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Devolution of Coparcenary Interest: A Critical Analysis of Notional Partition in the Post-2005 Era

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This paper provides a critical analysis of the idea of notional partition in the context of coparcenary interest devolution under Hindu law, particularly in regard to the transformational amendments made by the Hindu Succession (Amendment) Act of 2005. The paper explores the historical evolution of Mitakshara coparcenary and women's exclusion from ancestral property rights before delving into legislative and judicial measures with the objective of rectifying gender inequalities. Focusing on the post-2005 legal system, the research interrogates the continuing importance and complexity of notional partition, a legal fiction used to determine the shares of heirs on the death of a coparcener. The analysis highlights unresolved ambiguities, inconsistencies in judicial interpretation, and practical challenges arising from the dual responsibilities that daughters now undertake as both coparceners and heirs. The article concludes with doctrinal and legislative recommendations to simplify succession law, address gender imbalances, and ensure that the promise of equal inheritance is preserved in practice as well as in principle.

Keywords: *Hindu succession, notional partition, coparcenary, gender equality, inheritance law.*

INTRODUCTION

The Hindu Succession Act 1956 established intestate succession regulations for Hindus in India. It maintained the Mitakshara coparcenary system, which granted birthright interests in ancestral property only to male members. The rule of survivorship ensured that a deceased

coparcener's share was distributed to remaining male coparceners, excluding daughters from coparcenary rights by birth.¹ This meant daughters were allowed to inherit only as Class I heirs under intestate laws, which restricted their rights and maintained gender inequalities.²

The Hindu Succession (Amendment) Act 2005 made an important reform by explicitly recognising daughters' coparcenary status, with rights and obligations similar to those of sons, and abolishing the rule of survivorship for coparcenary property.³ The revision aligned the law with the constitutional ideals of equality and non-discrimination under Articles 14 and 15. Section 6(3) of the amended Act includes the doctrine of notional partition, which assumes that partition occurs immediately before the death of a coparcener for estimating the deceased's share for inheritance purposes.⁴ This legal fiction combines the joint family property framework with individual succession principles.

Despite the progressive intent, the implementation of the doctrine results in interpretive challenges and inconsistent decisions. Notably, the Supreme Court's rulings in *Prakash v Phulavati*⁵ and *Vineeta Sharma v Rakesh Sharma*⁶ explained some issues while leaving open concerns regarding the retrospective effect and the calculation of shares under the updated Act. These judicial developments require a thorough doctrinal evaluation of the law. This study uses doctrinal legal research methods, with a focus on legislative texts, judicial pronouncements, and academic views, to build a thorough understanding of the post-amendment legal regime. This method allows critical analysis, which is required for evaluating the amendment's impact and finding opportunities for legislative reform.

The paper begins with a discussion of the historical evolution of Mitakshara coparcenary and the doctrine of notional partition prior to the 2005 Amendment, followed by a detailed

¹ Hindu Succession Act 1956

² Sukanya Mukherjee, 'AN OVERVIEW OF HINDU WOMEN'S RIGHT TO PROPERTY' (2023) 8(2) NUJS Journal of Regulatory Studies <<https://journals.nujs.edu/index.php/njrs/article/view/295>> accessed 10 July 2026

³ Prateeksha K N, 'Critical Analysis of the Changes brought by 2005 Amendment of Hindu Succession Act' (2021) 4(4) International Journal of Law Management and Humanities <<https://ijlmh.com/paper/critical-analysis-of-the-changes-brought-by-2005-amendment-of-hindu-succession-act/>> accessed 10 July 2026

⁴ Hindu Succession (Amendment) Act 2005, s 6(3)

⁵ *Prakash v Phulavati* AIR 2015 SCW 6160

⁶ *Vineeta Sharma v Rakesh Sharma & Ors* (2020) 9 SCC 1

analysis of the statutory reforms, consolidation of judicial interpretations, and a critical evaluation with recommendations for improving legal clarity and gender parity.

