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“A STUDY ON WOMEN’S INHERITANCE RIGHTS IN INDIA”

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“A STUDY ON WOMEN’S INHERITANCE RIGHTS IN INDIA”

The law has drifted and moved more towards formal equality, but the actual question is whether women are capable and able to claim, possess and control the property which the law gives them.

ABSTRACT:

Women’s inheritance rights in India went through a significant transformation from a kind of historically unequal position towards better and greater legal recognition of equality. This study examines the transformation and change by focusing not only on the legal entitlement of women to inherit property but also on whether such entitlement is effectively and sufficiently realized in practice. The study begins by examining the significance of inheritance rights from the perspective of constitutional equality and women’s economic security. Then it analyses the evolution of the legal framework governing women’s inheritance, with specific emphasis on the Hindu Succession Act, 1956, the Hindu Succession (Amendment) Act, 2005, and their position under other personal laws. The study further examines the judicial development and change of women’s inheritance rights through significant Supreme Court decisions and evaluates to which the judicial interpretation has strengthened the legal position of women. Further moving beyond the formal legal framework, the study explores the continuing gap between legal rights and their actual realization, including social and familial pressures, preference given for all male heirs, relinquishment of property, lack of awareness and difficulties in accessing legal remedies. The study particularly considers the distinction between merely inheriting property and having effective ownership, possession and control over it. Based on legal and existing empirical literature, the study finds out that the legislative and judicial reforms have substantially strengthened women’s formal inheritance rights, but effective equality requires greater awareness, accessibility and practical enforcement. This concludes with suggestions aimed at strengthening women’s ability to claim and exercise their legally recognized inheritance rights in India.

CHAPTER I: OVERVIEW ON INTRODUCTION

1.1 BACKGROUND OF THE STUDY:

Inheritance is an important means through which property and wealth are transferred from one generation to another generation. For a women, the ability to inherit and own any property is closely connected and linked with the economic security, independence and decision-making

within the family and society. However, women in India have historically faced many unequal treatment in the matter of inheritance, as major preference and priority are often being given to the male heirs in the family. Over time, legal reforms have improved this position of women in family as well as society. The Hindu Succession Act, 1956 and its Amendment in 2005 has significantly strengthened women's inheritance rights, mainly by recognizing daughters as coparceners in the same way as sons or male heirs. Judicial decisions have played an important role and has further clarified and developed these rights. Despite all these legal developments, having a legal right does not automatically and always mean that women actually receive, possess or control inherited property. Social and family pressure, priority for male heirs, lack of awareness and difficulties in accessing the legal remedies available may prevent women from fully obtaining and exercising their rights. Therefore, this study focuses on the gap between women's legal entitlement to inheritance and its actual realization in practice, with particular focus revolving around ownership, possession, control and empowerment.

1.2 SIGNIFICANCE OF THE STUDY:

Women's inheritance rights are significant because ownership of a property can directly influence a women's economic and social position. A woman who owns property in her own name might definitely have greater financial security and greater ability to participate in decision making concerning her own life and family. Inheritance can therefore function as an important source of economic empowerment. The significance of inheritance is also linked and related with the principle of substantive equality. It is not sufficient that the law formally provides women and men with equal rights, the if social and practical situations prevent women from enjoying those rights. The effectiveness of inheritance law must therefore be considered by examining whether women are actually able to obtain and control the property to which they are legally entitled. Existing research makes us understand that legal reforms does not always produce the same results in practice. Women's property rights may be affected by many reasons including family expectations, preference for male heirs, voluntary or pressured relinquishment of shares, lack of legal awareness and difficulties in approaching legal institutions. All these issues make it necessary to examine inheritance beyond the wording of statutory provisions. This study is therefore significant and crucial because it connects legal reform with its practical impact, rather than just treating women's inheritance merely as a question of succession law. It considers inheritance as a means of promoting equality, economic security, ownership and empowerment.

1.3 REVIEW OF LITERATURE:

Few important literature we can build the review around involves:

1. **Bina Agarwal – *A Field of One's Own***- Agarwal's book examines the gender and land rights in South Asia and argues that women's independent ownership and control over property are important for their economic well-being, social status and empowerment. Importantly for your research, the book also specifically examines the gap between women's legal rights and their actual claims and control over land.
2. **Sanchari Roy – *Empowering Women? Inheritance Rights, Female Education and Dowry Payments in India***- This study, published in the Journal of Development Economics, examines the effects of gender-progressive inheritance reforms in India. It is particularly useful because it questions whether legal reform automatically increases the likelihood of daughters actually inheriting property. The study found that despite legal reform, parents continued to disinherit daughters in some circumstances, sometimes compensating them through education or dowry.
3. **Nayana Bose and Shreyasee Das – *Intergenerational Effects of Improving Women's Property Rights: Evidence from India***- Published in Oxford Development Studies, this research examines the broader intergenerational consequences of improvements in women's property rights in India. It helps us move beyond the narrow question of “Does a daughter get property?” and consider how property rights can affect women's position and outcomes across generations.

1.4 RESEARCH GAP:

The existing literature has extensively examined the historical development of women's property rights, the Hindu Succession Act, 1956, the 2005 Amendment, and judicial developments concerning women's inheritance. Many studies have also highlighted and focused that formal legal rights do not always result and end up in women actually receiving or controlling property. However, there exists a gap in examining the disconnect between women's legal entitlement to that of inheritance and its practical realization, particularly to the extent where women are able to claim, receive, possess and control inherited property within social and familial settings. Therefore, this study focuses on women's inheritance rights not merely as a legal entitlement but as a right that must be effectively realized in practice.

