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Discrimination on the Name of Protection: Historical Trajectory of Indian Tribal Women's Access to Land

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ABSTRACT

In the tribal world, land is central to the socio-economic, political and cultural life and is a source of empowerment. But due to lack of applicability of the statutory laws and the continuation of the customary rules in the tribal affairs, there is no clear demarcation on Indian tribal women's right to property from the colonial days to the present. It brings us to a crucial question as to how far on the name of protecting the tribal culture and their customary rules a discriminatory system against women can be allowed to continue.

A recent Supreme Court judgement, passed on 25th July 2025, on the case of Ram Charan & Ors. vs. Sukhram & Ors., highlighted this issue and affirmed that Dhaiya, a deceased Gond women's legal heirs are entitled to an equal share of her maternal grandfather's ancestral property even when the customary tribal rules do not clearly specify on this subject. The judgement further highlighted that the tribal women in India cannot be denied their property right on the name of protecting the tribal culture.

Adopting a post-modernist approach this paper, therefore, argues that women is not one organic body and the discriminations faced by them needs cross community, class and cultural introspection. The history of Indian tribal women's access to property is a case in study in this relation. To understand the Indian tribal women's issues around access to property better, this paper, thus, locates it

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in the context of colonial and post-colonial laws of India and tries to identify the historical trajectory of this subject.

INTRODUCTION

Access to land is a source of empowerment. In the tribal areas it is even more so as in these regions it is the primary source of wealth and power. But the question of who can have access to land in the tribal regions is left to the customary laws of the tribes on the name of protecting the “exclusive” (Risley: 1892, p. 105) tribal cultures. It was a colonial approach of looking at the tribes as archaic entities requiring special treatment of protection. But this protection of the other world of the tribes came at a cost to them, denying them equal opportunity and growth since the colonial times.

Post-colonial India witnessed continuation of this policy. Such an approach proved especially fatal to the rights of tribal women. In fact they became the worst sufferers of all, as they were left to the subject of customary laws of the tribes, often patriarchal in nature, denying them any progressive law to empower them.

Since colonial approach is the base of the present day discrimination faced by Indian tribal women, this paper begins with a study of the colonial view point on this subject. In doing so a detailed enquiry into the colonial legal history towards the tribal world and its impact on the tribal women is articulated. Taking a comparative approach the tribal women’s right to property is then analysed in the context of post-independent Indian legal system. Analysing through the prism of post-modernist theory, the paper finally concludes locating the plight of tribal women in lack of statutory laws protecting their property rights.

TRIBAL WOMEN’S ACCESS TO PROPERTY IN COLONIAL ERA

The British colonial rulers’ understanding and approach to the tribes of India evolved over time and is shaped by their needs of revenue generation, economic relevance

of the forest, administration and law & order issue on the face of tribal revolts. Colonial tribal policies or Acts hardly addressed the issues concerning the women in these areas as they rarely fell in the ambit of Colonial interests. However, colonial approach towards the tribes definitely impacted the fate of the tribal women to which they are fighting even today in the post independent India.

The initial interest of the British in the tribes of India was limited to a mere curiosity of the colonisers about them, a matter of study, and an anthropological project than anything else. The research of early British administrators like E. G. Mann, W. W. Hunter in the Indian tribal world indicates the same.

With passing time British interest increased in the tribes of India. New emerging factors like the need of timber from the jungle for British Navy and Railway sleepers, emerging law and order issues with rise of tribal revolts like the Santhal Rebellion (1855-57), the Munda Rebellion (1899-1900) drew British attention in the tribes of India. It is important to note here that during the Santhal Rebellion, Jhunu Murmu and Phulo Murmu, the two sisters of Sidhu and Kanu, the Santhal rebel leaders, took leadership role raising arms against British Raj, as also moneylenders, landlords and all the outsiders of Santhal world called Diku by them. It forced the British to formulate a comprehensive policy towards the forests and tribes of India in order to safeguard colonial interest in these regions. Acts like Indian Forest Acts of 1865, 1878, and 1927 were steps in this direction.

The Forest Act 1865 for example established the Forest Department in India and right of managing forest Affairs was officially handed over to it. With the census of 1872 British Raj also gained a statistical knowledge of location and number of tribes residing in different parts of India. Soon the colonisers used this knowledge to

enact Laws categorizing the forest areas and the tribes residing in it. Tribes residing in the forest, having no written proof of ownership of land were now at the mercy of the Colonisers for their traditional rights in the forests. They can be easily evicted by the colonisers anytime. Tribal women were also obviously a victim of these new legalities. Infact the Indian Forest Act 1878 was a step ahead in this direction and needs to be seen in the above noted context. It categorized forests into "Reserved Forest" areas where forest resources was exclusive property of the British Raj and "Protected Forest" where people were given conditional rights to use forest and forest products. This categorization forest areas was beyond the understanding of the tribes and their rights over forest land came under threat.

Revenue generation of the British further influenced the tribal life in India. British required records of land rights so that taxation could be easily exacted from the one single owner of the property. Following the British patriarchal laws it was convenient for the British Raj to accept the male heir as the owner of the property as it would be more convenient collecting taxes from single owners than communal ownership of land as it was existing traditionally. The tribes in Chotanagpur area like Mundas and Oraon followed Communal ownership of land. But with the land revenue collection requiring individual owners', British created private property by registering lands on the name of male heads of the families after following a detailed village by village survey of the land. The Chota Nagpur Tenancy Act (1908) in Bengal presidency is a case in example here that prevented transfer of tribal lands to non-tribal and pointed that male heir has legitimate right to inherit property. Such a practice impacted the tribal women's access to property in two ways. In the earlier communal hold over the land the women automatically exercised some control over the lands of their area. But with the

male heads declared the property owners in some of the tribal areas the women in these areas became dependent on the males of the family for their survival. In some other cases for example the Lalung tribes located in north eastern parts of India following communal ownership of land married daughters were exclusively denied access to the land. The logic to it was to prevent the possibility of marriage as pretext for people outside of the tribe to have access to the tribal clan property.

