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THE AFTERLIFE OF INDIAN COPARCENARY RIGHTS UNDER HSA AMENDMENT 2005: ITS SOCIAL, LEGAL, POLITICAL, ECONOMIC, IMPACT ON JOINT HINDU FAMILY STRUCTURE

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ABSTRACT

The Hindu Succession (Amendment) Act of 2005 changed the way daughters are treated when it comes to inheriting property. It made daughters equal to sons in terms of ownership rights from the moment they are born, which aligns with the constitution's promises of equal treatment and fairness. However, even with this important change in the law, there is still a big gap between what the law says and how it is actually lived out in practice. This paper looks into that gap by studying how legal changes, court rulings, and long-standing traditional ideas affect women's ability to inherit property. The research uses a mix of legal analysis and real-life examples from interviews with judges, lawyers, and scholars in Rajasthan. Using ideas from feminist property theory and the capability approach, the paper argues that real gender justice needs more than just legal changes it also needs better enforcement, better understanding of the law, and changes in social attitudes. The paper first looks at the history and constitution-related changes in women's inheritance rights, then examines the legal shifts brought by the 2005 Amendment and the challenges in putting those laws into practice, and ends with suggestions for how to close the gap between what the law says and what women actually experience.

Keywords: Hindu Succession (Amendment) Act, 2005; Coparcenary Rights; Women's Inheritance; Gender Justice; Constitutional Equality; Hindu Joint Family; Socio-Legal Research; Patriarchy.

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I. INTRODUCTION

Ownership of property has traditionally been seen as one of the most long-lasting sources of social status, security, and independence of individuals. Though many constitutions of modern democracies ensure formal equality between men and women, the ability to enjoy property rights can be crucial for the actual empowerment of the latter. Therefore, in addition to being an instrument for the intergenerational transfer of property, inheritance is a legal institution, which affects bargaining power in the family, access to resources, resilience to economic risks, and freedom of choice. In agricultural societies like India, where land remains one of the most valuable economic resources, inheritance plays a crucial role in maintaining women's structural dependence on men despite the constitutional provisions for equality.

Hindu Succession (Amendment) Act, 2005² was a landmark piece of legislation in the personal law jurisprudence of India, as it granted daughters the right of coparcener by birth with the same rights and liabilities as that of sons. This legislation aimed at breaking one of the most entrenched customs of Mitakshara coparcenary system and bringing succession laws in line with equality under the Constitution. However, judicial pronouncements in subsequent cases such as *Vineeta Sharma vs. Rakesh Sharma*³ confirmed that daughters had coparcenary rights despite the status of the father being alive on the date the amendment was enacted. Nonetheless, almost two decades since this legislative measure, an important question arises: Has equality under the law led to equality in the family.

The above query becomes highly significant in Rajasthan because of the fact that inheritance laws here are operating under the framework of socio-cultural context characterized by patrilineal culture, agrarian nature of land tenure system, and customs like Mayra, Kulachar, and informal relinquishment custom. These customs have no power to override the statutory right of succession but still have relevance in determining how families deal with claims on ancestral property from their daughters. Thus, the relevance of these informal institutions proves that the enactment of the 2005 amendment act cannot be seen from the point of view of legislative and judicial approach alone but should also be analyzed in terms of the interplay of law, social norms and power of families.

² The Hindu Succession (Amendment) Act, No. 39 of 2005.

³ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1.

There is extensive literature available on the doctrinal development of women's inheritance laws, the constitutional legality of the amendment, and the developing jurisprudence regarding coparcenary. There has not been much focus, however, on the practical aspect of how statutory equality operates with customs and family settlements and negotiations in practice and influences women's inheritance rights, specifically in the socio-cultural framework of western Rajasthan. The discussion will be incomplete if it is assumed that the success of the amendment can be judged on the basis of legislative intentions or court judgments alone.

