

# **WOMEN'S PROPERTY RIGHTS: A SOCIO-LEGAL PERSPECTIVE**



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**Editors**

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## FROM THE EDITOR'S DESK

*Women's Property Rights: A Socio-Legal Study* is an interdisciplinary edited volume that critically examines the evolving dimensions of women's rights to property in contemporary society. The book brings together 23 scholarly chapters contributed by academicians, researchers, legal professionals, and social scientists from diverse disciplines, offering a comprehensive understanding of the legal, social, economic, and cultural aspects of women's property rights. Property rights constitute one of the most significant indicators of women's empowerment, dignity, and social justice. Although constitutional guarantees, legislative reforms, and judicial interventions have strengthened women's legal entitlements over property, the practical realization of these rights continues to face numerous social, cultural, economic, and institutional barriers. This volume explores these challenges through socio-legal perspectives and highlights the gap between legal provisions and social realities. The chapters in this edited volume discuss a wide range of themes, including inheritance rights, marital property, succession laws, gender discrimination in property ownership, customary practices, women's land rights, economic empowerment, domestic violence and property deprivation, constitutional safeguards, personal laws, and emerging judicial trends. The contributors also examine the role of law, state institutions, civil society, and policy frameworks in ensuring gender justice and equality in property ownership. By integrating perspectives from law, sociology, social work, women's studies, economics, political science, and allied disciplines, the book provides an inclusive academic platform for understanding the intersection between gender and property. The volume emphasizes that women's access to and control over property is not merely a legal issue but also a matter of social transformation, economic independence, and human rights. This book will serve as a valuable resource for students, researchers, teachers, policymakers, legal practitioners, activists, and all those interested in gender justice and socio-legal studies. It contributes meaningfully to the ongoing discourse on women's empowerment and the realization of substantive equality in society.

**Editors**



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# CHAPTER 1

## PROPERTY RIGHTS OF WOMEN UNDER THE COPARCENARY SYSTEM: LEGAL AND JUDICIAL DEVELOPMENTS WITH SPECIAL REFERENCE TO RAJANI V. RADHA NAMBIDI PARAMBATH

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### **Abstract**

*Ancient Hindu scriptures revered daughters as the epitome of prosperity and continuity. Still, the classical Hindu law of the Mitakshara system denied daughters coparcenary status and equal inheritance rights of male members of the Hindu joint family, and the Hindu Succession Act of 1956 largely supported this exclusion. The Hindu Succession (Amendment) Act of 2005 marked a watershed moment, granting daughters the status of coparceners by birth, putting them on an equal footing with sons in matters of joint family property. The Kerala Joint Hindu Family System (Abolition) Act of 1975 had previously abolished the joint family and coparcenary system in Kerala. The Hindu Succession (Amendment) Act of 2005 has raised concerns about the applicability and scope of the central amendment in Kerala. This study addresses the interplay between the 1975 state legislation and the 2005 parliamentary amendment with special reference to the Kerala High Court's decision in Rajani v. Radha Nambidi Parambath case, in which the court ruled that daughters have equal coparcenary rights on an equal footing with male members of the Hindu joint family under the amended Hindu Succession Act, and emphasises the importance of central legislation in the event of direct conflict. The court also*

*clarified that a father's testamentary disposition can only affect his individual share and cannot override the statutory rights conferred on daughters as coparceners. By analysing this decision, this chapter highlights the evolving jurisprudence on gender equality in Hindu Succession Law*

*and places Kerala within the larger constitutional and legislative movement for substantive equality in property rights.*

**Keywords:** *Property Rights, The Hindu Succession Act - 1956, Joint Hindu Family, The Kerala Joint Hindu Family System (Abolition) Act - 1975.*

## **Introduction**

India is a legally plural society in which many systems of family and personal status laws coexist. The law governing rights within marriage, upon divorce, and in matters arising out of marital relationships, including succession and inheritance, is not uniform but varies according to religious community. Alongside community-specific personal laws, secular enactments such as the Special Marriage Act, 1954 (governing civil marriages) and the Indian Succession Act, 1925 (regulating testamentary and intestate succession for certain communities) operate within the Indian legal framework (Uma, S., 2022). This coexistence reflects the historical accommodation of religious diversity within the constitutional structure of India. Hindu women's legal right to inherit property has been restricted from the earliest times in Indian culture. The Vedic hymns, Dharmaśāstra texts, and Smṛti literature show that property usually went from father to son. Daughters, wives, and widows had very little chance to own anything. In the ancient text Manusmṛiti illustrates her limitation as a woman in different age. Throughout history, restrictions on Hindu women's property rights have undergone change, and current laws governing these rights are more liberal than those of ancient Hindu society. (Halder, D., & Jaishankar, K., 2008) Hindu society provided women with property known as stridhan or dowry (literally, women's property or fortune), and it mainly came from marriage gifts (clothes, jewellery, and in some rare cases, landed properties). However, women were denied property rights to the ancestral or marital landed property, and their right over succession of the landed family property was limited. With the emergence of different schools of Hindu law, the concept of stridhan started

expanding its literal and legal meaning, granting women more rights to certain forms of property.

Before independence, the greater part of India was governed by the Mitakshara, a twelfth-century legal treatise interpreted through later commentaries and judicial decisions under Anglo-Hindu law (J. Duncan M. Derrett, 1959). The Mitakshara school is based on commentary written by Vijnaneswara on the Yajurvedic smriti and followed in most part of India (Delhi Law Academy, 2026, January 19). Under the Mitakshara system, ancestral property and its accretions did not ordinarily devolve by succession to the widow, daughter, daughter's son, or other agnatic and cognatic heirs if the deceased left behind a son, son's son, or son's son's son, and had not affected a "severance" from the coparcenary (J. Duncan M. Derrett, 1959). The rule of survivorship governed devolution, reinforcing the exclusion of female heirs in the presence of male lineal descendants.

In contrast, another school of Hindu law, the Dayabhaga, prevalent in certain regions, differed significantly in its treatment of property rights. While Mitakshara recognized a birthright in ancestral property, Dayabhaga postponed such rights until the death of the father. Thus, under Dayabhaga, the father retained greater powers of alienation during his lifetime, and succession rather than survivorship governed inheritance. The Dayabhaga system, in certain respects, resembled the Anglo-American concept of tenancy-in-common or inheritance laws. Before independence period, significant efforts were undertaken to reform to give property rights to women and codify Hindu personal law. The Hindu Women's Right to Property Act, 1937 was one of the most important enactments in the British period that brought about changes to give better rights to women. This was the earliest legislation giving rights of succession to widows of late persons on par with the sons of the deceased. (Hindu Women's Rights to Property Act, Act No. XVIII of 1937, 1937) The widow entitled limited rights to claim partition and became a member of joint family.

In 1941, the colonial British government had appointed a four-member Hindu Law Committee, known as the Rau Committee to study and to make proposals for the reforms related with Hindu personal laws. The Rau Committee drew up two bills, the Hindu Marriage and the Intestate Succession Bills, which were introduced in

the Central Legislature in 1943 and was widely circulated and discussed and given the name “Hindu Code Bill” (Ray, 1952). But these codes eventually allowed to lapse because of disapproval from the conservative component that constituted the main support of the British government in power at the time. Then Dr.B.R. Ambedkar introduced the Hindu Code Bill in the legislature on 11 April 1947(Ray, 1952). The Bill aimed to codify Hindu family law and “modernise” it by removing discriminatory provisions and practices, particularly those affecting women (Sinha, C, 2012). It was also faced strong opposition from congress party and other quarters from within legislature and public.

Codification of customs in to a codified law is a positive step. It gives space for modification after it codified and enacted through legislative process. It is very helpful to the law interpreting agency or court to evaluate and rectify the problems contain in it. There were strong opposition inside and outside the Parliament with regard to the codification of Hindu personal laws, even though the Hindu Succession Act was enacted and came into force on June 17, 1956 to codify and reform the law of intestate succession for Hindus, Sikhs, Jains and Buddhists aiming to establish a uniform, advanced system of inheritance. This act contains thirty-one sections and a schedule which contains class I and class II heirs. In this Act, Sections 6, 14, and 16 concerned with property rights of female at a limited level (India Code, 1956).

Section 6 of H S A deals with coparcenary status and this section did not grant women or daughter as coparceners. Coparcenary is a group of members of family having birth right in ancestral assets. A coparcenary is a narrower component within the Hindu Undivided Family (HUF) that cooperatively owns ancestral property. It comprises of those members who attain an interest in the property by birth, and in exceptional cases, by adoption. The head of the coparcenary is known as the Karta. Traditionally, under the Mitakshara school, only male members up to four degrees from the senior-most male ancestor constituted the coparcenary. In contrast, the joint family as a wider entity includes both male and female members and is not limited by generational limits in the same manner. The distinction between joint family and coparcenary is therefore crucial.

While every coparcenary is part of a joint family, not every member of a joint family is a coparcener. Coparcenary is a limited body of individuals who possess a right by birth in ancestral property and who can demand partition. Traditionally, women were excluded from coparcenary membership, even though they were members of the joint family.

### **Background of the Study**

The coparcenary system has undergone significant transformation in the post-independence period. Several states made progressive amendments to Hindu succession Act to modify and accommodate females as coparcener or give equal property to females like males. Meanwhile Kerala, Tamil Nadu, Andhra and Karnataka made amendments to the Act to accommodate female and granted property rights in their ancestral property.<sup>174<sup>th</sup></sup> law commission report also favoured to the amendment to the 1956 Act to accommodate female as equal in ancestral property rights (Law Commission of India, 2000). Eventually a landmark change was introduced through the Hindu Succession (Amendment) Act, 2005, which conferred upon daughters the status of coparceners in the Mitakshara coparcenary. By recognizing daughters as coparceners by birth, with rights and liabilities equal to those of sons, the amendment fundamentally altered the patriarchal structure of the traditional coparcenary system.

The inclusion of daughters represents a radical shift in property relations within the Hindu joint family and marks a significant step toward gender equality in succession law. Thus, the evolution from classical Mitakshara principles to statutory reform under the 2005 amendment reflects the broader constitutional commitment to equality and the progressive restructuring of personal law in India. Even though some confusions prevailed over when the amended changes of the Act became effective and it culminated the historic Supreme Court judgement in 2020 Vineetha Sharma case and the court affirmed that the right of the girl child over ancestral property begin by “birth”.

## **Mitakshara Law**

In the Vedic period, Brahmins maintained their superior status through the Dharamshastras, derived from sacred texts like the Vedas and Smritis, customs, and principles of good conscience. At that time, husband and wife were considered joint owners of the household, with the husband pledging to protect his wife's economic rights. Texts such as the Apastamba Dharmasutra allowed the wife to manage household expenses in her husband's absence, and the concept of unity between husband and wife supported inheritance rights, with Brihaspati stating that a widow could inherit her sonless husband's estate before other heirs. However, this religious idea of unity was not recognized in secular law, leading to the gradual denial of women's ownership and inheritance rights. In the 12th century, two major schools of Hindu law emerged, Dayabhaga, formulated by Jimutavahana and followed mainly in Bengal, and Mitakshara, written by Vijnaneshwara as a commentary on the Yajnavalkya Smriti and accepted in most of India, both differing primarily on rules of inheritance.

Under the earlier Mitakshara Law, a son acquired a right and interest in family property by birth, and only male members up to three generations, son, grandson, and great-grandson, were recognized as coparceners, excluding women entirely. The Hindu Law of Inheritance Act, 1929 marked an initial move toward including women by granting limited inheritance rights to a son's daughter, daughter's daughter, and sister. Subsequently, the Hindu Women's Right to Property Act, 1937 allowed a widow to inherit alongside her son with an equal share, though she was still not considered a coparcener. Before the Hindu Succession Act, 1956, a woman's property was classified as Stridhan (her absolute property) and Hindu Women's Estate (a limited estate with restricted powers). Although the 1956 Act sought to provide equal inheritance rights to sons and daughters under the Mitakshara system, inequality persisted because sons retained a birthright in joint family property, while daughters could inherit only their father's separate property and his notional share in joint property if he died intestate. Since much property, especially in rural areas, remained jointly owned, this system continued to disadvantage women, as coparcenary membership by birth was effectively limited to males (Asra Shifaya 2021). However,

the amendment of the Act in 2005 radically alters the position of woman in coparcenary status and granted equal right with male counterparts. At the same time, some confusion prevailed to the time when the rights begin. So many cases emerged to determine the issue. In *Prakash v Phulavati* (2016) the Supreme Court took the view that a daughter could not make any claims with respect to her father's ancestral property if the father had died without a will prior to 20 December 2004 (Alok Prasanna Kumar 2020). In *Danamma @ Suman Surpur v Amar* (2018), the Court took the view that even if the suit for partition by a daughter is filed prior to 2005, it would have to be decided in accordance with the amended Act of 2005. The three-judge bench in *Vineeta Sharma v Rakesh Sharma* (2020) was set up to resolve the contradictor interpretations of the Court in the *Prakash* and *Danamma* cases. In the *Vineeta Sharma* case, the Court has concluded that irrespective of the date on which the father died, with effect from 2005, daughters would be entitled to a share in the coparcenary property on the same footing as sons. In doing so, it overruled the finding in the *Prakash* case which had imposed a cut-off date of 20 December 2004 for daughters to claim coparcenary rights. The *Danamma* judgment, to the extent it had approved the *Prakash* judgment, was also overruled, but its major finding, that daughters would be coparceners irrespective of when their father died, was upheld (Alok Prasanna Kumar 2020). The Apex judicial body in *Vineeta Sharma v. Rakesh Sharma* (2020) finally concluded and elucidated the scope of Hindu Succession (Amendment) Act, 2005 concerning daughters' coparcenary entitlements. The verdict held that a female child becomes a coparcener by birth, just like a male child, in a Hindu joint family ruled by Mitakshara law. It held that the father need not be alive on 9 September 2005 (the date the amendment came into being) for the daughter to get coparcenary rights. The decision also resolved differing interpretations from previous cases and declared that daughters have equal rights and obligations or liabilities in coparcenary property (*Vineeta Sharma v. Rakesh Sharma*, 2020).

## **Women's Property Rights in Kerala**

Previously comprising three distinct princely states of Travancore, Cochin and Malabar, Kerala became a unified state in 1956 as part of the linguistic reorganization of states since Indian independence. The ideological varna system in the Hindu caste order did not have its equals in the local social structure in Kerala. The caste system at the local level came to be referred to as the jati system. In the jati system of Kerala, all varnas are not found in the same order as in the varna system prevailed all over India. (Menon, Vineetha, 2012). Even though there existed eleven or more local inheritance laws in Kerala like, The Madras Marumakkathayam Act, 1932 , The Madras Aliyasanthana Act 1949, The Travancore Nayar Act, The Travancore Ezhava Act, III of 1100, The Nanjinad Vellala Act of 1101, The Travancore Kshatriya Act of 1108, The Travancore Krishnanvaka Marumakkathayee Act, The Cochin Thiyya Act, The Cochm Makkathayam Thiyya Act, The Cochm Nayar Act, The Cochin Marumakkathayam Act, The Kerala Nambudm Act, 1958, most Hindus in Kerala are governed their inheritance under HSA1956(Kerala Joint Hindu Family System (Abolition) Act, 1975,1976). These local laws more or less accepted and adopted joint family system in various forms, some of them patrilineal and others matrilineal. Due to its progressive role of cast associations and other modern literary initiatives, the Kerala State in front to modify the legal laws relating to succession. Since succession is a concurrent subject, the state decided to modify the inheritance laws and made a law named Kerala Joint Hindu Family System (Abolition) Act. The main objective of the Act was to abolish the joint family system among Hindus in Kerala (Kerala Joint Hindu Family System (Abolition) Act, 1975,1976). The Act was instrumental in ensuring that all Hindu women in Kerala have equal rights in ancestral property.

### **The Kerala Joint Hindu Family System (Abolition) Act, 1975**

The Act contains seven sections and one schedule. The act aims to abolish joint family system among Hindus in Kerala. Section 3 of the act states that birth in family is not give rise to property and section 4 holds that Joint tenancy to be replaced by tenancy in common. Section 5 abrogated Rule of pious obligation of Hindu son abrogated (The

Kerala Joint Hindu Family System (Abolition) Act, 1975, 1976). The schedule repeals 12 Acts prevailed in Kerala that validated joint family system among various jati Hindus. The act hailed as a progressive step towards the Hindu inheritance and even get place in various law commission reports as a model for rest of India. From 1976 onwards there is no coparcenary system and joint family system in Kerala. Being so progressive from 1976, the 2005 amendment with regard to Hindu succession made by the Parliament had little effect to the Hindu population in Kerala.

However, in 2025 a case emerged in state of Kerala that questioned the legal validity of kerala joint family abolition act 1975. Through this case, the Kerala High Court dealt with a dispute relating to the partition of ancestral family property in Kozhikode. The plaintiffs, daughters of the deceased, requested their right to an equal share under the Hindu Succession (Amendment) Act, 2005, while the defendants, including a son of the deceased, maintained that the Kerala Joint Hindu Family System (Abolition) Act, 1975 limited their inheritance rights. Portions of the property had already been partitioned between male members, and a Will executed by the deceased owner attempted to favour the male heir. The daughters contended that, following the 2005 Amendment of HSA1956, they were entitled to equal coparcenary rights by birth, irrespective of previous partitions or state legislation. The High Court bench under Justice Easwaran S surveyed the apparent conflict between the union and state laws, examining both statutory provisions and historical texts (Chaturvedi, 2025). It decided that daughters are indeed coparceners from birth and that their rights cannot be restricted by either prior partitions or state enactments. The Will was held lawful only to the extent of the deceased's personal portion and could not affect the daughters' inheritance rights. Eventually, the High Court ruled in favour of the daughters, confirming their entitlement to equal shares in the ancestral property (N.P. Rajani & Ors. v. Radha Nambidi Parambath & Anr., 2025).

This decision clarified lingering ambiguities regarding the commencement of daughters' coparcenary rights and underscored the primacy of the 2005 Amendment (N.P. Rajani & Ors. v. Radha Nambidi Parambath & Anr., 2025). The ruling is consistent with the

Supreme Court's pronouncement in *Vineeta Sharma v. Rakesh Sharma* (2020), further strengthening gender equality in Hindu succession laws. The Court struck down Sections 3 and 4 of the Kerala Joint Hindu Family System (Abolition) Act, 1975, ruling them repugnant to the section 6 of Hindu Succession (Amendment) Act, 2005. (*N.P. Rajani & Ors. v. Radha Nambidi Parambath & Anr.*, 2025). As per article 254 (1) of Indian constitution, if a state law conflict with central law passed by parliament on a matter within the concurrent list, the Union law will prevail and the conflicting part of the state enactment or rule will be void to the extent of the inconsistency (Constitution of India, art. 254(1), 1950).

## **Conclusion**

The trajectory of women's property rights in India, particularly those of Hindu female, has evolved significantly from the British colonial period to the present liberal democratic regime. Over this long duration, substantial changes have happened, albeit at a slow pace. Legislative reforms and judicial interventions have played a decisive role in strengthening the inheritance position of women. In this background, the recent Kerala High Court verdict has further contributed to the discourse, providing significant clarifications and reinforcing the principles of equality in ancestral property entitlements. Collectively, these developments echoed the ongoing efforts to ensure that women are recognized as equal stakeholders in property, highlighting the ongoing progress of inheritance laws in India.

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## CHAPTER 2

# FROM SPOUSE TO SURVIVOR: PROPERTY RIGHTS OF INDIAN WOMEN IN DIVORCE AND WIDOWHOOD

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### **Abstract**

*Property rights are critical to the social and economic security of women, particularly in India, where patriarchal norms have historically restricted their access to inheritance and marital property. This study examines the property rights of Indian women in cases of divorce and widowhood, analysing the legal framework provided by the statutes such as the Hindu Succession Act, 1956, its 2005 amendment, the Hindu Marriage Act, 1955, the Indian Succession Act, 1925 and relevant Muslim personal laws. The research identifies challenges faced by women, including patriarchal family practices, lack of awareness, social stigma and procedural complexities, which often hinder them from claiming their legal entitlements. It also highlights*

*disparities across religious communities and the economic vulnerability women face after marital breakdown or widowhood. The study emphasises the importance of judicial interventions, awareness programmes and legal reforms in bridging the gap between statutory rights and practical access. Recommendations include legal harmonisation, simplified enforcement procedures, financial support systems and cultural sensitisation to empower women and ensure their economic independence.*

**Keywords:** *Indian Women, Property Rights, Widowhood, Divorce, Legal Challenges, Economic Empowerment, Marriage, Legal Laws*

## **Introduction**

Property rights are closely linked to the social and economic security of women. In India, these rights become especially important when a marriage ends due to divorce or the death of a husband. In these situations, women often face financial uncertainty and must depend on the legal protections to secure property, inheritance or maintenance. The change from being a spouse to becoming a survivor of marital breakdown or widowhood often decides whether a woman can keep her economic independence or faces vulnerability. Indian society has traditionally been influenced by patriarchal structures that limited women's control over property. Women's financial security typically relied on male family members such as fathers, husbands, or sons. When this relationship changes because of divorce or widowhood, many women encounter legal and social challenges in claiming their rightful share of property. Why legal reforms have tried to improve women's property rights, putting these reforms into practice remains consistent. This study examines the legal framework governing the property rights of the Indian government in cases of divorce and widowhood. It aims to highlight the challenges women face in exercising these rights and assess how legal provisions help improve their economic security and social status.

## **Statement of the Problem**

In India, women often face economic and social challenges after divorce or the death of their spouse. Property ownership and inheritance have traditionally been controlled by patriarchal family structures, which frequently limit women's access to property. Although laws such as the Hindu Succession Act, 1956 and the Hindu Marriage Act, 1955 and to protect women's rights in matters of inheritance, maintenance, and property, many women still encounter difficulties in claiming these rights. Lack of awareness, social pressure, and complex legal procedures often prevent divorced women and widows from fully exercising their legal entitlements. As a result, many women experience financial insecurity and dependence even after legal reforms intended to ensure equality. Therefore, it is necessary to examine the effectiveness of existing laws and identify

the challenges women face in accessing their property rights after divorce and widowhood.

### **Objectives of the Study**

- To examine the legal provisions related to the property rights of women in India after divorce and widowhood.
- To identify the challenges faced by divorced women and widows in claiming their property rights.
- To suggest possible measures for strengthening the protection and implementation of women's property rights in India.

### **Significance of the Study**

This study is significant because property rights are closely connected to the economic independence and social status of women. In India, divorce and widowhood often place women in vulnerable financial situations, making access to property and inheritance extremely important for their survival and dignity. By examining the legal protections available to women, this study helps highlight how laws aim to safeguard their rights after the end of a marriage. The research also helps in understanding the effectiveness of important legal provisions such as the Hindu Succession Act, 1956 and the Hindu Marriage Act, 1955, in ensuring women's access to property and financial support. It brings attention to the challenges faced by divorced women and widows in claiming these rights and contributes to discussions on gender equality and women's empowerment in India. The findings of the study may also be useful for legal scholars, policymakers, and social organisations working to strengthen women's rights.

### **Review of Literature**

*Annapurna Pattnaik and N. Patnaik (2023)*, in their study “*Matrimonial Property Rights of Women in India*,” examined the legal framework governing matrimonial property rights of women under different personal laws in India. The study observed that women's matrimonial property rights were governed by divorce and unequal legal provisions due to the existence of multiple personal laws based on religion. It highlighted that this lack of uniformity often created

disparities in the rights available to women after divorce or the death of a spouse.

**Divya Singh (2021)**, in *“Feminist Justice by Way of Women’s Rights to Property: An Indian Approach After Independence,”* discussed the historical and legal developments in property rights for Hindu women. The study focused on the evolution of equal rights in family property, highlighting legal reforms that aimed to reduce gender disparities.

**B. Agarwal (1998)**, in *“Widows versus Daughters or Widows as Daughters? Property, Land, and Economic Security in Rural India,”* highlighted that secure property and land rights were crucial for the economic security of widows in rural India. The study showed that widows often faced discrimination on inheritance, and granting them rights as daughters as well strengthened their financial independence and social status.

### **Scope of Study**

The scope of this study focuses on examining the property rights of Indian women in situations of divorce and widowhood. It analyses the legal provisions that govern inheritance, maintenance, and ownership of property in the relevant laws, particularly the Hindu Succession Act, 1956 and the Hindu Marriage Act, 1955. The study family explores the legal framework and the challenges faced by women in exercising their rights after marital dissolution or the death of a spouse. It also considers how social and cultural factors influence the practical implementation of these rights. However, the research is limited to a legal and analytical perspective and does not include an extensive empirical survey.

### **Research Design**

This study follows a descriptive analytical research design. It aims to examine and explain the legal provisions related to the property rights of Indian women after divorce and widowhood, and to analyse the challenges they face in exercising these rights. The research involves collecting and reviewing secondary data from legal statutes, case laws, textbooks, journals, research articles, and online legal resources. Using this design, the study evaluates the effectiveness of existing

laws, identifies gaps in their implementation and suggests measures to strengthen women's property rights.

### **Tracing the Journey: Women's Property Rights in India**

Women in India possess strong legal property rights, including equal inheritance in ancestral property as coparceners since the 2005 Hindu succession amendment. Women have absolute ownership over self-acquired property, rights to residence in the matrimonial home, and protection against liability for husbands' debts.

### **Property Rights of a Hindu Woman Under the Law**

The Hindu Succession Act, 1956 and the Hindu Women's Right to Property Act, 1937, govern Hindu widows. It allowed a Hindu widow to receive an equal share in her deceased husband's property as her sons. However, it failed to address the issues pertaining to the property rights of women as a whole; also, it did not give coparcenary rights to Hindu women.

### **Property Rights of a Christian Woman Under the Law**

The Indian Succession Act, 1925, deals with Christian women's property rights in India. One of the best aspects of this act is that it does not discriminate against women in any manner. It considers both male and female children as lineal descendants and entitles them an equal share in the intestate parents' property. It also provides similar rights to widows and widowers if they are over the property of their spouses.

### **Property Rights of a Woman Under Muslim Law**

Property rights are very complex under the Muslim law. The concept of inheritance under it has four features:

- The Koran specifies precise shares to certain persons;
- The residue goes to the agnates; in their absence, it goes to the uterine heirs;
- Maximum one-third of any Muslim's property can only be given away in the form of a will;
- Rights of inheritance begin only on the death of the person.

### **The Koranic Property Rights of Muslim Women Include**

- A widow has the right to receive one-fourth share of her husband's property if she has no children.
- A widow has the right to receive one-eighth shares of her husband's property if she has children.
- Female heirs get half the share of their parents' property compared to what the male heirs received.
- A single daughter has the right to receive half the share of her parents' property. However, in the case of more than one daughter, all the daughters get two-thirds of the share.

### **When Marriage Ends: Legal Provisions for Divorced Women**

Women in India have several legal rights before and after divorce to protect their financial security and well-being. They can claim maintenance or alimony from their husband under Section 125 of the Criminal Procedure Code and also under the Hindu Marriage Act, 1955, which allows interim maintenance during the case and permanent alimony after divorce. Women also have the right to residence and the protection of women from domestic violence act, 2005, meaning they can live in the matrimonial home or seek alternate accommodation. They have full ownership of their Sridhan (gifts, jewellery, money, or property received during marriage) and may have a right over jointly acquired property. In matters of child custody, courts mainly consider the welfare of the child and often award custody of young children to the mother. Women can file for divorce on legal grounds such as cruelty, adultery, or desertion under laws like the Hindu Marriage Act, the Special Marriage Act, or dissolution of Muslim Marriages Act, 1939. After a divorce, women also have the right to remarry and may claim child support, insurance benefits, and their share of joint financial assets. These rights help ensure women receive legal and financial protection after the end of a marriage.

### **Widows and Wealth: Inheritance Rights and Challenges**

Women in India have faced discrimination in matters of inheritance and property rights due to patriarchal tradition, lack of awareness and different personal laws for various religions. Earlier, women were

often denied ancestral property because the family feared land fragmentation or loss of property after marriage.

### **Inheritance Laws in India**

Inheritance laws differ based on religion. The Hindu Succession Act, 1956, governs Hindus, Sikhs, Jains and Buddhist, while the Indian Succession Act, 1925, applies to Christians, jews, and Parsis. Muslims follow the Muslim Personal Law Application Act 1937, and interpret that marriages are governed by the Special Marriage Act, 1954. These laws determine how properties are distributed when a person dies without leaving a will.

### **Challenges and Bias**

Despite legal progress, gender bias still exists. Some laws still favour male heirs, such as situations where a woman's property may pass to her husband's heirs rather than her parents if she dies without a will. In certain regions, customary or tribal laws continue to limit women's inheritance rights. Social pressure, fear of family conflict and lack of legal awareness also prevent women from claiming their rights.

### **Barriers to Justice: Social and Legal Obstacles**

In India, women transitioning from being a spouse to becoming a divorcee or widow often face significant social and legal obstacles in securing their property rights. although laws such as the Hindu succession act, 1956 and the Hindu Succession (amendment) Act, 2005 Provide women with inheritance rights, many still struggle to claim their share due to patriarchal traditions, lack of awareness, and family pressure, In divorce situation, women may only receive maintenance or alimony and often do not automatically get a share in their husband's self-acquired property unless it is jointly owned. Widows, despite being recognised as legal heirs under inheritance laws, sometimes face resistance from in-laws who attempt to deny them access to family property. Social stigma, financial dependence, and lengthy legal procedures further discourage women from pursuing legal claims. As a result, even though the legal claims. As a result, even though the legal framework exists to protect women's

rights, social attitudes and practical barriers continue to limit their ability to fully exercise those rights.

### **Courts Speak: Landmark Judgements Shaping Women's Rights**

Indian courts have played a crucial role in strengthening women's rights through landmark judgements that promote equality, dignity and social justice. One significant case is *Mohd. Ahmed Khan v. Shah Bano Begum* (1985), where the Supreme Court held that a divorced Muslim woman is entitled to maintenance under section 125 of the Criminal Procedure Code if she cannot maintain herself, reinforcing the principle that secular law protects women's rights irrespective of religion. Courts in India have played an important role in strengthening and protecting women's rights through progressive interpretations of the law. The judiciary has helped ensure gender equality by clarifying women's rights in areas such as inheritance, property ownership, maintenance, workplace dignity and protection from discrimination. Through various decisions, courts have affirmed that women have equal rights to answers for property, child maintenance after divorce and protection against gender-based injustice. The judiciary has also emphasised constitutional principles like equity, dignity and non-discrimination, ensuring that laws are applied in a way that empowers women and corrects long - standing social inequalities. As a result, judicial intervention continues to play a crucial role in advancing gender justice and improving the legal status of women in India.

### **Bridging the Gap: Evaluating the Effectiveness of Existing Laws**

India has introduced several legal measures to protect and promote women's rights in areas such as marriage, divorce, inheritance, property ownership, and protection from domestic violence. Law like the Hindu Succession Act, 1956, and its amendment through the Hindu Succession act, 2005 1956 and its (amendment) act, 2005 have strengthened women's inheritance rights by granting daughters equal rights by granting daughters equal rights in ancestral property. Similarly, the Protection of Women from Domestic Violence Act, 2005 ensure a woman's right to reside in the shared household and seek legal protection against abuse, while the Special Marriage Act,

1954, provides legal safeguards in interfaith marriages. These laws reflect the Indian legal system's effort to promote gender equality and protect women's dignity and economic security. However, the effectiveness of these laws is often limited in practice due to several challenges. Social attitudes, patriarchal traditions and family pressure sometimes discourage women from claiming their legal rights, especially in matters of property and inheritance. Many women are unaware of their rights, especially in matters of property and inheritance. Many women are unaware of their rights or lack access to legal support and financial resources to pursue legal action. Additionally, lengthy court procedures, delays in the justice system, and difficulties in enforcing court orders can reduce the practical impact of these laws. despite these challenges the legal framework has still played an important role in improving women's status over time .increased legal awareness, government initiatives, legal awareness, government initiatives, legal aid services, and social activism have encouraged more women to assert their rights. With stronger implementation, better literacy, and faster dispute resolution, these laws can become more effective in ensuring that women receive the protection and equality guaranteed to them under the law.

### **Findings**

- Legal framework exist but implementation is weak: while laws such as The Hindu Succession Act 1956, its 2005 amendment, and the Hindu Marriage Act,1955, provide clear rights to women in divorce and widowhood, enforcement remains inconsistent. Many women struggle to access their entitlements due to social and administrative barriers
- Patriarchal norms persist: cultural practices and family pressures continue to limit women's ability to claim property, especially in rural and tribal areas. Widows often face resistance from in-laws, and divorced women are sometimes denied their rightful share in jointly acquired property.
- Awareness gap: a significant number of woman lack knowledge about their legal rights, resulting in underutilization of statutory provisions.

- Disparities across religions: personal laws create unequal outcomes. Hindu and Christian women enjoy relatively better legal protection, while Muslim and tribal women face more restrictions and ambiguity regarding inheritance and property rights.
- Economic vulnerability: divorce or widowhood would often leave women financially insecure, especially if they have no children or access to independent income, making property rights critical for survival and social dignity.

### **Limitations of the Study**

- The study relies on secondary data and legal analysis, without extensive field work or interviews with affected women
- Real-life challenges and enforcement issues are inferred from literature rather than collected first-hand.
- Comparative perspectives with other countries' laws or international frameworks were not included.
- While the study covers major religions, variations in customary and tribal practices across States may not be fully captured.

### **Suggestions**

- Governments and NGO's should educate women about their legal property rights through workshops, media campaigns, and legal aid services.
- Courts and authorities should simplify procedures for claiming property, ensure speedy resolution of disputes, and monitor compliance with the law.
- Consider harmonising personal laws to reduce disparities across religions, especially for inheritance and marital property rights.
- Establish financial and social support systems for widows and divorced women, including housing, pensions and access to joint family property.
- Community – level initiatives should address patriarchal attitudes that discourage women from claiming their rights.

### **Conclusion**

The study concludes that while India has made significant progress in granting property rights to women after divorce and widowhood, legal

provisions alone are not sufficient to ensure equality. Social norms, family pressure and lack of awareness continue to hinder women from fully exercising their rights. Strengthening enforcement mechanisms, increasing awareness and addressing cultural biases are essential to empower women economically and socially. Legal reforms, combined with social change, can help bridge the gap between statutory rights and practical access, ensuring that women retain economic independence and dignity in the aftermath of marital dissolution or widowhood.

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## CHAPTER 3

# FACILITATING PROPERTY ACQUISITION AS A PATHWAY TOWARD FINANCIAL INCLUSION

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### **Abstract**

*Financial inclusion is an essential part of not only creating economic opportunity and equity, but also contributing to the development of financially stable individuals who will actively engage in economic activity, as they have access to financial services (savings accounts, loans, and insurance) and can confidently use these services to create stable economic futures. Property ownership is an important determinant of financial inclusion because assets such as land or housing can serve as collateral for obtaining loans from financial institutions. However, financial inclusion is often influenced by gender inequality and the marginalisation of low-income groups. Women and disadvantaged populations frequently face barriers, including a lack of legal*

*property documentation, limited financial literacy, and restricted access to financial resources. These challenges prevent them from accessing formal credit systems and economic opportunities. Access to financial resources enables individuals to invest in education, entrepreneurship, and skill development, which contribute to human capital formation. This study examines how barriers to property ownership contribute to financial exclusion and proposes policy measures to strengthen women's property rights, improve financial literacy, and promote inclusive financial systems.*

**Keywords:** *Financial Inclusion, Property Ownership, Credit Access, Human Capital, Workforce Participation, Economic Empowerment.*

## **Introduction**

Access to financial services is an important element to promoting economic growth and reducing levels of poverty around the world. Financial inclusion means individuals and businesses can access affordable financial products such as bank accounts, loans, insurance and payment services. These financial products allow people to manage risk, save money, invest in new and productive enterprises and enhance their overall quality of life. Despite global efforts to expand access to financial services a significant portion of the population remains excluded from access to formal financial services. Many individuals continue to use informal methods of borrowing money at high interest rates because they do not qualify or have access to formal borrowing in the form of loans through banks or other types of lending institutions. The lack of available collateral required by banks and other lending institutions is one of the major hindrances to access formal financial services and the inability to participate in these services is a barrier to providing additional economic opportunity for individuals. Addressing the barriers to access financial products should include addressing property rights and providing individuals with the ability to use their assets, such as land or houses, as collateral for the purpose of obtaining a loan from a financial institution. Individuals who have legally recognised property rights also have opportunities to participate in financial markets and invest in economic growth-related activities.

Unfortunately, property ownership is distributed unequally among people. There are many reasons for this disparity including factors like social, cultural and legal factors that may limit women or members of marginalised communities from owning property, which in turn, restricts their ability to get financial resources or earn a living from work they have done. Therefore, from a human resources perspective, being financially included means that an employee can access financial resources which allow him or her to invest in education, training and entrepreneurship. As a result, financial inclusion creates human capital development (the ability to invest in people), which is an important contributor to growth. Thus, the current research will focus on the importance of property ownership in terms of its ability to promote financial inclusion and its effect on obtaining

consumer credit and loans. Furthermore, the study will discuss how financial inclusion will impact employee development as well as empower employees.

### **Objectives**

- To analyse how owning a piece of property affects the ability to achieve financial inclusion
- To study how property assets can help people get loans/credits
- To assess the connection between financial inclusion and developing human capital
- To identify barriers that prevent a person from accessing credit if they do not own any property.

