



# PARTITIONS OF HINDU JOINT FAMILIES IN 20<sup>TH</sup> CENTURY BRITISH INDIA: A QUANTITATIVE EXAMINATION

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**Abstract:** This paper will look at the fundamental characteristics of Hindu inheritance law and examine crucial changes brought about by Anglo-Indian courts and legislation regarding the position of members of the Hindu joint family and relationship between joint and separate property. It will pay attention to differences between the Mitakshara and Dayabagha doctrines and illustrate how these differences manifested themselves through a quantitative analysis of partitions of the Hindu joint family during the first half of the 20<sup>th</sup> century. The findings of this study will suggest the following differences in partitions between families adhering to the Mitakshara and Dayabagha doctrines: first, females family members were more likely to initiate partitions in joint families adhering to the Dayabagha than those following the Mitakshara. Second, widows are more likely to initiate partitions in the Mitakshara than in the Dayabagha. Third, brothers are likely to initiate partitions against other siblings in the Dayabagha, whereas in the Mitakshara, both brothers and sons are likely to initiate partitions.

**Keywords:** Dayabagha, Hindu Inheritance Law, Hindu joint family, Mitakshara, partitions

Received : 29 September 2024

Revised : 30 October 2024

Accepted : 11 November 2024

Published : 13 December 2024

## TO CITE THIS ARTICLE:

Anantdeep Singh (2024). Partitions of Hindu Joint Families in 20th Century British India: A Quantitative Examination, *Journal of South Asian Research*, 2: 2, pp. 215-241.

## Introduction

The legal literature on the Hindu joint family dates to approximately 600 BCE. One of the objectives of Hindu family law has been the preservation of the joint family property. Classical Hindu jurisprudence is replete with injunctions condemning the partition of the family especially when the father is alive.<sup>1</sup> We may discern three characteristics of Hindu inheritance law regarding preservation of family property: First, restrictions were placed on the ability

of members of the joint family to divert capital out of the family. This was done by both limiting the ability of individual members to partition the family's property and by restricting the ability of some members of the family (particularly women and minors) to spend the family's wealth. Second, while Hindu inheritance law recognized both individual and joint property, the law encouraged placing individual property into the pool of the latter. Finally, the share of non-consanguine relations was limited to maintenance, thus limiting the access of outsiders to family property.<sup>2</sup>

The inheritance law practiced by Hindus was determined by caste and region. The level of adherence to *Dharmasastras* varied considerably according to caste background, geographical location, social standing, and family history.<sup>3</sup> The implementation of inheritance laws also considered local customs.<sup>4</sup> Judicial rulings would consider social factors and aimed at reaching a compromise between the litigants. The interpretation of *Dharmasastras* varied per author, and an author's influence was contingent upon his interpretation's ability to match the needs of a particular community.<sup>5</sup>

British administrators were unfamiliar with the diversity of legal practices and sought to rely on texts.<sup>6</sup> The need to have greater certainty in law led to the compilation of the 'Gentoo Code' in 1777.<sup>7</sup> *Colebrooke's Digest* followed the Gentoo Code to further assist English judges in interpretation of Hindu family law. Among the corpus of texts both the *Mitakshara* and *Dayabagha* gained influence among the judiciary and allowed for the selection and perpetuation of rules of family law and the abrogation of others.<sup>8</sup> Customs and texts not justifiable in the *Mitakshara* or *Dayabagha* ran the risk of being marginalized.<sup>9</sup> Most of the Hindu population was classified as adhering to either the *Mitakshara* or *Dayabagha* doctrine.<sup>10</sup>

The administration of Anglo-Hindu inheritance law brought the following crucial changes in the late 19<sup>th</sup> century.<sup>11</sup> First, male coparceners gained increasing rights to partition property. Second, the father's right to utilize wills and bequests was strengthened. Third, females, particularly widows, gained greater right to inherit and bequeath property.<sup>12</sup> The sharper delineation of both rights of members of the Hindu joint family and between separate and joint property encouraged partitions and allowed members who had heretofore only access to limited pools of family property to ask for greater proportions of family property.<sup>13</sup> Increased partitioning of joint family property was noted by many in the early 20<sup>th</sup> century.<sup>14</sup>

The increase in partitions brings numerous questions to the fore. Which members of the Hindu joint family were more likely to initiate partitions?

What role did gender play in the likelihood of a member initiating partition? And did patterns of partition differ between families adhering to Mitakshara and Dayabagha doctrines?

This study will address the following questions by examining partitions of Hindu joint families governed by the Mitakshara and Dayabagha doctrines through a quantitative analysis.<sup>15</sup> First were females more likely to initiate partitions in the Mitakshara or Dayabagha? And which female relative was most likely to initiate partition? Second, among male relatives, were brothers or sons more likely to initiate partitions?<sup>16</sup> Did this pattern differ between the Mitakshara and Dayabagha doctrines? The data includes cases of Hindu joint family partitions from 1900 to 1915 and 1932 to 1947 from the High Courts of Allahabad, Bombay, Calcutta, and Madras.<sup>17</sup>

Each of these four courts was in a different region of India.<sup>18</sup> The cases are split into two broad periods (1900 to 1915 and 1932 to 1947) to see if the characteristics of partition cases changed from the early part of the 20<sup>th</sup> century to the decades leading up to Indian independence. The cases were classified not only according to High Court and time period but also the gender, caste, and the relationship of the initiator of the partition vis-à-vis other members of the joint family.

## Literature Review

Sir Henry Sumner Maine's *On Early Law and Custom* provided one of the earliest studies of the Hindu joint family. Maine took a critical view of the joint family and suggested that it was one of causes of India's underdevelopment.<sup>19</sup> Madan's work countered Maine and posited that the Hindu joint family's stability may have had a positive effect on Indian society.<sup>20</sup> More recently, Kuran and Singh took the position that the Hindu joint family was an effective vehicle for the accumulation of capital and branching out into multiple businesses.<sup>21</sup>

Sontheimer's *The Joint Hindu Family* focused not on the economic impact of the joint family but on its legal evolution from 6<sup>th</sup> century B.C.E. to post-colonial India.<sup>22</sup> Newbigin's *The Hindu Family and the Emergence of Modern India* also looks at the legal aspects of the Hindu joint family and ties the legislation associated with it to a changing role in the legal status of Indian women.<sup>23</sup> Newbigin examines the process behind the Hindu family's transformation into an economic and taxable unit. Denault takes a similar position as Newbigin and stresses that changes in property law strengthened the need of colonial state to support the joint family.<sup>24</sup> Rachel Struman's *The Government of Social Life in Colonial India* suggests that the administration of Hindu family law in

western India provided a framework which allowed for increased questioning of the relationship between the genders and the relationship between the colonial state and society.<sup>25</sup> Ritu Birla's *Stages of Capital*, while not focusing on the Hindu joint family, shows how the Marwari community's joint family firms navigated colonial legislation in from the late 19<sup>th</sup> century.

