



## A comparative analysis of women's property rights in the Dayabhaga and Mitakshara schools of Hindu Law considering constitutional equality and the Hindu Succession (amendment) Act, 2005

Sidhi Tiwari<sup>1</sup>, Dr. Umesh Kumar<sup>2</sup>

<sup>1</sup> Research Scholar, Department of Law, Himachal Pradesh University Summerhill, Shimla, Himachal Pradesh, India

<sup>2</sup> Professor, Department of Law Himachal Pradesh University, Summerhill, Shimla, Himachal Pradesh, India

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### Abstract

The economic standing of women in Hindu culture was largely shaped by the rules of succession and inheritance. The Dayabhaga and Mitakshara schools of Hindu law traditionally employed divergent views towards property rights leading to various levels of proprietary claim for women. The Dayabhaga school recognised a significantly wider scope of inheritance rights for female heirs while the Mitakshara school was based on the idea of coparcenary which barred women from joint family property to a great extent. These different legal systems mirrored the existing patriarchal norms and had a considerable impact on women's standing in the household and in society. The Hindu Succession Act, 1956, was a major step forward in reform, but large inequities remained, especially with regard to coparcenary rights. The Hindu Succession (Amendment) Act, 2005 brought about a radical shift by giving the daughters the status as coparceners by birth, equalising the position of sons and daughters in respect of ancestral property. This paper critically examines the property rights of women under the Dayabhaga and Mitakshara schools. It compares their underlying principles and evaluates them in the light of the constitutional guarantees of equality, non-discrimination and gender justice embodied in Articles 14, 15 and 21 of the Constitution of India. The paper contends that the 2005 Amendment is a significant step towards substantive equality in Hindu succession law.

**Keywords:** Women's inheritance rights, Dayabhaga, Mitakshara, coparcenary, Hindu Succession Act, constitutional equality, gender justice etc

### Introduction

The matter of women's rights in property has been one of the major issues in the development of Hindu personal law. "Property ownership is not merely an economic entitlement, it is a source of social status, autonomy and dignity. Hindu law has grown historically from several schools of interpretation. Of these diverse schools, the Dayabhaga and Mitakshara schools emerged as the most significant systems of inheritance and succession. These schools had different notions of ownership, of succession and of the rights of women family members. The Mitakshara school was based on the principle of coparcenary, which provided for male heirs by birthright and excluded women from ancestral property. The Dayabhaga school, which was followed mainly in Bengal, gave a relatively better right to inheritance to women by recognising succession on the death of the owner. The legal status of women under both systems reflected the patriarchal structure of old Hindu culture, whereby property rights tended to be associated with male lineage and family continuity.

The Hindu Succession Act, 1956 was established to codify and improve upon Hindu succession law by improving the proprietary status of women but large disparities remained as daughters were excluded from the coparcenary frame. The constitutional commitment to equality enshrined in Article 14 and 15 of the Constitution of India has challenged the constitutionality of gender-based discrepancy in inheritance laws. In response to the constant demands for reform, parliament approved the Hindu Succession (Amendment) Act, 2005, declaring girls' coparceners by birth and equal to boys in ancestral property. This change was a departure from the traditional norms of the patriarchal

culture and moved the Hindu law of succession closer to the constitutional ideals of equality, non-discrimination and gender justice. A comparative study of the Dayabhaga and Mitakshara schools in this regard throws light on the historical basis of women's property rights and the revolutionary nature of the present legal developments.

### The Principle of Inheritance in Hindu Jurisprudence

Inheritance is one of the basic concepts of the Hindu law. It is a law by which the property passes on the death of the owner. Classical Hindu law saw inheritance not just as a transfer of property but as an institution deeply bound up with family continuity, religious duties and spiritual wellness. The idea of succession was based on the premise that the successor inherited not only the property of the dead but also the obligation to execute funeral rituals and to provide spiritual benefits for ancestors. Thus, the right of succession was historically associated with the ability of the person to provide religious efficacy to the departed. This notion had a considerable effect on the laws of succession under the different schools of Hindu law.

Ancient Hindu jurists formulated inheritance regulations aimed at safeguarding familial property within the lineage and guaranteeing the continuous execution of religious obligations. Although blood links formed a significant foundation for succession, spiritual benefit and closeness to the departed were also crucial factors. The two primary schools of Hindu law, Dayabhaga and Mitakshara, diverged in their understanding of these concepts. The Dayabhaga school prioritised the principles of spiritual benefit (shraddha and pinda offerings) as the foundation of inheritance, whereas the Mitakshara school focused mostly

on the philosophy of proximity and the notion of shared familial ownership. These differing methods directly impacted the proprietary rights of women. Traditional Hindu law often banned women from the principal line of succession and awarded them very modest estates, mirroring the patriarchal societal structure. Nonetheless, some types of women, such as widows, mothers, and daughters, progressively gained acknowledgement as heirs under certain conditions. The contemporary law of succession, especially following the implementation of the Hindu Succession Act, 1956, and its 2005 amendment, has significantly altered traditional principles by substituting religious and gender-based distinctions with a framework based on equality and individual property rights.