### **Review of Literature**

**Sharma & Gupta (2026)** looked at how property ownership or having access to property as collateral when borrowing money promotes financial inclusion and also allows individuals greater access to training and skills development through the development of human capital. This study highlights that when people with property can obtain loans using their property as collateral, it allows them to invest in their own skill development, as well as to invest in businesses.

**Reddy & Rao (2025)**, property ownership improves women's economic empowerment by providing access to more financial resources, which in turn enables them to invest in education, start businesses and find jobs.

According to **Patel and Desai (2023)**, the digitalisation of land records enhances the transparency of property ownership and provides easier access to credit from banks.

**Chakrabarty & Singh (2022)** looked at the role of financial inclusion in promoting entrepreneurship among small business owners; their research showed that access to property improves small business owners' creditworthiness and provides the opportunity for them to obtain loans to expand their businesses.

**Agarwal & Mahajan (2021)** conducted a study examining the relationship between gender equality within India and the ownership of property. The study provided support for the idea that female

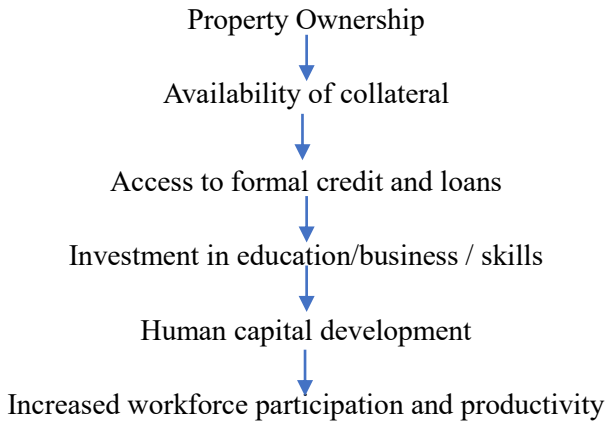
owners of property are more financially independent and have better access to formalised credit through banks than females who do not own property.

**Kumar & Mishra (2020)** examined how rights related to property ownership impact the ability of rural Indians to access capital and their findings show that rural households with legally recognised property titles will have a higher level of financial inclusion than those who do not have formal documentation for their land.

### **Research Gap**

Many recent studies in India involving financial inclusion, digital banking and the expansion of microfinance have left a wealth of evidence supporting these areas of research; however there remain major gaps in the overall knowledge pertaining to these topics, especially regarding property ownership as a key factor affecting access to formal credit and loans through financial institutions. The majority of the research conducted thus far has focused primarily on financial inclusion policies, banking infrastructure or effects of financial literacy, yet property ownership has received relatively less attention in terms of its effect on accessing formal credit from financial institutions. Existing such studies have focused mostly on economic or policy-driven reasons for developing financial inclusion; however, the social implications regarding human resource development and workforce participation through financial inclusion have also been briefly discussed within these studies. Although some studies have identified barriers that have limited women's and marginalized people's ability to obtain financial services, very few have examined how not owning property directly affects these groups ability to access formal financial services. This research study intends to address the aforementioned gaps in terms of examining the relationship between property ownership and obtaining access to formal financial services while exploring policies to strengthen inclusive financial systems and develop human capital through financial inclusion.

## Conceptual Framework



This framework shows that property ownership is an indirect contributor to economic development, due to providing access to financial resources as well as facilitating the formation of human capital

### Property Ownership as a Tool for Financial Inclusion

Using property as a means of accessing financial services requires that the lender have security in the form of collateral. Most lenders will use property (including land, houses and commercial buildings) as collateral since the value of the properties is stable in the market. By using property as collateral when they apply for a loan, individuals can access a variety of funds to:

- Establish or expand a business
- Buy equipment
- Get an education
- Make improvements to their home

These activities help to create jobs and spur the economy. In addition, owning property increases individuals' willingness to use formal financial institutions by opening a bank account and creating investment opportunities.

## **Barriers to Achieving Financial Equality**

***Gender Discrimination*** – Barriers to women’s ability to own property arise from cultural and legal restrictions preventing women from obtaining property ownership, thus limiting women’s access to financial services and consequently limiting women’s access to economic opportunities.

***Due to Lack of Ownership Papers*** – Many individuals living in rural locales don’t have legal ownership papers for the properties they own. Because of that, they cannot use their property as collateral on any loan.

***Barriers to Understanding Financial Systems*** – Many individuals lack the necessary knowledge to understand how to access banking and credit facilities. This lack of understanding can prevent individuals from using available financial systems to access funds.

***Institutional Barriers*** - Financial institutions sometimes have strict lending policies that will not allow low-income individuals access to credit.

## **Implications for Human Resource Development**

Human Resource Development is affected by many things, including what will happen to human resource development from now into the future. One of those influences is the expanding financial service industry; providing employees access to the financial service industry has a direct effect on the human resource manager.

***Employee Financial Stability and Business Performance*** – Employee access to a financial institution enables employees to better manage their financial responsibilities. Studies have shown that financially secure employees tend to have lower stress levels, resulting in better work performance.

***Employee Development*** – Employee access to financial institutions provides employees with access to credit facilities. This access aids employees in investing in their education and development, therefore improving their employability and productivity.

***Entrepreneurial and Job Creation*** – Employees can obtain secured loans using their property as collateral, which enables many

employees to grow their entrepreneurship, which creates jobs within their companies and helps develop the economy.

***Female Empowerment*** – When women have access to property ownership as well as access to banking services, they tend to participate more in business activities and contribute financially to the household.

### **Recommendations for Policy Changes**

- Strengthening property rights will allow individuals to have legally secure, recognised property as collateral for the purpose of borrowing. As a first step, governments must establish a clear title to property and ensure that property registration is as easy as possible; individuals will receive their legal property titles more quickly, which in turn increases their likelihood of accessing formal credit.
- The digitalisation of land and property records will lead to improved transparency and efficiency within property management systems. Digital land records can facilitate the swift verification of property ownership by financial institutions and can reduce ownership-related disputes. By integrating digital land records with banking services, financial institutions can improve the speed and reliability of the loan approval process.
- Financial education initiatives can assist individuals in understanding banking products and services, obtaining loans and services. Governmental and financial institutions should develop awareness campaigns and offer education programs on financial products, specifically targeting underserved populations in rural areas.
- Banking institutions need to create loan products that meet the requirements of individuals who do not have access to traditional forms of collateral or a credit history.
- Promotion of gender equality policies to ensure women have equal property ownership rights through legal reforms and awareness initiatives, strengthening women’s property rights will improve women’s financial inclusion, economic independence and their ability to participate more fully in economic activities.

## Conclusion

Promoting financial inclusion is critical to driving inclusive economic development and improving social equity. Access to financial products and services, especially credit and lending facilities, is facilitated through ownership of assets such as real estate. Through collateralization of their real estate assets, individuals will have opportunities to gain access to financial resources that they may use to invest in their education, grow a business, or acquire new skills. Financial inclusion is hampered by an array of obstacles, including gender discrimination, the lack of legally recognized property ownership and financial literacy limitations. Eliminating these obstacles will require collaboration between government agencies, financial service providers and policy makers. When viewed from a human capital perspective, financial inclusion enhances workforce development and increases entrepreneurial activity. If we can strengthen property rights while expanding access to financial products and services, we can significantly enhance the quality and quantity of human capital as well as promote sustainable economic development.

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## CHAPTER 4

# VALUATION OF DIGITAL PROPERTY IN STARTUPS: ACCOUNTING CHALLENGES AND FINANCIAL REPORTING ISSUES

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### **Abstract**

*This paper investigates the complexities of valuing digital property within start-up ecosystems. As intangible assets like software, data, and intellectual property drive value, traditional accounting standards struggle to capture their true worth. The study identifies key challenges in capitalization, amortization, and impairment testing under IFRS and GAAP. Through qualitative analysis, it highlights the disparity between book value and market valuation, leading to investor uncertainty. The research concludes that updated reporting frameworks are essential for transparency. Recommendations include enhanced disclosure and standardized valuation metrics to improve financial reliability in the digital economy.*

### **Introduction**

The global economy is undergoing a paradigm shift from industrial to digital, where value is increasingly derived from intangible assets rather than physical infrastructure. For startups, particularly in the technology sector, digital property—encompassing software code, algorithms, user data, and intellectual property—constitutes the primary source of competitive advantage and market value. However, the financial reporting frameworks governing these assets, primarily

International Financial Reporting Standards (IFRS) and Generally Accepted Accounting Principles (GAAP), were designed for an era dominated by tangible assets. This misalignment creates significant information asymmetry between startups and their stakeholders. Investors often rely on market valuations that reflect future potential, while financial statements reflect historical costs, leading to a disconnect that obscures true financial health. This paper explores the specific accounting challenges inherent in valuing digital property and proposes structural solutions to bridge the gap between economic reality and financial reporting.

## **Objectives**

The primary goal of this research is to bridge the gap between traditional accounting practices and the realities of the digital economy. Specifically, the objectives are:

- To identify the specific accounting challenges associated with recognizing digital property as assets on the balance sheet.
- To analyze the impact of current financial reporting standards on the valuation accuracy of early-stage startups.
- To propose practical solutions for accountants, auditors, and regulators to improve the transparency and reliability of digital asset reporting.

## **Challenges & Issues**

The core issue lies in the fundamental mismatch between how startups create value and how accountants measure it. This section details the specific hurdles in recognition, measurement, and reporting.

### ***Recognition and Capitalization Dilemmas***

Under **IAS 38 (Intangible Assets)** and **ASC 350 (Goodwill and Other Intangible Assets)**, an item is recognized as an asset only if it is controlled by the entity, results from a past event, and is expected to generate probable future economic benefits. For startups, the "probable future economic benefits" criterion is often speculative. While a physical machine has a clear utility, a software algorithm's value depends on market adoption, which is uncertain in the early stages. Consequently, many startups expense development costs

immediately under **ASC 730 (Research and Development)** or **IAS 38 (Research Phase)**, even though these costs create long-term digital property. This leads to a balance sheet that understates the company's true resource base, making the company appear less asset-rich than it actually is.

### ***Valuation Methodologies and Reliability***

Valuing digital property requires selecting an appropriate valuation method, each of which faces unique hurdles in the startup context:

- **Cost Approach:** This method values assets based on the cost to replace them. However, for startups, the cost of development (salaries, server costs) does not correlate with market value. A piece of code written for 10 million if it becomes a platform standard, or \$0 if it becomes obsolete.
- **Market Approach:** This relies on comparable transactions. In the digital economy, true comparables are rare. Every startup's digital property is unique (proprietary algorithms, specific user data sets), making market multiples difficult to apply accurately.
- **Income Approach (DCF):** This discounts future cash flows. While theoretically sound, it relies on highly speculative assumptions about user growth, churn rates, and monetization. Small changes in these assumptions lead to massive swings in valuation, reducing reliability.

### ***Impairment and Rapid Obsolescence***

Digital assets are prone to rapid obsolescence. A mobile app feature or a specific API integration may lose value within months due to technological shifts. Current impairment testing (e.g., **IAS 36**) is often annual or triggered by specific events. This lag means that balance sheets may carry "zombie assets"—digital property that has lost economic value but remains recorded at historical cost. This overstates equity and misleads stakeholders regarding the company's liquidity and solvency. Furthermore, the lack of standardized metrics for digital assets makes it difficult for auditors to verify these valuations objectively.

## Solutions

To address the identified challenges, the following recommendations are proposed for stakeholders to enhance financial reporting integrity.

***Enhanced Disclosure Requirements:*** Startups should be required to provide supplementary schedules detailing the nature, estimated useful life, and valuation methodology of digital assets in the footnotes of financial statements. This "shadow reporting" would allow investors to see the value drivers that are not captured on the face of the balance sheet. For example, disclosing the number of active users or the revenue contribution of specific software modules would provide context to the intangible asset value.

***Standardized Valuation Metrics:*** Industry bodies (such as the FASB or IASB) should develop specific valuation multiples for digital assets (e.g., value per active user, value per line of code, or value per data point) to aid auditors and investors. Creating a standardized framework for digital asset valuation would reduce subjectivity and allow for better cross-company comparisons. This would move the industry away from purely speculative models toward more data-driven assessments.

***Dynamic Amortization and Regulatory Updates:*** Regulators should consider creating a specific category for "Digital Intangibles" that allows for more flexible capitalization criteria than traditional intangible assets. Additionally, allowing for accelerated amortization schedules for high-risk digital assets would reflect their rapid depreciation and technological obsolescence. This would ensure that the expense recognition matches the revenue generation pattern of the digital product, providing a more accurate picture of profitability over time.

## Limitations

This research is subject to several constraints that must be acknowledged:

- **Subjectivity:** Valuation relies heavily on management estimates and internal models, which can be biased to attract investment or meet performance targets.

- **Rapid Obsolescence:** The speed of digital innovation outpaces the revision of accounting standards. A standard written today may be obsolete within two years of a new technology emerging.
- **Data Scarcity:** Limited empirical data exists on the long-term performance of capitalized digital assets in startups, making it difficult to validate valuation models statistically.

## Conclusion

The valuation of digital property remains a critical blind spot in modern accounting. For startups, where intangibles are the primary asset class, current reporting standards often obscure true financial health. Bridging the gap between market reality and book value requires a shift toward more flexible, disclosure-heavy reporting. Without these changes, investors face increased risk, and the digital economy lacks the financial transparency necessary for sustainable growth. Future accounting frameworks must evolve to recognize that in the digital frontier, the most valuable assets are often the ones hardest to measure.

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## CHAPTER 5

### ARTICLE 11 OF CEDAW WITH THE SDGs: A HRM PERSPECTIVE

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#### **Abstract**

*This article examines the intersection of Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Sustainable Development Goals (SDGs) as a comprehensive framework for the gender equality. Article 11 establishes women's rights to employment, equal opportunities, safe working conditions, and social security provisions that find cooperation in SDG targets, particularly SDG 5 and SDG 8. Drawing on the CEDAW Committee's monitoring work and emerging corporate practice, this article argues that Article 11 provides the normative*

*foundation upon which gender-responsive HRM must be built to bring equality among the corporate workers. However, as legal scholarship confirms, none of its equality standards have yet been adequately fulfilled by States parties, leaving a implementation gap that HRM professionals must bridge through workplace policies, practices, and cultures that translate international norms into the actual experience.*

**Keywords:** *CEDAW Article 11, SDG 5, SDG 8, Human Resource Management, Gender Equality and Discrimination, Workplace Rights and Safety.*

## **Introduction**

### ***The Article 11 and HRM***

When the UN General Assembly adopted CEDAW in 1979, Article 11 represented the women's economic rights. For the first time in international human rights law, a treaty comprehensively addressed the obligation of States parties to "eliminate discrimination against women in the field of employment". The article's provisions span the employment lifecycle—from recruitment through career progression to the retirement and also encompasses both the workplace conditions and social security protections for the welfare of the women in the workplace. Several decades later, SDG have come into action thus, SDG 5 (Gender Equality) and SDG 8 (Decent Work and Economic Growth) create measurable targets aligned with Article 11's normative framework.

The Danish Institute for Human Rights mapped the connection of CEDAW provisions to the SDG targets. HRM professionals are no longer implementing merely organizational policies; they are operationalizing international human rights law and contributing to global development goals. This article explores how Article 11's provisions translate into HRM practice, where implementation gaps persist, and what substantive alignment requires. HRM professionals not only implements merely organizational policies but also operationalises the international human rights law and contributing to the global development goals. This article explores how Article 11 provisions translate into HRM practice, where implementation gaps persist, and what substantive alignment actually requires.

### **The Article 11 Framework**

- The right to work as an inalienable right of all human beings: This foundational provision establishes that women's right to work is not contingent on marital status, family responsibilities, or economic conditions.
- The right to the same employment opportunities which includes the application of the same criteria for selection in employment. This requires elimination of gender-based distinctions in hiring, promotion, and assignment.

- The right to the free choice of profession and employment that provides promotion, job security, all benefits and conditions of service, and the right to vocational training and retraining, including apprenticeships and advanced training.
- The right to equal remuneration that includes benefits, and equal treatment in respect of work of equal value, as well as equality in the evaluation of the quality of work.
- Providing the right to social security particularly in cases of retirement, unemployment, sickness, invalidity, old age and other incapacity to work, with the right to paid leave.
- The right to protection of health and safety in working conditions including the safety in the function of reproduction.

### **Objectives**

- To examine the intersection of CEDAW Article 11 and the SDG framework
- To identify HRM Framework to achieve transformative equality

### **Literature Review**

The literature examining the intersection of CEDAW Article 11, the SDGs, and Human Resource Management spans international law, development studies, and organizational scholarship, revealing both a strong normative framework and significant implementation gaps.

The **(UN General Assembly, 1979)**, establishes in Article 11 a comprehensive set of women's employment rights which also includes the right to work, equal opportunities, free choice of choosing profession, equal remuneration for work and equal value, social security, and safe working conditions with the maternity protections.

The authoritative legal commentary by **Raday and Oksenberg (2022)** in the Oxford Commentaries on International Law promotes that the CEDAW Committee has developed a framework distinguishing the formal equality by removing discriminatory laws, substantive equality by addressing structural barriers, and transformative equality by changing underlying social and economic structures, noting that "none of its equality standards have yet been adequately fulfilled by States parties" and analysing the absence of a

dedicated general recommendation on Article 11, which leaves interpretive work distributed across other Committee outputs. The CEDAW Committee's General Recommendations provide essential interpretive guidance, with **General Recommendation No. 13** (UN CEDAW, 1989) specifically addressing equal remuneration for work of equal value and calling for gender-neutral job evaluation systems relevant to HRM pay equity, while subsequent recommendations including No. 28 and No. 35 extend state obligations to regulate private persons, including corporations.

The adoption of the 2030 Agenda introduced a parallel framework through the **SDGs (UN General Assembly, 2015)**, with the Danish Institute for Human Rights providing detailed mapping of CEDAW provisions to SDG targets that reveals binding of legal norms and voluntary development goals, such as linking Article 11.1(d) on equal remuneration to SDG Target 8.5 on equal pay. This creates a central tension in the literature between mandatory state obligations and voluntary corporate alignment, with emerging scholarship examining how organizations navigate this distinction. Contemporary analysis by **Rojkjaer (2025)** argues that human rights frameworks provide essential stability for diversity, equity, and inclusion of commitments against political volatility, while the **International Labour Organization (2000)** through its Maternity Protection Convention (No. 183) establishes concrete benchmarks including 14 weeks of paid leave that operationalize Article 11.2 requirements. Thus, the literature establishes that while international norms are clearly provided, significant work remains in transforming these standards into HRM practice, with scholars calling for greater attention to implementation mechanisms, corporate accountability, and the gap between existing policy adoption and actual workplace reality.

### The CEDAW and SDG Targets

CEDAW Article 11	SDG Targets	Alignment
Article 11.1(a)-(c) Right to work, equal employment	SDG 5.1	End all forms of discrimination against women and girls everywhere. This target directly provides the

opportunities, free choice of profession		non-discrimination approves central to equal employment access and choices.
Article 11.1(d) Equal remuneration for work of equal value	SDG 8.5	By 2030, achieve productive employment and decent work for all women and men, including young people and persons with disabilities, and provides equal pay for work value.
Article 11.1(e) Right to social security (retirement, unemployment, sickness, paid leave)	SDG 1.3	Implement nationally suitable social protection systems and measures. This act as a foundation for the economic security.
Article 11.1(f) Right to protection of health and safety at work, including reproductive function	SDG 8.8	Protect labour rights and promote safe and secure working environment for all workers. This also includes gender-responsive occupational health and safety.
Article 11.2 Maternity protection, prohibition of dismissal	SDG 5.4	Recognising and valuing unpaid care and domestic work through the provision of public services, infrastructure and social protection policies. This target finds a structural barrier to employment equality among women's
Article 11 The comprehensive framework for women's employment rights	SDG 5	Achieves gender equality and empower all women and the girls.
	SDG 8	Promotes the inclusive and sustainable economic growth, productive and complete employment opportunities and decent work for all.

## **HRM Implications**

- Use structured interviews, and audit hiring outcomes to address historical disadvantage in the recruitment & selection process
- Implement equal pay for work of equal value. Use gender-neutral job evaluation as per ILO 100, CEDAW GR 13 and also conduct regular pay audits.
- Prohibit pregnancy discrimination and provide 14 weeks paid leave as per ILO 183 and protect seniority, offer parental leave to all genders.
- Assess workplace hazards and protect reproductive health without excluding women from proving opportunities.
- Promote benefits for part-time or contract workers and support for robust public systems.

## **Findings**

- CEDAW Article 11 provisions directly align with SDG targets 5.1, 5.4, 8.5, and 8.8, and creates framework for gender equality at work.
- HRM framework act as a bridge between the international human rights law and workplace practice in the work employment.
- Though there are strong frameworks available, a significant implementation gap still exists between international standards and the actual workplace practice which requires active accountability mechanisms.

## **Conclusion**

The CEDAW Article 11 and the SDG framework establishes a strong normative foundation for gender equality in the workplace, the existing implementation gap between international standards and organizational practices demands the attention from HRM professionals for operationalizing and practically applicable these rights in the actual workplace.

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## CHAPTER 6

# RURAL-URBAN DIVIDES AND ACCESS GAP IN LAND TITLES

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### **Abstract**

*The rural-urban divide remains one of India's most persistent structural inequalities, affecting access to resources, services, and property rights. Among these, access to land titles is a critical but understudied aspect of inequality. Secure land tenure is inextricably linked to economic stability, social status, and political inclusion; however, large segments of the population remain excluded from formal land ownership. This article investigates*

*how disparities in land ownership, legal recognition, and tenure security exacerbate socioeconomic divides between rural and urban populations, disproportionately affecting marginalised communities. It contends that unequal access to land titles is both a cause and a result of larger structural inequalities ingrained in India's development trajectory.*

**Keywords:** *Rural, Urban Land, Inequality, Land Ownership.*

### **Introduction**

Land has historically been a key source of power and production in Indian society, influencing economic relations and social hierarchies. The rural-urban land ownership divide reflects not only spatial differences but also institutional and structural inequalities that limit access to resources. Land remains the primary source of income in rural areas, whereas it is becoming increasingly commodified as real estate in cities. However, access to land titles is uneven in both contexts, influenced by caste, class, gender, and state policy. The persistence of these disparities raises fundamental questions about the nature of development and the state's role in ensuring equitable access to property rights.

## **Conceptual Framework: Land, Inequality, and Development**

The relationship between land ownership and inequality has received extensive attention in development studies, where land is viewed as both an economic asset and a source of social power. Unequal land distribution leads to disparities in income, access to credit, and opportunities for advancement. In India, the rural-urban divide complicates the relationship by resulting in distinct patterns of land access and tenure security. Urban areas typically have more formalised property systems, whereas rural areas frequently rely on customary or informal arrangements. This duality reinforces structural inequalities while limiting the effectiveness of poverty-reduction policies

## **Historical Evolution of Land Ownership Patterns**

The roots of contemporary land inequality in India can be traced back to colonial land revenue systems like the zamindari and ryotwari, which restructured traditional land relations to benefit colonial interests. These systems concentrated land ownership among a few individuals while disrupting existing community-based tenure arrangements. Post-independence land reforms attempted to address these inequalities by eliminating intermediaries and redistributing land, but their implementation was uneven and frequently opposed by powerful landowners. As a result, the structural basis of land inequality remained largely unchanged, particularly in rural areas.

## **Rural Land Titles and Social Exclusion**

In rural India, access to land titles is closely linked to social hierarchies, particularly caste. Marginalised communities, such as Scheduled Castes and Scheduled Tribes, are over-represented among the landless and those with insecure land rights. The lack of formal land titles restricts their access to institutional credit, government programmes, and legal protection, perpetuating cycles of poverty and marginality. Furthermore, informal tenancy arrangements frequently expose these groups to eviction and exploitation, emphasising the need for more inclusive land policies.

## **Inequality in the Urban Land Market**

India's urban land markets are highly unequal, owing to rapid urbanisation, rising property prices, and speculative investment. While formal property ownership is more common in urban areas, access to land titles remains extremely unequal. Migrants and low-income communities frequently live in informal settlements that lack legal recognition, effectively excluding them from property rights and associated benefits. The dual system of formal and informal land tenure presents significant challenges to urban governance and social inclusion.

## **Land Dispossession and Periurban Expansion**

The expansion of cities into rural areas has resulted in peri-urban zones where traditional land use patterns are rapidly changing. In these areas, agricultural land is frequently acquired for industrial and infrastructure development, causing displacement and loss of livelihoods for rural communities. Compensation systems are frequently insufficient, and marginalised groups are frequently excluded from decision-making processes. This process of dispossession emphasises the uneven impact of urbanisation and the need for more equitable land acquisition policies.

## **Gender and Land Rights**

Gender inequality contributes significantly to the access gap in land titles. Despite legal provisions that protect women's property rights, social norms and institutional barriers continue to restrict their access to land ownership. Women are frequently excluded from inheritance and land transactions, which reduce their economic independence and social standing. Research has shown that secure land rights for women can have a significant positive impact on household welfare and economic development, emphasising the importance of addressing gender disparities in land ownership.

## **Institutional Challenges in Land Governance**

The complexities of India's land administration systems pose significant barriers to equitable access to land titles. Fragmented land records, bureaucratic inefficiencies, and a lack of transparency make

it difficult for marginalised communities to obtain legal recognition of their land rights. Efforts to digitise land records have shown promise, but implementation and accessibility issues remain. Addressing these challenges requires comprehensive reforms to improve governance and ensure accountability.

### **Socio-Economic Impacts of Land Title Inequality**

The unequal distribution of land titles has far-reaching socio-economic consequences. Land ownership provides not only economic security but also access to credit, education, and social networks. Conversely, the lack of land titles reinforces poverty and limits opportunities for upward mobility. The rural–urban divide in land access thus contributes to broader patterns of inequality, affecting multiple dimensions of human development.

### **Migration and Land Insecurity**

Migration is both a response to and a cause of land inequality. Rural populations without secure land tenure are more likely to move to cities in search of work. However, migrants frequently face similar challenges in urban areas, where they are barred from formal property markets and forced to live in informal settlements. This cyclical process of displacement and marginalisation demonstrates the interconnectedness of rural and urban inequalities.

### **Policy Responses and Land Reforms**

Land reforms, tenancy regulation, and the digitisation of land records have all been implemented as policy interventions to address land inequality. While these measures have had some success, their impact has been limited due to structural constraints and uneven implementation. Bridging the rural-urban divide requires comprehensive policies that address both land distribution and institutional barriers to access, with an emphasis on inclusivity and social justice.

## **Towards Inclusive Land Governance**

Inclusive land governance is critical to reducing inequalities and promoting sustainable development. This includes recognising marginalised communities' rights, increasing transparency in land administration, and ensuring equitable access to resources. Participatory approaches that engage local communities in decision-making processes can improve the effectiveness of land policies and promote social justice.

## **Conclusion**

The rural-urban divide in access to land titles is a critical dimension of inequality in India, reflecting larger socioeconomic and institutional disparities. Addressing this issue necessitates a comprehensive approach that incorporates land reforms into larger development strategies. Ensuring equitable access to land titles can improve economic security, reduce poverty, and promote inclusive growth. The persistence of land inequality emphasises the need for ongoing policy attention and institutional reforms.

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## CHAPTER 7

# CLIMATE DISPLACEMENT AND TENURE LOSS AMONG MARGINALIZED PEOPLE: A CRITICAL STUDY

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### **Abstract**

*Climate change is increasingly becoming a structural force, reshaping patterns of human settlement, livelihood, and social organisation around the world. Climate-induced displacement is one of the most severe consequences, disproportionately affecting marginalised communities such as indigenous peoples, small farmers, landless labourers, and urban informal settlers. This article investigates the link between climate displacement and land tenure loss, arguing that environmental changes not only physically displace people but also undermine their legal, customary, and social rights to land. This study, using a critical analysis of global and Indian contexts, demonstrates how climate change exacerbates pre-existing inequalities, creating a cycle of vulnerability, dispossession, and marginalisation.*

### **Introduction**

Climate displacement is the forced or voluntary movement of people in response to environmental changes such as floods, droughts, cyclones, and sea-level rise. In recent decades, climate-related disasters have displaced millions of people each year, making environmental migration one of the most pressing global issues. According to research, more than 283 million people were displaced between 2008 and 2020 as a result of climate-related events, demonstrating the crisis's scope. However, climate displacement is more than just a physical relocation; it is intricately linked to socioeconomic structures, particularly land ownership and access. Marginalised populations, who frequently rely on land for survival,

are the most vulnerable. Their lack of formal land rights leaves them vulnerable to tenure insecurity, increasing the likelihood of displacement and making recovery more difficult. This study aims to investigate how climate displacement contributes to tenure loss and reinforces marginalisation.

### **Climate Change and Human Displacement**

Climate change occurs both suddenly and gradually. Floods and cyclones cause immediate displacement, whereas desertification and land degradation erode livelihoods over time. In many regions, particularly in the Global South, environmental stresses combine with poverty, poor governance, and social inequality to create complex migration patterns. Scholarly research suggests that climate-induced migration cannot be understood using a simple cause-and-effect model. Instead, it is influenced by a variety of interconnected factors, such as economic conditions, political instability, and resource availability. Drought and land degradation reduce agricultural productivity in rural areas, forcing households to abandon their land and seek alternative livelihoods. This process is especially evident in rain-fed agriculture regions, where climate variability has a direct impact on survival rates

### **Land Tenure and Marginalization**

Land tenure refers to the methods by which land is owned, accessed, and controlled. For marginalised communities, tenure is frequently informal, customary, or undocumented. While such systems may provide local legitimacy, they are rarely acknowledged by formal legal institutions. The lack of secure land tenure significantly raises vulnerability to climate change. Marginalised populations are frequently denied compensation, rehabilitation programmes, and policy interventions because they lack legal recognition. According to studies, land tenure insecurity limits adaptive capacity because people are less likely to invest in land improvement or climate-resilient practices.

Furthermore, tenure insecurity creates an ongoing risk of eviction, especially in urban informal settlements. Climate hazards such as floods and storms not only cause property damage, but also serve as

justification for state-led evictions and redevelopment projects, displacing vulnerable populations even further.

### **Climate Displacement and Tenure Loss**

Climate displacement causes tenure loss in a variety of interconnected ways. First, environmental degradation results in the physical loss of land. Flooding, coastal erosion, and desertification can make land uninhabitable, essentially depriving communities of their primary resource base. In many cases, the loss is irreversible.

Second, displacement disrupts both legal and customary land claims. When forced to migrate, people frequently lose access to the documentation, community recognition, and institutional support required to maintain their tenure rights. This is especially important for indigenous communities, whose land rights rely on collective ownership and cultural practices. Third, resettlement processes often fail to restore tenure security. Displaced populations are frequently relocated to areas where land rights are unclear or contested, resulting in additional instability. According to research, resettlement frequently results in decreased access to natural resources and fewer opportunities for employment.

### **Case Study: India**

India is an important case study for examining the link between climate displacement and tenure loss. The country's reliance on monsoon-based agriculture leaves it extremely vulnerable to climate change. Floods, droughts, and cyclones frequently displace people, particularly in rural and coastal regions. In recent years, regions such as Uttarakhand and coastal states have seen significant climate-induced displacement. The lack of a comprehensive national policy on internal displacement exacerbates the situation by denying affected populations adequate legal protection or rehabilitation assistance. Marginalised communities, such as Dalits and Adivasis, are especially vulnerable due to their reliance on land and lack of formal ownership. Migration to cities frequently results in settlement in informal slums, where tenure insecurity persists. This results in a cycle of displacement in which people move from one insecure environment to the next without achieving stability.

## **Social and Economic Consequences**

The loss of land has significant social and economic consequences. For agrarian communities, land is more than just a source of income; it is also the foundation of identity, culture, and social relationships. Its disappearance causes economic instability, food insecurity, and social disintegration. Climate-induced land loss has psychological and cultural implications. According to studies, communities experience a "sense of loss" that extends beyond material deprivation to include emotional and cultural dislocation. This is especially evident among indigenous peoples, for whom land is inextricably linked to heritage and spirituality. Gender dynamics complicate the situation. Women, who frequently have limited land rights, face additional barriers to accessing resources and support during displacement. This makes them more vulnerable to exploitation and marginalisation.

## **Policy Gaps and Challenges**

Despite the growing recognition of climate displacement, significant policy gaps persist. Climate migrants are not recognised as a distinct category under international law, so their access to protection and assistance is limited. National policies are frequently fragmented and insufficient, failing to address the multifaceted realities of displacement and tenure loss. One significant issue is the lack of integration between climate policies and land governance. Although land tenure is critical for climate adaptation, it is often overlooked in global climate frameworks. This disconnect reduces the efficacy of adaptation strategies and perpetuates vulnerability.

## **Conclusion**

Climate displacement and tenure loss are inextricably linked processes that disproportionately impact marginalised groups. Land loss jeopardises not only livelihoods, but also social, cultural, and political rights. Addressing this issue requires a comprehensive approach that includes climate adaptation, land tenure security, and social justice. Without such interventions, climate change will worsen inequality, resulting in new forms of displacement and marginalisation. Ensuring secure land tenure for vulnerable

populations is thus critical for fostering resilience and achieving sustainable development goals.

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## CHAPTER 8

# THE SOCIO-ECONOMIC IMPACT OF COPARCENARY RIGHTS - A HISTORICAL REVIEW

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### **Abstract**

*The institution of coparcenary under Hindu law has historically shaped property relations within joint families in India. Rooted in patriarchal traditions, the Mitakshara coparcenary system excluded women from inheritance and ownership rights, reinforcing gender inequality. However, with the enactment of the Hindu Succession (Amendment) Act, 2005, daughters were granted equal coparcenary*

*rights by birth, marking a transformative shift in property law. This study examines the historical evolution of coparcenary rights and critically analyzes their socio-economic impact on women in India. It argues that while legal reforms have significantly advanced gender justice, structural barriers, social norms, and implementation challenges continue to limit their effectiveness.*

### **Introduction**

Property rights influence social status, economic security, and individual autonomy. In India, inheritance laws have long been governed by religious and customary practices, many of which are fundamentally patriarchal. The Hindu joint family system, particularly under Mitakshara law, recognised only male members as coparceners, effectively excluding women from property ownership. This exclusion had far-reaching effects. Women's lack of access to property hampered their economic independence and increased their reliance on male family members. The Hindu Succession (Amendment) Act of 2005 attempted to address this inequality by giving daughters equal rights as coparceners. This study investigates

the historical roots of coparcenary rights and assesses their socioeconomic implications in contemporary India.<sup>1</sup>

### **Historical Background of Coparcenary Rights**

Coparcenary is derived from ancient Hindu law, specifically the Mitakshara school, which was prevalent throughout most of India. A coparcenary was composed of male members of a joint family who inherited an interest in ancestral property at birth. Women were excluded from this system because they were deemed dependents rather than equal members.<sup>1</sup>

During the colonial period, British administrators codified Hindu law, frequently reinforcing existing patriarchal systems. The Hindu Women's Right to Property Act of 1937 was a pioneering attempt to strengthen women's property rights. However, it only granted women limited rights, allowing them to enjoy property but not granting full ownership.<sup>1</sup> The Hindu Succession Act of 1956 represented a significant change in Hindu personal law. While it increased women's inheritance rights, it also upheld the Mitakshara coparcenary system, which perpetuated gender discrimination. Daughters were not recognised as coparceners and thus could not inherit ancestral property at birth.<sup>1</sup> A significant shift occurred with state-level amendments in states like Andhra Pradesh, Tamil Nadu, and Maharashtra, which granted daughters coparcenary rights before the national reform. These regional initiatives paved the way for the Hindu Succession (Amendment) Act of 2005, which granted equal coparcenary rights to daughters throughout India.<sup>1</sup>

### **The Hindu Succession (Amendment) Act of 2005**

The 2005 amendment was a watershed moment in Indian legal history. It amended Section 6 of the Hindu Succession Act, giving daughters the same rights as coparceners by birth. This reform ensured that daughters have the same rights and liabilities in ancestral property as sons do.<sup>1</sup> The amendment sought to abolish gender discrimination and promote equality. It also aligned personal laws with constitutional equality principles outlined in Articles 14 and 15. However, the interpretation of the amendment raised several legal concerns, particularly regarding its retrospective application. The Supreme

Court clarified these issues in landmark decisions, establishing that daughters have coparcenary rights from birth, regardless of the father's status at the time of the amendment. This interpretation strengthened women's property rights while also ensuring that the law was applied uniformly.<sup>1</sup>

## **Socio-Economic Impact of Coparcenary Rights**

### **Economic Empowerment**

One of the most significant benefits of granting coparcenary rights to daughters is increased economic empowerment. Property ownership provides financial security, credit, and investment opportunities. Women with property rights are more likely to engage in economic activities and contribute to their household income.<sup>1</sup>

Research has shown that women's ownership of land and property reduces poverty and raises living standards. It also strengthens their bargaining power within households, allowing them to make decisions about education, healthcare, and family welfare.<sup>1</sup>

### **Transformation of Gender Relations**

Recognising daughters as coparceners challenges traditional patriarchal norms while also promoting gender equality. It transforms family dynamics by recognising women as equal partners in property and decision-making.<sup>1</sup> This transformation has broader social implications because it helps to change attitudes about women's roles in society. It also promotes the concept of gender justice, which is critical to achieving sustainable development.<sup>1</sup>

### **The Impact on the Rural Economy**

In rural India, land is the most important source of income. The inclusion of women as landowners has far-reaching consequences for agricultural productivity and resource management. Women who own land are more likely to invest in sustainable agricultural practices and help to ensure food security.<sup>1</sup> However, the impact is uneven due to socio-cultural differences and a lack of awareness. Many women are unaware of their rights and may face opposition from family members when claiming property.<sup>1</sup>

## **Social Challenges and Resistance**

Despite legal changes, social resistance remains a significant impediment. Patriarchal norms continue to shape property distribution, with women frequently pressured to give up their rights in favour of male relatives.<sup>1</sup> Many women voluntarily give up their inheritance in order to maintain family harmony. This practice undermines the law's objectives and reinforces gender inequality.

