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**CONSTITUTIONAL EQUALITY AND PROPERTY RIGHTS:  
A STUDY OF WOMEN'S COPARCENARY RIGHTS POST  
THE HINDU SUCCESSION (AMENDMENT) ACT, 2005**

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**ABSTRACT**

The Hindu Succession (Amendment) Act, 2005, marked a transformative milestone not only in Hindu personal law but also in India's constitutional journey toward gender equality and social justice. By granting daughters equal coparcenary rights in ancestral property, the amendment sought to harmonize personal law with the constitutional guarantees enshrined

under Articles 14, 15(3), and 21. This research examines the pre-amendment legal framework rooted in patriarchal norms that denied women equal inheritance rights and contrasts it with the progressive, constitutionally compliant changes introduced by the 2005 amendment.

Through an analysis of significant judicial pronouncements, particularly *Vineeta Sharma v. Rakesh Sharma* and *Danamma v. Amar*, the paper highlights how the judiciary has interpreted the amendment in light of constitutional principles such as equality, non-discrimination, and the right to dignity. Furthermore, the study explores the socio-legal implications of the amendment, focusing on women's empowerment, economic independence, and the role of legal reform in transforming entrenched social structures.

Despite its progressive intent, the amendment's real-world impact is impeded by factors such as societal resistance, lack of awareness, and procedural obstacles in property registration. A comparative analysis with global and South Asian frameworks underscores the need for continued efforts to align statutory law with constitutional ideals and to close the gap between legal promise and practice. This paper aims to contribute to the discourse on constitutional gender justice by evaluating the Hindu Succession (Amendment) Act, 2005, as an instrument of transformative constitutionalism and social equity.

## 1. INTRODUCTION

### 1.1 INTRODUCTION

The Hindu Succession (Amendment) Act<sup>1</sup>, 2005, represents a landmark reform in Indian family law, aimed at rectifying the historical gender inequities entrenched in the Hindu Succession Act, 1956. By granting daughters equal coparcenary rights in ancestral property, the amendment marked a significant departure from patriarchal inheritance practices that prioritized male heirs. This reform aligns with India's constitutional commitment to gender equality and reflects the evolving social and legal landscape.

This research paper delves into the implications of the amendment, tracing its historical context, analysing key judicial interpretations, and assessing its impact on women's socio-economic empowerment. Despite its progressive intent, the amendment's implementation faces challenges, such as lack of awareness, procedural barriers, and societal resistance, particularly in rural and traditional settings. This study aims to critically evaluate these aspects while proposing measures to enhance the effectiveness of the amendment in achieving its intended

goals.

This amendment also holds deep constitutional significance, as it embodies the spirit of gender justice envisioned under Articles 14, 15(3), and 21 of the Constitution of India. By recognizing daughters as coparceners by birth, the law seeks to remedy historical discrimination in property inheritance and actualize the constitutional guarantee of equality before the law and non-discrimination on grounds of sex. It further aligns with the Directive Principles of State Policy, particularly Article 39(a), which enjoins the state to ensure that men and women have an equal right to livelihood and ownership of material resources. Thus, the 2005 amendment is not merely a reform within personal law but a step toward fulfilling India's broader constitutional commitment to transformative equality and social justice.

By exploring the intersection of law, society, and gender justice, this paper seeks to contribute to the broader discourse on equitable property rights for women in India.

## **1.2 RESEARCH OBJECTIVES**

1. To analyse the historical evolution of women's inheritance rights under Hindu law and assess how these developments reflect the constitutional vision of equality and non-discrimination.
2. To examine the legal implications of the 2005 Amendment in granting equal coparcenary rights to daughters and its impact on traditional property inheritance practices.
3. To evaluate landmark judicial interpretations, and their role in clarifying the retrospective and prospective applicability of the amendment.
4. To identify the socio-economic challenges faced by women in asserting their coparcenary rights post-2005, including societal resistance, legal illiteracy, and procedural hurdles.
5. To propose recommendations for aligning statutory inheritance law with constitutional mandates through effective implementation, legal awareness, and social reform.

## **1.3 HYPOTHESIS**

The Hindu Succession (Amendment) Act, 2005, has significantly advanced gender equality by granting daughters equal coparcenary rights, thereby addressing long-standing disparities in property inheritance under Hindu law. However, its practical impact is hindered by societal

resistance, cultural norms, and procedural barriers, particularly in rural areas. Judicial interpretations have played a crucial role in clarifying ambiguities and strengthening its implementation, yet a lack of awareness among women and challenges in enforcement continue to limit its effectiveness.

#### **1.4 RESEARCH QUESTIONS**

The central questions guiding this research is:

1. How did the Hindu Succession Act, 1956, fall short of aligning with the constitutional guarantees of gender equality, and how did the Hindu Succession (Amendment) Act, 2005, seek to remedy these shortcomings?
2. What impact did 2005 Amendment Act had on the traditional concept of coparcenary rights in Hindu joint family property, and what are its broader implications for gender equality?
3. What role have landmark judicial pronouncements, played in shaping the interpretation and implementation of the 2005 Amendment?
4. What are the key socio-economic and procedural barriers faced by women in claiming their coparcenary rights under the 2005 Amendment?
5. What legal and policy measures can be recommended to ensure that the constitutional promise of substantive gender equality in property rights is effectively realized, especially in rural and patriarchal contexts?

#### **1.5 STATEMENT OF PROBLEM**

Despite the progressive intent of the Hindu Succession (Amendment) Act, 2005, in granting daughters equal coparcenary rights, its implementation has faced significant challenges. Historically, women under Hindu law were denied equal inheritance rights, perpetuating economic and social disparities. The 2005 amendment sought to rectify these injustices, but its practical impact remains limited due to persistent societal resistance, patriarchal norms, and procedural barriers in property registration and inheritance processes.

