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KARTA OF A JOINT HINDU FAMILY AN ANALYSIS OF THE QUALIFICATIONS, POWERS AND POSITIONS OF A KARTA *

INTRODUCTION

The person who governs the proper functioning of a Joint Hindu Family or the head of the family is called a Karta. This paper seeks to analyse the powers, the position of the Karta, the duties and liabilities of the Karta. The paper further talks about the need to redefine the qualifications, positions and powers of a Karta.

Concept of Hindu Joint Family or Hindu Undivided Family

A Joint Hindu Family is the normal condition of Hindu Society, or atleast it was until the last few decades. A joint Hindu family is a group of relatives tied together by ties of kinship & marriage and descended from a common ancestor. It includes children, children's children down the line, spouses. A joint Hindu Family is normally joint in worship/kitchen/business. Even daughter in laws/widowed daughters who has returned back to their parental side are part of a Hindu joint family. A joint family may encompass countless generations.

Concept of Karta

The manager of the Joint Hindu Family is called the Karta.¹The Karta of a Hindu joint Family in Hindu Law is the senior most member of the family entitled to manage family affairs, in his absence the next eldest male member after him is entitled to be the Karta. A Karta is the caretaker

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¹SurajBansiKoerVs. Sheo Prasad (1880) 5 Cal 148.

of the whole family and looks after the welfare of all the members of the family. His relationship with other members is a relationship of trust and confidence.²

In a HUF, the responsibility of Karta is to manage the HUF property. He is the custodian of the income and assets of the HUF. He is liable to make good to other family members with their shares of all sums which he has misappropriated or which he spent for purposes other than those in which the joint family was interested. His role is crucial. He is entrusted not only with the management of land/assets of the family but also is entrusted to do the general welfare of the family.³

His position is different from the manager of a company or a partnership. The reason behind it is that though the coparcenary deals with lands, assets/property but in an entirely different fashion. When a Karta is bestowed with such a position it is something, which takes place under the operation of law.⁴

Who can be a Karta?

1. **The Karta is the senior most male coparcener of the HUF:** Even if the Karta becomes aged, infirm, ailing, or even a leper, he may continue to be Karta. Where the senior most member is not Karta, the next senior male member takes over as Karta.⁵
2. **A junior coparcener can be Karta :** Only if the senior most member gives up his right, a junior coparcener can become Karta of the HUF, with the consent of all other members as held by Supreme Court.⁶
3. **There can be more than one Karta of a HUF:** There can be more than one Karta for a Joint Hindu Family.⁷
4. **Only Coparcener can become Karta:** The Supreme Court held that coparcenary is a necessary qualification for the managership of a joint Hindu family.⁸
5. **Minor as Karta:** In absence of the father, the elder minor son could act as the Karta of the family.⁹ Therefore, a minor can be the managing member of a Hindu undivided family.

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² G.M. Diwekar, Hindu Law – A Critical Commentary- 56 (Hindu Law House, 2nd Edition,2002)

³ *Union Of India vs Sree Ram Bohra And Others*, AIR 1965 SC 1531

⁴ Mulla, Principles of Hind law, vol.1 20th ed. (ed. S.A.Desai), LexisNexis Butterworths New Delhi, 2008

⁵ *Man vs. Gaini* ILR (1918) 40 All 70

⁶ *Narendra Kumar J. Modi Vs. CIT*, (1976) 105 ITR 109 (SC)

⁷ *Darshan Vs Prabhu Xc SVLR* (1946) All

⁸ *CIT vs. Seth Govindram Sugar Mills*, [1965] 57 ITR 510 (SC)

⁹ *Nemi Chand vs. Hira Chand*, 2000 (1) HLR 250 (Raj.)