## **Legal and Procedural Barriers**

Legal and procedural barriers impede the implementation of coparcenary rights. Complex documentation requirements, a lack of legal awareness, and lengthy litigation processes deter women from asserting their rights.<sup>1</sup> Furthermore, property disputes frequently involve multiple parties, making resolution difficult. Legal reforms must be accompanied by institutional support and awareness campaigns.

## **Broader Implications for Gender Justice**

The recognition of coparcenary rights for daughters is an important step towards gender justice. It makes personal laws consistent with constitutional principles and international human rights standards.<sup>1</sup> However, substantive equality requires more than just legal reform. It entails addressing structural inequalities, promoting education, and challenging societal norms. Women's empowerment is a legal, social, and economic issue.

## **Conclusion**

Coparcenary rights have evolved to reflect India's ongoing struggle for gender equality. While historical practices prevented women from owning property, legal reforms have attempted to correct these injustices. These reforms have a significant socioeconomic impact, helping to empower women and transform society. However, challenges persist in the form of social resistance, legal barriers, and a lack of awareness. Addressing these issues is critical to maximising the benefits of coparcenary rights. Future policies must prioritise improving implementation mechanisms and promoting gender-sensitive legal frameworks.

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## CHAPTER 9

# MATRIMONIAL PROPERTY RIGHTS IN THE SHARED HOUSEHOLD: JUDICIAL TRENDS AND LEGISLATIVE GAPS

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### **Abstract**

*A woman's right in a shared household is not charity flowing from marriage, but a legal entitlement rooted in equality, contribution, and constitutional morality.*

*The concept of matrimonial property rights in a shared household occupies a critical intersection between family law, property law, and Constitutional guarantees of equality and dignity. In India, the absence of a codified matrimonial property regime has resulted in women's housing security being largely addressed through judicial interpretation rather than legislative clarity. While courts—particularly the Supreme Court of India—have progressively interpreted the right to residence in a shared household to protect women from dispossession and domestic vulnerability, such protection remains confined to possessory and residential rights,*

*without translating into ownership or equitable distribution of property. This article critically examines the evolving judicial trends on shared household jurisprudence, highlighting inconsistencies and limitations arising from title-based property norms and restrictive statutory definitions. It further analyses the legislative gaps that prevent meaningful recognition of marriage as an economic partnership, thereby undermining substantive gender justice. The article argues that judicial creativity, though significant, cannot substitute comprehensive legislative reform. It concludes by emphasizing the urgent need for a clear matrimonial property framework that ensures equitable rights in the shared household, aligned with Constitutional values of equality, dignity, and social justice.*

**Keywords:** *Shared Household, Interpretations, Legislative and Matrimonial Property, Rights of Constitutional Protection, Residence, Gender Justice, Judicial*

## **Introduction**

The question of matrimonial property rights in the shared household lies at the heart of contemporary debates on gender justice, marital equality, and constitutional protection of dignity within the family. In India, marriage is often treated as a social institution grounded in personal relationships rather than as an economic partnership. As a result, property acquired or occupied during marriage continues to be governed largely by title-based ownership norms, leaving non-owning spouses—most often women—legally vulnerable upon marital breakdown.

The concept of a *shared household* gained statutory recognition with the enactment of the Protection of Women from Domestic Violence Act, 2005, which sought to secure a woman's right to residence irrespective of her proprietary interest in the property. Judicial interpretation, particularly by the Supreme Court of India, has played a pivotal role in shaping the contours of this right, attempting to balance property rights with the need to prevent economic abuse and homelessness. However, the scope and content of matrimonial property rights remain uncertain, oscillating between expansive protection and restrictive ownership-based limitations. Despite progressive judicial interventions, the absence of a comprehensive matrimonial property regime has resulted in fragmented and inconsistent outcomes. Courts have largely confined relief to a right of residence, stopping short of recognizing equitable ownership or shared economic contribution within marriage. This judicial approach, while protective in intent, exposes significant legislative gaps and underscores the limitations of case-by-case adjudication in addressing structural gender inequality.

Against this backdrop, the present paper examines the evolving judicial trends relating to shared household claims and critically analyses the legislative silence surrounding matrimonial property rights in India. It argues that sustainable gender justice cannot rest solely on judicial interpretation but requires a coherent statutory

framework that recognizes marriage as a partnership of equals, harmonizing family law with constitutional values of equality, dignity, and social justice.

### **Matrimonial Property Rights**

IN order to even the disparity in the social and economic structure of women, many laws have been passed and reforms made. These include the right to receive equal pay<sup>1</sup>, maternity benefit<sup>1</sup>, to own or inherit property<sup>1</sup>, to terminate unwanted pregnancies<sup>1</sup> and the right to be protected from cruelty<sup>1</sup> at the hand of husbands. In the patriarchal Indian society, it is customarily accepted that a woman belongs to her husband's family upon marriage. However, a woman's right to property in her matrimonial home is almost non-existent before the advent of Protection of Women from Domestic Violence Act in particularly in shared household property.

### **Constitutional Perspective on Matrimonial Property Rights**

The Constitution guaranteed fundamental rights to all citizens of India individually and collectively<sup>1</sup> which included the right to equality before the law<sup>1</sup>, prohibition of discrimination by the State on grounds of religion, race, caste, sex or place of birth<sup>1</sup> and equality of opportunity in matters concerning public employment<sup>1</sup>. The Union and States have concurrent powers over matters in List III of the Seventh Schedule. Personal or customary laws in List III administer matters such as marriage, divorce, intestacy, succession, joint family and partition and adoption. This also means that personal laws applicable to Hindus in one state need not necessarily be applicable to Hindus in some other state.

Article 372 again provided that all laws in force in the territory of India immediately before the commencement of the Constitution including case laws to continue as the law of the land until altered, amended or repealed. This has, to some extent, perpetuated the personal law system. Although, Article 44 of the Constitution talked about the directive policy of the state 'to endeavour to secure for the citizens a uniform civil code throughout the territory of India', it has not been achieved till date. India continues to be governed by myriad personal laws.

In **Krishna Singh v. Mathura Ahir**<sup>1</sup>, the Supreme Court indicated that Part III of the Constitution does not affect personal law. In **State of Bombay v. Narasu Appa Mali**<sup>1</sup>, the Court while deciding the validity of Bombay Prevention of Hindu Bigamous Marriage Act of 1946 noted that the Constitution excludes personal laws from the ambit of Article 13. It added that even if the term ‘laws in force’ included personal laws, the practice of polygamy would not be violative of Article 15 (1) because the article is based on ‘vital and compelling’ social, economic and religious grounds and not on grounds of gender. Therefore, the court observed that personal laws do not need to stand the judicial scrutiny of their constitutionality.<sup>1</sup>

### **Legislative Perspective on Married Women’s Property Right**

The first concerted effort towards codification of married woman’s right to property came in 1870 with the passage of the Married Women’s Property Act, 1870 which allowed married women to retain certain property such as their wages and earnings as separate property. However, it was not until the enactment of the Married Women’s Property Act 1882 that full proprietary rights were given to married women. However, the English legislature responded with a string of reforms and made several enactments that sought to ease the burden of divorced women. To begin with, grounds for seeking divorce were expanded and made the same for both sexes, courts were enabled to issue orders for permanent maintenance, alimony, to set aside disposition of property which were made with the objective of defeating the wife’s right to secure financial relief.<sup>1</sup> The Maintenance Orders Act 1958 sought to enforce maintenance orders through attachment of wages, salaries and other earnings. The Matrimonial Proceedings and Property Act 1970 allowed courts to award periodical payments, lump sum payments, transfer of property orders, settlement of property orders etc. The Act walked an extra step in instructing the courts that in awarding financial relief, they should consider ‘any contribution made by looking after the home or caring for the family.’ Additionally, the Act provided for the consideration of money or money’s worth to be considered as a share or enlarged share in the property in question.

The current regime is responsible for a woman, divorced by her husband after many years of maintaining the family home being left with nothing but a portion of the remains of her wedding presents despite her contribution to the accumulation of property that her former husband enjoys.

### **Women's Property Rights upon Marriage**

Stridhan, comparable to 'peculium' in Roman law or bride's 'pin money' in England is the movable property voluntarily presented to the bride from her family and friends. It mostly consists of jewelry, money and clothing. The term literally means 'woman's property' over which she exercises absolute control. A woman does not have a legal right to receive stridhan; however customary rules place an obligation on her family to provide her with some property upon marriage. In **Pratibha Rani v. Suraj Kumar**<sup>1</sup>, the Supreme Court held that stridhan is the wife's absolute property and therefore the husband or his relatives will have no rights over the stridhan and they would be deemed to be trustees if the stridhan was ever placed in their hands.

### **Shared Household**

"shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;<sup>1</sup>

Therefore, per this definition a shared household is a place where the aggrieved person lives or has lived at any time in a domestic relationship, either alone or with the respondent. This includes a household whether it is owned or rented jointly by the aggrieved person and the respondent, or by either of them individually. It also covers households where either the aggrieved person or the

respondent, or both, have any right, title, interest, or equity. Additionally, it includes households that belong to a joint family of which the respondent is a member, regardless of whether the respondent or the aggrieved person has any right, title, or interest in the property. But what happens if an aggrieved person has lived in a domestic relationship in multiple places? Would all such households fall within the purview of a ‘shared household’? The Supreme Court answered this question in the negative in **S.R. Batra & Ors. V. Smt. Taruna Batra**<sup>1</sup>. In this case, Smt. Taruna Batra was married to Amit Batra and began living in her mother-in-law’s house, which was on the second floor of a property in Delhi. After relations between the couple soured, Amit Batra filed for divorce, and in response, Taruna Batra lodged an F.I.R. under Sections 406, 498A, 506, and 34 of the Indian Penal Code. This led to the arrest of her in-laws, husband, and married sister-in-law, who were granted bail only after three days. During this period, Taruna Batra temporarily moved to her parents’ residence. Upon her return, she found the door to her mother-in-law’s house locked. She then filed Suit No. 87/2003, seeking a mandatory injunction to gain entry to the house and even broke the locks to do so. Meanwhile Amit Batra had moved to Ghaziabad, raising the question of whether Taruna Batra had the right to reside in her mother-in-law’s property under Section 17 of the DV Act. The Supreme Court held that a wife is only entitled to claim a right to residence in a ‘shared household,’ which is defined as the house belonging to or rented by the husband, or the house that is part of the joint family property in which the husband is a member. In this case, the property in question neither belonged to Amit Batra, was not rented by him, nor was it a joint family property of which he was a member. It was the exclusive property of Amit Batra’s mother, appellant No. 2, and therefore, it could not be considered a ‘shared household.’ The Court also noted that the definition of ‘shared household’ under Section 2(s) was clumsily drafted and required a sensible interpretation.

This judgment was overruled by a full bench of the Supreme Court in **Satish Chander Ahuja vs Sneha Ahuja**<sup>1</sup>, where the wife filed an application under Section 12 of the DV Act, alleging severe emotional and mental abuse by the respondents and seeking, among other reliefs, alternate accommodation. The Court In this landmark

judgment observed that the phrase “lives or at any stage has lived in a domestic relationship” should be given its normal and purposeful meaning, indicating a woman living in a household with some degree of permanency. The Court clarified that “mere fleeting or casual living at different places” does not constitute a shared household. It emphasized that the intention of the parties and the nature of their living arrangement, including the nature of the household, must be considered to determine whether the parties intended to treat the premises as a shared household. In disagreeing with the observations made in **S.R. Batra v. Taruna Batra**, the Court noted that the expression “at any stage has lived” was included to protect women from being denied the right to live in a shared household on the grounds that they were excluded from possession of the house or temporarily absent when the application was filed. The use of this expression is intended to ensure protection, not to imply that all houses where the aggrieved person has lived with the husband’s relatives automatically become shared households—a misinterpretation that does not reflect the legislative intent. Moreover, the Court disagreed with the finding in **S.R. Batra** that Section 2(s) was clumsily drafted, asserting instead that the definition of ‘share household’ is clear and exhaustive, designed to grant the aggrieved person a right of residence in the shared household. Therefore, the earlier narrow view established in **S.R. Batra v. Taruna Batra**—that an aggrieved wife cannot reside in a shared household owned by her mother-in-law or father-in-law—was rejected. The Court granted the aggrieved wife’s request for alternate accommodation, placing due reliance on Sections 17 and 19 of the DV Act. Through this judgment, it was clarified that an aggrieved person has the right to reside in a shared household owned by her in-laws until her husband secures an alternate accommodation. The Supreme Court’s ruling in **Satish Chander Ahuja v. Sneha Ahuja** significantly expanded the understanding of a ‘shared household,’ yet the evolution of this concept did not end there.

In a recent landmark judgment of **Prabha Tyagi v. Kamlesh Devi**<sup>1</sup>, the Court has gone a step forward in reinforcing the rights of women under the DV Act, by observing that “every woman in a domestic relationship has a right to reside in the shared household

even in the absence of any act of domestic violence by the respondent”. This judgment establishes that as long as a domestic relationship subsists between an aggrieved person and the respondent, a right to reside in the shared household exists, de hors a right, title or beneficial interest in the same. Further noting that, the expression contained in Section 17 namely, ‘every woman in a domestic relationship shall have the right to reside in the shared household irrespective whether she has any right, title or beneficial interest in same’ requires an expansive interpretation. It was also observed that even in cases where a woman has not actually resided in the shared household, she can still enforce her right of residence under Section 17(1) of the DV Act. The Court further clarified the legislative intent behind the expression “shall not be evicted or excluded from the shared household” under Section 17(2) of the Act, reinforcing the protection afforded to women in domestic relationships, ensuring that they cannot be unjustly removed or denied access to the shared household.

**Srinwati Mukherji v. State of Maharashtra and Anr.**<sup>1</sup>, the court held in the writ petition filed by Srinwati Mukherji, seeking directions to her husband to pay the remaining instalments for a flat booked jointly but still under construction. The court noted, “The Petitioner by this petition is seeking directions to Respondent No.2 husband to pay the remaining two instalments for the ‘shared household’, or such other amount as is payable to the developer towards the balance consideration.”

Justice Manjusha Deshpande made crucial observations on the scope and limitations of relief available under Section 19 of the DV Act, particularly regarding properties not yet in possession of either party.

The Supreme Court had delivered a landmark judgement in the case of **Satish Chander Ahuja vs Sneha Ahuja** wherein it was held that an estranged wife can claim a right to reside in a household belonging to the husband’s relatives. This judgement overrules the earlier precedent of the Supreme Court as laid down in **SR Batra vs Taruna Batra** and will have an indelible impact on the jurisprudence surrounding “The Protection of Women From Domestic Violence Act, 2005” (hereinafter referred to as ‘Act’). Here are some questions

related to the judgment. What is a 'shared household' wherein right of residence may be claimed by an estranged wife? In simple words, a shared household is a household where an estranged wife has lived at any stage in a domestic relationship. Such a household may be owned or rented jointly between the estranged wife and her husband. It also includes a household that is owned or rented by either one of the disputing couple. A shared household may belong to the joint family of which the husband is a member, irrespective of whether the husband or the estranged wife have any right, title or interest in the said household.

As per the judgment of the Supreme Court in Taruna Batra's case, the aggrieved wife's right to residence in a shared household was limited to properties that belonged to her husband or joint family property in which the husband was a member or had a share. Therefore, it was held that the estranged wife could not claim the right to reside in a house that belonged to her mother-in-law or father-in-law, as the case may be.

The estranged wife's right to claim residence in a shared household has been enlarged by virtue of the recent judgement of the Supreme Court. In the recent ruling, it has been held that an estranged wife is entitled to the right of residence in a shared household, irrespective of her having any legal interest in the same or not. This includes the right to reside in a shared household belonging to the husband's relatives as well.

There are certain preliminary conditions that need to be fulfilled as contemplated by the Supreme Court in the recent judgement. (i) The aggrieved wife has to satisfy by providing evidence that domestic violence has taken place. Only once the court is convinced that domestic violence has taken place can the above-mentioned relief be granted. (ii) The aggrieved wife has to live or have lived at any stage in the household in question. In cases where she was excluded from the premises or temporarily absent, such considerations would not deny her protection under the Act.

A shared household will not include any and all places the estranged wife lives or has lived at any stage in a domestic relationship. It would refer to places where she lives or has lived with some degree of permanency. A mere fleeting or casual living at

different places shall not make it a shared household. The intention of the parties and the nature of the living, including the nature of the household, have to be considered.

The ownership of the house may be in the name of the mother-in-law or father-in-law but it will not impact the right of a daughter-in-law to claim residence in such a house. The definition of a shared household emphasises on the establishment of a domestic relationship and investigation into the ownership of the said house has been deemed unnecessary by the Hon'ble Supreme Court

The right to residence in a shared household can be enforced against the husband as well as the mother-in-law, father in-law and/or any other relative of the husband as the case may be if the aggrieved wife has been in a domestic relationship with such persons.

The right to reside in a shared household is applicable to every woman in a domestic relationship, whether they are related by blood, marriage or through a relationship in the nature of marriage, adoption or are living together as part of a joint family. The right to reside can be claimed by such persons whether or not they have any right, title or beneficial interest in the said house.

The competent court may provide for alternate accommodation or order for payment of rent to an aggrieved wife as contemplated under the provisions of the Act. The Supreme Court in its recent judgement has opined that in order to claim such right to alternate accommodation or payment of rent, the husband would have to be a party to the petition as the right to maintenance can only be claimed from the husband.

The right to residence is not an indefeasible right of residence in a shared household especially when the daughter-in law is pitted against an aged father-in-law and mother-in-law. As extrapolated in the recent Supreme Court judgement, senior citizens are also entitled to live peacefully, not where there is marital discord between their son and daughter in-law. Therefore, the Supreme Court has held that the court has to balance the rights of both parties.

A bench of Justice MB Snehathala held that even after the death of husband the wife has a right to reside in shared household. The Kerala High Court held this in the case of **Chenthamara @ Kannan and others v. Meena (2025)**.

## **International Countries on Matrimonial Property Rights**

Countries that have made laws relating to matrimonial property apply the rule of equal distribution of the matrimonial property between the spouses, in divorce proceedings. When the division is being worked out, these laws also account for the needs and responsibilities of looking after any children from the relationship. Thus property is not taken by spouses in traditional manner, i.e. property in a particular spouse's name would remain with him. Instead, a common pool of resources is identified which is equally divided. Some countries have identified the right of matrimonial property to live-in relationships and same sex marriages, recognizing that the essence and dynamics in these relationships are no different from the ones that adopt an initial religious or formal process and the greater need of protection in such cases.

The equality spoken of in post divorce cases is to a greater extent the equality of result. The idea is that each spouse should exit the marriage at the same economic level as the other.

In the civil law countries, under the system of community property, the marriage is deemed to create a common fund which embraces wealth and property of each spouse. From the moment of marriage each spouse has a joint interest in the fund. The nature of the fund differs—in some countries it covers only the property acquired during the course of marriage, in others entire property of each spouse acquired before and after the marriage is covered.

## **Conclusion and Recommendations**

The present system of personal laws regarding property division is extremely biased against women because it fails to ensure that the woman will leave the marriage with the assets and economic security to which she is entitled. This legal regime is perpetuating gender inequalities that render the woman homeless and a destitute by divorce. Looking into the foregoing discussion, the following suggestions may emerge to construct a more equitable and egalitarian legal scheme that will protect the rights of women who are divorced from their husbands.

1. Separate Property: Individual property prior marriage should remain separate property to which only the owner will be entitled

after divorce. It may include inheritance and gifts and there should be a mandatory provision of registration of the same. Presumption unless disproved should be that unregistered assets are joint property.

2. Joint Marital Property: Property acquired in the course of the marriage that will be divided equally if the parties decide to divorce. The court must have the power to order the transfer of property from one party to another and to order settlement of spousal property for the benefit of the other spouse and children.
3. Ante-Nuptial Agreements: The court may enforce ante-nuptial contracts where both parties to the marriage agree to an alternative settlement of property. These recommended provisions treat marriage as a partnership of equals and recognize both financial and non-financial contributions of both spouses to the marriage, the household and the acquisition of assets. Removal of legal constraints and legitimization of reform of property rights is an important and catalytic first step for women. Without economic rights, the emergence of women as equal players in the mainstream of Indian life will remain as it has for the last six decades—slow and sometimes regressive.<sup>1</sup>

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## CHAPTER 10

### A STUDY ON STREEDHAN AND INALIENABLE RIGHTS UNDER HINDU LAW

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#### **Abstract**

*The Dowry framework is one of the most popular cultural evil that has attacked our advanced society. This evil has taken the lives of numerous young ladies' lives now, though numerous have encountered the delayed poison in their lives. We have succeeded in drawing attention to an unprecedented degree, yet with huge ethnic, etymological, and social differences in the country where we reside. In the same way that the eradication of social evils is concerned, individuals in our society do not follow the commands of any given group or association. Therefore, it is imperative that the eradication of these evils is carried out at the individual level. We need to make sure that despite the fact that the dowry is rejected, the lady does not let go of her right to Stridhan and the husband does not assimilate with it, as it has its own*

*money where the lady has acquired the Stridhan. Word Stridhan has been derived from the word Stri, which implies lady, and word Dhana, which implies property. The qualities of lady's home are that the lady receives it as a restricted proprietor; however, she is a proprietor of that property similar to how any individual can be a proprietor of their property, subject to two limitations: a) she can't normally disinherit the corpus, and b) it goes to the following successor from the last full proprietor upon her passing. The primary aim of this research was to investigate the rights of women under STRIDHAN, To analyze the various kinds of properties, which are usually conferred upon women in the form of STRIDHAN, To examine the various laws, which protect the streedhan of women in India. Data was collected*

*from 200 participants and convenient sampling was used for this study, and SPSS was utilized for interpretation of the results. The key finding of this study was that women*

*receive properties in the form of STRIDHAN in India.*

**Keywords:** *Etymological, Stridhan, Implies Woman, Qualities Elements, Proprietor*

## **Introduction**

The Smritikars saw the term "Stridhan" as those properties which a lady obtained through the medium of gifts from her loved ones, which significantly includes portable properties. Stridhan is additionally seen as including those properties which are offered by her wedding guests at the hour of both the marriage parade and the wedding function. The Privy Council had seen in *Bhagwandeem Doobey v. Maya Bae* (1869) that the properties which a Hindu lady obtained from men would not fall within the domain of Stridhan; rather, they would be classified as "Ladies' Estate." Regardless of the way that 'Stridhan' and 'Share' are totally unique words, they are sometimes blended to mean one and the same thing. Share has been characterized as "any property or respected security given or agreed to be given by the lady of the hour's family to the husband's family previously, later, or in the hour of marriage as per local law." The solitary differentiation among 'share' and 'Stridhan' is the presence of "interest, superfluous impact, or impulse" in the past, yet not in the last option. Stridhan is a current given to ladies intentionally, as opposed to because of pressure, superfluous impact, or force. The fundamental justification behind such differentiation is that assuming any marriage isolates from the present, the lady of the hour will need to recuperate the products she has been given as Stridhan, which won't be the situation in the settlement gifts. Hence, the Hindu Succession Act, 1956 is a positive forward-moving step towards protecting the property rights of Hindu ladies. Ladies are being given rights that have been denied to them since ages by this Act. This is a stupendous forward-moving step towards protecting the rights of ladies by dispensing with a lady's incapability to acquire and hold property as her sole owner. Along with the regulation, an equivalent measure of credit must be given to the legal executive too, who has given a liberal understanding to the regulation considering the social improvement of the country as a

whole. The aim of the study is about the streedhan and inalienable rights under hindu law.

### **Objectives**

- To study the rights of women under STREEDHAN,
- To analyse the different type of property is commonly given to women as STREEDHAN,
- To examine the current laws in protecting the streedhan of women's in india,
- To study the woman inalienable rights over STREEDHAN.

### **Review of Literature**

**Channa (2000) (Bhardwaj et al. 2022).** This paper has been written on the basis of the data collected on Colonial rule and the projected western science and values as the ultimate truth and western values and science as supreme. The stereotypical oppressed non-western woman had her counterpart in the male, rational, western culture, coming to her rescue, metaphorically and literally. "Conservative supporters of westernisation would attribute such malaise to 'tradition.' But rational thought points to globalisation, with its emphasis on material values, consumerism and 'trashing' of traditional knowledge. Globalisation has resulted in the erosion of the traditional resource base, and the knowledge and power base that went with it. In this paper, the author argues that empowerment, and so on, has to be located away from its eurocentric interpretations. A feminist methodology is a useful tool in redefining the political and a new understanding of global racism.

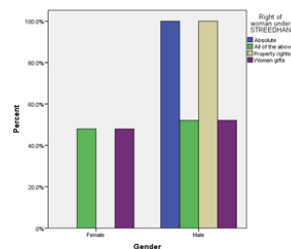
**Bardhan, Kalpana (2017) (Uthaman et al. 2022).** The first three sections of this paper deal with the structure of work in relation to poverty and hierarchy, differentials in quantity and quality of work participation, and disparities in work options and remuneration, and bargaining power to change existing work conditions. The concern is how patriarchy intersects with the existing hierarchy of castes and classes to perpetuate segmentation of the work market and inequities in access to means and resources for work. What has been studied so far is how oppressive dowry is, how preferred a son is, and how deprivation of nurturance of the female infant and child is. The

concern is whether these have any relation to the level of participation of women in economically useful work.

**Subhadra Mitra (2004) (Bhardwaj et al. 2022).** The poverty and marginalisation of the masses are exploding in the most urbanised metropolises that have the highest exposure to modernisation and globalisation. Urban India is replete with increasing crimes against women. The conservative support for westernisation would attribute this malaise to "tradition." Rational thinking attributes it to globalisation, with its focus on material values, consumerism, and the "trashing" of traditional knowledge. Globalisation has destroyed the traditional resource base as well as the knowledge and power base that accompanied it. In this paper, The argue that the concept of empowerment needs to be located away from its euro-centric connotations. A feminist methodology is an appropriate tool for redefining the political and the fresh concept of global racism.

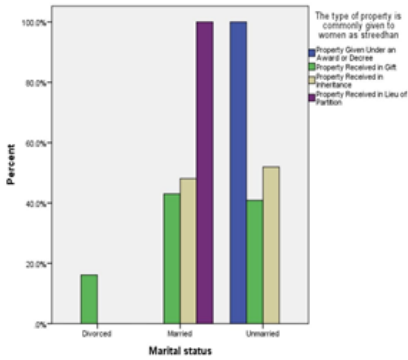
**Choudhary, Renu (2013) (Renu et al. 2011).** The author has used primary data for his analysis. Dowry, which was initially proposed as a voluntary marriage gift, has now turned into a compulsory payment by the bride's side to the groom's side. Moreover, the system of dowry, despite being strictly prohibited, has continued over the years. Ironically, the existing literature also appears to accept this existing cultural bias of the marriage market implicitly. The literature can be classified into two groups: one dealing with the history of dowry, while the other deals with the "post-hoc" explanations for the existing system of dowry. Although the literature offers partial explanations for the existing phenomena of dowry inflation, the value of women is completely ignored while discussing the "value" based phenomena of dowry in marriage.

## Analysis



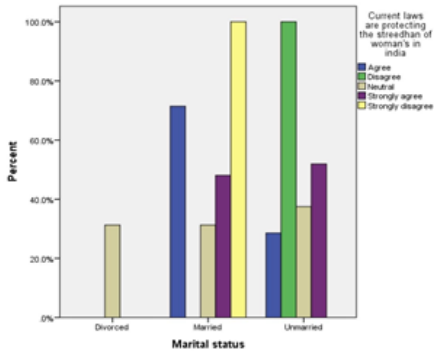
Legend: The above graph shows the gender and the right of property under streedhan

**Figure 1**



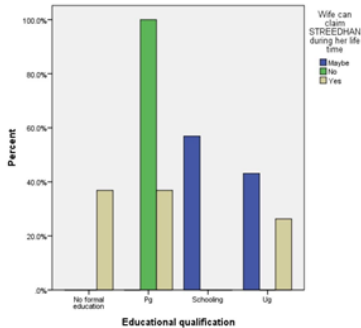
Legend: The above graph shows the marital status and the type of property given under streedhan

Figure 2



Legend: The above graph shows the marital status and the current laws in protecting rights under streedhan

Figure 3



Legend: The above graph shows the educational qualification and wife can claim streedhan

Figure 4

## Results

**Figure 1** The priority level changes substantially with educational level, where PhD holders strongly emphasize Infra Upgrades, 9%, whereas Postgraduates and Undergraduates have similar views, with Special grievance redressal mechanisms being 7.5% each. Notably, respondents holding an HSC qualification rank Legal awareness among prisoners as 9.5%, which is the most important area. **Figure 2** The legal rights under streedhan differ between males and females, with 100% of males surveyed ranking it as an Absolute property right, whereas Females have mixed responses, with 48% ranking it as All of the above, whereas 48% rank it as Women gifts. **Figure 3** The nature of property referred to in the context of streedhan also differs between marital groups, with 100% of Unmarried respondents selecting Property Given Under an Award or Decree, and 100% of Married respondents selecting Property Received in Lieu of Partition. Divorced respondents are the only group to refer to Property Received in Gift, at a rate of approximately 16.5%. **Figure 4** Confidence in current legal protections highlights stark differences, with 100% of Married respondents Strongly Disagreeing, although 72% of this group also Agree. Among Unmarried respondents, 100%.

## Discussion

**Figure 1** This data indicates a clear contrast between how members of each gender perceive the nature of streedhan rights. Men perceive these rights through a single lens, seeing it as an absolute form of property ownership. In contrast, members of the female gender perceive this right as multifaceted, associating it with aspects such as gifts received or a combination of multiple legal entitlements. This indicates that, although men perceive this right as legally binding, it is derived from a more nuanced perspective by members of the female gender.

**Figure 2** Marital status is seen to be an important factor in how each gender perceives the source of streedhan rights. Unmarried members of each gender perceive these property rights as resulting from legal proceedings, such as those resulting from a court decree. In contrast, married members of each gender perceive these rights as solely resulting from property received through family asset partition.

This indicates that, as each member of each gender progresses through their life, their perspective on property acquisition changes from legal realities to family realities.

**Figure 3** There is a significant lack of agreement when it comes to the effectiveness of Indian laws in this regard. Married individuals show the highest level of skepticism, indicating a high level of dissatisfaction with the current state of protection, despite some level of division within this particular group. Unmarried individuals also tend to follow this trend when it comes to assessing the current legal state. Divorced individuals seem to be the least connected to this particular issue, showing a higher level of neutrality when it comes to assessing legal protection. **Figure 4** The level of education plays a critical role in the level of accuracy when it comes to legal knowledge about claims regarding property. The level of education that shows the highest level of accuracy, despite being somewhat restrictive, is the Postgraduates, who believe that it is not possible to make a claim while still within a lifetime. Those who are currently undertaking an undergraduate course, or who have a lower level of education, tend to show a higher level of belief in the possibility of making a claim. Those who have a basic level of schooling tend to show the highest level of uncertainty.

### **Suggestion**

As indicated by the antiquated Smritis and all antiquated schools of Hindu law, for example, Dayabhaga, Mitakshara, etc., following are the items that are to be found in the ownership of a lady, regardless of whether she is a lady, wedded lady, or a widow. Gifts given to a lady before the fire of marriage. Gifts given to a lady in the marriage procession. Gifts given in the name of affection by the father by marriage, mother-in-law. Gifts given by the father, mother, and brother.

### **Limitation**

The study is simply a representation of primary data and doesn't represent the secondary data. The study is simply a representation of primary data, which doesn't have the proper number of responses to all the questions in the study. The samples are gathered from

uneducated people also; the meaning of the study may change as indicated by the account of the sample gathered.

## **Conclusion**

This is a thought, which dove down through the many years from the Hindu Smritis yet has today, permeated a wide assortment of associations with each unmistakable standing and locales. As indicated by the well-established Smritis and all the old schools of Hindu law, for instance, Dayabhaga, Mitakshara, etc, the following were the ownerships of a woman whether she is a woman, married woman, or widow. Gifts given to a woman before the fire of marriage or widowhood are all to be parsed as her Streedhan. Gifts made in recognition of reverence for father in law, mother in law Gifts made by father, mother, and sibling This cannot be a finished summary, and so, the gifts made after marriage by the relations or parent of the wife, such as those of the wife's life partner, and the gifts and properties received from youngsters and relations were included in the summary, as were many more as may be obviously perceived in this context. The query of whether a particular sort of property acquired by a woman is or is not Streedhan will depend on the source of the property, the intimate status of the woman at the time of acquisition, and whether she acquired it in virtue, asset of marriage, or widowhood. Gifts and properties acquired from the relations of a woman in virtue, asset of marriage, or widowhood are all to be perceived as her Streedhan.

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## CHAPTER 11

# UNIFORM CIVIL CODE AND WOMEN'S PROPERTY RIGHTS IN INDIA: A DOCTRINAL ANALYSIS OF GENDER EQUALITY UNDER RELIGIOUS PERSONAL LAWS WITH SPECIAL REFERENCE TO TAMILNADU

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### **Abstract**

*The issue of women's property rights in India remains closely connected with religious personal laws, which govern inheritance, succession, and ownership across different communities. While the Indian Constitution guarantees equality before law, variations in personal laws often result in unequal property rights for women. The concept of a Uniform Civil Code (UCC), envisaged under Article 44 of the Constitution, aims to harmonise personal laws and promote gender justice. This research examines the relationship between the Uniform Civil Code and women's property rights through a doctrinal legal analysis, focusing on whether a uniform legal framework*

*can ensure equality beyond religious distinctions. The main **aim** of the study is to analyse how far existing personal laws uphold gender equality in property rights and whether the UCC can serve as a mechanism for legal reform. The **objectives** include examining constitutional provisions, analysing inheritance laws under major religious personal laws, and evaluating judicial interpretations related to women's property rights. The research adopts a **doctrinal** methodology, relying on the analysis of statutes, constitutional provisions, landmark judicial decisions, and Law Commission reports. Secondary sources such as books, journal articles, and legal*

*commentaries are also used. The study finds that despite progressive reforms, significant disparities continue to exist in women's inheritance and property entitlements across personal laws. Judicial interventions have promoted equality, but inconsistencies remain due to religious legal diversity. The research concludes that a carefully structured Uniform Civil Code,*

*respecting cultural diversity while prioritising constitutional equality, may strengthen women's property rights and contribute to substantive gender justice in India.*

**Keywords:** *Uniform Civil Code (UCC), Women's Property Rights, Gender Equality, Religious Personal Laws, Inheritance Rights, Constitutional Equality, Socio-Legal Justice, Property and Succession Laws, Gender Justice*

## **Introduction**

India is a pluralistic society where personal laws governing marriage, inheritance, succession, and property rights differ according to religion. Hindu, Muslim, Christian, and Parsi communities follow distinct legal frameworks that regulate family and property relations. While these personal laws reflect cultural and religious diversity, they have also created variations in the legal status of women, particularly in matters relating to property ownership and inheritance. Despite constitutional guarantees of equality under Articles 14 and 15 of the Indian Constitution, women's property rights continue to be shaped by religious norms that sometimes result in unequal treatment. Property ownership plays a significant role in women's social and economic empowerment, as it enhances financial security, decision-making power, and social status. Over time, legislative reforms and judicial interventions have attempted to improve women's inheritance rights, especially within Hindu law. However, disparities still exist across different personal law systems, raising important questions about gender justice and legal uniformity. The concept of a Uniform Civil Code (UCC), envisaged under Article 44 of the Constitution as a Directive Principle of State Policy, seeks to establish a common set of civil laws applicable to all citizens irrespective of religion. The debate surrounding the UCC often centers on balancing religious freedom with constitutional ideals of equality and justice. In this context, examining women's property rights becomes crucial, as unequal inheritance laws directly affect women's empowerment and

socio-economic status. This research therefore undertakes a doctrinal analysis of women's property rights under various religious personal laws and evaluates whether the implementation of a Uniform Civil Code can promote gender equality while harmonising India's diverse legal traditions.

### **Evolution**

The **evolution** can be traced to the historical development of personal laws and the gradual recognition of women's legal rights in India. Traditionally, property and inheritance rights were governed by religion-based customs that largely favoured patriarchal control over property ownership. During the colonial period, personal laws were formally codified but continued to preserve gender inequalities. After independence, the Indian Constitution introduced principles of equality and non-discrimination, leading to reforms such as the Hindu Succession Act, 1956, and its 2005 amendment granting daughters equal coparcenary rights. However, disparities persisted across different religious personal laws, creating debates about uniformity and justice. Judicial activism and constitutional interpretation increasingly emphasized gender equality, bringing renewed attention to Article 44 and the idea of a Uniform Civil Code. The evolution of this topic therefore reflects a shift from tradition-based property regulation to rights-based legal reform, where the focus has moved toward harmonising personal laws with constitutional values of equality, dignity, and women's economic empowerment through property ownership.

