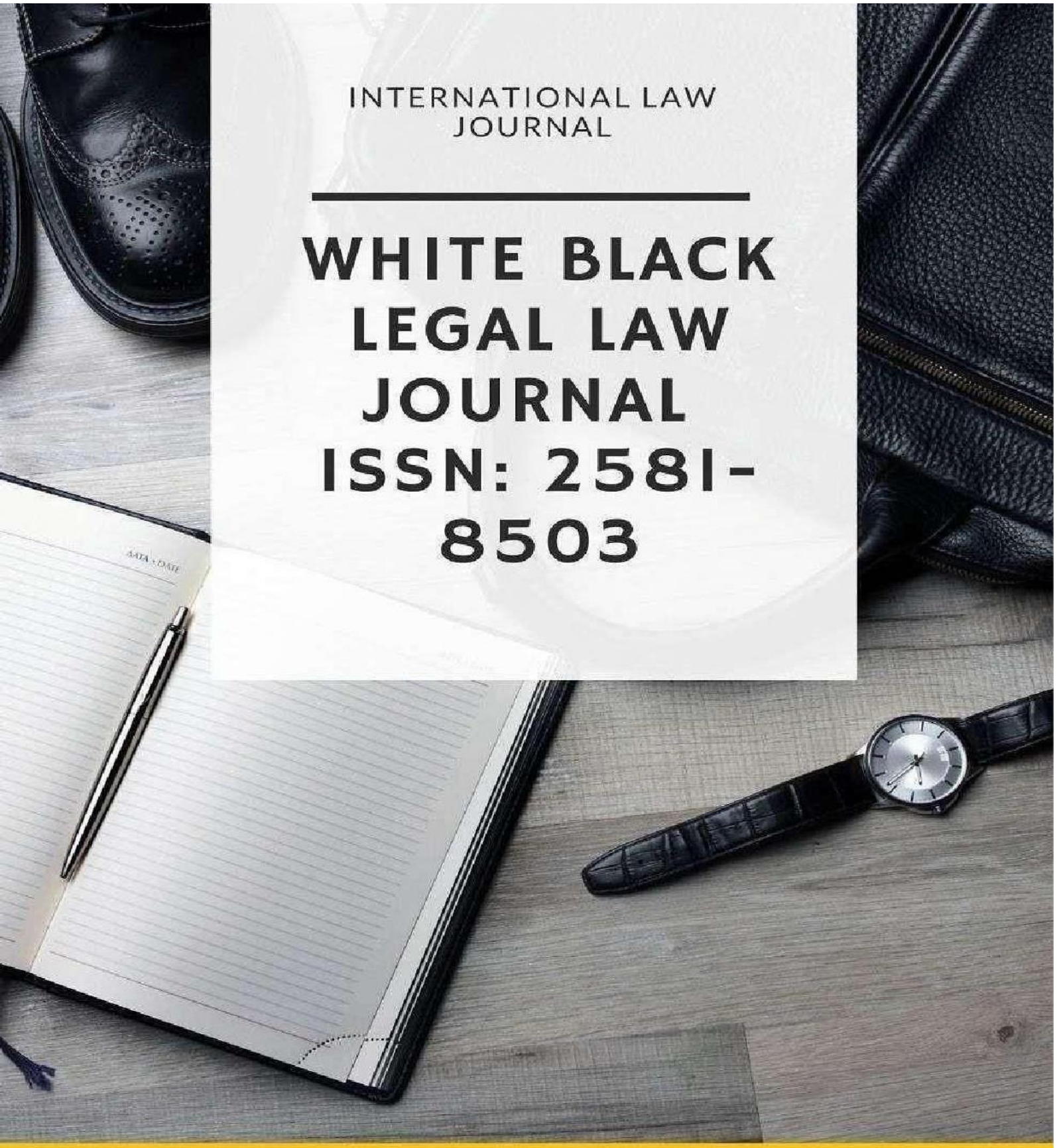


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COPARCENARY RIGHTS FOR DAUGHTERS UNDER HINDU LAW: A STUDY OF THE 2005 AMENDMENT AND ITS JUDICIAL INTERPRETATION

