

FROM STATE SUBJECTS TO DOMICILE HOLDERS: THE LEGAL EVOLUTION OF PROPERTY INHERITANCE FOR TRIBAL WOMEN IN JAMMU & KASHMIR

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ABSTRACT

In 2019, the constitutional reorganisation of Jammu and Kashmir abolished a 100-year-old regime of state subject law and introduced a new domicile regime. The effect of this transition on tribal women in the area, mostly belonging to the Gujjar, Bakerwal, Gaddi and Sippi tribes was paradoxical: even as the abrogation of Articles 370 and 35A deprived tribal women of the state of some discriminatory measures which had disenfranchised them, it also introduced new legal uncertainties concerning the interaction between personal law and customary successory. The paper critically reviews the changing legal status of tribal women in Jammu and Kashmir through three different periods Dogra state subject regime, the constitutional period under the J&K Constitution (1956) and the post-reorganisation period and assesses whether the shift of legal identity of tribal women in Jammu and Kashmir has been substantive or merely rhetoric improvement of property inheritance rights of tribal women. It is argued in the paper that the continuation of Section 2(2) of the Hindu Succession Act 1956 which does not apply to the members of Scheduled Tribe, coupled with the lack of effectiveness of the customary rules in terms of succession, together with the fact that the Forest Rights Act 2006 has not been implemented in Jammu and Kashmir in the first place, leaves tribal women in a legal vacuum. The three solutions to this structural deficit are referred to as legislative reform, judicial activism and community level legal literacy.

Keywords: Tribal women, Jammu and Kashmir, property inheritance, domicile law, Article 35A, Hindu Succession Act, customary law, Scheduled Tribes

I. Introduction

In Jammu and Kashmir, the issue of land has been inextricably linked to the legal identity of a person, most of the twentieth century. The condition of being a subject of the State was to have not just administrative status but a complex of rights to immovable property, to the employment of the public, and to educational privileges, which were categorically inaccessible to persons not a part of that

special group. When this structure failed because of Jammu and Kashmir Reorganisation Act 2019,¹⁶¹⁰ it brought a radical realignment of the belonging and ownership within the region.

To tribal women especially of Gujjar and Bakerwal tribes who were granted the Scheduled Tribe status under the Constitution (Scheduled Tribes) Order (Amendment) Act

¹⁶¹⁰ Jammu and Kashmir Reorganisation Act 2019 (Act 34 of 2019).

1991.¹⁶¹¹ the reorganisation had results which could not easily be characterised. They are, at the same time, the nominal beneficiaries of progressive discourse concerning gender equality and the real victims of a legal framework which has never fully safeguarded their rights to inheritance. The direction of this contradiction is followed in this paper.

The investigation is not historical only. Superior Court, in *Kamala Neti* (by her death; by her representatives) v *Special Land Acquisition Officer*,¹⁶¹² in 2022 reiterated the worrying fact that Section 2(2) of the Hindu Succession Act 1956 makes Section 2(2) of the Act inapplicable to Scheduled Tribes without a particular notification a notification which has never been made in relation to the Scheduled Tribes of Jammu and Kashmir. In *Ram Charan v Sukhram*, much more recently,¹⁶¹³ In 2025, the Supreme Court applied Article 14 of the Constitution to determine that tribal women should not be denied their right to inheritance based on unproven or discriminatory custom, as it infringed upon constitutional rights to equality. It is these judicial developments, set in the context of the reorganized legal order in Jammu and Kashmir, which constitute the main source of analysis in this paper.

The research proceeds in six parts: a historical account of the state subject framework and its gendered operation; an analysis of the tribal communities of Jammu and Kashmir and the customary norms governing property succession among them; an examination of the J&K constitutional period and the judicial evolution of women's property rights; a critical analysis of the 2019 reorganisation and the new domicile framework; a focused engagement with the central legal problem of tribal women's exclusion from the Hindu Succession Act; and, finally, a set of prescriptive recommendations for legal reform.

