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The Hindu Succession Law And Its Implications For Scheduled Tribe Women: Legal Developments And Recent Judicial Intervention

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ABSTRACT
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1. INTRODUCTION:

GROUND MATRIX

The Hindu Succession (Amendment) Act, 2005 represents a pivotal legislative intervention in Indian inheritance law, aiming to correct historical gender inequities ingrained in the Hindu Succession Act, 1956. By granting daughters equal coparcenary rights in joint Hindu family property, the Hindu Succession (Amendment) Act, 2005 sought to align legal practice with constitutional guarantees of gender equality. However, this progressive reform is marred by a significant lacuna: its explicit inapplicability to members of Scheduled Tribes (STs). A critical gap persists under Section 2(2) of Hindu Succession Act, 1956, which excludes Scheduled Tribes from its applicability, leaving tribal women governed by customary laws that often deny them inheritance rights. As a result, ST women remain excluded from the core benefits of the Hindu Succession (Amendment) Act, 2005, perpetuating patriarchal inheritance patterns and undermining the objectives of social justice and gender parity. This exclusion has raised constitutional concerns regarding equality, dignity, and non-discrimination under Articles 14, 15, and 21.[1]

This paper systematically examines the legal, socio-economic, and jurisprudential dimensions of the Hindu Succession (Amendment) Act, 2005 with respect to women belonging to Scheduled Tribes. It interrogates the legislative exclusion, explores the socio-cultural and economic ramifications for ST women, and critically analyses recent judicial pronouncements, including the Supreme Court's evolving approach towards tribal women's succession rights. The study further contextualizes these issues within broader debates on religious fundamentalism, legal ontology, and the interface between customary law and statutory reforms. Drawing from contemporary research and legal analytics, the paper proposes a multi-dimensional analytical framework for understanding the intensity of legal exclusion and advancing strategies for reform.

Constitutional Guarantees and Gender Justice

The Indian Constitution guarantees women's equality and authorizes the government to implement measures of progressive discrimination for her to mitigate the accumulated specific social, economic, educational, and political disadvantages that they face. Fundamental Rights establish equality before the law and equal protection under the law; prevent discrimination against any citizen on the basis of religion, race, ethnicity, sex, or birthplace; and provide all people with equal employment opportunities. Today, Constitutionalism has surpassed the importance of effective government in evolving women rights in contemporary times. The Constitution's Article 14, 15, 15 (3), 16, 39 (a), 39 (b), 39 (c) and 42 are very important in this regard.

Socio-Economic and Cultural Contexts: Customary Law of Scheduled Tribes and Gender justice

3.1 The Socio-Economic Position of Scheduled Tribe Women

Scheduled Tribes constitute approximately 8.6% of India's population, numbering 10.42 million people, encompassing over 705 distinct communities with diverse social, cultural, and economic practices.[2] STs are recognized as historically disadvantaged, facing systemic deprivation in education, health, land rights, and political representation. Tribal women, in particular, bear the brunt of intersectional discrimination—being subordinated both as members of a marginalized ethnic group and as women within patriarchal kinship structures.

Empirical studies underscore that tribal women's access to property is a critical determinant of their socio-economic status, bargaining power, and well-being.

[1] Vijay Nangesh, Hindu succession act and female in scheduled tribe and recent judgement, International Journal of Civil Law and Legal Research 2025; 5(2): 236-240

[2]. See, Year End Review 2024: Ministry of Tribal Affairs, Ministry of Tribal Affairs, Government of India, available at https://www.pib.gov.in/PressReleasePage.aspx?PRID=2090883&reg=3&lang=2

Landlessness and insecure tenure exacerbate poverty, food insecurity, and vulnerability to violence and displacement. Yet, customary laws governing succession in most tribal societies either preclude women from inheriting land or restrict their rights to maintenance or residual shares after male heirs.[3]

Gender Discrimination in Hindu Succession Laws: Legislative Framework

4.1 The Hindu Succession Act, 1956 and its 2005 Amendment

The historical architecture of Hindu succession law has been profoundly gendered. The Hindu Succession Act, 1956, though a landmark in codifying inheritance rights, institutionalized the Mitakshara coparcenary system, which conferred coparcenary rights only upon male descendants. Women, particularly daughters, could not be coparceners, thereby restricting their claim over ancestral property to limited inheritance as heirs rather than as joint owners. This legal paradigm not only reflected but also reinforced the patriarchal social order prevalent in Hindu society.