1.5 RESEARCH OBJECTIVES:

- * To examine the legal framework governing women's inheritance rights in India, with

particular and clear focus on the constitutional principles, evolution of the inheritance rights, the Hindu Succession Act, 1956, the 2005 Amendment of the act, and other relevant personal laws.

- * To analyse the judicial development of women's inheritance rights through significant Supreme Court decisions and to critically examine their contribution towards strengthening women's legal position.
- * To examine the gap between women's legally recognized inheritance rights and their actual realization, with proper and clear focus on social and practical barriers, ownership, control and women's empowerment.

1.6 RESEARCH QUESTIONS:

1. What is the legal framework governing women's inheritance rights in India, and how have constitutional principles, statutory reforms and other personal laws shaped these rights?
2. How have the Indian courts, particularly the Supreme Court, developed and strengthened women's inheritance rights through judicial interpretation?
3. What is the gap between women's legal entitlement to inheritance and its actual realization, and what social and practical factors affect women's ownership, control and empowerment through inherited property?

1.7 RESEARCH METHODOLOGY:

The present study adopts a doctrinal method of legal research. This study primarily relies on various legal materials including statutes, judicial decisions and other authoritative legal sources relevant to women's inheritance rights in India. This study also makes use of secondary legal and academic materials including books, journal articles and existing empirical research, to understand the historical, social and practical dimensions of women's property rights. All these sources are very helpful and are used to support the legal analysis and to examine the difference between formal legal entitlement and actual realization. The research is analytical in nature as it not only describes the law but also examines its development and practical significance. No primary field survey or interview-based empirical research is undertaken in this study.

1.8 LIMITATIONS OF THE STUDY:

This study is subject to certain limitations. First, as it is primarily a doctrinal study it does not involve primary field research, interviews or collection of original empirical data from women claiming inheritance. Secondly, since succession in India is influenced by many different personal-law frameworks, the study cannot provide an exhaustive examination of every rule applicable to every community within the limited scope of the paper. The major personal-law frameworks relevant to women's inheritance are considered, while the principal focus remains only on the development of women's legal rights and their practical realization. Thirdly, the study is limited to the materials and judicial developments relevant to its central research questions and does not attempt to cover every case or every aspect of succession law.

1.9 SCHEME OF STUDY:

Chapter I – Overview on Introduction provides the background and significance of the study, reviews the existing literature, identifies the research gap, states the research objectives and questions, explains the methodology and limitations, and presents the scheme of the study.

Chapter II – Legal Framework examines the constitutional and conceptual perspective, the evolution of women's inheritance rights, the Hindu Succession Act, 1956 and the 2005 Amendment, and the position under other relevant personal laws.

Chapter III – Judicial Development examines the development of women's inheritance rights through judicial interpretation, with particular focus on significant Supreme Court decisions and their critical evaluation.

Chapter IV – Legal Rights and Actual Realization examines the gap between legal rights and their practical enjoyment, including social and practical barriers and the relationship between property ownership, control and women's empowerment.

Chapter V – Conclusion and Suggestions presents the principal findings of the study, draws the overall conclusion and provides suggestions for improving the effective realization of women's inheritance rights.

CHAPTER II: LEGAL FRAMEWORK

The legal framework that governs women's inheritance rights in India has developed through various constitutional principles, statutory reforms and different personal laws. This chapter examines those legal developments and rights recognized for women under the applicable inheritance laws.

2.1 CONSTITUTIONAL AND CONCEPTUAL PERSPECTIVE:

Women's inheritance rights are closely connected and related with the constitutional principles of equality and non-discrimination. The Indian Constitution provides the basic framework for ensuring equal legal status to all women. Article 14 of Constitution guarantees equality before the law and equal protection of the laws¹. Article 15(1) prohibits discrimination on grounds that include sex, while Article 15(3) permits the State to make special provisions for women and children². These provisions provides and ensures a constitutional basis for improving the legal position of women in matters that involve property and inheritance. Inheritance generally means the transfer of property, rights and interests of a deceased person to his or her legal heirs. A woman's inheritance right therefore refers to her legally recognized right to receive a share in the property of a deceased person in accordance to the applicable law³. However, inheritance should not be understood as it involves receiving a share. Effective inheritance also involves the ability to possess, use and exercise control over a property⁴. The equality concept in inheritance has developed from merely providing formal equality towards ensuring substantive equality. Formal equality means that women and men are given equal legal rights. Substantive equality considers whether such rights can actually be enjoyed in practice. Therefore, the legal framework governing women's inheritance must be examined just in terms of the rights created by legislation but also by considering the nature and extent of those rights. In India, inheritance is governed by different legal frameworks depending on the religion and personal law that are applicable to the parties. The Hindu Succession Act, 1956 is considered crucial and important because the 2005 Amendment was a turnover point that changed the position of Hindu daughters in coparcenary property⁵. Muslim, Christian and Parsi inheritance is governed by different legal rules. Thus, women's inheritance rights in India cannot be understood through a single uniform rule.

2.2 EVOLUTION OF WOMEN'S INHERITANCE RIGHTS:

The position of women in relevance of property and inheritance has completely changed over time. Traditionally, women used to have limited rights in family property, and social practices use to give much importance to male heirs. The extent of women's rights also differed according to the applicable personal law and the nature of property. After Indian independence, the legal system slowly moved towards greater equality in property and succession. The Hindu Succession Act, 1956 was a crucial step in codifying the law relating to intestate succession among the Hindus in India⁶. It provided women with statutory rights of inheritance and dealt with the property of female Hindus. However, the original law did not place daughters on an

equal footing with sons in Mitakshara coparcenary property. The Hindu Succession (Amendment) Act, 2005 brought a great change by recognizing a daughter as a coparcener by birth in the same manner as a son. The daughter was said to have the same rights and liabilities in coparcenary property as that of a son. The reform therefore removed the gender-based distinction in the Hindu coparcenary law. The development of inheritance rights should also be understood in a broader context of constitutional equality. The change from limited or unequal property rights towards equal legal entitlement reflects the growing recognition that ownership of property can contribute to women's economic security, independence and participation in family decision-making. Thus, the evolution of women's inheritance rights in India represents a movement from historically unequal property relations towards better statutory and constitutional recognition of equality.

