

# Rethinking tribal women's inheritance rights

Now that the Supreme Court has ruled that the Hindu Succession Act does not apply to tribal communities, a separate law could be introduced to govern inheritance among indigenous populations

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'Excluding tribal women from inheritance rights in some cases due to the acceptance of exclusion clauses under Hindu laws, while granting rights in others because of 'Hinduisation', created uncertainty for tribal women whenever questions of inheritance arose.' File | Photo Credit: The Hindu

**T**he question of women's inheritance rights in tribal communities remains unresolved. Customary laws of most tribal communities deny absolute property rights to their women, and the Hindu Succession Act, 1956, which grants daughters inheritance rights in ancestral property, keeps tribal women out of its purview. Until recently, however, the Supreme Court had in some cases granted inheritance rights to tribal women who had 'Hinduised', i.e., adopted Hindu customs and traditions after abandoning their customary practices. This inconsistent approach

— excluding tribal women from inheritance rights in some cases due to the acceptance of exclusion clauses under Hindu laws, while granting rights in others because of 'Hinduisation' — created uncertainty for tribal women whenever questions of inheritance arose.

## Reaffirming an old principle

This came to an end when, on October 8, 2025, the Court delivered a verdict, upholding the core inheritance provisions of the Hindu Succession Act, 1956. A Bench of Justices Sanjay Karol and Prashant Kumar Mishra stated that the Act cannot be applied to Scheduled Tribes under any circumstances. While this observation was not new, it reaffirmed the law's principle of providing special protection to indigenous communities under the legal system.

The verdict was given in the case of *Nawang v. Bahadur*. The civil appeal challenged the order dated June 23, 2015, passed by the High Court of Himachal Pradesh at Shimla, pertaining to a particular property case. The High Court had said that tribal daughters who had been 'Hinduised' ought to have an opportunity to inherit property under the Hindu Succession Act. The Supreme Court overturned that order stating that only Parliament had the authority to extend the Act to tribal communities. The Court brought to light the fact that the High Court had overstepped its jurisdiction by directing legislative changes. It affirmed that tribal inheritance falls under the rubric of the customary practices of communities unless the Central government officially intervenes.

The Supreme Court's decision came just months after it recognised, in *Ram Charan v. Sukhram*, that excluding daughters from ancestral property violates their fundamental right to equality. It invites not only deep analysis, but also partially answers certain questions. Is 'Hinduising' a tribe the only way to secure inheritance rights for tribal women? Should Scheduled Tribes be granted inheritance rights solely on the basis of religion, disregarding their unique social and cultural characteristics? Can they not be given equal inheritance rights by expanding any other statute? Or, in the absence of consistent statutory and customary law guaranteeing tribal women inheritance rights, should tribal women continue to face discrimination under the pretext of upholding tradition?

## Defining Hindu

On defining the term 'Hindu', the Supreme Court, in *Sastri Yagnapurushadji v. Muldas Brudardas Vaishya* (1966), said that "unlike other religions in the world, the Hindu religion does not claim any one prophet, it does not worship any one God, it does not subscribe to any one dogma, it does not believe in any one philosophic concept, it does not follow any one set of religious rites or performances, in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life and nothing more". A person can be a Hindu either by birth or by conversion. Conversion means a bonafide intention to follow a particular faith with an unequivocal conduct expressing sufficient evidence of conversion. A converted person continues to be a member of the tribe unless his ancestors had converted long time ago and have stopped following tribal customs including the customary laws of inheritance and marriage, as are expected of the members of that tribe.

This judgment of the Supreme Court raises a question. Was not the earlier practice of 'Hinduisation' of tribal people a negation of the constitutional guarantee to protect the unique identity of tribal people? The ruling affirms the constitutional validity of Section 2(2) of the Hindu Succession Act, which excludes Scheduled Tribes from the Act. This provision had previously been challenged on the grounds that it created invidious discrimination between women belonging to Scheduled Tribes and those outside the category.

Earlier, the courts used to broaden the scope of Section 2(1) of the Hindu Succession Act to include Scheduled Tribes by holding that since they are not expressly excluded under the section, they would be included within the definition of 'Hindu' under Section 2(1) of the Act. This is not only contrary to Section 2(2), which states that notwithstanding anything to the contrary in Section 2(1), no provisions of the Act shall apply to notified Scheduled Tribes, but was also used to force tribal women to choose between their tribal identity and becoming followers of Hinduism.

## **An opportunity**

Now that the Supreme Court has stated that the Act cannot be extended to tribal people irrespective of their religious allegiance, it would be wise to introduce a special enactment governing inheritance rights among the indigenous population. Codifying customary laws of succession in other States with significant tribal populations on the lines of Mizoram could provide a solution to ensure gender parity while preserving tribal identity.