

## CONCEPT OF JOINT TENANCY AND COPARCENARY

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### ABSTRACT

*Dharmasastras do not divide the religious is distinguished from the secular in the Hindu social structure; hence an individual in the grasthasrama is trained to live a whole, as well as a meaningful existence for the profit and well-being of those involved, have gone before, those who are already here and those who will be born. As a result, Coparcenary is a separate concept derived from ancient Hindu jurisprudence, which finally became an integral feature of Hindu law in general, and the Mitakshara School of Hindu law in particular. The idea of coparcenary, as defined in English law, has a different connotation in India or the Hindu legal system. Coparcenary is defined in English law as the creation of a party act or the formation of legislation Under Hindu law, a coparcenary cannot be established by acts of parties, but it may be revoked by acts of parties. A sort of ownership shared by two or more persons is known as joint tenancy. It differs from other types of co-ownership in that, upon the death of the other joint tenant, the surviving joint tenant immediately becomes the sole owner of the property. This is referred to as a right of survivorship. Tenancy by totality refers to a shared tenancy between a husband and wife. Tenancy by the whole differs from other joint tenancies in several ways, including the impossibility of one co-tenant terminating the ownership.*

**Keywords:** Tenancy, Coparcenary, Hindu Law.

### INTRODUCTION

Mitakshara school was named after Vijnanaeshwara's commentary on the Yajnavalkya smriti, 'Mitakshara.' Except for Assam and Bengal, this school is prevalent across India. Despite being a continuous commentary, this is actually a summary of almost all of the important Smritis and covers all of the titles of Hindu law. Kane dates the composition to A.D. 1100 and 1200. Mitakshara literally means "short compendium." The Mitakshara School of thought adheres to the rule of inheritance based on the Principle of Propinquity or the closeness of blood relationships. However, the entire impact of this was not provided. The same idea was fully

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implemented by the Hindu Succession Act of 1956. The doctrine of survivorship states that property passes to the survivor following the death of the common ancestor. The family's boys have a birthright to the land under the following two rules:

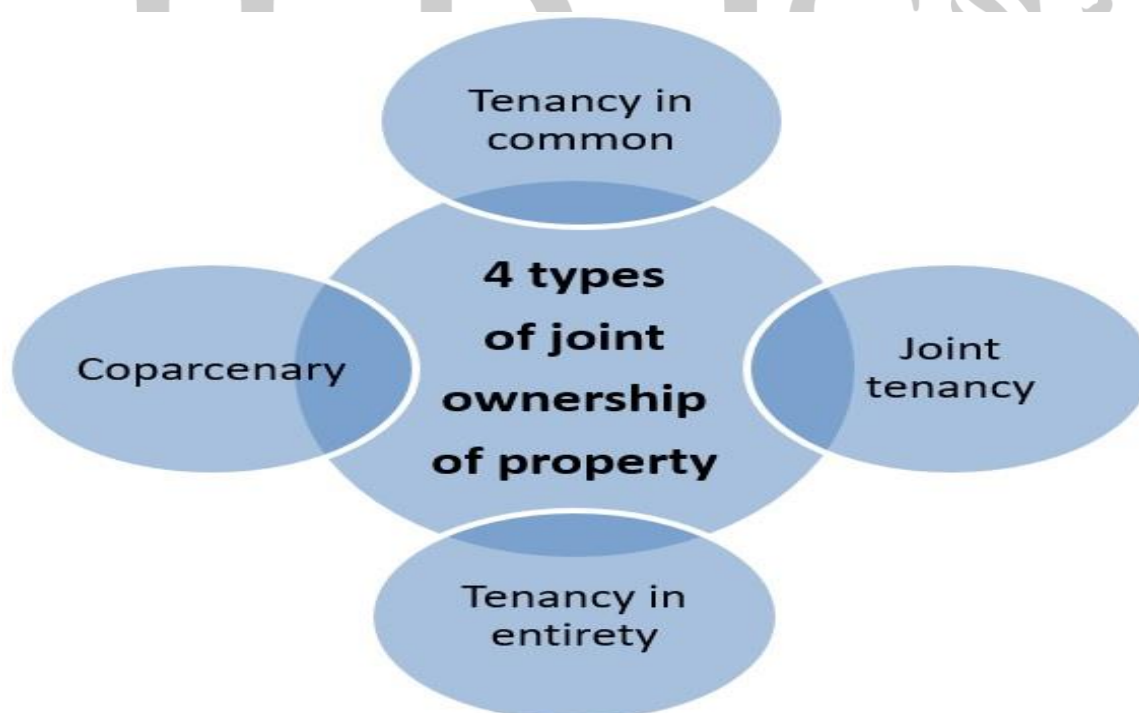
Females will not be heirs.

Agnates are preferable than cognates.

