



INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

+91 70421 48991
editor@ijlar.com
www.ijlar.com

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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

COPARCENARY RIGHTS OF DAUGHTERS: IMPACT OF THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

AUTHORED BY - HIRDESH NAYAK

ABSTRACT

The concept of coparcenary under Hindu law has historically been male-dominated, where only sons were granted a birthright in ancestral property. Daughters were excluded from such rights and were treated as temporary members of their natal families — expected to leave upon marriage and relinquish all claims to joint family wealth. This gender-based discrimination was not only socially unjust but also constitutionally repugnant, standing in direct tension with the guarantees of equality enshrined in Articles 14 and 15 of the Indian Constitution.

To address this deep-rooted inequality, Parliament enacted the Hindu Succession (Amendment) Act, 2005, which fundamentally transformed the legal position of daughters by conferring upon them equal coparcenary rights from birth. This research paper examines the historical evolution of coparcenary rights under Hindu law, the transformative changes introduced by the 2005 Amendment, and the trajectory of judicial interpretation that followed. It critically analyses three landmark Supreme Court decisions — *Prakash v. Phulavati* (2016), *Danamma @ Suman Surpur v. Amar* (2018), and *Vineeta Sharma v. Rakesh Sharma* (2020) — each of which contributed to the evolving jurisprudence surrounding daughters' inheritance rights.

Despite this progressive legal reform, the study identifies significant challenges in practical implementation, including persistent social resistance grounded in patriarchal norms, widespread lack of legal awareness among rural women, procedural and administrative hurdles in asserting property rights, economic dependence, and misuse of the dowry practice as a substitute for legitimate inheritance. The research argues that while the 2005 Amendment has established formal legal equality, substantive equality remains elusive for a large section of Indian women.

The paper concludes that the 2005 Amendment marks a watershed moment in the history of gender justice in India, but sustained effort is required at both the legislative and social levels to ensure its effective and meaningful implementation. True empowerment of women will only be realized when legal rights are accompanied by societal acceptance, awareness, and institutional support.

I. INTRODUCTION

The Hindu joint family system, as governed by classical Hindu jurisprudence, represents one of the most enduring socio-legal institutions in Indian history. At its core lies the concept of coparcenary — a species of joint ownership peculiar to Hindu law, under which certain members of a family acquire a birthright in ancestral property. Under the Mitakshara school, which governs most of India outside Bengal and Assam, the coparcenary traditionally comprised the male lineal descendants of a common ancestor within four degrees, each acquiring an interest in joint family property from birth.¹

For centuries, this system operated as an exclusively male preserve. Daughters, regardless of birth or lineage, were denied coparcenary membership. While the Hindu Succession Act, 1956 codified intestate succession for Hindus and made certain improvements in the rights of female heirs over separate property, it preserved the patriarchal architecture of the Mitakshara coparcenary by confining membership to males.²

This exclusion stood in glaring contradiction to the constitutional promise of equality. Articles 14 and 15 of the Constitution of India guarantee equality before the law and prohibit discrimination on grounds of sex.³⁴ The denial of coparcenary rights to daughters on the basis of sex alone was thus not merely a social inequity but a constitutional anomaly — one that persisted for nearly half a century after the Constitution's adoption.

¹Paras Diwan, *Modern Hindu Law* 210 (22nd ed., LexisNexis 2022).

²Hindu Succession Act, 1956, No. 30, Acts of Parliament, 1956 (India).

³India Const. art. 14.

⁴India Const. art. 15.

The Hindu Succession (Amendment) Act, 2005 was enacted to rectify this injustice. By amending Section 6 of the Hindu Succession Act, 1956, Parliament made daughters coparceners by birth in the same manner as sons, conferring upon them identical rights, liabilities, and the capacity to demand partition or serve as the Karta (manager) of the joint family.⁵ This amendment was a transformative moment in the history of Indian personal law — an acknowledgment, overdue by decades, that daughters are equal stakeholders in the family estate.

This paper undertakes a systematic examination of the evolution of coparcenary rights under Hindu law, the legislative framework of the 2005 Amendment, the judicial responses that shaped its application, the constitutional underpinnings of the reform, and the practical challenges that continue to impede its full realization. The central argument is that while the 2005 Amendment has achieved formal legal equality, the chasm between legal entitlement and social reality remains wide, necessitating concerted action across legal, administrative, and cultural domains.

