



# FAMILY LAW I

## SCHOOLS OF HINDU LAW

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  1. Mitakshara
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# Schools of Hindu law

- School means divided opinion on Rules and Principles of Hindu Law,
- It is uncodified
- Under Hindu Law, there are 2 schools
  1. **Mitakshara**
  2. **Dayabhaga**


# 1. Mitakshara School

- Orthodox school of thought
- Prevails throughout India except in Bengal and Assam
- Commentary by Vijnyaneshwara on the **code (smriti) of Yagnavalkya/Yajnavalkya**



❖ Characteristics:

1. Rights in the joint family Property is acquired by birth
2. Females had no right of succession to the family property (till 2005)
3. Rule of survivorship
4. Only coparceners entitled to right in family property
5. Joint ownership over joint family property
6. Unity of possession

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6. Coparcenary consists of only males
  7. Son can ask for partition of the coparcenary property
  8. The widow of coparcener had no right to succeed him
  9. Interest of a coparcener in family property is fluctuating

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## ❖ Subschoools:

- a. Mithila School- Bihar
- b. Banaras School- North India
- c. Bombay School- Maharashtra, Gujarat
- d. Dravida/ Madras School- South India


## 2. Dayabhaga School

- Based on digest of almost all smritis
- Prevails in Bengal and Assam
- Jimutvahana was the founder of this school



❖ Characteristics:

1. Son acquires right in the property after death of the father
2. Females had a right of succession to family property
3. Father could alienate ancestral property as if it were his own property
4. Son could not ask for partition during lifetime of the father

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5. Coparcener's right did not extend to property of grandfather or great grandfather
  6. Females were also coparceners
  7. Coparcener's widow could get husband's property but could not alienate

# Differences between two schools

## Mitakshara

1. Right of a son in the ancestral property by birth.
2. Females are not coparceners
3. Joint tenancy
4. Unity of ownership and unity of possession
5. Coparcener could not alienate his share in the property without consent of other coparceners.

## Dayabhaga

1. Right of son in the property after death of the father.
2. Females are coparceners.
3. Tenancy in common.
4. Unity is not in ownership
5. Father could alienate property as if his own self acquired property.



## Mitakshara

6. Coparceners could ask for partition during lifetime of ancestors.
7. Rule of survivorship
8. Coparceners have fluctuating interest till partition

## Dayabhaga

6. Son could not ask for partition during lifetime of Father.
7. No rule of survivorship
8. Definite share in the property

# Effect of migration

- When a Hindu migrates from one part of India to another prima facie he carries with him his personal law
- However this is a merely a presumption and can be rebutted showing that the family adopted the law or usage of the place to which it migrated by confronting to the manners, customs and usages of the people among whom it came to live