

SCHOOLS OF HINDU LAW

- Schools of Hindu Law came into being when different commentaries appeared to interpret “Smritis” with reference to different local customs in vogue in different part of India
 - In **Rutchepatty v/s. Rajendra(1839)** , it has been observed by the Privy Council that the different local customs prevailed in different provinces of India. The commentators of the smritis could not ignore the local customs and usages and while interpreting the texts, they eventually incorporated different local customs. The local conditions and customs of the different provinces have, therefore, gone to mould the principles of law prevailing in each province.
 - In **Collector of Madhura v/s. Mooto Ramalinga**, the Privy Council has held that “The ancient sources of Hindu Law i.e., Smritis are common to all different schools. The process by which those schools have been developed seems to have been of this kind. It works universally or very generally received becomes the subject of subsequent commentaries. The commentators puts his own gloss on ancient texts; and his authority having been received in one and rejected in another part of India, thus the school with conflicting doctrines arose.”
 - The two major schools of Hindu law are as follows-
- 1) **Mitakshara**
 - 2) **Daya Bhaga**

Mitakshara-

- ✓ The literal meaning of Mitakshara is ‘A brief Compendium’. Mitakshara is commentary by **Vijananeshwara** on ‘**Yajnavalkya Smriti**’ which was written in later half of **11th century**
- ✓ This school is applicable in the whole part of India except in **West Bengal and Assam**

- ✓ We could majorly divide these into **five categories**, which are now known as the five schools of Hinduism.

- 1. Mithila School**
- 2. Benaras School**
- 3. Dravida School**
- 4. Maharashtra School**
- 5. Punjab School**

Dayabhaga-

- ✓ Written by **Jimutavahana** in the latter half of **12th century**
- ✓ It is not commentary on a specific Smriti or Shruti but it is a digest of all the codes.
- ✓ Dayabhaga School predominantly prevailed in Assam and West Bengal. This is also one of the most important schools of Hindu laws. It is considered to be a digest for the leading smritis. Its primary focus was to deal with partition, inheritance and joint family. According to Kane, it was incorporated in between 1090-1130 A.D. Dayabhaga school was formulated with a view to eradicating all the other absurd and artificial principles of inheritance.

Major Differences between Mitakshara and Dayabhaga

1) In regards to Joint Property:

- ✓ **Mitakshara-** Right to property arises by birth (of the claimant); hence the son is a co- owner with the father in ancestral property. After the commencement of the Hindu Succession (Amendment) Act, 2005, the daughter of a coparcener is also a coparcener

The interest of a member of the joint family would, on his death, passed to the other members by survivorship. Section 6(3) of the Hindu Succession Act, as substituted by the Hindu Succession (Amendment) Act, 2005 abolishes the principles of survivorship.

- ✓ **Dayabhaga:** Right to property by death (of the last owner); hence son has no right to ancestral property during father's lifetime. On death of the holder of the property, the property will fall on his legal heirs according to the rule of inheritance or succession. The interest of every person would, on his death, pass by inheritance to his heirs, like widow or daughters.

2) In regards to Alienation:

- ✓ **Mitakshara-** Members of the joint family cannot dispose of their shares while undivided
- ✓ **Dayabhaga:** Any members of joint family may sell or give away his share even when undivided.

3) In regards to Inheritance:

- ✓ **Mitakshara** The Principle of Inheritance is Consanguinity (blood relationship). But in Mitakshara School of Law cognates are postponed to agnates.
- ✓ **Dayabhaga:** The Principle of Inheritance is spiritual efficacy(i.e., spiritual efficacy)

Some nearer cognates like sister's son are preferred to many agnates.∞

Mitakshara	Dayabhaga
Basis of inheritance is principle of propinquity/consanguinity i.e. Nearness in blood relationship. The person nearer In blood relationship shall succeed to property. But Females were excluded and agnates were preferred Over cognates	It rejects the preference of agnates over cognates and the basis of succession is based on the principle of religious efficacy or spiritual benefits. Whoever confers more spiritual benefits on the Deceased is preferred
Son, Grandson and great grandson have right over Property from birth	No such right to son, grandson or great grandson until father is alive, he is the Master of property and can dispose it at his pleasure
So has right to partition during lifetime of father	No right to partition during lifetime of father
Doctrine of Survivorship: Surviving coparceners take the share in case of death of a coparcener	If coparcener dies issueless (without child) his widow has a right to succeed to enforce a partition on her account.