HISTORICAL CONTEXT OF COPARCENARY AND THE PRE-2005 FICTION

The coparcenary doctrine in Mitakshara Hindu law established a complicated system of joint ownership in which particular male family members received undivided interests in ancestral property by birth. This system, governed by the principle that a son acquires an interest in ownership of the ancestral property by birth,⁷ created a patriarchal property arrangement where sons, grandsons, and great-grandsons became the coparcenary, while daughters remained excluded from such birthright ownership. In *Kalyani v Narayanan*, the Supreme Court recognised that this traditional coparcenary utilised an 'unequivocal intention to separate' to interfere with joint family status, highlighting the communal nature of property holding among male coparceners.⁸

The rule of survivorship, a principle central to pre-1956 Hindu law, stated that if a coparcener passed away, his interest was immediately transferred to surviving male coparceners without regard for succession principles.⁹ Scholars have criticised this method for institutionalising gender discrimination, as it excluded females from coparcenary property rights and allowed only males to inherit. The Hindu Women's Right to Property Act 1937 brought minimal reforms by providing widows with rights to partition and share enjoyment, but this fell short of giving daughters direct coparcenary status, maintaining their derived position within the joint family structure.¹⁰

The Hindu Succession Act, 1956 retained this gendered structure by retaining male-only coparcenary under Section 6, while recognising daughters solely as Class I heirs eligible for intestate succession. This legislative decision, which reflected existing social standards, reinforced what legal experts call 'systematic gender disparities' by limiting women to

⁷ 'Coparcenary in Hindu Law: Daughters Rights Post-2005 Amendment' (*Bhatt and Joshi Associates*, 15 May 2026) <<https://bhattandjoshiassociates.com/understanding-coparcenary-joint-ownership-and-birth-rights-in-hindu-ancestral-property/>> accessed 10 July 2026

⁸ Aparna N and Nayana Tara BG, 'Disruption of the Mitakshara Coparcenary | Vineeta Sharma v Rakesh Sharma: A Case Comment' (*SCC Online*, 29 September 2021) <<https://www.scconline.com/blog/post/2021/09/29/disruption-of-the-mitakshara-coparcenary-vineeta-sharma-v-rakesh-sharma-a-case-comment/>> accessed 10 July 2026

⁹ Hindu Succession (Amendment) Act 2005

¹⁰ The Hindu Women's Right to Property Act 1937

dependent inheritance roles rather than autonomous property ownership. The Act's approach reflected a compromise between traditional family structures and evolving constitutional equality ideals, but it did not sufficiently address the basic injustice inherent in survivorship-based devolution.

To lessen the severe nature of survivorship for female heirs, the theory of notional partition was developed as a legal fiction under Section 6(4), which used an imaginary division just before a coparcener's death to determine shares for Class I female heirs. This method was intended to balance the conventional system of joint families with the need for support for female family members who were not coparceners. However, this concept served as a limitation method rather than a revolutionary principle, providing little relief while maintaining the underlying male-centric coparcenary system.

The pre-2005 legislation thus established a hierarchical system in which women's property rights remained limited and derivative. Notional partition, despite its protective intention, failed to transform underlying gender dynamics and served as a partial remedy instead of addressing root causes of inequality. This inadequate framework, increasingly at odds with constitutional equality mandates, laid the groundwork for the revolutionary 2005 amendment, which would fundamentally restructure coparcenary relations by giving daughters equal status as coparceners and abolishing survivorship in favour of succession-based devolution.

THE 2005 AMENDMENT AND REFORMULATION OF SECTION 6

The Hindu Succession (Amendment) Act of 2005 became a landmark event in Indian succession law, completely altering the patriarchal framework of mitakshara coparcenary and raising females to equal status with sons as coparceners by birth. This legislative amendment, which came into effect on September 9, 2005, was inspired by constitutional principles of gender equality.¹¹ In addition to this, recommendations from the 174th Law Commission Report highlighted the clear prejudice against daughters in ancestral property rights under the 1956 Act.¹² The amendment was more than just a technical change; it

¹¹ Hindu Succession (Amendment) Act 2005

¹² Law Commission, *Report No 174: Property Rights of Women: Proposed Reforms under the Hindu Law* (2000)

represented an important step toward gender-neutral inheritance rules, breaking centuries-old patriarchal systems in Hindu property law.