### **Government Initiatives**

Various government initiatives in India indirectly support the goal of strengthening women's property rights and promoting gender equality, which are central to the debate on the Uniform Civil Code (UCC). Legislative reforms such as the Hindu Succession (Amendment) Act, 2005 granted daughters equal coparcenary rights in ancestral property, marking a major step toward gender-equal inheritance. The **Digital India Land Records Modernization Programme (DILRMP)** aims to digitize land records, improving transparency and enabling women to claim ownership rights more

easily. Schemes like **Pradhan Mantri Awas Yojana (PMAY)** encourage registering houses in the name of women or jointly with spouses, thereby enhancing women's economic security through property ownership. The **Beti Bachao Beti Padhao** initiative, though primarily focused on education and empowerment, promotes social awareness about gender equality, indirectly supporting women's legal rights including property ownership. Additionally, the National Policy for Women (Draft 2016) emphasizes equal access to productive resources such as land and property. Recent consultations and discussions by the Law Commission of India on reforms in personal laws and the feasibility of a Uniform Civil Code also reflect governmental efforts toward harmonising laws while ensuring gender justice. Together, these initiatives demonstrate a gradual policy shift toward strengthening women's property rights, aligning with constitutional principles of equality that underpin the idea of a Uniform Civil Code.

### **Factors Affecting**

Several unique **factors** influence the study of Uniform Civil Code and women's property rights in India from a doctrinal perspective. One major factor is legal pluralism, where different religious communities follow separate personal laws, creating unequal inheritance and property entitlements for women. Another important factor is the constitutional tension between gender equality and religious freedom, as Articles 14 and 15 promote equality while Article 25 protects religious practices. Judicial interpretation and activism also shape the evolution of women's property rights, as courts often attempt to harmonise personal laws with constitutional values. The patriarchal nature of traditional property systems continues to affect implementation, even where legal reforms exist. Additionally, legislative reforms and codification differences among Hindu, Muslim, Christian, and Parsi laws create varying levels of protection for women. The debate surrounding the Uniform Civil Code as a political and social issue further influences legal development, as concerns about cultural identity and minority rights affect reform efforts. Finally, the gap between formal legal equality and practical enforcement remains a key factor, since social customs, lack of

awareness, and economic dependency often limit women's actual access to property rights despite legal recognition. Together, these factors shape the socio-legal complexity of achieving gender equality through a Uniform Civil Code in India.

### **Current Trends**

In recent years, the debate on the Uniform Civil Code (UCC) and women's property rights in India has gained renewed legal and political attention, making it a highly relevant socio-legal issue. A major **current trend** is the increasing judicial emphasis on gender equality, with the Supreme Court recently observing that religious personal laws often deprive women of equal inheritance and civil rights and suggesting that a Uniform Civil Code could help eliminate such discrimination. Another significant development is the implementation of the Uniform Civil Code in Uttarakhand, the first Indian state to adopt a common legal framework governing marriage, divorce, and inheritance, aiming to ensure equal property rights irrespective of religion. Courts and policymakers are increasingly viewing the UCC as a mechanism for women's empowerment and legal uniformity, especially in matters of succession and property distribution. Additionally, recent legislative reforms such as the **Waqf (Amendment) Act, 2025**, which promotes representation and property-related protections for Muslim women, reflect a broader trend toward gender-inclusive property governance within personal law systems. Academic research also shows that strengthening women's inheritance rights improves autonomy, decision-making power, and social outcomes, reinforcing the legal push toward equality-based reforms. Overall, the current trend indicates a gradual shift from religion-based property norms toward constitutional principles of equality, making the UCC debate central to contemporary discussions on women's property rights in India.

### **Comparison Made With Other Countries/ Cities/States**

A **comparative perspective** strengthens the understanding of how a Uniform Civil Code (UCC) could influence women's property rights in India by examining reforms adopted in other jurisdictions. Countries such as **Turkey** replaced religious personal laws with a

unified civil code in 1926, granting women equal inheritance and property ownership rights under secular legislation. Similarly, **Tunisia** introduced progressive family law reforms that limited discriminatory practices and enhanced women's economic rights while maintaining cultural identity. In contrast, **Malaysia** continues to follow parallel legal systems where civil and Islamic laws coexist, resulting in variations in women's property entitlements offering a model comparable to India's plural legal framework. Within India, the state of Goa operates under a common civil code derived from Portuguese law, providing relatively uniform matrimonial property and succession rights irrespective of religion, often cited as a practical example of legal uniformity. Comparing these jurisdictions highlights that legal uniformity, when supported by constitutional safeguards and social acceptance, can improve gender equality in property rights. However, experiences also show that successful reform requires balancing equality with cultural diversity, making comparative analysis essential for evaluating the feasibility of a UCC in India.

### **Aim**

To doctrinally analyse whether the Uniform Civil Code can ensure gender equality in women's property rights by harmonising religious personal laws in India.

### **Objectives**

- To analyse the constitutional framework relating to gender equality and the Uniform Civil Code, particularly Articles 14, 15, 21, 25, and 44 of the Indian Constitution.
- To examine women's property and inheritance rights under major religious personal laws in India, including Hindu, Muslim, Christian, and Parsi laws.
- To explore whether legal uniformity can achieve substantive gender justice without undermining religious freedom.

## **Review of Literature**

**B. R. Ambedkar (1948)**, during the Constituent Assembly debates, strongly supported the introduction of a Uniform Civil Code (UCC) to promote equality among citizens. The discussion focused on the need to reform religious personal laws that often discriminated against women, particularly in matters of property and inheritance.

**Flavia Agnes (1999)** in *Law and Gender Inequality: The Politics of Women's Rights in India* examined how religious personal laws affect women's rights, particularly in matters of property and inheritance in India. The study found that many personal laws contain patriarchal provisions that restrict women's access to property and inheritance. The author concluded that gender discrimination is deeply embedded within personal laws and legal structures. The study suggested that gender equality cannot be achieved solely through the implementation of a Uniform Civil Code, but requires comprehensive reforms within existing personal laws to effectively address inequality.

**Tahir Mahmood (2013)** in *Uniform Civil Code: Fictions, Facts and the Constitutional Debate* analysed the constitutional debates surrounding the implementation of a Uniform Civil Code (UCC) in India. The study aimed to examine how religious personal laws influence equality and legal rights among citizens, particularly women. The author concluded that such disparities challenge the constitutional principle of equality.

**Werner Menski (2003)** in *Hindu Law: Beyond Tradition and Modernity* examined the evolution of Hindu personal laws and their impact on women's rights, particularly in matters of inheritance and property. The study found that reforms such as the Hindu Succession Act, 1956 significantly improved women's inheritance rights, but certain structural and social limitations continued to restrict full gender equality. The author concluded that while legal reforms have modernised Hindu law, gaps in achieving complete equality still remain. The study suggested that further legal and social reforms are necessary to ensure equal property rights for women.

**Kirti Singh (2013)** in *Seizing the Means of Reproduction: Entitlements and Property Rights of Women in India* examined women's struggles for economic independence and property

ownership in India. The study aimed to analyse how legal and social structures affect women's access to property and economic resources. The study found that despite certain legislative reforms, women continue to face significant barriers in claiming ownership and control over property. The author concluded that these challenges limit women's economic independence and reinforce gender inequality. The study suggested the need for stronger legal reforms and effective implementation of laws to ensure equal property rights and economic empowerment for women.

**Ratna Kapur (1996)** examined personal laws from a feminist perspective, focusing on their impact on women's property and inheritance rights in India. The study found that many personal laws continue to reflect patriarchal norms that limit women's ownership and control over property. The author concluded that such legal frameworks perpetuate gender inequality and restrict women's autonomy.

**Prabha Kotiswaran (2011)** examined gender justice within the framework of family and personal laws in India. The study aimed to analyse feminist perspectives on family law reforms and the challenges involved in achieving gender equality within existing personal laws. Using a socio-legal and analytical methodology, the author reviewed legal provisions, feminist scholarship, and judicial interpretations relating to family law. The author concluded that achieving gender justice requires deeper structural changes in the legal framework.

**Flavia Agnes (2001)** examined the relationship between personal laws and gender justice in India, focusing on differences in property and inheritance rights among women belonging to different religious communities. The study found that women from different religious communities experience unequal property rights due to variations in personal laws. The author concluded that such disparities challenge the principle of gender equality within the legal system.

**Nivedita Menon (2004)** have found that personal laws often reinforce patriarchal norms that limit women's autonomy and equality. The author concluded that legal frameworks must address these embedded inequalities to ensure gender justice. The study

suggested the need for gender-sensitive legal reforms that challenge patriarchal structures within personal laws.

**Leila Seth (2013)** The study found that women historically faced unequal property rights under several family laws. The author concluded that achieving substantive equality requires stronger legal protections for women. The study suggested the need for reforms in family law to ensure equal property and inheritance rights.

**Neera Chandhoke (2005)** examined the relationship between constitutional principles of equality and the operation of personal laws in India. The study aimed to analyse how the constitutional commitment to equality and justice interacts with religious personal law systems. Using a constitutional and analytical methodology, the author reviewed constitutional provisions, scholarly debates, and legal interpretations relating to equality and social justice.

**V. R. Krishna Iyer** examined the role of judicial interpretation in advancing gender justice within the Indian legal system. The discussion aimed to analyse how progressive interpretations of law could strengthen women's rights, particularly in matters of property and inheritance.

**Ruma Pal** examined the relationship between constitutional guarantees and women's rights within personal law systems. The study aimed to analyse how constitutional principles of equality should guide reforms in personal laws affecting women.

**M. P. Jain** in *Indian Constitutional Law* examined the constitutional framework relating to the Uniform Civil Code under Article 44 of the Constitution of India. The study aimed to analyse how a Uniform Civil Code could address inequalities created by diverse personal law systems, particularly in matters of inheritance and property rights.

**Granville Austin (1966)** in *The Indian Constitution: Cornerstone of a Nation* examined the philosophical foundations and objectives of the Indian Constitution. The study aimed to analyse how the Constitution seeks to balance religious freedom, social reform, and equality among citizens.

## **Methodology**

This study adopts a **doctrinal** research methodology, focusing on the analysis of existing legal principles and frameworks relating to women's property rights under religious personal laws in India. The research is primarily based on secondary sources, including constitutional provisions, statutory laws governing Hindu, Muslim, Christian, and Parsi personal laws, and landmark judicial decisions of the Supreme Court and High Courts.

## **Result**

The study demonstrates that women's property rights in India remain inconsistently protected due to the continued application of religion-based personal laws governing inheritance, succession, and ownership. Although the Indian Constitution guarantees equality before law and prohibits gender discrimination, doctrinal analysis shows that several personal law systems historically evolved within patriarchal social structures, resulting in unequal property entitlements for women. While statutory reforms and progressive judicial interpretations have improved women's inheritance rights, particularly in certain communities, disparities still exist across religious frameworks, creating unequal legal outcomes for similarly situated women. The analysis of constitutional provisions, statutory laws, and landmark judicial decisions indicates that courts have increasingly interpreted personal laws in light of constitutional morality and gender justice; however, judicial intervention alone has not fully eliminated structural inequalities. The research further finds that the concept of a Uniform Civil Code offers a potential legal mechanism to harmonise personal laws by introducing gender-neutral principles consistent with constitutional guarantees of equality, dignity, and social justice. At the same time, the findings highlight that the implementation of such a code must carefully respect cultural diversity and religious freedom to avoid social resistance. Overall, the study concludes that a balanced and constitutionally grounded Uniform Civil Code could promote substantive equality, strengthen women's economic empowerment, and ensure uniform protection of property rights for women across all religious communities in India.

## **Limitation**

This research is **limited** primarily by its doctrinal nature, as it focuses on analysing legal texts, constitutional provisions, statutes, and judicial decisions rather than examining the practical implementation of laws through empirical or field-based data. The study does not include primary data such as interviews, surveys, or lived experiences of women affected by personal laws, which may restrict understanding of ground realities. Further, the scope is confined to major religious personal laws in India and may not fully address regional customs, tribal practices, or informal property arrangements that also influence women's property rights. The evolving and politically sensitive nature of the Uniform Civil Code debate may also limit definitive conclusions, as legislative developments and policy changes are ongoing. Additionally, judicial interpretations and legal reforms continue to change over time, meaning the findings may require reassessment in light of future legal developments. Therefore, while the research provides a strong legal and constitutional analysis, its conclusions remain primarily theoretical and normative rather than practical or implementation-based.

## **Suggestion**

For strengthening women's property rights within the framework of the research topic "Uniform Civil Code and Women's Property Rights in India: A Doctrinal Analysis of Gender Equality under Religious Personal Laws," it is **suggested** that any move towards a Uniform Civil Code should prioritize constitutional principles of equality, dignity, and non-discrimination while respecting cultural diversity. Legal reforms must focus on harmonising inheritance and succession laws to ensure equal property rights for women across all religious communities. Judicial precedents promoting gender justice should be codified into clear statutory provisions to remove ambiguity in personal laws. Gradual and consultative implementation, involving legal experts, religious scholars, and civil society, is essential to avoid social resistance. Awareness programs should also be promoted to educate women about their legal property rights and remedies. Additionally, periodic review by law reform commissions and gender impact assessments should be introduced to ensure that reforms

achieve substantive equality rather than mere formal uniformity. Such balanced legal harmonisation can help transform the Uniform Civil Code into an instrument of real socio-economic empowerment for women in India.

## **Conclusion**

This research examined the relationship between the Uniform Civil Code (UCC) and women's property rights in India through a doctrinal analysis of gender equality under religious personal laws. The primary **aim** of the study was to evaluate whether a uniform legal framework could promote equal property rights for women beyond religious distinctions. The **objectives** included analysing constitutional principles of equality, examining provisions relating to inheritance and succession under various personal laws, and studying judicial interpretations that seek to balance religious freedom with gender justice. The **findings** reveal that although legislative reforms and judicial decisions have improved women's property rights in certain communities, significant disparities and inconsistencies still exist due to the plural personal law system. The study **suggests** that instead of imposing uniformity abruptly, a gradual and consultative approach toward a gender-just legal framework should be adopted, ensuring protection of cultural diversity while upholding constitutional equality. Legal awareness, progressive reforms within personal laws, and gender-sensitive interpretation by courts are also recommended to strengthen women's economic empowerment. The **future scope** of the research lies in comparative studies with other plural societies, empirical analysis of the social impact of property reforms, and examination of practical models for implementing a balanced and inclusive Uniform Civil Code in India.

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## CHAPTER 12

# COPARCENARY PROPERTY UNDER HINDU LAW: A CRITICAL ANALYSIS AFTER THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

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### **Abstract**

*The doctrine of coparcenary property is a fundamental concept in Hindu law governing the ownership and succession of joint family property. Traditionally, the Mitakshara system of coparcenary recognized only male members of the Hindu joint family as coparceners, thereby excluding daughters from equal rights in ancestral property. This position was significantly altered by the enactment of the Hindu Succession (Amendment) Act, 2005, which granted daughters the status of coparceners by birth, placing them on an equal footing with sons in matters of inheritance and property rights. The amendment marked a progressive step toward achieving gender equality and removing long-standing discriminatory practices within the framework of Hindu personal law. This article critically examines the doctrine of coparcenary property in the context of the post-amendment legal regime. It analyses the historical evolution of coparcenary rights, the legislative intent behind the 2005 amendment,*

*and the judicial interpretations that have shaped its implementation. Particular attention is given to landmark judicial pronouncements such as **Vineeta Sharma v. Rakesh Sharma**<sup>1</sup>, which clarified the scope and applicability of daughters' coparcenary rights. The study further explores the continuing challenges, ambiguities, and practical implications of the amendment in contemporary property disputes. By evaluating statutory provisions and judicial developments, the article aims to assess whether the amendment has effectively transformed the traditional doctrine of coparcenary into a more equitable legal framework consistent with constitutional principles of equality and justice.*

**Keywords:** Coparcenary Property, Hindu Joint Family, Daughter's Inheritance Rights, Hindu Succession (Amendment) Act, 2005, and Gender Equality in Property Rights.

## **Introduction**

The concept of coparcenary property forms a central pillar of the Hindu joint family system under traditional Hindu law. Under the Mitakshara school, coparcenary refers to a narrower body within a joint family consisting of members who acquire an interest in ancestral property by birth. Traditionally, this right was limited to male members such as the son, grandson, and great-grandson of the common ancestor. As a result, daughters were historically excluded from coparcenary rights and were denied equal participation in ancestral property. This exclusion reflected the patriarchal structure of the traditional Hindu family and created significant gender inequality in matters of inheritance and property ownership.

The legislative landscape of Hindu succession law underwent a major transformation with the enactment of the Hindu Succession Act, 1956, which sought to codify and reform the law relating to intestate succession among Hindus. Although the Act introduced several progressive changes, it retained the traditional Mitakshara coparcenary system that recognized only male coparceners. Consequently, daughters were not treated as coparceners by birth and did not enjoy equal rights in joint family property. This legal framework continued to attract criticism for perpetuating gender discrimination and for being inconsistent with the constitutional principles of equality and social justice. A significant step toward reforming this inequality came with the enactment of the Hindu Succession (Amendment) Act, 2005. The amendment brought a transformative change by recognizing daughters as coparceners by birth in the same manner as sons, thereby granting them equal rights and liabilities in coparcenary property. This legislative reform aimed to eliminate gender discrimination in property rights and to bring Hindu succession law in line with the constitutional mandate of equality. The amendment also strengthened the economic and social status of women within the family structure by ensuring their participation in ancestral property.

In the years following the amendment, the judiciary has played a crucial role in interpreting and clarifying the scope of daughters' coparcenary rights. Landmark judgments such as **Vineeta Sharma v. Rakesh Sharma** have affirmed that a daughter becomes a coparcener

by birth, irrespective of whether the father was alive on the date of the amendment. Such judicial pronouncements have significantly contributed to the evolution of the doctrine of coparcenary property in contemporary Hindu law. Against this backdrop, the present study critically examines the doctrine of coparcenary property in the post-amendment era. It seeks to analyse the historical development of coparcenary rights, the impact of the 2005 amendment, and the judicial interpretations that have shaped its practical application. The study also explores the continuing challenges and legal ambiguities surrounding the implementation of daughters' coparcenary rights in India, with the objective of evaluating whether the amendment has effectively achieved substantive gender equality in the realm of Hindu inheritance law.

### **Coparcenary**

Coparcenary is a narrower body within a Hindu Joint Family. Coparcenary is closely related to the **Mitakshara** and **Dayabhaga** schools of Hindu law, which provide the foundation for property rights among Hindus in India. It consisting of male members descended from a common ancestor up to four generations, who acquire an interest in joint family property by birth. Only coparceners have the right to demand partition and clam a definite share in ancestral property.

Under Mitakshra Hindu law, the following persons are considered coparceners- son, Daughter (after 2005 amendment Act), Grandson and Great grandson.

**Coparcenary Property:** Coparcenary property mainly consists of ancestral property and join family property inherited from ancestors. The ownership of such property is joint and fluctuating. The share of each coparcener changes with the birth or death of a member.

### **Key Features of the Hindu Succession (Amendment) Act, 2005**

The 2005 Amendment introduced several landmark changes to the 1956 Act. The most important reforms included granting daughters equal rights as sons in coparcenary property and removing discriminatory provisions.

## ***Equal Rights of Daughters in Coparcenary***

**Grant of Coparcenary Rights:** Section 6(1) provides: “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”. This provision fundamentally altered the nature of daughters’ rights from mere succession rights to birth rights as coparceners. The phrase “by birth become a coparcener” is crucial, as it establishes that coparcenary rights accrue automatically upon birth, not upon the commencement of the Act or any subsequent event.

**Nature of Property Rights:** Section 6(2) addresses the incidents of ownership: “Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, as coparcenary property”.

**Succession Upon Death:** Section 6(3) governs the devolution of coparcenary property upon death: “Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship”.

This subsection effectively abolishes the survivorship principle for coparcenary property, ensuring that daughters inherit through succession rather than survivorship.

**Amendment to the Schedule:** The 2005 Amendment also modified the Schedule to include great-grandchildren through female descendants in Class I. Specifically, entries in Class II such as “son of a pre-deceased daughter” and “daughter of a pre-deceased daughter” were elevated to Class I status, thereby granting them enhanced inheritance rights.

**Abolition of Pious Obligation:** Section 6(4) addresses the traditional concept of pious obligation under Hindu law: “After the commencement of the Hindu Succession (Amendment) Act, 2005, no

court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law". This provision modernizes Hindu law by abolishing the archaic concept of pious obligation, which imposed unlimited liability on male descendants for ancestral debts.

The amendment modified **Section 6** of the Act, which earlier excluded daughters from being coparceners. After the amendment:

- Daughters became **coparceners by birth**, just like sons.
- They now have the same rights in the property as sons, including the right to demand partition.
- They also bear the same liabilities as sons in respect of debts and obligations of the family.

This provision finally placed daughters on an equal footing with sons in terms of joint family property.

**Deletion of Section 23:** Earlier, **Section 23** prevented a female heir from demanding partition of a dwelling house until the male heirs chose to do so. This provision treated women as secondary members of the household and denied them effective property rights. The amendment deleted Section 23, allowing female heirs to seek partition equally with male heirs.

**Deletion of Section 24:** **Section 24** disqualified certain widows (such as those of predeceased sons or brothers) from inheritance if they remarried. This was highly discriminatory because it penalized women for remarrying, while men faced no such restriction. The amendment deleted this section, ensuring that widows could inherit irrespective of their marital status.

**Rights in Agricultural Property:** The amendment also clarified that daughters have equal rights in agricultural land. Previously, agricultural land was often excluded from inheritance rights under state laws, but the 2005 reform emphasized equality in all forms of property.

### ***Judicial Interpretation of the Amendment***

Even after the Hindu Succession (Amendment) Act, 2005 came into force, there was confusion about its scope and applicability. The law clearly stated that daughters would have the same rights as sons in

coparcenary property. However, a major question arose: **Would these rights apply only if the father was alive on the date of the amendment (9th September 2005), or would daughters always be coparceners by birth regardless of when the father died?** Courts delivered different interpretations, which led to inconsistency until the Supreme Court settled the issue.

### **Prakash v. Phulavati (2015)**

In this case, the Supreme Court took the view that the amendment was **prospective in nature**. The Court held that for a daughter to claim coparcenary rights, both the father (coparcener) and the daughter had to be alive on the date of the amendment, i.e., 9th September 2005. If the father had died before that date, the daughter could not claim rights in the coparcenary property. This judgment limited the scope of the amendment and disappointed many who believed daughters were coparceners by birth.

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

In this case, the Supreme Court appeared to deviate from its earlier position. It granted daughters coparcenary rights even though the father had died before 2005. This created confusion because it contradicted the principle laid down in *Prakash v. Phulavati*. Many legal scholars and practitioners pointed out the inconsistency between the two judgments.

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

A three-judge bench of the Supreme Court resolved the ongoing confusion in this landmark judgment. The Court held that **a daughter's right as a coparcener is by birth, just like that of a son**. It clarified that her rights are not dependent on whether the father was alive on the date of the amendment. This interpretation restored the true spirit of the 2005 Amendment and ensured that daughters' rights in ancestral property are absolute and independent. The Court also emphasized that the amendment was intended to correct historical injustice and uphold the constitutional principles of equality. Therefore, daughters could not be denied their share in property simply because the father had died before 2005.

**Other Supporting Judgments: Phulavati v. Prakash (Karnataka HC, 2010)** – Even before the Supreme Court’s decisions, some High Courts had tried to interpret the amendment, but their rulings often clashed, further deepening the confusion. **Mangammal v. T.B. Raju (2018)** – The Court reiterated the principle of gender equality in inheritance but leaned on the prospective interpretation. Finally, *Vineeta Sharma* settled the law once and for all, overruling conflicting judgments and giving daughters full coparcenary rights. The judicial journey of the 2005 Amendment reflects how important courts are in clarifying laws. The amendment granted equal rights on paper, but without judicial interpretation, the scope of those rights remained uncertain. With *Vineeta Sharma*, the Supreme Court ensured:

### **Impact of the Amendment on Women’s Rights**

The 2005 Amendment has had a transformative impact on women’s legal status in matters of inheritance. For the first time, daughters are recognized as equal stakeholders in family property. This reform has empowered women economically, given them greater bargaining power within families, and advanced the cause of gender justice.

- **Economic Empowerment:** Equal property rights give women financial security and independence.
- **Social Change:** The amendment challenges patriarchal traditions and promotes equality within families.
- **Legal Uniformity:** The amendment removed inconsistencies between states and created a uniform law across India.

However, despite these positive impacts, practical challenges remain. Many women, particularly in rural areas, are still unaware of their rights or face pressure from families to give up their share. Social stigma and lack of awareness often prevent women from claiming property, even when the law supports them.

### **Criticism of the Amendment**

While the amendment was a major step forward, it is not free from criticism. Some scholars argue that although the law changed on paper, social practices remain largely patriarchal. Others point out that the amendment applies only to Hindus, Buddhists, Jains, and Sikhs,

leaving women of other religions governed by different personal laws. Additionally, the distinction between ancestral property and self-acquired property continues to create confusion. While daughters now have rights in ancestral property, they may still face hurdles in asserting their claims in practice. Another criticism is the lack of awareness campaigns to educate women about their rights. Without awareness and enforcement, legal reforms may not achieve their full potential.

### **Comparison with Other Personal Laws**

The Hindu Succession (Amendment) Act, 2005 stands out as a progressive reform compared to personal laws of other religions in India. For instance, Muslim law still follows separate inheritance rules based on Sharia principles, where women typically receive half the share of men. Christian and Parsi succession laws are somewhat more gender-neutral, but they too have faced criticism for certain biases. The Hindu reform demonstrates how personal laws can evolve to meet the demands of equality and justice. It also highlights the need for broader reforms across all religions, possibly moving towards a Uniform Civil Code (UCC) as envisioned by the Constitution.

### **Importance of the Amendment in Constitutional Context**

The amendment is significant because it brings Hindu succession law in line with constitutional values. Article 14 guarantees equality before the law, and Article 15 prohibits discrimination on grounds of sex. By granting daughters equal rights in ancestral property, the amendment ensures that personal law does not violate these fundamental rights. It also fulfills the spirit of Directive Principles of State Policy, particularly Article 39, which directs the State to ensure that men and women have equal rights to adequate means of livelihood and property. In this way, the amendment strengthens both fundamental rights and directive principles.

### **Challenges in Implementation**

Despite the legal reform, implementation remains a challenge. Many families, especially in rural areas, resist giving property shares to daughters. Women are often pressured to sign relinquishment deeds,

surrendering their rights in favor of brothers. Lack of legal awareness and the high cost of litigation further discourage women from asserting their claims. Courts also face difficulties due to complex family structures, disputes over ancestral property, and conflicting claims. While the law is clear after the Vineeta Sharma judgment, practical enforcement requires strong legal support systems, legal aid, and awareness programs.

## **Conclusion**

The Hindu Succession (Amendment) Act, 2005 is a milestone in the journey towards gender equality in India. By granting daughters equal rights as sons in coparcenary property, it corrected centuries of injustice and gave women a strong legal foundation for economic independence. The amendment deleted discriminatory provisions, created uniformity across states, and aligned personal law with constitutional principles. Judicial interpretation, especially the landmark judgment in **Vineeta Sharma v. Rakesh Sharma** (2020), has further reinforced the rights of daughters as coparceners by birth. While challenges remain in implementation and awareness, the amendment represents a significant step in promoting equality, justice, and fairness in Indian society.

It is not merely a change in law but a social reform that strengthens women's position in families and contributes to a more balanced and equal society. The Hindu Succession (Amendment) Act, 2005 will always be remembered as a turning point in India's legal and social history.

## CHAPTER 13

### EMPOWERMENT THROUGH PROPERTY: SOCIO-LEGAL EVOLUTION OF WOMEN'S PROPERTY RIGHTS IN INDIA

#### *Matrimonial Property Rights: The Case for Shared Household*

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#### **Abstract**

*This paper explores the socio-legal development of women's property rights in India, with special focus on matrimonial property and the notion of the shared household. Although legislative changes, particularly the Hindu Succession (Amendment) Act, 2005, have enhanced women's inheritance rights in Indian law. Ownership in marriage is still primarily governed by title, without regard to the economic worth of unpaid domestic work. By way of a doctrinal analysis of constitutional provisions, succession law amendments, and judicial*

*constructions under the Protection of Women from Domestic Violence Act, 2005, this paper seeks to underscore the limitations of residence-based rights that do not vest proprietary rights. This paper contends that marriage should be recognized as an economic partnership in law and that shared household rights must develop into enforceable proprietary rights. This is necessary to promote substantive equality, secure women's economic autonomy, and convert property ownership into a tool of empowerment*

## **Introduction**

Ownership of property is an important factor in assessing the economic independence and bargaining power of an individual within the family and social setup. In most cultures, ownership of property is a symbol of security, freedom, and decision-making power. Historically, women all over the world, especially in patriarchal societies, have been denied equal rights to property<sup>1</sup>. This has further accentuated gender inequality, as women are made economically subservient to male relatives in the family. The legal evolution of women's rights to property in India has been a gradual process from the traditional religious laws to the constitutional changes that seek to ensure gender equality. Initially, the legal system was heavily influenced by patriarchal traditions that were imbedded in personal laws. Such laws curbed women's rights to independently own, inherit, and dispose of property.

However, the scenario is slowly changing. However, despite these developments in inheritance rights, the legal regime surrounding matrimonial property is still remarkably underdeveloped. The Indian legal system does not recognize marriage as an economic partnership where both partners have joint ownership of property acquired during the subsistence of the marriage. Rather, ownership of property is largely based on title, where the person in whose name the property is held is considered the owner. This regime is particularly prejudicial to women, especially homemakers who contribute to the family through their unpaid domestic work, child-rearing, and emotional support. Even though these contributions are crucial for the economic viability of the family, they are hardly recognized by the law as conferring any proprietary rights. The Protection of Women from Domestic Violence Act, 2005 brought into the legal regime the notion of "shared household,"<sup>1</sup> which conferred on women the right to reside in the shared household property irrespective of ownership. However, the right to reside in the shared household property does not confer any ownership rights. Therefore, women are still vulnerable to economic insecurity in the event of divorce, separation, or desertion. This paper contends that true empowerment must necessarily involve recognition of matrimonial property as jointly owned.

## **Historical Bases for Women's Property Rights**

### **Classical Hindu Law and Limited Estates**

In classical Hindu law, the structure of the family was strongly patriarchal. The property rights of women were very restricted and, in many cases, were placed under the control of men. Among the only properties that could be considered as belonging to women were *Stidhan*, which consisted of gifts given to the woman at the time of marriage, from relatives, or during special occasions. In theory, *Stidhan* was the property of the woman alone.<sup>1</sup> However, the control of such properties was, in many cases, in the hands of the husband or other male relatives. The woman did not have the social or legal status necessary to exercise control over her own property. Another important aspect of classical Hindu law was the idea of the "Hindu woman's estate." The widow was allowed to inherit property from her husband, but such inheritance was of a limited kind. The widow could enjoy the property during her lifetime but could not sell, transfer, or otherwise dispose of it as she wished. At her death, the property went to the heirs of the husband, not to her own heirs. This limited estate ensured that the property stayed within the male line. This served to perpetuate the economic dependence of women and ensured that no wealth accumulated in the hands of women. These limitations were a reflection of the societal perception of women as dependents and not as independent persons. This served to make property law a tool of patriarchal domination.

### **Statutory Reform and Absolute Ownership**

The status of women gradually changed for the better after India attained independence. The new Constitution was based on the ideals of equality, justice, and social transformation. The lawmakers realized the need for reforming personal laws to make them conform to the new Constitution. The Hindu Succession Act, 1956 was a significant milestone in the reform process. Section 14 of the Hindu Succession Act, 1956 marked a significant reform by converting a Hindu women limited estate into full ownership, there by granting her complete control over property possessed by her<sup>1</sup>. This implied that any property owned by a Hindu woman, whether acquired prior to or after the enactment of the Act, would belong to her entirely and could be

disposed of as she wished. This was a radical measure in that it recognized women as independent owners who could manage property without the intervention of men. But the Act was not flawless either. Under the Mitakshara school of Hindu joint family property, the right to coparcenary property was denied to women. Sons inherited property by birth, while daughters did not. This disparity was remedied after several decades by the Hindu Succession (Amendment) Act, 2005. The amendment gave daughters equal coparcenary rights to ancestral property, making them equal to sons. The Supreme Court in the case of Vineeta Sharma v. Rakesh Sharma made it clear that these rights are by birth and are not dependent on whether the father was alive at the time when the amendment came into effect. This further strengthened gender equality in inheritance rights and cleared any doubts that may have existed. Inheritance rights have undergone a radical transformation, but matrimonial property rights have not undergone any such change.

### **Constitutional Mandate and Substantive Equality**

The Indian Constitution provides a robust normative framework for gender equality. The right to equality is guaranteed under Article 14 of the Constitution of India<sup>1</sup>. Article 15(3) of the Constitution gives a further mandate to the State to make special laws for women and children with the aim of overcoming past disadvantages. The Directive Principles of State Policy also provide for social and economic justice. The Directive Principles of State Policy urge the State to overcome inequalities and ensure that men and women have sufficient means of livelihood. The right to property is no longer a fundamental right after the Forty Fourth Constitutional Amendment. However, the right to property is still guaranteed as a constitutional legal right under Article 300A of the Indian Constitution.

The judicial interpretation has widened the scope of Article 21 of the right to life and liberty to include dignity, livelihood, and autonomy<sup>1</sup>. Economic independence is a crucial part of dignity, especially for women who are structurally discriminated against in the job market and in the ownership of property. Substantive equality is more than mere equality in treatment. It involves the recognition of existing social inequalities and the implementation of legal solutions

to remedy them. In marriage, women's contributions may include unpaid domestic work such as the management of the household, child-rearing, psychological support, and taking care of senior members of the family. This allows the breadwinner to seek economic opportunities. The title-based system of property ownership disregards these contributions and is structurally discriminatory. Hence, there is a need to change matrimonial property law to bring it in line with constitutional obligations.

**Matrimonial Property Under Indian Law:** The Doctrinal Gap  
Contrary to the approach adopted by a number of contemporary jurisdictions, India lacks a full-fledged matrimonial property system. The major matrimonial laws such as the Hindu Marriage Act, 1955 largely concentrate on divorce, maintenance, and alimony, and not on the division of marital property<sup>1</sup>. Section 25 of the Hindu Marriage Act provides for the grant of permanent alimony and maintenance to one of the spouses after divorce. Although this provision provides some economic security, it does not confer any ownership rights in property acquired during the subsistence of marriage. Consequently, property division in India is based largely on title<sup>1</sup>. If a house, a plot of land, or an investment is in the husband's name, it becomes his property irrespective of the wife's contribution.

The issues are:

- Housewives do not have automatic proprietary rights.
- Women can leave their husbands without any right to the accumulated property.
- The courts focus more on maintenance awards rather than property division.
- There are economic differences between the spouses, which remain even after the divorce.

The amount of maintenance is often low and may stop upon remarriage or other reasons. Maintenance awards do not provide compensation for the sense of security that comes with property ownership.

In addition, maintenance cases can be long and uncertain. Many women cannot afford to go to court for a long period of time. Therefore, the current system does not treat marriage as an economic partnership.

## **Shared Household Jurisprudence**

One of the major milestones in the residential rights of women was achieved through the passing of the Protection of Women from Domestic Violence Act, 2005. The Act recognizes the notion of “shared household” and the fact that women are often left homeless or without a residence during domestic disputes. Under Section 17 of the Act, every woman in a domestic relationship is given the right to reside in the shared household, irrespective of whether she has legal title to the property or not<sup>1</sup>. At first, the Supreme Court gave a narrow interpretation to the right to reside in a shared household in the case of *S.R. Batra v. Taruna Batra*. The Court held that a shared household is only with respect to property owned or rented by the husband. However, the decision was widely criticized by scholars and activists who felt that it diluted the very purpose of the Act. A more progressive approach was taken in the case of *Satish Chander Ahuja v. Sneha Ahuja*<sup>1</sup>. The Court struck down the earlier decision and held that a shared household comprises of any household where the aggrieved woman lived in a domestic relationship. This decision widened the rights of residence and brought the law in line with the protective provisions of the Act. However, the decision still did not confer proprietary rights. Women can reside in the house but do not automatically acquire ownership or any share in its value. Therefore, the protection of residence continues to be temporary and remedial in nature.

## **Recognition of Domestic Labour and Economic Contribution**

Indian courts have recently started recognizing the economic contribution of domestic labour. The judicial remarks highlight the importance of homemakers in sustaining the family and contributing to the accumulation of wealth. Domestic work encompasses taking care of children, cooking, emotional support, and managing the household. These tasks demand time, effort, and expertise similar to those in formal employment. However, despite the recognition, the legal system has not been able to fully recognize these contributions in terms of property rights. The judiciary sometimes takes into account the contribution of domestic labour while awarding maintenance or compensation. However, there is no standardized

approach to ascertaining the contribution. The lack of legislative guidance leads to judicial inconsistencies. While some courts take a progressive approach, others strictly follow the principle of formal property rights.

### **The Rationale for a Matrimonial Property Statute**

In light of the weaknesses in the current system, there is a compelling rationale for the enactment of a comprehensive matrimonial property statute in India. A matrimonial property statute should embrace the following important tenets.

### **Marriage as an Economic Partnership**

Marriage should be recognized as an economic partnership where both partners make their contribution to the household economy.

### **Presumption of Joint Ownership**

All property acquired during the subsistence of marriage should be presumed to be jointly owned unless the contrary is proved.

### **Recognition of Non-Monetary Contributions**

Household work, child care, and other caregiving activities should be recognized as contributions that create property rights.