II. STATEMENT OF THE PROBLEM AND HYPOTHESIS

A. Statement of the Problem

The Hindu Succession Act, 1956, in its original form, preserved the Mitakshara coparcenary as a male institution. Daughters were categorically excluded from coparcenary membership and could only access ancestral property through limited rights of maintenance or as heirs to their father's separate property. This legislative framework institutionalized sex-based discrimination that persisted for nearly five decades despite India's constitutional commitment to equality under Articles 14 and 15.

The Hindu Succession (Amendment) Act, 2005 sought to dismantle this discriminatory structure by amending Section 6 to include daughters as coparceners by birth. However, the amendment's implementation was immediately fraught with interpretive difficulties. Crucially, the amendment text did not expressly resolve whether daughters could claim coparcenary rights where the coparcener-father had died before the amendment's commencement date of September 9, 2005. This ambiguity spawned nearly fifteen years of conflicting judicial decisions, creating uncertainty for litigants across India.

⁵Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India).

Beyond the interpretive debate, social and practical obstacles continue to frustrate the amendment's objectives. Patriarchal family structures, social stigma, lack of legal awareness among women — particularly in rural areas — financial dependence on male relatives, and administrative indifference collectively form a formidable barrier between legal entitlement and actual enjoyment of property rights. The core problem is therefore twofold: first, whether the 2005 Amendment has been properly interpreted and applied; and second, whether legal reform alone is sufficient to achieve substantive gender equality in property rights.

B. Hypothesis

The Hindu Succession (Amendment) Act, 2005, though progressive in granting daughters equal coparcenary rights by birth, has not achieved complete gender equality due to persistent societal resistance, inadequate legal awareness, and procedural barriers that prevent the full realization of the rights so conferred.

C. Objectives of the Study

The study pursues the following objectives: (i) to trace the historical evolution of coparcenary rights under Hindu law and identify the roots of gender-based exclusion; (ii) to analyse the legislative design and objectives of the 2005 Amendment; (iii) to critically examine judicial interpretations of the amendment, including the resolution achieved by the Supreme Court in *Vineeta Sharma v. Rakesh Sharma*; (iv) to assess the constitutional basis for reform through the prism of fundamental rights; and (v) to identify continuing challenges and propose actionable recommendations for bridging the gap between legal promise and social reality.

III. HISTORICAL BACKGROUND: COPARCENARY UNDER PRE-2005 HINDU LAW

A. Origins of Coparcenary in Hindu Jurisprudence

The concept of coparcenary is rooted in the ancient Dharmashastra texts and was elaborated by medieval commentators whose works gave rise to the regional schools of Hindu law. The term 'coparcenary' in the Hindu context denotes a narrower body of persons within a joint Hindu family

who possess a community of interest and unity of title in the joint or ancestral property.⁶ Unlike the broader joint Hindu family, membership in the coparcenary was confined to a male propositus and his lineal male descendants up to three degrees — that is, his son, grandson, and great-grandson.

The foundational principle of the Mitakshara coparcenary is the acquisition of a right in ancestral property by birth (*jus accrescendi*). Every son, upon birth, becomes a co-owner with his father and other coparceners in the joint family property, and this right is not contingent upon the father's death. Property devolves among coparceners by the rule of survivorship: upon the death of a coparcener, his undivided interest accretes to the surviving coparceners rather than passing by succession.⁷

B. The Exclusion of Daughters Under Classical Law

Daughters were unambiguously excluded from the Mitakshara coparcenary. Under the classical texts, daughters were considered part of the joint family only in the limited sense of entitlement to maintenance and provision for marriage expenses from the joint family estate. They had no birthright in ancestral property and consequently no right to demand partition.⁸ Upon marriage, a daughter was notionally deemed to have severed all ties with her natal family, making her claims to ancestral property appear illogical within the framework of the classical system. This 'transfer of membership' theory reinforced the perception that daughters were temporary sojourners in their natal families.

