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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **COMPREHENSIVE DISSECTION ON HINDU JOINT FAMILY-UNDER MITAKSHARA AND DAYABHAGA SCHOOL**

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## **ABSTRACT:**

Delineately Joint family is the Bedrock on which Hindu social organization is built. In India Joint family concept is embodied as fundamental aspect of Hindu law in which the concept of Hindu undivided family or joint family mainly to be seen in India. This article gives you clear cut approach with delineate concept of Hindu undivided family or joint family under Hindu law. In common parlance joint family or Hindu undivided family is where their common ancestor and his male lineal descendants along with other members such as, wives, daughter, unmarried person who stay together under one roof sharing everything in common. According to Hindu law school, basically Hindu law school govern by Both the school i.e. Mitakshara and Dayabhaga. The concept of joint family property is wider term which scrutinize and construe from the area which makes each of them different from one other. No person is deprived and escape from their joint family. May be in one generation of coparcenary it is brought to an end by partition, but again in the next generation of coparcenary it comes into existence automatically, and there is no way in which one can escape from it<sup>1</sup>. This is why we articulate that in Hindu law, there is a presumption that every kindred is to be esteemed as joint Hindu family. this article would be Delinately focusing on the Ambit and concept of Hindu joint family involved, and major roles played by karta, coparcenary in handling with joint family property, coparcenary under dayabhaga school and Mitakshara school. Apart from all the above to will come into to scrutinize concisely the difference between Mitakshara and dayabhaga school.

**Keywords:** Dayabhaga, Mitakshara, Joint Family Property, Hindu law, Coparcenary, Karta

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<sup>1</sup> Dr. Paras Diwan 12th Edition 2021, pg. no 392

# 1. INTRODUCTION

Before decoding and throwing light to the study subject matter delineately, firstly we have understood the basic concept of what is joint family literally means in Hindu law context? According to common parlance, joint family means where the family live under one umbrella, share resources, and follow a common ancestral lineage. Joint family is a family structure where multiple generation, typically consisting of grandparents, parents, children and sometimes even extended relatives live together in same household or in close proximity. In joint family, all member shares a common kitchen, common living space and often pool their resources and finance. The joint family system is a prominent feature of traditional Indian society, emphasizing the importance of families tie and shared responsibilities. Two prevalent school of thought govern the functioning of joint families in India. According to Hindu law school, first one is Mitakshara school and second one is Dayabhaga school.

It is essential to understand that a joint Hindu family necessitates a shared ancestor for its establishment. The presence of this common ancestor is a requirement for its creation, though not for its continuation. The demise of the common ancestors doesn't lead to the dissolution of the joint Hindu family. Through marriage, birth, or adoptions, upper family relationship shift and lower family connections are added. This cycle persists as long as the species survives. The Sapinda relationship, which encompasses individuals related through up to three and five lines of descent from the maternal and paternal sides, respectively, binds the family together.

## **Delineations' of joint Hindu family in Present Era**

Jurists have provided various delineation of a joint family, capturing its characteristics and legal implication. Here a concise overview of how some jurists have described the concept of a joint family.

1. **Mulla:** justice Mulla in his book Principle of Hindu law define a joint family as group of person who are all descended from a common Ancestor and include their wives and unmarried daughter. He highlights the shared ownership of property, common workship and the existence of a common family fund as essential feature of a joint family.
2. **Henry Maine:** she states that her notion about Hindu family as a group that share common ancestors, children and cousin related through marriage of similar children.
3. **Derrett:** j. Duncan M. Derrett, in his book Introduction to modern Hindu law, offers a broader perspective, stating that a joint family is not just about common property and common



meals. He suggests that jointness could extend to sharing a common residence and carrying out common financial transaction.

4. **P.V Kane:** Dr P.V Kane in his History of Dharma Shastra, explains that a joint family comprises of a common ancestors and all his lineal descendants, including their wives and unmarried daughters. He underlines the importance's of religious unity, property sharing and the concept of sapinda relationship within a joint family.

5. **K.M Kapadia:** She state her notion about Hindu family as family formed of relations from the mama or father side of wedded son [ Matrilineal or Patrilineal, independently] who live together with each other, then just the son living with his women and children, is a common family or joint family.

### **Case laws:**

According to legal parlance and case laws which gives you clear picture about the concept of joint family. Certainly, here is a few prominent case law related to the concept of joint family in India.

