

Land Rights of Tribal Women in India

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Abstract:

The article discusses the state of affairs of Tribal Women, especially with reference to their Rights relating to Land. It explores the idea of non-discrimination and equality of Tribal women vis-à-vis their male counterparts. It begins with the general position of women in terms of Rights over land and property all over the world followed by their specific case in India, thereafter, bringing to focus this aspect for Tribal Women in India.

The article studies the International Instruments and International Policies with reference to Land Rights of Women. Furthermore, it follows up with the study of Indian Laws and customary practices regarding the same. Ultimately, the article emphasizes the importance of specificity of circumstances relevant to Tribal Women and need for codification of specific laws to ensure and uphold Land Rights for Tribal Women.

Keywords: Tribal Women, Land Rights, Gender Biases among Tribals, Women's Rights, Human Rights of Tribal Women.

Introduction

The access, use and control over a land determines the level of enjoyment of human rights. The interdependence of different dimensions of human rights and land inheritance laws guarantees the underlying purpose of certain civil and political rights.¹ The legal aspects of self-determination and autonomy², gender equality, societal development, livelihood, food security, economic rights etc. are linked to individual land rights.³

Women land rights are crucial in guaranteeing their right to non-discrimination, achieving appropriate standard of living and weathering life's hardships. The scheduled tribe women inhabiting in the remotest areas are the most deprived section of the society. They play a pivotal role in a country's rural economy. Internationally, merely 12.8% of the agricultural land holdings belong to women while in parts of Africa and South-Asia, the number goes below 9%.⁴ A study conducted in 2019, suggests that globally more than 36.7% of the women work in agricultural land holdings. More than 50% of the women in Sub-

¹ United Nations Social and Economic Council, "Report on United Nations High Commission on Human Rights(E/2014/86)" (2014).

² Convention for Elimination of All Forms of Discrimination Against Women, "General Recommendation No. 21 (1994) Equality in Marriage and Family Relations" (United Nation, 1994) available at [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_49_38\(SUPP\)_4733_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_49_38(SUPP)_4733_E.pdf)

³ Centre for Women's Land Rights, "Ensuring that women have secure rights to land is essential to addressing poverty, hunger and gender equality around the world" (Landesa, Seattle, 2016) available at LCWLR.FactSheet.2016.pdf (landesa.org)

⁴ Food and Agriculture Organizations of the United Nations, "Gender and Land Rights Data base", available at [Statistics | Gender and Land Rights Database | Food and Agriculture Organization of the United Nations \(fao.org\)](http://Statistics|GenderandLandRightsDatabase|FoodandAgricultureOrganizationoftheUnitedNations(fao.org))
The data represented accounts to various agricultural census conducted by the countries in 1999 and 2000.

Saharan Africa and South Asia work in fields.⁵ Yet in 90 countries, women are prohibited from inheriting land due to the prevalent customary beliefs.⁶ They are the victims of systematic discrimination in use, control and access of land.⁷ A two-fold challenge namely; a domestic law guaranteeing women's land right; and a stringent approach for implementing these laws by overriding the customary beliefs and practices; is encountered during effective implementation of women land rights.⁸ Secure women land rights would result into a safer⁹, nourished¹⁰, healthy¹¹, prosperous and resilient¹² household.

International Instruments on Land Rights

With the absence of a specific international instrument on universal "human right to land", reliance is placed upon other instruments explicitly or implicitly referring to land rights. Some of the implicit references include Article 11 of the International Covenant on Economic, Social and Cultural Rights, 1996 wherein the state parties are required to recognize, the right to adequate standard of living including right to food and housing. Women being considered as drivers of sustainable development¹³, The United Nations 2030 Agenda for Sustainable Development Goals enshrines the land rights generally and implicitly in three of its goals namely; "Goal 1: Ending poverty, Goal 2: Mitigating Hunger and Goal 5: Gender Equality". Article 17 of the United Nations Declaration of Human Rights, 1948 states that every person has right to own his property individually or collectively and no one shall be arbitrarily deprived of this right.

