

PRINCIPLE OF SURVIVORSHIP AND PARTITION

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INTRODUCTION

“A species of estate, or tenancy, which exists where lands of inheritance descend from the ancestor to two or more persons. It arises in England either by common law or particular custom. By common law, as where a person, *seised in fee simple* (full title of real property) or fee-tail, dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins, or their representatives; in this case they all inherit, and these coheirs are then called “coparceners,” or, for brevity, “parceners” only.”¹

“Coparcenary refers to equal inheritance that was restricted only to male members of the Hindu Undivided Family. It is a narrow body of persons within a joint family. Coparceners jointly inherit property and have unity of possession. Coparcenary means ‘A species of estate, or tenancy, which exists where, land of inheritance descent from the common ancestor to two or person.’²

“According to Merriam Webster Dictionary coparcenary means ‘Joint Heirship’ or ‘Joint Ownership.’³

“Coparcenary is purely a creation of law that cannot be created by act of parties, except by adoption. In order to be able to claim a partition, it does not matter how remote from the common ancestor a person may be, provided he is not more than four degrees removed from the last male owner who has himself taken an interest by birth.”⁴

¹ <https://thelawdictionary.org/coparcenary/>, 15-03-2019, 11:43.

² <http://thelawdictionary.org/coparcenary/>.

³ <http://www.merriam-webster.com/dictionary/coparcenary>.

⁴ P.V.Kane, *History of Dharmasastra*, Vol. III, 3rd ed. 1993, p. 591. Vide *Moro vs. Ganesh*, 10 Bm. HCR, p. 444, 461-468.

Under the Mitakshara Coparcenary, one of the most patriarchal systems of a Hindu Joint family, the daughter had no right to ancestral property. The Hindu Succession Act, 2005 gave women rights at par with men to inherit property.

Under the Mitakshara school, there are 4 different schools;-

1. *Madras*
2. *Bombay*
3. *Banaras*
4. *Mithila*

“Within the joint family there is a narrower body called the Coparcenary. This includes the eldest male member + 3 generations. For eg : Son – Father – Grandfather – Great Grandfather. This special group of people are called coparceners and have a definitive right in ancestral property right since the moment of their conception. Earlier only a Son/Son’s son/Son’s son’s son were coparceners – now daughters are equally coparceners after 2005. They can get their share culled out by filing a suit for partition at any time. A coparcener’s interest is not fixed it fluctuates by birth and deaths in the family.”⁵

Until 1956, Unmarried women only had the right to claim maintenance from the joint family’s property which includes marriage expenses. A legislation in 1937 allowed a widow to inherit her deceased husband’s property, in the Mitakshara system.

In Dayabhaga system, one inherits the property after the death of the male holder, till the time of death he is only an heir to the property.

In essence, this means that a coparcenary property is ancestral property which prior to 2005 was inherited only by the male members of a Hindu joint family.

The Doctrine of Survivorship dictates that the shares of the coparceners of a property are varied and subject to change with respect to deaths and birth in the family. With a death in the family, the coparcenary property increases and with a birth in the family, the coparcenary property decreases.

⁵ <https://bharatchugh.wordpress.com/tag/what-is-a-coparcenary-and-who-all-are-coparceners/>, 15-03-19, 15:22.

After his death, the coparcenary property is 'survived' by the male descendants of the joint family and leaves nothing of the coparcenary property for his female descendants. On his birth, he takes an interest in the coparcenary property.

Notional property of 1956 modernized the coparcenary system that existed in the Hindu Joint family. Under this system, there were carefully thought out evaluations and demarcations regarding the share that each individual would get out of his coparcenary property.

A major bifurcation between the two Hindu schools with regards to coparcenary property is when an individual starts with the coparcenary property itself.

Under Mitakshara School, when a male descendant is born, he becomes the coparcener of the property or is the sole survivor of a partitioned coparcener property.