The question of rights of inheritance among women belonging to Scheduled Tribes (STs) occupies a labyrinthine space in India's legal jurisprudence and Constitutional framework. The Hindu Succession Act, 1956 was enacted as a progressive legislation to bring socio-legal uniformity and gender justice in matters of succession among Hindus.

The Act lays down a uniform and comprehensive system of inheritance and applies to persons governed by both the Mitaksara and Dayabhaga schools. It is hailed for its consolidation of Hindu laws on succession into one Act. The Hindu woman's limited estate is abolished by the Act. Any property possessed by a Hindu Female is to be held by her as her absolute property and she is given full power to deal with it and dispose it, as she likes. First time Hindu Widow was given power to deal with property. Limited rights were converted into absolute rights under Section 14 of the Act.[4]

4.2 Exclusion of Scheduled Tribes: Section 2(2) and its Ramifications

Despite its progressive tenor, Section 2(2) of the Hindu Succession Act, 1956 (as retained in the 2005 amendment), explicitly excludes its application to members of Scheduled Tribes unless the Central Government notifies otherwise.[5] The rationale, as indicated in the Statement of Objects and Reasons, was to respect and preserve the customary laws governing tribal communities, which vary widely across regions and ethnicities.[6] However, this carve-out has resulted in the continued subjection of ST women to customary inheritance regimes, many of which are deeply patriarchal and deny women the right to inherit property on par with men.

The legal architecture, therefore, creates a paradox: while Hindu women at large have been empowered through statutory reform, tribal women—arguably among the most marginalized—remain excluded from its emancipatory sweep. This exclusion is not merely legislative oversight; it is a function of deeper socio-legal and political dynamics, which are explored in the following sections.

The exclusion under Section 2(2) of the Hindu Succession Act, 1956, recognizes that tribal societies have historically followed distinct systems of property inheritance, often rooted in community norms rather than codified legislation. This exclusion was intended to preserve the autonomy of tribal customs and to respect their socio-cultural diversity.

4.3 The Hindu Succession (Amendment) Act, 2005: A Step towards Gender Justice

The Hindu Succession (Amendment) Act, 2005, enacted after decades of advocacy, marked a watershed moment in Hindu family law jurisprudence. The Amendment Act has introduced a new section 6 into the Act, by virtue of which a daughter of a coparcener in a joint Hindu family governed by Mitakshara law becomes a coparcener in her own right and enjoys rights equal to those enjoyed by the son of a coparcener. By amending Section 6 of the principal Act, the Hindu Succession (Amendment) Act, 2005 established that "on and from the commencement of the Amendment Act, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son"[7] . This effectively put daughters on par

[3]. Grzegorz Krochmal, "Sentiment of tweets and socio-economic characteristics as the determinants of voting behavior at the regional level. Case study of 2019 Polish parliamentary election," arXiv preprint arXiv:2010.03493v1, 2020. Available at https://arxiv.org/pdf/2010.03493

[4]. Sec. 14, the Hindu Succession Act, 1956 read as "any property possessed by a female Hindu, whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as a limited owner"

[5]. Sec. 2(2), the Hindu Succession Act, 1956, "Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs."

[6]. This statutory exclusion stems from the constitutional recognition of self-governance framework and protection for tribal communities' unique cultural and customary practices under Article 244 and Fifth and Sixth Schedules of the Indian Constitution, which deals with the Administration of Scheduled Areas and Tribal Areas.

[7] Sec. 6, the Hindu Succession (Amendment) Act, 2005, (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,:(a) also by birth become a coparcener in her own right; the same manner as the son here: (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities and disabilities in respect of the said

with sons in matters of joint family property, entitling them to demand partition, seek shares, and dispose of their share through testamentary disposition.

The legislative intent was clear: to eradicate gender bias and fulfill the promise of equality enshrined in Articles 14, 15, and 21 of the Indian Constitution. The intendment of amended Section 6 is to ensure that daughters are not deprived of their rights of obtaining share on becoming coparcener and claiming a partition of the coparcenary property by setting up the frivolous defense of oral partition and/or recorded in the unregistered memorandum of partition.

The Supreme Court, in *Vineeta Sharma v. Rakesh Sharma*[8], reaffirmed this intent, holding that the provisions contained in substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities. The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Section 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004. Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on the date of the amendment.

However, this objective remains only partially fulfilled, as women belonging to Scheduled Tribes (ST) continue to be excluded under Section 2(2) of the Act. The implication of the exemption under Section 2(2) of the Hindu Succession Act, 1956 has been contentious, as it effectively denies tribal women the statutory protections available to Hindu women under the amended Act. Many tribal customs continue to be male-centric, often preventing daughters or widows from inheriting ancestral property.[9]

This exclusion not only defeats the legislative intent to promote equality but also stands in violation of **Article 14** of the Indian Constitution. Land rights among tribal communities are also historically characterized by a lack of gender parity.

