Chapter 5  

ADIVASIS IN NANDURBAR DISTRICT AND THEIR CUSTOMARY PERSONAL LAW

5.1 ADIVASIS IN NANDURBAR DISTRICT

According to 2001 Census Report, 65.53% population of Nandurbar district consists of Adivasis. Adivasis are spread over in every corner of Nandurbar district, but they are mainly concentrated in the forests of Satpuda mountain regions and Basin of Narmada River. Following notified tribes of Adivasis can be found in the Nandurbar district.

5.1.1 Bhills

It is one of the dominant tribes in India, whose original home is the hilly country between Abu and Asirgarh from which they mostly spread over in the states of Madhya Pradesh, Rajasthan, Gujarat and Maharashtra. In Maharashtra, Bhills are mostly found in Khandesh, specifically in the ranges of Satpuda Mountain. In Nandurbar district, the population of Bhills is largest amongst the tribes. In 1871 the British Government declared them as a ‘criminal tribe’. According to Census of 2001, total population of Bhills in Nandurbar district is 7,14,127.

There is a myth among the Bhills of Satpuda ranges that, during the stone-age Beni Hejah and Raja Pantha tied chickens to their legs and danced in the Gav-Diwali festival because, in those days ghungrus (bells) were yet to be invented. Therefore, it can broadly be said that the history of Bhills dates back to the stone-age.

In the ancient Sanskrit texts we find the references of ‘Shabars’, ‘Kirats’, ‘Nishadas’, etc. Theses tribes were nothing but Bhills of Satpuda. Shabri in the Ramayana and Eklavya in the Mahabharata were Bhills.
The word ‘Bhill’ has its roots in the Dravidian language. In Dravidian language the word ‘bil’ or ‘bilva’ means ‘arrow’. In Bhilli language arrow means ‘bilakhi’. Bow and arrow is of great significance in the life of Bhills. They hold it from times immemorial. Therefore, they are called as Bhills. Their language is known as ‘Bhili’ or ‘Bhilorī’.

In the list of Scheduled Tribes 12 branches of Bhills are included in the same group, out of which only Bhill, Mewasi Bhill, Tadvi Bhill, Bhilala Pawra, and Vasave can be found in the Nandurbar district.

The Bhills are predominantly agricultural and pastoral people. Their subsidiary occupations are hunting, gathering of roots, etc.

Following types of Bhills can be found in Nandurbar district. These types are based on different clans/sibs of the Bhills. Some of them are their sub-tribes or branches while, others are merely regional groups.

**Wasave, Valvi, Padvi, Naik, Gavit**

In Nandurbar district the major population of Adivasis consists of Wasave, Valvi, Padvi, Naik and Gavit. These are the dominant clans of Bhills and not their sub-tribes. They consider themselves superior than other Bhills.

**Gavit**

The terms Gavit, Gamit and Gamta are equivalent. They are not different tribes or sub-tribes. In the list of scheduled tribes Gamit, Gamta, Gavit, Mavchi and Padvi are included in the same group.

---

1 Shah, Vimal, “*Gujaratke Adivasi*”, (1968), Gujarat University, Ahamadabad, at p 23.
Mavchi

Mavchi is one of the sub-tribe of the Bhills. They speak the Mawchi language.

Barde Bhills

According to Enthoven, Barde Bhill is a sub-tribe of the Bhills. They call themselves ‘Barda’, because long back they lived mostly in the hilly area which was locally called ‘Barda’. Thus the word Barda refers to the place of habitation. They do not have their separate language. They speak Marathi. They consider themselves as Hindus.

Dhanka Bhills

Socially they regard themselves separate from other Bhills. But they do not deny their relation with the Bhills. They speak ‘Bhili’ and ‘Dhanki’ language. In the list of Scheduled Tribes Dhankas are included with Tadvi and Tetaria Valvi in the same group.

Regional groups of Bhills in Nandurbar district are, Kotle Bhills, Mewasi Bhills, Ladhya Bhills, Ted Bhills, Nayde Bhills, Bode Gawal Bhills, Rathwa Bhills etc. It is to be noted that the Rathawa Bhills are included in the list of Scheduled Tribes as a separate tribe.

