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(DISTRICTS- RAIPUR, MAHASAMUND, DHAMTARI, BALODABAZAR-BHATAPARA)



ON

“Analysis of law relating to succession and inheritance in Hindus. Functioning of customary law in the tribal societies and its applicability for access to justice”

Submitted by

District – Balodabazar- Bhatapara (CG)

Acknowledgement

We feel highly elated to work on the topic **“Analysis of law relating to succession and inheritance in Hindus. Functioning of customary law in the tribal societies and its applicability for access to justice.”**

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District - Balodabazar-Bhatapara(CG)

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1. Introduction

India has a lengthy history of inheritance laws that have been shaped by religious and societal customs. Hindu inheritance law is said to have developed as a result of ancient texts like the Manusmriti YajnavalkyaSmriti, and NaradaSmriti, which traditionally favoured a patriarchal system in which property passed only through male descent.

The Hindu Succession Act, 1956 was eventually put into effect as a part of post-independence attempts to modernize and codify these customs. Succession and inheritance are foundational aspects of family law, reflecting the norms through which property and obligations are transmitted upon the death of an individual.

As the renowned author **Mulla** states, **“the law of inheritance comprises of rules which govern devolution of property, on the death of the person, upon other persons solely on account of their relationship with the former.”** Speaking purely in legal terms, **Black’s Law Dictionary** defines inheritance as **“receipt of a property from an ancestor under the laws of intestacy”** i.e. **“by bequest or device.**

In the context of Hindu law, these concepts have undergone a complex evolution from their roots in ancient dharmashastric texts to their present codified form. The Hindu Succession Act, 1956 and its subsequent amendments, most notably the 2005 amendment, represent a conscious shift towards gender equality and legal certainty. The Hindu Succession Act of 1956 marked a major change in Hindu succession law. The act granted sons and daughters equal rights over self-acquired property as part of India's greater post-independence reforms, with the goal of standardizing and codifying inheritance rules. The 2005 reform of the act guaranteed daughters the same coparcenary rights as sons, so resolving some of the historical gender inequities and ensuring that they may inherit family property equally.

2. Historical Background

In India, as far as personal laws (i.e. laws relating to marriage, divorce and succession etc.) are concerned, the Hindus were governed by shastric and customary laws which varied from region to region. This brought multiple laws of diversified nature to govern Hindus which were prevalent in different schools and sub-schools like **Mitakshara and Dayabhaga**. Both schools differ mainly on two accounts - the law of inheritance and Joint Family System.

Mitakshara School - The Mitakshara school, derived from the commentary of Vijnaneshwara on the Yajnavalkya Smriti, was the predominant system across most parts of India, except Bengal and Assam. Under Mitakshara, the concept of coparcenary played a central role. A coparcenary consisted of male members up to four generations descending from a common ancestor. Sons acquired an interest in ancestral property by birth, and devolution occurred through the doctrine of survivorship. The Mitakshara School recognizes two modes of devolution of the property namely, survivorship and succession. The rule of survivorship applies to joint family property and the rule of succession applies to the property held by the last owner.

Under mitakshara Law the property that was recognized was of two kinds – (i) Joint Family Property and (2) Separate Property. A joint Hindu family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. The cardinal doctrine of the mitakshara school is that the property inherited by a Hindu from his father, father's father, or father's father's father is ancestral property that means unobstructed heritage as regards his male issues. A property inherited by a Hindu from other relations is his separate property.

Dayabhaga School - The Dayabhaga school, primarily followed in Bengal and Assam, emphasized inheritance over survivorship. Property under this system was not jointly held by birthright; instead, rights were acquired only upon the

death of the owner. This school, derived from the works of Jimutavahana, allowed greater individual autonomy and recognized broader rights of inheritance, including to females to a limited extent. Thus, while both schools were based on ancient texts, they reflected different approaches to property devolution. In this way the property laws among Hindus became very complex.

3. Types of succession

There are two types of succession namely testamentary succession and non testamentary succession. The difference between both the succession is as following -

1. Testamentary Succession - when a Hindu dies leaving behind a will. The Indian Succession Act, 1925 governs such succession in the case of hindus. Under this, a hindu has the freedom to dispose of his or her property according to personal wishes, as long as the will is validly executed and free from coercion, fraud, or undue influence. Testamentary succession offers flexibility and autonomy in the distribution of one's estate and can override the default rules of intestate succession.

