Chapter 2
The Regime of Capital Accumulation, the *Hindu Undivided Family* and the Business Group in Independent India

Chirashree Das Gupta

Abstract The chapter addresses the issue of capital accumulation in the Hindu Undivided Family (HUF) and the business groups in India since independence. The organization of the 'business house' found legal sanction through multiple legislations spanning corporate and tax laws and forms the object of studies in 'corporate governance'. The chapter argues that, it is the dual existence of the HUF as both a family and a firm that makes it distinct from all other institutional categories. It discusses the channels through which family control over the organizational structure of business groups and the ownership of wealth by the family generated through these structures are maintained. The interlocking of the caste Hindu patriarchal family with corporate governance institutions is formally embedded in law in India. It is the materiality of capital that forges the social entity of the family owned business group. This materiality is formally legally embedded in the seamless interlock of the firm and the family where the firm becomes the family in the case of the HUF. This spans state codification of Hindu family law, corporate governance laws and taxation laws. The chapter further argues that, it is capital in its material social role in the circuit of financial and capital flows, which drives the network of institutions that constitutes the 'family owned business group' in India legally. This is formally undergirded by caste, patriarchy and religion. Moreover, it shows that, this unique

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This chapter is an extended and updated version of the publication of our paper Das Gupta and Gupta (2017) The *Hindu Undivided Family* in Independent India's Corporate Governance and Tax Regime, *SAMAJ* 15. This earlier publication from 2017 is under a creative commons license. This chapter presents case studies in Sections 2.2 and 2.3 which are different from the ones in the 2017 article. The macro-level tax data analysed in Section 2.3 is updated till 2018 in this chapter. In the 2017 article, the data was upto 2012-13 in some cases and 2014-15 in other cases. However, the premise and the main arguments have significant overlap in both the publications. I am grateful to Mohit Gupta for his help with the tax data updation for this chapter.

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A. Chakraborty and I. Chakraborty (eds.), *Indian Business Groups and other Corporations*, India Studies in Business and Economics,
https://doi.org/10.1007/978-981-99-5041-6_2

legal family/firm interlock is not available to Muslims, Christians, Parsis or Jews and hence constitutes a perverse legal privilege to the Hindu family.

2.1 Firm-Family Duality and the HUF in India

In the mainstream of the discipline of economics, the two institutions that are taken as units of analysis are firms and households (with the household often conflated with family though the two words have entirely different meanings). For example, a household can consist of people living under one roof without any familial relationships. Similarly, a family maybe dispersed across multiple households. Moreover, a household can consist of people who have no familial relationships. These two units, namely the firm and the household are taken as mutually exclusive spheres of production and consumption respectively in mainstream economics despite the fact that households do produce and firms do consume. In this conception, the social becomes exogenous to the economic and is regarded as beyond the scope of economics. There is very little exploration of the link between the two even in institutional economics which does recognize the interplay between the social and the economic. Almost no literature exists on these inter-related units as institutions of capital accumulation. And yet business families inhabit our life world and the everyday.

In the emerging literature on business groups in India, the entity of the ‘business group’ has found its place in institutional economics, economic sociology and the larger social science literature. But the familial basis of ownership and control of business groups remains an obscure area of study. The organisation of the ‘business house’ found legal sanction through multiple legislations spanning corporate and tax laws and form the object of studies in ‘corporate governance’. On the other hand, the institution of the ‘family’ has fallen in the ambit of study of ‘personal laws’. The first aspect is significant in establishing the institutional basis of concentration of capital combining the modalities of ownership and control. The second has implications for not only accumulation, investment and concentration of capital, but also tax avoidance and evasion (Das Gupta 2013). The relationship between these two aspects and the regimes of accumulation in independent India has been largely unexplored in the otherwise growing corpus of literature on the relation between the business group and ‘corporate governance’ and public policy.

The Hindu Undivided Family (HUF) as an institution in India has a long history. It got legal recognition in colonial India in the late nineteenth century, but it was only with the promulgation of the Income Tax Act of 1922 that it got the status of a separate and distinct tax entity. The legal category of the HUF exists in the tax code since then and its inclusion in the code is based on a much longer history of recognition of customary law by the British colonial state in India. In the interpretation of the colonial state, the HUF represented a joint family that was held together by strong ties of kinship and comprised of a variety of joint property relations among the members. These relationships created blurred and porous boundaries between the cultural underpinnings of the family as a social entity and the commercial existence

of the family as a trading entity. These porous boundaries were a complex function of marriage, lineage, patriarchal ties, and trade and business (Das Gupta and Gupta 2017).

