

READING MATERIAL

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DIVISIONAL JUDICIAL SEMINAR

FOR JUDICIAL OFFICERS POSTED IN BILASPUR DIVISION

(District- Bilaspur, Janjgir Champa, Raigarh, Korba and Mungeli)

ON THE TOPIC -

ANALYSIS OF LAW RELATING TO SUCCESSION
AND INHERITANCE IN HINDUS,
FUNCTIONING OF CUSTOMARY LAWS IN THE
TRIBAL SOCIETIES AND ITS APPLICABILITY
FOR ACCESS TO JUSTICE

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PREPARED BY :

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INTRODUCTION

Inheritance forms the cornerstone of property relations in Hindu society, reflecting a complex interplay of tradition, religion, and statutory reform. The law relating to inheritance among Hindus has evolved significantly—from ancient textual sources such as the *Smritis* and commentaries, through customary practices, to the codified framework established by modern legislation, particularly the Hindu Succession Act, 1956. This evolution mirrors the broader transformation of Indian society, especially in relation to gender justice, family structure, and the concept of property ownership. Rooted in ancient Hindu texts and customary practices, the principles governing succession have undergone substantial transformation through legislative intervention and judicial interpretation, culminating in a largely codified system under the Hindu Succession Act, 1956.

Customary law constitutes the foundational legal framework of tribal societies, regulating social relations and the distribution of rights and obligations within the community. In matters of inheritance, customary norms play a decisive role in determining succession to land and property, particularly community land and ancestral holdings, which form the economic and cultural backbone of tribal life. These customs, transmitted orally and practiced over

generations, reflect indigenous concepts of ownership, kinship, and collective responsibility, often differing fundamentally from codified personal and property laws.

By tracing the historical development and assessing the contemporary legal position, our presentation aims to highlight on intestate succession, the concept of coparcenary, and the distinction between ancestral and self-acquired property. It examines the legislative intent and constitutional ethos underlying key reforms, especially the Hindu Succession (Amendment) Act, 2005, which sought to remove gender-based discrimination by recognising daughters as equal coparceners. Our presentation further analyses landmark judicial pronouncements that have clarified, expanded, and, at times, recalibrated inheritance rights within the Hindu joint family system.

Our presentation also examines the applicability of tribal customary inheritance law in advancing access to justice for tribal communities. It situates customary practices within the constitutional and legal landscape of India, which recognises the autonomy of tribal societies through protective provisions under Articles 13, 244, and the Fifth and Sixth Schedules of the Constitution, as well as through judicial acknowledgement of valid customs.

HISTORICAL EVOLUTION OF SUCCESSION LAW IN INDIA

The Joint and undivided family was the condition of a Hindu society. The Joint family traces its origin to the ancient patriarchal system. The law of heirship had close connection with the doctrine – “He who inherits the property, also offers the pinda”. The law of inheritance comprises of rules which govern devolution of property on the death of a person upon other persons solely on account of their relationship to the former.

The Hindu Succession Act, 1956 relating to the succession among Hindus came into force on **17 June 1956**. Before the Act the property in Hindus was devolved by way of survivorship and governed by the classical Hindu law. It was for the first time in 1850 in British India a rule forming part of Hindu Law of Succession was abrogated by the Central legislature in the form of Caste Disabilities Removal Act, 1850.

Hindu Inheritance (Removal of Disabilities) Act, 1928 modified the traditional rules of Hindu law that disqualified heirs on the ground of certain bodily and mental diseases and deformity from inheriting the property.

Hindu Law of Inheritance (Amendment) Act, 1929 modified the traditional law of inheritance relating to son's daughter, daughter's daughter, sister and sister's son.

Moreover, **Hindu Gains of Learning Act, 1930** modified the traditional joint family law.

Hindu Women's Right to Property Act, 1937 sought to improve the legal position of women regarding inheritance of property being survivors of male Hindus under the laws of Succession and Joint property.

It was felt that the Hindu code should be prepared. In the year 1948 the Hindu Succession Bill was introduced in the Parliament. After that the **Hindu Succession Act, 1956** came into force as an authority in matters of Succession for Hindus.

SUCCESSION AND INHERITANCE UNDER HINDU LAW

What is intestate inheritance?

