

**DE JURE NEXUS LAW JOURNAL**

Author:

Amrita Gupta

Symbiosis Law School, Noida

1<sup>st</sup> Year, BBA LL.B.

**FEMALE- AS A COPARCENERS IN JOINT HINDU FAMILY****ABSTRACT**

*The Hindu undivided family (HUF) or joint Hindu family (JHF) is a Hindu customary law arrangement in which family members traditionally shared a same roof and performed family business jointly. Cash, securities, investments, commercial assets, and land were all owned collectively for the benefit of the extended family. The Hindu coparcenary is a narrower body than the Hindu joint family and is limited to a maximum of four generations, according to the Mitakshara School of Hindu law. Only a son born (or adopted) into a joint Hindu family was regarded a 'coparcener,' or someone who had a stake in the joint family property by virtue of his birth.*

*On this front, legal rulings were confined to a few precedents, but even if none of these precedents were able to spell down a general norm, discrimination against women remained a deeply ingrained practise in society. The legislature was swift to investigate gender discrimination, as seen by laws passed during the previous 200 years.*

**KEYWORDS**

*Hindu undivided family, family business, coparcenary, Hindu law, discrimination.*

**INTRODUCTION**

The British-Indian government was the first to take a step in this direction when it passed the Caste Disabilities Removal Act in 1850. Classical Hindu legal ideas such as the Hindu Undivided Family, coparcenary, Karta, theory of survivorship, and others limited women's claim to maintenance from joint family property.

The legislature recognised the predicament of women and implemented many legislation to help them, including the Hindu Women's Right to Property Act, 1937, Hindu Succession Act, 1956, and Hindu Succession Amendment Act (2005). These were some of the laws that were

able to preserve Hindu women's inheritance and property rights. During the year 2000, the Law Commission's 174th Report proposed revisions to the Hindu Succession Act, 1956 (hereafter referred to as HSA, 1956), and among the suggested reforms was the removal of discrimination against women, resulting in an amendment to Section 6 of the HSA, 1956.

The conceptual ramifications of coparcenary differ between English and Indian law because English law treats coparcenary as a creation of law by an act of the stakeholders involved in the coparcenary transaction, whereas Indian law treats coparcenary as a personal law that cannot be created by the respective stakeholders.

Because to the improvements made by the legislature, women's status has improved throughout time. The purpose of this article is to examine how the modifications were implemented, the impact of the legislations, court interpretations, and the author's recommendations for improving the legislations.

The author also discussed gender equality in the family and urged for women's rights to be strengthened within the joint family structure.

### **Concept of Hindu Coparcenary Property**

The Hindu undivided family (HUF) or joint Hindu family (JHF) is a Hindu customary law arrangement in which family members traditionally shared a same roof and performed family business jointly. Cash, securities, investments, commercial assets, and land were all owned collectively for the benefit of the extended family. The Hindu coparcenary is a narrower body than the Hindu joint family and is limited to a maximum of four generations, according to the Mitakshara School of Hindu law. Only a son born (or adopted) into a joint Hindu family was regarded a 'coparcener,' or someone who had a stake in the joint family property by virtue of his birth.

The portion of a coparcener in the family property is not set and changes with the birth or death of a son. At any time, a coparcener has the right to demand division of coparcenary property, i.e., separation of coparcenary interests. Wives of sons from several generations are referred to as "members" of the combined Hindu family, although they are not coparceners. They cannot demand partition, but they do have a right to maintenance and a piece of the partitioned property.

### **Supreme Court Ruling**

The Supreme Court, in *Vineeta Sharma v Rakesh Sharma & Others*, handed down its verdict on August 11th, putting all concerns to rest. The Court said unequivocally that a daughter who was alive at the time the 2005 Amendment was passed is a coparcener and has the same rights in coparcenary property as a son. This is true regardless of whether her father was alive or dead at the time the 2005 Amendment was passed. It has been declared unequivocally that a daughter, like a son, becomes a coparcener and acquires a right in coparcenary property at the time of her birth.

This ruling will not apply in a few circumstances, such as if the family is not governed by the Mitakshara School of Hindu Law, or if the female coparcener died before the 2005 Amendment, or if the coparcenary property was transferred, willed away, or partitioned before

2005. A registered document or a court order should have been used in the instance of partition. The Court has ruled that an oral partition or family arrangement/settlement must be backed up by significant documentary proof in order to be recognised legally enforceable. This is to ensure that female coparceners do not lose their rights due to bogus partition claims.

