



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : LLB

SEMESTER : IIIrd

SUBJECT : FAMILY LAW II

SUBJECT CODE: LLB -304

LECTURE : 13

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Rules relating to distribution of property and modes of partition, reopening of partition

Various Modes of Partition

Partition leads to division of status. The severance in the joint status could be brought about in the following ways:

Partition by father during his lifetime: Under the Hindu law, a special power is given to father in the exercise of which he can bring out partition on his own if the coparcenary consists of the father and his sons only. He can separate his sons from himself and also separate the sons from one another without the consent of the sons. This power of father is a part of the '*patria potestas*' (paternal power) that was recognized by Hindu law.

Partition by Individual Coparceners through unilateral declaration: The unilateral declaration of intention of partition by a coparcener is sufficient for the severance of status provided that the communication of the intention of partition must be made clearly. The consent of the other coparceners is not necessary.

Partition by Agreement: A partition may also come into effect between the coparceners through an agreement. An agreement constituting partition must define the share of each coparcener with an intention of immediate separation. The court does not recognize any partition until the agreement of partition comes into effect. Partition can be effected either orally or in writing. It is not necessary that a written agreement has to be registered if it has a record of what had happened. However, if the properties are divided by the agreement, registration is mandatory.

Partition by Conduct: When the coparceners of the family actually divide the family property by metes and bounds and each member enjoys the possession of the share allotted to him separately, the partition is said to take place by conduct. The conduct for severance of status varies from case to case.

Partition by Suits: The most common way to express one's intention to separate himself from the joint family property is filing a suit in the court. As soon as the plaintiff expresses his unequivocal intention to get separated in the court, his status in the joint family property comes to an end. However, a decree from the court is required which decides the respective shares of

the coparceners. The severance of status takes place from the date of filing such suit in the court. Both a minor and a major coparcener may approach the court for this purpose.

Partition by Notice: The essential element of partition is the intention to separate which must be communicated to other coparceners. Therefore, partition may come into effect even by a notice to the coparceners, whether accompanied by a suit or not.

Partition by Arbitration: In this mode of partition, an agreement is made amongst the coparceners of a joint family in which they appoint an arbitrator to arbitrate and divide the property. Such a partition becomes operative from the date thereof.

Partition by Conversion: Conversion of a coparcener to a non-hindu religion automatically leads to the severance of status of that coparcener from the joint family. He loses his membership of the coparcenary but this doesn't affect the status of other coparceners inter se.

The same result follows in case a coparcener marries a non-hindu under the Special Marriage Act, 1954.

Partition by Will: Before the enactment of the Hindu Succession Act, 1956, the undivided interest of a coparcener in the joint family property devolved on his death by the rule of survivorship. So, a coparcener cannot make an effective will for his coparcenary interest.

MCQ

1. Which committee formed Hindu Law?

- A) Rao Committee
- B) Maneka Gandhi
- C) Choksi Committee
- D) None of above

2. Hindu Law is personal Law.

- A) Yes
- B) No
- C) Partly
- D) None of Above

3. If Hindu husband changes his religion and ceased to be Hindu, a wife can demand for divorce?

- A) Yes
- B) No
- C) Partly
- D) None of Above

4. Is marriage between 16 years of boy and 12 years of girl be void?

- A) Yes
- B) No
- C) Partly
- D) None of Above

5. According to Hindu Marriage Act, what is the valid age of marriage for girl and boy? A) 16 – 20

- B) 18 - 21
- C) 14 – 18
- D) 20 – 22