

COMPARATIVE ANALYSIS BETWEEN MITAKSHARA AND DAYABHAGA: ANCIENT SCHOOL OF INDIAN JURISPRUDENCE

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Abstract

Hindu law developed from Shruti, Smriti, traditions, and digests. These comments spawned Hindu law schools that oversee family affairs like inheritance and succession. Based on Smriti and local norms, Mitakshara and Dayabhaga are the two main Hindu law schools. Vijnaneshwar's Mitakshara commentary on Yajnavalkya's code is read across India excluding Bengal and Assam. Mitakshara is the highest authority even when the two schools agree. Jimutvahana's compilation of leading Smritis founded Dayabhaga School. Dayabhaga, Dayatatva, and Daya-Sangraha run the school. Due to regional norms and practises in India, numerous Hindu law schools have developed. The Smritis' interpretations have incorporated local customs into each region's legal system. All Hindu law schools derive from the Smritis, regardless of their customs. All Hindu schools acknowledge the ancient Smritis. Commentaries on ancient texts developed the schools. Commentators interpreted old writings, and some Indian schools accepted them while others rejected them, resulting in competing doctrines. This paper compares these two ancient Hindu legal schools and examines whether present Indian law creates a common rule of conduct. Both schools use Smriti, although their customs differ.

Keywords: *Indian Jurisprudence, Mitakshara School, Dayabhaga School, Ancestral property, Rights of Succession.*

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INTRODUCTION

Hindu Law is a body of standards or rules called '*Dharma*'. In Hindu philosophy, *Dharma* is regarded as the law that regulates Society, family, and individual obligations. Hindu law has its possession put in history and as well as in the present-day period. *Dharmasastras* are the foundation of Hindu philosophy and have been used as a tool for justice. Hindu law has been considered on the premise of schools i.e. *Mitakshara* school and *Dayabhaga* school. These schools have a distinctive concept of property. The ancient or primary sources of Hindu law are *Shruti*, *Smriti* customs, commentaries, and digests, whereas legislation, precedent, and other similar works are considered modern sources of law. The development of Hindu law was influenced by all these sources such as commentaries like *Shruti*, *Smriti*, *Customs*, *usages*, and *digests* that specifically dealt with Hindu law. These commentaries gave rise to different schools of Hindu law that govern family matters such as the will of the deceased, inheritance of property, and intestate succession. These schools define the rules related to these matters. *Dayabhaga* and *Mitakshara* schools of Hindu law were established when the *Smriti* (Hindu religious texts) were interpreted differently based on the customs in different parts of India.¹ In the case of *Rutcheputti v. Rajendra*² the Privy Council stated that the various local customs of India led to the development of these law schools. The commentators who wrote about the *Smritis*, which are ancient Hindu texts about law and morality, had to consider the customs and traditions of the various region of India. This means that the legal principles that follow in each region of India are shaped by the specific customs and circumstances of that region. This article discusses the differences between

¹ Ankita Koirala, "Hindu Concept of Law" (April 30, 2020) available at: <http://dx.doi.org/10.2139/ssrn.3589070> (last visited on: 10.06.2023)

² 1837 2 MIA 132

these two legal schools of ancient Hinduism and considers whether current Indian law mitigates these differences by creating a common code of conduct. Both schools have their origins in different customs, but they have the same source of Smriti.³ The Privy Council in the case of *Madras v. Moottoo Rantalinga*⁴ stated that the ancient texts of Hindu Law, known as *Smritis*, are common to all the different schools of Hindu Law. The development of these schools involved the process of subsequent commentaries (*Tika or Bhashya*) on the universally accepted texts, where commentators added their interpretations. The authority of these commentators was accepted in some parts of India and rejected in others, leading to the emergence of conflicting doctrines in different schools of Hindu Law.

RESEARCH OBJECTIVE

The objective of the research paper is to present a detailed study of the topic “Comparative analysis between Mitakshara and Dayabhaga Ancient School of Indian jurisprudence” creating a substantial informational summary of it and offering an understanding of its significance in Indian culture.

SIGNIFICANCE AND BENEFIT

The codified Hindu Laws provide uniform laws for all Hindus, and in this codified area, there is no room for different schools of thought. However, these schools of thought are still relevant in the un-codified areas of Hindu law. The purpose of the research paper is to provide a better understanding of this concept.

