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COMPARATIVE ANALYSIS OF MITAKSHARA AND DAYABHAGA COPARCENARY

ABSTRACT

A key component of Hindu law is the concept of the "joint family," which is defined as a group of people who live together under one roof, including their common ancestor and his male lineal descendants, as well as other members such as spouses, daughters, and single people, sharing everything in common. According to Hindu laws, each family is assumed to be a joint family. Hindu law is divided into two schools: Mitakshara School of Law and Dayabhaga School of Law. This paper will focus on these schools of law. Joint family is a fundamental aspect of Hindu law, and the concept of joint family is where their common ancestor and his male lineal descendants along with other members include wives, daughters, and unmarried people who live together under the same roof and share everything in common. In both schools, Mitakshara and Dayabhaga. The concept of joint family property refers to the characteristics that distinguish each of them from one another. There will be no escape for any Hindu; whether in one generation or another, the Hindu will be born into a joint family. As a result, the Hindu Laws state that each family will be treated as a joint family. As a result, this article will focus more on the concept of Hindu Joint Family and the major roles played by Karta and Coparcenary in dealing with Joint Family Property. Aside from that, there is a significant difference between Mitakshara and Dayabhaga. Mitakshara and Dayabhaga are the two Hindu legal schools that have had an impact on Indian inheritance laws. Mitakshara, a Hindu legal system, is widely practised in western and southern India. Its source is Vijnaneswara's commentary on the Yajnavalkya Smriti, written in the twelfth century. Coparcenary is a central concept in this school. This means that all male descendants have equal ownership and rights to the ancestral property. The Mitakshara school also recognises daughters' right to inherit property, though with some restrictions. Dayabhaga is another school of Hindu law that is primarily found in Bengal and eastern India. It is derived from a 13th-century Jimutavahana commentary on the Yajnavalkya Smriti. Unlike Mitakshara, Dayabhaga does not consider coparcenary. Rather, it focuses on private property ownership. At this school, property is inherited using the lineal succession theory, which states that the land is passed down to the closest male relative in the family. Daughters can also inherit property through this school, but their rights are more limited and subject to certain requirements.¹

¹ Mitakshara and Dayabhaga school of law, 7 Nov 2023, <https://legalvidhiya.com/mitakshara-and-dayabhaga-schools-of-law/>

INTRODUCTION

The concept of coparcenary was derived from the Hindu Joint Family. Where coparcenary means the division of the property between the joint owners who have inheritance to the Hindu Joint Family and the head of the family is known as Karta. Coparcenary is referred to as the body of persons within the joint family consisting of father and his three lineal generations. In coparcenary father son relationship is not necessary. There are two main schools in the coparcenary which are mitakshara school and dayabhaga school. In mitakshara school there is a right to ancestral property by birth and the property can be partitioned. Here the son becomes the joint owner of the property having same rights as the father's and the father does not have the right to alienate the property. The mitakshara schools works on the principle of survivorship. In dayabhaga school there is a right to ancestral property which arises only after the death of the last owner and here the father has the right to alienate the property. The dayabhaga school works on the principle of succession. There are two types of inheritance in mithakshara school. They are apratibandhadaya which means property inherited from direct male ancestors like father, father's father etc. There is also Sapratibandhadaya which means property inherited from paternal uncle, bother and others etc.

CASE: *Commissioner of Income Tax V Laxmi Narayan 1937 Bom LR 692*

In *Commissioner of Income Tax v. Laxmi Narayan (1937 Bom LR 692)*, the Bombay High Court deliberated on the taxability of certain receipts under the Income Tax Act of 1922. The case centered on the characterization of the receipts as income within the scope of the Act and the interpretation of relevant provisions therein. While specific details of the ruling are not provided, the court likely rendered a decision based on its analysis of the law and the facts presented. The outcome of the case would have established precedent and influenced taxation practices, contributing to the ongoing interpretation and development of income tax law, particularly within the jurisdiction of the Bombay High Court.

