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Reserve Bank of India (Digital Lending) Directions, 2025

Background

The Reserve Bank of India ("RBI") recently issued the Reserve Bank of India (Digital Lending) Directions, 2025 ("Digital Lending Directions 2025") which seeks to consolidate various prior frameworks on digital lending in India.

The Digital Lending Directions has superseded and unified the following frameworks:

- o Loans Sourced by Banks and NBFCs over Digital Lending Platforms:
- o Guidelines on Digital Lending, 2022 ("Digital Lending Guidelines 2022"); and
- o Guidelines on Default Loss Guarantee in Digital Lending, 2023.

Key Changes of the Digital Lending Directions 2025

The key changes introduced via the Digital Lending Directions 2025 are as below.

1. Regulated Entities:

The entities regulated by the Digital Lending Directions 2025 are ("RE"): (i) all commercial banks; (ii) all cooperative banks – Primary (urban), State and Central Cooperative Banks; (iii) all Non-Banking Finance Companies ("NBFCs"), including Housing Finance Companies; and (iv) All India Financial Institutions ("AIFIs"). AIFIs have been recently covered under the Digital Lending Directions 2025.

2. Lending Service Providers:

- a. This is a new category of entities, defined under the Digital Lending Directions 2025 as *"as agent of a Regulated Entity (including another Regulated Entity) who carries out one or more of the Regulated Entity's functions, or part thereof, in customer acquisition services incidental to underwriting and pricing, servicing, monitoring, recovery of specific loan or loan portfolio on behalf of the Regulated Entity in conformity with extant outsourcing guidelines issued by the Reserve Bank"* ("LSP").
- b. Certain obligations are imposed on REs with respect to their use of LSPs in various commercial activities.
 - i. REs can engage LSPs only after entering into an agreement with the latter, with clearly defined roles and responsibilities between both parties.
 - ii. Irrespective of the agreement between an RE and an LSP, the RE shall bear the overarching responsibility for all activities of an LSP undertaken at its behest.
 - iii. REs are required to assess the LSPs technical capabilities, data privacy policies and storage systems, fairness in recovery processes and their compliance with applicable regulations before entering into agreements with LSPs. These metrics of assessment of LSPs should also be periodically reviewed by the RE.

- iv. REs are required to follow extant guidelines on supervising LSPs acting as recovery agents and other guidelines on outsourcing financial services to LSPs.¹
- v. REs are also required to ensure that the LSPs following the guidelines on arrangements with multiple lenders as provided in the Digital Lending Directions 2025

3. Consumer Protection Requirements.

- a. REs are mandated to only provide loans to borrowers with appropriate credit worthiness and not automatically increase credit limits without prior request.
- b. *Key Disclosures:*
 - i. REs are required to provide disclosures to borrowers on the loan extended in the form of Key Facts Statements ("KFS"), which should contain all the important details pertaining to the loan that allow the borrower to make an informed decision prior to taking the loan. The KFS should be provided in a manner as directed by the RBI from time to time.²
 - ii. Penal charges imposed by REs for inculcating credit discipline amongst the borrowers should be clearly displayed in the KFS and can be charged only in accordance with the policies issued by the RBI.³
 - iii. REs are required to disclose, updated information on a website maintained by them, pertaining to: (1) details of all their digital lending products and digital lending apps ("DLAs"); (2) details of the LSPs engaged, DLAs and the services provided by each of them; (3) details of the RE's customer care, grievance redressal mechanism along with a link to RBI's complaint management system ("CMS") and Sachet Portal; (4) privacy policies of the RE with respect to the borrower's data; (5) details of a recovery agent, when they will be appointed, the practices they can follow etc.
- c. *Cooling-off Period:* Also called a "look-up" period, is a vital mechanism that allows borrowers to make informed decisions regarding their necessity for a digital loan, has been revised. The earlier Digital Lending Guidelines 2022 had a look-up period of 3 days for loans of a tenure greater than 7 days and 1 day for loans of a shorter duration. The Digital Lending Directions 2025 have allowed more flexibility to REs for determining the cooling-off period, where the minimum duration for a cooling-off period that can be imposed on any loan is 1 day and the board of the RE is enabled to set longer cooling-off periods as it deems necessary.
- d. *Grievance Redressal mechanism:* The RE and LSP with interface to borrowers are required to designate nodal grievance redressal officers to dealing with digital lending complaints and their details are to be prominently displayed on DLA and RE's website. Borrowers should be given the opportunity to raise complaints directly on the DLA and/or the RE's website, which should be addressed within 30 days of receipt of the complaint by the RE. Failure to redress the complaint or a rejection of the

¹<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12378&Mode=0> and its attendant amendments.

²<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12663&Mode=0>

³<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12527&Mode=0>

complaint by the RE can entitle the borrower to approach the RBI's Reserve Bank-Integrated Ombudsman Scheme ("RB-IOS") via RBI's CMS portal or by physically lodging a complaint with the RBI.

4. Data use, storage and privacy:

- a. REs and LSPs engaged by REs are required to have robust privacy policies that should be compliant with applicable laws and prominently displayed on the website of the RE, LSP and any DLAs used by either entity to onboard borrowers. The RE, LSPs shall also ensure that they use the best technology for precluding any cybersecurity threats from the use of the DLA and/or the website by borrowers.
- b. RE and LSPs can access data of the borrowers only for the purpose of onboarding or undertaking KYC requirements for the borrowers. Such data can be accessed only with the explicit consent of the borrower and used only for the limited purpose for which the data is purported to be collected.
- c. RE and LSPs shall not store more than the basic data of the borrower, including not storing any biometric data of the borrower, for processing their loan requests. They should also give the borrower the option for having the RE, LSP and any interface they use to connect with the borrowers, such as DLA and/or website, for forgetting personal information that may be stored on these interfaces and that are on the records of the RE and LSP.

5. Digital Lending Apps:

- a. REs are required to report and list all the DLAs that are deployed or joined by them (via an LSP), on RBI's central information management system ("CIMS") platform. The details of the DLAs used, including those ceasing to be used or newly deployed or joined DLAs should be updated from time to time on the CIMS platform.
- b. The RE should appoint a chief compliance officer who is required to certify that all the information submitted regarding the DLAs that they have deployed or joined, on the CIMS platform, is correct. Such information would include: (1) DLA's link to RE's website, (2) DLAs appointment of a suitable nodal/grievance redressal officer for addressing borrower complaints, (3) maintenance of adequate data protection and privacy policies by DLAs when accessing and storing borrowers' personal data and others.

6. Default Loss Guarantee:

- a. REs can enter into Default Loss Guarantee ("DLG") arrangements only with LSPs and other REs, who should be incorporated as a company under the Companies Act 2013. DLG is where the guarantor can take on a percentage of the loss that accrues to a RE from issuance of a loans to borrowers.
- b. DLG Cap and Restrictions:
 - i. The cap on DLG that can be provided by an LSP or RE undertaking such services is 5% of the total amount

disbursed from a loan portfolio at any given time. For implicit guarantee arrangements, the DLG cover cannot exceed more than an amount equivalent to 5% of the underlying loan portfolio.

- ii. The portfolio over which DLG cover can be offered is also required to be: (1) fixed portfolio; and (2) only identifiable and measurable loan assets that have been sanctioned.
 - iii. DLG cover cannot be provided for revolving credit facilities,⁴ loans covered by credit guarantee schemes administered by trust funds⁵ and loans issued by NBFCs on peer-to-peer lending platforms.⁶
- c. DLG Provider:
- i. The RE is required to develop a robust policy for appointment of a DLG Provider, and include details such as minimum eligibility criteria for the DLG Provider, nature and extent of DLG cover, process of monitoring and reviewing the DLG arrangement and the fees payable to the DLG provider, that the DLG provider has the capacity to provide the DLG cover etc. This policy should be reviewed periodically.
 - d. The DLG can be provided in the following ways, which is the same as before: (1) cash deposit with RE; (2) fixed deposit maintained with a scheduled commercial bank in favour of RE; and bank guarantee in favour of RE.
 - e. If DLG provider is a RE, then the total DLG cover provided, which is outstanding, shall be deducted from its capital. The credit risk mitigation benefits on individual loan assets in the portfolio and computation of capital exposure are required to be undertaken based on existing norms.⁷

SEBI's ESG Bond Framework: A Structured Step Towards Sustainable Finance

Background

India's engagement with sustainable finance began formally in 2017 when the Securities Exchange Board of India ("SEBI") issued a circular dated 30 May 2017, outlining the disclosure requirements for issuance and listing of green debt securities in India which has further been amended and revised by SEBI vide its circular dated 6 February 2023. A green debt security is a type of security issued to raise funds for projects and/ or assets falling under certain categories like renewable energy, sustainable waste management, biodiversity conservation, circular economy adapted products etc.