¹⁶¹¹ Constitution (Scheduled Tribes) Order (Amendment) Act 1991 (Act 15 of 1991).

¹⁶¹² *Kamla Neti* (deceased; through legal representatives) v *Special Land Acquisition Officer* (2023) 3 SCC 528.

¹⁶¹³ *Ram Charan v Sukhram* 2025 INSC 865.

II. The Dogra State Subject Framework and Its Gendered Architecture

The legal foundations of property ownership in Jammu and Kashmir predate the Indian Constitution by several decades. Maharaja Hari Singh's Notification of 1927 and its successor of 1932 established the category of "state subject" a designation that determined eligibility for land ownership, government service, and civic participation.¹⁶¹⁴ These instruments were not designed with gender equity in mind. The state subject framework was fundamentally patriarchal in its architecture: descent through the male line was the primary conduit of status, and women who married outside the state were presumed to have forfeited their entitlements by virtue of coverture-adjacent assumptions embedded in the administrative practice of the time.

This construction of the Dogra period was later to be transferred to the constitutional order of independent India in the combined action of Articles 370 and 35A of the Constitution of India. Article 35A, inserted by the Constitution (Application to Jammu and Kashmir) Order 1954 under Article 370(1)(d), empowered the Jammu and Kashmir State Legislature to define permanent residents (PRs) of the state and to confer upon them special rights and privileges with respect to immovable property.¹⁶¹⁵ The practical consequence was that women permanent residents who married men who were not permanent residents termed non-permanent residents (NPRs) were treated as having lost their permanent resident status, and with it their right to inherit or own property in the state.

The discriminatory weight of this provision fell disproportionately upon women from marginalised communities, including tribal women. The Gujjar and Bakerwal tribes, pastoralist and semi-nomadic by tradition, inhabit a geographic and social space that has

¹⁶¹⁴ State Subject Notification of 1927 (Jammu and Kashmir), Notification No. 1-L/84; State Subject Notification of 1932.

¹⁶¹⁵ Constitution (Application to Jammu and Kashmir) Order 1954, CO 48, promulgated under art 370(1)(d) of the Constitution of India.

always involved movement across administrative boundaries between Jammu and Kashmir, Himachal Pradesh, and Uttarakhand.¹⁶¹⁶ For women from these communities, whose seasonal migration patterns often required engagement with communities and territories beyond the formal borders of the state, the gendered reading of permanent resident status created real threats to property security.

The landmark judgment of the Jammu and Kashmir High Court in *State of Jammu & Kashmir v Susheela Sawhney*¹⁶¹⁷ in 2002 corrected one aspect of this injustice, holding that a daughter of a permanent resident who married a non-permanent resident would not lose her own permanent resident status. But the court did not afford the same protection to the children of such unions, which created an asymmetry in the structure: children of a female permanent resident who married a male non-permanent resident did not automatically acquire the status of the mother but children of a female permanent resident who married a male non-permanent resident did. This asymmetry was especially acute to tribal communities where inter-tribal and cross-boundary marriages are not uncommon.

It is also significant that even after the Sawhney judgment, legislative instability remained. The Permanent Residents (Disqualification) Bill 2004, introduced by the then PDP-Congress coalition government, sought to reimpose the very discrimination that the court had struck down a legislative counter-move that, though ultimately not enacted due to political pressure, illustrated the precariousness of women's rights in a framework that depended on the legislature's continuing goodwill.¹⁶¹⁸

III. Tribal Communities of Jammu and Kashmir: Identity, Custom, and Land

Jammu and Kashmir is home to twelve notified Scheduled Tribe communities. Of these, eight communities including the Batli, Beda, Bot, Brookpa, Changpa, Garra, Men, and Purigpa received Scheduled Tribe status in 1989, while the Gujjars, Bakerwals, Gaddis, and Sippis were included in 1991 under the Constitution (Scheduled Tribes) Order (Amendment) Act 1991.¹⁶¹⁹ Together, the Gujjar and Bakerwal communities constitute approximately 11.9 per cent of Jammu and Kashmir's population as per the 2011 Census roughly 1.5 million persons making them the third largest ethnic group in the region after Kashmiris and Dogras.¹⁶²⁰