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ABSTRACT

The recognition of daughters as coparceners under Hindu law represents a significant legislative and constitutional development in the movement towards substantive gender equality in property rights. Traditionally, under the Mitakshara school of Hindu law, coparcenary membership was confined to male descendants, leaving daughters outside the core body of coparceners despite their membership in the wider joint Hindu family. The Hindu Succession (Amendment) Act, 2005 substituted Section 6 of the Hindu Succession Act, 1956 and conferred upon a daughter the status of a coparcener by birth, with the same rights and liabilities as a son. This paper examines the historical position, the statutory framework introduced in 2005, and the Supreme Court's interpretation of the amended provision, particularly in Prakash v. Phulavati, Danamma v. Amar and the authoritative three-Judge Bench decision in Vineeta Sharma v. Rakesh Sharma. It analyses the temporal operation of the amendment, the relevance of the father's survival on 9 September 2005, the protection of completed transactions, the meaning of partition, and the distinction between coparcenary property and a father's separate or self-acquired property. The paper adopts a doctrinal method based on primary legislation and judicial precedent. It argues that Section 6 has transformed the formal legal status of daughters, but that effective equality depends upon accurate identification of property, accessible remedies, reliable records and the practical enforcement of shares. The paper concludes that the 2005 reform must be understood as a measure of equal ownership and equal responsibility, rather than as a limited succession benefit.

Keywords: Hindu Succession Act, 1956; coparcenary; daughters' property rights; Mitakshara law; Section 6; Hindu Succession (Amendment) Act, 2005; Vineeta Sharma.

1. INTRODUCTION

Property rights are central to individual autonomy, economic security and equality within the family. In India, the law governing Hindu joint family property historically developed through personal-law doctrines that distinguished between the wider joint Hindu family and the narrower Mitakshara coparcenary. Under the traditional Mitakshara framework, sons acquired an interest in ancestral coparcenary property by birth, whereas daughters, although members of the family, were generally excluded from coparcenary status. This distinction reflected a gendered allocation of ownership and control over family wealth.

The Hindu Succession Act, 1956 codified important aspects of Hindu intestate succession but, in its original Section 6, substantially retained the rule of survivorship in Mitakshara coparcenary property, subject to a statutory exception where specified female heirs survived a deceased coparcener. The original scheme did not make daughters coparceners on the same footing as sons. The Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005) brought a fundamental change by substituting Section 6. With effect from 9 September 2005, a daughter of a coparcener became a coparcener in her own right by birth, with equal rights and liabilities. The reform raises important interpretive questions. Does the father have to be alive on the commencement date? Does the amendment apply to daughters born before 2005? What kinds of prior partitions are protected? Does the provision cover every property inherited or held by a father? The Supreme Court's decision in Vineeta Sharma v. Rakesh Sharma resolved the principal conflict in earlier decisions and established the governing interpretation. This paper analyses the statutory and judicial position and considers the remaining practical challenges.

2. RESEARCH OBJECTIVES

To trace the traditional position of daughters under the Mitakshara coparcenary system and the legal changes introduced by the Hindu Succession Act, 1956.

To examine the scope and effect of Section 6 as substituted by the Hindu Succession (Amendment) Act, 2005.

To analyse the leading judicial decisions concerning daughters' coparcenary rights, with particular emphasis on Vineeta Sharma v. Rakesh Sharma.

To clarify the legal distinction between coparcenary property, separate property and property devolving by intestate or testamentary succession.

To identify the limitations and practical barriers affecting the realisation of daughters' equal property rights.

3. RESEARCH QUESTIONS

What is the nature of a daughter's coparcenary status under amended Section 6 of the Hindu Succession Act, 1956?

Is the father's survival on 9 September 2005 a condition for a daughter to claim coparcenary rights?

How does the law treat partitions, alienations and testamentary dispositions made before the statutory cut-off date?

What is the scope of the amended provision in relation to ancestral/coparcenary property and a father's self-acquired property?

To what extent has judicial interpretation advanced substantive equality in the ownership and control of family property?

