



FACULTY OF JURIDICAL SCIENCES

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SUBJECT : FAMILY LAW II

LECTURE : 3

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Difference between Joint Hindu Family and Coparcener

1 In order to constitute a Joint Hindu family the existence of any kind of property is not required whereas in Coparcenary there exists a ancestral property.

2 Joint Hindu families consist of male and female members of a family whereas in Coparcenary no female can be a coparcener.

3 Coparceners are members of the Joint Hindu Family whereas all the members of Joint Hindu family are not Coparceners.

Formation and Incident under the coparcenary property under Dayabhaga and Mitakshara

Co parcenary – The system of coparcenary Formation of Mitakshara coparcenary - A single person cannot form a coparcenary. There should be at least two male members to constitute it. Like a Hindu joint family, the presence of a senior most male member is a must to start a coparcenary. A minimum of two members are required to start and to continue a coparcenary. Moreover, the relation of father and son is essential for starting a coparcenary. For example, a Hindu male obtains a share at a time of partition from his father and then gets married. Till the son is born, he is the sole male in this family, but he alone will not form a coparcenary. On the birth of his son, a coparcenary comprising of him and his son, will come into existence. When this son gets married, and a son is born to him, the coparcenary will comprise the father F, his son S, and his grandson SS.

S

SS

When a coparcenary is started, the senior most male member, with his son, that is, lineal male descendant, till four generations (inclusive of him) of male line will form a coparcenary. If there is a lineal male descendant in the fifth generation, he will be the member of the joint family, but will not be a coparcener as he is removed from the senior most male member by more than four generations.

When all the coparceners die, leaving behind only one of them, the surviving coparcener is called the sole surviving coparcener. As a minimum of two male members are required to form a coparcenary, a sole surviving coparcener cannot form a coparcenary all by him.

Why is coparcenary limited? The coparcenary is limited to three generations of lineal male decedence of the last holder of the property owner. According to the tenets of Hinduism, only descendants up to three generations can offer spiritual ministrations to the common ancestor. Besides, only males can be coparceners because the females invariably leave the father's house and assume domestic duties as they enter in the husband's home.

Unmarried women, until 1956 only had the right of maintenance from the joint property, which included only the marriage expenses. The 1937 legislation allowed a widow to move into the shoes of her deceased husband and inherit his share. However, she does NOT become a coparcenary to this joint property. Doctrine of reversioners: Hindu Succession Act, 1956: - for the first time, the widow got full rights in her husband's property S. 14 of the Act 2005 Act - daughters, by birth, got coparcenary rights.

Women as coparcenary: Under Mitakshara coparcenary, women cannot be coparceners. A wife, under Hindu law, has a right of maintenance out of her husband's property. Yet she is not a coparcener with him. Even a widow succeeding to her deceased husband's share in the joint family, under the Hindu Women's (right to property) Act, 1937, is not a coparcenary. Unity of possession and community of interest - One of the basic features of coparcenary is unity of possession, and community of interest. All the coparceners jointly own the coparcenary property and till a partition takes place, and their shares are specifically demarcated, no one can claim ownership over any specific item of the coparcenary property. The proceeds of undivided family are enjoyed by its members as till a partition takes place, they hold everything jointly. Coparcenary property suggests ownership by one group collectively, and enjoyment and possession of it by not only this group exclusively, but by the joint family members who are outside this group.

MCQ

1. If parents of a hindu child give up hindu religion than child will be consider
 - A) Hindu
 - B) Not a hindu
 - C) A & B is right
 - D) None of these

2. Hindu Law is
 - A) Personal
 - B) Local
 - C) Indian
 - D) None of these

3. Hindu law is applicable to Hindu for
 - A) General
 - B) Personal
 - C) All the means
 - D) None of these

4. Hindu underived family is not like as corporation a entity
 - A) Artificial
 - B) Legal
 - C) Separate
 - D) A & B is correct

5. The status of the member of HUF is
 - A) Individual
 - B) Joint
 - C) A & B is correct
 - D) None of these