C. The Hindu Succession Act, 1956: Reform and Its Limitations

The Hindu Succession Act, 1956 codified the law of intestate succession for Hindus and made significant improvements in the rights of female heirs over separate property. The Act created Class I heirs, which included daughters, who were entitled to equal shares in their father's separate property upon his death intestate. However, the Act expressly preserved the Mitakshara coparcenary structure, leaving the exclusion of daughters from joint family property intact. Section

⁶P.V. Kane, *History of Dharmasastra* 559 (Bhandarkar Oriental Research Institute, 2nd ed. 1974).

⁷Mulla, *Principles of Hindu Law* 265–68 (22nd ed., LexisNexis 2018).

⁸Vijender Kumar, *Hindu Women's Right to Property: Past and Present*, 45 *J. Indian L. Inst.* 257, 260 (2003).

6 continued to provide that coparcenary property devolved by survivorship among surviving male coparceners.⁹

The Law Commission of India, in its 174th Report of 2000, noted the anomaly between the equal inheritance rights conferred on daughters in separate property and their continued exclusion from coparcenary rights, and recommended legislative reform to achieve uniformity and conformity with constitutional values.¹⁰

IV. THE MITAKSHARA AND DAYABHAGA SCHOOLS COMPARED

A. The Mitakshara School

The Mitakshara school, derived from the commentary of *Vijnanesvara* on the *Yajnavalkya* Smriti (11th century), prevails in all parts of India except West Bengal and Assam. Its most distinctive feature in the context of coparcenary is the doctrine of survivorship and the conferment of a right by birth. When a son is born in a Mitakshara joint family, he at once acquires a right in ancestral property coextensive with the father's own right. This produces 'aggregate ownership' — the entire ancestral property is jointly owned by all coparceners, and no individual can predicate a definite fractional share until partition is affected.¹¹

This conception of concurrent ownership from birth produced significant implications for the power of alienation. A Mitakshara coparcener could not dispose of his undivided share without the consent of other coparceners, save in cases of legal necessity or benefit of the estate. Daughters, being non-members, had neither the benefit nor the burden of these rules.¹²

B. The Dayabhaga School

The Dayabhaga school, deriving its name from the text authored by *Jimutavahana* and prevailing in Bengal and Assam, presents a starkly different conception. Under the Dayabhaga system, sons do not acquire a right in their father's property by birth. Ownership vests exclusively in the father during his lifetime, and the son's right arises only upon the father's death. Property devolves by inheritance rather than survivorship, and the basis for succession is the principle of spiritual benefit (sapinda relationship).¹³

¹⁰Law Commission of India, Report No. 174: Property Rights of Women — Proposed Reforms Under Hindu Law (May 2000).

A consequence of this conception is that women — including daughters and widows — have a more recognized role in succession under the Dayabhaga system. Since property passes by inheritance and not survivorship, a daughter can succeed to her father's estate as an heir. Widows had historically greater rights under the Dayabhaga system, and the concept of 'fractional ownership' allowed for more particularized shares to be identified.¹⁴

C. Comparative Position of Daughters Pre-2005

Under both schools, a daughter's position in ancestral property prior to 2005 was markedly inferior to that of a son. In the Mitakshara system, she had no birthright whatsoever; in the Dayabhaga system, she had inheritance rights upon the father's death but no right by birth. The 2005 Amendment effectively overrode the distinctions between the two schools insofar as daughters' coparcenary rights are concerned, creating a uniform national standard of equal coparcenary membership throughout India.¹⁵

V. THE HINDU SUCCESSION (AMENDMENT) ACT, 2005: LEGISLATIVE ARCHITECTURE

A. Legislative Background and Intent

The enactment of the Hindu Succession (Amendment) Act, 2005 was preceded by sustained advocacy by women's rights organisation, academic scholarship highlighting the constitutional infirmity of the original Section 6, and the Law Commission's recommendations in its 174th Report. Several States had already enacted their own reforms: Andhra Pradesh (1985), Tamil Nadu (1989), Maharashtra and Karnataka (1994), and Kerala (1976) — each granting daughters coparcenary rights within those States. The 2005 central amendment replaced these varied State-level reforms with a uniform national provision, signalling Parliament's commitment to gender equality in property law as a matter of national policy.¹⁶

B. Amended Section 6: Textual Analysis

The amended Section 6 of the Hindu Succession Act, 1956 provides as follows:

¹⁴Veena Das, *Structure and Cognition: Aspects of Hindu Caste and Ritual* 112 (Oxford Univ. Press 1977).