The most important element of the amendment is the substitution of Section 6, which entirely redefined coparcenary membership and inheritance methods. Section 6(1) expressly provides that '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 by birth become a coparcener in her own right in the same manner as the son.'¹³ This provision ended the prolonged exemption of daughters from coparcenary status, providing them not just birthright ownership but also equal involvement in family property decisions. In *Danamma v Amar* (2018), the Supreme Court stated that this amendment undeniably granted daughters equal rights and responsibilities as sons in coparcenary properties, making daughters coparceners by birth, regardless of whether they were born prior to or after the amendment's implementation.¹⁴

A key component of the amended Section 6 is the total removal of the survivorship rule, which is replaced with succession-based devolution for all coparcenary property. Section 6(3) clearly provides that 'where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act 2005, his interest in the property of a Joint Hindu family shall devolve by testamentary or intestate succession and not by survivorship.'¹⁵ This provision is a complete break from traditional Mitakshara principles, ensuring that deceased coparceners' interests be passed on to their legal heirs rather than being acquired by living male coparceners. However, initial judicial interpretation confused the amendment's temporal scope, as seen in *Prakash v Phulavati* (2015). A single-judge panel decided that the amendment applied only when both father and daughter were living on September 9, 2005.¹⁶

The amendment maintains the idea of notional partition while reorganising its application within the new framework. According to the modified Section 6(3), 'the coparcenary property shall be deemed to have been divided as if a partition had taken place, with particular measures guaranteeing that the daughter receives the same share as that allotted

¹³ Hindu Succession (Amendment) Act 2005, s 6(1)

¹⁴ *Danamma @ Suman Surpur v Amar* (2018) 3 SCC 343

¹⁵ Hindu Succession (Amendment) Act 2005

¹⁶ *Prakash v Phulavati* AIR 2015 SCW 6160

to a son.¹⁷ This improved notional partition serves a different purpose than its pre-2005 counterpart; rather than protecting limited female interests, it now allows for fair distribution among all coparceners, including daughters who have achieved full coparcenary status. The process also grants inheritance rights to the children of predeceased daughters and sons, resulting in a comprehensive succession system that addresses current family structures.

Our analysis shows that the amendment's legislative structure displays complex constitutional reasoning by granting coparcenary rights to daughters by birth, aligning with the unobstructed heritage principle of traditional Mitakshara law while simultaneously eliminating its gender-discriminatory implementation. This method maintains the conceptual foundations of Hindu coparcenary while changing its substantive basis to achieve gender equality. Contrasting judicial interpretations in the Prakash case and the Danamma case created legal uncertainty until the Supreme Court's authoritative ruling in *Vineeta Sharma v Rakesh Sharma* (2020), which definitively established that daughters born before 2005 can claim coparcenary rights if they were alive on the amendment's effective date, regardless of their fathers' survival status.

The amendment includes significant provisions that protect existing property arrangements. Section 6(1)'s proviso clearly protects 'any disposition or alienation of property, including any partition or testamentary disposition of property, which had taken place before the 20th of December 2004.'¹⁸ This saving clause protects completed arrangements from retrospective interruption while assuring that pending or future property divisions include daughters' greater rights. In *Mangammal v T.B. Raju* (2018),¹⁹ the Supreme Court emphasised that registered partitions done before December 20, 2004, will be unaffected by the change, exhibiting legislative competence in combining gender equality aims with legal clarity.

The revised Section 6 addresses practical issues related to daughters' property management and disposal rights. Section 6(2) expressly specifies that property obtained by female Hindus pursuant to the amendment shall be kept by her with the elements of coparcenary ownership and grants unlimited testamentary disposition rights.²⁰ This section removes all remaining restrictions on daughters' property autonomy, guaranteeing that they have the

¹⁷ Hindu Succession (Amendment) Act 2005, s 6(3)(a)

¹⁸ Hindu Succession (Amendment) Act 2005, s 6(1)

¹⁹ *Mangamal @ Thulasi and Anr v T B Raju and Ors* (2018) 15 SCC 662

²⁰ Hindu Succession (Amendment) Act 2005, s 6(2)

same rights as male coparceners in managing, transferring, and bequeathing their coparcenary interests. The Karnataka High Court in the Prakash case first accepted that coparcenary privileges are acquired by birth, not by the death of the father. But this interpretation was later refined by successive Supreme Court decisions.

The 2005 amendment reflects a complete legal shift that goes beyond mere gender inclusion to profoundly reconsider the coparcenary institution. By granting daughters equal birthright status, eliminating survivorship, and rearranging hypothetical division mechanisms, the amendment accomplishes substantive gender equality while keeping the core feature of Hindu joint family property. This legislative achievement demonstrates how traditional legal institutions can be transformed to reflect contemporary constitutional values while maintaining their fundamental principles, though subsequent judicial clarifications in cases such as Vineeta Sharma were required to resolve interpretative ambiguities and ensure uniform application across jurisdictions.

