

# COPARCENRY RIGHTS OF FEMALE HINDUS

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The past decade has seen a major movement for the empowerment of women not only outside the home, but also within the home and within the marriage. Equality between the sexes can be achieved in the Indian context only if the woman is economically independent, with equal rights under the coparcenary system.

## **LAW PRIOR TO THE HINDU SUCCESSION ACT**

### ***Mitakshara Law***

Under the *Mitakshara* law, a Hindu coparcenary is a much narrower body than the Hindu undivided family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property. These are sons, grandsons and great-grand sons of the holder of the joint property for the time being.<sup>1</sup>

It is very clearly laid down that a woman cannot be a coparcener under the *Mitakshara* law.<sup>2</sup> Even a wife, although she is entitled to maintenance out of her husband's property and has to that extent an interest in his property, is not her husband's coparcener.<sup>3</sup> Nor is a mother a coparcener with her sons,<sup>4</sup> nor a mother-in-law with her daughter-in-law. There can be no coparcenary between a mother and daughter among devadasees.

### ***Aliyasanthana or Marumakkattayam Law***

*Marumakkattayam* or *Aliyasanthana* law is the customary law by which certain communities on the West coast of South India were governed. Whereas *Marumakkattayam* is applicable to all castes, *Aliyasanthana* is not followed by Brahmins. It is mainly followed by the Bunts, Bilwa caste and the non-priestly class among the Jains.<sup>5</sup>

Under this law every member born in the family (*Kutumba* or *tarwad*) had an equal right in the property owned by it. On the death of any member of the *kutumba* his or her interest in the *kutumba* property devolved on the other members of the *kutumba* by survivorship. The limited estate of the Hindu female familiar to the

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1 *Sujit Lal Chhabda v. C.I.T.*, AIR 1976 SC 109.

2 *C.I.T. v. Mills*, AIR 1966 SC 240; *Pushpa Devi v. CIT*, (1977) 4 SCC 184.

3 *Purna Bibee v. Radha Kissen Das*, AIR 1904 31 Cal. 476.

4 *Hira Singh v. Mst. Mangla*, AIR 1928 13 Pat. 359.

5 *Jalaja Shedthi v. Laxmi Shedthi*, (1973) 2 SCC 773.

*Mitakshara* law was unknown to this system, for under it every male and female member had equal rights in the *kutumba* property.<sup>6</sup>

However, under this law since the basis of the system was matriarchal, the children of female members alone were coparceners in the *kutumba*, but not the wife and the children of the male members.<sup>7</sup>

It can be concluded that under the *Marumakkattayam* law, the bias in the favour of only males being allowed to be coparceners in the joint Hindu family property is not present and every member born into the family is a coparcener by birth. Though this right is denied to the children of the male members.

### *The Hindu Women's Rights to Property Act, 1937*

The Hindu Women's Rights to Property Act,<sup>8</sup> 1937 was passed to give women better rights in relation to inheritance and it was enacted to bring about social change.

The 'interest in joint family property', means all other property in which he had under *Mitakshara* law interest at the time of his death.<sup>9</sup> The act puts the widow of a member of the joint family in the place of her deceased husband and the husband's interest in the joint family property under the *Mitakshara*, though undefined, vests immediately upon his death in the widow and does not devolve by survivorship.

The acquisition by the widow of the same interest as her deceased husband in the joint family property does not of itself disrupt the *Mitakshara* joint family and the widow continues as before to be a member of the joint family.<sup>10</sup> Her rights are augmented but there is no immediate severance of the joint family. Though her position in the joint family in many respects be analogous of any undivided male coparcener in the joint family it would be a misnomer to call her a coparcener.<sup>11</sup> All the High Courts and now the Supreme Court<sup>12</sup> are agreed that she does not by

6 *Ibid.*

7 *Ibid.*

8 Sec. 3(2) of the Act provided that "When a Hindu governed by any school of Hindu law other than the Dayabhaga school or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had." Further sub-section (3) provides for "Any interest devolving on a Hindu widow under the provisions of this section shall be the limited interest known as a Hindu Woman's estate, provided however that she shall have the same right of claiming partition as a male owner."

9 S.T. Desai, *Mulla's Principles of Hindu Law*, 16th Edn., 89 (1994).

10 *Parappa v. Nagamma*, (1954) Mad. 183; *Kamal Kishore v. Harhar*, (1951) 30 Pat. 357.

11 *Supra* n. 9.