### **Significance of Women's Property Rights**

The rights of women to own property are a key element of social equality, economic stability and human dignity. The capacity to acquire, transfer and manage property is the basis for defining the economic independence and social position of each person in any legal system. In the Hindu legal system, property rights have always been linked to family structure, patterns of succession, and social rank. Women's property rights were often denied or restricted, leading to economic dependency on male family members that curtailed their autonomy and involvement in decision-making processes. On the other hand, the acknowledgement of women's rights in property has been seen as an important tool for the improvement of their standing in the family and society. Property ownership gives women financial security, negotiating leverage and protection against the vulnerabilities of widowhood, abandonment, domestic abuse and other social disadvantages.

Women's property rights matter not just for the welfare of individual women, but also for the larger aims of equality and progress in society. Access to property provides women with more control over resources, livelihood choices and better involvement in economic activities. Equal inheritance rights disrupt the patriarchal conventions that have historically favoured male lineage and amassed wealth in men's hands. The belated recognition of the ownership interests of women in Hindu law is a case in point, a movement from archaic conceptions of dependency to ideas of equality and individual rights. Constitutional requirements of equality and non-discrimination as enshrined in Articles 14 and 15 of the Constitution give additional sources of support to women's property rights in contemporary India. The changes brought about by the Hindu Succession Act, 1956 and further strengthened by the Hindu Succession (Amendment) Act, 2005 are an awareness that gender parity cannot be attained without fair access to property and inheritance. Women's property rights are not just legal rights, but also important instruments for actual equality and women's empowerment in the family and society.

### **Historical Subjugation of Women Under Inheritance Legislation**

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historically favoured male lineage and amassed wealth in men's hands. The belated recognition of the ownership interests of women in Hindu law is a case in point, a movement from archaic conceptions of dependency to ideas of equality and individual rights. Constitutional requirements of equality and non-discrimination as enshrined in Articles 14 and 15 of the Constitution give additional sources of support to women's property rights in contemporary India. The changes brought about by the Hindu Succession Act, 1956 and further strengthened by the Hindu Succession (Amendment) Act, 2005 are an awareness that gender parity cannot be attained without fair access to property and inheritance. Women's property rights are not just legal rights, but also important instruments for actual equality and women's empowerment in the family and society.

The Dayabhaga school provided relatively greater acknowledgement to specific female heirs, especially widows, but it did not create absolute equality between genders. The rights of women to inherit were frequently dependent on the lack of male heirs and were rationalised more as exceptions than as affirmations of equal entitlement. The doctrine of a woman's limited estate further diminished proprietary autonomy by limiting her ability to alienate inherited property. Consequently, inherited property often remained under the de facto control of male relatives despite the formal acknowledgement of female succession. These legal disabilities mirrored wider societal beliefs about women's dependence and their perceived incapacity to manage familial assets. Colonial courts predominantly upheld these conventional principles, thus perpetuating existing disparities within the inheritance system.

The codification of Hindu law after independence marked a significant departure from these discriminatory norms. The Hindu Succession Act, 1956 abolished many traditional restrictions and transformed the limited estate of a woman into absolute ownership. But, the denial of status to daughters as coparceners under the Mitakshara structure as it continued, had an important feature of historical inequality. It was only with the Hindu Succession (Amendment) Act, 2005 that daughters were recognised as coparceners by birth thereby putting an end to one of the most long-standing forms of gender discrimination in Hindu law of inheritance. The amendment is a legislative response to centuries of exclusion and an attempt to bring succession laws in line with constitutional principles of equality and gender justice.

### **Research Objectives**

1. To analyse women's property rights within the framework of Dayabhaga.
2. To examine women's property rights within the Mitakshara school of law.
3. To analyse the inheritance and coparcenary rights available to women.
4. To evaluate the impact of constitutional principles and statutory reforms.

### **Research Question**

1. Did the Dayabhaga School provide relatively better proprietary rights to women than the Mitakshara School, and how far have modern statutory reforms eliminated these historical disparities?

2. How did the Dayabhaga and Mitakshara schools differ in their treatment of women as heirs and holders of property rights?
3. To what extent did traditional Hindu inheritance laws contribute to the economic and legal subordination of women; and How did the Hindu Succession Act, 1956 reform the proprietary rights of women under Hindu law?
4. Whether the Hindu Succession (Amendment) Act, 2005 has effectively eliminated the gender-based disparities that existed under the Mitakshara coparcenary system?