Anthropometric Measurements of Bhills—

Karve and Dandekar pointed out the anthropometric measurements of Bills of Khandesh as – the cephalic index (CI) 72.4, nasal index (NI) 94.8, and stature 64 inch. On the basis of anthropometric measurement Risley described that the Bhills are generally, Dolichocephalic with a few Mesocephalic cases and mostly Mesorrhinic with a few instances of Platyrhinic type with medium stature.  

---

2 Gare, Govind, "Satpudyatil Bhill: Etihasik ani Samajik Magova", Continental Prakashan, Pune, at p 16.
3 They migrated from the ‘Rath’ region of Alirajpur (Madhya Pradesh) therefore they are called as ‘Rathwa’. See, Shah, Supra note 1 at p 24.
The general physical traits of the Bhills can be stated as – black colour of skin, black, straight and long hair, dark eyes, nose turned up with broad and sunk bridge, dilated and very round nostrils, large mouth, thick lips, large and coarse teeth, large and salient zygoma, full cheek, flat and prominent molar bones, large, prominent and moveable ears and evenly hung, massive, widely separated jaws with the lower one square and large in proportions.

5.1.2 Pawra / Pawra Bhill

The Pawras or Pawra Bhills mostly reside in the Satpuda ranges, and especially in the belt between the Tapi and Narmada rivers. Their major population in Nandurbar district is concentrated in Akrani Mahal (also known as Dhadgaon), Shahada and some hilly parts of Taloda taluka. They are inhabitants of this region for the past 700 – 800 years. In the list of notified tribes Bhilala Pawras are included in the group of Bhills. Though some people consider them as a branch of Bhills but, they do not regard themselves as Bhills. They consider themselves as Rajputs from Rajasthan. Various studies and researches on them have also confirmed this fact and indicate that, Pawra is a distinct tribe which is different from the Bhills. They got the name Pawra because, they came from Pawagadh. Their language is known as Pawri.

Though in the list of notified tribes Pawras are referred to as ‘Bhilala Pawras’ but they are two different groups. According to Russel and Hiralal, the Bhilalas are commonly considered to be a mixed caste sprung from alliances of immigrant Rajputs with Bhills of Central Indian hills. As per Enthoven, in Central India, they are half Rajputs.5

---

Regional Names

Pawras are known by various regional names, such as Barwatya, Mathwadys, Nimadyas, Dehawalya, Palwadya, Barela, etc.

The term Barwatya derives from ‘bara’, i.e., ‘twelve’. This group of peoples resides in the region of twelve hillocks of Akrani taluka. Therefore, they are known as ‘Barwatya’ or ‘Barotya’. The Pawras who have migrated from Mathwad and Nimad from Madhya Pradesh are known as ‘Mathwadyas’ or ‘Mathwadi’ and ‘Nimadyas’ respectively. Pawras are the residents of hills and dense forest; and consider plain region as ‘deh’, i.e., ‘desh’ or ‘country’. Therefore, the Pawras who reside in the plains of Shahada taluka are known as ‘Dehawalya’ or ‘Dehavaya’. The Pawras who reside in the Basin of Narmada River are known as ‘Palwadya’ or ‘Palyo’ while those who reside in the Jalgaon district are known as ‘Barela’ or ‘Baharela’, which mean an outsider.

There are minor regional differences among the Pawras of different regions. Inspite of this, blood-ties and inter-marriages can be found among them.6

5.1.3 Kokni

According to Enthoven, the Kokni tribe had migrated from the Konkan region of Maharashtra during the famine of 1396 – 1408.7 It is because of this they got the name ‘Kokni’. They are also known as Kokna or Kukna. It is an independent tribe and does not have sub-tribes. In the list of Scheduled Tribes all the three names are included in the same group. Their original inhabitance is in the coastal region of Surat district of Gujarat, Mumbai, Thane, Kulaba and Ratnagiri districts of Maharashtra. From this region they migrated to other places in Maharashtra, Gujarat, Karnataka and the Union Territory of Nagarhaweli, etc. 99.74% Kokanis are found in the Nasik, Thane, Dhule (including

Nandurbar) districts.\(^8\) In Nandurbar district, they are mostly found in the Navapur taluka and the adjoining parts of the Nandurbar taluka. Their language is known as ‘Kokni’.

5.2 CUSTOMARY PERSONAL LAW OF ADIVASIS

Though there are various tribes and sub-tribes of Adivasis in Nandurbar district, but in the matter of personal laws all of them are governed by customary personal laws. On the matter of customary personal laws of Adivasis in Nandurbar district there is a broad substratum of similarity.