1. In the case of **Rukhmabai vs Lala Laxminarayan<sup>2</sup> and Rajagopal vs padmi<sup>3</sup>**, the court held that it was established that a family maintains its joint status when there is a unity in matter of sustenance, religious practices and inheritance. Even in situation where family members do not share meals or workship together, such as living separately, they might still be recognized as a joint Hindu family if they share an estate.

2. In the case of **chhotey lal &ors. Vs Jhandey lal & Anr.,<sup>4</sup>** it was concluded that a joint Hindu family doesn't possess the attributes of a company or legal entity due to the absence of separate legal existence from its individual members. A joint Hindu family is a cohesive unit whose interests are represented in all matter by the family karta. In other words, this case clarified that a joint Hindu family is not a company or jurist person, as it lacks a distinct legal entity separate from its members. The court stated that a joint Hindu family is a cohesive unit represented in all affairs by the karta of the family.

3. In the case of **surjit Lal Chhabda Vs CIT<sup>5</sup>**, In this case it was made clear by the Apex court that a joint family and Hindu undivided family are synonymous and it was also held by this court that the concept of joint Hindu family, along with its attributes, is established through legal principle and cannot be formed solely through the actions of individuals, except when an

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<sup>2</sup> AIR 1884

<sup>3</sup> AIR1965 SC

<sup>4</sup> AIR 1999 SC

<sup>5</sup> AIR 1976 SCC 142

outsider becomes part of the family through adoption , as highlighted in the case of surjit lal chhabda v CIT (1976) 3 SCC142.

The Mitakshara and dayabhaga are two different school of thought within Hindu law that govern the inheritance and property right of individuals in a joint family system. Mitakshara school, this school prevalent in most part of India, particularly in Northern and western part region, emphasizes the concept of coparcenary and joint family property. Dayabhaga school, this school mainly followed in west Bengal and some part of Assam, differ from Mitakshara in several aspects.

In concise summary, The Mitakshara school focuses on joint family property, coparcenary right and survivorship, while the dayabhaga school emphasizes individual rights, division of property and succession based Inheritance. Each school has its own set of rules and principle that guide the inheritance and property rights of individuals within a Hindu Joint Family.

In The Mitakshara system of joint family property, a son including an illegitimate son or widow daughter, has a right over the property from birth. This system also grants right to maintenance and survivorship, with unmarried daughter having right to maintenance and other members having a right of survivorship. The concept of succession and survivorship governs the acquisition of joint family property by coparceners. However, as seen **in the case of Board of revenue vs Muthu kumar**, if son inherits his father separate property, he acquires it as separate property, even if he has a son, according to section 8 of Hindu succession act. On the other hand, under the Dayabhaga system, sons do not have inherent right over properties by birth, and the concept of survivorship is not applicable between father and son. this system treats both self-acquired and joint family properties as subject to devolution through succession.

## **II. COPARCENARY UNDER MITAKSHARA SCHOOL OF JOINT FAMILY**

In the legal Parlance Coparceners refer to a joint Heir within a Hindu Undivided Family [ HUF], possessing legal entitlement to inherit property, titles and Assests under Hindu succession laws. Essentially This individual has the right to demand a partition of property. **It is important to note that while all coparceners are HUF members, not all HUF members might qualify as coparceners based on legal definition.** In Hindu succession law, a coparcenary is a distinct unit within a joint Hindu family that deals specifically with property matters. The concept is based on

the Mitakshara school of Hindu law, which includes schools like the Benaras school, Mithila school, Bombay school, Punjab school, Dravida school, Madras school.

A coparcenary comprises all mainly spiral or male member lineal descendants of the last property holder up to three generations. This group includes the son, son's son and son's son's sons, with the eldest member referred to as the last holders. There can be multiple male members in each generation, all connected by blood or legal adoption.

Importantly, its established in cases like **Sudarshan V. Narasimhulu** that one cannot become a coparcener through marriage or other arrangements, as coparcenary is legally defined structure. The Hindu Succession Act 1956 initially excluded female from being appointed as coparceners. Coparcenary in a legal context refers to a subset of individuals within a joint family. **The origin of coparcenary can be traced back to the concept of Daya a property concept introduced by vijnaneshwara in his commentary on yajnavalkya smiriti.** While the Hindu Succession Act does not explicitly define coparcenary the term signifies equal sharing among individuals. Primarily, it involves a father and his three direct male descendants, which includes himself, his son, grandson, and great grandson from the birth.

