

Hello friends. My name is SONALI NAIK

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The name of the module which I'm going to be

discussing today is Schools of Hindu law.

The outline of this study the schools of

thought or Hindu law that prevailed in

India before the codification of the laws,

The two main schools are the MITAKSHARA

school and the DAYABHAGA School.

The learning outcomes of this study.

The study of schools will brief

us about the prevalence of the

different schools of thought in India.

It would also highlight the fundamental

differences between the schools of thought.

The introduction.

Schools of Hindu law.

The schools of Hindu law

had great importance.

During the era of the uncoded

system of law,

today we have the uniform sets of

rules applicable to all Hindus

throughout the country except the

State of Goa where we have uniform

rules irrespective of religion.

The emergence of schools of thoughts

can be traced to the era of commentaries

and digest and this period is

generally known as the period of

systematic building up of law.

It was during this period that

the proper analysis and the systematic

assimilation of Hindu Law took place.

The two schools that is the MITAKSHARA

school and the DAYABHAGA school constitute

the main schools of Hindu law.

Both these are chief guides on Hindu law.

But the authority of these guides rose to such

great heights and great

predominance that the two grew as

chief schools of Hindu thought.

The MITAKSHARA school is generally considered

as more Orthodox and conservative,

whereas the DAYABHAGA school is usually

referred to as a reformist school as it.

propagates progressive views. .

The date of composition of the MITAKSHARA dates back between A.D. 1100 -1200.

MITAKSHARA is a running commentary on

the code of the sage named Yajnavalkya.

It was authored by a sage,

a jurist named Vijnaneshwara.

Whereas the DAYABHAGA is a digest

on all leading smritis.

It was authored by a sage

named Jimutavahana

during the period 1090 to 1130 AD..

Let us go to the prevalence of these schools.

The MITAKSHARA is accepted as

the highest authority throughout the

country and it holds sovereign sway over

most of India except the states of Bengal.

and Assam where the DAYABHAGA school prevails.

However, we must understand that the

MITAKSHARA is of

such high authority that in relation to

topics which are uncovered by the DAYABHAGA,

the MITAKSHARA would still prevail in Bengal and.

Assam.

The MITAKSHARA school

deals with all titles of Hindu law.

It deals with the law relating to marriage,

succession, joint, family property,

partition, guardianship, adoption, etc.

But the DAYABHAGA school mainly concerns itself

only with partition and inheritance.

And as I've said in my previous slide,

wherever the DAYABHAGA is silent,

the MITAKSHARA would prevail.

The MITAKSHARA School is further

subdivided or is further classified

into four sub schools which prevail

in different parts of the country.

Most of these schools follow
the same principles or
the same fundamental principles,
but they differ in terms of minor details,
and especially in matters relating to
succession and the joint family.

The various schools sub schools
are as such; the Banaras school which
usually extends to the whole of North
India except rural Punjab which
follows the customary laws.

The Mithila school which operates in
Tirhut and parts of North Bihar.

The Bombay School,
also called as a Maharashtra school
which prevails in western India
and the Madras School which is also
called as a Dravid school and which
prevails in the whole of South India.

The DAYABHAGA School on the other hand
does not have any subschools

Now coming to the classification of property;

The MITAKSHARA school classifies

property into two kinds,

the unobstructed heritage and

the obstructed heritage.

The unobstructed heritage is

called as Apratibandha Daya

Whereas the obstructed heritage is

called as the Sapratibandha Daya.

The term Apratibandha means unobstructed

and Sapratibandha means obstructed.

and Daya means heritage or estate.

Apratibandha Daya or Unobstructed heritage is

estate which is inherited

by a person from the father,

grandfather and great-grandfather.

The sons who are born into this family

acquire a birthright into this property.

The property accrues by birth and

is called an unobstructed because

the accrual of the right to

this property is not obstructed by
the existence of an owner or the
holder of estate.

This property always devolves
by way of survivorship upon the
surviving coparcener.

It does not pass on by succession to the
heirs of the deceased.

On the other hand,

Sapratibandha

means obstructed and Daya means heritage.

This property is obstructed heritage

It is called as obstructed heritage

because the right or the accrual

of the right to this property is

obstructed by the existence of an owner.

This property includes all property

which is inherited by a person from relations other

than Father GrandFather or Greatgrandfather.

The person who inherits this property,

inherits it as a full owner.

His sons or grandsons or great grandsons

do not have an interest in it by birth.

The person is the absolute owner

and therefore has wide powers of

alienation and disposal over it.

