

## RIGHTS OF A MINOR COPARCENER

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*The Hindu joint family system is an inseparable association of the life of the Hindus as it has been steered that there is no escape of the Hindu from the Joint Family. A Hindu Joint Family sometimes comprises of a common antecedent and all his male lineal descendants upto any generation with their unmarried daughters, their wives and their widows. Coparcener is sometimes believed to be same in meaning as the joint family. The moment a child is born he gets his birth right in the coparcenary. A minor coparcener becomes a major coparcener once he attains the age of 18 years. However, the term coparcener in the Mitakshara School of law its membership is confined to the male descendants upto four degrees, but from a common male ancestor only. It is a very unique feature of the Indian law that it does not draw a difference between the minor and the major coparceners. Hindu Law has established it that the presence of a minor coparcener is not an obstruction against partition by the adult coparceners. An agreement of partition which is entered into by the adult coparceners is binding upon the minor coparceners too provided such agreements are not unfair or prejudicial in the interest of the minor coparceners. Where the partition agreement is not in favour of the minor coparceners and is prejudicial, they can set aside such an agreement when they attain majority by claiming the re-opening of the partition. A minor coparcener has the same rights as that of his father but with some reasonable restrictions upon the powers to alienate and partition of property. The research methodology adopted in this project is both descriptive and analytical because the provisions regarding this are well settled.*

**Keywords:** Inseparable Association; Lineal Descendants; Coparcener

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## INTRODUCTION

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*“Children must be prevented from squandering away the property through inexperience, and if either or both of their parents die or if the parents disagree in matters concerning the children, provision must be made... for the management of their property”*

*-83rd Report of the Law Commission of India.<sup>1</sup>*

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<sup>1</sup> 83rd Report of the Law Commission of India.

A Hindu Joint Family is an undivided family arrangement prevalent in India in which a number of generations are living together in the same household, and all of them are bound together by the same relationship. It consists of a common male ancestor and his male lineal descendant's upto any generation along with his wife and children. It's necessary to have a common male ancestor and he acts as the manager or the karta of the Hindu Joint Family. The position of a karta is due to birth or marriage to a male member in the family and if the karta dies, the joint family does not come to an end. The upper links are disconnected and the member next to the deceased karta acquires the position by virtue of birth in the family, and this continues until the last member of the joint family is alive. A karta is a person who is the head of a family and takes decisions on behalf of the family. He represents the whole family and has the right to guide the decisions of the family members. Coparcenary is a narrower concept in a joint family. It consists of the father and his three male lineal ascendants. This coparcenary exists from the last holder of property or the senior most member of the household upto four degrees of lineal male descendants. And if any one of the four lineal male descendants dies, the coparcener ends. A coparcener has a right in the joint family property by birth until partition takes place. They have an equal right of maintenance by the family funds and are bound by any decisions taken by the karta. Also they have the right to challenge any decision of the karta which he thinks to be unnecessary and unreasonable. He can also claim his right of survivorship by a suit. A coparcenary is only among the males and not the females of the family and it is evolved naturally by birth and not by any form of agreement.

**Now the question arises is that who can be a coparcener?**

A coparcener can be a person who shares equally in the joint family property and the rights attached to the joint family property. A coparcenary exists among a father and a son and it can also exist among a grandfather and a grandson. There is no compulsion of the relationship of a father and a son to exist. An insane person can also be a coparcener as he gets his rights due to birth in the family and not due to any supervening insanity. Though he has no right to claim partition and has no right in the property when partition takes place, he still remains a coparcener in the joint family. In any scenario, his son cannot be excluded from the coparcenary. He can claim his rights as and when he regains his sanity.

A child born out of a civil marriage i.e. a marriage under the Special Marriage Act, 1954 forms a new coparcenary with his father.

A coparcenary can also exist within a coparcenary. It means that if a person A has three sons' b1, b2 and b3. B1 has two sons' c1 and c2 and b3 has three sons' d1, d2 and d3. B2 and b3 have separate properties and they die. Their separate property will be divided among their sons and their sons can form a coparcenary among themselves.