The Gujjar and Bakerwal communities are predominantly Muslim and practice transhumance, moving seasonally between the alpine meadows (margs) of Kashmir and the lower Shivalik ranges near Jammu.¹⁶²¹ Their customary legal framework for property and succession is an amalgam of Islamic inheritance principles, tribal custom, and informal community norms adjudicated through traditional councils (panchs). This layered normativity creates both flexibility and uncertainty flexibility because it allows community disputes to be resolved through consensus, and uncertainty because the content of these customs is rarely codified and frequently contested, particularly when women assert inheritance claims.

Under classical Islamic inheritance law applicable through the Muslim Personal Law (Shariat) Application Act 1937¹⁶²² daughters are entitled to half the share of sons, wives receive one-eighth of the estate when children exist,

¹⁶¹⁶ Rao A, *Autonomy: Life Cycle, Gender and Status among Himalayan Pastoralists* (Berghahn Books 1998).

¹⁶¹⁷ *State of Jammu & Kashmir v Susheela Sawhney* AIR 2002 J&K 57.

¹⁶¹⁸ Permanent Residents (Disqualification) Bill 2004 (Jammu and Kashmir Legislative Assembly Bill); see also IPCS, 'Women's Rights and the Jammu and Kashmir Reorganisation Act, 2019' (Institute of Peace and Conflict Studies, 2020).

¹⁶¹⁹ Constitution (Scheduled Tribes) Order (Amendment) Act 1991 (Act 15 of 1991); see also Quest Journals, 'Socio-Cultural Insight of Gujjar and Bakerwal in Jammu and Kashmir' (2022) 10(1) Quest Journals of Research in Humanities and Social Science.

¹⁶²⁰ Census of India 2011, Population Enumeration Data, Jammu and Kashmir.

¹⁶²¹ Bakarwal people (Wikipedia, accessed 14 April 2026) <https://en.wikipedia.org/wiki/Bakarwal>.

¹⁶²² Muslim Personal Law (Shariat) Application Act 1937 (Act 26 of 1937), s 2.

and mothers are entitled to one-sixth.¹⁶²³ These proportions remain unaffected by tribal customary norms, at least in formal legal terms. However, the socio-cultural practice among the Gujjar and Bakerwal communities has historically been resistant to daughters asserting their Islamic inheritance rights. The transmission of property is mainly by male agnates and the daughters who assert their claims in the family are often made to face social isolation or forced to sign relinquishment deeds.¹⁶²⁴ This tension between formal Islamic law and patriarchal custom is not unique to these communities but is acutely compounded for tribal women by their relative lack of access to legal institutions, low literacy rates the 2011 Census recorded a literacy rate of approximately 50 per cent among the Gujjar-Bakerwal community¹⁶²⁵ and physical remoteness from courts and revenue offices.

The other tribal communities the Gaddis and Sippis have their own distinct succession customs that similarly tend to privilege male heirs in matters of land transmission, though the precise content of these customs varies by locality and has evolved over time with partial Hinduisation of certain subgroups. The doctrinal implication of this Hinduisation is significant and is addressed in detail in Part V below.

IV. The J&K Constitutional Period: Judicial Evolution and Its Limits

The Jammu and Kashmir Constitution of 1956 created an internal legal order that operated in parallel with, and often divergent from, the Constitution of India. In matters of property and inheritance, this dual constitutional framework produced what might be characterised as a hierarchy of exclusions: first, the exclusion of women from property rights based on the gendered operation of the permanent resident framework; second, the exclusion of tribal women from the protective ambit of central

personal law statutes; and third, the exclusion of marginalised tribal communities from effective access to judicial remedies.

The legal development of the time was, however, significant, although stalling. The *Susheela Sawhney* case of 2002 was a major corrective action by the J&K High Court which based the status of permanent residents of women on their own independent legal personality and not on their marital status.¹⁶²⁶ However, the court's reasoning, rooted in the specific language of the J&K Constitution's permanent resident provisions, left unaddressed the deeper structural problem: the absence of any comprehensive legal framework governing property inheritance for tribal women that could be enforced independently of the permanent resident category.

