

## Whether a woman can be a Karta ( In reference to Hindu Succession (Amendment) Act, 2005 )

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### Abstract

A Hindu Joint Family's "Karta" has traditionally been a person who manages the family's finances and affairs. This custom raises problems regarding gender equality and women's household control. This article examines the legal, cultural, and sociological ramifications of a woman becoming a Karta in Hindu law. The Karta position's history and legal development are examined first. To comprehend the Karta's qualifications, duties, and power, it examines Hindu writings, scriptures, and major court judgments. Gender-specific inheritance and succession rules in India are also examined.

The research also examines Indian family gender norms and their impact on decision-making to contextualize contemporary social opinions. Socio-cultural viewpoints on women's responsibilities in family and property management are critically examined to uncover impediments and biases that may prevent women from becoming Kartas. The research also examines real-life cases of women becoming Kartas against social conventions. It examines family, social, and legal responses to these difficulties and their possible effects on joint family gender dynamics.

### Introduction

Coparcenary property refers to the kind of property that is inherited by a Hindu individual from their paternal lineage, namely from their father, grandpa, or great grandfather. Inherited property is legally owned by an individual and cannot be considered as being a portion of the coparcenary. The ownership of property in coparcenary is owned collectively by many individuals. The right to coparcenary inheritance is acquired by individuals via birth. Another approach to attaining coparcenary status is via the process of adoption. Previously, women were not granted coparcenary rights, nevertheless, they were still eligible to be recognized as members of a joint family. The concept of coparcenary is established by legal means.

The only entitlement to request division lies solely with the coparcener. The determination of whether an individual has the right to request a partition is contingent upon their status as a coparcener, rather than any other factor. The great great grandson lacks the legal standing to request a partition, since he does not possess the status of a coparcener. In a scenario when among three male descendants, one or more have died, the remaining holder, including a fifth descendant, have the right to assert a claim for division. If the individual in question is still living, he is not included.

The Smritis and commentary do not use the common legal term Karta. The legal fraternity and lawyers in our courts have frequently used it in place of the proper word Swami.<sup>1</sup>The *Karta* is a socio-religious position, that is, it relates to *pinddaan*, pious obligation, *mukhagni*, proprietary rights, management of property *etc.* The Karta is a socio-religious viewpoint, relating to *pind-daan*, pious obligation, *mukhagni*, proprietary rights, property management, and so on.

The Karta of the HUF is obviously the manager of the family property, but he or she possesses powers that the average manager does not.<sup>2</sup> As a result, the Karta cannot simply be compared with a property manager. Karta,

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<sup>1</sup>2 Jogendra Chunder Ghose, Principles of Hindu Law 321 ( S C. Auddy & Co. Print, Calcutta, 1903)

<sup>2</sup>*Union of India v. Shree Ram Bohra AIR 1965 SCR 860.*

on the other hand, is the manager of a joint family.<sup>3</sup> The manager ship covers not only the HUF's property but also certain religious and social duties. Because they are undivided, just one member of the family has the right and obligation to fulfill them for the rest of the family.<sup>4</sup> The senior most male member of the HUF would perform the HUF's religious and social functions. The view that the daughter can become a Karta after obtaining the status of a coparcener and subject to the riders and criteria is no longer res controversial, but the answer is still anticipated as to whether it is restricted to proprietary rights solely or the right to be a Karta is absolute. The decision here demonstrates the female's ownership interest, while the Court is mute on Karta's socio-religious component. According to the judgment, previous to the 2005 amendment, the main restriction to assigning Karta-ship power to a female on becoming the senior most member of HUF was that a female member of HUF was not a coparcener. However, with the adoption of the aforementioned amendment in 2005, a daughter (female) was declared to be a coparcener, and thus that impediment was removed. If the daughter is the eldest coparcener, she can become the Karta by referring to the Hindu Succession (Amendment) Act of 2005, which offers proprietary equality in favor of females. If the daughter is not allowed to be Karta, the equality will be imperfect.

Kartaship is associated with the concept that the Karta is the eldest and closest to the ancestors, and hence can perform the pindaan for them. He represents the entire family before the ancestors as the eldest male member. As a result, he gains the right to be the Karta and has some unusual powers as a result of his unusual status. He has a fiduciary capacity and can even discriminate between family members in concerns of maintenance. Out of love and affection, he may give a reasonable gift of a movable property of the joint property in any coparcenary property. He is not required to furnish accounts of property dealings unless a partition is requested and fraud is asserted against him. Karta's position is one of a kind. He is not an ordinary agent or trustee; rather, his powers are far superior and distinct due to the unique socio-religious position he holds in the family.

#### **Devolution of Interest In Coparcenary property [Pre 2005 amendment]**

Section 6 of the Hindu Succession Act of 1956 pertains to the allocation of interest in coparcenary property within a joint Hindu family that is subject to the Mitakshara legislation. The law of succession pertaining to Mitakshara coparcenary property was omitted in Section 6. According to the aforementioned clause, in the case of a male Hindu coparcener who passes away after the enactment of the 1956 Act, his interest shall be subject to survivorship and be inherited by the remaining members of the coparcenary.