³ Ramesh Chandra Nagpal, “Modern Hindu Law” 29 (2) *JILL*, 276 (1987)

⁴ 1 (1968) 12 MIA 397

RESEARCH METHODOLOGY

The research methodology used here is descriptive and explanatory doctrinal in nature. In this study, secondary data sources were used. Secondary sources such as scholarly articles, books, and court precedents will be reviewed for a comprehensive understanding of the school's principles and their interpretation over time.

BACKGROUND OF THE SOCIETY

Shruti

The first ancient source of Hindu law is called “Shruti”, which implies “to hear.” It alludes to the four Vedas and their Brahmanas. These texts were originally based on the Opinions of individual sages and were passed down orally.⁵ They were preserved and added to by the Sages’ families and disciples. The Vedas and Brahmanas date back to a time when Vedic culture was transitioning to the Brahmanism mode of thought and social order. Vedas are the ancient Hindu text that is divided into two parts: Samhita and Brahma. Samhita is a collection of hymns or mantras praising God, while Brahma is a theological explanation of Samhita.⁶ The Brahmanas are ritual treatises that prescribe and explain the meanings of sacrifices. They explain where these actions came from and give instructions on how to perform them.⁷ In addition, the Brahmanas specify when mantras should be chanted, sometimes providing examples, justifications, and mystical and philosophical speculations. The thoughts of ancient saints that were focused

⁵ Paras Diwan & Peeyusi Diwan, *Modern Hindu Law* 27 (Allahabad Law Agency, Faridabad, 2003)

⁶ Ibid

⁷ Ibid

on the divine light that enlightens the deepest corners of the human mind are referred to as Mantras. Mantras were either prayers or invocations or hymns praising the Almighty. Rig-Veda, Yajurveda, and Samaveda were the original three Vedas.⁸ Atharvaveda was included afterward. Even though Rig-Veda has an abundance of holy mantras, Samaveda and Yajurveda have acquired unreservedly from them. The Rig Veda is a tree, whereas the other two Vedas are its branches. However, all three Vedas are highly respected.⁹

Yajurveda is divided into two schools which are referred to as Black and White Yajurveda. Black Yajurveda is connected to the Taittiriya Brahmana, while the White Yajurveda is connected to the Satapatha Brahmana. The Atharvaveda is linked to the Gopatha Brahmana.¹⁰

While the Vedas do not contain any legal statements, their factual statements are sometimes referred to in the Smritis and commentaries as conclusive evidence of local customs.¹¹

Smritis

Smritis, a collection of manuals on Hindu Law, is the second source of Hindu Law after the Vedas. These manuals were written by medieval authorities on Hindu Law known as Sages or 'Rishis'. The Smritikars were neither kings, nor religious heads, nor legislators¹², they were philosophers, social thinkers, and teachers. From spiritual to temporal, how the code of conduct for life, in the form of Dharma, was taught by spiritual leaders and

⁸ Ibid at 28

⁹ Dr. Poonam Pradhan Saxena, *Family Law-II* 28 (Lexis Nexis, Gurgaon, 2011)

¹⁰ Ibid

¹¹ Ibid

¹² A. M. Bhattacharjee, *Hindu Law and the Constitution* 17 (2nd Ed. 1994)

covered a wide range of topics including behavior and relationships within families, rules for marriage, punishment for sexual misconduct, rituals for birth, death, and marriage, philosophy of Karma and rebirth, social behavior between people of different castes, duties of individuals at different stages of life, rules for governance and punishment, and financial matters such as contracts, property devolution, mortgage, and interest rates. Some of the rules in ancient times were either mandatory or recommended as appropriate conduct. The legal rules were called 'vyavahara' while personal, religious, or moral rules were called 'ahara'. Since writing was not common at that time, knowledge was passed down orally from a teacher to his student. This led to modifications and additions to the rules over time as per the customs and traditions of each generation.¹³

Dharma Sutras: Dharmasutras, which are ancient Indian texts written in prose and short maxims (Sutras). They were written between 800 to 200 BC and were intended to be training manuals for sages to teach their students about the duties of men in various relationships. Some of the well-known authors of Dharmasutras include Gautama, Baudhayan, Apastamba, Harita, Vashistha, and Vishnu. The text also mentions that the Dharmasutras contain both prose and verses.