4. RESEARCH METHODOLOGY

This study follows a doctrinal and analytical research methodology. It relies primarily on the Hindu Succession Act, 1956, as amended by the Hindu Succession (Amendment) Act, 2005, and on reported decisions of the Supreme Court of India. Legislative materials and official government publications are used to understand the object, commencement and content of the amendment. Secondary legal commentary is used only to provide context and is not treated as a substitute for statutory text or binding precedent.

The research is qualitative rather than empirical. It analyses the language of Section 6, compares the earlier and substituted statutory regimes, and evaluates the reasoning adopted by the Supreme Court in cases dealing with the temporal operation of the amendment and proof of partition. The scope is confined principally to Mitakshara coparcenary governed by the Hindu Succession Act. It does not attempt a comparative survey of every school of Hindu law or every State-specific amendment. The paper states the law as understood from the authorities cited below; any submission for publication should be checked against the journal's prescribed citation style and the latest official statutory text.

5. CONCEPT AND HISTORICAL POSITION OF COPARCENARY

A joint Hindu family is a broader family unit, while a Mitakshara coparcenary is a narrower body of persons who acquire an interest in coparcenary property by birth and possess specified rights, including the right to seek partition. Traditionally, the coparcenary comprised the lineal male descendants within the relevant degrees from a common male ancestor. The interest of each coparcener was not ordinarily a fixed fraction during the continuance of the coparcenary;

it could fluctuate with births and deaths, and become definite upon partition.

The exclusion of daughters from coparcenary status had consequences beyond the eventual receipt of an inheritance. A daughter did not enjoy the same birthright in coparcenary property, the same independent right to demand partition, or the same position in the management and control of that property. The difference was therefore structural. It affected the timing, nature and enforceability of the daughter's interest.

Before the central amendment, some States enacted reforms to provide daughters with coparcenary rights under State amendments to the Hindu Succession Act. These legislative developments demonstrated that the traditional exclusion was capable of reform. The 2005 central amendment extended the principle of equal coparcenary status nationally within the field governed by the amended central provision.

6. THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

The Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005) received Presidential assent on 5 September 2005 and came into force on 9 September 2005. It substituted Section 6 of the 1956 Act. The core rule in Section 6(1) is that, in a Joint Hindu family governed by Mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son.

The provision gives a daughter the same rights in coparcenary property as she would have had if she were a son. It also subjects her to the same liabilities in respect of that property. The equality is therefore substantive and reciprocal: a daughter is not merely entitled to a benefit but occupies the legal position of a coparcener. Her marital status does not extinguish the statutory status conferred by birth.

Section 6(2) provides that property to which a female Hindu becomes entitled by virtue of Section 6(1) is held with the incidents of coparcenary ownership and may be disposed of by her through testamentary disposition. Section 6(3) provides that where a Hindu dies after commencement of the amendment, his interest in Mitakshara coparcenary property devolves by testamentary or intestate succession under the Act and not by survivorship. For determining the deceased coparcener's interest, the statute employs a notional partition immediately before death; the daughter is allotted the same share as a son.

The proviso to Section 6(1), read with Section 6(5), protects specified dispositions, alienations and partitions that took place before 20 December 2004. Section 6(5) defines a protected partition by reference to a registered deed of partition or a decree of a court. The Supreme Court has explained that a plea of oral partition cannot ordinarily be accepted merely on oral evidence,

although exceptional cases supported by public documents and strong contemporaneous evidence may be considered.

7. JUDICIAL DEVELOPMENT AND INTERPRETATION

7.1 Prakash v. Phulavati

In Prakash v. Phulavati, (2016) 2 SCC 36, the Supreme Court adopted an interpretation that the amended Section 6 applied to a living daughter of a living coparcener as on 9 September 2005. This reading made the father's survival on the commencement date material to the daughter's claim. The decision generated considerable uncertainty because it appeared to qualify the statutory language that a daughter becomes a coparcener by birth.

7.2 Danamma v. Amar

In Danamma @ Suman Surpur v. Amar, (2018) 3 SCC 343, the Supreme Court granted daughters equal shares even though their father had died before the 2005 amendment. The reasoning and result did not sit comfortably with the living-coparcener requirement articulated in Prakash. The resulting divergence required authoritative resolution by a larger Bench.

