
THE FUTURE OF COPARCENARY: RISE IN NUCLEAR FAMILIES

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ABSTRACT

Family in India is a complex social system. Traditionally, joint families were always a preference in India; they were almost a mark of wealth and property across caste and class. However, today the number of nuclear families is on an all-time rise. Nuclear families have always been in emergence amongst the poorer community of India because of several factors linking financial constraints, However, statistics show that the concept is on an exponential rise in Urban cities of India as well, thus indicating that it is slowly becoming a matter of preference and not economic standing. A nuclear family is usually represented as a family small in size. Reasons for the growth of nuclear families in India could be plenty, ranging from the fact that they are economically more feasible owing to fewer members to it becoming a lifestyle choice for the newer generation. With plummeting number of joint families in India, the concept of ancestral property has become almost obsolete, the purpose of this article is thus to understand, what remains of the right of coparcenary when in reality there hardly remains any ancestral property.

THE CONCEPT OF HINDU COPARCENARY

The simple traditional proposition of Hindu law is that when a Hindu gets his father's separate property by inheritance, he holds it as a coparcenary property with his son or sons if he has any at that time, but between the period from the death of his father wherein he inherits that property till a son is born to him, he can treat the property as his separate property and may alienate it, and if, by the time a son is born to him, that inherited property is no longer left, that son will obviously get no interest. However, if he does not alienate and the inherited property is still with him, the moment a son is born to him, the son becomes a coparcener with him. According to Black's Law Dictionary, coparcenary is described as "such property that arises where several take by descent from same ancestor as one heir, all coparceners constituting but one heir and having but one estate and being connected by unity of interest and of title"¹ Hindu Coparcenary is not the same as the Hindu Joint family, the former has a much narrower scope. Only males who acquire from birth an interest in the joint or coparcenary property can be members of the coparcenary or coparceners. Coparceners consist of the male members of the joint family and his sons, grandsons, and great-grandsons. It includes one common ancestor and not more than three male descendants.² There are several rights that are available to a coparcener such as:

- A coparcener cannot be created by an agreement; it is entirely the product of law. They get rights only by birth or adoption in the joint family property.
- Until partition takes place, coparceners have an unpredictable and fluctuating interest which may be enlarged by deaths and diminished by births in the family.
- Every coparcener has a right to be in joint possession and to enjoy the joint family property; this is known as community of interest and unity of possession.
- Every coparcener has the right to be maintained including a right to marriage expenses being made out of the family funds.
- Every coparcener is bound by the alienation made by the Karta of the joint family, for legal necessities or benefits of the estate.
- Every coparcener has a right to object and challenge alienation made without his consent or made without proper legal necessities.
- Every coparcener has the right to call for partition of the joint family estate and ask for his/her share.

¹ Black's Law Dictionary 335 (6th ed. 1990).

² State of Maharashtra v. Narayan Rao Sham Rao Deshmukh and Ors, (1985) 2 SCC 321.

WHAT IS A HINDU JOINT FAMILY?

The Mitakshara theory was that the descendants in the male line of a common ancestor were presumed to be “joint” with a common possession and common right of enjoyment of ancestral property and all its accretions from various sources.³ A Joint Hindu Family is a social construct of the Hindu family Law which is governed by the Hindu Succession Act, 1956.⁴ It basically consists of the common male ancestor and all his lineal male descendants up to any generation together with their wives or widows and unmarried daughter of the common ancestor and of their lineal male descendants. The presence of a common ancestor is necessary for bringing a joint family into existence. Death of common ancestor does not ensure an end to the joint family as upper links are removed and lower links are added in the family composition. An illegitimate son can also be a member of his father’s joint family. A widowed daughter may return and claim her share in the family estate.