Dharmashastras: Dharmashastras are texts that discuss principles of Hindu law and ethics. They are written in poetry form called Shlokas and are based on an earlier text called Dharmasutras. However, the Dharmashastras are more systematic and clearer than the Dharmasutras.¹⁴

¹³ Supra note 5 at 29

¹⁴ Supra note 5 at 32

Manusmriti: Manusmriti is a significant text in Classical Hindu law and is essential for studying law in India. It is the oldest Smriti, or religious text based on memory, and was originally written by Manu. However, it was supplemented by later generations because the writing was not yet invented and it was transmitted orally. In the society of that time, Brahmins held a high position, while Women and Shudras did not have any rights.¹⁵

Yajnavalkya Smriti: The Yajnavalkya Smriti is a legal text written between the period of Budha and Vikramaditya in India. It was more systematically arranged and concise than the Manu Smriti. The Yajnavalkya Smriti recognized women's right to inherit and hold property and provided a better position for Sudras. It contains 1010 slokas and is divided into three books: Acara or ecclesiastical and moral code, Vyavahara or civil law, and Prayascitta, or penal code.

There are several commentaries written on this text by different authors such as Apararka, Visvarupa, Vijfanesvara, Mitra Misra, and Sulapani.¹⁶

Narada Smriti: Narada was a Nepali Sage who was known for his broadmindedness and progressive views on certain aspects of Hindu law. He supported widow re-marriage and advocated for women's rights to hold property. Narada believed in the supremacy of king-made law and established rules for pleading, evidence, and witnesses that were not mentioned in previous smritis (ancient Hindu texts on law and morality). Narada's approach to the law was more advanced and exhaustive than that of his predecessors, but he was also more conservative in some respects.¹⁷

¹⁵ Bilimoria Purushottama, "The idea of Hindu law" 43 *JS.A* 106 (2011)

¹⁶ Ibid

¹⁷ Ibid

Digests and Commentaries

Initially, there were Shrutis, which were the original texts. Later, commentaries (Tika or Bhashya) and digests (Nibandhs) were written over a period of more than a thousand years from the 7th century to 1800 A.D. In the early part of this period, most commentaries were written on the Smritis (texts dealing with social and religious laws), but later works were in the form of digests that synthesized various Smritis and explained and reconciled their contradictions. The development of various schools of Hindu law was made possible by the writings of different scholars who provided commentaries on the original source of Hindu law, which was common to all Hindus.¹⁸ However, over time, people began to follow different schools of thought for various reasons. Digests were created to address the fact that the rules mentioned in the Smriti (one of the Hindu sacred texts) were not always clear and did not cover all possible situations. The need of interpreting ancient texts was fulfilled by writers of digests and commentaries. In the legal case *Atmaram Abhimanji v. Bajirao Janrao*¹⁹, the Bombay High Court ruled that if there is a disagreement between an ancient text writer and a commentator, the opinion of the commentator (known as a Tika) will be considered more important.

Custom

Hindu law is derived from custom, which is regarded as the third source and the highest level of justice. The Judicial Committee defines custom as a rule

¹⁸ Abhishek Raj, Sources of Hindu law available at: <https://www.legalserviceindia.com/legal/article-8549-sources-of-hindu-law.html> (last visited on: 12.06.2023)

¹⁹ (1935) 37 BOMLR 553

that has become law because it has been followed consistently by a specific family, class, or region.

After the Shrutis and Smritis, custom is a significant source of law. However, custom takes precedence over the Smritis. Written law is viewed as subordinate to custom. Certain requirements must be completed for a custom to be legitimate.²⁰ The custom must be ancient and have been in practice for a long time and be accepted by common consent as a governing rule of a particular society. The custom must be clear and unambiguous, without any technicalities. The custom must be reasonable and not against any existing law. It must not be immoral or against any public policy. The custom must have been continuously and uniformly followed for a long time.²¹

There are three types of customs recognized by Indian courts. The first type is the local custom which refers to customs that are prevalent in a particular region or locality. The second type is class custom which refers to customs that are followed by a particular class of people. An example given is the custom among a class of Vaishyas where desertion or abandonment by the husband abrogates the marriage and the wife is free to marry again during the lifetime of the husband. The third type is family custom which refers to customs that are binding upon the members of a family. An example given is the custom in ancient Indian families where the eldest male member of the family inherits the estate.²²

²⁰ Supra note 15

²¹ Harikumar Pallathadka, "Relevance of Customs under Modern Hindu Law" 7 (6) *EJMCM* 3224 (2020)

²² P. H. Pendharkar, *Customary Personal Law of Adivasis in Nandurbar District A Critical Analysis* (2012) (Unpublished Ph.D. dissertation, North Maharashtra University)

MITAKSHARA SCHOOL OF LAW

Mitakshara is a commentary on the Yajnavalkya Smriti, which was written in the latter half of the eleventh century by Vijananeshwara.²³ The commentary was told to Vijananeshwara by his Guru Visvarupa.²⁴ Mitakshara is also known by other names such as Riju Mitakshara Tika, Riju Sam Mitakshara, or Parmitakshara. Vijananeshwara wrote a commentary on the Code of Yajnavalkya. He explains that his Guru Visvarupa had explained the code to him in a difficult and scattered manner, so he abridged it in a simpler and more concise style.