JUDICIAL CONSOLIDATION OF THE NOTIONAL-PARTITION DOCTRINE

The Supreme Court first established doctrinal depth to statutory notional partition in *Gurupad Khandappa Magdum v Hirabai Khandappa Magdum*, holding that once the fiction is used, it must be implemented to its logical end, so the widow's share is computed twice: first as a coparcener on the deemed partition and then as a Class I heir of the deceased coparcener.²¹ The decision set out two principles that continue to govern post-2005 litigation: first, notional partition does not sever the joint family; its scope is limited to arithmetically calculating the deceased's share; and secondly, every female relative governed by the proviso to the old Section 6, including widows and daughters, participates in both capacities once the fiction occurs.

Subsequent cases refined the outline. In *Rohit Chauhan v Surinder Singh*, the Court stated that a coparcener's testamentary capacity is restricted to the share that emerges after applying the notional partition.²² This prevents over-bequeathing and protects the statutory shares of Class I female heirs. Two years later, the *Prakash v Phulavati* judgment limited the 2005 amendment's scope to situations in which both father and daughter were alive on September

²¹ *Gurupad Khandappa Magdum v Hirabai Khandappa Magdum & Ors* (1978) 3 SCC 383

²² *Rohit Chauhan v Surinder Singh & Ors* (2013) 9 SCC 419

9, 2005.²³ But this temporal restriction resulted in inconsistent High Court rulings, undermining certainty in share calculations based on the fiction.

In the Danamma case, the court granted coparcenary rights to daughters regardless of the father's death before 2005, meaning that the notional partition calculation must now include daughters as coparceners rather than heirs.²⁴ The conflict between Prakash and Danamma caused doctrinal uncertainty until the bench of three judges in the Vineeta Sharma v Rakesh Sharma judgment resolved it by affirming full retrospective effect: every living daughter is a coparcener by birth, and the two-step calculation (deemed partition followed by succession of the father's allotment) is required regardless of whether prior litigation is pending.²⁵

While the Vineeta Sharma judgment recognised retrospectivity, it is unclear whether the fabrication dissolves the coparcenary. That issue was raised in the Uttam v Saubhag Singh case, where the court decided that once notional partition occurs because a Class I female heir survives, the coparcenary terminates, and property devolves to tenants-in-common.²⁶ Scholars critique this extension for expanding the fiction beyond its statutory intent and contradicting earlier assertions that the joint family exists among the remaining coparceners.²⁷ The dispute has practical consequences: if the coparcenary continues, later-born daughters or sons may still claim birth-based shares, and if it terminates, their rights are lost.

Recent High Court decisions highlight the doctrine's ongoing development. In Commissioner of Wealth Tax v Chander Sen, the court interpreted Uttam strictly, ruling that only the deceased's interest is separated, leaving the residual coparcenary intact for remaining coparceners.²⁸ In contrast, in Bhagwat Sharma v Tulsi Devi 2025, the High Court of Bombay considered Uttam broadly, recognising the fiction as a total severance and so denying the son born after 2005 the status of coparcener.

²³ *Prakash v Phulavati* (2015) AIR SCW 6160

²⁴ *Danamma @ Suman Surpur v Amar* (2018) 3 SCC 343

²⁵ *Vineeta Sharma v Rakesh Sharma & Ors* (2020) 9 SCC 1

²⁶ *Uttam v Saubhag Singh & Ors* (2016) 4 SCC 68

²⁷ Nikhil Rohatgi, 'A critique of the Supreme Court's judgment in Uttam v Saubhag Singh & Ors' (*Bar & Bench*, 24 November 2018) <<https://www.barandbench.com/columns/a-critique-of-the-supreme-courts-judgment-in-uttam-v-saubhag-singh-ors>> accessed 10 July 2026

²⁸ *Commissioner of Wealth Tax Etc Etc v Chander Sen Etc* (1986) 3 SCC 567

Conceptually, these varied strands reflect two contrasting perspectives on notional partition. The Gurupad-Asha Rani line views the fiction as a method of accounting that generally maintains the family structure, but the Uttam-Bhagwat Sharma line considers it a disruptive tool that dissolves the coparcenary. The Supreme Court has yet to clarify this doctrinal disagreement, leaving those litigating with tactical options. Heirs desiring higher shares may use Uttam, while coparceners seeking continuity may utilise Gurupad.