Consequently, this essay will employ a socio-legal approach which blends doctrine and empirics within the study of law in order to analyze inheritance laws. In essence, it will study the constitutional provisions, the development of statutes, judicial decisions, Law Commission Reports and the existing literature in addition to the interviews of judicial officials, practicing advocates and academicians on the application of inheritance laws. By incorporating doctrinal and empirical approaches within the analysis, this essay aims at finding out whether the Hindu Succession (Amendment) Act, 2005 has brought about a fundamental change in the status of women in Hindu joint family or patriarchal institutions are still limiting their equality guaranteed by law.

II. THE EVOLUTION OF WOMEN'S PROPERTY RIGHTS: FROM LIMITED ESTATE TO EQUAL COPARCENARY

The history of inheritance laws for women under Hindu law is that of a gradual change from a religiously endorsed subordination to constitutional equality. Nevertheless, such a development was neither consistent nor fully achieved. While the history of the inheritance laws of Hindus may be understood on the basis of legislative changes, it also reveals how the institution of law continually reiterated the prevailing social structure, especially that of the patriarchal arrangement in the Hindu Joint Family.

The early Vedic literature holds a different perspective regarding women from what one would generally expect.⁴ Women like Gargi and Maitreyi were active participants in philosophical discussions, and there is evidence of recognition of women as Sahadharmini who were

⁴ Simmi Tyagi & Ekta Gupta, Chapter 2: Historical Context of Women's Economic Rights in Hindu Law, 7 INT'L J. MULTIDISCIPLINARY RSCH. No. 2 (2025).

bestowed with ritual significance⁵. However, being a participant in intellectual discussion did not equate to economic independence. Right from this time period, even the Vedic rituals showed a tendency to favor male children, thereby suggesting the formation of patriarchal lineages which ultimately impacted the process of inheritance⁶. The glorification of the female divine along with the economic oppression of women is an inherent contradiction.⁷

In other words, this contradiction was institutionalized in the classical schools of Hindu law.⁸ According to the Mitakshara School, the coparcenary system was made a male preserve whereby ownership was granted solely to male progeny through survivorship doctrine. Women were not part of the coparcenary and were thus limited to their maintenance and few proprietary rights. On the contrary, in the Dayabhaga school, inheritance was recognized in case of the demise of the proprietor, and hence, widows and daughters enjoyed relatively more inheritance rights⁹. However, even in this case, no recognition was accorded to women as equal proprietors. Even when inheritance was allowed, the property was referred to as the "woman's estate", thus restricting her power to transfer and manage the property.

Nevertheless, colonial legislative reforms have been cognizant of these discriminatory practices but were only able to rectify some of them. The enactment of Hindu Women's Right to Property Act, 1937¹⁰ marked the first statutory move away from the rigidity of customs and traditions by granting the right of inheritance to widows in terms of her husband's property¹¹. However, this reform turned out to be structurally conservative as it retained the doctrine of limited estate and left the daughters excluded from inheriting any property. The legislation was a "half-hearted" effort in the sense that although it widened succession, it did not result in redistribution of ownership.¹² On the other hand, the Hindu Code Bill, 1948 took a step further

⁵ Kritika Sangtani & Shagun Tuteja, Women in Vedic India: A Narrative Review of Their Roles in Education, Philosophy, and Religion, 12 INT'L J. RSCH. & ANALYTICAL REV. No. 1 (2025).

⁶ Gobinda Chandra Mandal, The Rights and Status of Women in Ancient India: Insights from Hindu Legal Literature, 70 J. ASIATIC SOC'Y BANGLADESH (HUMANITIES) No. 1, 1 (2025).

⁷ Sumiksha Razdan & Shuchi Sharma, Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India, 7 INT'L J. SOC. IMPACT No. 1 (2022).

⁸ MANU, MANUSMRITI 9.3 (Georg Bühler trans., Sacred Books of the East ed., 1886).

⁹ P. C. Jain, Women's Property Rights Under Traditional Hindu Law and the Hindu Succession Act, 1956: Some Observations, 45 J. INDIAN L. INST. 509 (2003).

¹⁰ The Hindu Women's Right to Property Act, No. 18 of 1937

¹¹ R. Sathiya Bama & N. Neela, Hindu Women's Right to Property Act 1937—A Study, 1 SHANLAX INT'L J. ARTS, SCI. & HUMAN. No. 4 (2014).

