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Are suggestions to abolish Hindu Undivided Family (HUF) justified?

Recently, the Law Commission recommended doing away with the system of HUF altogether all over India

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If HUFs are abolished, their income would be taxed in the hands of individuals. Photo: iStock

Recently, the Law Commission, in a consultation paper on the Reform of Family Law, recommended the abolition, at the central government level, of the concept of

coparcenery under Hindu law, which forms the basis of a Hindu Undivided Family (HUF). In other words, the recommendation is to abolish the system of HUF altogether all over India.

The reasons for such recommendations are that there are various lacunae, anomalies and inconsistencies in the Hindu Succession Act, 1956 as amended to grant equal rights to daughters of coparceners as to sons, and that the institution of **HUF** was being used for tax avoidance. How far is this justified?

If one examines the basis for the Law Commission's views, these are reports of various committees of the 1940s to 1970s. Only one report is the 174th Report of the Law Commission in 2000, on the proposed reforms in Kerala relating to property rights of women. After each of these reports, there have been various amendments to the Hindu Succession Act. The basis of the conclusion that **HUFs are used for tax avoidance** is the Direct Taxes Enquiry Committee Report, 1971. After this report, the tax laws were amended to derecognise partial partitions of HUFs, which was the primary means of tax avoidance. The impact of these amendments on the conclusions arrived at by those committee reports does not seem to have been considered by the Law Commission.

Today, as any tax practitioner will testify, HUFs are hardly ever used for tax avoidance. The tax savings through an HUF is minimal, as it is only incomes up to ₹10 lakh which give a tax benefit of only ₹1,95,000. As against this, one has to factor in the time and effort of maintenance of separate records, accounts and of compliance. In most cases, it is just not worth the effort.

Also, the complexity of Hindu law after the amendments has ensured that most families prefer to steer clear of HUFs. They, in fact, prefer to partition existing HUFs, particularly as the younger generation does not want the complexity and uncertainty which goes with an HUF, more so if some of the family members are non-residents.

Therefore, the concern about the tax revenues does not seem justified, as abolition of HUFs will hardly result in any increase in tax collection.

As regards the complexities in laws, the question that springs to mind is—could not the laws have been drafted with a little better thought and after considering possible **anomalies and lacunae**? The law after all has been drafted by the government. One wonders whether an abolition law, drafted by the same government, which may be equally replete with anomalies and lacunae, will really help remedy the problem of complexity in law, or whether it will give rise to much more litigation and uncertainty.

In principle, there can be no argument with doing away with the concept of HUF as a separate unit of taxation. The state of Kerala has already abolished coparcenery since

1975—so the idea is not new. The question really is: should it not be seen in totality with the goal of having a common taxation, marriage and inheritance structure for the entire country, in the form of a Common Civil Code? Why choose only one part of the law for amendment? For instance, under tax laws, there is the concept of community of property for those governed by the Portuguese Civil Code, whereby half the income is taxed in the hands of each spouse. Should this also not be considered for abolition on the same grounds?

In case HUFs are abolished, the incomes of HUFs would then be taxed in the hands of individual members. Many countries have the concept of taxing a family income, rather than individual members of a family. There are deductions for maintenance of dependants available to the family, and a separate tax slab for the family. Is it time to consider moving to such a concept under our tax laws, instead of taxing each individual? This will eliminate some of the complexities in our tax laws, such as clubbing provisions applicable to income of spouse, minor children, etc. It will also result in a more equitable tax structure.

But, does the government believe in equity in taxation? It is often said by courts that there is no equity in taxes, and tax and equity are strangers. But that statement applies for interpretation of tax laws, whose intention is clear. For public finance, any tax system has to be fair, just and equitable. The government, therefore, needs to ensure that the overall tax structure meets these criteria, before taking a decision to abolish HUFs. It is a decision which has to be taken, not in isolation, but after consideration of all aspects and impacts.

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