The Hindu Gains Of Learning Act, 1930 - A Critical Analysis

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The Hindu Joint Family defines the collective system of family and relations in the Hindu society. It can be looked at, as a broad field having narrower paths, each defining a specific purpose. Its origin can be traced to the patriarchal system where the head of the family was the unquestioned ruler having control over the property. One of the narrower paths that this broad system has is the concept of coparcenary. The coparcenary[2] consisted of the male members (till 2005)[3] till three generations from the holder of the property.[4]The issue that this paper would be discussing is whether the property acquired by the member of the joint family using his own educational skills, which was financed by the joint family fund,would be regarded as a part of the joint family property or a separate property.

The issue in question is answered by The Hindu Gains of Learning Act, 1930. This Act may look like a needle in the haystack, with respect to the broad concept ofHindu Undivided Family ('HUF'),however, it has governed a very prominent part of the HUF with respect of the use of the joint family funds. The Act discusses the validity of the self-acquired property of the member of the joint family. The Hindu Gains of Learning Act, 1930enacted that earnings which were a result of special education, at the expense of the family, should be deemed to be the separate property of the acquirer. One of the reasons that this act came into existence was because of the need of the Indian Civil Service to keep their earnings separate from the joint family property.[5] This Act has conveniently allowed the members of the joint family to hold their self-acquired property, however it has left too many

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[2]Hindu Succession Act, 1956, Section 6.

[3]*Id.*(After the 2005 amendment, even daughters, both married and unmarried were given the title of coparcenary)

[4]POONAMPRADHANSAXENA, FAMILY LAW II,chapter 3, *Coparcenary Property*, Page 76

[5]Gulnther-Dietz Sontheimer, *Recent Developments in Hindu Law*, hienonline

questions unanswered, making it full of discrepancies. It gives an ambiguous perspective of the functioning of the concepts of liabilities, obligations and duties of its members in a HUF.

The few questions that this paper tends to discuss are what proportion of the joint family funds can be used to fund the education of the member of the joint family. Secondly, the nature of utilization[6] of joint family funds belonging to the coparcenary being used by non-coparceners (The Act specifies the members of the joint family and not only the coparceners). This paper also discusses the obligations of the member, who is the recipient of the education that is being imparted with the use of the joint family funds. While this paper also seeks to draw various comparisons with other concepts that the Hindu Joint Family system upholds, the main contention of the paper is, that if members have used joint family funds for their "special learning",they should be liable to give a "share" of their earning or acquisitions back to the joint family. The paper argues for a middle ground, rather than an extreme conclusionand recommends certain changes or additions that should be made to the Act.

In order to understand this Act, one also needs to understand the history of the rights of joint family, whichgave power to include the self-acquired property of the members as a joint family property. The general rule that existed was that 'any property or income acquired with the aid of joint family funds or with the detriment to the joint family property would itself become joint family property'.[7] This rule was being applied without any exceptions, to the extent that the whole self-acquired property of the member was being taken as the joint family property, under the pretext that the member of the joint family had used the joint family funds to impart education and hence the property acquired by the member was a part of the joint family. There were no distinctions between the primary education and special learning. The problem here was that the gains from the special skills with the use of family funds are also indirect gains and should be compensated in some form. However the Gains of Learning Act does not allow this.

[6] Nature of Utilization, refers to the purpose they have borrowed and whether it can be considered a loan or not

[7] POONAM PRADHAN SAXENA, FAMILY LAW II,Chapter 5, Categories of properties, Gains Of Learning, Page 137

One of the prominent arguments in favor of passing the Act was that the members of the joint family would never be able to create separate property because all their self-acquisitions would become joint family property.However this was not the case. Before passing of the Act, there were cases where the courts have not merged the self-acquired propertyinto the joint family property.This could be seen in *DurgaDutt Joshi*v. *Ganesh Dutt Joshi and Anr,5 IndCas 400*. Here,the plaintiff was a prominent astrologer and with a view to continue having uninterrupted study, he in the life-time of his father withdrew from living with his family and lived in seclusion, leaving his mother, his wife and his brother, in the ancestral house of the family. He had received a considerable sum of money, when he became a prominent astrologer. He had invested his money. The joint property of the family had not been partitioned. The defendant claimed that the income received by plaintiff for his services as an astrologer and the property acquired with such income, should be joint family property and hence should be brought into hotch pot in the partition sought to be effected. The court stated "where a son has received such education from his father, which was elementary education, which a boy in tender years would imbibe and the son had not used the joint family funds to achieve special skills or impart any form of special learning his self-acquired property would not be a part of the family property".[8]

The court also had a similar position in *Lachmin Knar* v. *Debi Prasad 20 A. 435*. In this case, there were three brothers, Ram Narain, SheoNarain and Jai Narain, whose ancestral home was at Bilar in the Cawnpore district. They went out into the world and obtained employment in the Commissariat Department and in the course of time each acquired considerable wealth. They were not shown to have had any assistance from the joint family funds except in their support in early years and rudimentary education. It was not shown that any money was raised on the ancestral house to start any of them in life. They did not work jointly and no one of them was shown to have had any concern with the savings and accumulations of the other brothers. The question before the Court was whether the savings and accumulations of one of the brothers formed joint family property. It was contended

[8]*DurgaDutt Joshi* v. *Ganesh Dutt Joshi and Anr*., 5 IndCas 400

in support of the affirmative that SheoNarain was educated, when a boy, at the family expense and that, therefore, his subsequent earnings and accumulations should be treated as joint family property.[9] Rest of the brothers had the right to keep their self-acquired property as their separate property.