The Hindu Women's Right to Property Act, 1937, gives the widows a right in the property and also a right to partition. If she acquires the property after the death of her husband the right of the other coparceners' stay suspended till the property enures. If the widow claims partition her interest in the property stands defined and the other coparceners' right of

survivorship ends there itself. But if she dies without claiming partition, the interest passes on to the other coparceners.

This paper provides a broader picture in which the property of a minor is treated under Hindu Law and Muslim Law. The main focus is upon the rights of the minor to alienate the property and the right to partition and the guardianship act too.

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## MINOR AS A COPARCENER

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Hindu Minority and Guardianship Act, 1956 defines a minor as a person who has not yet attained the age of 18 years. However, the Indian Majority Act, 1875 states that if a person is appointed a legal representative or a guardian by the court then the age of majority is 21 years. A minor is considered to be a person who is not mature enough and does not have the intellectual capacity of an adult and is not believed to be able to take any kind of legal decisions and transactions. Capacity of a person means the determination of whether a person can take certain decisions and exercise some rights and perform duties or not. A minor unless he attains the age of 18 years does not have the capacity to take certain decisions and enter into contracts as Section 11 of the Indian Contract Act renders a minor as non-competent and the contract void ab initio. But if a guardian enters into a contract on behalf of the minor for the minor's interest, then that contract is enforceable by law and stands valid.

Hindu Law makes no distinction between the rights of a major coparcener and a minor coparcener with respect to the joint family property. Some of the rights are common among all the coparceners. They include: the right of joint possession, the right of ownership, the right of alienation, the enjoyment of joint family property, the right to question the decisions of the karts, the right to claim partition. He can also claim his rights through a suit filed on behalf of his next friend or the guardian. Here the court first satisfies itself that the suit has been filed for the benefit of the minor and not otherwise. Then only the suit becomes effective.<sup>2</sup> In the case of P.H. Ramaswamy v. R. Kuppa, the Madras High Court stated that the restriction upon a minor to challenge his violation of rights is an unwarranted restriction upon his right. It is discriminatory in every sense and the minor is severed from the major coparceners and his opinion is not taken into consideration while partition and he cannot do anything on his own, he has to take the help of a guardian to give effect to the violation of his rights. However, it was stated that the minor coparcener is immature enough to decide it himself therefore it is upon the court to decide if the partition is in his favour or not and if the guardian is acting in a bona fide manner. Such a major decision can only be taken by the court and nobody else.

A guardian is a person who acts in the interest of the minor and his property on behalf of the minor. This is because the minor is considered to be immature enough to decide upon such matters. It is the responsibility of the guardian to act for the welfare of the minor and his property. Guardians can be testamentary or appointed by the court. The Hindu

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<sup>2</sup> P.H. Ramaswamy v. R. Kuppa, AIR 1957 Mad 81.

Minority and Guardianship Act, 1956 in addition to the Guardian and Wards Act, 1980 defines the powers and the responsibilities of the guardian with respect to the minor and his property. In case the minor dies during a suit, the suit can be continued by his guardian or his legal representative. In *Chinna Venkata Reddi v. Lakshamma*,<sup>3</sup> the mother acted as the guardian of her son and filed a suit for partition on the grounds that the other coparceners were subduing a certain property and forming collusive agreements of partition. The minor died while the suit was tried in the court, therefore, the court held that the suit was in the interest of the minor and therefore it should be continued with the mother as the legal representative and the property in favour of the son was awarded to the mother in the form of a decree in this case.

The guardianship Act loses its relevance once it is measured from the context of the time and cost to be borne by the guardian during the pendency of the suit. The guardian takes care of all the expenses that are borne out of the suit till the time the rights of the minors and his interest is not retained. Also sometimes the guardian tries to find some hidden motive in the rights and interests of the minor which causes damage to the interest of the minor. Therefore, the credibility, the cost and the time of the guardian are major factors that are necessary to be evaluated before their appointment so that it does not hinder the interest of the minor in his property. All these factors play a major role with respect to the minor's right and the decision of the court. If the partition claimed is not in favour of the minor coparcener he can claim his rights as soon as he attains majority at the age of 18 years.