Intestate inheritance refers to the legal process of distributing a deceased individual's assets when they have passed away without leaving a valid will. In such cases, the deceased is said to have died "intestate". On the other hand, In the case of testamentary succession there is a written document or probate specifying how their assets should be distributed among their heirs or beneficiaries.

Intestate Succession under the Hindu Succession Act, 1956

The Hindu Succession Act, 1956 governs intestate succession among Hindus, Buddhists, Jains, and Sikhs. The Act abolished many discriminatory aspects of traditional Hindu law and laid down a uniform scheme of succession. Sections 8 to 13 deal with succession to the property of a male Hindu dying intestate, classifying heirs into Class I and Class II heirs, with Class I heirs having preferential rights.

In **Commissioner of Wealth Tax v. Chander Sen (1986) 3 SCC 567**, the Supreme Court held that property inherited by a son from his father under Section 8 of the Act becomes his self-acquired property and not joint family property. This judgment significantly altered the traditional understanding of ancestral property and reinforced the statutory scheme over uncodified Hindu law.

CONCEPT OF COPARCENARY AND JOINT HINDU FAMILY

Concept of Joint Hindu family:

A family which originates from a common male ancestor and remains intact until there is a partition effected.

Coparcenary:

Coparcenary is an idea under Hindu law which includes the common male ancestor and its succeeding three generations. Under traditional Mitakshara law, a coparcenary consisted only of male members who acquired an interest in ancestral property by birth. The Hindu Succession Act, 1956 initially retained this patriarchal structure. However, the Hindu Succession (Amendment) Act, 2005 transformed the coparcenary system by conferring equal coparcenary rights upon daughters.

In **Vineeta Sharma v. Rakesh Sharma (2020) 9 SCC 1**, a Constitution Bench of the Supreme Court clarified that a daughter becomes a coparcener by birth, irrespective of whether the father was alive on the date of the amendment. The Court held that the amendment has retroactive application and gives effect to constitutional principles of equality under Articles 14 and 15.

Earlier, conflicting interpretations in **Prakash v. Phulavati (2016) 2 SCC 36** and **Danamma v. Amar (2018) 3 SCC 343** were settled in **Vineeta Sharma**, reaffirming the judiciary's role in advancing gender justice in inheritance law.

KEY FEATURES OF THE HINDU SUCCESSION ACT, 1956

Section 8 to 13 and 19 of the Act contain a group of general rules of succession in case of a male “dying intestate”. The Act also gives different rules of succession for the devolution of property of a female dying intestate.

Section 8 of the Act deals with general rules of succession in case of Hindu male i.e. the property of a male Hindu dying intestate shall devolve firstly, upon Class I heirs. If there is no heir of Class I then on Class II heirs. If there is no heir of any of the Classes then upon the agnates of the deceased and lastly, on cognates of the deceased if there is no agnate. Class I and II heirs are given under the Schedule of the Act.

In the Classical Hindu Law, After the death of the intestate the surviving coparceners used to get the property by doctrine of survivorship i.e. They all get the property as joint owners.

Original Section 6 of the Act provided that when a Hindu Coparcener dies, his interest in the coparcenary property shall devolve by survivorship upon the surviving members of the coparcenary.

But, **Section 6 Explanation I provided that**, if there is a female descendant which is a class I heir or a male relative claiming through such female relative then the property would devolve by way of succession and not by survivorship. But after the commencement of Amendment Act of 2005, in a joint Hindu family governed by Mitakshara law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son. So as of now, daughter of a Mitakshara coparcener has also been made a coparcener.

Before the coming up of “The Act” the female Hindu was not entitled to the property as full owner. After the coming up of the Act **Section 14** was introduced which specifies that the female Hindu is entitled to hold the property as full owner not as limited owner. **Section 14** and **Section 15** deal with cases where a female Hindu dies intestate. As per **Section 14** if a female Hindu has acquired any property whether before or after the commencement of the **Hindu Succession Act, 1956** she will be the full owner of such property not as limited owner. However, she should be in possession of such property, and she will be converted to the full owner automatically.