2. Non testamentary or Intestate succession - Intestate Succession refers to the devolution of property when a Hindu dies without executing a valid will. This is governed by the Hindu Succession Act, 1956. The Act provides a structured and hierarchical list of heirs among Class I and Class II categories, with a focus on ensuring equitable distribution.

4. Definition of "Hindu" Under The Hindu Succession Act

The term "Hindu" for the purposes of succession law has been given a broad definition under **Section 2 of the Hindu Succession Act, 1956**. It includes not only those who profess the Hindu religion in any of its forms but also encompasses followers of the Virashaiva, Lingayat, Brahmo, Prarthana, and Arya Samaj sects. Moreover, Buddhists, Jains, and Sikhs are also included under the term "Hindu" for the purposes of this

legislation. The Act further extends to any person who is not a Muslim, Christian, Parsi or Jew, and who is not governed by another personal law. Children born out of wedlock to Hindu parents, or to one Hindu parent and raised as a Hindu, are also treated as Hindus under the Act. This expansive definition ensures that the application of the Act is inclusive and responsive to the social realities of a diverse society.

5. Joint Hindu Family

A joint Hindu family consists of persons lineally descended from a common ancestor and includes their wives and unmarried daughters. The daughter, on marriage, ceases to be a member of her father's family and becomes a member of her husband's family. The Joint Hindu Family, with all its incidents, is thus a creature of law and cannot be created by an act of parties. A joint Hindu family is one in worship and holds joint assets. After separation of assets, the family ceases to be joint. Mere severance in food and worship is not treated as a separation.

6. Coparcenary

Coparcenary is a unique concept under the Mitakshara school of Hindu law, referring to a smaller unit within the Hindu Undivided Family (HUF). Traditionally, it consisted of a male lineal descendant up to four generations—son, grandson, great-grandson—who acquired a birthright in the ancestral property. With the Hindu Succession (Amendment) Act, 2005, daughters were also recognized as coparceners, placing them on equal footing with sons in terms of rights and liabilities. A coparcener has the right to inherit ancestral property by birth, demand partition, and alienate their share. The concept has been affirmed and clarified by key rulings, notably **Vineeta Sharma v. Rakesh Sharma (2020) 9 SCC 1** which confirmed that daughters are coparceners by birth, regardless of whether the father was alive on the date of the amendment.

"The Hon'ble Apex Court of India in the case of **State of Maharashtra v. Narayan Rao, reported in (1985) 2 SCC 321** held that a Hindu Coparcenary is, however, a narrower body than the joint family. A coparcener acquires a right in the

coparcenary property by birth; however, this right becomes definite only when a partition takes place. As long as the family remains joint, the share of a coparcener cannot be precisely determined, since it is subject to constant fluctuation. It increases upon the death of a coparcener and decreases upon the birth of a new coparcener.

The Hon'ble Apex Court of India in the case of **Vineeta Sharma V/s Rakesh Sharma & Others (2020) 9 SCC 1** has held as under:

“For interpreting the provision of section 6, it is necessary to ponder how coparcenary is formed. The basic concept of coparcenary is based upon common ownership by coparceners. When it remains undivided, the share of the coparcener is not certain. Nobody can claim with precision the extent of his right in the undivided property. Coparcener cannot claim any precise share as the interest in coparcenary is fluctuating. It increases and diminishes by death and birth in the family”

7. The Rule Of Four Degrees

A member of a joint family may be removed more than four degrees from the common ancestor (original holder of Coparcenary property), and yet he may be a coparcener. Whether he is so or not, depends on the answer to the question whether he can demand a partition of the Coparcenary property. If he can, he is a coparcener, otherwise, not. The rule is that partition can be demanded by any member of a joint family who is not removed more than four degrees from the last holder, however remote he may be from the common ancestor or original holder of the property. When a member of a joint family is removed more than four degrees from the last holder, he cannot demand a partition, and therefore he is not a coparcener.

Illustration - “A” inherits certain property from his father “X”. He has a son “B” and a grandson “C”, both members of an undivided family. **A, B, and C** are coparceners. A son “D” is then born to “C”. “D” becomes a coparcener by birth with “A”, “B”

and “C”. Subsequently, a son “E” is born to “D”. “E” is not a coparcener, for being fifth in descent from “A”, he cannot demand a partition of the family. On “A” s death, however “B” will become the head of the joint family and “E” will step into the Coparcenary as the great-grandson of “B”, though he is fifth in descent from “A”, the older.