The explicit ownership of land rights is formulated covering rights of indigenous people and women rights. The ILO in 1989 adopted the only legally binding Convention no. 169 on Indigenous and Tribal People on its member states. The convention enshrines the autonomy of indigenous people "to exercise control, to the extent possible, over their own economic, social and cultural development".¹⁴ It binds the member state to guarantee protection and ownership rights over the recognized lands, traditionally used

⁵ Food and Agriculture Organizations of the United Nations, "World Food and Agriculture Statistical Yearbook 2021", 6 (Rome, Italy 2021) available at [World Food and Agriculture – Statistical Yearbook 2021 \(fao.org\)](http://www.fao.org/world/qa/2021/)

⁶ Centre for Women's Land Rights, "The law of the Land and the Case for Women's Land Rights" (Landesa, Seattle, 2016) available at [Women_Land_print.pdf \(landesa.org\)](http://www.landesa.org/Women_Land_print.pdf)

⁷ Convention for Elimination of All Forms of Discrimination Against Women, "General Recommendation No. 34 (2016) on Rights of Rural Women CEDAW/C/GC/34" 3 (United Nations, 2016) available at [Etpu \(16dayscampaign.org\)](http://www.unhcr.org/refugees/article/43c4e614.html)

⁸ Centre for Women's Land Rights, "Ensuring that women have secure rights to land is essential to addressing poverty, hunger and gender equality around the world" (Landesa, Seattle, 2016) available at [LCWLR FactSheet 2016.pdf \(landesa.org\)](http://www.landesa.org/LCWLR_FactSheet_2016.pdf)

⁹ B. Agarwal & P. Panda, "Towards freedom from Domestic Violence, the neglected obvious" *Journal of Human Development*, 8(3) (India, 2007), 359-388 cited in Centre for Women's Land Rights, "The law of the Land and the Case for Women's Land Rights" (Landesa, Seattle, 2016) available at [Women_Land_print.pdf \(landesa.org\)](http://www.landesa.org/Women_Land_print.pdf)

¹⁰ K. Allendorf, "Do women's Land Rights promote empowerment and children health in Nepal?" *World Development*, 35(11) (Chicago, 2007) 1975-1988 cited in Centre for Women's Land Rights, "The law of the Land and the Case for Women's Land Rights" (Landesa, Seattle, 2016) available at [Women_Land_print.pdf \(landesa.org\)](http://www.landesa.org/Women_Land_print.pdf)

¹¹ N. Menon & H. Nguyen, "Women's land Rights and Children's Human capital in Vietnam" *World Development*, 54 (Chicago, 2014) 18-31 cited in Centre for Women's Land Rights, "The law of the Land and the Case for Women's Land Rights" (Landesa, Seattle, 2016) available at [Women_Land_print.pdf \(landesa.org\)](http://www.landesa.org/Women_Land_print.pdf)

¹² A. Peterman, "Women's Property Rights and Gender Policies: Implications for women's long term Welfare in Rural Tanzania" 47(1) *The Journal for Development Studies* (2011) 149-180 cited in Centre for Women's Land Rights, "The law of the Land and the Case for Women's Land Rights" (Landesa, Seattle, 2016) available at [Women_Land_print.pdf \(landesa.org\)](http://www.landesa.org/Women_Land_print.pdf)

¹³ Convention for Elimination of All Forms of Discrimination Against Women, "General Recommendation No. 34 (2016) on Rights of Rural Women CEDAW/C/GC/34" 10 (United Nations, 2016) available at [Etpu \(16dayscampaign.org\)](http://www.unhcr.org/refugees/article/43c4e614.html)

¹⁴ Convention no. 169 on Indigenous and Tribal People, 1989, art. 1

by them.¹⁵ Similarly, the Declaration on the Rights of Indigenous People 2007, adopted by the UN General assembly, though not legally binding upon its member states; recognizes the land, territory and resources rights of indigenous people; which were traditionally used or acquired by them.¹⁶ It further states that the indigenous women shall not face any kind of discrimination and special attention shall be attributed to their rights and needs.¹⁷

The Women's right to acquire, control and use of land is invoked in the Convention on the Elimination of all forms of Discrimination Against Women, 1979 (CEDAW). Article 14 of the Convention lays the responsibility of the members states in ensuring an equal treatment to the rural women in land and agrarian reforms and land related resettlement schemes. It further provides that in a marital home, "same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property" should be ensured by the state parties.¹⁸ The General Recommendation No. 21 (1994) emphasized that the women's right to financial independence includes the right to own, manage and dispose land.¹⁹