¹² S. S. Awasthi, Hindu Women's Right to Property Act, 1937: A Critique, 1 ILE FAM. & PRIV. L. REV. No. 1 (2023).

in terms of restructuring by granting absolute ownership to women while raising questions about the very legitimacy of Mitakshara coparcenary system.¹³

Undoubtedly, the Hindu Succession Act of 1956 proved to be a landmark statute, in that it codified the laws relating to succession and abolished the principle of limited ownership by virtue of section 14, making it clear that women would now be recognized as absolute owners of the property that they possess. However, at the same time, the statute ensured the preservation of the patriarchal essence of Mitakshara Coparcenary by denying the rights of coparcenary ownership to daughters while ensuring the principle of survivorship in respect of ancestral property. While the act certainly enhanced the proprietary rights of women, it did not alter the gendered structure of the Hindu Joint Family.¹⁴ This contradiction became more pronounced in light of Article 14 and 15 of the constitution¹⁵ and the recommendations of the 174th Law Commission report.¹⁶

The Hindu Succession (Amendment) Act, 2005 was thus not just another piece of legislation, but a constitutional necessity. Through its provision for recognizing daughters as coparcener by birth, doing away with the principle of survivorship, providing for the succession of agricultural property, and eliminating many other provisions that were discriminatory, the Parliament hoped to bring about an era of equality where patriarchal privilege would be replaced by formal legal equality. However, even as the law was changed in this way, the social institution that controls property transactions was not necessarily going to change along with it. The transformation from the limited estate system to that of equal coparceners is thus not only a testament to legislative changes, but also one where equality came to be on paper in 2005, but not necessarily in reality.

III. THE CONSTITUTIONALIZATION OF COPARCENARY: REIMAGINING THE HINDU JOINT FAMILY

¹³ Mytheli Sreenivas, *Conjuality and Capital: Gender, Families, and Property Under Colonial Law in India*, 63 J. ASIAN STUD. 937 (2004); B. R. AMBEDKAR, DR. BABASAHEB AMBEDKAR: WRITINGS AND SPEECHES vol. 14 (Gov't of Maharashtra 1994).

¹⁴ Supra note 8.

¹⁵ INDIA CONST. arts. 14 and 15.

¹⁶ LAW COMM'N OF INDIA, 174TH REPORT, PROPERTY RIGHTS OF WOMEN: PROPOSED REFORMS UNDER THE HINDU LAW (2000).

The Hindu Succession (Amendment) Act, 2005, was much more than just a reform of inheritance laws. It was, in fact, a constitutional reform of the Mitakshara coparcenary, which was one of the oldest institutions of Hindu personal law. Traditionally, the non-enjoyment of coparcenary by the daughter was seen as a natural result of the structure of Hindu Joint Family (HJF), wherein lineage, property, and succession were determined on the basis of male lineage. Therefore, proprietary rights could not be seen as an individual right but as a family right that had been passed down through the male line. Though this had some historical validity as per the traditional Hindu law, in the wake of the constitution of India, it increasingly appeared inconsistent with the principle of equality and dignity.¹⁷

It was not only the discriminatory effect of the coparcenary system that was challenged by the constitution but the entire structure of this institution as well. Under the Mitakshara law, a son acquired a share in the ancestral property through his very birth, and the daughter had no rights to the property even though she belonged to the same family by birth. The economic link of the daughters to their family would have to come through the means of maintenance, marriage or succession after the death of a male member of the family. This differentiation of the two categories of children was directly contrary to Articles 14 and 15 of the Constitution of India, which disallowed arbitrary classification and any form of discrimination against a person on the grounds of sex.¹⁸

The inconsistency of this constitutional provision did not go unnoticed in the legislature and courts of law. In its 174th Report the Law Commission of India¹⁹ clearly stated that the exclusion of daughters from the status of coparcener was one of the greatest examples of gender discrimination in Hindu personal laws. The Commission contended that daughters also work for the benefit of the family and hence, they cannot be discriminated against and deprived of proprietary rights simply because of their gender. The Commission went on to recommend that daughters be made coparceners by birth with the same rights and liabilities as sons so as to ensure that succession laws conform to the spirit of the Constitution.