¹⁵Poonam Pradhan Saxena, *Family Law Lectures: Family Law II* 88 (4th ed., LexisNexis 2020).

¹⁶Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 143 (Oxford Univ. Press 1999).

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall — (a) by birth become a coparcener in her own right in the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener.

The textual structure of the amended provision is significant in several respects. First, the operative phrase 'by birth' in Section 6(1)(a) unmistakably mirrors the classical Mitakshara doctrine — the acquisition of a right by birth. By employing this language, Parliament deliberately extended to daughters the same quality of birthright that sons had always enjoyed. Second, the provision equates daughters' 'rights' with sons' rights while simultaneously subjecting daughters to the same 'liabilities.' This bidirectionality ensures that daughters are not mere passive beneficiaries but full participants in the regime of coparcenary ownership.¹⁷

C. Key Changes Effected by the Amendment

1. Equal Coparcenary Status by Birth

The most fundamental change is the conferral of coparcenary status on daughters by birth. Prior to 2005, a woman could become a member of a coparcenary only by marriage into a family with a Mitakshara coparcenary — and even then, only as a member of the joint family, not as a coparcener with a birthright in the property. The amendment eliminates this distinction and places daughters on a complete footing of equality with sons from the moment of birth.

2. Right to Demand Partition

The right to demand partition of the joint family property is one of the most significant incidents of coparcenary. The amendment expressly confers this right upon daughters. Prior to 2005, a daughter had no independent mechanism to enforce her interest in joint property. The amendment now entitles her to seek a court-ordered partition and to receive her quantified share in the ancestral estate.

3. Capacity to Serve as Karta

The Karta is the senior-most coparcener who manages the affairs of the joint Hindu family. The amendment, by making daughters coparceners, implicitly opened the possibility of daughters serving as Karta — a role previously monopolized by senior male coparceners. Subsequent judicial decisions have affirmed this possibility, though questions about the order of preference among coparceners of different generations have remained contested.¹⁸

4. Protection of Pre-Existing Transactions

Section 6 contains a crucial saving clause: the amendment does not affect any disposition or alienation of property, any partition or testamentary disposition that had taken place before December 20, 2004 (the date of introduction of the Amendment Bill in the Lok Sabha). This protection ensures that bona fide transactions entered into before the reform became imminent are not invalidated.

D. Transitional Ambiguity

Notwithstanding the clarity of the amendment's substantive provisions, its temporal scope was ambiguous. The phrase 'on and from the commencement of the Hindu Succession (Amendment) Act, 2005' could be read to suggest prospective application only, meaning daughters whose fathers had died before September 9, 2005, could not benefit from the provision. This reading conflicted with the natural meaning of 'by birth become a coparcener' — language suggesting a right accruing from birth, not from the amendment date. This ambiguity was ultimately resolved only by the Supreme Court in 2020.¹⁹

VI. JUDICIAL INTERPRETATION POST-2005

A. Prakash v. Phulavati (2016)

1. Facts

The plaintiff Phulavati filed a suit seeking partition and a share in her deceased father's property. Her father had died in 1988 — seventeen years before the 2005 Amendment. During the pendency of the suit, she amended her plaint to claim an equal coparcenary share under amended Section 6. The trial court initially granted a limited share under pre-amendment law; the High Court of

Karnataka allowed her claim for an equal share. The son (Prakash) appealed to the Supreme Court.²⁰

2. Holding and Reasoning

A two-judge bench of the Supreme Court, in a judgment authored by Justice A.K. Goel, held that the 2005 Amendment was prospective in nature and that both the daughter and the coparcener-father must have been alive on September 9, 2005, for the daughter to benefit from the amendment. The court reasoned that the amendment, by using the phrase 'on and from the commencement' of the Act, intended to create new rights with effect from that date, not to disturb vested rights that had crystallized upon the father's earlier death.²¹

The court also observed that upon a coparcener's death before the amendment, a notional partition of his share would have been affected under the old Section 6, and the rights accruing to his heirs under the pre-2005 regime could not subsequently be disturbed by the amendment. Any disposition, alienation, or registered partition that took place before December 20, 2004, would remain unaffected.²²

3. Critical Assessment

While internally coherent, the Phulavati judgment was widely criticized for an overly narrow textual reading that undermined the amendment's progressive purpose. Critics noted that the 'by birth' language in Section 6(1)(a) was not merely a declaratory provision operative only from the amendment date, but a substantive attribution of status from birth — a status wrongly denied to daughters born years before 2005. The insistence on the father's survival as a precondition for the daughter's right created an arbitrary distinction with no support in the amendment's text or purpose.