From a normative point of view, the broader Uttam approach promotes gender justice by breaking patriarchal authority, but it risks disturbing stable titles and generating new partition suits. The narrower Gurupad approach maintains familial stability while potentially maintaining male supremacy if surviving coparceners decline physical partition. A balanced resolution could use a purpose-driven test: the fiction should be extended only as far as necessary to quantify the deceased's share for succession, leaving surviving members free to decide on actual partition, an approach consistent with Mulla's commentary, which warns against stretching the legal fiction to a bursting point.²⁹

In brief, the judicial development of the notional-partition concept has proceeded from Hirabai to Vineeta Sharma, but there are still remaining uncertainties about its disruptive reach, interaction with testamentary independence, and impact on the coparcenary. The following chapter will assess these outstanding concerns and recommend doctrinal improvements to ensure that the fiction achieves its intended goal of gender-equal inheritance while avoiding unnecessary litigation or destabilising joint-family structures.

CRITICAL EVALUATION AND FUTURE OF NOTIONAL PARTITION

The theory of notional partition, which was initially intended as a safeguard for female Class I heirs under pre-2005 law, now occupies an odd position in the modified statutory architecture. While daughters are coparceners by birth with rights equal to sons, the law even so mandates a deemed partition immediately before death to determine the deceased's share.³⁰ This poses a conceptual tension: if daughters have birthright ownership equal to sons, then continuing to calculate their shares using a legal fiction originally designed to avoid their exclusion from coparcenary is questionable.

²⁹ Dinshah Fardunji Mulla, *Principles of Hindu Law* (Gale, Making of Modern Law 2013)

³⁰ Hindu Succession (Amendment) Act 2005

The continued presence of notional partition shows legislative concern in changing traditional property structures without disrupting current joint families. As the critic argues, the illusion serves to integrate the modern principle of gender equality with the ancient institution of coparcenary, minimising abrupt disruption and facilitating a slow transition toward equitable succession norms.³¹ However, this compromise introduces practical obstacles that may frustrate rather than realise the amendment's gender-justice objectives. The dual-capacity calculation, where daughters inherit as coparceners in notional partition and as Class I heirs in succession, introduces arithmetic complexity that confuses litigants and invites litigation over share computation.³²

A thorough examination indicates that the notional partition operates differently after 2005 than its prior mechanism. Under pre-amendment law, the fiction protected daughters who were not coparceners by creating a fictitious stake that they may inherit; post-amendment, it applies to daughters who already have coparcenary rights, effectively partitioning property they already own by birth. This functional redundancy implies that the theory currently serves largely administrative rather than substantive purposes, a computational device rather than a right-creating instrument. The Supreme Court underlined in *Vineeta Sharma* that 'the fiction is only for ascertaining the share of a deceased coparcener and not to bring about real partition,' maintaining its narrow scope.³³

Despite this clarification, lower courts continue to face practical application difficulties. The 'immediately before death' timeframe presents evidential challenges when property prices increase, new purchases occur, or coparcenary status changes due to births or deaths between the deceased's death and actual division. In *State of Maharashtra v Narayan Rao Sham Rao Deshmukh*, the court observed that determining retroactive valuations for notional partition purposes imposes an unreasonable burden on heirs and courts alike, particularly in cases involving agricultural land subject to market volatility or growth-related appreciation.³⁴

³¹ Manisha Singh, 'Notional Partition under Hindu Law: Meaning and Implications' (2023) 6(1) International Journal of Law Management & Humanities <<https://ijlmh.com/paper/notional-partition-under-hindu-law-meaning-and-implications/>> accessed 10 July 2026

³² Niyati Karia and Urvi Jinsiwale, 'Daughters: The New Equals?' (SCC Online, 22 January 2021) <<https://www.scconline.com/blog/post/2021/01/22/daughters-the-new-equals/>> accessed 10 July 2026

