CONCLUSION

The joint Hindu family, a unique Hindu law institution has served a very useful purpose in Hindu society. It was a complete security against old age, unemployment and disability and insurance for a widow and her children who were to be looked after by the surviving members. Based on the principle of 'from each according to his capacity, to each according to his needs' the joint Hindu family was a forerunner of communism, yet by admitting the possession of individual property by the members of the family, it provided a synthesis of communism and capitalism.

This unique institution which has served one of the largest communities inhabiting this globe through the centuries suffered a set back in the modern times. As it would have been observed the development of Hindu law in the recent years has been mostly through tax laws.¹ Not that there was no civil litigation relating to family properties, but it was more on tax side.² Joint Hindu family under the name of Hindu undivided family is treated as a separate taxable unit and since our tax system³ is based on progressively increasing rates of tax for higher income, it is always considered beneficial to create as many taxable entities as possible so as to keep the taxable amounts within the lower slabs which attract a lower rate of tax. Individuals would, therefore, claim that a part of their

2.  Ibid.
3.  Ibid.
income was that of their Hindu undivided family and the Income-tax authorities would try to club the two together to charge a higher rate of tax. These disputes obviously went up to the highest court and many involved questions relating to the ownership of an income or asset by an individual or the Hindu undivided family had to be decided.

Various devices have been used by the Hindu undivided families to reduce tax incidence: Partial partition was one such device. Under the Hindu law of scriptures, partition of family property meant a total or complete partition of entire joint family assets, and partial partition of the properties was not within their contemplation. It was mainly for reducing their tax liability that Hindu undivided families resorted to partial partitions and this new concept of Hindu law which is entirely judge made came to be recognised.

4. The meandering of the High Courts have encouraged even a lone wayfarer to approach the Supreme Court seeking a verdict that a solitary individual constitute a Hindu undivided family, per Khanna, J., in Krishna Prasad V C.I.T. (1974) 97 I.T.R. 493.

5. See f.n. Chapter vi.


7. Raghvachariar, *Hindu Law*, 6th Edn., page 433- the law relating to partial partition is practically judge made (Contd...).
as such. Putting one's self-acquired property by a member into the family hotch-pot or impressing his individual property with the character of Hindu undivided family property was another device. The added advantage in such transfers was that they were not considered to be transfers as the term is understood under the Transfer of Property Act, and therefore, the ownership of property could shift from the individual to Hindu undivided family or from the Hindu undivided family to the individual without executing any formal instrument attracting stamp duty or gift-tax. Although under the Income-tax Act avoidance of Income-tax was negatived by making deeming provision under Section 64, relating to transfers to spouse or minor children, this object could be achieved by impressing individual property with the character of Hindu undivided family property and then making a partial partition of the asset and creating new taxable units. Section 64 of the Income-tax Act was therefore, amended by adding Sub-section (2) in the Act through Taxation Laws (Amendment) Act, 1975 which came into effect from 1.4.1976 to cover such cases of legal avoidance.

... law since the Hindu law texts do not contemplate cases of partial partition.

8. It would not, therefore, be wrong to say that most of the joint families existed only on paper for taxation purposes.


and by adding sub-section (c) to Section 171, partial partitions were derecognised, through Finance Act of 1980, which came into effect from 1.1.1979. Thus whereas questions arising in tax laws resulted in establishing new concepts of Hindu law, the established principles of Hindu law helped the tax planners in tax avoidance which forced the legislature to derecognise such devices.

In the recent times the enactment of Hindu Succession Act, 1956, gave a set back to the joint Hindu family, which has accelerated the extinction of the most cherished institution of the Hindus; viz., while interpreting section 8 of the Hindu Succession Act, 1956 in C.I.T. V Ram Rakshpal, Addl. C.I.T. (Mad.II) V V.R.A. Manicka Nugaliar, Addl.C.I.T.(Mad.I) V P.I.Karuppan Chettiar, Ghasiram Agarval V C.G.T., C.W.T. V Chennersen and C.I.T. V Khushiram Rangiram, it was laid down that the separate property of the father inherited by the son and the income from such assets would be assessed as the individual income of the son. This interpretation is not in conformity with the principles of Hindu personal law under which when a son inherits from his father, father's

12. (1968) 67 I.T.R. 164 (All.).
father, and father's father's father he holds such property as ancestral qua his son, son's son and son's son's son.