The colonial interpretation of the entity did not recognize the complex networks which resulted in the family as a business entity being governed by personal laws as against firms being defined by legal contracts. This had its roots in the colonial legal system which set a clear dividing line between the 'public' and the 'private'. The 'public' side of it aimed at making an individual free of moral relations, and the law was meant to shape the individual's relations freely in the market; while the personal side of it entrenched the denominational status based on caste, religion and family as basis for individual right (Das Gupta and Gupta 2017). This dual characteristic of the HUF shaped its legal status as a unit of business and taxation. It was recognized as a trading entity/ family firm as an income generating entity on the production side of the economy. But the arguments against it being taxed were premised on recognizing cultural ties, customary existence and the notion that the family preceded the firm, and that 'family income' was solely for the purpose of maintenance of the unit and fulfilling of customary obligations leading to the interpretation that the HUF is an income utilizing entity on the consumption side of the economy.

This sharp exclusivity of definition inherent in the neoclassical conception of economic activities in the tight compartmentalization of production and consumption created the dilemma for the colonial state in deciding what exactly the HUF was at the time of the passing of the Income Tax Act of 1860 and 1886 (Das Gupta and Gupta 2017). Both the acts recognized the HUF as a variant of a legal person under the category of 'individuals '(Birla 2008). Finally in the debate on the Super Tax Bill of 1917, the HUF was proposed to be recognized as a distinct category for taxation to overcome the problem of having to negotiate the dual characteristics of being a family and a business entity. This interpretation led to the recognition of the HUF as a separate tax entity which was subsequently incorporated into the Income tax Act 1922 (Newbigin 2013). It is this dual existence of the HUF as both a family and a firm that makes it distinctive from all other institutional categories as we shall see in the rest of this chapter.

The independent Indian state took the HUF as a distinct category in its legal framework and thus avoiding any engagement with the 'duality' question allowing the HUF a seamless transition as a legal entity from colonial to independent India. It was in the first decade after independence with the state's encoding of Hindu customary and personal law that the HUF was legally sanctified as originating in state code and then integrated into the Indian corporate governance and taxation system. Thus the HUF's sanctification in the state code of Hindu law is the only major departure in its status after independence as compared to the colonial period (Das Gupta and Gupta 2017).

Family owned business groups in India comprise of a plethora of corporate bodies spanning joint stock companies (public and private limited), partnership firms, trusts and other body incorporates and limited liability partnerships. Each of these vehicles of corporate governance are regulated by different pieces of legislations namely

the Companies Act 2013; the Indian Partnership Act 1932, the Societies Registration Act 1860 and the Limited Liability Partnership Act 2008 respectively. Despite these different pieces of legislation regulating these different corporate entities, inter-locking directorships and inter-locking shareholdings across these entities constitute these into the social entity of the business group in India (Das Gupta 2013). The top twenty two business houses in India through this system of interlocks directly controlled 25% of gross capital formation in the Indian economy in 1951. By 1990, this accounted for 28% of gross capital formation in India and is estimated to be at least 40% today. The extent of this control is however exercised by less than 1% actual investment by the business group (Das Gupta 2016). The key houses of business, both old and new, have found ways to maintain control over decision making through the institutional structure of the *family run business house* (Das Gupta 2010).

There are two distinct channels through which family control over the organizational structure of business groups and the ownership of wealth by the family generated through these structures are maintained. The first has to do with the legal provisions of 'corporate governance' structures which facilitate the optimum mix of various forms of registered companies like partnerships, private limited companies, unregistered and registered public limited companies, and limited liability partnerships under the umbrella business group through interlocking share-holdings and directorships. These are done within the enabling legal provisions of the Indian Partnerships Act of 1932, the Companies Act of 1956 and 2013 and the Limited Liability Partnership Act of 2008. Apart from risk spreading, this structure had also ensured avenue to escape the minimal restrictions on expansion under Monopolies and Restrictive Trade Practices after 1973 till it was repealed after liberalization. It was also important for labor deployment and control with employers often making sure that each company only had less than seven employees and pre-empting any possibility of trade union formation under the stipulations of the Trade Union Act of 1926. The second is through the legal sanctity given to the category of the *Hindu Undivided Family* (HUF) by interweaving it into corporate governance structures, family laws and the tax codes.