The term Mitakshara means 'a brief compendium'. The scope of the work goes beyond just a single commentary and includes the essence of the Smriti law along with its principles and commands, presenting it in the form of a comprehensive summary. Vijananeshwara analyzed the Yajnavalkya Smriti, which is a text that contains laws and regulations. He explained difficult passages in the text, filled in missing information, and resolved inconsistencies by referring to other old experts in the field.²⁵ He also classified different legal topics with accuracy and avoided unnecessary or irrelevant discussions. This treatise had an inherent value that motivated others to write explanations on it from a legal perspective.²⁶

In the 11th century, the country was divided into strong and autonomous states that frequently competed. In some cases, specific customs and traditions were acknowledged as more influential than the Medieval law.

²³ Supra note 7 at 34

²⁴ Raj Kumar Sarvadhikari, "The Principles of Hindu Law of Inheritance" *Tagore Law Lectures* 331 (1880)

²⁵ Supra note 7 at 34.

²⁶ *Bhugwandeon Doobey v. Myna Bae*, (1867) 11 MIA 487, 507, 508

The legislators in each state interpreted old laws in a way that would fit the current needs of their society so that the laws could be enforced by the authorities. They made sure to keep the fundamental principles of the laws intact while adapting them to fit the unique customs and traditions of the people. This is how the different schools of law originated which are now divided into five sub-schools or branches. The term “school” came into use later, with the word “sampradaya” previously used to refer to region-based variations. The five sub-schools are Mithila, Benaras, Dravida, Maharashtra, and Bengal.²⁷ The Mitakshara school of Hindu law was followed in Mithila, Benaras, Dravida, and Maharashtra, whereas the Dayabhaga law was introduced by Jimutavahana in the Bengal school. Mitakshara School had four sub-schools, all of which shared a common primary source and general principles. All these schools of Hindu law recognize the Mitakshara as the ultimate authority, but each school gives preference to specific treatises and commentaries that interpret passages from the Mitakshara differently. This results in differences between the schools. Yajnavalkya created a set of laws called the Code at Mithila. Mithila and Dravida were cities that existed before Benaras, which was a school of law. Mitakshara was the main text used in the Benaras school and was also used as a reference by other schools and writers, including Jimutavahana.²⁸ The doctrine of Vijananeshwara and the teachings of the Mithila School were popular in Bengal. Jimutavahana attempted to disprove their doctrine and demonstrated that the principles of Benaras and Mithila were not applicable in Bengal. Jimutavahana tried to prove that the interpretations of laws in the northern region were wrong. Despite facing criticism, he stood by his reasoning and used logical arguments instead of relying on authorities to

²⁷ Supra note 5 at 56

²⁸ Supra note 15 at 410

support his viewpoint. Therefore, his work called Dayabhaga is highly regarded as a great example of legal reasoning. As a result, Mitakshara remained the dominant legal authority throughout India except in Bengal, where Dayabhaga prevailed.

The Benaras School of law, which focuses on several primary works and commentaries. The primary work is Mitakshara by Vijananeswara, which is a text on Hindu law. This is followed by a commentary on Mitakshara and Madan Parijata called Subodhini, written by Visvesvara Bhatta. Madhava Acharya's commentary on Parasara Smriti is also studied. Other texts studied in this school include Kalpataru by Lakshmidhara, Vivada Tandava by Kamalakara, Keshava Vijayanti, Vira Mitrodaya by Mitra Mishra, and a commentary on Mitakshara by Nanda Pandita known as Balam Bhatta. The Mitakshara holds the highest authority in the Dravida School, followed by commentaries such as Smriti Chandrika by Devananda Bhatta, Saraswati Vilasa attributed to Pratapa Rudra Deva, and Vyavahara Nirnaya by Varada Raja. Similarly, in the Mithila school, the Mitakshara is also of supreme authority and is accompanied by commentaries like Vivada Ratnakara by Chandesvara, Vivada Chandra by Misaru Misra or Lakshmi Devi, and Vivada Chintamani by Vachaspati Mishra.²⁹ In Maharashtra, Mitakshara is followed by Vyavahara Mayukha by Nilkantha and a commentary on Parasara Smriti by Madhava Acharaya. In Bengal, Dayabhaga by Jinutavahana is considered very important and is followed by other texts such as Dayatatwa by Raghunandana and Dayakrama Sangraha by Srikrishna Tarkalankara. There are several commentaries on Dayabhaga,