For instance, in a coparcenary comprising of a Dad 'F', and his two children 'A' and 'B', A requests a partition, takes his share and after that gets married, when a male child is born to him, he will frame a coparcenary with his child. In this way, the introduction of a child is the beginning stage or resuscitating purpose of Mitakshara coparcenary.

Under Dayabhaga School, the coparcenary property the father is the sole owner of the property as long as he is alive. It is the death that is the starting point of the coparcener property.

This means that the Karta of the family holds the property till his death in Dayabagha whereas in Mitakshara the coparceners of the property become as soon as they are born.

The Karta also has the power to sell the coparcenary property in times of legal necessity or for benefit of the estate, however such a sale can be challenged by the continuing coparceners as not being a necessity or for the benefit of estate within 12 years of knowledge of the sale.

EVOLUTION OF COPARCENARY PROPERTY

The coparcenary as understood in Hindu law has its origin in the concept of Daya as explained by Vijnaneshwara while commenting on Yajnavalkyasmriti in the Daya vibhaga prakranam vayavahara adhaya. Here, Vijnaneshwara discussed that Daya is only that property which

becomes the property of another person, solely by reason of relation to the owner. The words solely by reason of relation exclude any other cause, such as purchase or the like.⁶

“The concept of coparcenary as understood in the general sense under English law has different meaning in India or Hindu legal system. In English law, coparcenary is the creation of act of parties or creation of law. In Hindu law, coparcenary cannot be created by acts of parties, however, it can be terminated by acts of parties. The coparcenary in Hindu law was limited only to male members who descended from the same male ancestors within three degrees. These coparceners have important rights as regards to property of the coparcenary but so long the coparcenary remains intact no member can claim any specific interest in any part of the property of the coparcenary because of the specific nature of coparcenary in the Mitakshara School of Hindu law.”⁷

“However, under Hindu law, the coparcenary in the Mitakshara and the Dayabhaga Schools of Hindu law have different meanings with the result that this difference in the concepts of coparcenary of the Mitakshara and the Dayabhaga Schools of Hindu Law resulted in the difference of definition of partition and the duty of the son to pay the debt of his father. Therefore, the deviation in the original concept of coparcenary is the result of social and proprietary influence.”⁸

“Hence, when females are made entitled to become coparceners it does not militate against the nature and concept of coparcenary because it is the social and proprietary aspect which prominently make it necessary that females should be included in the concept of coparcenary.”⁹

“However, the term Apatya (child) is a coparcener because according to Nirukta, Apatya means child which includes both son and daughter. Therefore, when a female is made a coparcener, it is only the recognition of the meaning of child in its true sense without making any distinction between a son and a daughter.”¹⁰

1. “Four generation rule – The lineal male descendants of a person, up to third generation (excluding him), acquire on birth, an interest in the coparcenary property.

⁶ Coparcenary under Hindu law: Boundaries redefined, NALSAR Law Review, Vol.4, No.1, 2008-2009.

⁷ Ibid 6.

⁸ Ibid 6.

⁹ Ibid 6.

¹⁰ Ibid 6.

2. Creation of law- Coparcenary is also a creation of law and cannot be formed by an agreement between the parties.
3. Only males – No stranger can be introduced in the coparcenary. Only a male child, born in the family or validly adopted, can become a coparcener.
4. Collective enjoyment – The proceeds of undivided family must be brought to the common chest or purse and then dealt with according to the modes of enjoyment by the members as an undivided family till a partition takes place because they hold everything jointly.
5. Acquisition of interest by birth – A coparcener in a joint family is born with an interest in the coparcenary property which means that the moment he is born in the family he gets a right by birth in the ownership of the coparcenary property.
6. Fluctuating and not a specific interest – A coparcener on birth gets an interest in the coparcenary property. His interest in the property is not a specific share and is subject to fluctuation with the deaths and births of other coparceners in the family. For example, a joint family comprises a father and two sons. Each of these is a coparcener and entitled to one- third share in the coparcenary property but on the death of any one coparcener, it will fluctuate and will increase.
7. Doctrine of Survivorship – Under the traditional law, on the death of a coparcener, his interest in the family property is immediately taken by those coparceners who survive him and thus he leaves nothing behind out of his interest in the coparcenary property for his female dependents. This phenomenon is called doctrine of survivorship.
8. Alienation of undivided interests – Generally, a coparcener is individually not entitled to alienate his undivided interest in the coparcenary property. Only in certain situations the father or senior most male member or the Karta can alienate the undivided interest or even the whole property.”¹¹

In the patrilineal system, that is under both Mitakshara as well as Dayabhaga system females were excluded in the transfer of property. Joint family property is what coparcenary property is.

