

Karta of a Joint Hindu Family: An Analysis of the Qualifications, Powers and Positions of a Karta

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Abstract

Family is the unit of the society, which forms its foundation². There is no denial of the fact that if the family bonds are not strong, the society will gradually collapse and degenerate. When we analyse the history of our country, we have always advocated for joint family systems and our older generations have followed the system of joint family throughout their life. Our ancestors believed that a close knit family is the essence of a welfare society. To ensure that families do not collapse and their properties do not reach different hands, there are communities in our country which encouraged and only approved marriages within relatives. As the nature of human beings is to have different opinions, conflict is bound to occur and in order to maintain discipline in the joint family system, the senior most members were assigned the responsibility of taking care of the family and ensuring the safety of the family. Through this paper, analysis is done with respect to the powers, qualifications, and positions of the Karta.

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² Dewar, John, and Stephen Parker. 2003. Family Law: Practices, Pressures and Process,; Proceedings of the Tenth World Conference of the International Society of Family Law, July 2001, Brisbane, Australia. Harte Publishing.

Introduction

Joint family system is one of the oldest cultures followed throughout our country. In a joint family system, the family as a whole has properties, owns and acquires them, but each of the members of such family shall have a separate right of their own over such property. As this joint family system, requires to have dealings and interactions with outsiders and even authorities in certain situations, it is mandatory that the system requires a head to regulate and represent the family in such dealings. Due to the nature of the unique system of joint family, it becomes necessary that a stranger cannot represent such families in the dealings, as the head also have the duty of binding the members together in their emotional capacity with each other. If such emotional bond is not maintained, the very essence of the property belonging to the family as a whole would not be maintained. Such a person who heads the family and represents the family and their property, keeping in mind the best interest of the family members is Karta. Karta is often the paternal side of the family and if the paternal head is not present, the member who has seniority in age, shall be provided the opportunity to be Karta³.

In earlier times, the Patriarchy and social structure only assigned male member, who was the senior most in the family as Karta. This provided the male member (Karta), unquestionable and absolute power over the family and the property, turning him into a dictator and increasing the atrocities the female members had to face. Over time, the powers of the Karta has reduced and paved way for women to also take up the position of Karta, thus ensuring gender justice and equality in the family set-up⁴.

³Dr. Poonam Pradhan Saxena, Family Law Lectures- Family Law II, Third Edition, Lexis Nexis Butterworths, 2016.

⁴Shruti Sahni Yogendra Singh UPES, Dehradun UPES, Dehradun, "UdgamVigyati" – The Origin of Knowledge", Volume 1 (2015) October

Hypothesis

This paper has not been made on the basis of any hypothesis.

Research Methodology

For this paper the main source of data has been the statute-Hindu Succession Act, from which the provisions relating to Karta has been referred from. To substantiate the provisions, various precedents of the court has also been mentioned and referred in this paper. The amendment which has been made to the Succession Act has also been referred to in writing this paper.

Persons who are Qualified to be Karta

The member of the family, who has seniority in age, is qualified to be a Karta⁵, and the criteria depend on the age and not on the consent of the other members of the family⁶. Even if Karta is temporarily absent, it does not give the other members chance to occupy that position⁷. Only if the Karta is dead, can other member act on his position. If the Karta himself does not want to continue the position, he can relinquish his position and another person from the family will be appointed as the Karta⁸. It is utmost important that in a joint family system, there can be one or more than one Karta to occupy such position⁹. Qualification of being a Karta is determined by birth and age criteria. A younger person can only have such position:

1. on the death of the Karta

⁵VarodaBhaktavatsaludu v. Venkata Narasimha Rao, AIR 1940 Mad 530

⁶Himchandra v. Matilal, (1933) ILR 60 Cal 1253

⁷Sidappa v. Linappa, 42 Mys HCR 669

⁸Mudit v. Rangalal, (1902) ILR 29 Cal 797

⁹DamodarMisra v. SanamaliMisra, AIR 1967 Ori 61

2. if the Karta has expressly stated that during his absence a particular younger member would discharge his functions
3. in situations where there is calamity and distress which hampers the members and their interest.