### **Methodology**

This study employs a doctrinal and analytical research methodology to investigate women's property rights within the Dayabhaga and Mitakshara schools of Hindu law, considering constitutional equality and the Hindu Succession (Amendment) Act, 2005. The study predominantly relies on secondary sources, encompassing classical Hindu law treatises, statutory enactments, judicial rulings, academic writings, commentaries, journal articles, and constitutional provisions. Significant emphasis has been placed on authoritative texts, including H.T. Colebrooke's analysis of the Dayabhaga and Mitakshara schools, A.S. Altekar's examination of the historical status of women in Hindu civilisation, and established commentaries on Hindu law. These sources have been employed to delineate the historical evolution of inheritance principles and the legal standing of women within the Hindu succession system. The research utilises a comparative methodology to examine the differing principles regulating women's property rights within the Dayabhaga and Mitakshara frameworks. It analyses the degree to which each school acknowledged women's rights to inheritance, ownership, and succession, while also delineating the legal constraints placed on female heirs. The study further assesses the effects of legislative changes implemented by the Hindu Succession Act of 1956 and the Hindu Succession (Amendment) Act of 2005. Furthermore, pertinent rulings from the Supreme Court and various High Courts have been meticulously analysed to evaluate the judicial interpretation of women's inheritance rights and the advancing notion of gender justice. The constitutional framework constitutes a fundamental element of the analysis. The research assesses both traditional and modern succession laws concerning the principles of equality, non-discrimination, and dignity as enshrined in Articles 14, 15, and 21 of the Indian Constitution. This research employs historical, comparative, statutory, and constitutional analysis to ascertain whether modern Hindu succession law has adequately rectified the historical inequities faced by women and whether the legal reforms have successfully promoted substantive gender equality in inheritance and property ownership.

### **Research Hypothesis**

Despite both schools originating under patriarchal Hindu law, the Dayabhaga School granted broader property rights to women, especially widows, than the Mitakshara School. The Hindu Succession Act of 1956 and its 2005 Amendment have significantly altered conventional Hindu inheritance laws by establishing gender equality in coparcenary rights.

### **Historical Development of Hindu Succession**

The law of succession in Hindu law has evolved over centuries by blending religious doctrines, customary practices and juristic interpretations. During the early Vedic period, property relations were largely determined by patriarchal family relations, with inheritance primarily along the male line. The rules of succession were based on the continuity of the family and the performance of religious obligations, especially funeral rites and offerings to ancestors. The sons being the main participants in these religious duties were in a favoured position in the scheme of inheritance. While women were respected within the household, they generally had few proprietary rights and often depended on male relatives for economic security. An important exception was the concept of *stridhana*, which recognised a woman's exclusive ownership of certain kinds of property received by way of gifts, marriage, or inheritance. But such rights were much less extensive, however, than were those of men.

With the development of Hindu law, various schools of interpretation developed, resulting in variations in succession principles in various regions. The two most influential schools, Mitakshara and Dayabhaga, offered different answers to the question of inheritance. The Mitakshara school was founded on the commentary of Vijnaneshwara on the *Yajnavalkya Smriti*. It stressed the doctrine of birthright and joint family ownership. Under this system, male coparceners acquired an interest in ancestral property by birth. Women did not come within the coparcenary. The Dayabhaga school founded by Jimutavahana, on the other hand, rejected the doctrine of birthright, and accepted succession on the death of the owner. This gave some female heirs, especially widows a slightly larger share of the inheritance than under the Mitakshara system. But both schools represented the dominant patriarchal standards and did not establish full parity between men and women concerning property and succession.

British courts increasingly relied upon textual Hindu law during the colonial period in their attempts to administer personal laws through authoritative Sanskrit texts and juristic commentaries. While this process did bring about a greater uniformity of rules of succession, it also cemented a number of traditional disabilities on women. The nineteenth and twentieth centuries saw the rise of social reform movements which drew attention to the inequalities of Hindu inheritance law and called for greater recognition of women's proprietary rights. Significant efforts were made to improve the legal position of widows through legislative interventions such as the Hindu Women's Right to Property Act, 1937 which gave them a share in joint family property, though such rights were limited in nature.

Post independence, the Hindu Succession Act, 1956 was enacted and witnessed a radical transformation. The Act codified and updated Hindu succession law, abolished many of the traditional distinctions between female heirs, and under Section 14 converted a woman's limited estate into absolute ownership. Nevertheless, daughters were not part of the Mitakshara coparcenary system, which continued to be one of the major sources of gender inequality. This anomaly was finally rectified by the Hindu Succession (Amendment) Act, 2005, which granted daughters born coparcenary rights and placed them on an equal footing with sons. This amendment is the final stage in the historic

evolution of the Hindu succession law from the patriarchal and religious system of succession to a system that is increasingly subject to constitutional principles of equality, dignity and gender justice.

