Click to prove you're human

Image Source- This Article is written by Rohit Raj, a Student currently pursuing B.A. LLB (Hons.) from Lloyd Law College. This is an exhaustive article based on the classification of Properties and which type of Properties is existing in the current Scenario. IntroductionProperty is intended to serve life, and no matter how much we surround it with rights and respect, it has no personal being. It is part of the earth man walks on. It is not a man. -Martin Luther King, Jr.The word property is derived from the Latin word proprietary and the French comparable proprius which implies a thing owned. The concept of property and ownership is closely associated with one another. There is often no property without possession and no possession without property. The concept of property possesses a significant place in human life since its impossible to measure the extent of ownership without property.The property includes an exceptionally more extensive meaning in its real sense. It not only includes the money and only the other tangible things but it also includes intangible rights which are considered as a source of income or wealth. The interest which a person has in lands and chattels to the exclusion of others and it is proper to enjoy and to lose certain things most supremely as he pleases, provided he makes no utilization of them precluded by law.The sea and the air, cannot be appropriated; one may appreciate them, but no one has an exclusive right over it. When things are fully our own, or when all others are prohibited from intruding with them, or from interfering around them, no individual other than the proprietor, who has this exclusive right, can have any claim either to use them, or to prevent him from disposing of them as he satisfies.And the reason behind is that the property, considered as an exclusive right to things, contains not as it were a right to utilize those things, but a right to a range of them, either by exchanging them for other things or by giving them away to any other individual, without any consideration, or even throwing them away. Click AboveClassification of PropertyClassification of Property means Property is divided into different forms which are known by different names and all the different properties have their own characteristics, features, and way of conducting its property. According to Article 220 of Hindu Law, Property is classified into two types: (1) Joint Hindu Family Property (2) Separate Property. Joint-family Property is also known as Coparcenary Property and this property consists of (a) Ancestral Property (b) Property jointly acquired by the members of the Joint family. (c) Separate property of a member thrown into the common stock. (d) Property acquired by all or any of the coparcener with the aid of joint family funds.There is a lot of division and classification in Property. Before the enactment of Hindu law, there were two principal schools i.e. Mitakshara and Dayabhaga. Mitakshara School divides the property into two categories and the first one is Unobstructed Property and the second one is Obstructed Property. Further, after the enactment of Hindu law and the decline of both principal school, the Property is divided into two parts i.e. Joint Family Property and Separate Property under Hindu law.Obstructed propertyThe property to which right accrues not by birth but on the passing of the final owner is called obstructed property. It is called obstructed since the accrual of the right to it is obstructed by the existence of the final owner. Hence the property devolving on parents, brothers, nephews, uncles, etc. upon the passing of the last owner, is obstructed property. These relatives are not vested intrigued by birth. Their right to it arises only on the passing of the last owner.In this way, any property acquired by a male Hindu from relations other than father, fathers father and fathers fathers father would be called obstructed heritage. The owner of this property holds the property as Separate and absolute one and there is no chance of combining property.Obstructed property rights gained by the owner after the succession of the final owner but there are some exceptional cases where the ownership passes by survivorship. The exception cases were mentioned below:Two or more than two sons, grandsons, and great-grandsons succeeding as heirs to the separate property of their paternal ancestor take as joint tenants with survivorship.Two or more grandsons of a daughter who is a member of a joint family succeed as heirs to their maternal grandfather as joint tenants with the right of survivorship.Two or more widows succeeding as heirs of their husband take as joint tenants with survivorship rights.Two or more daughters succeeding as heirs of their father take as joint tenants.These are the only 4 conditions or exceptional circumstances in which ownership of the obstructed property transfers to another before the succession of the previous owner.IllustrationAn acquired the certain property from his brother who passed on issueless. The acquired property within the hands of A will be a discouraging legacy for the children of A. The children of A will acquire the property from A as it were after his passing.Unobstructed propertyThe property in which an individual secures and is intrigued by birth is called unobstructed property. It is called unobstructed since the accrual of the right to it isnt obstructed by the presence of the owner. Hence property inherited by a Hindu from his father, grandfather, and great grandfather is unobstructed heritage as regards his claim male issues, that is, his sons, sons and sons child. These rights arise on account of their birth in the family and the male descendants in whom the property vests, are called coparceners. Thus, the hereditary property in the hands of the final male owner is unobstructed. IllustrationA acquired certain property from his father. Two children born to A, M and N are coparceners with A. M and N will procure an interest by birth within the hereditary property of A. Thus the property within the hands of A is unhindered legacy, as the presence of the father is no obstacle or obstacle to his children procuring an intrigued by birth within the property.It is seen that the distinction between obstructed and unobstructed property is recognized by the Mitakshara School and according to Dayabhaga School all the properties should be considered as Obstructed property because no one can inherit the property just after the birth or no one can have interest in anothers property by birth. This difference of thought of both the school demarcates Obstructed and Unobstructed Property.Ancestral propertyAncestral Property is also known as Self-acquired Property after the partition in a Joint Hindu family. As the name suggests Ancestral Property this property is automatically inherited to next-generation people. This Ancestral property was inherited till 3 generations or it is also considered as a part of Coparcenary property as it also includes property descended from father, great grandfather. Self-acquired property and the ancestral property is part of Separate property as above discussed.Separate Property is the second category of property under Hindu law in which the property is inherited by the other members of non-blood relations.In the case,Gurdip Kaur vs. Ghamand Singh Dewa Singh, 1965, the dictionary meaning of Ancestral