An exception is made in the case where the deceased individual has a female relative listed in Class I of the Schedule or a male relative listed in that same Class who claims through such a female relative. In such cases, the interest of the coparcener will be transferred through either testamentary or intestate succession, depending on the circumstances. To determine the share of the deceased coparcener, it is necessary to consider the partition that took place before their death. Explanation 2 renders the separated individual unable to assert any rights in the event of intestate succession. While it is true that the widow or daughter, as Class I heirs, have the ability to claim a portion in the property left by the dead coparcener, it is important to note that the daughter is not considered a coparcener and so does not have the same entitlements as the widow. However, the widow does have the right to claim a share in the case of partition.

Several states, including Andhra Pradesh, Tamil Nadu, Karnataka, and Maharashtra, have issued State Amendments to the Act of 1956. These amendments were implemented to provide equal rights to daughters in Hindu Mitakshara coparcenary property. On July 30, 1994, an amendment was introduced to the Act of 1956 by the inclusion of Section 6A by Karnataka Act 23 of 1994. The modification to the Act of 1956 introduced Section 29A in the State of Andhra Pradesh on September 5, 1985, in Tamil Nadu on March 25, 1989, and in Maharashtra on September 26, 1994. The Act was adopted in the state of Kerala in the year 1975.

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<sup>3</sup> Sir Dinshaw Fardunji Mulla, Hindu Law 324 (Lexis Nexis, Noida, 2010)

<sup>4</sup>Commissioner of Income Tax v. Seth Govindram Sugar Mills Ltd, supra note 2, at 161

**Devolution of Interest In Coparcenary property [Post 2005 amendment]**

The controversy over whether the daughter, as the senior most member of the Mitakshara Hindu Undivided Family (HUF), can be a Karta or not, emerged following the implementation of the Hindu Succession (Amendment) Act, 2005.<sup>5</sup> According to the Coram of three Supreme Court justices, only a coparcener can be the Karta or manager of a joint family.<sup>6</sup> A widow or mother cannot be the manager of a joint family since she is not a coparcener. In brief, the disagreement was between coparceners, with the plaintiff claiming to be a Karta due to being the senior most coparcener in the family. Giving the ability to the daughter as the senior most members to be a Karta is a progressive method that has attempted to empower females by offering proprietary interest to them. At the same time, the judgment does not encompass all aspects of Karta while providing Kartaship to the daughter as the HUF's senior member.

Hindu society is characterized by the combined and undivided family. An undivided Hindu family is ordinarily joint not only in estate, but also in food and worship; thus, not only the concerns of the joint property, but also anything relating to their commensality and religious duties and observances, must be regulated by its members, or by the manager to whom they have expressly or implicitly delegated the task of regulation.<sup>7</sup> Following the 2005 Amendment, the daughter also became a coparcener, raising the question of whether she is now liable for pious obligation. The goal of the 2005 Amendment Act does not appear to impose any socio-religious obligations on the daughter. This is also obvious from section 6 (4) of the Hindu Succession Act, 1956, which states that the legislative inclination or legislative wisdom is against religious obligation. The Supreme Court's verdict on this point is still pending; if she can become a Karta, which is also a socio-religious act, and then she can be held liable for the pious obligation. Pious obligation, on the other hand, is related to pind-daan, thus if pious requirement is imposed on her, she should be granted the right to pind-daan as well.

Another intriguing fact is that "a statute affecting a substantive right must be held prospective unless made retrospective either expressly or by necessary intention".<sup>8</sup> In principle, the court granted a female coparcener the right to be Karta if she is the eldest of the coparceners, but by enlarging the rights of Karta in the current case, the court has given retrospective effect to the Hindu Succession (Amendment) Act, 2005. However, the Coram has not said whether the senior most coparcener, if female, will be a Karta if the father died before September 9, 2005. However, the judgment states unequivocally that the Hindu Succession (Amendment) Act of 2005 would apply retrospectively. The Supreme Court's decision in *Prakash v. Phulavati* said that:<sup>9</sup>

“The provisions of the Hindu Succession (Amendment) Act, 2005, are applicable “prospectively” [on and from September 9, 2005, when the Act came into force], and not with “retrospective” effect as held by some High Courts in the country.”

This judgment is significant because it states that women have the right to become Karta only if their predecessor died on or after September 9, 2005, which contradicts the judicial precedent binding on the High Court of Delhi under Article 141 of the Indian Constitution. In the case of *St. Xavier's College Society v. State of Gujarat*,<sup>10</sup> the Supreme Court's Coram of nine judges, according to Jaganmohan Reddy and Alagiriswami JJ:<sup>11</sup>

“In a concrete case coming before the Supreme Court by way of an appeal under Article 133, or by special leave under Article 136 or by petition under Article 32, the law declared by virtue of Article 141 is binding on all courts within the territory of India.”

