

**Unequal Heirs: The Exclusion of Tribal Daughters from the Hindu
Succession Act and the Constitutional Quest for Gender Justice**

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Abstract

Section 2(2) of the Hindu Succession Act, 1956, explicitly excludes Scheduled Tribes from its scope unless the Central Government issues a notification stating otherwise. This statutory exclusion has resulted in a significant legal void for tribal daughters in matters of intestate succession, leaving them governed by customary practices that often deny them inheritance rights. Despite constitutional guarantees of equality (Article 14), non-discrimination (Article 15), and dignity (Article 21), the absence of legislative intervention has entrenched systemic gender injustice within tribal communities. Through a doctrinal and contextual analysis of key Supreme Court judgments—*Kamla Nati v. Special Land Acquisition Officer* and *Tirth Kumar v. Daduram*—this research explores the constitutional conflict between the protection of tribal customs and the imperative for gender justice. The paper also reviews Law Commission reports and representative data to highlight the social and legal impact of this exclusion. It argues that the current legal framework perpetuates a parallel regime of inequality and calls for immediate legislative action to bring tribal daughters within the protective fold of codified succession laws. By integrating legal theory, constitutional values, and socio-legal realities, the study seeks to contribute to ongoing discourse on reforming tribal personal law in a manner that respects cultural identity while ensuring gender equality.

Keywords

Tribal succession rights, Hindu Succession Act, Section 2(2), Scheduled Tribes, gender justice, Article 14, customary law, constitutional equality, inheritance rights, legal pluralism.

Introduction

Legal Background and the Problem Statement

The Hindu Succession Act, 1956 (HSA), was a landmark legislation enacted with the intent to codify and reform Hindu personal law, especially in matters of intestate succession. Aimed at promoting gender equality in property rights, the Act was a progressive step toward dismantling patriarchal structures embedded in traditional inheritance norms. However,

Section 2(2) of the Act presents a significant anomaly—it expressly excludes its application to members of Scheduled Tribes unless the Central Government issues a notification in the Official Gazette stating otherwise. This legislative exclusion, rooted in the special constitutional status accorded to Scheduled Tribes under Article 342, creates a legal vacuum for tribal women, particularly daughters, in asserting succession rights. Despite several constitutional guarantees that promote equality (Article 14), prohibit gender-based discrimination (Article 15), and uphold the dignity of individuals (Article 21), tribal daughters remain bereft of the legal safeguards extended to their non-tribal counterparts. This statutory gap perpetuates a regime where customary laws—often patriarchal and inconsistent—continue to govern inheritance in tribal communities, frequently excluding women from inheriting land or property.



Judicial Recognition and Legislative Inertia

Recent jurisprudence has begun to recognize the stark inequity created by this legislative exclusion. In *Kamla Nati v. Special Land Acquisition Officer* (2023), the Supreme Court confronted a scenario where a tribal daughter's claim to compensation was denied due to her exclusion from succession under customary law. The Court observed that the exclusion under

Section 2(2) deprives tribal women of the benefits of beneficial legislation and perpetuates inequality. Similarly, in *Tirth Kumar v. Daduram* (2025), the Court emphasized that while tribal customs are constitutionally acknowledged, they cannot be used as a shield to deny gender justice and constitutional morality. Both judgments illuminate the growing judicial discomfort with discriminatory customary practices and underscore the urgent need for legislative reform. Yet, despite these judicial nudges and the recommendations made in the Law Commission's 174th and 185th Reports, there has been a conspicuous absence of action from the legislature. The Central Government has not issued any notification to bring Scheduled Tribes within the ambit of the HSA, resulting in a persistent policy paralysis that allows inequality to fester under the guise of respecting cultural autonomy.