On 30 September 2024, SEBI, in its board meeting, approved a proposal to specify the frameworks for the issuance of social bonds, sustainability bonds and sustainability-linked bonds, which together with green debt securities, will be termed as Environment, Social and Governance Debt Securities (the "ESG Debt Securities"). Pursuant to the amendment of the SEBI (Issue

⁴https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12300

⁵<https://rbi.org.in/Scripts/NotificationUser.aspx?id=12384&Mode=0>

⁶https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=11137

⁷https://rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=12815

https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12550

https://rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=12816

<https://rbi.org.in/Scripts/NotificationUser.aspx?id=10636&Mode=0>

https://rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12538

and Listing of Non-Convertible Securities) Regulations, 2021 (the “NCS Regulations”) dated 11 December 2024, which introduced Regulation 12 A for issuance of ESG Debt Securities, SEBI vide its circular dated 5 June 2025, introduced the Framework for Environment, Social and Governance (ESG) Debt Securities (other than green debt securities) (the “Framework”). This Framework is intended to facilitate the raising of funds by issuers through the issuance of such securities.

Introduction

ESG Debt Securities are defined under Regulation 2(1) (oa) of the NCS Regulations as:

“ESG Debt Securities means green debt securities, social bonds, sustainability bonds, sustainability-linked bonds, or any other type of bonds, by whatever name called, that are issued in accordance with such international frameworks as adapted or adjusted to suit Indian requirements that are specified by the Board from time to time, and any other securities as specified by the Board.”

The definition is inclusive in the sense that it permits inclusion of any other kind of bond that aligns with the requirements laid down under such international frameworks as specified by SEBI.

The Framework introduces a structured set of regulatory requirements for the issuance of ESG Debt Securities in India, excluding green debt securities (which are governed under a separate set of disclosure requirements issued by SEBI). The Framework covers three categories of instruments: (i) Social Bonds, (ii) Sustainability Bonds and (iii) Sustainability-Linked Bonds which are listed or proposed to be listed on a recognized stock exchange. The requirements under the Framework shall be in addition to the requirements specified in the NCS Regulations and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Key Highlights of the Framework

1. Definitions of the securities covered under the Framework

The Framework defines each type of ESG Debt Security distinctly:

i. Social Bonds:

Debt instruments whose proceeds are exclusively utilized for social projects that directly aim to address a specific social issue and/or seek to achieve positive social outcomes that fall under the categories stated in the Framework such as, affordable housing and basic infrastructure, food security, healthcare, education, employment generation, etc.

ii. Sustainability Bonds:

Debt instruments whose proceeds are exclusively utilized to finance or re-finance a combination of eligible green project(s) and social project(s) as specified under the definition of green bonds and social bonds respectively. While the existing green debt securities framework under SEBI still applies to the environmental component, the new Framework ensures that social allocations meet the same rigor as those in pure social bonds.

iii. Sustainability-Linked Bonds:

Unlike the above two categories, Sustainability-Linked Bonds are not tied to specific project use. Instead, it has its financial and/or structural characteristics linked to predefined sustainability objectives of the issuer. Subject

to the condition that such objectives are measured through predefined ‘Sustainability Key Performance Indicators’ (i.e. quantifiable metrics used to measure the performance of selected indicators) (“KPIs”) and assessed against predefined ‘Sustainability Performance Targets’ (i.e. measurable improvements in KPIs on to which issuers commit with a predefined timeline) (“SPTs”).

2. Alignment with International Standards

The Framework mandates that the issuer must ensure their bonds fall under the definitions as stated above or comply with at least one of the following widely accepted standards:

- International Capital Market Association Principles / Guidelines;
- Climate Bonds Standard;
- Association of Southeast Asian Nations Standards;
- European Union Standards; and
- Any framework or methodology specified by any financial sector regulator in India.

3. Pre issue requirements and continuous disclosure requirements

A key innovation in the Framework is the mandatory set of pre-issuance disclosures and set of continuous disclosures post-listing of the ESG Debt security.

For Social and Sustainability Bonds:

Under pre issue requirements, the issuers must clearly outline the project’s objectives, the details of the target population and the benefits from the project. The issuer must also explain their internal project selection process, including governance structures, screening criteria and any impact assessments used. Issuers must also identify the tools and systems they will use to ensure proper use of proceeds—whether internal controls, audit mechanisms or third-party oversight.

The Framework also mandates annual reporting on how the proceeds are used. This includes amounts allocated, details of funded projects and consistency with the original disclosures. If any proceeds remain unutilized, issuers must explain why, how they are being held and when they will be deployed.

For Sustainability-Linked Bonds:

The emphasis shifts to performance in Sustainability-Linked Bonds. Issuers must disclose their sustainability strategy, relevant KPIs and SPTs. These must be material, time-bound and clearly aligned with business goals.

The Framework mandates that annual reports must track performance against KPIs and SPTs post the issuance of the Sustainability-Linked Bonds. This is the true test of the bond’s credibility. If targets are missed, the bond’s structure may trigger financial penalties, such as a step-up in coupon rates.

4. Third party assurance

The Framework of SEBI on ESG Debt Securities, mandates independent third-party reviews both before and after bond issuance to prevent greenwashing and ensure credible ESG claims.

Before issuance, the independent third-party reviewers assess alignment with global standards, verify the use of

proceeds, governance and tracking systems and evaluate the relevance and ambition of KPIs and SPTs, especially for Sustainability-Linked Bonds.

After issuance, the independent, third party reviewers verify fund deployment, impact disclosures and whether targets were met, using methods like audits and staff interviews.

Conclusion: Key takeaways and challenges of the Framework

The Framework marks a strategic turning point in India's financial ecosystem, positioning ESG Debt Securities as a credible vehicle for sustainable financing. Following are the key takeaways and challenges from the Framework:

1. Benefits for Issuers and Investors:

The Framework provides issuers with a standardized, credible way to raise funds for social and environmental initiatives, aligning with global disclosure norms. This enhances their market reputation and helps attract ESG-focused investors, especially valuable for issuers seeking to scale internationally. Public sector projects such as affordable housing, rural healthcare and education can also benefit by accessing social bond markets with increased investor trust due to the Framework's transparency. For investors, SEBI's rules reduce uncertainty and increase comparability. Rigorous disclosures and mandatory third-party reviews help them better assess risks and impacts. Investors are more likely to participate, knowing that the ESG claims are backed by verifiable data.

2. Prevention of Purpose-washing:

The Framework plays a crucial role in preventing purpose-washing (i.e. making false, misleading, unsubstantiated or otherwise incomplete claims about the purpose for which bonds are issued) by mandating clear disclosures on the use of proceeds, alignment with established global principles, independent third-party reviews and requiring issuers to justify ESG claims with measurable impact metrics.

3. Concerns around Third-Party Reviewers:

While the Framework mandates external third-party reviews to validate the ESG credentials of bonds, there is currently no uniform accreditation or oversight mechanism for such reviewers. This raises concerns about the consistency, independence and objectivity of assessments, potentially shifting the risk of purpose-washing to the review process itself.

4. Issuer Readiness and Data Gaps:

Many Indian firms, especially small and medium enterprises, lack the expertise and data systems needed to comply with the Framework. Capacity-building and better data infrastructure are essential for accurate reporting and project validation.

Partition of Property in India: Understanding The Law and Process Including Special Considerations for Agricultural Property

In Indian families, it's common for multiple generations to own property together. However, situations arise over time where family members may want their individual share of a jointly owned property. This legal division is known as a partition. Whether done amicably or through the courts, partition plays a key role in clarifying ownership rights and preventing future disputes.

What is The Partition of Property?

Partition means dividing jointly owned property among co-owners so that each person receives a defined, individual share. Once the partition is complete, each co-owner becomes the absolute owner of their share and can use, sell, or transfer it independently.

For example, in a Hindu Undivided Family (HUF), members (coparceners) have a shared interest in ancestral property. When a partition takes place, this joint status ends, and the property is divided among them.

Partition of property can take two forms: actual partition and notional partition. In an actual partition, the property is physically divided among the co-owners, and each individual receives a specific and identifiable portion, which they can independently own, possess, and manage.

On the other hand, a notional partition involves only the formal recognition and allocation of shares among the co-owners without physically dividing the property. This means that while each person's share is clearly defined, the property continues to be held jointly in terms of possession and use.

What Kind of Property Can Be Partitioned?

1. Ancestral Property

This is property that has been in a Hindu family for at least four generations (passed down from father to son to grandson to great-grandson). Traditionally, only the male descendants had automatic rights. However, a landmark change came with the Hindu Succession Amendment in 2005. This amendment is clearly stated in Section 6 that daughters have the same birthright to this inherited property as sons¹.

In *Prakash & Ors. v. Phulavati & Ors.* (2016), the Supreme Court held that the amendment was prospective and that a daughter could claim coparcenary rights only if the father was alive on 9 September 2005.² However, this reasoning was contradicted in *Danamma @ Suman Surpur & Anr. v. Amar & Ors.* (2018), where daughters were held entitled to a share despite the father's death prior to the amendment.³ These contradictory rulings created legal ambiguity, necessitating authoritative interpretation. This led to a three-judge bench in *Vineeta Sharma v. Rakesh Sharma & Ors.* landmark judgment in 2020, which settled the position

¹ [The Hindu Succession \(Amendment\) Act, 2005, § 6](#)

² [Prakash v. Phulavati, \(2016\) 2 SCC 36 \(India\)](#)

³ [D Danamma @ Suman Surpur v. Amar, \(2018\) 3 SCC 343 \(India\)](#)

by holding that a daughter becomes a coparcener by birth, and her rights are not contingent upon the father's living status as of the amendment date. This decision firmly entrenched gender equality in the coparcenary structure of Hindu law⁴.

