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## Beyond the statute: Unpacking women's realities under Hindu succession law post-2005

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### Abstract

The Hindu Succession (Amendment) Act 2005 is a landmark in the pantheon of Indian domestic law, which has brought a fundamental reworking of female rights in property rights. This treatise has tried a serious breakdown of the legislative development of the Act, its judicial interpretation and practice especially in providing equal coparcenary rights to daughters in ancestral property. Through a thorough examination of the provisions contained in the statutes, groundbreaking judicial decisions, and scientific research, the paper evaluates the effectiveness of the Amendment in promoting substantive gender equality. Although the 2005 reforms are reflective of a positive step in the right direction, entrenched socio-cultural barriers, haphazard enforcement practices and lack of legal literacy still stand in the way to the ultimate realization of the rights of women to property. The article, therefore, argues that, much as legal reform cannot be done without, it should be supported by social change and effective implementation strategies to achieve the constitutional promise of gender justice.

**Keywords:** Hindu succession act, women's property rights, coparcenary rights, gender equality, amendment act 2005, ancestral property, joint Hindu family

### Introduction

#### Literature Review

Women property rights are a pillar of economic security and social empowerment in all the parts of the world. Although viewed as a reformist act, the Hindu Succession Act of 1956 was a move that formalized gender discrimination especially on matters of ancestral property in Hindu Joint Families <sup>[2]</sup>. It was determined in earlier scholarship that daughters of the original Act of 1956 would be mere heirs and not coparceners and capable of dividing family property only in the event of a death of male coparceners.

Articles 14 and 15 of the Indian Constitution gave the constitutional framework of equality before the law and the ban on discrimination of any kind based on sex, which inherently created a conflict with the provisions of personal law <sup>[4]</sup>. This conflict elicited long term lobbying by women rights groups and the 174<sup>th</sup> Report of the Law Commission (2000) that particularly suggested that section 6 of the Hindu Succession Act be amended to enable daughters of the deceased to receive the same coparcenary rights as sons.

After the Amendment of 2005, it was shown by comparative legal scholarship that jurisdictions around the world shifted to gender-neutral inheritance laws, but there were still gaps in implementation based on the different cultures. Empirical research after 2005 showed that urban women had more knowledge about their legal rights but the rural population was not well aware of this added rights <sup>[7]</sup>. In *Vineeta Sharma v.*, the Supreme Court made a landmark decision. Rakesh Sharma (2020) substantially extended the scope of the application of the Amendment and introduced a retrospective force on the daughters born prior to 2005 <sup>[8]</sup>.

The gap between legal rights and reality in the life has been reported by recent socio-legal studies, and the implementation barriers are identified as inadequate documentation, cultural rejection, and exemption of agricultural land at the state level <sup>[9]</sup>. The current research is in line with this developing field of knowledge by conducting a thorough analysis of the effectiveness of the 2005 Amendment, which is based on a statutory analysis, judicial interpretation, and empirical research findings <sup>[10]</sup>.

Property rights constitute one of the main pillars of economic security as well as social empowerment <sup>[1]</sup>. Under the Indian environment where approximately eighty percent of the population follows Hindu personal laws, the Hindu Succession Act 1956 oversees the

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aspects of inheritance and succession <sup>[2]</sup>. The initial law, though reformist in its conception, institutionalized gender discrimination in practice, particularly with regard to ancestral property alienated to Hindu Joint Families (HJF) <sup>[3]</sup>.

The Hindu Succession (Amendment) Act of 2005, the result of long-term mobilization by women's rights lobbies, farsighted jurists and relentless direction of the Law Commission of India, took up the most intractable aspect of succession jurisprudence: the bar to daughters' coparcenary rights in joint property of the family <sup>[4]</sup>. The statute of 2005, by repealing the discriminatory terms of Section 6 and Section 23, attempted to reconcile succession law to the constitutional provisions codified in Articles 14 and 15, which respectively require fairness in law and prohibit discrimination based on sex <sup>[5]</sup>.

It is in this context that the present analysis critically examines women's property rights as provided in the Hindu Succession Act of 2005. The examination takes into account the statutory framework, judges who have read and expanded these entitlements, empirical evidence defining its practical effect, and outlines future barriers <sup>[6]</sup>. This paper provides a comprehensive analysis supported by legal doctrine, case law precedent, and empirical research, concluding with prescriptive actions aimed at strengthening both the legislative framework and its implementation machinery to guarantee that planned changes infiltrate the real lives of Indian women.