¹⁰ *Budhi Jena v. Dhobai Naik*, AIR 1958 Oriss 7

6. **Father as a Karta:** If the manager or father is the Karta, he has certain additional powers of alienation under Hindu Law and in exercise of those powers he can alienate the Joint Hindu Family property so as to bind the interests of minor in such a property.¹¹
7. **More than one Karta:** Two persons may look after the affairs of the family¹²; the authority is based not on any Hindu Laws but on the members of the authority who confer faith on them. The most important qualification required to become a Karta is that a person should be a coparcener in the family. There can always be more than one managing member in the family.¹³

Position of Female as a Karta in a Joint Hindu Family

After amendment made by Hindu Succession (Amendment) Act, 2005, daughter can be coparcener of HUF like the sons of HUF. After her marriage she becomes member of her husband's HUF and continues to be a coparcener of her father's family.¹⁴ Being a coparcener, she can also seek partition of the dwelling house where the family resides and she can also dispose of her share in coparcenary property at her own will.¹⁵ If a Hindu dies, the coparcener property shall be allotted to the daughter as is allotted to sons.¹⁶ If a female coparcener dies before partition, then children of such coparcener would be eligible for allotment, assuming a partition had taken place immediately before her demise. A widow of a pre-deceased son even though remarried is now eligible for share in property as legal heir of the pre-deceased son of the family.¹⁷

Female as Karta

Many courts had held that only a coparcener can become Karta of HUF. Since, a female was not considered as coparcener, she was not empowered to act as Karta prior to amendment in Hindu Succession Act. However, w.e.f. 6th September, 2005, after amendments made by Hindu Succession (Amendment) Act, 2005 in respect of position of female member, the daughter of coparcener shall by birth become a coparcener in her own right in the same manner as the son.

¹¹*Subramaniam Vs. Krishnaswami*, AIR 1972 Mad 377

¹²*Union of India Vs. Shriman*, AIR 1935 SC 1531

¹³*Nemi Chand Vs. Hira Chand*, 2000 (1) HLR 250 (Raj.)

¹⁴*C.P. Berai Vs. Laxmi Narayan*, AIR 1949 Nag 128

¹⁵*Sushila Devi Rampura Vs. Income Tax Officer*, AIR 1959 Cal

¹⁶*RadhaAmmal Vs. Commissioner of Income Tax Officer*, AIR 1950 Mad 588

¹⁷*Commissioner of Income Tax Vs. Seth Govind Ram*, AIR 1966 SC 2

II. DUTIES AND LIABILITIES OF A KARTA

(1) Duty to Render Accounts:

It is the prime duty of Karta to render accounts to the other coparceners regarding the income from joint family property and the expenditures thereon. But he is not under any obligation to account for his past dealings with the family property unless there is clear proof of misappropriation or fraudulent use of the family funds or estate by him. He is liable to account at the time of partition only and then only for the family property as it exists at the time. But this does not mean that the parties are bound to accept the statement of the Karta as to what the property consisted of.¹⁸

(2) Duty to Realise Debt Due To the Family:

It is an important duty of the Karta to make sincere efforts to realise the debt due to family.¹⁹ But he cannot give up any debt, although he has got the full power to settle accounts with debtors and to make a reasonable reduction either towards interest or towards principal in the interest of the family.²⁰

(3) Duty to Spend Reasonably:

It is the duty of the Karta to spend the joint family funds only for the purposes of the family. It is not his duty to save by resorting to economy unnecessarily. He must spend reasonably. If he spends unreasonably and it is not approved by other members of the family, the remedy would be to demand partition.²¹

(4) Duty Not To Start New Business without the Consent of Other Coparceners:

The Karta must obtain the consent of other coparceners before starting a new business, as he cannot impose the risk of a new business upon the minor as well as adult members of joint family.²²

In ***P.S. Sairam v. P.S. Rama Rao***²³, Karta of the family uses joint family property for his separate business. He has started business by taking loan from market, in the premises of Joint-Hindu property. This property was not used only by the Karta, but also by junior members of Joint family. In this case, the Supreme Court observed that business carried on by Karta cannot be

¹⁸ *Dr. Gopal Vs. Trimbak*, AIR 1953 Nag 175

¹⁹ *S. Rangaswamay Vs. A. P. Transco and Ors.*, 2002 (4) ALT 108

²⁰ *Ghuia Devi Vs. Shyamlal Mandal*, AIR 1974 Pat 68.