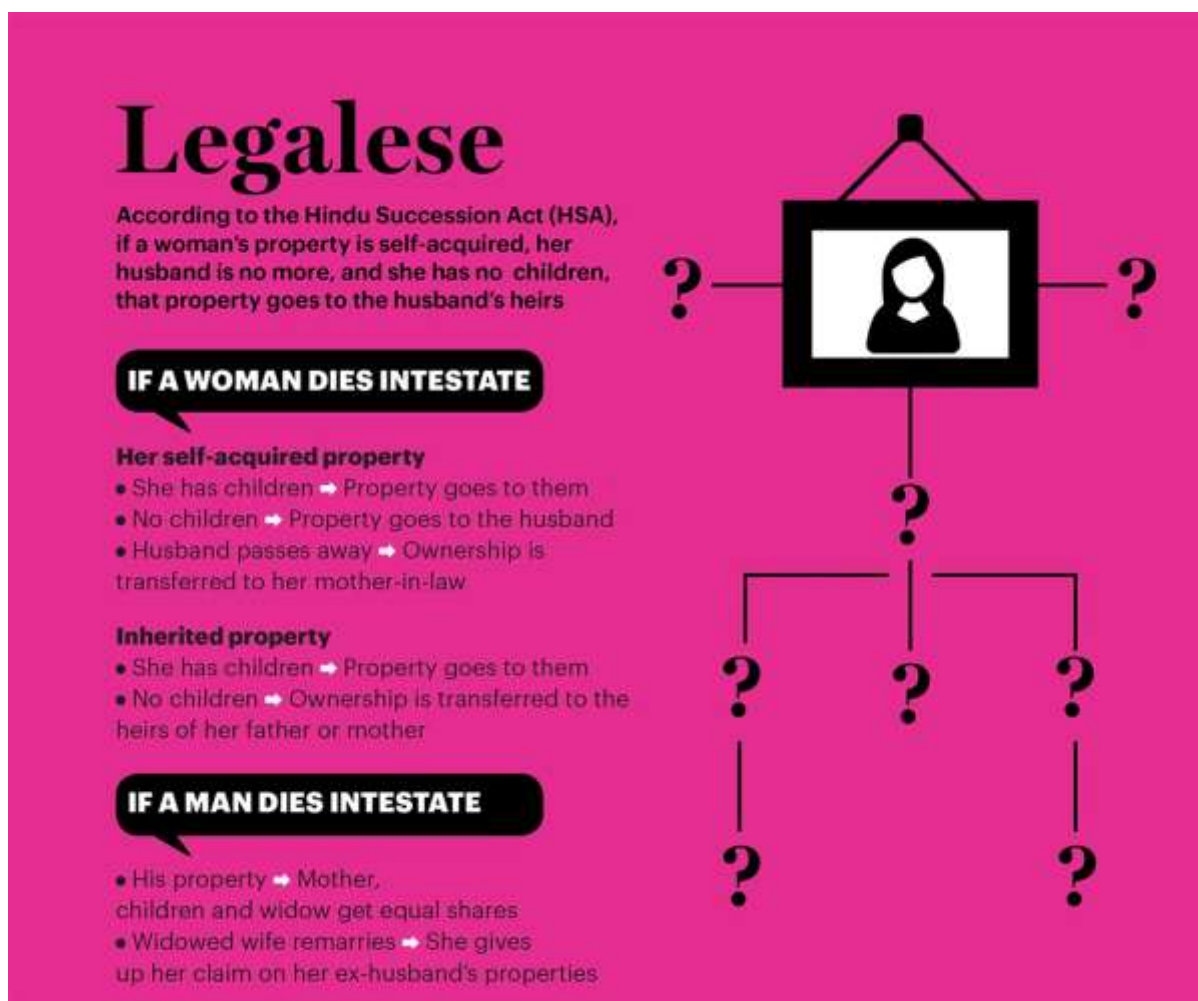
Constitutional Conflict and the Need for Reform

This paper contends that the continued exclusion of Scheduled Tribes from the HSA framework not only undermines the principle of gender equality but also conflicts with India's constitutional vision of justice and dignity for all citizens. While cultural pluralism and the protection of tribal customs are essential elements of India's democratic ethos, they cannot come at the cost of fundamental rights. Article 15(3) of the Constitution empowers the State to make special provisions for women, thereby providing a constitutional basis to override patriarchal customs when they infringe upon gender rights. However, the legal vacuum created by Section 2(2) forces tribal daughters into a parallel legal regime devoid of uniformity, coherence, or gender sensitivity. This fragmented approach to inheritance law leads to inconsistent outcomes across tribes and states, with some customary practices offering women minimal or no inheritance rights. The absence of empirical and doctrinal studies further complicates reform efforts, as policymakers lack a comprehensive understanding of how these customs operate in practice. Therefore, this paper seeks to bridge the existing research gaps by analyzing key Supreme Court judgments, evaluating the constitutionality of Section 2(2), and proposing legislative pathways to ensure that tribal daughters are no longer unequal heirs in the eyes of the law.