5.3 LAW RELATING TO MARRIAGE

5.3.1 Betrothal

a. A system of betrothal is followed amongst the Adivasis in Nandurbar district. Generally the parents of prospective bride / bridegroom entered into the contract of betrothal/marriage. But the parents cannot impose their decision on their children/wards.

b. In many cases spouses are selected by the concerned parties themselves. Therefore, in every case, it is not essential to obtain the consent of parents/guardians. Both, male or female, if mature, can consent to his/her betrothal/marriage.

c. In case the children/wards are not mature, their parent’s consent is essential, in fact in such case it is only the parents/guardians who are entitled to contract betrothal/marriage of their child/ward.

d. Generally, the age of maturity in case of female is 13 - 16 years and for male it is 15 - 18 years.

e. The system of betrothal can be by-passed, if the marriage is in the form of capture, elopement, etc. In such cases marriage can be accepted by paying Zagada.\(^9\)

\(^8\) Shailaja, ibid, pp 79 -80.
f. A man or woman can marry another man or woman, as the case may be, other than the man or woman with whom he/she was previously engaged by way of betrothal. In such a case he/she will have to break the contract of betrothal. Breaking of betrothal is an essential condition. It may be either a condition precedent or condition subsequent. In such a case a system of Zagada follows.

g. A contract of betrothal can be annulled and the grounds for such annulment are not specific. Following consequences occur in case of annulment—
   i. Bride’s father has to return the bride-price (Dej) which he has received from the groom’s family.
   ii. In case if the woman marries another man, that another man with whom she marries has to pay the Dej amount to the first husband with whom the contract of betrothal/marriage was made.
   iii. If a man marries another woman, he looses the amount of Dej which is paid by or on behalf of him.
   iv. Apart from this; compensation also has to be paid by the defaulting party to the person who has incurred expenses. Fine may also be imposed by the Panchas on the defaulting party and the amount of fine is retained by the Panchas.

5.3.2 Means of Acquiring Mate, Forms of Marriage and Preferential Mating

a. According to the customary practices amongst the Adivasis mates (husband/wife) can be acquired by—
   i. Paying bride-price, i.e., Dej (marriage by purchase)

Note—
* Among Tadvi Bhills this system of marriage is banned by making Tharao.

---

9 Zagada payment is a mode of settlement of dispute wherein the guilty party has to pay some of amount which is decided by Panchas. Most of the time, the amount of Zagada is fixed for various wrongs. It a kind of fine, certain portion of which is retained by the Panchas and the remaining is given to the party against whom wrong has been done, as a compensation. If the Zagada is paid for marriage by capture or elopement then it also includes bride-price. In this case amount of bride-price is given to the parents of the bride and fine is retained by the Panchas. Once the zagada is paid the marriage is accepted by the parents of the bride as well as by the community and the guilty person is absolved from his guilt.
ii. Service

Note—
* Since the practice of bride-price is banned Among Tadvi Bhills, they do not have a system of marriage by service. Though they have a system of Ghar-jawai, but it is not in the form of service.

iii. Exchange—

Note—
* Among Tadvi Bhills this system of marriage is banned by making Tharao.

iv. Capture—

Note—
* If the woman does not agree/approve of such marriage she can go back to her parental home. In such a case, the man has to pay Zagada. Even if she subsequently agrees/approves of such marriage, Zagada (in the form of bride-price) has to be paid by on behalf of the groom.
* Among Tadvi Bhills the amount of Zagda (to which they call Dava) in case of capture of unmarried girl is less than that in case of capture of a married woman.

v. Intrusion\(^{10}\)

vi. Mutual consent

vii. Elopement

b. Apart from monogamy, polygyny is also allowed. In case of polygyny, there in no restriction on the number of wives.

\(^{10}\) Generally this occurs when they are in love with each other and the boy resiles from marrying her or postpones the marriage indefinitely.
c. Although polygyny is allowed, polyandry is not allowed.

5.3.3 Conditions Regarding Tribe and Sub-tribe, etc.

a. Adivasis of the Nandurbar district are Tribal Endogamous groups therefore, for the validity of marriage both parties to the marriage must be of the same tribe/sub-tribe.\(^{11}\)

5.3.4 Prohibited Degrees

a. Marriages between the cross-cousins though allowed, the same is not allowed between parallel-cousins.