¹⁷ M. P. JAIN, INDIAN CONSTITUTIONAL LAW (Sanjay Jain rev., 9th ed., LexisNexis 2025); PARAS DIWAN & PEEYUSHI DIWAN, MODERN HINDU LAW (CODIFIED & UNCODIFIED) (27th ed., Allahabad Law Agency 2025, reprint 2026).

¹⁸ Supra note 14 and INDIA CONST. arts 38 and 39.

¹⁹ Supra note 15.

However, the importance of the 2005 amendment is not simply that it endows daughters with new rights, but that it fundamentally changes the identity of daughters in law in the Hindu Joint Family. Before the amendment, daughters were classified only as heirs to whom their right inheres only after succession. By making daughters coparceners in their birthright, the amendment changed this juridical identity of daughters who have been made equal to sons. This was not the sole change that the amendment made. Daughters were now granted rights to claim partition, become karta when legally possible, own agricultural land, and owe liabilities equivalent to those of coparcenaries. Alongside this, the amendment also discarded the concept of survivorship in favor of testamentary and intestate succession.

Nonetheless, the constitutional importance of the amendment was recognised only through judicial interpretation later on. There were some uncertainties pertaining to the time application of the amendment in the first few years after the amendment was introduced. The court used a narrow interpretation of the amendment in *Prakash v. Phulavati*²⁰ to conclude that daughters could assert their coparcenary rights only if the father was alive on the date when the amendment became effective. However, it is interesting to note that just soon after, the court decided in *Danamma @ Suman Surpur v. Amar*²¹ that daughters had the right to assert coparcenary rights even if the father was dead before 2005, thus making the doctrine internally inconsistent. However, it is important to mention that the inconsistency was overcome by the decision made in *Vineeta Sharma v. Rakesh Sharma*²² (2020) where the court concluded that the coparcenary rights are established due to birth and do not depend on whether the father was alive on 9 September 2005. The court reiterated that the amendment was meant to eradicate discrimination and should be interpreted consistently with constitutional equality, not with restrictions coming from patriarchal succession rules.

Seen together, these decisions marked the amendment's transformation from being a mere legislative change to a constitutional commitment to gender equality in personal laws among Hindus. Instead of considering daughters to be the benefactors of benevolent legislation, the Supreme Court treated them as equals before the Constitution, whose property rights derive from their existence and not any patriarchal largesse. Through this, the courts reinforced the

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

²¹ *Danamma @ Suman Surpur v. Amar*, (2018) 3 SCC 343.

²² *Supra* note 2.

idea that personal laws, even if founded in tradition, are not exempt from the demands of constitutional morality.

But mere constitutional acknowledgement cannot ensure constitutional implementation. Though the amendment and the judicial pronouncements may have restructured the laws pertaining to coparcenary, they do not ensure the restructuring of the institutions through which property negotiation takes place amongst family members. Customary norms, emotional duties, private negotiations, and patriarchal bargaining all continue to regulate women's access to property in spite of the equal rights accorded to women by law. The constitutionalization of coparcenary therefore marks the first step towards change; the more difficult task is to understand how legal equality fails to translate into social equality and why this happens. It is this gap between law and society that the next section tries to explore.

IV. BETWEEN STATUTE AND SOCIETY: WHY FORMAL EQUALITY HAS NOT BECOME SOCIAL EQUALITY

There is no denying the fact that the Hindu Succession (Amendment) Act of 2005 has certainly revolutionized the legal framework of inheritance through the recognition of daughters as equal coparceners. However, almost two decades later, it is the continuing inequality in property ownership which highlights the critical difference between formal equality that is provided by the law and substantive equality that actually happens in real life. Although the amendment act has done away with the statutory discrimination, it was unable on its own to destroy the social structure that still controls women's connection with their family property.