2.3 HINDU SUCCESSION ACT, 1956 AND 2005 AMENDMENT:

The Hindu Succession Act, 1956 is one of the principal laws that governs intestate succession among the Hindus in India. It deals with the devolution of property when a Hindu dies without writing a valid will. The Act contains provisions relating to succession to the property of male and female Hindus, coparcenary property and the order of succession among heirs.

HINDU SUCCESSION ACT, 1956:

This 1956 Act was an important legislative development because it provided a statutory framework for Hindu succession and recognized women as legal heirs. The Section 8 of the act provides the general rules of succession in case of a male Hindu dying intestate, while Section 10 of the act provides rules for distribution among Class I heirs⁷. The Schedule to the Act includes both sons and daughters among the Class I heirs. The Section 14 of the act is also significant because it provides that property possessed by a female Hindu shall be held by her, as her absolute property⁸, subject to conditions contained in the provision. This was a crucial step in moving away from the concept of a woman having only a limited interest in the property. However, the original Section 6 of the act continued the traditional Mitakshara concept of coparcenary in which membership and rights were primarily associated with male descendants. As a result, daughters did not originally enjoy the same coparcenary rights as the sons.

HINDU SUCCESSION (AMENDMENT) ACT, 2005:

The Hindu Succession (Amendment) Act, 2005 significantly changed this position. The

amendment substituted Section 6 of the act and provided that in a Joint Hindu Family governed by Mitakshara law, the daughter becomes a coparcener by birth in her own right like that of a son⁹. She has the same rights in the coparcenary property as a son and is also subject to the same liabilities also.

The major changes introduced by the 2005 includes:

1. Daughter as a coparcener by birth: A daughter acquires coparcenary status by birth.
2. Equal rights like sons: She has the same rights in coparcenary property as a son.
3. Equal liabilities: She is subjected to the same liabilities relating to the coparcenary property.
4. Equal share: A daughter is entitled to a share equivalent to that of a son in the relevant coparcenary property.
5. Removal of gender-based distinction: The amendment substantially reduced the earlier distinction between sons and daughters under Mitakshara coparcenary law.

This amendment came into force on 9 September 2005¹⁰. It also contains statutory protection for certain dispositions, alienation and partitions completed before 20 December 2004¹¹. The 2005 Amendment is therefore considered a major milestone in the legal development of women's inheritance rights in India. It changed the daughter's position from that of a person who could inherit in certain circumstances to a coparcener having an independent right by birth in Mitakshara coparcenary property. The Act also contains provisions relating to succession to the property of female Hindus under Sections 15 and 16. These provisions determine the order in which the property of a female Hindu dying intestate devolves among her heirs. Overall, the Hindu Succession Act, specifically after 2005 Amendment, provides a stronger statutory basis for equality between sons and daughters in the Hindu inheritance.

2.4 OTHER PERSONAL LAWS:

India follows a plural legal system in matters of succession. Apart from the Hindu Succession Act, women's inheritance rights may be governed by different personal laws depending on the community concerned. The major frameworks relevant to this study are Muslim personal law, Christian law and Parsi law.

2.4.1 MUSLIM PERSONAL LAW:

Muslim inheritance in India is primarily governed by the Muslim personal law. The Muslim Personal Law (Shariat) Application Act, 1937 provides that Muslim personal law shall be the rule of decision in matters involving intestate succession¹², subject to the provisions of the Act. Under the Muslim law, women are recognized as the legal heirs and can inherit property from

specified relatives¹³. The share of a female heir is determined according to the rules applicable to the particular relationship and circumstances of succession. The law therefore recognizes a woman's independent right to inherit, although the share may not always be equal to that of a male heir. A significant feature of Muslim inheritance law is that the right of inheritance arises according to the applicable rules of succession rather than just simply depending on the family preferences. The legal framework recognizes women as heirs, while the actual share depends on the nature of the relationship with the deceased and the other surviving heirs.

2.4.2 CHRISTIAN LAW:

Succession relating to Christians in India is principally governed by the Indian Succession Act, 1925¹⁴, subject to its applicable provisions and exceptions. The Act consolidates the rules relating to intestate as well as testamentary succession. Its provisions concerning intestate succession deals with the distribution of property among the surviving family members and relatives. The Act provides rules for situations where a person dies without a will and determines the shares of the surviving spouse, children and other relatives according to the circumstances specified in the Act. The framework is important for women because it legally recognizes the rights of wives and daughters within the applicable rules of succession.

Thus, Christian women's inheritance rights are primarily determined through the statutory rules governing succession rather than the Hindu Succession Act. The actual share depends greatly upon the family circumstances as well as the applicable provisions of the Indian Succession Act.