*Note—*

*Among Pawras and Tadvi Bhills marriage with any relative is prohibited.

b. Marriage between persons having same clan is not allowed.

c. Marriage between persons having same surname is not allowed.

*Note—*

* Among Mavchis and Bhills in some parts of Taloda Taluka, marriage with a person having same surname is allowed.

5.3.5 Conditions Regarding Age and Consent

a. Age of marriage in case of a girl is 13-16 and in case of boy the age of marriage is 15-18 years.

---

\(^{11}\) Now a day, instances can be found of marriage between different tribes and sub-tribes and even with non-Adivasis, and the same are being accepted as being valid by the Adivasi society.
b. If the parties to the marriage have not attained the age of maturity, consent of the parents is essential for the marriage. But if they attain maturity consent of each other is sufficient.

c. Prior consent of girl in case of marriage by capture and of the boy in case of marriage by intrusion is immaterial.

**5.3.6 Dowry / Bride-Price**

a. Bride-price (*Dej*) is essential for marriage.\(^{12}\) It is paid by or on behalf of the groom to the bride’s parents. And the same becomes payable on the day when the contract of betrothal/marriage is entered into. But it can be postponed in rare cases.

b. If the groom or his parents rescinds to give the agreed bride-price, and if the marriage is still to be solemnized, the bride’s parents have a right to cancel the marriage contract already entered into. But if the marriage is already solemnized, non-payment of bride-price will not affect the validity of marriage.\(^{13}\)

c. If the marriage is in the form of Capture, Elopement, etc., i.e., without the consent of the parents, such marriage will not be treaded as invalid, but the *Zagada* in the form of *Dej* has to be paid to the parents of the bride.

*Note*—

*Among Tadvi Bhills Bride Price is banned by making *Tharao* (i.e., resolution).*

**5.3.7 Ceremonies**

\(^{12}\) Bride-price varies from place to place and community to community.

\(^{13}\) Bride-price is the right of the bride’s parents. If it is not paid, such parents have right to recover the same. In case of non-payment the *Punchas* will order the defaulting party (groom’s parents) to pay it. According to the custom of Adivasis, especially those residing in the ranges of *Satpuda Mountain* (*doguvala*), if the bride-price is due and the person with whom it is due or any member of his family dies, the dead-body may not be allowed to remove from the home for burial till the bride-price is paid.
a. The ceremonies of marriage among the Adivasis of Nandurbar districts include *Girhun Puja* and *Umber Padne*.

b. Among Adivasis marriage is not a sacrament; therefore, if any of the ceremonies is not properly performed or not at all performed, it does not affect the validity of marriage.\(^{14}\)

### 5.3.8 Restitution of Conjugal Rights

a. In case of disputes between the spouses, before giving or taking divorce, a procedure for restitution of conjugal rights is followed. This procedure is followed by the intervention of *Punchas*. The *Punchas* tries to reconcile the disputes among the spouses and persuade them to come together and cohabit.

### 5.3.9 Divorce

a. Both, the husband as well as the wife, have equal right to take divorce.

b. The grounds on which divorce can be given or taken are not specific.

c. Whatever be the grounds of divorce, the same are equally available to the husband as well as the wife. However, witchcraft is a special ground available to the husband, which is in vogue amongst the Adivasis residing in the *Satpuda* Mountain ranges (*Doguwala*).

d. Conversion to any other religion by itself does not dissolves the marriage.

e. Procedure for taking or giving divorce: It is essential for the parties seeking divorce to disclose reasons for which he/she desires to seek divorce. Such disclosure of reasons must be made to the *Punchas*. The reason for such disclosure is to decide the issue of bride-price. If the guilty party for divorce is husband, he will not get back the bride-price which is paid by or on behalf of him to the wife’s parents. And if wife is a guilty party then her parents have to return

---

\(^{14}\) For example, marriages in form like, Capture, Elopement, Intrusion, etc. are performed without going through the ceremonies still such marriages are treated as valid provided, *Zagada, Dej*, etc. is paid.
the bride-price which they have received from the husband’s side. Once the issue of bride-price is settled ‘formal declaration’ of dissolution of marriage is declared by the Punchas.

f. After divorce, the divorced wife is neither entitled to any maintenance nor is she entitled to any claim of property against her previous husband.