In *Nopany Investments (Pvt) Ltd v. Santokh Singh*¹⁰, Court held that if Karta of a joint undivided Hindu family is living in a distant land temporarily and is not able to manage the activities for the welfare of the family, a coparcener who is young in age can be Karta, with the prior permission of the existing Karta and other family members can look after the family and do the duties which the Karta is supposed to discharge. The court laid down in this case, situations where a coparcener can step into the shoes of a Karta:

1. When Karta is not accessible
2. When Karta relinquishes his position.
3. When calamity or distress hits the family.
4. In absence of the father
5. When Karta is in a distant place and he cannot return immediately.

Post 2005, females were not qualified to be Karta on the basis that daughters ceases to be members of a family once they are married, and the rest of the female members are not born into the family, but become members after their marriage¹¹. In cases like *Commissioner of Income Tax v. Govindram Sugar Mills*¹² and *Ram Avadh v. Kedar Nath*¹³, females were denied the position of Karta stating out the above reasons.

The 2005 Amendment to the Hindu Succession Act, recognised that daughters are also coparceners and that they are entitled to same proprietary rights as the sons. This entitled

¹⁰AIR 2008 SC 673

¹¹P.lshwara Phat, "Hindu Mother's Right to Share in the Coparcenery Property: A Critique of South Indian Practice" 9 The Academy Law Review 287 (1985).

¹²AIR 1996 SC 24

¹³AIR 1976 All 283

them to the position of becoming Karta of the family, if they are the senior most in age or if any situations as mentioned above exist.

Position of Karta in a Hindu Joint Family

Karta's position is Sui genesis, which comes to him or her out of their birth and seniority. The relationship of the Karta with that of the family is out of trust and on the belief that he/she would not act in contravention to the benefit of the family. The relationship is similar to that of a trustee (Karta) and the beneficiaries¹⁴ (family members), but the Karta cannot be made accountable to the family for his actions, unless there is proven charges of fraud and misappropriation against him/her. Whenever Karta does any act where the benefit of the family is given utmost importance, he cannot be made liable for neither negligence¹⁵ nor his actions be scrutinised¹⁶. But when Karta misappropriates the funds of the family and used it for his own benefits, he can be made to repay the amount back to the family's assets¹⁷.

Karta is not entitled for any remuneration for the services he renders

Position of Karta honorary and hence is not entitled for any remuneration or salary. He should not directly or indirectly receive any kind of money in return for the services he renders. Karta holds his position out of sanctity and love for the family members and not eyeing on any other benefits¹⁸. In *Jugal Kishore Baldeo Sahai v. Commissioner of Income Tax*¹⁹, court held that Karta in a Hindu Undivided family is not entitled for any remuneration for the duties he/she performs to the family members. But when in situations

¹⁴Perrazu v. Subbarayadu, AIR 1922 PC 71

¹⁵Raya v. Gopal, 11 IC 666.

¹⁶Vaikuntam v. Avudiappa, AIR 1937 Mad 127

¹⁷Abhay Chandra v. Pyari Mohan, 5 Beng LR 347

¹⁸Ms. Shradha Arore, 4th Year, B.B.A.LL.B (Hons.), C.N.L.U, Patna, Karta of a Joint Hindu Family An Analysis of the Qualifications, Powers and positions of a Karta, Law Mantra, ISSN 2321-6417 Volume 3 Issue 2,3.

¹⁹(1967) 63 ITR 238

he had spent a lot of time and labour for the activities and business of the family, which he/she could have diverted for other purposes for their benefit, there is no bar in claiming remuneration for that particular work. If there is an agreement to that effect between the Karta and the family members, that he should be given remuneration, then that agreement is valid as per law.

Powers of Karta

Following are the powers which the Karta of a Hindu Joint Family enjoys:

1. Karta has the power to manage the activities in a Hindu Undivided Family. But his powers are not absolute²⁰. He can take possession of the property and can receive income of the family from every source. An individual member cannot retain the right of possession over the joint family property.
2. Karta can remove and evict a member if he finds such member as a nuisance or detrimental to the interest of other members²¹.
3. Karta can allocate the position of residence to the members.
4. He can look into and pay for the educational expenses of the members from the amount received on behalf of the family.
5. Karta can give maintenance to any members if he wants.
6. In case of emergency situations, Karta has to allocate and source funds for the benefit of the family.