Furthermore, a lack of legal awareness among women, particularly in rural areas, has hindered their ability to claim and exercise these rights. While landmark judicial interpretations have clarified the scope and applicability of the amendment, gaps between the legal framework and its ground-level enforcement persist. This research seeks to address the challenges in bridging these gaps and evaluate the extent to which the amendment has contributed to promoting gender

equality in property ownership.

### 1.6 LIMITATION OF THIS RESEARCH

This research is primarily focused on the Hindu Succession (Amendment) Act, 2005, and its implications within the Indian legal framework, excluding other religious or cultural inheritance systems. The study relies on judicial interpretations, particularly landmark judgments, which may not encompass all case laws or regional variations in interpretation and implementation. Additionally, due to the absence of comprehensive field studies, the research depends on secondary sources, which may not fully represent ground-level realities, especially in rural areas. The cultural and regional diversity in India also presents a limitation, as customs and practices may differ significantly across states, affecting the generalizability of the findings. Furthermore, while the study covers the impact of the amendment up to the present day, it does not account for future legal developments or reforms. These limitations should be considered when interpreting the findings and conclusions of the research.

### 1.7 REVIEW OF LITERATURE

**R. K. Gupta**, *Women's Legal Rights in India*<sup>2</sup>: Gupta's book discusses the intersection of gender and property law in India, focusing on the impact of the Hindu Succession (Amendment) Act. The book examines barriers to the effective implementation of the amendment, especially in rural settings, where patriarchal norms still dominate.

**V. Ramaswamy**<sup>3</sup> argues that the amendment is a significant leap towards gender equality by granting women equal coparcenary rights. Ramaswamy highlights how the reform provides women with the legal framework to inherit ancestral property, thus promoting economic independence.

**S. Ghosh (2018)**<sup>4</sup>: This journal article critically examines the legal rights granted to daughters under the Hindu Succession (Amendment) Act, 2005, focusing on its implementation challenges.

Ghosh highlights the discrepancies between legal provisions and their ground-level application, particularly in rural India.

**Srinivasan (2017)**<sup>5</sup>: Srinivasan's article discusses the potential of the amendment to

economically empower women by granting them legal rights to ancestral property. It also highlights challenges such as legal illiteracy, social resistance, and the lack of awareness of these legal rights, particularly in rural communities.

**J. S. Kapoor, *Comparative Family Law: Property Rights of Women in South Asia* (2019):**

This article provides a comparative analysis of women's property rights in South Asia, particularly focusing on reforms in countries like Bangladesh and Nepal. Kapoor argues that while India's 2005 amendment is a step forward, the implementation of such laws in India faces similar challenges to those in neighboring countries.

***Vineeta Sharma v. Rakesh Sharma* (2020)<sup>6</sup>:** This landmark Supreme Court case clarified that the Hindu Succession (Amendment) Act, 2005, applies to all daughters, regardless of whether they were born before or after the amendment. It reinforced the retrospective application of the law, ensuring daughters have equal coparcenary rights in ancestral property.

***Danamma v. Amar* (2018)<sup>7</sup>:** In this case, the Supreme Court held that the amendment conferred coparcenary rights upon daughters from birth, irrespective of whether the father had passed away before the amendment came into effect. The ruling clarified that daughters have the same rights as sons to coparcenary property from birth.

Reports from the Law Commission of India have also been instrumental in providing empirical evidence and recommendations for improving the enforcement of the amendment. The **Law Commission's Report on Reforming Family Law** (2018) discusses the gaps in the implementation of the amendment, particularly in relation to property registration, women's legal awareness, and the persistence of patriarchal customs in rural areas.

## **1.8 RESEARCH METHODOLOGY**

This study adopts a doctrinal research methodology to analyse the legal provisions of the Hindu Succession (Amendment) Act, 2005, and its impact on women's coparcenary rights. The primary sources of data will include the text of the Act, relevant case law, and judicial interpretations, as well as secondary sources such as legal commentaries, academic journals, books, and reports from legal and government bodies.

Qualitative Analysis will be employed to critically examine landmark judgments, including

*Vineeta Sharma v. Rakesh Sharma* and *Danamma v. Amar*, to understand how courts have interpreted the scope of the amendment and its retrospective and prospective applicability

The study will also consider socio-legal perspectives, drawing from reports and surveys, where available, to assess the challenges women face in asserting their rights under the amendment, particularly in rural and patriarchal settings. Though empirical data collection may be limited, secondary sources will provide insight into these ground-level issues.

## **1.9 MODE OF CITATION**

In accordance with academic standards, the OSCOLA (Oxford University Standard for the Citation of Legal Authorities) citation style will be employed for referencing sources throughout the seminar paper. The OSCOLA provides guidelines for citing legal documents, cases, statutes, scholarly articles, and other relevant sources. Citations will be formatted in accordance with the OSCOLA's rules for clarity, consistency, and accuracy.

## **2. CHAPTERISATION SCHEME**

### **2.1 Chapter 1: Historical and Legal Background**

#### **2.1.1 Hindu Law of Inheritance Before 2005**

Before the enactment of the Hindu Succession (Amendment) Act, 2005, the Hindu law of inheritance, especially under the Mitakshara school, was inherently patriarchal and failed to provide equal property rights to women. Daughters were excluded from the coparcenary, a narrower body within the joint Hindu family, where only male members acquired rights by birth. Under this system, ancestral property was collectively owned by male coparceners, and succession followed a strictly agnatic line. Though the Hindu Succession Act, 1956, attempted to codify and reform Hindu inheritance law, it retained the exclusion of daughters from coparcenary rights, thereby perpetuating gender inequality.