### **Uniformity**

A secular law would apply uniformly and equitably in all personal laws. Protection Against Dispossession Women should not be forcibly evicted or deprived of property as a consequence of dissolution of marriage. These changes would empower women in marriage and enhance their economic autonomy.

### **Doctrinal Basis for the Recognition of Proprietary Shared Household Rights**

The recognition of proprietary rights over shared household properties will remedy a significant lacuna in Indian law. At present, the Protection of Women from Domestic Violence Act offers protection against eviction but not ownership. The recognition of proprietary rights will yield several advantages. First, it will ensure

long-term economic security for women who may have abandoned their career ambitions for domestic commitments. Second, it will ensure just division of properties jointly accumulated during the marriage. Third, it will prevent the deliberate registration of properties in the sole name of one spouse. Fourth, it will enhance the bargaining position of women in relationships. It is necessary to enact legislation to ensure that these rights are institutionalized.

## **Conclusion**

The story of women's property rights in India is one of major strides, especially in the area of inheritance. But the story of matrimonial property rights is one of incompleteness. While the Hindu Succession (Amendment) Act, 2005 brought equality in ancestral property, and judicial constructions expanded residential security under domestic violence legislation, full equality in property within marriage remains an unfulfilled promise. Unless changed, the current law will continue to leave women economically vulnerable after divorce or separation. The next step in the evolution of women's property rights in India would be a constitutionalized matrimonial property system. Declaring marriage an economic partnership and providing women equal rights in joint household property would be a step towards substantive equality, preventing the feminization of poverty, and promoting dignity. Economic freedom and empowerment are two sides of the same coin. Property ownership brings security, bargaining power, and freedom of choice. Empowerment of women in India through property ownership must move beyond inheritance rights to equal participation in property created during marriage. The recognition of shared household property rights as proprietary rights would bring constitutional aspirations within the realm of reality.

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## CHAPTER 14

# TRANSFORMATION OF COPARCENARY RIGHTS IN HINDU LAW: A CRITICAL ANALYSIS OF THE PRE- AND POST-2005 LEGAL FRAMEWORK

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### **Abstract**

*The doctrine of coparcenary has historically governed the distribution of ancestral property within the Hindu joint family system. Traditionally, the coparcenary structure recognised only male members as coparceners, thereby excluding daughters from acquiring a birthright in ancestral property. This gender-based distinction was reflected in the provisions of the Hindu Succession Act, 1956. In order to address this inequality and promote gender justice, the legislature enacted the Hindu Succession (Amendment) Act, 2005, which granted daughters the status of coparceners by birth and placed them on an equal footing with sons in matters relating to ancestral property. This study adopts a*

*doctrinal research approach based on secondary sources such as statutes, judicial decisions, and scholarly literature. The paper analyses the legal framework governing coparcenary rights before and after the 2005 amendment and evaluates the transformation brought about in women's property rights. The study concludes that the amendment represents a significant step toward achieving gender equality in inheritance laws, although effective realization of these rights depends on increased awareness and consistent judicial interpretation.*

**Keywords:** *Coparcenary, Hindu Succession Law, Ancestral Property, Gender Equality, Inheritance Rights, Hindu Joint Family*

## **Introduction**

In Hindu personal law, the idea of coparcenary is important, especially when it comes to issues of inheritance and ancestral property in joint families. The Mitakshara school of Hindu law, which only acknowledged male members of a joint Hindu family as coparceners, traditionally controlled the doctrine of coparcenary. In this system, sons were born with a claim to ancestral property, but daughters were not. The patriarchal structure ingrained in traditional inheritance laws, which restricted women's property rights and produced gender differences in the distribution of family assets, was reflected in this exclusion.

The Hindu Succession Act of 1956, which preserved the male-centric nature of coparcenary rights while codifying various aspects of inheritance among Hindus, largely controlled the legal situation. Significant legal changes were eventually brought about by worries about gender inequality and the need to advance women's equal property rights. The legislature responded to these worries by passing the Hindu Succession (Amendment) Act, 2005, which significantly changed the law pertaining to coparcenary rights. The amendment put daughters on an equal footing with sons in matters pertaining to ancestral property by granting them the status of coparceners by birth.

The legal situation was largely governed by the Hindu Succession Act of 1956, which codified various aspects of inheritance among Hindus while maintaining the male-centric nature of coparcenary rights. Concerns about gender inequality and the need to promote women's equal property rights ultimately led to significant legal changes. In response to these concerns, the legislature passed the Hindu Succession (Amendment) Act, 2005, which substantially altered the coparcenary rights legislation. By giving daughters the status of coparceners by birth, the amendment placed them on an equal footing with sons in matters concerning ancestral property.

## **Research Objective**

The study looks at how coparcenary rights changed under Hindu law with the 2005 legal changes. The main goals of the study are:

- To examine the concept and structure of coparcenary within the Hindu joint family system

- To analyse the legal position of coparcenary rights prior to the amendment under the Hindu Succession Act, 1956.
- To Evaluate the changes introduced through the Hindu Succession (Amendment) Act, 2005 with respect to daughters' coparcenary rights.
- To critically compare the pre-2005 and post-2005 legal framework governing ancestral property rights.

### **Research Methodology**

The present study adopts a **doctrinal research methodology** based on secondary sources of data. The research primarily relies on the analysis of statutory provisions, judicial decisions, and scholarly writings relating to coparcenary rights under Hindu law. Relevant provisions of the Hindu Succession Act, 1956 and the amendments introduced by the Hindu Succession (Amendment) Act, 2005 have been examined in detail. In addition, important judicial interpretations, including landmark decisions such as *Vineeta Sharma v. Rakesh Sharma*, have been analysed to understand the evolving legal position of daughters in coparcenary property. Secondary materials such as books, journal articles, and legal commentaries have also been referred to in order to provide a comprehensive understanding of the subject.

### **Concept of Coparcenary Under Hindu Law**

A key component of the traditional Hindu joint family system is the doctrine of coparcenary. It describes a smaller group of members of a joint Hindu family who are born with a claim to the ancestral property. Male family members who shared a common ancestor were considered coparceners under the Mitakshara school of Hindu law. A joint interest in the ancestral property was traditionally held by the father, son, grandson and great-grandson, who made up the coparcenary. Each coparcener was entitled to claim his portion of the property and to demand partition.

The Hindu Succession Act of 1956 established the legal framework for Hindu inheritance and succession. The Act preserved the traditional idea of coparcenary under the Mitakshara system, despite bringing uniformity to many aspects of Hindu succession law.

Daughters were thus barred from obtaining a birthright in ancestral property and only male members were acknowledged as coparceners. Instead, daughters were regarded as family members who could only inherit property in specific situations, typically following the father's death.

The patriarchal nature of Hindu inheritance laws, which gave male family members the majority of property rights, was reflected in this traditional structure. Daughters' exclusion from coparcenary rights was criticized over time on the grounds of social injustice and gender inequality. The denial of equal property rights to women, according to legal scholars and reformers, is incompatible with the equality and non-discrimination principles of the constitution.

The Hindu Succession (Amendment) Act, 2005, which gave daughters equal rights as coparceners in ancestral property, significantly changed the concept of coparcenary as a result of these concerns.

### **Coparcenary Right Before the 2005 Amendment**

Before the 2005 amendment, the doctrine of coparcenary under Hindu law was primarily governed by the Mitakshara system. This system recognized only male members of a Hindu joint family as coparceners. Under this traditional setup, the right to ancestral property came by birth and was limited to male descendants such as sons, grandsons, and great-grandsons. These members shared a joint interest in the family property and had the legal right to ask for a partition at any time.

The laws concerning succession and inheritance among Hindus were set out in the Hindu Succession Act of 1956. While the Act sought to modernize certain parts of Hindu succession law, it still kept the traditional concept of coparcenary from the Mitakshara school. As a result, daughters were not recognized as coparceners and did not have any birthright to ancestral property. Instead, they were entitled to a limited share in specific situations, like inheriting after their father's death. This legal position reflected the patriarchal nature of the joint family system, where property rights were mainly in the hands of male members. Daughters were considered part of the family, but they were excluded from the coparcenary structure. They

could not demand a division of property or control ancestral assets. This exclusion led to significant gender gaps in property ownership and economic security. Over time, the unfair nature of these laws drew strong criticism from legal scholars, social reformers, and women's rights advocates. Many argued that denying daughters equal rights to ancestral property went against the values of gender equality and social justice. As a result, the need for reform became clear, leading to the passing of the Hindu Succession (Amendment) Act, 2005. This marked an important change in the legal framework surrounding coparcenary rights.

### **Coparcenary Right after the 2005 Amendment**

A significant change in Hindu succession law occurred with the Hindu Succession (Amendment) Act, 2005. The amendment aimed to end gender discrimination regarding ancestral property and ensure equal rights for daughters in the Hindu joint family system. Before this amendment, daughters were not seen as coparceners under the Mitakshara system, meaning they did not have a birthright to ancestral property.

The 2005 amendment made a major change by granting daughters coparcener status by birth, the same as sons. Daughters were entitled to the same rights and responsibilities as male coparceners regarding ancestral property. As coparceners, daughters could claim a share in the family property, request a partition, and dispose of their share through a will. This amendment placed daughters on equal footing with sons in the coparcenary structure.

Another key implication of the amendment was that daughters could become the karta of a Hindu joint family if they were the eldest coparcener. This was a progressive step toward improving the legal and economic standing of women in the family. The judiciary further clarified the amendment's scope and meaning in several landmark rulings. One of the most important cases was *Vineeta Sharma v. Rakesh Sharma*, where the Supreme Court ruled that a daughter becomes a coparcener by birth, regardless of whether the father was alive when the amendment was made in 2005. This judgment reinforced the amendment's purpose and bolstered the recognition of daughters' equal rights to ancestral property. Thus, the 2005

amendment marked a crucial step toward achieving gender equality in inheritance laws and transformed the traditional concept of coparcenary under Hindu law.

### **Comparative Analysis of Coparcenary Rights: Pre-2005 and Post-2005 Legal Framework**

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## Basic Comparison on pre 2005 Position and Post 2005 Position

<b>Aspect</b>	<b>Pre-2005 Position</b>	<b>Post-2005 Position</b>
Coparceners	Only male members	Male and female members
Rights of daughters	No birthright in ancestral property	Equal rights as sons
Right to partition	Not available to daughters	Daughters can demand partition
Legal objective	Patriarchal structure	Gender equality

### **Findings and Discussion**

The Hindu Succession Act of 1956 used to say that only male members of a family could own property. This meant that daughters did not have any rights to this property when they were born. The Hindu Succession Act of 1956 was like a rule book that said men in the family got to control the property. Daughters were not part of this group. Could not get a share of the property just because they were born into the family. This made it hard for daughters to have any power or control over money and property in their family.

Then the Hindu Succession Amendment Act of 2005 came along. Changed things. This new law said that daughters are part of the family property group from the moment they are born. The Hindu Succession Amendment Act of 2005 was a deal because it helped make things more fair for daughters. Now daughters have the rights as sons when it comes to getting a share of the family property. The Hindu Succession Amendment Act of 2005 also said that daughters can ask for their share of the property to be divided up.

Courts have also helped make sure this new law is followed. One important court case was *Vineeta Sharma v. Rakesh Sharma*. The court said that daughters get their rights to the family property just because they were born into the family. The court also said that it does not matter if the father was alive when the new law was passed. The *Vineeta Sharma v. Rakesh Sharma* case helped make sure the Hindu Succession Amendment Act of 2005 is applied in a way that's fair to daughters. The Hindu Succession Amendment Act of 2005 and the

Vineeta Sharma v. Rakesh Sharma case are important because they help make sure daughters have the rights, as sons when it comes to family property.

The law has changed for the better. There are still some problems that daughters face when it comes to getting what they deserve from their family property. Daughters may not know they have these rights or they might be afraid to speak up because of what their family will think. So even though the new law helps daughters people need to know more about it and accept that daughters should have the rights, as sons when it comes to property that has been passed down from their family. Daughters need to be able to get their share of the family property without being stopped by what others think.

### **Conclusion**

The concept of coparcenary has been really important in deciding how ancestral property is divided in joint families. For a time the way coparcenary worked under the Hindu Succession Act 1956 was based on the idea that men were in charge and only male family members were considered coparceners who had a right to ancestral property from birth. This meant that daughters were not considered coparceners and could not own property, which was not fair to them. The Hindu Succession Amendment Act, 2005 was a change that helped make things more equal. It said that daughters are also coparceners from birth and have the rights as sons. This change was really good for women's property rights. Helped move things towards being more fair for everyone. Court decisions, like the one in Vineeta Sharma v. Rakesh Sharma have also helped make it clear what the amendment means and have reinforced the idea that daughters have rights to ancestral property.

Even though the amendment has made some changes it will take time for people to understand and accept these new rights. The courts also need to enforce these rights. Overall the way coparcenary rights are changing shows that we are moving away from a system where men are in charge of inheriting property and towards a system that is more fair and equal for everyone especially when it comes to coparcenary and property rights, for women.

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## CHAPTER 15

# THE CONSTITUTIONAL VALIDITY OF MUSLIM PERSONAL LAW ON WOMEN'S PROPERTY RIGHTS IN INDIA: A JURISPRUDENTIAL ANALYSIS

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### **Abstract**

*This paper analyzes the constitutional validity of Muslim Personal Law relating to women's property rights in India, with particular reference to the Muslim Personal Law (Shariat) Application Act, 1937. It examines the gender-based disparities in inheritance, especially the rule granting male heirs a larger share than female heirs, and evaluates their compatibility with fundamental rights under Articles 14, 15, and 21*

*of the Constitution. The study explores doctrinal differences within Islamic inheritance law, key judicial decisions, and recent developments such as challenges following the Uttarakhand Uniform Civil Code. It highlights the tension between religious freedom and gender equality, as well as concerns regarding a potential legal vacuum if existing laws are invalidated. This paper concludes by emphasizing the need for balanced legal reforms to ensure gender justice while respecting religious autonomy.*

### **Introduction**

The legal framework governing the property rights of Muslim women in India represents one of the most complex intersections of religious doctrine, colonial-era legislation, and contemporary constitutional aspirations. At the center of this discourse is the Muslim Personal Law

(Shariat) Application Act, 1937, a statute that mandates the application of Islamic Shariat to the Muslim community in matters of marriage, divorce, and succession. While this Act was originally conceived as a protective measure to shield Muslim women from exclusionary local customs, it has increasingly become the subject of intense judicial scrutiny. Historically, patriarchal structures entrenched in laws have limited women's inheritance rights. While reforms such as the Hindu Succession (Amendment) Act, 2005 sought to remove gender bias by making daughters coparceners, implementing the laws and awareness of the same remain uneven.

A prevalent image that arises in discussions over the women's rights is that of an uneducated, veiled, subjugated, and uninformed woman, accompanied by several children. A woman devoid of agency, subjugated to the caprices of her father, brother, spouse, or any other male relative. This reductionism and generalization primarily stem from Western conceptions of modernity and empowerment: a woman clad in a burqa is presumed to be oppressed and uninformed, regarded as property by her male counterparts, devoid of individuality or autonomy, in contrast to a modernly attired woman who is expected to be educated and cognizant of her rights and freedoms.

Muslim women were definitely not meant to play a docile role in society. Rather, Islam established equality and dignity for both men and women. And, the personal laws, practices are against the very notions, injunctions and principles of Islamic law. Therefore, most Islamic feminists argue that women's rights under Islam cannot be made parallel to the Western movement for women's rights. "Many Muslim women devoted to their faith would not attain freedom if international organizations or autocratic regimes impose a secular paradigm onto them externally or hierarchically."

The current legal debate focuses on whether the gender-based distributive schemes found in Shariat, particularly the principle that a male heir receives double the share of a female heir of the same degree, can be reconciled with the equality code enshrined in Articles 14, 15, and 21 of the Indian Constitution.

## **Objectives**

- To examine the constitutional validity of Muslim Personal Law concerning women's property rights in India.
- To analyze the compatibility of Muslim Personal Law with fundamental rights, particularly Articles 14, 15, and 21 of the Constitution of India.
- To evaluate the extent of property rights granted to Muslim women, including inheritance, maintenance, and ownership.
- To conduct a jurisprudential analysis of key judicial decisions relating to Muslim Personal Law and women's rights.
- To suggest possible legal reforms to ensure better protection of Muslim women's property rights.

## **The Historical and Statutory Genesis of the 1937 Shariat Act – Pre Constitutional Laws**

The enactment of the Muslim Personal Law (Shariat) Application Act 1937 was a response to the diverse and often discriminatory customary practices that governed Indian Muslims during the British Raj. Before 1937, colonial courts applied a hybrid system known as Anglo-Mohammedan law, but they frequently allowed local customs to override scriptural mandates. In many regions, such as the Punjab or among the Mappilas of Kerala, these customs followed agnatic or matrilineal patterns that entirely excluded daughters and widows from inheriting immovable property. The 1937 Act was promoted by the Jamiat Ulema-e-Hind and other Muslim organizations as a means to restore the "Quranic shares" to women, providing them with a statutory floor that customs could no longer undermine.

Section 2 of the 1937 Act serves as the primary operative provision, declaring that "notwithstanding any custom or usage to the contrary," the rule of decision in questions regarding intestate succession, special property of females, marriage, and dower shall be Muslim Personal Law. However, the Act famously carved out an exception for agricultural land, a move intended to preserve the landed interests of the feudal elite in rural India. This exclusion meant that in the absence of state-level amendments—such as those later passed in Kerala—rural Muslim women remained largely excluded from the

inheritance of family farms, which constituted the bulk of ancestral wealth.

The scope and legal effect under the 1937 Act is that

- a) It extends the Act to the whole of India
- b) It mandates Shariat as the rule of decision for marriage, divorce, maintenance, dower and intestate succession.
- c) It explicitly excludes agricultural land (save for state amendments) and testamentary succession.
- d) It allows individuals to declare their desire to be governed by Shariat in matters of gifts, trusts, and non-charitable waqfs.
- e) It nullifies previous colonial acts like the Punjab Laws Act, 1872, insofar as they prioritized custom over Shariat.

## **Doctrinal Foundations of Customary Law of Inheritance**

### **The Sunni and Shia Inheritance Frameworks**

#### **A. Muslim Personal Law**

Equal Recognition, Unequal Shares Women's right to inheritance under Muslim law, which is governed by the Muslim Personal Law (Shariat) Application Act, 1937. However, the Quranic principle generally grants women half the share of similarly placed male heirs (e.g., brothers receive double shares of the sisters)

The Muslim law of inheritance, known as *Fara'id*, is built upon a system of fixed shares for specific relatives identified in the Quran, known as "Sharers," followed by a secondary distribution to "Residuaries". While both the Sunni and Shia schools derive their authority from the same primary texts, their interpretive methodologies result in significantly different outcomes for female heirs.

This disparity is defended on the grounds of men's financial responsibility for the family, but critics argue it contravenes Articles 14 and 15 of the Constitution. Muslim women have more freedom over property they acquire on their own because there is no joint family concept, unlike Hindu law. However, social pressures often force them to give up their shares.

## **Inheritance of Women**

Quran Islam recognized her human attributes in any circumstance, whether as a wife, mother, sister, or daughter. She inherits some portion of the deceased relative's estate, a portion determined by her degree of kinship to the deceased. This is her rightful share, which cannot be appropriated or revoked; even if the decedent intended to disinherit her through a will favoring other relatives or causes, the law prohibits such actions. It is permissible for any proprietor to leave up to one-third of their estate in their will. Thus, he may not impinge upon the rights of heirs, regardless of gender. Mother: She is the all-time inheritor of the deceased's property, as her place falls under the Quranic heirs.

## **The Sunni (Hanafi) Scheme of Distribution**

The Sunni school, which governs the vast majority of Indian Muslims, utilizes a classification system that prioritizes agnatic relatives—those related to the deceased through an unbroken chain of males. Heirs are divided into Sharers (Quranic Heirs), Residuaries, and Distant Kindred. There are 12 specific relatives identified as Sharers, including the husband, wife, father, mother, and daughter. The most controversial feature of this system is the 2:1 ratio: "Allah commands you as regards your children's (inheritance): to the male, a portion equal to that of two females". In practice, if a man dies leaving a son and a daughter, the son takes two-thirds of the remainder of the estate, while the daughter takes one-third. Furthermore, a Sunni widow's share is fixed at if the deceased has no children and if there are children. If there are multiple wives, this single share (or) is divided equally among them, potentially leaving an individual widow with a very small portion of the matrimonial home.

## **The Shia (Ithna Ashari) Scheme of Distribution**

The Shias base the right of succession to the property on two principles:

### **(a) Nasab (or) Blood Relationship**

This is further classified into

- Dhu fard, the Koranic heirs or sharers
- Dhu qarabt or blood relations

### **(b) Sabab or Special Cause or Affinity (i.e) Spouses**

Shia jurisprudence offers a more inclusive framework for female relatives by abolishing the Sunni preference for agnates. Shia law divides heirs into three classes based on proximity to the deceased, where the presence of an heir in a higher class entirely excludes those in lower classes. Notably, Shia law places a wife, daughter, mother, husband and father in the first class heirs and she takes precedence over the deceased's brothers or uncles, who in Sunni law might inherit as residuaries.

Shia law also applies the Doctrine of Return (*Radd*) more liberally to female heirs. If there is a surplus after all sharers have taken their fixed portions, and no residuaries are present, the surplus "returns" to the sharers in proportion to their shares. For a Shia daughter, this often means that in the absence of a brother, she can eventually inherit the entire estate, whereas a Sunni daughter might be forced to share the remainder with a distant male cousin.

S.No	Heir Category	Sunni Law of Inheritance	Shia Law of Inheritance
1.	Wife	<ul style="list-style-type: none"> <li>• 1/8<sup>th</sup> share, when there is child to the deceased male</li> <li>• 1/4<sup>th</sup> share, when there is no child to the deceased male</li> </ul>	<ul style="list-style-type: none"> <li>• 1/8<sup>th</sup> share, when there is child to the deceased male</li> <li>• 1/4<sup>th</sup> share, when there is no child to the deceased male</li> </ul>
2.	Daughter	<ul style="list-style-type: none"> <li>• 1/2<sup>nd</sup> share, when there is only one daughter</li> <li>• 2/3<sup>rd</sup> share, when there are 2 or more daughter</li> <li>• When there is a son, daughter becomes residuary</li> </ul>	<ul style="list-style-type: none"> <li>• 1/2<sup>nd</sup> share, when there is only one daughter</li> <li>• 2/3<sup>rd</sup> share, when there are 2 or more daughter</li> <li>• When there is a son, daughter becomes residuary</li> </ul>
3.	Son's Daughter	<ul style="list-style-type: none"> <li>• 1/2<sup>nd</sup> share, when there is only one son's daughter</li> <li>• 2/3<sup>rd</sup> share, when there are 2 or more son's daughter</li> <li>• Son's daughter is excluded when there is a son or higher son's son</li> <li>• She becomes a residuary when there is a equal son's son</li> </ul>	<ul style="list-style-type: none"> <li>• In the presence of class I heirs, they are excluded</li> </ul>
4.	Mother	<ul style="list-style-type: none"> <li>• 1/6<sup>th</sup> share of the deceased</li> <li>• 1/3<sup>rd</sup> share, when there is no child</li> </ul>	<ul style="list-style-type: none"> <li>• 1/6<sup>th</sup> share of the deceased</li> <li>• 1/3<sup>rd</sup> share, when there is no child</li> </ul>

5.	True Grandmother	<ul style="list-style-type: none"> <li>• 1/6<sup>th</sup> share of the deceased</li> <li>• Excluded, in the presence of the mother</li> </ul>	<ul style="list-style-type: none"> <li>• In the presence of class I heirs, they are excluded</li> </ul>
6.	Full Sister	<ul style="list-style-type: none"> <li>• 1/2<sup>nd</sup> share, when there is only one full sister</li> <li>• 2/3<sup>rd</sup> share, when there are 2 or more full sisters</li> <li>• Excluded, in the presence of son or son's son or father</li> <li>• She becomes a residuary when there is a full brother</li> </ul>	<ul style="list-style-type: none"> <li>• In the presence of class I heirs, they are excluded</li> </ul>
7.	Consanguine Sister	<ul style="list-style-type: none"> <li>• 1/2<sup>nd</sup> share, when there is only one sister</li> <li>• 2/3<sup>rd</sup> share, when there are 2 or more sisters</li> <li>• 1/6<sup>th</sup> share, when there is a full brother</li> <li>• She becomes a residuary when there is a consanguine brother</li> </ul>	<ul style="list-style-type: none"> <li>• In the presence of class I heirs, they are excluded</li> </ul>
8.	Uterine sister	<ul style="list-style-type: none"> <li>• 1/6<sup>th</sup> share of the deceased male</li> <li>• 1/3<sup>rd</sup> share, if there are 2 or more uterine sisters</li> </ul>	<ul style="list-style-type: none"> <li>• In the presence of class I heirs, they are excluded</li> </ul>

## **Constitutionality in Muslim Women's Property Rights**

**Article 14 – Right to Equality** where muslim women have the same legal standing as men and women of other religions. Any law (including personal laws, if challenged) must not be arbitrary or discriminatory. Courts have used Article 14 to strike down practices that are unjust or unequal.

**Article 15 – Prohibition of Discrimination** where Muslim women cannot be discriminated against simply because they are women or Muslims. Laws like the **Protection of Women from Domestic Violence Act, 2005** ensure women's right to residence and protection from dispossession.

**Article 25 – Freedom of Religion** implies that Muslim Personal Law (Shariat) is protected under religious freedom. If personal laws discriminate against women, they may conflict with Articles 14 and 15. Courts often avoid direct interference unless fundamental rights are clearly violated.

**Article 26 – Protection of Religious Affairs:** Religious communities have the right to manage their own affairs in matters of religion that supports the autonomy of Muslim Personal Law in governing inheritance and property matters. However, this autonomy is not absolute and is subject to public order, morality, and health.

**Article 44 – Uniform Civil Code (UCC):** Encourages the State to implement a Uniform Civil Code. A UCC could standardize property and inheritance laws across religions. It is often debated in the context of gender justice for Muslim women.

## **Theological and Social Justifications for Disparity**

The defense of unequal inheritance shares often rests on the concept of *Nafaqah* (maintenance) and the broader socio-economic structure of Islamic society. Under Shariat, a Muslim male is legally obligated to maintain his wife, children, and dependent female relatives. He is also required to provide *Mahr* (dower) to his wife at the time of marriage, which becomes her absolute property. In contrast, any property a woman inherits or earns is hers alone to manage; she has no legal obligation to contribute to household expenses.

Scholars argue that the 2:1 ratio is a reflection of these "financial responsibilities" rather than a judgment on the value of the genders.

They point to instances where women inherit equally—such as uterine siblings—or more than men—such as a daughter receiving more than a grandfather—to argue that the system is based on "proximity" and "generation" rather than gender. However, modern critics argue that in the 21st century, the assumption that men are the sole breadwinners is obsolete, and that maintaining such disparities violates the dignity and autonomy of the individual woman.

### **Constitutional Immunity: The Narasu Appa Mali Doctrine**

The primary legal shield for personal laws in India has been the 1951 judgment of the Bombay High Court in *State of Bombay v. Narasu Appa Mali*. In this case, the court was asked to determine whether the Bombay Prevention of Hindu Bigamous Marriage Act, 1946, was discriminatory because it allowed Muslims to remain polygamous while prohibiting the same for Hindus. The court, led by Chief Justice Chagla and Justice Gajendragadkar, held that personal laws are not "laws" or "laws in force" within the meaning of Article 13 of the Constitution.

Article 13(1) states that all laws in force in the territory of India before the commencement of the Constitution, insofar as they are inconsistent with fundamental rights, shall be void. However, the *Narasu* court reasoned that "personal law" was a distinct category from "custom and usage" or "statutory law". They argued that if the framers of the Constitution had intended for personal laws to be subject to Part III (Fundamental Rights), they would have explicitly included them in the definition provided in Article 13(3). This judgment established a seventy-year precedent of non-interference, shielding religious personal laws from equality-based challenges.

### **The Modern Shift: Shayara Bano and the Statutory Argument**

The 2017 Supreme Court ruling in *Shayara Bano v. Union of India*, which invalidated the practice of instant triple talaq, marked a significant departure from the *Narasu* doctrine. While the majority did not explicitly overrule *Narasu*, Justices Nariman and Lalit developed a "statutory argument" that has profound implications for inheritance law. They held that because the 1937 Shariat Act specifically

recognizes and enforces certain aspects of Shariat as the "rule of decision," those practices are effectively given statutory backing.

Under this logic, the 1937 Act transforms uncodified religious rules into "law" under Article 13, making them subject to the touchstone of fundamental rights. This shift has emboldened new petitioners to argue that if the state enforces a distributive scheme that grants women only half the share of men, it is the state itself that is discriminating against women on the grounds of sex, violating Article 15.

### **The Uttarakhand UCC and the 2026 Legal Challenges**

The legal landscape shifted again in 2024 with the passage of the Uttarakhand Uniform Civil Code (UCC). This state-level legislation has provided a new tactical opening for challenges to the 1937 Shariat Act. In the ongoing "Sabu Mani" petitions heard by the Supreme Court in 2025 and 2026, the petitioners argue that the 1937 Act has become "arbitrary and irrational".

Their argument is centered on "postal code discrimination": two Muslim women of identical faith and citizenship now receive vastly different property rights based solely on their residence. In Uttarakhand, a Muslim daughter would inherit an equal share to her brother under the UCC, while in a neighboring state like Uttar Pradesh, she would receive only half. The petitioners claim that because uniformity has ceased to exist across the territory of India, the 1937 Shariat Act can no longer claim to be a "purely religious" instrument protected by Article 25, but must instead be treated as a civil statute subject to the equality code.

### **Judicial Observations and the "Legal Vacuum" Concern**

During the hearings on March 10, 2026, a bench led by Chief Justice Surya Kant and including Justices Joymalya Bagchi and R. Mahadevan expressed both judicial sympathy for the claim of discrimination and deep caution regarding the remedy. Chief Justice Kant orally observed that the petitioners had a "very good case on discrimination" but raised a "practical question of law": if the inheritance provisions of the 1937 Shariat Act are struck down, what law would govern Muslim succession.

The Court warned that in their "over-anxiety for reforms," they might create a "legal vacuum" that could actually deprive Muslim women of the limited protections they currently enjoy. Advocate Prashant Bhushan, representing the petitioners, suggested that the Indian Succession Act, 1925, could fill this void. However, the Court noted that Section 29 of the 1925 Act explicitly excludes Muslims from its scope, meaning a judicial strike-down of the 1937 Act would not automatically trigger the application of secular law without legislative intervention.

### **Testamentary Power: The Limits of the Wasiyat**

The ability of a Muslim to ensure gender parity through a will (*Wasiyat*) is severely restricted by traditional law to protect the "fixed heirs". A testator can generally only bequeath one-third of their net estate to non-heirs. Under Sunni (Hanafi) law, a bequest to an heir—such as a daughter—is only valid if all other heirs consent to it after the death of the testator. This "consent rule" essentially allows sons to veto any attempt by a father to grant his daughter an equal share through his will.

Shia law is somewhat more flexible, allowing a legacy to an heir without the consent of other heirs as long as it does not exceed the one-third limit. If the legacy exceeds one-third, consent is required. These limits reflect the Quranic principle that "no will can be made in favor of an heir," as their shares are already divinely ordained. While intended to prevent the total disinheritance of children, these restrictions now act as a barrier to parents who wish to voluntarily apply modern notions of equality to their property.

### **Constitutional Morality vs. Essential Religious Practices**

The judicial resolution of these property disputes hinges on the conflict between two developing doctrines: Essential Religious Practices (ERP) and Constitutional Morality. The ERP doctrine, originating in the 1954 *Shirur Mutt* case, allows the judiciary to determine which religious practices are "essential" to the faith and thus protected under Article 25. The petitioners in the current inheritance cases argue that succession is a matter of *Muamalat* (civil

transactions) rather than *Ibadat* (acts of worship), and is therefore not an essential religious practice that can override the right to equality.

Opposing this is the doctrine of Constitutional Morality, which demands that the interpretation of laws be guided by the values of liberty, equality, and dignity. In cases like *Sabarimala*, the Court has held that "morality" as used in Article 25(1) must be understood as "constitutional morality". This suggests that any religious practice—even if deemed essential—must yield if it violates the fundamental dignity of women as equal citizens. Justice Chandrachud has emphasized that constitutional morality is not subject to "fleeting fancies" but is rooted in the "postulates of human liberty".

### **The Role of the Law Commission and the Uniform Civil Code**

The Law Commission of India has been instrumental in shaping the debate over Article 44, which directs the state to "endeavour to secure for the citizens a uniform civil code". The 21st Law Commission, in its 2018 report, recommended against an immediate UCC, arguing that "uniformity is not the same as equality". Instead, it proposed the "uniformity of rights" by reforming each religion's personal law from within to eliminate gender disparities. For Muslim law, it suggested that inheritance should be based on "proximity to the deceased" rather than a preference for male agnates.

However, the 22nd Law Commission has reopened the consultation process, reflecting the government's renewed push for a UCC. Advocates argue that a UCC is necessary to ensure "ease of administration" and to strengthen the "secular fabric of the nation". Opponents, including the AIMPLB, maintain that personal laws are an essential part of religious freedom and that a UCC would be a "tyranny to the minority". The Supreme Court's observations in 2026 suggest a middle path: acknowledging the discriminatory nature of current laws while urging the legislature to fulfill the mandate of Article 44 to avoid a judicial vacuum.

### **Recommendations**

The doctrinal and constitutional analysis of Muslim women's property rights in India reveals a system in flux. The 1937 Shariat Act is no longer viewed merely as a shield for religious identity but is

increasingly scrutinized as a state-enforced mechanism of gender discrimination. The central challenge lies in reconciling the collective rights of a religious minority to preserve its identity with the individual rights of Muslim women to equality and dignity.

The current litigation in the Supreme Court, sparked by the Sabu Mani petitions and the Uttarakhand UCC, suggests that the 75-year-old *Narasu Appa Mali* shield is nearing its end. If the Court follows the precedent set in *Shayara Bano*, it may well declare that the 2:1 inheritance ratio, when enforced by the state through a colonial statute, violates the basic structure of the Constitution. However, the fear of a "legal vacuum" remains a potent deterrent to radical judicial action. The most likely outcome is a series of incremental reforms—either through judicial "read-downs" that prioritize daughters as residuaries (following the Shia model) or through legislative codification that aligns inheritance with modern socio-economic realities. As India approaches the realization of a Uniform Civil Code, the property rights of Muslim women will remain the litmus test for the nation's commitment to secularism and gender justice.