2. Self-Acquired Property

Self-acquired property is the exclusive possession of an individual who has acquired it through their means, such as purchase or individual inheritance. Generally, it is not subject to partition unless one of two conditions is met:

- First, the owner voluntarily merges it with the joint family property, thereby relinquishing their sole ownership; or
- Second, the owner dies intestate (without a will), in which case it becomes subject to the laws of succession applicable to their religious affiliation.

What Laws Govern The Partition in India?

Partition in India is governed by a combination of central legislation and personal laws, contingent upon the religious affiliation of the individuals involved and the nature of property ownership:

1. The Partition Act, 1893:

- This Act provides a legal remedy when a physical division of jointly owned property isn't possible or would reduce its value, allowing the court to order a sale instead and divide the proceeds among co-owners.
- Under Section 2 of the Act, when a suit for partition is filed and the court finds that a division by metes and bounds is impracticable or would materially affect the value of the property, it may direct the sale of the entire property and distribute the proceeds among the shareholders.
- As per Section 3, if one of the co-owners wishes to purchase the share of the party seeking the sale, the court may allow this after determining a fair valuation. This ensures that existing co-owners have the opportunity to retain the property within the family or co-ownership structure.
- Section 4 of the Act also grants preferential rights to existing co-owners or family members in cases where a non-family member (a "stranger") seeks partition. In such instances, before ordering a complete sale of the property, the court may allow the existing co-owners to purchase the outsider's share, thereby keeping the property within the original ownership group.
- Further, Section 9 empowers the court to make a fair division of the property where possible, and in case any portion cannot be conveniently divided, it may be sold and the proceeds equitably distributed⁵.
- The 86th Law Commission Report has recommended amendments to the Act to make it more effective, but these changes are yet to be implemented⁶.

2. Hindu Succession Act, 1956:

- This Act applies to individuals who are Hindu, Buddhist, Jain, or Sikh by religion.
- The 2005 amendment to Section 6 granted daughters equal coparcenary rights by birth in joint Hindu family property, allowing them to demand partition and inherit equally with sons.⁷
- It abolished the doctrine of survivorship, ensuring that a deceased coparcener's share devolves by intestate succession rather than passing solely to surviving male members.
- Any coparcener, including a daughter, can seek partition and claim her share through legal proceedings.
- While coparcenary rights apply to ancestral property, self-acquired property devolves under the Act's general rules of succession without invoking survivorship.

3. Indian Succession Act, 1925:

- This Act governs succession for individuals not covered by specific personal laws, including Christians and Parsis. It also applies to Buddhists in cases of testamentary succession.
- It lays down rules for both testamentary succession, where a valid will exists, and intestate succession, when a person dies without a will.
- In intestate succession, property is generally distributed equally among legal heirs, such as the spouse, children, and, in their absence, extended family.
- The religion of the heirs is not relevant for Christians, but the deceased must have been a Christian at the time of death.
- Adopted children do not have the same inheritance rights as biological children under this Act.⁸

4. Muslim Personal Law (Shariat) Application Act, 1937:

- This Act governs property distribution among Muslims in matters of intestate succession, marriage, divorce, and inheritance.⁹
- Property is divided according to Islamic inheritance principles, which follow fixed shares for heirs such as spouses, children, and parents.
- Unlike other laws, a Muslim son who converts to another religion still retains his inheritance rights.
- A child born outside of marriage (an illegitimate child) is also entitled to claim a share in ancestral property under Islamic law.
- Muslim law does not recognize the concept of joint family property or coparcenary; hence, partition occurs upon the death of the property holder according to fixed shares.

How Can Property be Partitioned?

The partition of property, whether residential, commercial, or agricultural, can be achieved through various methods, ranging from amicable settlements to formal legal proceedings:

⁴[Vineeta Sharma v. Rakesh Sharma, \(2020\) 9 SCC 1 \(India\)](#)

⁵[The Partition Act, 1893, §§ 2–4, 9 \(India\)](#)

⁶[Law Comm'n of India, 86th Report on the Partition Act, 1893](#)

⁷[The Hindu Succession Act, 1956, § 6, amended by The Hindu Succession \(Amendment\) Act, 2005 \(India\).](#)

⁸[The Indian Succession Act, 1925, §§ 33–44 \(India\)](#)

⁹[The Muslim Personal Law \(Shariat\) Application Act, 1937, § 2 \(India\)](#)

1. Partition by Mutual Agreement

- Partition by mutual agreement is one of the most preferred and legally recognized modes of dividing jointly held property in India. It is based on the principle that co-owners or family members can amicably and voluntarily determine their respective shares without resorting to litigation. This category includes family settlements and arbitration-based resolutions, both of which uphold the autonomy of parties and promote efficiency, fairness, and familial harmony.

A. Family Settlement

A family settlement is an informal and consensual arrangement between co-owners, typically among family members, to divide jointly owned or ancestral property. It is widely accepted by Indian courts as a valid mode of partition, especially when the intent is to preserve family unity and avoid disputes.

Form of the Settlement

A family settlement may be either oral or written. Indian courts have recognized that even an oral family arrangement is legally valid and enforceable if it is proven through conduct or other supporting evidence. However, when the settlement pertains to immovable property, it is strongly advisable to document the arrangement in writing.

Registration and Stamp Duty

Where a family settlement or partition arrangement results in the creation or transfer of rights in immovable property, it must be registered under Section 17(1)(b) of the Registration Act, 1908. In addition, stamp duty must be paid as per the applicable rates prescribed under the Indian Stamp Act, 1899, which vary by state. Registration of the document ensures legal validity, enforceability, and protection of parties interests in present and future transactions.

Judicial Interpretation

Indian courts have consistently upheld the legal validity of family settlements, even in the absence of formal documentation, provided the arrangement is voluntary, fair, and acted upon by all concerned parties.

- In the landmark case of *Kale & Ors v. Deputy Director of Consolidation & Ors.*, 1976 the Supreme Court ruled that a family arrangement made to resolve present or future disputes, if bona fide and voluntarily accepted, does not require registration if it merely records a pre-existing oral agreement.¹⁰
- More recently, in *Jugal Kishore Khanna (D) Thr Lrs & Anr. vs. Sudhir Khanna & Ors.*, 2024, the Supreme Court addressed the validity of an oral family settlement concerning immovable property. The Court held that such a settlement is legally enforceable if it is bona fide, voluntary,

and acted upon by the parties, even without formal registration.¹¹

B. Partition by Arbitration

Where disputes arise even among family members, but there is still a willingness to avoid court litigation, arbitration serves as an effective method of achieving a mutually agreed partition.

- Parties must enter into a valid arbitration agreement that clearly states that partition related disputes will be resolved through arbitration, as governed by the Arbitration and Conciliation Act, 1996.
- The appointed arbitrator conducts hearings and reviews the claims of the parties in a flexible and time-bound manner, similar to a court, but with less formality.
- The arbitrator may order physical division, valuation and sale, or distribution of proceeds depending on the feasibility and nature of the property.
- The arbitral award is final and binding, with very limited scope for challenge under Sections 34 and 37 of the Act.¹²
- Arbitration is particularly useful when parties wish to avoid the delays and adversarial nature of court proceedings. It is a confidential, time-efficient, and cost-effective alternative that respects the parties autonomy in resolving disputes.

Whether through informal family settlements or structured arbitration proceedings, partition by mutual agreement remains one of the most efficient and harmonious ways to divide jointly owned property in India. By including arbitration under the broader umbrella of mutual agreement, Indian law accommodates both informal and semi-formal methods of partition, whether through oral consensus, written settlement, or structured alternative dispute resolution.

2. Partition by Partition Deed

A partition deed is a formal legal instrument executed when co-owners or legal heirs mutually agree to divide jointly owned or inherited property among themselves. This method of partition is widely used when parties wish to avoid litigation and document the division of property through a legally binding agreement.

Once executed, a partition deed conclusively defines the share of each co-owner, converting joint ownership into separate and exclusive ownership of distinct portions of the property.