**The case of venugopala v. union of India**<sup>6</sup> Highlighted that under Mitakshara school, the concept of coparcenary is rooted in the birthright of male descendants, such as a son, son's son and son's son's son. This traditional concept was followed by the Hindu Succession Act 1956.

**Formation of Mitakshara coparcenary necessitates the presence of a minimum of Two male members, as a single person cannot establish it.** A senior male member's presence within a Hindu joint family is crucial to initiate a coparcenary. It's important to note that this requirement of at least two members persist for both the inception and continuation of a coparcenary. Additionally, the father-son relationship holds significance in the establishment of a coparcenary. **Under Mitakshara coparcenary Framework,** women are excluded from being coparceners. While a wife holds a right to maintenance from her husband's property under Hindu law, she does not possess coparcenary status alongside him. A widow of a deceased coparcener also lacks coparcenary status and cannot act as the family karta<sup>7</sup>, making any alienation made by her inapplicable to other family members, but binding on her own share in the property. Even if a

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<sup>6</sup> AIR 1969 SC 1094

<sup>7</sup> K.M. Ramaswami Chetti and Ors vs P.K Lakshamma and Ors AIR 1963 AP 199

widow succeeds to her deceased husband share within the joint family due to the Hindu Women Right to property Act,1937, she does not acquire coparcenary status. While she cannot be the manager or karta, she can be recognized as the head of joint family for income tax purposes. Notably, a Mother is not a coparcener to her sons or daughter, even if they are devadasis. In Mitakshara school of Hindu law, the status of women is traditionally limited in terms of property rights and participation within the joint family. Under the mitakshara system, women do not have the same level of inheritance rights as men.

### **Exception under mitakshara school coparcenary:**

It's important to note that changes have been introduced to address the gender disparities in inheritance laws and property rights in India. Various legal reform, such as the Hindu succession (Amendment) Act of 2005, Aimed to provide women with equal rights in ancestral property. This Amendment extended coparcenary rights to daughters as well, addressing some of the gender-based imbalances present in the Mitakshara schools traditional framework.

**The introduction of new section 6 in the Hindu Succession Act,2005 has led to question about its applicability. While it's clear that daughter born after 9 September 2005 are covered by the Amendment, courts have grappled with whether the Amendments applies to (1) Daughter born before 2005 but after 1956 and (2) Daughter born before 1956. Consequently, the interpretation of section 6 has evolved through various landmark cases, reflecting changing judicial perspective.**

### **Case law:**

**1. In the case of Prakash vs Phulavati<sup>8</sup>,** The supreme court issued a distinctive judgment in 2015. The court approach in this instance disregarded the historical context of Hindu succession and the concept of coparcenary. Instead, it focused solely on the plain meaning of section 6 of the Hindu Succession Act. According to the court, the wording of the act indicated that a daughter was entitled to coparcenary property on and from the commencement of this act. Thus, the judgment held that the benefits of section 6 applied only when both the daughter and father were alive in 2005. However, this perspective didn't align with the understanding of coparcenary as a birthright. The court clarified that the acts applicability was prospective.

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<sup>8</sup> AIR 2015 SC

2. **In the case of Danamma vs Amar singh<sup>9</sup>** The court extensively delved into the concept of coparcenary, reaffirming that it's an inherent right by birth without any attached conditions. The phrase on and from the commencement of the Act was interpreted as merely indicating the date from which a daughter's rights were acknowledged. This judgment asserted that daughters could inherit coparcenary property by birth, regardless of their birth year. However, within the same judgment, the court recognized the binding principle of Prakash vs phulavati.

3. **In the case of Vineeta Sharma vs Rakesh Sharma<sup>10</sup>**, The Supreme court addressed the question of whether the Hindu succession (Amendment) Act, 2005 could be interpreted retrospectively or only prospectively. The judgment upheld the principles established in prior cases and provided clarity on the matter. The court reiterated that daughter rights in coparcenary property are inherent right by birth, irrespective of when they were born. It affirmed that the 2005 amendment enactment. The court upheld that a daughter has equal rights as soon in ancestral property. The judgment also emphasized that the amendment intent was to remove the gender-based disparity in property rights and achieve gender equality. Overall, the Vineeta Sharma vs Rajesh Sharma case reaffirmed the principle that daughters have equal coparcenary rights in ancestral property, irrespective of their birth year, and that the amendment should be applied with a retrospective perspective to ensure gender equality in inheritance.

