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## MITAKSHARA COPARCENARY-FORMATION AND INCIDENTS & PROPERTY UNDER DAYABHAGA LAW

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### ABSTRACT:

This research paper provides a comprehensive exploration of two pivotal systems of Hindu inheritance law in India: the Mitakshara coparcenary system and the Dayabhaga law. Rooted in centuries of cultural and religious traditions, these systems embody distinct approaches to property ownership, inheritance, and family dynamics. Through an in-depth analysis of their historical development, legal principles, case law, socio-legal implications, and contemporary relevance, this study sheds light on the multifaceted dimensions of Hindu inheritance laws. Notably, it highlights the evolving landscape of property distribution in the face of changing family structures, gender dynamics, and legislative reforms. This research underscores the imperative of striking a delicate balance between tradition and modernity, emphasizing the need for informed discussions, policy reforms, and academic discourse to address emerging challenges and promote equality in inheritance practices within a diverse and evolving Indian society.

**Keywords:** Hindu inheritance laws, Mitakshara coparcenary system, Dayabhaga law, property distribution, historical evolution, gender equality, legal reforms, socio-legal implications, family dynamics, cultural considerations, case law, legislative changes.

## **1. Introduction:**

Hindu inheritance laws in India, deeply rooted in centuries of cultural, religious, and societal norms, have evolved through intricate legal doctrines and principles. Among these, the Mitakshara coparcenary system and the Dayabhaga law stand as pillars shaping the distribution of property within Hindu families. These two systems represent distinct approaches to property ownership, inheritance, and the complex interplay between tradition and modernity. The Mitakshara system, characterized by the concept of coparcenary and joint family, has historical origins tracing back to ancient texts and commentaries, while the Dayabhaga law emphasizes individual ownership and inheritance rights, reflecting a more individualistic approach. This research paper delves into the formation, incidents, and property distribution mechanisms under the Mitakshara coparcenary system, juxtaposed with the property regime under the Dayabhaga law. Through a meticulous examination of historical evolution, judicial interpretations, socio-legal implications, and contemporary relevance, this paper aims to illuminate the multifaceted dimensions of these systems, contributing to a comprehensive understanding of Hindu inheritance laws in India.

This introduction sets the stage by highlighting the significance of the Mitakshara coparcenary system and the Dayabhaga law in shaping property distribution. It outlines the focus areas of the research paper and emphasizes the historical, legal, and socio-legal contexts that will be explored throughout the paper.

## **2. Mitakshara Coparcenary: Formation and Incidents:**

### **2.1 Historical Development of the Mitakshara System:**

The Mitakshara school of thought has its origins in ancient Hindu texts, with the earliest systematic exposition found in Yajnavalkya Smriti. Later, Vijnanesvara's "Mitakshara" commentary in the 12th century consolidated the principles of the Mitakshara school, offering insights into property, inheritance, and coparcenary.<sup>1</sup>

### **2.2 Formation of Coparcenary and Joint Hindu Family:**

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<sup>1</sup> J. DUNCAN M. DERRETT, THE MITAKSHARA AND THE TRADITIONAL HINDU LAW OF INHERITANCE

In the Mitakshara system, a coparcenary is formed by male descendants sharing a common ancestor and holding ancestral property jointly. Birthright is a central criterion, where male descendants are by birth members of the coparcenary, and females do not inherently possess coparcenary rights.<sup>2</sup>

### **2.3 Incidents of Coparcenary: Birthright, Survivorship, and Property Rights:**

Coparcenary members have birthright shares in ancestral property, and their interest grows by survivorship. On a coparcener's death, his share is distributed among surviving coparceners. Daughters were historically excluded, but recent legal changes have expanded their inheritance rights.<sup>3</sup>

### **2.4 Mitakshara Coparcenary vs. Self-Acquired Property:**

While coparcenary property is governed by Mitakshara principles, self-acquired property can be freely disposed of by the owner through a will. Self-acquired property does not have the same survivorship rights as coparcenary property.

## **3. Dayabhaga Law: Property Regime and Inheritance:**

### **3.1 Origin and Historical Evolution of Dayabhaga Law:**

The Dayabhaga system, first articulated in Jimutavahana's "Dayabhaga," emphasizes individual ownership and recognizes a person's right to dispose of property through a will. It contrasts with the joint family-centric approach of the Mitakshara system.<sup>4</sup>

### **3.2 Property Ownership under Dayabhaga Law:**

Dayabhaga law allows for separate property ownership, enabling individuals to have exclusive rights over their assets. Unlike Mitakshara, daughters in the Dayabhaga system inherit equally

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<sup>2</sup> WERNER MENSKI, HINDU LAW: BEYOND TRADITION AND MODERNITY (Oxford Univ. Press) (2003)

<sup>3</sup> PARAS DIWAN & PEEYUSHI DIWAN, MODERN HINDU LAW: (CODIFIED AND UNCODIFIED) (Allahabad Law Agency) (2016)

<sup>4</sup> JĪMUṬAVĀHANA & LUDO ROCHER, JĪMUṬAVĀHANA'S DĀYABHĀGA: THE HINDU LAW OF INHERITANCE IN BENGAL (Oxford University Press) (2002)

along with sons.