A registered partition deed constitutes conclusive evidence of the division of property and the respective ownership of each party. Although an unregistered deed cannot be relied upon to transfer title, it may be admitted in evidence to prove

¹⁰ [Kale v. Deputy Director of Consolidation, \(1976\) 3 SCC 119 \(India\)](#)

¹¹ [Jugal Kishore Khanna \(D\) through Lrs. v. Sudhir Khanna, 2024 SCC Online SC 56 \(India\)](#)

¹² [The Arbitration and Conciliation Act, 1996, § 34, § 37 \(India\)](#)

a family arrangement under specific legal circumstances, in accordance with Section 49 of the Registration Act, 1908 read with Section 13 of the Indian Evidence Act, 1872.¹³

Stamp Duty and Registration Charges

The stamp duty & registration fees for partition deed vary from state to state and must be calculated on the basis of state specific stamp acts and latest notifications, for example:

- In Maharashtra, the stamp duty for a partition deed between family members is generally 1% of the market value of the property, with a maximum limit of ₹10,000 per share of the family members. If the partition is among non-family members, the stamp duty increases to 4% of the market value of the separated shares, while the registration fee remains at 1%.
- In Karnataka, stamp duty rate is 5% for property priced above Rs. 45 lakh, 3% for property priced between Rs. 21 and 45 lakh, and 2% for property less than Rs. 20 lakh. Registration charge is 1% of the value of the share of an individual, capped at ₹20,000
- In Delhi, the stamp duty rate for a partition deed is 2% of the value of the separated share of the property, registration charge is fixed at 1% of the value;
- In Tamil Nadu, for family members, the stamp duty is 1% of the property's market value, capped at ₹10,000 (₹25,000 after September 30, 2013) for each share. The registration fee is also 1%, capped at ₹2,000 (₹4,000 after September 30, 2013) for each share. For non-family members, the stamp duty is 4% of the market value of the property for the separated shares of individuals, and the registration fee is 1% of the market value for those shares.;
- In Telangana, the stamp duty for a partition deed typically ranges from 0.5% to 1% of the property's value, depending on whether it's among family members or not. Registration charges for partition deeds are generally a fixed fee of Rs 1,000.

These rates are subject to change, and parties are advised to consult the local Sub-Registrar Office or revenue authority for the latest applicable rates in their jurisdiction.

Process of Execution and Registration

The process of completing a partition deed involves the following steps:

1. **Drafting:** The deed must be carefully drafted, clearly describing the property, identifying all co-owners, and specifying the share allotted to each party upon partition.
2. **Stamp Duty:** The partition deed must be executed on a non-judicial stamp paper of appropriate value, as per the Stamp Act applicable in the respective State. Stamp duty varies from State to State and may depend on the nature and value of the property and the number of shares being divided.
3. **Execution:** All parties to the partition must sign the deed. The execution must be done in the presence of at least two witnesses, who must also sign the document, attesting the execution.

4. **Registration:** Under Section 17(1)(b) of the Registration Act, 1908, a partition deed that affects immovable property of value exceeding ₹100 must be compulsorily registered. The parties must present the document for registration at the office of the Sub-Registrar within whose jurisdiction the property is situated.
5. **Presentation and Admission of Execution:** The parties (or their authorised agents) must appear before the Sub-Registrar and admit to the execution of the deed. Their identities are verified, and biometric details and photographs are typically captured as per current procedural requirements.
6. **Payment of Registration Fees:** Registration fees, calculated based on the value and location of the property, must be paid. These rates vary from State to State.
7. **Registration and Return of Document:** Upon successful verification and fee payment, the Sub-Registrar registers the deed, endorses it, and returns a certified copy to the parties.

Legal Effect of a Registered Partition Deed

Once a partition deed is duly executed, stamped, and registered:

- Each co-owner becomes the absolute owner of the portion allotted to them and is entitled to use, sell, mortgage, or transfer it independently.
- The partition becomes final and binding, and it cannot be reopened except on legally recognized grounds such as fraud, mistake, or absence of free consent, as detailed below.
- The deed serves as conclusive proof of ownership and protects against future disputes or claims.

Thus, a partition deed not only formalizes the division of property but also ensures legal clarity and security for all parties involved. When executed in accordance with the governing laws and properly recorded, it provides a strong foundation for the peaceful enjoyment and transfer of property in future generations.

3. Partition Suit (Judicial Partition)

When co-owners or legal heirs are unable to reach a mutual agreement regarding the division of jointly owned property, any person with a legitimate share in the property may approach a civil court to initiate a partition suit. This process is known as judicial partition, and it provides a formal legal mechanism to equitably divide the property through court intervention.

Judicial partition is governed by the Civil Procedure Code, 1908, and, where applicable, the Partition Act, 1893. It becomes necessary when disputes arise over ownership, share entitlement, or the method of division.

Legal Framework and Procedure

1. **Right to File:** Any co-owner, coparcener, or legal heir having a definable share in the joint property may file a partition suit. This includes daughters, post the Hindu

¹³ [The Indian Evidence Act, 1872, § 13 \(India\)](#)

Succession (Amendment) Act, 2005, who have equal rights as sons in ancestral property.

2. **Filing of Suit:** The partition suit must be filed in the appropriate civil court having territorial jurisdiction over the property. The plaintiff must establish:
 - Their relationship to the joint property,
 - The existence of undivided shares,
 - The necessity for partition.
3. **Preliminary Decree:** Once the court is satisfied that the plaintiff has a valid share, it passes a preliminary decree under Order XX Rule 18 of the Civil Procedure Code, 1908, declaring the respective shares of all parties.¹⁴ At this stage, no physical division of the property takes place.
4. **Final Decree and Physical Division:** Upon final hearing, the court issues a final decree, which may involve:
 - Division of the property by metes and bounds, i.e., through actual measurement and allocation,
 - Appointment of a court commissioner to assist with physical division and prepare a report,
 - Sale of the property and distribution of proceeds, if physical division is not feasible.

Application of the Partition Act, 1893: Where a physical partition would result in loss of value or impracticality, the court may, under Section 2 of the Partition Act, order a sale of the property and distribute the proceeds equitably. Under Section 4, if a stranger (i.e., a non-family member) has acquired an interest in the property and seeks partition, other co-owners may apply to purchase the outsider's share to retain the property within the family.¹⁵

Key Features and Considerations

- **Court-Driven Process:** Judicial partition is a structured process that ensures legal clarity but can be time-consuming and costly, especially in cases involving multiple claimants or disputed ownership.
- **Binding Nature:** Once the final decree is passed and executed, the partition is final and binding on all parties, unless challenged on grounds such as fraud, misrepresentation, or procedural irregularities.
- **Enforcement:** If one or more parties resist the execution of the final decree, the court may issue an execution order, directing the police or revenue authorities to enforce the partition.
- **Appeals and Reopening:** Orders and decrees in partition suits may be appealed under the Code of Civil Procedure, and in limited cases, the partition may be reopened, particularly where fraud or exclusion is established.

4. Partition by Relinquishment Deed

A relinquishment deed is a legal document by which a co-owner or legal heir voluntarily surrenders their share in a jointly owned or inherited property in favour of another co-owner. This method is commonly used in family contexts to effectuate a partial partition where one or more heirs choose to give up their right, title, and interest in the property,

thereby allowing the remaining co-owners to consolidate ownership.

Distinction Between Relinquishment Deed and Release Deed

While often confused, a relinquishment deed and a release deed are not the same, though both serve the purpose of extinguishing a party's rights in a property. The key distinctions are as follows:

- A relinquishment deed is typically executed in the context of intestate succession, where a legal heir relinquishes their undivided share or interest in inherited property in favour of another co-heir. The relinquishing party does not possess a defined ownership share at the time of execution, as the property has not yet been partitioned; rather, they hold a notional right arising from their status as a legal heir.
- In contrast, a release deed is executed between co-owners who already have ascertained ownership rights in the property. It is commonly used when one co-owner releases their interest in a jointly held property, whether inherited, self-acquired, or jointly purchased, in favour of another co-owner. The release is made in respect of a known and identifiable share in the property, and the instrument may or may not involve consideration.
- The distinction is crucial, as the improper use of these terms can affect the applicability of stamp duty, the registrability of the document, and the legal validity of the transfer. Therefore, the choice between a release deed and a relinquishment deed must be guided by the nature of ownership and the legal relationship between the parties.

Legal Framework and Process for Executing a Relinquishment Deed

A relinquishment deed is a legally recognized instrument through which a person who holds a lawful share in an immovable property voluntarily surrenders their rights in favour of another co-owner. It is primarily used in cases of intestate succession, where legal heirs wish to redistribute ownership among themselves without partitioning the property physically. The legal framework governing relinquishment deeds includes the Transfer of Property Act, 1882, Indian Stamp Act, 1899 (as amended by respective states) and the Registration Act, 1908, as given below.

Eligibility, Nature, and Legal Effect of a Relinquishment Deed

A relinquishment deed may be executed only by a person having a legitimate right or interest in a property, typically, a legal heir who has inherited a notional share upon the death of the original owner. The deed must clearly specify:

- The description of the property and the extent of the share being relinquished,
- The identity of the beneficiary co-owner(s) receiving the relinquished share, and
- A declaration that the relinquishment is made voluntarily, without coercion, fraud, or misrepresentation.

¹⁴ [The Civil Procedure Code, 1908, Order XX Rule 18 \(India\)](#)

¹⁵ [The Partition Act, 1893, §2–4 \(India\)](#)

While such relinquishments are commonly executed without consideration, especially among family members, instances involving monetary compensation may arise. In such cases, the transaction could be recharacterized as a sale, potentially attracting higher stamp duty and capital gains tax under the Income Tax Act, 1961.

Once duly executed and registered, the relinquishment deed completely extinguishes the rights, title, and interest of the executant in the specified share of the property. The beneficiary thereby acquires absolute ownership over that share, enabling them to possess, enjoy, transfer, mortgage, or sell it without legal hindrance.