### **Ancient Sources of Hindu Succession**

The foundations of Hindu succession law can be traced to ancient religious and legal texts that governed social relations, family organization, and property rights in early Hindu society. These sources provided the normative framework from which later jurists developed the principles of inheritance and succession. The Vedas, Smritis, and their subsequent commentaries collectively shaped the legal understanding of property devolution and the status of heirs within the Hindu family system.

#### **Vedas**

The Vedas constitute the earliest and most authoritative source of Hindu law. Although they do not contain a systematic law of inheritance, they reflect the social and religious values that influenced the development of succession principles. Vedic literature emphasized the importance of lineage, family continuity, and the performance of ancestral rites. The preference for male heirs emerged largely from the belief that sons were responsible for performing funeral ceremonies and ensuring the spiritual welfare of deceased ancestors. Nevertheless, certain Vedic references indicate that women enjoyed a comparatively respected position in society and, in specific circumstances, could possess and control property.

#### **Smritis**

The Smritis represent the most significant source for the development of classical Hindu succession law. Composed by ancient jurists, these texts translated religious principles into practical legal rules governing inheritance, partition, marriage, and property. The Smritis sought to regulate succession by identifying eligible heirs and determining the order in which property should devolve. Most Smriti writers prioritized male descendants while recognizing limited rights for female relatives such as widows, daughters, and mothers. The divergent interpretations of these texts later gave rise to the Dayabhaga and Mitakshara schools of Hindu law.

#### **Manusmriti**

The Manusmriti occupies a prominent place among the Smritis and exercised considerable influence on the evolution of Hindu inheritance law. It reflected the patriarchal structure of ancient Hindu society and generally favored male succession. The text viewed sons as the primary heirs and assigned women a dependent status within the family. Although provisions relating to 'stridhana' recognized a woman's separate property, inheritance rights for daughters and widows remained restricted. The Manusmriti therefore contributed to the institutionalization of gender-based distinctions in matters of property and succession.

#### **Yajnavalkya Smriti**

The Yajnavalkya Smriti introduced a more systematic and sophisticated treatment of inheritance law. It classified heirs according to their relationship with the deceased and provided clearer rules regarding succession and partition.

The text served as the principal foundation of the Mitakshara school and exerted a profound influence on later Hindu jurisprudence. While it continued to prioritize male heirs, it recognized certain proprietary interests of women, particularly in relation to stridhana and widowhood. Its comparatively structured approach made it one of the most authoritative sources of classical Hindu law.

#### **Narada Smriti**

The Narada Smriti is regarded as one of the earliest legal treatises devoted substantially to juridical matters. It elaborated rules relating to inheritance, property disputes, and family relations. The text emphasized blood relationship and legal proximity in determining succession and contributed significantly to the development of Hindu inheritance doctrines. Although it did not radically improve the proprietary position of women, it recognized the rights of certain female heirs in the absence of closer male relatives. Its discussions on succession influenced later jurists and judicial interpretations in the development of Hindu personal law.

Collectively, these ancient sources laid the intellectual and legal foundations of Hindu succession law. While they reflected the social realities of their time and generally favored male inheritance, they also provided the basis upon which later reforms and judicial interpretations evolved. The modern law of succession, particularly after the Hindu Succession Act, 1956 and its amendment in 2005, represents a significant departure from many of these traditional principles by affirming equal proprietary rights for women.

#### **Women's Position in Ancient Hindu Society**

The position of women in ancient Hindu society presents a complex picture that varied across different historical periods. During the early Vedic age, women occupied a relatively dignified and respected position within the family and society. They were entitled to education, participated in religious ceremonies, and, in certain instances, engaged in philosophical debates alongside men. Women such as Gargi and Maitreyi are frequently cited as examples of female intellectual achievement in Vedic literature. Marriage was regarded as a sacred partnership, and women played an important role in the performance of religious rites. However, the gradual transformation of social institutions and the increasing emphasis on patriarchal lineage led to a decline in the legal and economic status of women.

By the Smriti period, inheritance and property rights became increasingly centred on male descendants. The preference for sons was closely associated with the religious belief that only male heirs could effectively perform funeral rites and offer pinda and shradha to ancestors. As a consequence, women were generally excluded from the principal line of succession and remained economically dependent upon fathers, husbands, or sons. Although they enjoyed social recognition as wives and mothers, their legal capacity to own and inherit property remained limited. The resulting framework laid the foundation for the gender inequalities that later characterized both the Dayabhaga and Mitakshara systems of inheritance.

#### **Stridhana Concept**

Among the few proprietary rights available to women under ancient Hindu law, the institution of stridhana represented the most significant. The term stridhana refers to property

exclusively belonging to a woman and constituted an exception to the general rule of male control over family assets. Ancient jurists recognized various categories of stridhana, including gifts received from parents, brothers, relatives, husband, and other persons at the time of marriage or during the woman's lifetime. Unlike joint family property, stridhana was treated as the separate property of the woman, over which she enjoyed a recognized proprietary interest.