Section 15 talks about general rules of succession in the case of female Hindus that is the property will devolve as follows:

1. Son and daughter (including the children of any pre-deceased son or daughter) and the husband.
2. Upon the heirs of the husband.
3. Mother or father
4. Upon the heirs of the father
5. Upon the heirs of the mother

However, as per **sub-section 2 of section 15**, when a female Hindu inherit from her father or mother in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) will devolve upon the heirs of the father. And if any property is inherited by a female Hindu from her husband or from her father-in-law in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) will devolve upon the heirs of the husband.

As per **Section 29** If an Intestate has left no heir qualified to succeed to his or her property, such property shall devolve on the government.

THE HINDU SUCCESSION (AMENDMENT) ACT, 2005

The Hindu Succession (Amendment) Act, 2005 was enacted to eliminate gender-based discrimination inherent in the Mitakshara coparcenary system. The Statement of Objects and Reasons explicitly reflect the constitutional values of equality, dignity, and social justice.

The Act was amended in order to provide property rights to the female. Before this amendment the daughter of a coparcenar used to get a share of property from her father's share.

By virtue of **Hindu Succession (Amendment) Act, 2005** in a joint Hindu family governed by Mitakshara law, daughter of a coparcenary was given full rights and liabilities in the property as that of a son by birth and concept of survivorship was abolished and the concept of succession became the only mode of Inheritance of property among Hindus.

There was a dispute regarding the applicability of this Amendment. In ***Prakash v. Phulavati (2016) 2 SCC 36***, It was held that the amendment was prospective. In ***Danamma v. Amar (2018) 3 SCC 343***, It was held that the amendment was **retrospective**. This issue was decided in ***Vineeta Sharma v. Rakesh Sharma (2020) 9 SCC 1***, Hon'ble Supreme Court held that, the amendment operates

‘in futuro’, that is the amendment is **retroactive** which is based on an antecedent event.

Another issue that was discussed in this judgment was that the oral partition operated after 20-12-2004 will be rejected and the partition which has been affected by a registered deed or a decree of a court will only be valid.

In **Ganduri Koteswaramma v. Chakiri Yanadi (2011) 9 SCC 788**, the Supreme Court held that the amendment confers substantive rights upon daughters and applies even to pending partition proceedings. The judgment reinforced the intent of the legislature to ensure real and effective equality rather than formal equality.

JUDICIAL PRONOUNCEMENTS ON HINDU INHERITANCE

LAW

The Supreme Court has consistently emphasised that personal laws must be interpreted in harmony with constitutional values. In **Shayara Bano v. Union of India (2017) 9 SCC 1**, though not directly related to inheritance, the Court affirmed that personal laws cannot be immune from constitutional scrutiny. This principle has influenced inheritance jurisprudence by subjecting discriminatory practices to equality norms.

Arunachala Gounder v. Ponnuswamy (2022) 11 SCC 520

Hon'ble Supreme Court held that the self-acquired property of a Hindu male dying intestate i.e. without writing a will, would devolve by Inheritance and not by Succession. The court observed that if a female dies Intestate, then any ancestral property passed onto her from her father would be bestowed upon the heirs of her father.

K.C. Laxmana v. K.C. Chandrappa Gowda 2022 SCC Online 471

Hon'ble Supreme court held that a Hindu father or manager of a Hindu undivided family has power to make a gift of ancestral property only for a 'pious purpose' i.e. for charitable or religious purpose.

Kattukandi Edathil Krishnan v.Kattukandi Edathil Valsan 2022 SCc Online 737

Hon'ble Supreme court held that even children born from a live-in relationship have the coparcenary right to inherit the family's property. A child who is born to live in partners living together for an extended period has rights over the ancestral property of his father.

CUSTOMARY LAW IN TRIBAL SOCIETY AND ITS RELATIONSHIP WITH HINDU SUCCESSION ACT

What is Custom?

A **custom** is a practice or behavior that has been followed continuously and uniformly by a community for a long period of time. These customs gradually developed into rules that governed social behavior, family relations, property rights, and community life. Such rules are known as **customary laws**.

Custom represents the earliest form of law and reflects the social consciousness, values, and needs of the people among whom it operates. Unlike statutory law, customary law derives its authority from **long-standing usage, community acceptance, and social necessity**, rather than legislation. While statutes are deliberately created by legislative authorities, custom evolves **spontaneously** from repeated human conduct and collective acceptance over time. When society treats a practice as legally mandatory rather than optional, and the judiciary gives it legal recognition, it attains the status of law.