To summarize it can be argued that British policy towards the tribes of India was shaped by their economic interests and law order maintenance. There interference in the tribal world was limited to meeting the stake of revenue generation and reducing the possibilities of tribal revolt against the British Raj. But their policies of special and exclusive treatment of tribal culture allowing their customary laws to govern them proved catastrophic for the tribal women, especially their property rights, in the days to come. It can be argued, therefore that British followed a policy of non-interference in the matters of internal affairs of the tribes where it suited them leaving the tribal women subject to dependency and exploitation by their own people.

TRIBAL WOMEN'S ACCESS TO PROPERTY IN POST-INDEPENDENT INDIA

The Colonial approach of viewing tribes as other and exclusive that deserves special protection continued in the Post-Colonial Independent India. Articles in the Indian Constitution like 244, 244A, 275 (1), 342, 388A and 399 are some of the important provisions that act as guiding principle in policy formulations on the scheduled tribes. One common thread in all these articles is the consistent emphasis on the fact that the culture of Scheduled Tribes deserve special protection. However the provisions that were made to safeguard the tribal interests have proved fatal for the property rights of the tribal women.

The recent Agricultural Census reports speaks louder than

any other evidence arguing the same. According to Agricultural census report 2010-II Scheduled Tribe men owned 88.7 % of land whereas Scheduled Tribe women owned only 11.3 % of tribal land holding. By 2015 – 16 , according to the Agricultural Census Report (2015-16), the land holding of Tribal women increased by 8.65 % only, while the overall land holding of Scheduled Tribe increased by 18.62 %.

The fact that Tribal affairs related to inheritance and marriage are subject to customary laws of the concerned tribe, the tribal women in India are still subject to discriminations when it come to inheritance and property rights. The statutory laws like Muslim Personal Law (Shariat) Application Act 1937, Hindu Succession Act (1956) , the Hindu Succession (Amendment) Act 2005 ensured property rights of the women from different religions. In fact the Hindu Succession (Amendment) Act 2005 gave coparcenary rights to the females (Hindus, Buddhists, Jains, Sikhs) by birth just as applicable on male heirs. But all these Acts are legally not applicable for tribal women as they are subject to customary laws of the tribes.

Recently there had been consistent demand from tribal women for demanding statutory laws protecting their property and inheritance rights.

A case to highlight here is the Ram Charan & Ors. v. Sukhram & Ors. (2025) case which was related to the Gond Scheduled Tribe from Chhattisgarh. In this case successors of Dahiya, a Gond women, seeked share in the property of their maternal grandfather's ancestral property. Supreme Court of India upheld in this subject that the responsibility of getting evidence that females are not allowed to have share in the ancestral property lies with the opposing party to the rights of females seeking share in the property rather than the other way round. As the opposing party in this case could not prove a custom that specifically bars women from

inheriting ancestral property, court upheld that not giving female heirs right over ancestral property is denial of fundamental right to equality, protected by Article 14 of the constitution, which is applicable in cases where there is no clear tribal customary laws.

In case of the Himachal Pradesh High Court verdict on Bahadur v. Bratiya (2015) case, related to the Gaddi Scheduled tribe of Himachal Pradesh, the court passed the judgement that state should not accept or allow any law including customary laws if it is violating equality before the law (Article 14) and prohibition of discrimination on grounds of sex (Article 15) guaranteed by the Indian Constitution. Based on these grounds Himachal high court pointed that the tribal areas in the state of Himachal Pradesh should inherit according to Hindu Succession Act 1956. However in 2025 Nawang & Anr. v. Bahadur & Ors. (2025) case Supreme Court ruled that section 2(2) of Hindu succession Act 1956 specifically states that it is not applicable on Scheduled Tribes unless the central government issues a specific notification. Thus the verdict of broad applicability of Hindu Succession Act 1956 on all Scheduled Tribes of Himachal Pradesh, as passed by Himachal Pradesh High court, became null and void with the passing of 2025 verdict of Supreme Court.

Thus it can be argued based on the analysis of the cases noted above that the Tribal women in India have started raising their voices against an age long discriminations against them, denying them right to equality and justice on the name of protection of tribal culture. Taking the post-modernist approach, therefore it would be absolutely valid to point out that the subject of property right and inheritance needs cross community and cultural introspection.

CONCLUSION

In conclusion it is important to highlight on some of the key aspects determining the inheritance issue of the

tribal women even today. The colonial approach of non-interference in the tribal world was shaped by their administrative and economic interests allowing them to rule themselves according to their respective customs even if it meant injustice to someone. This colonial approach should not have been blindly followed in the post-colonial India, especially in the matter of inheritance right of the tribal women. Taking a post-modernist approach the issues faced by Indian women should be studied and addressed from the prism of class, caste and culture. Archaic tribal customs, often in favour of patriarchal society, are road blocker on the path of growth and empowerment of the tribal women. Understanding the gravity and significance of the same necessary legal remedies needs to be taken by the legislature as also the judiciary of India.

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