5.3.10 Automatic Dissolution of Marriage

a. If a married woman elopes with any other man, her previous marriage ceases. In such as a case formal declaration of divorce is not necessary. Previous marriage ceases automatically.

b. In this case, the man with whom she elopes has to pay the bride-price (in the form of Zagada) to her previous husband.

5.3.11 Remarriage

a. Once the procedure for divorce is finalized, both the parties can re-marry either between themselves or with any other person with whom marriage is not prohibited.

b. After the death of a spouse both, the widow or the widower, as the case may be, are allowed to re-marry.

c. In case of re-marriage of widow or widower, as the case may be, junior-levirate or sororate marriages can be performed, but in no case it is binding.

d. There is no prescribed period of waiting for re-marriage, ether in case of divorce or of widowhood.
5.4 LAW RELATING TO SUCCESSION TO PROPERTY

5.4.1 Sons

a. When an Adivasi dies leaving behind him his son/s, daughter/s, widow/s, father/s, mother/s, brother/s, sister/s, and any other near or remote relatives, his property will devolve upon his son/s only.

b. If there be more sons than one, all sons will take the property in equal proportions\(^{15}\) and simultaneously. It is immaterial whether such son/s be born through a validly married wife or be born outside wedlock.\(^ {16}\) It is also irrelevant

c. whether such son/s is/are joint or separated. Even a son who leaves his father’s family and takes up his residence permanently with his father-in-law as Ghar-jawai takes equal share in the property of his father. A son taken in adoption also takes equal share in the property of the propositus.

However a step son\(^ {17}\) and a son given in adoption have no share in the property of the propositus.

d. Though the rule of ‘Primogeniture’ or ‘Ultimogeniture’ is not followed amongst the Adivasis; but apart from the regular (equal) share, the youngest son takes the home of his father (which is known as ‘Motha Ghar’). This is an extra share for the youngest son.

---

\(^{15}\) Share of sons in the inheritance does not distributed according to the number of mothers.

\(^{16}\) Child born before marriage or out of extra-marital relations is generally called as illegitimate. According to Section 16 of the Hindu Marriage Act, 1955, a child is legitimate even the marriage between his/her mother and father is void or voidable. It has been held in *M. Mathayya v. Kamu*, (1981) 1 Mad LJ 107 that, a child under void marriage has been legitimatized indeed, but unless the marriage is solemnized the children born cannot press into service Section 16 of the Hindu Marriage Act, 1955. Thus, the child before marriage of parents cannot be held to be legitimate issue by invoking the doctrine of acknowledgement of father as prevalent in Mahomeden Law (*Md. Khan Sahib v. Ali Khan Sahib*, AIR 1981 Mad 209). Strictly speaking, the concept of illegitimacy is not recognized amongst the Adivasis. Every child whose father is known is treated as legitimate child of that father. However, if a child is born to a woman though extra-marital relations (i.e., by any man other than her husband) is called as ‘Chinal’s child’. And such woman is called as ‘Chinal’. According to the belief of Adivasis, if the pregnant woman (Chinal) does not discloses the name of the person whose child she is carrying, she faces complications and sufferings at the time of delivery; the child cannot come out of her womb.

\(^{17}\) Step-son is entitled to claim share from the estate of his natural father.
e. In his life-time, a father cannot nominate a particular son as the fit person to take a larger share than his brother/s after his (i.e., father’s) death. Nor a father can reduce the share of any son.

f. Son/s of each pre-deceased son of the propositus represents their respective father. That is, succession in such a case is by ‘Per Stripe’ rule.

g. Inheritance successively devolves upon all male lineal descendents how low so-ever it may be. There is no limit to the degrees (generations) of male lineal descendents for inheritance.

5.4.2 Father

a. In the absence of male lineal descendents, the estate of the porpositus devolves upon his father, if alive, and thereafter, it will devolve upon the brothers of the propositus.

b. However, the propositus’s father’s or brother’s, as the case may be, right is subject to the “life-interest” of the widow of the propositus, provided she does not re-marry; as well as the “limited interest” of the daughter of the propositus till her marriage.

c. For the purpose of inheritance father includes—real/natural father as well as adoptive father.