According to **Salmond**, “Custom is the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility.” Similarly,

Holland defines “custom as a generally observed course of conduct which society considers legally binding.”

Difference Between Usage and Custom

Although the terms **usage** and **custom** are often used interchangeably in everyday language, they have **distinct legal meanings**. In jurisprudence, the difference lies mainly in their **legal authority and enforceability**.

Usage refers to a habitual or customary practice followed by people in a particular trade, locality, or community. It is based on convenience, tradition, or practice but **does not automatically have legal force**. **Custom** on the other hand is a long-established practice that has acquired **binding legal force** because it fulfills legal requirements and is recognized and enforced by courts.

All customs **originate from usage**, but not all usages become customs. When a usage is followed consistently for a long time, accepted as obligatory, and recognized by courts, it becomes a custom.

LEGAL RECOGNITION & EVIDENTIARY VALUE OF CUSTOMARY LAW IN INDIA

The Indian Constitution recognizes and protects tribal customary laws:

- **Article 13(3)(a)** includes customs and usages within the definition of “law”
- **Article 244** read with **Fifth and Sixth Schedules** provides autonomy to tribal areas
- **Sixth Schedule** (Articles 244(2) & 275) empowers Autonomous District Councils to:
 - Make laws on **inheritance, marriage, social customs, and land**
 - Administer justice according to **customary practices**

This establishes constitutional legitimacy for tribal customary law. Indian courts treat tribal customary law as a **question of fact**, not law. Therefore, it must be **specifically pleaded**. The burden of proof lies on the person relying on the custom. Courts do not automatically take judicial notice of tribal customs. This principle is firmly settled in jurisprudence. Courts have recognized tribal customs as valid if they are **ancient, certain, and reasonable**.

Succession and Inheritance

Many tribal communities follow:

- **Community ownership of land**
- **Patrilineal or matrilineal inheritance**

Customary practices often differ from Hindu Succession Act provisions, and courts generally respect tribal customs unless they violate constitutional principles.

In **Madhu Kishwar v. State of Bihar (1996) 5 SCC 125**, the Supreme Court upheld the customary law of the Chotanagpur tribes that excluded women from inheritance of land, citing the need to preserve tribal identity. However, the Court also acknowledged the tension between customary practices and gender equality, urging gradual reform.

In **Samatha v. State of Andhra Pradesh (1997) 8 SCC 191**, the Supreme Court emphasised the protective role of the Constitution in safeguarding tribal land and customs from exploitation, linking customary law with socio-economic justice.

Land in tribal societies is not merely economic but **cultural and spiritual**. Customary law governs:

- Community ownership
- Restrictions on alienation
- Use of forest and natural resources

Statutes like **PESA (Panchayats (Extension to the Scheduled Areas) Act, 1996.) Act, 1996** – Recognizes customary practices of Gram Sabhas and **Forest Rights Act, 2006** – Acknowledges traditional forest rights based on custom recognize customary land rights and strengthen tribal control over resources.

TESTS FOR PROVING TRIBAL CUSTOM

For a tribal customary law to be accepted as evidence, it must satisfy the following tests:

1. **Antiquity** – Long-standing practice followed from time immemorial
2. **Continuity** – Regular and uninterrupted observance
3. **Certainty** – Clear and definite rules
4. **Uniformity** – Consistent application within the community
5. **Reasonableness** – Not arbitrary or oppressive
6. **Obligatory Nature** – Accepted as binding by the tribe
7. **Constitutional Validity** – Not violative of fundamental rights or public policy

MODES OF PROVING TRIBAL CUSTOMARY LAW

(a) Oral Evidence

- Statements of **tribal elders, village heads, and community leaders**
- Testimony must show consistent and long-standing observance

(b) Documentary Evidence

- District Gazetteers
- Settlement and revenue records
- Anthropological surveys
- Tribal law manuals
- Reports of government committees

(c) Judicial Recognition

If a tribal custom has been previously recognized by a court, it carries **high evidentiary value** and normally does not require fresh proof.