4. **In the case of Subhash eknathrao khandekar vs Pragyabai Manohar Birader<sup>11</sup>**, it was further clarified that daughter can indeed be coparceners under section 6 of the act, whereas widows of sons are not granted coparcenary status.

## **RIGHT OF COPARCENERS UNDER MITAKSHARA SCHOOL**

Under the Mitakshara school of Hindu law, coparceners have certain rights and privileges in relation to ancestral property and the joint family. The key rights of coparceners within the Mitakshara system included: -

### **1. Birthright to Ancestral Property:**

Coparceners have a Birthright to the ancestral property, which includes property inherited from their paternal ancestors. This right is acquired by male descendants through birth into the family. Sons, grandsons and great grandson are eligible coparceners.

### **2. Equal Ownership:**

Coparceners share equal ownership of the ancestral property. Each coparcener has an undivided

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<sup>9</sup> AIR 2018 SC721

<sup>10</sup> AIR 2020 SC

<sup>11</sup> 2008.Bom 46



interest in the entire property. There is no specific share allotted to any coparceners until a partition occurs.

### **3. Right to Management:**

Coparceners have the right to manage the ancestral property and family affairs. The senior-most male member (karta) traditionally takes on this role. However, all coparceners have a say in decisions affecting the property.

### **4. Alienation Restrictions:**

Under the Mitakshara school, a coparcener cannot independently sell or alienate his share of the property without the consent of other coparceners. Any such transaction would be considered valid.

### **5. Right to Partition:**

Coparceners possess the birthright to demand a partition of the ubiquitous lineage property. A partition divides the property into specific shares, allowing coparceners to hold individual power. Any coparceners can request a partition, leading to the distribution of the property among all coparceners.

### **6. Right to survivorship:**

In the event of the death of a coparcener, his share of the property does not pass through inheritance. Instead, his share is divided among the survivorship. This helps maintain the joint family structure and prevent fragmentation of property.

It's important to note that while these rights are established, they may vary depending on specific legal interpretations, regional customs, and legislative changes. The rights of coparceners have evolved over time, with legal reform introducing changes to address gender inequalities and modern societal needs.

The Mitakshara school of Hindu law established its law of succession based on the principle of propinquity. This principle prioritizes individuals with closer blood relationships, starting with class I heirs. If no member exists within class I heirs, then class II heirs come into consideration. In the absence of both class I and class II heirs, the focus shifts to agnates. If no agnates are present either, cognates are considered. If no eligible member is found within the class I heirs, class II heirs, agnates, cognates, the matter is directed to the government for resolution. This sequence outlines the order of preference for inheritance, emphasizing blood ties as the basis for succession under the Mitakshara school of Hindu law.

## **A. COPARCENARY WITHIN THE COPARCENARY**

In the Mitakshara school of Hindu law, the concept of coparcenary within the coparcenary refers to the situation where a distinct coparcenary group exist within an overarching coparcenary. For Instance, consider a coparcenary consisting of a father (P) and his three sons (Q, R and S). if Q has his own separate property and he passes away, his sons (QS1 and QS2) can inherit his property and establish a new coparcenary group among themselves. This Phenomenon creates a subsets of coparceners within the larger coparcenary structure. This legal concept recognizes the ability of different groups within a family to manage their ancestral properties separately. In other word The concept of coparcenary within coparcenary arises when there is a partition within a coparcenary group, resulting in the formation of sub groups. Each sub-group can then be considered a separate coparcenary, with its own rights and liabilities. This can occur, for instance, when a coparcenary divides into smaller branches due to the death of the head of the family or other reason.

This situation can become legally complex, as each sub-group continues to have its own set of rights and responsibilities within the larger family framework. The legal analysis involves understanding the partition process, the distribution of assests, the rights of each member within their respective sub-group, and the overarching rules of coparcenary property law.