Across India, the Supreme Court's engagement with tribal women's inheritance rights during this period was shaped by the significant case of *Madhu Kishwar v State of Bihar*,¹⁶²⁷ decided in 1996. In that case, the majority declined to strike down tribal customary laws excluding women from inheritance, reasoning that such a declaration would "bring about chaos in the existing law" and that the court was reluctant to characterise tribal customs as violative of Articles 14 and 15.¹⁶²⁸ The minority view in that case that the general principles of the Hindu Succession Act 1956 were consistent with justice, equity, and good conscience and should apply to tribal women did not carry the day, but would later assume renewed importance in subsequent judicial reasoning.¹⁶²⁹

The Hindu Succession Act 1956 itself presented a categorical problem. Section 2(2) of the Act provides that "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

¹⁶²³ *ibid*; see also Rising Kashmir, 'Why Women's Property Rights in Kashmir Remained Unaltered?' (22 November 2025).

¹⁶²⁴ *ibid*.

¹⁶²⁵ National Alliance of People's Movements, Statement on Gujjar Bakerwal Rights (July 2023).

¹⁶²⁶ *State of Jammu & Kashmir v Susheela Sawhney* (n 8).

¹⁶²⁷ *Madhu Kishwar v State of Bihar* (1996) 5 SCC 125.

¹⁶²⁸ *ibid*.

¹⁶²⁹ *ibid* (minority judgment per Fathima Beevi J).

Gazette, otherwise directs."¹⁶³⁰ No such notification has been issued for the Scheduled Tribes of Jammu and Kashmir. This exclusion meant that, while the Hindu Succession (Amendment) Act 2005 transformed the property rights of Hindu women across India by recognising daughters as coparceners with equal rights to ancestral property, tribal women including those in Jammu and Kashmir remained categorically outside the protection of that transformative legislation.¹⁶³¹

Former Chief Minister Mehbooba Mufti's abolition of stamp duty on property registered in women's names, reducing it to zero from five per cent, represented one of the rare administrative interventions during the J&K constitutional period that materially incentivised women's property ownership.¹⁶³² This policy, however, changed after the reorganisation in August 2019, which demonstrates the weakness of executive-level protections which are not backed by statute.

V. The 2019 Reorganisation: New Architecture, Old Exclusions

The Jammu and Kashmir Reorganisation Act 2019 bifurcated the state of Jammu and Kashmir into two Union Territories Jammu and Kashmir (with a legislature) and Ladakh (without) with effect from 31 October 2019.¹⁶³³ The legislation extended 106 central laws to the Union Territory, repealed 153 state laws, and abolished the J&K Legislative Council.¹⁶³⁴ Crucially, the constitutional foundation of the permanent resident framework Articles 370 and 35A was rendered inoperative by a Presidential Order of 5 August 2019.¹⁶³⁵

The replacement of the permanent resident category by the domicile category was effected through the Jammu and Kashmir

Reorganisation (Adaptation of State Laws) Order 2020.¹⁶³⁶ Under the new domicile regime, a person qualifies as a domicile if they have resided in the Union Territory for fifteen years, or studied there for seven years and appeared in Class 10 or Class 12 examinations, or if they are registered migrants, or if they are children of certain categories of Central Government employees who have served in J&K for ten years.¹⁶³⁷ For J&K women who had married outside the state, the new framework carried an ostensible advantage: for the first time, such women could obtain domicile certificates and thereby access the privileges associated with domicile status.¹⁶³⁸

This shift has been presented by the Union Government as a correction of a historical gender injustice. There is substance to that claim. The pre-2019 framework had, until the Sawhney judgment and its partial corrections, effectively penalised women for exercising the choice of whom to marry. The domicile framework removed the matrimonial nexus from the determination of a woman's entitlement to state-linked benefits.