³³ *Vineeta Sharma v Rakesh Sharma & Ors* (2020) 9 SCC 1

³⁴ *State of Maharashtra v Narayan Rao Sham Rao Deshmukh & Ors* AIR 1985 SC 716

Our analysis identifies three structural flaws originating from the post-2005 notional partition doctrine. First, the dual-capacity calculation gives daughters bigger shares than sons in some cases, breaching the amendment's equality obligation. When a coparcener dies, leaving a widow, mother, sons, and daughters, each daughter receives both a coparcenary share and an inheritance share, whereas sons only receive the latter, resulting in reverse discrimination that can be challenged constitutionally. Second, the fiction's application to widows and mothers, who are not coparceners but receive shares in the hypothetical split, preserves the gender hierarchy that the amendment aimed to remove by considering them as derivative beneficiaries rather than independent rights holders.

Third, the doctrine's interaction with the testamentary rights under Section 30 causes unpredictability. While coparceners may bequeath their shares by will, determining the bequeathable extent requires a notional partition calculation, and conflicts over this basis frequently render testamentary dispositions unenforceable or subject to lengthy litigation. In *M. Arumugam v S. Alagammal* (2020), the High Court observed that testamentary clarity becomes a casualty of notional partition difficulty, limiting individual freedom in property disposition.

Based on the perspective of gender equality, there is debate whether notional partition appropriately resolves historical inequality or merely repackages it. Feminist legal scholars say that the doctrine's continuation indicates legislative hesitation to completely abolish patriarchal property arrangements, safeguarding male coparceners' interests at the expense of clear equitable succession. Others argue that the fiction maintains a balance between tradition and reform, preserving joint families' bonds while ensuring daughters' fair share.³⁵ Research highlights enforcement gaps in rural contexts; families usually bypass notional partition calculations through informal settlements, excluding daughters despite their legal coparcenary status.³⁶

³⁵ J Starli, 'CRITICAL ANALYSIS OF DISPARITY IN PROPERTY RIGHTS OF WOMEN IN INDIA: A GLIMPSE' (*Tamil Nadu State Judicial Academy*) <<https://www.studocu.com/in/document/university-of-delhi/political-science/11-starli-female-property-rights-article-corrected/26311873?sid=b9e81fe2-ad94-454d-8e4e-def055ee0c271786641396>> accessed 10 July 2026

³⁶ Bina Agarwal and Shruthi Naik, 'Do courts grant women their inheritance shares? An analysis of case law in India' (2024) 182 *World Development* <<https://www.sciencedirect.com/science/article/pii/S0305750X2400158X>> accessed 10 July 2026

The issue of coparcenary disruption remains doctrinally unresolved. Vineeta Sharma found that notional partition does not terminate the joint family. However, *Uttam v Saubhag Singh* stated differently, creating jurisdictional differences on whether surviving coparceners retain their status or become tenants-in-common post-partition.³⁷ The problem has consequences for further property transactions, tax status, and future succession scenarios, demanding authoritative clarification from a Constitution Bench to clarify competing precedents and establish uniform national norms.

A comparative analysis of succession reforms in various personal law systems reveals possible options. The Muslim Women (Protection of Rights on Marriage) Act of 2019 implemented direct statutory share allocation without deemed partition fictions, simplifying inheritance calculations while ensuring gender equality.³⁸ Similarly, various state amendments to Hindu succession law, most notably in Maharashtra and Karnataka, experimented with less complex succession formulae that avoid notional partition complications, but they were surpassed by the 2005 central amendment.³⁹

Looking ahead, the doctrine faces challenges from multiple directions. The rise of digital property, such as bitcoin, intellectual property rights, and intangible assets, contradicts the partition logic meant for physical joint family estates.⁴⁰ Furthermore, changing family structures, such as nuclear households and non-traditional living arrangements, make coparcenary ideas increasingly outdated, raising the question of whether notional partition is still relevant for modern property relations.