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The senior most member of a family can be the karta of a family. But what if a situation arises that all the adult male members of a family are absent or have died, then a minor can act as the karta of the family in such a case after the consent of the rest of the other family members. If he is sui juris, he can act through his natural guardian i.e. his mother.

The position of a minor as the karta was also clarified in Mulla's Hindu Law:

*“Capacity of a minor to act as guardian: There is no rule of Hindu Law that the managing member of an undivided family should be an adult. He may be a minor in which case he is competent to act as guardian not only of his own wife and children but also the wife and children of another minor member of the family.”*

What is coparcenary property?

A coparcenary property is the one which is held by a Hindu Joint Family where all the members of the family have an equal share and right in the joint family property unless anyone has claimed that a share of the property is their separate or self-acquired property. With the coming up of the Hindu Gains of Learning Act, 1930, the concept of self-

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<sup>3</sup> *ChinnaVenkataReddiv.Lakshamma*, 1964 (1) SCJ 45.

acquired property came into existence. If there is no such joint family property then the members of the family can form a coparcenery by pooling their self-acquired property.

After the karta dies, his descendants have a right over the joint family property. This concept is that of the doctrine of survivorship. There are no specific shares of any individual in the joint family property; it depends upon the death and birth in the family. On birth, the interests of the coparceners in the property decreases, whereas on death, it increases.

Every person including the minors has an interest in the coparcenery property by virtue of birth in the joint family.

What is partition?

Partition means the severance of the joint status of the coparceners and the division of the joint family property. Partition does not mean the transfer of property rather it means the separation of the interests of the coparceners.

Suits for partition can be filed by adults by means of a decree. The filing of the suit is not necessarily the conclusive evidence of the intention of partition. The court has the power to divide the property by metes and bounds and also to take into effect the separation of the status without actually dividing the property. Suits for the partition can also be filed by minors. But minors do not have the right to file it themselves and therefore they are allotted a guardian by the court who is believed to have the best of interest of the minor and has the capability of spending his time and money for the rights of the coparcener. If the minor dies during the pendency of the suit, then his legal representative is entitled to the property that was supposed to be in the interest of the minor. When a minor files a suit for partition in a court on behalf of his legal representative, then it is upon the court to decide if the suit filed is in the interest of the minor or not and then only the proceedings are taken forward. It was held in the case of *Ganapaty v. Subramanyam*<sup>4</sup> that if the suit for partition is not found to be in the interest of the minor, it does not separate the minor from the family. The decision of the court on such a suit does not create a new right in favour of the minor, but it recognizes the right which emanated in him when the suit was commenced. It was held in the case of *Peddasubbayya v. Akkamma* that the decision of the court in favour of the minor does not mean that a new right is to be recognized for the benefit of the minor, rather to recognize a right which was already possessed by the minor and was in question at the time of institution of the suit.<sup>5</sup> The effective date for the severance of status will be the date of the institution of the suit. The interest of the minor is of the prime nature. During the pendency of the suit by a minor and before the pronouncement of a preliminary decree by the court, if a child is born to the father, the minor's share will not decrease at the birth of another son as the institution of the suit itself had affected the severance of the status.

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<sup>4</sup> *Ganapaty v. Subramanyam*, AIR 1929 Mad 738

<sup>5</sup> *Kakamanu Peddasubbayya v. Kakamanu Akkamma*, AIR 1958 SC 1042

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## ALIENATION OF MINOR'S PROPERTY

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The coparcenary property of a minor is dealt under the law relating to Hindu Undivided Family property. Under this, the karta can dispose of the property according to his will in case there arises any legal necessity or there is a need for any benefit of the estate. Thus, if a karta wants to dispose of his property, he can do so through his natural guardian and no prior permission of the court is required for such disposal. In the case of *Re Kishnakant Maganlal*<sup>6</sup>, the court had said that it would amount to anomaly of the prior permission of the court is required before a father can alienate the Hindu Joint Family property. Therefore, in this situation, any normal karta other than the father can alienate the property without the prior permission of the court. Alienation can also be rendered void at the option of the minor himself if there is no prior permission of the court. Alienation can only be done in case of a legal necessity or for the benefit of the estate or the minor himself.