Interlocked firms and families are the legal structure in which capital accumulation is institutionally embedded in India. It may also be noted that the first level of the firm-family interlock is germaine to capitalist firms universally i.e. individual members of families own and control shares. But in India, the HUF interlock with firms is unique and specific in not only maintaining control of the family, but this privilege as a legal entity is only endowed to Hindus as defined in the state's codification of Hindu personal and family law ie a Hindu is anyone who is not Muslim, Parsi, Christian or Jew. After defining the HUF through the codification of personal laws in 1955–56, the state then took the next step to perpetuate the 'Hindu Undivided Family' (HUF) as an entity recognized by the Wealth Tax Act 1957 and Section 2 of the Income Tax Act 1961 as a distinct unit of taxation with grant of tax avoidance facilities on 'family income' with higher exemptions and lower tax rates compared to other categories of assesses. The tax rates for the HUF is the same as that of individuals since the intervention of the Wanchoo Committee and the K N Raj Committee but HUFs were subject to a lower rate of taxation than individuals before these interventions.

Social science has largely not engaged with this socio-legal entity. In corporate law, tax law and personal law—the three spaces it inhabits—it has been largely regarded as a 'loophole' that is incongruent with 'modern' corporate governance and taxation structures. It is often referred to as a remnant from the archaic which does not serve any purpose in contemporary modes of capital accumulation. The women's movement in India that has had the closest engagement with this structure has often associated it with feudal structures of land and property holdings. Its implications on capital accumulation in the 'modern' sectors have not been studied at all. This paper, based on analysis of macroeconomic data and case studies extracted from a comprehensive primary research on 150 family owned business groups in India is an attempt to interrogate such propositions and to arrive at a comprehensive delineation of the role of the HUF in the capital accumulation regime in independent India.

The paper is divided into three sections. Section 2.1 above has elucidated the process through which the HUF was institutionally embedded into the state's codification of the Hindu personal and family law. Section 2.2 analyses the institutional embedding of the HUF in corporate governance structures. Section 2.3 dwells on installation and use of the HUF in tax structures and the role it plays as a vital institution in tax avoidance processes. The three sections together show the critical role the HUF plays in the circuits of capital accumulation in India.

2.2 Institutional Embedding of the HUF in Corporate Governance Structures

In our study of 150 family owned business groups in India carried out in two phases (2003–05 and 2008–11), except for the two groups which were not of Hindu origin in our survey, all business groups had Hindu Undivided Family (HUF) accounts. On an average, each group controlled directly and indirectly about 47 companies. Each business group had on an average three to four holding companies along with one to three flagship companies. In these companies, the Karta of the family along with other members held shares as individuals. The next biggest single share-holding in these companies was by HUFs belonging to the family. At least two family members in every case were directors of these companies. These companies in turn owned shares of other public limited, private limited and partnership firms which they controlled. In such firms and companies, family members and close associates from other business families are directors. In addition, these groups control trusts governed by the Societies Registration Act 1860 (as we shall see later) and other related legislation (Table 2.1).

This forms the formal structure of ownership and control through which all activities related to capital accumulation by business families is controlled. In 35.3% of the groups surveyed, stocks in group companies were not held by HUFs in publicly listed companies, but were held in the 'private limited' companies. The *Karta*s of the HUF or other HUF members however held stocks in the publicly listed companies

Table 2.1 Summary of the survey on HUFs and business groups

Number of business families surveyed	150
Number of firms affiliated to business groups which were analyzed for institutional interlocks	7500
Average number of companies/firms in a family owned/controlled business group	47
Average number of HUFs found to be interlocked in each business groups	9
Average number of trusts/registered societies found to be interlocked with each business group	4
Number of detailed case studies of family owned business groups	25
Number of members of business families interviewed as part of case studies	300
Number of managers of firms interviewed as part of case studies	300
Number of employees who were not managers interviewed as part of case studies	200

Source *Author's survey of 150 business groups*

in 61.3% of the groups surveyed. Thus the payouts to the HUF as well as to the individual who is part of an HUF is simultaneously maintained. At the same time, the HUF can hold other property e.g. houses, cash, gold, share certificates, fixed deposits which would not be considered in the asset accounting of the business group. The income and wealth holdings in HUF do not get counted in the business group's ownership and control of assets. This interlocking structure of firms and families serves multiple purposes of which we will illustrate two major uses: 1. Family control over the circuits of capital within the business group 2. Tax avoidance. In this section, we focus on the first purpose.