²¹ *Chandra Kishore Vs. Nanak Chand*, AIR 1975 Del 175

²² *Sunil Kumar Vs. Ram Prakash*, AIR 1988 SC 576.

²³ Civil Case No: 817 of 2002

treated to be the joint family business and that properties acquired out of income of said business, have got to be treated as self-acquisitions of Karta.

(5) Duty not to alienate coparcenary property except for legal necessity and benefit to the estate:

It is the duty of the Karta to obtain the consent of adult coparceners before alienating the joint family property.²⁴ But if he alienates the property for legal necessity or for benefit to estate, he need not obtain the consent of other coparceners. Whether the transaction is sought to be justified on the ground of legal necessity or benefit to the estate, the real question to be considered is whether it is fair and proper transaction, such as, a prudent owner would enter into, with the knowledge available to him at the time.

III. POWERS OF A KARTA

(1) Power over income and expenditure:

The Karta exercises extensive control over the income and expenditure of the joint family. Since his position is not like the trustee or agent, he is not bound to economise or save like a trustee or agent provided he spends the income of the family for the benefit of the members of the family, e.g., for maintenance, education, marriage, and other religious ceremonies of the coparceners and of the members of their respective families.²⁵

(2) Power to manage joint family business:

The Karta has the power to manage the joint family business. In this respect he can take all such steps which are just and necessary for the promotion of the business.

(3) Power to contract debt for family purposes:

The Karta can enter into contracts incurring debts for family purposes and family business which will bind the other coparceners to the extent only of their interest in the joint family property.²⁶ Such debt contracts could bind the adult coparceners personally also if they were parties to the contract expressly or impliedly or they subsequently ratify the contract and in case of minors if they ratify on attaining majority.²⁷

²⁴*DevKishan Vs. Ram Kishan*, AIR 2002 Raj. 370.

²⁵Sanjiva Row, Sanjiva Row's *The Indian Succession Act*, 7th ed. 2000, Butterworths India, New Delhi

²⁶*Bhagyamma Vs. Nirangamma*, 2009 (111) BomLR 393.

²⁷*Jhabbu Ram Vs. BahoranSingh andOrs.* AIR 1926 All 243

In case of a loan advanced to the manager, if the lender makes due inquiry into the necessity for the loan and lends the money bona fide, the debt is binding on the interests of all the members although the reasonably credited necessity did not in fact exist.²⁸

(4) Power to Enter Into Contract:

The Karta has the power of making contracts, giving receipts, entering into compromises, discharging contracts ordinarily incidental to the business of the family.

(5) Power to Refer to Arbitration:

The Karta may refer to arbitration any matter involving the interest of joint Hindu family and the other members of the family including minors are bound by the reference and consequently by the award made upon it.²⁹

(6) Power to Enter Into Compromise:

The Karta can enter into a compromise in any matter relating to joint family property. He, however, has no power to give up a debt due to joint family and give up a valuable item without any return or consideration, though he has a right to settle accounts with the debtors and to make a reasonable reduction either towards interest or towards principal in the interest of the family.

(7) Power to Give Discharge:

The Karta has power to give a valid discharge to the debt due to joint family. Where one of the members of joint family is a minor, he cannot claim the benefit of Section 7 of the Limitation Act.

(8) Power to Acknowledge Debts:

The Karta has power to acknowledge a debt or make a part payment of it, so as to extend the period of limitation. But he cannot execute a fresh promissory note or a bond so as to revive a time barred debt.