This property always succeeds by way of

succession to the heirs of the deceased.

However, the DAYABHAGA School does

not admit such classification.

According to the DAYABHAGA school all property is

Sapratibandha Daya or obstructed heritage.

According to the Law of Succession,

the fundamental differences between the

two schools is with respect to the law of

succession and the law of joint family.

Now let us go to the law of succession;

The MITAKSHARA school bases its law succession

on the Doctrine/ principles of propinquity,

which means nearness or proximity

of blood relations.

Whereas the DAYABHAGA school bases its

law of succession on the principles of religious efficacy or spiritual benefits.

The MITAKSHARA school and the Law of Propinquity.

Now according to this principle, a person who is nearer in blood relationship to the deceased will succeed to the property of the deceased.

Let me give you 2 examples here.

If a father dies leaving behind his son and his daughter.

Then, according to the principle of propinquity his son as well as his daughter would inherit his property because both of them are related to the deceased in the same in the same degree of relationship.

If a man dies leaving behind a son's son and a daughter's son, based on the principle of propinquity, it would mean that the son's son and the daughter's son would inherit

equally and simultaneously since both
these relations stand in the same degree
of relationship with that of the deceased ancestor.

However,

what we need to know here is

that the MITAKSHARA school did not

give full application to this principle,

It was limited by two subsidiary rules.

1. The exclusion of females and
2. The preference of agnates over cognates.

Now accordingly it would mean that with

respect to the first example given,

the son would exclude the

daughter from inheritance and in

relation to the second example.

The son's son would exclude

the daughter's son, the daughter's son being a cognate.

The DAYABHAGA School bases its law of

inheritance on religious efficacy.

This principle implies that one who

is able to offer or one who offers

more spiritual or religious benefits on the manes of the deceased ancestor,

that is, the Pinda of the paternal or the maternal ancestor through Pindadana, would succeed to the property of the deceased in preference to others who confer less spiritual benefits.

This doctrine is purely based on religious principles and therefore its operation does not lead to the preference of agnates over cognates.

The Law of joint family.

The MITAKSHARA school bases its law of joint family on the twin doctrines; the Son's Interest by Birth and Succession by Survivorship

Son's interest by birth means that every son in a joint family is born with interest in the joint family property.

He acquires a proprietary right in the Hindu joint family immediately upon his death.

He has an interest equal to that of his father and such an interest, which he can sever at any point of time by demanding a partition, whether he be a minor Coparcener

or a major Coparcener and can convert

the same into his separate property.

Such property, that is

the Hindu joint family property always

devolves by survivorship upon the

surviving coparceners in the family

and never by succession.

Property that developed by succession is always

separate property or self acquired property.

Examples: if a man dies leaving behind his two

sons and his two daughters and his widow,

it would mean that the Sons would

have an interest in the joint family.

property and therefore the the

Joint Hindu family property would devolve only

upon the two sons of the deceased,

whereas in relation to the self

acquired property of the deceased

It would devolve by way of succession

upon his widow upon his two sons

as well as upon his daughters..

The DAYABHAGA School does not

recognize these twin doctrines.

Sons do not acquire an interest by birth,

All property devolves by way of inheritance or succession,

upon the heirs of the deceased.

After the death of the father all

rights to the property accrue for the first

time upon the death of the father.

As long as the father is living,

he is the absolute owner of all property,

whether it be ancestral or whether

it be separate or self acquired

property of the deceased.

With regards to powers of alienation,

and partition,

since in a MITAKSHARA school sons acquire

an interest by birth, sons have the

right to demand for a partition at any

point of time and they can sever their

interest in the joint family property and.

enjoy it separately. As far

as alienation is concerned,

the father has very limited powers of

disposal of joint family property.

He can alienate the joint family property

only under exceptional circumstances.

These are recognized as a

Apatkale or legal necessity,

Kutumbarthe, which means benefit of estate

and Dharmarthe, which means the performance

of indispensable duties.

Any alienation which is made

for purposes other than these would be an improper alienation and

hence any coparcener in the joint family,

whether it be a minor or whether it be a major coparcener can

challenge such an improper alienation

and also demand for partition.

Thank you. In conclusion,

I would say that the schools had relevance

during the era of the uncodified law.

We have seen that these two schools

propagate diverse fundamental principles.

These two schools prevailed until

the Hindu law was codified.

Today we have uniform sets of rules

because most aspects

of Hindu law has been codified by legislation.

Thank you.