# COPARCENARY UNDER HINDU LAW: AN OVERVIEW OF THE RECENT AMENDMENT

**BY**

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**INTRODUCTION**

Coparcenary is a term used in matters related to Hindu Succession Law. It refers to a person who has the capacity to assume a legal right in his ancestral property by birth. It means ‘unity of title, possession and interest’. It is purely a creation of law; it cannot be created by the act of parties, except by adoption. It is directly derived from the concept and practice of Hindu undivided family.Coparcenary is only found in Hindu Law which acquires interest in family by birth. A Coparcenary can travel till three generations and sanctioned by Mitakshara.

**JOINT HINDU FAMILY**

A joint Hindu family consists of all persons lineally descended from a common ancestor and include their wives and unmarried daughters. A Joint Hindu family is one in worship and holds join assets. After separation of assets, the family ceases to be joint. Mere severance in food and worship is not treated as a separation.

**TWO SCHOOLS OF HINDU LAW**

There are two main schools of Hindu law i.e Mitakshara and Dayabhaga. Mitakshara law applies to most parts of India except Bengal. Maharashtra school prevailed in North India, Bombay School, in Western India. However, certain areas in southern India are governed by Marumakkatayam, Aliyasantana, Nambudiri systems of law.

**TYPES OF PROPERTY**

**SELF ACQUIRED PROPERTY**

If any property purchased in individuals own name as an outcome of his own income is called self acquired property.

**Ancestral property**

If any property inherited from his/her own ancestors or get in way of inheritance is called ancestral property. In the case of State Bank of India Vs Ghamandiram in which six aspects of Coparcenary is explained which are as follows

* Every person taking the birth acquires the interest in property till three generations.
* Every Coparcenary has the right of partition.
* Each and every Coparcenary has the collective ownership.
* As a result of such ownership there is joint possession and common enjoyment of each and every Coparcenary over entire property.
* No Coparcenary have the right to elienate his undivided share in his ancestral property except for unecessity and without concurrent of other coparcenary.
* Upon death of Coparcenary his undivided share transfer to other coparcenary and this rule is called survivorship.

**TWO IMPORTANT ASPECTS ON WHICH COPARCENARY IS FORMED**

* Unobstructed Heritage: It is found only in Mitakshara School. The right of person by birth to get share in property is not obstructed by the existence of any person.
* Obstructed Heritage: The right of person by birth to get share in property is obstructed by the existence of person. If a father gets property from his father but son of the father will not get the property. This concept is only found in Dayabhaga law.

**OTHER LAWS PRIOR TO HINDU SUCCESSION ACT, 1956**

TheHindu Law of Inheritance Act, 1929was the first legislation to bring a woman into the scene of inheritance and its laws. This act conferred rights of inheritance upon three female heirs which are his son’s daughter, granddaughter and sister.

The Hindu Women’s Right to Property Act, 1937 was landmark legislation conferring ownership rights on women. This law brought about major changes in the then followed customary laws and schools of thought. It also affected Coparcenary laws, partition laws and laws of property, inheritance and adoption. It also took into account the rights of widows and divorcees. Prior to this law, there were no codified laws to deal with the problem and disputes were resolved using customary practices. This act was passed after much voicing of discontent over the unsatisfactory condition of women’ rights. However, it was by no means enough to achieve the lofty target of gender equality.

**Hindu Succession Act, 1956**

The Hindu Succession Act, 1956 was focused upon providing equality as stated by Article 14 of Constitution of India. The idea of the limited estate as propagated by the Hindu Women’s Right to Property Act was abolished in 1956 by the introduction of this act. This act tried to uplift the position and status of women in society by providing them with the inheritance of share in their father’s property.

**THE CONCEPT OF NOTIONAL PARTITION**

As per 1937 act the concept of Coparcenary is modified in which widow or wife is not Coparcenary but she is entitled to receive equal share and this break the rule of survivorship. The Hindu Code Bill is drafted by PN Rao Committee that there should be uniformity and uniform way of succession. After death of Coparcenary immediately the shares are assumed and calculated and divided between wife, daughter. This concept is called notional partition. Daughters were declared as legal heirs of their fathers and received the rights of inheritance of a share of the separate property owned by the father through the notional partition. The ancestral property owned by the family would still be legally inherited by the son of the family and the daughter would have no rights over it thereby following the rules of survivorship. This led to the continuity of inequality but at a slower or less diminishing pace.