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## CHAPTER 16

# DIGITAL LAND RECORD MODERNIZATION IN INDIA: A COMPREHENSIVE ANALYSIS OF DILRMP IMPLEMENTATION CHALLENGES WITH SPECIAL REFERENCE TO WOMEN'S LAND RIGHTS AND TENURE SECURITY

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### **Abstract**

*The modernization of land administration in India, primarily through the Digital India Land Records Modernization Programme (DILRMP), represents a paradigm shift from colonial-era manual record-keeping to a technology-driven Integrated Land Information Management System (ILIMS). While the program aims to enhance transparency, reduce litigation, and facilitate efficient land markets, its impact on gender-equitable land tenure remains a subject of intense scholarly and policy debate. This research paper examines the implementation of DILRMP with a specific focus on the systemic, technical, and socio-cultural challenges faced by women, who*

*constitute over 75% of the agricultural workforce yet own less than 13% of the land. Through an analysis of technical components—such as the Record of Rights (RoR) digitization and the National Generic Document Registration System (NGDRS)—and socio-legal barriers, the study identifies a significant "digital gender divide" that risks formalizing existing patriarchal exclusions. The findings suggest that while technological interventions like the mandatory "Gender Column" in the RoR offer pathways for empowerment, they must be supported by gender-minimize administrative reforms, increased digital literacy, and community-based verification. The paper argues that the transition from*

*presumptive to conclusive titling must be handled with care to ensure that the "mirror principle" of digital registers accurately reflects the rights of women, rather than merely entrenching historical inequities in a digital format.*

**Keywords:** *Digital India Land Records Modernization Programme (DILRMP), Women's Land Rights, Hindu Succession Act, Digital Literacy, Conclusive Titling, Record of Rights (RoR), NGDRS, Land Governance, Gender Disaggregated Data.*

## **Research Methodology**

The methodology adopted for this research paper is primarily qualitative, drawing upon an extensive synthesis of secondary data sources, legal precedents, and policy frameworks. The study employs a socio-legal analytical lens to evaluate the intersection of technological modernization and gendered property rights. Data collection was facilitated through a comprehensive review of official government reports from the Department of Land Resources (DoLR), NITI Aayog, and state revenue departments. Furthermore, empirical findings from international organizations, such as the World Bank and UN Women, and national research institutions, including the National Council of Applied Economic Research (NCAER), were utilized to provide a data-driven perspective on women's land ownership patterns and the challenges of digital access.<sup>1</sup>

The legal analysis component of the methodology involved an in-depth examination of the Hindu Succession (Amendment) Act, 2005, and relevant judicial pronouncements from the Supreme Court of India and various High Courts. These were cited in accordance with the 21st Edition of the Bluebook uniform system of citation to ensure academic rigor and jurisdictional accuracy. To assess the technical implementation of DILRMP, the research analyzed digital portals such as Bhoomi (Karnataka) and Jharbhoomi (Jharkhand), focusing on the functionality of online mutation and the accessibility of digital records for female users.<sup>5</sup> The study also integrated findings from the "Land Conflict Watch" database to understand the implications of digitization on land disputes involving marginalized communities and women.<sup>7</sup>

## **Scope of the Study**

The scope of this study is focused on the Indian national context, with a specific emphasis on the implementation of the Digital India Land Records Modernization Programme (DILRMP) since its revamping in 2016. The research investigates the technical components of the program, including the computerization of Record of Rights (RoRs), the digitization of cadastral maps, and the implementation of the National Generic Document Registration System (NGDRS).<sup>10</sup> While the study covers the broad national policy framework, it provides granular insights through case studies of specific states like Karnataka, Jharkhand, Odisha, and West Bengal, which offer diverse models of digital land governance and gender-sensitive interventions.<sup>5</sup>

The study's thematic scope is restricted to the impact of digitization on agricultural and rural land, as these are the primary areas where women's labor and inheritance rights are most contested. It excludes private property matters that do not involve state-managed records or revenue administration. A critical part of the scope involves analyzing the legal transition from "presumptive titling" to "conclusive titling" and its specific implications for women's tenure security.<sup>14</sup> Furthermore, the study explores the "digital gender divide," examining how socio-economic factors such as education, internet penetration, and patriarchal norms affect women's ability to navigate digital land systems.<sup>18</sup>

## **Introduction: The Imperative of Land Modernization and Gender Equity**

Land is the fundamental asset in rural India, serving not only as a primary source of livelihood and food security but also as a determinant of social status, political influence, and economic mobility. For women, who provide the vast majority of agricultural labor, the lack of secure land tenure remains one of the most significant barriers to empowerment.<sup>1</sup> Historically, land administration in India has been characterized by a colonial-era manual system that was opaque, prone to corruption, and deeply biased toward male heads of households.<sup>23</sup> The transition to a digitized environment through the Digital India Land Records Modernization Programme (DILRMP) is intended to dismantle these inefficiencies

by creating an Integrated Land Information Management System (ILIMS) that offers real-time, tamper-proof information.<sup>26</sup>

However, the modernization of records is not merely a technical migration; it is a profound socio-legal transformation. As India moves toward "conclusive titling"—where the state provides a guaranteed title to the landholder—the accuracy and inclusivity of these digital records become paramount.<sup>28</sup> If the initial digitization process relies on records that have historically excluded women, there is a severe risk that technology will formalize and perpetuate patriarchal patterns of landholding.<sup>7</sup> Despite progressive legal reforms such as the Hindu Succession (Amendment) Act of 2005, which granted daughters equal coparcenary rights, the effective realization of these rights is often hindered by the "invisible" nature of women in revenue records.<sup>29</sup>

### **Literature Review: Synthesizing the Nexus of Digitization and Tenure Security**

The academic and policy literature on land record digitization in India has evolved from a focus on administrative efficiency to a more nuanced critique of social inclusion. Early studies on projects like Karnataka's Bhoomi emphasized the reduction in corruption and the streamlining of the mutation process, which allowed farmers to obtain records in weeks rather than years.<sup>5</sup> Yet, scholars have long argued that legal and technological changes alone are insufficient to ensure women's land rights without addressing the underlying patriarchal ideology that governs rural social relations.<sup>3</sup>

Recent findings reveal a persistent disparity. Even in states where digitization is advanced, women's ownership is often limited to smaller, non-irrigated, or inferior quality plots, often held under joint titles with male relatives.<sup>2</sup> International reports underscore that land ownership for women is a critical indicator of the Sustainable Development Goals (SDGs), particularly in reducing domestic violence and improving household nutrition.<sup>1</sup> However, literature also warns of the "digital divide," where the transition to online portals can exclude those without digital literacy or internet access, effectively creating a new form of "digital exclusion" for rural women. The move toward "conclusive titling" is seen as a potential risk if the verification

process does not proactively identify and record female heirs whose names might be missing from the "presumptive" records.<sup>17</sup>

### **DILRMP: Genesis, Evolution, and Objectives**

The Digital India Land Records Modernization Programme (DILRMP) was launched in its current form in 2016 as a Central Sector Scheme, absorbing the earlier National Land Records Modernization Programme (NLRMP) that had been active since 2008.<sup>26</sup> The program represents a massive federal investment, with a recent outlay of 875 crore rupees for the period 2021-2025, focused on creating a modern, comprehensive, and transparent land record management system.<sup>26</sup>

The core components of the DILRMP are designed to create a "seamless" integration of land data across different government departments. This includes the computerization of the Record of Rights (RoR), which stores textual ownership information; the digitization of cadastral maps, which provides spatial boundaries; and the computerization of the registration process to eliminate manual deed writing.<sup>35</sup> A key objective is the development of an Integrated Land Information Management System (ILIMS), which aims to provide "automatic mutation" where land records are updated immediately after a property is registered.

<b>Component</b>	<b>Objective</b>	<b>Status (approx. late 2023)</b>
Computerization of RoRs	Digitalize ownership textual data	95.09% of villages completed
Digitization of Cadastral Maps	Convert paper maps to digital format	68% of maps completed
Computerization of Registration	Automate Sub-Registrar Offices	93% of SROs completed
Integration of SROs and Revenue	Enable automatic mutation	75% of SROs integrated
Geo-referencing of Maps	Align digital maps with ground coordinates	49.10% of villages completed

### **Data Derived From.<sup>10</sup>**

Beyond these technical goals, the DILRMP has expanded to include the Revenue Court Case Management System (RCCMS), which links land disputes directly to the RoR, ensuring that any judicial stay or order is reflected in the digital record in real-time. This is a critical development for women, as their land claims are frequently tied up in litigation for years.<sup>17</sup>

### **The Digital Gender Divide: Intersectional Barriers for Women**

While the DILRMP offers the promise of transparency, the transition to a digital environment has uncovered a significant "digital gender divide" in rural India.

### **Technical and Infrastructural Obstacles**

Access to digital infrastructure is heavily skewed toward men. Quantitative findings show that in rural regions like Uttarakhand, only 30.1% of women aged 15–49 use the internet, compared to over 55% of men. This gap is exacerbated by the fact that only 31% of rural Indian families have internet access overall.<sup>37</sup> For women, the cost of a smartphone—averaging over 20,000 INR—is a major financial obstacle.<sup>37</sup> Without direct access to devices or the skills to use them, women must rely on "gatekeepers"—usually male relatives or agents—to access their own land records.

### **Socio-Cultural Barriers and Patriarchal Norms**

The implementation of DILRMP occurs within a social framework where "customary law" often overrides formal statutes. Even when the law allows for equal inheritance, societal pressure frequently forces women to sign away their rights to land in favor of their brothers.<sup>22</sup> These patriarchal structures are reflected in the "Kagazi Raj" legacy, where village officials like the *Patwari* have traditionally viewed land as a male asset.<sup>40</sup> Digital literacy programs often fail to reach women because of social restrictions on their mobility. In extreme cases, such as in tribal communities in Jharkhand, women face physical violence and social exclusion when they attempt to assert their land rights.

## **Administrative and Procedural Invisibility**

Historically, land records were centered on the "Head of Household," a role almost exclusively filled by men.<sup>22</sup> This "administrative blindness" meant that women were rarely listed as co-owners in manual registers. When these records are digitized without proactive verification, the invisibility of women is simply migrated to the digital server.<sup>20</sup> Furthermore, the lack of gender-disaggregated data in the past has made it difficult to track these exclusions.<sup>42</sup>

## **Legal Framework and the Impact of Land Records on Succession**

The legal backbone of women's land rights in India is the Hindu Succession Act, 1956, and its transformative 2005 amendment.

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

The 2005 Amendment to Section 6 of the Act granted daughters the status of coparcener by birth, identical to sons.<sup>43</sup>

### **Key Legal Provisions Affecting Digital Records**

- **Coparcenary by Birth:** A daughter becomes a coparcener from the moment she is born.<sup>37</sup>
- **Automatic Inclusion:** This is an inherent legal status that revenue records should ideally reflect automatically.<sup>43</sup>
- **Restrictions on Partition:** For a daughter's claim to be blocked, there must have been a final, registered partition deed or a court decree executed before December 20, 2004.<sup>43</sup>

The challenge for the DILRMP is to ensure that "automatic mutation" software recognizes these mandates. When a landowner dies, the digital system should theoretically prompt the entry of all children (sons and daughters) as new owners, rather than relying on manual entries.

## **Landmark Judgments and Judicial Interpretations**

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

In *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (India), the Supreme Court held that:<sup>10</sup>

1. **Retroactive Operation:** The rights are given by birth; thus, it is irrelevant whether the father was alive on September 9, 2005.<sup>43</sup>

2. **Protection against Oral Partition:** The Court emphasized that an "oral partition" cannot be a defense against a daughter's claim, as it lacks legal evidentiary value.<sup>44</sup>

### **Relevance to Online Mutation and Digital Databases**

This judgment means thousands of women previously excluded are now legally entitled to be entered into the RoR. Digital portals must therefore allow for the "reopening" of mutation cases where women were excluded based on outdated principles.<sup>1</sup>

### **Other Significant Case Laws**

- **Ram Charan v. Sukhram (2025):** The Supreme Court held that denying a female heir rights based on "silent customs" violates the constitutional mandate of equality, reinforcing that digital records must follow statutory law over local traditions.
- **M. Sivadasan v. A. Soudamini (2023):** The Court noted that "possession" is a critical factor for certain ownership claims under Section 14 of the HSA, underscores the need for digital records to accurately capture who is actually cultivating the land.
- **Bihar Mutation Rule Case (2025):** The Supreme Court quashed a rule requiring mutation proof as a precondition for property registration, stating it arbitrary and illegal given the nascent stage of digital records.<sup>36</sup>

### **Technological Interventions and State Databases**

#### **The National Generic Document Registration System (NGDRS)**

The NGDRS is a "One Nation, One Software" initiative designed to modernize the registration process.<sup>2</sup> For women, its benefits include online slot booking to avoid intimidating environments and biometric authentication to ensure their actual consent is obtained during transactions.<sup>2</sup>

### **State Success Stories: Bhoomi and Jharbhoomi**

**Karnataka's Bhoomi Project:** Provides "online mutation requests" allowing women to apply from kiosks, bypassing the village accountant's discretion.

**Jharkhand's Jharbhoomi:** Offers instant access to khata and khasra details and provides SMS alerts on mutation status, allowing women to monitor their property against fraudulent transfers.<sup>1</sup>

Portal Feature	Benefit to Women	State Example
Mandatory Gender Column	Generates data for women-centric policies	National/DILRMP
SMS Mutation Alerts	Prevents fraudulent transfers by relatives	Jharkhand <sup>1</sup>
Kiosk Access (RTC)	Facilitates bank loans without intermediaries	Karnataka

### From Presumptive to Conclusive Titling: Implications for Women

India currently follows a "presumptive titling" system. NITI Aayog has proposed a shift toward "conclusive titling," where the state provides a guaranteed title and indemnity against errors.<sup>14</sup>

### The Opportunity and the Risk

Conclusive titling could make women's ownership "irrefutable." However, the "mirror principle" poses a threat if women's rights are not recorded *before* the title becomes conclusive.<sup>14</sup> Once a title is declared conclusive after a three-year dispute period, any woman who failed to record her name might lose her ancestral right forever.<sup>15</sup>

### Suggestions and Policy Recommendations

1. **Mandatory Gender-Disaggregated Audits:** Use the "Gender Column" to conduct annual audits of women's land ownership.
2. **Automatic Succession Algorithms:** Update revenue software with algorithms that automatically identify and list all legal heirs upon the death of a landowner.
3. **Community-Based Verification:** Leverage Women's Self-Help Groups (SHGs) for "land literacy" and public verification of digital maps in Gram Sabhas.
4. **Special Provisions for Tribal Women:** Implement "fast-track" digital grievance mechanisms for tribal women facing violence in land matters.

5. **Mobile Land Clinics:** Invest in vans with digital kiosks and female revenue officials to visit remote areas for on-site record updates.

## **Conclusion**

The Digital India Land Records Modernization Programme is one of the most significant governance reforms in post-independent India. By moving land administration from the "shadows of the village office" to the "transparency of the digital portal," it offers a historic opportunity to rectify centuries of gendered exclusion.<sup>23</sup> However, if the digital "mirror" is focused only on current "presumptive" owners, it will merely entrench existing patriarchal structures.<sup>20</sup> By integrating gender-disaggregated data, prioritizing digital literacy, and ensuring that the move to conclusive titling is inclusive, India can ensure that its digital land records are not just efficient, but also equitable.

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## CHAPTER 17

# THE SOCIO-ECONOMIC IMPACT AND IMPLEMENTATION BARRIERS OF FEMALE COPARCENARY: A POST-2005 JURIDICAL AND EMPIRICAL STUDY

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### **Abstract**

*The Hindu Succession (Amendment) Act, 2005, was designed to rectify deep-seated gender inequalities by granting daughters equal coparcenary rights in ancestral property. While the landmark ruling in Vineeta Sharma v. Rakesh Sharma (2020) provided necessary legal finality regarding the retroactive nature of these rights, a significant "implementation gap" persists between statutory promises and lived realities. This report provides a specialized analysis of the socio-economic transformations catalysed by the amendment—including its impact on women's human capital*

*and intra-household bargaining power—while identifying the cultural and administrative barriers that continue to impede its progress. By synthesizing a review of recent legal scholarship and empirical studies, the report evaluates the efficacy of the law in agricultural and tribal contexts and offers strategic recommendations to bridge the divide between de jure equality and de facto ownership.*

**Keywords:** *Socio-Economic Impact, Implementation Barriers, Vineeta Sharma v. Rakesh Sharma, Human Capital, Bina Agarwal, Customary Law, Land Records Digitization, Karta.*

## **Analytical Framework and Research Methodology**

The study employs a doctrinal and socio-legal research methodology to examine the evolution of women's property rights.<sup>1</sup> It analyzes primary legal sources, including the Hindu Succession Act, 1956, and the 2005 Amendment Act, alongside secondary qualitative data from judicial pronouncements and Law Commission reports. By applying the "black letter law" to empirical findings on landholding and decision-making power, the methodology seeks to identify inconsistencies between enacted legislation and social norms.<sup>2</sup> The study is primarily library-based, utilizing case law analysis and analytical induction to synthesize patterns in judicial interpretation.

## **Review of Literature: The Gap Between Reform and Reality**

The academic discourse on Hindu succession rights has shifted from debating the "need for reform" to assessing the "impact of implementation." Early scholarship by Bina Agarwal (1994) established the foundational link between land ownership and women's bargaining power, arguing that land is not merely a marker of wealth but an instrument of autonomy. This theoretical framework paved the way for the 2005 legislative shift.

More recent studies have quantified the human capital benefits of the 2005 amendment. Research published in the *European Journal of Development Research* (2025) demonstrates that in reform states, Hindu and Sikh daughters in landholding households showed significant improvements in education (years of schooling) and health indicators (BMI z-scores). Furthermore, data from the National Family Health Survey (NFHS) indicates a rise in women's participation in household decision-making following the reform.

However, the literature also highlights persistent failures in actualizing these rights. K. N. Prateeksha (2021) notes that despite the elimination of legal gender bias, the law remains a "fractional justice" due to ongoing cultural ambiguities.<sup>9</sup> A critical study by Agarwal and Naik (2024) analysing 505 High Court cases found that while 77% of rulings favoured women, only 52% actually granted direct shares in joint family property, with the remainder being mediated through other, often more limited, rights. Pranay Agarwal (2022) emphasizes that the reforms are only truly effective when they translate into

increased landholdings, an area where the Landesa study identifies profound administrative friction due to outdated Record of Rights (ROR).<sup>11</sup>

### **Introduction: From Exclusion to Inclusion**

Before 2005, the Mitakshara school of law operated on the principle of survivorship, which restricted coparcenary membership—and thus the birthright to ancestral property—exclusively to male descendants. The Hindu Succession Act, 1956, maintained this patriarchal core, providing women only a "notional" share through succession upon the death of a male relative.<sup>13</sup> The Hindu Succession (Amendment) Act, 2005, fundamentally transformed this by substituting Section 6, declaring daughters as coparceners "by birth" in their own right, with the same rights and liabilities as sons. This legislative metamorphosis aimed not only to fulfill the constitutional mandate of Articles 14 and 15 but also to provide women with economic security and a voice within the Hindu Undivided Family (HUF).

### **The Judicial Trilogy and Retroactive Clarification**

The temporal reach of the amendment was the subject of a decade-long judicial conundrum:

1. **Prakash v. Shilavati (2016)**: Held the amendment was prospective, requiring both the father and daughter to be alive on Sept. 9, 2005.
2. **Danamma v. Amar (2018)**: Deviated by granting shares even if the father died before 2005, provided the suit was pending.
3. **Vineeta Sharma v. Rakesh Sharma (2020)**: Resolved the conflict by holding that coparcenary rights are an "unobstructed heritage" acquired by birth. The court ruled the amendment is "retroactive," meaning the father's survival on the date of the amendment is irrelevant.

### **Implementation Hurdles: Socio-Economic Realities**

Despite legal clarity, several barriers prevent the practical realization of property rights for Hindu women.

## **Social Renunciation and "Dowry Substitution"**

A pervasive cultural barrier is the pressure on daughters to renounce their inheritance to maintain "familial harmony." The Landesa study (2017) found that many families view property as a male-line asset, often arguing that a daughter's inheritance was "settled" through her dowry. This belief persists despite the legal distinction between *Stridhan* and coparcenary birthright.

## **Administrative Invisibility in Land Records**

The transition of agricultural land remains hindered by the "Record of Rights" (ROR) systems. Studies indicate that women are seldom in possession of physical titles or updated RORs, making their ownership "notional" and limiting their ability to use land as collateral for credit. Digitization efforts in 2025 have begun to address this, but administrative apathy in rural areas continues to stall mutations.

## **The Tribal Gap: Customary vs. Constitutional Law**

Under Section 2(2) of the Act, Scheduled Tribes are excluded from the HSA unless specifically notified.<sup>17</sup> This leaves millions of tribal women governed by patriarchal customary laws. However, in *Ram Charan v. Sukhram* (2025), the Supreme Court held that tribal customs barring women from inheritance cannot override constitutional values of equality, signaling a move toward inclusive succession.

## **The Role of Female Karta: Managerial Autonomy**

The recognition of daughters as coparceners has legally enabled them to act as *Karta* (Manager) of the HUF. In *Manu Gupta v. Sujata Sharma* (2016), confirmed by later rulings, it was established that the senior-most coparcener, regardless of gender or marital status, can manage family assets. This shift is critical for economic empowerment, as it grants women the power to alienate property for legal necessity and control family finances.

## Suggestions for Policy and Reform

1. **Mandatory ROR Mutation:** State governments should mandate the automatic inclusion of daughters in land records upon birth or during special "mutation drives."
2. **Amendment of Section 2(2):** To ensure uniform gender justice, the Act should be amended to include tribal communities, providing a baseline of equal inheritance rights.
3. **Reform of Section 15:** The source-based devolution of a woman's property (where it returns to the husband's or father's heirs) should be made gender-neutral to reflect her status as an absolute owner.
4. **Digitized Fast-Track Dispute Resolution:** The 2025 launch of dedicated fast-track courts for property disputes should prioritize partition suits involving female coparceners to prevent long-term litigation attrition.

## Conclusion

The evolution of Hindu succession law from the 1956 Act to the *Vineeta Sharma* ruling represents a triumphant constitutional journey toward gender parity.<sup>20</sup> By establishing coparcenary as an "unobstructed birthright," the judiciary has removed the final legal barriers to female ownership. Yet, as empirical literature shows, the "human capital" of this reform is only fully realized when social attitudes and administrative procedures align with the statute. To move from "paper rights" to "pocket rights," India must address the tribal gap and the procedural invisibility of women in the agricultural sector, ensuring that "once a daughter, always a coparcener" is a practical reality for every Hindu woman.

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## CHAPTER 18

# FROM COVENANT TO CONTRACT: THE EVOLUTION OF MARITAL PROPERTY REGIMES IN DISSOLUTION AND SUCCESSION IN INDIA

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### **Abstract**

*Marriage has traditionally been understood as a sacred covenant shaped by religious beliefs, cultural values, and long-standing social traditions. Over time, however, the development of modern legal systems has gradually transformed marriage into a legal relationship that carries defined rights, duties, and economic consequences. This study examines the evolution of marital property regimes by tracing the journey of marriage through different stages of legal thought and institutional development. It reflects*

*the transition from theological foundations, through the influence of colonial legal structures, to the emergence of constitutional morality and the modern pursuit of economic justice between spouses. Particular attention is given to the treatment of marital property during dissolution of marriage and in matters of succession. By analysing these developments, this work highlights the importance of fairness, equality, and dignity in regulating property relations within marriage and contributes to the broader understanding of the continuing evolution of family law.*

### **Introduction**

Marriage has historically been regarded as one of the most significant institutions governing family life and social order.<sup>1</sup> In many traditional societies, marriage was understood primarily as a sacred

covenant, rooted in religious values and cultural customs.<sup>1</sup> The covenantal understanding emphasised moral commitment, mutual fidelity, and the spiritual bond between spouses rather than legal rights and obligations. Over time, however, social transformation and legal development gradually altered this understanding. Legal scholars increasingly began to describe marriage not only as a moral union but also as a relationship involving enforceable rights and duties.<sup>1</sup> In this sense, marriage began to move from the realm of theology toward the sphere of law. During the colonial period, the regulation of marriage and family relations became more structured through the introduction of codified legal principles. Colonial courts and legislatures began to interpret marriage within the framework of legal status and contractual relations, influencing the development of modern family law.<sup>1</sup> In India, this transformation is reflected in important legislative enactments such as the Hindu Marriage Act, which codified the law relating to marriage among Hindus and introduced legal provisions concerning divorce and matrimonial relief. Similarly, the Special Marriage Act<sup>1</sup> created a framework for civil marriage irrespective of religion, reflecting the modern shift toward secular legal regulation of marital relationships. Judicial decisions have also played a significant role in shaping the contemporary understanding of marriage and marital rights. In **Shayara Bano v. Union of India**, the Supreme Court examined the constitutional validity of instant triple talaq and emphasised the importance of protecting dignity and equality within marital relationships, particularly in light of **Article 14 (Right to Equality)** and **Article 21 (Right to Life and Personal Liberty)** of the Constitution of India.

Likewise, the Court in **Vineeta Sharma v. Rakesh Sharma** recognised equal coparcenary rights for daughters under the Hindu Succession Act, reinforcing the principle of gender equality under **Article 14** and the prohibition of discrimination under **Article 15** of the Constitution of India in matters of family property and succession.

This study therefore examines the evolution of marital property regimes through the transition from theology to colonial law, and from constitutional morality to economic justice, highlighting how contemporary legal systems attempt to ensure fairness, equality, and dignity in marital relationships.

## **Theological Foundations of Marriage (Covenant)**

### **Meaning of Marriage as a Covenant**

In early societies, marriage was not viewed as a simple legal agreement. It was considered a sacred covenant, a solemn promise made between spouses before God and society. This covenant emphasized faith, loyalty, and lifelong commitment, making marriage a moral and spiritual bond built on trust and responsibility. Unlike modern contractual relationships, covenantal marriage focused more on duty and moral obligation rather than individual rights. The stability of family life and social order was closely connected to this belief.

### **Religious Foundations of Marriage**

Many religious traditions describe marriage as a divinely ordained institution. It is seen as a sacred union intended to create a stable family and promote social harmony.

- **Divine Institution** – Marriage is believed to originate from divine will.
- **Sacred Commitment** – The relationship is expected to be lifelong.
- **Moral Responsibility** – Spouses must support each other emotionally and socially.
- **Community Recognition** – Marriage is respected and recognised by society.

### **Concept of the “One Flesh” Union**

The theological understanding of marriage highlights the idea of unity between spouses, often described as a “one flesh” union. This concept symbolises the merging of two lives into a single partnership.

This unity involves:

- Emotional partnership
- Spiritual connection
- Shared responsibilities
- Family unity

Because of this belief, marriage was traditionally expected to be permanent and exclusive.

## **Influence on Early Legal Thought**

Religious ideas about marriage also influenced early legal systems. Courts often recognised the importance of religious traditions when resolving matrimonial disputes. For example, in **Sarla Mudgal v. Union of India (1995)**, the Supreme Court highlighted that marriage carries important legal and social responsibilities and held that conversion to another religion cannot be used as a means to contract a second marriage while the first marriage subsists.

## **Relevance to Modern Legal Development**

The theological view of marriage represents the starting point of the historical transformation of marital law. Over time, social change and legal reforms gradually transformed marriage from a sacred covenant into a legally regulated relationship, shaping modern rules on property, divorce, and succession.

## **Colonial Influence on Marital Property Law**

### **Introduction**

The colonial period significantly influenced the legal understanding of marriage and property relations in India. During British rule, traditional customs and religious practices governing marriage gradually came under the influence of formal legal systems and codified laws.

### **Development of Legal Framework**

British administrators introduced structured legal procedures and courts to resolve disputes relating to marriage and family property. As a result, marital relationships began to be interpreted through legal principles and judicial decisions, rather than relying solely on customs and traditions.

### **Impact on Marital Property**

The colonial legal system affected the way property within marriage was understood. Courts began to interpret rules relating to inheritance, succession, and family property, which increased the role of law in regulating marital rights.

- Recognition of legal rights in marital property.
- Judicial interpretation of customary inheritance rules.
- Greater reliance on courts for resolving family disputes.

### **Importance for Modern Law**

Colonial legal influence marked a shift in the perception of marriage. It gradually introduced the idea that marriage could involve legal rights, duties, and property interests. This transformation later contributed to the development of modern statutes such as the **Hindu Marriage Act** and the **Hindu Succession Act**, which regulate marriage and succession in contemporary Indian law.

### **Constitutional Morality and Marital Right**

#### **Introduction**

The concept of constitutional morality plays an important role in protecting individual rights within marriage. The Constitution ensures that marital relationships are governed not only by tradition but also by principles of equality, dignity, and justice. The idea of constitutional morality was strongly emphasised by the Supreme Court in *Navtej Singh Johar v. Union of India* (2018), where the Court stated that constitutional values must prevail over social morality when fundamental rights are at stake.

#### **Role of Fundamental Rights**

Fundamental Rights guaranteed under the Constitution help safeguard the rights of individuals within marital relationships. **Article 14** ensures equality before the law, **Article 15** prohibits discrimination on the basis of sex, and **Article 21** protects the right to life and personal liberty, which includes dignity and autonomy within marriage.

These constitutional provisions encourage courts to examine whether traditional practices within marriage respect the values of justice and equality. The Supreme Court in *Justice K.S. Puttaswamy v. Union of India* (2017) recognised the right to privacy, which also protects personal choices in intimate and family relationships.

## **Judicial Protection of Marital Rights**

Indian courts have played a significant role in protecting marital rights through constitutional interpretation. In **Shayara Bano v. Union of India (2017)**, the Supreme Court declared the practice of instant triple talaq (talaq-e-biddat) unconstitutional, emphasising the importance of gender equality and dignity within marriage.

Similarly, in **Joseph Shine v. Union of India (2018)**, the Court struck down Section 497 of the Indian Penal Code, which criminalised adultery, holding that it violated **Articles 14, 15, and 21** by treating women as property of their husbands. The judgment recognised the autonomy and equality of individuals in marital relationships.

## **Importance for Modern Family Law**

The idea of constitutional morality ensures that marriage is not controlled only by tradition but also by constitutional values. This approach strengthens the protection of marital rights and promotes fairness, equality, and dignity within family law.

These developments show how modern legal systems are gradually transforming marriage into a relationship governed by rights, justice, and constitutional principles, ensuring that both spouses enjoy equal protection under the law.

## **Economic Justice and Property Distribution**

### **Introduction**

The concept of economic justice is an important aspect of modern family law. It ensures that both spouses are treated fairly in matters of property and financial rights, especially during divorce or separation. Economic justice aims to protect the financial security and dignity of individuals within marriage.

### **Importance of Property Distribution**

Property distribution plays a crucial role in maintaining fairness between spouses. In many marriages, one spouse may contribute through household responsibilities or childcare, while the other may earn income. Recognising these contributions is important to ensure equitable distribution of property. This principle supports the idea that

both spouses share economic partnership and mutual contribution within the marriage.

### **Legal Recognition of Economic Rights**

Modern legal systems increasingly recognise the need to protect economic rights within marriage. Laws relating to maintenance, inheritance, and matrimonial property aim to ensure that neither spouse faces economic disadvantage after the dissolution of marriage. For example, in **Vineeta Sharma v. Rakesh Sharma (2020)**, the Supreme Court recognised equal coparcenary rights for daughters under the Hindu Succession Act, 1956, reinforcing the principle of gender equality in property rights and holding that daughters have the same rights as sons in ancestral property by birth.

### **Role in Modern Family Law**

Economic justice plays a significant role in shaping modern matrimonial law. Courts increasingly focus on ensuring fair property distribution and financial protection for both spouses. These developments reflect the growing recognition that marriage is not only a social relationship but also an economic partnership.

### **Significance for Marital Property Regimes**

The idea of economic justice supports the development of balanced marital property regimes, ensuring that property distribution during divorce or succession reflects the contributions and rights of both spouses. This approach promotes **fairness, equality, and financial stability** within family law.

### **Conclusion**

The evolution of marital property regimes reflects the broader transformation of marriage itself. Historically, marriage was understood primarily as a sacred covenant, deeply rooted in religious traditions and moral obligations. During this period, the focus of marriage was not on legal rights or property distribution but on faith, commitment, and social stability. With the emergence of colonial legal systems, marriage gradually entered the sphere of formal law and legal regulation. Colonial courts and administrative systems

introduced structured legal principles that began to influence family relationships, inheritance rules, and property rights. This marked an important transition where marriage was increasingly viewed through the lens of legal rights and responsibilities. In the modern constitutional framework, the protection of individual dignity, equality, and personal liberty has become central to the regulation of marital relationships. Courts have actively interpreted constitutional principles to safeguard marital rights and ensure that traditional practices do not undermine the fundamental rights of individuals. At the same time, the idea of economic justice has gained increasing importance in family law. Modern legal systems recognise that marriage is not only a social or emotional partnership but also an economic partnership where both spouses contribute in different ways. Ensuring fair property distribution during divorce or succession is therefore essential to maintaining justice and equality. Ultimately, the journey from covenant to contract illustrates how marriage has evolved from a purely moral and religious institution into a legally regulated relationship shaped by constitutional values and economic fairness. This transformation reflects society's continuing effort to balance tradition, law, and justice in the regulation of marital relationships.

## CHAPTER 19

# HINDU SUCCESSION (AMENDMENT) ACT, 2005 A STUDY ON DAUGHTERS' COPARCENARY RIGHTS AND GENDER JUSTICE

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### **Chapter 1: Introduction**

#### **Property Rights and Gender Justice**

**Slogan: “Property ownership is power in disguise.”**

**- B.R. Ambedkar**

Property ownership is not merely about land or wealth; it is deeply connected with power, dignity, and independence. In India, property has traditionally passed through the male lineage under Hindu law, particularly under the Mitakshara system, where only male members were recognized as coparceners. For generations, daughters were treated as temporary members of their natal family because they were expected to marry and join another household, resulting in economic dependence on husbands, lack of bargaining power, and exclusion from ancestral wealth. Even after the Hindu Succession Act, 1956, inequality persisted as daughters were denied coparcenary rights. A major transformation came with the Hindu Succession (Amendment) Act, 2005, which recognized daughters as equal coparceners by birth. Before 2005, only sons had an automatic right in ancestral property, whereas daughters could claim only under limited conditions; after the amendment, both sons and daughters have equal rights from birth.

Despite such progressive reforms, the need for this study arises from the gap between law and reality. Many women voluntarily relinquish their share due to emotional pressure, rural women often lack awareness of their legal rights, and legal processes remain time-consuming and expensive. In many villages, daughters sign release deeds during marriage to maintain family harmony, thereby

surrendering their rights. The aim of this study is to critically analyse the transformation of daughters' coparcenary rights and evaluate their practical impact on gender justice in India. The objectives include examining the historical exclusion of women, analysing statutory reforms and judicial developments, evaluating socio-economic impact, and identifying implementation gaps with suggestions. This study adopts a doctrinal methodology based on Bare Acts, landmark judgments, Law Commission reports, and scholarly writings, including cases like *Vineeta Sharma v. Rakesh Sharma* and *Prakash v. Phulavati*.

## **Chapter 2: Concept of Coparcenary**

### **Understanding Joint Family Property Rights**

**Slogan: “Law must evolve with society.” — Roscoe Pound**

Coparcenary refers to a narrower body within a Hindu joint family consisting of persons who acquire rights in ancestral property by birth. Traditionally limited to four generations of male lineage, the concept has expanded after the 2005 amendment to include daughters as coparceners. While every coparcener is a member of the joint family, not every member is a coparcener; for instance, a wife is a member but not a coparcener by birth. The essential features include the right by birth, community of interest, unity of possession, fluctuating shares, and the right to demand partition. A coparcener's share changes with births and deaths, and property remains jointly owned until partition. The survivorship rule earlier governed inheritance, but after 2005, succession laws apply equally to daughters. The Karta system, traditionally male-dominated, now allows daughters to act as Karta if they are the eldest coparcener. Property can be alienated only for legal necessity, benefit of estate, or religious obligations.

Coparcenary property includes ancestral property inherited up to four generations, joint family property acquired through common funds, and excludes separate property unless blended. The Mitakshara system is based on birthright and survivorship, while the Dayabhaga system, prevalent in West Bengal, recognizes rights only after the father's death and historically provided relatively better recognition to women. Before 2005, women's rights were limited to Stridhan and restricted estate rights, and they lacked coparcenary rights entirely.

After the amendment, daughters gained equal rights, liabilities, and authority, including the right to demand partition and become Karta. Practical illustrations show that both sons and daughters now have equal rights by birth, can demand partition, and retain rights even if the father died before 2005, as clarified in *Vineeta Sharma v. Rakesh Sharma*. Coparcenary plays a vital role in promoting gender equality, economic independence, and reducing disputes, although social resistance and lack of awareness continue to hinder its full implementation.

### **Chapter 3: Women's Rights Before 2005**

#### **Legal Discrimination and Social Consequences**

**Slogan: "Justice delayed is justice denied." — William Ewart Gladstone**

Before 2005, under the Hindu Succession Act, 1956, daughters were not recognized as coparceners and had no birthright in ancestral property. Property devolved through survivorship, favoring male members, and daughters could inherit only in separate property after the father's death. Married daughters were often excluded from natal property, and women could not become Karta. This legal framework led to economic dependence, gender inequality, lack of decision-making power, and social conditioning where women were discouraged from claiming their rights. Dowry was often treated as a substitute for inheritance, reinforcing inequality. Women without property were more vulnerable to domestic violence, abandonment, and financial exploitation, especially in rural areas where awareness was low.

These provisions faced constitutional criticism for violating Articles 14, 15, and 21 of the Constitution, as they denied equality, encouraged gender discrimination, and affected dignity. They also contradicted Directive Principles such as Article 39. Courts and scholars criticized the law as patriarchal and outdated, and the Law Commission recommended equal rights for daughters. The exclusion of women reinforced patriarchal structures, unequal wealth distribution, and hindered empowerment. For example, in a joint family consisting of a father, son, and daughter, only the son was a

coparcener with birthright, while the daughter had limited rights, clearly reflecting systemic inequality.

## **Chapter 4: 2005 Amendment**

### **A Revolutionary Legal Reform**

**Slogan: “Equality before law must become equality in reality.” — Jawaharlal Nehru**

The Hindu Succession (Amendment) Act, 2005 marked a revolutionary shift by granting daughters equal coparcenary rights by birth, irrespective of marital status. Daughters now have equal rights and liabilities, including inheritance, partition, and responsibility for debts, and can also become Karta of the joint family. The amendment abolished the survivorship rule, ensured equal rights in agricultural land, and protected women from dispossession. Practical examples show daughters successfully claiming equal shares, even if married or living abroad, and property being equally divided among sons and daughters. However, the amendment has limitations, as rights are not automatically enforced and require legal action, and social acceptance is still evolving. It has also impacted joint family structures by promoting equality but increasing property fragmentation.

## **Chapter 5: Judicial Interpretation**

### **Role of Courts in Clarifying the Law**

**Slogan: “Law is what the courts say it is.” — Oliver Wendell Holmes Jr.**

Judicial interpretation played a crucial role in shaping the application of the amendment. In *Prakash v. Phulavati*, the Court held that the amendment was prospective and required the father to be alive on 9 September 2005, which was widely criticized. Later, in *Vineeta Sharma v. Rakesh Sharma*, the Supreme Court clarified that coparcenary rights are by birth and do not depend on the father being alive, establishing true equality. In *Danamma v. Amar*, the Court recognized daughters’ rights, though it created temporary confusion. Overall, judicial trends have shifted towards progressive interpretation, strengthening constitutional values and ensuring uniform application of the law.

## **Chapter 6: Socio-Legal Impact**

### **Transformation in Society**

**Slogan: “Empower a woman, empower a nation.” — Kofi Annan**

The amendment has significantly contributed to gender equality and economic empowerment. Property ownership enables women to access loans, start businesses, and achieve financial security. Socially, women have gained respect, independence, and participation in decision-making. It has also influenced marriage dynamics by reducing reliance on dowry and increasing bargaining power. Urban areas show greater awareness and assertion of rights, while rural areas continue to face resistance. Psychologically, women experience increased confidence and identity through ownership.

