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**COVERT COERCION AND WOMEN'S PROPERTY RIGHTS
IN INDIA: A FEMINIST JURISPRUDENTIAL CRITIQUE OF
RELINQUISHMENT PRACTICES IN CONTRAST WITH
CLASSICAL SCHOOLS OF JURISPRUDENCE**

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Abstract

The Hindu Succession (Amendment) Act, 2005 gave daughters the same right to ancestral property as sons — a landmark legal transformation. Yet, two decades later, a quiet and deeply uncomfortable reality persists: Indian women continue to surrender their inheritance rights through relinquishment deeds and family settlements signed inside deeply unequal family environments. The National Family Health Survey (NFHS-5, 2019–21) tells the story plainly — only 43.3 per cent of women in India own land or a house, alone or jointly. That figure sits against a backdrop of formal legal equality that has existed since 2005. Something is clearly going wrong between the law on paper and the life being lived.

This paper argues that what is going wrong has a name: covert coercion. It is a form of structural and emotional pressure — invisible to standard legal doctrines of consent — that operates inside patriarchal Indian families and pushes women to give up what the law has given them. The paper compares how seven major schools of jurisprudence — legal positivism, natural law, the historical school, sociological jurisprudence, legal realism, liberal jurisprudence, and feminist jurisprudence — understand consent, autonomy, and coercion in property transactions involving women. It argues that only feminist jurisprudence can see this problem clearly and address it honestly. The paper also examines constitutional protections under Articles 14, 15, and 21, reviews key Supreme Court decisions, and proposes a set of concrete, constitutionally grounded reforms.

Keywords: *Feminist Jurisprudence, Women's Property Rights, Covert Coercion, Hindu Succession, Relinquishment Deeds, Substantive Equality, Coparcenary, Patriarchy, Legal*

1. Introduction

Property and power have always walked hand in hand in human societies. In India's patriarchal social order, ancestral land has historically meant far more than financial security — it has been the foundation of male authority in the family and the key mechanism through which women were kept economically dependent. The Mitakshara school of Hindu law, which governed most Hindus across the country, restricted membership of the coparcenary entirely to male descendants.¹ Women were not members. They could not demand partition. Ancestral land passed from father to son in an unbroken male chain, generation after generation.

The Hindu Succession Act, 1956 made a partial attempt at reform, but it left the male-only coparcenary essentially intact. The real transformation came with the Hindu Succession (Amendment) Act, 2005.² That amendment declared daughters to be coparceners by birth, with exactly the same rights and duties as sons. The Supreme Court confirmed and strengthened this in *Vineeta Sharma v. Rakesh Sharma*, ruling that a daughter's coparcenary right exists from the moment of her birth regardless of whether her father was alive when the 2005 amendment came into force.³ Earlier conflicting decisions in *Prakash v. Phulavati*⁴ and *Danamma v. Amar*⁵ were put to rest.

And yet the gap between what the law says and what actually happens on the ground remains stubbornly wide. Women are still being shut out of ancestral property — not through legal exclusion any more, but through informal disinheritance. Daughters sign relinquishment deeds or agree to family settlements, surrendering their shares to male relatives. These transactions are dressed up as acts of love, family harmony, or sisterly generosity. Courts, applying standard

¹Diwan, P. (2019). *Modern Hindu law* (23rd ed.). Allahabad Law Agency.

²Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005). The Act substituted Section 6 of the Hindu Succession Act, 1956, conferring upon daughters the same rights and liabilities in Mitakshara coparcenary property as sons, from the date of their birth.

³*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (Supreme Court of India). The Court unanimously held that daughters acquire coparcenary rights by birth under the Hindu Succession (Amendment) Act, 2005, irrespective of whether the father was alive on the date of the amendment. Available at: <https://indiankanoon.org/doc/1730080/>

⁴*Prakash v. Phulavati*, (2016) 2 SCC 36 (Supreme Court of India). The Court held that the 2005 amendment applied only to living daughters of living coparceners as on the date of the amendment — a position subsequently overruled by *Vineeta Sharma* (2020). Available at: <https://indiankanoon.org/doc/188885/>

⁵*Danamma @ Suman Surpur v. Amar*, (2018) 3 SCC 343 (Supreme Court of India). The Court held that daughters born before the 2005 amendment are also entitled to coparcenary rights. Available at: <https://indiankanoon.org/doc/1198440/>

contract law principles, typically uphold them as long as the deed is properly registered⁶ and no overt threats or physical force can be proved under Section 15 of the Indian Contract Act, 1872.⁷

This paper argues that such an approach rests on a serious error: it mistakes formal procedural consent for genuine free choice. Drawing on feminist jurisprudence — and especially the work of Catharine MacKinnon⁸ — this paper develops the idea of *covert coercion*: a pattern of structural and emotional pressure that forces women to give up property rights without any visible threats or force. This kind of coercion leaves no trace in the legal record, but it operates powerfully inside the patriarchal Indian family. Legal positivism and liberal contract theory cannot see it. Feminist jurisprudence can — and must. The analysis in this paper draws on Parashar's foundational work on feminist jurisprudence in India⁹ as well as the empirical data of NFHS-5.¹⁰

2. Objectives of the Study

This paper pursues five specific objectives:

- (i) To critically examine, through the lens of feminist jurisprudence, the relinquishment practices through which Indian women are deprived of inheritance rights, with particular focus on the structural mechanics of covert coercion within patriarchal family environments, as documented by Agnes¹¹ and Parashar.¹²
- (ii) To compare how seven major schools of jurisprudence conceptualise consent, autonomy, and coercion in property transactions involving women, drawing on Mahajan's comprehensive account of jurisprudential schools¹³ and Freeman's treatment

⁶Registration Act, 1908 (Act 16 of 1908), Section 17. Relinquishment deeds relating to immovable property valued above Rs. 100 are subject to compulsory registration; however, registration alone does not certify that consent was genuinely free and informed.

⁷Indian Contract Act, 1872 (Act 9 of 1872), Sections 14–16. Section 15 defines coercion as the commission or threat of an act forbidden by law. Section 16 defines undue influence as arising where one party dominates another's will and uses that dominance to obtain an unfair advantage.

⁸MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Harvard University Press.

⁹Parashar, A. (2013). *Feminist perspectives in Indian personal laws: An analysis of constitutional jurisprudence*. *Indian Journal of Gender Studies*, 20(2), 215–242. <https://doi.org/10.1177/0971521513482284>

¹⁰International Institute for Population Sciences. (2021). *National Family Health Survey-5 (NFHS-5) 2019–21: India report*. Ministry of Health and Family Welfare, Government of India. Available at: http://rchiips.org/nfhs/NFHS-5Reports/NFHS-5_INDIA_REPORT.pdf

¹¹Agnes, F. (2011). *Law and gender inequality: The politics of women's rights in India*. Oxford University Press.

