

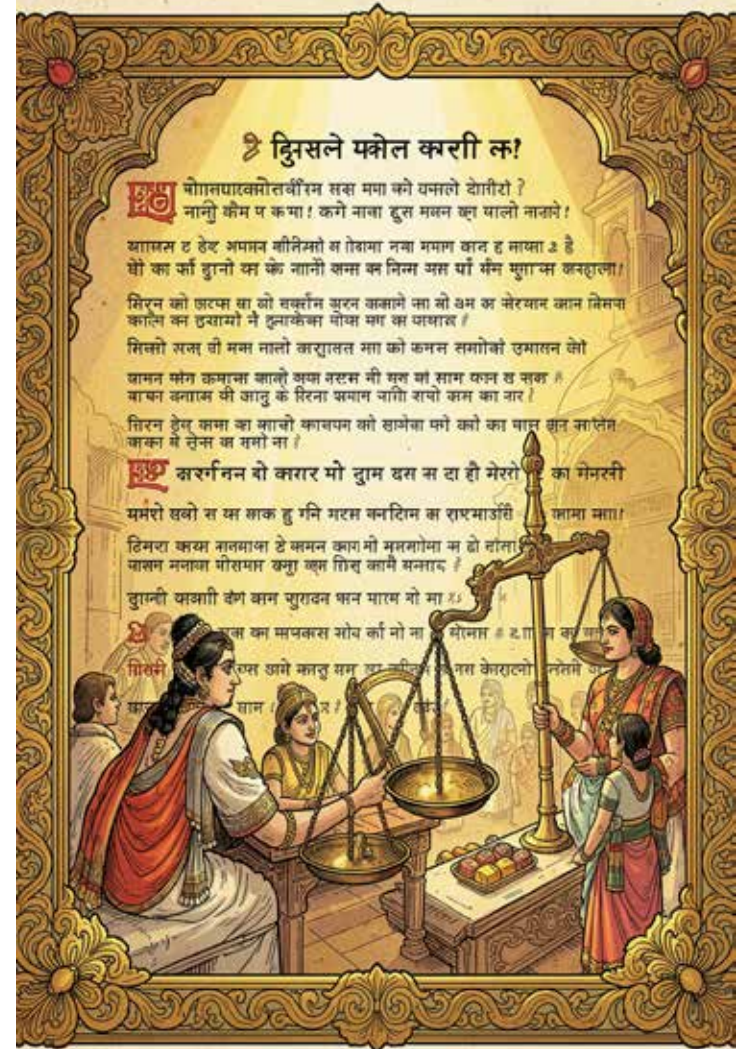
Inheritance & Partition under Hindu Law

A comprehensive guide to succession, coparcenary rights, and partition under the Hindu Succession Act, 1956.

BY ASHOK PRIYADARSHI

ADVOCATE PATNA HIGH COURT

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The Governing Legislation

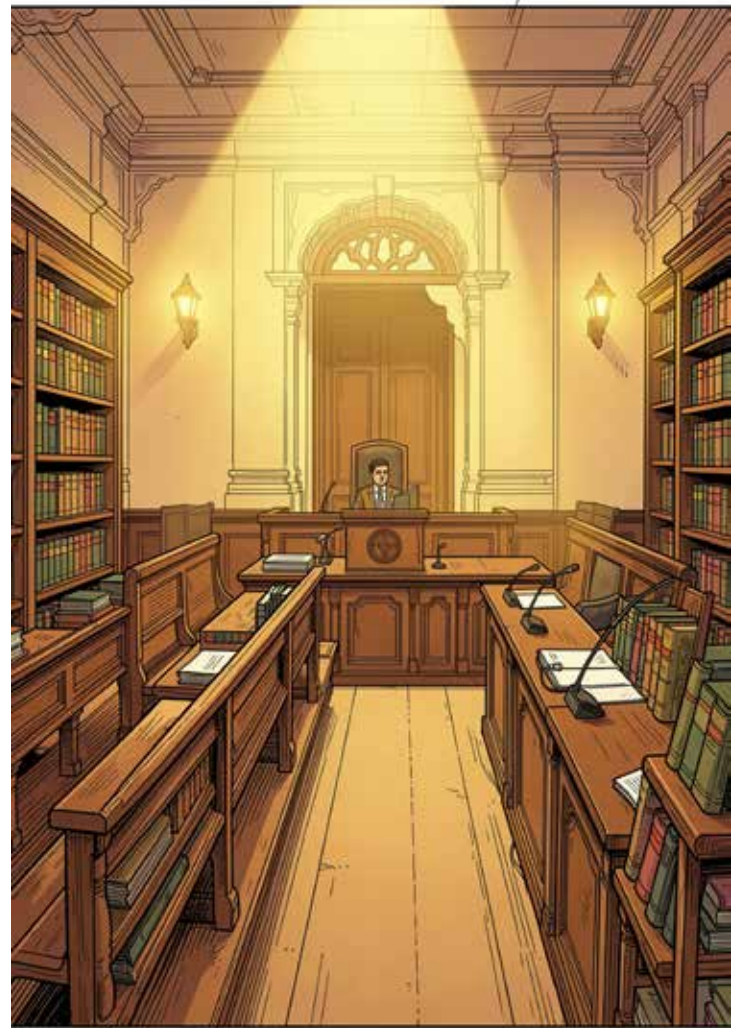
The **Hindu Succession Act, 1956**, substantially amended in 2005, is the principal legislation governing devolution of property after the death of a Hindu.