Also, no testamentary guardian can be appointed by the father in his place in the case of a minor's undivided interest in the Hindu Undivided Family. The reason being that father himself does not have the power over the same by virtue of being a natural guardian. In the case of *Subramanyam v. Subba Rao*, the court said that if a contract is entered into for the sale or purchase of any immovable property by the guardian on behalf of the minor, it will be enforceable on the minor so far as it is in the interest of the minor. As soon as the contract is prejudicial to the interest of the minor, the performance of the contract is rejected. The minor also has a right to transfer his property in case there is any legal necessity or for the benefit of the estate or the minor himself. If the minor wants, he can also sue for the possession of the property which has been sold and consideration for such has been paid. Even though all such activities of the minor are done under the supervision or say guardianship of a guardian still, neither the minor nor the guardian are bound by each other. Their relationship is that of a fiduciary nature. The guardian cannot be bound by the minor by virtue of any personal contract. Although he can impose a financial liability upon the minor's property by virtue of such a contract. The minor's estate is only used to discharge the debts and not the minor himself. For as long as the guardian is not taking the advantage of the minor's property he is acting in good faith. Beyond that he can be sued for breach of trust. No matter how much time and money he has invested in the property of the minor or the length of time spent there he cannot take adverse possession of the minor's property.

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## RIGHT OF THE MINOR UNDER MUSLIM LAW

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Under the Muslim Law, father is considered as the legal guardian of the minor's property. In the case of Sunni's, the guardianship is transferred to the executor and in the case of Shia's, it is transferred to the grandfather after the father. In the case of Sunni's, the father can appoint a testamentary guardian and in the case of Shia's, the father can appoint a testamentary guardian only if the grandfather is dead. Similar to Hindu Law, here also

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<sup>6</sup> re *KrishnakantMaganlal*, AIR 1961 Guj 68.

alienation of property can only be done in the case of a legal necessity. The father and the executor are authorized to sell the property of the minor in such a situation. However, such powers are restricted in case of immovable property. Under Muslim Law, the mother is not given the right to alienate the property of the minor. It was clarified in the case of *Imambandi v. Mutsaddi*, that Muslim Law does not confer the right of a guardian upon the mother of the minor. Under Muslim Law, the executor cannot bring into effect the partition of the property as it will be unlawful on his part.

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## CONCLUSION

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The rights given to the minors are for their interest and the sometimes they are executed under the supervision of a guardian. Although the guardian is the legal representative of the minor, he is not entitled to force the minor to do anything or that minor can raise a legal action against him and the action initiated by the guardian will be rendered invalid and rejected by the court. The rights of the minors as discussed aforesaid are equal to that of the rest of the coparceners but in some cases there is a need of the guidance of a guardian to protect the interest of the minor in the family property in case he is being ill-treated or being discriminated from the rest of the coparceners. Also the rights that are protected by the court do not result in the creation of any new right; rather it is to protect the rights of the minor that are in question. In case of Muslim Law, the mother can never be appointed as the guardian of the minor in any case. And it is necessary in Muslim Law just like in Hindu Law to alienate or sell the property of the minor only in case of a legal necessity or in the case of the benefit of the estate or of the minor. Also there is a demarcation upon the alienation of movable and immovable property in Muslim Law. Alienation of immovable property is done only in some exceptional cases. In both the Hindu and Muslim Laws, if the alienation or partition is not in the favour of the minor he can claim an action once he attains the age of majority. Even though all the laws are somewhere different while dealing with the rights of the minor, there is a common thread that runs through all, and that is they seek to promote the interest of the minor without any prejudice. For that the credibility of the guardian is thoroughly looked into by the court. And in most of the cases as soon as the minor attains majority he sets aside the alienation or partition of the property to claim his rights in this matter.