**LANDMARK STEP TAKEN BY PN RAO COMMITTEE**

In the year 1956 Andhra Pradesh was the first state in which daughters were regarded as Coparcenary. Andhra Pradesh, Tamil Nadu, Karnataka, Maharashtra were initially four states which brings state amendment by giving daughters a status Coparcenary which means they got equal rights in ancestral property. In Joint Hindu family governed by Mitakshara a daughter of Coparcenary both of them shall be alive. To avail the benefit of state amendment daughter and Coparcenary has to be alive. Section 29(A) of Hindu Succession Act says equal rights to daughter in Coparcenary Property. According to its sub clause (1) there should be Jointness of family i.e. in a joint Hindu family governed by Mitakshara law. She should be allotted same share as if she is son. The same liabilities as if son have in ancestral property.

(2) If upon partition in a joint Hindu family the daughters have to allot a same share as is allotable to a son

(3) Any property to which a female Hindu becomes entitled shall be held by her with Coparcenary ownership.

This sub clause (3) has been added to avoid limited ownership of widow or wife in the year 1937 which has been added in which wife was not entitled to sell or dispose off her property.

(4) This clause made difference in unmarried and married girls. Only unmarried girls are treated as member of joint family. Girls who are married before partition they are regarded as coparcenary and allotted a share and girls who are married after partition would be treated as coparcenary. This is discrimination between married and unmarried girls.

Kerela has totally abolished the concept of coparcenary property that is if there is any property equal rights should be given to son and daughter.

**THE HINDU SUCCESSION AMENDMENT ACT, 2005**

The Hindu Succession Amendment Act 2005 was enacted with the aim of expanding the rights of women and daughters of the family and brings them at par with the male members.Section 6 of this amendment challenged the fundamental principles of Hindu coparcenary law. Through this amendment daughters, both married and unmarried, were given equal rights over the coparcenary as the sons of the family. It also provided that the females of the family could now also act as the Karta of the family which they couldn’t previous to this law. Any reference made to a coparcener would also include daughters equally.

Any property inherently entitled by her would-be under coparcenary ownership and would not be disposed of by testamentary disposition. The amendment yet does not provide a completely fair chance as there are still provisions which have not been bought at par with equality like after her death all her property is to be owned by husband’s side of the family.

Law Commission submitted its 174th report and they advice in rest of the states that how there a discrimination between son and daughter in respect to coparcenary property. So law commission has brought radical change through its 174th report. After recommendation parliament has brought this change on 9th September, 2005.After 9thSeptember, 2005 old section was replaced and till 2020 there is confusion in its interpretation. To have the rights of a daughter in coparcenary property

1. (a) The family should be joint in nature.
2. The family should be governed by mitakshara law.
3. The daughter by birth becomes a coparcenary.

(2) Any property received by daughter in a partition should be separate property and also have a right to sell, dispose, transferred. She is absolute owner of a property.

(3) Survivorship is completely replaced by succession. When a person dies his property is not transferred to coparcenary it will be transferred to nearest legal heirs. Survivorship creates discrimination because if any coparcenary dies his property is transferred to other coparcenary through survivorship.

(4) Son pies obligation concept is completely taken away. Son pies obligation means if a father borrows a loan for funeral expenses or any other family function and before he repays a loan he dies so now it is duty of a son to repay a loan to a person from which his father borrows a loan.

**DWELL COPARCENARY**

When daughters becomes karta she can become in both the family either husband or fathers.

**POWERS OF MANAGER**

Power to elienate property: If any Coparcenary has community of interest cannot sell the property without the consent or interest of other Coparcenary. This rule differs in Bombay and Madras school. The purchaser who purchases the property he is attached with common interest with other Coparcenary. The purchaser enjoys the ownership and the purchaser can demand partition and the get specified land. Karta has the power to elienate property including shares of Coparcenary to any other person without the consent of other Copracenary but it should be for legal necessity or betterment of the state.

When karta looks after business he himself not look after affairs of family so he is entitled to sell the property without anyone consent and to use that money for family upliftment. This concept is called legal necessity. In a joint family there is unmarried For example in a joint family if there is n unmarried daughter in 1980s and the husband family was demanding for money ( not dowry ) then father acting as karta can sell the entire ancestral property for marriage of unmarried daughter.