“In Dharmasastra coparceners are referred to as Sahadaee. The term coparceners came to be used as a result of influence of Western Jurisprudence. Therefore, the present concept is not

¹¹ https://www.lawctopus.com/academike/interest-of-hindu-women-in-coparcenary-property-under-hindu-succession-act-2005/#_ednref3, 17-03-2019,11:38.

very difficult from the earlier one. The justification of coparcenary according to the Mitakshara School is that those who can offer funeral oblations (Pindh-daan) are entitled to the property. The concept of Pindh-daan is that the person who offers funeral oblations share the same blood with the person to whom he is offering a Pindh.”¹²

“A coparcenary is purely a creation of law; it cannot be created by act of parties, except by adoption. In order to be able to claim a partition, it does not matter how remote from the common ancestor a person may be, provided he is not more than four degrees removed from the last male owner who has himself taken an interest by birth.”¹³

In spite of the fact that a coparcenary must have a typical predecessor to begin with, it is not to be assumed that at each degree coparcenary is constrained to four degrees from the regular progenitor. An individual from a joint family might be expelled more than four degrees from the regular progenitor (unique holder of coparcenary property) but then he might be a coparcener. Regardless of whether he is so or not relies upon the response to the inquiry whether he can request segment of the coparcenary property. On the off chance that he can, he is a coparcener yet not something else. The standard is that segment can be requested by any individual from a joint family who isn't evacuated more than four degrees from the last holder, notwithstanding, remote he might be from the basic precursor or unique holder of the property.

At the point when an individual from a joint family is evacuated multiple degrees from the last holder he can't request segment, and accordingly, he isn't a coparcener. On the demise, be that as it may, of the last holder, he would be qualified for a share on parcel, except if his dad, granddad and incredible granddad had all predeceased last holder. The reason is that at whatever point a break of more than three degree happens between the holders of property the coparcenary comes to an end.

As per Dayabhaga School, the establishment of a coparcenary is laid on the demise of the dad. Insofar as the dad is alive, there is no coparcenary in its severe feeling of the word among him and his male issue. It is just on his demise leaving at least two male issues that a coparcenary is first shaped. Consequently, it is right to state that the arrangement of a coparcenary does not

¹² Ibid 6.

¹³ P.V.Kane, History of Dharmasastra, Vol. III, 3rd ed. 1993, p. 591. Vide Moro v. Ganesh, 10 Bm. HCR, p. 444, pp. 461-468 where Mr. Justice Nanbhai Haridas very lucidly explains by several diagrams the limits of a coparcenary and what persons are entitled to demand a partition and from whom.

depend upon any demonstration of the gatherings. It is a production of the law. It is framed suddenly on the passing of the precursor. It might be broken up promptly subsequently by segment yet up to that point the beneficiaries hold the property as coparceners. These perceptions should clearly be perused with regards to a dad kicking the bucket leaving two or on the other hand progressively male issues who might establish a coparcenary, however obviously, in their case, there would be just solidarity of ownership and not solidarity of possession.

Therefore, till a parcel by dispenses and limits, that is, genuine and last appropriation of properties happens, each coparcener can say what his offer will be.

In different words, none of them can say such and such property will tumble to his offer. Each coparcener is in control of the whole property, regardless of whether he has no real ownership, as ownership of one is ownership of all. Nobody can guarantee any selective ownership of property except if settled upon by coparceners.