However, to evaluate the reorganisation solely through the prism of the permanent resident-domicile transition would be to mistake the removal of one discriminatory mechanism for the creation of a genuinely just inheritance framework. Several structural deficits persist and, in certain respects, have deepened.

First, the extension of central laws to Jammu and Kashmir did not resolve the fundamental problem posed by Section 2(2) of the Hindu Succession Act 1956. The Act was already a central legislation; its extension to J&K does not alter its internal exclusion of Scheduled Tribe members from its operation. Tribal women in Jammu and Kashmir remain as categorically excluded from the protections of the Hindu Succession Act 2005 amendment as they were

¹⁶³⁰ Hindu Succession Act 1956 (Act 30 of 1956), s 2(2).

¹⁶³¹ Hindu Succession (Amendment) Act 2005 (Act 39 of 2005), s 6; see also Bar and Bench, 'Succession Rights of Tribal Women: Time to Make Them Gender Equal' (9 April 2023).

¹⁶³² Rising Kashmir (n 15).

¹⁶³³ Jammu and Kashmir Reorganisation Act 2019 (Act 34 of 2019), s 2.

¹⁶³⁴ *ibid*; see also Wikipedia, 'Jammu and Kashmir Reorganisation Act, 2019' (accessed 14 April 2026).

¹⁶³⁵ Constitution (Application to Jammu and Kashmir) Order 2019, CO 272.

¹⁶³⁶ Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order 2020, SO 1229(E).

¹⁶³⁷ *ibid*; see also The Print, 'What New J&K Domicile Rule Is and How It Impacts Residents of the Union Territory' (3 April 2020).

¹⁶³⁸ South Asia Monitor, 'Jammu and Kashmir Domicile Law to Benefit Women Married to Outsiders' (2020).

before 2019. The reorganisation has not triggered any Central Government notification extending the Act to the Scheduled Tribes of Jammu and Kashmir.

Second, twenty-five existing state laws were repealed under the Jammu and Kashmir Reorganisation (Adaptation of State Laws) Order 2020 and 113 others were adapted with changes made. Some of the laws that were repealed included the tools that however imperfectly offered the regulatory frameworks of land and property particular to the social circumstances of Jammu and Kashmir. The shift to a more centralized legislative system with no commensurate focus on the vacuum presented by the customary succession law on tribal communities has created legal ambiguity.

Third, the Forest Rights Act 2006,¹⁶³⁹ whose implementation in Jammu and Kashmir was long overdue (the Act could not be extended to J&K before 2019 because of the state's autonomous legislative domain), was finally made applicable following the reorganisation. For Gujjar and Bakerwal communities, the Forest Rights Act offers a potential pathway to formal land rights including individual and community forest rights over lands traditionally occupied and cultivated. However, as tribal rights scholars and community leaders have noted, implementation has been slow and the Act's gender-transformative potential has not been realised, primarily because tribal women rarely appear as primary claimants in the claim-filing process.¹⁶⁴⁰

VI. The Central Legal Problem: Tribal Women between Custom and Statute

The deepest legal problem confronting tribal women in Jammu and Kashmir in matters of property inheritance is structural and triangular in character: they are excluded from the Hindu Succession Act 1956 by Section 2(2); they are inadequately served by customary succession

norms that predominantly favour male heirs; and the Muslim Personal Law (Shariat) Application Act 1937, while formally applicable to the Muslim Gujjar and Bakerwal communities, operates in practice through a social enforcement deficit that systematically disadvantages women.

The interactions between these three normative frameworks, can be explained by a case of a Bakerwal woman whose father dies without a will. She being a Muslim has a right according to Islamic law as it is applied under Shariat Application Act to half of the share of her brothers in the inheritance. The tribal communities were not left out by the Muslim Personal Law (Shariat) Application Act 1937 and, so, by law, her entitlement under Islamic law to inheritance takes precedence over the exclusionary clause of the Hindu Succession Act. The real implementation of this right, however, is constrained by: the revenue authorities bringing about a mutation in her name; the customary practices in the community not to override the formal legal right; and the woman herself having the information, resources and the social support to exercise her rights within the revenue administration and, where it is needed, a court.