The deed is considered legally binding and irrevocable, unless challenged in court on valid legal grounds such as fraud, misrepresentation, or absence of free consent. Indian courts have consistently upheld the validity of properly executed and registered relinquishment deeds, recognizing them as effective instruments for resolving inheritance issues.

Relinquishment deeds are particularly valuable in the context of family property settlements, where one or more heirs voluntarily opt out of inheritance or seek to consolidate ownership. They provide clear and enforceable title to the beneficiary and serve to prevent future disputes over inherited assets.

Stamp Duty and Registration

A relinquishment deed involving immovable property must be registered under Section 17 of the Registration Act, 1908, to be legally enforceable. It must be executed on stamp paper of appropriate value under the Indian Stamp Act, 1899, as applicable in the relevant state. The applicable stamp duty and registration charges vary based on the state, the relationship between parties, and whether consideration is involved, for example:

- In Delhi, stamp duty on relinquishment deed is not subject to the standard stamp duty rate of 6% for men and 4% for women, but instead, it has a fixed stamp duty of ₹100. The registration fee for a relinquishment deed is 1% of the total value of the deed, plus a ₹100 pasting charge.
- In Maharashtra, the stamp duty for a relinquishment deed is generally 3% of the property's market value. Additionally, there is a registration fee, which is typically 1% of the market value, with a maximum cap of Rs. 30,000. However, these rates can vary depending on the property's location (e.g., within municipal corporation limits, municipal council areas, or Gram Panchayat areas).
- In Karnataka, a relinquishment deed is typically subject to a 5% stamp duty and a 1% registration fee on the market value of the property or portion of property being released. This applies regardless of whether the relinquishing party is a family member or not.
- In Tamil Nadu, for a relinquishment deed, stamp duty is typically 6% for men and 4% for women, based on the property's market value or agreement value, whichever

is higher. Registration charges are generally 1% of the property's market value or agreement value.

- In Telangana, a 4% stamp duty and registration fees are typically 0.5% of the property value, with a minimum of Rs 1,000 and a maximum of Rs 50,000.

These rates are subject to change by state notifications. If consideration is involved, stamp duty may be calculated as if the transaction were a sale, especially when between non-family members, as discussed above.

5. Partition By Gift Deed

A gift deed is a legal instrument used to voluntarily transfer ownership of property from one person to another without consideration. Though not a traditional mode of partition of property, a gift deed can serve the functional purpose of dividing ownership among co-owners, especially in family arrangements where a party wishes to transfer their share to another family member as part of a broader property settlement.

Distinction Between Release Deed and Gift Deed

The legal distinction between release deed and gift deed has been clearly elucidated by the Delhi High Court in *Tripta Kaushik v. Sub Registrar VI-A, Delhi & Anr. and Ramesh Sharma v. Government of N.C.T. of Delhi & Ors* (2020). The Court held that a release deed is valid only when executed in favour of all the remaining co-owners, as it signifies the surrender or extinguishment of the executant's undivided share in a joint property in favour of the other co-owners collectively.

However, if the relinquishment is made in favour of only one co-owner to the exclusion of the others, such a transaction cannot be construed as a release of rights, and instead amounts to a transfer attracting the nature of a gift deed, particularly when it is made without consideration. In such cases, the document does not merely extinguish the executant's rights but confers ownership on a specific individual, thereby requiring compliance with the legal formalities applicable to a gift, including registration and appropriate stamp duty¹⁶.

This judicial interpretation reinforces the principle that the substance of the transaction, not merely its title, determines its legal character and the applicable statutory requirements.

Legal Framework for Executing a Gift Deed

The execution of a gift deed is governed primarily by the Section 122 Transfer of Property Act, 1882, which mandates that a gift of immovable property must be made voluntarily, and must be accepted by the donee during the lifetime and mental competence of the donor. If the donee predeceases acceptance, the gift is rendered void¹⁷.

Furthermore, to be legally valid, the gift deed must be compulsorily registered in accordance with Section 17 of the Registration Act, 1908, and must be attested by at least two witnesses.¹⁸

Eligibility and Nature

A gift deed may be executed by any person who holds clear, transferable title to the property. In the context of family property division, it is often used by a co-owner to gift their share

¹⁶ [Tripta Kaushik v. Sub Registrar VI-A, Delhi & Anr. and Ramesh Sharma v. Government of N.C.T. of Delhi & Ors., 2020 AIR ONLINE 2020 DEL 781 \(India\).](#)

¹⁷ [The Transfer of Property Act, 1882, § 122](#)

¹⁸ [The Registration Act, 1908, § 17\(1\)\(a\)](#)

to another family member, thereby reducing the number of stakeholders and facilitating partial or complete partition. The transfer must be unconditional and without monetary consideration. If consideration is involved, the transaction may be treated as a sale, attracting higher stamp duty and taxation implications.

Stamp Duty and Registration Fee (State-wise Overview)

Stamp duty on gift deeds depends on two main points, firstly, the relationship between donor and donee and secondly, the nature of the property. For example:

- In Delhi, the stamp duty and transfer duty is 4% if the donee is a woman and 6% if the donee is a man. Registration fee is 1% of the total value+Rs.100/- pasting charges.¹⁹
- In Maharashtra, the stamp duty for a gift deed is generally 3% of the property's market value. This applies to transfers between non-family members or distant relatives. For gift deeds between family members (close relatives), the stamp duty might be lower, potentially as low as ₹200.²⁰
- In Karnataka, the stamp duty for a gift deed is generally 5% of the property's market value if the donee (recipient) is not a family member. However, if the donee is a family member, the stamp duty is a fixed amount, typically ₹5,000 for Bangalore Metropolitan Region Development Authority (BMRDA)/ Bruhat Bengaluru Mahanagara Palike (BBMP)/ City Corporation properties, ₹3,000 for City/Municipal Council/Town Panchayath properties.²¹
- In Tamil Nadu, the stamp duty for a gift deed is generally 7% of the market value of the property. However, if the gift is made to a family member (spouse, children, parents, siblings, or grandchildren), the stamp duty is reduced to a 1%.²²
- In Telangana, the stamp duty for a gift deed (transfer of property without consideration) is generally 2% if the gift is in favor of a family member, and 5% if it's in favor of someone outside the family. Registration charges are typically 0.5% of the property value, with a minimum of Rs 2,000 and a maximum of Rs 25,000 for family members and Rs 1,00,000 for gift to person outside family.²³

Legal Effect of a Gift Deed in Partition

Once a gift deed is duly executed and registered:

- The donee becomes the absolute owner of the property or share gifted.
- The gift is irrevocable, unless proven to have been executed under fraud, coercion, or undue influence.
- It may effectively reduce or reconfigure co-ownership, thereby facilitating a partition even though not in the technical sense.

A gift deed should not be used to disguise a sale, especially where consideration is involved. If misclassified, it may attract higher duties and legal scrutiny. In case of disputes, courts examine the

intent, documentation, and relationships between parties to determine the true nature of the transaction.

Other Key Considerations During Partition of Property

1. Minor's Interest:

When a minor has a share in the property being partitioned, the guardian must obtain prior permission from the court under the Guardians and Wards Act, 1890. This safeguard ensures that the minor's interests are adequately protected during the partition process.²⁴

2. Unequal Division:

Partition is not always equal, especially in cases involving wills or family settlements where parties mutually agree to unequal shares. Courts generally uphold such arrangements provided they are made voluntarily, without coercion, and are equitable.

Reopening or Challenging a Partition

The principle that partition is final and irrevocable is rooted in both classical Hindu law and judicial tradition. Manusmriti states that: "three actions are irrevocable: once a partition of property is made, once a damsel is given in marriage, and once a gift is made- these actions, once performed, cannot be undone or revoked." While this reflects the sanctity of partition, Indian courts have recognized certain exceptions where a partition may be reopened to uphold equity and legality.

1. Legal Grounds for Reopening a Partition

Fraud or Misrepresentation

A partition may be reopened where any coparcener was misled, deceived, or wrongfully excluded. Courts have consistently held that a decree of partition obtained through concealment of material facts or fraud is liable to be set aside.

- In *Santosh v. Jagatram*, AIR 2010, a widow's rights were fraudulently omitted, and the partition decree was set aside.²⁵
- In *Bhishambar v. Lala Amar*, AIR 1937, reopening was permitted upon discovery of fraud post-decree.²⁶
- However, courts have cautioned that fraud must be specifically pleaded at the initial stage; a party cannot later introduce allegations of fraud to unsettle an otherwise valid partition.

Mistake or Omission

If a coparcener was excluded by mistake or if properties not owned by the family were inadvertently included, a suit may be brought for reopening.