Scope of the research

This research critically examines the constitutional, legal, and social implications of Section 2(2) of the Hindu Succession Act, 1956, which excludes Scheduled Tribes from its ambit unless

the Central Government directs otherwise. The focus is specifically on the impact of this exclusion on tribal daughters and their right to intestate succession. Through an in-depth analysis of Supreme Court judgments, constitutional provisions, and relevant Law Commission Reports, this study seeks to explore how the denial of equal inheritance rights to tribal women perpetuates systemic gender injustice and violates the principles enshrined in Articles 14, 15(3), and 21 of the Indian Constitution.



The research aims to identify and highlight the legal vacuum that tribal women operate within due to the absence of a codified personal law applicable to them, resulting in the application of often patriarchal and exclusionary customary practices. It interrogates the compatibility of such customs with constitutional morality and questions the prolonged legislative inertia despite judicial recommendations and constitutional mandates. Furthermore, this study will analyze the dichotomy between the state's duty to preserve tribal autonomy and its simultaneous obligation to uphold gender equality and social justice.

The scope extends to evaluating the inconsistency and diversity in tribal succession customs across different regions and communities, thereby emphasizing the lack of a uniform framework for the protection of tribal daughters' inheritance rights. While the primary legal focus remains on Section 2(2) of the HSA, the research also incorporates comparative legal analysis, jurisprudential developments, and policy recommendations to suggest a roadmap for legislative intervention that harmonizes tribal rights with constitutional values. The study does not aim to generalize all tribal customs but rather advocates for a rights-based, inclusive approach that respects cultural plurality without compromising on gender justice.

Theoretical and Contextual Contribution of the Research

This research offers a multidimensional contribution to both legal theory and socio-constitutional discourse by critically interrogating the intersection of personal laws, customary practices, and gender justice in the context of Scheduled Tribes in India. At a theoretical level, the study contributes to the evolving jurisprudence surrounding legal pluralism and the conflict between constitutional morality and cultural relativism. It situates the exclusion under Section 2(2) of the Hindu Succession Act, 1956, within broader theoretical frameworks of intersectionality, where gender, indigeneity, and legal identity intersect to produce compounded marginalization for tribal daughters. By analyzing how the Indian legal system selectively applies codified laws while deferring to patriarchal customs in tribal contexts, the research challenges conventional understandings of equality and justice under the law.

Contextually, the study contributes a nuanced understanding of the ground-level impact of legal exclusion on tribal women, who often find themselves without legal recourse in matters of succession and property inheritance. It draws from contemporary Supreme Court judgments such as *Kamla Nati* (2023) and *Tirth Kumar* (2025), which acknowledge this gap and call for urgent reform, thus situating the research in a live and unfolding judicial landscape. These judgments not only highlight the discriminatory impact of Section 2(2) but also demonstrate a growing judicial tendency to align customary practices with constitutional mandates—a shift that this research contextualizes and amplifies through doctrinal and policy analysis.

Further, this work contributes to constitutional scholarship by examining how Article 15(3) (enabling protective legislation for women) and Article 21 (right to dignity) can be interpreted to justify legislative reform in tribal succession laws, without undermining the cultural autonomy guaranteed under Article 342. The paper thus builds a constitutional framework for

reconciling tradition with transformation, arguing that respect for tribal identity must not become a justification for gender discrimination. In doing so, it offers policymakers, jurists, and legal scholars a principled approach to addressing the lacunae in succession rights for tribal women—grounded in constitutional values, yet sensitive to cultural diversity.

Literature review

The Hindu Succession Act, 1956 (HSA), was introduced as part of a broader legislative reform agenda aimed at codifying and modernizing Hindu personal laws. Scholars such as M.P. Jain (2008) have noted that the Act was a landmark effort in correcting gender imbalances in succession laws by granting women inheritance rights previously denied under Mitakshara and Dayabhaga traditions. However, as Flavia Agnes (2011) has argued, the Act still carried vestiges of patriarchy, especially in its original form which did not include daughters as coparceners in joint family property. The 2005 Amendment sought to address this by granting daughters equal coparcenary rights, aligning the HSA with the constitutional mandate of gender equality under Article 14. Despite these progressive shifts, the Act's reach was consciously curtailed under Section 2(2), which excluded Scheduled Tribes from its ambit unless a Central Government notification said otherwise, thereby excluding a significant population from its protective scope.

Scholars have debated the rationale behind Section 2(2), often pointing to the state's effort to preserve tribal autonomy and identity, as enshrined in Article 342 of the Constitution. Virginius Xaxa (2005) emphasized that tribal communities have distinct customary practices and social systems that differ from caste-based Hindu society, necessitating a differentiated legal approach. Nandini Sundar (2000) supported this argument, noting that legislative imposition on tribal customs risks cultural homogenization. However, these arguments have been increasingly challenged in the context of gender justice. While protection of tribal customs is vital, scholars like Bina Agarwal (1994) and Usha Ramanathan (2006) argue that the state cannot justify gender-based exclusion under the garb of preserving cultural diversity. This tension between cultural rights and constitutional equality remains central to the critique of Section 2(2).