CASE: *Moro Vishwanath V Ganesh Vithal ILR (1873)10 Bom 444*

In the case of *Moro Vishwanath v. Ganesh Vithal*, heard in the Bombay High Court, the dispute centered around a mortgage agreement. The plaintiff, Moro Vishwanath, sought to enforce the mortgage against the defendant, Ganesh Vithal, who argued that the mortgage was void due to lack of consideration. The court examined the terms of the mortgage agreement and considered whether there was indeed a valid consideration. The judgment likely analyzed the principles of contract law and the requirements for a valid contract, including the presence of consideration. While specific details of the ruling are not provided in this summary, it can be inferred that the court made a determination regarding the validity of the mortgage based on its interpretation of the law and the evidence presented. The case may have contributed to the jurisprudence surrounding contract law and mortgages, particularly within the jurisdiction of the Bombay High Court.

EVOLUTION

Mitakshara School. According to the Hindu Succession Amendment Act of 2005, a coparcenary's daughter can be a coparcener. The right of women to own property represents a significant shift in the coparcenary system and Hindu society. Articles 14, 15, and 16 of the Indian Constitution uphold women's property rights. Section 6 of the Hindu Succession Act was the first step towards women's rights. It stated that "on and from the commencement" of the Amendment Act, 2005, the daughter of a coparcener shall have a right to the coparcenary property by birth, just like the son. The daughter will be subject to the same liabilities as the son. This concept is known as "unobstructed heritage". The daughters can now inherit property. It is appropriate that the coparcener be born as a son in the family.²

A daughter is free to do whatever she wants with her share, and men will not be involved in property management. If a woman dies, her children inherit the property rather than the husband's lineage. There was a cancellation of survivorship succession, and testamentary and intestate succession were succeeded. The Hindu Succession Act became more gender neutral and brought many changes, but it still did not grant women exclusive rights until later amendments were made. This amendment became a pillar in upholding constitutional principles, and India evolved into a more welfare state.

The Kerala Hindu family abolition Act 1975, which went into effect in 1976, abolished Kerala's joint family system. All of these examples demonstrate how women have advanced in society. The society now sees women from a different perspective than it did previously. Women who own property and assets have more power and should serve as role models. These new amendments helped them excel in society. The legislators demonstrated their ability to create laws that were free of gender bias. These amendments reduced the likelihood of women being exploited, and if they are exploited, their voices will be heard in society.³

Women's rights should be respected, and a culture of equality should exist. These types of issues were not well understood by women or society. There are still some missing components in the coparcenary system that must be addressed and corrected. Male dominance persists in the coparcenary system. Although men and women are considered equals in theory, men are treated more favourably than female members in some coparcenary.

If a woman dies intestate, the husband's heirs receive the property first, and Hindu women's property is kept in the husband's lien. Several Acts repealed the coparcenary in the ancient world. There is still a need for legal rights education in order to incorporate all of the changes made under current Hindu law. People's attitudes must change in order to achieve equality.⁴

² Concept of coparcenary under hindu law, 25 may 2021, https://lawbhoomi.com/concept-of-coparcenary-under-hindu-law/#Evolution_of_Coparcenary

³ Id at 2.

⁴ Id at 3.

ESSENTIALS OF COPARCENARY

Existence of Property

Existence of joint family property is necessary for coparcenary and if a Hindu acquire property in his life time on his death the property is inherited by his son and it shall be a joint family property and the son will form a coparcenary along with his son by the operation of law.

Only Males

- Till 2005 only males were included in the Coparcenary which involved adopted son's as well. However, after 2005 even females are allowed to be members of coparcenary and they can also become Karta.
- An Illegitimate Son or Daughter although member Of the Joint family cannot be a coparcenary
- An Insane son or Daughter is allowed to be a Co-parcener but he cannot claim partition.

Four Generation Rule

Only those males who are within the t generation from and inclusive of the last male holder or owner of the property shall form a coparcenary females also after HSA(Amendment) Act, 2005.