In *Ratnam Chettiar v. Kuppuswami*, AIR 1976 the court held that a partition could be challenged on grounds of bona fide mistake regarding ownership. Additionally, if joint family properties were left out unintentionally, they can be subjected to partition later.²⁷

Disqualified Coparcener

¹⁹ Revenue Department, Government of NCT of Delhi, [Property Registration Guidelines \(last visited June 8, 2025\)](#) (India)

²⁰ The Maharashtra Stamp Act, 1958, § 34 (India)

²¹ Department of Stamps and Registration, Government of Karnataka, [Stamp Duty and Registration Fee Schedule \(Sept. 2024\)](#) (India)

²² Inspector General of Registration, Government of Tamil Nadu, [Stamp Duty and Registration Charges \(2023\)](#) (India)

²³ Registration and Stamps Department, Government of Telangana, [Gift Deed Fee Structure and Stamp Duty Circular, Memo No. 128/2021 \(Issued on Apr. 14, 2021\)](#) (India)

²⁴ The Guardians and Wards Act, 1890

²⁵ *Santosh v. Jagatram*, AIR 2010 SC 1170 (India)

²⁶ *Bhishambar v. Lala Amar*, AIR 1937 All. 382 (India)

²⁷ *Ratnam Chettiar v. Kuppuswami*, AIR 1976 Mad. 270 (India)

A coparcener who was excluded from partition on account of disqualification, such as unsoundness of mind, physical disability, or erroneous legal interpretation, may seek reopening of the partition if such disqualification is later removed, cured, or deemed unlawful.

Under traditional Hindu law, certain categories of individuals were disqualified from inheritance (e.g., persons suffering from congenital deformities or terminal illness). However, modern jurisprudence has increasingly aligned with constitutional values of equality and therefore enables reopening of partition.

Son in Womb

Under Hindu law, a child in the womb at the time of partition is treated as a living coparcener. If no share was allotted to the unborn child at the time of partition, the transaction is liable to be reopened. This is supported by judicial interpretation and commentary in Mulla's Principles of Hindu Law, which emphasizes that failure to reserve a share for such a child invalidates the finality of the partition, insofar as it affects their interest.

Adopted Son

Under Section 12 of the Hindu Adoptions and Maintenance Act, 1956, a son adopted by a widow relates back to the date of death of the adoptive father, thereby placing him in the same legal position as a biological son born prior to the partition. If such adoption occurs after partition and no share was reserved or considered for the adopted child, he may file a suit for reopening the partition to claim his rightful share in the ancestral property.²⁸

Absent Coparcener

A partition may also be challenged by a coparcener who was absent, unaware, or unrepresented during the transaction. Courts have held that mere physical absence or lack of communication at the time of partition cannot deprive a coparcener of their rightful share.

The law recognizes that actual participation or express consent is essential in partition proceedings. If an individual was left out without notice or allocation, the partition is not binding as to them. This is particularly relevant in cases of family members residing abroad, in military service, or otherwise unavailable.

Minor Coparcener

Where a minor coparcener was allotted an inadequate, unfair, or unjust share, or where his interest was not adequately safeguarded by the guardian or Karta, he is entitled to reopen the partition upon attaining majority.

This right exists even in the absence of fraud or coercion, reflecting a strong protective stance under Hindu law. In Sukhrani v. Hari Shanker, AIR 1979 SC 1436, the Supreme Court held that a partition could be reopened at the instance of a minor whose interest had been compromised, even if represented by the father or guardian.²⁹ The principle finds statutory reinforcement under the Hindu Minority and Guardianship Act, 1956, which mandates that the guardian must act in the best interest of the minor at all times.³⁰

2. **Judicial Affirmation of Reopening in Recent Case Laws**

In recent years, courts have reaffirmed that a partition is not immune from challenge if the process is flawed or inequitable.

Maresh v. Ishwar & Others, Karnataka High Court, 2024

In this case, the Karnataka High Court (Dharwad Bench) dealt with a situation where the plaintiff, Maresh, was excluded from an earlier partition that had been effected through a compromise decree. Maresh had not been made a party to the earlier proceedings and had no knowledge of the compromise until much later.

The Court held that a compromise decree is not binding on someone who was not a party to it, and that such a person has the right to file an independent suit for partition. The Court further observed that the mere existence of a deed or decree does not preclude judicial scrutiny if it is alleged that a rightful legal heir was excluded without notice or consent.

"A person not a party to a compromise decree cannot be bound by it and is entitled to challenge the same through an independent suit." - Maresh v. Ishwar & Ors., Karnataka HC (2024).³¹ This decision reaffirms that procedural fairness is a constitutional requirement, and courts will not allow technical finality to override substantive rights, particularly in matters of family property.

Joginder Singh v. Dr. Virinderjit Singh Gill, Supreme Court of India, 2024

In this matter before the Supreme Court, the dispute revolved around oral partition claims and long-standing family arrangements that allegedly excluded certain legal heirs. The appellant challenged the partition on grounds that it lacked proper documentation and did not include all heirs entitled to a share.

The Supreme Court held that courts must closely examine oral partitions or informal arrangements, especially where there is ambiguity, exclusion, or lack of documentary proof. The Court also clarified that procedural non-compliance (such as defects in pleadings) should not result in automatic dismissal, unless specifically mandated by statute.

"Substantive rights must not be defeated by procedural technicalities, particularly in family disputes involving property." - Joginder Singh v. Dr. Virinderjit Singh Gill, SC (2024).³²

This judgment reiterates the judiciary's commitment to ensuring that no legal heir is denied their rightful share due to informal arrangements or legal shortcuts. It emphasizes that all legal heirs must be included, and that documentation and transparency are critical for the conclusive validity of any partition.

3. **Limitation and Evidentiary Challenges**

Although courts recognize the right to challenge a flawed partition, such claims are subject to:

Limitation

Under the Limitation Act, 1963, a suit for partition or for a share in joint family property must typically be filed within 12

²⁸ [The Hindu Adoptions and Maintenance Act, 1956, § 12 \(India\)](#)

²⁹ [Sukhrani \(Dead\) by L.Rs. v. Hari Shanker, AIR 1979 SC 1436 \(India\)](#)

³⁰ [The Hindu Minority and Guardianship Act, 1956, § 8 \(India\)](#)

³¹ [Maresh v. Ishwar, 2024 SCC OnLine Kar 187 \(India\)](#)

³² [Joginder Singh v. Dr. Virinderjit Singh Gill, 2024 INSC 814 \(India\)](#)

years from the date when the plaintiff's right to claim partition is either denied or otherwise becomes known. However, if the challenge is based on fraud, misrepresentation, or concealment, the limitation period may be extended, starting from the date of discovery of the fraud (as per Section 17 of the Limitation Act).³³

Presumption of Validity

Where a partition, whether oral or written, has been acted upon by the parties, and is reflected in public records such as:

- Mutation entries in land revenue records,
- Municipal or property tax records,
- Separate possession or enjoyment by co-owners,

the courts will typically presume the partition to be valid unless strong evidence is led to the contrary. The longer such partition has been in effect without challenge, the stronger the presumption becomes.

Burden of Proof

- The onus lies entirely on the party seeking to reopen the partition to establish:
- That the partition was vitiated by fraud, coercion, or mistake;
- That they were excluded from the proceedings or not made aware of their rights;

Or that the partition violates mandatory legal requirements, such as the inclusion of all lawful heirs.

This evidentiary burden is particularly high when the challenge is raised after a considerable lapse of time, or when mutation records, possession, or registered documents already reflect a settled partition.

4. **Agricultural Land and Partition Challenges**

In the context of agricultural property, reopening may also arise where:

- Mutation was carried out without including all legal heirs;
- Revenue authority approval was not obtained, where mandated by state-specific laws;
- Minimum landholding or anti-fragmentation norms were violated.

Here, courts may direct revenue authorities to revisit the partition, ensure proper demarcation, and correct ownership records accordingly.

The law acknowledges partition as a legally binding reallocation of ownership. However, when the process lacks transparency or rightful heirs are excluded, courts have not hesitated to intervene.

Reopening a partition in such circumstances reflects the judiciary's commitment to ensuring that no individual is unjustly deprived of their rightful share. It upholds the core principles of justice and equality, particularly in the modern legal landscape where reforms have strengthened the rights of all heirs, including daughters, in ancestral property.

Special Considerations for Agricultural Property

Partition of agricultural property in India is not governed by a single uniform law. It intersects with state-specific tenancy acts, land reform statutes, and constitutional mandates. Below are the key legal considerations unique to agricultural land:

1. **State-Specific Tenancy and Land Reform Laws**

Agricultural land is regulated under state-specific legislation such as the Maharashtra Tenancy and Agricultural Lands Act, 1948³⁴, and the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. These laws often:

- Restrict ownership to "agriculturists" only.
- Impose conditions on the partition, sale, or gift of agricultural land.
- Require revenue authority permission for partition and transfers.³⁵

Violating these can render a partition invalid or unrecorded in official revenue records.

2. **Restrictions on Fragmentation**

Many states, including Punjab, Haryana, and Maharashtra, prohibit the partition of agricultural holdings into plots smaller than a statutory minimum area. These anti-fragmentation laws aim to avoid unviable land parcels and preserve agricultural productivity.

Instead of physical division, such laws may allow only undivided shares unless consolidation or special permission is granted under state land consolidation laws.

3. **Gender Equality in Agricultural Inheritance:**

Historically, agricultural inheritance laws in some Indian states excluded daughters from inheriting agricultural land. However, the legal landscape has evolved to uphold gender equality. The Supreme Court in *Madhu Kishwar v. State of Bihar (1996)*³⁶ and the Hindu Succession (Amendment) Act, 2005 have affirmed daughters' equal rights in ancestral agricultural property. These reforms ensure that women have the same legal standing as men in partition and succession involving agricultural land.