ANALYSIS OF COPARCENARY IN TERMS OF SURVIVORSHIP AND PARTITION WITH JUDICIAL PRONOUNCEMENT

In *Sudarsana Maistri v. Narasimhulu*,¹⁴ it was held that a joint family and its coparcenary with all its incidents are purely a creature of Hindu law and cannot be created by act of parties, as the fundamental principle of the joint family is the tie of sapinda-ship arising by birth, marriage and adoption.

In *Narayan Reddy v. Sai Reddi*,¹⁵ where in a suit for partition of joint family properties, a preliminary decree was passed ascertaining the share of the parties, it was held that it was open to the unmarried daughter to claim share in those properties under Section 29A as amended by A.P. Amendment Act, 1986 before the passing of the final decree.

¹⁴ (1902) 25 Mad. 149.

¹⁵ AIR 1990 AP 263.

In *Ashok Kumar Ratanchand v. CIT*,¹⁶ the A.P. High Court held that where a coparcener who obtains property on partition and marries subsequently, the status of unit of assessment after marriage is necessarily that of a Hindu undivided family and the income from such property is assessable in that status and not in the status of the individual. After discussing the entire case law on the subject, the Court observed that the property which a coparcener obtains on partition does not become for all times his individual and separate property. If he has a wife or a daughter, depending on him the property will be charged by the obligation to maintain them.

If he marries later, his property, ancestral or self-acquired, will be burdened by an obligation to maintain his wife. If he begets a son, that son becomes entitled to a share in the property which thereby revives the character of joint family property. If he begets only daughters, the obligation to maintain them will be fastened on the property. An unmarried Hindu male, obtaining a share of ancestral property on partition retains the property as his absolute property.

But after marriage the property becomes encumbered by an obligation to maintain his wife or other dependents. It sheds the character of separate property and revives its character as joint property of the smaller unit consisting of himself and his wife. In that limited sense, the income therefrom may be the income of the Hindu undivided family consisting of himself and his wife.

The Hindu Succession Act was put into force in the year 2005. This act granted rights to married as well as unmarried women to inherit their ancestral or coparcenary property at par with any other male member of her family.

“By this amendment, the daughter is a coparcener in her own right and has the same rights and liabilities in the coparcenary property as the son. This means a daughter along with a son is liable for debts of joint family. The daughter is also entitled to dispose of her share of the coparcenary property thereof by way of a will.”¹⁷

In *Gurupad vs. Hirbai*,¹⁸ Supreme Court observed that ignoring a woman’s right to get a share at the time of notional partition essentially means that: ‘One unwittingly permits one’s

¹⁶ (1990) 186 ITR 475.

¹⁷ Hindu Succession Act, Amendment 2005.

¹⁸ AIR 1978 SC 1239.

imagination to boggle under the oppression of the reality that there was in fact no partition between the plaintiff's husband and his sons.

In *M. Yogendra and Ors. vs. Leelamma N. and Ors.*¹⁹, the Supreme Court held that 'The Act indisputably would prevail over the Hindu Law. We may notice that the Parliament, with a view to confer right upon the female heirs, even in relation to the joint family property, enacted Hindu Succession Act, 2005.

Further in *G. Sekar vs. Geetha and Ors.*²⁰, the Supreme Court held that: 'It is, therefore, evident that the Parliament intended to achieve the goal of removal of discrimination not only by Section 6 of the Act but also by conferring an absolute right in a female heir to ask for a partition in a dwelling house wholly occupied by a joint family as provided for in terms of Section 23 of the Act. The primary issue experienced on inspecting Section 6 involves the absence of an unequivocal qualification among wedded and unmarried girls. This reality must be underscored as the wedded and the unmarried girl do contrast in regards for example, participation of family; something which is significant to the idea of the coparcenary. In any case, working under the presumption that the term little girl, as utilized in the Act, is comprehensive of both hitched and unmarried little girls, it is important to comprehend that the endeavour to recognize a wedded and unmarried little girl may demonstrate pointless, regarding characterizing the coparcenary.