Not only was the individual property of the Hindu not to devolve on his survivors as a joint family, but even his interest in the joint family property was now to be inherited by his heirs under the Hindu Succession Act, 1956, if he was survived by a female in Class I of the Schedule to this Act or a male claiming through such a female.

In C.I.T. v Babubhai Mansukhbhai, and Prjjal v Deulat Ram, Gujarat and Punjab & Haryana High Courts respectively have held the opposite view that the separate property inherited from the father by a son would be held by him as ancestral one qua his sons as section 8 of the Hindu Succession Act, 1956 deals with the devolution of the property and does not change the character of the property in the hands of the son on whom the property devolved by succession. It is submitted that the same would be the case with the interest of the deceased in the Hindu undivided family property, inherited by a son under the proviso to section 6.

Thus, according to one view, there were to be no more additions of the individual property of a deceased member to

the properties of the family and even a part of the family property representing the interest of the deceased in the joint property was to go out of the hands of the family, it was considered that at least to the extent of the interest of the surviving members the family property remained joint.\textsuperscript{17} However, the Supreme Court's decision in the case of \textit{ Gurupad Khandappa Magdam V Hirabai Khandappa Magdam\textsuperscript{16}} has shattered this last hope and the decision virtually means that on the death of a coparcener survived by a female heir in Class I of the Schedule, or a male claiming through such a female, there would be a complete and automatic partition of the entire family properties among all the members who are entitled to a share on partition. If joint Hindu families have to survive this position must be remedied.

The judicial interpretations of the law and the legislative efforts to plug all possible loopholes of tax evasion have thus created a situation in which the joint family has been greatly mauled and it is legitimately felt that if this process continues the Hindu undivided family may be eased out of existence. Supreme Court in \textit{ Gowli Buddanna V C.I.T.\textsuperscript{19}}, \textit{ N.V. Harendranath V C.I.T.\textsuperscript{20}}, \textit{ Surjit Lal Chhabra}

\begin{itemize}
  \item \textit{C.I.T. V Smt. Nagarti\textsuperscript{21}} (1976) 76 I.T.R. 352(Mysore);
  \textit{See Also C.W.T. V Kantilal Manilal (1973) 90 I.R.\textsuperscript{22}}.
  \item \textit{A.I.R.} 1966 S.C. 1523.
\end{itemize}
V C.I.T. and C.W.T. v Smt. Champa Kumari Singh, while reiterating that the concept of Hindu undivided family in tax laws means the same thing as a joint Hindu family under the Hindus personal law, it is respectfully submitted, has deviated from the meaning attributed to the expression under the Hindu law to such an extent that we have to take a second look at the semantics of the expression. Particularly in view of the decision in Surjitlal Chhabra's case, where the assessee who all along was assessed as an individual claimed the status of Hindu undivided family, consisting of himself, his wife and unmarried daughter by throwing his separate property into the common hotch-pot and the Supreme Court held that although the assessee constituted a Hindu undivided family along with his wife and daughter on the ground that the joint and undivided family is the normal condition of the Hindu society, the property thus thrown by him into the family hotch-pot could not constitute Hindu undivided family property. This has almost blurred the distinction between the nuclear family and joint Hindu family and this is exactly what the Supreme Court has done. When a solitary individual weds, he merely constitutes a nuclear family and the assertion of the Supreme Court that since Hindu undivided family is the natural condition of the Hindu society, assessee constitutes a Hindu undivided family