The literature on the joint family has also been enriched by examinations of the Mitakshara and Dayabagha doctrines. While the time of origin of the Mitakshara and Dayabagha have been subject to dispute, it is generally accepted that the Mitakshara preceded the Dayabagha.<sup>26</sup> Derrett (1976) disagrees with the general consensus places the dates of the Mitakshara between 1121 and 1125 AD and suggests that the Dayabagha was written earlier.<sup>27</sup> Carroll compares of the position of daughters as heirs in the Mitakshara and Dayabagha doctrines as well as in Islamic law.<sup>28</sup> Agarwal (1998) examines the recent changes in Hindu family law, while focusing on the Mitakshara, as it pertains to the ability of women to own property. Kulkarni provides an examination of the relationship between the Hindu inheritance law and widow immolation.<sup>29</sup> Singh compares the Mitakshara doctrine as it pertains to female heirs with Islamic inheritance law.<sup>30</sup>

While the existing literature on the Hindu joint family has examined both its legal evolution and the economic impact, there no quantitative analyses of partitions of joint families. This study will add to existing literature on the Hindu joint family by providing a quantitative analysis of partitions of the Hindu joint family during the first half of the 20<sup>th</sup> century. This work will also add to the growing examination of the differences between the Mitakshara and Dayabagha by providing a comparison of which members of the family were likely to initiate partitions in each doctrine.

### **A Comparative Analysis of the Mitakshara and Dayabagha doctrines**

Let us turn to a brief comparative analysis of the Mitakshara and Dayabagha doctrines. The Mitakshara distinguishes between joint and separate property. Joint property is held collectively by the joint family.<sup>31</sup> On the other hand, separate property is held by a particular member of the joint family. Mitakshara doctrine encourages separate property to become joint property in the following ways: First, separate property enters the pool of joint property upon the death of its owner unless it is disposed of by the owner. Second, all property is assumed to be joint unless stated otherwise. Finally, any property acquired through joint property is classified as joint property.<sup>32</sup> The Dayabagha doctrine does not distinguish between joint and separate property.<sup>33</sup> Division

takes place at the death of the *karta*, but his sons have the option of holding the property collectively.

In the Mitakshara, individual rights to specific portions of the family property are not recognized while the family remains undivided. Each coparcener's precise share cannot be claimed. Legal partition is characterized by the process of determining and delineating the respective shares of each member, transforming previously unspecified rights into a quantified division of the property where each coparcener's percentage of ownership is established.<sup>34</sup>

Under the Dayabhaga, each coparcener possesses a distinct and defined interest in the family's property. Though the property is collectively possessed by the family, it is apportioned into specific shares. Consequently, partition in this context entails the distribution of the property by dividing these predefined shares among the heirs.

In a Mitakshara joint family, the coparceners can demonstrate their intention to treat the property as belonging to separate owners simply through an agreement to possess and enjoy the property in specified shares, even without a formal partition of the property.<sup>35</sup>

Under the Dayabhaga framework, joint family property is uniquely managed with a defining emphasis on clear allocation of shares, even while the family remains united. Unlike Mitakshara law, Dayabhaga requires more than just a mutual understanding or agreement among coparceners to recognize their shares in joint property. For a formal partition to be recognized under Dayabhaga, it is imperative that there is an actual division of the property, entailing the distribution of distinct portions of the estate to coparceners.

The Mitakshara doctrine frowns upon partitions and encourages members of the joint family to continually hold property collectively. On the other hand, the Dayabhaga mandates division of property upon the death of the *karta* unless the male heirs request otherwise. Heirs in both doctrines may request partitions while the *karta* is alive.

Women cannot be coparceners of joint property according to the the Mitakshara doctrine.<sup>36</sup> Their rights are restricted to maintenance.<sup>37</sup> Unlike the Mitakshara, the Dayabhaga recognizes female coparceners. A widow as a coparcener has priority and is followed by the daughters.

A widow, in both the Mitakshara and Dayabhaga could inherit property only in the absence of sons, agnatic grandsons, and agnatic great-grandsons. A widow may not to sell, gift, or mortgage her estate. However, the Dayabhaga and Mitakshara differ on the following points: First, in the Dayabhaga, widows

inherit a portion of the family property while in the Mitakshara, widows inherit only the separate property of the husband. Second, the Dayabagha allows a widow to ask for a partition of the family property in the absence of male descendants.<sup>38</sup> Second, third both doctrines recognize *stridhan*, the Mitakshara stipulates that the widow's heirs inherit *stridhan*, while the Dayabagha stipulates that after the widow's death, the husband's heirs inherit *stridhan*. Crucially, widows were given "maintenance" in the Mitakshara.

We may draw three key points from our brief comparisons of the Mitakshara and Dayabagha doctrines. First, since Dayabagha is more conducive to individually held property than the Mitakshara. Second, the Dayabagha is more conducive to female members of the family owning property. However, the Mitakshara allows the widow access to maintenance and allows the widow's heirs to inherit her *stridhan*. Finally, since the *karta* has the greater power to give property to coparceners in the Dayabagha doctrine, we expect other members to the Dayabagha governed family to be less inclined to challenge the *karta's* wishes.

What can we infer about partitions from the above comparison of the Mitakshara and Dayabagha doctrines? First, partitions may occur more frequently in the Dayabagha than in the Mitakshara. The latter discourages partitioning of property while the former presupposes partitions upon the death of the *karta*. Members of a joint family governed by Dayabagha rules have clearly defined shares of the estate. Such individuals are more likely to initiate partitions.

Second, since there are a greater number of female coparceners in the Dayabagha, and females have greater scope for inheriting and owning property independently, females will be more likely to initiate partitions in the Dayabagha than the Mitakshara.

Third, since the *karta* has greater powers in the Dayabagha than the Mitakshara, he is more likely to initiate partitions in the latter.<sup>39</sup> Finally, due to the great power the *karta* has in disposing property in the Dayabagha, his sons are less likely to initiate partitions as they may fear being disinherited.<sup>40</sup> However, in the absence of a *karta*, brothers are more likely to initiate partitions in the Dayabagha.

Based on our comparative analysis of the Mitakshara and Dayabagha doctrines, this study will test three hypotheses: First, are females more likely to initiate partitions in the Dayabagha? Second, while female heirs in general may initiate more partitions in the Dayabagha, are widows more likely to initiate partitions in the Mitakshara? <sup>41</sup> Third, is there difference regarding which male

heirs initiate partitions in the two doctrines? Since partitions typically occur after the death of the *karta*, brothers are more likely to initiate partitions in the Dayabagha against other siblings. On the other hand, in the Mitakshara partitions may occur during and after the death of the *karta*, so there will be less of the difference in the proportion of partitions initiated by brothers and sons. Let us turn to a discussion of the fundamental characteristics of Hindu inheritance law.