Ultimately, notional partition is a transitional procedure that is unsuitable for permanent adoption into succession law. Its complexities confuse rather than clarify rights, its implementation causes rather than resolves conflicts, and its continued use represents an insufficient commitment to gender equality. The doctrine's future is likely to involve either complete removal in favour of straightforward Class I succession, or significant

³⁷ *Vineeta Sharma v Rakesh Sharma & Ors* (2020) 9 SCC 1

³⁸ Muslim Women (Protection of Rights on Marriage) Act 2019

³⁹ Kanieka Arora and Dipti Bansal, 'EVOLUTION OF PROPERTY RIGHTS OF A HINDU FEMALE - AN ANALYSIS UNDER THE HINDU SUCCESSION ACT, 1956' (2023) 62(2) Panjab University Law Review <<https://pulr.puchd.ac.in/index.php/pulr/article/view/197>> accessed 10 July 2026

⁴⁰ Dr Prashant Mali and Aswathy Prakash G, 'DEATH IN THE ERA OF PERPETUAL DIGITAL AFTERLIFE: DIGITAL ASSETS, POSTHUMOUS LEGACY, OWNERSHIP AND ITS LEGAL IMPLICATIONS' (2019) 15(1) National Law School Journal <<https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1365&context=nlsj>> accessed 10 July 2026

simplification through legislative amendments that explain calculating procedure, temporal scope, and coparcenary continuity effects. Until such reform comes, notional partition will remain a conceptually elegant but practically difficult fiction that hinders rather than advances the equality goals it appears to serve.

RECOMMENDATIONS FOR REFORM

The survival of notional partition as an important aspect of post-2005 succession law requires immediate legislative and judicial action to remove residual ambiguities, simplify implementation, and achieve the amendment's gender-equality objectives. Based on doctrinal research and comparative jurisprudence, this section suggests practical remedies to solve structural weaknesses discussed in previous sections.

First, Parliament should consider amending Section 6(3) to remove the dual-capacity calculation, which now requires daughters to inherit as both coparceners in notional partition and Class I heirs in succession. According to the 204th Law Commission Report, duplication increases computational complexity and gives rise to litigation over arithmetic share allocation.⁴¹ A simplified provision might simply specify that coparcenary property is distributed equally among all living coparceners, and deceased coparceners' shares are transferred to Class I heirs, therefore eliminating the fiction for post-2005 deaths. This explanation aligns with the amendment's underlying idea that daughters are coparceners in the same manner as sons, making them direct owners rather than derived beneficiaries requiring a fictional mechanism.⁴²

Second, the Supreme Court should convene a Constitution Bench to decide definitively whether notional partition terminates coparcenary status among surviving members or merely crystallises the deceased's share. Conflicting precedents in the Uttam case and the Commissioner of Wealth Tax case cause jurisdictional confusion, influencing property taxation, succession events, and testamentary planning.⁴³ A specific decision clarifying that notional partition is exclusively restricted to share calculation without compromising joint family status would safeguard traditional coparcenary benefits such as agricultural tax exemptions and business continuity, while respecting daughters' inheritance rights. The

⁴¹ Law Commission, *Report No 204: Proposal to Amend the Hindu Succession Act, 1956* (2008)

⁴² *Danamma @ Suman Surpur v Amar* (2018) 3 SCC 343

⁴³ *Commissioner of Wealth Tax Etc Etc v Chander Sen Etc* (1986) 3 SCC 567

Court should adopt Mulla's interpretation that 'a statutory fiction which treats an imaginary state of affairs as real requires that the consequences and incidents of the putative state of affairs must flow from or accompany it' only as far as the statute's purpose demands.

Third, for the purpose of taking into account the realities of contemporary succession, Section 6(5) and its explanation need to be expanded by legislation. The definition of 'partition' as it currently exists, which restricts it to registered deeds or court orders, leaves out mediated family settlements, arbitration awards, and digital property divides, which are becoming more and more prevalent in modern practice. Although Vineeta Sharma was right to reject false oral partition claims in order to safeguard the rights of daughters, the judgment's total prohibition on unregistered partitions may render legitimate family arrangements that existed prior to December 2004 null and void. If they meet strict evidentiary requirements, such as contemporaneous public documentation and fair treatment of all coparceners, an amended explanation could acknowledge additional partition modes, such as revenue-recorded physical divisions, notarised family arbitration awards, and mediation settlement agreements.

Fourth, the Act needs clarification regarding daughters' testamentary powers over coparcenary interests. Although daughters are granted the incidents of coparcenary ownership under Section 6(2), including the right to testamentary disposition, it is unclear how this will interact with the general testamentary provision of Section 30.⁴⁴ In order to eliminate discriminatory challenges to daughters' wills based on conventional coparcenary constraints, the 207th Law Commission Report advocated unambiguous statutory affirmation that girls possess unrestricted bequest capacity equal to sons.⁴⁵ To remove any remaining ambiguity and confirm gender equality in property independence, a legislative amendment that clearly states that a daughter coparcener is allowed to dispose of her entire undivided interest by testamentary disposition without restriction should be implemented.

