

Differences between Mitakshara and Dayabhaga Schools of Hindu Law

A structured comparison of the two principal classical schools of Hindu law

Context: Mitakshara, authored by Vijnaneshwara as a commentary on the Yajnavalkya Smriti, influenced most parts of India. Dayabhaga, authored by Jimutavahana, became the principal authority in Bengal. Their most significant distinction lies in the time and basis of proprietary interest in ancestral property.

Comparative Table of Schools of Hindu Law

Basis of Difference	Mitakshara School	Dayabhaga School
Nature and author of the authority	The Mitakshara School is based on the Mitakshara of Vijnaneshwara, which is a commentary on the Yajnavalkya Smriti.	The Dayabhaga School is based on the Dayabhaga of Jimutavahana, which is a digest-like work reconciling and systematising rules of older Smritis.
Territorial application	The Mitakshara School is followed in most parts of India and is treated as the general classical school outside Bengal, subject to regional sub-schools.	The Dayabhaga School is principally confined to Bengal, though it may also be relevant in some adjoining areas where that tradition is recognised.
Basis of inheritance	Inheritance is connected with apratibandha daya, that is unobstructed heritage, where the son acquires an interest by birth in ancestral property.	Inheritance is connected with sapratibandha daya, that is obstructed heritage, where the son acquires interest only after the father's death.

Basis of Difference	Mitakshara School	Dayabhaga School
Time when the son acquires interest	A son, grandson and great-grandson acquire an interest in ancestral property by birth itself.	A son does not acquire interest by birth. His right arises only after the father's death, when succession opens.
Coparcenary	Coparcenary arises by birth and includes the father and male lineal descendants up to four generations under the classical doctrine.	Coparcenary arises only after the father's death, when the heirs inherit jointly.
Right to demand partition	Sons can demand partition during the father's lifetime, subject to the limits and regional rules recognised by Hindu law.	Sons cannot demand partition during the father's lifetime because they do not have a vested proprietary interest by birth.
Father's power of alienation	The father cannot alienate ancestral property at his uncontrolled discretion. His power is qualified and is generally limited by legal necessity, benefit of estate or recognised exceptions.	The father has a wider and more absolute power of alienation over the property during his lifetime.
Ancestral and separate property	Mitakshara draws a clear distinction between ancestral property and separate or self-acquired property.	The distinction is less rigid in practical inheritance because succession generally begins after death.
Doctrine of survivorship	The doctrine of survivorship applies to coparcenary property. On the death of a coparcener, his interest may pass to surviving coparceners under the classical rule.	The doctrine of survivorship does not apply in the same manner. Property devolves by succession rather than by survivorship.

Basis of Difference	Mitakshara School	Dayabhaga School
Rights of widows	Traditionally, a widow did not receive her husband's share during his lifetime, and after his death her claim could be excluded by the survivorship rights of other coparceners. Her right was often limited to maintenance.	A widow can inherit her deceased husband's share because succession applies and survivorship does not exclude her in the same way.
Position of females in coparcenary	Under traditional Mitakshara law, females were not coparceners. This position has been substantially changed by the Hindu Succession (Amendment) Act, 2005, which made daughters coparceners by birth.	Traditional Dayabhaga did not depend on a birth-based coparcenary in the same manner, and the widow's right to succeed to the husband's share was more strongly recognised.
Mode of partition	Partition is generally per stirpes, meaning according to branches of the family.	Partition is generally per capita, meaning equal shares are allotted to each heir.
Sapinda relationship and heirship	Sapinda relationship is based on propinquity, community of blood and nearness of relationship. Consanguinity is the guiding principle.	Sapinda relationship is based on pinda offerings to deceased ancestors. Spiritual benefit is the guiding principle for heirship.
Religious efficacy and blood relationship	Inheritance is not based on religious efficacy or spiritual benefit. It is primarily based on blood relationship and nearness of kin.	Inheritance is substantially influenced by religious efficacy, because the heir is preferred on the basis of capacity to confer spiritual benefit.

Basis of Difference	Mitakshara School	Dayabhaga School
Size and character of coparcenary	The coparcenary is usually larger because rights arise by birth and include several male lineal descendants under the classical doctrine.	The coparcenary is usually smaller because rights arise only after the father's death among heirs who inherit at that stage.
Sub-schools and further classification	Mitakshara is divided into important sub-schools, namely the Benares School, Mithila School, Maharashtra or Bombay School and Dravida School.	Dayabhaga is not ordinarily divided into comparable sub-schools in the same manner, and its main operation is associated with Bengal.
Effect of migration	A family governed by a Mitakshara sub-school ordinarily carries that personal law after migration, unless abandonment of the old law or adoption of the new local law is clearly proved.	Where Dayabhaga is the family's personal law, the same personal-law principle applies: mere migration does not automatically substitute another school without proof of change in usage or law.

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