### **Pre-2005 Legal Framework: Discriminatory Foundations**

#### **The Hindu Succession Act, 1956: Selective Reforms**

The Hindu Succession Act, 1956 was one of the wider reforms passed in the Hindu Code Bill, which was meant to modernize Hindu personal laws <sup>[1]</sup>. Although it granted women some rights of inheritance, especially as Class I heirs in separate property possession, it maintained the discriminatory coparcenary regime of ancestral belongings <sup>[2]</sup>. By Section 6 of the original Act, only male members were recognized as coparceners—joint owners by birth—while daughters had become mere heirs and acquired rights only on partition or by the demise of the coparcener <sup>[3]</sup>.

This distinction brought about a chain of legal incompetence on the part of daughters: <sup>[4]</sup>.

- Daughters were refused the right to partition HUF property in the lifetime of the ancestor.
- They had no inheritance of ancestral property by birth; they could receive a portion of the father's property only on his death by testament and could be bequeathed at will.
- Section 23 imposed additional restrictions on married daughters.

### **Constitutionality and Social History**

The provisions of discrimination were in battle with the requirements of the Constitution assuring equality <sup>[1]</sup>. The Indian Constitution Articles 14, 15 and 16 prohibit any discrimination based on gender and also provide citizens with equal security before law <sup>[2]</sup>. However, personal laws were granted superior immunity by Article 25, which most frequently invokes religious autonomy, creating an intricate balancing act between gender justice and religious tradition

<sup>[3]</sup>.

The legal discrimination was further strengthened with the help of social attitudes: patriarchal norms demonstrated daughters as the *paraya dhan* (the wealth of other people) who were to be introduced into their marriage families <sup>[4]</sup>. Property was viewed as a process of maintaining family lineage by male descendants, and the entitlement of daughters was considered a hindrance to family and economic sustainability.

### **Courts' Acknowledgment of Inequality**

Until 2005, courts were occasionally recognizing the discriminatory aspects of succession laws <sup>[1]</sup>. The Supreme Court in *Prakash v. Phulavati* pointed out that although the 1956 Act had somewhat bolstered the rights of women, it still contained archaic concepts with respect to ancestral property <sup>[2]</sup>. The Law Commission in its 174th Report (2000) specifically proposed the amendment of Section 6 to give daughters equal coparcenary rights, noting that the rule of survivorship held under a Mitakshara coparcenary was antithetical to the spirit of modern times <sup>[3]</sup>.

### **Amendment of 2005: Legislative Change Key Statutory Provisions**

In 2005, the Hindu Succession (Amendment) Act was passed, which brought significant changes to the method of succession <sup>[1]</sup>.

#### **Amendment to Section 6: Equal Coparcenary Rights:**

The amended Section 6 accorded daughters the status of coparceners equal to sons, granting them the following entitlements: birthright acquisition of coparcenary status; rights of survivorship in ancestral property; and capacity to demand partition of joint property <sup>[2]</sup>.

**Correction of Section 23: Partition Rights:** Section 23's limitation on partition rights in cases where male coparceners were present was abolished completely <sup>[3]</sup>. This exclusion allowed daughters to apply for partition irrespective of male coparceners' presence, thereby removing a major barrier to partition proceedings.

**Repeal of Section 24: Widows' Rights:** Section 24, which limited the rights of sons in inherited property of widows, was repealed, eliminating any gender limitations on the right of female heirs to property <sup>[4]</sup>.

**Eligibility as Karta:** Although not directly mentioned in the Amendment, judicial interpretation has established that a daughter may be appointed as Karta (Manager) of the Hindu undivided Family where she is the eldest-surviving coparcener, sweeping away another patriarchal hurdle <sup>[5]</sup>.

### **Legislative Intention and Policy Goals**

The intention of the legislation is evident in parliamentary debates and in the Statement of Objects and Reasons that accompany the Amendment Bill <sup>[1]</sup>. The Amendment was in line with international commitments required of India by the Convention on the Elimination of All Forms of Discrimination Against Women, which stipulates equal rights to property ownership and inheritance <sup>[2]</sup>.

**Judicial Interpretation: Broadening and Enriching Rights**

**Retrospective Application: The Central Controversy**

The most controversial interpretive question concerned the temporal application of the Amendment <sup>[1]</sup>. The amended Act under Section 6(5) provides that it shall be effective from the commencement of the Act, but the statute is silent on whether daughters born before September 9, 2005 (commencement date) would be able to claim coparcenary rights <sup>[2]</sup>.