Property is Property which has been inherited from the ancestors was accepted by the Court. It was also held that a property inherited from a father, fathers father or great grandfather is ancestral property.A question arises that who can acquire ancestral property? This was answered in the case of Arshnoor Singh vs. Harpal Kaur, 2019, it was held by the Honble Supreme Court that Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors up to three degrees above him, then his male legal heirs up to three degrees below him, would get an equal right as coparceners in that property.After the amendment and enforcement of the Hindu Succession Act in 2005, women were also allowed to enjoy the Self-acquired property or Ancestral property with equal rights but this right on the ancestral property was not earlier provided to the Women. Now, women and men have equal rights over their ancestral property. There are some incidents of Ancestral property which are mentioned below:The Ancestral Property should be for 4 generations old or we can say that ancestral property should be continued for four generations and should be inherited from generation to generation.The Ancestral Property should not be divided by the members and when the division takes place, the property becomes the self-acquired property.In the Ancestral Property, the person has the right or interest in the property right from birth.The ancestral property rights are controlled by per strip and not through per capita.The Shares in the ancestral property is first determined for each generation and then subdivided for the successive generation.Joint family propertyJoint family or coparcenary property is that property in which every coparcener has a joint interest or right and over that property, the coparcener has a joint possession. Or we can also say that the joint family property is the property which is jointly acquired by the member of the family with the aid of ancestral property.Joint family Property defines as if any member of joint family property acquired in his own name in the presence of an ancestral nucleus. In V.D. Dhanwatey v. CIT, 1968, it was held that The general doctrine of Hindu law is that property acquired by a Karta or a coparcener with the aid or assistance of joint family assets is impressed with the character of joint family property. To put it differently, it is an essential feature of a self-acquired property that it should have been acquired without assistance or aid of the joint family property. It is therefore clear that before an acquisition can be claimed to be separate property, it must be shown that it was made without any aid or assistance from the ancestral or joint family property. Many times it is believed that property possessed by members of a joint family is a Joint family property. In the case of Srinivas Krishna Rao Kango vs. Narayan Devji Kango, 1954, it was held that The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that any property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact.Some considered Coparcenary property and Joint family property as two different things but actually both are same under Hindu law.The basic difference which is considered and said that both are different is that in joint family property, both males and females are considered as members whereas, In coparcenary, only male members are considered as a member. Female members have no right or interest in the property by birth in a Joint family but In Coparcenary, all members have equal right or interest in the property by birth.These little differences make people think that both Joint family property and coparcenary are two different concepts otherwise it is considered as the same under Hindu law.ConclusionProperty related matters are a serious concern or problem that is faced by the Indians. A lot of rules and amendments were made in order to lessen the number of disputes related to property matters and the government has also established many regulatory bodies which regulate the problem of property and classification of property under Hindu law and Hindu succession act.Land dispute or property dispute is not something new dispute or conflict which arises in this generation. It has been prevalent since the very early period but there were no provisions of law that can regulate the conflict of property.Another conclusion which can be derived from this whole article is that with the passage of time the status of female members or we can say that the rights of female members are secured in the different forms of property which were totally absent or neglected in the early period when there is no Indian succession Act, Hindu law and many others. LawSikho has created a telegram group for exchanging legal knowledge, referrals and various opportunities. You can click on this link and join: Serato DJ Crack 2025Serato DJ PRO Crack

Image Source- This Article is written by Rohit Raj, a Student currently pursuing B.A. LLB (Hons.) from Lloyd Law College. This is an exhaustive article based on the classification of Properties and which type of Properties is existing in the current Scenario. IntroductionProperty is intended to serve life, and no matter how much we surround it with rights and respect, it has no personal being. It is part of the earth man walks on. It is not a man. -Martin Luther King, Jr.The word property is derived from the Latin word proprietary and the French comparable proprius which implies a thing owned. The concept of property and ownership is closely associated with one another. There is often no property without possession and no possession without property. The concept of property possesses a significant place in human life since its impossible to measure the extent of ownership without property.The property includes an exceptionally more extensive meaning in its real sense. It not only includes the money and only the other tangible things but it also includes intangible rights which are considered as a source of income or wealth. The interest which a person has in lands and chattels to the exclusion of others and it is proper to enjoy and to lose certain things most supremely as he pleases, provided he makes no utilization of them precluded by law.The sea and the air, cannot be appropriated; one may appreciate them, but no one has an exclusive right over it. When things are fully our own, or when all others are prohibited from intruding with them, or from interfering around them, no individual other than the proprietor, who has this exclusive right, can have any claim either to use them, or to prevent him from disposing of them as he satisfies.And the reason behind is that the property, considered as an exclusive right to things, contains not as it were a right to utilize those things, but a right to a range of them, either by exchanging them for other things or by giving them away to any other individual, without any consideration, or even throwing them away. Click AboveClassification of PropertyClassification of Property means Property is divided into different forms which are known by different names and all the different properties have their own characteristics, features, and way of conducting its property. According to Article 220 of Hindu Law, Property is classified into two types: (1) Joint Hindu Family Property (2) Separate Property. Joint-family Property is also known as Coparcenary Property and this property consists of (a) Ancestral