2.4.3 PARSILAW:

The Parsi intestate succession is dealt with under the Indian Succession Act, 1925¹⁵. The Act contains special rules for Parsi intestate in a separate chapter. These provisions determine the distribution of the property among the surviving spouse, children and, in specified situations, parents. Under Section 51 of the act, where a Parsi dies intestate leaving a widow or widower and children, the property is divided so that the surviving spouse and each child receive equal shares in it, in accordance to the statutory provisions. Where children are left without a surviving spouse, the children receive equal shares¹⁶. The Act also provides rules concerning the shares of parents in specified cases. The Parsi succession provisions provide a statutory framework for determining the shares of women and men within the family. They demonstrate that the women's inheritance rights in India are regulated through various legal frameworks rather than by means of one common or particular succession law. The study of other personal laws shows that the women's inheritance rights in India has developed through different and many statutory and personal-law frameworks¹⁷, but the exact nature and share of inheritance

may differ. The legal recognition of women as heirs forms an significant part of the broader movement towards equality in property and succession.

The legal framework shows that the women's inheritance rights have been strengthened through various constitutional principles and statutory reforms, although the applicable rules differ across the various personal laws. These provisions provide the foundation for examining how courts, the judiciary have further developed and clarified women's inheritance rights.

CHAPTER III: JUDICIAL DEVELOPMENT

The development of women's inheritance rights in India has not been shaped up by the legislation alone. The Supreme Court has played an great and significant role in interpreting the statutory provisions and clarifying the extent of women's rights, particularly under the Hindu Succession Act, 1956. There are some major judicial developments and their contribution to strengthening women's inheritance rights is necessary to be known.

3.1 JUDICIAL EVOLUTION:

The judiciary has played a major role in developing the legal position of women in matters that are related to property and inheritance. Courts have interpreted the succession laws in the light of constitutional principles of equality and have gradually moved away from interpretations that permitted gender-based disadvantages. An important aspect of this judicial development has been the recognition that property rights are connected with the equality, dignity and economic independence of a women. In *C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*¹⁸, the Supreme Court considered the property rights of Hindu women and emphasised the importance of interpreting personal laws consistently with constitutional values of equality. The Supreme Court also examined discriminatory customary rules that are related to women's inheritance.

In *Madhu Kishwar v. State of Bihar*¹⁹, the court considered provisions of the Chota Nagpur Tenancy Act, 1908, which gave preference to the male succession among certain tribal communities. This case raised important questions concerning gender equality and women's rights in property. The enactment of the Hindu Succession (Amendment) Act, 2005 created a further need for judicial interpretation. The amended Section 6 recognized daughters as coparceners by birth and placed them on the same legal footing as sons in Mitakshara coparcenary property. However, questions were raised regarding the temporal operation of the amendment and whether a daughter's right depends on the father's existence which means him

being alive on 9 September 2005.

In *Prakash v. Phulavati*²⁰, the Court held that the amended Section 6 applied where both the daughter and the coparcener father were alive on the date of commencement of the amendment. This interpretation was subsequently placed in difficulty by the decision in *Danamma v. Amar*²¹, where the Court recognized the daughters' coparcenary rights even though their father had died before the 2005 Amendment came into force. So there was different judgments given in these cases for the same subject matter which created lots of confusion. The resulting difference in judicial approaches required authoritative clarification. This was finally clarified perfectly without any further confusion and ambiguity by the three-Judge Bench in *Vineeta Sharma v. Rakesh Sharma*²², which settled the position concerning the daughter's coparcenary right under the amended Section 6.

Thus, judicial evolution and its role has been important in transforming statutory equality into a clearer and more enforceable legal right. The Supreme Court's interpretation has particularly strengthened the position of daughters by recognizing that their coparceners by birth and have similar rights and liabilities as that on a son.

3.2 MAJOR SUPREME COURT DECISIONS:

C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil²³:

In *C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*, the Supreme Court examined the property rights of a Hindu women in the context of constitutional equality.

The Court then considered the relationship between the personal law and constitutional guarantee of equality. The Court emphasized that laws concerning women's property rights should be understood in the context of constitutional values. This judgment recognized that the constitutional commitment to equality supports and wants the advancement of rights and equal legal status for all women in the property. The judgment helped establish that women's property rights should not be considered separately from the constitutional principles of equality and dignity. The case therefore forms part of the judicial development towards a more gender-equal understanding of the property rights.

Madhu Kishwar v. State of Bihar²⁴:

In *Madhu Kishwar v. State of Bihar*, the Supreme Court considered the challenges to provisions of the Chota Nagpur Tenancy Act, 1908, which had restricted the succession to the male among certain tribal communities. The petitioners have argued that excluding women from inheritance was completely discriminatory and contrary to constitutional guarantees. This case was significant because it brought the conflict between customary inheritance practices and

constitutional equality before the Supreme Court. The Court examined the position of tribal women and then the social and customary background of the succession rules. Although the Court did not completely invalidate the challenged succession scheme, the case focused on highlighting the constitutional concerns surrounding the discrimination against women in property as well as succession. It also demonstrated the difficulty of balancing customary practices with constitutional commitment to equality.

Prakash v. Phulavati²⁵:

In *Prakash v. Phulavati*, the Supreme Court considered the effect of 2005 Amendment to Section 6 of the Hindu Succession Act. The core issue was whether a daughter could claim coparcenary rights when the father, who was a coparcener, had died before the amendment came into force. The Court held that the amended provision applied to living daughters of living coparceners as on 9 September 2005. Thus, according to this decision, the existence of the father as a living coparcener on the date of commencement of the amendment was relevant to the daughter's claim. This decision was later looked into as because later judgments created different views and perspective for the same subject matter. This created important limitation on the practical operation of the amended Section 6 of the act and subsequently became subject of reconsideration by a larger Bench.