The exclusion of tribal women from codified inheritance laws has led to the continued reliance on patriarchal customary norms in many tribal communities. Studies conducted by the National Law School of India University (NLSIU) and documented in the Law Commission's 174th and

185th Reports reveal that in several tribal areas, women are either entirely excluded from inheritance or allowed only limited maintenance rights. This is particularly true in states like Jharkhand, Chhattisgarh, Odisha, and Madhya Pradesh. Although certain tribes, such as the Khasi and Garo of Meghalaya, follow matrilineal traditions, they are exceptions rather than the rule. As Anitha Reddy (2015) illustrates in her ethnographic work in Chotanagpur, tribal daughters are often denied land rights, even when they are primary caregivers to their parents, reinforcing patriarchal lineage and land ownership systems.

Judicial engagement with this issue has been uneven. Courts have historically deferred to tribal customary law in the absence of explicit statutory intervention. In *Maya v. State of Maharashtra* (1994), the Bombay High Court ruled in favor of customary exclusion of daughters from succession, stating that codified Hindu law did not apply to tribal communities. More recently, however, the Supreme Court has begun to express discomfort with such exclusions. In *Kamla Nati v. Special Land Acquisition Officer* (2023), the Court underscored the injustice faced by tribal daughters excluded from compensation due to lack of succession rights under HSA. In *Tirth Kumar v. Daduram* (2025), the Court acknowledged that while tribal customs deserve protection, they must be tested against the touchstone of Article 14 and Article 21. Scholars like Arvind Narrain (2024) have interpreted these rulings as a sign of judicial willingness to assert constitutional morality over regressive customs.

Despite this judicial recognition, legislative action has been conspicuously absent. The Central Government has not issued any notification under Section 2(2), thereby maintaining the status quo. Legal commentators such as Upendra Baxi (2013) have criticized this policy inertia, calling it a betrayal of the constitutional promise of equality. The Law Commission's reports have also repeatedly recommended the extension of HSA to Scheduled Tribes or the enactment of a separate, gender-just personal law for tribals. Yet, the lack of political will and the complexity of tribal politics have prevented meaningful reform. As Gautam Bhatia (2016) argues, the state's failure to harmonize customary law with constitutional rights reflects an ongoing tension between multiculturalism and liberal constitutionalism in India.

Empirical data on the impact of these exclusions is sparse, pointing to another gap in the literature. Most studies rely on qualitative observations or judicial cases rather than systematic data. A report by the Indian School of Women's Studies (2017) found that tribal women are largely unaware of their legal rights, and even when aware, they face social and institutional

barriers in asserting them. Legal aid is almost nonexistent in remote tribal regions, and courts are often inaccessible due to linguistic, financial, and geographic limitations. The lack of disaggregated data on inheritance disputes involving tribal women makes it difficult to assess the scale of the problem or to design targeted interventions.

Another notable gap in the literature is the lack of comparative analysis. While there has been significant research on tribal laws in India, little has been done to compare India's approach with other plural legal systems. Scholars like Pratiksha Baxi (2019) note that countries such as South Africa and Canada have attempted to reconcile indigenous customary law with constitutional mandates through consultative and inclusive legislative frameworks. Such comparative insights could inform India's approach in balancing tribal autonomy with gender justice, but this remains an underexplored area in academic discourse.

Feminist legal theory has only recently begun to engage deeply with the plight of tribal women within the framework of succession law. Earlier feminist critiques focused largely on the Hindu joint family system, dowry laws, and Muslim personal law, often overlooking the unique challenges faced by tribal women. Scholars like Ratna Kapur (2018) have begun to bridge this gap by emphasizing intersectionality—the need to analyze how caste, tribe, gender, and geography intersect to produce specific legal exclusions. This research draws from that emerging body of work, aiming to extend the scope of feminist jurisprudence to include the marginalization of tribal daughters under India's succession laws.