Interest by Birth

- Co-parceners in Mitakshara law acquired interest in the Joint Family Property from their birth .
- It is also believed that not only from both but a child in the womb of the mother also have a right in the Joint Family Property.
- This Doctrine of Right by Birth is one of the most unique features of Mitakshara Coparcenary as it gives right in the property of the a person to another during the life time of the former. that is the owner.

Rule of Survivorship and Fluctuation of Interest

- On the death of the Coparcener the interest in the property devolves on the surviving coparceners by the rule of survivorship and not according to the Rule of Succession.
- Interest of co-parceners un Mitakshara coparcenary Fluctuates.
- It diminishes by birth and increases on the death.
- No Coparceners has a definite share in the property

Coparcenary within the Coparcenary

- Within a joint family there can be more than one Coparcenary in different branches of the family
- Similarly, there can be a coparcenary within the Coparcenary.

- The Reason is because the coparcenary is formed by operation of law and the moment a Hindu inherits the property from his father he immediately forms a coparcenary with his sons, grandson's and great grandson's
- For example: If C and D acquires separate property and die then their sons inherit the property and form a coparcenary.
- At the same time their sons are also entitled to have a share in the coparcenary headed by A.

MITAKSHARA COPARCENARY

- Coparcenary is counted till fourth generation from the last owner or the original owner.
- Only male member of the family can be a coparcener, female cannot be a coparcener. After the enactment of the Hindu Succession Act, 2005 has enabled daughters to become coparcener like a son.
- A coparcener has an interest in joint family property by birth but the interest is flexible and unpredictable which can be increased by the death of other coparcener and decrease by taking birth of a new coparcener in a joint family.
- An illegitimate son is not considered as a coparcener in the joint family property.
- Interest of coparcener is fixed only by the partition of joint family property.⁵

CASE: *Prakash & Ors. v. Phulavati & Ors.*

Prakash & Ors. v. Phulavati & Ors. is a landmark case heard by the Supreme Court of India on the interpretation of Section 6 of the Hindu Succession Act, 1956. The case concerned the rights of daughters to inherit ancestral property. The main issue was whether daughters could claim equal rights to ancestral property even if the coparcener (father) died before the Act was amended in 2005. The Supreme Court ruled that the amended provision of Section 6 of the Hindu Succession Act, 1956, which grants daughters equal rights to ancestral property, would take effect retroactively from the Act's inception. As a result, daughters were entitled to inherit ancestral property even if the coparcener died before the amendment. This decision represented a significant step toward gender equality in succession laws, ensuring that daughters and sons are treated equally in inheritance matters. The decision clarified the law's retrospective application and had far-reaching implications for Indian property rights and family law.⁶

CASE: *Shalini Sumant Raut & Ors vs Milind Sumant Raut & Ors*

⁵ Explain In Detail The Character Of Mitakshara And Dayabhaga Coparcenary. Difference Between Them, 7 Nov 2020, https://lawcorner.in/explain-in-detail-the-character-of-mitakshara-and-dayabhaga-coparcenary-difference-between-them/#Coparcenary_of_Mitakshara_School

⁶ Coparcenary under Hindu Law: An Overview of the recent Amendments, Feb 2020, <https://blog.ipleaders.in/coparcenary-hindu-law/>

The case of Shalini Sumant Raut & Ors vs Milind Sumant Raut & Ors pertains to the devolution of ancestral property in a Hindu joint family. After the death of the coparcener, Rajaram, leaving behind 5 sons and 3 daughters, the property was delved upon by intestate succession under section 8 of the Hindu Succession Act. The court held that the interests in the ancestral property devolved to his sons and daughters, and the female heirs were entitled to a share in the property. This case is significant in the context of the 2005 amendment to the Hindu Succession Act, which granted daughters equal coparcenary rights in the ancestral property. The case reflects the evolving nature of the concept of coparcenary and its impact on gender equality and women's economic empowerment

DAYABHAGA COPARCENARY

- Dayabhaga Coparcenary is followed in Bengal and Assam.
- Dayabhaga coparcenary is based on the concept of succession and not survivorship
- coparcenary property distributed among legal heirs and not surviving co- parceners
- Right in property is there but only after the death of the father.
- There are certain features of dayabhaga coparcenary :-
 1. Right to Survivorship
 - No, there is no right of survivorship.
 - Dayabhaga coparcenary is not based on Doctrine of survivorship but is based on the principle of succession wherein the legal heirs are entitled to the property and not the surviving coparceners.
 2. Joint Management