This legal structure stood in stark contrast to the constitutional vision of equality, dignity, and non-discrimination enshrined in Articles 14 and 15 of the Constitution of India. The denial of coparcenary status to daughters effectively reinforced patriarchal norms and economic subordination, denying women equal access to ancestral resources. As a result, the inheritance regime under the Mitakshara system conflicted with the fundamental rights framework that guarantees equal protection of laws and prohibits discrimination on the basis of sex. The omission to recognize daughters as coparceners not only had economic implications but also

violated the constitutional mandate of substantive equality and social justice, as envisioned by the framers of the Constitution.

Although Hindu women, including daughters, had some rights to inherit property under the Hindu Succession Act, 1956, the law did not grant them equal rights to ancestral or coparcenary property. The inheritance rights of women were limited to property from their parents, and they were not recognized as coparceners, which limited their ability to manage or demand a share in the ancestral property.

In contrast, the Dayabhaga<sup>8</sup> system, followed in certain parts of India, granted daughters equal rights to inherit ancestral property, but the Mitakshara system was more prevalent and remained restrictive. The traditional gender roles within the family structure further reinforced the exclusion of daughters from equal property rights.

### **2.1.2 Evolution of Women's Rights in Hindu Law**

The legal status of women in Hindu law, particularly with regard to inheritance and property rights, has evolved significantly over the years. Traditionally, Hindu women were excluded from holding property in their own right, with property being passed along the male line. Under the Mitakshara system, daughters had no rights to coparcenary property, and their inheritance rights were restricted to properties like stridhan (property acquired by women during marriage). This system reinforced the patriarchal structure where women were dependent on male relatives for their livelihood and were not allowed to claim an equal share in ancestral property.

The first major legal reform in this regard was the Hindu Women's Right to Property Act, 1937<sup>9</sup>, which granted women the right to inherit property in the absence of a male heir. However, the Act did not provide equal rights to coparcenary property, thus perpetuating the gender disparity in inheritance rights.

In 1956, the Hindu Succession Act<sup>10</sup> was enacted to provide a unified law of succession for Hindus. The Act made significant strides in recognizing women's rights to inherit property, but it still did not grant them equal rights to coparcenary property under the Mitakshara system. Women could inherit property only in the absence of male heirs, and their rights were often subordinated to those of male relatives.

The most significant change came with the Hindu Succession (Amendment) Act, 2005, which granted daughters equal rights as sons in ancestral property. This amendment was a landmark in Hindu law, ensuring that daughters became coparceners by birth, as sons had been.

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

The Hindu Succession (Amendment) Act, 2005, was a landmark reform in India's legal system, addressing the long-standing gender disparity in inheritance rights under Hindu law. Before this amendment, Hindu daughters were not recognized as coparceners, thus being excluded from inheriting ancestral property in the same manner as sons. This exclusion was rooted in the patriarchal norms established by the Mitakshara system of Hindu law, which governed inheritance and property rights for the majority of Hindus in India.

The key provision of the 2005 amendment was the revision of Section 6 of the Hindu Succession Act, 1956, which now states that daughters have the same rights as sons to inherit ancestral property by birth. The amendment also made the law retrospective, meaning that daughters could claim their share in ancestral property even if the father had passed away before the amendment came into force. This provision has been a breakthrough in ensuring that daughters, regardless of their marital status, have the legal standing to claim their share of ancestral property.

While the legal provision marked a significant achievement in the direction of gender equality, its impact has been mixed. The reform's implementation has faced several challenges, including a lack of awareness about the amendment among women, as well as resistance from certain sections of society and family structures. In practice, women have often encountered difficulties in asserting their rights to coparcenary property due to social, cultural, and economic barriers.

### **2.1.4 Constitutional Foundations for Reform in Hindu Inheritance Law**

The Hindu Succession (Amendment) Act, 2005, must be understood not only as a statutory reform within personal law but as a direct response to the constitutional imperative of gender equality. The Indian Constitution, since its inception, has guaranteed fundamental rights that prohibit gender-based discrimination and promise substantive equality. However, for decades, Hindu personal law—particularly the law governing inheritance under the Mitakshara system remained in conflict with these constitutional values by excluding daughters from coparcenary rights. The 2005 amendment, therefore, represents a legislative correction aimed at harmonising

personal law with constitutional mandates and bridging the gap between law in books and law in practice.

The foundation for this reform lies primarily in Article 14, which guarantees equality before the law and equal protection of the laws, and Article 15(1), which explicitly prohibits discrimination on grounds including sex. Additionally, Article 15(3) empowers the State to make special provisions for women and children, recognising the necessity of affirmative action to correct historical injustices. The denial of coparcenary rights to daughters not only violated these articles but also perpetuated socio-economic subordination. The amendment thus sought to give effect to the constitutional vision of equality by removing one of the most entrenched patriarchal norms within Hindu personal law.

The judiciary has played a pivotal role in interpreting personal law through a constitutional lens. In *C. Masilamani Mudaliar v Idol of Sri Swaminathaswami Thirukoil*<sup>11</sup>, the Supreme Court observed that personal laws must evolve in light of constitutional guarantees and that women's right to property is a component of the right to life and dignity under Article 21. The Court emphasised that traditional practices cannot override constitutional values, and any statute inconsistent with fundamental rights must be reinterpreted to uphold equality. This progressive approach laid the groundwork for viewing personal law not as insulated from constitutional scrutiny, but as subject to the egalitarian spirit of the Constitution.

Further constitutional backing is found in the Directive Principles of State Policy, particularly Article 39(a), which directs the State to ensure that men and women equally have the right to an adequate means of livelihood, and Article 39(b), which advocates for the equitable distribution of material resources. Though not enforceable in courts, these principles serve as a guide for legislative and judicial action. The 2005 amendment aligns with these directives by promoting economic justice and empowering women through legal access to ancestral property.<sup>12</sup>

In *Vineeta Sharma v Rakesh Sharma*, the Supreme Court reaffirmed the retrospective application of the 2005 amendment, declaring that daughters have coparcenary rights by birth irrespective of the father's date of death. The Court explicitly invoked constitutional principles, holding that the amendment aimed to ensure equality between sons and daughters in the Hindu joint family system.

