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Evolution of Coparcenary Rights under Hindu Law

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Hindu law has evolved through time to become a very complicated and changing body of law, with constant changes affecting the vast majority of the country of what is legally recognised as "Hindu." Coparcener, unlike some other family members, has legal possession over ancestral property. In Hindu law, the definition and requirements for this coparcener are always evolving and altering. Under Hindu Succession Laws, the property is separated into two categories: ancestral and self-acquired. The ancestral property is frequently the subject of debate and differing viewpoints on succession in Hindu Undivided Family, the word coparcener has referred to a person to a member who has the legal title of the given ancestral given in, through Hindu succession law, and the same is acquired person due to his birth in the same family. Below we shall deal with the dynamic alteration of such coparcenary rights under Hindu Law throughout the ages with the inclusion of different members in each alteration.

Keywords: *personal law, coparcenary rights, hindu succession law, HUF.*

INTRODUCTION: ORIGIN FROM ANCIENT INDIA

The property of the Hindu undivided family (HUF) is referred to as ancestral property and coined by Income Tax Act 1961. In brief, it is a legal entity given to Joint Hindu Family for the purpose of tax assessment. The two schools of law that grow the Hindu Joint family's succession law under Indian law are Mitakshara and Dayabhaga. The right to ancestral property

is obtained by birth, according to Mitakshara School, therefore the son becomes a co-owner of the property with the same rights as the father. Under the Dayabhaga School of succession, the right of the austral property only arises when the previous owner occurs. The above two schools are each based on a distinct interpretation of the text Yagnavalkya Smriti, composed by sage Yagyavalkya and is one of ancient India's three principal Smritis.

MITAKSHARA SCHOOL

Interpretation by Vigneshwara of Yagnavalkya's book is the foundation of the Mitakshara School. It is based on the dual concepts of a son's birthright and the survivorship of joint family property. The following features are the basic features of Mitakshara School:

- Rule of succession rooting from the *principle of propinquity, which again places its focus on blood connection proximity.*
- *Females will not qualify for inheritance.*
- *Agnates would be given priority over cognates in inheritance.*
- *The part and priority of difference of a coparcener in the joint family hierarchy of inheritance are not fixed and change with the changing numbers of members in the family due to birth or death.*

In brief, the male coparceners who gain their ancestral or joint family property through the previous 3 generals do so on the basis of the right to given property from birth itself. For example- W, X, Y, and Z are 4 members, till W is alive the coparcenary rights would be extended to three generations as i.e. making W, X, Y, and Z coparceners. In a situation where HUF does not exist at present, then it gets formed for the very first time when person A dies and his son B inherits his individual property. Hence B forms a HUF. Once such a HUF comes into existence and it continues to exist till a partition takes place or the line be.

It is quite evident that under this school women had no position as coparcener and could never become one. The widow of a deceased coparcener could not enforce the partition of her husband's share against his brothers. Property rights for Hindu women were severely restricted, then, by this school of interpretation. Prevalence of this school can be noticed in practice in the whole of India, except, Assam and Bengal.

DAYABHAGA SCHOOL

Sage Jimootvahana's comments on Yagnavalkya's work inspired the Dayabhaga School. Under the Dayabhaga School of succession, the male coparcener does not inherit property on the birth itself but after the previous owner has died. The same is widely accepted in Bengal and Assam regions. Distinct characteristics of Dayabhaga School are:

- Rule of succession based on religious efficacy or spiritual benefit.
- In this way, a person who has comparatively greater religious benefit from the deceased person's property shall be given priority of entitlement of the right to inheritance of the given property. It means one who confers a more religious benefit on the deceased is entitled to inheritance in preference to the others who confer less spiritual benefit. This concept of religious benefit stems from the doctrine of the *offering of obligation (pind-dan)* to the deceased.
- Interestingly, under this school, the right to widow has given in inheriting and division of property if there is no preceding male offspring.

Dayabhaga is a reformist school, whereas Mitakshara is an orthodox school. Definite share for heirs of joint family property and Each brother can sell his ownership stake in the company. In this generation, Mitakshara & Dayabhaga schools are not as important as they once were. Mitakshara is only relevant now in relation to coparcenary property rights since Hindu law was substituted by legislative statutes in 1955 and 1956, namely the Hindu succession act and the Hindu adoptions act.