All these situations are patented against tribal women in Jammu and Kashmir. Revenue mutations are frequently delayed or resisted by male relatives. The tribal panchayat (informal council) which has de facto authority to resolve disputes in most Gujjar and Bakerwal settlements leans towards customary norms instead of the formal legal principles and the norms have been shown to be against daughters and widows in land issues.¹⁶⁴¹ Literacy rates, as noted, remain low particularly for women reducing the realistic capacity for self-representation before formal institutions.

For Hindu tribal women primarily among the Gaddi and certain Changpa communities the problem takes a different form. The doctrine of "Hinduisation," which Indian courts have

¹⁶³⁹ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Act 2 of 2007).

¹⁶⁴⁰ Caravan Magazine, 'Gujjars and Bakerwals Bear the Brunt of BJP's "Land Jihad" Bogey in Jammu and Kashmir' (30 December 2020).

¹⁶⁴¹ Rao (n 7).

developed to determine whether a tribal community has sufficiently adopted Hindu customs and practices to fall within the Hindu Succession Act, creates a perverse incentive structure.¹⁶⁴² In *Labishwar Manjhi v Pran Manjhi*,¹⁶⁴³ the Supreme Court held that where evidence disclosed that parties belonging to a Scheduled Tribe were practising Hindu customs, the Hindu Succession Act would apply to inheritance. The Himachal Pradesh High Court in *Bahadur v Bratiya*¹⁶⁴⁴ went further, holding that gender discrimination violates fundamental rights and that daughters are entitled to equal shares. However, the determination of whether a community has been "sufficiently Hinduised" is fact-sensitive and unpredictable, creating litigation uncertainty rather than assured protection.

This structural issue was completely revealed in the 2022 Supreme Court decision in the *Kamla Neti* case. The Court affirmed that women of Scheduled Tribes were not subject to the Hindu Succession Act by virtue of Section 2(2); but at the same time noted that the daughters of the tribals deserve equal rights to the daughters of the non-tribals in respect of property and that the Parliament needed to move promptly to amend the Act. The Supreme Court in 2024, in further hearings, again called upon Parliament to make the amendments needed to make tribal women eligible to succession.¹⁶⁴⁵ In 2024, in further proceedings, the Supreme Court again urged Parliament to make necessary amendments to secure survivorship rights for tribal women.¹⁶⁴⁶ These judicial exhortations, however, carry no binding legislative force, and Parliament has yet to act.

The most significant recent development is the Supreme Court's 2025 decision in *Ram Charan v*

Sukhram.¹⁶⁴⁷ The court held that in the absence of a proven custom permitting or denying inheritance rights, a tribal woman could not be denied her equal share in ancestral property on the basis of unproven or discriminatory customary norms. Invoking Article 14, the court reasoned that customs excluding women from inheritance must be proven, rational, non-arbitrary, and consistent with public policy a standard that most tribal customs denying women's inheritance rights cannot satisfy.¹⁶⁴⁸ This decision, while not directly in the Jammu and Kashmir context, has profound implications for tribal women in the Union Territory whose customary norms similarly lack formal codification or empirical documentation.

VII. The Constitutional Dimension: Articles 14, 15, 21, and the Equality Deficit

The constitutional arguments for comprehensive inheritance rights for tribal women in Jammu and Kashmir are formidable. Article 14 guarantees equality before the law and equal protection of laws to all persons within the territory of India. The Supreme Court has consistently held that Article 14 prohibits not only formal discrimination but also substantive inequality particularly where differential treatment has no rational nexus to a legitimate legislative objective.¹⁶⁴⁹

The non-tribal women who are excluded in the Hindu Succession Act 1956 due to Section 2(2) present a unique Article 14 challenge: since non-tribal daughters can enjoy coparcenary rights due to the 2005 amendment, then on what basis are tribal daughters not given the same rights? The solution provided to the preservation of tribal customs collapses when we analyze these customs as being not provable, conflicting with each other, and unequal to each other. Article 15(3) allows the State to introduce special treatment of women and children; it does not allow and even

¹⁶⁴² Down to Earth, 'How Tribal Women in India Are Subjected to "Hinduisation" to Be Able to Access Right to Inherited Property' (10 January 2023).

