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OPINION RIGHTS

# Equal Property Rights for All Women: Whither Tribal Governance?



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*The modern notion of private property that emerged during the colonial period, with emphasis on ownership rights, recorded primarily in favour of men, along with its patriarchal baggage, is itself a recent intrusion into the tribal communities from the outside.*





Tribal women in Rajasthan. Image for representation only. Photo: PTI

The Supreme Court bench consisting of Justice Sanjay Karol and Justice Joymalya Bagchi in [Civil Appeal No. 9537 of 2025 on July 17, 2025](#), declared that the exclusion of tribal women from inheritance is unfair and discriminatory. And though the [Hindu Succession Act, 1956](#) is not applicable to the Scheduled Tribes, it doesn't mean that tribal women are automatically excluded from inheritance.

The Hindu Succession Act stated unequivocally that “nothing contained in this Act shall apply to the members of any Scheduled Tribe...unless the Union government, by notification in the Official Gazette, otherwise directs”. So, the Hindu Adoptions and Maintenance Act, 1956, and the Hindu Marriage Act, 1955, too do not apply to them.

The top court asserted that such discrimination is in violation of Article 14 of the constitution which guarantees equality before the law and equal protection of the law; that Article 15(1) disallows discrimination against any person on grounds of religion, race, caste, sex, or place of birth. Moreover, Articles 38 and 46 require the state to strive for the promotion of equality and to protect the interests of socially and educationally backward classes, including women. That customs too, like the law, cannot remain stuck in time; none can be allowed to take refuge in customs or hide behind them to deprive others of their right.

Customs must yield to the core of India's constitutional framework, the principles of justice, equity, and good conscience. With these, the court struck down the rulings of the lower courts. The lower courts in Chhattisgarh had earlier ruled that in the absence of evidence of customary inheritance rights and being Hindu, the appellant was not eligible for inheritance.

Quite often, the court would presume that customarily, the daughters are entitled to a share in their parental property. This has to be proved in the court to claim their share. Or, that the daughters are excluded from their parental property, too, has to be disproved to claim their share.

Often the court would ingeniously embark to assess **how much Hinduised and assimilated they are** by inspecting their marriage or death rituals in order to apply the Hindu Succession Act, contrary to the law itself. That too, when innumerable rituals pass off as the accepted standards amongst Hindus!

Would all these hopefully come to an end now?

### **Property inheritance in tribal customs**

If the Hindu Succession Act is not applicable to the tribals, what then are the tribal customs on inheritance to private property? How can they prove the existence or non-existence of women's inheritance to private property when 'private property' itself is non-existent to them in their traditions and customs? How can they fish out a custom from a non-existent tradition?

The modern notion of private property that emerged during the colonial period, with emphasis on ownership rights, recorded primarily in favour of men, along with its patriarchal baggage, is itself a recent intrusion into the tribal communities from the outside.

Unlike all others, the historical and legal facts are that the Scheduled Tribes are *never* identified on the basis of any religion or belief systems or castes, but only on the basis of their community – their social, cultural and economic characteristics – that too, specific to the geographical regions they traditionally inhabit. They organise their lives and livelihood on an entirely different land and resource governance regime. The result: a relatively egalitarian and just society and a higher status for their women, including an enviable sex ratio as compared to the non-tribals.

The tribal land regime, which covers women's rights – whatever that entails – is antithetical to the very idea of 'property' and 'ownership'. Land and natural resources do not 'belong' to the individual or to a community. Instead, communities belong to the land, which is the only way collective stewardship with inter-generational equity can be accomplished and sustained.

This is mostly alien to modern jurisprudence. Because they belong to the land, their relationship to the land is that of sustenance at subsistence level, not surplus. It is limited to 'right to resource use' rather than 'resource rights' in terms of ownership. Even the products of their labour – physical and mental (knowledge, art etc) – are not personally owned, not

even by the family, but belong to the community to which the person belongs.

However, in recent times, the modern legal systems have begun to grapple with it to find ways of adopting this indigenous peoples' jurisprudence, internationally and nationally. Tribal women's rights, including inheritance rights, ought not to be understood and approached as just issues of private property rights. It is much more. It is inseparable from and embedded within the diverse tenurial governance and rights over land and resources of tribal peoples that have evolved over history in law and politics.

The judiciary invariably misses this, except in rare instances, as in the much-celebrated Samatha and Niyamgiri judgements.

### **Looking back**

India, however, has a long unbroken history of expanding legal frame and geographical area that recognise the continuity of tribal traditions, customs and traditional institutions. The tribal regions remained outside, or in the periphery, or a nominal part of the princely States. They were mostly left to govern themselves through their customary and traditional governance systems and institutions.

The British followed this by formalising the exclusion of tribal areas from the colonial regime through a spate of laws. The traditional Manki-Munda system was legalised with the Wilkinson's Rule, 1837, in Chaibasa in the Kolhan areas of Jharkhand. These laws do not deny inheritance to women.

The Inner Line Permit under the Bengal Eastern Frontier Regulation, 1873 in Arunachal Pradesh, Mizoram, Hill areas of Manipur (extended to the rest of Manipur in 2019) and Nagaland, regulates entry of outsiders, and bars outsiders or residents of other parts of India from acquiring 'any interest in land' even now. The Scheduled District Act, 1874 kept the tribals of the Scheduled Districts free from the automatic application of colonial laws unless extended with or without modification. The lands and land governance regime of the Santals, the Mundas and Uraons were protected by the **Santhal Pargana Tenancy Act, 1876**, and the **Chotanagpur Tenancy Act, 1908**.