(9) Power to Represent in Suits:

The Karta may represent the joint family in the event of a suit by or against the family, so that other members are not the necessary parties to the same. The Karta himself be sued or he can institute a suit with respect to any property or other matters of the joint family. Whenever a decree is passed against him, that would bind all other members of the family, if, as regards minor

²⁸K J Aiyar's Judicial Dictionary , 13th edn (ed P M Bakshi), Butterworths India, New Delhi, 2001

²⁹*Gauramma Vs. Mallappa*, AIR 1964 SC 510

members, he acted in the litigation in their interest, and in case of major members, he acted with their consent.³⁰

The Karta represents the interests of the joint family property also. A Hindu widow inheriting her husband's share under Hindu Women's Right to Property Act, 1937, does not by itself disrupt the joint family status.

After such inheritance she continues to be a member of the joint family and the Karta of joint family can represent her in all suits. The enlargement of her limited estate into full estate by virtue of Section 14 of the Hindu Succession Act does not bring about a change in the Karta's power to represent joint family including her.

(10) Power of Alienation:

The Karta can alienate for value the joint family property so as to bind the interests of the other coparceners provided it is made:

- (a) With the consent of all the existing coparceners; they being all adults;
- (b) For legal necessity³¹; or
- (c) For the benefit to the estate.

Thus where the Karta alienates the joint family property for legal necessity or for the benefit to the estate, the consent of the other coparceners to this effect is not necessary. He, in such cases can proceed to alienate the joint family property even without the consent of other coparceners.³²

He does not enjoy the absolute power to alienate joint family property. Some strict restrictions have been provided over his powers in this respect. The expression "for pious purposes" has been so often used in different contexts in Hindu law.³³ The powers of Karta cannot extend in this context.

In **G. Shiva Kumari v. Indian Overseas Bank**³⁴, the Andhra Pradesh High Court held that the Karta of joint family can burden the estate by mortgaging the property for the benefit of the estate. However, in doing so, he must act as a prudent owner with the knowledge available to him at the time of transaction. A transaction by the manager which is neither risky nor speculative but calculated to confer a positive advantage on the family, can be said to benefit the estate.

³⁰ *Jawwala Singh Vs. Lachman Singh*, AIR 1974 P & H 188

³¹ *DevKishan Vs. Ram Kishan*, AIR 2002 Raj 370

³² *P.S.Sairam Vs. P.S.Ramaraopisey*, AIR 2004 SC 1619

³³ *Ramesh DamodarDeshmukhVs. Damodar D. Deshmukh*, (1991) 1 Mah. L.J.153

³⁴ AIR 1978 AP 378

The law also sanctions gifts to strangers by a manager of a joint family of small extent for pious purposes. But a gift to a stranger, however, much the donor was beholden to him, cannot be sustained on the ground that it was made out of charity. The scope of the power cannot be extended on the basis of wide interpretation given to the words "pious purposes" in the Hindu law in a different context.

The father as a Karta of joint family can dispose of or mortgage the joint family property which includes the shares of his sons. Such sale or mortgage can be effected by him for the payment of debts which he had incurred for his personal gains. The alienations in such cases would be binding on his sons provided the debt was incurred prior to alienation and it was not for any immoral purposes.

In ***Pavitri Devi v. Darbari Singh***³⁵, the Court held that the Karta has got absolute power to alienate his undivided interest in the joint family. The transferee in such cases acquires the right to get that part of the property partitioned and to claim possession over it to the same extent and in the same manner as it was available to the Karta.

In ***Radha Krishna Das v. Kaluram***³⁶, the Supreme Court held that "where an alienation by way of sale of the family property made by a Hindu father is challenged by his sons on the ground of want of legal necessity then it is now well settled that what the alienee is required to establish is legal necessity for the transaction and that it is not necessary for him to show that every bit of the consideration which he advanced was actually applied for meeting family necessity. The reason is that the alienee can rarely have the means of controlling and directing the actual application of the money paid or advanced by him unless he enter into the management himself."