¹⁶⁴³ *Labishwar Manjhi v Pran Manjhi* (2000) 8 SCC 587.

¹⁶⁴⁴ *Bahadur v Bratiya* AIR 2016 HP 58.

¹⁶⁴⁵ *Kamla Neti* (n 3); see also Lexology, 'The Supreme Court of India Upholds That a Woman Belonging to a Scheduled Tribe (ST) Is Entitled to an Equal Share in Inherited Tribal Land' (2 May 2023).

¹⁶⁴⁶ LiveLaw, 'Supreme Court Upholds Tribal Woman's Inheritance Rights; Urges Parliament to Extend Hindu Succession Act to Scheduled Tribes' (19 December 2024).

¹⁶⁴⁷ *Ram Charan v Sukhram* (n 4).

¹⁶⁴⁸ *ibid*; Legal Bites, 'Can Tribal Women Be Denied Equal Inheritance Rights? What Did the Supreme Court Say?' (23 July 2025).

¹⁶⁴⁹ *E P Royappa v State of Tamil Nadu* (1974) 4 SCC 3; *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

expressly deplores the inclusion of special treatment of women that effectively excludes women as a matter of right to property. Article 21's expanded interpretation as encompassing the right to live with dignity, economic security, and equal access to resources provides a further constitutional anchor. The Supreme Court's reading of Article 21, particularly in the context of women's property rights as articulated in *Vineeta Sharma v Rakesh Sharma*¹⁶⁵⁰ where the court affirmed that daughters become coparceners by birth and not by the father being alive at the time of the 2005 amendment has implications for the argument that tribal daughters should similarly be entitled to equal shares. While *Vineeta Sharma* was decided under the Hindu Succession Act and technically does not bind tribal succession, its constitutional logic that a daughter's right to inherit is not a privilege but an incident of birth and equality has persuasive force that transcends the Act's formal boundaries.

The fact that the tribal women in Jammu and Kashmir are especially vulnerable is further compounded by the fact that it intersects with gender and ethnicity. A significant part of the Gujjar and Bakerwal population is at a disadvantage in a variety of ways: they are women in a patriarchal society, they are a religious minority in the Union Territory, they are in communities with a low literacy rate, and they are located in geographically isolated regions with limited access to legal assistance and courts. This compound vulnerability requires a comparatively strong legislative response in constitutional terms that recognizes a multi-faceted approach to governance that is responsive to gender instead of gender alone.

VIII. Towards Reform: Legislative, Judicial, and Community Pathways

The analysis above reveals a structural lacuna that cannot be addressed by judicial interpretation alone, necessary as judicial intervention has been. A comprehensive reform

agenda for property inheritance rights of tribal women in Jammu and Kashmir requires simultaneous engagement at three levels.

Legislative Reform. The most urgent requirement is an amendment to Section 2(2) of the Hindu Succession Act 1956 to enable its application to Scheduled Tribe members, either by removing the exclusion entirely or by empowering tribal communities to opt into its framework through a democratic process that includes tribal women's voices. The Supreme Court has twice in 2022 and again in 2024 called upon Parliament to make this amendment.¹⁶⁵¹ The J&K-specific dimension of this reform would require that the Central Government issue a notification extending the Hindu Succession Act to the Scheduled Tribes of the Union Territory, which it has the authority to do under Section 2(2) itself. Such a notification would immediately alter the legal landscape for the estimated twelve tribal communities of Jammu and Kashmir.