¹²Parashar, A. (2013). *Feminist perspectives in Indian personal laws: An analysis of constitutional jurisprudence*. *Indian Journal of Gender Studies*, 20(2), 215–242. <https://doi.org/10.1177/0971521513482284>

¹³Mahajan, V. D. (2021). *Jurisprudence and legal theory* (5th ed.). Eastern Book Company.

of feminist jurisprudence.¹⁴

- (iii) To evaluate whether the current legal framework under the Indian Contract Act, 1872¹⁵ and Hindu succession statutes adequately protects women against structural and emotional coercion in relinquishment cases.
- (iv) To examine constitutional jurisprudence under Articles 14, 15, and 21¹⁶, and to assess its alignment with feminist ideas of substantive equality, in light of landmark decisions including *Vineeta Sharma*¹⁷ and *Shayara Bano*.¹⁸
- (v) To propose a feminist and constitutionally grounded interpretive framework for evaluating consent and equality in inheritance disputes involving women's relinquishment deeds, drawing on Paranjape's jurisprudential analysis.¹⁹

3. Hypothesis

This paper proceeds from the hypothesis that relinquishment deeds executed by women within Indian patriarchal family structures rarely represent genuine free consent in any meaningful substantive sense. Such transactions are shaped by covert coercion — emotional manipulation, cultural conditioning, economic dependency, and moral pressure — that is structurally invisible to positivist²⁰ and liberal legal frameworks but analytically visible through feminist jurisprudence.²¹ The paper further proposes that Indian constitutional jurisprudence, through its evolving commitment to substantive equality under Articles 14, 15, and 21,²² already provides the legal foundation for a feminist re-reading of consent in inheritance disputes. The NFHS-5 data²³ provides the empirical anchor for this claim.

¹⁴Freeman, M. D. A. (2014). *Lloyd's introduction to jurisprudence* (9th ed.). Sweet & Maxwell.

¹⁵Indian Contract Act, 1872 (Act 9 of 1872), Sections 14–16. Section 15 defines coercion as the commission or threat of an act forbidden by law. Section 16 defines undue influence as arising where one party dominates another's will and uses that dominance to obtain an unfair advantage.

¹⁶Constitution of India, 1950, Articles 14, 15, and 21. Article 14 guarantees equality before the law; Article 15 prohibits sex-based discrimination; Article 15(3) permits special provisions for women; Article 21 protects life, liberty, dignity, and autonomy.

¹⁷*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (Supreme Court of India). The Court unanimously held that daughters acquire coparcenary rights by birth under the Hindu Succession (Amendment) Act, 2005, irrespective of whether the father was alive on the date of the amendment. Available at: <https://indiankanoon.org/doc/1730080/>

¹⁸*Shayara Bano v. Union of India*, (2017) 9 SCC 1 (Constitution Bench). The Court declared instant triple talaq unconstitutional under Articles 14 and 21, establishing that personal law practices cannot evade constitutional scrutiny. Available at: <https://indiankanoon.org/doc/127517806/>

¹⁹Paranjape, N. V. (2022). *Studies in jurisprudence and legal theory* (10th ed.). Central Law Agency.

²⁰Hart, H. L. A. (1994). *The concept of law* (2nd ed.). Oxford University Press.

²¹MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Harvard University Press.

²²Constitution of India, 1950, Articles 14, 15, and 21. Article 14 guarantees equality before the law; Article 15 prohibits sex-based discrimination; Article 15(3) permits special provisions for women; Article 21 protects life, liberty, dignity, and autonomy.

²³International Institute for Population Sciences. (2021). *National Family Health Survey-5 (NFHS-5) 2019–21: India report*. Ministry of Health and Family Welfare, Government of India. Available at:

4. Research Methodology

This study uses a doctrinal and comparative jurisprudential research methodology. It critically examines statutory provisions, constitutional principles, and judicial interpretations relating to women's inheritance rights and relinquishment practices in India. Primary legal sources include the Hindu Succession (Amendment) Act, 2005,²⁴ the Indian Contract Act, 1872,²⁵ the Transfer of Property Act, 1882,²⁶ the Registration Act, 1908,²⁷ and the Constitution of India.²⁸

Secondary sources include Supreme Court decisions, authoritative legal treatises from Oxford University Press, Harvard University Press, Yale University Press, LexisNexis, Eastern Book Company, and Sweet & Maxwell, and peer-reviewed journal articles. Empirical data from NFHS-5 (2019–21)²⁹ grounds the theoretical analysis in social reality. The comparative jurisprudential component analyses seven major schools of jurisprudence and their approaches to consent, autonomy, and coercion in transactions involving women. The study is analytical and normative in nature rather than empirical or field-based.

5. Research Gap

Most Indian scholarship on women's property rights focuses on the statutory reforms of 2005 and the judicial expansion of daughters' coparcenary rights through *Vineeta Sharma*,³⁰

http://rchiips.org/nfhs/NFHS-5Reports/NFHS-5_INDIA_REPORT.pdf

²⁴Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005). The Act substituted Section 6 of the Hindu Succession Act, 1956, conferring upon daughters the same rights and liabilities in Mitakshara coparcenary property as sons, from the date of their birth.

²⁵Indian Contract Act, 1872 (Act 9 of 1872), Sections 14–16. Section 15 defines coercion as the commission or threat of an act forbidden by law. Section 16 defines undue influence as arising where one party dominates another's will and uses that dominance to obtain an unfair advantage.

²⁶Transfer of Property Act, 1882 (Act 4 of 1882), Section 6. This provision governs the alienability of property interests and forms the broader statutory framework within which relinquishment deeds and family settlement agreements involving immovable property are executed in India.

²⁷Registration Act, 1908 (Act 16 of 1908), Section 17. Relinquishment deeds relating to immovable property valued above Rs. 100 are subject to compulsory registration; however, registration alone does not certify that consent was genuinely free and informed.

²⁸Constitution of India, 1950, Articles 14, 15, and 21. Article 14 guarantees equality before the law; Article 15 prohibits sex-based discrimination; Article 15(3) permits special provisions for women; Article 21 protects life, liberty, dignity, and autonomy.

²⁹International Institute for Population Sciences. (2021). National Family Health Survey-5 (NFHS-5) 2019–21: India report. Ministry of Health and Family Welfare, Government of India. Available at: http://rchiips.org/nfhs/NFHS-5Reports/NFHS-5_INDIA_REPORT.pdf

³⁰*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (Supreme Court of India). The Court unanimously held that daughters acquire coparcenary rights by birth under the Hindu Succession (Amendment) Act, 2005, irrespective of whether the father was alive on the date of the amendment. Available at: <https://indiankanoon.org/doc/1730080/>

Danamma,³¹ and *Phulavati*.³² That body of work is valuable but concentrates almost entirely on how formal rights have expanded. It says relatively little about how those rights continue to be defeated in practice through relinquishment deeds and family settlements. The empirical gap — only 43.3% women's property ownership despite two decades of formal equality³³ — remains significantly under-theorised.