### Fundamental Aspects of Hindu Law

The *Dharmasutras* and *Smritis* have numerous references to a patrilineal family consisting of at least three generations.<sup>42</sup> The cohesiveness of the family was linked with the offering of *pindas*: one was obliged to give offerings to three male lineal ascendants and in turn one would receive offerings from up to three generations of male agnatic descendants. This system of inheritance was based on the relationship of male agnates and excluded other agnates and collaterals, and outsiders. Injunctions to prevent the breaking up of the patrilineal family were common in these texts.<sup>43</sup> Sons who initiated partition were admonished and punishments including ostracism were recommended.<sup>44</sup>

The relationship between the son and the father was characterized by the term *sadharnam*.<sup>45</sup> The father was responsible for the well-being and care of his son when the latter was a minor; the son was obliged to care for his father when the latter was aged. *Sadharanam* also implied the existence of property which allowed for the realization of obligations that existed between father and son. The son inherited the rights as well as the duties of the father.<sup>46</sup> The son could enjoy the fruits of the father's self-acquired property. The son did not have the power to claim a share in the property and partition it. The father also could not alienate property in a way which was contrary to the interests of the family. Sons were liable to pay the debts of the father.<sup>47</sup> The Dayabagha and Mitakshara both discuss the relationship between the father and son; however, the former emphasized the rights of the father whereas in the latter the son had more leeway to separate from the father.<sup>48</sup>

The *Dharmasturas*, *Arthasastra*, and various *smritis* posited that the father was the sole owner of both his self-acquired property as well as the ancestral property.<sup>49</sup> However, there was disagreement over how the father could dispose of his property: Some texts suggested that the father must divide the ancestral property equitably among his sons but may give his self-acquired property as he sees fit; other texts suggested that the father could favor particular sons in regards to both ancestral property and self-acquired property. Acquisitions

made by the sons became either property of the father or joint family property and were to be divided equally.<sup>50</sup> Some exceptions were made: These included gains from *vidya-dhana* (gains from learning), *saudayika* (gifts by the father to one of the sons), and *saurya-dhana* (acquisition by prowess.) Such gains were not acquired by using family property and during the time of partition they went to the son who acquired them. However, these gains were not separate property since the family could consume them; however, in the event of a partition they were assigned to the acquirer.<sup>51</sup>

Some jurists downplayed the distinction between ancestral and self-acquired property and suggested that both forms of property belong to the father.<sup>52</sup> They did not recognize the right of the son to ask for a partition and suggested that the son's right was limited to an equal share of ancestral property when a partition takes place.<sup>53</sup> The son was powerless at birth and only acquired ownership when a partition took place.<sup>54</sup> Other jurists posited that the son acquired the right to property at birth.<sup>55</sup>

Partitions often took place after the death of the father.<sup>56</sup> If a partition took place while the father was alive, his consent was mandatory. Sons could not have ownership and were not independent while the father was alive. The father could consider the individual needs and circumstances of his sons when partitioning property and could distribute property unequally; however, the father was not allowed to disinherit any of the sons.<sup>57</sup>

We can infer the following from our discussion: First, while early Hindu law did distinguish between ancestral and acquired property, joint and separate property were not clearly distinguished. Fathers had considerable power to dispose of their acquired property but there were restrictions on how ancestral property was to be partitioned. Second, property acquired by sons using the family's resources became part of the family's property. When sons did acquire property without using the family's resources, this property could be consumed by other members of the family. A son only had exclusive right to this property in the event of a partition. Thus, even property acquired exclusively through one's one effort was part of the pool of joint property until a partition. Third, the rights of sons to initiate partition were severely curtailed. The father had considerable independence over the utilization of his property, and he was protected from partitions initiated by sons. A father could partition his property as he wished provided he did not disinherit one of his sons. The father was also shielded to an extent from creditors as he had the ability to postpone paying debts and passing them on to the next generation.



Women's property came from two sources: inheritance and *stridhan*.<sup>58</sup> In the Mitakshara, both widows and unmarried daughters had right to maintenance. Daughters could inherit only in the absence of widows and male heirs (widows, as noted earlier, could inherit in the absence of male heirs.) Let us now examine how Anglo-Hindu law brought about changes in the positions of specific members of the Hindu joint family.

## Fathers

While Hindu law had recognized allowed fathers to transfer property, it had also placed restrictions on the power of the father to disinherit any of his sons. Wills were unknown to Hindu law.<sup>59</sup> Anglo-Indian courts began to recognize the use of wills in the 1820s. A strict interpretation of the *Dayabagha* was implemented in Bengal so the father could "without any restriction dispose of his property...by sale, mortgage, gift, or will" to strangers or any of his offspring. Unlike traditional Hindu law, fathers could now exclude any heirs. While Hindu inheritance law had distinguished between ancestral and self-acquired property, Anglo-Indian courts gave the father full reign to dispose of both types of property.<sup>60</sup>

The father's position was also strengthened where the *Mitakshara* doctrine was applied. A Hindu without male descendants could now dispose by will both his separate and self-acquired property.<sup>61</sup> A Hindu with male descendants could dispose of moveable self-acquired property provided he did not completely disinherit his male descendants.<sup>62</sup>

Let us look at two cases which provide examples of the growing testamentary power of fathers. The cases of *Balwant Singh v. Rani Kishori* and *Sri Raja Rao Venkata v Court of Wards* illustrate the growing power of fathers.

### *Case Summary: Balwant Singh v. Rani Kishori*<sup>63</sup>

Raja Jaswant Rao had indicated by deed the whole of his property to his wife Rani Kishori. Jaswant Rao's son, Balwant Singh was left with only a meager allowance.<sup>64</sup> Balwant Singh challenged the transfer of property to Rani Kishori, however the court ruled that since Raja Jaswant Rao's property was not ancestral but self-acquired property, he had the right to transfer this property out of the pool of joint family property.

Raja Jaswant Rao was able to disinherit his son in favor of his wife. While he would not have been able to do this under a strict interpretation of the *Mitakshara* doctrine, he was able to do so in Anglo-Hindu law because he provided a nominal allowance to his son and demonstrated that the property transferred to his widow was self-acquired property.

### *Sri Raja Rao Venkata v Court of Wards*<sup>65</sup>

Gangadhara Ramo Rao had been a *zamindar* of an impartible estate that was passed on by primogeniture.<sup>66</sup> He adopted a son, Raja Rao Venkata in 1873. Ramo Rao's wife gave birth to a son, Venkata Kumari, in 1885. In 1890, shortly before his death, Rama Rao created a will which transferred his property and zamindari to Venkata Kumari. Raja Rao Venkata challenged the will on the grounds that primogeniture was the established custom of the zamindari estate. However, the court ruled that since sufficient proof of custom did not exist and the adopted son was not a coparcener in the joint family, Rama Rao had the ability to transfer his estate through a will.

This case demonstrates how the male head of a family could use wills to transfer property and thus circumvent the implementation of Hindu laws of inheritance.

Both cases above point to the use of wills by male patriarchs to transfer property to a particular heir and disinherit others. Anglo-Hindu law gave much greater rights to male patriarchs than had been possible in *traditional* Hindu law.

### **Male Coparceners**

While Hindu law had acknowledged the rights of male descendants of the *karta*, the concept of coparcenary changed the relationship between the *karta* and his male descendants. Coparcenary in Anglo-Hindu law is a result of birth and can be dissolved by a member demanding a partition. In the case of a death of a coparcener, his share will go to the surviving coparceners.<sup>67</sup> We have seen above that Hindu legal literature frowned upon the initiation of partitions by sons.<sup>68</sup> However, the classification of the son as of coparcener in Anglo-Hindu law allowed him to initiate partitions at will whereas the *dharmastras* had permitted partitions only under specific circumstances.<sup>69</sup> Second, the concept of coparcenary did not include the responsibilities and obligations that had been noted in the *dharmastras* between father and son. In 1861, Madras courts made it the right of males to ask their fathers for a partition. The other High Courts of India gradually took a similar position to the Madras High Court and gave the sons right to partition. Let us look at two cases which enhanced the right of male coparceners to partition property.

