

## PART I - HINDU LAW

### SECTION I - HINDU LAW OF INHERITANCE

#### A. HINDU JOINT FAMILY AND COPARCENARY PROPERTY (INHERITANCE BY SURVIVORSHIP)

#### 1. HINDU JOINT FAMILY AND CO-PARCENARY SYSTEM (COPARCENARY PROPERTY)

[MOST IMPORTANT]

#### **SYNOPSIS:**

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- B. Features of Coparcenary**
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- N. Effect of legislation in the Hindu Joint family**
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#### **A. INTRODUCTION:**

- 1. The Hindu Joint Family is peculiar to Hindu society only. It is an institution of male members and female members like husband, wife, unmarried daughters, sons' unmarried daughters. Within the joint family there exists a system called the co-parcenary. The co-parcenars are the owners of joint family property.

Only male members are coparceners. They have got the right of partition in the co - parcenary property.

2. Coparcenary is a part of the Hindu Joint Family. It includes only persons who acquire an interest in the joint or co-parcenary property. They are the three generations next to the holder in unbroken male descent. e.g., sons, grand sons and great grand sons of the holder.
3. It consists of common male ancestors and his linear male descendents in the male line within 4 degrees counting from and inclusive of such ancestor or 3 degrees exclusive of the ancestor. Though every Coparcenary must have a common ancestor to start with, it need not be limited to four degrees from the common ancestor.

A coparcener may be 4 degrees away from the common ancestor, but if he is in a position to demand partition of the coparcenary property, he can be a coparcener. Partition can be demanded by any member of a joint family who is within four degrees from the last holder and he may be remote from the common ancestor or original holder of the property.

Eg: If member of a joint family is four degrees away from the last holder, and he cannot demand a partition, he is not a coparcener. On the death of the last holder, he would become the member of the coparcenary. But if his father, grand father and great

grandfather had all predeceased the last holder, then he is not entitled to be a coparcener because, there is a rule that if there is a break of more than three degrees between any holder of property and the person who claims to enter the coparcenary after his death, the line ceases in that direction and survivorship is confined to those collaterals and descendants who are within the limit of four degrees.

4. No co-parcenary can commence without a male ancestor. Hindu co-parcenary is a continually expanding unit. With one common male ancestor, there may be one or more families. No female can be a coparcener, though she can be a member of a Joint Hindu family.
5. The difference between ancestral property and separate property is that ancestral property is that which is inherited by a Hindu from his father, father's father, father's father's father and property inherited from other relations is his separate property. In the case of ancestral property, if the person inheriting it has sons, grand sons or great grand sons, they become joint owners/coparceners with him. They become entitled to it due to their birth.

***Commissioner of Income Tax Vs. Lakshminarayana:***

A joint family consists of all persons lineally descended from a common ancestor, and includes their wives and daughters. A Hindu coparcenary is narrower body than the joint family. It includes only those

persons who acquire by birth an interest in the joint or coparcenary property.

**B. FEATURES OF CO-PARCENARY:**

1. Co-parcenary is a creation of law and not by the act of parties. Only in case of adoption, the adopted becomes a coparcener for the properties of the adoptive father.
2. Though a female can be member of a joint family entitled to maintenance out of her husband's property, she cannot be a coparcener.
3. Unity of ownership is the essence of a co-parcenary. When the property is undivided, share in the property is unpredictable. The interest of a member in the family enlarges by deaths and diminishes by births in the family. There is community of interest and unity of possession between all the members of the family. The coparcenary property is held in collective ownership by all the coparceners in a quasi corporate capacity.
4. There may be maintenance holders without being coparceners in the common estate.
5. If the Manager or other members in the family make invalid alienations, then the co-parceners have right to invalidate them.
6. The co-parcenary is a corporate entity and in all transactions the Kartha represents.

**C. RIGHTS OF COPARCENERS:**

The following are the rights of a co-parcener:

1. Every co-parcener is entitled to community of interest and unity of possession of co-parcenary property along with the other co-parceners.
2. A Co-parcener's share gets defined only when a partition takes place.
3. Every Co-parcener is entitled to joint possession of the co-parcenary property and also its enjoyment. In case, a co-parcener is not allowed for joint possession or enjoyment of property, then he can enforce his right by a civil suit.
4. Every Co-parcener is entitled to maintenance out of the income of the co-parcenary property.
5. Every adult co-parcener is entitled for partition of the co-parcenary property.
6. A Co-parcener is entitled to get his share, if another Co-parcener dies. This is as per the rule of survivorship.