Apart from the HUF being a vehicle of tax avoidance (illustrated in the subsequent section), both 'old' and 'new' capitalist business houses of Hindu origin use the provision of HUF to consolidate family holdings and ensure the control of capital within the family through transactions between the HUF and individuals within the HUF who held key positions in the share-holding and managerial patterns of the companies within the fold of the business house through interlocking directorships and share-holding. To illustrate the modalities of family control over the circuits of capital within the business group, we present another case study from our survey.

Patriarch A from business family 1 is married to B from business family 2. They have three sons C, D and E and one daughter F. C, D and E have a son each named M, N and O. Daughter F is married to G into business family 3. Sons C, D and E are married to H, I and J and from business families 4, 5 and 6.

The HUFs created from these alliances in Family 1 are:

1. HUF1 (A—karta, C, D and E coparcenaries, B member):
2. HUF2 (C—karta, H member)
3. HUF3 (D—karta, I member)
4. HUF 4 (E—karta, J member)
5. HUF 5 (A—karta, C—coparcenary, B and H member)
6. HUF 6 (A—karta, D—coparcenary, B and I member)

7. HUF 7 (A—karta, E—coparcenary, B and J member)
8. HUF 8 (C—karta, M coparcenery (minor with C as guardian)
9. HUF 9 (D—karta, N coparcenary (minor with D as guardian)
10. HUF 10 (E—karta, O coparcenary (minor with E as guardian)

Thus 10 HUFs can be operated by a single family because the law entails the provision that any Hindu male can start a new ‘Hindu Undivided Family’ as long as he is married. Even as families went nuclear, the ‘HUF’ could be perpetuated as a legal entity as each nuclear family marked the beginning of a new ‘HUF’ without requiring the dissolution of earlier HUFs including the same family members. Similar HUFs exist in families 2, 3, 4, 5 and 6.

Family 1 has two flagship companies—MLX Ltd and MLY Ltd. Six percent of shares in MLX Ltd are held by A, B, C, D and E. Another five percent shares are owned between HUFs 1, 2 3 and 4. Similarly, seven percent shares in MLY Ltd are held by A, C D and E. Another four percent is held by HUFs 5, 6, 7 and 8. Eight other group companies together hold twelve percent shares of MLX Ltd. Nine different group companies hold twelve percent share of MLY Ltd. There are three other subsidiary/ holding companies in the group. These hold shares in twelve other group companies. HUFs 9 and 10 hold two percent shares in all twelve of these group companies. Two group companies along with A, B, C, D, E, F, G, H, I and J hold shares in two trusts named after A’s grandfather, and father respectively. These trusts own shares of eight group companies. HUFs belonging to families 2, 3, 4 and 5 have shares in eight group companies. The daughter, son-in-law and the three daughters-in-law own shares as individuals in five corporate entities in which two are partnerships and three are companies.

Thus individuals, HUFS, firms/companies and trusts form multiple level of overlapping interlocks to control 34 firms/companies and two trusts, even though each of these entities are governed by different corporate governance laws as we have shown earlier.

A, the patriarch is a director in eight companies, The sons C, D and E and the son-in-law G in six each, the daughter F in three, four members each from families 2, 3, 4 and 5 in two each. All the women in the family are involved as sleeping directors in group companies as well as active management of the trusts in position of executive authority. Had there been no HUF provision, individual family members would need to own a much larger proportion of shares to exert family control over the constituent firms/companies in the business group. But with the HUFs, a much larger sphere of control can be exercised with minimal investment of family wealth.

This business group owned four large and five medium sized factories and three small scale enterprises spread over five states in India. Out of these, four were owned by public limited companies, five were owned by private limited companies, two by HUFs and one by a partnership. These factories were integrated into the global value chain of a range of manufacturing goods in consumables.

Eighteen other corporate entities in the group were shown to be invested in a non-banking finance company, hotels, trading, property dealing and leasing and entertainment. The trusts ran for-profit schools along with running temples, two hospitals and an orphanage.

The total investment by the families and individuals in the 34 corporate entities it exerts control over is 1.44% of the total investments. But the family effectively through combination of individual members, interlocked companies and HUFs control 70% of the share-holding and through inter-locking directorships, 90% of the board of management.