The concept acquired particular importance because it provided women with a degree of economic security within a predominantly patriarchal social order. While different schools of Hindu law differed regarding the extent of a woman's power to alienate or dispose of such property, there was broad acceptance of the principle that stridhana belonged exclusively to her. Over time, the concept influenced legislative reforms that expanded women's proprietary rights and eventually culminated in the recognition of full ownership under modern Hindu law. Thus, stridhana served as an early legal acknowledgment of women's independent property rights, despite the broader limitations imposed by traditional succession rules.

### **Widow's Rights**

The legal position of widows under traditional Hindu law reflected both recognition and restriction. In a society where inheritance primarily favoured male heirs, widows often occupied a vulnerable economic position following the death of their husbands. Under the Mitakshara system, a widow was excluded from the coparcenary and did not acquire an interest in ancestral property by birth. Her rights were generally confined to maintenance and, in certain circumstances, succession to her husband's separate property. Even when property devolved upon her, she usually held only a limited estate, which restricted her ability to alienate or dispose of the property according to her own wishes.

The Dayabhaga school afforded widows a comparatively stronger position. Since inheritance opened only upon the death of the owner, widows could succeed to their husband's property in the absence of closer heirs. Nevertheless, their rights remained subject to several legal restrictions, and full ownership was rarely recognized. The inadequacies of the traditional system eventually prompted legislative intervention. The Hindu Women's Right to Property Act, 1937 significantly improved the position of widows by granting them an interest in joint family property, while the Hindu Succession Act, 1956 converted the limited estate into absolute ownership under Section 14. These reforms marked a decisive shift from dependency toward proprietary autonomy and laid the foundation for contemporary gender equality in inheritance law.

### **Dayabhaga School and Women's Property Rights Origin**

The Dayabhaga School is one of the principal schools of Hindu law governing inheritance and succession. It was propounded by the eminent jurist Jimutavahana, whose treatise 'Dayabhaga' laid down a distinct scheme of succession based on the doctrine of spiritual benefit. Unlike the Mitakshara School, which dominated most parts of India, the Dayabhaga School came to be predominantly followed in Bengal and later extended its influence to parts

of Eastern India, including present-day West Bengal, Assam, and Tripura. The school developed an independent theory of inheritance that substantially influenced the legal position of women in matters of succession and property rights.

### **Important Features**

#### **a. No Birthright**

A distinctive feature of the Dayabhaga School is its rejection of the doctrine of birthright. Under this system, a son does not acquire an interest in ancestral property merely by being born into the family. Ownership remains vested exclusively in the father during his lifetime, and the son acquires no proprietary right until succession actually opens. This principle sharply distinguishes the Dayabhaga system from the Mitakshara School, where a son becomes a coparcener by birth.

#### **b. Property Devolves After Father's Death**

Since the Dayabhaga School does not recognize birthright ownership, succession takes effect only after the death of the property holder. During his lifetime, the father enjoys absolute control over his property and possesses broad powers of management, transfer, and alienation. The heirs acquire rights only upon his death. This principle had significant implications for women because the absence of survivorship created greater opportunities for female relatives to inherit property.

#### **c. Better Rights for Women**

One of the most progressive aspects of the Dayabhaga School was its comparatively favourable treatment of women in matters of succession. Unlike the Mitakshara system, which largely excluded women from coparcenary ownership, the Dayabhaga School recognized women as heirs in a more meaningful manner. Female relatives were included within the order of succession and could inherit property in circumstances where male heirs were absent or where the succession rules so provided. As a result, women enjoyed a stronger legal position and greater economic protection than under the traditional Mitakshara framework.

#### **d. Widow Could Inherit Husband's Estate**

The Dayabhaga School expressly recognized the widow as a legal heir to her husband's estate. Upon the death of the husband, the widow could succeed to his property and enjoy proprietary rights therein. This recognition marked a significant departure from many traditional inheritance principles that prioritized male succession and relegated women to claims for maintenance alone.

#### **e. Female Heirs Recognised More Extensively**

The scheme of succession under the Dayabhaga School accorded greater recognition to female heirs than the Mitakshara School. Widows, daughters, and certain other female relatives were included within the succession framework and could inherit property under specified circumstances. Although these rights were not equivalent to those enjoyed by male heirs, they nevertheless reflected a more inclusive approach to inheritance and represented an important step toward acknowledging women's proprietary interests.

## **Widow's Position**

### **a. Widow Succeeds in Absence of Sons**

Under the Dayabhaga system, the widow occupied an important place in the order of succession. In the absence of sons, she succeeded to her husband's estate and acquired a legal interest in the property. Her right was recognized as a right of inheritance rather than merely a right of maintenance. Consequently, widows enjoyed a greater degree of economic security and legal protection than under many other traditional systems of inheritance.