Property (b) Property jointly acquired by the members of the Joint family. (c) Separate property of a member thrown into the common stock. (d) Property acquired by all or any of the coparcener with the aid of joint family funds.There is a lot of division and classification in Property. Before the enactment of Hindu law, there were two principal schools i.e. Mitakshara and Dayabhaga. Mitakshara School divides the property into two categories and the first one is Unobstructed Property and the second one is Obstructed Property. Further, after the enactment of Hindu law and the decline of both principal school, the Property is divided into two parts i.e. Joint Family Property and Separate Property under Hindu law.Obstructed propertyThe property to which right accrues not by birth but on the passing of the final owner is called obstructed property. It is called obstructed since the accrual of the right to it is obstructed by the existence of the final owner. Hence the property devolving on parents, brothers, nephews, uncles, etc. upon the passing of the last owner, is obstructed property. These relatives are not vested intrigued by birth. Their right to it arises only on the passing of the last owner.In this way, any property acquired by a male Hindu from relations other than father, fathers father and fathers fathers father would be called obstructed heritage. The owner of this property holds the property as Separate and absolute one and there is no chance of combining property.Obstructed property rights gained by the owner after the succession of the final owner but there are some exceptional cases where the ownership passes by survivorship. The exception cases were mentioned below:Two or more than two sons, grandsons, and great-grandsons succeeding as heirs to the separate property of their paternal ancestor take as joint tenants with survivorship.Two or more grandsons of a daughter who is a member of a joint family succeed as heirs to their maternal grandfather as joint tenants with the right of survivorship.Two or more widows succeeding as heirs of their husband take as joint tenants with survivorship rights.Two or more daughters succeeding as heirs of their father take as joint tenants.These are the only 4 conditions or exceptional circumstances in which ownership of the obstructed property transfers to another before the succession of the previous owner.IllustrationAn acquired the certain property from his brother who passed on issueless. The acquired property within the hands of A will be a discouraging legacy for the children of A. The children of A will acquire the property from A as it were after his passing.Unobstructed propertyThe property in which an individual secures and is intrigued by birth is called unobstructed property. It is called unobstructed since the accrual of the right to it isnt obstructed by the presence of the owner. Hence property inherited by a Hindu from his father, grandfather, and great grandfather is unobstructed heritage as regards his claim male issues, that is, his sons, sons and sons child. These rights arise on account of their birth in the family and the male descendants in whom the property vests, are called coparceners. Thus, the hereditary property in the hands of the final male owner is unobstructed. IllustrationA acquired certain property from his father. Two children born to A, M and N are coparceners with A. M and N will procure an interest by birth within the hereditary property of A. Thus the property within the hands of A is unhindered legacy, as the presence of the father is no obstacle or obstacle to his children procuring an intrigued by birth within the property.It is seen that the distinction between obstructed and unobstructed property is recognized by the Mitakshara School and according to Dayabhaga School all the properties should be considered as Obstructed property because no one can inherit the property just after the birth or no one can have interest in anothers property by birth. This difference of thought of both the school demarcates Obstructed and Unobstructed Property.Ancestral propertyAncestral Property is also known as Self-acquired Property after the partition in a Joint Hindu family. As the name suggests Ancestral Property this property is automatically inherited to next-generation people. This Ancestral property was inherited till 3 generations or it is also considered as a part of Coparcenary property as it also includes property descended from father, great grandfather. Self-acquired property and the ancestral property is part of Separate property as above discussed.Separate Property is the second category of property under Hindu law in which the property is inherited by the other members of non-blood relations.In the case,Gurdip Kaur vs. Ghamand Singh Dewa Singh, 1965, the dictionary meaning of Ancestral Property is Property which has been inherited from the ancestors was accepted by the Court. It was also held that a property inherited from a father, fathers father or great grandfather is ancestral property.A question arises that who can acquire ancestral property? This was answered in the case of Arshnoor Singh vs. Harpal Kaur, 2019, it was held by the Honble Supreme Court that Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors up to three degrees above him, then his male legal heirs up to three degrees below him, would get an equal right as coparceners in that property.After the amendment and enforcement of the Hindu Succession Act in 2005, women were also allowed to enjoy the Self-acquired property or Ancestral property with equal rights but this right on the ancestral property was not earlier provided to the Women. Now, women and men have equal rights over their ancestral property. There are some incidents of Ancestral property which are mentioned below:The Ancestral Property should be for 4 generations old or we can say that ancestral property should be continued for four generations and should be inherited from generation to generation.The Ancestral Property should not be divided by the members and when the division takes place, the property becomes the self-acquired property.In the Ancestral Property, the person has the right or interest in the property right from birth.The ancestral property rights are controlled by per strip and not through per capita.The Shares in the ancestral property is first determined for each generation and then subdivided for the successive generation.Joint family propertyJoint family or coparcenary property is that property in which every coparcener has a joint interest or right and over that property, the coparcener has a joint possession. Or we can also say that the joint family property is the property which is jointly acquired by the member of the family with the aid of ancestral property.Joint family Property defines as if any member of joint family property acquired in his own name in the presence of an ancestral nucleus. In V.D. Dhanwatey v. CIT, 1968, it was held that The general doctrine of Hindu law is that property acquired by a Karta or a coparcener with the aid or assistance of joint family assets is impressed with the character of joint family property. To put it differently, it is an essential feature of a self-acquired property that it should have been acquired without assistance or aid of the joint family property. It is therefore clear that before an acquisition can be claimed to be separate property, it must