²⁹ Ibid

including those by Srinatha, Achyuta, Raghunandana, Mahesvara, Srikrishna, and Ragmbhadra.³⁰

The Mitakshara System

The Hindu law has a common primary source that all Hindus follow, which has been interpreted and commented upon by multiple commentators. Due to this, the finished works of different commentators differ from each other. Additionally, certain works are accepted as more authoritative or superior in certain regions, while others are rejected comparatively.³¹ Mitakshara, which is a commentary on Yajnavalkya Smriti written by Vijananeshwara, became the primary source of authority for the entire country of India except for certain areas in Punjab and Bengal. In Bengal, Mitakshara was also considered a high authority except when it contradicted the Dayabhaga, which is considered the most important source of authority in Bengal. Even Mitakshara is a text that was open to different interpretations, which led to it being divided into several schools of thought. However, these divisions were minor and did not fundamentally change the principles of the text. The divergences were primarily due to different interpretations by individual commentators, but they did not replace or invalidate the original text.³²

³⁰ Manjeet Yadav, “Mitakshara and Dayabhaga School” *available at*: <https://thelawmatics.in/mitakshara-and-dayabhaga-school-of-law/> (last visited on: 12.06.2023)

³¹ Sujit Kumar, “Mitakshara School of Hindu Law” *available at*: <https://legalserviceindia.com/legal/article-8984-mitakshara-school-of-hindu-law.html> (last visited on: 12.06.2023)

³² Saimy Eliza Abraham, “Short Note on Hindu Joint Family- under Mitakshara and Dayabhaga” 2 (1) *IJLMH* 1-7 (2018)

During the British regime, European judges would often ask Pundits (Hindu scholars) for their opinions to help them make decisions about Hindu law. However, it is uncertain whether the Pundits who were consulted had access to all the important sources of information at that time. Moreover, regional differences in the use of language affected the understanding of sub-divisions within a certain field (presumably law or jurisprudence). As people became more knowledgeable about the language (Sanskrit), these strict sub-divisions became less important. For example, in some cases where questions about Hindu law needed to be settled and the authorities of all schools were examined to find a common answer. It was found that the basic concepts of a Hindu undivided family were the same across all schools.³³

The Benaras School, school is described as the most orthodox and is prevalent in northern India, including Orissa and the central province. However, it is not followed in Punjab where customary law, modifying the Mitakshara school of Hindu law, still prevails.³⁴ Maharashtra or the Bombay School of Law, which is known for being the most liberal of all schools of law covers the entire Western region of India, including the island of Bombay, Gujarat, North Konkan, and Berar.³⁵ In other areas such as the island of Bombay, Gujarat, and North Konkan, the authority of Vyavahara Mayukha on certain points is considered to be even superior to Mitakshara in the event of a conflict between the two. However, the 'Mayukha' is regarded as being equal to the Mitakshara in terms of authority in Poona,

³³ Tanya Gupta, "Formation and Incident under the Coparcenary Property: Mitakshara and Dayabhaga School" *available at*: <https://lexpeeps.in/formation-and-incident-under-the-coparcenary-property-mitakshara-and-dayabhaga-school/> (last visited on: 12.06.2023)

³⁴ *Infra* note 40

³⁵ Virendra Kumar, "Crucifying the concept of Mitakshara coparcenary" 53 (3) *JILL*, pp. 413-436 (2011)

Ahmednagar, and Khandesh. The High Court of Bombay often referred to other works such as Subodhini and Kaustubha, but their approach was to interpret them in a way that was consistent and avoided any disputes. The Mithila Covers Tirhoot and other parts of Bihar, while the Dravida School covers the southern parts of India.

Property Rights Under Mitakshara School of Law

In Mitakshara School, the Doctrine of Propinquity operated which was related to nearness in the blood relationship. This means that one who was nearer to the deceased by consanguinity would succeed the further one in getting the property. Property devolves through either the rules of succession or survivorship.