## **B. TYPE OF PROPERTY UNDER MITAKSHARA SCHOOL**

Under the Mitakshara school of Hindu law, property is classified in to categories: -

1. Unobstructed property
2. Obstructed property

### **1. Unobstructed property:**

In Mitakshara school, unobstructed property is also known as coparcenary property. It includes ancestral property that's inherited in an unbroken line of male descendants. The right to this acquired by Birth and all male descendants up to Four generation have a share in it. Sons, grandsons, and great-grandsons have an equal right in this property. The property remains concentrated as long as the coparceners are live.

Under Mitakshara school of Hindu law, unobstructed property refers to property that is inherited by coparceners through 'birthright, rather than being dependent on the death of the last owner. Unlike obstructed property, there is no delay in acquiring 'ownership, the right to the property is immediate upon birth in the family.

In the Mitakshara school, ancestral property is considered unobstructed property. Unobstructed property doesn't require the consent of the 'last owner heirs for inheritance. The concept of survivorship doesn't apply to unobstructed property. When a coparcener passes away, their share in the property doesn't automatically pass on to the surviving coparceners.

## **2. Obstructed Property**

Obstructed property also known as sapinda property, refer to property that doesn't pass on to heirs by birthright but rather upon death of last owner. The term obstructed implies that the right to inheritance is obstructed until the death of last male owner. In cases of obstructed property, the consent of all coparceners is generally required for alienation (sale or transfer) of the property. This gives clear cut approach that property always in the hand of family member and isn't alienated without proper consideration.

## **Under Hindu law, the property is further divided into**

### **1. Separate property (self- acquired property)**

This property is owned individually by a coparceners and is not subject to the principle of survivorship. It can be acquired through gifts, wills, purchase or any other means outside the joint family fund.

### **2. Joint family property (coparcenary property)**

This property is owned jointly by all the male members of the joint Hindu family by the birth. It includes ancestral property as well as property acquired using the joint family funds. The principle of survivorship applies here, meaning when a coparcener passes away, his share passes on the surviving coparceners.

**The division of property between these two type is a key aspect of the Mitakshara Hindu law and varies based on factors like ancestral or self-acquired nature and the rights of coparceners.**

## **C. KARTA**

In Hindu law, a karta refer to the eldest male member of a Hindu joint family who holds the position of leadership and manages the family affairs, assests and properties. The karta has significant decision making authority and is responsible for making financial, legal and other important decisions on behalf of the family. this concept is mainly associated with the Mitakshara

joint family system, where property is held collectively and passed down through generation. Traditionally, the karta is the senior most male member of the family. He is typically the eldest male member in the family, but it's important to note that age alone is not the sole criterion. seniority in the terms of birth order is a key factor. The karta should be a member of HUF and have the capacity to manage the family affair. The karta position is unique (sui generis) and they cannot be equated with other family members. Their role as the head of the family distinguishes them from other coparceners.

**In the legal context of Hindu undivided family (HUF),** the role of the karta is analogous to that of a manager, entrusted with overseeing the family property related matters. This legal principle was established in **the landmark case of Suraj Bansi Kero v. Sheo Prasad**<sup>12</sup>. The karta assumes the pivotal position of the family foremost authority, equipped with a range of mechanism to administer the family and its associated assets. In this context, karta serves as the family ultimate leader, entrusted with comprehensive responsibilities for both familial and property related affairs. The karta role is distinctive within the framework of joint Hindu family, embodying the caretaker of the entire family welfare and property.

The term karta refer to the senior most male member of Hindu Joint Family, responsible for managing the family and its property. In a legal context, the karta holds a fiduciary relationship with other family member and bears unlimited liability, except in case of fraud or misappropriation. This role embodies significant legal and financial responsibilities within the framework of Hindu Joint Family.

The karta, in the context of Hindu undivided family, is the manager and representative of the family. The karta is usually the eldest male member, often the father or grandfather. **The term karta is derived from the Sanskrit word Kartavya, which means one who performs the duties. The karta acts as a trustee of the family property and is responsible for managing the family affair.**

Upon the karta death or retirement, the eldest male member in the next generation usually assumes the position of karta. This transition is based on the customary practices and can be legally recognized. The successor karta takes on the same responsibilities, duties and power as the previous karta. The role of the karta under Hind law is that of a manager, decision makers, trustee,

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<sup>12</sup> AIR 1880 ILR 5 Cal 148

representative of family property and affair.