**CHARACTERSTICS OF KARTA**

* The karta can sell the entire ancestral property for legal necessity or for benefit of the state.
* Whatever actions done by karta shall be binding on every major and minor of family.
* The karta looks after or discharge the duties of family.
* The karta can sell the entire property without the consent of other Coparcenary.
* Without expressed or implied consent of other Coparcenary if karta sold the property it would not be considered as void.

For example if certain amount is necessary that is one of the coparcenary met with accident and have to undergo for brain surgery the karta is acting for benefit of the family if the family is joint in nature.

Karta can also sell the property for the maintenance of wife or minor child.

**DIFFERENCE BETWEEN RULE OF SURVIVORSHIP AND RULE OF SUCCESSION**

The amendment of the Hindu succession act in 2005 brought forth the rule of succession overrules of survivorship. Prior to this amendment the daughters and other female relatives of the family were only considered as heirs and were entitled to their share of notional partition only after the death of the Karta while all the male members were eligible to acquire their shares even before the Karta’s death due to bearing the rights of coparceners, this was the rule of survivorship.

The rule basically meant that only sons of the family could inherit property by coparcener rights because they were considered responsible for the further survival of the family name. While the rule of succession implies that the property would be inherited by the order of birth irrespective of gender. This rule was introduced by the 2005 amendment and thereby included the daughters of the family within the coparcener rights.

**ISSUES IN INTERPRETATION**

The issue in interpretation was whether it is necessary that the father of the daughter should be living as on the date of commencement for the latter to claim the benefit of the 2005 amendment.

**Shalini Sumant Raut & Ors vs Milind Sumant Raut & Ors**

In this case, Rajaram died leaving behind 8 heirs, 5 sons and 3 daughters. His property was delved upon by intestate succession under section 8 of the Hindu Succession Act and not by survivorship. It was held that the applicants would have to consider the three female heirs and their share in the property by means of a notional partition. They will also have to consider the notional partitions which would take place in the future by the death of these coparceners leaving behind female heirs.

**Prakash Vs Phulavati**

The dispute was about the ancestral and self acquired property and retrospective application of the Amendment act. The respondent in the Supreme Court petition had filed a suit in the trial court of Belgaum, claiming for partition and possession of certain per ancestral properties, which were acquired by her father and different per cent of share in another property. The death of respondent’s father, who had acquired the ancestral property, happened on 18th of February, 1988. After his death respondent acquired ancestral properties. When the Amendment act came on effect on 9th of September 2005, the respondent, according to section 6(1) of the Act, rightfully claimed her share of the property according to the amendment act.

In the Trial court, the contention was that the Respondent cannot claim the ancestral property because of the simple reason of her not being a legal coparcener in the property. Whereas in the High Court the contention was that the respondent’ father died before the Amendment Act came into existence, hence it cannot be applied to the respondent’s case. In the Supreme Court, the contention was that the Amendment Act came into place after the death of the respondent’s father, which made him lose his status of being coparcener. Hence, she cannot claim to be the coparcener. When she is not a coparcener then the act, which expressely doesn’t talk about any retrospective applicability, would not be applied in her case.

**Dannamma v. Amar**

In this case, the appellants were the daughters of a coparcener who had died in 2001. The respondents were the sons of the deceased who had filed a suit for partition of the property in 2002. They claimed that the daughters were born prior to 1956, the enactment of the act. The trial court had denied any share to the daughters. The appeals to High Court were also dismissed.

However, the Supreme Court reversed the impugned judgments. The question was whether by the virtue of the amendment, the daughters would become coparceners “in the same right as the sons.” While relying on the case of Anar Devi, it held that the concept of notional partition exists only for the computation of the interests of the shares of the heirs and does not disrupt the Coparcenary as a whole. Further, the court reiterated the principles laid down by the Phulavati case. It said the purpose of the amendment was to realize the constitutional mandate of equality.

The court held that the lower courts should have been mindful of this change in legal rights. It relied on the case of Ganduri Koteshwaramma, to say the rights under the amended act are not lost merely because a preliminary decree has been passed in a partition suit before.It was held that the amendment further gave an inherent right by birth in the property to the daughters. The court then directed the trial court to apply the principles accordingly and grant a share in the Coparcenary property to the daughters as well.