On an average, 26 out of the 34 corporate entities reported losses in the previous four years. With asset and income transfers within group companies and HUFs (through related party transactions), profit and loss accounting is spread across business groups to declare the minimum level of profits once again to avoid taxation. A similar case study of the largest business group in India by Naz (2016), shows that around 64 out of 88 group companies, reported loss in two consecutive years. It must be noted here that such related party transactions are by the law to be approved by the Board of the company. Given the interlock between family members on the board, such transactions are blessed by the legal sanction of the corporate governance structure interlocked with the family.

The HUF also exists legally in tax law independent of these interlocked entities. For example, land for eight of the factories is owned by four different HUFs of family 1 and are shown to have been leased to the company owning the factory or enterprise. The transfer of lease income is to the HUF for which taxation is at par with an individual. However, the HUF is a corporate entity as we shall see in the next section and hence this is yet another way in which corporate tax exemption on income is being perpetuated through the legal regime of corporate governance in India.

Our interviews with the family members of this family owned business group revealed certain remarkable aspects of the firm/family interlock. All the men and women had been married through alliances brokered by the family. Early marriages were the norm. There was significant resistance to the idea of marriages of choice. All marriage alliances were based on caste rules of endogamy and exogamy along with considerations of class status. In another case study, we had found that while marriages across ethnicities were considered ‘normal’, caste and class barriers were rigid. Thus families founded on the basis of caste rules and patriarchy are the defining features of the business family in India.

The materiality of capital forges the social entity of the family owned business group which is formally legally embedded in the seamless interlock of the firm and the family. This spans state codification of Hindu family law, corporate governance laws and taxation laws. This unique legal family/firm interlock is only available to Hindus. It is not available to Muslims, Christians, Parsis or Jews and hence constitutes a perverse legal privilege to the Hindu family. The caste Hindu patriarchal family bound by son preference is an imperative of social reproduction of institutional structures of accumulation in India. In the next section we shall see how this son preference is incentivized by institutions of taxation. It is capital in its material

social role in the circuit of financial and capital flows that drives the network of institutions that constitute the ‘family owned business group’ in India undergirded by caste, patriarchy and religion (Das Gupta and Gupta 2017).

2.3 HUF as a Vehicle of Tax Avoidance

We start with the distinction between statutory and effective taxation rates. There is difference between the statutory rates which are announced every year by modification of the Finance Act and what finally transcends into the actual payments as taxes by income tax payers. These actual payments as percentage of declared income are called the effective tax rates. Statutory rates are the ones prescribed by law, the effective tax rates are the realized average tax rates (Das Gupta and Gupta 2017).

Let us go back to our case study in the earlier section. Patriarch A from business family 1 is married to B from business family 2. They have three sons C, D and E and one daughter F. C, D and E have a son each named M, N and O. Daughter F is married to G into business family 3. Sons C, D and E are married to H, I and J and from business families 4, 5 and 6.

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8. HUF 8 (C—karta, M coparcenery (minor with C as guardian)
9. HUF 9 (D—karta, N coparcenary (minor with D as guardian)
10. HUF 10 (E—karta, O coparcenary (minor with E as guardian)

Let the annual taxable income stream from the companies MLX Ltd and MLY Ltd for A, C, D and E be Rs 20 lakhs each. In the absence of any HUF provisions, A, C, D and E would have to each pay Rs 412,500/—as income tax as per taxation rates for Financial Year 2018–19 by application of statutory rates (Table 2.2). The effective taxation rate is 20.625% in this scenario.

However, A, C, D and E can use the ten HUFs effectively among themselves and distribute the income across their four individual tax accounts and the ten HUFs (Table 2.3) using the provisions of existing income tax laws and the four acts codifying Hindu property laws. In such a scenario, the total tax liability would be only Rs 225,000/—each for A, C, D and E. The effective taxation rate has been almost halved to 11.25% in the second scenario by using the HUFs.