There is also a near-total absence of comparative jurisprudential analysis that brings feminist critiques of consent into structured dialogue with other jurisprudential traditions in the specific context of women's property relinquishment in India. Scholars like Parashar³⁴ and Agnes³⁵ have made important contributions to feminist legal analysis in India, but the specific concept of covert coercion as a legally relevant category has not been systematically theorised. This paper directly addresses that gap, building on Mahajan's jurisprudential framework³⁶ and Aravindhan and Saji Sivan's recent doctrinal analysis.³⁷

6. Review of Literature

Writing on women's property rights in India falls into three broad streams. The first is doctrinal scholarship on succession law reform. Paras Diwan's *Modern Hindu Law*³⁸ is the standard reference for Hindu joint family property, Mitakshara coparcenary rights, and the doctrinal changes brought by the 2005 amendment. M. P. Jain's *Indian Constitutional Law*³⁹ traces the evolution of Articles 14, 15, and 21 from formal to substantive equality with authoritative analysis. Aravindhan and Saji Sivan's 2025 article⁴⁰ offers a rigorous doctrinal critique of *Vineeta Sharma* and analyses its retroactive impact on pending succession disputes. Singh's

³¹Danamma @ Suman Surpur v. Amar, (2018) 3 SCC 343 (Supreme Court of India). The Court held that daughters born before the 2005 amendment are also entitled to coparcenary rights. Available at: <https://indiankanoon.org/doc/1198440/>

³²Prakash v. Phulavati, (2016) 2 SCC 36 (Supreme Court of India). The Court held that the 2005 amendment applied only to living daughters of living coparceners as on the date of the amendment — a position subsequently overruled by *Vineeta Sharma* (2020). Available at: <https://indiankanoon.org/doc/188885/>

³³International Institute for Population Sciences. (2021). National Family Health Survey-5 (NFHS-5) 2019–21: India report. Ministry of Health and Family Welfare, Government of India. Available at: http://rchiips.org/nfhs/NFHS-5Reports/NFHS-5_INDIA_REPORT.pdf

³⁴Parashar, A. (2013). Feminist perspectives in Indian personal laws: An analysis of constitutional jurisprudence. *Indian Journal of Gender Studies*, 20(2), 215–242. <https://doi.org/10.1177/0971521513482284>

³⁵Agnes, F. (2011). *Law and gender inequality: The politics of women's rights in India*. Oxford University Press.

³⁶Mahajan, V. D. (2021). *Jurisprudence and legal theory* (5th ed.). Eastern Book Company.

³⁷Aravindhan, M., & Saji Sivan, S. (2025). *Vineeta Sharma v. Rakesh Sharma* (2020) 9 SCC 1: A critical analysis of daughters' coparcenary rights. *Legal Research & Analysis*, 3(2), 1–18.

³⁸Diwan, P. (2019). *Modern Hindu law* (23rd ed.). Allahabad Law Agency.

³⁹Jain, M. P. (2018). *Indian constitutional law* (8th ed.). LexisNexis.

⁴⁰Aravindhan, M., & Saji Sivan, S. (2025). *Vineeta Sharma v. Rakesh Sharma* (2020) 9 SCC 1: A critical analysis of daughters' coparcenary rights. *Legal Research & Analysis*, 3(2), 1–18.

2022 piece⁴¹ traces the judicial journey from *Phulavati* to *Danamma* to *Vineeta Sharma* and evaluates what each decision meant for women's coparcenary rights in practice.

The second stream is socio-legal scholarship on the gap between law and practice. Flavia Agnes's *Law and Gender Inequality*⁴² is the most comprehensive account of how family pressure, emotional manipulation, and social stigma regularly strip women of inheritance rights without any formal legal mechanism being triggered. Lotika Sarkar's article⁴³ confirms that formal rights for women only turn into real social entitlements when backed by deeper structural change. Upendra Baxi's foundational critique of the Indian legal system⁴⁴ identifies systemic institutional failures and unexamined ideological assumptions that prevent law from delivering substantive justice to marginalised groups.

The third stream is jurisprudential scholarship on feminist legal theory. MacKinnon's *Toward a Feminist Theory of the State*⁴⁵ argues that liberal legal systems present masculine experience as universal and objective, systematically excluding women's perspectives from the very definition of what counts as law. Freeman's *Lloyd's Introduction to Jurisprudence*⁴⁶ places MacKinnon's radical feminist critique within the wider landscape of feminist legal theory. Parashar's peer-reviewed article⁴⁷ applies feminist theory directly to Indian personal laws, arguing that constitutional equality provisions have been diluted by patriarchal judicial interpretation. Paranjape's jurisprudence text⁴⁸ situates the feminist critique of consent within the broader critique of liberal contract law theory as it applies to Indian women's legal experience.

7. Schools of Jurisprudence and Women's Property Rights: A Comparative Analysis

7.1 Legal Positivism: The Blind Spot of Formal Consent

Legal positivism, most closely associated with John Austin and H. L. A. Hart, defines law as a

⁴¹Singh, T. (2022). *Vineeta Sharma v. Rakesh Sharma: Reflections on daughters' rights*. Prayagraj Law Review, 1(1), 50–58.

⁴²Agnes, F. (2011). *Law and gender inequality: The politics of women's rights in India*. Oxford University Press.

⁴³Sarkar, L. (1994). *Women, law and social change*. Journal of the Indian Law Institute, 36(3), 356–370.

⁴⁴Baxi, U. (1982). *The crisis of the Indian legal system*. Journal of the Indian Law Institute, 24(4), 601–618.

⁴⁵MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Harvard University Press.

⁴⁶Freeman, M. D. A. (2014). *Lloyd's introduction to jurisprudence* (9th ed.). Sweet & Maxwell.

⁴⁷Parashar, A. (2013). *Feminist perspectives in Indian personal laws: An analysis of constitutional jurisprudence*. Indian Journal of Gender Studies, 20(2), 215–242. <https://doi.org/10.1177/0971521513482284>

⁴⁸Paranjape, N. V. (2022). *Studies in jurisprudence and legal theory* (10th ed.). Central Law Agency.

body of validly enacted rules whose binding force comes from the authority of the sovereign or from social acceptance of a rule of recognition.⁴⁹ Under this framework, the legal validity of any transaction depends on procedural compliance, not moral justice. If a relinquishment deed is duly registered, executed by a legally competent woman, and shows no overt coercion within the technical meaning of Section 15 of the Contract Act,⁵⁰ the positivist regards it as fully valid. Full stop.

This formal certainty is positivism's strength and also its most serious limitation. As Mahajan notes in his standard jurisprudence text, positivism's insistence on separating law from morality means that structurally unequal transactions receive the same legal validation as genuinely free ones, so long as procedural boxes are ticked.⁵¹ Consider a very common scenario in Indian families: a daughter is told that claiming her share will break her parents' hearts, ruin her brother's future, and make her an outcast in the community. She signs. No one physically forces her. The deed is registered. No document records the emotional manipulation she lived through. Positivist adjudication upholds the deed without a second thought. The coercion, though real and powerful, is structurally invisible to positivist analysis.

7.2 Natural Law Theory: Moral Legitimacy Without Structural Awareness

Natural law theorists hold that law is inseparable from morality and that a law lacking moral legitimacy is deficient as law.⁵² From this standpoint, pressuring women to surrender inheritance rights is morally wrong — it violates human dignity. India's Constitution reflects natural law thinking in important ways. The Supreme Court has held that Article 21 protects not only physical liberty but the right to live with dignity,⁵³ which must include economic autonomy. In *Joseph Shine v. Union of India*,⁵⁴ the Court made clear that treating women as the property of their families violates their dignity as full legal persons.