4. **Mutation and Revenue Records**

After partition, whether by family settlement, deed, or court decree, the mutation of revenue records is essential. Mutation is the official process by which the government updates land ownership in revenue registers.

- Mutation is carried out by the Tehsildar or other designated revenue officers.
- Lack of mutation can hinder access to subsidies, loans, or legal recourse.
- Partition without mutation may not be recognized for practical purposes.

5. **Ceiling Laws and Holding Limits**

³³ The Limitation Act, 1963, §§ 3, 17 (India)

³⁴ The Maharashtra Tenancy and Agricultural Lands Act, 1948, § 31 (India)

³⁵ The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, § 110 (India)

³⁶ *Madhu Kishwar v. State of Bihar*, (1996) 5 SCC 125 (India).

Post-independence land reform laws impose landholding ceilings to prevent concentration of agricultural land. If partition results in any heir exceeding the statutory ceiling (which varies by state), the excess land may be:

- Declared surplus;
- Subject to acquisition by the state;
- Re-distributed to landless persons.

Examples include Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973,³⁷ and similar laws in Bihar, Tamil Nadu, and Gujarat.

6. Restrictions on Transfers to Non-Agriculturists

In several states, such as Karnataka, Himachal Pradesh, Uttarakhand, and Gujarat, agricultural land can only be transferred to individuals legally recognized as "agriculturists."

Even a lawful heir, if not classified as an agriculturist under the respective state law, may:

- Be barred from receiving land via partition;
- Require conversion of land use before receiving ownership;
- Need prior approval from the district collector or revenue authority.

These rules safeguard agrarian policy goals but complicate partition among urbanized family members.

7. Testamentary Limitations

While agricultural land can be passed through a will, several states limit such testamentary freedom:

- Wills cannot override land ceiling limits.
- Wills in favour of non-agriculturists may be invalidated.
- In some cases, succession laws override testamentary intent in matters involving agricultural land.

In particular, Punjab and Maharashtra have precedents where courts have restricted such transfers to preserve agricultural character and prevent circumvention of tenancy protections.

Conclusion

The partition of property in India is a legally structured process governed by a combination of statutory provisions, personal laws, and judicial precedents. It applies to a broad range of property types, including ancestral, self-acquired, residential, commercial, and agricultural holdings. The mode of partition may vary, through mutual agreement, arbitration, execution of a partition deed, or a formal judicial decree, each governed by specific legal procedures, evidentiary requirements, and documentation standards.

Recent legal developments, including the recognition of equal rights for daughters under the Hindu Succession (Amendment) Act, 2005 and evolving jurisprudence on oral settlements and reopening of partitions, have significantly reshaped the legal landscape. Special considerations also arise in cases involving minors, adopted children, agricultural land, and state-specific tenancy and land reform statutes.

Proper registration, stamp duty compliance, and mutation of records are essential for ensuring the legal enforceability of any partition. Where disputes arise, courts have consistently emphasized the importance of including all legal heirs and upholding procedural fairness.

In sum, partition is not only a tool for reallocating property but also for establishing clear title, preventing future disputes, and enabling lawful enjoyment and transfer of ownership. A sound understanding of the legal framework and compliance with procedural safeguards are critical to achieving a valid and enforceable division of property.

³⁷ [The Andhra Pradesh Land Reforms \(Ceiling on Agricultural Holdings\) Act, 1973, § 7 \(India\)](#)

Contracts By and With Minors: Effects and Nuances

Hindu Law

“The king shall protect the inherited (and other property) of a minor, until he has returned (from his teacher’s house) or until he has passed his minority.”¹

In India, minors are placed under the care and supervision of guardians to ensure the welfare of the minor, including the provision of essential needs. The legislative framework prioritises minor welfare by treating property transfers by guardians as voidable rather than void, recognising that such transactions may serve legitimate purposes for the minor's benefit or estate preservation.

In Hindu jurisprudence, a guardian safeguards the minor's interests and manages both joint family and separate property. The Hindu Minority and Guardianship Act, 1956 (HMGA) provides powers to the guardians while taking care of minors.²

Guardian’s Powers and Minor’s Rights Under Section 8 HMGA

Section 8 of the Hindu Minority and Guardianship Act empowers natural guardians to manage a minor’s property but prohibits the sale, mortgage, or lease of immovable property without court approval. Such unauthorised acts are voidable. Guardians are not entitled to a minor’s undivided interest in joint family property but can oversee separate property.³

However, this provision incorporates a few windows of relaxation specifically for leasing arrangements. Guardians may lease a minor's property without court permission if the term is under five years and doesn't extend beyond one year after the minor attains majority.⁴ The guardian also retains unrestricted authority over (a) movable property alienation and (b) contractual obligations. Guardians can bind a minor's estate contractually, but cannot impose personal liability directly on the minor beyond the estate's encumbrance.

Guardian’s Power To Enter Into A Contract For A Minor’s Property

In Hindu Law, a comprehensive two-pronged safeguard mechanism governs transactions involving a minor's property. First, judicial permission is mandatorily required for any disposal of the minor's assets. Second, the law permits only beneficial transactions, meaning any sale or transfer must demonstrably serve the minor's welfare or be necessary for their benefit. Courts are often called to decide if a minor’s property sale by a guardian is void or voidable.

The Supreme Court has clarified in the case of *Vinoda v. M.S. Susheelamma (D) BY LRS (2021)*⁵ that there is no fixed parameter to determine what constitutes necessity-

“There are no specific grounds to prove the existence of legal necessity, and it must therefore depend on the facts of each case.”

The process for the guardian to take a permission as per Section 31 of the Guardians and Wards Act (GAWA)⁶, is only upon demonstrating "necessity or evident advantage" to the ward, Courts ensure property transfers benefit minors by requiring documentation, judicial approval, notice to parties, public auctions, or supervised, directed investments.⁷

Over time, a catena of judgments has elaborated on this stance. This principle was laid down by the Privy Council in the *locus classicus Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree (1856)*⁸ where it was held that the power of a manager for a minor’s estate is “limited and qualified,” and must be exercised only in cases of necessity or benefit to the estate. A minor can challenge property alienation post-majority whereas, guardians can’t bind minors with personal covenants or impose personal obligations on them.⁹ In *Amirtham Kudumbah v. Sarnam Kudumban (1991)*¹⁰ the Supreme Court clarified that alienation without court sanction is voidable, and the minor or persons claiming under him may challenge such sale only within three years of attaining majority under Article 60 of the Limitation Act.¹¹

The Supreme Court has held in the case of *Vishwambhar and Ors. v. Laxminarayana (Dead) through L.Rs. and Ors. (2001)*¹² that sale by the guardian without prior permission of the Court becomes voidable and not void *ab initio*. A suit for possession without seeking cancellation of sale deeds is dismissed after a minor attains majority.

In the case of *Divya Dip Singh and Ors. v. Ram Bachan Mishra and Ors. (1997)*¹³ it has been held that a guardian’s sale without court permission is voidable and remains valid unless the minor challenges it within three years of majority, and prior acknowledgement bars later invalidation. In *Nagappan v. Ammasai Gounder (2004)*¹⁴, the Court held that a natural guardian’s sale of a minor’s immovable property without complying with Section 8(1) and (2) of the HMGA is voidable, not void, and must be challenged to be set aside. *Nangalamma Bhavani Amma v. Gopalkrishnan Nair and Ors. (2004)*¹⁵ reaffirmed this, stating such sales are valid unless challenged. In *Murugan v. Kesava Gounder (2019)*¹⁶, the Supreme Court clarified that a registered sale deed remains effective unless legally set aside, despite violating Section 8(3) HGMA.

Thus, it is a settled provision in law that the powers of the natural guardian of a Hindu minor are larger than those of a guardian appointed under any other act.¹⁷ A guardian may alienate

¹ Manu, Manusmriti, VIII, verse 27.

² Hindu Minority and Guardianship Act, Act No. 32 of 1956, § 8.

³ *Ayodhya Sah v. Jt Director of Consolidation*, AIR 1992 Pat 97.

⁴ Hindu Minority and Guardianship Act, Act No. 32 of 1956, § 8(2)(b).

⁵ *Vinoda v. M.S. Susheelamma (D) BY LRS 2021 INSC 878*.

⁶ Guardians and Wards Act, Act No. 8 of 1890, §31.

⁷ *Surta Singh v. Pritam Singh*, 1982 SCC OnLine P&H 352

⁸ *Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree* 1856 SCC OnLine PC 7.

⁹ *Koonweree* 1856 SCC OnLine PC 7.

¹⁰ *Amirtham Kudumbah v. Sarnam Kudumban* MANU/SC/0585/1991.

¹¹ *Amirtham Kudumbah v. Sarnam Kudumban* MANU/SC/0585/1991.

¹² *Vishwambhar and Ors. v. Laxminarayana (Dead) through L.Rs. and Ors.* MANU/SC/0374/2001.

¹³ *Divya Dip Singh and Ors. v. Ram Bachan Mishra and Ors.* MANU/SC/0345/1997.