Customary Law and Its Interface with Gender Justice

The legal pluralism that characterizes the Indian legal system recognizes the authority of customary law among Scheduled Tribes. Customary succession rules, though diverse, often reflect patriarchal biases—preferring agnatic succession and excluding daughters or wives from substantive inheritance. For instance, in many tribal communities in central and eastern India, property devolves exclusively upon male descendants, with daughters married into other clans considered outsiders.[10]

While defenders of customary law argue for the preservation of tribal identity and autonomy, critics contend that such customs, when discriminatory, contravene constitutional norms and international human rights standards. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) establishes a universal framework of minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of Indigenous Peoples. It recognizes both the right of indigenous peoples to maintain their customs and the imperative of gender equality.[11] The challenge, therefore, lies in balancing cultural preservation with the universal imperative of non-discrimination.

The Paradox of Exclusion: Scheduled Tribe Women and the Hindu Succession (Amendment) Act, 2005

The explicit exclusion of STs especially the tribal women from the ambit of Hindu Succession (Amendment) Act, 2005 creates a legal vacuum. On the one hand, they are not governed by the egalitarian reforms of the Hindu Succession Act; on the other, they are not subject to any uniform or codified system that guarantees gender equality in inheritance. This situation entrenches legal uncertainty and perpetuates the subordination of tribal women.

Recent research in legal data mining and analytics reveals that the lack of structured data on tribal customary laws and judicial outcomes further compounds the problem, making it difficult to assess the prevalence and impact of gender discrimination in tribal succession [4]. The absence of legal ontology and standardized documentation impedes both legal reform and effective judicial intervention.

Judicial Responses: the Evolving Jurisprudence on Tribal Women's Succession Rights

7.1 Early Judicial Deference to Custom

Historically, Indian courts have exhibited deference to customary law in matters involving Scheduled Tribes. The Apex Court and various High Courts have maintained that, in the absence of statutory intervention, tribal succession is governed by customary practices, even if these are discriminatory. In *MadhuKishwar v. State of*

coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter."

[8] AIR 2020 Supreme Court 3717.

[9] For more detail, see, Vijay Nangesh, Hindu succession act and female in scheduled tribe and recent judgement, International Journal of Civil Law and Legal Research 2025; 5(2): 236-240, available at https://www.civillawjournal.com/article/165/5-2-39-222.pdf

[10] Ibid.

[11] The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the United Nations General Assembly on Thursday, 13 September 2007, by a majority of 143 States, including India. For more details, seethe United Nations Declaration on the Rights of Indigenous Peoples, available at https://www.un.org/development/desa/Indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Bihar[12] the petitioners challenged the provisions of the Chotanagpur Tenancy Act, 1908, asserting that these provisions were discriminatory against ST women, thereby violating the constitutional guarantees of equality.[13]

The central issue revolved around the Act's preference for male succession in property inheritance among Scheduled Tribes in Bihar, which the petitioners contended was unconstitutional. The case brought into focus the broader themes of gender discrimination, tribal customs, and constitutional supremacy in law. The Apex Court examined the Sections 7, 8, and 76 of the Chotanagpur Tenancy Act entrenched gender discrimination by favoring male succession in property inheritance among Scheduled Tribes. The Court recognized Scheduled Tribe individuals as equal citizens entitled to constitutional protections. While acknowledging the challenges of enforcing personal laws on tribal societies, the Bench emphasized that exclusion from inheritance based solely on gender was inappropriate. The majority upheld the validity of tribal customs, recognizing the cultural distinctiveness and autonomy of tribal communities under Article 13(3) (a). However, Justice Ramaswamy's concurring opinion emphasized that customs must evolve to align with constitutional mandates of equality and human dignity. He observed that women's exclusion from property rights perpetuates dependency and violates the spirit of Article 21. The Apex Court, directed the State to reassess the provisions in light of constitutional principles and ensuring that tribal women could inherit property on par with their male counterparts, subject to specific regulatory measures to prevent land alienation. Though the Apex Court upheld the validity of customary law precluding tribal women from inheriting ancestral land, reasoning that legislative, not judicial, intervention was required to effect change, but the judgement marks a significant judicial intervention in the realm of tribal succession laws.[14]