7.3 Vineeta Sharma v. Rakesh Sharma

The three-Judge Bench in Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1, settled the principal controversy. The Court held that the substituted Section 6 confers coparcenary status on a daughter born before or after the amendment in the same manner as a son, with the same rights and liabilities. Since the right is by birth, it is not necessary that the father coparcener should have been alive on 9 September 2005. The daughter's right is not dependent upon the death of her father.

The Court characterised the amendment as retroactive in operation: the daughter's birth is the antecedent event, but the statutory right can be claimed with effect from 9 September 2005, subject to the statutory protection for transactions before 20 December 2004. The Court also clarified that the notional partition under the unamended Section 6 was a legal fiction for calculating the deceased coparcener's share; it did not by itself effect an actual partition or disrupt the continuing coparcenary.

Vineeta Sharma further held that a preliminary decree does not necessarily conclude the matter where final decree proceedings or an appeal remain pending. Courts must give effect to the daughter's equal share in such proceedings. On proof of partition, the Court emphasised the statutory requirements: a registered partition deed or a court decree is the recognised mode under Section 6(5). An oral partition plea supported by public documents may be accepted only in exceptional circumstances where the evidence establishes the partition with the same degree

of certainty as a court decree. Oral testimony alone is insufficient.

The Court overruled the contrary view in Prakash v. Phulavati on the requirement of a living father and clarified the legal position in light of the earlier conflicting decisions. Vineeta Sharma is consequently the central authority for interpreting amended Section 6.

8. SCOPE AND LIMITS OF A DAUGHTER'S RIGHT

8.1 The property must be coparcenary property

The 2005 amendment does not convert every asset owned by a father into coparcenary property. Section 6 concerns a Joint Hindu family governed by Mitakshara law and property that is legally coparcenary property. A father's self-acquired or separate property does not become coparcenary property merely because he has a daughter or because the family uses the expression 'ancestral property'. The character and source of the property must be established on the facts and under applicable Hindu law.

8.2 Equal rights and liabilities

A daughter who is a coparcener enjoys the same rights and is subject to the same liabilities in respect of coparcenary property as a son. The statutory scheme does not create a one-sided entitlement. It places daughters within the legal structure of coparcenary ownership, including the incidents attached to that status.

8.3 Marriage does not defeat coparcenary status

The amended provision does not make a daughter's coparcenary status dependent upon her remaining unmarried. Because the right is conferred by birth, marriage cannot by itself divest her of the statutory status or the rights flowing from it. Any contrary assumption would reintroduce the very gender distinction that the amendment sought to remove.

8.4 Prior transactions and partition

The protection for transactions before 20 December 2004 is important to legal certainty. It prevents the amendment from unsettling completed dispositions and partitions that fall within the statutory saving. At the same time, a mere assertion that a family orally divided its property should not be sufficient to defeat a daughter's claim. The evidentiary approach in Vineeta Sharma seeks to balance protection of genuine past transactions with prevention of fabricated or unsubstantiated partition claims.

8.5 Devolution on death

Section 6(3) changes the mode of devolution of a coparcener's interest where death occurs after commencement of the amendment. The interest devolves by testamentary or intestate succession under the Act, rather than by survivorship. The notional partition mechanism

determines the deceased's share for succession purposes. It should not be confused with an actual partition of the entire joint family property.

9. CONSTITUTIONAL AND SOCIAL SIGNIFICANCE

The 2005 amendment advances the constitutional commitment to equality by removing a statutory distinction that excluded daughters from a central form of family ownership. Although personal laws have their own historical development, legislative reform in this area reflects the principle that gender should not determine a person's capacity to hold an equal proprietary interest by birth. The Supreme Court in Vineeta Sharma recognised the discriminatory character of the former exclusion and interpreted the amended provision to give full effect to the legislative purpose.

Equal coparcenary status can strengthen women's economic agency by recognising their independent proprietary claims. Ownership may improve access to resources, provide security in times of marital or familial instability, and affirm daughters as equal stakeholders in family property. The significance of the reform is not confined to the monetary value of a share; it also concerns dignity, autonomy and equal participation in family wealth.