<sup>5</sup>*Sujata Sharma v. Manu Gupta*, AIR 2016 226 DLT 647

<sup>6</sup> *Commissioner of Income Tax v. Seth Govindram Sugar Mills Ltd*, AIR 1966 SCR (3) 488

<sup>7</sup> *Sri Vira Viradhi Vira Pratapa Sri Raghunadha Anunga Bhima Deo Kesari Maharaz v. Sri Brozo Kishoro Patta De*, SCC 1876

<sup>8</sup> *Sadhu Singh v. Dharam Dev* AIR 1981 1 SCC 510

<sup>9</sup> AIR 2016 SC 769.

<sup>10</sup> AIR 1974 1 SCC 717.

<sup>11</sup> *Id* at 736.

In the judgment, father's claim in the HUF did not dissipate but was inherited by her. The Karta, or father of the plaintiff (Shri Krishan Mohan Gupta) of the HUF (D.R. Gupta & Sons), died prior to the passage of the HSA Amendment Act, 2005.

The matter arose due to the divergent perspectives articulated in two prior rulings. The case of *Prakash v. Phulavati* established that the entitlements provided by the amended section 6 are applicable to daughters who are alive at the time of the amendment on September 9, 2005, regardless of their date of birth. It is determined that despite the father's passing prior to the enactment of the Amendment Act in 2005, which left behind two daughters, a son, and a widow, it was ruled that the daughter would be entitled to an equal portion of the inheritance. Contrary to the remark made in the case of *Prakash vs. Phulavati*, the court argued that the survival of the father of the daughter at the time of the amendment is not a prerequisite for the daughter to be eligible for the benefits outlined in the 2005 amendment. The rationale for this decision was derived from the following observations:<sup>12</sup>

“Coparcener right is by birth. Thus, it is not at all necessary that the father of the daughter should be living as on the date of the amendment, as she has not been conferred the rights of a coparcener by obstructed heritage. According to the Mitakshara coparcenary Hindu law, as administered which is recognised in section 6(1), it is not necessary that there should be a living, coparcener or father as on the date of the amendment to whom the daughter would succeed. The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughters born before can claim these rights only with effect from the date of the amendment, i.e., 9.9.2005 with saving of past transactions as provided in the proviso to section 6(1) read with section 6(5).”

The *Vineeta Sharma*<sup>13</sup> case by overriding the above judgment settled the issue as to whether the 2005 Amendment had conferred equal rights to daughters in coparcenary property, regardless of whether the father was alive prior to the Amendment. The HUF's senior most female coparcener may be appointed as Karta, despite the fact that the death of the previous Karta (the plaintiff's father) occurred prior to the Hindu Succession (Amendment) Act, 2005, which granted the daughters the right of coparcener in the HUF.

The retroactive impact of the Hindu Succession (Amendment) Act, 2005 will be considered. The 2005 Amendment was enacted to modify Section 6 of the Act in order to conform to the constitutional principle of gender equality. According to the amendment, the female offspring of the coparcener will acquire coparcenary rights by virtue of birth, on equal footing with their male counterparts.

### **Conclusion**

In the Mitakshara school of Hindu law, a son is inherently entitled to an equal share of the joint family property by virtue of his birth, on par with his father. The term "son" encompasses three generations: the immediate son, the son's son, and the son's son's son. According to the statement, it is implied that the male offspring of a Hindu individual, within the male lineage, until the fourth generation, are considered his sons.

The daughter did not possess an inherent entitlement to the joint family property by virtue of her birth. However, in the states of Andhra Pradesh, Tamil Nadu, and Maharashtra, the legislation has been modified with the inclusion of Sections 29-A, 29-B, and 29-C, respectively. Similarly, in Karnataka, Section 6-A has been added to the Hindu Succession Act of 1956. The Parliament, drawing inspiration from the aforementioned four States, enacted The Hindu Succession (Amendment) Act, 2005, which applies to the whole of India. Hindu Succession (amendment) Act of 2005 grants daughters same entitlement to ancestral property as sons, regardless of the father's survival at the time of the modification. Prior to the amendment in 2005, the Hindu Succession Act, 1956 (HSA), did not confer to daughters the right to family property. The amendment enacted in 2005 and

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<sup>12</sup> *Vineeta Sharma v. Rakesh Sharma and Ors.* (2020) 9 SCC 1.

<sup>13</sup> *Ibid.*

the subsequent judgment by the Supreme Court represents notable advancements in the effort to eradicate gender-based discrimination within the framework of inheritance as governed by Hindu Personal Law.

The HUF's senior most female coparcener could be a Karta. However, not generally, but limited to the Karta's property interest. The notion of Karta in its entirety is avoided while dealing with the socio-religious concept of Karta, which must be addressed. The daughter had received proprietary justice in the judicial interpretations by establishing equal proprietary interest. On the one hand, the justice is a progressive attitude, but the courts must respond whether it incorporates socio-religious practices and position for the daughters, that is, whether they hold the rights related to pinddaan, pious obligation, mukhagni, etc.