### **Plight of Hindu females after the enactment of Hindu Succession (Amendment) Act, 2005**

The 2005 modification to the Hindu Succession Act was a watershed moment in attaining gender equality when daughters were made coparceners, symbolising women's economic and cultural advancement. Daughters born into joint families are now financially secure since they will inherit the family property. In the event that the daughter's marriage fails, she has the option of returning to the family home and receiving a share of the notional partition as well as an equal share of her father's property. Instead of receiving one-third of the property, she will receive an equal share with her male sibling.

Another notable achievement of the Hindu Succession Amendment Act, 2005 is the repeal of Section 4(2), which provided a forum for gender-biased state laws to take expertise in matters of devolution of tenancy rights in agricultural land, resulting in more gender-biased property rights because male descendants were given a preference in the said State laws, whereas female descendants were given limited ownership

This measure was extremely beneficial to women from agricultural families because they now had the right to inherit their father's property. It is also claimed that Section 23 was repealed by this amendment act, as Section 23 did not provide residential rights to married daughters until they were separated, deserted, or widowed, and thus the daughters were given the right to reside and seek partition.

Even though the 2005 amendment gave women equal rights, other problems remained unaddressed, such as whether daughters could become Kartas in the family. Daughters are thought to be prone to their husbands' influence, and this discriminatory and devoid rationale was used to prevent women from becoming Kartas. Daughters being made coparceners will only benefit women born into families with a lot of ancestral property, as this rule of "females as coparceners" will not apply to women whose parents have self-acquired the property. As a result, a parent who wants his son to inherit his self-acquired estate may draught a will in his son's favour, jeopardising a daughter's position as a coparcener.

Even though the legislature is attempting to achieve equality between male and female heirs, the researcher believes that the concept of inheritance by birth should be abandoned, and that different rules regarding the succession of self-acquired property should be established by restricting testamentary rights under Section 30 of the HSA, because daughters in other religions, such as Islam, have a right to their parents' self-acquired property.

As a result, it is decided that just providing coparcenary rights to daughters is insufficient, and that regulations governing self-acquired property must be created. Instead, the legislature should work to eliminate the Mitakshara school of law and establish consistency to succession law. A aim should be made to bring Hindu law into consistency.

### **Conclusion and suggestions**

It is determined that HSA 1956 has resulted in certain major developments in succession law, including the following:

Women's Position – By making a daughter a coparcener by virtue of her birth, the 2005 amendment has placed her on an equal footing with sons. A daughter is now regarded an equal member of her family and has considerable influence in the realm of her birth family. In the case of Pravat Chandra Pattnaik v. Sarat Chandra Pattnaik, the court rejected a claim by one of the parties that daughters born after 2005 were entitled to coparcenary property but not those born before 2005, on the grounds that the legislature had intended for those daughters born before 2005 to be entitled to joint family property only after the 2005 amendment took effect.

Suggestions– It is urged that individuals alter their minds on gender equality, and that there is a need to teach people about this. The legislative objective underlying the 2005 amendment will be realised only if widespread education on the subject is carried out. From a legal standpoint, it is suggested that the legislature consider amending Section 30 of the HSA Amendment Act 2005, whereby the testator rights of the deceased male should be kept in check, because it is common practise in society for the father's separate property or self-acquired property to be given to the son by testamentary succession, which is another way of avoiding the legislative intent behind the Hindu Succession Act, 2005, and thus a testator right should be kept in check. It is also suggested that society be made aware of the financial advantages that a woman may bring to her family if she is treated similarly to her male counterpart.<sup>123</sup>

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<sup>1</sup> Ipleaders, AVAILABLE AT: <https://blog.ipleaders.in/females-as-coparceners-an-analysis/#:~:text=It%20is%20now%20a%20settled,by%20virtue%20of%20her%20birth> (last visited Mar. 7, 2022)

<sup>2</sup> BW Legal world, AVAILABLE AT: <http://bwlegalworld.businessworld.in/article/Female-Coparcener-s-Right-in-Ancestral-Property-SC-Ruling-and-Its-Impact/06-10-2020-328604/> (last visited Mar. 7, 2022)

<sup>3</sup> Legal service india, AVAILABLE AT: <https://www.legalserviceindia.com/articles/kar.htm> (last visited Mar. 7, 2022)