### *Nagalinga Mudali v. Subbaramanya Mudali and others*<sup>70</sup>

Tirimula Mudali died in the earlier part of the 19<sup>th</sup> century and left two sons, Subbaramanya and Virasami. The former had two sons, Perumal and

Darmalinga. Perumal's son filed for a division of the Hindu joint family while much of the remainder of the family alleged that much of the ancestral estate had spent since the death of Tirimula on funerals and ceremonies and Subbiramanya had gifted away the landed property of the family. The members of the family also argued that Perumal's son was prohibited from partitioning the property. However, the court argued that Perumal's son was a male coparcener and was entitled to partition his grandfather's estate. The High Court took a broader interpretation of the Mitakshara doctrine than was often the case and in this instance extended the right to partition ancestral property to grandsons.

### ***Judmohandas Mangal Das v. Sir Mangaldas Nathuboy and Others*<sup>71</sup>**

Sir Mangaldas Nathubhoy belonged to the Kapoli Bania caste. His property consisted of inheritance dating back to his great-grandfather, the self-acquired property of his grandfather and father, property inherited from his grandmother, and his own self-acquired property. He alleged that all of his property (barring his inheritance from great-grandfather) was self-acquired. He also alleged that the Kapoli Bania caste had a tradition that prohibited sons from partitioning against the will of the father. The High Court ruled that Nathubhoy's son, Jugmohandas Mangaldas was entitled to partition, however his share was limited to his father's ancestral estate and not any of the latter's self-acquired property. In this case, the High Court overruled custom and gave preference to Mitakshara doctrine which allowed for partition. However, the High Court protected Nathubhoy's self-acquired property from partition.

In both cases above, the High Court took a broader interpretation of the Mitakshara doctrine and permitted male coparceners to partition family property.

### **Widows in Anglo-Hindu Law**

While a *karta* had power to alienate property, women had little or no say over the alienation of family property.<sup>72</sup> The widow's power over such property was limited to usufruct and she could only alienate it under exceptional circumstances. After her death, this property passed on to her husband's heirs. Anglo-Hindu law expanded the circumstances in which a widow could alienate property. This included payment of her deceased husband's debts. Widows could also alienate property for the wedding of their daughters and also the weddings of sons of their daughters. Religious functions (such as the funeral of her late husband) and sponsorship of charitable acts were

also legitimate reasons for widows to alienate property.<sup>73</sup> Widows could also alienate properties to pay the joint family's taxes.

Anglo-Hindu law also widened the scope for alienation of property by the widow in the following ways: First, it allowed for widows to alienate property not only for "necessity" but also for the "benefit" of the estate.<sup>74</sup> The scope of the term "benefit" was expanded to include increasing the size and profitability of the estate. Second, Anglo-Hindu law allowed for widows to alienate property if they had the consent of other members of the family. Finally, the testamentary powers of widows were greater in Anglo-Hindu law than had been the case before.<sup>75</sup>

### ***Behari Lal v. Madho Lal Ahir Gayawal***<sup>76</sup>

Damodhur Mahton, a member of a family of priests died in 1845, leaving his widow and two daughters. His widow Lachoo Dai died in 1878 and his youngest daughter, Phula Dai, died in 1852 leaving a son, Madho Lal. His elder daughter, Rani Dai, had a son Behari Lal. Behari Lal claimed an exclusive right to the estate on the basis of will created by Lachoo Dai. According to the Mitakshara doctrine Behari Lal would have an equal share with Madho Lal but the former suggested that his caste did not adhere to the Mitakshara. The Privy Council ruled that Behari Lal could not prove the existence of a custom particular to his caste and that Lachoo Dai did not have power to alienate the estate without the approval of her daughters. While Behari Lal did not receive the estate and Lachoo Dai's ability to alienate the estate was limited, it is worth acknowledging that the court judgement did suggest that a widow could alienate with the approval of other heirs.<sup>77</sup>

### ***Bajrang Singh v. Manokarnika Singh***<sup>78</sup>

Sitla Baksh Singh, a resident of Sultanpur died leaving a widow Daryao Kunwar and two daughters Jagrani Kunwar and Janga Kunwar.<sup>79</sup> Daryao Kunwar died in 1892 and sold the estate before she passed away to her son-in-law Mahesh Baksh Singh.<sup>80</sup> Janga Kunwar and many distant male relatives of Sitla Baksh Singh challenged the sale of the estate to her brother-in-law. The court recognized that Mitakshara doctrine limits the power of a widow to alienate property but recognized that Daryao Kumar has customary right to sell the property and that she had attained the consent of the nearest male relatives of her husband in before she sold her property. This case illustrates a willingness on the part of the Privy Council to take a more flexible interpretation Hindu law of alienation and thus allow the widow to sell her property.

## Partitions of the Hindu Joint Family: A Quantitative Analysis

Let us turn to a quantitative examination. We obtained data from four high courts in British India: Bombay, Allahabad, Calcutta, and Madras. Our data is divided into two time periods, one from 1900 to 1915 and from 1932 to 1947. We classified cases according to court, caste, time period, setting (urban or rural), gender, and the school of inheritance law.<sup>81</sup> Our data also includes the position of the plaintiff in the family.<sup>82</sup>

A caste breakdown of the initiators of partition illustrates that there is some difference in the caste makeup of those adhering to the Mitakshara and Dayabagha schools. Those adhering to the Dayabagha had a higher proportion of Brahmins and a smaller proportion of members from landowning and agrarian castes.<sup>83</sup>

**Table 1A: Initiators of partition and Caste Background 1900-1915.**

	<i>Mitakshara</i>	<i>Dayabagha</i>
Brahmin	35(14.8%)	20(64.52%)
Landowner/Agrarian	125(52.96%)	4(12.90%)
Merchant	36(15.25%)	6(19.35%)
Lower Caste/Dalit	37(15.68%)	1(3.23%)
Other	3(1.27%)	0

**Table 1B: Initiators of partition and Caste Background 1932-1947.**

	Mitakshara	Dayabagha
Brahmin	84 (16.26%)	34 (37.36%)
Landowner/Agrarian/upper	201(39.88%)	28(30.77%)
Merchant	117(23.21%)	9(9.89%)
Lower Caste/Dalit	101(20%)	20(21.99%)
Other	1(0.2%)	0

The overwhelming number of initiators of partition in both Mitakshara and Dayabagha were males. This was true for 1900-1915 and for 1932-1947. However, females who initiated partitions formed a greater proportion of the Dayabagha sample. The chi-square value for Table 2A is 9.973 and yields a p-value of .0016. The results are also significant for Table 2B, the 1932-19147 period: we get a chi-square value of 24.768 and a p-value of .00000026.<sup>84</sup>

**Table 2A: Initiators of Partition 1900-1915: Breakdown via gender**

	<i>Male</i>	<i>Female</i>
Mitakshara	201 (86.6%)	31 (13.4%)
Dayabagha	20 (64.5%)	11 (35.5%)

**Table 2B: Initiators of Partition Breakdown via Gender 1932-1947**

	<i>Male</i>	<i>Female</i>
Mitakshara	457(90.67%)	47(9.33%)
Dayabagha	65(71.4%)	26(28.6%)

A logit regression buttresses our results and shows that adherence to the Mitakshara is statistically significantly associated with male-initiated partitions.<sup>85</sup>

**Table 2C: Dependent variable Male. Excluded Variables: Calcutta, Dalit, Dayabagha**

<i>Coefficient</i>	<i>Odds Ratio</i>
C	2.18***
Agrarian Castes	1.26
Brahmin	1.30
Business Castes	1.40
Mitakshara	3.46***
Matrilineal Inheritance Systems	1.05
Allahabad	0.99
Madras	1.39
Bombay	1.01
Before 1915	0.64**
Urban	1.01