Different High Courts initially took differing positions on this question <sup>[1]</sup>. However, the Supreme Court gradually broadened the derivative of the Amendment. In *Prakash v. Phulavati* (2016), the Court ruled that daughters born prior to 2005 would be eligible to claim coparcenary rights provided the coparcenary existed (father alive) on the date of commencement <sup>[2]</sup>.

In the historic ruling of *Vineeta Sharma v. Rakesh Sharma* (2020), a three-judge bench ruled that the Amendment would apply retrospectively to all daughters, including those born before the commencement date, provided the coparcenary relationship continued to exist at the time of the Amendment <sup>[3]</sup>. This landmark decision substantially expanded women's access to coparcenary rights across generations.

**Property Rights and Testamentary Freedom**

Courts have confirmed that coparcener daughters possess complete testamentary freedom of their portion of ancestral property once it becomes separate property on partition <sup>[1]</sup>. This entitlement distinguishes their rights from the traditional system of coparcenary in which ancestral property passed through survivorship rather than succession <sup>[2]</sup>.

**Daughters as Karta**

Although the eligibility of daughters to serve as Karta of Hindu Joint Families is not specifically stated in the statute, courts have acknowledged this right <sup>[1]</sup>. In *Prabhavati v. State of Maharashtra* (2020), the Bombay High Court ruled that the refusal to grant this right would be counterproductive to the 2005 Amendment's objectives <sup>[2]</sup>.

**Scope and Limitations**

Judicial interpretation has also elucidated certain limitations on the Amendment's scope <sup>[1]</sup>. Several states, including Tamil Nadu, Andhra Pradesh, Maharashtra and Karnataka, passed laws exempting agricultural land from the Amendment's application, creating significant barriers for rural women whose family resources were primarily in agricultural holdings <sup>[2]</sup>.

**Analysis and Evaluation**

**Positive Outcomes**

**Legal Recognition and Legitimacy:** The Amendment of 2005 provided daughters with formal legal status regarding their inheritance claims, establishing a strong normative basis of gender equality in property rights <sup>[1]</sup>. Academic research demonstrates that urban, educated women exhibit greater awareness of their rights to ancestral property <sup>[2]</sup>.

**Increase in Property Claims:** Empirical studies show a quantitative increase in the number of daughters who filed partition suits and demanded shares of ancestral property

after 2005 <sup>[1]</sup>. The National Commission for Women recorded a twenty-three percent increase in legal consultation on property matters since 2005 among women <sup>[2]</sup>.

**Judicial Activism:** The scope of the Amendment was greatly broadened through progressive judicial interpretation, most notably in the *Vineeta Sharma* decision, demonstrating the judiciary's commitment to substantive equality <sup>[1]</sup>.

**Symbolic and Social Impact:** The Amendment challenged deeply-rooted patriarchal traditions by defining daughters as permanent members of natal families rather than temporary dwellers until marriage <sup>[1]</sup>. This metaphorical transformation has facilitated wider discussions of gender equality in family structures <sup>[2]</sup>.

**Continuing Struggles and Constraints**

**Socio-Cultural Resistance:** Although legislative reforms were enacted, social acceptance remains limited, particularly in rural contexts <sup>[1]</sup>. A Center for Social Research study conducted in 2018 showed that sixty-seven percent of eligible women in rural regions were unaware of their coparcenary rights, with only twelve percent of those possessing knowledge exercising claims <sup>[2]</sup>.

**Implementation Gaps:** Exemptions on agricultural land in several states presented barriers to women in rural areas whose main family resources consist of agricultural holdings <sup>[1]</sup>. Problems of documentation and proof continue to challenge women attempting to establish their entitlements <sup>[2]</sup>.

**Traditional Law in Contrast to Statutory Law:** The Amendment is not applicable to tribes and some communities governed by customary law, leaving them with unfair inheritance practices based on community identity <sup>[1]</sup>.

**Economic Realities:** Even where women are able to prove property claims, actual possession and economic control remain elusive <sup>[1]</sup>.

**Empirical Research: Mixed Results**

Studies of the Amendment's direct effects reveal a complicated picture <sup>[1]</sup>. A 2019 study examining property ownership data discovered that although it increased the range of legal claims women could bring, genuine possession and control equated to negligible percentages compared to men, especially in rural settings <sup>[2]</sup>.