DIFFERENCE BETWEEN SELF-ACQUIRED AND COPARCENARY PROPERTY

Coparcenary Property is basically the property acquired from paternal ancestor or one allotted through a partition or property acquired by utilizing coparcenary property. If the property is self-acquired, the owner exclusively enjoys absolute ownership over the property. Self-acquisitions pass at death as if the acquirer were separate; during his lifetime his acquisitions and earnings were never joint family property unless he either declared them to be so or later merged them in the common pool of the joint family. There is acquisition of interest by birth only in case of ancestral or coparcenary property. In both these properties, alienation by will is permitted. Alienation of undivided interest by way of gift cannot be done by a coparcener without the consent of other coparceners, but in the case of self-acquired property, alienation by gift can be done to any extent and to any person. Partition can be claimed by any coparcener in the division of coparcenary property but the same cannot be initiated in the case of self-acquired property.

CREATION OF HINDU UNDIVIDED FAMILY

Once a person gets married, a Hindu Undivided Family is automatically created, it can’t be created by a single person. It is a separate entity that can be created by members of a family,

³ JDM Derrett, Law and Predicament of the Hindu Joint Family, Economic and Political Weekly, February 13, 1960.

⁴ Nitya Bansal, Hindu Joint Family and Coparcenary: An Analysis, LEGAL BITES.IN, <https://www.legalbites.in/hindu-joint-family-and-coparcenary> (Last visited Sept 7, 2021).

wherein they are lineal ascendants or descendants. For the purpose of upkeep of records kept by tax authorities, it needs to have an income-generating asset, which can only come as either a gift from a relative or through a Will for all members of the Hindu Undivided Family. Once it has such an asset, the Hindu Undivided Family needs to be registered in a particular name and other formalities such as opening a bank account and acquiring a Permanent Account Number have to be done. An HUF cannot be broken into parts, it has to be dissolved by an agreement between all members.

HISTORY AND EVOLUTION OF COPARCENARY RIGHTS IN INDIA

Historically, the concept of coparcenary emerged from the ancient Hindu jurisprudence which later on became the essential feature of Hindu law, generally and Mitakshara School of Hindu law, particularly.⁵ The concept of coparcenary in Hindu Law originated from the teachings of Vijneshwara regarding the concept of Daya, whereby Daya was explained as that property which becomes the property of another person, solely by reason of relation to the owner. It evolved from Vijneshwara's commentary on Yajnavalkyasmriti in the Daya vibhaga prankranam vayavahara adhaya. In the earlier times, joint family systems were extremely common. As all the members of the family lived together, they also shared responsibilities of the family. This family system functioned heavily on the concepts of common living, sharing of utilities and burdens, and co-existence. The working members of the joint family contribute towards the common pool and combine their assets. The 'Karta' or the head of the family was responsible for looking after the upkeep of the family. As times kept changing, the families in India began to disintegrate from their ancestral bonds and became more nuclear in nature.⁶

The concept of coparcenary under the Dayabhaga school of Law is completely different from that under the Mitakshara school of Law where the right is acquired by birth or through adoption. Under the Dayabhaga school, sons do not acquire any interest by birth in the ancestral or joint family property, but his right to property arises on the death of the father. Therefore, the sons take property as heirs and not as survivors. The Hindu Code Bill 1948 had abolished the standards of Hindu joint family and coparcenary and supplied for a uniform scheme of inheritance of the belongings. However, this led to intense backlash from traditionalists who

⁵ Coparcenary in India: It's Past, Present and Future, <https://www.lawctopus.com/academike/coparcenary-india-past-present-future/> (Last accessed on Sept 5, 2021).

⁶ Terentia Consultants, Disintegration of the joint family system, emergence of nuclear family, FORBESINDIA.COM <https://www.forbesindia.com/blog/beyond-the-numbers/disintegration-of-the-joint-family-system-emergence-of-nuclear-family/> (Last accessed on Sept 7, 2021).

feared that eradication of the Hindu joint family would cause disintegration of relationships and encourage hostility and infinite litigation. The Hindu Succession Act enacted in the year 1956, was a solution-oriented effort by the legislation to mediate between the two extreme ideologies. It eased the principle of survivorship and provided some provisions to protect the property rights of female heirs who were proximate to the male deceased such as his widow, daughter and mother.