Property, according to feminist theory, has gone beyond mere economic importance and is essentially associated with empowerment and social recognition. For instance, the ownership of productive resources, especially land, increases women's decision-making power, minimizes economic dependence, and empowers women at the domestic level.²³ Likewise the legal changes in personal laws usually result in very little social change since relations in families still continue to be dominated by patriarchal values instead of legal provisions. Thus,

²³ BINA AGARWAL, *A FIELD OF ONE'S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA* (Cambridge Univ. Press 1994).

equal inheritance through law does not necessarily ensure equal entitlement to inherited property.²⁴

This disjunction can also be explained using the capability theory of Amartya Sen²⁵ and Martha Nussbaum.²⁶ While both theorists make a distinction between the possession of a right and its effective implementation, when applied to inheritance issues, a woman may have a legal right to some share of ancestral property, and still not be able to claim or maintain her share due to economic dependency, emotional compulsion, or the fear of destroying family relations. Hence, equality cannot be achieved only through the possession of rights but through their capability.

The issue can also be addressed by considering the continuing phenomenon of patriarchal bargaining. According to Deniz Kandiyoti, "*women bargain within the patriarchal family in terms of accepting an unequal arrangement in order to secure social security, family acceptance and/or stability*".²⁷ With regard to inheritance, this is generally seen in the form of giving up property to brothers as an act of voluntariness. While these agreements appear to be voluntary on paper, they are often conducted within unequal power relations in which maintaining family peace is more important than establishing rights.

This theoretical perspective is evident in the practical findings of the current study. In the interviews carried out with judicial officers, practicing advocates, and legal experts, it was found that the open rejection of the right to inheritance by daughters has been significantly reduced since the amendments made in 2005. The opposition has been more covert. Women have always been seen as being coerced into giving up their statutory shares than being rejected from their right. There has definitely been a rise in awareness of the law but mere awareness has not superseded patriarchal traditions.²⁸

Customary traditions have a role to play even in inheritance negotiations in various parts of North India, although they have no legal basis. Practices like Mayra, Kulachar, and transactions in relation to marriages are usually viewed as serving the economic right of the daughters, thus

²⁴ FLAVIA AGNES, FAMILY LAW: VOLUME 1: FAMILY LAWS AND CONSTITUTIONAL CLAIMS (Oxford Univ. Press 2011).

²⁵ AMARTYA SEN, DEVELOPMENT AS FREEDOM (Oxford Univ. Press 1999).

²⁶ MARTHA C. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH (Cambridge Univ. Press 2000).

²⁷ Deniz Kandiyoti, Bargaining with Patriarchy, 2 GENDER & SOC'Y 274 (1988).

²⁸ Naila Kabeer, Resources, Agency, Achievements: Reflections on the Measurement of Women's Empowerment, 30 DEV. & CHANGE 435 (1999).

preventing any further claim on their ancestral properties. Similarly, deeds of relinquishments like Haq Tyag and family arrangements, although they do not come under inheritance, are seen as voluntary deeds made to preserve the family peace.

However, what needs special mention here is the concept of dowry in this context. Even though it is legally forbidden through the Dowry Prohibition Act, 1961,²⁹ it still persists in most of the societies wherein it is explained as the share of the girl in her parent's property. This concept completely defies the very purpose of the Hindu Succession (Amendment) Act, where inheritance is seen as a right rather than a gift by virtue of one's birth.

The effects of these practices have repercussions beyond just the transfer of property. Symbolic violence helps to conceptualize practices of inequality in terms of normalization rather than coercive action. Women may choose not to claim their inheritance rights not because of a lack of any protection, but because societal conventions render these acts as unbecoming of the notions of family loyalty or gratitude.³⁰ In severe cases, women who exercise their legal rights might be subject to emotional withdrawal, troubled family relations, or even ostracization by society. The largest hindrances to inheritance today are, therefore, not legal but informal.

This study's findings imply that the central issue facing women's right to inheritance has changed. The issue here is not whether daughters have the same legal rights or not, and that has been settled through law-making and constitutional interpretations. The real issue is whether women can use these rights socially, economically, and institutionally without having any sort of threat or discrimination. To close this gap, we need to go beyond law-making and change the social institutions that manage property in families.