8. Classification of Property under Hindu Law

Under Hindu Law, property is classified into following category -

1. Joint Hindu Family Property - Joint Hindu Family Property refers to property that is held collectively by the members of a Hindu joint family, arising by virtue of their status in the family. It primarily includes ancestral property, which is property inherited by a male Hindu from his father, grandfather, and great-grandfather. Such property becomes joint family property the moment it is inherited and is shared by the coparceners of the family. It also includes property acquired by coparceners with the aid of joint family funds or through joint labour. Additionally, if a member voluntarily throws his self-acquired property into the common stock with a clear intention to treat it as joint family property, it too can assume that character. The essential feature of joint family property is that it is held jointly and is not divided among the members, unless and until a partition takes place. While all members of a joint family have an interest in the property, coparceners now including both sons and daughters have a birthright in it and can demand partition.

2. Coparcenary Property - Coparcenary property is the one which is inherited by a Hindu from his father, grandfather, or great grandfather. The defining feature of coparcenary property is that it remains undivided and is held collectively by all coparceners, each of whom has a fluctuating share that varies with the birth and death of other coparceners. No individual can claim a definite portion of the property until partition takes place. A coparcener has the right to demand partition, to alienate

his or her undivided interest under certain conditions, and to become the karta (manager) if eligible. The Hon'ble Supreme Court of India, in **Vineeta Sharma v. Rakesh Sharma & Others (2020) 9 SCC 1**, observed that "Coparcenary property is that which a Hindu inherits from his father, grandfather, or great-grandfather. Property inherited from others is held in his rights and does not form part of the coparcenary. Coparcenary property is held by joint ownership."

3. Ancestral Property- Ancestral property is a species of Coparcenary property.

Ancestral property is acquired by unobstructed heritage. Ancestral Property is the property inherited by a male Hindu from his father, father's father or father's father's father. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherit it, acquire an interest and the rights attached to such property at the moment of their birth. For property to retain its ancestral character, it must remain undivided. Once partitioned, each coparcener's share becomes self-acquired property, over which they have absolute rights.

4. Separate Property - Separate property refers to property that is owned by an individual Hindu in his or her own right, and over which the Hindu has full control and can dispose of it as they wish. Separate' property includes 'Self acquired' property. Even if a Hindu is a member of a joint family, he may possess separate property. The term self-acquired indicates that the property has been acquired by a coparcener by his own exertion without assistance of family funds. Even if a Hindu is a member of a joint family, he may own separate property, which is exclusively his. No member of the coparcenary including his male descendants acquires any interest in it by birth. He is free to sell it, gift it, or bequeath it through a will to anyone he chooses. Such property is not subject to partition, and if he dies intestate, it passes to his legal heirs by succession not to the surviving coparceners by survivorship.

9. The Hindu Succession Act 1956

Enacted as part of post-independence efforts to modernize and codify Hindu personal laws, the Hindu Succession Act of 1956 aimed to provide a uniform and comprehensive system of inheritance. The Act has drastically changed the old Hindu law of inheritance. The modern law is applicable to all Hindus whether they belong to Mitakshara or Dayabhaga school. No longer are the schools and sub-schools of Hindu law relevant in respect of the law of succession. The modern law also overrides the customary mode of succession. This does not mean, however, that the modern law is a complete divergence from the classical law.

It tried to remove the existing inequality between male and female with respect to rights to property in the joint family property and also brought revolutionary changes so as to recognize the right of inheritance of Hindu females at par with males. While the Act recognized daughters as legal heirs, their rights in joint family property remained restricted, as they were not considered coparceners under the Mitakshara system.

10. Position of daughters before the enactment of the Hindu Succession amendment act, 2005 -

Section 6 of the Act provided that whenever a male Hindu, having an interest in a Mitakshara coparcenary property died after the commencement of this Act, then his interest in property would devolve by rule of survivorship and not in accordance with the Act. However, Proviso to Section 6 incorporates that when Mitakshara coparcener died leaving behind a female heir of Class I or a male heir claiming through her, then the interest would devolve by testamentary or intestate succession in accordance with the Act and not by the rule of survivorship. Therefore, it is evident from the Act that Hindu females could not inherit ancestral property by birth right and were excluded from joint family coparcenary under the Mitakshara system. For instance, if a joint

family property was divided, then each male coparcener took his share and the female got nothing. Only when one of the coparceners died, she got a share in the interest as an heir to the deceased coparcener.