B. Danamma @ Suman Surpur v. Amar (2018)

1. Facts and Holding

In Danamma, another two-judge bench took a markedly different view. The court held that daughters are coparceners from birth and that the 2005 Amendment applies retroactively —

²⁰Prakash v. Phulavati, (2016) 2 SCC 36 (India).

²¹Prakash v. Phulavati, (2016) 2 SCC 36, ¶ 16 (India).

²²Id. at ¶ 23.

meaning even daughters born before the amendment, and daughters whose fathers had died before its commencement, are entitled to coparcenary rights in ancestral property.²³

The court emphasized the constitutional mandate of gender equality and the legislative intent to place daughters on an equal footing with sons. It observed that the amendment should be interpreted in a manner that advances rather than retards its object of eliminating discrimination, and that the right conferred by birth cannot logically be made contingent on the continued survival of the father.²⁴

2. The Contradictions Between Phulavati and Danamma

The Danamma judgment created an irreconcilable conflict with Phulavati. Both decisions were delivered by benches of co-equal strength (two judges), and neither could overrule the other. The result was a period of acute legal uncertainty: High Courts across India were divided on which line of authority to follow, and litigants found it impossible to predict the outcome of property disputes. This conflict made a reference to a larger bench inevitable.

C. Vineeta Sharma v. Rakesh Sharma (2020): The Definitive Resolution

1. Facts and Procedural History

Vineeta Sharma filed a suit claiming her share in the ancestral property of her deceased father, Dev Dutt Sharma, who had died intestate in December 1999. The Delhi High Court dismissed her claim, following Phulavati to hold that since her father had predeceased the amendment, she could not benefit from it. She appealed to the Supreme Court, where the case was referred to a three-judge bench in view of the conflict between Phulavati and Danamma.²⁵

2. Issues Before the Court

The Supreme Court formulated the following principal issues: (i) Whether the right conferred by Section 6(1) of the amended Act is subject to the condition that the coparcener-father must have been alive on September 9, 2005; and (ii) whether the amendment is prospective, retrospective, or retroactive in its operation.

²³Danamma @ Suman Surpur v. Amar, (2018) 3 SCC 343, ¶ 19 (India).

²⁴Id. at ¶ 25.

²⁵Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1 (India).

3. The Court's Holding

A three-judge bench, in a judgment authored by Justice Arun Mishra, definitively resolved the conflict. The court held that a daughter becomes a coparcener by birth, and this right is not contingent on the father being alive on the amendment date. The court's reasoning is captured in the following passage from the judgment:²⁶

'It is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive; relevant is birth within degrees of coparcenary to which it extends... The provisions of Section 6(1) leave no room to entertain the proposition that the coparcener should be living on 9.9.2005 through whom the daughter is claiming.'

The court distinguished between 'retrospective' and 'retroactive' application. A truly retrospective law operates from a date prior to its enactment and may reopen settled rights. A retroactive law, by contrast, attaches new consequences to facts or events that occurred in the past without disturbing rights that had finally accrued. Section 6 operates retroactively: the right is conferred from birth, but it is 'declared' as such only on and from September 9, 2005. Accordingly, daughters born before the amendment are its beneficiaries, but partitions effected by registered deed or court decree before December 20, 2004, remain undisturbed.²⁷

4. Significance and Directions Issued

The Vineeta Sharma judgment is the most important judicial contribution to the law of coparcenary rights for daughters. By affirming the retroactive operation of the amendment, the court brought millions of daughters — born before 2005 and whose fathers may have died decades ago — within the protective ambit of the law. The court also directed High Courts to dispose of all pending cases involving daughters' property rights within six months, acknowledging that procedural delay is itself a form of denial of justice.²⁸

VII. CONSTITUTIONAL AND HUMAN RIGHTS DIMENSIONS

A. Article 14: Equality Before the Law

Article 14 guarantees that the State shall not deny to any person equality before the law or the equal protection of the laws. The traditional exclusion of daughters from coparcenary membership

²⁶Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1, ¶ 56 (India).