be shown that it was made without any aid or assistance from the ancestral or joint family property. Many times it is believed that property possessed by members of a joint family is a Joint family property. In the case of Srinivas Krishna Rao Kango vs. Narayan Devji Kango, 1954, it was held that The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that any property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact.Some considered Coparcenary property and Joint family property as two different things but actually both are same under Hindu law.The basic difference which is considered and said that both are different is that in joint family property, both males and females are considered as members whereas, In coparcenary, only male members are considered as a member. Female members have no right or interest in the property by birth in a Joint family but In Coparcenary, all members have equal right or interest in the property by birth.These little differences make people think that both Joint family property and coparcenary are two different concepts otherwise it is considered as the same under Hindu law.ConclusionProperty related matters are a serious concern or problem that is faced by the Indians. A lot of rules and amendments were made in order to lessen the number of disputes related to property matters and the government has also established many regulatory bodies which regulate the problem of property and classification of property under Hindu law and Hindu succession act.Land dispute or property dispute is not something new dispute or conflict which arises in this generation. It has been prevalent since the very early period but there were no provisions of law that can regulate the conflict of property.Another conclusion which can be derived from this whole article is that with the passage of time the status of female members or we can say that the rights of female members are secured in the different forms of property which were totally absent or neglected in the early period when there is no Indian succession Act, Hindu law and many others. LawSikho has created a telegram group for exchanging legal knowledge, referrals and various opportunities. You can click on this link and join: Serato DJ Crack 2025Serato DJ PRO Crack

Happy Families are all alike, every unhappy Family is unhappy in its own way. That unhappiness often finds its painful way into a courtroom. The concept of Joint Hindu Family, Ancestral, coparcenar has always been a debatable issue and give rise to litigation and as such effort has been made to clarify the doubts and to explain the law in a more explicit manner.To begin with, it is important to understand, as to who are Hindus.The word Hindu is derived from the river Sindhu otherwise known as Indus which flows from the Punjab. That part of the great Aryan race, which immigrated from Central Asia, through the mountain passes into India, settled first in the districts near the river Sindhu (now called the Indust). The Persians pronounced this word Hindu and named their Aryan brethren Hindus. The Constitution-makers were fully conscious of the broad and comprehensive character of Hindu religion; and so, while guaranteeing the fundamental right to freedom of religion, Explanation II to Article 25 of Constitution of India was kept in mind under the codifying Acts, namely, the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956, thereafter the concept of the term Hindu has undergone a radical change and it has been given an extended meaning. This Act applies-(a) to any person, who is a Hindu by religion in any of its forms or developments including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj;(b) to any person who is a Buddhist, Jaina or Sikh by religion; and(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed. Explanation.The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be: any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion; any child, legitimate or illegitimate one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.The same provision is made in the other three Acts, as referred above.Hindus were governed by Shastric and Customary laws which varied from region to region and sometimes it varied in the same region on a caste basis. As the country is vast and communications and social interactions in the past were difficult, it led to adversity in the law. Consequently in matters of succession also, there were different schools, like Dayabhaga in Bengal and the adjoining areas; Mayukha in Bombay, Konkan and Gujarat and Marumakkattayam or Nambudri in Kerala and Mitakshara in other parts of India with slight variations. The two systems of inheritance which are predominant amongst the Hindus in India are; Mitakshara system and Dayabhaga system. Dayabhaga system prevails in Bengal, Mitakshara system in other parts of India. The difference between the two systems arises from the fact that, while the doctrine of religious efficacy is the guiding principle under Dayabhaga School, there is no such definite guiding principle under Mitakshara School. Mitakshara System recognizes two modes of devolution of property, namely, survivorship and succession. The rule of survivorship applies to joint family property, the rule of succession apply to property held in absolute severalty by the last owner. The reason is that while every member of a Mitakshara joint family has only an undivided interest in the joint property. On birth, the son acquires a right and interest in the family property. According to this school, a son, grandson and a great grandson constitute a class of coparcenars, based on birth in the family. This means that with every birth or death of a male in the family, the share of every other surviving male either gets diminished or enlarged. If a coparcenary consists of a father and his two sons, each would own one third of the property. If another son is born in the family, automatically the share of each male is reduced to one fourth. No female is a member of the coparcenary. The principles of Mitakshara coparcenary are embedded in the Hindu Law jurisprudence and continue to apply after 1956 Act(of course prior to the amending Act of 2005). Dayabhaga recognizes only one mode of devolution, namely, succession. It does not recognize the rule of survivorship even in the case of joint family property, a member of a Dayabhaga joint family holds his share in quasi-severalty, so that it passes on his death to his heirs as if he was absolutely seized thereof, and not to the surviving coparceners. The Dayabhaga school neither accords a right by birth nor by survivorship though a joint family and joint property is recognized. Neither sons nor daughters become coparceners at birth nor do they have rights in the family property during their father's lifetime. However, on his death, they inherit as tenants-in-common. It is a notable feature of the Dayabhaga School that the daughters also get equal shares along with their brothers. A joint Hindu Family consists of all persons lineally descended from a common ancestor, and includes their wives and unmarried daughters. Joint Hindu Family is controlled by the head of the family and is called Karta. Gowli Buddanna v. Commissioner of Income-tax, Mysore, AIR 1966 SC 1523 .