Introduction:

A Hindu Joint Family setup is an extended family arrangement prevalent which has an enormous legal significance in India. Simply, a Hindu Joint Family would at best be described as, the lineal descendants and their dependants where, the former trace their origin to one common ancestor. The underlying essence of a joint family is the fact that it traces its origin back to one common ancestor and with the addition and deaths of members, joint families can continue till eternity.

It is important to understand that though a single familial unit, a Joint Hindu Family does not have a separate legal identity and is not a juristic person. Though, the only collective statutory recognition that has been bestowed upon a Joint Hindu Family is for the purposes of taxation. Though, the definition is highly flexible.

The researcher, through this paper aims at throwing some light upon certain issues associated with the Hindu Joint Family Setup; especially for a student of Family law. The focal points of the research are drawn into the following heads:

- Distinction between the Mitakshara and Dayabhaga schools of law – qua the Hindu Joint Family Setup. An analysis into how, the two schools of law look at the familial arrangement. For e.g. In a Hindu undivided family governed by the Mitakshara Law, no individual member of that family can predicate that he has a definite share in the property of that family.
- A brief insight into who are the Important Role Players – the Karta and the women (especially in the context of them becoming coparceners post 2005)
- Status of the Property for the Joint Family – An overview over the concept of partition of property. The researcher also intends to throw some light into the status of the property for the purposes of Taxation. It may be stated that for the purposes of the Income Tax Act (S. 171), a partition by metes and bounds i.e. a physical division of property is required.

Distinction between the Dayabhaga And Mitakshara Schools:

Important terminology:

Before embarking upon an explanation as to what is the distinction between the schools of law, it is important to define some important terms.

- Coparcenary: Partnership in inheritance; joint heirship; joint right of succession to an inheritance.
- Unity of Possession: Though, a coparcenary may exist, yet till partition takes place there cannot be a definite share for any of the coparceners.
- Doctrine of Survivorship: The concept basically states that, the property would be devolved upon the death of the coparcener to his next survivor, irrespective of who his heir is.
- Karta: The eldest member of a Hindu Joint Family is known as the Karta of the coparcenary. He is the representative of the family.
- Alienation: the voluntary and absolute transfer of title and possession of real property from one person to another.

**Effect Of Coparcenary:**

There is a difference in the way a joint family comes into existence in the Mitakshara and the Dayabhaga systems. Under the Dayabhaga School on the death of the Karta, the succession is per stirpes; that each son has an equal and absolute share. By absolute, one may note that none of the descendants of the heir inheriting have any right over the property. In addition to this, if one of the heirs dies then, even his wife or unmarried daughter have a share over his property which is not possible under Mitakshara law.

**Interest By Possession**

Another point of distinction between the Mitakshara and the Dayabhaga schools is that a coparcener takes a fixed share once the Karta dies. In other words it’s a certain share. Thus, for example a person dies leaving behind 4 sons, then each son would have a determined 1/4th share to the property.

Under the Mitakshara school of Hindu law, it may be said that there is a literal presumption of love and affection in the family, i.e. there is a community interest in the family property. By community interest one means that all the coparceners have an interest in the joint family property. Under the Dayabhaga School though, there is a constant notion of having a fixed share of property. Though, there may be a community interest as long a partition by metes and bounds hasn’t taken place.

**Doctrine Of Survivorship**

This doctrine has been explained earlier. The Dayabhaga School allows for devolving of properties only at the point of succession. Thus, there is no question of inheriting any property. It is due to the application of this concept that there exists no coparcenary between a grandfather and his grandson under the Dayabhaga School.

The application of this rule is also related because classical Hindu Law recognised the concepts of unobstructed heritage and obstructed heritage to property. By unobstructed heritage one means that between the lineal descendants the coparcenary never ends. Thus, if one of the chain members dies then the coparcenary shifts to the next lineal descendant. This phenomenon has been accepted under Mitakshara School. On the other hand, the Dayabhaga School recognizes only obstructed heritage.

There are two further differences between the two schools of law that the researcher wants to delve upon but they would be explained in the next part of the essay owing to the fact that they involve the role players such as the Karta.
Key Role Players in The Hindu Joint Family

The Hindu Joint Family being considered as the close knit unit as it is though has a few prominent members while its legal status is being considered. The researcher intends to reflect the legal status of two prominent members: the Karta, the status of a female as a coparcener post the 2005 amendment.