²⁷Id. at ¶ 62.

²⁸Id. at ¶ 71.

failed the test of Article 14 on multiple grounds. It created a classification based solely on sex — a ground that the Constitution treats with particular scepticism — without any intelligible differentia having a rational nexus to a legitimate State objective. Courts have consistently held that sex-based classifications in personal law must withstand constitutional scrutiny, and that the mere antiquity of a discriminatory rule furnishes no justification for its continuation.²⁹

B. Article 15: Prohibition of Sex-Based Discrimination

Article 15 explicitly prohibits the State from discriminating against any citizen on grounds of sex. The Supreme Court's jurisprudence under Article 15 has evolved to recognised that formal non-discrimination is insufficient; the Constitution mandates substantive equality that eliminates the structural disadvantages faced by women. The 2005 Amendment is a direct legislative response to this constitutional command, removing from the statute book a provision that discriminated against daughters solely because of their sex.³⁰

C. Article 21: Right to Life with Dignity and Economic Autonomy

Article 21 protects the right to life and personal liberty, which the Supreme Court has expansively interpreted to encompass the right to live with dignity, the right to livelihood, and the right to economic independence. Denial of coparcenary rights to daughters deprived them of the financial security that ancestral property ownership confers — forcing dependence on fathers, brothers, or husbands for economic survival. By recognizing daughters as equal co-owners of joint family property, the 2005 Amendment reinforces Article 21's guarantee of a dignified existence.³¹

D. International Human Rights Obligations

India is a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which obliges State parties to eliminate discriminatory laws relating to property and inheritance. Article 16 of CEDAW specifically addresses equality in property rights within the family. The 2005 Amendment aligns Indian law with India's treaty obligations and with the international consensus on women's economic rights as a component of human rights. National

²⁹India Const. arts. 14, 15, 21; see also *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310 (India).

³¹India Const. art. 21.

Family Health Survey data consistently demonstrates the correlation between women's property ownership and improved health, education, and autonomy outcomes.³²

E. Role of the Judiciary in Upholding Constitutional Morality

The Supreme Court has consistently emphasized that personal laws cannot override the fundamental constitutional rights of equality and dignity. The Vineeta Sharma bench invoked the concept of 'constitutional morality' — the imperative that laws, including personal laws, must conform to the constitutional values of equality, non-discrimination, and human dignity — to justify its purposive interpretation of the 2005 Amendment. This constitutional morality framework provides a doctrinal basis for continued judicial oversight of personal law reforms.³³

VIII. SOCIO-LEGAL CHALLENGES IN IMPLEMENTATION

A. Patriarchal Social Norms and Cultural Resistance

The most pervasive obstacle to the effective implementation of the 2005 Amendment is the deeply entrenched patriarchal norm that ancestral property is — and ought to remain — a male preserve. This norm operates at multiple levels: within families, daughters are socialized from childhood to regard a claim on ancestral property as selfish or disloyal; at the community level, a daughter who asserts such a claim may face social censure or pressure from caste panchayats; and at the State level, land records and mutation entries are routinely maintained in male names by revenue officials who reflect the prevailing social bias.³⁴

B. Emotional Coercion and Induced Relinquishment

Even where daughters are aware of their legal rights, they frequently relinquish them in response to emotional pressure from family members. The invocation of familial solidarity, the guilt of 'breaking up' the family estate, and the fear of social boycott or strained sibling relationships create powerful incentives for daughters to forego their legal entitlements. This phenomenon — 'induced

³²National Family Health Survey (NFHS-5), Int'l Inst. for Population Sciences (IIPS) 2019–2021, available at <http://rchiips.org/nfhs/>.

³³Smt. Savita Samvedi v. Union of India, (1996) 2 SCC 380, ¶ 12 (India).

³⁴Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* 38–42 (Cambridge Univ. Press 1994).

relinquishment' — is particularly acute among daughters who are emotionally and financially dependent on their natal families after marriage.³⁵

C. Lack of Legal Awareness

National surveys indicate that a substantial proportion of rural women in India are unaware of their rights under the amended Hindu Succession Act. The National Commission for Women has reported that legal literacy among rural women remains severely inadequate, with many women unable to identify their rights in property, let alone the procedural steps required to enforce them.³⁶ This gap is exacerbated by the general inaccessibility of legal services in rural areas, the high cost of litigation relative to women's income levels, and the absence of targeted legal aid programmes focused on property rights.