With separate application of other exemption possibilities under the Income Tax Act, the actual tax liability can be brought down to much further even for much larger sums of income from multiple sources. Similar use of the HUF can be made

Table 2.2 Effective tax liability in the absence of HUF—scenario 1

Tax entity	Income reported from MLX Ltd and MLY Ltd (Rs)	Tax to be paid at 2018–19 rates (Rs)
A	2,000,000	412,500
C	2,000,000	412,500
D	2,000,000	412,500
E	2,000,000	412,500
Total	8,000,000	1,650,000

Source *Author's calculations based on case study*

Table 2.3 Effective tax liability with the use of HUF—scenario 2

Tax entity	Income reported from MLX Ltd and MLY Ltd (Rs)	Tax to be paid at 2018–19 rates (Rs)
A	1,375,000	225,000
C	1,375,000	225,000
D	1,375,000	225,000
E	1,375,000	225,000
HUF1	250,000	0
HUF2	250,000	0
HUF3	250,000	0
HUF4	250,000	0
HUF5	250,000	0
HUF6	250,000	0
HUF7	250,000	0
HUF8	250,000	0
HUF9	250,000	0
HUF10	250,000	0
Total	8,000,000	900,000

Source *Author's calculations based on case study*

to circumvent wealth and property tax. Moreover, if any member were to draw an income from the coiffeur of 'family income' accumulated in the HUF, such income would be exempt from taxation by virtue of being the higher cost of maintenance of the 'undivided family'. Thus it must be noted that the use of HUF for tax avoidance is perfectly legal in India.

If A had four married sons with a male child each and no daughter, he would be able to form two additional HUFs which could be used to reduce tax liabilities of family members further. If any of the sons do not get married, then the possibility of forming the additional HUFs reduces. Thus son preference and hetero-normative marriages in every generation, bound by caste and religious rules as per the state's

Hindu code, have a very material incentive in the form of the HUF tax provisions in India.

Figure 2.1 shows annual average effective taxation rates (ETR) of individuals, HUFs and all other assessees (which consist of different forms of body incorporates or corporate entities—firm, companies, societies and trusts etc.). From 1954–55 to 1998–99, the ETR of individuals were the lowest, the ETRs of corporate entities were the highest while the ETR of HUF was between the two. Also, the ETR of all entities increased between 1973 and 1993. There were several reasons for this. First, there was abolition of higher exemptions and lower tax rates to HUF as compared to individuals. Second, there was the promulgation of the Monopolies and Restrictive Trades Practices (MRTP) Act in 1971 which recognized the business group as a whole as the unit of organization of capital and put in restrictions on interlocking shareholdings and directorships. Third, the ETRs of HUFs increased significantly in the same period with the abolition of HUF privileges in land and other property holdings (but not corporate holdings which come under the purview of the central government) in Tamil Nadu, Kerala, Andhra Pradesh and Maharashtra. The decline in ETRs of corporate after the mid-1980s is explained by the dilution of the MRTP Act and its subsequent repeal. The ETRs show a sharp decline in 1998–99 and 1999–2000 after which the CBDT stopped releasing data.

Compared to the pre-1991 levels, ETRs of all tax categories have declined. The recent data that has been released since 2012–13 to 2017–18 shows a significant decline in the ETR of individuals. But the steepest decline is recorded by the ETR of HUFs in this period. Figures 2.1 and 2.2 together show that HUFs have paid the lowest rates of ETR since 1956 in the period 2012–13 to 2017–18.

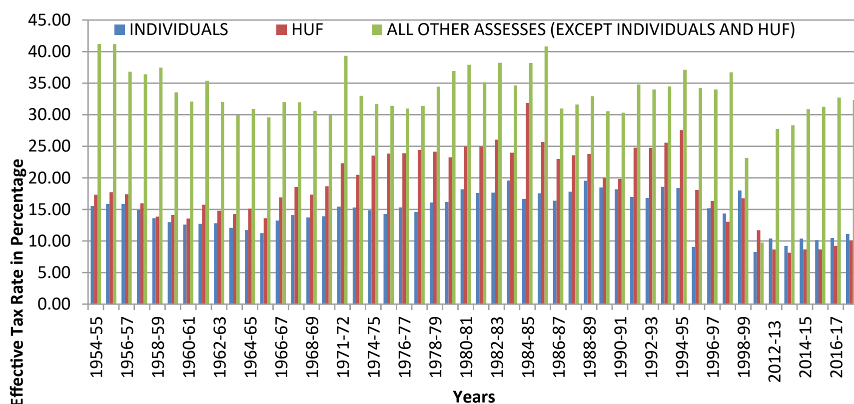

Fig. 2.1 Annual effective tax rate for HUF, individuals and all other assesses (1954–55 to 1999–2000; 2012–13 to 2017–18). *Source All India Income Tax Statistics Released by Central Board of Direct Taxes for Data up to 1999–2000 and Income Tax Data from website of Central Board of Direct Taxes for Data from 2012–2018. Note* Disaggregated Data for Various Assesses is not available for the period 2000–2011