Danamma v. Amar²⁶:

In *Danamma v. Amar*, the Supreme Court dealt with the rights of daughters in coparcenary property where the father had died before the commencement of the 2005 Amendment. The Court recognised the daughters' entitlement to shares in the coparcenary property even though their father had died in 2001. The decision therefore differed from the approach taken in *Prakash v. Phulavati*. This created a conflict in the interpretation of the amended Section 6. The difference between the two decisions made it necessary for the Supreme Court to provide a final authoritative interpretation. The significance of *Danamma* lies in its recognition of the daughter's substantive coparcenary right and its movement towards treating daughters equally with sons in the distribution of coparcenary property.

Vineeta Sharma v. Rakesh Sharma²⁷:

The position was finally settled by the three-Judge Bench of the Supreme Court in *Vineeta Sharma v. Rakesh Sharma*. The principal question was whether a daughter could claim coparcenary rights under the amended Section 6 when the father was not alive on 9 September 2005. The Supreme Court held that the daughter becomes a coparcener by birth as similar to that of a son. They have equal rights and liabilities like son. The right does not depend upon the father being alive on 9 September 2005. The Court therefore rejected the restrictive

interpretation adopted in *Prakash v. Phulavati*. The Court also clarified that the daughter born before or after the 2005 Amendment enjoys the status of a coparcener in the same manner as a son, subject to the statutory provisions governing earlier transactions and partitions. The judgment also considered the conflict between *Prakash* and *Danamma* and settled the law by giving effect to the principle that the daughter's coparcenary right is acquired by birth. This judgment is the turning point as it ended all kinds of questions and confusions and gave a clarity. The decision is significant because it transformed the legal position of daughters from one dependent upon the circumstances of the father's death to an independent statutory right arising from birth. It therefore represents one of the most important judicial developments in women's inheritance rights in India.

Arunachala Gounder v. Ponnusamy²⁸:

In *Arunachala Gounder v. Ponnusamy*, the Supreme Court considered the rights of a daughter in relation to the property of her father. The Court had to examine the position of daughters under Hindu succession framework and later discussed the historical development of women's rights in property. The Court recognized that daughter's right to inherit the separate or self-acquired property of her father could arise under the applicable rules of succession. This decision is related because it demonstrates that women's inheritance rights are not confined only to the question of coparcenary property under Section 6. The judgment therefore adds another dimension to the judicial development of women's inheritance rights by recognizing the importance of the daughter's position as a legal heir in relation to her father's property.

3.3 CRITICAL ANALYSIS:

The judicial system has greatly contributed to the development of women's inheritance rights which therefore shows a clear movement towards substantive equality. The Supreme Court has progressively interpreted succession laws in a manner that strengthens the legal position of women and reduces gender-based differentiation. The most important development is the interpretation of Section 6 of the Hindu Succession Act after the 2005 Amendment. The conflicting decisions in *Prakash* and *Danamma* created uncertainty and ambiguity regarding the rights of daughters whose fathers had died before the amendment²⁹. Later the decision in *Vineeta Sharma* finally settled this uncertainty³⁰ and all confusions and gave a clarity by recognizing the daughter's coparcenary status by birth.

This development is important because a right based on birth is stronger than a right that depends upon a particular family circumstance. By recognizing daughters as coparceners in the same manner as sons, the Court strengthened the legal foundation for equal participation

in coparcenary property. At the same time, judicial recognition cannot completely eliminate all difficulties faced by women in exercising their inheritance rights. A legally recognized share may still be affected by family pressure, lack of awareness, reluctance to claim property and difficulties in obtaining actual possession or control³¹. All these issues demonstrate that judicial development is necessary but still it is not by itself sufficient to achieve substantive equality. The decisions also show that courts have an important role in resolving uncertainty and ambiguity created by legislative reforms. *Vineeta Sharma* is a perfect example of how judicial interpretation can bring greater certainty and consistency to women's inheritance rights. However, the effectiveness of such judicial development ultimately depends upon women's ability to understand and enforce the rights recognized by law.

The judicial development of women's inheritance rights can be viewed as an important step towards equality, but it should be considered together with practical conditions in which women exercise these rights. The judicial decisions examined clearly demonstrates that the Supreme Court has substantially strengthened the women's inheritance rights through constitutional interpretation and statutory clarification. *Vineeta Sharma* reflects a significant change towards equality between daughters and sons. However, the effectiveness of these rights depends upon their practical realisation, which requires examination of the social and practical barriers affecting women.

CHAPTER IV – LEGAL RIGHTS AND ACTUAL REALISATION

The recognition of inheritance rights for women is gradually obtained through constitutional provisions, legislation and judicial decisions which has significantly brought changes in the legal position of the women in India. However, the existence of such legal right does not always mean that women are able to claim, receive, possess and control the property to which they are entitled through such recognition rights. This chapter examines the difference between legal entitlement and actual realization, social and practical barriers that are faced by women, and the relationship between property ownership, control and women's empowerment.

4.1 GAP BETWEEN LAW AND PRACTICE:

The legal framework governing women's inheritance rights in India has slowly moved towards greater equality. Constitutional principles of equality and non-discrimination provide the foundation and base for equal treatment, while statutory reforms have greatly strengthened women's rights to inherit property. The Hindu Succession (Amendment) Act, 2005 was a

crutial stage for development because it has recognized daughters as coparceners like that of sons in a Mitakshara joint Hindu family. The Supreme Court in *Vineeta Sharma v. Rakesh Sharma* had clearly clarified that the right of a daughter as a coparcener is acquired by birth³² and does not depend upon the father being alive on the date of commencement of the 2005 Amendment.