The limitation of natural law theory, from a feminist perspective, is its historical tendency to wrap specific social arrangements in the language of universal moral order. Classical natural

⁴⁹Hart, H. L. A. (1994). *The concept of law* (2nd ed.). Oxford University Press.

⁵⁰Indian Contract Act, 1872 (Act 9 of 1872), Sections 14–16. Section 15 defines coercion as the commission or threat of an act forbidden by law. Section 16 defines undue influence as arising where one party dominates another's will and uses that dominance to obtain an unfair advantage.

⁵¹Mahajan, V. D. (2021). *Jurisprudence and legal theory* (5th ed.). Eastern Book Company.

⁵²Mahajan, V. D. (2021). *Jurisprudence and legal theory* (5th ed.). Eastern Book Company.

⁵³Constitution of India, 1950, Articles 14, 15, and 21. Article 14 guarantees equality before the law; Article 15 prohibits sex-based discrimination; Article 15(3) permits special provisions for women; Article 21 protects life, liberty, dignity, and autonomy.

⁵⁴*Joseph Shine v. Union of India*, (2019) 3 SCC 39 (Constitution Bench). The Court struck down Section 497 IPC, holding that treating women as property of their husbands violates Articles 14 and 21. Available at: <https://indiankanoon.org/doc/41838978/>

law often presented women's subordination within the family as 'natural'. MacKinnon and other feminist scholars warn that appeals to 'universal morality' frequently conceal the preferences of dominant groups behind the appearance of timeless principle.⁵⁵

7.3 The Historical School: Tradition as Legitimised Inequality

Friedrich Carl von Savigny's historical school regards law not as the product of legislative will but as the living expression of the *Volkgeist* — the collective spirit of a people embedded in their customs and historical practices.⁵⁶ Applied to Hindu succession law, this framework roots the relinquishment of women's property rights in centuries of patrilineal inheritance custom, under which ancestral land flowed exclusively through male lines and daughters were seen as *paraya dhan* — someone else's wealth — who would leave their natal family on marriage and had no claim on family property.

This school has real descriptive value in explaining why such practices persist. But its normative implications are deeply troubling. If law simply follows custom, and custom is patriarchal, then law becomes a tool for perpetuating domination. Feminist jurisprudence rejects this, insisting that customs must be judged by standards of dignity and equality.⁵⁷ The Supreme Court moved in exactly this direction in *Mary Roy v. State of Kerala*,⁵⁸ striking down discriminatory succession customs in Christian personal law. The trajectory from *Phulavati* through *Danamma* to *Vineeta Sharma*⁵⁹ represents precisely such a constitutional break from historically embedded patriarchal inheritance practice.

7.4 Sociological Jurisprudence: Seeing the Gap Between Law and Reality

Roscoe Pound viewed law as a tool of social engineering designed to achieve the greatest possible satisfaction of human wants with minimum conflict and waste.⁶⁰ Unlike positivism, this school evaluates law not by its formal logic but by its practical social results. From a sociological standpoint, the persistence of women's relinquishment despite statutory reform is

⁵⁵MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Harvard University Press.

⁵⁶Mahajan, V. D. (2021). *Jurisprudence and legal theory* (5th ed.). Eastern Book Company.

⁵⁷Parashar, A. (2013). Feminist perspectives in Indian personal laws: An analysis of constitutional jurisprudence. *Indian Journal of Gender Studies*, 20(2), 215–242. <https://doi.org/10.1177/0971521513482284>

⁵⁸*Mary Roy v. State of Kerala*, (1986) 2 SCC 209 (Supreme Court of India). The Court struck down discriminatory provisions of the Travancore Christian Succession Act as unconstitutional under Articles 14 and 15. Available at: <https://indiankanoon.org/doc/812397/>

⁵⁹*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (Supreme Court of India). The Court unanimously held that daughters acquire coparcenary rights by birth under the Hindu Succession (Amendment) Act, 2005, irrespective of whether the father was alive on the date of the amendment. Available at: <https://indiankanoon.org/doc/1730080/>

⁶⁰Pound, R. (1954). *An introduction to the philosophy of law*. Yale University Press.

powerful evidence that law-in-the-books and law-in-action have drifted dangerously apart. The NFHS-5 data makes this gap quantitatively concrete: despite formal coparcenary equality, only 43.3% of Indian women own any land or house.⁶¹ The law promises full formal entitlement; social reality delivers less than half of that. The space between the two is precisely where covert coercion operates. Sociological jurisprudence recognises this as a serious failure of the legal instrument. However, Pound's framework tends to treat social interests as pre-given and politically neutral. It does not adequately interrogate how the social is itself structured by gender — how patriarchy is not simply one more interest to be balanced, but a fundamental architecture of power that shapes whose preferences prevail and who bears the costs of every 'compromise'.⁶²

7.5 Legal Realism: Exposing the Patriarchal Assumptions of Judges

Legal realism challenges the formalist picture of judges mechanically applying neutral rules. Realists argue that judicial decisions are shaped by social context, personal values, and unexamined ideological assumptions.⁶³ A realist reading of Indian court decisions on women's relinquishment reveals a consistent pattern: judges privilege registered documents, presume consent from formal execution, and treat the absence of proven overt threats as equivalent to genuine free will. Questions of independent legal advice, full understanding of permanent consequences, or equality of bargaining position rarely appear in judicial reasoning.

This is not coincidental. It reflects deep and largely unexamined assumptions that patriarchal culture has placed inside judicial consciousness — assumptions about women's natural deference to male family authority and about the sanctity of private family arrangements. Legal realism gives us the tools to identify these assumptions.⁶⁴ Feminist jurisprudence then names them as gendered, analyses their structural origins in patriarchal social organisation, and demands an alternative approach to adjudication grounded in substantive equality.

7.6 Liberal Jurisprudence: The Problem of Assuming Equal Autonomy

Liberal jurisprudence, rooted in the political thought of Locke and Mill, places individual

⁶¹International Institute for Population Sciences. (2021). National Family Health Survey-5 (NFHS-5) 2019–21: India report (Regional data). Ministry of Health and Family Welfare, Government of India. Women's property ownership ranges from approximately 57–62% in Kerala and Tamil Nadu to under 30–35% in Uttar Pradesh, Rajasthan, Bihar, and Madhya Pradesh. Available at: http://rchiips.org/nfhs/NFHS-5Reports/NFHS-5_INDIA_REPORT.pdf

⁶²Paranjape, N. V. (2022). *Studies in jurisprudence and legal theory* (10th ed.). Central Law Agency.

⁶³Mahajan, V. D. (2021). *Jurisprudence and legal theory* (5th ed.). Eastern Book Company.

⁶⁴Freeman, M. D. A. (2014). *Lloyd's introduction to jurisprudence* (9th ed.). Sweet & Maxwell.

autonomy and freedom of contract at the centre of legal theory.⁶⁵ Under this framework, a legally competent adult who signs a relinquishment deed is presumed to be exercising her autonomous choice. Liberal theory celebrates this as freedom. Interference with such choices is seen as paternalistic and suspect.