The school operates on a religious efficacy or spiritual benefit basis. According to the Doctrine of Oblations, individuals “who confer more spiritual benefit are entitled to inherit the property over those who confer less spiritual benefit. Females in the family may inherit the property as well. The sons do not have a birthright to the property, according to this school. If the coparcener dies without issue, In Hindu law, the coparcenary was confined to male members descended from the same male ancestors within three degrees. These coparceners have essential rights to the coparcenary's property, but as long as the coparcenary is intact, no member may claim any special interest in any part of the coparcenary's property due to the specific nature of coparcenary under the Mitakshara School of Hindu law. However, under Hindu law, the coparcenary has various meanings in the Mitakshara and Dayabhaga Schools of Hindu Law, resulting in a variation in the definition of division and the son's responsibility to pay his father's debt. As a result, the change from the basic notion of coparcenary is due to societal and proprietary influences. As a result, making females eligible to become coparceners does not contradict the nature and idea of coparcenaries because it is the social and proprietary aspects that make it imperative that females be included in the notion of the coparcenary. However, the term Apatya (child) is a coparcener since Nirukta defines Apatya as a kid who encompasses both son and daughter. As a result, when a female is designated a coparcener, it is just the acknowledgment of the definition of the kid in its broadest sense, without discrimination between son and daughter. State law governs the formation of a joint tenancy in both real and personal property” (Real property consists of land and its attachments, whereas personal property includes everything else).

Transfers to two or more persons who are not married must specifically disclose a desire to form by stating that the property would be held as joint tenants with rights of survivorship rather than tenants in common. For personal property transfers, such as stock certificates, the letters "JTWRS" can be used to denote a joint tenancy with the right to inherit A shared tenancy can be formed in almost any type of property. The features of various forms of jointly owned

property vary. Depending on the account arrangement, any joint renter of a bank account may normally withdraw the entire amount on deposit. Bonds and company stocks are often transferred or sold with the signatures of all joint tenants. To transfer or sell real estate, all joint tenants and their spouses must sign deeds and contracts.<sup>1</sup> The finest example of joint tenancy is the Mitakshara coparcenary property. “The most common form of joint tenancy is survivorship, in which the whole tenancy passes on the death of any partner tenant to the survivors, and finally to the last survivor. This incidence of survivorship assures that there is no vacancy of possession, and if only one tenant remains, he survives to the whole possession, which is known as *jus accrescendi* and is the most significant characteristic of joint tenancy. As a result, each tenant's interest is similar in scope, character, and duration. As a result, joint tenancy includes four concepts: the unity of possession, unity of interest, unity of title, and unity of beginning of title”. Mitakshara coparcenary property is comparable to joint tenancy. The occurrence of *sapindaship*, which is missing in English law, is one of the most crucial factors in the formation of a Mitakshara coparcenary.<sup>2</sup>



<sup>1</sup> Coparcenary Under Hindu Law : Boundaries Redefined , Dr. Vijendra Kumar ,Academia [https://www.academia.edu/1891799/Coparcenary\\_Under\\_Hindu\\_Law\\_Boundaries\\_Redefined](https://www.academia.edu/1891799/Coparcenary_Under_Hindu_Law_Boundaries_Redefined)

<sup>2</sup> Partition-and-Joint-Family-and-Coparcenary , Mahesh M , Academia [https://www.academia.edu/10969284/Partition\\_and\\_Joint\\_Family\\_and\\_Coparcenary](https://www.academia.edu/10969284/Partition_and_Joint_Family_and_Coparcenary)

## JOINT TENANCY AND CO PARCENARY

Renters in general are tenants who collectively hold the same property under various and unique titles, but through unity of possession, because no one knows his or her own severalty and therefore all occupy provocatively. “When two or more persons hold the same property, their claims may arise under different labels, under the same titles but at different dates, or through terms of limitation suggesting that the beneficiaries are to take in discrete sections. The notion of tenancy in common in Hindu law is quite similar compared to a Dayabhaga coparcenary. If a man dies without a will, abandoning sons, grandchildren by departed sons, and great-grandsons whose fathers and grandfathers died before him, the estate passes to the sons, grandsons, and great-grandsons, with the grandsons and great-grandsons having acquired the shares of their dead grandparents and fathers as well as the” heirs<sup>3</sup> “The old Mitakshara rule stated that heirs took as joint tenants with right of survivorship in cases where heirs were sons, grandsons, great-grandsons, or grandsons by a daughter who succeeded to their grandfather's estate provided they were living as members of the joint family at the time of succession, or when heirs were two or more widows of the intestate, or when heirs were two or more daughters who succeeded to their father. This long-standing tradition of Hindu Law was altered by the Hindu Succession Act of 1956, which states in Section 19 that these heirs shall accede to the estate as tenants in common rather than joint tenants”. This causes significant changes in Hindu succession law, and when combined with Section 8, forbids any coparcenary from forming. The contrast between joint tenancy and common tenancies is not, as is frequently assumed, a distinction in the nature of tenancy. It is, on the alternative, a variation in the nature of possession, or more precisely, interest. As a result, whether the nature is joint or separate is an important consideration because the two have different effects. Acts of one person under joint tenancy bound the other since they own under the same title, but the tenant in common does not.<sup>4</sup>

