

## Joint Hindu family

- A joint Hindu family consists of common male ancestors, his wife, his and all his lineal male descendants together with their wives, widows and unmarried daughters and also daughters of male descendants.
- Joint Family is till **7<sup>th</sup> generation**
- A joint Hindu family has no separate legal entity. It is neither a juristic person nor a corporation. [**Chotelal V. Jhandelal 1972**]
- A joint Hindu family can neither be created by act of members nor by an agreement between the parties. A stranger cannot be a member of a joint Hindu family. The only exception is marriage and adoption.
- Law will presume that every Hindu undivided family is a joint one unless contrary is proved. [**Adiveppa & Ors. Vs. Bhimappa & Anr 2017**]
- There must be at least two members to constitute a joint family and they must be the Hindu.
- For bringing a joint Hindu family in existence of common male ancestor is necessary but for its continuance common male ancestor is not necessary.
- An illegitimate son of a lineal male descendant is a member of the joint family but is not a coparcener .If a partition takes place between the father and the sons, illegitimate son can be allotted a share.
- (**GurNarain Das v. GurTahal Das, 1952**)  
The father can give an equal share to the illegitimate son. However after the death of the father, if a partition takes palce, the illegitimate son will get half the share of a legitimate son.

### **Coparcenary**

- The original purpose of coparcenary was spiritual in nature. Only those people were considered a part of coparcenary who can offer antim sanskar to their father (i.e. Males) and only those coparceners have a right in ancestral property. **Till 4<sup>th</sup> generation.**

- In Hindu law there are two types of property
  1. Self earned property
  2. Ancestral property
- Where a person possesses an interest in ancestral property he is not the sole owner of it and his son, grandson, great-grandson acquire right by bus in this coparcenary property[ only in mitakshara school, no such right in dayabhaga]
- Under the classical law no female could be a member of coparcenary including the unmarried daughter, though these females are a part of joint family
- **Position before 2005 amendment:** Coparcenary consisted of a continuous chain of **four generations of male members**. [ including the last holder of the property]. It is a narrower body within a joint family
- The mitakshara concept of coparcener is based on the notion of son's birthright in the joint family property .Coparcener acquires interest in the joint family property by birth.
- Mitakshara coparcenary comes to an end either by partition or by death of the last surviving coparcener.
- Existence of a joint family property is essential in a coparcenary
- Initially coparcenary carried with itself the doctrine of survivorship. It means that on the death of a coparcener his interest in the joint family property will devolve on surviving coparcener by the rule of survivorship and not by the rule of succession.
- This Doctrine was diluted by Hindu Succession Act 1956 and finally abolished by 2005 amendment.
- **Position after 2005 amendment: section 6[ 1 ]** of the Hindu Succession Act 1956 was amended by succession Amendment Act 2005 it brought about following changes:-
  1. The daughter [married or unmarried] of a coparcener shall by birth become a coparcener in her own right in the same manner as son.
  2. She has the same right Coparcenary property as she would have had if she had been a son.

3. She shall be subject to the same liabilities in respect of the said coparcenary property as that of a son.
- **The Succession Amendment Act 2005** also abolished the doctrine of survivorship. Now the interest of the deceased for partners will devolve by testamentary or intestate succession and not by survivorship.
- **Ashnoor Singh versus Harpal Kaur and others 2009** Supreme Court held that rule under mitakshara law that whenever a male Ancestor acquire any property from any of his paternal ancestors upon 3 degree above him, then his male legal Heirs up to three degrees below him would get an equal rights as coparceners in that property will apply in case of succession which opened before Hindu Succession Act 1956.

### **Karta**

- The affair of a joint Hindu family has to be managed by some male member. The senior most male member who manages the affairs of the joint Hindu family is called the karta.
- He is regarded as the head of the family and possesses the supreme position in the affairs of the.
- Generally the senior most coparcener of a joint family is the karta. The presumption is very strong. In case of any conflict the senior most members will be the Karta of the family.
- **Kiran Devi v. The Bihar State Sunni Wakf Board & Others**, 2021, 3-judge bench of the Supreme Court consisting of Justices Ashok Bhushan, S.Abdul Nazeer and Hemant Gupta held that any business being run by a “Karta” of a Hindu Undivided Family (HUF) on tenanted property it would not give rise to a presumption of that being a joint business of HUF, unless there is a solid evidence in its support.
- As regards the question whether a female can be a karta? Supreme Court in **CIT vs. Seth Govindram Sugar Mills 1966** held that female member cannot be a karta because she cannot be a coparcener. However after the 2005 amendment,

position has changed and now a female can be a coparcener therefore now in the absence of a male member female can be a karta.

### **Hindu Succession (Amendment) Act 2005: Section 6**

- The Hindu Succession (Amendment) Act 2005 is very crucial as it addressed various gender inequalities in the previous act and gave equal rights to daughters in Hindu Mitakshara Coparcenary Property.

### **Changes after the 2005 amendment**

- The act amended the provision which excluded daughters from coparcenary property.
- Daughter of a coparcener shall birth become a coparcener in the same manner as the son.
- Coparcener property shall be allotted to the daughter as is allotted to sons if a Hindu dies.
- A daughter is entitled to demand a partition of the HUF.
- A daughter is also entitled to dispose off her share in the coparcenary property at her own will.
- If a female coparcener dies before partition, then children of such coparcener would eligible for allotment assuming a partition had taken place immediately before her demise.

### **Confusion over applicability of Section 6**

- In the case of ***Prakash and others v. Phulavati (2016)***, [Justice Anil Dave, A.K. Goyal], the apex court opined that “The rights of coparceners under amendment act 2005 are applicable to living daughters of living coparceners as on 9/9/2005 irrespective of the birth date of daughters.” It simply means that If a coparcener (father) had passed away prior to Sept 9, 2005, the living daughter of the coparcener would have no right to coparcenary property in such case.

- The Supreme Court in the case of ***Danamma v. Amar (2018)***[ **A.K. Sikri, Ashok Bhushan**] held that if the father passed away prior to date 09.09.2005 (the date on which amendment came) and a prior suit is pending for partition by a male coparcener, the female coparceners will be entitled to a share (Although same was not entitled in Phulavati's case).
- These two cases created an era of confusion on the interpretation of Section 6 of the Hindu Succession (Amendment) Act 2005.

**The Amendment Act aimed at making two major amendments in the Hindu Succession Act, 1956:**

1. Amended the provision which excluded the right of daughters from coparcenary property.
  2. Omitted Section 3 of the act which disentitled a female heir to ask for partition in respect of a dwelling house which is wholly occupied by a joint family, until the male heirs choose to divide their respective shares.
- In the recent case of ***Vineeta Sharma v. Rakesh Sharma 2020*** [ **JUSTICE ARUN MISHRA, S. ABDUL NAZEER, M.R. SHAH J.J.**] the bench the Supreme Court ruled that daughters have an equal right in the parental property the same as the son, even if the father died before the Hindu succession (amendment) act 2005.
  - It also held that the rights under the amendment are applicable to living daughters of living coparceners as on the date 09.09.2005, irrespective of when such daughters are born.