MacKinnon's feminist critique of liberal legal theory is the most powerful and sustained in the jurisprudential literature. She argues that the 'autonomous individual' assumed by liberal law is a gendered construct — it describes the experience of economically independent men in conditions of formal equality, and presents that particular experience as the universal human experience.⁶⁶ Women in patriarchal Indian families are not in those conditions. Their choices about property are shaped by emotional dependency on male family members who control resources, by the cultural imperative of feminine self-sacrifice framed as virtue, by fear of social exclusion, and by economic vulnerability that leaves them no realistic alternative to compliance.⁶⁷ Paranjape identifies the structural problem with liberal jurisprudence here: by drawing a sharp line between the 'private' sphere of the family and the 'public' sphere of law, liberal theory places the family beyond legal scrutiny, even when the family is the very site where constitutional rights are being violated.⁶⁸

8. Feminist Jurisprudence and the Theory of Covert Coercion

Feminist jurisprudence is not a single school of thought. It includes liberal feminist, radical feminist, cultural feminist, and critical feminist strands.⁶⁹ What all of them share is the claim that gender is a fundamental axis of social power that shapes law in ways mainstream legal theory consistently fails to acknowledge. Law's claims to neutrality and universality are not innocent — they are ideological, presenting the experience of dominant social groups as the experience of all.

The most analytically useful strand for this paper is the radical feminist critique associated with MacKinnon, who argues that law does not merely fail to protect women from patriarchy — it actively legitimises patriarchal power by presenting it as the normal, consensual, legally valid state of affairs.⁷⁰ The doctrine of free consent in contract law is her paradigm example: it looks

⁶⁵Mahajan, V. D. (2021). *Jurisprudence and legal theory* (5th ed.). Eastern Book Company.

⁶⁶MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Harvard University Press.

⁶⁷Agnes, F. (2011). *Law and gender inequality: The politics of women's rights in India*. Oxford University Press.

⁶⁸Paranjape, N. V. (2022). *Studies in jurisprudence and legal theory* (10th ed.). Central Law Agency.

⁶⁹Freeman, M. D. A. (2014). *Lloyd's introduction to jurisprudence* (9th ed.). Sweet & Maxwell.

⁷⁰MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Harvard University Press.

neutral and universal but actually reflects a masculine conception of autonomy premised on freedom from structural constraint and equal bargaining power — conditions precisely absent in women's dealings with property within Indian family structures.

This paper defines covert coercion as comprising five interlocking mechanisms through which women are compelled to relinquish inheritance rights within Indian patriarchal families:

- (i) Emotional manipulation — a daughter is made to feel that asserting her inheritance rights is an act of cruelty toward her parents or siblings. Refusing to relinquish is framed as betrayal, not legal right.
- (ii) Moral guilt rooted in gendered cultural norms — the cultural norm that a 'good daughter' does not claim property from her parental home is invoked so powerfully that relinquishment comes to feel like an expression of love and duty rather than the permanent, irrevocable legal surrender that it actually is.
- (iii) Cultural conditioning — through years of socialisation, many women have internalised patriarchal norms so deeply that they genuinely believe relinquishment is natural, appropriate, and even what they want. The coercion has become invisible even to its own subject.
- (iv) Economic dependency — where a woman's livelihood depends on the goodwill or financial support of male relatives, she has no realistic exit option. Asserting her legal rights means risking everything she depends on for survival.
- (v) Fear of social ostracism — women who assert inheritance rights in Indian communities face well-documented social penalties: permanent rupture of family ties, exclusion from community events, and public labelling as greedy or unfeminine.

None of these mechanisms constitute 'coercion' within the narrow technical meaning of Section 15 of the Indian Contract Act, 1872,⁷¹ which requires a threatening act forbidden by law. But each is powerfully effective in shaping women's choices about property. Together, they produce a signed, registered deed that looks legally identical to one executed by a woman making a truly free choice — even though the social reality underlying the two documents is entirely different. Agnes's field documentation confirms this pattern with disturbing clarity: women who knew about their legal rights routinely signed relinquishment deeds under family

⁷¹Indian Contract Act, 1872 (Act 9 of 1872), Sections 14–16. Section 15 defines coercion as the commission or threat of an act forbidden by law. Section 16 defines undue influence as arising where one party dominates another's will and uses that dominance to obtain an unfair advantage.

pressure, often without independent legal advice and without fully understanding that the consequence was permanent and irrevocable.⁷² Feminist jurisprudence insists that this gap between formal awareness and substantive free choice is not a private family matter beyond legal reach — it is a public legal failure, as Parashar's analysis of constitutional jurisprudence confirms.⁷³

9. Constitutional Jurisprudence and Substantive Equality

The Indian Constitution gives the feminist jurisprudential critique developed in this paper a strong normative foundation. Article 14 guarantees equality before the law and equal protection of the laws to all persons. Article 15 prohibits discrimination on the grounds of sex. Article 15(3) specifically empowers the state to make special provisions for women, departing explicitly from a purely formal equality model in favour of substantive equality aimed at correcting structural disadvantage. Article 21, as the Supreme Court has progressively interpreted it, protects not just physical liberty but dignity, personal autonomy, and the right to a life with real substantive content.⁷⁴

The Supreme Court's approach to women's property rights has moved steadily in the direction of substantive equality. In *Vineeta Sharma*,⁷⁵ the Court grounded daughters' coparcenary rights not merely in statutory text but in the constitutional imperative that exclusion from family property based on gender is a structural injustice. In *Shayara Bano v. Union of India*,⁷⁶ the Court struck down instant triple talaq as unconstitutional under Articles 14 and 21, establishing the principle that personal law practices cannot use religious or customary authority as a shield against constitutional scrutiny when they systematically harm women's dignity and autonomy. That principle applies with equal force to relinquishment practices that shelter behind 'family tradition' and 'sisterly generosity'.

⁷²Agnes, F. (2011). *Law and gender inequality: The politics of women's rights in India*. Oxford University Press.

⁷³Parashar, A. (2013). Feminist perspectives in Indian personal laws: An analysis of constitutional jurisprudence. *Indian Journal of Gender Studies*, 20(2), 215–242. <https://doi.org/10.1177/0971521513482284>

⁷⁴Constitution of India, 1950, Articles 14, 15, and 21. Article 14 guarantees equality before the law; Article 15 prohibits sex-based discrimination; Article 15(3) permits special provisions for women; Article 21 protects life, liberty, dignity, and autonomy.