**Here the question would be arising in the mind of reader that who can be karta under Hindu law?**

**According to Hindu law certain situation basically 3 persons can eligible to be karta Position holder:**

- 1. Senior most male member**
- 2. Junior male member**
- 3. Female member as karta.**

Certainly, here are **the detailed characteristics of karta under Hindu Law:**

- 1. Unique Position:** The karta Holds a special and distinct status within a Hindu Undivided Family (HUF). This Position is sui Generis and cannot be equated with any other member of the family.
- 2. Independent Authority:** The karta authority is independent of the consent or concurrence of the other family members. They can make decisions on behalf of the family without requiring the approval of other coparceners (family members with a birthright to the joint family property).
- 3. Managerial Role:** The karta is responsible for managing and administering the affairs of the HUF. This includes making financial, business and property-related decisions.
- 4. Unlimited Powers:** The karta possesses extensive powers, including the power to alienate, sell, lease or mortgage the family property. However, these powers are meant to be exercised for the benefit of the family and not for personal gain.
- 5. No Partnership or Agency:** Despite acting on behalf of other family members, the karta is not considered a partner or an agent. They act as the head of the family and represent the collective interest.
- 6. No Accountability for Routine Decision:** The karta is not required to seek permission or consent from co-parceners for routine decisions. They have the autonomy to make ordinary management decisions.
- 7. Basic Necessities:** The karta is obligated to provide basic necessities like food, clothing, education and shelter to all family members. This obligation ensures the welfare of the family members.
- 8. Succession:** In cases of the karta demise, the position is usually succeeded by the eldest male members of the family, in line with the principles of primogeniture.



9. **Accountability for Mis-Management:** While the karta enjoys significant autonomy, they can be held accountable if their action leads to Mis-Management, fraud, misappropriation, wrongful alienation of family property. Karta will be held liable for that act not family member of joint family or Hindu undivided family.

10. **Income distribution:** The karta is responsible for distributing income generated from joint family property. They have the discretion to allocate these funds among family members, taking into consideration their needs and requirements.

11. **Religious and social function:** The karta often plays a role in organizing and funding religious and social function for the family. these events are seen as important for the family's unity and well-being.

It's important to understand that these characteristics are based on traditional Hindu law principles and are specific to the context of a Hindu undivided family. Legal interpretations may vary, and the role of karta evolved over time with changes in legislation and legal precedents.

## **POWER OF KARTA**

In legal context, the power of the karta within a Hindu Undivided Family are derived from Hindu law and are associated with the management and administration of the family affair and property. Here's a breakdown of the key power of the karta within HUF.

1. **Power of Management:** The karta is considered the head of the family and his extensive power to manage the affair, property and business of the HUF. This power is generally absolute, allowing the karta to make decisions for the benefit of the family estate without being questioned by other members.

2. **Right to Representation:** The karta represent the HUF in various legal, social, and religious matters. Any transactions entered into by the karta on behalf of the family and binding on all the members of the HUF.

3. **Power to Compromise:** The karta has the authority to settle disputes related to family property or management. This includes the power to compromise ongoing lawsuits, family debt and other transactions. However, if the karta action are not in good faith, they can be challenged during a partition.

4. **Power to Enter into Contracts:** The karta can enter into contracts on behalf of the HUF and these contracts are legally enforceable against the family.

5. **Power to Refer Dispute to Arbitration:** The karta can choose to refer disputes to arbitration and the arbitrator decision is binding on all member of HUF.

6. **Power to Acknowledge Debts and contract debts:** The karta can acknowledge debts on behalf of the family and contract debts for the family benefits. these debts especially those incurred in the ordinary course of business are binding on the entire HUF.

7. **Limited Power of Alienation:** While generally, no family members has the power to alienate(transfer) joint Family property, the karta can do so under specific circumstances:

- (a) Legal Necessity
- (b) Benefit of the Estate
- (c) Indispensable Duties

## **COPARCENERY UNDER DAYABHAGA SCHOOL**

The Dayabhaga school is a Hindu law system that primarily applies in part of India, including west Bengal. In contrast to the Mitakshara school, which follows the concept of coparcenary, the Dayabhaga school has different principles for inheritance and property rights.