Legal necessity does not mean actual compulsion; it means pressure upon the estate which in law may be regarded as serious and sufficient. The onus of proving legal necessity may be discharged by the alienee by proof of actual necessity or by proof that he made proper and bona fide enquiries about the existence of the necessity and that he did all that was reasonable to satisfy himself as to the existence of the necessity.

Where the father in the capacity of Karta alienates the property on the ground of legal necessity, the burden of its proof is on the alienee. Where legal necessity is not proved, the alienation would be binding on the share of the father in joint family property. Similarly where the father gave away the ancestral property in gift to his daughter, the Madras High Court held that the gift was void

³⁵ 1993 (3) ALT 25 SC

³⁶ AIR 1967 SC 574

not voidable. Where a coparcener surrenders his share in the coparcenary property in favour of his wife, it was held to be invalid.

The Supreme Court held that where the father as a Karta proceeded to sell away joint family property on account of legal necessity, no coparcener could restrain him through a suit of injunction from doing it. If the coparcener considers the sale to be bad, he could challenge its validity after the sale is affected.

Where the sale considerations were spent by Karta who was agriculturist, on purchase of agricultural implements and also on marriage of granddaughter it was held that the sale was for legal necessity therefore the court refused to set aside the sale merely on the ground that consideration was meagre. Similarly in ***Sunder Das and others v. Gajananrao***³⁷ & others, ancestral property was alienated by the Karta on ground of legal necessity.

It was mentioned in sale-deed as to sale being for legal and family necessity. Father was serving as upper division clerk in court. He was not shown to have been addicted to immoral conduct. Sale was thus treated to have been taken for family necessity. Thus father was held competent to have disposed of share of minor sons. Hence the minor sons were bound by the sale made by the father for family necessity.

In ***Naresh and others v. Babulal***³⁸ and others, the High Court held that Karta of the family cannot be restrained from alienating joint family property.

IV.POSITION OF A KARTA

The Karta should ensure that all the wants and needs of the members of the family are satisfied provided they are reasonable. The members have a right to enforce legal action against the Karta, as in when he fails to perform his duties.³⁹ Also, A Hindu Undivided Family (HUF) offers specific advantages as far as taxation is concerned. The Income Tax Act and Wealth Tax Act recognise the HUF as an independent assessable or taxable entity. Hence, HUFs enjoy all deductions and exemptions under the IT Act independent of the income and tax liabilities of its members. The Hindu Law defines the HUF as a family, which consists of males lineally descended from a common ancestor and includes their wives and unmarried daughters. All of these gives vests position in the Karta.

Legal Position of the Karta

³⁷ AIR 1997 SC 1684

³⁸ Criminal Case No: 1339 of 2014

³⁹ Werner Meneski, Hindu Law Beyond Tradition and Modernity 491 (Oxford University Press 1st Edition 2003)

The karta can file suit or take other legal proceedings to safeguard the interest of the members of the family, the properties and the business.⁴⁰ He also has a right to representation.⁴¹ Where a transaction purports to have been entered by two or more described as Kartas or Joint members of the family, they must all join as plaintiffs in the suit.⁴² An adverse order passed against the manager requiring him to deliver the possession of the property to another person, binds the other member members of the family though they are not parties there.⁴³ He can refer any dispute to arbitration or settle or can effect settlement or compromise of such dispute.⁴⁴

Position Regarding Debts

He can acknowledge liability to pay debts due and payable by the family, to give discharge for the debts; to pay interest on money borrowed etc. due and payable by the family.⁴⁵ If a decree is passed against the Karta of the Joint Hindu Family in respect of a liability properly incurred for necessities of the family, the binding character of this decree upon the interest of the other members depends, not upon their having or not having been parties to the suit but on the authority of the Karta to bear the liability.⁴⁶ A creditor advancing money to the manager must satisfy himself that the money was required for family purpose.⁴⁷