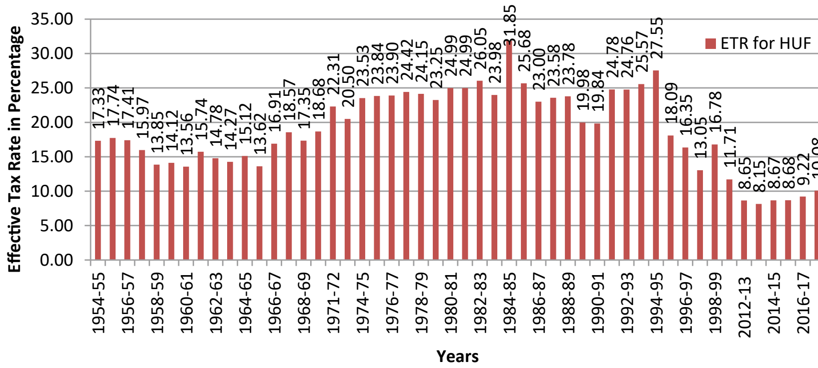

Fig. 2.2 Annual effective tax rates of HUFs (1954–55 to 1999–2000; 2012–13 to 2017–18). *Source All India Income Tax Statistics Released by Central Board of Direct Taxes for Data up to 1999–2000 and Income Tax Data from website of Central Board of Direct Taxes for Data from 2012–2018. Note* Disaggregated Data for Various Assesses is not available for the period 2000–2011

However, the ETRs across time do not tell us about the extent of regressiveness of the direct income tax in India. Figure 2.3 shows that the effective tax rates of firms and companies decrease as size of income increases. For individuals the trend of taxation is initially progressive but becomes regressive at the top range for incomes above Rs 50 lakhs. The same trend is evident for the HUF but with two significant features. First, at the bottom end, up to an income below Rs 5 lakhs, the effective rate of taxation of HUFs is consistently regressive. Second, the ETRs of HUFS is significantly less than individual tax assessees for every level of income. Third, for incomes above Rs 50 lakhs, ETRs of HUF again turn regressive.

An analysis of the sources of incomes for various categories of tax assessees for the period 2012–18 (the years for which this data is available) is presented in Tables 2.4 and 2.5. Individuals are the only category of income earners who earn an income for salary. HUF income accrues from business income, short and long term capital gains, house property income and interest income. There is no salary income reported by HUFs. In fact the composition of the HUF income is similar to income composition of firms, companies and other body incorporates and very different from the composition of individual incomes in which salary income constitutes around 54% of the income. Thus the HUF is similar to a corporate entity with the additional characteristic that around 9% of its income comes from house property while this share is less than 4% for firms and companies. But, it gets away with exemptions claiming to be a 'family' utilizing income for maintenance treated at par with an 'individual' tax payer and pays the lowest rates of income tax as demonstrated earlier. Thus the effective tax paid by the HUF is much lesser than corporate entities of business even though its income structure is similar to corporate entities as we have shown earlier.