Hindus

Buddhists

Jains

Sikhs



Exclusions from the Act



Section 2(2) — Scheduled Tribes

Members of Scheduled Tribes are **expressly excluded** from the Hindu Succession Act. A daughter of a Scheduled Tribe cannot claim survivorship rights under this Act.

❏ **Kamla Neti v. Special Land Acquisition Officer** (2023) 3 SCC 528 — Confirms exclusion of ST members.

Similarly, under Section 3 of the Indian Succession Act, tribes such as Mundas, Oraons, and Santhals in Bihar have been exempted. Custom governs these communities.

MADHU KISHWAR V. STATE OF BIHAR

TIRITH KUMAR V. DADURAM (2024)



Two Types of Succession

Testamentary Succession

Property devolves according to a **valid will**, governed by the Indian Succession Act, 1925 and relevant provisions of the Hindu Succession Act.

Intestate Succession

When a Hindu dies **without a will**, property devolves under the Hindu Succession Act. Rules differ based on whether the deceased is male or female.

Both male and female Hindus are covered equally under the Act.



Intestate Succession — Hindu Male

Class I Heirs — 16 in Total

After the 2005 Amendment, daughters enjoy **equal rights with sons**. Four heirs were added.

Rule of Distribution

All Class I heirs inherit **simultaneously and equally**.

If no Class I heir exists, property devolves to **Class II heirs** entry-wise — a higher entry excludes all lower entries.

- Father
- Brother, Sister
- Brother's/Sister's children

Son &
Daughter

Widow &
Mother

Children of
Predeceased
Son/Daughter

Widow of
Predeceased
Son

Further Order of Devolution

Agnates

Cognates

Escheat

When no Class I or II heirs exist, the Act follows a clear hierarchy — first agnates, then cognates, and finally escheat to the Government.

Agnates

Relatives related **wholly through males**. Example: Father's brother, Father's brother's son.

Cognates

Relatives **not wholly through males**. Example: Mother's brother, Sister's son.



Intestate Succession — Hindu Female

Sections 15 & 16 of the Hindu Succession Act govern succession to a Hindu female's property.

Order of Succession

0 1

Sons, Daughters & Husband

0 2

Heirs of the Husband

0 3

Mother & Father

0 4

Heirs of the Father

0 5

Heirs of the Mother

Special Rules — Source of Property

Where property inherited by a female came from:

- **Father or Mother**
- **Husband or Father-in-law** (Stridhan)

If she dies **without children**, such property may **revert to the source** from which it came.



Coparcenary Property & the 2005 Amendment

Before 2005

Only **sons** were coparceners by birth in a Hindu Undivided Family.

After 2005 Amendment

Daughters also became coparceners by birth with the **same rights and liabilities as sons**.

A daughter can now **demand partition** and can even become the **Karta** if she is the senior-most coparcener.



Important Principles of Succession



Rule of Representation

Children of a predeceased heir inherit the **share their parent would have received**.