This approach has been critiqued for abdicating the judiciary's constitutional responsibility to uphold gender justice. The reluctance to subject custom to constitutional scrutiny has left ST women without effective remedies for discrimination.The significance of the case does not lie in its judgment but in the minority view, which was discussed by Justice K. Ramaswamy. In his concurrent judgment he held that the provisions of the Hindu Succession Act and the Indian Succession Act would apply to the Scheduled Tribes. He further asserted that this was consistent with the general principles contained therein: justice, equity, fairness, justness, and good conscience. Therefore, it was held by Justice K. Ramaswamy that the Scheduled Tribe women would succeed to the estate of their parent, brother, and husband as heirs by intestate succession and inherit the property with equal share with the male heir with absolute rights as per the general principles of the Hindu Succession Act, 1956, as amended and interpreted by the Supreme Court.

7.2 The Shift towards Constitutional Values: Recent Judgments

A significant shift is discernible in recent years, as courts grapple with the tension between custom and constitutional principles. The Apex Court and several High Courts of the country have begun to interrogate the constitutionality of discriminatory customs, invoking Articles 14 and 15 of the Indian Constitution.

7.2.1 KamlaNeti v. State of Chhattisgarh: ***A New Jurisprudence and its Limits***

In *KamlaNeti v. State of Chhattisgarh*, the central legal issues that arose before the Apex Courtwas whether themembers of the Schedules Tribe community come within the purview of the Hindu Succession Act, 1956?The Appellant placed reliance on the minority view in *MadhuKishwar vs the State of Bihar*, wherein it was observed that the provisions of the said Act would apply to female members belonging to a Scheduled Tribe and the general principles contained therein being consistent with justice, equity, fairness, justness and good conscience would apply to them. The Apex Court dismissed the petition in view of Section 2(2) of Hindu Succession Act and held that the Appellant being the member of the Scheduled Tribe and as the female member of the Scheduled Tribe is specifically excluded, the Appellant is not entitled to any right of survivorship under the provisions of Hindu Succession Act.

Although the Court dismissed the petition, the judgment recorded some strong observations which could potentially pave the way for legislative amendments. The Apex Court directed to examine the question by the Central Government to consider it just and necessary to withdraw the exemptions provided under the Hindu Succession Act in so far as the applicability of the provisions of the Hindu Succession Act to the Scheduled Tribes and whether to bring a suitable amendment or not.[15]

[12] AIR 1996 Supreme Court 1864.

[13] Sandeep Kindo, Continuing Custom': Indigenous Inheritance in the Indian Supreme Court's Kishwar v Bihar Dissent, Australian Journal of Asian Law, 2024, Vol 25 No 1, Article 2: 23-37, available at file:///C:/Users/hp/Desktop/ST%20women%20property%20rights.pdf

[14] *Supra* note 9.

[15]The Apex Court observed that "when the daughter belonging to the non-tribal is entitled to the equal share in the property of the father, there is no reason to deny such right to the daughter of the Tribal community. Female tribal is entitled to parity with male tribal in intestate succession. To deny the equal right to the daughter belonging to the tribal even after a period of 70 years of the Constitution of India under which right to equality is guaranteed, it is high time for the Central Government to look into the matter and if required, to amend the provisions of the Hindu Succession Act by which the Hindu Succession Act is not made applicable to the members of the Scheduled Tribe. Therefore, though we dismiss the present appeal, it is directed to examine the question by the Central Government to consider it just and

7.2.2 Tirith Kumar v. Daduram : Tribal Customary Law and Equal Rights Discourse

The Apex Court of India, in *Tirith Kumar v. Daduram*[16] again addressed the question pertaining to the inheritance rights within Scheduled Tribes and the applicability of the Hindu Succession Act, 1956 (HINDU SUCCESSION ACT, 1956, 1956) to them in The Court re-affirmed that Section 2(2) of the HINDU SUCCESSION ACT, 1956, 1956, explicitly states that the Act does not apply to members of Scheduled Tribes unless the Central Government issues a notification directing otherwise.Though, the judgement reaffirms the non-applicability of the HINDU SUCCESSION ACT, 1956, 1956, to Scheduled Tribes in the absence of specific notification, regardless of cultural assimilation, the Apex Court bolstered the need for legislative intervention to address the exclusion of Scheduled Tribes from the Hindu Succession Act.

