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# "EMPOWERING THE UNSUNG: UNRAVELLING THE RIGHTS OF SCHEDULED TRIBAL WOMEN"- *The Legal Battle between Customary Laws and Constitutional Privileges*

- Shivankar Gangwar<sup>1</sup> & Hetal Juneja<sup>2</sup>

## INTRODUCTION

Honourable Supreme Court's latest Judgement in Kamla Neti (Dead) through LRs versus The Special Land Acquisition Officer & others.<sup>3</sup> emphasises the feeble conditions of a 75-year-old democratic, sovereign state that cannot access most of its tribal women citizens.<sup>4</sup> As per The Hindu Succession Act, of 1956, Hindu women are equally entitled to the acquisition of self-acquired property. To the misfortune, Section 2(2) of this act<sup>5</sup> excludes these belongings from the Schedule Tribes of our nation. A month ago this issue was pointed out in the Apex Court where it was held that "When the daughter belonging to a non-tribal community is entitled to an equal share in the property of her father, there is no reason to deny such a right to the daughter of a person of a tribal community."<sup>6</sup>

This Article shall cover aspects of the Recognition of Issues, surrounding tribal women and the Constitutional vs. the Custom debate for Schedule Tribes in the nation with the judiciary's standing on the aforesaid matters and an insight into the recent judgement along with its impact.

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<sup>3</sup> <https://www.latestlaws.com/latest-caselaw/2022/december/2022-latest-caselaw-955-sc/>

<sup>4</sup> <https://indianculturalforum.in/2023/01/23/time-to-recognise-the-right-to-survivorship-of-tribal-women/>

<sup>5</sup> [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_3\\_20\\_00027\\_195630\\_1517807324239&sectionId=29914&sectionno=2&orderno=2](https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00027_195630_1517807324239&sectionId=29914&sectionno=2&orderno=2)

<sup>6</sup> <https://www.barandbench.com/amp/story/columns/succession-rights-of-tribal-women-time-to-make-them-gender-equal>

## ISSUES CURTAILING RIGHTS OF ST WOMEN:

### UNDERSTANDING TRIBAL SOCIETIES AND THEIR INHERITANCE PRACTICES

Patriarchy is the root cause of manifestation of all this, where a husband or a male head of a family decides when a lady shall conceive a child and many dependent spouses gratify their husbands by having a boy child due to lack of financial independence<sup>7</sup>. It is crucial to stress that when we refer to "Scheduled Tribes," we are not talking about a single, uniform culture<sup>8</sup>. Sex Ratio (number of females per 1000 males) is an important indicator of female status and autonomy within the family and society. A balanced sex ratio indicates less gender discrimination and better care and treatment of female infants<sup>9</sup>. Female literacy and increasing labour market participation are supported by many tribal societies, particularly in matrilineal tribes, and women's economic contribution allows women more sovereignty and involvement in family and communal activities<sup>10</sup>. However, tribal women lag the total population in most states<sup>11</sup>. A woman is often viewed as an economic asset in tribal civilizations. A hard-working, diligent, and obedient wife is highly valued<sup>12</sup>. However, assumptions are that increased female labour force involvement would result in enlarged female volition at home. According to a study conducted in the Himalayas. Higher female literacy rates and labour force involvement do not translate into increased domestic autonomy among Garhwali women.<sup>13</sup>

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<sup>7</sup> Dyson, T., Moore, M., 1983. On Kinship Structure, Female Autonomy, and Demographic Behaviour in India. *Population and Development Review* 9 (1)

<sup>8</sup>[https://www.sciencedirect.com/science/article/pii/S1053535707001254?ref=pdf\\_download&fr=RR-2&rr=7f5289a51d2a9a78](https://www.sciencedirect.com/science/article/pii/S1053535707001254?ref=pdf_download&fr=RR-2&rr=7f5289a51d2a9a78)

<sup>9</sup> Kishor, S., 1993. May god give sons to all: gender and child mortality in India. *American Sociological Review* 58 (2).

<sup>10</sup> Maharana, A., 2005. *Demographic Perspectives on Indian Tribes*. Oxford University Press.

<sup>11</sup> Roy B., 1987. Development and Tribal Women of India. *Mainstream*, 19 & 20, November 25.

<sup>12</sup> Chaudhuri, N.C., 1978. Womanhood in tribal India. In: *Tribal Women in India*. Indian Anthropological Society, Calcutta.

<sup>13</sup> Maharatna, A., 2000. Fertility, mortality and gender bias among tribal population: an Indian perspective. *Social Science and Medicine*, 50.