Mc Fadden R-Square 0.055

Which male relatives were most likely to initiate partitions? We predicted that in the Dayabagha, since the karta has considerable authority to dispose of property and his sons have limited rights, we are more not likely to see partitions initiated by sons.<sup>86</sup> Table 3A shows that only 4.76% of partitions of the Dayabagha partitions were initiated by sons whereas 21.5% of Mitakshara partitions were initiated by sons. Fathers and other male relatives were more likely to initiate partitions in the Dayabagha while the proportion of partitions initiated by brothers was similar in Mitakshara and Dayabagha.<sup>87</sup> While Table 3A does not yield statistically significant results, a comparison of sons with all other male relatives in Table 3B gives us statistically significant results.<sup>88</sup>

**Table 3A: Male Initiators of Partition 1900 to 1915**

	<i>Mitakshara</i>	<i>Dayabagha</i>
Brother	83(41.5%)	9(42.85%)
Son	43(21.5%)	1(4.76%)
Father	16(8%)	3(14.29%)
Other	58(29%)	8(38.10%)

**Table 3B: Sons as Initiators of Partition 1900 to 1915**

	<i>Mitakshara</i>	<i>Dayabagha</i>
Sons	43 (21.5%)	1 (4.76%)
All Other Male Relatives	157(78.5%)	62(95.24%)

Sons from families adhering to the Dayabagha doctrine were also less likely to initiate partitions during the period from 1932 to 1947. Table 3C yields statistical significance.<sup>89</sup>

**Table 3C: Male Initiators of Partition 1932 to 1947**

	<i>Mitakshara</i>	<i>Dayabagha</i>
Brother	207(45.30%)	37(58.73%)
Son	105(22.98%)	2(3.17%)
Father	46(10.07%)	5(7.94%)
Other	99(21.67%)	19(30.16%)

These results were supported by a logit regression which indicated that there was statistical significance for sons initiating partition in families adhering to the Mitakshara doctrine.<sup>90</sup>

**Table 3B: Dependent variable Son. Excluded Variables: Calcutta, Dalit, Dayabagha. Only Males in Sample**

<i>Coefficient</i>	<i>Odds Ratio</i>
C	0.17***
Agrarian Castes	0.67*
Brahmin	0.78
Business Castes	0.82
Mitakshara	2.04*
Matrilineal Inheritance Systems	1.43
Allahabad	0.61
Madras	1.03
Bombay	0.99
Before 1915	1.06
Urban	1.21

Mc Fadden R-Square: 0.016

Were brothers more likely to initiate partitions in the Dayabagha when we controlled other variables? A logit regression finds significance for brothers initiating partitions when the family adheres to the Dayabagha doctrine.<sup>91</sup> Brothers were most likely to initiate partitions in the Dayabagha. We also see regional variation with brothers initiating partitions in southern India more so than elsewhere.<sup>92</sup>

**Table 3A: Dependent variable Brother. Excluded Variables: Calcutta, Dalit, Mitakshara. Only Males in Sample**

<i>Coefficient</i>	<i>Odds Ratio</i>
C	0.41***
Agrarian Castes	1.14
Brahmin	0.72
Business Castes	1.10
Dayabagha Inheritance System	1.98**
Matrilineal	0.13***
Allahabad	1.28
Madras	2.34***
Bombay	1.53
Before 1915	0.30
Urban	1.23

Mc Fadden R-Squared: 0.028

Did the Mitakshara and Dayabagha differ in terms of partitions initiated by female relatives? Widows initiated a larger proportion of partitions in Mitakshara during the 1900 to 1915 period and the 1932 to 1947 period. However, we do not obtain statistical significance for either Table 4A or Table 4B.<sup>93</sup> Thus, there appears to be no statistical difference as per which female relatives initiate partitions.

**Table 4A: Female Initiators of Partition Before 1915**

	<i>Mitakshara</i>	<i>Dayabagha</i>
Widow	20 (64.5%)	3(27.3%)
Mother	4(12.9%)	3(27.3%)
Daughter	5(16.1%)	4(36.4%)
Other	2(6.4%)	1(9%)



**Female Initiators of Partition 1932 to 1947**

	<i>Mitakshara</i>	<i>Dayabagha</i>
Widow	34 (72.34%)	13(50%)
Mother	2 (4.26%)	4(15.38%)
Daughter	7(14.89%)	4(15.38%)
Other	4(8.52%)	5(19.23%)

However, when we control for caste, we find via a logit regression that widows are more likely to initiate partitions in the Mitakshara. We also see from Table 5A that belonging to an agrarian caste reduced the odds of a widow initiating a partition.<sup>94</sup>

**Table 5A: Dependent variable Widow. Excluded Variables: Calcutta, Dalit, Dayabagha. Only Females in Sample**

<i>Coefficient</i>	<i>Odds Ratio</i>
C	1.70
Agrarian Castes	0.29**
Brahmin	1.15
Business Castes	0.38
Mitakshara Inheritance System	3.31*
Marrumakhatayam Inheritance System	0.17
Allahabad	1.46
Madras	0.64
Bombay	0.52
Before 1915	0.98
Urban	0.49

Mc Fadden R-Square: 0.11

We may infer the following from our examination of quantitative evidence: First, males are more likely to initiate partitions than in the Dayabagha.<sup>95</sup> The Mitakshara and Dayabagha also differ regarding which male members of the family initiate partitions: in the former, sons initiated partitions whereas in the latter brothers initiated partitions. Second, while females initiated a greater proportion of the cases in the Dayanagha, widows were more likely to initiate partitions under the Mitakshara. As noted in the discussion these results were obtained when we controlled caste background.

## Conclusion

Our above discussion analyzed and compared the laws of the Mitakshara and Dayabagha doctrines as they pertain to the partitioning of the Hindu joint

family. We noted that property is held differently in the two doctrines. We also saw that the *karta* has considerably more power in the Dayabagha and looked at the position of the remaining male members. We also looked at the differences in how females are treated in the two doctrines and examined differences in the tendency of females to initiate partitions. We turned to specific members of the Hindu joint family and saw that due to differences in the two doctrines sons and widows were more likely to initiate partitions under the Mitakshara while brothers were more likely to do so in the Dayabagha.

Our study adds to the growing body of literature on the Hindu joint family and raises some questions for future study. First, while we examined differences between the Mitakshara and Dayabagha doctrines, how did regional application of the Mitakshara vary regarding partitioning of property? Second, there is need for greater examination of the interaction between caste-based inheritance practices and the two doctrines. How did the economic and social life of castes change when their inheritance practices were made to conform to the Mitakshara and Dayabagha? This study hopes to spur further discussion of such questions.