⁷⁵*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (Supreme Court of India). The Court unanimously held that daughters acquire coparcenary rights by birth under the Hindu Succession (Amendment) Act, 2005, irrespective of whether the father was alive on the date of the amendment. Available at: <https://indiankanoon.org/doc/1730080/>

⁷⁶*Shayara Bano v. Union of India*, (2017) 9 SCC 1 (Constitution Bench). The Court declared instant triple talaq unconstitutional under Articles 14 and 21, establishing that personal law practices cannot evade constitutional scrutiny. Available at: <https://indiankanoon.org/doc/127517806/>

As Jain demonstrates in his constitutional law treatise, the evolution of Article 21 jurisprudence reflects an unmistakable movement from formal to substantive constitutionalism.⁷⁷ Substantive equality — as feminist jurisprudence requires — means that law must account for the structural position of the consenting party: her economic vulnerability, her social dependencies, her power relationship with the other party. This principle is now well established in Indian constitutional doctrine. It has not yet been applied to the private law of family property relinquishment. That is the application this paper calls for, and the one that Parashar's analysis of constitutional jurisprudence supports.⁷⁸

10. Empirical and Doctrinal Analysis

10.1 The Data: What the Numbers Tell Us

The NFHS-5 (2019–21) data makes the scale of the problem impossible to ignore. Despite over fifteen years of formal coparcenary equality under the 2005 amendment, and despite the Supreme Court's definitive ruling in *Vineeta Sharma* in 2020,⁷⁹ only 43.3% of Indian women own land or a house either alone or jointly.⁸⁰ This is a marginal improvement from 38.4% recorded in NFHS-4 (2015–16), but it remains profoundly inadequate given what formal law now guarantees. The data exposes a stark truth: statutory equality in property rights has not translated into actual ownership equality for the majority of Indian women.

The regional picture is even more revealing. Women's property ownership ranges from approximately 57–62% in Kerala and Tamil Nadu to under 30–35% in Uttar Pradesh, Rajasthan, Bihar, and Madhya Pradesh.⁸¹ This variation is analytically important because it shows that the gap between formal legal entitlement and actual ownership is not fixed or inevitable. It varies in direct relation to the strength of the structural mechanisms of covert

⁷⁷Jain, M. P. (2018). Indian constitutional law (8th ed.). LexisNexis.

⁷⁸Parashar, A. (2013). Feminist perspectives in Indian personal laws: An analysis of constitutional jurisprudence. *Indian Journal of Gender Studies*, 20(2), 215–242. <https://doi.org/10.1177/0971521513482284>

⁷⁹*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (Supreme Court of India). The Court unanimously held that daughters acquire coparcenary rights by birth under the Hindu Succession (Amendment) Act, 2005, irrespective of whether the father was alive on the date of the amendment. Available at: <https://indiankanoon.org/doc/1730080/>

⁸⁰International Institute for Population Sciences. (2021). National Family Health Survey-5 (NFHS-5) 2019–21: India report (Regional data). Ministry of Health and Family Welfare, Government of India. Women's property ownership ranges from approximately 57–62% in Kerala and Tamil Nadu to under 30–35% in Uttar Pradesh, Rajasthan, Bihar, and Madhya Pradesh. Available at: http://rchiips.org/nfhs/NFHS-5Reports/NFHS-5_INDIA_REPORT.pdf

⁸¹International Institute for Population Sciences. (2021). National Family Health Survey-5 (NFHS-5) 2019–21: India report (Regional data). Ministry of Health and Family Welfare, Government of India. Women's property ownership ranges from approximately 57–62% in Kerala and Tamil Nadu to under 30–35% in Uttar Pradesh, Rajasthan, Bihar, and Madhya Pradesh. Available at: http://rchiips.org/nfhs/NFHS-5Reports/NFHS-5_INDIA_REPORT.pdf

coercion identified in this paper. Agnes's field-based documentation⁸² and Parashar's doctrinal analysis⁸³ both confirm that women in these regions sign relinquishment deeds without independent legal advice, without fully understanding the permanent consequences, and in conditions of emotional and social pressure that are far removed from genuine autonomous choice.

10.2 How Courts Handle Relinquishment Deeds

Indian courts at the High Court and district court levels have consistently taken a formalistic approach to women's relinquishment deeds. The standard judicial inquiry focuses on: (i) whether the deed is duly registered under Section 17 of the Registration Act, 1908;⁸⁴ (ii) whether the woman was legally competent at the time of execution; (iii) whether any overt act of coercion within the meaning of Section 15 of the Indian Contract Act, 1872⁸⁵ can be proved; and (iv) whether consideration was paid. The contextual questions that feminist jurisprudential analysis requires — about power relationships, social pressure, availability of independent advice, and genuine understanding of consequences — are almost entirely absent from judicial reasoning.

This approach directly reflects the positivist and liberal jurisprudential assumptions this paper has critiqued. Courts rarely ask whether the woman had independent legal advice or whether family pressure was operating at the time of signing. By treating procedural compliance as sufficient proof of valid consent, courts effectively serve as the final institutional enforcer of informal patriarchal disinheritance. As Baxi has observed, formal legal neutrality of this kind is itself a form of structural complicity in injustice.⁸⁶

10.3 The Contract Act: A Framework That Falls Short

Section 16 of the Indian Contract Act, 1872 on undue influence is potentially the most relevant provision for the feminist critique of women's relinquishment deeds.⁸⁷ It provides that a

⁸²Agnes, F. (2011). *Law and gender inequality: The politics of women's rights in India*. Oxford University Press.

⁸³Parashar, A. (2013). Feminist perspectives in Indian personal laws: An analysis of constitutional jurisprudence. *Indian Journal of Gender Studies*, 20(2), 215–242. <https://doi.org/10.1177/0971521513482284>

⁸⁴Registration Act, 1908 (Act 16 of 1908), Section 17. Relinquishment deeds relating to immovable property valued above Rs. 100 are subject to compulsory registration; however, registration alone does not certify that consent was genuinely free and informed.

⁸⁵Indian Contract Act, 1872 (Act 9 of 1872), Sections 14–16. Section 15 defines coercion as the commission or threat of an act forbidden by law. Section 16 defines undue influence as arising where one party dominates another's will and uses that dominance to obtain an unfair advantage.

⁸⁶Baxi, U. (1982). The crisis of the Indian legal system. *Journal of the Indian Law Institute*, 24(4), 601–618.

⁸⁷Indian Contract Act, 1872 (Act 9 of 1872), Sections 14–16. Section 15 defines coercion as the commission or threat of an act forbidden by law. Section 16 defines undue influence as arising where one party dominates

contract is induced by undue influence where one party is in a position to dominate the will of another and uses that position to obtain an unfair advantage. But courts apply Section 16 narrowly in family property cases. They require evidence of discrete, active psychological pressure rather than recognising the structural conditions of patriarchal family life as themselves creating a position of dominance over women.

The family hierarchy — with its built-in asymmetries of age, gender, economic control, and emotional authority — does not trigger a presumption of undue influence in Indian judicial practice, even though there are strong jurisprudential grounds for precisely such a presumption where a woman relinquishes inheritance rights in favour of male relatives without independent legal advice.⁸⁸ English equity law developed similar presumptions for fiduciary relationships. Indian law has not extended comparable reasoning to the patriarchal family context. This is a significant and costly doctrinal gap, as Sarkar's socio-legal analysis confirms.⁸⁹

11. Discussion: Building a Feminist Jurisprudential Framework

The analysis above points to a clear and uncomfortable conclusion. The persistence of women's property relinquishment despite formal statutory equality is not an accident or a simple implementation problem that better enforcement can fix. It is the product of a structural contradiction: a legal order formally committed to gender equality, sitting within a social order organised around patriarchal kinship structures that systematically produce covert coercion. Closing that gap requires more than new statutes or stricter enforcement. It requires a fundamental change in how law thinks about consent, autonomy, and coercion when women transact property within family settings.