## BALANCING THE CUSTOM AND THE CONSTITUTION

The primary reason for the denial of inheritance rights to women is the prevalent belief that women are incapable of managing property and making decisions related to it<sup>14</sup>. People from tribes have a unique identity of their own, this unique identity is protected by the Indian Constitution. Hindu law is exempted from attaining the intended constitutional purpose, and exclusion of certain tribes from its application. The whole idea of such impunity is to protect the tribal customary laws governing matters related to marriage, inheritance, succession etc<sup>15</sup>. Schedule Tribes, also known as Aborigines are the section of the Indian population who still observe their tribal ways, their own peculiar customs and cultural norms<sup>16</sup>. As they are isolated from the major currents of national life and dwell in difficult-to-reach places within the hills, the tribal people have continued to lag. Special provisions are required for the scheduling tribes to protect their interests<sup>17</sup>. The primary issue with these people is that their socioeconomic conditions must improve gradually so as not to abruptly disrupt their social structure and way of life. However, it is indisputable that tribal people have been more Hinduized<sup>18</sup>. The need is to evolve ways and means to gradually adjust the tribal population to change conditions and integrate them slowly into the general life of the country without undue and hasty disruption of their way of living<sup>19</sup>. The legislative restriction found in Codified Hindu Laws is consistent with the notion that bringing Indigenous people into unrestricted contact with the outside world could be detrimental to them. The Central Government is also given the option to include Schedule Tribes in the scope of Codified Hindu Laws. Therefore, the provision endorses the integration strategy, furthering the state's goal of integrating tribal people into society without upsetting their way of life.<sup>20</sup>

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<sup>14</sup> [https://economictimes.indiatimes.com/small-biz/legal/notable-supreme-court-lawyer-dr-kislay-panday-advocates-for-gender-equality-in-tribal-womens-succession-rights-while-respecting-the-culture/articleshow/100499805.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/small-biz/legal/notable-supreme-court-lawyer-dr-kislay-panday-advocates-for-gender-equality-in-tribal-womens-succession-rights-while-respecting-the-culture/articleshow/100499805.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>15</sup> <https://theprint.in/opinion/india-protects-customary-tribal-laws-that-violate-equality-for-st-women-whos-hearing-none/871871/>

<sup>16</sup> Jain, M. P., Chelameswar, J., Naidu, D. S. (2018). Indian Constitutional Law. India: LexisNexis.

<sup>17</sup> 8 pg 167 Sharma, R. K. (2004). Indian Society, Institutions and Change. India: Atlantic.

<sup>18</sup> 6 Ghurye, G. S. (1980). The Scheduled Tribes of India. United Kingdom: Transaction Books.

<sup>19</sup> <https://economictimes.indiatimes.com/small-biz/legal/notable-supreme-court-lawyer-dr-kislay-panday-advocates-for-gender-equality-in-tribal-womens-succession-rights-while-respecting-the-culture/articleshow/100499805.cms>

<sup>20</sup> <https://www.jstor.org/stable/48645685?searchText=Tribal+women+and+succession+rights+in+india&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DTribal%2Bwomen%2Band%2Bsuccession%2Brights%2Bin%2Bin>

An intriguing aspect of India's socioeconomic history is that tribal people must demonstrate and authenticate their resemblance to their Hindu neighbours to be subject to Hindu law, particularly when it comes to succession, since there are no codified customary practises in place<sup>21</sup>. In other words, if it can be shown that tribals are sufficiently Hindu guides she/he may be covered under Hindu law<sup>22</sup>. In keeping with the aforementioned statement, this essay makes the case for the codification of tribal customary law. There is a strong belief that codifying customary laws is necessary to ensure their preservation and also because uncoded norms give a great deal of room for interpretation and arbitrary action. Customary laws in India are largely undocumented and uncoded which leaves a scope for arbitration.<sup>23</sup>

## **BACKGROUND AND THE OPINION OF THE JUDICIARY AGAINST SCHEDULED TRIBAL WOMEN**

The current legal dispute between Kamla Neti and the Special Land Acquisition Officer exemplifies how tribal women continue to endure hardships without receiving any relief. This dispute concerns the compensation to be paid for a newly acquired land.<sup>24</sup>

The Supreme Court ruled that the appellant is not entitled to any portion of the compensation under the terms of the Hindu Succession Act as the daughter since she is a member of a tribal community and is not a scheduled tribe as described under Section 2(2) of the Hindu Succession Act.