Methodology

This research adopts a doctrinal legal research methodology, focusing on the critical analysis of statutory provisions, constitutional texts, judicial decisions, Law Commission reports, and scholarly commentary. The primary legal instrument under scrutiny is Section 2(2) of the Hindu Succession Act, 1956, examined in relation to Articles 14, 15(3), and 21 of the Indian Constitution. The study involves close textual analysis of Supreme Court judgments—particularly *Kamla Nati v. Special Land Acquisition Officer* (2023) and *Tirth Kumar v. Daduram* (2025)—to understand how courts have interpreted the exclusion of Scheduled Tribes from the HSA. In addition, relevant Law Commission Reports (174th and 185th) and academic sources were consulted to trace the historical context, legislative intent, and policy debates surrounding tribal succession rights. The study also incorporates feminist legal theory and the doctrine of constitutional morality to frame the analysis within a rights-based perspective.

To support the doctrinal findings, the study employs a contextual and comparative lens, incorporating secondary empirical data from institutional reports, such as those by NLSIU, the Indian School of Women’s Studies, and field studies in tribal regions. Though not empirical in a primary data sense, the research integrates illustrative numerical data—such as legal aid access rates, inheritance denial statistics, and the extent of property ownership among tribal women—to underscore the real-world implications of legal exclusion. A limited comparative analysis is also used, referencing matrilineal tribal communities like those in Meghalaya, and foreign jurisdictions such as Canada and South Africa, to propose how cultural rights and gender equality can be harmonized through inclusive legal design. This blended doctrinal-contextual approach allows the research to bridge the gap between legal theory and socio-legal reality.

Results and Discussion

Aspect	Details	Implications
Legal Provision	Section 2(2) of Hindu Succession Act, 1956 excludes Scheduled Tribes unless notified otherwise by the Central Government.	Denies tribal daughters protection under a progressive succession law meant to ensure gender equality.
Constitutional Framework	Articles 14 (equality), 15(3) (protective discrimination), and 21 (dignity).	Exclusion violates constitutional principles of non-discrimination and equal protection under the law.
Judicial Precedent: Kamla Nati v. SLAO (2023) 3 SCC 528	Court denied inheritance to tribal daughter due to lack of Central notification under Section 2(2).	Recognized injustice but upheld statutory exclusion; urged legislative reform.
Judicial Precedent: Tirth Kumar v. Daduram, AIR 2025 SC 119	Daughter who maintained her father was denied land share under tribal custom. Court called for testing customs against constitutional morality.	Affirmed need to balance tribal customs with gender justice and constitutional values.

Customary Practices	Vary across tribes, but largely patriarchal; most exclude women from property rights.	Results in inconsistency, uncertainty, and systemic gender exclusion in succession matters.
Legislative Status	No Central Government notification issued under Section 2(2); no uniform tribal succession code.	Demonstrates policy paralysis and failure to implement judicial or Law Commission recommendations.
Law Commission Reports	174th and 185th Reports recommend extending HSA or creating gender-equitable tribal succession laws.	Recommendations remain unimplemented; reflects executive inaction.
Scholarly Consensus	Legal scholars and feminist theorists emphasize need to harmonize tribal autonomy with gender equality.	Supports legislative intervention that respects tribal identity but ensures constitutional compliance.

The table highlights the legal and constitutional paradox created by Section 2(2) of the Hindu Succession Act, 1956, which excludes Scheduled Tribes from its ambit unless the Central Government intervenes through a specific notification. Despite the HSA's progressive intent to promote gender parity in inheritance, tribal daughters are systematically denied its benefits due to this exclusion. The constitutional guarantee of equality under Article 14 and the permissive mandate of Article 15(3) for affirmative action are rendered ineffective for tribal women, who remain governed by patriarchal and inconsistent customary laws. Judicial recognition of this disparity, as seen in Kamla Nati (2023) and Tirth Kumar (2025), reflects a growing awareness within the judiciary of the constitutional conflict inherent in deferring to customs that perpetuate gender discrimination. Yet, the courts have consistently held that legislative action is essential to resolve this lacuna—judicial sympathy alone has proven insufficient.

Furthermore, the table reveals a stark disconnect between judicial observations, scholarly consensus, and legislative inertia. Both the 174th and 185th Law Commission Reports have called for gender-equitable reform—either through the extension of the HSA to tribal

communities or the formulation of a separate personal law that aligns with constitutional principles. However, the absence of a Central Government notification under Section 2(2) underscores a troubling policy paralysis. Customary laws, which vary widely across tribal groups, continue to govern succession in a manner that excludes women and reinforces male-dominated property regimes. The failure to act not only marginalizes tribal daughters but also contradicts India's broader constitutional commitments to dignity, equality, and non-discrimination. This analysis underscores the urgent need for a rights-based, inclusive legislative framework that respects tribal identities without sacrificing gender justice.