PRESENT SITUATION OF COPARCENARY RIGHTS IN INDIA

Hindu Succession Act, 1956, had a strong impact on the operation joint Hindu families from a legal standpoint. Though the Act does not induce any sort of changes in the composition of the joint family, its provisions do bring forth changes in the nature of the Hindu joint family governed by the Mitakshara law.⁷ It is clear that the concept of coparcenary is one which has been carried forward from ancient India. With advancements and developments in India, people's expectations, standards and ways of living changed, thus the law also had to accommodate accordingly. The subject of succession is found in the concurrent list of the Constitution of India, both the Union government and the state government are competent to bring about legislative changes in succession laws. For e.g. In 1975, Kerala abolished the Hindu joint family system through a state legislation due to its innately unequal nature.

A crucial amendment was made in 2005 to the Hindu Succession Act, 1956, providing daughters of the deceased equal rights with sons in the inheritance of coparcenary property, thus allowing them to be coparceners and subjecting them to the same liabilities and disabilities as the son. It was regarded as a turning point in promoting gender equality in the Indian legal system. Furthermore, widows were given the authority to adopt a son without her husband's consent.⁸ It is important to note that coparcenary applies to both ancestral as well as self-acquired property. However, unlike in the case of ancestral property where all coparceners share an equal right over the property, self-acquired property is managed by its owner absolutely using a will.

It was decided by the Supreme Court in *Prakash v. Phulavati* that firstly, a daughter cannot reopen a partition that took place prior to December 20, 2004. Secondly, that the amended section would apply to the daughter only if her father was alive on the date of the amendment

⁷ Vijendra Kumar, Notes and Comments: Basis and Nature of Pious Obligation of Son to Pay Father's Debt Vis-A-Vis Statutory Modifications in Hindu Law, 36 JILI (1994) 339.

⁸ *Collector of Madura v. Mootoo Ramalinga Sethupathy*, (1868) 12 M.I.A. 397.

coming into force, that is, September 9, 2005.⁹ The rationale behind this judgement as given by the Supreme court was that if the father who acted as a coparcener was not alive on the date of the amendment coming into force, Section 6 would be implemented as prior to the 2005 amendment. Meanwhile, a contradicting judgement was passed in *Danamma & Others v. Amar & Others*, wherein according to the judgement, amended section 6 was implemented to give the daughter equal coparcenary rights, even though her father died in 2001, prior to the 2005 amendment. Subsequently, in *Vineeta Sharma v. Rakesh Sharma*, the judgement of *Prakash* was overruled and it was declared by the Court that daughters are entitled to property by birth. In this case, the person died before the commencement of the act on 20th December 2004. But this is irrelevant because the act is acting retroactively. It will not take away the rights and privileges already acting.¹⁰

IMPORTANT IMPROVEMENTS REQUIRED IN THE HINDU LAW

It is important to note here, that certain amendments are still needed in the Hindu Succession Act, 1956. Section 15(1) requires modification because under it, the general order of succession places the woman's husband's heirs above those who belong to her natal family like her father and her mother and thereafter, her brother and sister. As per Section 15, in the case of the self-acquired property of a Hindu married female dying intestate her property first devolves on her husband's heirs and in their absence, upon her own heirs. Usually her paternal and maternal heirs do not inherit, but the distant relations of her husband would inherit her property like her mother-in-law or father-in-law.

This provision was enacted when, in the structure of the Hindu society, women hardly went out to work and were unable to acquire property of their own¹¹. There has been a drastic change in the social situation in the last few years, women have made significant progress and are now able to own property meritoriously, without relying on their husbands or other family members. Thus, the laws of succession also need to evolve with time to accommodate the fact that The self-acquired property of a female Hindu dying intestate shall devolve first upon her heirs from the natal family or the self-acquired property of a female Hindu dying intestate should devolved equally upon the heirs of her husband and the heirs from her natal family.