Thus we can see that the argument about "being unable to create separate property", before the passing of this Acthas failed. The courts have recognized that receiving elementary education does not bind the individual to give away his self-acquired property into the joint family property. It is only when the individual was receiving any form of "special education/skills" with the help of joint family fund, he is liable to pay. In *DurgaDutt Joshi* v. *Ganesh Dutt Joshi and Anr*,5 IndCas 400the courts denied the merging of the plaintiffs self-acquired property into the joint property. In *Lachmin Knar* v. *Debi Prasad* 20 A. 435 when the court saw that SheoNarain was educated (special learning) at the expense of the family his property was merged into the joint family fund. It was further found that other members had only received rudimentary education and were thus exempted from giving their self-acquired property to the joint family property. This was because the joint family fund was not at the detriment when the plaintiffs acquired any form of special skills/education. The contention here is that the Gains of Learning Act should also have had a provision where the property acquired by a member of the joint family, usinghis special education, which was funded by the joint family fund should be made a part of the joint family property.

Furthermore another argument raised is that education is considered as maintenance[10] and hence each member deserves a right to get it, using the joint family funds, without having to give their self-acquired property into the joint family fund. Section 3 (b) of the Act states that Gains of Learning is to be held as the separate property of the acquirer by reason of "himself or his family having, while he was acquiring his learning, been maintained or supported, wholly or in part, by

[9]*Lachmin Knar* v. *Debi Prasad*, 20 A. 435

[10]POONAMPRADHANSAXENA, FAMILY LAW II,Chapter 5, Categorization Of Property, Gains of Learning, Page 138

the joint funds of his family, or by the funds of any member thereof"[11].Here acounter-argument raised is that, if education is defined under the purview of "maintenance"[12] and it is seen as a right of all the members of the joint family, then that form of education should be restricted to primary education and not special education. In the Indian Context, one attains special education/skills after clearing the twelfth grade and at the age of eighteen. If a person is a major, then the parents are not entitled to maintain him. If the member of the joint family uses the joint family funds for his special education, he should be liable to pay back. The nature of this kind of borrowing should be "treated as a loan" on which the borrower (member of the joint family) should pay back the principle amount and the interest. These kinds of "returns" should be derived from the income earned or from the self-acquired property, of the member of the joint family who had borrowed money.

In *Gokalchand*v.*Hukumchand,* AIR 1921 PC 35[13],where a person had acquired education by paying fee from the joint family income which enabled him to acquire knowledge, compete at a competitive examination and become a member of the Indian Civil Service. It was held by the Court that salary earned by said person was the property of joint family and thus should be partitioned between the members of the said family. This judgment is made at a time before the Act came into existence. However if one looks at the practicality of the judgment, one realizes that making the user (member) of the joint family fund liable for his/her education is an essential aspect.After the decision of Privy Council in Gokalchand's case (supra),Hindu Gains of Learning Act,1930was enactedby virtue of which allgainsoflearning, whether thelearningbespecial or ordinary, became the self-acquired property of the acquirer[14]. In this case the member of the joint family was a major. He had used the joint family fund for receiving special skills. In fact, one of the reasons he was able to become a member of the Indian Civil Services was because he was able to use the family funds to fund his training for the exam. It is to be noted that, here that the

[11]Hindu Gains of Learning Act, 1930, Section 3(b)

[12]The Hindu Adoptions and Maintenance Act, 1956, Section 20(2)

[13]*Gokalchand*v.*Hukumchand* AIR 1921 PC 35

[14]Hindu Gains of Learning Act, 1930

emphasis lies on the nature of utilization. The use of the family funds by a major to acquire any form of special skill/knowledge should be treated in the form of money borrowed and not as a right to maintenance. Hence, its treatment should also be in such a way where a proportion of his self-acquired property which is equivalent to the principle amount borrowed plus interest, be made a part of the joint family property. Furthermore, here it is not restricting any member of thejoint family to use the joint family fund and only making sure that the benefit derived from the family fund is paid back.