The objective behind guaranteeing equal land inheritance, control, use, and disposition rights would foster their civil and political rights. The General Recommendation No. 34 (2016) of CEDAW enshrines that the right of rural women over land and natural resources are fundamental in nature. In furtherance, it fixes the responsibility of the member states to: take temporary measures against discriminatory land right practices and formulate comprehensive strategies to overcome them. It requires the state parties to specifically understand the discriminatory customary practices in land inheritance, use and control and raise awareness on women land rights. The national legislators should legislate laws ensuring equal land rights of the indigenous married couple irrespective of the presence of a male guarantor.²⁰ In 2017, the committee had issued recommendations to certain member states for addressing the discriminatory practices towards women in land, inheritance and property subjects.²¹

International Policies on Women's Land Rights

The Beijing Declaration and Platform for Action (1995) is one of the important international policy instruments on women. It entrusts upon the government to formulate legislative and administrative provisions for promoting and strengthening women's right to own and inherit land and their access to economic resources.²² The same had been set as a policy priority in Rio+20 conference, 2012.

¹⁵Convention no. 169 on Indigenous and Tribal People, 1989, art. 14

¹⁶ United Nations, Declaration on the Rights of Indigenous Peoples, 2007, art. 26 cl.1

¹⁷ United Nations Declaration on Rights of Indigenous People, 2017, art. 21 cl.2 and art. 22

¹⁸ Convention on the Elimination of all forms of Discrimination Against Women, 1979, art. 16 cl. h

¹⁹ Convention for Elimination of All Forms of Discrimination Against Women, "General Recommendation No. 21 (1994) Equality in Marriage and Family Relations" (United Nation, 1994) available at [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_49_38\(SUPP\)_4733_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/A_49_38(SUPP)_4733_E.pdf)

²⁰ Convention for Elimination of All Forms of Discrimination Against Women, "General Recommendation No. 34 (2016) on Rights of Rural Women CEDAW/C/GC/34" 17 (United Nations, 2016) available at Etpu.16dayscampaign.org

²¹ United Nations and United Nations Entity for Gender Equality and Empowerment of Women, "Realizing Women's Rights to Land and other Productive Resources, Second Edition, OHCHR ref.: HR/PUB/13/04/Rev. 1", (New York and Geneva, 2020). The Committee had issued the following recommendations: Kenya was recommended to recognize equality in marriage and property matters. It was further recommended to re-instate the law requiring spouse's approval with respect to matrimonial property transactions and repeal the present succession act bot guaranteeing equal inheritance rights to men and women; Sri Lanka was recommended to amend all laws guaranteeing unequal opportunities to women towards land inheritance, ownership, disposal and control.

²² United Nations, "Resolution 1 Beijing Declaration and Platform for Action", 24 (1995) available at <https://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

Under, the prevailing Indian legislations, the women succession rights are granted under the following legislations, namely; The Hindu Succession Act, 1956 confers equal succession rights of an ancestral or a jointly owned property to a woman belonging to Hindu, Jain, Sikh and Buddhist Community; The Indian Succession Act, 1925 caters to the inheritance rights of Christians, Parsi's and Jews in India. It provides equal rights to the son and daughter while the Christian/Jews married women is entitled to a minimum of one third share of her husband's property subject to the presence of lineal-descendants; the rights of the Muslim women and women of inter faith marriages are governed by the Muslim Personal Law (Shariat) Application Act, 1937 and Special Marriage Act, 1954. The ineffective implementation and enforcement of these laws have resulted in the deprivation of inheritance rights of rural women, specifically the scheduled tribe and castes.

None of these legislations cover the rights of scheduled tribe women. Section 2 (2) of the Hindu Succession Act, 1956 prohibits the application of its provisions to the members of the scheduled tribe community recognized under article 366(25) of the Indian Constitution. The Supreme Court of India in *Madhu Kishwar & Ors. Etc. v. State of Bihar & Ors.*²³ on deciding whether the Hindu Succession Act, 1956, would apply to a tribal woman; who under the tribal customary belief's is not allowed to inherit the property, observed:

“...the provisions of Hindu Succession Act, 1956 and the Indian Succession Act, 1925 though in terms, would not apply to the Scheduled Tribes, the general principles contained therein being consistent with justice equity, fairness, justness and good conscience would apply to them”.

Though the majority of the court was of the opinion that if the prevalent tribal customary laws were found to be inconsistent with the fundamental rights guaranteed under the Constitution of India, the fundamental rights would prevail. Yet the court adopted a conservative approach by declaring the discriminatory land inheritance customary law as constitutional and not repugnant to Article 14 to avoid chaos. Thereby entitling the tribal women to inherit the property belonging to her father/husband but with limited alienation rights.