DEVELOPMENTS IN BRITISH RAJ

The Mughal dynasty ruled during the medieval period. During this time, Muslim rulers imposed a new set of rules for Muslims, but they did not change the Hindu community's own norms on marriage and succession. However, when Britishers intervened, many socio-political changes were implemented in trying to 'civilise' the population. As we have shown in our discussion, the ancient Hindu society and succession rules had a strong gender discriminating undertone, with women either

being completely ignored (Mitakshara) or having restricted intermediary privileges (Dayabhaga). A constant urge for social reforms in the same field through reformers like Raja Ram Mohan Roy and other Indian-European social reformers resulted in widespread demand and action taking place to reduce gender disparities in Hindu coparcenary.

THE HINDU WOMEN RIGHTS TO PROPERTY ACT, 1937

Under the reformed Act, widows were finally given an undivided stake as Mitakshara coparcener. This resulted primarily to shift the burden of maintenance from others to the widow herself. This helped to further establish the widow's shares on her son's property. This also extends to widowed grand-daughter and a widowed granddaughter to participate with male issues. The 1937 Act recognised three sorts of widows: 1) intestate (dead without leaving a valid will); 2) widow of a pre-deceased son (son died before father died), and 3) widow of a pre-deceased grandson who is the son of a predeceased father. The Act, on the other hand, did not reform or amend the entire subject of Hindu inheritance law in general.¹

POST-INDEPENDENCE ADOPTIONS

Hindu Succession Act, 1956

Following independence, many laws enacted by the British Raj established precedents for legislation based on an equitable premise. During the 1948 deliberations in the Constitutive Assembly of India (legislative), Dr. B.R. Ambedkar highlighted the drawbacks of Hindu women's succession rules and proposed revisions to the current laws in the new Hindu Code Bill. The following are some of the modifications that have occurred as a result of the same:

- Women inherit in the same order as men: widows, daughters, and widows of pre-deceased sons. Female heirs have a substantially larger number of grades of coparcenary privileges.

¹ Hindu Women Rights To Property Act, 1937

- Half of the son's property belongs to the daughter.
- Under the Dayabhaga, the father takes precedence over the mother; but, under the current Bill, the mother takes precedence over the father.
- The bill eliminates the reversioners' power to claim the property once the widow has died.²

Unified succession legislation, the Hindu Succession Act (1956), was created for Hindus in free India based on the Hindu Code Bill. The Anglo-American tenancy in common has a lot in common with the Dayabhaga School. However, while adopting, Mitakshara coparcenary was chosen as a guideline.³ If the same is followed then eventually when a Hindu with interest in the present Mitakshara property dies, the same right present in coparcenary will pass through survivorship on some rare occasion. This will be extended till the previous coparcenary has been affected by deaths and new ones are born. Until such happen, the Ancient when a Hindu relation to joint family property inheritance may prevail. Inclusion in the first class of females in the schedule, joint heir as of the widow, son, daughter, and others attempted to unite matrilineal and patrilineal structure, each given by Mitakshara and Dayabhaga Schools of inheritance. Close female relationships, on the other hand, will no longer be at the mercy of the deceased's agnates.⁴

According to Section 2 of the given Act, this law of succession would be applicable on:

- Hindu by religion
- Buddhist, Jain, or Sikh by religion
- Who is NOT Muslim, Christian, Parsi.⁵

However, exceptions to each case may be found. For example, Hindu marriages registered under the Special Marriage Act, 1954, for such married couples and their property (also of

² Hindu Code Bill, 1948, s 1

³ Hindu Succession Act, 1956, s 6

⁴ Hindu Succession Act, 1956, s 10

⁵ Hindu Succession Act, 1956, s 2

their children but not necessarily grandchildren) has not to pass under Hindu Succession Act,⁶ but the property rights in such case would be governed by Indian Succession Act, 1929.⁷ Even among the 'non-Hindus' would come under the umbrella term of what recognises as 'Hindu'⁸ in law, if they have abandoned various non-Hindu rituals and instead prefer and (not necessarily) continue to follow rituals mirroring Hindu ones. Tribal people too who embrace practices similar to Hindus are controlled by the Act.⁹ Following the criteria of application as discussed above, Buddhists from the Himalayas, offspring of inter-religious marriages who are still raised up as Hindus, all of the states will follow the Hindu Succession Act in case of inheritance if no other legislature governs the same earlier. There is no such thing as a religious qualification. For the time being, Scheduled Tribes are excluded from the Act, yet it is reasonable to say that the Act's provisions would be familiar to them as they are to many of the Hindu castes to whom it does apply.¹⁰