It reiterated that statutes must be interpreted in consonance with constitutional values to achieve the goal of substantive equality envisaged under Article 14.

The concept of transformative constitutionalism, now a guiding interpretive principle in Indian jurisprudence, reinforces this direction. As held in *Navtej Singh Johar v Union of India*<sup>13</sup>, the Constitution is not a static document but a living instrument intended to bring about social transformation. Applying this concept to inheritance law, the exclusion of daughters from coparcenary rights was inconsistent with the transformative goals of the Constitution. The 2005 amendment, therefore, is not just a legal reform but a constitutional necessity to dismantle systemic gender inequality.

## **2.2 Chapter 2: Judicial Interpretation and Case Laws**

### **2.2.1 Case Laws Pre-2005 Amendment**

Before the Hindu Succession (Amendment) Act, 2005, the legal landscape regarding women's inheritance rights, especially with regard to coparcenary property, was largely influenced by the judicial interpretation of the provisions of the Hindu Succession Act, 1956. While the Act provided women with some inheritance rights, the courts consistently upheld the patriarchal principles embedded in the law, which excluded daughters from coparcenary rights under the Mitakshara system. This created a gap between the statutory law and the actual application of inheritance rights for women.

Some key case laws before the 2005 amendment are as follows:

#### **1. M. S. V. R. Anjaneyulu v. S. Krishnamurthy (1969)<sup>14</sup>**

In this case, the Supreme Court ruled that a daughter, under the Mitakshara system, does not have the right to a share in ancestral property by virtue of her birth in the family. The judgment reinforced the notion that coparcenary rights were limited to male heirs. The court held that only male descendants were entitled to a share in the ancestral property, excluding daughters from this right. This decision reflected the prevailing legal position before the amendment, which did not recognize daughters as coparceners.

#### **2. K. K. Verma v. Union of India (1973)<sup>15</sup>**

This case revolved around the interpretation of the Hindu Succession Act, 1956, and the exclusion of daughters from inheriting coparcenary property. The Court upheld the traditional view that Hindu women did not have the right to share in ancestral property as coparceners,

even though they could inherit individual property from their parents under the Act. The case reiterated the disparity between the inheritance rights of male and female children in Hindu law, particularly regarding ancestral property.

### **3. V. Tulasamma v. Sesha Reddy (1977)<sup>16</sup>**

The Tulasamma case was significant because the Supreme Court ruled on the limited rights of daughters under the Mitakshara system. In this case, the Court distinguished between the rights of a daughter in the father's property and the inheritance rights under the Hindu Succession Act, 1956. The judgment made it clear that while daughters had certain rights of inheritance, they were not entitled to a share in coparcenary property unless specifically stated in a will or by the father's declaration. The Court's decision was based on the patriarchal system in place, which excluded daughters from the rights to ancestral property by default.

### **4. G. S. Sainani v. L. B. K. Sainani (1987)<sup>17</sup>**

This case further emphasized the male-centric nature of the Mitakshara coparcenary system. The Supreme Court held that the Mitakshara system of Hindu law did not allow daughters to inherit or claim a share in coparcenary property, and they could only inherit their father's property if they were the sole heirs. The decision reinforced the notion that daughters did not have the same rights as sons in terms of ancestral property, although they could inherit parental property if no male heirs were available.

### **2.2.2 Vineeta Sharma v Rakesh Sharma (2020)**

The Vineeta Sharma v. Rakesh Sharma (2020)<sup>18</sup> case is a landmark judgment by the Supreme Court of India that settled the critical issue of the retrospective application of the Hindu Succession (Amendment) Act, 2005. This case is significant as it reinforced the position that daughters are entitled to equal rights as sons in coparcenary property, and further clarified the legal standing of women in inheritance matters under the Hindu Succession Act, 1956.

#### **Facts of the Case:**

The dispute in this case arose from the interpretation of Section 6 of the Hindu Succession Act, 1956, as amended by the Hindu Succession (Amendment) Act, 2005. The 2005 amendment had granted daughters the same rights as sons in relation to ancestral property, making them coparceners by birth under the Mitakshara system. The issue in this case was whether the rights granted by the amendment applied to daughters whose fathers had passed away before the

amendment came into effect.

In this particular case, the father of the appellant, Vineeta Sharma, passed away in 1981, before the amendment was enacted. The respondents (other coparceners) contended that Vineeta, being a daughter, was not entitled to a share in the coparcenary property, as the father had passed away prior to the amendment.

### **Legal Issue:**

The primary legal issue before the Court was whether the Hindu Succession (Amendment) Act, 2005, which granted daughters coparcenary rights, was retrospective in nature and whether it would apply to daughters whose fathers died before the amendment came into force.

### **Supreme Court's Judgment:**

The Supreme Court, in a bench of three judges, delivered a unanimous judgment in favor of Vineeta Sharma. The Court held that the Hindu Succession (Amendment) Act, 2005, applies retroactively, thereby granting daughters coparcenary rights even if their father died before the amendment. The Court clarified that the amendment was intended to bring about substantive equality between sons and daughters concerning inheritance rights in coparcenary property.

The Court emphasized that the amendment was not merely procedural but substantive in nature, and therefore, it applies retrospectively to daughters born before the amendment. This means that even if the father had passed away before 2005, his daughter would have a legal claim to coparcenary property as if the father were still alive when the law was amended. The Court reaffirmed that the amendment recognized daughters as coparceners by birth in the same way as sons. Therefore, a daughter who is born into a coparcenary family has an equal right to a share in the coparcenary property, irrespective of the father's death.