(Para 210 of Hindu Law by Mulla) There must be atleast two members to constitute it. It may even consists of two female members. It may similarly consists of a male Hindu and the widow of the deceased brother Smt. Sitabai and another v. Ramachandra, reported in AIR 1970 SC 343 Possession of a joint family property is not a necessary requisite for the constitution of joint family. It is true that for the existence of a joint family, the family need possess no property. The chord that knits the members of the family together is not property but the relationship. Hindus get a joint family status by birth and the joint family property is only an adjunct of the joint family.A presumption has always been in favour of joint Hindu undivided family property unless it is proved to the contrary.The law presumes that the members of a Hindu family are joint. That presumption will be stronger in the case of a father and his sons. It is for the party who pleads that a member of a family has separated himself from the family to prove it satisfactorily. Bhagwati Prasad Sah and others v. Dulhin Rameshwari Kuer and another, reported in AIR 1952 SC 72,Indranarayan v. Roop Narayan and another, AIR 1971 Supreme Court 1962, Kaushal Kishore and others v. Dharam Kishore and others, 1977 PLR 749. No doubt, the Old Hindu Law, after coming into being of The Hindu Succession Act,1956 has been codified, to the extent mentioned therein. However, even, at the time of framing the Act,1956, the concept of Joint Hindu Family co-parcenary property, was retained, by the law framers. It was, under these circumstances, that Section 6 of the Act, was incorporated, in the said Act, which relates to the mode of devolution of the property, which was co-parcenary, in the hands of the male holder.It, therefore, could not be said, that the entire concept of the co-parcenary property, was completely eliminated or obliterated, while framing the Act. Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum and others, AIR 1978 Supreme Court 1239 , Raj Rani v. Chief Settlement Commissioner, AIR 1984 Supreme Court 1234Balbiri Devi v. Tejbir Singh,2010(3) RCR(Civil) 35Under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This position has been affected by section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by Section 8, he does not take it as Karta of his own undivided family but takes it in his individual capacity. the property which devolved on a Hindu on the death of his father inte-state would not constitute HUF property consisting of his own branch including his son. In other words, the son's son would not have any right in the property of his grand father.Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. [1986] 161 ITR 370 , Yudhishter v. Ashok Kumar, (1987) 1 SCC 204,Commissioner of Income Tax v. P.L. Karuppan Chettiar, 1993 Supp (1) SCC 580 and Additional Commissioner of Income Tax v. M. Karthikeyan, 1994 Supp. (2) SCC 112.It is manifest that the language of Section 8 must be constructed in the context of Section 6 of the Act. The provisions of Section 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act,1956 came into force i.e. where succession opened before the Amending Act, Section 8 of the Act will have no application. Eramma v. Veerupana and others, AIR 1966 Supreme Court 1879, Daya Singh (Dead) Through LRs. and another v. Dhan Kaur, 1974(1) SCC 700 Ancestral property commonly known as Jaddi, Pushtani, Dada lahi and Coparcenary PropertyThe terminology Ancestral has been derived from the word Jad i.e A Grandfather, an ancestor and from Pusht dar Pusht i.e generation after generation. The word ancestral property has not been defined in any statute i.e The Hindu Succession Act, 1956, The Indian Succession Act,1925. Ancestral Property means Property inherited from paternal ancestor-All property inherited by a male Hindu from his father, fathers father or fathers fathers father, is ancestral property and any property inherited by a person from any other relation is his separate property. The essential feature of ancestral property according to Mitakshara law is that the sons, grandsons and great-grandsons of the person who inherits it, acquire an interest, and the rights attached to such property at the moment of their birth. (Para 221 of Hindu Law by Mulla) Ass Kaur v. Kartar Singh, 2007(3) RCR(Civil) 369 : (2007)5 SCC 561 Coparcener is one who shares (equally) with others in inheritance in the estate of a common ancestor. Otherwise called parceners, are such as have equal portion in the inheritance of an ancestor, or who come in equality to the lands of their ancestors. A person to whom an estate descends jointly and who holds it as an entire estate. But sometimes, two or more persons together constituted the heir, and to this case they took the land as parceners or coparceners, the latter expression being the more common. In theory of law, coparceners together constituted a single heir; 'they be but one heir and yet several persons'. They were called parceners because, every coparcener had a common law right to have a partition made. A male member of a joint family and his sons, grandsons and great grandsons constitute a coparcenery(Prior to amendment Act,2005). In other words, three generations comes to the holder in unbroken male descendant. Coparcenery is a creature of law. It cannot be created by act of parties. By adoption, a stranger may be introduced as a member thereof. It is a family unit. A Hindu coparcenary is, however, a narrower body than the joint family, only males who acquire by birth an interest in the joint or co-parcenary property can be members of the coparcenary or coparceners. No female can be 'a coparcener prior to enactment of Hindu Succession (Amendment) Act,2005 but by virtue of amendment,2005, now daughters have equal right and are co-parceners. (Para 211 to 214,219 of Hindu Law by Mulla)Coparcenary is a creature of Hindu Law and cannot be created by agreement of parties except in the case of reunion. It is a corporate body or a family unit. The law also recognizes a branch of the family as a subordinate corporate body. The said family unit, whether the larger one or the subordinate one, can acquire, hold and dispose of family property subject to the limitations laid down by law. Ordinarily, the manager, or by consent, express or implied, of the members of the family, any other member or members can carry on business or acquire property, subject to the limitations laid down by the said law, for or on behalf of the family. Such business or property would be the business or property of the family. One or more members of that family can start a business or acquire property without the aid of the joint family property, but such business or acquisition would be his or their acquisition. The business so started or property so acquired can be thrown into the common stock or blended with the joint family property in which case the said property becomes the estate of the joint family. But he or they need not do so, in which case the said property would be his or their self-acquisition, and succession to such property would be governed not by the law of joint family but only by the law of inheritance.In such a case, if a property was jointly acquired by them, it would not be governed by the law of joint family; for Hindu law does not recognize some of the members of a Joint family belonging to different branches, or even to a single branch, as a corporate unit. Bhagwan Dayal (since deceased) v. Mst. Reoti Devi (deceased) reported in AIR 1962 SC 287, Sunil Kumar and another v. Ram Prakash and others [(1988) 2 SCC 771Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him, would get an equal right as coparceners in that property. A person inheriting property from his three immediate paternal ancestors holds it, and must hold it, in coparcenary with his sons, son's sons, and son's son's sons, but as regards other relations, he holds it, and is entitled to hold it as his absolute property. if the property is inherited from a paternal ancestor beyond the third degree then the property is not ancestral as against the inheritor's sons, and the inheritor has absolute powers of disposal over it. So also, if the inheritor has neither a son, son's son nor son's son's son, the property is absolute in the inheritor's hands even though he may have other relations, for instance, a great-great-grandson or a paternal uncle, in the case of inheritance from father. But property which comes to an inheritor from one of his three immediate paternal ancestors as absolute property owing to the absence of sons, grandsons or great-grandsons, becomes ancestral property with the birth of any of them, though an alienation made by the inheritor before such birth, cannot be impeached.The character of ancestral property is not taken away by there being a partition of the property in the family of the inheritor, and though a share of ancestral property allotted to a coparcener on partition will be his separate property as regards others [Bejai Bahadur v. Bhupindar, 17A. 456 : 221.A 139 (PC), it will be ancestral property as against the allottee's sons, grandsons, and great-grandsons whether born before or after the partition. Valliammai Achi v. Nagappa Chettiar, (SC) :AIR 1967 SC 1153, Sunil Kumar and another v. Ram Prakash and others (1988) 2 SCC 771 Sheela Devi v. Lal Chand, (SC) :2006(4) RCR CIVIL 912, 2018(3) RCR(Civil) 1004,Maya Devi v. Amrjit Kaur. It is well settled that the share which a co-sharer obtains on partition of ancestral property is ancestral property as regards his male issues. They take an interest in it by birth whether they are in existence at the time of partition or are born subsequently: If that is so and the character of the ancestral property does not change so far as sons are concerned even after partition, The character cannot change merely because the father makes a will by which he gives the residue of the joint family property (after making certain bequests) to the son.Such share, however, is ancestral property only as regards his male issue. As regards other relations, it is separate property, and if the coparcener dies without leaving male issue, it passes to his heirs by succession Valliammai Achi v. Nagappa Chettiar and Ors., AIR 1967 SC 1153, C. Krishna Prasad v. C.I.T, Bangalore, 1975 (1) SCC 160, Rohit Chauhan v. Surinder Singh and Ors. 2013(4) R.C.R.(Civil) 40 : 2013 (9) SCC 419, Shyam Narayan Prasad v. Krisha Prasad & Ors., (2018) 7 SCC 646.Interest is a word of wide and vague significance, and no doubt it might be used of a wife's or daughter's right to be maintained which right accrues in the daughter's case on birth; but if the father's obligations are increased, his ownership is not divested, divided or impaired by marriage or the birth of a daughter. This is equally true of ancestral property belonging to himself alone as of self-acquired property. (AIR 1966 SC 1523)Property which is originally ancestral does not become the self acquired property of the donee by the fact of his having obtained it by gift,will and not by inheritance, when it would have descended to him by inheritance even if there had been no gift,will.(1925)7 Lah 4, Kapur Chand Major v. Des Raj:1974 PLR 522.There is no presumption that the property is ancestral. It is well settled that the onus lies on the person who asserts the ancestral nature of the property. Mere mention of name of common ancestor in the settlement pedigree table, not presumptive proof that the land is ancestral. The ancestral nature of the property has to be proved by way of documentary evidence. It is however tirate of law that once the party has admitted in the pleadings that the property is ancestral, there cannot be an issue in this regard , so that the party has to still prove the same, although there is admission of other party it is true that the property being ancestral in nature has to be proved in terms of its devolution/descendance from generations, in essence, last generation should be fourth generation. The burden lies upon the plaintiffs to prove the ancestral nature of land in question. Mere assertion in the plaint and admission thereof in the written statement would not clothe the Court to presume ancestral nature of the property. The ancestral nature of the property has to be proved in terms of excerpt, pedigree table and as per requirement of Volume 1, Chapter 9, Rules 5 and 6 of High Court Rules and Orders.As per para No.232 of Mullah's Law, the plaintiffs who have asserted that the property was ancestral in nature, have to prove that the same has devolved upon them from three generations, in essence, they are the fourth generation. The admission of the defendants would not change the legal position. If a co-parcener of a joint family claims that properties are his self-acquired properties, the burden is on him to prove that the same are the self-acquired properties. Matu Ram (deceased) through LRs v. Kartar Singh and others 2004 (3) LJR 818 ,V.K. Surendra v. V.K. Thimmaiah (SC):2013(10) SCC 211, Gurmail Singh v. Rajbir Singh and another 2014(4) RCR (Civil) 397, Balihar Singh v. Sarabjit Kaur 2017(2(RCR(Civil) 226, Hari Kishan v. Rati Ram,2018(4) PLR 783Where it is found that some of the property in the suit is ancestral but the whole of it is not, and it is impossible to distinguish which portion is ancestral, the whole of the property in the suit must be held to be non-ancestral and must be regarded as self acquired. The law has been settled in Mara Singh v. Mst. Nikko alias Punjab Kaur and another, AIR 1964 Supreme Court 1821, G. Narayana Raju v. G. Chamaraju : AIR 1968 SC 1276, Inder Singh v. Channo and others, 2004(3) RCR(Civil) 803 (SC) : 2005(1) CCC 138.The concept of ancestral property under customary law is similar to the concept of coparcenary property under Hindu Law in the matters of exercise of power of alienation. In Punjab, the right of succession and power of alienation are governed by personal law, i.e., in case of Muslims by Muhammadan Law and in case of Hindus by Hindu Law of Mitakshara School except to the extent to which it is modified by custom. However, power of a male holder to alienate the property was limited only if there were reversioners in existence qua whom the property held by the male holder could be treated as ancestral. This power to control the alienation by a male holder and to challenge any alienation so made was further hedged round by two statutes, the Punjab Limitation (Custom) Act (No. 1 of 1920) and the Punjab Custom (Power to Contest) Act (No. 2 of 1920), according to which only a reversioner within five degrees could challenge and control the power of alienation of a male holder within the period prescribed. Thus if a person had no reversioner living within fixed degrees his power of alienation even qua the ancestral property was co-extensive with that over his self-acquired property. In respect of State of Punjab it has to be held by virtue ofPunjab Custom (Power to Contest) Act, 1920, Punjab Customs (Power of contest) Amendment