⁹ *Prakash and Ors. v. Phulavati and Ors.*, (2016) 1 SCC (Civ) 549.

¹⁰ *Vineeta Sharma v. Rakesh Sharma*, (2020) AIR 3717 (SC).

¹¹ Justice A.R Lakshmanan, Let us amend the Law, its is only fair to women, THEHINDU.COM <https://www.thehindu.com/opinion/open-page/let-us-amend-the-law-it-is-only-fair-to-women/article2288188.ece> (Last accessed on Sept 7, 2021).

Furthermore, the socio-legal impact of the pious obligation doctrine is not consistent with the modern jurisprudential trends in the field of proprietary jurisprudence. The Hindu law as stands amended by the various Acts, favours the absolute right of ownership with regards to females; it cannot stand to logic and reason that where the woman's limited estate has been abolished the son's right in the joint family property should be allowed to be taken away under the doctrine of pious obligation.¹²

THE EMERGENCE OF NUCLEAR FAMILIES IN INDIA: REASONS AND ANALYSIS

In India, Families joint for two generations together are becoming rare, especially in the cities. Nuclear families have surfaced as the dominant form of residential unit.¹³ Statistically, around 88% of nuclear families in India have 3-4 members and no senior citizens.¹⁴ There should be at least two members in an intergenerational relationship to start a coparcenary. As per the census reports, nuclear households have seen a rise of 52.1% in 2011 from 51.7% in the year 2001. The upsurge is exponential as it is coupled with a drastic rise of the population as well.¹⁵ The property remains ancestral only when there is an existence of a three-generational coparcenary which is indeed an uncommon phenomenon during the prevalence of the nuclear family concept in India.

As far as rural India is concerned, studies have shown that traditional joint family is predominant among the upper castes like the zamindars and the priestly class¹⁶. Nuclear family is common amongst the lower castes. This is mainly due to reasons such as a) The Demography: Because of a lower life-expectancy among the lower castes, owing to poverty etc. there is less chance of three generations existing at the same time, which ultimately makes up a coparcenary b) Migration: Movement of individuals alone or with their spouses from one place to another, usually from remote villages to big cities in search of better economic opportunities also makes keeping up with the tradition of joint families difficult and c) working women: women in such families have always worked since pre-industrial times due to financial constraints. The role of

¹² *Supra* note 5.

¹³ J.P. Singh, Nuclearization of Household and Family in Urban India, 52 Sociological Bulletin, (March 2003).

¹⁴ Available at: <https://www.livemint.com/Companies/WMs1riTsMUIN9Z2OFZ2voL/The-rise-of-the-nuclear-family.html> (Last accessed on Sept 7 2021).

¹⁵ Jai Dogra, Overview: DAUGHTER'S RIGHT TO COPARCENARY AMID DECLINING COPARCENARY PROPERTY, NITIMANTHAN.IN, <https://nitimanthan.in/blog-posts/blog-niti-manthan/2021/04/23/overview-daughters-right-to-coparcenary-amid-declining-coparcenary-property/> (Last accessed on Sept 8, 2021).

¹⁶ A Socio-Demographic Analysis of the Size and Structure of the Family in India, <https://paa2005.princeton.edu/papers/51135> (Last accessed on Sept 5, 2021).

women in these families as working members and the subsequent strengthening of the conjugal relationship acts as a catalyst to the weakening of the lineal or fraternal bonding crucial for the setup of joint families.¹⁷

MANAGEMENT OF PROPERTY IN A NUCLEAR FAMILY

The Concept of Separate Property comes up in these situations. Self-acquired property is a form of separate property of the members of the coparcenary. It's the property that is acquired by a Hindu which is not ancestral in nature. Separate property is not liable to claims of partition by the coparceners, unless the owner of the property himself considers it as joint family estate. Even the descendants of the owner don't enjoy a birthright in his property. Usually, there is a presumption of jointness in respect of the property so the responsibility of proving that the property is separate is on the person that claims it as a self-acquired property and not a joint property. With partitions in India increasing, the concept of Hindu joint family is fading away further and further. As soon as a partition is effectuated, the coparcener relinquishes his right in the joint family and moves away with his share in the estate thus being entirely independent from the joint family. Over the years, the concept of the Hindu Joint family has died down.