5.4.3 Brother/s and Their Issues

a. After the father, the estate of the propositus devolves upon the brother/s of the propositus.

b. Brothers for the purpose of inheritance include—real brother, step-brother whose father is common but mothers are different (half-blood relation) and adoptive brother. However, uterine brother (step-brother whose mother is common but father is different) is not entitled to inherit the property of the propositus.

c. In case of more brothers than one Rule (b) in Para 5.4.1 mutatis mutandis is applicable.
d. Son/s of each pre-deceased brother of the propositus represents their respective father. That is, succession in such case is by ‘Per Stripe’ rule.

e. Inheritance successively devolves upon all male lineal descendents of the brother/s how low so-ever it may be. There is no limit to the degrees (generations) of male lineal descendents for inheritance.

5.4.4 Widows

a. Widow/s of the deceased is not entitled to inherit the property of her deceased husband if, any of his male lineal descendents is available. So is the case if the father, brother/s or any of the male relatives from the Kutumba\(^\text{18}\) of her deceased husband (propositus) is available.

b. However, after the death of the husband and in the absence of any of his male lineal descendents, his widow/s is entitled to hold possession of the estate of her deceased husband. Her interest in such property is in the form of “life-interest”.

c. There is no distinction in the rights of the widow based upon the circumstances whether her husband was or was not joint\(^\text{19}\) with his father and/or brothers at the time of his death.

d. Widow/s has no right to alienate the property of her deceased husband. However, she can dispose off miscellaneous movable property.

e. On her re-marriage she looses all her rights in respect of the estate of her deceased husband. However, unchastity is not a sufficient ground for disentitlement of her rights in the property of her deceased husband.

f. The rules which are applicable to the widow/s of the propositus are mutatis mutandis applicable to the widow/s of his male lineal descendents.

\(^{18}\text{Kutumba, some times also referred to as kaka-baba relations. For the purpose of succession, it includes all male relatives descended from common male ancestor. This concept is similar to that of ‘coparceny’ under the Hindu law. However, the limits of degrees (i.e., generations), which is applicable to Hindus, is not applicable to Adivasis.}\)

\(^{19}\text{The concept of joint-family, in the strict sense of term, is not applicable to Adivasis.}\)
5.4.5 Daughters and Their Issues

a. Daughter/s is entitled to hold the possession of the property of her deceased father till her marriage; provided there does not exist any male lineal descendent of her father. This rule has another condition, according to which, if any widow or widows (including her mother) of the propositus survives him, the daughter is not entitled to hold possession of the property. In such a case, she is only entitled to the right of residence and to be maintained while, possession of the property will remain with the widow/s.

b. The daughter/s holding property in the above case has a “limited interest” in it, and therefore, she is not entitled to alienate the property. However, she can dispose off miscellaneous movable property.

c. On her marriage, the above-stated right of the daughter comes to an end.

d. However, if she brings Ghar-Jawai to her father’s residence, her right to hold property of her deceased father extends till her death. Thus, “life interest” is created in this case.

e. If all the male successors form the father’s Kutumba are exhausted, the property devolves upon the daughter/s. In this case, she has an “absolute right” in the property she succeeds; therefore, she can alienate the same.

f. In case of more daughters than one Rule I (b) of Para 5.4.1 mutatis mutandis is applicable.

g. Son/s of each pre-deceased daughter of the propositus represents their respective mother. That is, succession in such case is by ‘Per Stripe’ rule.

h. Daughter/s of any pre-deceased daughter of the propositus is not entitled to any share in the property of the propositus.

Note—
*Among Mavchis, Kokanis, Tadvi Bhills and Dehuwalla Bhills in some parts of Nandurbar taluka after the failure of the male lineal descendents of the propositus his

---

20 Dehuwalla Bhills is not a separate category of Bhill. This is only a regional name. Dehuwalla Bhills are those Bhill who reside in the plains of Nandurbar District. While the Bhills who reside in the Satpuda
property devolves upon the daughter/s. And it is only after the daughter/s, the father, brother/s, etc. of the propositus succeeds.

5.4.6 Son-in-law (*Ghar-jawai*)

a. Son-in-law, even if leaves his own family and takes up his residence with his father-in-law as *Ghar-jawai*, is not entitled to inherit the property of his father-in-law.

5.4.7 Residuaries

a. After failure of all of the above-stated relatives the property of the propositus devolves upon the residuaries such as, the mother, sister/s and their issues, etc.

