



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : LLB

SEMESTER : IIIrd

SUBJECT : FAMILY LAW II

SUBJECT CODE: LLB -304

LECTURE : 2

FACULTY NAME: Mr JP Srivastava

Point of Distinction between the Mitakshara Joint Family and Dayabhaga Hindu Joint Family

There are two main schools: Mitakshara School and Dayabhaga School. The Dayabhaga School is confined to Bengal and it takes its name after the work entitled the Dayabhaga written by Jimutavahana. The Dayabhaga is, in fact, only a chapter of a larger work of that author, but this chapter alone is now extant.

The rest of India follows the Mitakshara School which is so called after the work entitled Mitakshara written by Vijnaneswara as a commentary on the Smriti of Yajnavalkya. The Mitakshara (which means measured words) is regarded as authority even in Bengal in regard to all matters on which there is no contradictory opinion expressed in the Dayabhaga. The Mitakshara School is usually subdivided into four schools, namely, the Benaras School, the Mithila School, the Maharashtra and the Dravida School.

Differences between Mitakshara and Dayabhaga Hindu Joint Family:

The essential differences between Mitakshara and Dayabhaga relate to the following—

(i) Joint Family:

According to the Mitakshara a son, grandson and great-grandson acquire by birth a right in the ancestral property. This doctrine is the basis of the Mitakshara joint family. According to the Dayabhaga the ownership of the son can arise only after the death of the father.

There, is no right by birth. The father has un-controlled power of alienation over the family property under the Dayabhaga. Under the Mitakshara the father's power are qualified by the son's equal right by birth.

(ii) Survivorship:

Brothers who have inherited property from their father have a right of survivorship in the Mitakshara joint family. The Dayabhaga does not recognise any right of survivorship and the brothers hold in quasi-severalty with full power of alienation.

(iii) Widow's rights:

When one of the brothers dies, his widow can succeed to his share under the Dayabhaga but under the Mitakshara her rights are excluded by the right of survivorship of the brothers. The widow can then have only a right to maintenance.

