

Thus not available to
the females, although



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Thus it consists of father's son, son's son and son's son's son. It includes only those members, who acquire an interest by birth in the joint property called as coparcenary property, they being the sons, grandsons and great-grandsons of the holder of the joint property. The Supreme Court in *Narendra v. W.*

T. Commissioner observed that coparcenary is a smaller body which includes only those male descendants upto three generations who have interest in the coparcenary property by birth. Every coparcenary starts with a common ancestor which after his death includes collaterals also. The extension of coparcenary upto three generations carries special significance for Hindus as the male descendant's upto three generations are competent to offer spiritual benefits to their ancestors. The females are excluded from coparcenary as it was one of the conditions of coparcenary that its members are entitled to demand partition which right was not available to the females, although when a partition took place, some females like mothers and widows were given a share.

For the creation of a coparcenary normally a common ancestor is necessary still the coparcenary could continue to exist in his absence. It may continue with the collaterals and their descendants who may be related to the deceased common ancestor by not more than three generations. The special characteristics of a Mitakshara coparcenary are community of interest and unity of possession between all members of the coparcenary. Each coparcener is entitled to joint possession and enjoyment of the common property. The essence of a coparcenary being unity of ownership, no

individual member of the family, while it remains undivided, can predicate of the joint and undivided property that he has a certain definite share.

Such a corporate body with its heritage is purely a creature of law; it cannot be created by an act of parties except in so far on adoption a stranger could be admitted to it. Those male persons who are not by birth or by adoption members of joint family could not, in absence of an enforceable custom, constitute a coparcenary by agreement. The Supreme Court has rightly observed that the Mitakshara coparcenary is created by operation of law not by agreement of the parties. But where some son is taken in adoption, the assimilation of such adopted son, no doubt, is by the acts of the parties. The following are the essential characteristics of Mitakshara coparcenary: (1) The male descendant's upto three generations from a common ancestor constitute a coparcenary; (2) The members can demand partition; (3) Each of the coparcenary has control over the entire property along with others till partition is affected; (4) Their ownership and the right of possession is common; (5) The coparcenary property could be alienated only in case of necessity and that too with the consent of other coparceners; (6) On the death of any of the coparceners, his share devolves on other coparceners by the rule of survivorship and not by succession.

Thus where a person acquires some property by succession from his father, grandfather and great grandfather, his son, son's son and son's son's son acquire an interest in that property by birth and they assume the status of joint owners of such property reserving with them the right to demand partition. In this way all such descendants who are equipped with the right to demand partition constitute coparcenary. There may be small coparcenary

within the coparcenary which can be illustrated by the following diagram:—

In the above diagram, A constitutes a coparcenary along with his four sons, B, C, D, E and five grandsons namely, B1, S1, S2, M and N two great grandsons namely, B2 and N1.

Here B and N2 and their descendants would not be the members of coparcenary as they are removed from A beyond three generations. But as soon as A dies B3 and N2 are also included in the coparcenary. In the above illustration A constitutes a larger coparcenary along with all the descendants, who are covered within three generations from A. In case E dies leaving behind his own separate property which is inherited by M and N.

For N, the property thus inherited from his father, E, would be ancestral property and therefore N1, N2 and N3 would acquire an interest by birth in that property. Thus we see that N2 and N3 who could not be the members of original larger coparcenary along with A, would constitute a smaller coparcenary along with N. Thus in the larger coparcenary a smaller coparcenary also subsists with N1, N2 and N3. It makes the proposition possible that members in a branch of a male descendant of the coparcenary can constitute a separate coparcenary which would be comparatively smaller one, having all the characteristics and conditions of a coparcenary in the proper sense. Where during the lifetime of a common ancestor, one of his male descendant dies, the coparcenary does not stretch down to one more generation but on the other hand it remains confined only up to three generations below from the common ancestor.

The following diagram will illustrate the point: In the above case, A constitutes coparcenary along with , C, S1 and S2. If predeceased A, then too coparcenary will be confined between A, C, S1 and S2. In case Ñ also predeceased A the coparcenary will still confine between A, S1 and S2. It will not extend below S1 and S2, i. e., it will include the male descendant's upto three generations from A, in no case it will extend beyond that. But as soon A dies, S1, S2, M, N, Î and P, all of them become the members of coparcenary. In the above illustration even if S2 had predeceased A, the coparcenary with the common ancestor A, would not have extended to Î and P.