**Mangalam Vs TB Raju**

Court extensively focused on Danimma Vs Amar and Prakash Vs Phulavati. Firstly said that there was prospective effect and then there was appeal come out from Supreme Court against share and calculated shares of parties in such a way that the daughters will get equal share i.e it is retrospective in nature.

**AMBIGUITIES IN INTERPRETATION**

There was not a binding judgment because there was three conflicting judgment came out from above three cases. The judgment in Danamma thus brought back the controversy from its grave. Though the judgment agrees with the ratio in Phulavati, it does not apply it. By giving the daughters the benefit of the amended act even though the father had died before the amendment, the judgment directly goes the against the ratio of Phulavati which prescribed that the amendment shall only apply to “living daughters of living coparceners.” Since the Phulavati case still continues to be good law, a daughter whose father had died before the amendment cannot claim the benefit of the amendment act. However, going by the ruling in Danmma, a daughter will be entitled to the benefits of the amendment act in a pending suit filed after 2005 regardless of when the father died. The distinction between fresh suits for partition and pending suits does not a have sound basis.

By the literal interpretation of the statute, the ruling in Phulavati is legally sound. It is also more pragmatic to set a clear date for the application of the amendment act. This has, however, been blurred by the judgment in Danamma. There is still ambiguity as to whether daughters of coparceners dying before the amendment act can by the virtue of the judgment in Danamma institute a claim in the Coparcenary property.

The rationale in Danmma focuses of the objective of the amendment to give the daughters “inherent right to property by birth.” If this rationale is followed, then in case of father’s death before the amendment a daughter should be allowed to institute a claim for partition based on this right. However, the ruling restricts itself to pending suits or suits filed by a male coparcener. In contrast, noticing that the ruling in Phulavati is an “authoritative precedent,” a female has no rights under the amendment act if the father had died before enactment. In such a case, she shall have no claim to institute proceedings for partition. Hence, in this author’s view, it is not logically sound to draw a distinction between suits for partition that have not been finally decided, those suits for partition that are sought to be instituted by daughters.  The effect of these two judgments, thus, has dichotomized the law.

**Vineeta Sharma Vs Rakesh Sharma**

In this case Supreme Court recognizing the equal rights of daughters in Coparcenary property, it has been explained that the law regarding devolution of Coparcenary property and also the impact of 2005 amendment to Hindu Succession Act on daughters right to it. The bench comprising Justices Arun Mishra and MR Shah observed that the classic Shastric Hindu law excluded the daughter from being coparcener, and this injustice has been done away with by the 2005 Amendment of the Hindu Succession Act in consonance with the spirit of the constitution. According to section 6 of Hindu succession Act,1956 when a male Hindu dies, having at the time of his death an interest in Mitakshara Coparcenary Property, his interest in the property shall devolve by survivorship upon the surviving members of the Coparcenary. This Provision has two main problems first that is there discrimination based on gender and second it violates woman’s fundamental right. Therefore to provide social justice to women this provision is replaced by section 6 of Hindu Succession Amendment Act, 2005. Due to section 6 there are some confusion which is created that whether a father should be alive on 2005 or if he dies then daughter would get right in ancestral property or not. Daughter should be born after 2005 or before 2005. However these all question are solved through the judgment of this case. It is contended in this case that the daughter has equal right in ancestral property, irrespective of whether her father was alive or not at the time of Amendment. Hindu Succession (Amendment) Act, 2005 has a retrospective effect. Amendment is applicable to living daughters of the living Coparcenars as on 9-9-2005.

**CONCLUSION**

In a country like ours where patriarchal notions still control the economic and social lives of women, legislation should be a stepping stone to overcome these barriers and not act as a roadblock. The society still treats women who demand their rightful share in ancestral property with contempt. Hence, the concept of Coparcenary has come a long way and has undergone many changes. The 2005 amendment is a big step in dismantling patriarchal forces because it grants women economic freedom and challenges the notion that they become a part of their husband’s family after marriage. It is necessary to understand whether equality exists only as a phenomenon or it is actually present for the awareness and approval of the majority of the people. It should not be solely realized by placing a section of women in traditions of inequality.

Thus, there is a need to create social awareness and to educate people to change their attitude towards the concept of gender equality. The need of the hour is also to focus attention on changing the social attitudes in favour of equality for all by enacting a uniform law.

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