**D. DIFFERENCE BETWEEN MITAKSHARA AND DAYABHAGA REGARDING DAYA (HERITAGE) AND VIBHAGA (PARTITION):**

There is a difference of opinion with regard to Heritage (daya) and Partition (Vibhaga) between Mitakshara and Dayabhaga schools.

1. According to **Dayabhaga**, the ownership of the property passes to the legal heirs only on the death of the previous owner.

According to **Mitakshara** School, the existence of father or owner of the co-parcenary property does not affect the legal heirs from getting the property as soon as they are born. This is known as the **doctrine of Right of birth**.

2. In **Dayabhaga** School, there cannot be any partition during the lifetime of the father (legal owner). Only after his death, the legal heirs can partition the property.

In **Mitakshara** School, partition is possible even during the lifetime of the father because the interest in the property fluctuates by the number of births and deaths of male members in the family.

#### **E. UNOBSTRUCTED AND OBSTRUCTED HERITAGE: (APARTHIBANDHA DAYA AND SAPRADHIBANDHA DAYA)**

##### **1. APARTHIBANDHA DAYA : (UNOBSTRUCTED HERITAGE):**

According to the Mitakshara joint Family system, the existence of father or ancestors does not affect his putra (son) from acquiring a right in the coparcenary property. The putra includes son's son and son's son's son (4 degrees).

So even a great grand son can acquire property right when his great grand father is alive. This is known as **unobstructed heritage i.e., the heritage is not at all obstructed by the existence of ancestors**. It **devolves by survivorship**. The putra can claim partition even when the ancestor is alive.

It advocates equal ownership between the father and son. Death of one of the coparceners does not create a chance of inheritance. The right of survivorship operates in favour of the surviving coparceners and they continue to be owners.

##### **2. SAPRADHIBANDHA DAYA (OBSTRUCTED HERITAGE):**

The existence of the owner is an obstruction to inheriting the property by the other (the putras) legal heirs. Partition is not possible as long as the ancestor is alive. This is known as obstructed heritage or sapradhibandha daya. **Property is acquired not by birth but only on the death of the last owner**. The relatives have only a **spes successionis**.

In Dayabhaga law, there is no distinction between Obstructed and Unobstructed heritage. This distinction is existing only in Mitakshara School. In Dayabhaga, all inheritances are obstructed, i.e., the son takes an interest only on the death of the last owner.

##### **F. COPARCENARY WITHIN A COPARCENARY:**

There can be a coparcenary within a coparcenary. For eg., A dies and his property is inherited by his sons

B, C and D. The three brothers constitute a coparcenary. Suppose B is an Advocate – he has self acquired property. He dies leaving two sons E and F. E and F are already coparceners in the self acquired property of their father B. So, there are coparcenary system, one bigger with C,D,E and F, the other smaller consisting E and F only. Thus, there can be a coparcenary within a coparcenary.

***Baghvan Dayal Vs. TMST Reoti Devi:***

A Kartha died leaving three sons. The three sons constituted a coparcenary. One of the sons died leaving his two sons. For his self acquired property both his sons claimed separate coparcenary share. However, the brothers of the deceased father contended that the property belonged to all under the original coparcenary system.

The Supreme Court held that there could be a “Co-parcenary system within a co-parcenary”. Some members of a co-parcenary system could separately form another system of co-parcenary within the same Hindu Joint Family. But persons from different Hindu Joint families could not form a co-parcenary within a co-parcenary.

**G. DIFFERENCE BETWEEN COPARCENARY AND JOINT TENANCY:**

The co-parcenary system resembles joint Tenancy of English law as they both have joint possession, right of survivorship and liability to partition. But they differ from each other in the following aspects.