### Notes

1. The *Manusmriti* and other seminal texts discourage the partitioning of family property, particularly when the father is alive. Exceptions are made such as when the father is indifferent to wealth. Iyer (1911, pg. 9.)
2. An important exception to this were adopted sons who could inherit property in the absence of a legitimate son Iyer (1911, pg. 449.).
3. Derrett (1961, pg. 13)
4. Local customs could vary immensely: in Punjab patrilineal inheritance was the norm whereas in Karnataka and other parts of southern India bilateral and matrilineal inheritance practices were not uncommon. Mukund (1999) discusses inheritance traditions in south India.
5. Visvarupa, whose commentaries gave greater autonomy to the sons, was more popular in the southern regions of India. Ghose (1917, pg. 5.)
6. When referring to the Mitakshara and Dayabagha as texts, I have italicized them. However, when I refer to them as doctrines or practice the terms are not italicized.
7. Lariviere (1989, pg 760.) *The Gentoo Code* was heavily influenced by the *Dayabagha*. (Kishwar 2145.)
8. The *Mitakshara* and *Dayabagha* were translated earlier than other commentaries; both texts assumed a patrilineal and patriarchal family. (Kishwar, 2146.) British trained judges tended to regard the *Mitakshara* and *Dayabagha* as schools of jurisprudence

analogous to the *maddhabs* in Islamic law. While *Mitakshara* inspired numerous regional variations, the practice of the *Dayabagha* was more uniform. (Newbiggin, 35-38).

9. One such example was *patni-bhaga* which allowed widows to take equal shares with the sons if a partition took place upon the death of the *karta*. While *patni-bhaga* had textual support in some of the *Dharmasastra*, Anglo-Indian courts treated a patrilineal exogamous joint family as the norm and insisted that sufficient proof of *patni-bhaga* was needed as a custom was necessary for its implementation. Regional variations in south India such as bilateral inheritance in parts of Karnataka and wider interpretations of *stridhan* in Tamil Nadu were made to conform to *Mitakshara* doctrine. On *patni-bhaga* see Grady, (1868, pg. 383.)
10. Most Hindus were classified as adherents the *Mitakshara* which has the following sub-divisions: Benares, Dravida, Mithilia, and Maharashtra. The Hindus of Bengal and Assam were classified as adherents of the *Dayabagha*. Mulla (1915, pg. 9-11) A minority of Hindus did not follow the *Mitakshara* or *Dayabagha* and instead adhered to matrilineal systems of inheritance known as the *Marumakkathayam* and *Aliyasantana*.
11. When discussing Hindu inheritance law as it was administered in British India, the term "Anglo-Hindu" will be used. When talking about Hindu inheritance law in general the suffix "Anglo" will not be used.
12. Women's ability to own property has greatly advanced in independent India because of the passage of the Federal Hindu Succession Act of 1956 and the Hindu Succession Act of 2005.
13. I do not suggest that Anglo-Indian courts were the sole reason behind increasing frequency of partitions. Instead, a variety of factors were behind the rise of partitions including growing individualism, urbanization, and the development of a market for land. However, Anglo-Indian courts responded to the greater demand for partitions and their reinterpretation of Hindu inheritance law facilitated partitions.
14. Saavala (1998, pg. 65)
15. Matrilineal inheritance systems which the *Marumakkathayam* and *Aliyasantana* and Islamic inheritance law are outside the scope of this study.
16. Brothers and sons were chosen for analysis for the following reasons: First, the father is not likely to initiate partition. (Hindu law discusses in detail the possibility of other male heirs initiating partition but there is limited discussion of fathers themselves initiating partitions.) Instead, younger heirs are more likely to want to separate from the joint family. Second, if a partition occurs when the father is alive, it is often initiated by sons. On the other hand, if the partition occurs when a father is deceased, it can then be initiated by a brother against his other siblings. One can read a partition initiated by a son to mean that the partition took place while the father was alive whereas a partition initiated by a brother meant that the partition took place after the father had passed away.

17. Data for the joint family partitions comes from the following sources: *Indian Law Reports* from four of British India's High Courts: Bombay, Calcutta, Madras, and Allahabad from 1900 to 1915 and 1932 to 1947. The *All India Reporter*, All India Reporter Ltd. Nagpur, CP was also consulted. Two limitations about our data must be noted: First, the data does not include partition cases resolved in caste councils, lower courts or outside of the judicial system. Second, only cases which had sufficient information about the initiator of the partition and the family's background were selected.
18. Ilbert (1910, pg.306.)
19. Maine pp. 78-79.
20. Madan pp.211-231
21. Kuran and Singh pp. 508-511
22. Sontheimer's work provided a critical analysis of earlier commentaries on the joint family and places the evolution of the Mitakshara and Dayabagha doctrines in the broader context of the development of Hindu family law.
23. Newbigin suggests that changes in Hindu family law helped Hindu women gain the right to property. However, this was done to make them into taxable citizens.
24. Denault, (2009.)
25. Struman argues that Hindu family law was changed by its interaction with liberal conceptions of the law, and this paved the way for a reevaluation of the position of Hindu women in Hindu law.
26. Most historians place the Mitakshara at some time before 1200 CE and the Dayabagha between 1200 and 1500 CE. The Chalukya dyansty's patronage of the Mitakshara helped the doctrine's spread across India while Adisura Sen's patronage of the Dayabagha spread it in Bengal. The Dayabagha may also have Buddhist influence. See Kulkarni (2019) pg. 484
27. Kane, *History of the Dharmasastra* Vol 1, pg. 327 suggests that the author of the Dayagagha was responding to the Mitakshara text. Derrett (1976) challenges Kane's assertion.
28. Carroll (1991) focuses on the Hanfi school of Islamic law.
29. Kulkarni (2019) suggests that increased widow's rights to property in Dayabagha caused other heirs to encourage the practice of widow immolation.
30. Singh (2017)
31. Joint property is divided into two categories ancestral and non-ancestral.
32. Singh (2017, pp.45-46.)
33. Carroll, (1991, pg. 802.)
34. The share of each coparcener is not fixed and changes with the death of other coparceners. Halder and Jaishankar (2008, pg.666.)

35. Halder and Jaishankar (2008, pg. 667)
36. Halder and Jaishankar (2008, pg. 666)
37. Maintenance was not a fixed amount and could vary depending on the family's wealth. Widows and unmarried daughters were both entitled to maintenance.
38. Halder and Jaishankar (2008, pg. 667)
39. A *karta* under the Dayabagha doctrine has ample power to dispose property and to potentially disinherit heirs. On the other hand, under the Mitakshara doctrine a *karta*'s powers are constrained. Hence the *karta* in the latter may be more inclined to partition.
40. Given the absolute power the *karta* has over disposing property, sons have little room to initiate partitions while the *karta* is alive. Some exceptions (such as insanity) disqualify the absolute power of the *karta* and allow for sons to initiate partitions.
41. Recall that widows inherit the "separate property" of the husband and their *stridhan* goes to the widow's heirs not the husband's family in the Mitakshara. On the other hand, widows only take a portion of the share of the joint family property in the Dayabagha as this doctrine does not distinguish between joint and separate property. The Dayabagha stipulates that widow's *stridhan* goes to the husband's family. Thus, the widow's rights are in these respects greater in the Mitakshara and they have a greater incentive ensure that their property is distinct from the common joint family pool.
42. The *Dharmasutras* are guides for both ethics and the law. Only four of the numerous texts have survived. The *Dhamrasutras* were written after the *Dharmasutras* and extensively discuss legal matters. The *Smritis* are derivative works that comment and develop upon primary texts. "*Kula*" came to denote extended patrilineal households while the *Kutumba* denoted smaller units. "*Kutumba*" was used in contexts that imply a meaning similar to "joint family." Sontheimer (1965, pp. 27-32.)
43. The purpose of ancestor worship was to ensure continuity of the line and to pass property on to one's descendants despite the claims of other relatives. Sontheimer (1965, pg. 61.)
44. Partitions when the father reached an old age or passed away were acceptable.
45. Not only did *sadharnam* coexist between the father and son but it was also based upon the presupposition that the son would eventually take the place of his father. Sontheimer (1965, pg. 88) discusses this in greater detail.
46. Hindu thought stressed that the son is continuation of the father and was expected to fulfill the spiritual and worldly obligations of his father.
47. Debts carry on to the grandson who must pay back the principal. The great grandson is liable if he has inherited a portion of the ancestral estate. Other relatives (if they inherited the property) had to pay the debt with interest in the absence of sons. Debts unpaid by sons were transferred to grandsons. However, great-grandsons were no longer liable for debt. Sontheimer (1965, 77-82.)