**The following table illustrates women's exercise of property rights post-2005**

**Table 1:** Women's Exercise of Property Rights Post-2005 (2019 Study)

Indicator	Urban Areas	Rural Areas
Awareness of Rights	64%	31%
Filed Property Claims	28%	9%
Obtained Possession	19%	4%
Exercised Control	15%	2%

The data reveals a significant implementation gap, with legal rights not translating proportionally into actual economic benefits.

## Comparative Perspectives

### International Context

The 2005 amendment of the Hindu Succession Act in India represents part of a global movement toward gender-irrelevant inheritance laws <sup>[1]</sup>. Comparative scholarship observes common pathways followed by multiple jurisdictions, beginning with legislation in Ireland in 2000 through state-level reforms in the United States, all of which perform incremental changes to correct deeply ingrained inequities <sup>[2]</sup>.

However, academic investigation emphasizes that the announcement of egalitarian legal systems tends to remain disconnected from necessary societal modifications and strong enforcement systems <sup>[1]</sup>. Consequently, the gap between parity in codification and lived reality continues to exist as a pervasive challenge to substantive legalization <sup>[2]</sup>.

### Indian Religious Personal Laws

Among Indian personal law systems, Hindu law is distinctive in offering daughters an equivalent portion of coparcenary rights, representing substantive gender openness in matrimonial property distribution <sup>[1]</sup>. In sharp contrast, the personal legislation of Muslim, Christian and Parsi groups remains defined according to gender-based inheritance practices creating unequal results dependent on religious affiliation <sup>[2]</sup>. Such disparate treatment attracts wider questioning of equality and universality of constitutional rights across religious communities, forcing critical analysis of secular legal principles in the uneven landscape of religious law <sup>[3]</sup>.

## Recommendations for Reform

### Legal and Policy Reforms

Uniform national standards for agricultural land exemptions should be established to ensure consistent application of the 2005 Amendment across all states. Legislative amendments should clarify the status of customary law communities and extend uniform succession rights <sup>[1]</sup>.

### Implementation and Awareness Initiatives

Large-scale public education campaigns addressing cultural perceptions of women's property rights are essential <sup>[1]</sup>. Training programs for revenue officials, judges, and law enforcement agencies should standardize documentation practices and reduce administrative barriers <sup>[2]</sup>.

### Judicial Reforms

Specialized property rights courts should be established to provide expedited resolution of succession disputes <sup>[1]</sup>. Judicial precedent should be strengthened through training on gender-sensitive jurisprudence and substantive equality principles <sup>[2]</sup>.

## Conclusion

The Hindu Succession (Amendment) Act of 2005 represents an important landmark in the Indian journey toward achieving gender equity by systematically abolishing principles of patriarchal exclusion and rebalancing individual rights in line with constitutional obligations of equal opportunity <sup>[1]</sup>. Judicial jurisprudence, especially the landmark case of *Vineeta Sharma v. Rakesh Sharma*, has enhanced statutory gains through broad, purposeful interpretative approaches extending the Amendment's operational application <sup>[2]</sup>.

Notwithstanding these substantive developments, legal reform alone proves insufficient to eradicate entrenched socio-cultural stratifications <sup>[1]</sup>. The intractable gap between the enshrinement and implementation of rights demonstrates the inherent constraints of law-based approaches to realizing social change. Issues including cultural resistance, organizational impediments, lack of public awareness, and institutionalized barriers continue to ensure that millions of women remain deprived of rightful entitlements <sup>[2]</sup>.

The next step requires a balanced, multi-pronged approach synergizing legislative precision, appropriate implementation mechanisms, and active public education campaigns supported by society's cultural commitment to change <sup>[1]</sup>. The law has opened the portal to equality; it remains for civil society to ensure that daughters may pass this portal without ostracism, that cadastral systems systematize female coparcenary recognition, and that women receive not merely legal but actual economic trusteeship of hereditary property <sup>[2]</sup>.

The history of the Hindu Succession Act reflects larger conflicts coursing through Indian society—conflicts between practice and new egalitarian demands, religious community autonomy and indivisibility of constitutional rights, and between de jure equality and substantive justice <sup>[1]</sup>. As India advances through the constitutional pathway, the lessons of succession law reform illuminate a fundamental principle: radical change must not remain limited to legislative intent or judicial activism but should be embodied in society's long-term commitment to re-imagine gender relations within institutions of family and property <sup>[2]</sup>.

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