Act, 1973,that there is a complete bar to contest any alienation of ancestral or non-ancestral immovable property or appointment of an heir to such property on the ground that such alienation or appointment was contrary to custom. In Haryana, the property in the hands of a successor may be held to be coparcenary property as well as ancestral property as known to Customary Law.It is well settled that the parties can fall back upon Hindu Law in case they fail to establish that the rule of decision is custom. Therefore, in Haryana both under Hindu Law and the Customary Law, the alienation would be open to challenge. Mihan v. Inder: 2008(3) RCR(Civil) 824(FB), Hardip Singh v. Sukhdev Singh: 2010(3) RCR (Civil) 644. Similarly the power of a person governed by Hindu Law was also restricted qua ancestral property or what is termed as coparcenary property. It is settled law that the power of a Karta to sell coparcenary property is subject to certain restrictions viz. the sale should be for legal necessity or for the benefit of the estate. Apart from that, a karta in addition to the aforesaid powers of alienation has also the special power to sell or mortgage ancestral property to discharge his antecedent debt which is not tainted with immorality. Such alienation would bind the interests of all the undivided members of the family whether they are adults or minors. His acts could be questioned in the Courts of law. The other members of the family have a right to have the transaction declared void, if not justified. No doubt the law confers a right on the coparcener to challenge the alienation made by karta, but that right is not inclusive of the right to obstruct alienation. Nor the right to obstruct alienation could be considered as incidental to the right to challenge the alienation. These are two distinct rights. One is the right to claim a share in the joint family estate free from unnecessary and unwanted encumbrance. The other is a right to interfere with the act of management of the joint family affairs. The coparcener cannot claim the latter right and indeed, he is not entitled for it. When an alienation is challenged as being unjustified or illegal it would be for the alienee to prove that there was legal necessity in fact or that he made proper and bona fide enquiry as to the existence of such-necessity. If the alienation is found to be unjustified, then it would be declared void. It is settled that a karta of the Joint Hindu Family can alienate the ancestral/coparcenary property for legal necessity and a coparcener has no right to restrain the karta from alienating the coparcenary property but if the sale is made without legal necessity and it is not for the benefit of the estate, it can be challenged by the coparceners but after the sale is made. The principle of law applicable in this case is that so long a property remains in the hands of a single person, the same was to be treated as a separate property and thus, would be entitled to dispose of the coparcenary property as the same were his separate property, but, if a son is subsequently born to him or adopted by him, the alienation whether it is by way of sale, mortgage or gift, will nevertheless stand, for a son cannot object to alienations so made by his father before he was born or begotten. But once a son is born, it becomes a coparcenary property and he would acquire an interest therein.Legal necessity to support the sale must however be established by the alienees. Joginder Singh v. Kehar Singh, (Punjab) (F.B.), 1965 PLR 700, Rani & Anr. v. Santa Bala Debnath & Ors., (1970) 3 SCC 722 , C. Krishna Prasad v. C.I.T. Bangalore, 1975(1) SCC 160, Manohar Lal v. Dewan Chand, (P&H)(FB) L1985) PLR 689, Sunil Kumar and another v. Ram Parkash AIR 1988 (S.C.) 576, Daljit Kaur Mangat v. Surinder Singh Sandhu, 2017(4) LH 1821Vijay A. Mittal & Ors. v. Kulwant Rai (Dead) through LRs & Ors., (2019) 3 SCC 520.(Para 253 to 268 of Hindu Law by Mulla)Court Fee:The Court fee payable on a suit for declaration challenging the Joint Hindu Family property and the alienation challenged on the ground of fraud and misrepresentation. The Court found that the suit for declaration challenging the alienation of a Joint Hindu Family property stands on a different footing that the suit challenging the sale deed on the ground of fraud and misrepresentation, which attracts ad valorem Court fee.The ad valorem Court fee is not payable in such a suit Niranjan Kaur v. Nirbigan Kaur 1981 P.L.J. 423(Full Bench), Smt. Beena and others v. Rajinder Kumar and others 2006 (2) P.L.R.6; 2006 (1) PLJ 96, Bhagwan Kaur and others v. Amrik Singh and others, 2006 (2) P.L.R.-649, Dr. Ashok Kumar Goyal v. Arya Mittar and others, Sheela Devi v. Lal Chand, (SC) :2006(4) RCR CIVIL 912,2007 (11) P.L.R. 798, Vijay Pal v. Beer Pal Alias Jag Pal, 2007(2) PLJ 512.(Section 7(iv) of Court Fees Act,1970)Limitation:The period of limitation for setting aside an alienation by a father of joint family property is 12 years from the date when the alienee takes possession of the property Schedule 1, Article 109 of The Limitation Act,1963)(Para 269 of Hindu Law by Mulla). The period of limitation by a person excluded from a joint family property to enforce a right to share therein 12 years, when the exclusion becomes known to the plaintiff. Article 110(of The Limitation Act,1963)The terminology ancestral has lost its significance after The Hindu Succession Act, 1956 came into force w.e.f 17.6.1956 and there is no ancestral property thereafter and it is only coparcenary property under section 6 of the Act. After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post - 1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self acquired property, and does not remain coparcenary property. If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law.The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-a-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.The law in this regard has been clarified by the Hon,ble Supreme Court of India in Arshnoor Singh v. Harpal Kaur, 2019(3) RCR (Civil) 529 , wherein it has been held Lal Singh was the owner of large tracts of agricultural land in Village Khangarh, District Ferozepur, Punjab. The Appellant herein is the great-grandson of Lal Singh.The genealogy table of Lal Singh's family is set out herein below for the sake of convenience:Lal Singh passed away in 1951, and his entire property was inherited by his only son Inder Singh. In 1964, Inder Singh during his lifetime, effected a partition of the entire property vide decree dated 04.11.1964 passed in Civil Suit No. 182 of 4.11.1962 between his three sons viz. Gurcharan Singh, Dharam Singh, and Swaran Singh in equal shares.In the present case, the succession opened in 1951 on the death of Lal Singh. The nature of the property inherited by his son Inder Singh was coparcenary in nature. Even though Inder Singh had effected a partition of the coparcenary property amongst his sons in 1964, the nature of the property inherited by Inder Singh's sons would remain as coparcenary property qua their male descendants upto three degrees below them.In the present case, the entire property of Lal Singh was inherited by his son Inder Singh as coparcenary property prior to 1956. This coparcenary property was partitioned between the three sons of Inder Singh by the court vide a decree of partition dated 04.11.1964. The shares allotted in partition to the coparceners, continued