12 *Satrughan v. Sabupari*, AIR 1967 SC 272; *Laxmi Perumallu v. Krishnavenamma*, AIR 1965 SC 825.

operation of the Act become a coparcener.<sup>13</sup> But it would not be correct to describe her interest as inchoate or imperfect till she claims partition.<sup>14</sup> She becomes entitled to the undivided interest of her deceased husband and takes "same interest as her husband" and not "the same rights as her husband" Therefore, it follows that though a Hindu widow cannot be a coparcener she has coparcenary interest, and she is also a member of the coparcenary by virtue of rights conferred on her under the 1937 Act.<sup>15</sup>

Therefore it can be seen that the Act provided that the women was given the same interest as her deceased husband in the property, but the act stopped short of giving her full rights in the property, that is she only had life interest in the property and upon her death the property reverted back to the heirs of the husband.

### ***LAW POST THE HINDU SUCCESSION ACT***

#### ***The Hindu Succession Act 1956***

##### ***Coparcenary rights of widow***

In a case<sup>16</sup> the Supreme Court has held that a widow has coparcenary interest, whereby if a widow does not exercise her right of partition, there is no severance of the Hindu coparcenary and on her death the interest merges in the coparcenary property or lapses to the other coparceners. Also vide Sec. 14 of the Hindu Succession Act her right to property becomes absolute.<sup>17</sup> The Supreme Court has held that the Hindu Women's right to property Act "gives statutory recognition to customary law regarding widow's right to share of a son on death of her husband after partition."<sup>18</sup>

##### ***Coparcenary rights under Marumakkattayam and Aliyasanthana law invalid***

The Hindu Succession Act, 1956<sup>19</sup> takes away the coparcenary rights of a child of a female under *Marumakkattayam* law. The same is applicable to the

13 *Radha Ammal v. I.T. Commissioner Madras*, (1950) 1 M.L.J. 339; *Rathinasabapathy v. Yellawa*, (1953) 2 M.L.J. 459.

14 *Sankara Rao v. Rajyalashamma*, AIR 1961 AP 241.

15 *CED v. Alladi Kuppaswamy*, (1977) 3 SCC 385.

16 *Ibid.*

17 *Daya Singh v. Dhan Kaur*, (1974) 1 SCC 700.

18 *V. Tulasamma v. Sessa Reddy*, (1977) 3 SCC 99.

19 Sec. 7(1) When a Hindu, to whom the marumakkattayam or nambudri law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a tarwad, tavazhi, or illom, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession and not according to the marumakkattayam or nambudri law.

coparcenary rights under the *Aliyasanthana*<sup>20</sup> law.

***Woman cannot be coparcener***

Vide Sec. 6 of the Hindu Succession Act, a male who has interest in the joint Hindu family property, shall be governed by *Mitakshara* law<sup>21</sup> as far as his property is to be divided, and in a case the Supreme Court held that "A joint family may consist of female members. It may consist of a male member, his wife, his mother and his unmarried daughters. The property of a joint family does not cease to belong to a family because there is only a single male member in the family. A Hindu coparcenary is, however, a narrower body than the joint family. Only males who acquire by birth an interest in the joint or coparcenary property can be members of the coparcenary or coparceners. A male member of a joint family and his sons, grandsons and great-grandsons constitute a coparcenary."<sup>22</sup> Therefore under the Act, woman cannot be a coparcenary.

In the same vein the Supreme Court held that "A partition of the property can only be among parties who have pre-existing right to the property. Under the Hindu law, a female major or minor has no share in the ancestral property. A female is given a share either in the self-acquired property of the husband or the father, or in the share of the husband or the father in the coparcenary property after the property is partitioned."<sup>23</sup>

In a case<sup>24</sup> however, the Supreme Court opined that the woman, does not cease to be a member of the joint Hindu family even though she inherits by succession. It held "It is true that the right of a female heir to the interest inherited by her in the family property gets fixed on the death of a male member under S. 6 of the Act but she cannot be treated as having ceased to be a member of the family without her volition as otherwise it would lead to strange results which could not have been in the contemplation of Parliament when it enacted that provision and which might also not be in the interest of such female heirs. Otherwise it may result in the wife automatically being separated from her husband when one of her sons dies leaving her behind as his heir. Such a result does not follow from the language of the statute. In such an event she would have the option to separate herself or to continue in the family as long as she wishes as its member though she has acquired an indefeasible interest in a specific share of the family property which would remain undiminished

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20 Sec. 7(2) When a Hindu to whom the Aliyasanthana law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a kutumba, kavaru, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession and not according to the Aliyasanthana law.

21 The exception being, that if he has female heirs then his property shall be divided by succession and not survivorship.

22 *State of Maharashtra v. Narayan Rao*, (1985) 2 SCC 321.