Moreover, by virtue of Section 4 (2) of the Act, women have been placed in an unequal position in comparison to males with regard to inheritance rights in agricultural land. Further, Section 23 again disentitled a female heir to seek partition in respect of a dwelling house wholly occupied by a joint family until the male heirs choose to divide their respective shares.

The Hon'ble Apex Court of India in Vineeta Sharma V/s Rakesh Sharma & Others (2020) 9 SCC 1 has held as under:

“In view of the provisions contained in section 6 when a coparcener is survived by a female heir of class I or male relative of such female, it was necessary to ascertain the share of the deceased, as such, a legal fiction was created. The explanation I provided legal fiction of partition as if it had taken place immediately before his death, notwithstanding whether he had the right to claim it or not. However, a separated hindu could not claim an interest in the coparcenary based on intestacy in the interest left by the deceased”

11. Position after the Hindu Succession amendment Act 2005

The Amendment Act, 2005 deleted Section 4 (2) of the Hindu Succession Act 1956, and paved the way for women's inheritance in agricultural lands becoming equal to that of males. The Hindu Succession Amendment Act, 2005 has addressed a very pertinent matter relating to the rights of daughters in the Mitakshara coparcenary and thus elevated the daughter's position by amending section 6 of the Hindu Succession Act 1956. The amended Section 6 deals with devolution of interest in coparcenary property. Section 6(1) provides that the daughter of a coparcener in a joint family governed by the Mitakshara law shall, on and from the date of commencement of the Hindu

Succession (Amendment) Act, 2005, by birth become a coparcener in her own right in the same manner as the son. She shall have the same rights and be subjected to the same disabilities in the coparcenary property as that of a son and any reference to a Hindu Mitakshara Coparcenary shall be deemed to include a reference to a daughter of a coparcener.

Proviso to section 6(1) provides that any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th December, 2004, shall not be affected or invalidated by the provision in Section 6(1). Thus, by virtue of amended section 6, the daughter of a coparcener has become a coparcener in the Mitakshara joint family property and has the same birth right as that of son with same rights and liabilities. Daughters will now get a share equal to that of sons at the time of notional partition, just before the death of the father, and an equal share of the father's separate share.

Sub Section 3 of the section 6 provides that where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and
- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

The explanation to section 6(3) of the Act provides that “For the purposes of this subsection, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.”

Section 23 of the Hindu Succession Act, 1956 has been omitted by the Amendment Act, 2005, as a result of which, at present all daughters, both unmarried and married, are entitled to same rights as sons to reside in and to claim partition of the parental dwelling home. The Amendment Act, 2005 has also omitted section 24 which had disqualified certain widows on remarriage from succeeding to the property of intestate. Now the widow of a predeceased son or the widow of a pre-deceased son of a pre-deceased son or widow of the brother can inherit the intestate’s property even if she has remarried.

12.Salient Features of Hindu Succession Act

The importance of the act lies in the fact that it provides uniform rules for succession and reduces the conflict that arose by the conflict ideas of customary rules.

General rule of succession in males – section 8 lays down the general rules in case of succession of hindu male. It applies in the case where the succession opens after the commencement of the act. As per this section the property of a male Hindu dying intestate shall devolve

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

As per the schedule of the Act **class I heirs are** - Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son [son of a predeceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son]

Class II heirs are - I. Father. II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister. III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter. IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter. V. Father's father; father's mother. VI. Father's widow; brother's widow. VII. Father's brother; father's sister. VIII. Mother's father; mother's mother. IX. Mother's brother; mother's sister.

Agnate – section 3(1) (a) of the Act defines agnate as the persons related by blood or adoption wholly through males.

Cognate - section 3(1) (c) of the Act defines cognate as persons related by blood or adoption but not wholly through males.