Under the dayabhaga school, coparcenary does not exist in the same way as it does in the Mitakshara school. In the Mitakshara school ancestral property is passed down through generations and all male descendants up to four generations are considered coparceners and have an equal share in the property. In the dayabhaga school, property is generally considered as owned by individuals and inheritance is based on succession rather than coparcenary. Each person has ownership over their property and upon their death, their property is inherited by their heirs according to certain rules. There is no concept of joint family ownership in the same way as in the Mitakshara school. It's important to note that the specifics of inheritance and property rights can vary depending on various factor including personal choices, local custom and legal changes.

In the Dayabhaga school of Hindu law, the concept of coparcenary emerges upon the demise of the father, at which point the son inherits the paternal property. This formation of coparcenary is not extended to four generations. This idea of coparcenary is predicated on the notion of inheritance by right due to death. Thus, the son inherits his father property only after the fathers passing.

### **Illustration:**

**Let's consider sham as the father and A as his son. At the time of Birth, a does not possess inherent rights in the property. These rights materialize only upon the father demise. Following this event, an assumes the position of coparcener within the family**

The Notion of coparcenary under the Dayabhaga school of Hindu law is different from that under the Mitakshara school. In the dayabhaga system, there is no concept of joint family property or coparcenary. **Instead we get to see in The dayabhaga school that male and female both hold the position and right of coparcenary.** apart from Abovementioned Instead, property is held by individual owners and there is no right by birth in ancestral property. **A landmark case related to the Dayabhaga school and coparcenary in the case of Gangadhar v. Shankar (AIR 1936 Cal641).** In this case, the Calcutta High court held that the Dayabhaga law does not recognize the concept of coparcenary. The court emphasized that the property devolves through inheritance and there is no joint family property that is subject to survivorship rights.

It's important to note that the dayabhaga system is followed primarily in west Bengal and some other part of India, while the Mitakshara system is more prevalent in other regions. **The concept of coparcenary and joint family property is a significant distinction between these two schools of Hindu law.**

It's important to note that the dayabhaga school does not emphasize the joint family structure and coparcenary rights as much as the Mitakshara school. Instead, **it focuses on individual ownership and succession based on the established rules of inheritance.** This leads to more straightforward and predictable division of property among heirs, compared to the complex coparcenary structure of the mitakshara school.

Under the dayabhaga school, all inheritance devolves through succession **The concept of survivorship is not applicable under the dayabhaga school of law.** In this school, when a coparcener passes away, their shares do not transfer to other coparceners through survivorship; instead, they are inherited by deceased coparceners' heirs.

## **DEVOLUTION OF PROPERTY**

According to Hindu law, the Devolution of property follows by the Hindu law school is totally opposite of one coin of both sides.

1. **Mitakshara school:** In the Mitakshara school, the devolution of property is based on **the notion of Doctrine of survivorship.** which indicates that upon the death of a coparcener, the property is transferred to the next surviving generation, regardless of the identity of the heir.

2. **Dayabhaga School:** In the dayabhaga school, the devolution of property is based on the notion and **operates under the doctrine of succession**. This means that if a coparcener passes away, their share does not transfer through survivorship to other coparceners. Instead it is inherited by legal heir.

## **TYPE OF PROPERTY UNDER DAYABHAGA SCHOOL**

In the dayabhaga school, property is classified into Apratibandha Daya (unobstructed Heritage) and Sapratibandha Daya (obstructed Heritage), But unobstructed Heritage is not recognized under this school. So, all the Property falls under the category and governed by obstructed Heritage. This classification affects the inheritance and succession rules within this legal framework of this school.

## **KARTA UNDER DAYABHAGA SCHOOL**

Under the Dayabhaga school of Hindu law, the karta is typically the eldest manly member of the joint family. still there are certain circumstances under which Women can also acts as a karta. who can be karta under dayabhaga school:

1. **Eldest Male members:** Traditionally, the karta is the eldest male member of the joint family. He assumes the role upon the death of previous karta or when he becomes the eldest male in the family.
2. **Absence of Eligible Male:** if there is no eligible male member in the family, such as minor or an incapacitated male, a female can act as the karta. In this case, the female becomes the karta by necessity due to the absence of a suitable male member.
3. **Female Managerial role:** In cases where a widow has inherited property from her husband, she can act as the karta for that property. This allows her to manage the property and make decision for the family.
4. **Minor Male:** if the eldest male member is a minor, the female guardian (usually mother) can acts as the karta until the minor attains the necessary age to take over the role.
5. **Specific legal provision:** Some legal documents or specific family arrangement might designate a female member as the karta due to unique circumstance or agreements.