Prior to the passage of the Hindu Succession Act in 1956, individuals were controlled by customary rules that differed by area and also by caste. These statutes were notable for their gender discrimination and legal variety. The planned law could not be adopted throughout the nation due to a lack of finances, leading to variations in its application across the country. As

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<sup>3</sup> Joint Hindu Family, Coparcenary, Joint Tenants, Tenants-in-Common explained ,RAJ DAKSH LEGAL (16 nov 2020) <https://dakshalegal.home.blog/2020/11/16/joint-hindu-family-coparcenary-joint-tenants-tenants-in-common-explained/>

<sup>4</sup> Coparcenary under Hindu Law, Shubham kumar (8<sup>th</sup> august 2020 ) , <https://indianlawportal.co.in/coparcenary-under-hindu-law/>

a result, different schools of thought and practices emerged, further confusing and diverging the law. In all practising locations, the laws frequently encountered gender disparity. As established in Article 14 of the Indian Constitution, the Hindu Succession Act of 1956 was intended to promote equity. Through the notional partition, daughters were recognised as legitimate heirs of their parents and obtained inheritance rights to a portion of the father's primary residence. The boy would still legally receive the family's ancestral land, while the girl would have no entitlements. To it, under the laws of survivorship.<sup>5</sup> This resulted in continued inequality but at a slower or less declining rate. As a result, inequality persisted, but at a reduced or less rapid rate. It was revealed that the legislation created on the issue could not accomplish the goal of equality and hence ought to be revised to reflect changing societal needs. The Hindu Succession Amendment Act of 2005 was designed to provide women and daughters of the family equal rights as male members. It follows the recommendations made in the law commission report. As a result of this change, the girls in the families, either married or unmarried, gained coparcenary rights with the other full rights and obligations of a son. Section 6 of this modification called into question the fundamental ideas of Hindu coparcenary law. This change gave daughters, whether married or unmarried, the same privileges over the coparcenary as boys in the household. It was also said that the females of the household may now serve as the family's Karta, which they could not do previously.<sup>6</sup> There were considerable gains for women in the societal structure with the implementation of the 2005 revision to the Hindu succession statute in 1986. Today, the advantages supplied are reaping and growing for the welfare of society. Unlike in earlier, when they had to rely on their male colleagues to include them in their wills in order to secure only a fraction of their rights, all females in the family are now coparcenary shareholders of the family property with equal rights and obligations. The chance to assert their rights politely strengthens their basis and gives them with emergency financial support, which boosts their confidence and maybe more.

- **Shalini Sumant Raut & Ors vs Milind Sumant Raut & Ors**

“Rajaram died in this situation, leaving 8 heirs, 5 sons, and 3 daughters. His inheritance was divided by intestate succession, not survivorship, under Section 8 of the Hindu Succession Act. The petitioners were ordered to evaluate the three female heirs and their portion of the property

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<sup>5</sup> Coparcenary in India: It's Past, Present and Future, Jasleen kaur (3 Feb 2015), Lawctopus, <https://www.lawctopus.com/academike/coparcenary-india-past-present-future/>

<sup>6</sup> Lexis nexis student series, family law lectures, second ed. 2007, Poonam Pradhan saxena

using a theoretical division. They will also have to evaluate the possible partitions that might occur in the future if these coparceners died, leaving behind female heirs.”<sup>7</sup>

- **Prakash & Ors. v. Phulavati & Ors.**

“Phulavati sought the division and separation of half of her father's property. During the pendency of this dispute, the amendment went into effect, and the question was whether it was retrospective. The Supreme Court ruled that daughters would have a coparcenary right on and from the start of the amendment, establishing that the amendment is prospective in nature, which means that the right to coparcenary property would be available only to 'living daughters' of 'living coparceners' on and from the start of the amendment”<sup>8</sup>

## CONCLUSION

As a result, the idea of a coparcenary has evolved and changed significantly. The 2005 amendment is an important step toward removing patriarchal tendencies since it provides women with income equality and rejects the concept that after marriage, they become a member of their husband's families. It is critical to establish if equity exists only as a phenomenon or if it exists with an overwhelming of people's understanding and permission. It cannot be achieved just by confining a subgroup of women to unfair norms. As a response, there is an urgent need to develop social awareness and train people in order to change their perspectives about gender parity.

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<sup>7</sup> Shalini Sumant Raut & Ors vs Milind Sumant Raut & Ors , AIR 1976 SC 109

<sup>8</sup> Prakash & Ors. v. Phulavati & Ors., (2016) 2 SCC 36.