11.1 Contextual Interpretation of Consent

Courts adjudicating relinquishment deeds should move from a formalistic to a contextual approach to consent. The evaluative question must shift from 'Was this deed properly registered and formally executed?' to 'Was this deed executed in conditions that made genuine autonomous choice possible for this woman, in this family, in these economic circumstances?' This contextual approach is not a legal innovation — it is the logical application of the substantive equality principles the Supreme Court has already affirmed in *Vineeta Sharma*⁹⁰

another's will and uses that dominance to obtain an unfair advantage.

⁸⁸Paranjape, N. V. (2022). *Studies in jurisprudence and legal theory* (10th ed.). Central Law Agency.

⁸⁹Sarkar, L. (1994). Women, law and social change. *Journal of the Indian Law Institute*, 36(3), 356–370.

⁹⁰*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (Supreme Court of India). The Court unanimously held that daughters acquire coparcenary rights by birth under the Hindu Succession (Amendment) Act, 2005, irrespective

and *Shayara Bano*,⁹¹ both of which rejected formalistic deference to family arrangements in favour of constitutional scrutiny of the conditions underlying them.

11.2 Amending Section 16 to Recognise Structural Coercion

Parliament should amend Section 16 of the Indian Contract Act, 1872 to extend the definition of undue influence to encompass structural conditions of patriarchal dependency, emotional manipulation, and economic vulnerability in family property transactions.⁹² Specifically, a rebuttable presumption of undue influence should be legislated for cases where a woman relinquishes inheritance rights in favour of male relatives without having received independent legal advice from an advocate who has no professional connection with those relatives. This would shift the burden of proof onto the male relatives to demonstrate that the transaction was genuinely free and fully informed, as Paranjape's analysis of feminist jurisprudence in India recommends.⁹³

11.3 Mandatory Independent Legal Advice and a Waiting Period

The Registration Act, 1908 should be amended to provide that no relinquishment deed involving a woman's inheritance rights over immovable property can be registered unless accompanied by a certificate from an independent advocate confirming that the woman received independent legal advice about the nature, scope, and permanent irrevocable consequences of the relinquishment before she signed.⁹⁴ A mandatory waiting period of not less than thirty days between the woman's receipt of independent advice and the registration of the deed should also be required. This prevents acutely pressure-driven execution while allowing time for genuine deliberation and reflection.

11.4 Constitutionalising Private Law: Articles 14, 15, and 21

The constitutional guarantees under Articles 14, 15, and 21⁹⁵ should be expressly applied by

of whether the father was alive on the date of the amendment. Available at: <https://indiankanoon.org/doc/1730080/>

⁹¹*Shayara Bano v. Union of India*, (2017) 9 SCC 1 (Constitution Bench). The Court declared instant triple talaq unconstitutional under Articles 14 and 21, establishing that personal law practices cannot evade constitutional scrutiny. Available at: <https://indiankanoon.org/doc/127517806/>

⁹²Indian Contract Act, 1872 (Act 9 of 1872), Sections 14–16. Section 15 defines coercion as the commission or threat of an act forbidden by law. Section 16 defines undue influence as arising where one party dominates another's will and uses that dominance to obtain an unfair advantage.

⁹³Paranjape, N. V. (2022). *Studies in jurisprudence and legal theory* (10th ed.). Central Law Agency.

⁹⁴Registration Act, 1908 (Act 16 of 1908), Section 17. Relinquishment deeds relating to immovable property valued above Rs. 100 are subject to compulsory registration; however, registration alone does not certify that consent was genuinely free and informed.

⁹⁵Constitution of India, 1950, Articles 14, 15, and 21. Article 14 guarantees equality before the law; Article 15

the Supreme Court and High Courts to private law consent and property doctrines in family transactions. This means interpreting Section 16 of the Contract Act and the validity conditions for relinquishment deeds consistently with constitutional values, not through formal neutrality alone. As Jain's treatise demonstrates, the evolution of Article 21 doctrine provides ample support for exactly this constitutionalisation of private law.⁹⁶ The doctrinal foundation laid in *Vineeta Sharma*⁹⁷ — treating daughters' inheritance rights as constitutional rather than merely statutory — provides the anchor from which a broader constitutional intervention in the conditions under which those rights are surrendered can be extended.

11.5 Legal Awareness Programmes Through NALSA

The National Legal Services Authority (NALSA) and State Legal Services Authorities should design and run targeted legal awareness programmes, in Hindi and regional languages, specifically aimed at informing women of their inheritance rights under the 2005 amendment, the legal meaning and permanent consequences of signing relinquishment deeds, and how to access free legal aid for inheritance disputes. These programmes should be delivered through panchayati raj institutions, women's self-help groups, and community-based organisations, and should specifically address all five mechanisms of covert coercion identified in this paper. Baxi's critique of systemic legal failure⁹⁸ underscores the urgency of precisely this kind of structural intervention.

12. Key Research Findings

Finding 1: Despite formal coparcenary equality since 2005 and the Supreme Court's definitive ruling in *Vineeta Sharma* (2020),⁹⁹ only 43.3% of Indian women own land or a house either alone or jointly (NFHS-5, 2019–21).¹⁰⁰ Formal legal reform has failed to deliver substantive proprietary equality for the majority of Indian women.

prohibits sex-based discrimination; Article 15(3) permits special provisions for women; Article 21 protects life, liberty, dignity, and autonomy.

⁹⁶Jain, M. P. (2018). Indian constitutional law (8th ed.). LexisNexis.

⁹⁷*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (Supreme Court of India). The Court unanimously held that daughters acquire coparcenary rights by birth under the Hindu Succession (Amendment) Act, 2005, irrespective of whether the father was alive on the date of the amendment. Available at: <https://indiankanoon.org/doc/1730080/>

⁹⁸Baxi, U. (1982). The crisis of the Indian legal system. *Journal of the Indian Law Institute*, 24(4), 601–618.

⁹⁹*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (Supreme Court of India). The Court unanimously held that daughters acquire coparcenary rights by birth under the Hindu Succession (Amendment) Act, 2005, irrespective of whether the father was alive on the date of the amendment. Available at: <https://indiankanoon.org/doc/1730080/>

¹⁰⁰International Institute for Population Sciences. (2021). National Family Health Survey-5 (NFHS-5) 2019–21: India report. Ministry of Health and Family Welfare, Government of India. Available at: http://rchiips.org/nfhs/NFHS-5Reports/NFHS-5_INDIA_REPORT.pdf

Finding 2: The dominant mechanism through which formal inheritance rights are defeated is covert coercion — structural and emotional pressure operating through five interlocking mechanisms of patriarchal family life. This form of coercion is invisible to positivist and liberal legal frameworks but analytically visible through feminist jurisprudence.

Finding 3: Legal positivism¹⁰¹ and liberal jurisprudence, by focusing exclusively on formal procedural consent and presuming the validity of registered instruments, systematically legitimise women's informal disinheritance through relinquishment deeds. These frameworks make the legal system a structural participant in the reproduction of gender inequality.