### **b. Enjoys Larger Inheritance Rights than Under Mitakshara**

The rights available to widows under the Dayabhaga School were substantially broader than those recognized under the Mitakshara system. Since succession opened only after the death of the owner and the doctrine of survivorship did not operate in the same manner, widows could inherit property that would otherwise have passed exclusively to male coparceners under Mitakshara law. Although the widow's estate was generally limited in nature, her legal position remained considerably stronger than that of a widow governed by traditional Mitakshara principles.

## **Critical Analysis**

From the perspective of women's property rights, the Dayabhaga School represented a relatively progressive approach when compared with the Mitakshara School. By rejecting birthright ownership and recognizing women, particularly widows, as heirs, it created greater opportunities for female participation in inheritance. The school provided widows with a recognized proprietary interest and expanded the category of female heirs within the succession framework. However, the Dayabhaga system did not establish complete gender equality. Women's rights remained secondary to those of male heirs, and inherited property was frequently subject to the restrictions of a limited estate. Therefore, while Dayabhaga marked a significant advancement within classical Hindu law, it remained rooted in a patriarchal social structure. Genuine equality in succession required later legislative reforms, particularly the Hindu Succession Act, 1956 and the Hindu Succession (Amendment) Act, 2005, which sought to place women and men on a more equal footing in matters of inheritance and property ownership.

## **Mitakshara School and Women's Property Rights Origin**

The Mitakshara School is the most influential and widely followed school of Hindu law. It derives its authority from the 'Mitakshara', a celebrated commentary on the Yajnavalkya Smriti written by the jurist Vijñaneshwara in the eleventh century. Owing to its comprehensive treatment of inheritance, succession, and joint family property, the Mitakshara School became the dominant legal system throughout most parts of India, including northern, western, southern, and central regions. Prior to the codification of Hindu law, it governed the rights of Hindus in matters of succession and property across a vast geographical area.

## **Features of the Mitakshara School**

### **a. Coparcenary Concept**

The most distinctive feature of the Mitakshara School is the doctrine of coparcenary. A coparcenary consists of male

members of a Hindu joint family who acquire a proprietary interest in ancestral property by virtue of birth. Under this system, ancestral property is regarded as joint family property, and ownership is shared among coparceners. Every coparcener possesses an undivided interest in the property and is entitled to seek partition. The doctrine reflects the collective nature of the Hindu joint family and forms the foundation of the Mitakshara law of succession.

### **b. Rights Acquired by Birth**

Unlike the Dayabhaga School, the Mitakshara system recognizes birthright ownership. A son acquires an interest in ancestral property immediately upon birth and becomes a coparcener along with his father and other male descendants. Consequently, the father's powers over ancestral property are restricted because he cannot deal with such property as its absolute owner. The doctrine of birthright significantly shaped the structure of Hindu inheritance and contributed to the exclusion of women from proprietary rights in ancestral property.

### **c. Women Excluded from Coparcenary**

Traditional Mitakshara law excluded women from the coparcenary structure. Since only male descendants could become coparceners, women were denied participation in the ownership and management of ancestral property. Daughters, wives, and mothers were treated as members of the family but were not recognized as coparceners with proprietary rights in joint family property. This exclusion represented one of the most significant legal disabilities imposed upon women under classical Hindu law.

### **d. No Right by Birth**

Because women were not coparceners, they did not acquire any interest in ancestral property by birth. While a son became entitled to a share immediately upon birth, a daughter remained outside the framework of joint ownership. Her rights, if any, arose only through succession and were substantially inferior to those enjoyed by male members of the family. This distinction reflected the patriarchal assumptions underlying the traditional law of inheritance.

### **e. Limited Succession Rights**

The succession rights available to women under the Mitakshara School were highly restricted. Female heirs could inherit property only under specific circumstances and often ranked below male heirs in the order of succession. Even where inheritance was recognized, the proprietary interest acquired by women was frequently limited in nature. Such restrictions curtailed women's economic independence and reinforced their dependence on male relatives for financial security.

### **f. Dependence Upon Male Lineage**

The Mitakshara system was fundamentally organized around the concept of male lineage and family continuity. Property was intended to remain within the male line of descent, and succession rules were designed accordingly. Women's legal status in matters of inheritance was therefore largely derivative, being dependent upon their relationship with a male member of the family. This approach significantly restricted the development of independent property rights for women.

## Widow's Position

### a. Widow Generally Could Not Become Coparcener

Under traditional Mitakshara law, a widow could not become a coparcener because coparcenary membership was restricted to male descendants. Upon the death of her husband, she did not acquire his coparcenary interest as an owner in the same manner as a surviving male coparcener. Instead, the doctrine of survivorship operated to transfer the deceased coparcener's interest to the remaining male members of the coparcenary. Consequently, the widow was excluded from the ownership structure of joint family property.