However, formal equality does not automatically produce effective equality. Daughters may face social pressure to relinquish their shares, lack access to title documents, encounter resistance from relatives, or be discouraged from initiating partition proceedings. Informal family arrangements and unregistered transactions can create evidentiary disputes. Legal awareness, accessible legal aid, accurate land and revenue records, and timely adjudication are therefore essential to the practical operation of Section 6.

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10. CRITICAL ANALYSIS

The 2005 amendment is a decisive statutory correction, but its implementation requires careful legal analysis. First, courts must distinguish coparcenary property from separate property. Overstating the amendment as granting daughters an automatic share in every property owned by their father risks misunderstanding the statutory scheme. The right is powerful, but it operates within the defined field of Mitakshara coparcenary.

Second, the protection of pre-20 December 2004 transactions creates a need for reliable proof. The Supreme Court's insistence on registered deeds, decrees and exceptionally strong documentary evidence of oral partitions is a practical safeguard against collusive claims. Yet courts must examine the evidence sensitively so that genuine historical partitions are recognised without allowing unsupported assertions to defeat statutory equality.

Third, the persistence of family-level pressure may cause daughters to relinquish rights without fully understanding their legal position. A formal equality rule can be undermined where the daughter is expected to sign a release deed or accept a smaller settlement for the sake of family harmony. Legal literacy and independent advice are necessary to ensure that any relinquishment is informed and voluntary.

Finally, the amendment should be viewed as part of a broader project of equal property ownership. Its success depends not only on judicial pronouncements but also on registration practices, mutation and revenue records, legal services, and the willingness of institutions to treat daughters as independent rights-holders. The law establishes parity; social and administrative structures must make that parity real.

11. FINDINGS

Amended Section 6 recognises a daughter as a coparcener by birth in a Mitakshara joint Hindu family, in the same manner as a son.

A daughter born before or after the 2005 amendment may claim the statutory rights with effect from 9 September 2005, subject to the statutory savings.

The father need not have been alive on 9 September 2005 for the daughter to claim the benefit of amended Section 6.

The amendment protects qualifying dispositions, alienations and partitions before 20 December 2004; an oral partition claim requires exceptional and compelling documentary proof.

The provision concerns coparcenary property and does not automatically convert self-acquired or separate property into joint family property.

Effective enforcement remains dependent on awareness, documentation, accessible remedies and the ability to resist coercive relinquishment.

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12. SUGGESTIONS

Legal awareness programmes should explain that daughters have equal coparcenary status irrespective of marital status.

Property and revenue records should accurately reflect the names and shares of all legally entitled coparceners and successors.

Courts should scrutinise alleged prior partitions in accordance with Section 6(5) and Vineeta Sharma, without accepting unsupported oral claims.

Legal aid institutions and universities should promote accessible guidance on partition suits, succession, release deeds and the evidentiary requirements for property claims.

Any relinquishment or family settlement should be examined for informed and voluntary consent, particularly where unequal bargaining power is apparent.

13. CONCLUSION

The recognition of daughters as coparceners under the Hindu Succession (Amendment) Act, 2005 marks a major transformation in Hindu property law. By substituting Section 6, Parliament moved beyond the limited position of daughters as heirs and recognised them as coparceners by birth, with the same rights and liabilities as sons. The Supreme Court's decision in Vineeta Sharma v. Rakesh Sharma gave authoritative effect to this reform by holding that the father need not be alive on the commencement date and by clarifying the treatment of prior partitions and pending proceedings.

The legal position is now clear in its central proposition: a daughter is an equal coparcener in a Mitakshara joint Hindu family, subject to the statutory conditions and protections. Nevertheless, the distinction between coparcenary and separate property, the evidentiary requirements for prior partitions, and the practical pressures surrounding family property continue to matter. The true measure of the amendment will be the extent to which daughters can exercise their rights independently and receive equal treatment in the administration and division of family assets. Equality in the statute must be translated into equality in ownership, records and lived experience.

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