

# Hindu Law Regarding Partition within HUF

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**ABSTRACT:** *Each of the claiming rights over his or her shares is approved by the Partition Act (1893). The essay essentially reflects on the underlying laws that are the rules for the division of property in India and the steps that can be taken to cope smoothly and efficiently with conflicts over partition. The statute also addresses the inheritance of property through up to four generations of the male lineage. Nonetheless, there were separate land division rules for sons and daughters until the reform of the Hindu Succession Act, 1956, in 2005. India's Newest Property Law mentions a girl child as well as a male child is considered as a part of her father's HUF (Hindu Undivided Family), regardless of being married or unmarried. The girl could be named as the designated 'Karta' or the manager of her father's HUF land. According to the Partition Deed of the land, the actual partition of every property is executed to ensure that each family member gets his or her equal share. On the basis of India's Property Law, if the rules on the division of property are not followed or if a friendly settlement is a far shot, a court case may occur for dispute resolution.*

**KEYWORDS:** *Hindu Undivided Family; Hindu Succession Act; Partition.*

## INTRODUCTION

Partition is an act by which a coparcener leaves his relationship with the common family and loses his coparcener identity and becomes a separate entity from the relationships of the joint family. A significant outcome of such partition is that, as a result of partition, the proportion of coparcener or coparceners pursuing partition that is unknown, fluctuating and unstable before partition, becomes precise and definitive and therefore allocated to the respective representatives[1].

It is the modification of the different desires with regard to the whole, according to the Mitakshara Law, by distributing them into specific sections of the aggregate. Therefore, the division of Mitakshara is used in two distinct senses: first, the modification into separate shares, according to the entire family property, of the various rights of the individual members; second, the severance of the shared status, with the subsequent legal implications. It was defined as the crystallization into a particular share in the joint family estate of the fluctuating interest of a coparcenary[1].

Under the law of Dayabhaga, it implies the distribution of property in compliance with the coparcener's particular share. It involves breaking up shared ownership, i.e. separating or dividing the share according to metes and bound between coparcener. Division of the properties in compliance with the basic percentage of the owners. Under the Dayabhaga, the coparcenary nature is unity of possession, while it is unity of ownership in Mitakshara. Each adult coparcener, male or female, is entitled to impose partition under the Dayabhaga Statute[2].

Partition suggests putting to an end the mutual status. The joint family ceases to be joint upon partition, and nuclear families or multiple joint families come into being. There are members of the common family who are eligible to seek partition and are therefore entitled to a share[2]. There is another group of members of the joint family who do not have the right to partition, but are entitled to share if the partition takes place. Only between the parties to the division will a reunification be made[3].

Partition is a severance of mutual status under the Mitakshara rule and, as such, it is a matter of individual will. To effect a division, an unequivocal suggestion of a wish by a single member of the joint family to split is appropriate. A simple expression of such an intention is the filing of a suit for partition[3].

## DISCUSSION

A Hindu joint family, along with the wife or wives (or widows) and unmarried daughters of the common ancestor and of the lineal male descendants, consists of the common ancestor and all his lineal male descendants over either generation. In order to put a shared family into being, the existence of the mutual ancestor is required, since its continuity is not a requirement[4].

All individuals linearly inherited from a single ancestor constitute of a common Hindu family, including their wives and unmarried daughters. A daughter cease being a married member of her father's family and becomes a family member of her parents[4].

The natural state in Hindu society is a joint and undivided family. In general, an undivided Hindu family is not only united in land, but also in food and worship. The presence of a joint estate is not a necessary prerequisite for the creation of a common family, and a family which has no property can still be a common family. The family ceases to be joint if there is a joint estate and the members of the family become independent in the estate. In food and religion, simple severance does not serve as a division[5].

The property of a common family does not cease to be the property of a common family belonging to any such family simply because the family is embodied by a sole male member holding rights that might be enjoyed by an absolute owner of the property. It may also be made up of two female participants. In order to create a joint Hindu family, there must be at least two members. A single male or female, even though the properties are solely ancestral, will not establish a Hindu joint family[5].