All the class I heirs shall take simultaneously and to the exclusion of all other heirs. If no one from the class I heirs gets the property then class II heirs get the property. those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the rules provided in **section 10** of the Act according to which the intestate's widow, or if there are more widows than one, all the widows together, shall take one share. The surviving sons and daughters and the mother of the intestate shall each take one share. The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share. The distribution of the share among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his pre-deceased sons gets the same portion and among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

Section 11 of the act provides that the property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they, share equally. **Section 12** deals with the order of succession among agnates or cognates which provides that of two heirs, the one who has fewer or no degrees of ascent is preferred. Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent and where neither heir is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously.

13. Property of a female

Section 14(1) of the Act provides that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as a full owner thereof and not as a limited owner. Further through the Explanation appended to sub-section (1) of Section 14 different methods by which woman may have acquired property are enumerated or would acquire property and states that 'property' includes both movable and immovable property acquired by a Hindu female by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person whether relative or not, before, at or after her

marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also such property held by her as stridhana immediately before the commencement of this Act .Sub section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. Which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise preexisting rights. In such cases a restricted estate in favour of a female is legally permissible and section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognise a preexisting right, such as a claim to maintainance or partition or share to which the female is entitled, the subsection has absolutely no application and the limited interest would automatically be enlarged into an absolute one by force of section 14(1) and the restrictions placed, if any, under the document would have to be ignored.

Subsection (2) of Section 14 is in the nature of a provision and has a field of its own without interfering with the operation of section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by section 14(1) or in a way so as to become totally inconsistent with the main provision.

14. General rules of succession in female hindu

The general rules of succession to the property of a Hindu female dying intestate is that the order of succession devolves according to section 15 and 16 of the Act. Section 15(1) provides that if a Hindu female dies intestate, then her property will devolve according to the rules set out in Section 16 as, following -

- firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband;
- secondly, upon the heirs of the husband;

- thirdly upon the mother and father;
- fourthly upon the heirs of the father;
- and lastly upon the heirs of the mother.

However if a female Hindu, dies issueless leaving behind no child or grandchild, then different rules will govern the matter of succession to her property, depending on whether she has inherited property from her father or mother or from husband or father-in-law. Section 15 does not apply to the property held by a Hindu female with restricted rights i.e. provided in Section 14(2) at the time of her death but applies to cases where she becomes a fresh stock of descent. **Under sub section 2 (a) of section 15, if a Hindu female inherits any property from her father or mother, and she dies without children or grandchildren, then her property devolves on the heirs of her father.**

As per Rule 1 of Section 16 of the Act of 1956, though (a) to (e) heirs are shown under section 15(1) of the Act 1956, but those in one entry shall be preferred to those in any succeeding entry and those included in the same entry shall take simultaneously. For example if a female dies leaving behind her son, daughter and husband who come under section 15(1) (a) of the Act, they will take 1/3rd share each simultaneously in the said property by excluding the other heirs shown under section 15(1)(b) to (e) of the Act.

15. Disqualification

Section 25 of the Act disqualifies a **murderer** from inheriting the property of the person whom he murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder. **The murderer under this section includes the person who abets the murder.** section 26 of the Act disqualifies **convert's descendant** from inheriting the property. As per section 26 where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and

their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens. Section 27 further provides the effect of disqualification and states that in case of any disqualification, the property would be inherited considering that the person disqualified died before the intestate.

16. Legal development and relevant case laws

After amendment of 2005, Section 6 of the Act confer legal rights and liabilities upon daughters in the ancestral property by birth in a Hindu Undivided Family ('HUF'), equivalent to that of a son. **Since the amendment, a question that came up before the Court was whether section 6 of the Act can be retrospectively applied?**

The case law on this issue has been unclear and contradictory so far. In [Prakash vs Phulvati \(2016\) 2 SCC 36](#) a single-judge bench of the Supreme Court held that section 6, as amended in 2005, did not apply retrospectively, and thus only applied to those cases where both the father and his daughter were alive on the September 9th 2005, when the amendment came into effect.

However, in [Dannama @ Suman Surpur vs Amar \(2018\) 3 SCC 343](#), a division judge bench of the Supreme Court held that the amended section conferred full rights upon the daughter, who could claim her rights to the property in question despite her father having passed away in 2001 before the amendment came into force.