Alongside this, the implementation of the Forest Rights Act 2006 in Jammu and Kashmir must be expedited and reformed to ensure gender-inclusive titling. The Act's provisions for individual forest rights, community forest rights, and habitat rights for nomadic communities offer a potentially transformative mechanism for formalising the land relationship of Gujjar and Bakerwal communities. Implementing agencies must be required to record women as joint titleholders in all Forest Rights Act claims, removing the bureaucratic default of recognising only male household heads.¹⁶⁵²

Judicial Activism. The *Ram Charan* decision of 2025 opens a significant doctrinal avenue for tribal women in Jammu and Kashmir to challenge denials of inheritance rights before courts. Where a tribal community's customary norms cannot be proven through evidence and, as the Supreme Court noted, customs must be shown to be reasonable and consistent with public policy courts can apply the

¹⁶⁵⁰ *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1.

¹⁶⁵¹ *Kamla Neti* (n 3); LiveLaw (n 40).

¹⁶⁵² Caravan Magazine (n 33); Forest Rights Act 2006 (n 32), ss 3, 4, 5.

principles of justice, equity, and good conscience under Article 14 to grant women their equal shares.¹⁶⁵³ The J&K High Court should develop a coherent and progressive jurisprudence along these lines, taking cognisance of the specific social and geographic vulnerabilities of tribal women in the Union Territory.

Revenue courts and district administrations too, play a critical role in making sure that mutations of property after the death of a tribal man are not made on a case-by-case basis without investigation into the right of the female heirs to inheritance. An administrative reform that would have a minimal cost but a high impact would be to make mandatory a procedural requirement that all mutation proceedings in tribal areas must include a notice to female relatives and record their consent or claim.

Community Legal Literacy. In Jammu and Kashmir, the legal rights of tribal women are formal to a large extent as compared to their actual implementation. The gap could be closed by a thorough legal literacy programme, which would be provided by the mobile schools and seasonal education centres that are currently being established among the Gujjar and Bakarwal communities.. Examples of issues which should be covered by such a programme are the Islamic inheritance rights under the Shariat Application Act, the rights under the Forest Rights Act and the procedure to be followed in case of denied mutation before revenue authorities. Intermediaries between the marginalised women and formal legal institutions can be the tribal women organisations and community paralegal workers who have been trained in both the formal and customary laws.

IX. Conclusion

The Jammu and Kashmir case of the shift of a state subject (state citizen) to that of a domicile holder (permanent resident) brings out an

underlying reality in terms of legal reform; that alteration of legal identity does not necessarily result in alteration of the substantive rights of individuals. To tribal women in this Union Territory, the abrogation of Articles 370 and 35A eliminated one level of discriminatory exclusion namely the gender-based discrimination based on permanent resident status which punished women who married outside the state, but much deeper-rooted, structural exclusion was still largely in place. The origins of this more profound structure are as follows: (a) that the Hindu Succession Act does not apply to members of Scheduled Tribes; (b) that the traditional laws of the Hindu succession are patriarchal; and (c) that the structural impediments do not allow tribal women to enjoy the formal rights they do.

The 2020 Domicile framework is not an accomplishment in its own right, at best it is a building block to the future of reforms. The 'Forest Rights Act, 2006' which is now in effect in Jammu and Kashmir too, promises real potential in the formalization of the land-related rights of tribal populations. But the hope of this Act, which is to bring a positive change to the position of women, will not be fulfilled unless the administration takes the initiative to make sure that women are incorporated into the land ownership titles. In the cases of Kamla Neti and Ram Charan, the Supreme Court has directed the constitutional course towards equality- but it is not able to make laws on the behalf of parliament.

The women of Gujjar, Bakarwal, Gaddi and Sippi communities who live in Jammu and Kashmir do not seek special privileges. He are merely claiming that right to which the Constitution of India has granted every citizen the right of inheritance to that which the law has vested in them; the right to have their property registered in the revenue books; the right to live without the fear that some patriarchal custom, a careless governmental apparatus, or an old Act of law, will deprive them of their economic security. The law of the free Indian nation has all the machinery needed to bring these rights to

¹⁶⁵³ *Ram Charan v Sukhram* (n 4).

citizens. The only things that have been wanting are the political will to ensure that this framework is operationalized to the full.

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