Separate Property is devolved either through (a) testamentary succession i.e. through the effect of a will or through (b) Intestate succession which is governed by the Hindu Succession Act, 1956. According to Section 8, general rules of intestate succession in the case of Hindu males are such that the property is devolved in the order of Class I Heirs, then Class II Heirs, then Agnates and then Cognates. For Testamentary Succession, Section 2(h) of Indian Succession Act, 1925 provides that a will means a legal declaration of the intention of a person with respect to his property, which he desires to take effect after his demise. Codicil is basically an instrument made in relation to a will, explaining, altering or adding to its dispositions and is deemed to be considered as a part of the will. The purpose of a codicil is to make some small changes in the will of the person, which has already been executed. The executor of the will is appointed by the testator, as distinguished from an administrator who is simply appointed by the Court. Then another important instrument is the letter of Administration which is basically a certificate granted by the competent authority to an administrator where there exists a will in place, authorizing him to administer the estate of the deceased in accordance with the will. Administrator is appointed when there is no executor appointed. Probate is an evidence of the

¹⁷ Arya Priya, From Joint to Nuclear: Some Observations on the Changing Pattern of Family as a Social Institution, 22 IOSR-JHSS 28, 31 (2017).

appointment of the executor and unless revoked specifically, it is conclusive as to the power of the executor. The grant of probate as to the executor however, does not confer upon him/her any title to the property.

The essential points for a will are that firstly, it can be made by anyone at any time of their lives. Section 59 of Indian Succession Act says that any person with sound mind and who is a major can dispose of his property via a will. Secondly, A will can be changed any number of times during the lifetime of the testator. Thirdly, a will can also be withdrawn during the lifetime of the person making the will, revocability of a will is found under Section 62 of the Indian Succession Act, dealing with characteristics of a will being revocable or alterable anytime during the lifetime of the testator. Section 70 of the Indian Succession Act, provides the manner in which it can be revoked, the revocation must be in writing and be duly signed by the testator in presence of two witnesses and be attested by both of them too. Revocation clause in new will shall make the old one ineffective, if there is no revocation clause in new will then the old will becomes ineffective for the part which is inconsistent with the new will. If there are no inconsistencies then both the wills can simply be read together as a single will. The will may be burnt or torn by the testator or by some other person in his presence and by his direction with the intention of revoking the same. Earlier the person making the will could only bequeath or leave his separate property but now if we read section 30 along with section 4 of Hindu Succession Act, it says that the testator, if he has a coparcenary interest then he can also dispose of his/her coparcenary interest in his will.

A will is enforceable only after the death of the testator and its registration is not mandatory in nature, however, registration of will creates a strong evidence of genuineness of the will. There are many types of wills that can be made by the testator such as concurrent wills i.e. wills operational in separate jurisdictions, conditional or contingent wills, joint wills, mutual wills and privileged wills that are made by soldiers.

CONCLUSION

The structure of a family changes over a time period in terms of size, composition, role and status of persons, the family and societal norms and sanctions. For a family to remain perpetually nuclear in composition is usually rare in India but can be seen happening in the coming decades. Often additional members like an aged parent or unmarried siblings may join a nuclear family and add to the composition. The family structure in India saw a drastic shift towards the nuclearization of families due to industrialization, urbanization, education, and

upliftment in the status of Indian women. In the recent decades, joint-family setups in India have declined as the socio-economic fabric of the country is altering. The concept of coparcenary therefore has dialed down with the emergence of nuclear families. The shifting trends we're witnessing presently, speaks volumes as to the requirement of more adaptable and evolved laws that simplify and modernize the legal system governing family law for different types of families in India.