Another intriguing issue while characterizing the coparcenary concern the consideration or avoidance of the embraced girl is concerned. The content of the Section 6 of the Hindu Succession (Amendment) Act, 2005 no place makes reference to any reference to an embraced little girl, however keeps up the incorporation of just a girl by birth, as a piece of the coparcenary. In this way, for every single pragmatic reason, it is difficult to incorporate the embraced little girl in the new meaning of the coparcenary - an issue which should be rethought.

The core of the issues lies in the disarray which encompasses the expression, "the daughter of a coparcener". It is obvious from a perusing of Section 6 that the little girl of the prepositus is undoubtedly a coparcener, qualified for an offer in the coparcenary property, equivalent to that

¹⁹ 2010 (1)ALL MR (SC) 490.

²⁰ AIR 2009 SC2 649.

of her brother's. Be that as it may, it is important to comprehend that the appropriateness of this expression is confined to this translation alone.

The request of succession among agnates or cognates is administered by three standards of inclination, set down in Section 12, which are basic to both the classes of beneficiaries. So as to figure out which of the at least two petitioners in the class of agnates or of cognates, plan of action must be taken to govern 1 and 2, set down in Section 12, and at first to govern 1. When one contending beneficiary isn't qualified for be linked to the next under standard 1 or 2, they take all the while, under Rule 3.

Rule 1 states that this standard is urgent and establishes that, of two beneficiaries, the person who has less or no degrees of rising is favoured. Outline – If the two contending beneficiaries are two security agnates, that is, sibling's child's little girl, (father's child's little girl), and b) fatherly uncle's child (father's dad's child). The previous, who has just 2 degrees of climb is to be wanted to the last mentioned, that has three degrees of rising.

Rule 2 states that this standard authorizes that where the quantity of degrees of rising is the equivalent, the person who has less or no degrees of drop is favoured. Delineation – The contending beneficiaries are two guarantee agnates, a) sibling's child's little girl (father's child's girl), and b) sibling's child's girl (father's child's little girl). Once more, the previous is to be favoured, on the grounds that, regardless of having two degrees of climb, each, the previous has just three degrees of plunge contrasted with the last's 4.

Rule 3 states his standard sanctions that where neither one of the heirs is qualified for be favoured, under principle 1 or two, they take at the same time. Delineation – The contending beneficiaries are two agnates, a's) child, and b's) child's girl. There are no degrees of rising, and the quantity of degrees of plunge is the equivalent in the event of both, and both remain in a similar level of drop. In this way, neither one of the heirs is qualified for be favoured. Outline 2 – The contending beneficiaries are two cognates, a) little girl's child, and b) child's girl's child. The position is comparable, to that of delineation 1 and they take at the same time.

Section 6 of the Hindu Succession Act in an air of specious city adopts the existing law of partition. Section 6 provides where a person dies having an undivided interest in a Mitakshara parcenary, and leaving a female relative specified in Class Schedule, (or a male heir claiming

through such female heir) divided interest shall devolve by testamentary or intestate according to the provisions of the Act. Explanation 1 to the lays down:²¹ "For the purposes of this section, the interest Hindu Mitakshara coparcener shall be deemed to be the share property that would have been allotted to him, if a partition property had taken place just before his death, irrespective he was entitled to claim partition or not." Thus prima facie involves the importation of the existing law of partition. It may be pointed out that in the view of the learned Editor Mulla, 56 the statutory fiction of notional partition necessarily the treatment of imaginary state of affairs as real and " effect given to the inevitable corollaries of that state of affairs." reliance has been placed in this connection on the following observations of the Supreme Court in "The State of Bombay v. Pandurang"²² ,When a statute enacts that something shall be deemed to done, which in fact and truth was not done, the Court is bound certain for what purposes and between, what persons the statutory fiction is to be resorted to and full effect must be given to the fiction and it should be carried to its logical conclusion.