In order to critically analyze the Act we have to look at the aspects which have not been covered by the Act and can be added for better clarification of the Act. While enacting this Act, one aspect that the law makers forgot to put was the "reasonable amount clause". According to section 3(a) of The Hindu Gains of Learning Act, 1930 "his (member of the joint family) learning having been, in whole or in part, imparted to him by any member, living or deceased, of his family, or with the aid of the joint funds of his family, or with the aid of the funds of any member thereof"[15]. The law allows the members of the Hindu joint family to use the joint family funds, but it does not specify the proportion, that the members can use to aid "Gains of Learning". This flaw can lead to creating unfair advantages for certain members of the family. With the privatization of education, the cost of education has also increased. Thus, even if a member of the hindu joint family uses the family fund for education purposes, he would be causing a substantial detriment to the family fund.

The concept of "reasonability clause" does exist in other areas of the subject of hindu joint family. It could be understood by drawing parallels to the concept of father being allowed to "gift a reasonable proportion" of the joint family property to his daughter.[16] If the gift is of a disproportionate size it would be held invalid. Similarly, if the funds being used for special learning is of an amount that is not reasonable and it would be causing a severe detriment to the joint family fund, then the member of the joint family should be liable to give a certain amount of his self- acquired

[15]Hindu Gains of Learning Act, 1930, Section 3(a)

[16]*R. Kuppayee*v. *Raja Gounder*, (2004) 1 SCC 295

property into the joint family property, thus compensating for the detriment caused to the family fund.

Moreover another suggestion that this paper seeks to make, is on the moral ground. It is suggested that the member who is using the family fund should have an obligation towards the family to repay in any form. The members should be obligated to payback whatever amount of the family fund they used to aid their special learning. This would draw another parallel to with the concept of pious obligation[17] i.e. the son's liability to pay for his father's debts which were not for immoral or illegal purpose.

A similar point has been discussed in Narada, where it was stated that, whatever is acquired by the member of the joint family, at the expense of joint family funds should be partible at the instance of the family members. The Narada expressly provided for that "he who maintains the family of a brother, while that brother was engaged in study, shall get a share in the latter's money that he makes with the help of this learning"[18]. The contention raised is, that a certain proportion equivalent to the detriment caused or the amount derived of the family fund, should be taken from the self-acquired property of the member, it may not be the whole self-acquired property.

If we look in the current scenario and analyze the cases after the Act came into existence, it should be noted, that the sole factor that is being considered to define the property in question as self-acquired or joint family property is whether the member had acquired the property using "gains of learning". If a member of the joint family uses the joint family funds to acquire other assets or starts a new business with it, it would be considered a part of the joint family property. However, gains of learning should be considered as an asset that has been acquired using the joint family funds. It may not be tangible or measurable. The lawhas not distinguished between tangible or intangible assets. The mere fact that gains of learning has also been achieved by causing a detriment to the family property,

[17]Hindu Succession Act, 1956,Section 6(Pre 2005 concept. After 2005 it got removed)

[18]POONAMPRADHANSAXENA, FAMILY LAW II,Chapter 5, Categorization Of Property, Gains of Learning

should make it fall into the same category as any other asset that has been acquired by the member using joint family funds.

Furthermore another reason that was furthered for passing this bill was to further the rights of widows. MukundraoRamraoJayakar, had presented Gains of Learning Bill as vital for improving the position of Hindu women. Women's inability to succeed to property held by the Mitakshara coparcenary unit left widows exposed to poverty and a life of destitution. His bill would remedy this situation by securing a man's earnings as his individual property, which made his wife eligible to inherit. A Hindu woman's access to property would thus improve under the bill, though only on the basis of her married status.[19]However, this was not the case now. After the passing of the Hindu Succession Act, 1956[20] women and widows have got more rights in family property. Thus, again the argument stands invalid in the context of the twenty first century. Giving the individuals the right to use their joint family fund in order to acquire special education, which later in life, forms their means of subsistence is the motive. It does not get defeated if their certain proportion of separate property is taken up by the joint family fund as a return, nor does it cause any detriment to the widows in the present scenario.

In the recent times, it is evident that there need to be certain changes in the Act[21]. The society has evolved and thus there is a need for the law to evolve at a similar pace. The need of the hour at that point of time was to have a law, which allowed the members of the joint family to have their own separate properties. The law was thus enacted keeping in mind this need of creating separate property. In the current scenario, the need of the hour is to amend the law in such a way, that it does not take away the "rights of the joint family" rather than the individual. The Hindu Gains of Learning Act, 1930 has left too many open-ended conclusions. The Act failed to define what amount of family fund is reasonable. There needs to exist a middle ground on which the law canoperate and differentiate between primary and special

[19] Eleanor Newbigin,*The codification of personal law and secular citizenship*, The Indian Economic and Social History Review, 46, 1 (2009): 83–104

[20]Hindu Succession Act 1956, Section 6(2005 amendment)

[21]Hindu Gains of Learning Act, 1930

education. The question that remains with us to ponder upon is, whether the family needs to have an obligation towards its members or is it the members who owe it to the family for their special education. Thisshould be made an important criterionfor determining how this Act can further be shaped.