23 *Hiraji Tolaji Bagwan v. Shakuntala*, (1990) 1 SCC 440.

24 *State of Maharashtra v. Narayan Rao*, (1985) 2 SCC 321.

whatever may be the subsequent changes in the composition of the membership of the family.”

Even though the daughter is not a coparcener with her father, yet she can represent her father, if the father dies during the pendency of a partition suit/appeal filed by him against other coparceners, by operation of S.6 of the Hindu Succession Act r/w Or. 22 R. 3 CPC.<sup>25</sup>

*Woman has no right to blend exclusive property with coparcenary*

The Hindu law does not even allow a woman to blend, that is, merge her property with the joint Hindu family property. If the Hindu female who is the absolute owner of the impresses her exclusive property with the character of the joint family property, she creates new claimants to her property to the exclusion of herself, because, not being a coparcener, she has no right to demand a share in the joint family property by asking for partition.<sup>26</sup>

*Woman can introduce a coparcener*

In a case the Supreme Court has held that “a property obtained by a sole surviving coparcener in a family does not become his ‘separate property’ so long as there is a woman in the family who can bring into existence a new coparcener by adoption.”<sup>27</sup> Therefore even though a woman cannot be a coparcener, she has a right to introduce a coparcener in the joint family property.

***Hindu Succession (A.P. Amendment) Act, 1986***

The Andhra Pradesh High Court in case,<sup>28</sup> held that “A new chapter II A is inserted into the Hindu Succession Act consisting of Ss. 29A, 29B & 29C. Sec. 29A stipulates that in a joint family governed by Mitakshara law the daughter shall by birth become a coparcener in her own right and have the same rights in the coparcenary property as she would have had if she had been a son. It makes the daughter’s right to ancestral property direct and absolute. Sec. 29B provides for devolution of such interest by survivorship. S. 29C gives preferential right to acquire property in certain cases.” The Supreme Court affirmed the opinion of the AP High Court in *S. Narayan Reddy v. S. Sai Reddy*.<sup>29</sup>

***Hindu Succession (T.N. Amendment) Act, 1989***

The Hindu Succession (T.N. Amendment) Act, 1989 introduced similar sections as the A.P. Amendment to the Hindu Succession Act, thereby granting the

25 *Pavitri Devi v. Darbani Singh*, (1993) 4 SCC 392.

26 *Pushpa Devi v. CIT*, (1977) 4 SCC 184.

27 *Manohar Lal Ganerwal v. Bhuri Bai*, (1973) 3 SCC 432.

28 *S. Narayan Reddy v. S. Sai Reddy*, AIR 1990 AP 263.

29 (1991) 3 SCC 647.

right of coparcenary on the female by birth including all disabilities and liabilities of a coparcener in a joint Hindu family coparcenary.

These amendments do not give the right of coparcenary to the wife of the male coparcener.

### **CONCLUSION**

Under the *Mitakshara* law, a woman's coparcenary right was not recognised. She was not even entitled from her father. Her only right was on the stridhan that she received at the time of marriage. The *Dayabhaga* law does not recognise the concept of a varying share, it clearly demarcated the shares between the members of the family. Under the *Marumakkattayam* law, every child born in the family automatically became a coparcener. It did not distinguish between male or female, but denied this right of coparcenary to the children of the male line.

The British introduced the Hindu Women's Right to Property Act, 1937 to give the Hindu female, in particular the Hindu widow a better deal. This act recognised the coparcenary interest of the widow, but did not give her the right to be a coparcener. Thus she could have a lifetime coparcenary interest in the joint Hindu property, during her life time and after her death the property was reverted back to the coparcenary.

The Hindu Succession Act, 1956 made that right absolute vide S. 14. But vide S. 6 of the same Act, the female Hindu was denied the right to be a coparcener. This meant that a daughter, a wife while her husband was alive and a mother could not be coparceners in the joint Hindu family property.

In 1986, the Andhra Pradesh legislature passed an amendment to the Hindu Succession Act, by virtue of, a daughter was granted equal coparcenary rights, with the same disabilities and liabilities as the son. Similar amendments by the Tamil Nadu and Karnataka legislatures granted the same rights on the daughter of a joint Hindu family.

By judicial decisions a daughter also has the right to ask for passing of a final decree in the case of partition. Thus the amendments are an attempt to be a more equitable to the woman and grant her, her rightful share. These amendments have left out the wife from being a coparcener in her husband's family. This rationale behind this probably that if a wife were allowed to a coparcener in her husband's family then she would become a coparcener in both the family and get a greater share than her brothers which would be against equity.

More states which follow the Mitakshara system should follow the Andhra Pradesh example to include daughters as coparceners.