²⁰Bhaskaran v. Bhaskaran , (1908) ILR 1 All 77

²¹Kaviya, Bhuvaneswari, Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences, Karta and His Powers: An Overview, International Journal of Applied and Pure Mathematics

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7. Karta is the legal representative of the family as a whole in all social, litigation matters, spiritual, revenue matters which includes suits and cases²². Decree passed against Karta in his capacity will bind all other members.
8. Karta can receive and spend the family income giving utmost importance to benefits of other members. He can utilise the amount for defending litigations, filing suits, educational purposes, purchasing land, purchasing goods, entering into contracts, repaying loans²³ etc.
9. The property of the family can only be severed by the Karta, if the other coparceners agree. In case of minors, if the alienation is for their benefit, Karta can do so²⁴. For doing any unlawful act, the property cannot be alienated²⁵.
10. Karta has to admit and pay the money which is due by the family as a whole and also have to pay interest for such debt²⁶. He can attain money in the forms of loans for the benefit of the family as a whole.²⁷ Every coparcener is liable to repay such loans to the scope of their portion in the family.²⁸
11. Karta has power to refer for arbitration when disputes arise between family members or between a family members and third parties.²⁹ In case of disputed between families, he can facilitate compromise between them.³⁰
12. Karta shall keep a record of the accounts of the family for future references.
13. Karta or father can partition the property equally between the sons and daughters. The partition can be challenged on the ground that partition is not

²²Singriah v. Ramanuja , AIR 1959 Mys 239(DB)

²³Bhowani v. Jagannath, (1909) 13 CWN 309

²⁴VVV Ramaraju v. Korada Malleswara Rao, (1999) 2 HLR 257(AP)

²⁵Dev Kishan v. Ram Kishan, AIR 2002 Raj 370

²⁶Nallamili Veerayamma v. Karri Ammireddi, (1949) 1 Mad LJ 189

²⁷Krishnanand v. Raja Ram Singh, AIR 1922 All 16

²⁸Sirikany Lal v. Sidheshwari Prasad, AIR 1937 Pat 455

²⁹Jagannath v. Mannu Lal, (1894) ILR 16 All 231

³⁰Bhola Prasad v. Ramkumar, (1932) ILR 11 Pat 399

fair and unreasonable.³¹After partition of the property, Karta would be held liable for any debts that arise.³²

14. Karta has power to gift ancestral property which is movable without the consent of his family members, if such gift is for the performance of any duty which is indispensable, prescribed by any texts, in situations of distress³³etc.
15. In case of necessity, Karta can sell the property at a low cost, and that would be deemed legal.³⁴
16. Karta can carry out any ancestral business considering the benefit of the society. For carrying out such business, Karta can engage employees, purchase and sell goods and services, employ funds etc.
17. Karta has control over all the money and expenditure and can employ the surplus for any business or any activities for the benefit of the family as a whole.

Responsibilities of Karta

1. Karta has primary responsibility to provide food, shelter and other basic requirements to the family members.
2. Karta has to provide for the marriage expenses of unmarried daughters from the family's assets.
3. Karta has to arrange and provide for expenses when any of the family members deceases.
4. He has to defend family in all litigations.
5. He has to provide for the taxes and other statutory dues which are payable by the family.

³¹P.N. VenkatasubramaniaIyer v. P.N. EaswaraIyer, AIR 1966 Mad 266.

³²S. Rangaswamy v. A.P. Transco and Ors,2002(4) ALT 108

³³Gauramma v. Mallappa, AIR 1964 SC 510

³⁴ChanumuriSubhaveni and Ors. v. SappaSrinivasa Rao and Ors,2004(4)ALD 745

Conclusion

The responsibility of the Karta in a Hindu Undivided family is to ensure that every activity conducted by him should be for the benefit of the family. At no point, shall the Karta have any malicious intention to fraud the members of the family. Though Karta has control over the funds of the family, he is merely the custodian and cannot appropriate the funds for his benefit. In the era prior to globalisation, Karta system and joint family system has helped in reaffirming the values of family into our country. The position and power of Karta has degenerated mainly because of the nuclear family system our country has adapted to over the years. In a family of three or four members, the existence of a Karta and such powers are immaterial. Today's generation believes in taking decisions in their own and they do not believing in entrusting a person, Karta, with their properties and the decisions relating with such property. A system which advocated Patriarchy till 2005 must have caused a lot of atrocities to the women in joint families, denying them their education, employment opportunities, and commanding them to live a life of surrender rather than of body sovereignty and dignity. As the nature of law is to change and adapt with the changes of the society, the system of joint family and Karta has degenerated because of the flaws and limitations in it.