Fifth, for notional partition valuation disputes, courts must create consistent evidentiary standards. When determining the deceased's share retrospectively, value conflicts are sometimes caused by property appreciation, depreciation, and acquisitions that take place between death and the final partition. Lower litigation and equitable distribution would

⁴⁴ *Vineeta Sharma v Rakesh Sharma & Ors* (2020) 9 SCC 1

⁴⁵ Hindu Succession (Amendment) Act 2005, s 30

result from judicial rules stating that the notional partition operates at market values that were in effect on the day of death, with changes made only for future accretions that can be directly linked to the deceased's interest. In *State of Maharashtra v Narayan Rao Deshmukh*, the Supreme Court established the theoretical basis for these principles, which need to be further developed through authoritative precedent.⁴⁶

Sixth, intangible and digital asset succession within coparcenary frameworks should be addressed by legislation. Although current regulations assume that physical ancestral property is subject to notional partition calculations, cryptocurrencies, intellectual property, digital enterprises, and intangible investment portfolios are becoming more and more common in modern estates. These assets are not taken into account by the notional partition logic, which assumes the division of physical ancestral holdings. The schedule provisions should be changed by Parliament to specifically include digital assets in the definition of 'property' and to give judges the authority to create fair distribution guidelines for intangible coparcenary interests that cannot be divided using conventional methods.

Lastly, as a transitional institution that is incompatible with nuclear family structures and gender-neutral succession principles, legislation reform should take into account the phased eradication of the coparcenary. Coparcenary property is instantly changed to tenancy-in-common under Kerala's Joint Hindu Family System Abolition Act, 1976, with shares immediately and irreversibly vesting in each family member.⁴⁷ The conceptual and practical challenges of notional partition could be eliminated, and full gender parity could be achieved with a Union constitution that adopted Kerala's strategy and included strong transitional provisions safeguarding current systems. Without using legal fictions, daughters and sons would inherit in the same way as Class I heirs, streamlining succession law and upholding the equality requirements of the Constitution.

The enforcement of these reforms requires combined legislative, judicial, and administrative action. The Supreme Court should expeditiously settle doctrinal disputes through authoritative precedent, state governments should update revenue records to appropriately reflect coparcenary changes, and Parliament should make simplifying succession law a top priority in its legislative agenda. The objective of the 2005 amendment genuine gender

⁴⁶ *State of Maharashtra v Narayan Rao Sham Rao Deshmukh & Ors* AIR 1985 SC 716

⁴⁷ Kerala Joint Hindu Family System (Abolition) Act 1976

equality in ancestral property rights can only be completely achieved with such extensive reform, turning the notional divide from a source of litigation into a historical document documenting India's progress toward substantive equality.

CONCLUSION

Incorporating the principle of gender equality within the law of succession, the 2005 amendment to the Hindu Succession Act represents a significant turning point in the Indian legal system. The legislature paved the path for a more equitable distribution of ancestral estates across generations by granting daughters the same coparcenary rights as sons from birth and by doing away with gender-based restrictions on the rights of partition, management, and residence in joint family property. This shift is also indicative of a broader spirit of reform, recognising the vital role of equal property rights in achieving substantive justice for women in Indian society.

Despite these developments, the persistent use of notional division to establish succession has resulted in major complexity, needless litigation, and doctrinal ambiguities. Multiple Supreme Court and High Court decisions, although clarifying various issues, have exposed conceptual difficulties involving share computation, status of heirs after a notional partition, and accommodating new property forms in a developing economy. These persistent issues highlight the importance of simplifying the legislation, providing better statutory guidance, and aligning it with contemporary social realities.

Ultimately, the promise of equal inheritance for daughters must be supported by legal mechanisms that are clear and accessible. The gradual abolition or streamlining of notional partition, the adoption of technology-inclusive asset definitions, and Parliament's and the judiciary's persistent efforts to eliminate remaining discrimination are essential for achieving both the letter and spirit of the 2005 amendment. As India's families, property landscapes, and societal ideals evolve, so will the laws that govern their foundations.