In an often quoted passage in Appovier v. Rama Subba Aiyan ,²³ Lord Westbury observed : "It is necessary to bear in mind the two-fold application of the word 'division'. There may be a division of right and there may be a division of property." The effect of this decision, in the language of the Calcutta High Court is: - "The question is not whether there was a separation by metes and bounds but a separation in estate and interest; for that would have the same legal effect, so far as altering the status of a family is concerned, as a partition by metes and bounds."²⁴ Lord Davey in Balakishen Das v. Ram Narain²⁵ approved of the above statement as accurately expressing the effect of the decision in Appovier' s case.

The allotment of a share to female member was made only when there was a division by metes and bounds and which had been affirmed by the Privy Council in Pratapmull Agarwalla v. Danabati Bibi.²⁶

It may possibly be objected that in view of the recent decision of the Supreme Court in Munna Lai v. Raj Kumar,²⁷ Pratapmull's case is no longer binding in full. The ratio of the Supreme

²¹D.F. Mulla, Principles of Hindu Law.

²²[1953] S.C.R. 773

²³ 11M.L.A. 75.

²⁴ As quoted in Balakishen Das v. Ram Narain 30

²⁵ 30 I.A. 139.

²⁶ 63 I.A. 33.

²⁷ A.I.R. 1962 S.G. 1495.

Court decision is that where there is a preliminary decree for partition under which a female member is entitled to share, she will be deemed to be "possessed" of such property under section 14 of the Hindu Succession Act, notwithstanding the fact that there is no partition by metes and bounds, and in this respect the decision in Pratapmull's case is inapplicable. But where the question of applicability of section 14 does not arise, the principle in the Privy Council's case continues.

The formation of the survivorship enthusiasm with an individual other than a companion includes expenses and dangers which might be conflicting with the wants of the maker and exceed the benefits of the relationship. Reference to joint occupancy or a numerous gathering account as a "will substitute" or "poor man's will" is deluding, since the outcomes under joint tenure or a multiple-party record might be essentially not quite the same as the outcomes under a will.

The reality remains that joint occupancy and numerous gathering accounts are often used as an option in contrast to a will in unobtrusive bequests. It is anticipated that joint occupancy and numerous gathering records will keep on being well known notwithstanding any exertion of the lawful calling to teach the general open with regards to the risks of joint tenure and numerous gathering accounts.

Since different gathering accounts are expected as an option to administration, the protests with respect to various gathering accounts, especially P.O.D. accounts, are less serious than protests with respect to joint tenure.

One complaint to various gathering records could be fulfilled through the utilization of an enemy of slip by idea to counteract unintended disinheritance. Change of joint occupancy so it is predictable with the wants of the overall population is increasingly intricate. Under existing law, the best exhortation is to maintain a strategic distance from the joint tenure association with an individual other than a companion.

COMPARATIVE AND CRITICAL ANALYSIS

Under Muslim Law, Agnatic beneficiaries in inclination is commonly used to the deceptive term 'residuaries'. Buildup and 'residuary' gives a feeling that what is left of the property after the offer of Class I beneficiaries are fulfilled, as per their detail, however it isn't correct on the grounds that the majority of the property stays as buildup. This critical class has a place with child, father (in few cases), sibling, fatherly uncle, and so forth. Who are essential male relations and expected to get more.

Arrangement of these beneficiaries are acknowledgments of Pre-Islamic traditions, and Class I is given inclination, attributable to the regard in Koran. Else, the greater part of the property, lapses to agnatic beneficiaries, the people whose rights were constantly perceived by inborn law.

So in Muslim law, the male heirs in the list of residuary in their own rights are only the sons. The other class, i.e. Class – II is

1. Daughter's son
2. The son's daughter as a residuary in the right of son's son,
3. Full sister in the right of full brother, and
4. Consanguine sister in the right of consanguine brother.
5. Full sister, and consanguine sister, when they succeed with daughters and son's daughter.