The Court analysed Section 6 of the Hindu Succession Act, which was amended to allow daughters to claim a share in coparcenary property. The Court interpreted the law in a way that ensured its applicability to daughters born before the amendment, thereby protecting their rights to inheritance, even if the father had died earlier.

### **2.2.3 Danamma v Amar (2018)**

The case of *Danamma v. Amar* (2018)<sup>19</sup> is another crucial judgment by the Supreme Court that

further clarified the scope and application of Section 6 of the Hindu Succession Act, 1956, especially in relation to the inheritance rights of daughters under the amended law.

**Facts of the Case:**

In this case, the dispute revolved around the entitlement of a daughter to ancestral property after the father's death, in light of the Hindu Succession (Amendment) Act, 2005. The appellant, Danamma, was seeking a share in the coparcenary property of her deceased father, who had passed away in 2001, well before the amendment. The defendants, who were the male heirs, contested her right to claim a share in the property, asserting that she was not entitled to coparcenary rights since the father had died before the amendment came into effect.

**Legal Issue:**

The key legal issue in this case was whether the rights conferred upon daughters by the Hindu Succession (Amendment) Act, 2005, would be applicable to daughters whose fathers had passed away prior to the amendment. Essentially, the question was whether the amendment, which granted daughters equal rights to coparcenary property, had a retrospective effect.

**Supreme Court's Judgment:**

The Supreme Court, in a significant ruling, held that the Hindu Succession (Amendment) Act, 2005, applied retrospectively. The Court confirmed that daughters, irrespective of whether their father was alive when the amendment came into force, had a right to claim a share in the coparcenary property. The judgment clarified that the 2005 amendment, which made daughters coparceners by birth, was not a mere procedural change but a substantive change in law, thereby giving daughters equal rights in ancestral property.

The Court ruled that the provisions of the 2005 amendment applied not only to living coparceners but also to daughters whose fathers had passed away before the amendment. This ruling followed the principle that the amendment was intended to provide substantive equality in inheritance laws and was thus applicable retroactively.

The judgment reaffirmed that daughters were granted coparcenary rights by birth, just like sons. It was further clarified that daughters have the same rights to inherit coparcenary property as sons, thus ensuring gender equality in the distribution of ancestral property.

#### 2.2.4 Judicial Interpretation of the Amendment through a Constitutional Lens

The judiciary has played a transformative role in shaping the constitutional understanding of women's inheritance rights in India, particularly after the Hindu Succession (Amendment) Act, 2005. While the amendment itself was a legislative initiative aimed at ending gender-based discrimination in property rights under Hindu law, the interpretation of this statute by the higher judiciary has significantly contributed to embedding it within the broader framework of constitutional equality, dignity, and social justice.

A pivotal case in this regard is *Vineeta Sharma v Rakesh Sharma*, where the Supreme Court unequivocally held that daughters have coparcenary rights by birth, regardless of the father's date of death. The Court adopted a constitutionally infused interpretation, stating that the amendment aims to uphold the guarantees enshrined under Articles 14 and 15 of the Constitution of India. It held that daughters and sons must be treated equally in all matters of inheritance and property ownership, and that any attempt to differentiate based on gender would amount to a constitutional violation. The Court noted, "The conferral of coparcenary rights upon the daughter is by birth and not by any event such as the father's death. The very objective of the amendment is to recognize equality and to override discriminatory practices."<sup>20</sup>

The Court also applied the principle of substantive equality, noting that merely formal equality, where women are theoretically entitled to rights without practical access, is insufficient to meet constitutional standards. In doing so, the Court reaffirmed the State's obligation under Article 15(3) to enact measures that empower women and correct historical disadvantage. This is consistent with the broader constitutional scheme which allows the State to take affirmative steps in favour of women and marginalized communities.

Another instance of constitutionally guided interpretation occurred in *Prakash v Phulavati*, where the Supreme Court, while dealing with the scope of the 2005 amendment, interpreted its temporal applicability. Although the Court in this case held that the amendment does not apply retrospectively if the father died prior to 2005, it nevertheless acknowledged the amendment's constitutional underpinnings. It observed that the intent of the legislation was to eliminate gender bias in coparcenary succession, a legacy of a patriarchal legal structure that stood in contradiction with the equality clauses of the Constitution.<sup>21</sup>

The evolving judicial discourse has increasingly embraced transformative constitutionalism,

which posits that the Constitution is a living document intended to bring about fundamental societal change. In *Navtej Singh Johar v Union of India*, the Court described the Constitution as an instrument of social transformation and held that courts must interpret laws in a way that dismantles social hierarchies and ensures dignity for all. Although not a case on inheritance, its interpretative philosophy has influenced how courts read personal laws, previously shielded from constitutional scrutiny, through the lens of equality and dignity.

Furthermore, the judiciary has explicitly invoked Article 21, particularly in *C Masilamani Mudaliar v Idol of Sri Swaminathaswami Thirukoil*, where the Supreme Court held that women's right to property is integral to their right to life and personal liberty.<sup>22</sup> The Court emphasised that constitutional values must prevail over customary or statutory norms that perpetuate inequality. This reasoning laid the groundwork for treating inheritance rights not merely as statutory entitlements but as extensions of fundamental rights.

Hence, judicial interpretation of the Hindu Succession (Amendment) Act, 2005, reflects a decisive shift towards constitutionalising personal law. Courts have increasingly asserted that statutory reforms aimed at achieving gender justice must be interpreted in light of the Constitution's egalitarian ethos. Through these interpretations, the judiciary has reinforced the view that legal rights to property are not isolated privileges but constitutionally guaranteed entitlements essential for the realisation of equality, dignity, and liberty.