JUDICIAL APPROACH TO TRIBAL CUSTOMARY LAWS AND CASE LAWS

Madhu Kishwar v. State of Bihar (1996) 5 SCC 125

Recognized tribal customary inheritance practices but examined them in the light of gender equality.

Laxmibai v. Bhagwantbuva (2013) 4 SCC 97

Held that customs must be proved by **clear, cogent, and reliable evidence.**

Thakur Gokalchand v. Parvin Kumari (1952) 1 SCC 713

Custom must be strictly proved and cannot be inferred by analogy.

Dayachand Porte v. Kamlabai, 2018 (5) CGLJ 426

The court dismissed a divorce petition filed under the Hindu Marriage Act because the parties were governed by tribal customary law, not codified Hindu law.

Ramdev Ram v. Dhani Ram & Others, AIR 2016 Chh 107

The High Court upheld the judgement of trial court and has recognized the custom of Uraon tribe that the daughters are not

allowed to succeed to the property of father and it is only in the case of "**Ghar Jinha**" that where son-in-law is allowed to reside with the father of girl then only, the daughter is entitled to succeed to the property by way of Succession.

In a 2025 judgment **Digbal Tandi v. State of Chhattisgarh 2025 SCC Online Chh 10025**, the High Court upheld the right of **Gram Sabhas** to install cautionary hoardings against illegal religious conversions. The court ruled this was a valid measure to safeguard indigenous cultural heritage and local tribal customs.

HOW CUSTOMARY LAW AFFECTED SUCCESSION ACT

Customary tribal laws in India significantly affect succession by generally excluding tribal communities from the Hindu Succession Act. Section 2(2) of the Hindu Succession Act explicitly excludes Scheduled Tribes unless the Central Government notifies otherwise, leaving them under their own customs for inheritance.

Tribal land is often viewed as community-held for use, not individual ownership, complicating modern property laws and rights. Many tribal customs historically favor male lineage, denying or limiting property rights for women, a practice seen as discriminatory by courts, though recent Supreme Court rulings emphasize that

discriminatory customs must yield to constitutional equality, pushing for reforms but acknowledging changes need legislative or community-led processes, not just judicial fiat.

In a landmark ruling in **Ram Charan vs Sukhram, 2025 SCC OnLine SC 1465 [decided on 17-7-2025]**, the Supreme Court asserted that the exclusion of tribal women from inheritance on the basis of customary practices violates the constitutional guarantee of equality. The verdict is being hailed as a progressive step towards gender justice among India's tribal communities. The case stemmed from an appeal where tribal women were denied inheritance rights solely on the grounds of tribal custom. The apex court held that such exclusion contravenes **Articles 14 and 15** of the Constitution, which ensure equality before the law and prohibit discrimination on the grounds of sex. The bench ruled that in the absence of a clearly established and proven customary bar, courts are duty-bound to uphold the principles of justice, equity, and good conscience. The judgment drew on key precedents, including ***Mst. Sarwango v. Mst. Urchamahin (2013) SCC Online CHH 5*** which awarded inheritance to daughters on the basis of equity, and the recent ***Tirith Kumar v. Daduram (2024) SCC Online SC 3810***, which upheld female inheritance rights in tribal property matters.

CONCLUSION

The law relating to succession and inheritance among Hindus reflects a gradual shift from traditional norms to a rights-based statutory framework, particularly through the Hindu Succession Act, 1956 and its progressive amendments aimed at ensuring gender equality. However, in the context of tribal societies, **customary laws** continue to play a vital role in regulating succession and inheritance, preserving cultural identity and community autonomy.

While tribal customary laws contribute to **accessible and informal justice mechanisms**, they may at times conflict with constitutional principles of equality and non-discrimination, especially concerning the rights of women. The judiciary therefore performs a crucial role in harmonizing customary practices with fundamental rights. A balanced approach that respects tribal customs while ensuring access to justice and constitutional safeguards is essential for achieving inclusive and equitable legal outcomes.

KNOWLEDGE HAS TO BE IMPROVED, CHALLENGED AND INCREASED CONSTANTLY, OR IT VANISHES.

- PETER DRUCKER



DISTRICT & SESSION COURT, KORBA