48. There is controversy regarding when the *Dayabagha* was written. Most scholars date the *Dayabagha* between the 12<sup>th</sup> and 15<sup>th</sup> centuries. The *Mitakshara* is believed to have been written on the eve of the 12<sup>th</sup> century. The first English translations of both the *Dayabagha* and *Mitakshara* were done in 1810 by Henry Colebrooke. Rocher (2002, pp. 18-20.)
49. Some texts such as the *Narada smriti* did not distinguish between ancestral and self-acquired property. Sontheimer (1965, pg. 143.)
50. Sons who failed to contribute to the family could be separated from the family.
51. Sontheimer (1965, pg.169.)
52. Medhathathi's *Manubhasya* was a leading commentary on the *Manusmriti* and is an example of this position. Sontheimer (1965, pg. 202.)
53. Partitions would take place when the father is aged, dead, incompetent, disqualified to run a family, or wishes for a partition. Sontheimer (1965, pg. 131.)
54. Partitions initiated by sons or forced upon the father were considered immoral by Medhathathi and other jurists. Sontheimer (1965, pg. 203.)
55. Visvarupa's *Balakrida*, a medieval commentary on the *Yajnavalkyasmriti*, suggested ancestral property preceded partition because ownership comes about because of birth. Visvarupa's views found more acceptance in southern India. Sontheimer pg. 205 Aparaditya suggested that ancestral property is *sadharnam* upon the birth of the son. Aparaditya's *Apaprarka-Yajnavalkya-Dharmasastra Nibandha* was composed in the 12<sup>th</sup> century. (Ramdas, 1986.)
56. Some texts made exceptions to this rule and allowed partitions during the lifetime of the father if the father loses an interest in worldly affairs and the daughters have been married. Sons may partition without the father's consent if the latter has become an outcaste or suffers from certain diseases. Sontheimer (1965, pg. 131.)
57. Some writers such as Usanas (referenced in the *Arthashastra*) and Narada recommend providing a greater share to the eldest son. The *Astamba* and other texts recommend partitioning equally among sons. Harita suggests that the father has three options: He may retire from worldly life, live with a son, or provide his sons minor portions of the property and live on his own property. Sontheimer (1965, pg. 135.)
58. A mother's property is divided evenly between uterine sons and daughters. A woman may not dispose of it as she wishes. A woman has greater leeway to dispose of *stridhan*. What constitutes *stridhan*? *Stridhan*, according to the *Manusmriti*, consists of six distinct categories including gifts given before and after a woman's marriage. Mulla (1915, pg. 80.)
59. There were some anomalous instances of wills used by Hindus in pre-British India but wills were first used in substantial amounts in Bengal in the early 19<sup>th</sup> century. Mayne (1922, pp. 566-570.)
60. Trevelyan (1917, pg. 224.)

61. Both moveable and immoveable properties could be disposed of by wills in the absence of male heirs.
62. The Hindu Wills Act of 1870 greatly strengthened the position of fathers. (Majumdar, 1904.) *Balwant Singh v. Rani Kishori* 1898(I.L.R. 20 All. 267 (P.C.))
63. *Balwant Singh v. Rani Kishori* (1898(I.L.R. 20 All. 267 (P.C.))
64. *Balwant Singh* was *Jaswant Rao's* son through another wife.
65. *Sri Raja Rao Venkata v. Court of Wards*, 1899 ILR 22 Mad 383
66. The zamindari was in southern India and was established in 1647. *Rama Rao* was given control in 1850.
67. Hindu coparceners and English joint tenants differ on the following points: First joint tenancy is the result of a deed or will while coparcenary comes about from birth. Second, coparcenary exists between relatives, but joint tenancy may exist between strangers. Finally, joint tenants have fixed shares whereas the coparceners' shares are not fixed. Both coparceners and joint tenants have the right of survivorship and also access to the entire estate. *Cowell* (1895, pp. 9-10.)
68. A significant portion of Hindu legal literature restricts partitions by sons to special circumstances such as the father's insanity.
69. Sons could initiate partitions in special circumstances such as the father's insanity or neglect of property by the father.
70. *Nagalinga Mudali v. Subbiramanya Mudali* (1880) 1 M.C.H.R. 77
71. *Judmohandas Mangal Das v. Sir Mangaldas Nathuboy and Others* (1886) I.L.R., 10 Bom., 528
72. Alienations occurred through gifting, hypothecation, sale, and donation of property.
73. The Mitakshara generally provided greater scope for alienation of property by widows than the Dayabagha. *Gill* (1986, pp. 45-49.)
74. The term "benefit" was distinguished from "necessity" and included actions which enlarged the estate. The original term *kutumbarthe* (literally benefit of the *kutumb*) allowed alienations for sustenance and survival for members of the joint family was extended. *Sontheimer* (1965, pp. 34)
75. The Hindu Women's Right of Property Act extended to Hindu widows the right to inherit intestate property, but this act only applied to separate property. *Halder and Jaishankar*, pg. 674
76. *Behari Lal v. Madho Lal Ahir Gayawai* (1891) I.L.R. 19 C. 236
77. It would have been very unlikely that a widow could gain the right to alienate property with solely the approval of two other female members of the family in traditional Hindu law.
78. *Bajrangi Singh v. Manokarnika Singh* (1907) I.L.R. 30 All.1

79. Singh was from a tribe near Oudh and his tribes' traditions excluded daughters and their heirs from inheriting a portion of the father's estate.
80. Mahesh Baksh Singh was Jagrani Kunwar's husband.
81. A small number of our cases came (12 in the 1900-1915 period and 16 in the 1932 to 1947 period) from matrilineal systems of inheritance: the Aliyasantana and Marumakkathayam. These cases were largely from the Nambudiri Brahmin community in Kerala and Tuluva ethnic group in Karnataka. These have been excluded from much of the data analysis and discussion because this study is a comparison of the Mitakshara and Dayabagha doctrines. However, I have included these in the logit regressions to increase statistical robustness of results.
82. "Son" implies that the partition was initiated by one of the sons of the *karta* when he was alive. "Brother" means that the *karta* had passed away and partition was initiated by one of his sons against the other siblings.
83. Many of the landowners in Bengal were Kayasths who traced their origins to Bihar and the United Provinces. This may have played a role in reducing the proportion of landowners adhering to the Dayabagha.
84. Table 2A and Table 2B each had one degree of freedom.
85. \* Indicates significance at 10%, \*\*indicates significance at 5% and \*\*\* indicates significance at 1% throughout this study. I have included families adhering to the matrilineal south Indian inheritance systems in all regressions as a reference point. These are represented by the independent variable "matrilineal inheritance systems."
86. The following tables compare partitions initiated by male members of the Hindu joint family only in Mitakshara and Dayabagha adhering families. I have excluded families adhering to the matrilineal inheritance systems in the tables.
87. "Other" refers to all other male relatives such as uncles, cousins, and grandsons.
88. Table3A had given us a Chi-Square value of 4.083 and a P-value of 0.2526 with 3 degrees of freedom whereas Table 3B gives us a Chi-Square of 13.64 and a P-value of 0.0002 and 1 degree of freedom. While the difference in likelihood of sons initiating partition between the Mitakshara and Dayabagha doctrines is significant, this is not the case for the difference between other categories of relatives.
89. The chi-square value for Table 3C was 14.697 and the P-value was 0.002 with 3 degrees of freedom.
90. The odds ratio of 2.04 for the Mitakshara here indicates that sons in Mitakshara adherent families have 2.04 times the likelihood of initiating partitions vis-à-vis their counterparts in the Dayabagha. The data supports our assertion that male coparceners adhering to the Dayabagha were averse to partitioning the property while the *karta* was alive. Belonging to an agricultural caste also appears to have had a negative impact on sons initiating partition.