In the *Shafeeg bin Salim Talib and another v Fatimah bte Abud bin Talib and others*²⁸, The High Court, the administrators argued that (a) the concept of joint tenancy is unknown to Muslim law and (b) the operation of the right of survivorship under a joint tenancy is repugnant to Muslim law as it operated as a testamentary gift to Fatimah and increased her share in the Estate which is prohibited by Muslim law.

“Before the Mapilla Succession Act, (Act 1 of 1918) was enacted, any property owned by a member of a Mapilla tarwad belonged to the tarwad, whether it was self-acquired or otherwise and succession to such property was by right of survivorship. The tarwad property remained

²⁸ **Civil Appeal No 70 of 2009**

imparfible although the members of the tarwad had a proprietary interest in the property and therefore entitled to maintenance The general Islamic law by which Muslims were governed in the rest of the country was not in force among the Mapillas of North Malabar and some parts of South Kanara, where Mapillas predominate. The customary law prevailed in the Mapilla society of North Malabar and parts of South Kanara. This system of inheritance, according to Marumakathayam law, is a deviation from the original Islamic law and had been adopted by the Mapillas by reason of a custom which had developed out of certain historic conditions and factors which it is not necessary now to go into.”²⁹

Pakistan is an Islam centric country which means that the laws of survivorship and partition are in accordance to the aforementioned.

CONCLUSION

Coparcenary property has evolved in terms of ownership and it is evident through the course of time. Where once only the male members of the joint family inherited the coparcenary property, on the basis of schools, i.e., Mitakshara or Dayabhaga , on the birth of the member or death of the father , through the 2005 Amendment , women are also included as a successor of the property.

The 2005 Amendment is considered as one of the major steps taken towards gender equality.

However, Campaigns for legal literacy; efforts to enhance social awareness of the advantages to the whole family if women own property; and legal and social aid for women seeking to assert their rights, are only a few of the many steps needed to fulfil the change incorporated in the Act.

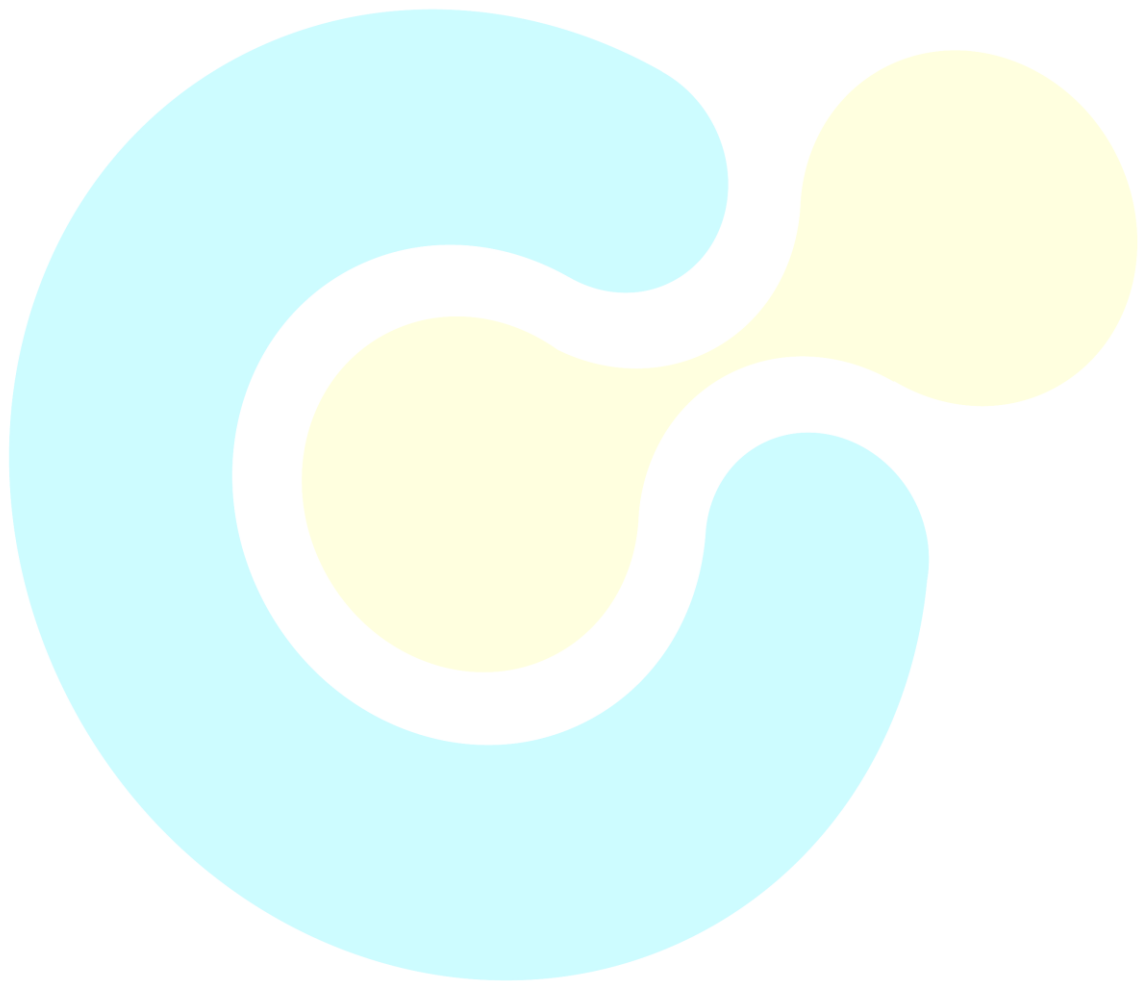
²⁹ *Mukkattumbrath Ayisumma vs Vayyaprath Pazhae Bangalayil*, AIR 1953 Mad 425, (1952) 2 MLJ 933.