5.4.8 Miscellaneous

a. A person who is otherwise qualified for inheritance cannot be disqualified for any reason.

b. According to the customary practices, testamentary disposition of property is not allowed amongst the Adivasis. Therefore, if an Adivasi disposes his property by making a will by which the rights of the successors are adversely affected, such disposition of property will not be accepted by the successors. However, he may give a small portion of land to his daughter for her life.

c. During the life of father son/s can demand partition. The son’s share in the partition is same as described above.

Mountain ranges are known as Doguwalla. Dehuwalla Bhills are mostly influenced by their non-Adivasi neighbours especially Hindus.
5.5 LAW RELATING TO MAINTENANCE

5.5.1 General Concept

As has already been stated, family is an economic unit. Like every other society, the family in Adivasi society also performs various economic activities for their survival. But the distinguishing feature of Adivasi family is equal participation of male and female in the performance of economic activities. Thus, all the members of the family participate in the economic activities and earn their livelihood. Therefore, the concept of maintenance, in the strict sense of the term, is not available amongst the Adivasis since all the family members are economically independent. Therefore, the Adivasi wife or the Adivasi husband cannot claim maintenance from each other “as a matter of right” though, it is a “moral obligation” on the part of both the spouses to provide each other the bare necessities of survival such as, food, residence, clothing, etc. The concept of ‘separate maintenance’ or ‘allowance’ is not recognized by the Adivasis society. The concept of maintenance includes bare necessities such as, providing food, residence, clothing, etc.

Amongst the Adivasis, especially among the Doguwalls, a unique concept of maintenance is found in the form of Tawanya/Damanya and Khuta. According to which; if the daughter/sister is not capable to maintain herself some property, especially in the form of live-stock, is given to her for her maintenance. The property which is given to her is known as Damanya/Tawanya. Subsequently, if the she become capable of maintaining herself and in a position of returning the Damanya/Tawanya she will have to return it. The property which is, thus, return is known as Khuta.

Sons are liable to maintain their aged or infirm parents. As the concept of joint family, in the strict of sense of term, is not available amongst the Adivasis, the primary responsibility of maintaining the parents is on the son who resides with them. Generally, such son is the youngest son, who receives the extra share (Motha Ghar). But this is not absolute rule. Parents can claim maintenance from any son who is capable to maintain them.
5.5.2 Children

a. Primary responsibility of maintaining minor children is on their father and after him on their mother.
b. Children, for the purpose of maintenance, include son/s, daughter/s, adopted son/daughter, step-son/s, step-daughter/s, illegitimate son/s and illegitimate daughter/s.
c. Children, though major, are entitled to be maintained if they are mentally or physically unfit for maintaining themselves.
d. Daughters, if unable to maintain themselves, are entitled to be maintained till their marriage. After marriage, her husband is liable for her maintenance.

5.5.3 Wife/Widow

e. After marriage the responsibility of maintaining the wife is on her husband. After the death of the husband, her children, if they are capable to maintain her, are liable to maintain her. And if the children are not capable to maintain her, the responsibility of maintaining her is on the other family members (kaka-baba) of her deceased husband, if she stays with them and does not remarry.
f. After divorce, neither her husband nor his family members are liable to maintain her.

5.5.4 Son-in-law (Ghar-jawai)

g. Son-in-law, if leaves his own family and takes up his residence with his father-in-law as Ghar-jawai, is entitled to the right to residence and to be maintained out of the property from his father-in-law.
5.6 LAW RELATING TO ADOPTION

5.6.1 General Concept

a. Custom of adoption is in vogue among the Adivasis, which is known as “sitting on lap”. However, adoption among Adivasis has no religious significance.

*Note*—
* The concept of adoption is not available among the Tadvi Bhills and Bhill Chieftains of Raisingpur (Taluka Akkalkua).
* Among Wasave Bhills of Akkalkua though the concept of adoption is not in vogue but they can take a child for maintenance if they have the capacity to maintain.

5.6.2 Who Can Take in Adoption

a. A man who is married, widower or a divorcee can take a child in adoption. However a bachelor is not entitled to take a child in adoption.

b. Females, whether married or unmarried, are not entitled to take a child in adoption.