D. The Dowry-as-Substitute Argument

A widespread social rationalisation for denying daughters their share in ancestral property is the argument that the dowry or 'stridhan' given at marriage constitutes the daughter's de facto share of the family estate. This argument, which has no basis in law, is frequently invoked by families to dissuade daughters from asserting their coparcenary rights. It conflates two entirely distinct legal concepts: dowry — a social custom with no statutory sanction — and coparcenary rights, which are constitutionally protected property entitlements. The Supreme Court has repeatedly rejected this conflation, but it continues to enjoy currency at the social level.³⁷

E. Administrative and Procedural Hurdles

Even where daughters successfully obtain court decrees recognizing their coparcenary rights, the enforcement of those decrees through mutation of land records presents significant practical challenges. Revenue officials, particularly at the village and taluk levels, may delay or refuse to effect mutations in favour of female co-owners. The procedures for partition are cumbersome, requiring succession certificates, genealogical proofs, valuation reports, and court attestations —

³⁵Bina Agarwal, *supra* note 29, at 220–25.

³⁶National Commission for Women, *A Report on Women's Property Rights in India 22–24* (2019), available at <http://ncw.nic.in>.

³⁷Maya Sharma, *Loving Women: Being Lesbian in Unprivileged India* 89 (Zubaan 2006).

a process that can take years and impose costs disproportionate to the value of the property in dispute.³⁸

F. Exclusion Relating to Agricultural Land

Although the 2005 Amendment applies uniformly to all categories of ancestral property, agricultural land has historically been governed by State-specific land reform laws that may restrict inheritance or transfer. The coexistence of multiple overlapping legislative regimes continues to create confusion and inconsistency in enforcement, particularly in States with active tenancy legislation. Recent Supreme Court decisions have progressively aligned the treatment of agricultural land with the amendment's mandate of equal rights, but comprehensive uniformity has not yet been achieved.

IX. COMPARATIVE AND INTERNATIONAL PERSPECTIVE

A. Pre-2005 State Amendments: Lessons from Early Reform

Prior to the central amendment, five Indian States had enacted legislation granting daughters coparcenary rights: Andhra Pradesh (1985), Tamil Nadu (1989), Maharashtra (1994), Karnataka (1994), and Kerala (1976). The experience of these States offered valuable empirical evidence on the likely social and legal consequences of a national reform. Studies indicated that while these State amendments increased women's formal property rights, the practical realisation of those rights remained limited due to the same social and administrative factors that continue to impede the 2005 Amendment nationally.

B. International Comparisons: Legal Reform and Social Lag

A comparative examination of inheritance law reform in other jurisdictions reveals that formal legal equality is a necessary but not sufficient condition for substantive equality. In many Sub-Saharan African jurisdictions, statutory inheritance reforms have similarly struggled against customary law resistance. In South Asian neighbours such as Bangladesh and Pakistan, reform of inheritance law along gender-equal lines has been more limited, with Islamic personal law remaining the dominant framework. In the OECD world, gender-neutral intestate succession law

³⁸Sabara @ Sabitri Devi v. State of Bihar, (2013) 14 SCC 165 (India).

is near-universal, but economic disparities in property ownership between men and women persist due to structural labour market inequalities.³⁹

The Indian experience offers a distinctive model of judicial activism reinforcing legislative reform — a dynamic in which courts, as in Vineeta Sharma, read legislative text purposively to advance constitutional values. This model has relevance for other jurisdictions grappling with the lag between statutory reform and social change. The combination of legislative mandate, constitutional grounding, and activist judicial interpretation constitutes a powerful toolkit for advancing gender equality in property law.⁴⁰

C. The Role of Women's Movements in Driving Reform

The 2005 Amendment did not emerge in a vacuum. It was the product of sustained advocacy by women's rights movements, feminist lawyers, and academic scholars who argued that the exclusion of daughters from coparcenary was constitutionally indefensible. The trajectory of reform — from State-level experiments beginning in 1976, through the Law Commission's recommendation in 2000, to the central amendment in 2005 — illustrates the importance of civil society advocacy in translating constitutional values into legislative reality.⁴¹

X. SUGGESTIONS AND RECOMMENDATIONS

A. Targeted Legal Aid and Awareness Programmes

State Legal Services Authorities should conduct targeted legal literacy campaigns focusing on women's property rights under the Hindu Succession Act as amended. These campaigns should be conducted in vernacular languages, utilize community radio and self-help group networks, and specifically target rural women. District Legal Services Authorities should maintain dedicated cells for property rights disputes and provide free legal representation to women seeking to assert coparcenary rights.