The doctrine of survivorship states that the property devolves to the surviving coparceners of the deceased and not the legal heirs while according to the doctrine of succession, the property devolves to the legal heirs. Although according to the Hindu Succession (Amendment) Act, 2005, property in a Mitakshara coparcenary devolves through survivorship. Members of the family acquire a right to the property by birth. Although their share is not definite and keeps on fluctuating the share increases on the death of any member and decreases on the birth of a member. Since the share is not definite or ascertainable, coparceners (Those having shares in the joint family property) cannot transfer their shares to the third party. It is a narrower concept of a joint family which consists of Four Generations of Hindu males who are eligible to inherit the property. If a coparcener dies, his widow cannot demand a division of his share of property from his brothers.

In the Mitakshara coparcenary, only male heirs can inherit property. A woman cannot become a coparcener under this system. However, the Hindu Succession (Amendment) Act, of 2005, changed this by allowing women to become coparceners in ancestral property. This change was influenced by Western ideas.

According to this school, the property is of two types of namely ancestor's property and separate property. Here ancestral property is partitioned according to the rules of survivorship while separate property goes to descendants only. In default of close heir, brother, and immediate survivors shall inherit, the wife does not inherit. This school recognizes three classes of heirs viz. (a) Gotraja Sapindas, (b) Samanodakas, and (c) Bandhus.

Concept of Marriage Mitakshara School of Law

Under the Mitakshara school of Hindu law, marriage is considered a sacrament and is a binding social contract between a man and a woman. The Mitakshara school recognizes eight forms of marriage, including Brahma, Daiva, Arsha, Prajapatya, Asura, Gandharva, Rakshasa, and Paishacha.

Under the Brahma form of marriage, the bride's father gives her away to the groom after receiving a dowry. In the Daiva form, the bride is given as a sacrificial offering to a priest. In the Arsha form, the groom offers a cow and a bull to the bride's father as a symbol of his commitment. In the Prajapatya form, the groom marries the bride after seeking her consent.

The Asura form of marriage involves the groom paying a price to the bride's father for her hand in marriage. In the Gandharva form, the couple marries out of love and mutual consent. The Rakshasa form is where the

groom abducts the bride against her will. Lastly, the Paishacha form of marriage is where the groom seduces an unwilling woman.

Overall, under the Mitakshara school, marriage is considered a sacred union between a man and a woman that involves various forms and rituals.

DAYABHAGA SCHOOL OF LAW

Dayabhaga is a legal system followed in West Bengal and parts of Assam, India. It is a compilation of all the codes related to inheritance and succession and is based on a commentary written in the 12th century by Jimutavahana. It is a digest of all relevant codes, not a commentary on a specific work. Inheritance, succession, and joint family structures are all discussed in the Dayabhaga. It was a part of the Dharmaratna. Jimutavahana approaches the topic of inheritance and succession straightforwardly and directly, treating it as an unbiased science, without relying on the propositions put forth by other commentators.³⁶ He relies on reason and logic rather than relying solely on rules, past examples, or assumptions. Through exploring different perspectives and delving into the core of the topic, he develops principles that are grounded in practicality and rational thinking. It rejects the concept of joint family and coparcenary, emphasizing individual ownership and inheritance rights.³⁷

Unlike Mitakshara School, it does not have any sub-divisions. Other commentaries adopted in the Dayabhaga School include-Dayatatyā, Dayakram-Sangrah, Virmitrodaya, and Dattaka Chandrika.

³⁶ Dayabhaga School of Law, *available at:* <https://aishwaryasandeep.com/2021/09/16/dayabhaga-school-of-law/> (last visited on: 12.06.2023)

³⁷ Ibid

Property Rights Under Dayabhaga School of Law

The doctrine of religious efficacy operated in this school which states that the person who gave more religious benefits to the deceased was preferred over others in the devolution of the property. It arises from the practice of making an offering of rice balls to ancestors who have passed away. This practice is known as “Pinda Offering.” Under the Dayabhaga school presently, the property devolves through the doctrine of succession. A son becomes the owner of the property only after the death of his father. Each heir has a definite share in this school. So, one can easily transfer his share. A father can make, a testamentary disposition on the whole of the property without the son objecting to it.³⁸

The Dayabhaga school recognizes two types of property: joint property and separate property. In both cases, descendants are entitled to inherit the property. If a coparcener dies, their widow will inherit the property if there is no closer heir. However, she cannot sell or transfer the property to anyone else. If there are no male descendants, the widow has the right to inherit her husband's share and can demand a division of property. After her husband's death, she becomes a coparcener with her brothers-in-law and has the same right to partition her share of the property. So, women in families ruled by Dayabhaga School have equal rights with that of the male heirs.