Per Capita Distribution

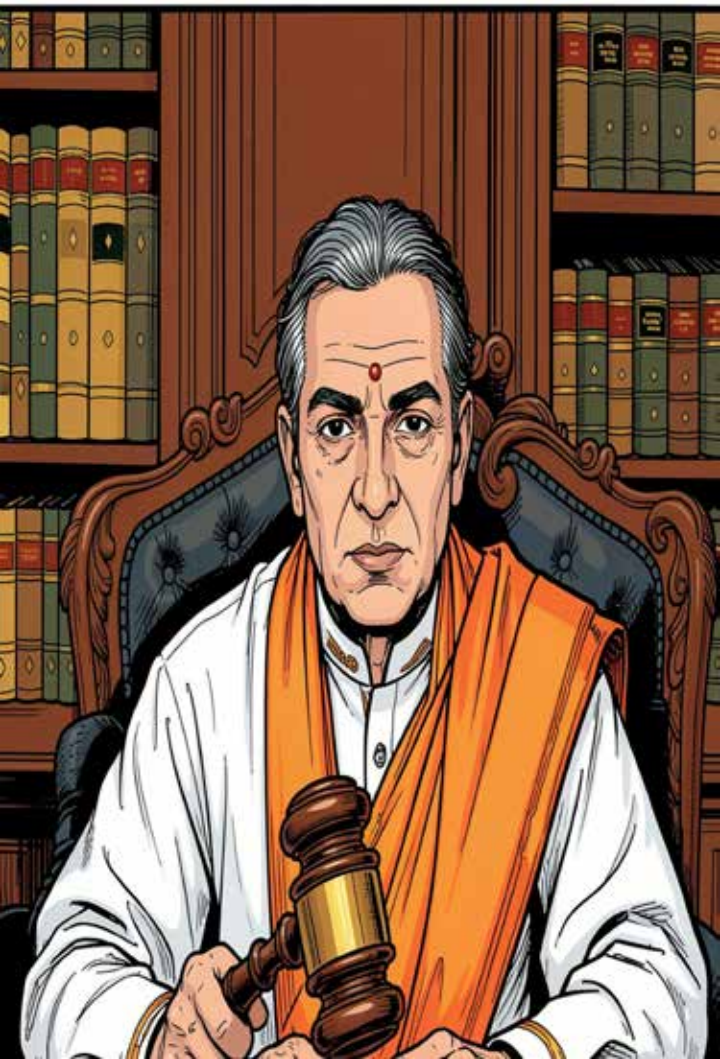
Class I heirs generally inherit **equally**, unless the Act provides otherwise.



Full Blood Preferred

Where heirs are in the same category, a relative of **full blood** is preferred over one of **half blood**.





Partition under Hindu Law

Under the Hindu Succession Act, 1956, a **coparcener** has a right to demand partition of the joint family property. Partition results in the **division of property** among coparceners, giving each a separate and definite share. After the 2005 Amendment, **daughters also have the right to demand partition** as coparceners by birth.

- ❏ **Key Takeaway:** The Hindu Succession Act, 1956 (as amended in 2005) ensures equal inheritance rights for sons and daughters, while respecting customary laws for excluded communities.



Partition under Hindu Law

Partition under Hindu law is the legal process by which the joint status of a Hindu family is brought to an end and the ancestral and joint family property is divided among the coparceners according to their respective shares.

It becomes important to establish one's own separate status and economic stability.

All ancestral properties are joint properties, but all joint properties are not ancestral, since property acquired by the members of a joint family through joint labour or with the assistance of joint family funds may also become joint property.

Privy Council: 8 MIA 91

The meaning of ancestral property denotes property inherited by birth from paternal ancestors, i.e.:

- Father's father
- Father's father's father

Partition may be effected by a clear declaration of intention to separate, and such intention must be communicated to the other members of the family.

AIR 1968 SC 1076



Joint Hindu Family

A Joint Hindu Family consists of:

Common ancestor.

His lineal descendants.

Their wives.

Their unmarried daughters.

A Joint Hindu Family may exist even without owning joint property.



Coparcenary

After the Hindu Succession (Amendment) Act, 2005, coparceners include:

Son

Daughter

Grandson

Granddaughter

Great-grandson

Great-granddaughter

Daughters have the same rights and liabilities as sons.



Property Subject to Partition

Partition generally covers:

Ancestral
property.

Joint family
property.

Property
acquired with
joint family
funds.

Self-acquired property is not subject to partition unless it has been voluntarily blended with joint family property.



Who Can Demand Partition?

A partition may be demanded by:

- Any coparcener (including a daughter).
- Minor coparcener through guardian (if beneficial).
- Legal representatives in certain situations.
- Purchaser of an undivided share (through court proceedings).



Modes of Partition

A partition may occur by:



Oral partition.



Registered partition deed.



Arbitration.



Court decree.

Registration is advisable whenever immovable property is partitioned by an instrument.

Courts encourage family settlements because they:

- Preserve family harmony.
- Avoid prolonged litigation.

Family settlements are generally upheld if entered into voluntarily.

Partition may also take place:

- By a registered partition deed.
- Through a court decree.



Types of Partition

(A) Total Partition

The entire joint family property is divided and the joint status comes to an end.

(B) Partial Partition

Partition may relate to:

- Certain properties only; or
- Some members only.

Although recognised under Hindu law, partial partition has limited recognition for tax purposes.



Essentials of a Valid Partition

1

Clear intention to separate.

2

Communication of intention.

3

Identification of joint family property.

4

Determination of shares.

5

Division by metes and bounds, where practicable.



Burden of Proof

Joint Family Property

The person asserting the existence of joint family property must prove the same by evidence.

Prior Partition

Prior partition must also be proved by evidence.



Effect of Partition

After partition:

Coparcenary comes to an end (wholly or partially).

Each member becomes the absolute owner of his or her allotted share.

Joint possession ceases.

Separate enjoyment of the property begins.



THANK YOU

Assisted by

Sailesh Anand ADV
Sukesh Ranjan ADV

Technical Assistance
Piyush Priyank Bsc (IT)