to remain coparcenary property in their hands qua their male descendants. As a consequence, the property allotted to Dharam Singh in partition continued to remain coparcenary property qua the Appellant.The earliest legislation bringing females into the scheme of inheritance is the Hindu Law of Inheritance Act, 1929. This Act, conferred inheritance rights on three female heirs i.e. son's daughter, daughter's daughter and sister, thereby creating a limited restriction on the rule of survivorship. Another landmark legislation conferring ownership rights on woman was the Hindu Women's Right to Property Act (XVIII of) 1937. This Act brought about revolutionary changes in the Hindu Law of all schools, and brought changes not only in the law of coparcenary but also in the law of partition, alienation of property, inheritance and adoption. The framers of the Indian Constitution took note of the adverse and discriminatory position of women in society and took special care to ensure that the State took positive steps to give her equal status. Articles 14, 15(2) and (3) and 16 of the Constitution of India, thus not only inhibit discrimination against women but in appropriate circumstances provide a free hand to the State to provide protective discrimination in favour of women. These provisions are part of the Fundamental Rights guaranteed by the Constitution. Part IV of the Constitution contains the Directive Principles which are no less fundamental in the governance of the State and inter-alia also provide that the State shall endeavor to ensure equality between man and woman. It is not that the women were totally excluded from inheriting the coparcenery-ancestral property after the enactment of The Hindu Succession Act,1956. Section 6 of Act,1956 although excluded the daughters to be coparceners, but provided that if the deceased had left him surviving a female relative or a male relative through such female relative specified in Class 1 of the schedule, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under the Act and not by survivorship. And further it has been explained that the interest of a Hindu Mitakshara Coparcener shall be deemed to be the share in the property that would have been allotted to him if the partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. Thus, if A was a coparcener in the property died leaving behind his widow and daughter, then, on his death, there will be deemed partition of coparcenery property and his interest would be inherited by his widow and daughter. (Para 215 & 215 -A of Hindu Law by Mulla)6. Devolution of interest in coparcenary property.-When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act: Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.Explanation 1:For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.Explanation 2:Nothing contained in the proviso to this section shall be construed as enabling a person who had separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein. The Parliament, with a view to confer right upon the female heirs, even in relation to the joint family property, enacted Hindu Succession Act(Amendment), 2005 and now the daughters also become coparcener by birth in her own right as the son However, the amendment has een held to be prospective and is not retrospective. Prakash v. Phulavati 2015(4) RCR(Civil) 952.Thus to some extent the discrimination amongst the male and female have been removed, but not completely. Every member of the joint family, whether male or female should become the coparcener, so as to wipe out the discrimination for all times to come. The law of inheritance in respect of all the real & personal properties should be so simplified that every family becomes Happy.Written By: Rajinder Goyal, Advocate - Former Addl. Advocate General, Punjab, Punjab & Haryana High CourtEmail: rajgoel2k@yahoo.com, Mobile:+91 9814033663 Authentication No: AG025504364987-12-820 When you read Hindu law, you get to know about different types of property and this leads to the confusion in mind. So, we are going to discuss about all the properties to get clarity. Generally there are two types of properties:1. Coparcenary property or Joint Hindu family property The joint family property is also called Coparcenary property. The coparceners have the right to alienate or dispose this property. This property is jointly held by the members of the joint Hindu family or Hindu Undivided Family (HUF) who have lineally descended from the common ancestors including their wives and daughters in possession and they have common interest in it like maintenance etc.Before 2005, unmarried daughters were the members of HUF but married daughters were not. Unmarried daughters as a member can only get right to residence and maintenance in this property and cannot demand share in this property. Daughters regardless of their marriage were not the coparceners in HUF property. Coparceners were the male members of the family which can demand partition in the property and can get equal share in that property. Daughters can only get share out of fathers coparcenary share allotted to him on partition, whether before or after death, in case of intestate succession. After 2005, daughters also became the coparceners in this property equally as sons.Coparcenary property is again divisible into two types:(a) Ancestral property As per Supreme Court in R.Virupakshaiah vs. Sarvamma & Anr.[1], Ancestral property is inherited up to four generations of male lineage and should have remained undivided throughout this period.(b) Property which is not Ancestral This property consists of property acquired with the aid of ancestral property and property acquired by the individual coparcener without such aid but treated by them as property of the whole family.2. Separate or Self- Acquired property Self- acquired property is the one which is acquired by a person through his own money or by way of gift. A person can gift, transfer or alienate this property during his life.This property gets devolved onto heirs through two modes:(a) Testamentary Mode In this mode, the property is transferred to the heirs through will as per the wishes of the owner of the property after his death.(b) Intestate Mode- In this mode, the property is transferred to the wife, children or other relatives of the person after his death without will.It is settled law that ancestral property can only become an HUF property if it is inherited before 1956, and such HUF property therefore which came into existence before 1956 continues as such even after 1956 or HUF property can come into existence if after the year 1956, a person throws his property into common hotchpotch and consecutively HUF is created. If the person inherited property after 1956, on the death of the father and there was no HUF existing at that time then, the property will become self- acquired not HUF although the property is ancestral as held in Dr. Suraj Munjal vs. Chandan Munjal & Ors. on 30th January, 2018.[1] Civil Appeal No. 7346 OF 2008, held on 17 December, 2008

Joint property ownership. Joint family account. Difference between joint family property and self acquired property. Classification of property joint family property and separate property. Joint family property law in india. Joint property. Difference between joint family property and separate property. Joint famil. What is joint family property. Incidents of hindu joint family property and separate property.