The Karta:

In a Joint Hindu Family, the Karta being the representative is responsible for the family. He is supposed to oversee the income and assets of the joint property. He is accountable to all other family members for the use of their shares of all sums which he spent. The Karta’s powers and liabilities and his power of alienation are similar in both the Dayabhaga and the Mitakshara Schools. The difference that draws a contradistinction between the two is that the latter must be in a position to render full accounts at all points of time. On the other hand, the Karta under the Dayabhaga School should render accounts only at the time of partition.

As per Hindu law’s convention, the senior most male member is generally the Karta of the joint family. The Andhra Pradesh High Court has stated that the Karta does not owe his position to agreement or consent of other coparceners. His status has been a part of Hindu Culture for long. As long as he is alive, irrespective of his age, health or strength, he continues to be Karta.

A conflict arises when in the presence of a senior male member can a junior male member be the Karta? The position of law decided on this is that if all the coparceners agree, then a junior male member can be a Karta. Though, this is contingent upon the whims and fancies of the coparceners who may withdraw their consent at any time.

Can A Female Member Be The Karta?

The Mitakshara School sets a position of law, that on marriage the wife entails ownership rights to her husband’s separate and joint family property. Similarly, a daughter garners this right at birth. The contingency to this being that there is a distinction between males and females. Mitakshara law sets the status of women as bound to the family or asvatantra. Thus, their rights can be entailed only while they belong to the family.

The Hindu Joint Family Setup has since time immemorial been criticised for being a patriarchal setup. Thus, even the “manager” of a Joint Hindu Family has not been spared from this patriarchal approach. The position of law qua the status of women as the Karta has been inconclusive. The views seem to be rigid which, is a fatal flaw. Courts all over India have given different views:

– Women, per courts, have been allowed as the Karta as a last resort. She may be a widow who takes over in the absence of adult male members in the family. The court though does not delve into what could this absence mean? The true test as per the court is not who
transferred/incurred the liability, but whether the transaction was necessary. The courts though have rejected the notion of a widow as a coparcener for the want of a legal qualification to become a manger of a JHF. The mother then may be the Karta as the natural guardian of minor male members. She can also, represent the HUF for the purpose of assessment and recovery of income tax. After refreshing through the authorities it was held that the mother or any other female could not be the Karta of the Joint Family. Per the interpretation of the Court Hindu Law allows only a coparcener as a Karta and since females cannot be coparceners, they cannot be the Karta.

Dharmashastras are the one and only sure guide. The Dharmashastras give recognition to two of the above decisions. The status of female members qua debts incurred as the Karta will be binding upon the family and must be paid out of the joint family funds. Thus, it may be submitted that there does exist a certain sense of gender neutrality. Dharmashastras also mandate her acts as manager by accepting positive benefits as well and not merely conservative/negative acts. Thereby, the texts mandate her judgement as the Karta.

**Status Of Female Coparcenary (Pre And Post Amendment)**

There is an inherent bond between property and personal laws in India. Before 1956, property laws qua Hindus lacked coherence and differed on a regional basis. This can be seen in the distinct application of the Mitakshara and the Dayabhaga Schools.

The Mitakshara School of succession, dominant in North India, was excessively patriarchal and the heirs had to be males. Under this, only lineal male descendants have a right by birth to familial property that their father has. Their interest is equal to that of the father. The coparcenary was exclusive till 2005 for male members. Distinct to this, the Dayabhaga system did not acknowledge inheritance rights. Though there are instances where the patriarchal shackles are broken, for instance under the Marumakkattayam law, in Kerala, lineage is traced through the female line.

Though, with the advent of common law in India, the lawmakers sought to change this patriarchal bias. Women were bestowed with greater rights but still denied coparcenary rights. Subsequently, through state amendments, this need of gender neutrality was fulfilled.

For instance the State of Kerala abolished the concept of coparcenary according to the Kerala Joint Family System (Abolition) Act, 1975. As per the statute the heirs (male and female) did not acquire property by birth but hold tenancy rights till the property is partitioned. Subsequently, Andhra Pradesh (1986), Tamil Nadu (1989), Karnataka (1994) and Maharashtra (1994) equal ‘coparcener’ rights on ancestral property by birth to both sons and daughters.

