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Landmark Judgment: A Turning Point for Advansi Women to Have Equal Property Rights



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As the Supreme Court firmly states, culture cannot be a shield for discrimination.



View of the Supreme Court of India, in New Delhi. Photo: PTI.

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The recent [Supreme Court judgment](#) upholding the right of tribal women to an equal share in their father's property represents a vital turning point for adivasi women in India. As I reflect on this, it's hard to overstate the historical weight of the judgment, especially considering how embedded patriarchal norms have shaped inheritance and property rights in tribal communities.

Despite the fact that adivasi communities are considered more egalitarian and democratic where each get their equal share or rights, even the constitutional provisions on equality of women are substantively not interpreted and practiced. Moreover, adivasi women have long been marked by exclusion and discrimination. This discrimination was normalised and interpreted in a way that women should be barred from these rights.



Adivasi traditions have long been influenced by patriarchal norms

Adivasi traditions have long been influenced by patriarchal norms, perpetuating a system where men hold dominance over land and property. Although Adivasi women are often considered to have relatively better status compared to women in other communities, the reality is that they face significant barriers to inheritance and property rights. Unwritten customs and social norms dictate that land and property are passed down from father to son, excluding women from inheritance. This patrilineal system is reinforced by societal expectations and attitudes that position men as the rightful owners of land, while women are often treated as secondary members of the community with limited access to land use.

Traditionally, Adivasi communities have governed and

managed their land through a unique blend of special laws and customary laws. In Jharkhand, for instance, laws such as the Chotanagpur Tenancy Act, 1908, Santhal Pargana Tenancy (Supplementary Provisions) Act 1949, and Wilkinson Rules under Regulation XIII of 1883 have protected Adivasi land and resource rights since the colonial era.

Customary laws, passed down through oral traditions, empower communities to manage and control their land, preventing outsiders from acquiring it. Historically, during the pre-colonial period, land and forests were collectively owned and managed by the community, with decision-making authority resting with the community itself. This communal approach to land management has been a hallmark of Adivasi culture and identity which was changed during the colonial period.

The British colonial era saw the introduction of a land record system that formalised privatisation of property with patriarchal norms, where land ownership was predominantly recorded in the name of men. This system recognised men as the heads of households, thereby consolidating their control over land and resources.

As a result, collective ownership rights were also documented/recorded in the name of men, reinforcing a patriarchal framework that marginalised women's rights and roles in land ownership and management.

Women have limited access to land and resources, but not ownership rights

In many Adivasi communities, women have limited access to land and resources, but not ownership rights, due to entrenched customary practices. These practices allow women to access land and resources conditionally, such as until marriage she can access the land for her maintenance, but once she is married she is expected to join their husband's clan and claim rights in his property.

In some communities, like the Santhal community's "Taben Jom" – some other communities call it the "Khorposh" system – she is given a portion of land for her survival and maintenance, if married and residing in her father's place of residence with her husband. However, these rights are restricted to access and use, not ownership, and are often not recognised or respected. The patriarchal mindset perpetuates the notion that women are responsible for land grabbing, often blaming them for being lured away by non-Adivasi men, and treated as commodities without agency.

This denial of land rights further marginalises women,

paving the way for rights violations. Instead of promoting good practices that grant inheritance rights to Adivasi women, the assumption that Adivasi women will marry non-Adivasi men for land has become a dominant narrative, hindering progress towards gender equality.

Patriarchal ideologies and norms have instilled a deep-seated fear in men of losing their power and privilege, leading to the limitation of women's roles, knowledge, and participation in family and community decision-making. The more women are discriminated against and excluded from decision-making processes as an equal partner, the more they are controlled and restricted inside and outside the community.

However, when women are respected and valued, their rights are more likely to be protected. It's essential for communities to recognise that empowering women doesn't diminish men's rights, but rather promotes a more equitable and inclusive society. By valuing and respecting women, communities can foster a culture of mutual respect and understanding, where both men and women can thrive as equal partners.