³⁸ Debarati Halder & K Jaishankar, “Property Rights of Hindu Women: A feminist Review of Succession Laws of Ancient, Medieval, and Modern India” 24 (2), *JLR* 663 (2008-2009), available at: <https://www.jstor.org/stable/pdf/25654333.pdf> (last visited on: 21.07.2023)

The concept of coparcenary does not exist in this school. It was held in the case of *Badrinarayan Shankar Bhandari v. Omprakash Shankar Bhandari*³⁹ that Dayabhaga School is a branch of Hindu law that deals with the inheritance of property. Unlike other schools of Hindu law, the property is passed down through succession rather than survivorship. This means that each individual member of a Hindu family has their own property right and can dispose of it as they see fit through gift or will. This school recognizes three classes of heir viz. (a) Sapindas, (b) Sakulyas, and (c) Bandhus.

Concept of Marriage under Dayabhaga School of Law

Under the Dayabhaga school of Hindu law, marriage is a sacrament and is regarded as a religious duty that must be performed by every individual. In this school of law, marriage is a civil contract between the bride and the groom, and it is not necessary to have the consent of the parents or guardians. This school recognizes two types of marriage- (i) Brahma Marriage and (ii) Asura Marriage. Under Brahma Marriage the groom is expected to offer a Gift or 'Dakshina' to the bride's father as a token of appreciation for allowing him to marry his daughter. Asura Marriage is a Marriage where the bride is obtained by the groom through payment of consideration to

her father. Under Dayabhaga School Husband has complete control over the property of the wife and she has no right to it during her lifetime. However, she is entitled to maintenance from her husband and can inherit his property in case of his death.

³⁹ 2014 SCC OnLine Bom 908

LEGISLATIVE PROVISION WHICH BROUGHT MODIFICATIONS IN HINDU LAW

It is evident historically, women have struggled to inherit property, especially their fathers' ancestors' property. Initially, women did not have the right to be "coparceners," which means having an equal share in the inheritance of an estate. This was due to the belief that women belonged to another family. However, over time, women's property rights have gradually evolved.

In the Mitakshara School of Hinduism, it is believed that women did not have the same inheritance rights as men. As a result, only male heirs were eligible to inherit the property, and women were only permitted to claim Stridhan - a limited number of gifts given to them at marriage, such as jewellery and clothing as their own. Women were consequently afforded fewer privileges and opportunities than men.

Indian constitution's emphasis on equality, despite the need for positive discrimination. Article 14 ensures that everyone is equal before the law and subject to equal treatment. Article 15 strengthens this provision by allowing the government to take affirmative action to protect the interests of women and other oppressed groups. Article 21 guarantees the right to life with dignity.⁴⁰

Hindu Succession Act 1956

⁴⁰ Tanisha Maheshwari, "Women's Property Rights- Hindu Succession Act" <https://articles.manupatra.com/article-details/Women-s-Property-Rights-Hindu-Succession-Act> (last visited on: 14.06.2023)

The legislative provision that brought modifications in Hindu law is the Hindu Succession Act, of 1956. This act amended the Hindu law of succession and made significant changes to the inheritance rights of women and other family members. The act applies to Hindus, Buddhists, Jains, and Sikhs. The Hindu Succession Act, of 1956 made a huge change in the inheritance rules of Hindus and this part tells about such changes. This Act has abrogated the difference between these two schools and has created a uniform code of conduct. It mainly deals with the devolution of the property of a person dying intestate but also deals with testamentary succession and coparcenary laws. Firstly, this school has a uniform application over both the schools and applies to some southern parts which were governed by some other schools and states that all other laws relating to Hindu law shall cease to exist after the commencement of this act. This act disqualified the previous classes of heirs and now the property devolves on firstly the class-1 heirs, then to class-2 heirs, then to agnates⁴¹, and lastly to the cognates of the deceased. This act has increased the status of women in inheritance and included daughters in Class-1 heirs. Earlier women didn't have absolute ownership over the property but now Sec. 14(1) made them the full owner of the property possessed by her.

It was decided in the case of *Bhimacharya v. Ramacharya*⁴² that the husband will be given preference to the stridhan of the woman dying without any issue over others. But now according to the Hindu Succession Act, of 1956, the husband is not given preference first and now the property of a woman devolves in such criteria. The first beneficiaries are her sons, daughters,

⁴¹ Prakash Chand Jain, "Women's Property Rights Under Traditional Hindu Law and The Hindu Succession Act, 1956: Some Observations" 45 (3/4), *JILI* 527 (2003), available at: <https://www.jstor.org/stable/pdf/43951878.pdf> (last visited on: 21.07.2023)

⁴² (1909) I.L.R. 33 Bom. 452

grandchildren, and husband. If the woman did not have any children or grandchildren, her property would then go to the heirs of her husband. If there are no heirs of the husband, the woman's property would then go to her mother and father. If they are no longer alive, the property would go to the heirs of the father and then, lastly, to the heirs of the mother.