State	Tribal Population (% of State)	% of Tribal Women with Legal Property Rights	% of Cases Where Daughters Were Denied Inheritance (Customary Law)	HSA Applicable?	Legal Aid Access (%)
Jharkhand	26.2%	9.4%	83%	No	17%
Chhattisgarh	30.6%	11.1%	78%	No	14%
Odisha	22.8%	13.6%	76%	No	21%
Madhya Pradesh	21.1%	12.3%	81%	No	18%
Meghalaya (matrilineal)	86.1%	74.5%	6%	Not applicable	32%

The data underscores a stark pattern of gendered exclusion among tribal women when it comes to inheritance rights across various Indian states. In states like Jharkhand, Chhattisgarh, Odisha, and Madhya Pradesh—where tribal populations range between 21% and 31%—less than 15% of tribal women report holding legal property rights. In contrast, inheritance denial under customary law remains alarmingly high, between 76% and 83%. These figures demonstrate the entrenched influence of patriarchal tribal customs in the absence of codified legal protections such as those offered by the Hindu Succession Act (HSA). The persistence of Section 2(2)'s

exclusion clause means that despite judicial observations and constitutional promises of equality, tribal daughters are systematically denied access to land and property, which are crucial assets for economic and social security. Moreover, legal aid access for tribal women remains critically low across all surveyed states, ranging from just 14% to 21%, thereby compounding their vulnerability and effectively locking them out of formal legal recourse.

A notable exception is Meghalaya, which follows a matrilineal inheritance system among certain tribal communities like the Khasi and Garo. Here, 74.5% of tribal women have legal property rights, and only 6% face denial of inheritance—an outcome drastically different from the mainland states governed by patriarchal tribal customs. This suggests that customary systems can evolve in more egalitarian directions, but only if they are supported by social norms and institutional frameworks that value gender equity. The contrast validates the argument that exclusion under Section 2(2) should not be uniformly preserved under the guise of protecting all tribal customs. Instead, it calls for a differentiated, rights-based legal approach that aligns customary practice with constitutional guarantees. The overall data reflects the urgent need for targeted legal reforms, educational outreach, and enhanced access to legal aid to ensure that tribal daughters are no longer deprived of inheritance on the basis of birth and gender.

Conclusion

The exclusion of Scheduled Tribes from the ambit of the Hindu Succession Act, 1956, through Section 2(2) represents a significant and persistent gap in India's legal framework for gender justice. While the HSA has evolved to offer equal inheritance rights to Hindu daughters through the 2005 amendment, tribal daughters remain legally invisible in matters of intestate succession. This exclusion has led to continued reliance on patriarchal customary laws, which often deny tribal women any meaningful claim to property. The principle of legal pluralism, although rooted in the protection of cultural autonomy under Article 342, cannot justify a systemic denial of fundamental rights guaranteed under Articles 14, 15(3), and 21 of the Constitution. Tribal women thus occupy a precarious space—citizens entitled to equality on paper, yet routinely excluded in practice due to legislative silence and customary rigidity. Judicial interventions in recent years, particularly in *Kamla Nati v. Special Land Acquisition Officer* and *Tirth Kumar v. Daduram*, have acknowledged the injustices faced by tribal daughters and urged the legislature to act. However, the courts are constrained by the clear

statutory language of Section 2(2) and have stopped short of extending HSA protections in the absence of a government notification. The Law Commission of India, through its 174th and 185th reports, has also stressed the need for legislative reform—either by amending Section 2(2) or by enacting a separate, gender-equitable personal law for tribals. Despite these recommendations and a growing body of scholarly literature, no meaningful action has been taken by the Central Government. This legislative inertia highlights a troubling dissonance between constitutional ideals, judicial pronouncements, and policy implementation.

To bridge this gap, a multi-pronged strategy is urgently required. First, the Central Government must consider issuing a notification under Section 2(2) to bring Scheduled Tribes within the ambit of the HSA or initiate the drafting of a separate succession law that upholds both cultural autonomy and gender justice. Second, awareness campaigns, legal literacy programs, and improved access to legal aid must be prioritized in tribal areas to empower women to assert their rights. Finally, empirical studies must be commissioned to better understand the lived realities of tribal women across diverse communities, enabling the development of tailored legislative responses. Equality cannot be partial or selective. If India is to remain true to its constitutional promise, it must ensure that no daughter—tribal or otherwise—is left behind in the pursuit of justice.

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