The 15th Law Commission via its 174th report (2000) suggested amendments to balance the discrimination against women. The present amended Act was modelled upon this report’s recommendations. The 2005 amendment gives women equal rights in the inheritance of ancestral wealth, thus, bringing them at par with their male heirs. Section 6
of the Hindu Succession Act, 1956 (amended 2005) embodies this equality. An important question though, is still unanswered even after the amendment; whether women or daughters can be allowed to become managers or Karta of the joint family? The issue raised against them being the Karta was their “absence” from the joint family home post the amendment.

**Status of Property with respect to Partition**

Every adult coparcener has the right to demand a partition of the joint Hindu family. The conflicting point is whether the son can demand a partition, if the father has an interest with his brother, father or other coparceners? The position of law qua this point is inconclusive. In Bombay, it has been held that the son is not entitled to a partition without the consent of his father, if the father is joint with his father, brothers or other coparceners. However, if the joint family consists only of the father and the sons, the son can demand a partition against the father and if the family consists only of the grandfather and the grandsons, the sons can also enforce a partition against the grandfather.

**Right of Father**

A Hindu father joint with his sons and governed by Mitakshara Law in contradistinction to other manager of a Hindu undivided family or an ordinary coparcener enjoys the larger power to impose a partition on his sons with himself as well as amongst his sons inter se without their consent, whether the sons are majors or minors.

However, the partition made must be fair and equal, and if not, then the major sons have a right to repudiate the partition and the minor sons have a right to avoid that partition when they attain majority. In case of such an unfair partition, it is voidable and not void ab initio. However, a grandfather cannot bring about a partition amongst his grandsons. The father also has the superior right to bring about a partial partition of the properties, with the rider that the partition has to be bona fide and fair and just.

**Intention to Separate**

Partition is a severance of status and thus is a matter of individual volition. The division of the joint status may be brought about by any adult member of the family by intimating, indicating or representing to the other members, in clear and unambiguous terms his intention to separate and enjoy his share in the family property in severalty. It is immaterial in such a case whether the other coparceners give their assent to the separation or not. Further, when there is communication of intention by a single coparcener, the question to be proved on the facts of the case is whether there was a total partition, or that the other members decided to remain united or to reunite.

The manifestation of the intention should be “declared”, i.e. that it should be to the knowledge of the person affected thereby. Thus it is a necessary condition that a member of a joint Hindu family, seeking to separate himself from others will have to make known his intention to the other members of the family from whom he seeks to separate.
Once a communication of intention has taken place in clear and unambiguous terms which has resulted in the severance of the joint family status, it is not open for the coparcener to get back to the original position by merely revoking the same. There has to be an agreement to reunite and that a mere revocation of the intention cannot amount to an agreement to reunite. However, it has been held that a notice that been given to the other coparceners can be withdrawn with their consent.

Thus, it is submitted that once a notice has been issued that has come to the knowledge of the other members, a severance would take place and such a notice cannot be withdrawn. It is submitted that this is also reflected from Radhakrishna v. Satya Narayan, where the court held that when in a suit for partition, the plaint contains a clear and an unambiguous expression of an intention to separate, and summons have been served on the other coparceners, division in status is effected from the date of the filing of the suit.

“It sometimes happens that persons make statements which serve their purpose or proceed upon ignorance of the true position, and it not their statements but their relation with the estate which should be taken into account while determining the issue.” It is submitted that this statement has to be read in the context of a further statement in the same case which said that “If the document clearly shows a division of right, its legal construction and effect cannot be controlled or altered by evidence of the future conduct”. It is submitted that reading these two statements together, the conclusion that can be drawn is that, if the document is a clear expression of the intention to separate, then it does act as a separation and the future conduct of the parties does not matter, unless it can be shown that the document was never intended to act as one for partition but was a sham one for another ulterior purpose.

It is also important to note the once a severance of joint status has taken place, the subsequent conduct of the parties is not relevant to be determined. The mere fact that separated coparceners chose to live together or act jointly for purposes of business or trade or in their dealing with properties, would not give them the status or coparceners under the Mitakshara law. The important point here is that the coparceners must be proved to have been separated, and if so, then mere subsequent conduct unless a reunion takes place, would not restore the joint family status.