### **3.3 Differences Between Mitakshara and Dayabhaga Systems:**

The key distinction lies in property ownership and distribution mechanisms. Mitakshara emphasizes coparcenary property and birthright shares, while Dayabhaga emphasizes individual ownership and equal inheritance rights for daughters

## **4. Comparative Analysis: Mitakshara vs. Dayabhaga:**

### **4.1 Distribution of Property in Mitakshara vs. Dayabhaga:**

The Mitakshara system promotes joint ownership and inheritance through coparcenary, where property is shared among male descendants. In contrast, the Dayabhaga system emphasizes individual ownership, allowing property to be divided according to a person's will, promoting autonomy in inheritance distribution.

### **4.2 Gender Equality and Coparcenary vs. Dayabhaga:**

Mitakshara traditionally excluded daughters from coparcenary rights, leading to unequal distribution of property. The Dayabhaga system, by granting equal inheritance rights to daughters, addresses gender disparities in property distribution.<sup>5</sup>

### **4.3 Impact of Religious Reforms and Social Changes on Both Systems:**

The 19th and 20th centuries witnessed social and legal reforms that challenged traditional practices. Religious reform movements and legal changes aimed to rectify gender inequalities and adapt Hindu inheritance laws to contemporary values.<sup>6</sup>

## **5. Case Laws and Judicial Interpretations:**

### **5.1 Mitakshara Coparcenary Cases and Precedents:**

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<sup>5</sup> ARCHANA PARASHAR & FRANCESCA DOMINELLO, *THE FAMILY IN LAW* (Cambridge University Press) (2017)

<sup>6</sup> ROBERT D. BAIRD, *RELIGION AND LAW IN INDEPENDENT INDIA* (Manohar Publishers & Distributors) (2005)

Landmark cases such as the "Dayabhaga vs. Mitakshara" debate in "State of Andhra Pradesh v. Jayalakshmi" have clarified coparcenary principles and expanded the scope of women's rights in inheritance.<sup>7</sup>

## 5.2 Landmark Dayabhaga Law Cases:

Cases like "Satyabati vs. Gourhari" have played a pivotal role in shaping the understanding of individual ownership and equal inheritance rights for daughters under the Dayabhaga system.<sup>8</sup>

## 5.3 Influences of Case Law on Legal Understanding:

Judicial interpretations have contributed to the dynamic evolution of Hindu inheritance laws. Court decisions have often aligned with contemporary societal values, thereby reflecting the changing landscape of inheritance practices.

# 6. Socio-Legal Implications and Contemporary Relevance:

## 6.1 Modern Challenges in Coparcenary Property Distribution:

As families become nuclear and traditional joint family structures change, disputes over coparcenary property distribution and women's rights within the coparcenary have emerged.

## 6.2 Changing Gender Dynamics and Property Rights:

Women's empowerment and the push for gender equality have led to discussions on redefining property rights and inheritance practices, especially within the Mitakshara system.

## 6.3 Legal Reforms and Amendments: Impacts on Both Systems:

Amendments to the Hindu Succession Act, such as the 2005 amendment, have sought to eliminate gender-based discrimination and promote equal property rights for daughters. These reforms have

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<sup>7</sup> EEDE JAYALAKSHMI VS STATE OF ANDHRA PRADESH ON 22 SEPTEMBER, 2022, <https://indiankanoon.org/doc/26377097/> (last visited Aug 10, 2023)

<sup>8</sup> GOURISHANKAR CHATTORAJ V. SM. SATYABATI DEBI OPPOSITE PARTY., CALCUTTA HIGH COURT, JUDGMENT, LAW, CASEMINE.COM [HTTPS://WWW.CASEMINE.COM, https://www.casemine.com/judgement/in/56e10cab607dba38966134e7](https://www.casemine.com/judgement/in/56e10cab607dba38966134e7) (last visited Aug 10, 2023)

significantly impacted both Mitakshara and Dayabhaga systems.

## **7. Comparative Property Distribution: Analysis of Data and Trends:**

### **7.1 Empirical Study on Property Distribution Patterns:**

Several empirical studies have examined property distribution patterns in both Mitakshara and Dayabhaga systems. Research findings indicate shifts in inheritance practices due to changing family dynamics and socio-economic factors.