On 11-8-2020, the Supreme Court of India passed a landmark judgment in [Vineeta Sharma v. Rakesh Sharma,\(2020\) 9 SCC 1](#) stating that the Hindu Succession (Amendment) Act, 2005 will have a retrospective effect. The 2005 Amendment amended Section 6 of the Act in order to align with the constitutional belief of gender equality. Under the amendment, the daughter of the coparcener shall by birth become a coparcener in her own right in the same manner as the son.

Vineeta Sharma case settled the matter in the question – whether the 2005 Amendment had deemed the daughter to have the same right as of a son in the

coparcenary property irrespective of the father being alive before the Amendment. The judgment was decided by a three-Judge Bench comprising of Arun Mishra, M. R. Shah and S. Abdul Nazeer, J. and was authored by Arun Mishra, J. It stated that as the right of being a coparcener is by birth for a son and so is it for a daughter post the 2005 Amendment, and even if the father was not alive on 9-9-2005, it does not obstruct a daughter's right from claiming her share in the coparcenary property.

This judgment resulted in overruling the Supreme Court's earlier judgments in **Prakash v. Phulavati and Mangammal v. T.B. Raju** which had held otherwise. Hereby, Vineeta Sharma judgment re-affirmed equality in the treatment of sons and daughters by the law for the purposes of succession.

One of the reasons listed by the Supreme Court in the recent judgment to put the daughter at par with the son is that coparcenary rights are formed since birth and "it is not necessary to form a coparcenary or to become a coparcener that a predecessor coparcener should be alive."

17. Impact of Vineeta Sharma v. Rakesh Sharma (2020) 9 SCC 1 Supreme Court judgment on pending appeals or execution proceedings

In **Vineeta Sharma v. Rakesh Sharma (2020)**, the Supreme Court has clarified that its ruling will apply to:

"...all pending suits and appeals.. daughters can not be denied their right of equality merely because the suit was filed or decided before the 2005 amendment". If a case was already decided earlier based on **Prakash v. Phulavati**, but an appeal is pending in the High Court or the Supreme Court then, **Vineeta Sharma** will apply because it's a larger bench decision and overrules earlier conflicting judgments. The court is bound to follow **Vineeta Sharma** case, even if the trial court ruled otherwise.

Now the question arises that what If an execution Case is Pending?

If a decree (e.g., for partition) was passed earlier under old law or Prakash v. Phulavati, but the execution is still pending then -

- 1-The daughter can challenge the execution because the decree is based on an overruled law. Courts generally do not revise final decrees during execution but may grant a stay if substantial injustice is shown.
- 2-The daughter can challenge the original decree in an appropriate court.

Functioning of customary law in tribal societies and its applicability for access to justice

18. Customary laws

Customary laws in tribal communities are a set of unwritten rules, traditions, and practices that govern social, cultural, and personal matters within the tribe. These laws are passed down through generations and are integral to the tribe's identity and way of life. They address issues like marriage, inheritance, resource rights, and dispute resolution, often differing significantly from mainstream legal systems. Tribal communities under Schedule V and VI adhere to customary laws for succession. Customary law is the habitual conduct of a society, shaped by its norms, practices, and traditions. It encompasses acceptable and unacceptable behaviour guidelines enforced through mechanisms like taboos, sanctions, social rituals, cultural values, public opinion, and individual ethics. These elements collectively regulate and restrain societal behaviour patterns.

19. How Tribal Custom Will Be Proved Before a Civil Court in India

Proving a tribal custom in a civil court is crucial because these customs are often unwritten and vary. The burden of proving the existence and validity of a custom generally lies on the party asserting it. Here's how it's typically done, drawing upon provisions of the Indian Evidence Act, 1872, and judicial precedents.

20. Essentials for valid Custom

1. **Ancient:** The validity of custom usually depends on the number of years it is followed. However, there is no definition of ancientness, though, 100yrs has been determined to be ancient enough. A new custom cannot be recognized in a form of agreement for a specific or short time period.

In the case of **Rajothi vs Selliah (1996) 2 MLJ 40**, a Self-Respecter's Cult started a movement under which traditional ceremonies were substituted with simple ceremonies for marriage that did not involve Shastric ceremonies. Hon'ble High Court held that no one is free to create a law or custom, as it is a function and role of the legislature.