Position Regarding Income

The Karta of the Joint Hindu Family has absolute authority to decide how the expenditure will be met, how the income will be spent and how the surplus will be utilized.⁴⁸ It is general rule that all members who works or do business out of joint family property must hand over income to Karta.⁴⁹ It is for Karta to allot funds to the members and look after needs and requirements, so long as family remains joint, no member can ask for any specified share in the income.⁵⁰

Position Regarding Management

Karta is sui generis (of its own kind) the relationship between him and members is not like principal or agent or like partners in a partnership firm.⁵¹ He is the head of the family and acts on

⁴⁰*Sheoshankar Vs. Jaddokunwar*, AIR 1914 (41) IA 216

⁴¹*AmritSagar Vs. SudeshBeheriLal*, AIR 1970 SC 5

⁴²*Ramsebuk Vs. Ramlall*, 1881 6 Cal 815

⁴³*Venkatanarayana Vs. Somraju* 1937 Madras 880

⁴⁴*Venkata Row Vs. Tulja Ram Row*, AIR 1922 P.C 69

⁴⁵*Annamalai Vs. Chettiar Vs. VeerappaChettiar*, AIR 1956 SC 12

⁴⁶ *Ibid*

⁴⁷ *AcharyaSukhlendra*, Hindu Law 631 Modern Law House, 1st Edition, 2002

⁴⁸*RamnathVs. Goturam* 1920 (44) Bom 79.

⁴⁹*Pritam Singh Vs. Ujgar Singh*, 1878 (1) All 651

⁵⁰*BhogganiVs. Jaggernath*, 1909 13 CWN 309.

⁵¹*Gendalal Vs. Nanalal*, AIR 1956 MB 58.

behalf of other members.⁵² He stands in a fiduciary relationship with other members but he is not a trustee, nobody can question what he spent unless charges of misappropriation. When any coparcener charges of improper alienations made by Karta, burden of proof lies on him to prove such are mala fide acts of Karta.⁵³

Position Regarding Property

Movable Property as gifts

The father or the Karta has the authority to gift ancestral joint family property to sons, daughters etc. as a matter of affection wherein the gift is in furtherance of "indispensable acts of duty, and family, relief from distress and so forth".⁵⁴ Such gifts do have limitation like a gift cannot entail the whole property to be given to one particular member as it cannot be then upheld as "gift of affection".⁵⁵

Immoveable Property as gifts

The Karta does possess the capacity to gift an individual, owing to few restrictions, for pious purposes. It was laid down in *Guramma v. Mallapa*⁵⁶ that a father can gift his daughter a portion of an immoveable property if it conforms to the reasonability criteria, looking at the properties which are owned by the family. Though, it is not acceptable for a husband to gift any such property to his spouse under the clause of "Pious Purposes".

V. CONCLUSION

The concept of Karta in a Joint Hindu Family is not just a position of power but also serves a very practical purpose. With the Karta being the head of the Joint Hindu Family, the family gets a proper structure and thus functions properly. The Karta acts as a centralizing force. As he is the head of the family, he has proper experience and knowledge to take the appropriate decisions that are suitable for the family. Centralization is the key to good management and is provided by the Karta. Despite all the powers the Karta has, a lot of checks have been also imposed on Karta to prevent any misuse of power. This ensures that the Karta works for the welfare of the Joint Hindu Family.

⁵² *Krishnamurti Vs. Chidambara*, (1946) Mad 670.

⁵³ *Laxminarayan Vs. Dinker* 1943 3 Nag 390.

⁵⁴ *Kameswara Sastri Vs. Veeracharlu*, (1911) 34 Mad 420

⁵⁵ *Abhaychandra Vs. Pyari Mohan*, (1870) 5 Beng LR 347

⁵⁶ AIR 1964 SC 510



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