All these legal developments show us that women have been given much stronger formal rights in inheritance. However, formal recognition of rights and actual enjoyment of that right are not the same matter. A woman may legally be entitled to a share in a property but may not actually receive it, obtain possession of it or exercise control over it. Therefore, the effectiveness of such inheritance law must also be considered from the perspective of what happens after the right has been legally recognized, which is very necessary. Research on women's inheritance litigation in India demonstrates this gap³³. A study of 505 High Court cases concerning women's claims to joint family property³⁴ has clearly found that the family members were frequently involved in opposing women's claims. Though women obtained some form of property in many cases, only a small part of favourable decisions resulted in women receiving their direct coparcenary share in joint family property³⁵.

This shows us that legal recognition does not automatically end up in complete implementation of their rights. The gap between law and practice can also be seen in the way how the families deal with such inherited property. In few of the families, daughters may be expected to leave the parental property to their brothers as they are male or a woman may be told that the property should remain within the family or that her brother has a greater need for it. Such expectations can influence whether she decides to claim her legal share. Another frequent argument is that a daughter has already received her share in the form of marriage expenses, jewellery, cash or other gifts. However, such benefits cannot automatically be treated as equivalent to a woman's legal share in immovable property. The value and nature of marriage gifts may vary considerably, and they do not necessarily provide the woman with continuing ownership or control over property. Research on inheritance disputes in India has identified the use of such arguments in challenges to women's claims.

The practical gap may arise when women themselves decide not to pursue their claims. A daughter may consider maintaining family harmony instead of focusing on obtaining her property share. She may have fear that asserting her right will result in some conflict and problems with her parents or brothers and thinks it's better to avoid such situations. In few other cases, emotional relationships and social expectations might have a major influence on the woman's decision than the legal right available to her. Relinquishment is another crucial

problem, where a woman may give up her share in favour of a brother or another family member. Although relinquishment might appear to be a voluntary legal act, such decision taken by a woman may have been influenced by family pressure, social expectations or a desire to avoid disputes. Many research has documented circumstances where women had relinquished claims to landed property in favour of brothers despite the existence of statutory rights³⁶.

The gap is not a difference between “having a law” and “not having a law³⁷.” It involves several stages. A woman must first know that she has a right, then be able to claim it, obtain recognition of her claim, receive the property and finally exercise control over it. Failure at any of these stages can reduce the practical value of the legal right. Thus, the real effectiveness of inheritance reform should be assessed not only by the wording of legislation but also by its implementation in family and social life³⁸. Substantive equality is where women are able to enjoy the rights that the law formally guarantees to them.

4.2 SOCIAL AND PRACTICAL BARRIERS:

The gap between legal entitlement and actual realization is influenced by a combination of many factors that includes social, economic and practical factors. These barriers operate even if the legal position is clear. They can easily affect a woman's decision to claim property, her ability to approach legal institutions and her ability to retain control after receiving such property.

Family and Social Pressure:

Family pressure is one of the major and common barriers to the exercise of inheritance rights. In a family where sons are regarded as the persons who will continue the family line and look after the parents, property may be viewed as something that should remain with only the sons as this is followed by them traditionally and hence it cannot be questioned by anyone including the women in the family either who has a share in the property legally. A daughter who claims an equal share is considered as acting and deciding against family expectations. This problem is particularly important because inheritance disputes often involve close family members. Research examining High Court cases found that family members were the main opposing parties in large majority of the cases³⁹, with their brothers being the most common opposing parties. A woman may consequently face difficult choice between asserting a legal right and maintaining family relationships. Therefore she may decide not to pursue the property in order to avoid conflict⁴⁰, particularly where she remains emotionally or economically connected to her parental family.

Lack of Legal Awareness:

Women may not usually know that they possess an independent inheritance right or may incorrectly believe that sons have a stronger legal claim to family property. Some may also be unaware of the changes introduced by the 2005 Amendment and the subsequent clarification by the Supreme Court⁴¹. Legal awareness is very much important not only for knowing that a right exists but also for understanding how such right can be actually enforced. Property disputes is generally related to succession, partition, title, registration and documentation. Without proper and sufficient knowledge or legal assistance, a woman finds it very difficult to determine the nature of her claim. So the legal reform needs to be accompanied by accessible information about women's property rights. Awareness programme, legal aid and simple explanations of succession laws can greatly help the women in understanding as well as how to exercise their rights⁴².

Economic and Procedural Difficulties:

The process of enforcing a property right may itself create difficulties. Court proceedings can involve many expenditure including legal expenses, documentation, travel, delay and the need to obtain professional assistance. All these difficulties can easily discourage a women from pursuing their claims, particularly where the disputed property has limited immediate economic value compared with the cost and duration of litigation as because it's a huge process to deal with and they aren't ready to undergo such difficulties without knowledge and guidance. The 2024 study of women's inheritance litigation found that the average duration of cases took nearly several years⁴³, with some disputes taking much longer to conclude and still remains pending. Such delays can reduce the practical accessibility of legal remedies even when the underlying legal right is recognized. In such known conditions of the proceedings, delay and expenses a women may choose family settlement, negotiation or relinquishment instead of pursuing prolonged litigation. While alternative resolution may sometimes be useful, it is important that any settlement or relinquishment is made with proper knowledge and without any force and coercion, but voluntarily.

Relinquishment and Family Settlement:

Relinquishment of inheritance is an issue because it directly affects actual realization. A woman may formally give up her share in favour of a brother or another relative, while such an act may prevent her from obtaining the property even though the law originally recognized her entitlement. Research has also found instances of women giving up claims to landed property in favour of brothers⁴⁴ and also identified social practices that encourage such decisions. Family settlement can also equally contribute in affecting the final distribution of

property. A settlement may be legally valid, but the situations in which the woman has agreed to it are important when considering the broader issue of women's actual enjoyment of inheritance rights. A woman should be able to make decisions concerning her property out of her own choice and voluntarily without being compelled by family expectations⁴⁵.