³⁹Report of the Committee on the Status of Women in India, Towards Equality 98 (Dep't of Social Welfare, Gov't of India 1974).

⁴⁰Gitanjali Nain Gill, Women and the Environment: A Study of Environmental Justice and Coparcenary Rights 67 (2020).

⁴¹Archana Parashar, Women and Family Law Reform in India 54 (Sage Publications 1992).

B. Judicial Reforms for Expeditious Disposal

The Supreme Court's direction in Vineeta Sharma to dispose of pending property rights cases within six months should be strictly monitored and enforced. Family courts and civil courts should receive targeted training in the amended provisions and their constitutional underpinnings. The creation of dedicated benches for family property disputes in District Courts would reduce delay and signal the State's commitment to the prompt vindication of women's property rights.

C. Reform of Revenue Administration

Land record mutation procedures should be streamlined and digitized to reduce opportunities for discriminatory delay. State governments should issue specific circulars directing revenue officials to effect mutations in favour of daughters upon production of succession certificates or court decrees, and to refrain from requiring additional male consent. Ombudsman mechanisms should be established to address complaints of administrative discrimination in land registration and mutation processes.

D. Education, Cultural Change and Social Awareness

The effectiveness of legal reform is ultimately conditioned by social change. School and university curricula should include modules on women's legal rights, including property and inheritance rights. Mass media campaigns — particularly in rural areas — should normalise daughters' exercise of coparcenary rights and challenge the social stigma associated with such claims. Civil society organizations working on women's rights should be supported and funded to undertake legal empowerment work in communities most resistant to reform.⁴²

E. Legislative Clarification on the Dowry-Property Interface

Parliament should consider amending the Hindu Succession Act to include an express provision clarifying that stridhan or dowry received at marriage does not extinguish or reduce a daughter's coparcenary rights. This legislative clarification would close the normative gap that allows the 'dowry substitute' argument to persist at the social level, and would remove any ambiguity about the independent character of coparcenary entitlements.

XI. CONCLUSION

The Hindu Succession (Amendment) Act, 2005 constitutes one of the most significant milestones in the long struggle for gender equality in Indian personal law. By conferring coparcenary rights on daughters by birth — rights identical in character and quality to those enjoyed by sons — the amendment fundamentally reoriented the Hindu joint family system from a male preserve to a gender-neutral institution. The legislative reform was reinforced by the Supreme Court's authoritative pronouncement in *Vineeta Sharma v. Rakesh Sharma* (2020), which settled the vexed question of the amendment's temporal reach and established the retroactive character of daughters' coparcenary rights.

Yet the distance between formal legal equality and substantive social equality remains considerable. The barriers erected by patriarchal norms, emotional coercion, lack of awareness, administrative indifference, and procedural complexity are formidable, and they operate most effectively against those women who are most economically vulnerable and socially marginalized — precisely those who have most to gain from the reform. The law, as it stands, provides the architecture of equality; the task of filling that architecture with substance belongs to the judiciary, the executive, civil society, and ultimately to the families and communities that must internalize the values underlying the reform.

This paper has argued that the 2005 Amendment is a necessary but not sufficient condition for achieving genuine gender equality in property rights. The amendment must be accompanied by a sustained programme of legal empowerment, administrative reform, and cultural change if its promise is to be realised for every daughter in every joint Hindu family. As the Supreme Court observed in *Vineeta Sharma*, the daughter's right is an inalienable birthright — one that was wrongly denied for centuries and is now constitutionally affirmed. The challenge for the coming decades is to ensure that this right is not merely inscribed in law books but lived as a social reality for every daughter of India.⁴³

⁴³*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1, ¶ 78 (India).