

SCHOOLS OF HINDU LAW

Due to the emergence of various commentaries on SMIRITI and SRUTI, different schools of thoughts arose. The commentary in one part of the country varied from the commentary in the other parts of the country.

School means rules and principles of Hindu Law which are divided into opinion. It is not codified. There are two Schools of Hindu Law:-

- a) Mitakshara
- b) Dayabhaga.

Mitakshara School prevails throughout India except in Bengal. It is a running commentary on the code of Yajnavalkya (Yajnavalkya Smriti).

Mitakshara is an orthodox School whereas the Dayabhaga is Reformist School.

The Mitakshara and Dayabhaga Schools differed on important issues as regards the rules of inheritance. However, this branch of the law is now codified by the Hindu Succession Act, 1956, which has dissolved the differences between the two. Now, the main difference between them is on joint family system.

Mitakshara- Rights in the joint family property is acquired by birth, and as a rule, females have no right of succession to the family property. The right to property passes by survivorship to the other male members of the family.

Dayabhaga- Rights in the joint family property are acquired by inheritance or by will, and the share of a deceased male member goes to his widow in default of a closed heir.

MITAKSHARA SCHOOL:

The Mitakshara School exists throughout India except in the State of Bengal. The Yagnavalkya Smriti was commented on by Vijnaneshwara under the title Mitakshara. The followers of Mitakshara are grouped together under the Mitakshara School. Mitakshara school is based on the code of Yagnavalkya

commented by Vijnaneshwara, a great thinker and a law maker from Gulbarga, Karnataka. The Inheritance is based on the principle or propinquity i.e. the nearest in blood relationship will get the property. Sapinda relationship is of blood. The right to Hindu joint family property is by birth. So, a son immediately after birth gets a right to the property. The system of devolution of property is by survivorship (***But now it has been amended by 2005 Amendment Act***). The share of co-parcener in the joint family property is not definite or ascertainable, as their shares are fluctuating with births and deaths of the co-parceners. The co-parcener has no absolute right to transfer his share in the joint family property, as his share is not definite or ascertainable. The widow of a deceased co-parcener cannot enforce partition of her husband's share against his brothers.

A woman could never become a co-parcener. But, the Hindu Succession (amendment) Act of 2005 empowered the women to become a co-parcener like a male in ancestral property. A major change enacted due to western influence.

Sub-Schools under the Mitakshara School:

There are four Sub-Schools under the Mitakshara School:

i. Dravidian School of thought : (Madras school)

It exists in South India. In the case of adoption by a widow it has a peculiar custom that the consent of the sapindas was necessary for a valid adoption. ('Sapindas' – blood relation). The main authority accepted by this school is Smriti Chandrika authored by Devananda Bhatta.

ii. Maharashtra School: (Bombay School of Thought)

It exists in Bombay (Mumbai) and Gujarat. The Bombay school has got an entire work of religious and Civil laws. The main authority accepted by this school is Vyavahara Mayukha authored by Nilakantha.

iii. Banaras School of Thought:

It extends of whole of northern India except in Punjab where its authority is modified by customary law in rural areas. The main authority accepted by this school is Viramitrodaya authored by Mitra Mishra.

iv. Mithila School of Thought:

It exists in Tirhut, North Bihar and Uttar Pradesh near the Jamuna (Yamuna) river areas. The main authority accepted by this school is Vivad Chintamani authored by Vachaspati Mishra and Vivad Ratnakara authored by Chandeshwar Thakur.

v. Punjab School:

It prevails in the part of the country called East Punjab. This School is chiefly governed by local customs. The main authority accepted by this school is Viramitrodaya authored by Mitra Mishra and local customs of Punjab.

DAYABHAGA SCHOOL OF THOUGHT

It exists in Bengal and Assam only. The Yagna Valkya smriti and some other Smrities are commented on by Jimutavahana under the title Dayabhaga. It has no sub-school. It differs from Mistakshara School in many respects. Dayabhaga School is based mainly on the code of yagnavalkya commented by Jimutuvahana, Inheritance is based on the principle of spiritual benefit. It arises by pinda offering i.e. rice ball offering to deceased ancestors.