Patriarchal and Customary Practices:

Patriarchal attitudes influence property distribution even after the law has changed. The idea and traditional concept that sons are the natural successors of family property may continue to exist within families and communities. Changes in the legislation may take time to produce corresponding changes in social behaviour. Research on inheritance reform in India shows that legal reforms can be affected by continuing cultural norms and preferences given to son⁴⁶. This clearly demonstrates that statutory equality alone may not immediately remove deeply established social practices.

Lack of Effective Control After Inheritance:

Even when a woman somehow succeeds in obtaining a share in the property, another difficulty may arise: whether she actually controls it. Property may be registered in her name while another family member manages, uses or receives income from it. In such cases, formal ownership exists, but practical control may remain limited to that women which is not fair. This distinction is important because actual empowerment depends not merely on holding a legal title but also they should have the ability to take meaningful decisions regarding such property. The barriers to women's inheritance rights exist at different levels—social, family, informational, economic, procedural and institutional. Removal of all such barriers is necessary to convert formal legal equality into substantive equality.

4.3 OWNERSHIP, CONTROL AND EMPOWERMENT:

The actual realization of inheritance rights should be understood as more than merely receiving a legal share. It includes the ability to own, possess, use, manage and make decisions regarding property. Ownership and control are necessary for understanding whether women's inheritance rights have produced meaningful change⁴⁷. Ownership refers to the legal right or interest that a woman has in property. It gives her a recognized legal position and may give her a right and chance to deal with the property according to law. Possession means the actual holding or enjoyment of the property, while control refers to the ability to make decisions regarding the use, management, transfer or income generated from the property. The three aspects do not always exist together. A woman may have her name recorded as an owner but may not physically possess the property. Similarly, she may possess property but have limited

authority to decide how it should be used. Therefore, the practical effectiveness of inheritance rights requires attention to both ownership and control.

Bina Agarwal's research has particularly focused and emphasized on the difference between ownership and control of land⁴⁸. Her work treats women's command over property as important for economic security and bargaining power, rather than viewing property merely as an asset recorded in a person's name.

Property ownership can contribute to economic security. A woman who has an independent property may have a resource that could support her during situations of financial problem. Property can be important in situations such as widowhood, marital breakdown or economic dependence. Secure property rights can therefore provide women with greater protection against such economic vulnerability. Inheritance can also influence decision-making power within the household. When women possess independent economic resources, they may have the ability to participate in decisions concerning household expenditure, education, residence and other matters. Property can greatly strengthen a woman's bargaining position within the family. However, the relationship between inheritance and empowerment is not automatic. A woman may technically inherit property but transfer it to a male relative, allow another person to manage it or be unable to use it independently. In such cases, the legal right may have limited impact on her actual autonomy. Research has shown that social effects of inheritance reforms can be complex. Studies have examined the relationship between inheritance rights and women's education, economic position and household outcomes⁴⁹, while other research has shown that cultural norms can continue to influence how reforms operate in practice.

The distinction between property ownership and property control is therefore essential. A woman's name on a title document is an important legal step, but empowerment is to make her have the practical ability to use and manage the property⁵⁰ and make her take decisions concerning it. Inheritance rights may also provide women with greater social security and dignity. A woman who has independent property may not be economically dependent on other family members and face everything themselves. This can strengthen her ability to participate in family decisions and may provide greater security during vulnerable stages of life. Empowerment should not be measured only in economic terms. The ability to make decisions about one's own property can also strengthen autonomy, confidence and participation in family and social life. Thus, inheritance rights have both economic and social significance. The core reason to recognize women's inheritance rights is therefore not merely to place women and men on an equal footing in statutory language. The objective is narrow but broader enough to ensure that women can actually enjoy the property rights recognized by law. Legal

entitlement, ownership, possession and control must work together to produce meaningful empowerment.

Therefore this shows that the existence of legal rights does not by itself guarantee their practical enjoyment. The gap between law and practice is influenced by factors including family pressure, social expectations, lack of legal awareness, economic and procedural difficulties, relinquishment and continuing patriarchal practices. At the same time, ownership and control of property can also strengthen women's economic security, decision-making ability and empowerment. Therefore, the actual success of inheritance reform depends on converting formal legal rights into rights that women can effectively claim, possess, use and control.

CHAPTER V – CONCLUSION AND SUGGESTIONS

5.1 FINDINGS AND CONCLUSION:

The study on women's inheritance rights in India clearly shows and makes us understand that the legal position of women has undergone crucial development over years. Constitutional principles of equality, statutory reforms and judicial decisions have also contributed in strengthening the women's right to inherit and own property. However, the study shows that legal recognition alone is not sufficient enough to ensure that women can actually receive, possess and control inherited property.

The first objective of the study was to examine the legal framework governing women's inheritance rights in India. The study finds that the Constitution provides a foundation through the principles of equality and non-discrimination. Article 14 of Indian Constitution guarantees equality before the law and equal protection of the laws, while Article 15 prohibits discrimination on grounds including sex. These constitutional principles have influenced and helped in the better and gradual development of the laws that are related to women's property rights. The Hindu Succession Act, 1956 was a significant part in the development of women's inheritance rights. This Act provided a statutory framework for succession among Hindus and recognized women's rights in different forms of property. However, the original law did not provide daughters with the same coparcenary position as that of a son in a Mitakshara joint Hindu family. Later, this position was changed by the Hindu Succession (Amendment) Act, 2005, which created a great advantage for women and recognized daughters as coparceners by birth and provided them with the same rights and liabilities as sons in coparcenary property. The study also finds that inheritance rights are not governed by a single

uniform law for all communities but different personal laws and statutory provisions apply to different religious communities. Muslim, Christian succession, and Parsis are provided with different and separate rules concerning succession. Therefore, the legal framework governing women's inheritance in India remains plural and is influenced by both statutory law and personal law.