Hindu Succession Amendment Act 2015

This act brought some monumental changes in the history of women's right to inherit property. Under the act provisions of Section 6⁴³ were amended whereby women were entitled to equal coparcenary rights as sons. They would be able to claim partition and possession of ancestral and self-occupied property of their father. One of the milestone cases along this line was the *Prakash v. Phulvati*⁴⁴ case where the respondent (according to the Supreme Court case) documented a request in 1992 in the preliminary Court of Belgaum where she guaranteed her entitlement to acquire the property of her father who died in the year 1988. The preliminary court mostly permitted her suit. Distressed by the decision she pursued and appealed in the High Court looking for her right to legacy under the amendments of the Hindu Succession Act. Since the sole reason for the amendment was to eliminate the current inconsistencies among sons and daughters regarding their coparcenary freedoms she will be qualified for her father's tribal and self-involved property since birth. The High Court ruled in favor of applying the amended provisions. Notwithstanding, the apex court

⁴³ Rishabh Shroff & Tanmay Patnaik, "Supreme Court rules that daughters have equal rights in their father's property" available at: <https://www.lexology.com/Commentary/private-client-offshore-services/india/cyril-amarchand-mangaldas/supreme-court-rules-that-daughters-have-equal-rights-in-their-fathers-property#%3A~%3Atext%3DDaughters> (last visited on: 14.06.2023)

⁴⁴ AIR 2016 SC 769

overruled the request for the High Court expressing that until and except if it has been explicitly expressed in the statute the act will have a planned and prospective application.

In the case of *Masammatt Dilraj Kuari v. Rikheswar Ram Dube & Ors.*⁴⁵ insanity was considered a ground for disqualification in the interest in the intestate and many more such cases are there. But now according to Sec. 28 of this act, no such ground of disqualification exists and is held to be invalid. The act brought some gender-neutral changes. Entitled women with coparcenary rights since birth like a son of a Hindu Joint family. Some other sections along with Section 6 were amended and repealed concerning women's right to seek partition and possession of the dwelling house or a widow's right to inherit her husband's property upon remarriage, Section 4(2) was omitted, Section 30 there was the substitution of words in order to enhance gender-neutrality. Further Section 24 dealing with the inheritance of a husband's property by a widowed woman upon her remarriage was repealed along with Section 23 concerning the partition of a dwelling house.

Present Scenario

The position of women's coparcenary rights has been switched in a new judgment called "*Vineeta Sharma v. Rakesh Sharma*"⁴⁶ articulated on the 11th of Aug 2020. For this situation, it was held that women will be qualified for coparcenary status and freedoms like sons regardless of whether they were born before or after the amendment. The condition that fathers should be alive on the date of passing of the act that is (09.09.2015) isn't required. The court gave the act a "retroactive" application. The verdict given by the

⁴⁵ 151 Ind Cas 419

⁴⁶ (2020) 9 SCC 1

bench in *Prakash v. Phulvati*⁴⁷ case was overruled subsequently giving women equality. The court gave a choice on the two positions, first and foremost giving women equivalent coparcenary freedoms since birth and inconsequentiality of the father being alive upon the date of the amendment. At present, any confusion or disorder surrounding women's right to inherit property or titles has been resolved.

CONCLUSION

Hindu law is one of the world's oldest and most extensive legal systems, having existed for approximately 6000 years. It was established by the people as a guide for individuals to follow to attain salvation rather than as a means of preventing crime or wrongdoing. Initially Hindu law was established to meet the needs of the people and for their welfare. In the past, Hindus only followed the laws that they believed came from their deities; today, they also follow man-made laws. The ancient Schools of Hindu law are mentioned above. Schools of Hindu law are the reason for the establishment of Hindu law and have played a significant role in its improvement. These schools are moreover alluded to as commentaries and digestives of the Smritis, which are old Hindu texts. These schools have contributed to the development of Hindu law and expanded its scope.

The modern laws of the country are abrogating the difference between the two schools of the Hindu law and a uniform code of conduct is on its way in the form of amendments taking place in the Hindu Succession Act. However, decisions laid down before the amendment of the act cannot be opened again and stand decided. But the laws regarding intestate succession have changed completely from what they were and what they are at present.

⁴⁷ AIR 2016 SC 769