**COPARCENARY**

**JOINT TENANCY**

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| <ol style="list-style-type: none"> <li>1. It is a creation of law</li> <li>2. Two or more individuals not related to each other cannot become coparceners (Bhagwan Dayal Vs. MST Reoti Devi)</li> <li>3. It is created by Survivorship.</li> <li>4. The doctrine of right by birth takes place. (Eg) X and Y are coparceners. X dies leaving his son Z. Y and Z shall be coparceners who can claim the benefit by survivorship. After death of Y, Z will be entitled by survivorship.</li> </ol> | <ol style="list-style-type: none"> <li>1. It is created by survivorship</li> <li>2. Any two persons may become joint tenants.</li> <li>3. It arises by grant.</li> <li>4. Doctrine of survivorship takes place. (Eg) X and Y are Joint Tenants. X dies leaving his son Z. Under English law, Y alone can claim the property. Later on, after Y's death his son is entitled to the property.</li> </ol> |
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## **H. PROPERTIES COMPRISING CO-PARCENARY PROPERTY:**

Includes property inherited from paternal ancestors, blended property (self acquired property blended with coparcenary property) property acquired or earned by utilising coparcenary property.

### **1. Property inherited from Paternal Ancestors:**

Any property inherited from his father's father or father's, father's father is his ancestral property. This is a co-parcenary property and his son, son's son and son's, son's son acquire rights by birth. Addition to the property with the income of co-parcenary property is also co-parcenary property.

If more than one son inherit the self acquired property of their father, they hold it as joint family property, if they are living as members of a joint family at the time of his death.

Any property acquired by the father by adverse possession would be treated as a self acquired property and the sons do not get interest by birth. He can convey it to any one.

### ***Ananda Rao Vs. Vasant Rao:***

In this case, the difference between ancestral property and separate property was highlighted. Property inherited by a Hindu from his father, father's

father or father's father's father is ancestral property whereas property inherited by him from other relatives is his separate property.

If any person inheriting ancestral property has sons, grand sons or great grand sons, they become joint owners/ coparceners with the person inheriting the property, due to their birth.

### **2. Property inherited from divided father:**

Whether the property inherited from separated father is ancestral or separate property in the hands of the sons is a debated question.

Different High Courts interpret it differently. According to Gujarat High Court, property from divided father is only ancestral property and taxed as income of the joint family. But the view of the Madras High Court is different. It says that the property is only separate property in the hands of the son and cannot be taxed as the income of the joint family.

### **3. Blending or Blended Property or Doctrine of Blending:**

A coparcener may blend his separate property with the ancestral property; thus making it co-parcenary property, if he wishes to do so. It is a unilateral act and so it is considered as gift. Such blending is not taxed under the Gift Tax Act. A female member cannot blend separate property with joint family property as she is not a coparcener.

#### **4. Property acquired by utilising co-parcenary property:**

If property is acquired by utilising co- parcenary property it is treated as co parcenary property. In ***Bengal Insurance Co. Vs. Vellayamma***, it was decided that if the life of a coparcener is insured and premium is paid out of joint family funds, then the insurance amount received is coparcenary property.

##### ***Kondiram Vs. Krishna:***

It was held that properties which are admittedly coparcenary property till they are partitioned, should be held as joint family properties, but if any property is acquired by a coparcener after a severance (partition), it cannot be blended or clubbed with the joint family properties.

#### **I. PROPERTY FROM MATERNAL ANCESTORS:**

Property inherited from maternal ancestors is not co-parcenary property but only self acquired property.

##### ***Venkamma Vs. Venkata Ramanayamma:***

A and B were brothers, and members of a Mitakshara co-parcenary. Their mother's father (maternal grand father) died and they inherited his property as legal heirs. Subsequently A died. A's widow claimed the property, as property from maternal grand

father would not form a Co-parcenary property. The Privy Council rejected her contention and held that B was entitled to get the property by survivorship and not A's widow by inheritance. Property inherited by a person from collaterals like brother, uncle, or property from a female, is his separate property.

##### ***Mohammed Hussain Vs. Krishnanandhan:***

In this case, the Privy Council held that property inherited from maternal ancestors is not coparcenary property and the sons have no right by birth. The property inherited from maternal ancestors is only self acquired.

In this case the meaning of the "ancestral property" was also given as property. Inherited by a male then father, father's father and father's father's father and not from any other ancestor, male or female, paternal or maternal, near a remote.

#### **J. SHARES ALLOTTED ON PARTITION:**

Any share obtained by a co-parcener by partition of ancestral property is ancestral property for his male issues. Interest is acquired on such property by birth. The issues may be in existence at the time of partition or subsequently.

Regarding other relations, it is only separate and if the co-parcener dies without leaving male issue, the property passes to the heirs by succession.

***Bhagwant P. Sulakhe Vs. Digamabar Gopal Sulkhe:***

The plaintiff filed a suit for partition against his deceased brother's son. Both of them were members of a joint family. They were managing agent for a company as partners of a firm which they had set up.