Role of adivasi women in movements to protect 'jal, jangal aur jameen'

Adivasi communities are frequently threatened by the forceful acquisition of their land and resources by governments and private companies. In the face of this exploitation, Adivasi women have emerged as strong advocates for their collective rights, actively participating in movements like the Netarhat field firing range movement, Koel Karo movement, and Nagdi movement.

These women have taken a firm stand against land grabbing, organising and resisting to protect their "jal, jangal, aur jameen" (water, forest, and land). Their unwavering commitment is a testament to their role as custodians of their communities' futures, demonstrating that they are not mere bystanders but powerful agents of change.

In a landmark judgment in *Ramcharan vs Sukhram*, the Supreme Court has boldly affirmed that women's right to inherit and own property cannot be denied or diminished by discriminatory customs. The Court has ruled that for a custom to be valid, it must demonstrate continuity, certainty, and reasonableness, and conform to constitutional values of equality and justice, as well as international human rights norms.

Recognising that instances of women being granted rights are exceptions rather than the norm. A closer look at the *Ramcharan vs Sukhram* case itself brings out the dynamics of the decision. Here, the petitioner – a tribal woman denied her

share of ancestral land – challenged the exclusion she faced under customary law.

The Supreme Court bench acknowledged both the historic and cultural sensitivities at play. But it held firmly that where custom violates constitutional or human rights, it must give way – there is no longer room to justify denial or exclusion. The verdict has sent a clear message: gender justice and equality are non-negotiable when it comes to property rights in India's tribal communities.

The Supreme Court's ruling delivers a powerful challenge to these entrenched systems. It raises the question of formal recognition of women's legal rights, especially over land and property, cannot be hedged by custom any longer if its illegal, unreasonable or opposed to public policy.

Within the community level on the rights of women on property there are exceptional cases where women got the rights and also cases where they've been denied. It depends on the level of community understanding on gender and rights perspective. Since any culture and practices are not static, it's dynamic, so it changes as per their needs which has to be acknowledged then only culture is considered as living and dynamic.

Customs are considered valid when at least these ingredients are there a) continuity b) certainty c) long usage and d) reasonability. So when customs are not opposed to our constitutional and human/ women/ indigenous rights and maintain equality, justice and good conscience it is broadly recognised.

However, there are conflicts between collective rights and individual rights, for adivasis' collective rights are more important to be secured for individual rights. Therefore some efforts have been made to include this collective ownership such as Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006 has provision for joint entitlement of land ownership.

Special laws and policies are needed to be amended with gender inclusivity

So, the special laws and policies are needed to be amended with gender inclusivity. Within The Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 also gram sabha can have gender parity and inclusivity to accommodate women and other gender's rights on property.

The judgment's importance is magnified on the global stage. Article 22 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) upholds the right of indigenous women and children to protection from discrimination, while India's ratification of the Convention on the Elimination of All Forms of Discrimination Against

Women (CEDAW) – and its General Recommendation 39 – call for more than just legal equality, but real, lived equality for adivasi women.

The Court's words echo these international standards, bridging the gap between high-minded commitments and ground realities.

Still, as heartening as this progress is, the genuine work begins now. Changing actual lives always proves slower than changing laws. The ingrained patriarchal attitudes, fears over cultural dilution, and anxieties about land alienation will not evaporate overnight. Foreseeably, community resistance – rooted in tradition and identity – will surface, sometimes forcefully.

For many, gender parity in land rights might seem like a foreign imposition or even a threat to community cohesion. But, as the Supreme Court firmly states, culture cannot be a shield for discrimination.

Looking ahead, the real challenge will be transforming legal developments into community-wide acceptance and behavioral change. I believe that persistent dialogue, education, and partnership with traditional leaders, alongside legal reforms, will be crucial in making equality a lived experience for adivasi women. When constitutional principles and global human rights standards combine with grassroots advocacy, there's real promise for creating communities where every woman has her rightful place and power.

Elina Horo is an adivasi activist from Jharkhand.

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