## **2.3 Chapter 3: Socio-Cultural Barriers to the Implementation of the Amendment**

### **2.3.1 Socio-Cultural Norms and Family Resistance**

Traditional patriarchal norms continue to govern inheritance practices, especially in rural India. These norms often limit the role of women to domestic and familial responsibilities, excluding them from the rights to ancestral property. Despite legal changes, such norms persist, and many families still resist the idea of daughters inheriting property. This resistance is particularly pronounced in rural regions, where daughters are often expected to forgo their claims to ancestral property in favour of male heirs. In a 2019 report<sup>23</sup> by the National Commission for Women, it was found that approximately 60% of women attempting to claim their share of coparcenary property faced significant opposition from male relatives who cited traditional beliefs as justification for denying daughters their rights. Even in urban areas, where legal awareness is somewhat higher, the persistence of familial resistance continues to undermine the application of the law.

Family resistance to the inheritance rights of daughters can manifest in various forms, including informal family agreements and social pressures that discourage women from asserting their rights. The continuation of these practices highlights the gap between legal reform and its social acceptance, indicating that legal provisions alone are insufficient to address deeply rooted societal attitudes.

Legal illiteracy further complicates the effective implementation of the Hindu Succession (Amendment) Act, 2005. A large portion of the population, especially in rural areas, remains unaware of their legal rights to inherit coparcenary property. According to a 2020 survey<sup>24</sup> by the National Legal Services Authority (NALSA), around 80% of rural women were unaware of their inheritance rights under the Hindu Succession Act. This lack of awareness leaves many women unable to claim their rightful share of property, either due to ignorance or coercion by family members who discourage them from doing so.

Even when women are aware of their legal entitlements, challenges such as limited access to legal resources and representation prevent them from effectively exercising their rights. The judicial process can often be complex, and many women lack the financial means or support to pursue litigation. A 2018 study<sup>25</sup> by the Indian Women's Rights Council found that only 18% of rural women had access to legal aid services, exacerbating the barriers they face in securing their rights.

The intersection of socio-cultural resistance and legal illiteracy creates a significant obstacle to the realization of daughters' coparcenary property rights. While the 2005 amendment legally entitled daughters to equal inheritance, traditional norms and limited legal literacy often prevent women from accessing these rights. To address these challenges, it is crucial to promote legal awareness and reform societal attitudes towards gender and property rights. Initiatives such as community-based legal education and targeted awareness campaigns in rural areas could play a pivotal role in bridging the gap between legal rights and their practical implementation.

### **2.3.2 Rural vs Urban Disparities in the Application of the Law**

In rural areas, the persistence of traditional patriarchal practices and limited access to legal resources continue to present challenges for women seeking to claim their share of ancestral property. Rural women are often constrained by deeply ingrained cultural norms that

discourage them from exercising their inheritance rights, with familial and community pressures further limiting their access to property. A study by R. Rao<sup>26</sup> and S. Patel highlights that rural women are less likely to assert their inheritance rights, due to both lack of awareness and the strong social control exerted by male family members. In contrast, while urban areas provide better legal awareness and resources, women still face significant resistance from male relatives who may challenge their claims, citing traditional beliefs and personal interests in maintaining control over family property.

Resistance from male family members is a recurring theme in the implementation of the 2005 amendment across both rural and urban settings. Despite legal advancements, male family members often contest daughters' claims to ancestral property, leveraging familial authority and traditional views on gender roles. Studies have shown that in both settings, daughters face opposition not only from immediate family members but also from extended kin who seek to uphold patriarchal norms. For example, in urban cases, women have reported facing subtle forms of resistance, such as being discouraged from pursuing legal claims or being offered a lesser share in property settlements. According to the article "Gender and Inheritance in India" by S. Desai (2019)<sup>27</sup>, resistance within the family, especially from male members, is one of the key factors preventing women from fully benefiting from the legal reforms.

The persistence of patriarchal control over property decisions highlights the gap between the law's provisions and its application in real life. Despite the law providing daughters with equal rights to ancestral property, the deep-seated societal norms and resistance from male heirs continue to obstruct the realization of women's inheritance rights.

## **2.4 Chapter 4: Women's Economic Empowerment Post-Amendment**

### **2.4.1 The Potential of Economic Empowerment through Property Rights**

The recognition of women's property rights through the Hindu Succession (Amendment) Act, 2005, is intrinsically connected to the constitutional mandate of gender equality. Article 14 guarantees equality before the law and equal protection of laws, while Article 15(3) permits the State to make special provisions for women and children. By granting daughters equal coparcenary rights, the amendment serves as a statutory embodiment of these principles. Property ownership, long monopolized by male heirs under personal laws, was a primary site of structural inequality. The amendment thus rectifies a normative gap between personal law and constitutional equality, transforming women's legal status from beneficiaries of male

goodwill to autonomous legal coparceners entitled by birth. In this way, the reform signifies a step toward fulfilling the Constitution's promise of equal dignity and socio-economic opportunity for women.

Furthermore, the amendment advances the broader vision of transformative constitutionalism, a concept embraced by the Supreme Court in various rulings to signify the dynamic role of the Constitution in promoting social justice and dismantling entrenched hierarchies. The empowerment of women through equal inheritance is not merely a statutory correction but a constitutional imperative aimed at restructuring patriarchal norms that have historically denied women access to wealth, status, and voice within the family. As recognized in *Vineeta Sharma v. Rakesh Sharma*, the amendment represents a substantive advancement of gender justice and is a means to ensure real equality, not just formal legal parity. The transformation of property rights through the lens of constitutional morality reaffirms the judiciary's role in interpreting personal law in line with the evolving ethos of the Constitution.

Access to property can be a vital source of financial security, particularly in rural areas, where women's economic resources are often limited. Data from the Ministry of Rural Development (2019)<sup>28</sup> reveals that rural women face higher economic dependency and limited access to credit and land. By extending property rights to daughters, the amendment provides an opportunity for women to access wealth, land, and property, which can be crucial for their long-term financial stability. According to the 2018 report<sup>29</sup> by the National Family Health Survey (NFHS), women who have control over property are more likely to have better access to healthcare and educational opportunities, improving their quality of life.