With his wife and daughter is semantically untenable. With great deference to the learned judge, it is submitted that he has misapplied the presumption relating to Hindu undivided family as this presumption is only meant to decide the preliminary issue by the courts relating to the status of the family when some members of the family allege that they are separate and the others assert that they are joint. It is in this context that the presumption of the joint family is made by the courts. The basis of the presumption is indeed obvious. When a son is born under Mitakshara law, he immediately constitutes a Hindu undivided family with his father having right by birth in the family property. Therefore, when a family consists of father and sons and may be other female members too, the court presumes that they are joint because it is the natural condition of a family and not in the situation in which the Supreme Court applied the presumption. Thus this interpretation gives a new twist to the meaning of Hindu undivided family which means that any Hindu can start a Hindu undivided family at his option at any time even without having a son. It is thus submitted that the time has come to grapple with the concept of Hindu joint family in correct perspective. After all the conceptual delusion has to be abandoned.

Despite several frontal and flanking attacks on the joint family structure, the Hindu joint family is still an important aspect of the life of a Hindu. Retention of this institution is still necessary as it still plays a vital role in the social, economic and financial institutions of the country as Hindu undivided families are engaged in big businesses and industries so vital to the progress and prosperity of India. To preserve the cherished institution of Hindu joint family, which is still an important instrumentality in the strengthening of the national economy, it is the imperative need of the time that the Parliament should step in and set at rest the conflicting judicial interpretations, and check tax evasion. It is submitted that the amendments in the substantive provisions of Hindu law, Income-tax law and in the adjudication machinery are required so that the two fold objectives of preserving the institution of Hindu undivided family, and preventing it from becoming an instrumentality of tax evasion are achieved:

I. Amendments in the substantive provisions of Hindu Law:

(1) With a view to making it clear, a provision be added that the separate property inherited by a Hindu male from his father, father's father, or father's father's father will continue to be ancestral property in his hands qua his sons, son's son and son's son's son;
(ii) explanation should be added by way of clarification to Explanation 1 to Section 6 of the Hindu Succession Act, 1956, to the effect that the deemed or notional partition is not an actual partition but it is only for a limited purpose, i.e., to ascertain the interest of the deceased coparcener and when once his interest is worked out, that interest alone would devolve among the heirs of Class I. Fiction or notional partition should be used as a device to find out the share of the deceased coparcener and should be confined to that purpose alone.

II. Amendments in the provisions of Income-tax Act:

(i) initial tax exemption limit to the Hindu undivided family be at least Rs. 10,000 more than any other category of assesses. This will check the fake partitions, and encourage Hindu joint family system;

(ii) penal provisions for tax evasion should be made stringent;

(iii) no appeal should be entertained by any appellate authority unless the tax imposed by the tax authority is deposited. This will restrict the prolonged litigations, as we find today, and loss of revenue to the government;
the provisions added in sections 64 and 171 vide  
Taxation Laws (Amendment) Acts, 1970 and 1975 and  
Finance Act of 1980, be repealed, so that the Hindu  
joint family is restored to its pristine glory.

III. Amendments in the adjudicating process:

(i) separate Bench(es) at the High Courts and Supreme  
Court, be constituted to hear tax cases and the judges  
on these Benches should be taken from the Indian  
Revenue Service and the academicians specialized  
in Hindu law and taxation. This will not only help  
in the speedy disposal of tax laws cases but bring  
more consistency in the decisions;

(ii) at the Appellate Tribunals too, the academicians  
should also be appointed as members and chairmen;

(iii) the oral arguments of the counsel should be limited  
for half an hour on either side to facilitate the  
disposal of a greater number of cases;

(iv) the practice of filing written briefs must be made  
obligatory on counsels. With the introduction of this  
practice, half an hour time for oral arguments would  
be enough. Presently most of the time of the Courts is  
consumed on hearing the lengthy arguments of the senior  
Advocates even in cases which have no merits. Submission
of written briefs will lead to exactitude and narrowing down of matters in controversy and afford opportunities for young lawyers to do research;

(v) every tax case should be disposed of within six months and the system of adjournments should sparingly be used.