## **Chapter 7: Challenges**

### **Barriers to Implementation**

**Slogan: “Social reform is harder than legal reform.” — Mahatma Gandhi**

Despite legal progress, several challenges persist, including lack of awareness, social pressure, emotional coercion, complex legal procedures, high costs, and lengthy litigation. Patriarchal attitudes discourage women from asserting rights, and administrative issues such as poor land records and lack of digitization create obstacles. Fraud, forgery, and unauthorized transfers further complicate matters. Rural women, widows, and divorced women face greater challenges, highlighting the intersectional nature of inequality.

## **Chapter 8: Government Initiatives**

### **Steps Towards Empowerment**

**Slogan: “Development is freedom.” — Amartya Sen**

Government initiatives include free legal aid, legal literacy programs, digitization of land records, reduced stamp duty for women, fast-track courts, and e-courts systems. NGOs contribute through awareness campaigns and legal support, while educational initiatives promote legal literacy. Technology has improved access to justice through online filing and case tracking. However, further improvements are

needed in rural outreach, simplification of procedures, and stronger enforcement mechanisms.

## **Chapter 9–12 Combined Conclusion Part**

### **Analysis, Findings, Suggestions & Conclusion**

**Slogan: “Equality in law is the first step, equality in society is the goal.” — Ruth Bader Ginsburg**

The comparative analysis clearly shows a transformation from male-dominated inheritance to gender-equal coparcenary rights after 2005. Legal reforms have improved women’s economic position, decision-making power, and social status. However, findings reveal that despite progressive laws, implementation remains weak due to social resistance, lack of awareness, and procedural barriers. The judiciary has played a transformative role, particularly through *Vineeta Sharma v. Rakesh Sharma*, ensuring uniform interpretation. Suggestions include strengthening legal awareness, simplifying procedures, ensuring inclusion of women in property records, expanding legal aid, promoting digital land systems, and encouraging social awareness campaigns.

In conclusion, the Hindu Succession (Amendment) Act, 2005 represents a historic step towards gender justice by granting daughters equal rights. While legal equality has been achieved, social acceptance is still evolving, and implementation remains the real challenge. True empowerment requires not only legal recognition but also social acceptance, economic independence, and effective enforcement. The future of gender justice depends on bridging the gap between law and practice, ensuring that equality is realized in every household.

“Equality in law is the first step, but equality in society is the ultimate goal. The true success of property rights reform lies not in legislation alone, but in its acceptance and practice within every household.”

## CHAPTER 20

# EMPOWERMENT OF TRIBAL WOMEN IN INDIA: AN ASSESSMENT

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### **Abstract**

*In today's world, women being empowered has become a significant issue in our culture. These days, the economic advancement of women is seen as essential to a nation's progress. Empowering women is crucial to the advancement of society. Women, who make up half of the world's population, have long been overlooked as benefits of advancement. The broader social and cultural conditions also influence the part of tribe-based women in rural economies; this is particularly true in developing nations. One significant topic that has received more attention recently is the involvement of tribal women in local administration. Tribal women have historically experienced various forms of marginalization and prejudice that have hindered their ability to fully participate in traditional processes for making decisions. Nonetheless, there have been a drive to support and encourage indigenous women's involvement in local administration*

*as equality and the rights of women get more attention. Tribal women can contribute to making certain that their viewpoints are considered and taken into consideration when creating and implementing policies. These obstacles include harassment based on ethnic background and gender, norms of culture limiting women's freedom and active participation in everyday life, a shortage of educational attainment, and restricted access to funds. This essay is about the economic and social situation of tribal women within India. The examiner tries to figure out what it's like for these women, who come from various cultural backgrounds and have distinct religious views, financial systems, and levels of familiarity with modernization and industrialization. The study's author also looks into how to give tribal women greater power while safeguarding their privileges and living situations in today's world.*

**Keywords:** *rights, indigenous women, empowerment, and society.*

## **Introduction**

Approximately 8.2% of Indian citizens is made up of tribal communities. According to the 2001 census, which falls the people who live in tribal territories are referred to as slated tribes (STs) under the Indian Constitution. For the past 150–200 generations in more specific, tribal populations have experienced a number of societal shifts. Many of those modifications have been brought about by outside forces. With a variety of goals and intentions, hitherto unheard-of socioeconomic, judicial, governmental, sacred, and political powers have effectively penetrated tribal territory and begun to either directly or indirectly influence tribal life.

A highly established gender status arrangement that is appropriate for the dominant economic is one of the greatest and most significant markers of tribe-based social system's unique uniqueness. The important overlapping functions that tribal women carry out in society—managing the home and putting food into the standardized basket, effectively putting themselves within socioeconomic and cultural contexts, and expressing their unique individuality in home life and society at large—are amply demonstrated by ethnographic studies. However, because of environmental deterioration and outside intervention, tribal women struggle to obtain a good living and a sustainable livelihood. In order to impact the liberation of rural tribe women in particular, the approach for tribal development ought to be improved, bettered, developed, and elevated. There is, in fact, an increasing amount literary works emerging on these topics. Emancipation of women is crucial to the advancement of society at large, and given the growing social exclusion and sensation of extermination that tribal communities are experiencing, it is necessary to examine the degree of tribal women being empowered and their contribution to changes in structure for a better future in everyday life.

## **Objective of the Study**

1. To make the idea of tribal empowerment for women clear.
2. To assess the significance of indigenous women's empowerment.
3. To examine the difficulties tribal women encounter.
4. To suggest solutions for the aforementioned problems.

## Methodology

The secondary information used in this work is being examined by several writers and scholars. Numerous books, journals, and trustworthy ones have been searched for the pertinent material and expertise given in the bibliography. The commission that conducts elections of India, the government's Ministry of Tribal Affairs, and the Office Standardization of the Registry General Survey 200–2011 – provided all of the statistical information and standardized numerical information.

**Table 1 Schedule Percentages Population by tribe: 2001–2011**

Percentage of STs in 2001			Percentages of STs in 2011		
	Total	8.04%		Total	8.08%
1.	Rural area	10.7%	1.	Rural	11.4%
2	Urban area	2.5%	2.	Urban	2.9%

**Source:** India's Census 2001–2011, General Registrar's Office

**Table 2 Scheduling Tribe Populations by Residence and Sex:  
2011 Census**

	Male		Female		
Total	Rural	Urban	Total	Rural	Urban
5,23,08,724	4,61,16,262	53,76,593	5,19,61,221	4,67,93,931	52,67,281

**Source:** India's Census 2001–2011, General Registrar's Office

## Indian Tribal Women's Socioeconomic Situation

A societal degree of social fairness is significantly reflected in the position of women in that specific society. Female status is frequently defined in the context of what they do in the home, social circle, and social order and also their sources of income, job prospects, schooling, medical care, and childbearing. Women play an important and essential part in tribal groups. Although they make up roughly half of the general population, women are more influential in tribal society compared to those in other groups of people simply because they put in more effort as well as are crucial to the household governance and economic. Tribal women typically have greater societal standing than ethnically diverse women in social home concerns. A primitive

economic is defined as one that is focused on sustenance. The fiscal roles that tribal women occupy within a community typically determine their position. They are acknowledged as "forest people" as well. Women who live in forests have a closer bond with the natural world than do men. Considering they provide fuel, a substantial amount of their everyday nourishment, medical supplies, and grazing, the women who live in forests can be considered the fundamental foundation of their livelihoods.

The majority of the labor needed for agricultural and the gathering of forest-based goods is provided by tribal women. However, reforestation and other elements, such as a middleman's meddling, have significantly altered women's job patterns. Produce accessibility has fallen, and the difference between the hamlet and the forestry has grown due to the reduction of forest acreage in several areas. Second, the conventional socioeconomic pattern has undergone significant modifications due to outside pressures brought about by non-tribal immigrants and the infiltration of outside culture through towns, cities, etc. Ownership of private land for changing cultivation has been a significant movement. For instance, the Orissan tribes that practice both include the Juang, the Hill Bhiyan and Lanjia Saora, Kondh Oraon, Koya, Gond, Bondo, etc.

By one region of South Bihar in the beginning of the 1980s, 300 women walked into forest areas each day to gather kindling from illegally cut trees, according to a research cited in Chamber et al. Half of these individuals were continuously in debt due to their meager monthly income of Rs. 120. They traveled up to 12 kilometers to get to the woodland, and once people had done gathering seasoned wood, they took a freight train equipped with their head loaders to the town. Throughout the entire procedure, they had to induce the forest ranger to turn a blind eye, the community captains to let them accomplish it, and railroad workers to let them ride the railroad "free." They rarely have much money left over at the end of it.

Whenever a family's financial circumstances worsen to the extent where men are compelled to relocate in pursuit of occasional or long-term employment, women's obligations are exacerbated. When this occurs, the women are left to attempt cultivating on top of all the household chores, childcare, and elderly care. This often turns out to

be an unachievable responsibility. Despite the fact it is against the law for non-native people to acquire land belonging to tribes, women might be forced to take out money from reputable money lenders to be able to survive, to which they subsequently could ultimately become obligated and lose their lands.

The status of tribal women can be significantly compromised by the commercializing of Non-Timber Agricultural Forests Produce Products (NTFP), exacerbating gender inequities. Previously, women held substantial authority over the gathering and distributing of NTFP; however, however, commodification usurps their capacity for decision-making power, transferring it to men, a scenario that poses grave consequences for women. Due to their fundamental necessities being unattainable, the tribal women endure significant challenges experienced by the locals, since a substantial portion of their existence is dedicated to collecting water and kindling. These ladies labor from dawn to midnight, working alongside men in the required information.

Their lives are spent working within as well as without the home, which leads to destitution that is made worse by a lack of employment and low pay, making it extremely tough for them to survive. The effects are more severe for tribal women who have more tasks to do. Many tribal populations have absorbed the discriminatory employment practices of nearby caste organizations as a result of the shift to established conventional agriculture, especially in regions where changing cultivation is prohibited. Tribal women are also compelled to work as wage employees due to a lack of both financial and employment prospects.

To put it another way, women's workloads are increased by the distance between them from woodlands and environmental deterioration, but their status is also negatively impacted by outer cultural forces that go hand in hand with corporate objectives. Lack of nutrition and poor health are far more prevalent among women who live in forests than between men due to increased workloads, deteriorating the environment, and other associated issues.

## **Government Programs to Empower Tribal People in Planning and Development**

With specific and focused strategic planning, the Indian Administration's national programs acknowledge the significance of tribal community development in general. In the scheduled regions of India's indigenous-concentrated States, the Comprehensive Tribal Development Programme (ITDP) was initiated during 5th Five-Year Plan. The comprehensive Tribe Sub-Plans of the 5 and 6th Five-Year Plans were designed to help tribal groups thrive economically. It was anticipated throughout the 1970s that generalized development initiatives would address the needs that these marginalized groups and offer the necessary support as an addition to the overall efforts, but this hasn't happened.

Furthermore, compared to complementing the ordinary rules and regulations, the special provisions for welfare and growth of backward categories started to replace them. The Regional Sub-Plan (TSP) for STs and the Special Component Plan (SCP) for SCs, two novel techniques, were introduced in this framework in 1974 and 1979, respectfully. It was anticipated that the two of them unique approaches would guarantee that those 2 underprivileged groups would receive sufficient benefits from all of the broad development areas. However, there is no customized program created for women, and indigenous women within particular, under the TSP or any of the other programs that were put in place as a result of it.

It is clear that while certain non-governmental organizations suffer from successfully mobilized to provide services that are necessary for the well-being of these indigenous populations through raising their awareness and providing education to them using the most efficient ways that are possible, tribal populations only make limited use of these facilities. Tribal women seldom participate in these programs, or a lot of services don't reach those in need. The government has put in place a number of initiatives that inspire indigenous people to start startup companies. The overall impact of these programs on indigenous groups' financial development has not been what was anticipated. Rural prosperity and woman's empowerment go hand in hand. Targeted rural development programs

have been undertaken over many years. Women do not receive the rewards in proportionality.

### **Indian Constitutional Provisions Pertaining to Tribal Rights**

Legislature and executive acts are required by the Constitution's declared objective of a society with equality in order to rebuild social stability through distributing and correctional justice under a system of law. The aforementioned goal of socialism with democracy is accomplished through the Directive Principles and the underlying fundamental rights. The Preamble's usage of the word "socialist" must be interpreted in accordance with the objectives of the clauses found in Articles 14, 15, 16, 17, 21, 23, 38, 39, 46, and all other related articles.

A practical, broad, and comprehensive comprehension of the constitutional document makes a social and economic democracy with liberty, equality of chances, equality about status, and solidarity a reality for us, the people of India, with the exception of the Scheduled Tribes of India. We must strive to minimize income and differences in status as well as to provide equality of opportunity along with facilities. The establishment of a socialist, secular, democratic republic with the rule of law ought to constitute the ultimate goal of every governmental action. The fundamental rights of Indian people are safeguarded by the principles included in the third portion of the Indian Constitution. Articles 14–17 and 19–21 of those freedoms are pertinent to the investigation. When it comes to preserving the rights through culture of Scheduled Castes and Tribes (the Adivasis), which are envisioned in Articles 46 and 39(b) respectively, Part IV the the Constitution of the Republic is more detailed.

According to Article fourteen, no one on Indian soil may be denied equity before the legislation or equal treatment under the law. By a way that particularly addresses the circumstances of Scheduled Tribes and Scheduled Castes, Article 15 operationalizes the idea of equality. The phrase "backward classes" in Article 15(4) clearly involves classes consisting of people who are not candidates of the Schedule Caste system and Scheduled Tribes in general. In addition, the Constitution provides for reservations for a part of Scheduled

Castes and tribal communities, and the List of Schedule Group may be listed by a Presidents Order. The constitutional document also specifies obligations that the State must fulfill for the social and economic advancement of underprivileged groups and guarantees fundamental fundamental rights of the majority of its inhabitants. particularly designated tribes and Scheduled Castes, respectively. The Constitution of the United Chapter on Basic Rights, which is found in Part 3, guarantees people' rights. This chapter on Direct Principles and the Government Policy contains the State's obligations.

Article 46 of the Constitution requires the government to safeguard the educational and financial objectives of the poorer segments of society, particularly SCs and STs, without injustice and oppression. The idea of "distributive justice," which refers to eliminating economic disparities and correcting injustices brought about by interactions or interactions between the privileged and the unequal in society, is embodied in this paper.

To enable to ensure that the ownership and authority of the community's tangible assets are divided in a way which most effectively serves the benefit of everyone, the state is required by Article 39, paragraph b, of the Constitution. This implies that the state has a responsibility to establish a well-being state and a fair and equal social order. The goal is to ensure that the basic requirements of the average person are met and the fact the state works to alter the social structure. There is no denying that neglected tribal people do not have the same opportunities as fellow citizens in different developed areas of the authorities, and the state needs to be used to enact legislation to prevent tribal people from being abused through the furthermore, Schedule V governs the State's legislative authority under Article 245. In another word, because the tribes listed as Scheduled are covered by Schedule V, state administration must act by its constitution to ensure that state law governing them does not conflict with Schedule V's goals and that state law governing them is enacted to achieve those goals.

The goal of the fundamental plan outlined in Articles 15(4) and 46, together with the authority granted to the state legislature under Schedules V, is to uphold and defend the objectives and the tribal people. taking into account past experiences and the not-tribals' abuse

of the inexperience of the tribal people. Constitutional protections made it necessary to protect the land's other resources, which make up their natural endowments plus the cornerstone of empowering them economically.

Schedules the letter V along with VI make up an essential framework of constitutional law that aims at protecting tribal people from mistreatment, maintain their property along with other resources to promote their economic independence, and extend economic and social democracy with liberty, equality, brotherhood, and dignity. The main goal of Paragraph 5(2) of Schedule-V within the Constitution is to completely forbid the disposition of immovable assets to anyone other than tribe members in order to maintain peace and demonstrate proper administration of a tribally recognized area, as well as to safeguard the STs' possession, right heirs, and legitimate rights in the land that they currently hold.

In conjunction with Schedule-V application with regard to the STs, the creation of standardized areas aims to protect tribal autonomy, their traditions, and financial independence in order to guarantee fairness in society, the economy, and politics for the maintenance of peace and exemplary governance in the designated area. The governor's office of the territory in question has enormous authority to maintain peace and good administration when certain tribal-controlled regions are designated as "Schedule Areas" by the president. Himachal Pradesh, Bihar, Orissa, Maharashtra, Rajasthan, which is and Gujarat have all received notifications about designated designated areas. Despite growing requests, the tribal regions of West Bengal, the southern state of Kerala Tamil Nadu, and Karnataka have not yet been scheduled.

In *State of A.P. v. Samatha* The Court of Appeals ruled by an overwhelming majority that the phrase "human being" indicates someone who is natural as well as an artificial being." including the constitutional authorities. The justification for such an interpretation was found in the constitutional scheme in which the State is regarded as a juristic person with obligations of bringing a fair societal order and in and that the weaker sections, including the tribal people, are granted the freedom to live with dignity. Judge Ramaswamy noted:

## **Conclusion and Suggestions**

According to the aforementioned investigation, native women's involvement in societal and economic endeavors is noteworthy, and their social standing is determined by the amount of work they accomplish on a daily basis. Tribes women's employment involvement is impacted by a variety of socioeconomic and ecological issues. According to the current study, women's status is elevated when they make significant contributions to fundamental subsistence activities. Despite their dearth of control over material and resources from society, the contribution they make to the subsistence-based economy places them in a unique and permanent situation. It may be stated that tribal women have a unique financial advantage and a higher prestige in many places due to a variety of variables. Despite the fact indigenous women are heavily involved with financial operations, they are not encouraged to assume roles of leadership in the community. It can be stated right once that the majority of tribal populations are patriarchal with men in charge. The Indian Constitution contains norms aimed at protecting and safeguarding the interests of tribal people, but the privileges of tribal women remain largely invisible, ignored, and unacknowledged despite the numerous advancement programs and laws for ensuring the welfare of tribal groups. In India, indigenous women essentially have no part in the cultural and

In actuality, tribal the positions of women are clearly limited in the majority of ways. Engagement in the agricultural economy is the greatest casualty. Women are unable to absorb new concepts and initiatives pertaining to their wellbeing due to the startlingly low rate of female literacy. This disadvantage has prevented women from raising awareness and fully using since possibilities brought about by the development process. It prevents modernization of any type and contributes to the continuation of discriminating lifestyle choices both inside and beyond the family. Thus, it can be proposed that the following areas should be given special attention in terms of the well-being and progress of indigenous women:

Women's the availability of resources, poor literacy rates, a lack of community services and active engagement, and the requirement for awareness-raising programs because there are no targeted

interventions that would raise indigenous women's standard of life. A suitable position in the approach to strategy must be given to tribal women's involvement in enhancing their living conditions through the full exploration of natural resources and alternatives applications. Their knowledge, attitude, and ability to carry out their work effectively and quickly will be enhanced by appropriate training, awareness, and awareness on various economic programs and events. Governing bodies or Gram Sabhas in communities should be given specific duties to ensure the wellbeing of indigenous women in especial. Consequently, in order to improve standards of life for tribal women living in rural areas, tribal policy ought to focus on tackling issues related to gender-specific preferences.

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## CHAPTER 21

# A STUDY ON IMPACT OF WOMEN PROPERTY RIGHTS 2005 AMENDMENT OF HINDU SUCCESSION ACT WITH SPECIAL REFERENCE TO CHENNAI

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### **Abstract**

*The 2005 amendment to the Hindu Succession Act marked a pivotal step toward gender equality by granting daughters equal rights in ancestral property. Before this law was amended, daughters in Hindu joint families did not have the same rights as sons to inherit or manage family property. This amendment made daughters equal coparceners by birth, allowing them to claim their rightful share. The main aim of this study is to assess how much women in Chennai know about this amendment, whether they are using it to claim property, and what challenges they face. The objectives are to measure awareness, to examine legal and social obstacles,*

*understand family attitudes, and suggest ways to improve access to these rights. The study conducted empirical research, combining surveys and interviews to collect both numerical data and personal experiences. With sample size 213, sample frames within Chennai. The findings showed that women were unaware of the law, and only few had tried to claim property under it. The study suggests that awareness programs should be conducted to educate women about their rights, legal procedures should be made simpler, and free legal aid should be made available. It also recommends including legal education in schools to create long-term awareness. In conclusion, although the 2005 amendment is a progressive step*

*toward gender equality, many women in Chennai are still not able to benefit from it due to a lack of awareness, social pressure, and legal difficulties.*

**Keywords:** *Women's property rights, Gender equality, Inheritance reform, Coparcenary rights.*

## **Introduction**

The Hindu Succession Act, 1956 marked a significant stride in codifying inheritance laws among Hindus in post-independence India. However, it originally reinforced a gender bias by denying daughters equal rights in ancestral property, especially within the framework of the Mitakshara coparcenary system. The 2005 Amendment to the Hindu Succession Act served as a watershed moment in the journey towards gender justice, as it granted daughters equal coparcenary rights as sons in joint Hindu family property. This legal reform sought to correct a historical wrong, where patriarchal norms had long dictated the distribution of property, relegating women to a secondary position within familial and societal structures. The amendment not only has legal implications but also socio cultural consequences, influencing the perception and treatment of women in the Indian family structure. This study focuses on understanding the real-world impact of this legislative change, particularly in Chennai, a metropolitan city where traditional customs intersect with modern legal awareness and gender-sensitive movements.

**Evolution** of Female Property Rights in India: The trajectory of women's rights in property under Hindu law has been a gradual yet significant one. Traditionally, under the Mitakshara school of Hindu law, women were not considered coparceners and had no claim in joint family property. Even the Hindu Women's Right to Property Act, 1937, was limited in scope, granting only limited rights to widows. Post-independence reforms through the Hindu Succession Act, 1956 brought a more codified approach, yet daughters were excluded from the coparceners by default. The shift began with judicial activism and progressive state laws, like the Tamil Nadu amendment in 1989, granting daughters equal coparcenary rights. This state-specific reform laid the groundwork for the central 2005 Amendment, which finally recognized daughters as equal coparceners, irrespective of

marital status. This change symbolized a structural transformation in the understanding of women's rights under personal laws, moving from welfare-based dependency to equality and autonomy.

**Government Initiatives and Legislative Backing:** The 2005 Amendment was preceded and accompanied by several other governmental initiatives aimed at promoting gender equality. The National Policy for the Empowerment of Women (2001) emphasized the need for equal property rights as a tool for women's socio-economic empowerment. Schemes like the Mahila Samakhya Programme and Support to Training and Employment Programme (STEP) were launched to enhance women's financial independence. The judiciary also played a proactive role, with landmark judgments such as *Vineeta Sharma v. Rakesh Sharma* (2020) affirming that the 2005 amendment is retrospective, strengthening the amendment's application. These legislative and judicial actions showcase the commitment of both the Parliament and the judiciary in upholding constitutional values of gender equality and non-discrimination in family and inheritance laws.

**Factors Affecting Implementation and Acceptance:** Despite the progressive nature of the law, several socio-economic and cultural factors continue to affect its effective implementation. In many families, especially in rural and semi-urban areas, the patriarchal mindset remains entrenched, discouraging women from claiming their rights for fear of familial discord or social stigma. Even in urban centers like Chennai, although legal literacy is comparatively higher, cultural norms often dissuade women from asserting their property rights. Factors such as lack of awareness, emotional attachment to family harmony, economic dependence, and procedural hurdles in mutation of property records further hinder the realization of these rights. Moreover, societal expectations around marriage and dowry continue to operate as informal substitutes for legal entitlements, weakening the enforcement of the amendment.

**Current Trends and Legal Awareness in Chennai:** Chennai, being a metropolitan city with a rich cultural heritage and a growing middle class, presents a unique case in evaluating the effectiveness of the 2005 Amendment. Over the last decade, increased access to legal services, women's rights organizations, and legal aid clinics has

helped raise awareness among urban women. Many women in Chennai, particularly those involved in professional sectors and educated families, are increasingly asserting their rights under the amended law. However, the trend remains inconsistent, with marginalized communities and lower-income households still facing significant barriers. The city reflects a microcosm of the broader Indian society progressive in pockets, yet regressive in others. The intersection of class, caste, and gender continues to shape the discourse around property rights.

**Comparison of Other States and International:** While Tamil Nadu was a forerunner in granting coparceny rights to daughters in 1989, other states like Andhra Pradesh, Karnataka, and Maharashtra also enacted similar reforms prior to the central amendment. However, the impact varies widely across regions depending on literacy rates, judicial efficiency, and social structures. Internationally, countries like Nepal and Sri Lanka have made strides in gender-equal inheritance laws, with Nepal amending its Civil Code to grant daughters equal rights in parental property. In contrast, several Middle Eastern nations still follow Sharia-based inheritance laws where male heirs receive a larger share. Scandinavian countries offer exemplary models of gender-equal inheritance embedded in civil law systems and backed by strong welfare mechanisms. Comparing these jurisdictions highlights the importance of social reform, legal clarity, and institutional support in making laws effective beyond their text. The primary **aim** of this study is to critically examine the impact of the 2005 Amendment to the Hindu Succession Act on the inheritance rights of women, with special reference to its implementation and effectiveness in the city of Chennai. The study aims to explore the extent to which the amendment has empowered women socially, economically, and legally in the context of property inheritance.

### **Objectives**

- To examine the impact of the 2005 amendment on women's inheritance rights in Chennai.
- To assess the level of awareness among women regarding their legal right to ancestral property.

- To identify the social, cultural, and economic factors that influence women's ability to claim property rights.

## Review of Literature

1. **Saxena (2024)** examines lingering anomalies in the succession of a Hindu woman's property despite successive legal reforms. **Objective:** To identify gaps in intestate succession rules for self-acquired property of both married and unmarried Hindu females. **Methodology:** Doctrinal analysis of statutes (Hindu Women's Right to Property Act 1937; Hindu Succession Act 1956; Amendment Act 2005) and key judicial decisions, supplemented by a review of legislative debates. **Findings:** While the 2005 amendment conferred coparcenary rights on daughters, it failed to address intestate succession of a woman's self-acquired assets, leaving unclear heir determination and prompting inconsistent court rulings. Saxena **concluded** to specify amendments to clarify heirs' hierarchy and ensure uniform application.
2. **Thulaseedharan (2018)** explores the historical and legal evolution of Hindu women's property rights in India, emphasizing the continued influence of patriarchal norms in personal law. **Objective:** To examine how traditional legal concepts and personal laws have restricted Hindu women's property rights and to argue for the codification of these laws. **Methodology:** The author uses a historical-legal analysis, tracing the development of women's property rights from the Vedic period through Smritis, pre-independence legislations, and post-independence statutory changes, including the 2005 amendment. **Findings:** While ancient customs once allowed equal inheritance for daughters, later interpretations reduced women's rights to a limited estate. Even after legislative reforms, such as the Hindu Succession (Amendment) Act, 2005, unresolved issues remain particularly regarding testamentary succession and the preference for male heirs in cases of female intestates. Thulaseedharan **conclude** that the current reliance on uncodified personal laws continues to marginalize women and calls for comprehensive codification to eliminate gender bias in succession laws.

## **Methodology**

This is empirical research done by method of convenient sampling with independent variables like age, gender, education etc and dependent variables like awareness and perception of the female property rights and their effectiveness of Indian legal system and suggestions to resolve disputes arising in coparcenary right. The number of responses collected were 213, the sample frame was taken in Shankar IAS Academy and SKLS galaxy mall, primary sources such as questionnaires and surveys have been used to do research, secondary sources such as research, articles, journals were used for this study and tools used bar graphs and pie charts, chi square and cross tabulations are used to represent the response, sampling it's done by me through sending questionnaire through WhatsApp and other social media.

## **Limitations**

The research faces several limitations, including sampling bias due to the convenient sampling method, which may not accurately represent Chennai's diverse population. Its scope is confined to Chennai and nearby areas, excluding rural and other urban contexts. The sample size of 229 respondents is relatively small, limiting the generalizability of the findings. Additionally, the study relies on self-reported data from surveys and questionnaires, which can be subjective and prone to social desirability bias. These factors collectively restrict the comprehensiveness and applicability of the research, underscoring the need for broader, more representative studies to capture diverse perspectives and ensure robust conclusions.

## **Suggestions**

The study reveals several significant gaps and challenges in the domain of intestate succession and gender equality in property rights, suggesting a strong need for further research in targeted areas. First and foremost, the issue of legal illiteracy, especially among non-coparceners, highlights the urgent necessity to conduct in-depth studies on legal awareness. Future research can explore how knowledge of inheritance laws varies based on gender, educational background, and social setting, such as rural versus urban populations.

This could pave the way for tailored legal literacy campaigns. Secondly, the prominence of gender bias among coparceners calls for a deeper investigation into the socio-cultural and familial practices that continue to undermine women's rights, despite existing legal protections.

Qualitative research including case studies and interviews with affected individuals can provide insights into how systemic gender discrimination manifests in property disputes. Additionally, since many respondents have shown faith in mediation and family counseling to resolve inheritance conflicts, future studies should examine the structure, availability, and effectiveness of such alternative dispute resolution mechanisms in real-world scenarios. Exploring successful mediation models can help recommend scalable solutions. Furthermore, the mixed responses on the effectiveness of current legal reforms underscore the need for research focused on the implementation and enforcement of laws. This includes assessing how efficiently courts handle succession disputes, the role of legal aid, and the responsiveness of the legal system to vulnerable populations.

Finally, the influence of education on perceptions about gender equality in inheritance suggests that future research should explore how legal education can be integrated into formal and informal learning spaces. Investigating the impact of school-level education, awareness workshops, and community-based interventions could help improve public understanding and bridge the gap between legal theory and practical access to rights.

## **Conclusion**

Intestate succession, which refers to the distribution of property when a person dies without a will, remains a complex area of personal law in India, especially when viewed through the lens of gender, education, and social status. This study aimed to explore the socio-legal challenges in intestate succession, focusing on the disparities in awareness, access, and participation between different demographic groups, particularly in relation to gender and coparcenary rights. The primary objectives were to identify the most pressing issues faced by individuals in intestate succession, understand the impact of educational background and marital status on legal perception, and

evaluate the role of mediation and legal mechanisms in resolving inheritance disputes.

The key findings reveal that non-coparceners often struggle with a lack of legal knowledge, while coparceners, particularly women, highlight gender bias as a predominant issue. Educational attainment appears to influence trust in the legal system, with undergraduates showing higher confidence in equal rights than PhD holders who maintain a more critical stance. Male respondents were more aware of inheritance rights, while married individuals reported higher instances of discrimination in property transfer. There is also a broad consensus on the usefulness of mediation and family counseling in addressing disputes. Based on these insights, suggestions include enhancing legal literacy programs, enforcing inheritance laws more strictly, and promoting gender-sensitive reforms through both policy and grassroots initiatives.

The future scope of this research lies in expanding its geographical reach, examining rural-urban differences, and exploring the effectiveness of government initiatives in greater detail. In conclusion, the study underscores the need for a multifaceted approach combining legal enforcement, education, and social engagement to ensure equitable access to inheritance rights and reduce gender disparities in property succession. In conclusion, this study sheds light on the multifaceted challenges surrounding intestate succession in India, with particular emphasis on gender disparities, legal awareness, and the effectiveness of current legal frameworks. The findings reveal significant gaps in knowledge and participation, especially among non-coparceners and women, highlighting the persistent influence of traditional family structures and gender norms. While educational attainment and occupational background shape perceptions of legal equality, there remains a widespread belief in the potential of mediation and legal support systems to resolve disputes. To foster a more equitable inheritance system, it is essential to strengthen legal literacy, enforce existing laws effectively, and promote inclusive reforms that address the realities faced by marginalized groups. Ultimately, ensuring fair and just intestate succession requires not only legal and policy interventions but also a broader cultural shift towards recognizing and upholding equal

inheritance rights for all individuals, regardless of gender or social status.

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## CHAPTER 22

# EMPOWERMENT THROUGH PROPERTY: SOCIO-LEGAL EVOLUTION OF WOMEN'S PROPERTY RIGHTS IN INDIA (THE UNIFORM CIVIL CODE AND THE FUTURE INHERITANCE)

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### **Abstract**

*The Uniform Civil Code (UCC) envisions the abolition of religion based personal laws in India, which currently govern marriage divorce inheritance, and adoption, and their replacement with one uniform, secular legal system that is equally applicable to all citizens. Article 44 of the Indian Constitution, which is the source of UCC, sets it as its objective to ensure gender justice, a strong national integration, and secularism. This article assesses and contrasts the Hindus' personal laws with the Muslims', the Christians' and the Parsi's with a special focus on the inheritance and succession rights which are the least favorable to women. It also portrays the judicial unfolding of the UCC*

*principle through the major cases: Shah Bano, Sarla Mudgal, and Vineeta Sharma, along with the roles played by the successive Law Commissions. The paper also discusses what the move towards UCC would mean for the sectarian inheritance laws and legal pluralism and the extent to which it will be a tension point between law and religious faith in India. There is no doubt that the UCC brings major benefits such as uniformity, gender equality, legal simplification, and consolidation of secularism but at the same time, there are considerable challenges like cultural resistance, political opposition, and difficulties in implementation. In light of the above, the article believes that the*

*consultative, phased approach supported by robust political will and community engagement would be the best way forward for achieving a fair and united legal system in India.*

**Keywords:** *Uniform Civil Code, Personal Laws, Inheritance, Gender Equality, Secularism, Article 44*

## **Introduction**

The UCC plans to abolish the religious personal laws, which are the different laws for each religion that govern marriage, divorce, inheritance, and adoption, and introduce one set of ordinary laws for all these matters to be equally followed by all the citizens regardless of religion, caste, or gender. The Constitution of India, through its Article 44, includes the directive principle of state policy such a code to help national integration and gender justice. By this, UCC wants to bring equality, secularism and social harmony in the legal framework of India. It makes sure that citizens are given equal treatment before law in their personal life related matters.

The most important objectives of the UCC is to remove inequalities which is presented in existing personal laws, especially those that discriminates against women. Currently, many personal laws provide unequal rights to men and women in the society relating to the matter of divorce, inheritance, and maintenance. By instituting a unified legal framework that applies to all, it intends to guarantee that women and men have equal rights under law, and equal legal rights, without consideration of any person's religion. Besides bringing the personal laws under the same set of laws, this move also upholds the principle of secularism by disassociating the personal laws from religious influence and thus, creating an impartial legal system. In sum, the Uniform Civil Code is viewed as a crucial reform that will pave the way for a just, equal, and cohesive society grounded in the principles of justice and equality.

## **Personal Laws in India**

India's personal laws deal with various issues such as adoption, divorce, maintenance, marriage, and inheritance. In India, personal laws are based on the religious texts and cultural customs of different communities.

Hindu personal law, Muslim personal law, Christian personal law, and Parsi personal law are the main four categories of personal laws in India.

### **Hindu Law of Inheritance**

Coparcenary is a legal notion that was first introduced by the Mitakshara school of Hindu law based on ancient Hindu jurisprudence. The term is used to signify dual heirship or property ownership. The fundamental idea behind the coparcenary notion is that the common male ancestor and his lineal male descendants within four degrees, which include the ancestor, or within three degrees, which exclude the ancestor, constitute a Joint Hindu Family. The concept here is essentially common ownership and succession within a Hindu family.

The Mitakshara School only allowed women to inherit property from their husband in the form of stridhan in a very limited sense the school actually broadened the technical and legal meanings of stridhan to include nine types:<sup>1</sup>

- Gifts and bequests from relatives;
- Gifts and bequests from strangers;
- Property acquired through personal effort or mechanical skills
- Property purchased with stridhan;
- Property acquired by compromise;
- Property obtained by adverse possession;
- Property obtained in lieu of maintenance;
- Property obtained by inheritance; and
- Share obtained by partition.

Nevertheless, the first seven kinds were accepted and defined as different forms of stridhan, while the latter two kept being debated till the early twentieth century.

### **Controversy over Property Gained through Woman's Inheritance**

The Mitakshara School treated all these nine types of succession as Stridhan. However, the Privy Council went against the old school of thought on the features of property changed by the female heirs. It was held that when the property is inherited by females from males<sup>1</sup> and

also by females from females<sup>1</sup>, the property does not retain the characteristics of Stridhan but becomes women's estate. The Bombay school, however, disagrees with the English ruling on the attributes of the Stridhan<sup>1</sup> that inherited property by the woman is of three kinds: (a) inheritance of property by a woman from a female, (b) inheritance of a woman from a male in whose family the woman is born such as daughters, sisters, brothers' daughter, etc., and (c) inheritance of a woman from a male, where the woman in question is given the father's gotra or lineage by the marriage, such as intestate's widow, mother, etc.

The Bombay School maintains that the first two types of property have the attributes of Stridhan's whereas the third kind of property is not Stridhan but women's estate.<sup>1</sup>

### **Dispute over Share Obtained on Partition**

While the older schools of thought varied on the nature of stridhan, especially in the context of property a woman inherits, all the major schools of Hindu law pretty much agreed that the share obtained by a woman on partition is not stridhan but her estate.<sup>1</sup>

A coparcenary consists of a male member of a joint family along with his direct male descendants up to the great grandchildren. A coparcener is entitled from birth to the coparcenary property; however, the precise extent of their share can only be ascertained through partition.<sup>1</sup> The share of a coparcener in a joint family cannot be fixed with absolute certainty as it changes, going up when a coparcener dies and going down when a new coparcener is born. The Hindu Coparcenary is even more restrictive than the joint family.

Before the Hindu Succession (Amendment) Act 2005, daughters were not considered as coparceners in their own right under Hindu law. The amendment act made daughters coparceners. This amendment was in line with the 174th Law Commission report titled Property Rights of Women: Proposed Reforms under the Hindu Law where it said that it is unjust to exclude daughters from inheriting the ancestral property solely on the basis of gender.<sup>1</sup>

Though, as daughters were made coparceners, the judiciary intervention was very necessary to clear the doubts about the application of the section. The Court in the case Prakash & Others v.