2. **Continuous:** It is important that the custom is being followed continuously and has not been abandoned. Thus, a custom maybe 400 yrs old but once abandoned, it cannot be revived.
3. **Certain:** There must be clarity in the usage, involvement, and entailment of custom to avoid any sort of ambiguity in its origin, application, and consequence. Any vagueness may rise confusion and may invalidate it.
4. **Reasonable:** There must be some reasonableness and fairness in the custom. Though what is reasonable depends on the specific era and social values.
5. **Not against morality:** It should not be immoral or repugnant.

6. **Not against public policy:** A custom should not be against the public policy and norms of society.

7. **Not against any law:** If a custom is against any statutory law, it is invalid.

The Collector of Madhura v. Mottoo Ramalinga Sathupathy (Privy Council,1869)

- Custom is one of the most important sources of Hindu Law. It is important to the point that, if any conflict arises between a custom and the text of the Smritis, which is a written source, such custom will override the text.

Methods of Proof (Indian Evidence Act, 1872):

- **Section 13:** Facts relevant when right or custom is in question: This section is highly relevant. It states that facts showing the existence, creation, claim, modification, recognition, assertion, or denial of the custom, or any transaction inconsistent with it, are relevant.
- **Decisions of tribal councils or elders:** Records or testimonies reflecting how the custom was applied in disputes within the community.
- **Family arrangements or settlements:** Documents or oral accounts demonstrating how property was divided or inherited based on the custom.
- **Section 48: Opinion as to existence of right or custom:** The opinions of persons who would be likely to know of the existence of such a custom are relevant. This often includes: - Elder members of the tribal community, Individuals with deep knowledge of the community's traditions and practices.
- **Village headmen, chiefs, or tribal leaders:** Persons traditionally responsible for upholding and interpreting customary laws.
- **Anthropologists or sociologists:** Experts who have studied the specific tribal community and its customs.
- **Oral Evidence:** Since many tribal customs are unwritten, oral testimony from credible witnesses within the community is crucial. These witnesses must be able

to demonstrate a thorough understanding and consistent application of the custom.

- Documentary Evidence: While customs are uncodified, there might be records of tribal councils or traditional courts.
- Anthropological studies or reports detailing the customs of the specific tribe.
- Gazetteers or historical documents mentioning the customs.

21. Judicial Interpretation

In India, the legal framework for inheritance among tribal communities is complex, often involving a blend of customary laws and judicial interpretations. While the Hindu Succession Act, 1956, generally doesn't apply to Scheduled Tribes (unless specifically notified by the Central Government), the Supreme Court has emphasized the application of principles of justice, equity, and good conscience, particularly concerning gender equality in inheritance. This has led to judicial decisions that, while not directly applying the HSA, recognize the rights of tribal women to inherit property, sometimes even granting them equal shares with male heirs.

- The case of [Tirith Kumar & Ors. vs. Daduram & Ors\[2024 INSC 1005\], \(2024\) SCC Online SC 3810](#) brings into focus the complex relationship between statutory law and tribal customs in matters of inheritance. This Supreme Court decision tackled the key issue of whether the Hindu Succession Act, 1956 (HSA, 1956), applies to the Sawara tribe, a Scheduled Tribe under Article 342 of the Constitution.

The Supreme Court's legal reasoning in above case can be broken down as follows:

1. Non-Applicability of the HSA, 1956, to Scheduled Tribes:

The Court affirmed that Section 2(2) of the HSA, 1956, explicitly states that the Act does not apply to members of Scheduled Tribes unless the Central Government issues a notification directing otherwise. As the Sawara tribe is a recognized Scheduled Tribe

under Article 342 of the Constitution, and no such notification was issued, the HSA, 1956, could not govern the succession rights in this case.

2. Inapplicability of Hindu Law Due to "Hinduisation":

The appellants argued that they were "sufficiently Hinduised" and thus should be governed by Hindu law. The Court rejected this contention, emphasizing that the constitutional provisions regarding Scheduled Tribes do not change based on an individual's level of assimilation into Hindu customs. The status of a tribe as a Scheduled Tribe is determined by the Constitution and official notifications, not by cultural practices.

3. Application of Justice, Equity, and Good Conscience:

In the absence of applicable statutory laws, the Court turned to the Central Provinces Laws Act, 1875, particularly Section 6, which allows for decisions based on justice, equity, and good conscience. The Court held that denying inheritance rights to the female descendants of Mardan would be inequitable. Thus, it granted equal property rights to Mardan's daughters and their successors.

