1937, The Special Marriage Act, 1954, The Muslim Personal Law (Shariat) Application Act, 1937.

Prescribed Books:

1. Ranganath Misra, *Mayne’s Treatise on Hindu Law & Usage* (17th ed., 2014)
2. Satyajeet A. Desai, *Mulla Principles of Hindu Law*, Vol. I & II (23rd ed., 2018)
3. Tahir Mahmood, *Principles of Hindu Law* (2014).
4. Poonam Pradhan Saxena, *Family Law Lectures, Family Law– II*, (5th ed., 2022)
5. Paras Diwan, *Modern Hindu Law* (25th ed., 2021)
6. Duncan M. Derrett, *A Critique of Modern Hindu Law* (1970)
7. Mulla, *Principles of Mohomedan Law* (22nd ed., 2017)
7. Asaf A.A. Fyzee, *Outlines of Muhammadan Law* (5thed.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 skeptic 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 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 *Hunoomanprasad 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
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| 1. | Commissioner of Income- Tax v. Gomedalli Lakshminarayan, AIR 1935 Bom. 412 | 01 |
| 2. | Moro Vishwanath v. Ganesh Vithal (1873) 10 Bom. 444 | 05 |
| 3. | Muhammad Husain Khan v. Babu Kishva Nandan Sahai, AIR 1937 PC 233 | 11 |
| 4. | C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar, AIR 1953 SC 495 | 14 |
| 5. | Smt. Dipov. Wassan Singh, AIR 1983 SC 846 | 22 |
| 6. | Commissioner of Wealth-Tax v. Chander Sen, AIR 1986 SC 1753 | 24 |
| 7. | M/s. Nopany Investments (P) Ltd. v. Santokh Singh (HUF), 2007 (13) JT 448 | 32 |
| 8. | Mrs. Sujata Sharma v. Shri Manu Gupta 226 (2016) DLT 647 | 37 |

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

9. <i>Hunooman Prasad Panday v. Mussumat Babooee Munraj Koonweree</i> (1854-1857) 6 Moore's IA 393 (PC) 36	48
10. <i>Sunil Kumar v. Ram Prakash</i> (1988) 2 SCC 77	49
11. <i>Dev Kishan v. Ram Kishan</i> , AIR 2002 Raj. 370	58
12. <i>Balmukandv. KamlaWati</i> , AIR 1964 SC 138	67
13. <i>Arshnoor Singh v. Harpal Kaur</i> , MANU/SC/0864/2019	72
14. <i>Guramma Bhratar Chanbasappa Deshmukh v. Mallappa Chanbasappa</i> , AIR 1964 SC 510	80
15. <i>R. Kuppayeev. Raja Gounder</i> (2004) 1 SCC 295	87
16. <i>Arvind @ Abasaheb Ganesh Kulkarni v. Anna @ Dhanpal Parisa Chougule</i> , AIR 1980 SC 645	93

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

17. <i>A. Raghavammav. A. Chenchamma</i> , AIR 1964 SC 136	96
18. <i>Puttrangamma v. M.S. Ranganna</i> , AIR 1968 SC 1018	107
19. <i>Kakumanu Pedasubhayya v. Kakumanu Akkamma</i> , AIR 1968 SC 1042	115

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 Mitakashara 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

20. <i>Vellikannu v. R. Singaperumal</i> (2005) 6 SCC 622	123
21. <i>Nirmala v. Government of NCT of Delhi</i> , 170(2010) DLT 577	131
22. <i>Archna v. Dy. Director of Consolidation</i> (High Court of Allahabad on 27.03.2015)	141
23. <i>Babu Ram v. Santokh Singh (deceased) through LRs</i> , (SC) 2019	154
24. <i>Revanasiddappa v. Mallikarjun</i> , (2011) 11 SCC 1	164
25. <i>Ganduri Koteshwaramma and another v. Chakiri Yanadi and another</i> (2011) 9SCC 788179	172

Topic 5: Succession to the Property of Male Intestate

- (a) Mitakshara property
(b) separate property

26. <i>Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum</i> , AIR 1978 SC 1239	178
27. <i>Uttam v. Saubhag Singh</i> (2016) 4 SCC 68209	184
28. <i>Vineeta Sharma v. Rakesh Sharma and Others</i> (2020) AIR 3717 (SC)	190
30. <i>Radha Bai v. Ram Narayan</i> , (SC) decided on 22-11-2019	207
31. <i>Atma Singh v. Gurmej Kaur (D) and Others</i> , (2017) AIR (SC) 4604	218
32. <i>Rajesh Pawar v Parwatiba Bende</i> , Bombay High Court, decided on 07-04-2022	223

Topic 6: Succession to the Property of Female Intestate

32. <i>Bhagat Ram v. Teja Singh</i> , AIR 2002 SC 1	232
33. <i>Om Prakash v. Radha Charan</i> , 2009(7) SCALE 51	235

Topic 7: Hindu Women's estate

34. <i>V. Tulasamma v. Sesha Reddy</i> AIR 1977 SC 1944	238
35. <i>Jagannathan Pillai v. Kunjithapadam Pillai</i> , AIR 1987 SC 1493	246
36. <i>Jupudy Pardha Sarathy v. Pentapati Rama Krishna</i> (2016) 2 SCC 56253	253

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

37. <i>Mussa Miya waladMahammed Shaffi v. Kadar Bax</i> , AIR 1928 PC 108 160	266
38. <i>Valia Peedikakkandi Katheessa Umma v. Pathakkalan Narayanath Kunhamu</i> , AIR 1964 SCC 275 165	272
39. <i>Hayatuddin v. Abdul Gani</i> , AIR 1976 Bom. 23 171	278
40. <i>Abdul Hafiz Beg v. Sahebbi</i> , AIR 1975 Bom. 165 178	286

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.