The Members of the coparcenary have a Right to jointly Manage the Property and can take decisions regarding selling and leasing out.
 3. Share of Income Generated

Each and every coparcener is entitled to the profits generated and has a share in them.
Example; deceased
 4. Liability for Debts

Each and every coparcenary is liable to the Debts and their liability is limited to the share in the property.

Case: *Prakash and Ors v/s Phulavati and Ors*

Prakash and Ors v. Phulavati and Ors is a landmark case in Indian succession law, where the Supreme Court addressed the interpretation of Section 6 of the Hindu Succession Act, 1956, as amended in 2005. The dispute centered on the rights of daughters to inherit ancestral property when the coparcener had died prior to the amendment. The Supreme Court ruled that

the amended provision granting daughters equal rights in ancestral property would apply retrospectively from the date of the Act's commencement, ensuring gender equality in succession. The judgment provided clarity on the retrospective application of the law and had significant implications for inheritance rights in Hindu joint families, establishing a progressive precedent for gender equality in succession laws in India.

Case: *Sacchidananda Samantha v/s Ranjan Kumar Basu & Ors.*

Sacchidananda Samantha v. Ranjan Kumar Basu & Ors. is a notable case heard by the Calcutta High Court concerning property disputes. The case primarily revolved around the ownership and possession of a property and the validity of certain transactions related to it. While the specific details of the case are not provided in this summary, it can be inferred that the court examined the evidence, legal arguments, and relevant laws to adjudicate the matter. The judgment likely addressed issues such as title deeds, contractual agreements, and the rights of the parties involved. While further specifics of the ruling are not outlined here, the case would have had implications for property rights and legal principles within the jurisdiction of the Calcutta High Court.

Case: *Ipsa Ahmed Mogaria & Ors. v/s Abhramji Ahmadji Mogaria*

Ipsa Ahmed Mogaria & Ors. v. Abhramji Ahmadji Mogaria is a notable case heard by the Gujarat High Court involving property disputes within a family. The specifics of the case may include issues such as inheritance rights, ownership of land or assets, partition, or any other related matters. Without the full details of the case, it is difficult to provide a comprehensive summary. However, it can be presumed that the court would have examined the evidence, legal arguments, and relevant laws to make its determination. The judgment likely addressed the rights and interests of the parties involved, as well as any contractual agreements or legal principles pertinent to the case. This case would have had implications for property rights and family law within the jurisdiction of the Gujarat High Court.

CONCLUSION

In conclusion, the comparative analysis of Mitakshara and Dayabhaga coparcenary systems reveals contrasting approaches to property rights and inheritance within Hindu law.

Mitakshara emphasizes joint family unity and automatic inheritance by birth, promoting stability but perpetuating gender inequality and restricting individual freedom. On the other hand, Dayabhaga prioritizes individual ownership and flexibility, allowing for greater autonomy and adaptability to changing family dynamics. While Mitakshara ensures the continuity of the joint family through survivorship, Dayabhaga offers greater testamentary power and personalized distribution of assets. The choice between these systems often

reflects regional customs, cultural practices, and individual preferences, with variations and hybrid forms existing across different communities in India. In contemporary times, legal reforms aimed at promoting gender equality and individual autonomy have led to amendments in Hindu succession laws, addressing inherent biases and inequities within traditional coparcenary systems. Ultimately, the comparative analysis of Mitakshara and Dayabhaga coparcenary systems underscores the complex interplay between tradition and modernity, unity and autonomy, within the framework of Hindu family law. Both systems have shaped legal discourse and societal norms, contributing to the diverse heritage and evolving nature of Indian jurisprudence. As India continues its journey towards social progress and legal reform, understanding the nuances of these coparcenary systems remains essential for ensuring justice and equity in inheritance rights.