SUGGESTIONS

1. It is submitted that the Hindu Succession (Amendment) Act makes discrimination between a daughter born in the family and a daughter adopted in the family of her adoption. Therefore, this anomaly must be removed by making an amendment in the existing Act to absorb adopted daughter in the family of her adoption as a coparcener as is done in the case of an adopted son.
2. It is submitted that if there is a real desire to help the female in general and the Hindu female in particular in the light of the Hindu Succession (Amendment) Act, 2005, the provisions to make the wife a sharer in the property at the moment of her entry into the family of her marriage must be made. Since her entry in the family of her marriage is not temporary but is permanent for life, the female should be made a sharer in the property of the relations of her husband. Where the husband is a sharer, she should be an equal sharer with her. If the Parliament is serious to improve financial position of Hindu female, the wife, who is the other half of her husband, it should make a law that should give her equal economic rights in the property of her husband and equal right of heirship with her husband in the property of relatives of her husband as she is the inseparable half of her husband. It will be in total conformity with the spirit of Hindu view of life as she is Sapinda Gotraja.
3. In part limiting the privilege to will. Such confinements are regular in a few European nations. Generally ladies may acquire close to nothing, as wills regularly exclude them. Be that as it may, since the 2005 Act does not contact testamentary opportunity, holding the Mitaksara framework and making girls coparceners, while not the perfect arrangement, at any rate gives ladies guaranteed shares in joint family property.
4. I also believe truly that all property should be on the basis of intestate and not survivorship in the sense that families should preach and practise equality within their home.
5. On the analogy and rationale of Dattaka, all her rights must cease in the family of her birth after marriage and consequent replacement must take place in the family of her marriage. Further, every marriage must be registered.³⁰

³⁰ Seema v. Ashwani Kumar, AIR 2006 SC 1158: the Supreme Court held that marriages of all persons, citizens of India, belonging to various religions should be made compulsorily registrable in their respective States, where marriage is solemnized.

If these provisions are made, divorce will become only an exception, and on divorce a Hindu female should be divested of all her properties which she had got by virtue of her marriage. I also feel that Survivorship has always been biased towards the male heirs of the joint family. The legislations as well as courts are working towards developing gender neutral arrangements for the succession of coparcenary property for women in terms of survivorship and partition.



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