The **Government of India Act, 1935**, introduced provincial autonomy and elected governments in the tribal areas declared as excluded or partially

excluded areas in the northeast and the central Indian tribal belt. However, there was one exception: the Imperial Forest Department, set up in 1864, steadily encroached and colonised large parts of the forested tribal homelands, except most parts of the north-east, under the legal cover of the Forest Act of 1865, the precursor to the present Indian Forest Act, 1927, and similar such state laws.

Later, recognising and yielding to the demands for political autonomy of the tribal peoples, India's constitutional framework carved an indelible space at its core. The **Fifth Schedule** under Article 244 requires the governor to make a regulation to prohibit or restrict land transfer by or among tribals and regulate the allotment of land to tribals in the Scheduled Area.

The Scheduled Area covers parts of 10 central Indian states – Andhra Pradesh, Telangana, Odisha, Jharkhand, Chhattisgarh, Himachal Pradesh, Rajasthan, Madhya Pradesh, Maharashtra and Gujarat. The **Provisions of the Panchayat (Extension to Scheduled Areas) Act, 1996** (PESA), applicable to these areas, primarily define the powers of the Gram Sabhas of the natural villages managing their affairs in accordance with traditions and customs.

In contrast are the unviable, artificially created Gram Sabhas at the Gram Panchayat level for the rest of the state. The Scheduled Area Gram Sabhas are to prevent land alienation, restore illegally alienated lands, own minor forest produce and control minor water bodies and minor minerals within their territorial jurisdiction. Moreover, PESA requires that the state laws are to be aligned with the customary law, social and religious practices and traditional management practices of community resources.

These Gram Sabhas are to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution. This includes tribal women's rights to resources, including inheritance of livelihood resources. The Scheduled Area covers 11.3% of the land area and 39.4 % of the tribal population of the country.

The **Sixth Schedule** under Article 244 empowers the elected district and regional councils to enact laws in respect of social customs, the inheritance of property and the allotment, occupation or use of land other than reserved forest for community use. The Sixth Schedule areas cover 4.2% of the tribal population and 1.7% of the geographical area viz. Dima Hasao,

Karbi Anglong and Bodoland in Assam; Khasi Hills, Garo Hills and Jaintia Hills in Meghalaya; Chakma, Mara and Lai in Mizoram; and Tripura Tribal Areas Autonomous Districts Council.

Nagaland and Mizoram are insulated from the automatic extension of any law of the parliament in respect of religious or social practices, customary law and procedure, and ownership and transfer of land and its resources by [\*\*Article 371 A\*\*](#) and [\*\*Article 371 G\*\*](#) respectively of the constitution. Together, these overwhelmingly tribal majority states cover 1.14 % of the geographical area and 1.73 % of the total tribal population in the country.

In the northeast, tribal land tenure is primarily governed by customary laws and practices, with community or clan ownership being common. Most lands, including forests, are community-owned. Customary laws still hold significant influence, particularly in the shifting cultivation (jhum) areas, even though individual ownership and private land have been introduced in some areas. These customary and clan-based systems often involve village councils or traditional leaders managing land allocation and usage.

The interaction with formal legal systems has led to changes and challenges, land alienation and conflicts and the erosion of traditional ownership patterns and the strengthening of patriarchal influences.

Tribal land protective laws are in place in most states. Non-tribal entry is restricted in major parts of the northeast and in Lakshadweep, and transfer of land to them is prohibited. Entry to tribal reserve areas is regulated and transfer of land has to be permitted by the chief commissioner in Andaman & Nicobar Islands. Transfer of any land to non-tribals is prohibited in the Scheduled Areas of Andhra Pradesh and Telangana.

In most other states, land transfer is permitted with the approval of the district collector, except in Maharashtra where a prior Gram Sabha consent is required. A few states, like Tamil Nadu, have no specific protective legislation.

### **Advancing customary governance**

A remarkable expansion of the customary governance and rights was ushered in with the [\*\*Scheduled Tribes and Other Traditional Forest Dwellers \(Recognition of Forest Rights\) Act 2006\*\*](#) (known as the Forest

Rights Act, or FRA).

The ‘traditional or customary boundaries of the village’ defined as the ‘community forest resource’ was recognised as the territorial jurisdiction of the Gram Sabhas. The Gram Sabhas are now the authorities to protect, conserve and manage forest, wildlife and biodiversity in these areas together with their habitats (customary and such other habitats).

FRA recognises the “rights of tribal under any traditional or customary law of the concerned tribes of any State”, and “any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers...which are not mentioned” in FRA “excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal”.

The environment ministry affirmed in its [2009 Country Report to the FAO](#) that FRA “assigned rights to protect around 40 million ha of community forest resources to village level democratic institutions. The fine-tuning of other forest-related legislations is needed with respect to the said Act.”

The FRA brought these forest lands, including the titled lands for individual forest rights, “registered jointly in the name of both the spouses in case of married persons” under Gram Sabha governance. This is an extraordinary progress in the law on rights. These individual forest rights, which are non-transferable, though inheritable, are brought within the collective governance domain of the Gram Sabha.

With this, around 15-20 % of land area of the country, where 41% of the tribals reside, are legally under an altogether different democratic governance regime of village self-rule, based on the tribal customary governance frame.

So, when the Supreme Court says that customs cannot remain stuck in time, laws, judiciary and judgments too cannot – and they should not.

*C.R. Bijoy examines natural resource conflicts and governance issues.*

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