The second objective was to examine judicial development that is relevant and related to the women's inheritance rights. The judiciary, particularly the Supreme Court, has played a major significant role in interpreting and clarifying women's property rights. Judicial decisions have helped develop the understanding of equality in relation to women's property and inheritance. In the case *C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil* women's property rights were connected with constitutional equality. *Madhu Kishwar v. State of Bihar* highlighted the difficulties involved when customary or personal rules affecting women's property rights come into conflict with constitutional principles.

The interpretation of the 2005 amendment to the Hindu Succession Act also developed through judicial decisions. *Prakash v. Phulavati* adopted a restrictive interpretation concerning the requirement that the coparcener father should have been alive on 9 September 2005. The decision in *Danamma v. Amar* subsequently recognized daughters' coparcenary shares in circumstances that created uncertainty and confusions regarding the interpretation of the amended Section 6. This uncertainty and confusion was substantially resolved by the Supreme Court clearly in *Vineeta Sharma v. Rakesh Sharma*. The Court clarified that a daughter becomes a coparcener by birth and has all rights and liabilities as of a son and that the father need not have been alive on 9 September 2005. The decision therefore provided greater clarity regarding the operation of the 2005 Amendment and strengthened the legal position of daughters in coparcenary property.

The third objective of the study was to examine the gap between legally recognized rights and their actual realization. The study finds that this is one of the major continuing challenges in the area of women's inheritance. A woman may have a legal right to property but still faces huge difficulties in claiming, receiving, possessing or controlling it. The gap between law and practice is influenced by various factors including family pressure, preference for male heirs, social expectations, lack of awareness of legal rights, economic difficulties and the cost and delay involved in legal proceedings can affect a woman's ability to exercise her inheritance rights. In few cases, women may also relinquish their shares in favour of brothers or other family members in order to maintain family relationships or avoid disputes that might occur later due to such claim in property by a women.

The study therefore finds that the existence of a legal right should not be treated as the final measure of equality, the actual enjoyment of the right is also equally important because just having the share of property but not control or ownership or any decision making regarding it, then that is no way said as true existence of a right. A woman who has a legal share but cannot obtain possession or exercise control over the property may not receive the full benefit intended by the law, ownership and control of property is necessary. Property can provide women with economic security and may strengthen their ability to participate in household decisions. Independent ownership can also reduce economic dependence and provide greater security during situations of financial difficulty, widowhood or breakdown of a marital relationship. However, the study also finds that formal ownership and actual control are not always the same. A woman might have a property registered in her own name, but another family member would manage or controls the property. Therefore, meaningful realisation of inheritance rights requires more than recording a woman's name as an owner. It requires her ability to possess, use, manage and make decisions concerning the property.

Overall, the study finds that India has made considerable legal progress and development in recognising women's inheritance rights. Constitutional principles, statutory reforms and judicial decisions have created a stronger legal foundation for equality between women and men in matters of property. The 2005 amendment to the Hindu Succession Act and the subsequent clarification in *Vineeta Sharma* represent important developments in this direction. The study demonstrates that legal equality and practical equality are not always the same and the continuing influence of factors including family expectations, social practices, lack of awareness and practical difficulties can prevent women from fully enjoying the rights provided by law. Therefore, the effectiveness of inheritance reform should ultimately be assessed by whether women is able to actually claim, receive, possess and control their property instead of just having such property. The study concludes that women's inheritance rights are not merely property rights but are also connected with economic security, independence, dignity and empowerment. Strengthening the law is necessary, but its objectives can be achieved completely only when women are able to exercise these rights in practice. The transition from formal legal entitlement to actual ownership and control is therefore essential for achieving substantive equality in inheritance.

5.2 SUGGESTIONS:

1. Increase Legal Awareness where women should be made aware of their inheritance rights through legal awareness programmes, educational initiatives and community-

level programmes. Awareness can help women understand their entitlement and take appropriate steps to claim their property.

2. Strengthen Legal Aid and Accessible Remedies is necessary. Legal aid and assistance should be made easily accessible to women who face difficulties in claiming inheritance. Affordable and simple legal procedures can help women enforce their rights without being discouraged by cost or procedural difficulties.
3. Prevent Forced or Improper Relinquishment as women should not be pressured by family members to give up their lawful inheritance. Relinquishment or family settlements should be made only with the woman's free and informed consent, after she understands the legal consequences.
4. Improve Access to Property Records and Documentation so that women can have easier access to property documents, land records and succession-related records. Proper documentation of women's shares can reduce disputes and help ensure that their legal rights are recognised in practice.
5. Strengthen Women's Ownership and Control Over Property, because legal recognition should be accompanied by actual possession, use and control of inherited property. Women should be able to independently manage and benefit from property in their name rather than merely having their names recorded as legal owners.
6. Promote Substantive Equality in Practice, legal reforms should focus not only on giving women equal rights on paper but also ensure they get and use them effectively.

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¹ INDIA CONST. art. 14.

² INDIA CONST. art. 15.

³ Hindu Succession Act, 1956, No. 30 of 1956, §§ 8–10, INDIA CODE (2025).

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⁷ Id. §§ 8, 10.

⁸ Id. § 14.

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