### **7.2 Socio-Economic Factors Influencing Property Division:**

Socio-economic factors such as education, economic status, and urbanization play a significant role in determining property distribution patterns. These factors often intersect with traditional inheritance norms.<sup>9</sup>

## **8. Legislative Changes and Reforms:**

### **8.1 Hindu Succession Act, 1956: Amendments and Impact:**

The Hindu Succession Act of 1956 was a milestone in codifying Hindu inheritance laws. Subsequent amendments, including the 2005 amendment, aimed to address gender inequality and ensure equal rights for daughters in ancestral property.<sup>10</sup>

### **8.2 Mitakshara and Dayabhaga Reforms: A Comparative Review:**

Reforms have been introduced to modernize and align Hindu inheritance laws with the principles of equality and justice. These reforms have had varying impacts on the Mitakshara and Dayabhaga systems due to their distinct approaches.

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<sup>9</sup> MYSORE NARASIMHACHAR SRINIVAS & MYSORE NARASIMHACHAR SRINIVAS, SOCIAL CHANGE IN MODERN INDIA: BY M.N. SRINIVAS (Orient Longman) (1972)

<sup>10</sup> HINDUISM AND LAW SSRN, <https://deliverypdf.ssrn.com/delivery.php?ID=72900102211401001609009909302902009402600601400108404903012508301811807406410409409912202412709903004404401501211911310506709802102906305801011120025099021094086022019015096093126121113075122127124099084016064080125116093008125009083095010075113001&EXT=pdf&INDEX=TRUE> (last visited Aug 11, 2023)

## **9. Cultural and Religious Considerations:**

### **9.1 Role of Religion and Custom in Property Distribution:**

Religious beliefs and customs have historically influenced property distribution practices in both systems. Understanding the cultural underpinnings is crucial to contextualizing the legal frameworks.

### **9.2 Balancing Tradition with Modern Legal Principles:**

The challenge lies in reconciling traditional practices with evolving legal principles. This balance requires sensitivity to cultural norms while ensuring justice and equality for all parties involved.

## **Conclusion:**

Recap of key findings and insights from the research paper.

Emphasis on the importance of understanding Mitakshara coparcenary and Dayabhaga law in modern India.

Reflection on the ongoing evolution of inheritance laws and the need for continued research to address emerging challenges and opportunities.

The exploration of the Mitakshara coparcenary system and the Dayabhaga law has illuminated the complex landscape of Hindu inheritance laws in India. This paper has delved into the historical origins, legal principles, case laws, socio-legal implications, and contemporary relevance of these two systems. The evolution of property distribution norms, especially in the context of changing family structures, gender dynamics, and legal reforms, has underscored the need for a nuanced approach.

In a rapidly transforming society, where traditional values coexist with modern legal principles, understanding the intricacies of the Mitakshara and Dayabhaga systems becomes paramount. The research highlights the ongoing tension between preserving cultural heritage and advancing towards a more egalitarian legal framework.

As the socio-economic landscape evolves, it is imperative to recognize the potential of legal reforms to address gender disparities and ensure equal inheritance rights. This paper also emphasizes the importance of informed discussions, not only among legal practitioners but also within academic circles, policy-making bodies, and society at large. The path forward necessitates a delicate balance between tradition, equity, and justice, reflecting the aspirations of a contemporary and progressive India. In conclusion, the Mitakshara coparcenary system and the Dayabhaga law are emblematic of the complexities inherent in shaping inheritance norms within a diverse and evolving society. This research serves as a foundation for further exploration and dialogue, inviting scholars, legal experts, and policymakers to collectively contribute to the ongoing discourse surrounding property rights and inheritance practices in Hindu law.



**Reference:**

**Books:**

- I. J. DUNCAN M. DERRETT, THE MITAKSHARA AND THE TRADITIONAL HINDU LAW OF INHERITANCE
- II. WERNER MENSKI, HINDU LAW: BEYOND TRADITION AND MODERNITY (Oxford Univ. Press) (2003)
- III. PARAS DIWAN & PEEYUSHI DIWAN, MODERN HINDU LAW: (CODIFIED AND UNCODIFIED) (Allahabad Law Agency) (2016)
- IV. JĪMŪTAVĀHANA & LUDO ROCHER, JĪMŪTAVĀHANA'S DĀYABHĀGA: THE HINDU LAW OF INHERITANCE IN BENGAL (Oxford University Press) (2002)
- V. ARCHANA PARASHAR & FRANCESCA DOMINELLO, THE FAMILY IN LAW (Cambridge University Press) (2017)
- VI. ROBERT D. BAIRD, RELIGION AND LAW IN INDEPENDENT INDIA (Manohar Publishers & Distributors) (2005)
- VII. MYSORE NARASIMHACHAR SRINIVAS & MYSORE NARASIMHACHAR SRINIVAS, SOCIAL CHANGE IN MODERN INDIA: BY M.N. SRINIVAS (Orient Longman) (1972)

**Website:**

- I. <https://indiankanoon.org/doc/26377097/>
- II. <https://www.casemine.com/judgement/in/56e10cab607dba38966134e7>
- III. <https://deliverypdf.ssrn.com/delivery.php?ID=7290010221140100160900990930290200940260060140010840490301250830181180740641040940991220241270990300440440150121191131050670980210290630580101111200250990210940860220190150960931>

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