TESTAMENTARY SUCCESSION

A succession in which the given property, which has to be inherited through family, is governed by a will or testament of a deceased person is known as a testamentary succession. In accordance with the current Hindu law, a male or female owner can create his own personal will, and they will thus create may or may not conform to the limitations and regulations given under Mitakshara coparcenary. Thus the succession under Testamentary succession serves the rules and regulation of the will particularly, varying from individual to individual, legitimising and legalising the same even if it does not fall in line with what the laws of inheritance state.

⁶ Hindu Succession Act, 1956, s 5

⁷ Indian Succession Act, 1925, ss 9, 10, 42, and 43

⁸ *Fanindra Deb Raikat v Rajeswar Dass and Ors.* (1885) L.R. 12

⁹ *Nalinaksha Majhi and Ors. v Rajani Kanto Das Mohanta and Ors.*, AIR 1931, Cal 741

¹⁰ Hindu Succession Act, 1956, s 2

INTESTATE SUCCESSION

Intestate succession has been defined as occurring when a person dies without a will or testament. When such a situation occurs, the distribution of coparcenary rights among the heirs of ancestral property is governed by the said laws of inheritance.

There are four different types of heirs:

1. Class I
2. Class II
3. Class III (Agnates)
4. Class IV (Cognates)

As evident from the hierarchy of Class members, the Class I members acquires the right of the joint family property at the same time and this right would not be passed to the Class II members until none of the members of Class I is alive. Also, if all the members of Class I denies to inherit the given property then this shall pass to subsequent classes. Under all the Classes, the member's absolute rights are well determined and divided and it is not claimed by birth itself but due to the death of the present owner. Even remarriage or conversion may not deprive the rights of the heirs. When Class III and IV heirs are present, the property will only pass to them if no one from Class II is present.

Hindu Succession (Amendment) Act, 2005

Alteration of Section 6: In original Hindu law (preceding Hindu Succession Act) the only form of property ownership by women was given to them in form of gifts and dowry (Stridhan): a. Presents from relatives and b. Gifts from strangers. Later giving absolute right over the given property, the former having restricted rights over the same. Coming towards the Act of 1956 there still existed overshadowed the rights of women due to the heavy influence of the Mitakshara school of coparcenary rights. The previous Act's Section 6 resulted in revision due to the introduction of this amendment. With the older one repealed, the new provision was added, by affirming the position of daughters as rightful coparceners by birth itself, in property under Joint Hindu Family, given the same rights as the male progeny of the

same family with existing equal enforceability of right upon the family property. Before the introduction of the Hindu Succession (Amendment) Act, 2005, under Hindu inheritance, Class I used to consist of twelve heirs, eight among those females and the remaining 4Males, but after 2005, four new heirs were added, of which eleven are female and five are males.

Section 4(2) of the Act is amended: Section 4(2)¹¹ in brief resulted in ignorance of including agricultural property under the ancestral property. This transferred power over to state governance through state-imposed land regulations., resulting in a further dig at the discrimination of entitlement of women on the property, this time upon the cultivation of agricultural property.

Dwelling Houses partition: Earlier, the scope of a dwelling home in form of a partition did not cover females without the approval of male heirs.¹²The requirement of a female heir to live within the dwelling was that she has to be either separated, unmarried, widowed, or deserted, according to the clause. The same has been altered.

CONCLUSION

From the above discussion, we see the continuous change in the understanding and implementation of coparcenary rights. From the origin of the same to the current course of events we see the limits attached to inheritance rights in Hindu law expanding. This has resulted in a positive shift in the inclusion of more and more previously discriminated groups in the community and has also provided more clarity and ease to follow. The Hindu coparcenary law thus today stands as more well established than ever. However, with all the progression already made with respect to women, it would be interesting to study whether the age-old custom of not even qualifying women as the rightful owner of the ancestral property would be challenged at the ground level.

¹¹ Hindu Succession (Amendment) Act, 2005, s 4(2)

¹² Hindu Succession Act, 1956, s 23