**Here some Notable case, which deals with that can women be karta under dayabhaga school**

### **1. Radha Bai v Gajanan (1887):**

In this case, the privy council considered the position of a female karta under the dayabhaga

school. The case involved a widow who had taken on the role of karta in her husband joint family. The question was whether a widow could act as karta in a dayabhaga family.

The privy council held that a widow could act as a karta under certain circumstances. They recognized that in the absence of a male member competent to act as karta, a female could take on the role. **This case acknowledged the principle that the position of karta is not exclusively limited to males and that in exceptional situations, females can manage family affair and property.**

## CONCLUSION

Under this article the core understanding part and gist of this paper is about throwing light on delineate root and concept of Hindu undivided family or joint family and Hindu law school. as we got see that whole Hindu law school revolved around 3 concepts basically coparceners and karta, inheritance of property and their legal provision. as we got see that abovementioned The notion of coparcenary under both the Hindu law school and how they position and act make differentiate between each other. On the concise note, In Mitakshara school of Hindu Law Generally the notion of coparcenary talks about male member like children, fore-son, grandson, great-grandson who have the right from by birth and interest in coparcenary property. under Mitakshara school, Female are not considered as coparceners instead she will always be a part of the joint family. under this school of Hindu law notion of coparcenary is counted from the 3 generation of male lineage descendants. Under this school, father, grandfather, forefather, great grandfather can be considered as coparceners. Under this school of Hindu law, the conception of coparcenary grounded on the notion of birthright and devolution of property is based on the notion of doctrine of survivorship. Under this school of Hindu law, coparceners are further ahead become eligible to position karta. Mitakshara school of Hindu follow the concept of unobstructed heritage (coparcenary property). This school (Mitakshara school) of Hindu law mostly prevail in all the regions part of India except west Bengal, Assam. In Dayabhaga school of Hindu law, the concept of coparcenary emerges upon the father death, with the sons inheriting the paternal property. This arrangement does not extend over 4 generations and the foundation of coparcenary is rooted in the principle of succession by demise. This signifies that the son gains inheritance rights to his father's property solely after the passing of the final holder or karta. Under this school of Hindu law grounded on the notion of demise of the father and devolution of property is based on the notion of Succession. Dayabhaga school of Hindu law influence in predominantly observed in the west Bengal and Assam region of India. Under dayabhaga school, this school treats inherited



property as the individual self-acquired property. This school doesn't follow the unobstructed heritage. Under Dayabhaga school, there is no concept of joint family ownership in the same way as in the Mitakshara school. It's Important to note that the specifics of inheritance and property right can vary depending on various factor including personal choice, local custom and level changes. under the Dayabhaga school, coparcenary concept does not exist in the same way as it does in Mitakshara school. There is no concept of coparcenary as to be followed 4 generations male 3 lineage descendant's constsing of Father, son, son's son, son's son's son. **Mitakshara school and Dayabhaga school of Hindu law are considered as same side of same coin.** As abovementioned **the slight difference between both the school and here some notable similarities also exist like Both school. like both the school of Hindu law are governed through Hindu Succession Act ,1956.** This Act codifies the rules for property inheritance among Hindus and incorporates provision that apply to both the school of Hindu law. **Prior Amendment of Hindu Succession Act, 2005, In both school of Hindu Law Female were not considered to coparceners and eligible to hold the position of karta, that time there is gender disparity law prevail against women and their rights were curb by male dominant society who don't want to see the women should walk in same footing in the course of society status. In both the school of Hindu law, here got to see that by subduing the women right and compelling to relinquish there right and telling their subjugation as her conduct and act of politeness by the male dominant society. Is this right way to treat women in the male dominant society who seeds you birth to till end of the life but however we getted to see that how female were encounter through hoax patriarchal custom and tradition but After the Amendment of Hindu succession act 2005, female were considered as to be coparceners in ancestral property and also give the right to female could the position of karta.**

**As abovementioned about lot of difference between Both the school of Hindu law.** but here come to the main difference between this two school of Hindu law is **that here the females can become coparceners and hold the position of karta of the family. female can also step in the shoes of male coparceners and their right.** The conclusion of this paper gives you concise overview understanding about whatever abovementioned and the eye opening of gist part of this article.