Phulavati <sup>1</sup>and Others ruled that the 2005 amendment act is prospective in nature and the law would only be applicable to the Living Daughters of the Living Coparceners. This was also confirmed in the case of Mangammal V. T.B. Raju.<sup>1</sup>

Danamma @Suman Supur & Another v. Amar & Others<sup>1</sup> gave a contradictory view and it stated that it is the birth which creates the coparcenary right and thus recognized the right of a daughter whose father died even before the beginning of the amendment act. In Vineeta Sharma v. Rakesh Sharma<sup>1</sup>, the court further clarified the legislative intent behind the amended section 6 of the Hindu Succession Act. The Supreme Court ruling in this case held that it is not important when the amendment act came into force for daughters to be given equal rights as sons. It is the birthright of a daughter to have coparcenary rights. The Court also affirmed that the amendment is not a matter of prospective or retrospective, but rather it is a retroactive change. Recently, this was confirmed in the case of Prasanta Kumar Sahoo & Co. v. Charulata Sahu & Ors<sup>1</sup> Even the daughters of those whose fathers passed away prior to the Act's amendment were entitled to inherit their father's estate.

### **Muslim Law of Inheritance**

According to the Muslim Personal Law (Shariat) Application Act, 1937 a Muslim husband can only dispose of one third of his assets by will even with the consent of his heirs. The rest of the property passes to wife and heirs. The heir is not entitled to the property if he does not clear the deceased's debts. Female heir's share is half of male heir's. A Muslim woman is entitled to one eighth of her husband's property if there are children, else one fourth. Muslim law does not acknowledge illegitimate children. The act is not applicable to couples married under the Special Marriage Act, 1954. This kind of succession is governed by the Indian Succession Act, 1925.<sup>1</sup>

### **General Principles of Succession**

#### **Customary Principles of Succession**

Succession in Muslim Law was characterized by four fundamental principles:

1. Nearest male agnates succeeded to the whole estate of the deceased;
2. Females and cognates were excluded;
3. Descendants were preferred to ascendants and ascendants to collaterals;
4. Where agnates were equally distant from the deceased, they shared the estate per capita.<sup>1</sup>

### **Islamic Rules of Succession**

The Prophet added the following further principles to the old, established customary rule of succession:

1. Husband and wife are considered equal and entitled to inherit from each other
2. In fact, some close female relatives and cognates are given recognition and listed as heirs, thereby implying a wider circle of potential inheritors beyond just the immediate family.
3. Parents and some other ascendants besides the children (descendants) are recognized as heirs.
4. Persons who were not allowed to inherit under the customary law are designated as heirs. These newly made heirs are given certain shares of the inheritance.
5. Newly created heirs inherit along with customary heirs and they are not disinherited.
6. After giving to the newly created heirs (sharers) their specific shares, the remainder of the property, called the residue, is given to the customary heirs (residuaries). Thus, nothing is left unaccounted for.

The Sunnis and Shias are the two major Islamic groups. The first is sometimes called Hanafi. Even though there are some common norms, each of these religions have their own laws that govern property devolution of males and females as well as succession by will and without a will.

Muslims are bound by the Islamic rules of inheritance which are derived from the Quran and Hadith and implemented by the Shariat Act. However, these are not consolidated into a single secular statute, but are rather accepted by the courts. Under Sunni law, inheritance is through fixed shares e.g. normally each son's share is twice that of a

daughter. A wife's right is only a fraction of her husband's share quite often 1/4 or 1/8 of the estate, depending on whether children survive, and a widow's right is similarly restricted often 1/8 or 1/4 if there are children. Parents, siblings and other relatives also have specified shares. The Shia law is different in detail but the principles are the same in that men get bigger portions than women. Overall, Muslim women do not have equal inheritance rights in terms of gender, and wives shares are very limited. It has been said by scholars and practitioners that Muslim law does not have the idea of joint family property and considers each heirs share as separate.<sup>1</sup>

### **Christian Law (Indian Succession Act, 1925) and Parsi Law**

Indian Succession Act, 1925 controls succession of Christian and Parsi. A will can be bequeath all or part a beneficiary. Property is shared equally among sons and daughters. Children born outside Christian wedlock are not recognized by law. Shares fixed for Christian wives. If the deceased person has children, one third of the inheritance goes to the wife, and the rest is shared between the children. The widow will get half of the estate if the other heirs are not children, and the rest will go to the other relatives. If there are no children or relatives, she gets the entire property. If a Parsi man dies leaving a wife and children, the sons and wife each get double the share of a daughter. If he dies leaving children but no wife, each son gets twice as much as each daughter. If a Parsi woman passes away leaving her husband and children, each child and the husband shall get the same share. In case a Parsi man dies leaving both or one parent(s), children, and a wife, the father will get half the share of the son, and the mother will get half of the daughter's share. The parent(s) of a Parsi woman dying leaving children and a husband are entitled to half of each child's share.<sup>1</sup>

### **Supreme Court's View on Uniform Civil Code (UCC)**

In the historic Shah Bano case<sup>1</sup> of 1985, the Supreme Court had decided that a woman, who had been divorced and was denied maintenance, could claim maintenance invoking Section 125<sup>1</sup> of the CRPC. At the same time, the Court had also drawn attention to the requirement of a uniform civil code which should govern all citizens

irrespective of their religion. The next cases like *Sarla Mudgal v. Union of India*<sup>1</sup> (1995) and *John Vallamattom v. Union of India*<sup>1</sup>(2003) also pointed towards the need for a uniform civil code.

In the matter of *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*<sup>1</sup> (2019), the Court praised the State of Goa for implementing a uniform civil code and strongly recommended the same for the entire country.

### **Law Commission's Stance on Uniform Civil Code (UCC)**

In 2018, the 21st Law Commission<sup>1</sup>, led by Justice Balbir Singh Chauhan, considered that a uniform civil code was neither necessary nor desirable at that stage, marking the coexistence of secularism with the country's plurality as the main reason. Rather, it suggested that the reforms be made in the discriminatory practices of the different personal laws.

To celebrate the years since the first consultation paper, the 22nd Law Commission led by Justice (Retd) Rituraj Awasthi in 2022, invited various stakeholders, including the public and religious organizations, to share their views on UCC.

### **Religious Succession Laws and the Constitutional Demand for Gender Equality**

Inheritance laws in India mainly depend on religion, based personal laws. Such a situation has been harshly criticized for causing gender and religious inequalities. Several Public Interest Litigations (PILs) have been filed to bring about changes in succession laws and request the implementation of a Uniform Civil Code (UCC) so that everyone can be treated equally and discriminatory practices can be eliminated. Succession is the legal process of transferring property, rights, or titles of a deceased person to their heirs. It can either take place through a will (testamentary succession) or through the distribution of property according to the personal laws of the deceased (intestate succession) if there is no will. According to Indian law, the Hindu Succession Act, 1956 is applicable to Hindus, Muslims follow their personal laws, and Christians and Parsis are governed by the Indian Succession Act, 1925. Earlier, Hindu personal law mainly had two schools: Mitakshara and Dayabhaga. Under the Mitakshara system, the

concept of coparcenary was followed, i.e. sons have a birthright in the ancestral property and also can ask for partition even during the father's lifetime. On the other hand, women were denied such rights.

On the other hand, Dayabhaga school which is mainly practiced in Bengal and Assam regards inheritance as secondary to spiritual merit. Hence it allowed women to inherit property to a larger extent. At the time of the original enactment of the Hindu Succession Act 1956 daughters could not claim share as coparceners in the ancestral property albeit the 2005 amendment of Section 6 changed that by giving daughters equal coparcenary rights. The Supreme Court forcefully restated the same in *Vineeta Sharma v. Rakesh Sharma*,(India) stating that girls get coparcenary rights on birth irrespective of whether the father was alive at the time of the amendment. Islamic succession law, based on Quran, is also the inheritance law of Muslims. Besides that, the sects Sunni and Shia also differ in their succession rules. While Shia law only recognizes the nuclear family, the Sunni law also includes agnatic heirs who are male relatives by lineage.

Women, though allowed to inherit property according to Islamic law, are usually entitled to a smaller portion; e.g. in case of death of husband, the widow would get one, fourth of the estate where no children are present and one, eighth if there are children. The retention of religion, based succession legislations has brought about legal questions on the right of equality and non-discrimination found in India Const. arts. 14 15 21, and has further fueled the debate for a UCC (Uniform Civil Code) implementation as stated in India Const. art. 44, which is aimed at providing gender justice and making inheritance laws uniform.<sup>1</sup>

### **Pros and Cons of Implementation of UCC in India Pros Uniformity and Equality**

The implementation of uniform legislation would guarantee that all individuals, irrespective of their religious affiliation, adhere to a standardized set of regulations pertaining to the processes of succession and inheritance. This scheme is meant to address the inequalities that personal laws have been perpetuating so far. Following the law's equal protection notion, which is the spirit of the

Indian Constitution, individuals have a fair right to inherit properties regardless of their gender, religion, or caste.

### **Simplification**

One of the benefits of the Uniform Commercial Code (UCC) is that it can simplify and make the law more efficient by replacing the complicated tangle of individual laws with a single uniform code. This can in fact, make it easier for people to understand their legal rights and duties. Besides that, the adoption of a reduced legal system can potentially decrease legal hiccups and court cases related to inheritance, thereby freeing the overloaded Indian judiciary.

### **Gender Equality**

One of the chief benefits of the Uniform Civil Code (UCC) is its potential to abolish gender, based discrimination in inheritance. Women, as per personal laws, especially in the context of ancestral property, are often seen as being deprived of certain rights. However, the enactment of a Uniform Civil Code (UCC) can give women the same rights as men in this matter. This change can lead to increased economic empowerment for women, break down old patriarchal traditions, and promote gender equality in the society.

### **Secularism**

The Uniform Civil Code (UCC) of India fits perfectly with the country's commitment to secularism and ensures that laws are not made keeping one religion in mind. The statement points out the concept of state being neutral to religious matters, giving no special treatment to any religious group. Keeping a clear separation between religion and state is very important for upholding the democratic and secular character of India.

### **Legal Aspect**

Over the years legislature judiciary, and civil society have been trying to either amend the personal laws or draft a civil code. The cases of Mohd. Ahmed Khan v. Shah Bano Begum<sup>1</sup>, Jordan Diengdeh v. S.S. Chopra,<sup>1</sup> and Sarla Mudgal vs. Union of India<sup>1</sup> are main cases on the line. In Shah Bano, the court ruled that the Article 44 is a dead letter

and that a unified Civil Code will support cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. It observed that the legislature must ensure a unified civil code for citizens. Something has to start if Constitution is to have any significance. In the Sarla Mudgal Case of 1995, the Supreme Court solicited the prime minister to reconsider the Article 44 to establish a UCC in India. In the years 1997 and 2000, the Ahmedabad Women Action Group Case and Lily Thomas Case<sup>1</sup> showed that the court did not direct the government to implement UCC in the Sarala Mudgal case.

### **Disadvantages**

#### **Resistance and Opposition**

Religious organizations have strongly opposed UCC, especially those that fear it may undermine their right to religious autonomy. Enacting the Uniform Civil Code (UCC) is even likely to provoke protests and possibly political backlash, thus leading to social upheaval. Some communities may see it as an attempt to impose the same rules on a very diverse set of religious and cultural traditions.

#### **Cultural Sensitivities**

India is a country whose character is diversity of its people and their different ways and customs. Personal laws, over the course of many years, have been altered to a large extent in order to accommodate very different sets of activities. Hence, Uniform Civil Code (UCC) may fail to reflect the very different cultural and socio, economic circumstances of different communities. Introducing such a measure could be seen as imposing a uniform solution on a culture that is, in fact, culturally diverse.

#### **Legal Complications**

Although the UCC intends to create a more coherent legal structure, it might end up causing a whole bunch of new complicated rules which, in the end, may not really be much easier for the ordinary people to understand. Shifting the so called personal laws over to the uniform code is bound to bring in confusion and discomfort,

especially when they are newly introduced and the people get used to them.

### **Implementation**

A major hurdle in the execution of the UCC in India is that it should be uniformly and fairly enforced all over this huge and diverse country. Make people aware of the new laws and ensuring that they follow them would be quite a big task for the administration. Besides, replacing separate legal systems with one law might lead to disputes and confusion as to how different provisions of the revised law should be put into practice.

### **Political Will**

Implementing the UCC will require a clear and strong political will which has always been a matter of major friction in Indian politics. Governments coming one after another will be hesitant to take a firm stand on this matter, as they will be worried about losing the support of certain religious groups.<sup>1</sup>

In short, the idea of a Uniform Civil Code in India with regard to succession and inheritance can have good points like equality, simplicity and secularism. On the other hand, it has several challenges like cultural issues, political opposition and the complexity of the implementation. Balancing the pros and cons mentioned above is really a complex and on going task in India's legal and social system.

### **Conflict Between Religious and Secular Law**

Let's look at normative problems from the stand point of the Uniform Civil Code. The legal pluralism and conflicts of laws which have been the focus so far will now give way to the discussion of secular, religious law conflicts. Whenever secular and religious laws come into effect, the higher judiciary of India grants their overriding jurisdiction. Judges have to adhere to very specific procedural rules in order to resolve such disputes which is the reason for the discrepancy. Such a process needs to be very sensitive to religion and culture. Think about the cultural significance of the different practices and come up with ways to support the gender equity. If the judicial system wants to lay down a full legal procedure, it is a must that it

communicates with religious scholars regarding the different legal opinions which are fundamental to religious interpretation.<sup>1</sup> Therefore, these standards should be taken into account if we want to make a decision that will promote both gender equity and the Constitution. Religious studies should be a resource for secular decision making. Although by following a well thought out procedure, there may be a risk of political interests of major factions being put in jeopardy, which in turn may lead to protest movements. Still, to effectively resist these demonstrations, support from local communities is crucial. It seems to be another ethical dilemma that we need to decide on the tension between individual and group rights. This paper supports the view that both individual and group rights are valuable and should be supported. As human beings are autonomous, individual rights are what make it possible for them to carry out their plans, be who they really are, and do as they please. However, group rights, which take care of the collective identity, lead to a cultural diversity that is really a plus for society. More often than not these two kinds of rights come into conflict. Once more, just like in the previous two instances, we have to decide on a set of rights at conflict. Give a lead to one of the two options. In fact, recent societal reactions against intercaste marriages, particularly in the northern part of India, have made this issue more visible. Young couples who marry individuals from different castes and tribes without getting their parent's permission risk being socially ostracized or even killed. By doing so, the couple exercised their rights while also crossing the lines of caste and community. On the other hand, it is the individuals who have violated communal reputation that are blamed. The khap panchayat is a system of governance for several areas in North India and it is responsible for giving out directions mainly. This body is mainly associated with encouraging violence as a means of restoring the communal "honour." Community elders who are respected constitute the khap. Over the past one decade, many khaps have ordered their relatives to carry out executions of law violators. Thus, democratic and modern India cannot tolerate such acts under the guise of collective rights. These murders were carried out in India but the Indian government did not do anything to take legal action against them. Political leaders understood that holding these khaps

accountable would be politically very costly in a country where traditional belief systems are still dominant. In a conflict, the fundamental individual rights should take precedence over the rights of the group.<sup>1</sup>

## **Conclusion**

A major cornerstone towards attaining gender equality through the application of equal rights across religions and communities is the Uniform Civil Code. The current system of personal laws results in significant gender discrimination/disparities as a result of their application with respect to inheritance rights and succession; these personal laws directly contravene constitutional protections as guaranteed by Articles 14, 15, 21, and 44.

While there have been various judicial decisions in favour of a UCC (Shah Bano and Sarla Mudgal), there continues to be considerable apprehension among politicians with regard to the implementation of a Uniform Civil Code. The successful implementation of such a system will require the creation of strong political resolve, dialogue with communities, and consultation with groups using a phased approach.

The Uniform Civil Code is much more than just another piece of legal legislation; it is a commitment to the constitutional obligation to provide for the creation of an equal and just society through the establishment of an equal opportunity-based society.

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## CHAPTER 23

# INVISIBLE CHAINS: A CRITICAL LEGAL ANALYSIS OF INTERNALIZED PATRIARCHY AMONG WOMEN AND ITS IMPACT ON GENDER JUSTICE

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### **Abstract**

*The way patriarchy has historically arranged its social, cultural, and legal structures have been such that they give precedence to male authority over that of women. In addition to blatant discrimination, modern gender injustices tend to happen via subtle forms of social conditioning that influence beliefs, preferences, and involvement of women in the process of strengthening gender hierarchies. Internalized patriarchy is the mechanism where women internalize and replicate patriarchal norms, attitudes, and expectations and in some cases even become agents of perpetuating systems that do not favor them. Although legal changes have increased the formal assurances of equality, gender injustice prevails, and therefore there are important concerns as to whether law is effective in eradicating socially ingrained*

*norms. The paper is a critical discourse of the phenomenon of internalized patriarchy in a legal system and its effects on the achievement of substantive gender justice. The main goals consist in evaluating the impact of internalized gender norms on the interest of women in legal rights, evaluating the contribution of judicial reasoning and judicial reminisces to reproduced implicit biases, and analyzing the disconnect between the constitutional equality and realities. The paper uses both a doctrinal and a socio-legal approach that examines the constitutional clauses, legal safeguards, and judicial rulings and social and behavioral factors that define legal consequences. The results indicate that even with progressive legislation, internalized patriarchal attitudes are an impeding factor to access to justice,*

*lessen reporting gender-based harms, as well as act as a proxy factor to be discriminative. The study claims that legal change needs to be accompanied by revolutionary initiatives, such as gender-sensitive court education, educational change, and interventions on community levels. Gender justice*

*must be sustainable through structural change in the law, but also cognitive and cultural change.*

**Keywords:** *Internalized Patriarchy, Gender Justice, Feminist Legal Theory, Substantive Equality, Socio-Legal Analysis, Women's Rights, Patriarchal Norms, Legal Reform*

## **Introduction**

### **Conceptualizing Patriarchy in Legal and Social Systems**

Patriarchy is a structural system whereby social norms, institutional arrangements and legal norms are organized in a way that supports male dominance and acceptance of gender hierarchies. Modern research has shown that despite the presence of formal equality that has been established in a constitution, structural inequalities can still exist due to the presence of social norms and institutional practices (World Bank 2022; UN Women 2022). Legal systems can sound neutral but in fact, in their interpretation and imposition, they can be more male-centric than it might seem.

### **Internalized Patriarchy Means**

To the extent that women knowingly or unknowingly internalize and reproduce patriarchal beliefs, internalized patriarchy is the process that strengthens gender hierarchies at the family, work and community levels. The current statistics provided by the world show that both men and women still have gender-biased perceptions that legitimize inequality, which proves that discriminatory norms have been internalized at the psychological level (UNDP 2023).<sup>1</sup>

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<sup>1</sup> World Bank, *Women, Business and the Law 2022* (World Bank Group 2022); UN Women, *Progress on the Sustainable Development Goals: The Gender Snapshot 2022* (UN Women 2022); UNDP, *2023 Gender Social Norms Index (GSNI)* (United Nations Development Programme 2023); World Economic Forum, *Global Gender Gap Report 2023* (World Economic Forum 2023).; OECD, *Gender Equality at a Glance 2023* (OECD Publishing 2023); UN Women, *Progress on the Sustainable Development Goals: The*

## **Gender Justice Discourse Relevance**

Gender justice is not just about formal equality as a legal matter, but transformation of material lived-realities. Nevertheless, due to years-long gender disparities in economic involvement, political visibility, and access to justice, normative change is falling behind the legislative one (World Economic Forum 2023). Internalized norms, hence, constitute a serious impediment to transformational equality.

## **Statement of Problem**

Although there exist progressive statutory and constitutional protection, gender-based discrimination persists and a part of it is perpetuated by internalized patriarchal views on the part of women themselves.

## **Research Questions**

1. How does internalized patriarchy affect women's engagement with legal rights?
2. Does judicial and institutional practice adequately address normative bias?
3. Can legal reform alone achieve substantive gender justice?

## **Hypothesis**

Internalized patriarchal norms significantly undermine the effectiveness of gender-protective laws.

## **Scope and Limitations**

The study focuses on contemporary legal frameworks and socio-legal dynamics between 2020–2025, acknowledging limited empirical generalization.

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*Gender Snapshot 2023* (UN Women 2023); World Bank, *Women, Business and the Law 2023* (World Bank Group 2023).

## **Research Methodology**

A doctrinal analysis of constitutional and statutory provisions is combined with a socio-legal review of global gender norm data and institutional reports (UNDP 2023; World Bank 2022).

## **Theoretical Framework**

### **Feminist Legal Theory**

#### **Liberal Feminism**

The theory of liberal feminism supports formal equality in the eyes of law and elimination of discriminatory obstacles by legislative action and constitutional guarantees. Gender equality evaluation reports released recently point to the fact that even with the increased legal safeguards, the gaps in implementation are still in place, limiting the opportunity of women to be equal in economic and political life (World Bank 2022). Liberal feminism is thus focusing on reinforcing enforcement and institutional responsibility.

#### **Radical Feminism**

The radical feminist theory is critical of law as a tool historically determined by the patriarchal system which they believe, legal neutrality tends to cover systemic male dominance. Modern analyses of gender norm inform about the systematic biases that still exist in the context of social and institutional structures that require radical feminists to argue that the reform should not only modify the statutory language but also disrupt the very relations of power (UNDP 2023).<sup>2</sup>

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<sup>2</sup> World Bank, *Women, Business and the Law 2022* (World Bank Group 2022); World Bank, *Women, Business and the Law 2023* (World Bank Group 2023); UNDP, *2023 Gender Social Norms Index (GSNI)* (United Nations Development Programme 2023); OECD, *Gender Equality at a Glance 2023* (OECD Publishing 2023); UN Women, *Progress on the Sustainable Development Goals: The Gender Snapshot 2022* (UN Women 2022); Siegel, R. B., “Anti-Stereotyping and Equality Jurisprudence” (2021) 130 *Yale Law Journal Forum* 491; Crenshaw, K., “Intersectionality and Critical Race Theory in Contemporary Jurisprudence” (2022) 122 *Columbia Law Review Forum* 1.

## **Intersectional Feminism**

Intersectional feminism is a feminism that appreciates the existence of gender oppression, which cuts across caste, class, race, and disability among others. The studies of gender gaps in the world show that disadvantaged women face even greater disadvantages when it comes to accessing justice and representation (World Economic Forum 2023). This framework is necessary in assessing the differential patriarchal effects that are internalized.

## **Internalized Oppression Theory**

### **Psychological Foundations**

The internalized oppression theory describes the process of internalizing the ideologies of the dominant group by the marginalized group and influencing personal perception and behavior. The latest data on gender attitudes in the world proves that both women and men could internalize discriminatory beliefs that legitimize inequality (UNDP 2023).

## **Social Conditioning and Gender Roles**

The family, education, the media, and religion are the sources that reinforce stereotypical expectations and restrict agency by establishing gender norms (UN Women 2022).

## **Feminine and Masculine Socialization and Legalities**

Social norms are embodied in and defined by law. Progressive laws are in favor of equality, whereas the socialization of gender roles affects how rights are asserted, construed and implemented, proving the interdependence between socialization and legal systems (World Bank 2022; UN Women 2022).

## **Historical Evolution of Patriarchal Structures in Law**

### **Colonial Legal Legacy in India**

The legal system that existed in India during the colonial era institutionalized the patriarchal norms because the laws that governed the Indians were personal and strengthened the male power in issues to do with property, marriage, and inheritance. British rulers codified religious legislation by selectively interpreting, frequently freezing

the traditions of patriarchy into legal strict types (Agnes 2021). Modern legal history records that the codifying of colonial society reinforced gender order through placing textual privilege on top of social change and, by positioning such norms in statutory text, it instilled into the present-day adjudication system (De 2022).

## **Gender Hierarchy and Laws Relating to Personality**

### **Hindu Personal Law**

Reforms that were post-independent like succession and guardianship law amendments aimed to enhance property rights of women. Nevertheless, empirical studies reveal that the social resistance and traditional practices restrict the successful realization of the rights of women to inheritance and in marriage despite the legal changes (Jain 2020; World Bank 2022).<sup>3</sup>

### **Muslim Personal Law**

The controversies of triple talaq and the custody of maintenance have further made both sides of the religion and constitutional equality tensions. The recent court and legislative interventions can be seen as the effort to make individual law practices consistent with the principles of gender justice, yet other scholars claim that structural inequality still remains in such fields as guardianship and inheritance (Kirmani 2020; Agnes 2021).

Equality is a vision of the constitution where all individuals are equal and therefore equal in rights.<|human|>4.3 Constitutional Vision of Equality.

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<sup>3</sup> Agnes, F., *Women and Law in India: An Omnibus Comprising Law and Gender Inequality and Enslaved Daughters* (Oxford University Press 2021); De, R., “Constitutional Interpretation and Gender Justice in Postcolonial India” (2022) 20(2) *International Journal of Constitutional Law* 567; Jain, M., “Women’s Inheritance Rights and Social Resistance in India” (2020) 55(3) *Economic and Political Weekly* 45; World Bank, *Women, Business and the Law 2022* (World Bank Group 2022); World Bank, *Women, Business and the Law 2023* (World Bank Group 2023); OECD, *Social Institutions and Gender Index (SIGI) 2022 Report* (OECD Publishing 2022).

Article 14 ensures equality before the law and equal protection of the law and they are the basis of the anti-discrimination legal tradition.

Article 15 has banned any form of discrimination based on sex and has allowed affirmative action.

Article 21 broadens security of life and individual liberty to the sphere of dignity and control.

Social justice and gender equity are the goals of governance encouraged according to the Directive Principles of State Policy. Recent constitutional reviews attest to the fact that even though the framework is radical in its ambitions, the achievement of substantive equality is still unequal because of the deep-rooted socio-legal standards (Bhatia 2023; World Bank 2022).

### **Internalized Patriarchy: Conceptual and Empirical Dimensions**

Internalized patriarchy is a mechanism working both in terms of the daily social institutions that provide normalization to the gender hierarchies and influence the way women perceive their own capabilities of independency, power and rights entitlement. The modern gender norm surveys show that conflicting beliefs tend to be widespread across the genders, which means that the development of patriarchal values is densely rooted in social structures, which are firmly embedded on the psychological level (UNDP 2023).<sup>4</sup>

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<sup>4</sup> UNDP, *2023 Gender Social Norms Index (GSNI)* (United Nations Development Programme 2023); UNDP, *Human Development Report 2021/2022: Uncertain Times, Unsettled Lives* (United Nations Development Programme 2022); UN Women, *Progress on the Sustainable Development Goals: The Gender Snapshot 2022* (UN Women 2022); OECD, *Social Institutions and Gender Index (SIGI) 2022 Report* (OECD Publishing 2022); World Economic Forum, *Global Gender Gap Report 2023* (World Economic Forum 2023).

### **Family Formation and Gender Internalization**

Family is the main place of gender socialization and roles of care giving, obedience and honor are passed on across generations. Empirical evidence indicates that women often absorb expectations that give more emphasis on the domestic role than their involvement in the public and restrict their exposure to legal and economic opportunities (UN Women 2022). This kind of conditioning has an impact on decision making on issues of marriage, inheritance and reporting of violence.

### **Education and Social Reinforcement**

The educational institutions can recreate gender stereotypes based on the curriculum, expectations of instructors and peer culture. According to the report on the global development, female enrollment has increased, still, there are gendered career tracking and normative biases that prevent the aspirations toward leadership (World Bank 2022). These tendencies enforce internal restraint against formal equality in accessing education.

### **Media Presentation and Cultural Discourses**

The scenes of media tend to reinforce feminine stereotypes regarding sacrifice, morality and identity of relationships. Stresses of global media patterns reveal that objectification remains a consistent issue and normative framing plays a role in supporting the unequal gender roles (UNESCO 2021).

### **Workplace and Institutional Reinforcement**

Internalized subordination is further determined by institutional practices such as informal promotion criterion and gender bias tolerance. According to Global Gender Gap Report, structural barriers and normative expectations still restrain the progress of women, and the coexistence of personal belief systems and systemic inequality.

### **Legal Case Analysis: Women as Enforcers of Patriarchal Norms**

The socio-legal studies and judicial records indicate that there are complicated dynamics in which women can play their roles in strengthening the patriarchal practices specifically in the family and

community systems. It has been argued that internalized norms increase litigation rates, evidence practice and consistency in testimonies in cases involving gender (Agnes 2021; Bhatia 2023).

### **Domestic Violence Cases**

The courts have witnessed cases of female relatives, mothers-in-law and old women perpetually spreading abusive atmospheres in domestic violence cases. According to empirical reviews, social stigma, economical reliance, and imbedded notions regarding the persistence of the marital relationship wisen the victims of traditional courses to seek solutions offered by protective law (UN Women 2022). The judicial reasoning is at times biased in favor of family accommodation, as opposed to autonomy of survivors, showing slight normative bias.

### **Dowry-Related Litigation**

The intergenerational complicity of dowry-related prosecutions can be seen in that women can impose the requirements of dowry as family custodians. Legal studies indicate the conflict between strict penal legal measures and judicial cynicism toward abuse of same, which has the potential to water down application of enforcement (Agnes 2021). Such interpretation can partially compromise the deterrent effect of anti-dowry laws.

### **Harassment in the Workplace Conflicts**

Complaints with regard to workplace harassment are often met with institutional objections. Research has revealed that fear of reputational damage and organizational obedience might be internalized and restrain women against testifying against top officials (World Economic Forum 2023). Adjudicatory bodies have been known to embrace restrictive evidentiary norms that do not consider power imbalances.

### **Honor-Related Crimes**

Honor-based violence usually entails the support of the female relatives of punitive measure on women who have crossed social norms. The literature of socio-legal shows that the societal

internalization of honor ideology is solidified through collective reinforcement of the patriarchal control (UNDP 2023).

On balance, although courts are becoming more sensitive to the rights of the gender, implicit bias and reasoning of reconciliation still dominate, which is the result of a long-standing collision of the interpretation of the law and internalized patriarchy (Bhatia 2023).

### **Impact on Gender Justice**

Internalized patriarchy has a significant effect in undermining the realization of substantive gender justice because it influences the attitudes towards reporting, adjudication, and the implementation of laws that protect people. Socio-cultural conditioning still impedes the efficient provision of justice, in spite of the legislative protection (UN Women 2022; World Bank 2022).

### **Obstacles to the Reporting of Crimes**

Surveys on gender norms indicate that there is a significantly large number of women who consider domestic violence as an acceptable aspect of society in some situations, which has internalized beliefs (UNDP 2023). The risk of stigmatization, financial reliance, and family coercion lead to the victims not making the courts and this weakens the deterrence effect of the law.

### **Victim-Blaming Culture**

Attitudes of victim-blaming are still observed in the community and institutional context. It has been found that women are commonly doubted by the society, their clothes, or actions in instances of violence and harassment and the blame is redirected towards the perpetrators (UN Women 2022). These attitudes can affect the police investigations and courtroom analysis of evidence.

### **Ineffective Enforcement of Safety Legislation**

Protection frameworks are available in Protection of Women from Domestic Violence Act, 2005, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Dowry Prohibition Act, 1961. Nevertheless, the lack of implementation, including the lack of awareness, the insufficient

number of protection officers, and organizational non-adherence, restricts their performance (World Bank 2022; World Economic Forum 2023). Patriarchal ideals are usually internalized and thus reconciliatory approaches are adopted instead of enforcement based on rights.

### **Internalized Misogyny of Judicial Reasoning**

Certain implicit assumptions on ideal femininity, family preservation and moral behaviour are sometimes manifested in judicial discourse. As observed in the modern day constitutional literature, despite the growing trend of gendered interpretations of the constitution, traces of the manifestation of paternalism remain manifest within sentencing, checks of credibility and remedial interest (Bhatia 2023).<sup>5</sup>

### **Comparative Perspective**

The comparative analysis gives an idea of how various jurisdictions address structural patriarchy and internalised gender norms by reforming their laws and innovating their institutions.

The book is a work of feminist jurisprudence that examines feminism in the United States and seeks to promote equality among genders. <|human|>8.1 Feminist Jurisprudence in the United States of America.

The current feminist jurisprudence in the United States has focused on substantive equality, anti-stereotypical principles, and the

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<sup>5</sup> UN Women, *Progress on the Sustainable Development Goals: The Gender Snapshot 2022* (UN Women 2022); World Bank, *Women, Business and the Law 2022* (World Bank Group 2022); UNDP, *2023 Gender Social Norms Index (GSNI)* (United Nations Development Programme 2023); UN Women, *Measuring the Shadow Pandemic: Violence Against Women During COVID-19* (UN Women 2021); World Economic Forum, *Global Gender Gap Report 2023* (World Economic Forum 2023); World Bank, *Women, Business and the Law 2023* (World Bank Group 2023); OECD, *Gender Equality at a Glance 2023* (OECD Publishing 2023); Bhatia, G., *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2023).

awareness of intersectional discrimination. The recent constitutional commentary has pointed to the changing role of the judiciary in the reproductive autonomy, the workplace discrimination and the gender-based violence, as well as emphasized the continued ideological divisions in the equality jurisprudence (Siegel 2021; Crenshaw 2022). Socio-legal studies have emphasized that institutional accountability and cultural change are not possible with formal anti-discrimination laws only (OECD 2023).

### **The CEDAW and the International Human Rights Framework Comprises 8.2**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defines binding commitments of State respondents to get rid of discrimination both in public and private spheres. Recent years have seen general recommendations highlighting the necessity to respond to adverse gender stereotypes and institutional obstacles to inequality (CEDAW Committee 2020). Based on checks conducted by the world, it is observed that the compliance is unequal, especially in converting normative commitments into working domestic enforcements (UN Women 2022).<sup>6</sup>

### **The Next Lesson is the Lessons of Scandinavian Gender Equality Models**

Scandinavian nations have been documented to be known as having progressive parental leave laws, equal political representation, and robust welfare programs. These countries are always ranked top by comparative gender indices in terms of bridging the economic and political differences (World Economic Forum 2023). Nevertheless, researchers warn that even the so-performing models still have to deal

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<sup>6</sup> Siegel, R. B., “Anti-Stereotyping and Equality Jurisprudence” (2021) 130 *Yale Law Journal Forum* 491; Crenshaw, K., “Intersectionality and Critical Race Theory in Contemporary Jurisprudence” (2022) 122 *Columbia Law Review Forum* 1; OECD, *Gender Equality at a Glance 2023* (OECD Publishing 2023).

with the insidious cultural stereotypes, proving that institutional reform should be supported by the ongoing normative interactions (OECD 2023).

On the whole, comparative frameworks show that transformative gender justice needs a concerted legislative change, institutional responsibility, and long-term work on the internalized norms of patriarchy.

### **Policy Recommendations**

It takes both structural and normative change in order to tackle internalized patriarchy.

### **Judicial Training in Gender Sensitivity**

Judges and judicial officers should be given capacity-building programs where modules on unconscious bias, gender stereotyping as well as intersectionality will be included. According to the recent global justice evaluations, the current status of judicial education is that it enhances sensitivity in the handling of gender-based claims (UN Women 2022; OECD 2023).

### **Reform in Personal Laws**

It is necessary to reconcile personal laws with the principles of constitutional equality which will help to remove the remnants of gender hierarchies. The relevance of the study on comparative constitutional scholarship emphasises the need to match the religious, or customary norms with the standards of substantive equality (Bhatia 2023).

### **Individual Sex Education in Schools**

To break stereotypes at early ages, the incorporation of gender equality and education based on rights in school syllabus can be used. According to development reports, early educational interventions have serious effects on the long-term normative change (World Bank 2022).<sup>7</sup>

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<sup>7</sup> UN Women, *Progress on the Sustainable Development Goals: The Gender Snapshot 2022* (UN Women 2022); OECD, *Gender Equality at a Glance*

## **Guidelines of Media Regulation**

Media responsibility models must discourage such stereotypical accountability and encourage gender responsible accountability. The reviews of the international policies emphasize the significance of media regulation in redefining the attitudes of people towards the gender roles (UNESCO 2021).

## **Awareness Community-Based Programs**

Internalized norms can be met in the local context through the use of grassroots engagement initiatives, especially in rural and marginalized communities (UNDP 2023).

## **Enhancing Institutional Accountability**

It should be properly enforced with audits of compliance on a regular basis, independent oversight bodies, and transparent reporting mechanisms all across (World Economic Forum 2023).

## **Research Gaps**

In spite of increasing scholarship, there are still a lot of gaps. One is that there is not much interdisciplinary analysis of internalized patriarchy between legal studies, psychology, and sociology (OECD 2023). Second, there is a lack of empirical studies in the context of the Indian market, especially on the attitudes of women towards legal rights and the obstacles to their implementation (World Bank 2022). Third, not many research papers integrate psychological internalization theory with doctrinal constitutional analysis, meaning

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2023 (OECD Publishing 2023); Bhatia, G., *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins India 2023); World Bank, *Women, Business and the Law 2022* (World Bank Group 2022); UNESCO, *Gender Equality and Education: Policy Review and Global Monitoring Insights* (UNESCO 2021); OECD, *Social Institutions and Gender Index (SIGI) 2022 Report* (OECD Publishing 2022); UNDP, *2023 Gender Social Norms Index (GSNI)* (United Nations Development Programme 2023).

that they need to develop psychological-legal frameworks (UNDP 2023).

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