### b. Only Limited Estate Available

Where a widow inherited property under certain exceptions recognized by law, she generally acquired only a limited estate. Such an estate entitled her to enjoy the income and benefits of the property during her lifetime but restricted her power to alienate, transfer, or dispose of it. The concept of the Hindu woman's limited estate reflected the belief that property should ultimately revert to the husband's lineage rather than pass under the independent control of the widow. This limitation remained a significant obstacle to women's economic autonomy until legislative reforms in the twentieth century.

## Critical Analysis

The Mitakshara School played a decisive role in shaping traditional Hindu inheritance law; however, its impact on women's property rights was largely exclusionary. Through the doctrines of coparcenary, birthright, and survivorship, it institutionalized male dominance over ancestral property and confined ownership within the male line of descent. Women were excluded from coparcenary membership, denied rights by birth, and granted only limited inheritance rights. The widow's position further illustrated the restrictive nature of the system, as her proprietary interests were often subordinated to those of surviving male relatives. Although the Mitakshara School reflected the social realities of its time, it perpetuated structural inequalities that prevented women from enjoying equal rights in property. The constitutional commitment to equality and the reforms introduced through the Hindu Succession Act, 1956 and the Hindu Succession (Amendment) Act, 2005 were therefore necessary to dismantle these historical barriers and extend equal proprietary rights to women, particularly daughters, within the Hindu family.

The foregoing discussion highlights the key differences between the Dayabhaga and Mitakshara schools regarding women's property rights. These comparative findings are summarized in Table 1 below:

Table 1

Basis	Dayabhaga	Mitakshara
Right by Birth	No	Yes
Coparcenary	Absent	Present
Women's Position	Comparatively Better	Comparatively Inferior
Widow's Rights	Stronger	Weaker
Succession Principle	Inheritance	Survivorship
Female Heirs	Wider Recognition	Restricted Recognition

## Constitutional Perspective

The evolution of women's property rights in India cannot be understood solely through the lens of traditional Hindu law.

The adoption of the Constitution of India introduced a new normative framework founded upon equality, dignity, and social justice. Constitutional principles have played a decisive role in challenging discriminatory inheritance rules and have significantly influenced legislative reforms relating to women's property rights. The historical exclusion of women from ownership and succession, particularly under the Mitakshara system, increasingly came into conflict with the constitutional commitment to gender equality. Consequently, succession laws were subjected to scrutiny in light of the broader objectives of constitutionalism and social transformation.

## Article 14: Equality before Law

Article 14 guarantees equality before the law and equal protection of the laws to all persons. This provision embodies the principle that similarly situated individuals should be treated alike and prohibits arbitrary discrimination. Traditional inheritance rules that excluded daughters from coparcenary rights solely on the basis of sex created a legal distinction that was difficult to reconcile with the constitutional mandate of equality.

## Article 15: Prohibition of Discrimination

Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Gender-based exclusions embedded in traditional succession laws effectively denied women equal access to family property and inheritance. The constitutional prohibition against discrimination provided a strong foundation for subsequent legislative measures designed to eliminate inequalities in property ownership and succession.

## Article 15(3): Protective Discrimination

While Article 15 prohibits discrimination, Article 15(3) authorizes the State to make special provisions for women and children. This provision recognizes that formal equality alone may be insufficient to address historical disadvantages and permits affirmative legal measures aimed at improving the status of women. Several legislative reforms relating to inheritance and property rights can be viewed as manifestations of this constitutional commitment to substantive equality.

## Article 21: Right to Dignity

The Supreme Court has consistently interpreted Article 21 as encompassing the right to live with dignity. Economic independence and access to property are integral components of individual dignity and personal autonomy. The denial of inheritance rights not only affects a woman's financial security but also undermines her social status and capacity for independent decision-making. Equal property rights therefore contribute directly to the realization of the constitutional guarantee of a dignified life.

## Directive Principles and Gender Justice

The Directive Principles of State Policy emphasize the establishment of a social order based on justice, equality, and welfare. Articles 38 and 39 encourage the State to reduce inequalities and ensure that men and women have equal access to material resources. Although non-justiciable, these principles have provided important guidance for legislative reforms aimed at achieving gender justice in matters of succession and inheritance.

### **Argument: Traditional Mitakshara Rules and Constitutional Equality**

The traditional Mitakshara system was largely inconsistent with constitutional principles of equality. By restricting coparcenary membership to male descendants and denying daughters rights by birth, it institutionalized gender-based distinctions in the ownership of ancestral property. The doctrine of survivorship further reinforced male dominance by ensuring that property remained within the male line of descent. These rules reflected historical social conditions but became increasingly incompatible with the constitutional vision of equal citizenship and non-discrimination. The demand for reform was therefore not merely a matter of legal modernization but a constitutional necessity aimed at eliminating structural barriers to women's equality.