This school is followed in Bengal and some parts of Assam only.

The main features of this School are as follows:

- Sapinda relation is by pinda offerings.
- The right to Hindu joint family property is not by birth but only on the death of the father.
- The system of devolution of property is by inheritance. The legal heirs (sons) have definite shares after the death of the father.
- Each brother has ownership over a definite fraction of the joint family property and so can transfer his share.

- The widow has a right to succeed to husband's share and enforce partition if there are no male descendants.
- On the death of the husband the widow becomes a co-parcener with other brothers of the husband. She can enforce partition of her share.

Differences between the two Schools in Coparcenary:-

Mitakshara	Dayabhaga
i) Right of a son by birth in the ancestral property equal to the interest of his father.	i) A son is entitled to his ancestral property only on the death of his father. The father is the absolute owner of his property in his lifetime.
ii) A son becomes coparcener right after his birth. His right is applicable to the property of his grandfather and grand-grandfather.	ii) A son becomes coparcener by death of his father. This right is not available within the property of his father, grandfather or grand-grandfather.
iii) Everyone is entitled to the property as a unit. Their shares are not defined. They have only the commodity of ownership. There is joint-tenancy.	iii) Everyone's share is defined. There is tenancy-in-common.
iv) One cannot transfer his share to the third party.	iv) One can transfer his share.
v) The joint-property can be partitioned. In that case, it will be partitioned as it was in case of the father.	v) As the shares are defined, one can easily partition with his share.

Differences between the two Schools in Succession-

- 1. Mitakshara-** Property of a deceased Hindu is partitioned into two ways as the property is of two types- (a) Ancestor's property, (b) Separate property.

Ancestor's property is partitioned in accordance to the Rules of Survivorship. But a Separate property is partitioned to the descendants.

Dayabhaga- Property is of two types- (a) Joint, (b) Separate. The descendants inherits the property whatever type it is.

- 2. Mitakshara-** In default of close heir, brother and immediate survivors inherit, the wife does not inherit.

Dayabhaga- If coparcener dies, his widow will get the property in default of a close heir but she cannot alienate.

- 3. Mitakshara-** The order of heirs is decided by mereness of blood.

Dayabhaga- The order of heirs is decided by the competence to offer Pinda and Sraddho to the deceased.

Effect of migration:

When a Hindu family migrates from one State to another, the law draws a presumption that it carries with it its personal law, i.e., the laws and customs prevailing in the State from which it came. The presumption can, however, be rebutted, by showing that such a family has adopted the law and usages of the new province where it has settled down.

Thus, for instance, where a Hindu family migrates say, from Maharashtra (where the Mitakshara law prevails), to Bengal (where the Dayabhaga law prevails), the presumption is that the family continues to be governed by the Mitakshara Law. This presumption may be rebutted by showing that the family has abandoned the law of the province of its origin (i.e. Maharashtra), and adopted the law of the province where it has settled (i.e. Bengal).

So also, if a Hindu governed by the Mitakshara migrates from Bombay to Calcutta, he is still presumed to be governed by the Mitakshara, unless he displaces such a presumption in the manner stated above. It is for this reason that it has rightly been said that Hindu Law is not a *lex loci*, i.e., a local law, but it is, in every sense, a personal law.

In *Abdurahim v. Halimabai*, the Court observed: “Where a Hindu family migrates from one part of India to another, *prima facie*, they carry with them their personal law, and if they are alleged to have become subject to a new local custom, this new custom must be affirmatively proved to have been adopted.”

It is also to be noted that it is the law as it existed at the time of the migration that continues to govern the migrated members. Thus, such persons are affected by decisions of the Courts of their State of origin which declare the law as it existed at the time of the migration, but not by customs incorporated in its law after the date of migration.

When such migration takes place to a country outside India, the Court may presume that such a family has adopted the law of that country, if it is shown that the family has so acted as to raise an inference that they have cut off all the ties of their earlier environment.