In 1957 this managing agency agreement expired and was not renewed by the company. On the contrary the Plaintiff was appointed in 1957 as Managing Director. By that time, there were disputes in the joint family and the joint family status ceased to exist.

In these circumstances it was held: The remuneration paid to the Plaintiff as Managing Director of the company was his personal property. The test is whether it was paid to him for his own individual services or as representing the joint family.

The shares in the company originally purchased in the name of the plaintiff and the defendant, however, were paid out of joint family funds. They remain joint family property and are unaffected by the subsequent disruption of the family. So they can be partitioned amongst the joint family members.

**K. PROPERTY RECEIVED AS GIFT FROM PATERNAL ANCESTORS:**

Originally it was doubtful as regards the question whether it constitutes co-parcenary property or separate property. But from decided case laws, it is

held that the father may indicate whether the property should be held as self acquired property or Co-parcenary property. The language of the document is relied upon in order to find out the intention of the donor.

**L. SELF ACQUIRED PROPERTY: (SEPARATE PROPERTY)**

Self acquired property is such property acquired by the co-parcener himself without detriment to the co-parcenary.

The following properties are considered as "Self acquired":

1. Gift of any portion of ancestral property through love and affection by a father to the male issue.
2. Government grant to a member of a joint family.
3. Any income of separate property and purchase made with such income.
4. Any property inherited by a Hindu from a person other than his father., father's father, or father's father's father.
5. Ancestral property lost to the family and recovered by member without the assistance of joint family property.

6. Property which is held by sole co-parcener who is surviving when there is no widow with power to adopt.
7. Any property acquired by means of learning are considered to be separate property as under the Hindu Gains of Learning Act 1930.
8. Any share received on partition by a co-parcener without a male issue.
9. Income received from separate property.

The difference between self acquired property and co-parcenary property was pointed out in the famous case of:

***Katama Nachiar Vs. Raja of Shiva Ganga:***

The East India Company in 1800, made a gift of the Shiva Ganga Zamindari to the then Raja in recognition of his help to the East India Company. After the Raja's death in 1829, two persons claimed the grant.

- i. The daughter of the deceased Raja as the legal heir.
- ii. The Raja's brother's son by way of survivorship.

The question to be decided was whether the grant was self acquired property, or co-parcenary property. The Privy Council held that the grant was self acquired property and as such the rules of inheritance would apply and the daughter would get it.

**The difference are:**

<b>SELF ACQUIRED</b>	<b>CO-PARCENARY</b>
1. Rules of Inheritance shall apply	1. Rules of survivorship shall apply
2. Such property may be bequathed under a will.	2. Co-parcenary property cannot be bequeathed under a will.
3. Alienation can be done without restriction.	3. Alienation cannot be done of coparcenary property

***Arunachala Mudaliar Vs. Muruganatha Mudaliar:***

A Hindu after giving some properties to his wife and other relatives made a will of his three self-acquired properties to his three sons separately. He also mentioned in the will that the sons shall enjoy the properties allotted to them with absolute rights and with powers of transfer.

Now the question is whether the property received by his son by gift or will of his father is a separate property or ancestral property.

The Supreme Court held that by looking into the intention of the donor as evidenced in the Will and the

surrounding circumstances, the properties in the hands of sons are not ancestral properties but only separate properties.

**M. GAINS OF LEARNING:**

The gains of learning (earning by way of education and qualification obtained by a member maintained out of joint family funds) was originally considered as part of co-parcenary property. It is now settled that it does not constitute co-parcenary property by virtue of the Hindu Gains of Learning Act 1930.

**Before the Hindu Gains of Learning Act, there were 2 propositions:**

1. Gains made by profession or occupation requiring special training was joint property.
2. Gains made by personal labour of a joint family member maintained out of joint family funds was self acquired property.

The object of the Hindu Gains of Learning Act was to provide uniform rule as to property acquired by a member of family. Even if the learning was acquired as part of the expense of the family, his property will not be joint family property.

Even if the acquirer and his family were maintained by the family while the acquirer was learning, his property will not be joint family property. All gains, whether ordinary or extraordinary learning are separate property. Education means any education - elementary, technical or general training.

***Gopal Chand Vs. Hukum Chand:***

Gopal Chand was an I.C.S. Officer. He was educated by utilising the co-parcenary property. He had his education in England.