*Note*—
* Among Kokanis and Mawchis, a widow can adopt a child provided she obtains the consent of her deceased husband’s brothers or other family members (*kaka-baba*).

c. At the time of adoption, it is necessary that the adopter should be destitute of a son, son’s son, son’s son’s son, etc. However, daughter’s son is no bar to the right of adoption.

d. A daughter can be taken in adoption, if the adopter is destitute of daughter.

e. A person who has already adopted a son cannot adopt another son in the life-time of the first.
5.6.3 Who Can Give in Adoption

a. A natural father has a right to give his child in adoption and in his absence, that is, after his death; his relatives (kaka-baba) can give the child in adoption.
b. Natural father can give his child in adoption even without the consent of the child’s mother.

*Note*
*Among Kokanis and Mawchis mother’s consent is essential.*

c. Mother has no right to give the child in adoption even if, she is widow or a divorcee and having custody of her child.
d. Step-father cannot give step-child in adoption.

5.6.4 Who Can be Given or Taken in Adoption

a. There is no bar for a person to give in adoption his only son/daughter, eldest son/daughter. However he cannot give in adoption his adopted son/daughter.
b. Age of the adoptee is no bar, though generally adolescent child are given in adoption.
c. The adoptee, as a rule, should be related to the adopter. For taking a child in adoption first preference should be given to the brother’s son/daughter thereafter, a child from the family (kaka-baba) can be taken in adoption.

*Note—*
*If a child from a different family is taken in adoption instead of following the above-stated rule, such a child will not be entitled to take share from property of his adoptive father. In this case, such a child has only a right to be maintained.*

d. There is no custom regarding the disparity of age between the adopter and the adoptee.
5.6.5 Ceremonies Essential for Adoption

a. As adoption amongst the Adivasis has no religious significance, performance of any ceremony is not essential.

5.6.6 Effects of Adoption

a. After adoption, the adopted son does not retain his right to inherit from his natural father. However, the son given in adoption can inherit the property of his natural father, in preference to his other relatives from the natural family, if the natural father dies without leaving behind him his any other lineal descendents
b. After adoption the adopted son becomes a substitute for the real son and acquires all rights, benefits as well as duties, liabilities and responsibilities of a real son. However, the ‘doctrine of relation back’ is not applicable among the Adivasis.
c. The rights, duties, etc. does not affect even if a natural-born real son subsequently takes birth in his adoptive family. In such a case adopted son’s right to share the property of adoptive father is equal to that of his natural-born real brother.
d. Adopted son cannot be disinherited from the property of the adopter.
e. Adopted child cannot marry any person of his/her natural family with whom his/her marriage would not have been allowed had he/she not been given in adoption.

5.6.7 Miscellaneous

a. In case the adopter has more than one wife, both or all such wives are treated as mother of such adopted child.
b. Once an adoption is validly made, it cannot subsequently be cancelled on any ground.
5.7 LAW RELATING TO MINORITY AND GUARDIANSHIP

5.7.1 Guardians and Their Appointment

a. Father is the first guardian of his child, whether male or female.
b. After father the guardianship of a minor child devolves upon the mother of the child. And after the mother the guardianship of the minor child goes to other family members from the paternal side i.e., kaka-baba of the minor.
c. If a widow who is the guardian of her minor child remarries, her right to guardianship ceases.
d. Mother’s right of guardianship of her minor child carries with it the right to dispose her in marriage.
e. Neither the father nor the mother can appoint by testament or otherwise, any other person, to be after his/her death the guardian of his minor child.
f. After marriage the guardianship and custody of minor female goes to her husband.

5.7.2 Powers of Guardian

a. Guardians cannot alienate the property of their wards by way of sale, gift or mortgage. Nor can the property of the minor be given on lease.

5.7.3 Miscellaneous

a. A minor may acquire property independently of parents or guardians.
b. A minor, who has inherited his father’s property, is liable for the debt of his father.
c. The property inherited by the minor cannot be alienated even for paying the debt of his father.

Note—
* If the inherited property is in the form of agricultural land, the income out of it can be used for paying the debt of his father.

d. Females, whether minors or majors, are always under guardianship.

e. Guardianship of unmarried females, whether minors or majors, successively devolves upon their father; after him upon the mother and after her upon other family members, i.e., her kaka-baba.

f. Guardianship of married female, whether minor or major, successively devolves upon her husband and after him it devolves upon the family members of her husband, provided she stays with them and does not remarry.

g. As the concept of illegitimacy is not available amongst the Adivasis, it makes no difference to the right of guardianship.