7.2.3 Ram Charan v. Sukhram : Recognition of Equal Property Rights for Daughters belonging to Tribal community

The judgment of the Apex Court in *Ram Charan v. Sukhram*[17] represents a historic reaffirmation of gender justice in the context of tribal inheritance. The short question involved in this appeal is whether a tribal woman or her legal heirs would be entitled to an equal share in her ancestral property or not. The Court held that denying the tribal daughter a right in the property only exacerbates gender division and discrimination, which the law should ensure to weed out. Citing Articles 14 of the Indian Constitution, the Court observed that in the absence of a valid custom barring female succession, the constitutional guarantee of equality prevails. The Court emphasized that in keeping with the principles of justice, equity and good conscience, read along with the overarching effect of Article 14 of the Constitution, a tribal woman or her legal heirs, are entitled to their equal share in the property.

7.2.4 Munni Devi v. Rama Devi: urged of legislative reform in Section 2(2) of the Hindu Succession Act

In *Manni Devi v. Rama Devi*[18], the Rajasthan High Court again urged legislative reform to amend Section 2(2) of the Hindu Succession Act, so that tribal women may benefit from its protective provisions. The Court held that to deny equal rights to the daughters belonging to the Tribal communities, even after more than seven decades of independence, is manifestly unjustified. Hence, it is the right time and high time for the Union of India to revisit the provisions contained under Section 2(2) of the Act of 1956, and if deemed necessary, the provisions of the Act of 1956 be amended to safeguard and promote the rights of Female Members of the Scheduled Tribe community.

Conclusion & Suggestions

The Hindu Succession (Amendment) Act, 2005 represents a significant advance in the quest for gender justice in India, but its exclusion of Scheduled Tribe women constitutes a glaring lacuna that perpetuates historical and systemic discrimination. The interplay of statutory law, customary practice, and socio-economic determinants creates a complex web of disadvantage for ST women, denying them the benefits of equal inheritance and undermining their socio-economic empowerment.

Denying the equal inheritance right to the daughter belonging to the tribal community even after a period of 70 years of the Constitution of India under which right to equality is guaranteed, remains an unfulfilled aspiration.The Latin maxim of "***Dura Lex, Sedlex***" i.e., *The law is hard, but it is the law*, (where there is a conflict between statutory provisions and equitable considerations, the former must prevail to ensure uniformity and predictability) was reflected in the recent Apex Court's Judgements regarding the inheritance rights of the daughter belonging to Scheduled Tribe community.

Recent judicial pronouncements indicate a growing willingness to subject discriminatory customs to constitutional scrutiny and to reinterpret legal exclusions in light of evolving standards of equality. The judicial response towards the women belongs to the tribal community raised pertinent questions as can tribal women come under the Hindu Succession Act, and does the principle of equity and good conscience apply so that irrespective of customary law, women get inheritance in tribal communities? The minority view, of Justice K. Ramaswamy, in *MadhuKishwar vs the State of Bihar*, that the provisions of the Hindu Succession Act, 1956 would apply to female members belonging to a Scheduled Tribe and the general principles contained therein being consistent with justice, equity, fairness, justness and the judgment of Apex Court in *KamlaNeti v. State of Chhattisgarh*that the provisions of the Hindu Succession Act and the Indian Succession Act would apply to the Scheduled Tribes, indicate a willingness to subject custom to constitutional scrutiny and to interpret statutory exclusions in a manner consistent with the evolving standards of gender justice. Emphasizing the constitutional right to equality enshrined in Articles 14 and 21, the Court asserted the unjustifiability of denying survivorship rights to female members of the Tribal community. The Court's call for a reevaluation by the Central Government and potential amendments to the Hindu Succession Act (HINDU SUCCESSION ACT, 1956) 1956, ensuring its applicability to Scheduled Tribe members, underscores the urgency of rectifying the longstanding gender inequities within tribal communities.

The realization of gender equality in inheritance among the women belongs to Scheduled Tribes requires a concerted and multi-dimensional effort—legislative

necessary to withdraw the exemptions provided under the Hindu Succession Act in so far as the applicability of the provisions of the Hindu Succession Act to the Scheduled Tribes and whether to bring a suitable amendment or not."

[16]AIR Online 2024 SC 833.

[17]2025 SCC Online SC 1465.

[18]2025 SCC Online Raj 3772.

reform, judicial activism, community engagement, and technological innovation. The most direct and effective solution for the issue at hand is a legislative amendment that does away with the exclusion under Section 2(2) and extends the application of the HINDU SUCCESSION ACT, 1956 to tribal communities who have undocumented, ambiguous or an absence of inheritance practices as a whole. This would ensure that tribal women receive the same statutory rights to ancestral property as their non-tribal counterparts, aligning the law with Articles 14 and 15(3) of the Constitution

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