It thus appears that the road from formal equality to substantive justice has not been completed. While the Hindu Succession (Amendment) Act, 2005 has managed to constitutionalise equality within the context of succession, its transformative power is still limited by patriarchal family relations which informally continue to determine ownership despite legal rules. Achieving substantive equality under the Constitution demands that it be understood that the fight for women's rights over property is not only a legal but also a social struggle.

V. FROM LEGAL EQUALITY TO

²⁹ The Dowry Prohibition Act, No. 28 of 1961.

³⁰ PIERRE BOURDIEU, *MASCULINE DOMINATION* (Richard Nice trans., Stanford Univ. Press 2001).

SUBSTANTIVE JUSTICE: THE WAY FORWARD

The Hindu Succession (Amendment) Act, 2005 is certainly one of the most important milestones for achieving substantive equality in terms of women's property rights in Hindu personal law. Yet, as the discussion above shows, legislative changes do not necessarily assure substantive equality. The persisting role of patriarchal values, informal familial arrangements, lack of legal knowledge and efficiency problems suggest that gender justice in the field of inheritance calls for a much more multi-dimensional approach.

First and foremost, there is the need to enhance legal awareness. In spite of the fact that the Constitution recognizes daughters as equal coparceners, most women are unaware of what exactly their rights are or how they can get them enforced. The public legal awareness programs that are organized through the National Legal Services Authority (NALSA), State Legal Services Authorities, and legal aid clinics in each village need to specifically focus on the rights of women to inherit property.

Second, institutional implementation needs to be considerably enhanced.³¹ The right to inheritance does not only depend on judicial interpretation but also on efficient systems of revenue management and land records. Protracted mutation procedures, complex procedures, and inconsistent administrative practices often act as impediments for women in exercising their rights. Streamlining mutation procedures and guaranteeing timely disposal of inheritance cases, among other things, would substantially enhance the effectiveness of existing rights.

As equally important is the need to tackle the prevailing social values that have been impacting inheritance laws. The agreements made and voluntary release agreements should be based on true decisions and not those which may have been made under influence of emotions and coercion. Awareness programs that involve educational bodies, non-governmental organisations, and community leaders can help change the perception of the constitutional right of women inheritance from being viewed as an interruption of family peace.

It is worth noting that judicial interpretation has had a transformational role in establishing equality of daughters as coparceners in matters relating to inheritance, especially as seen in the

³¹ LANDESA RURAL DEV. INST., HSAA Study Report: Implementation of the Hindu Succession (Amendment) Act, 2005 (2014).

case of *Vineeta Sharma v. Rakesh Sharma*.³² It is important that this purposive and constitution-based approach be maintained to ensure that any technicality does not work against the principle of gender equality. On the other hand, the courts must take note of the dynamics of coercion and unequal bargaining in such family disputes.

In conclusion, the success of the Hindu Succession (Amendment) Act is determined not in terms of the rights that it guarantees but by the degree to which they are enjoyed without any fear of intimidation, oppression, or discrimination. The move from equality before the law to justice requires the cooperation of all the legislative, judicial, and social spheres. When women have the ability not only to inherit property according to the law but also to freely use their property without any fear, then equality can be achieved.

VI. CONCLUSION

The enactment of the Hindu Succession (Amendment) Act, 2005 was indeed a watershed in the history of Hindu succession laws, as it treated daughters on an equal footing as coparceners, and thus brought the inheritance of property into consonance with the values of equality and non-discrimination guaranteed under the constitution of India. This was clearly stated in *Vineeta Sharma v. Rakesh Sharma*.³³

Nevertheless, this research indicates that while inheritance law is becoming part of the constitution, there has been no parallel change in the practices within society. Gendered traditions, customs, informal disposal of property, and institutional practices still play a role in restricting women from using their legal rights. Therefore, the issue lies now not in the lack of legislation, but in the implementation of existing laws.

Through the fusion of doctrine with empirical findings, the article maintains that any form of inheritance legislation should not only be assessed based on the rights it provides but through how much of it is actually enforced. Property ownership is still very important for women's economic independence, negotiating ability, and citizenship equality. Hence, the real success of the 2005 amendment can only be achieved if equality is not only expressed on paper or in court decisions but is also accepted socially. humanized

³² Supra note 2.

³³ Ibid.