Later on, when the Hindu Joint family incurred heavy debts, Gopal Chand's self-acquired property was also attached in execution of a decree. Gopal Chand challenged the decree of the Court on the ground that his property was self acquired and did not form part of co-parcenary property.

The Privy Council held that any property as capital would be deemed to be co-parcenary property and as such the decree of execution was held valid.

However, the passing of the Hindu Gains of Learning Act 1930 superseded the Privy Council's judgement and provided that any property acquired through gains of learning is always property deemed to be self acquired property and not co-parcenary.

## N. EFFECT OF LEGISLATION IN THE HINDU JOINT FAMILY:

### 1. THE HINDU WOMEN'S RIGHTS TO PROPERTY ACT, 1937:

The above Act has effected the Hindu Joint family system. On the death of a co-parcener his widow can take his share and can demand partition. If she does not do so, the interest would merge in the co-parcenary after her death.

On partition, her share becomes definite and devolves upon her husband's heirs after her death. So, she is not a co-parcener but only a substitution in the place of her husband. This Act has been repealed by the Hindu Succession Act 1956.

### 2. THE HINDU SUCCESSION ACT, 1956:

Section 30 the Act has empowered a co-parcener to dispose of his interest in the Mitakshara co-parcenary property by a will. If a will is executed by a co-parcener then the rule of survivorship does not operate.

In the absence of a will, if a co-parcener has left female heirs like widow's daughters, mother, etc, then the co-parcener's share is inherited by such female heirs and the rule of survivorship does not operate. So, immediately after the death of a co-parcener, his widow and other female heirs can ask for partition. Thus the Hindu co-parcenary has now become a mere shadow, a myth and a farce.

## O. DIFFERENCE BETWEEN MITAKSHARA AND DAYABHAGA CO-PARCENARY:

DAYABHAGA	MITAKSHARA
1. There is no coparcenary between the father and sons during the father's life as there is no right by birth.	1. As the sons have right by birth, the coparcenary arises even during the life time of the father and sons.
2. The share of each coparcener being defined, it can be alienated.	2. The share of each co-parcener is not defined and hence alienation does not exist fully but only to a limited extent.
3. Interest does not pass by survivorship.	3. Interest passes by survivorship.
4. On the death of a co-parcener his heirs become coparceners.	4. A son becomes a coparcener by birth itself.
5. As coparcenary exists only on death of a coparcener, even females may become coparceners.	5. Here, only males can be coparceners.

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| <p>6. The alienee gets a right to ask for partition. He can ask for joint possession along with the co- parceners, as he has a defined share.</p> <p>7. The son does not have a right to partition against the father.</p> <p>8. The Manager is bound to give account of his past management of the property.</p> | <p>6. As there is no defined share the alienee can seek a suit for partition.</p> <p>7. The son can institute a suit for partition even against his father.</p> <p>8. The Manager need not give account for past management.</p> |
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**UNIVERSITY QUESTIONS FOR REVIEW:**

1. *“Hindu Joint Family is peculiar to Hindu Society only” Comment.*
2. *Only male members are co-parceners in Hindu Joint Family. Discuss the effect of Hindu Succession Act, 1956.*
3. *Explain “obstructed and unobstructed heritage” in Hindu Joint Family.*
4. *“The enactment of Hindu Act 1956 has made the coparcenary system a mere shadow, a myth and a farce”. Comment.*
5. *Explain what is Coparcenary system? What are the different types of self acquired property recognised by law.*

6. *Trace the inroads made upon the ancient joint family by means of recent legislation.*
7. *What are the rules regarding blending of separate property of a coparcener with his ancestral property.*
8. *Elucidate the character of Gains of 9 members of a Hindu Joint family both before and after the passing of the Hindu Gains of Learning Act 1930.*
9. *The Joint and Undivided family is the normal condition of “Hindu society”- Discuss.*
10. *“Under the Mitakshara law there is no inheritance but merely partition, under the Dayabhaga law there is no partition but inheritance only”- Discuss.*
11. *What is ancestral property? What kinds of property are regarded as ancestral property? Explain.*
12. *Distinguish between ancestral property and self acquired property?*
13. *“A coparcenary is purely a creation of Hindu law”. Discuss.*
14. *What is Joint Hindu family? Distinguish between Joint Hindu family and Hindu Co-parcenary?*