Ownership of coparcenary property enhances women's bargaining power within the family. Studies have shown that property rights allow women to play a more influential role in family decisions and contribute to their social and economic well-being. In their article "Legal Reforms and the Changing Role of Women in Rural India," K. S. Patel and M. Verma (2020)<sup>30</sup> argue that women with property rights are more likely to challenge patriarchal norms and participate actively in household decision-making processes. Empowering women with property rights can challenge deeply ingrained gender inequalities and give them a stronger voice within their households.

Access to ancestral property can also facilitate women's entry into entrepreneurship, which is

essential for financial autonomy. According to a study by the Ministry of Micro, Small, and Medium Enterprises (MSME, 2020)<sup>31</sup>, property ownership can be a significant asset for women seeking to start small businesses or engage in agricultural activities. However, challenges such as limited access to credit, market opportunities, and societal resistance persist, hindering women's ability to fully capitalize on these opportunities. Despite these barriers, there are examples of women using inherited property to set up small businesses and improve their financial standing, particularly in urban areas.

## 2.5 Chapter 5: Comparative Analysis with Other Jurisdictions

### 2.5.1 Property Rights of Women in South Asia

The question of women's property rights has long been a contested issue across South Asia, where patriarchal traditions and customary practices have significantly influenced legal frameworks and societal attitudes. While countries in the region have made strides in addressing gender inequalities in inheritance and property ownership, the implementation of such reforms remains fraught with challenges. This section provides an overview of the legal landscape of women's property rights in India, Nepal, Bangladesh, and Pakistan, supported by available statistics.

In India, the Hindu Succession (Amendment) Act, 2005, marked a watershed moment by granting daughters equal coparcenary rights in ancestral property. According to the National Family Health Survey-5 (2019–2021)<sup>32</sup>, only 42.3% of women in India own land or property, either individually or jointly. This statistic underscores the gap between legal provisions and their implementation, as patriarchal norms continue to restrict women's access to their rightful inheritance. Judicial decisions such as *Vineeta Sharma v Rakesh Sharma (2020)* have clarified the retrospective application of the 2005 amendment, but issues such as legal illiteracy and familial resistance persist.

Nepal has also embraced progressive legal reforms. The Constitution<sup>33</sup> of Nepal guarantees gender equality and includes explicit provisions for women's property rights. However, a 2020 report by the National Women Commission of Nepal<sup>34</sup> found that only 19.7% of women owned property in their name, highlighting significant disparities in the practical realization of these rights. Despite amendments to the Muluki Ain (General Code) that ensure daughters' inheritance rights by birth, societal norms often prevent women from asserting these rights effectively.

In Bangladesh, property rights for women are governed by personal laws. Islamic inheritance law provides women with the right to inherit property, but the share is typically half that of male heirs. According to a 2018 study<sup>35</sup> by the BRAC Institute of Governance and Development, only 12% of rural women in Bangladesh had access to inherited property, reflecting deep-rooted gender disparities. Hindu women, comprising a small minority, face even greater challenges due to the lack of codified inheritance laws, leaving them dependent on customary practices that largely exclude them from property ownership.

Pakistan recognizes women's inheritance rights under Islamic law, which grants female heirs a share in property, albeit unequal to that of male heirs. The Pakistan Bureau of Statistics (2017)<sup>36</sup> reported that only 3% of rural women and 7% of urban women owned land in their names, revealing significant inequities. The Prevention of Anti-Women Practices Act (2011) aims to curb the denial of inheritance rights, but enforcement remains a challenge, with familial resistance often prevailing over legal entitlements.

A comparative analysis reveals that while South Asian countries have introduced legislative measures to strengthen women's property rights, these reforms have not yet translated into substantial change in ownership statistics. India and Nepal have adopted a more egalitarian approach by granting daughters property rights by birth, but their success has been hindered by socio-cultural barriers. Bangladesh and Pakistan continue to struggle with the application of personal laws that perpetuate gender inequality.

### 3. Conclusion and Suggestion

The Hindu Succession (Amendment) Act, 2005, stands as a landmark legislative reform that seeks to correct centuries of gender-based discrimination in Hindu inheritance law. By granting daughters equal coparcenary rights, the amendment has not only modified statutory personal law but has also played a crucial role in fulfilling the constitutional promise of equality, non-discrimination, and dignity under Articles 14, 15(3), and 21 of the Constitution of India. This transformation in the legal landscape reflects the spirit of transformative constitutionalism, which envisions the Constitution as a living document tasked with dismantling historical hierarchies and ensuring social justice.

Judicial interpretation has been instrumental in giving constitutional effect to the 2005 amendment. In *Vineeta Sharma v Rakesh Sharma*, the Supreme Court recognised daughters as

coparceners by birth and affirmed the retrospective application of the amendment. The judgment underscored the constitutional commitment to gender parity, holding that any interpretation that perpetuates inequality is impermissible under the current constitutional framework. Similarly, earlier decisions such as *C Masilamani Mudaliar* laid the normative groundwork for recognising women's property rights as integral to the right to life under Article 21. Together, these decisions have shifted the interpretative lens of the judiciary from formal legality to substantive constitutional justice.

Despite the amendment's progressive content and its judicial reinforcement, the full realisation of equal inheritance rights remains obstructed by socio-cultural resistance, lack of legal awareness, and procedural challenges—especially in rural and patriarchal settings. Informal settlements, familial coercion, and a lack of property registration continue to undermine the effective enforcement of daughters' rights. This divergence between constitutional ideals and ground-level realities signals that legal reform must be accompanied by structural and social transformation.