91. This is the opposite of what was noticed in the Mitakshara where property was partitioned by male coparceners while the *karta* was alive (though this tendency was weaker in agrarian castes than other castes.)
92. The tendency to initiate partitions after the death of the *karta* (i.e. brothers partitioning the property) was greater among families following the Mitakshara in the south than those following the Mitakshara in other regions. This requires further investigation.
93. Table 4A yielded a Chi-Square of 4.693 with a p-value of 0.195 with three degrees of freedom. Table 4B yielded a Chi-Square of 3.781 with a p-value of 0.286 and 3 degrees of freedom.
94. Widows from agrarian castes may have had different pressures than widows from other caste backgrounds. Farmers may have had greater incentive for holding plots of land as smaller plots may not have been sufficient to provide a living.
95. There was no statistically significant difference in the likelihood of females initiating partitions in the Dayabagha and matrilineal systems of inheritance.

### *Primary Sources*

*Allahabad Law Reporter*, 1899-1947. Vols. 22-74. Allahabad: Government Press.

*Bombay Law Reporter*, 1899-1948. Vols. 1-52. Bombay: Bombay Law Reporter Office.

*Calcutta Law Reporter*, 1899-1948. Vols. 25-76. Calcutta: Government Press.

*Madras Law Reporter* 1899-1947. Vols. 23-76. Madras: Government Press.

### **Secondary Sources**

Agarwal, B. (1998). Widows versus daughters or widows as daughters? Property, land, and economic security in rural India. *Modern Asian Studies*, 32(1), 1-48.

Birla, R. (2009). *Stages of capital: Law, culture, and market governance in late colonial India*. Duke University Press.

Carroll, L. (1991). Daughter's right of inheritance in India: A perspective on the problem of dowry. *Modern Asian Studies*, 25(4), 791-809.

Cowell, H. (1895). *A Short Treatise on Hindu Law: As Administered in the Courts of British India*. Thacker, Spink.

Denault, L. (2009). Partition and the politics of the joint family in nineteenth-century north India. *The Indian Economic & Social History Review*, 46(1), 27-55.

Derrett, J. D. M. (1961). The administration of Hindu law by the British. *Comparative Studies in Society and History*, 4(1), 10-52.

Derrett, J. D. M. (1976). The Relative Antiquity of the Mitāksharā and the Dāyabhāga. In *Essays in Classical and Modern Hindu Law* (pp. 198-206). Brill.

Ghose, J. C. (1917). *The principles of Hindu law* (Vol. 2). SC Auddy & Company.

- Gill, K. (1986). Hindu women's right to property in India. Deep & Deep Publications
- Grady, S. G. (1868). *A Treatise on the Hindoo Law of Inheritance: Comprising the Doctrines of the Various Schools, with the Decisions of the High Courts of the Several Presidencies of India, and the Judgments of the Privy Council on Appeal*. Wildy & Sons.
- Halder, D., & Jaishankar, K. (2008). Property rights of Hindu women: A feminist review of succession laws of ancient, medieval, and modern India. *Journal of law and religion*, 24(2), 663-687.
- Ilbert, C. (1910). British India. *Journal of the Society of Comparative Legislation*, 10(2), 306-314.
- Iyer, V. Kalyanaram (1911) *A complete collection of Hindu law books on inheritance*. No. 451.N.M. Tripathi & Co
- Kishwar, M. (1994). Codified Hindu law: Myth and reality. *Economic and Political Weekly*, 29(33), 2145-2161.
- Kulkarni, P. (2017). The British Academy Brian Barry Prize Essay: Can Religious Norms Undermine Effective Property Rights? Evidence from Inheritance Rights of Widows in Colonial India. *British Journal of Political Science*, 47(3), 479-499.
- Kuran, T., & Singh, A. (2013). Economic Modernization in Late British India: Hindu-Muslim Differences. *Economic Development and Cultural Change*, 61(3), 503-538.
- Lariviere, R. W. (1989). Justices and Paṇḍitas: some ironies in contemporary readings of the Hindu legal past. *The Journal of Asian Studies*, 48(4), 757-769.
- Madan, T. N. (1963). The joint family: A terminological clarification. In *Family and Marriage* (pp. 7-16). Brill.
- Madan, T. N. (1976). The Hindu family and development. *Journal of Social & Economic Studies*. Pp. 211-231
- Maine, H. S. (1890). *On Early Law and Custom*. J. Murray.
- Majumdar, M. C. (1904). *The Hindu Wills Act (Act XXI of 1870): With which is Incorporated the Probate and Administration Act: with Elaborate Notes and Commentary*. Sanyal Wills
- Mayne, J. D. (1922). *A treatise on Hindu law and usage*. Higginbotham.
- Mukund, K. (1999). Women's property rights in South India: A Review. *Economic and Political Weekly*, 32(22), 1352-1358.
- Mulla, D. F. (1915). *Principles of Hindu law*. NM Tripathi.
- Newbigin, E. (2013). *The Hindu family and the emergence of modern India: law, citizenship and community* (Vol. 22). Cambridge University Press.
- Ramdas, Ravindranath Vaman. "Glimpses of Apararka-Tika of Aparaditya the king of the Shilahara Dynastu of North Konkan (1127-1148 A. D.) Which was presented to the court of Jayasimha the king of Kashmir," *Proceedings of the Indian History Congress*, vol. 47, 1986, pp. 122-127
- Rocher L. *Jimutavahana's Dayabhaga: The Hindu Law of Inheritance in Bengal*. Oxford University Press, 2002.

- 
- Saavala, M. (1998). The 'Hindu joint family': Past and present. *Studia Orientalia Electronica*, 84, 61-74.
- Singh, A. (2017). Women, wealth and law: Anglo-hindu and anglo-islamic inheritance law in British India. *South Asia: Journal of South Asian Studies*, 40(1), 40-53.
- Sontheimer, G. D. (1965). *The Joint Hindu Family: Its Evolution as a Legal Institution* (Doctoral dissertation, SOAS University of London).
- Sturman, R. (2012). *The Government of Social Life in Colonial India: Liberalism, Religious Law, and Women's Rights* (No. 21). Cambridge University Press.
- Trevelyan, E. J. (1917). *Hindu law as administered in British India*. Thacker, Spink & Company.