A Hindu coparcenary is a much smaller entity than the family of the joint. For those entities who possess an interest in the joint or coparcenary property by birth shall be included. For the time being, in other words, the three generations next to the holder of unbroken male succession are the sons, grandsons and great-grandsons of the holder of the joint house[6].

A species of coparcenary property is ancestral property. As mentioned above, if a Hindu inherits his father's land, it becomes ancestral with regard to his son in his hands. In such a case, as regards the property so inherited, it is said that the son becomes a coparcener with the father, and the coparcenary includes the father and the son. This does not, however, suggest that only the father and his sons will consist of a coparcenary. It is not just the sons, but also the grandsons and great grandsons who gain an interest in the coparcenary property by birth. With his lineal descendants in the male line within four degrees, counting from and including certain ancestor, Coparcenary starts with a shared male ancestor. The coparcenary principle of Mitakshara is based on the notion of the birth right of the son in the joint family land[6].

Although to begin with, every coparcenary must have a common ancestor, it is not to be concluded that every current coparcenary is limited to four degrees from the common ancestor. If a member of a joint family is separated from the last holder by more than four degrees, he is unable to claim a partition and is thus not a coparcener. On the death, though, of the last holder, if he were fifth in descent from him and were entitled to a share in division, he would become a member of the coparcenary, unless his father, grandfather and great-grandfather had all predeceased the last holder. The line stops in that direction if a split of more than three degrees occurs between any holder of property and the individual who claims to join the coparcenary after his death, and the survivorship is limited to those collaterals and heirs who are under the four-degree limit[7].

The sons do not gain any stake by birth in ancestral property under the Dayabhaga statute. Their rights derive from the death of a father for the first time. On passing, they take the property as if left by him, as heirs and not by survivorship, whether independent or ancestral. As the sons do not take any interest in ancestral property in the lifetime of their parent, according to the Dayabhaga tradition, there can be no coparcenary in the strict sense of the term between a father and sons[7].

The father can dispose, by sale, gift, will or otherwise, of ancestral property, whether movable or immovable, in the same way as he may dispose of his own separate property. Since sons do not gain any interest in ancestral property by birth, they cannot claim a partition from the parent of such property. Therefore, under the Dayabhaga rule, a coparcenary could consist of both males and females. Each coparcener takes a given share of the land, and that share is owned by him. It does not fluctuate with births and family deaths[8].

A single person is unable to shape a coparcenary. At least two male participants should be created to constitute it. The involvement of a senior most male member, like a Hindu joint family, is a must to start a coparcenary. To start and maintain a coparcenary, a minimum of two members are required. In addition, in order to start a coparcenary, the relationship between father and son is necessary[8].

A Hindu man, for example, receives a share from his father at the time of partition and then gets married. He is the only male in this family before the son is born, but he alone will not form a coparcenary. A

coparcenary composed of him and his son would come into being at the birth of his son. Once this son gets married and a son is born to him, Father F, his son S, and his grandson SS will be part of the coparcenary[9].

Under Mitakshara, women should not be coparcenary's. A woman, under Hindu law, is entitled to preserve the property of her husband. Yet with him, she's no coparcener. Under the Hindu Women's (right to property) Act, 1937, also a widow succeeding in the share of her deceased husband in the common family is not a coparcenary[10].

Several inroads were made into the classical notion of coparcenary under the Hindu Succession Act, 1956. He was permitted to do so, in case the coparcener decided to make a testamentary disposition of his share. A coparcener had to seek a partition until this Act, before he could testamentary dispose-off his share[10].

### CONCLUSION & IMPLICATION

In the current situation, as changes are made to the extent that women are entitled to inherit property both from their paternal side and from the husband's side, if equitable rights are extended to their parental heirs along with the heirs of their husband to inherit their property, it would be quite justified.

It is therefore proposed that section 15 should be modified in order to bring about a balance, so that if a Hindu woman dies intestate, leaving her self-acquired property without heirs, as stated in section 15 of clause 'a, the property should be transferred to the heirs of her husband and also to the heirs of her paternal hand.

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