To bridge this implementation gap, a multi-pronged approach is required. First, legal literacy campaigns focused on rural and underserved areas must be prioritised, particularly for women who remain unaware of their constitutional and statutory rights. Second, institutional training for revenue officers, panchayat members, and legal service authorities should be mandated to ensure that these actors support rather than obstruct women's inheritance claims. Third, the judiciary and legislature must continue to harmonise personal laws with constitutional mandates, ensuring that patriarchal customs are invalidated when inconsistent with the right to equality and dignity.

Moreover, the directive principles under Article 39(a) and 39(b), which advocate equal access to livelihood and equitable distribution of resources, should guide state policy in the implementation of inheritance reforms. Legal aid programs, alternative dispute resolution mechanisms, and fast-track property dispute forums could also be established to support women seeking to assert their rights.

To enhance the impact of the 2005 amendment, it is crucial to focus on a dual approach: strengthening legal frameworks while simultaneously addressing the socio-cultural barriers that hinder their implementation. Raising awareness through nationwide legal literacy

programs, particularly targeting women in rural and underserved areas, can equip them with the knowledge necessary to claim their rightful inheritance. Moreover, it is important to engage communities in challenging patriarchal norms and promoting an inclusive approach to property ownership.

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<sup>1</sup> Hindu Succession (Amendment) Act 2005 (India), Act 39 of 2005.

<sup>2</sup> R K Gupta, *Women's Legal Rights in India* (3rd edn, Sage Publications 2018)

<sup>3</sup> V Ramaswamy, *Gender and Property Law* (2nd edn, Oxford University Press 2016)

<sup>4</sup> S Ghosh, 'The Hindu Succession Act: A Study of Daughters' Rights' (2018) 29(1) *Journal of Family Law* 45-63<sup>5</sup> Srinivasan, *Women, Property Rights, and Socio-Economic Empowerment: A Critical Analysis* (2017)

<sup>6</sup> *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1

<sup>7</sup> *Danamma v Amar* (2018) 2 SCC 340<sup>8</sup> H. N. L. Bhatia, *Hindu Law of Inheritance and Partition* (3rd edn, Universal Law Publishing 2013) <sup>9</sup> Hindu Women's Right to Property Act, 1937 (India), Act 18 of 1937

<sup>10</sup> Hindu Succession Act, 1956 (India), Act 30 of 1956. <sup>11</sup> *C Masilamani Mudaliar v Idol of Sri Swaminathaswami Thirukoil* (1996) 8 SCC 525 (SC).

<sup>12</sup> The Constitution of India, arts 14, 15(1), 15(3), 21, 39(a), 39(b). <sup>13</sup> *Navtej Singh Johar v Union of India* (2018) 10 SCC 1 (SC). <sup>14</sup> *M. S. V. R. Anjaneyulu v S. Krishnamurthy* (1969) 3 SCC 1.

<sup>15</sup> *K. K. Verma v Union of India* (1973) 2 SCC 35.

<sup>16</sup> *V. Tulasamma v Sessa Reddy* (1977) 3 SCC 99. <sup>17</sup> *G. S. Sainani v L. B. K. Sainani* (1987) 1 SCC 13.

<sup>18</sup> *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1.

<sup>19</sup> *Danamma v Amar* (2018) 8 SCC 749.

<sup>20</sup> *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1 (SC).

<sup>21</sup> *Prakash v Phulavati* (2016) 2 SCC 36 (SC).

<sup>22</sup> *C Masilamani Mudaliar v Idol of Sri Swaminathaswami Thirukoil* (1996) 8 SCC 525 (SC).

<sup>23</sup> National Commission for Women, 'Report on Women and Inheritance Rights' (2019) <https://www.ncw.nic.in> accessed 11 January 2025.

<sup>24</sup> National Legal Services Authority (NALSA), 'Annual Report 2020' (NALSA, 2020) <https://nalsa.gov.in> accessed 11 January 2025.

<sup>25</sup> Indian Women's Rights Council, 'Access to Legal Aid in Rural Areas' (2018) <https://www.iwrc.org> accessed 11 January 2025.

<sup>26</sup> R. Rao and S. Patel, 'Barriers to Women's Inheritance Rights in Rural India' (2018) *Journal of Rural Development Studies* 45(2) 112-127.

<sup>27</sup> S. Desai, 'Gender and Inheritance in India: The Impact of the Hindu Succession Act' (2019) *Women's Studies International Forum* 52 78-84.

<sup>28</sup> Ministry of Rural Development, Report on Women's Economic Empowerment in Rural India (Government of India, 2019) <https://rural.nic.in> accessed 11 January 2025.

<sup>29</sup> National Family Health Survey, India, 2018 (Ministry of Health and Family Welfare, 2018) <https://rchiips.org> accessed 11 January 2025.

<sup>30</sup> K. S. Patel and M. Verma, 'Legal Reforms and the Changing Role of Women in Rural India' (2020) *Indian Journal of Rural Development* 34(1) 45-59.

<sup>31</sup> Ministry of Micro, Small, and Medium Enterprises, Women Entrepreneurs in India: A Survey (Government of India, 2020) <https://msme.gov.in> accessed 11 January 2025.

<sup>32</sup> National Family Health Survey (NFHS-5) 2019–2021, International Institute for Population Sciences (IIPS) <http://rchiips.org/nfhs/> accessed 11 January 2025.

<sup>33</sup> Constitution of Nepal 2015 (Nepal) art 38(6).

<sup>34</sup> National Women Commission of Nepal, Annual Report 2020 (National Women Commission 2020).

<sup>35</sup> BRAC Institute of Governance and Development, Women's Access to Inherited Property in Bangladesh: A Study on Legal Framework and Implementation (BRAC University 2018).

<sup>36</sup> Pakistan Bureau of Statistics, Census Report 2017 (Government of Pakistan 2017).