4. Reiteration of the Need for Legislative Reform:

The Court referenced the case of [Kamla Neti v. LAO \(2023\) 3 SCC 528](#), where it was suggested that the Central Government consider amending the HSA, 1956, to include Scheduled Tribes, thereby securing equal inheritance rights for female tribal members. The Court reiterated this recommendation, highlighting the constitutional guarantee of equality under Articles 14 and 21.

Several key precedents influenced the Court's decision:

- [Madhu Kishwar & Ors. v. State of Bihar \(1996 5 SCC 125\)](#): The Court held that the HSA, 1956, does not apply to Scheduled Tribes as per Section 2(2) of the Act unless specifically directed by the Central Government.
- [State of Maharashtra v. Milind \(2001\) 1 SCC 4](#): The Court emphasized that the lists of Scheduled Castes and Tribes are to be amended only with the permission

of the President, reinforcing the constitutional position under Articles 341 and 342.

- [M.V. Elisabeth and Others v. Harwan Investment & Trading Pvt. Ltd. \(1993 Supp \(2\) SCC 433\)](#): The Court discussed the application of justice, equity, and good conscience in situations where statutory provisions are silent or inadequate.
- [M.C. Mahajan, J., in Saraswathi Ammal v. Jagadambal \(1953 1 SCC 362\)](#): It was held that in the absence of specific customary laws, the principles of justice, equity, and good conscience should guide the decision-making process in succession matters.
- [Mst. Sarwango and Anr. v. Mst. Urchamahin and Anr.1 2013 SCC Online Chh 5](#): The Hon'ble High Court of Chhattisgarh held that in absence of any law of inheritance or custom prevailing in their caste governing the inheritance the Courts are required to decide the rights according to justice, equity and good conscience in term of Section 6 of the Central Provinces Law Act, 1875.
- [Daduram and Ors. v. Tirith Kumar and Ors. \(2024\) SCC Online SC 3810](#) Judgment dated 06.02.2019 in S.A. 270/2003: The Hon'ble High Court of Chhattisgarh held that in absence of any law of inheritance prevailing in Gond-caste governing inheritance, courts are required to decide right according to justice, equity and good conscience in terms of Section 6 of the Central Provinces Laws Act, 1875.

These precedents collectively established that, in the absence of explicit statutory provisions or when certain groups are exempted from general laws, courts should resort to principles of justice, equity, and good conscience to adjudicate disputes.

22. **Challenges for tribal (Adivasi) women**

Despite advancements in statutory law, tribal women often remain excluded from inheritance due to customary practices. Section 2(2) of the HSA, 1956, preserves tribal autonomy by excluding Scheduled Tribes from its ambit unless specifically notified. While this protects cultural traditions, it often entrenches gender inequality

23. Conclusion

In conclusion, the law relating to succession and inheritance among Hindus has evolved from patriarchal and doctrinal origins to a modern, rights-based framework. Over millennia, Hindu succession law has traversed a remarkable journey from the inclusive guidelines of classical Smṛti texts through patriarchal medieval doctrines to the codified law of Hindu Succession Amendment Act 2005. The codification efforts of 1956, reinforced by the progressive amendment of 2005 and clarified through judicial decisions, demonstrate a clear trajectory towards legal and gender justice. While the law now supports equality in theory, its social acceptance and implementation continue to require vigilance, education, and advocacy. The journey from Mitakshara to Vineeta Sharma case marks not only legal evolution but also the broader transformation of societal values in contemporary India.

However, it must also be noted that the Hindu Succession Act has carved out an important exception in favour of custom. Certain communities, especially tribal groups, continue to be governed by their customary laws rather than the provisions of the Hindu Succession Act. Although these customs have legal recognition, they are not codified under a uniform statute. Different communities follow different customs, leading to inconsistency, ambiguity, and at times injustice. Therefore, it becomes necessary to codify the law with regard to such customs as well, in order to bring clarity, uniformity, and ensure that the principles of justice and equality reach all sections of society without diluting their cultural identity.

In essence, the Hindu Succession regime has evolved into a progressive legal framework that now resonates with constitutional values of justice, gender parity, and personal autonomy. However, achieving its full transformative potential demands sustained efforts—legal, administrative, social, and cultural—to bridge the gap between progressive law and lived reality.