This illustrates how sons are rewarded whereas daughters aren't, and how tribal and non-tribal women are regarded differently. The case also raised an older issue: The Bombay High Court's

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<sup>21</sup>[https://heinonline.org/HOL/Page?handle=hein.journals/ijlmhs12&div=246&g\\_sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/ijlmhs12&div=246&g_sent=1&casa_token=&collection=journals)

<sup>22</sup> 7 Chowdhry P. *Understanding Women's Land Rights: Gender Discrimination in Ownership* (2017). India: SAGE Publications

<sup>23</sup> Mukhim P. *Women's Entitlement to Land and Livestock in Matrilineal Meghalaya* in Kelkar G. and Krishnaraj M. (ed.). *Women, Land and Power in Asia*, (2013) Routledge

<sup>24</sup> <https://www.indialegallive.com/constitutional-law-news/courts-news/tribal-women-ancestral-property/>

ruling in the *Narasu Appa Mali* case (NAM), declared that as tribal societies are exempt from the fundamental rights of an individual, one cannot interfere with their customary or personal rules.<sup>25</sup>

Justice Chandrachud disapproved of the NAM's choice. He argued that the reasoning behind the Bombay HC's NAM decision was incorrect. Additionally, he claimed that immunised norms and practises, including the prohibition on women in Sabarimala, undermine the Constitution's supremacy. After the NAM case, academics began to speculate about whether or not courts consider the Constitution as a fundamental constitution that never changes.

Indian courts addressed this issue in numerous cases, notably the Sabarimala ruling. In response to the query of whether customary law might be altered to other constitutional values such as equality, the Hon'ble Supreme Court stated that the original goal of the Constitution was for it to be "transformative in nature."

In the *Madhu Kishwar* case<sup>26</sup>, Justice K. Ramaswamy stated in his decision that "exclusion from inheritance would not be justified" in response to the question of whether the equal contribution of women and their constitutional promise of equality could be overlooked in favour of customary law.

The Van Gujjar community requested to be removed from the forest region they called home in a PIL that was submitted to the Uttarakhand High Court<sup>27</sup>. The court found that the Indigenous community's fundamental rights could not be violated. As a result, Articles 14 (right to equality before the law) and 15 (discrimination based on sex, religion, etc.) of the Constitution apply to the tribal community, which includes tribal women.<sup>28</sup>

## IMPACT AND THE WAY AHEAD

Legal recognition of tribal women's land and resource rights ensures their active involvement in sustainable land management, preserving biodiversity, and supporting community livelihoods.<sup>29</sup>

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<sup>25</sup> <https://ijcrt.org/papers/IJCRT2209399.pdf>

<sup>26</sup> <https://www.casemine.com/judgement/in/5609ace0e4b014971140fea0>

<sup>27</sup> [https://heinonline.org/HOL/Page?handle=hein.journals/juscrp2&div=439&g\\_sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/juscrp2&div=439&g_sent=1&casa_token=&collection=journals)

<sup>28</sup> <https://www.scconline.com/blog/post/2021/07/30/hindu-customs/amp/>

<sup>29</sup> <https://ncwapps.nic.in/pdfreports/Customary%20Law.pdf>

Tribal women are given the means through laws that support culturally appropriate education and the preservation of Indigenous knowledge to transmit traditions, advance environmental stewardship, and strengthen communities<sup>30</sup>. Legal provisions guaranteeing access to quality healthcare and maternal services lead to improved health outcomes, reduced maternal and child mortality, and a stronger foundation for sustainable development. Legal reforms supporting tribal women's access to credit, markets, and entrepreneurship opportunities drive economic empowerment and poverty reduction within indigenous communities.<sup>31</sup>

## CONCLUSION

Government agencies, civil society organisations, and local communities must work together to address numerous issues, such as institutional discrimination, limited access to healthcare and education, and cultural norms that uphold gender-based inequality. It is critical to understand how the larger fight for social justice and human rights is entwined with the rights of tribal women. Fostering cooperation among diverse stakeholders, including governmental agencies, non-governmental organisations, academic institutions, and the global community, is crucial as we move forward. We can build a more inclusive and equitable society where every person, regardless of background, has the chance to live a life of dignity, agency, and fulfilment if we work together to advance the cause of tribal women's rights. towards the end, empowering tribal women is not just a matter of justice; it is also an essential step towards creating a more powerful, varied, and peaceful India.

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<sup>30</sup> <https://www.deccanherald.com/opinion/govt-needs-to-do-more-to-protect-rights-of-tribal-women-1182775.html>

<sup>31</sup> <https://thewire.in/law/when-it-comes-to-dalit-and-tribal-rights-the-judiciary-in-india-just-does-not-get-it>