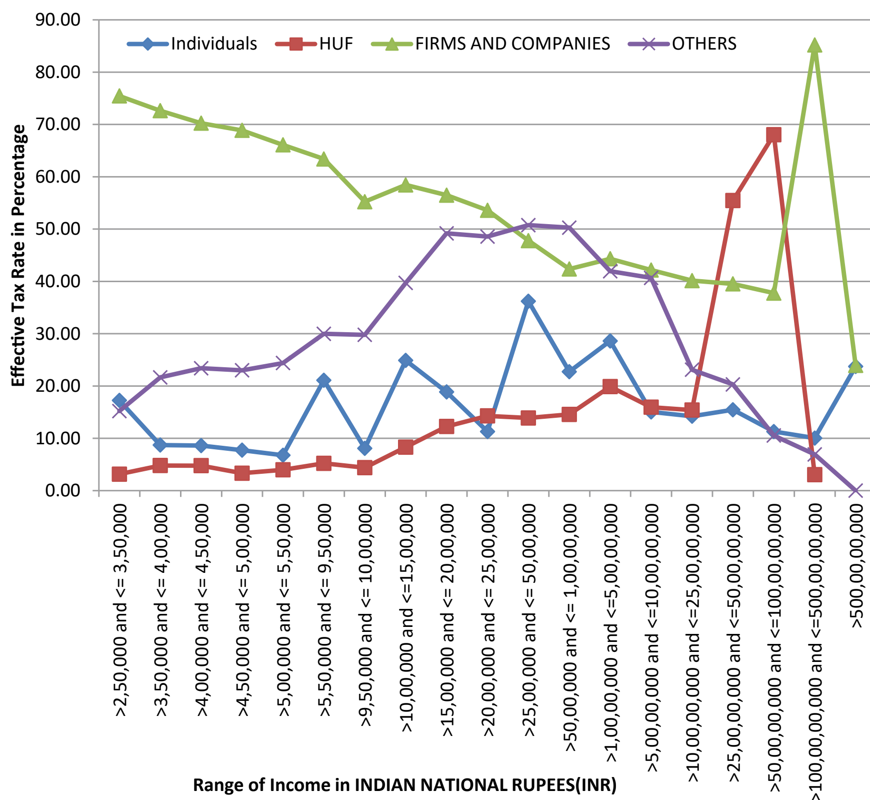

Fig. 2.3 Average effective tax rate by range of income (2012–2018). Source Income Tax Data Released by Central Board of Direct Taxes for various Years

Table 2.4 Composition of income (in percentage) from various sources for different assesses for the period 2012–2018

Type of assessee	Salary income	House property income	Business income	Long term capital gains	Short term capital gains	Other sources income	Total income of assessee
Individual	54.29	1.66	30.36	1.87	0.53	11.29	100.00
HUF	0.00	9.12	42.69	4.32	1.81	42.06	100.00
Firm	0.00	3.51	88.67	3.18	1.08	3.56	100.00
AOP/BOI	0.00	1.90	28.51	4.57	46.24	18.77	100.00
Companies	0.00	1.09	83.11	4.37	2.23	9.21	100.00
Others	0.00	3.43	67.73	3.54	7.99	17.31	100.00

Source Author's Calculation from Income Tax Data Released by Central Board of Direct Taxes for various Years

Table 2.5 Share of interest income (in percentage) in the category 'income from other sources' for various assesses for the period 2012–2018

Type of assessee	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18
Individuals	29.63	36.43	36.66	31.80	30.07	27.72
HUF	43.65	51.18	54.25	55.40	56.20	56.10
Firms	51.74	54.92	67.14	52.20	55.45	49.36
AOP/BOI	31.00	67.79	47.37	13.13	30.82	31.93
Companies	69.97	77.39	55.13	38.57	34.98	34.12

Source Author's Calculation from Income Tax Data Released by Central Board of Direct Taxes for various Years

Thus the HUF is an inter-locked corporate governance structure whose activities based on income source are typically that of a business incorporate. It is interlocked into the institutional structure of asset, wealth and property holding in India in a maze of interlocked family and business entities spanning all five tax categories which comprise the Hindu family owned business group. There is no systemic compilation of data by the Indian state on interlocking tax entities and extent of direct and indirect ownership of economic assets and property by family owned business groups. But as we argued in Sect. 2.1, the tax structure continues to treat the HUF as a family/household consumption entity at par with individuals not recognizing its functions solely as a business entity.

2.4 Conclusion

To conclude, the interlock of the caste Hindu patriarchal family with corporate governance institutions is formally embedded in law in India. It is the materiality of capital that forges the social entity of the family owned business group. This materiality is formally legally embedded in the seamless interlock of the firm and the family where the firm becomes the family in the case of the HUF. This spans state codification of Hindu family law, corporate governance laws and taxation laws.

It is capital in its material social role in the circuit of financial and capital flows that drives the network of institutions that constitute the 'family owned business group' in India legally. This is formally undergirded by caste, patriarchy and religion. Moreover, this unique legal family/firm interlock is not available to Muslims, Christians, Parsis or Jews and hence constitutes a perverse legal privilege to the Hindu family.

The caste Hindu patriarchal family bound by son preference is an imperative of social reproduction of institutional structures of accumulation in India. Trust and informality of kinship and familial relationships are very much 'within the law' working on the logic of profit. As can be seen from the above discussion, this raises very fundamental questions not only on the implications on the institutional basis of the macro economy showing the endogeneity of the 'social' in the 'economic'

(a point we raised right at the outset), but also the very nature of the claims of the 'secular state' and constitutional provisions of equal opportunity.

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