Finding 4: Sociological jurisprudence and legal realism partially expose the social and institutional dimensions of the problem. However, only feminist jurisprudence¹⁰² provides both the analytical diagnosis — patriarchy as a specific structure of gendered power embedded in legal institutions — and the normative framework — substantive equality grounded in dignity and constitutional rights — necessary for genuine gender justice.

Finding 5: Indian constitutional jurisprudence has moved steadily toward substantive equality in women's property cases (*Vineeta Sharma*, 2020;¹⁰³ *Shayara Bano*, 2017;¹⁰⁴ *Joseph Shine*, 2019¹⁰⁵). This jurisprudence is formally compatible with feminist jurisprudential reasoning but has not yet been extended to the private law context of relinquishment deeds.

Finding 6: Section 16 of the Indian Contract Act, 1872¹⁰⁶ on undue influence is structurally inadequate to capture women's coerced property relinquishment in India. It requires proof of discrete acts of domination rather than recognising structural conditions of patriarchal family

¹⁰¹Hart, H. L. A. (1994). *The concept of law* (2nd ed.). Oxford University Press.

¹⁰²MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Harvard University Press.

¹⁰³*Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1 (Supreme Court of India). The Court unanimously held that daughters acquire coparcenary rights by birth under the Hindu Succession (Amendment) Act, 2005, irrespective of whether the father was alive on the date of the amendment. Available at: <https://indiankanoon.org/doc/1730080/>

¹⁰⁴*Shayara Bano v. Union of India*, (2017) 9 SCC 1 (Constitution Bench). The Court declared instant triple talaq unconstitutional under Articles 14 and 21, establishing that personal law practices cannot evade constitutional scrutiny. Available at: <https://indiankanoon.org/doc/127517806/>

¹⁰⁵*Joseph Shine v. Union of India*, (2019) 3 SCC 39 (Constitution Bench). The Court struck down Section 497 IPC, holding that treating women as property of their husbands violates Articles 14 and 21. Available at: <https://indiankanoon.org/doc/41838978/>

¹⁰⁶Indian Contract Act, 1872 (Act 9 of 1872), Sections 14–16. Section 15 defines coercion as the commission or threat of an act forbidden by law. Section 16 defines undue influence as arising where one party dominates another's will and uses that dominance to obtain an unfair advantage.

dependency as themselves creating a legal presumption of undue influence, as Paranjape's analysis demonstrates.¹⁰⁷

13. Recommendations

- i. Parliament should amend Section 16 of the Indian Contract Act, 1872¹⁰⁸ to introduce a rebuttable presumption of undue influence in transactions where a woman relinquishes inheritance rights over immovable property in favour of male relatives without independent legal advice. The amendment should place upon the male relatives the burden of proving affirmatively that the transaction was entered into freely, with full informed consent, in conditions of substantive equality.
- ii. Section 17 of the Registration Act, 1908¹⁰⁹ should be amended to require a compulsory independent legal advice certificate before registration of any deed of relinquishment involving a woman's inheritance rights. A mandatory thirty-day waiting period between the giving of independent advice and the registration of the deed should be legislated.
- iii. The Supreme Court should issue practice directions requiring all courts adjudicating women's relinquishment deeds to conduct a contextual inquiry into the social circumstances, availability of independent legal advice, and the woman's genuine understanding of the permanent consequences of the transaction, before upholding such instruments as valid expressions of free consent.
- iv. NALSA and State Legal Services Authorities should design and deliver targeted legal awareness campaigns in Hindi and regional languages, delivered through panchayati raj institutions, women's self-help groups, and community legal aid clinics, specifically informing women of their inheritance rights under the Hindu Succession (Amendment) Act, 2005,¹¹⁰ the legal consequences of relinquishment deeds, and available legal aid resources.
- v. The Bar Council of India and the University Grants Commission should make feminist jurisprudence and substantive equality theory mandatory components of the core

¹⁰⁷Paranjape, N. V. (2022). *Studies in jurisprudence and legal theory* (10th ed.). Central Law Agency.

¹⁰⁸Indian Contract Act, 1872 (Act 9 of 1872), Sections 14–16. Section 15 defines coercion as the commission or threat of an act forbidden by law. Section 16 defines undue influence as arising where one party dominates another's will and uses that dominance to obtain an unfair advantage.

¹⁰⁹Registration Act, 1908 (Act 16 of 1908), Section 17. Relinquishment deeds relating to immovable property valued above Rs. 100 are subject to compulsory registration; however, registration alone does not certify that consent was genuinely free and informed.

¹¹⁰Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005). The Act substituted Section 6 of the Hindu Succession Act, 1956, conferring upon daughters the same rights and liabilities in Mitakshara coparcenary property as sons, from the date of their birth.

jurisprudence curriculum in all law schools across India, and should include gender-sensitive adjudication training as a core element of continuing legal education for practising advocates and judicial officers.

14. Conclusion

The persistence of women's property relinquishment in India two decades after the 2005 amendment is one of the most telling illustrations available of the distance between law as written and law as lived. This paper has shown that this distance is not a technical implementation gap that better enforcement can close. It is the product of a structural contradiction between a constitutional order formally committed to gender equality and a social order organised around patriarchal kinship structures that systematically produce covert coercion — a form of pressure that is invisible to the law's formal doctrines but devastatingly effective in practice.

The paper has compared how seven major schools of jurisprudence respond to this problem. Legal positivism validates the deed because the procedure is correct. Liberal jurisprudence celebrates the choice because formal competence is present. Historical jurisprudence finds the arrangement familiar because it has been practised for centuries. Sociological jurisprudence notices the gap between law and reality but lacks the tools to name its cause. Legal realism exposes judicial ideological assumptions but cannot supply a normative direction. Only feminist jurisprudence brings together the analytical tools to diagnose the problem at its structural roots and the normative vision of substantive equality to point toward a genuinely transformative remedy.

The concept of covert coercion developed here — comprising emotional manipulation, moral guilt, cultural conditioning, economic dependency, and fear of social ostracism — gives both courts and legislators a practically useful and theoretically rigorous account of the mechanisms through which patriarchal family structures continue to defeat formal statutory equality in the domain of women's property rights.

India's Constitution — in its guarantee of substantive equality, dignity, and autonomy under Articles 14, 15, and 21 — provides the normative foundation for the reforms this paper proposes. The Supreme Court has already demonstrated, in *Vineeta Sharma*, *Shayara Bano*,

and Joseph Shine, that constitutional intervention in patriarchal personal law practices is both legally sound and constitutionally required. Extending that intervention to the private law conditions under which women surrender the rights those decisions affirm is not a radical step — it is the logical and necessary continuation of the constitutional project of gender justice in India.

Feminist jurisprudence does not ask law to take sides in a family quarrel. It asks law to look honestly at the conditions under which family transactions happen — and to recognise that a legal system that validates the products of covert coercion, and calls them consent, is not doing justice. It is doing patriarchy's work. Meaningful realisation of women's constitutional right to equality in property requires a change not just in statutes or in courts, but in the jurisprudential imagination through which law understands what consent means and what equality demands. Feminist jurisprudence is the compass for that necessary change.

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