### **Statutory Reforms**

The Hindu Women's Right to Property Act, 1937 was the first important statutory attempt to improve the proprietary situation of Hindu women. The Act conferred widows an interest in the property of their deceased husbands and allowed them to enjoy certain rights reserved for male heirs. The estate conferred, but still limited in nature. The legislation was an important departure from the traditional exclusion of women from property ownership.

### **Hindu Succession Act, 1956**

The Hindu Succession Act, 1956 was an important landmark in the codification and reform of Hindu succession law. The Act introduced a uniform scheme of succession for the Hindus and also greatly enlarged the rights of female heirs. Most importantly, section 14 converted a woman's limited estate into her absolute property thereby enhancing her proprietary autonomy. Nevertheless, the Act did not abolish the Mitakshara coparcenary system and did not confer coparcenary rights on daughters by birth. Thus, a large expanse of gender inequality remained untouched.

### **The Hindu Succession (Amendment) Act, 2005**

The Hindu Succession (Amendment) Act, 2005 is the most important reform that has happened in the history of Hindu succession law. This amendment substituted section 6 in the 1956 Act and made daughters coparceners by birth in the same way as sons. Daughters were given equal rights and equal liabilities with male coparceners in ancestral property. This reform virtually eliminated one of the most persistent disabilities imposed on women under the traditional Mitakshara system and brought Hindu succession law into closer conformity with constitutional principles of equality and gender justice.

The 2005 amendment transformed the legal landscape by recognizing daughters as equal participants in the ownership and transmission of family property. It not only corrected a long-standing historical injustice but also reinforced the constitutional commitment to substantive equality. Through this reform, Hindu succession law moved significantly closer to achieving gender-neutral inheritance rights and dismantling the patriarchal assumptions that had historically governed the law of property and succession.

### **Conclusion**

The comparative analysis of the Dayabhaga and Mitakshara schools of Hindu law demonstrates that women's property

rights have historically been shaped by patriarchal notions of family, inheritance, and ownership. While both schools emerged from the same legal and cultural tradition, they differed significantly in their treatment of female heirs. The Dayabhaga School adopted a comparatively liberal approach by recognizing widows and other female relatives as heirs and permitting succession only after the death of the property holder. In contrast, the Mitakshara School was founded upon the doctrines of coparcenary, birthright, and survivorship, which effectively excluded women from ownership of ancestral property and confined inheritance within the male line of descent. Consequently, women remained economically dependent and legally disadvantaged for centuries under the traditional succession framework.

The constitutional commitment to equality, dignity and non-discrimination fundamentally changed the legal understanding of inheritance rights in independent India. Legislative reforms started from "Hindu Women's Right to Property Act, 1937" and culminated in "Hindu Succession Act, 1956" to improve proprietary status of women. But more transformative was the passage of "Hindu Succession (Amendment) Act, 2005" which gave daughters coparcenary rights by birth and ended one of the most entrenched products of gender discrimination under the Mitakshara law. Judicial pronouncements, particularly in "Vineeta Sharma v. Rakesh Sharma" have strengthened the principle that daughters are entitled to equal rights in ancestral property. While progress has been significant, women continue to face challenges in fully enjoying their property rights due to social barriers, lack of awareness and unequal implementation. The transition from restricted inheritance rights to equal coparcenary rights is not just a legal change but a part of a larger movement for substantive gender justice and constitutional equality in India.

### **Suggestions**

- 1. Strengthening Legal Awareness:** Government agencies, educational institutions, and civil society organizations should undertake awareness programmes to educate women about their inheritance and property rights under the Hindu Succession Act and its amendments.
- 2. Effective Implementation of the 2005 Amendment:** Administrative authorities and revenue officials should ensure the prompt mutation and recording of daughters' rights in ancestral property to prevent discrimination at the implementation stage.
- 3. Simplification of Succession Procedures:** Legal and administrative procedures relating to succession, partition, and inheritance should be simplified to facilitate easier access to property rights, particularly for women residing in rural areas.
- 4. Judicial Sensitization:** Continuous judicial training and sensitization regarding gender justice and constitutional equality can contribute to more effective enforcement of women's inheritance rights.
- 5. Promotion of Gender-Neutral Property Practices:** Families should be encouraged to recognize daughters as equal stakeholders in family property, thereby fostering a culture of equality beyond legal compliance.

- 6. Further Research and Policy Review:** Continuous assessment of the practical impact of inheritance reforms should be undertaken to identify persistent barriers and formulate policies that ensure the effective realization of women's economic rights.

The recognition of equal property rights is indispensable for achieving genuine gender justice. Legal equality in succession must be accompanied by social acceptance and effective implementation to ensure that women enjoy not only formal rights but also meaningful control over property and economic resources.

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