¹⁴ *Nagappan v. Ammasai Gounder (2004) (13) SCC, 480.*

¹⁵ *Nangalamma Bhavani Amma v. Gopalkrishnan Nair and Ors. (2004) 8 SCC 785.*

¹⁶ *Murugan v. Kesava Gounder (2019) 20 SCC 633.*

¹⁷ *Ram Chunder v. Brojonath (1879) 4 Cal 929 (FB).*

property without sanction if necessary and ratified within three years post-majority.

Legal Recourse for Third Parties in Minors' Property Dealings

Even good-faith third parties risk loss when minors misrepresent or guardians act beyond authority, highlighting the law's unwavering protection of minors.

In the landmark case of *Mohiri Bibee v. Dharmodas Ghose* (1903)¹⁸ a minor obtained a loan by falsely claiming adulthood and executed a mortgage deed. The Privy Council held the contract *void ab initio*, ruling that estoppel doesn't apply to minors under Section 11 ICA. Even with fraudulent misrepresentation, minors aren't liable unless the fraud is directly attributable to them.

Further, in the common law case of *Leslie Ltd. v. Sheill* (1914)¹⁹, the court addressed the limits of equitable relief against minors who fraudulently misrepresent their age. The court held that a minor who misrepresented their age can be ordered to return property only if it is traceable, and since the spent loan money wasn't, enforcing repayment would amount to enforcing a void contract, which equity disallows. The judgment clarified that "*restitution stops when repayment begins*," meaning, while equity protects fairness, it won't enforce contracts by making minors monetarily liable for fraud.

Relief lies only against the *de facto* guardian, not the minor or their estate, and any security created by the guardian cannot be enforced against the minor's property as a right.

In cases when the guardian is not following the due process as statutorily required, the victim minors or the contracting party has these recourses available to them, as in *Amirtham Kudumbah v. Sarnam Kudumban* (1991)²⁰, the Supreme Court affirmed that a minor, on attaining majority, can repudiate a guardian's unauthorized property transfer within three years, and this right is transferable to anyone who later acquires the property.

The case of *Vasantkumar v. State of Maharashtra* (2022)²¹ established that, to invoke action under Section 420 of the Indian Penal Code (IPC), and to establish cheating by a guardian, it must be proven that they acted with deliberate deception and dishonest intent from the start, causing the minor or another to part with property or alter a valuable document.

Hence, the legal recourse available are :

1. Transfer of the right to sue alongside a minor.
2. Contract Voidable, not void *ab initio* at the discretion of the court.
3. Courts may direct the restoration of benefits under Section 33 of the Specific Relief Act.²²
4. Criminal action against the guardian of a minor for fraudulent actions.

¹⁸ *Mohiri Bibee v. Dharmodas Ghose* [1903] UKPC 12.

¹⁹ *Leslie Ltd. v. Sheill* (1914) 3 K.B.607.

²⁰ *Amirtham Kudumbah v. Sarnam Kudumban* MANU/SC/0585/1991.

²¹ *Vasantkumar v. State of Maharashtra* (2022) SCC OnLine Bom 712.

²² Specific Relief Act, Act No. 47 of 1963, §33.

²³ Dinshah Fardunji Mulla and Satyajeeet Atul Desa, Mulla: Principles of Mahomedan Law, 20th Edition, 2019.

²⁴ The Indian Majority Act, ACT NO. 9 OF 1875.

5. A declaratory suit can be filed by the minor or the party representing the minor.

Mohammadan Law

In Mohammadan law, guardianship over a person is common, however, guardians are also appointed in case of property. A person who has reached puberty, which is usually around the age of 15, they are considered mature and is expected to handle their own affairs, such as property and legal decisions.²³

However, this has been changed since the inception of the Indian Majority Act.²⁴ According to this Act, a Muslim must be at least 18 years old to manage their own property or make most legal decisions, except in three specific cases

- Marriage
- Dower or Mahr - the money or gift the husband gives the wife at the time of marriage
- Divorce

A Muslim can act independently in three matters at 15, but for all other legal or property issues, they need a guardian until 18, as per GAWA provisions. Any transfer of immovable property by a guardian that breaches the legal provisions of the GAWA can be set aside upon the application of the minor or any other individual who suffers prejudice from such a transaction.²⁵ The guardianship of the property of the minor under Muslim law is of three types:

- Legal *de jure* or natural guardian.
- Guardian appointed by the court or certified guardian; and
- *De facto* guardian

De Jure Guardian of Minors' Property

Tyabji in his "*Principles of Mohammadan Law*" has stated in Section 261 that neither mother, nor brother, nor the uncle can, without the authority of the Court, deal with the property of a minor. Asaf A.A. Fyze in Section 34 has reiterated the same principles. In case of Legal guardianship of property, the following persons are entitled and in the same preference and are *de jure* guardians:²⁶

- The father;
- The executor appointed by the father's will;
- The father's father;
- The executor appointed by the will of the father's father.

As per the landmark case of *Meethiyani Sidhiqu v. Muhammed Kunju Pareeth Kutty* (1996)²⁷, no relative, including the mother²⁸, brother²⁹, or uncle of a minor, possesses a legal right to act as the guardian of the minor's property by virtue of relationship alone. The father or, in his absence, the paternal grandfather can appoint the mother, brother, uncle, or any other person by will as a legal guardian, giving them full powers and duties.

If a guardian's income is insufficient, they can transfer the minor's property by sale, mortgage, or lease if it's necessary for

²⁵ *Solema Bibi v. Hafeez Mahomed* (1927) 54 Cal. 687.

²⁶ *Supra* 24.

²⁷ *Meethiyani Sidhiqu v. Muhammed Kunju Pareeth Kutty* (1996) AIR SC1003.

²⁸ *Patel Parshottamdas Narasinbhai v. Bai Dhabu* ('73) A. Guj. 88.

²⁹ *Syed Shah Gulam Ghouse Mohiuddin v. Syed Shah Ahmad Mohiuddin Kamisul Qadir* ('71) A.S.C. 2184.

the minor's maintenance, education, or welfare and done as per guardianship laws.³⁰

Court Appointed Guardian

In the absence of the legal guardians, the responsibility to appoint a guardian for the minor's property vests in the Court, acting as the representative of the State³¹, however, it is limited.³² If no legal guardian exists, the Court may appoint any suitable person as guardian of the minor's property, prioritising the minor's welfare.³³ The mother may be appointed over paternal relatives, even if she is a pardanashin woman, and maternal relatives may be preferred if in the minor's best interest.

De Facto Guardian of Minors' Property

A *de facto* guardian is one who is not legally or judicially appointed but voluntarily assumes care of the minor's person or property. Such a guardian is distinct from a *de jure* guardian and has no legal authority to transfer any interest in the minor's immovable property. An important observation in the latest case of *Sajida W/o Mohammed Ghouse Major v. Bibi Jan W/o Sayed Sabjan Sab Major (2024)*³⁴ is that a *de facto* guardian who assumes the role of the minor's guardian has no power to effect a transfer. Such a transaction is not merely voidable but void.³⁵ An alienation of property by a *de facto* guardian may be ratified by a minor on attaining majority.³⁶ Court permission for selling a minor's property helps avoid future disputes. Under the Limitation Act³⁷, Article 44 gives 3 years for challenging transfers by legal guardians, while Article 144³⁸ gives 12 years for adverse

possession by unauthorised ones, similar remedies apply under Hindu Law or GAWA.

Conclusion

In sum, the courts have consistently inclined towards following the doctrine of the Best Interest of Minor, establishing a strong legal framework that prioritises the protection of minors while balancing the legitimate interests of third parties. The jurisprudence across Hindu and Mohammadan law demonstrates a careful calibration between protecting minors from exploitation and ensuring that property transactions can proceed where genuinely beneficial. While the legislative intent remains firmly protective, treating unauthorised transactions as voidable rather than void and requiring the court's oversight for significant property dealings, the law also provides measured recourse for parties who deal with minors or their guardians in good faith.

³⁰ [Kaiser Parvez v. Abdul Majid Al.R. 1982 All. 9.](#)

³¹ [Imbandi v. Mutsaddi \(1918\) 45 I.A. 73, 84, 45 Cal. 878, 893, 47 I.C. 513.](#)

³² [Alim-ullah v. Abadi \(1906\) 29 All. 90.](#)

³³ [Md. Naziruddin v. Govindrajulu Appah \(1971\) A. Mad. 44.](#)

³⁴ [Sajida W/o Mohammed Ghouse Major v. Bibi Jan W/O Sayed Sabjan Sab Major \(2024\) R.S.A. NO.1011/2007 \(INJ\).](#)

³⁵ [Supra 24; Mohd. Raheemuddin v. Aaysha Begum \(1978\) 2 An. W.R. 84;](#)

³⁶ [Supra 24.](#)

³⁷ [Limitation Act, 1963 Act No. 36 of 1963, art 144.](#)

³⁸ [Limitation Act, 1963 Act No. 36 of 1963, art 44.](#)

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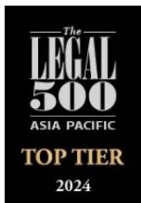
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