Indian Law and Policy on Tribal Women's Land rights

Tribes are accorded special Constitutional protection for their customary laws, that are largely uncodified, with the aim of protecting their distinctive cultural heritage while being aware of historic injustices that they have typically faced at the hands of the majority. Schedule V of the Indian Constitution identifies special privileges for those areas wherever the bulk of the population belongs to scheduled Tribes. Schedule VI applies special privileges to tribals who reside within the northeastern states of Assam, Meghalaya, Tripura and Mizoram. The sixth schedule has provided autonomy to the areas and allowed tribes to border their own rules in accordance with their customary practices. State and union legislations aren't enforceable in these regions unless approved by the District Councils, that are expected to enact in accordance with customary law.

Fundamental Rights and Directive Principles of State Policy additionally define Constitutional mandates and therefore the professed goals of the state. Article 14 of the Constitution guarantees the fundamental right to equality, while making an exception for special provisions towards the advancement of scheduled Tribes. Article 15 (1) prohibits gender discrimination. The directive principle, under Article 39 (a) enjoins the state to confirm that men and women equally have adequate suggests that of

²³ 1996 SCC (5) 125

livelihood. Article 38 directs the state to market the welfare of individuals (men and women alike) by securing a social order in which justice - social, economic, and political - informs all establishments of national life. Article 44 additionally directs the state to endeavour to secure for its citizens a consistent civil code.

There is an unspoken, basic principle of land succession, transfer and distribution of keeping land inside the family. Customary practices do not recognize the need for formal entitlement of land in a woman's name as an individual. Men, and even many women, regarded women as either related to the father, then the husband and finally the son; as an individual she had no identity.²⁴

The Tribal women's right to inherit land is based on customary law in India as Section 2(2) of the Hindu Succession Act specifically excludes female member of the Schedule Tribe from the provisions of Hindu Succession Act.²⁵ Even the Supreme Court of India in the case of *Madhu Kishwar and others (Petitioners) v State of Bihar and others (Respondents)*²⁶ while recognising that the customary law of succession was discriminatory to women refused to strike it down. The decision held that it was not desirable to declare customary law to be contrary to constitutional Rights of women under Article 15, 14 and 21. The Rights of Tribal Women have been curtailed by customary perspectives and have only grown through Judicial efforts.

In *Kamla Neti (Dead) V. The Special Land Acquisition officer and Ors* the SC of India called upon the Government to look into the provisions of Hindu Succession Act and change them to provide right to Survivorship to Tribal Women in lines with the other non-tribal women. The court held that to denying equal rights to tribal women even after 70 years of coming in force of the constitution of India is against the spirit and values of constitutional values. The Madras HC in a recent decision has made it clear that tribal women in the state are not excluded from the provisions of the Hindu Succession Act and, therefore, they cannot be denied the right to inherit family properties. Refusing to accept a contention that Section 2(2) of the Act ..nothing contained in this Act should apply to members of Sch .. Court held that when the custom and usage are not established then central govt must notify to that effect that Tribal women will get access to equal shares in property.

Conclusion

Tribals inadvertently rely upon intestate succession due to lack of awareness and poor literacy and exclude women from intestate succession laws, making them rely solely upon customs. Tribal customs emanate from patriarchal society depriving women of inheritance right. As the tribal women's property rights question touches upon sensitive issues of kinship, tribal culture as well as deeply entrenched gender norms, the current patchwork legislative framework also reflects the tentative approach of the state in confronting the problem. Further, given the weak institutions and lethargic governance virtually endemic in India, tribal women are most susceptible to falling through the cracks of the plurality of laws which regulate their access to land.

²⁴ Ashok Sircaur and Sohini Paul, Do Tribals have Land Rights? A Study of Land Rights of Women available at <https://www.pradan.net/sampark/do-tribals-have-land-rights-a-study-of-land-rights-for-women-by-ashok-sircar-and-sohini-paul/>

²⁵ Section 2(2) Hindu Succession Act, "Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs".

²⁶ (1996) 5 Supreme Court Cases 125.

A separate codification exercise needs to be undertaken to codify and give legitimacy to tribal practices. However, it needs to offset the inequitable practices inbuilt in the tribal customs. Further Extensive consultation and stakeholder engagement should guide the process to bring it in tune with avowed constitutional values and customs. So that the new law appeals to the sensitivities of tribal women.