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**Position of Power for Women as  
Karta**

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For long, devolution of interest of co-parcenary property was restricted to the male members of the family and only the male members had a right to the ancestral property by birth and demand partition of the Hindu Undivided Family ('HUF') property. Hindu women were excluded from these very basic inheritance rights for the obvious vested reasons.

A HUF is a separate entity that is created by members of a family wherein the members are lineal ascendants or descendants. In relation to HUF, a co-parcener is a person who acquires a right in the ancestral property of the HUF by virtue of his birth in the family and has the right to demand partition of HUF property. Prior to the amendment made to the Hindu Succession Act, 1956 ('Act'), this devolution of interest of property was restricted to the male members of the family. However, this conservative approach was rectified by passing of the Hindu Succession (Amendment) Act, 2005 ('Amendment Act') in September, 2005 whereby Section 6 of the Act was amended to include female members of the HUF within the scope of co-parceners of the family property thereby entitling daughters a right to ancestral property and demand partition of the HUF property.

Traditionally, the responsibility of the management of the HUF property rests with the *Karta* of the family who takes care of the day to day expenses of the family. Historically, the senior-most male member from the co-parceners automatically became the *Karta* of HUF as prior to the Amendment Act, female members of the family were not entitled to be the co-parceners of the HUF. Interestingly, even subsequent to the enactment of the Amendment Act, there was no clarity pertaining to whether the senior-most female member could become the *Karta* of the HUF as the amendment only dealt with inheritance and not management of the HUF property. This very issue was contested and addressed in a recent judgment of the High Court of Delhi in the matter of *Mrs. Sujata Sharma vs. Shri Manu Gupta* {CS(OS) 2011/2006}, which is discussed herein below:

**Point of Contention:** The moot point of contention in the aforesaid matter was whether the Plaintiff, being the first born married female member amongst the co-parceners of the HUF, was entitled to be the *Karta* of the HUF.

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**Contention of the Plaintiff:** The Plaintiff contended that pursuant to the commencement of Amendment Act, all rights available to a Hindu male member of HUF under the *Mitakshara* school of law have become available to the female members of the family as provided under Section 6 of the Amendment Act. Consequently, a daughter in the HUF is now recognized as co-parcener by birth in her own right and has the same rights in the HUF property as that of a son born in the HUF. Reliance was placed on the case of *Tribhovan Das Haribhai Tamboli vs. Gujarat Revenue Tribunal and Ors.* {AIR 1991 SC 1538} where the Hon'ble Supreme Court had held that the manager-ship of HUF property goes to a person by birth and is regulated by seniority and the *Karta* or the manager occupies a position superior to that of the other members. It was contended that merely because the Plaintiff is a female, it cannot act as a disqualification for appointment as *Karta* especially when she is the eldest of the co-parceners of the HUF.

**Contention of the Defendants:** The above arguments were rebutted by the Defendants on the ground that Section 4 of the Act has to be read in the context in which it was enacted, i.e. only those customary rights have been overridden for which there is a specific provision in the Amendment Act. As Section 6 does not specifically refer to the expression *Karta* of HUF, the right of becoming a *Karta* has to be adduced from the original text under the Hindu law. The Amendment Act only recognized the right of a female member to inherit the HUF property but did not extend to granting them any right in the management of the HUF property.

**Decision of Court:** The Hon'ble High Court held that in view of the Section 6 of the Amendment Act, the proposition that female member of the joint family would have rights to inheritance in the HUF property but at the same time will not be entitled to be appointed as a *Karta* for the management of the same HUF property is legally untenable. The impediment which prevented a female member of HUF from becoming its *Karta* was that of want of qualification of co-parcenership. Section 6 of the Amendment Act being a socially beneficial legislation has given equal rights of inheritance to both Hindu males and females. In view thereof, if the male member of a HUF, by virtue of being the eldest born member of the family can become a *Karta*, the same shall be applicable to the eldest born female member of the family too. It was further clarified that the marital status of the Plaintiff does not alter her right to inherit co-parcenership to which she has succeeded after the demise of her father.

**Conclusion:** It is evident that the intent of the legislature by passing the Amendment Act was to include female members of HUF within the scope of competent parties to inherit *Mitakshara* co-parcenership property. However, due to the ambiguity of the provisions of the Amendment Act and lack of awareness of the recent amendments including among women, the discrimination continued. The above forward looking judgment has clarified the actual intent of the legislature by holding that the female members who are entitled to inherit HUF property in capacity of co-parcener are also entitled to manage such property by application of law. Hopefully, it would gradually strengthen the position of the women in the social hierarchy and assist in elimination of gender discrimination, oppression and negation of the fundamental right of equality of women guaranteed under the Constitution of India.

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