

Discussion on Customary Laws Prevalent in Jharkhand with regard to Marriage, Inheritance and Rights of Tribal Women in Ancestral Property

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Areas to be covered

- Difference between Statutory Law and Customary Law
- Status of Tribal Women in Jharkhand
- What is Custom ?
- Essentials of a valid Custom.
- Tribal Women Land inheritance rights in Jharkhand,
- Landmark Judgments of the Supreme Court and the Jharkhand High Court
- Recommendations and way ahead.



Introduction

- According to the UNHD Report, 1995, women constitute half of the population and work two-third of the world's working hours, but she earns just one-tenth of the world's income.
- Women's land rights are limited by custom, social norms and legislations which hamper their economic status, opportunities and dignified life in the home.
- Ownership over land empowers women and provides them income, security and status.



GENESIS OF THE ISSUE

- The concern for land rights of indigenous women was first raised at Beijing + 10 Review by members of Consult for Women and Land Rights (CWLR) at meetings in Bangkok and New York.
- Tribal women are being denied land rights in a scenario where there are rising incidences of violation of their rights as widows, single and separated women.



STATEMENT OF PROBLEM

- Patriarchy has resulted in violence against tribal women
- Traditions and laws are an obstacle to women's ownership of land, either through purchase or inheritance
- Tribal women in Jharkhand are unable to hold legal title to land though they have a right to till it.
- Legal systems in India and the world being reluctant to interfere with personal laws, maintains the inequality between a man and a women's right to property.



WHAT IS A CUSTOM?

A custom can be defined and described as a conduct which has been in continuous practice and has become a rule or norm of the society of community which has approved of it as such and accepted the same as having the force of law for the members of the society or community.

SALMOND – “Custom is frequently the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility. The national conscience may well be accepted by the courts as an authoritative guide; and of this conscience national custom is the external and visible sign”

AUSTIN – “Custom is a rule of conduct which the governed observed spontaneously and not in pursuance of law set by political superior”

ALLEN – “Custom is a legal and social phenomenon growing up by forces inherent in society – forces partly of reason and necessity, and partly of suggestion and imitation”



ESSENTIALS OF A VALID CUSTOM

A custom should be:

- * Ancient
- * Uniform and continuous
- * Certain
- * Must be consciously accepted as a right
- * Reasonable
- * Not be opposed to morality, public policy and an express enactment



CUSTOM AS LAW

Classification of custom

- One which does not have a binding effect

(Concerned with less important aspects of life)

- One which has a legally binding effect

(Possesses the force of law)

Tribal Custom

- Confined to a particular tribe, caste or community



CUSTOMARY LAWS FOR INHERITANCE AND SUCCESSION RIGHTS OF WOMEN AMONG THE MUNDA AND THE ORAON TRIBE

- Daughters among the Mundas do not inherit.
- Sons are bound to support unmarried sisters until their marriage.
- When a deceased Munda leaves an unmarried daughter or daughters and no widow or son, the unmarried daughter or daughters will be entitled to the personal property left by their father and will be in possession of the lands left by the deceased till their marriage.
- Neither a daughter's husband nor a daughter's sons are entitled to inherit.
- Ghar-dijoa – Any land that may be given to the ghar-dijoa by the Panch may be enjoyed by him as long as his wife is alive, after which the inheritance passes to the nearest bhayad, as a daughter's son does not inherit.
- In the absence of sons, widow or unmarried daughters of a deceased Munda, his property goes to the nearest male agnate.
- Illegitimate Sons
- Adopted Son belonging to the same clan
- Adopted Son from a different clan
- *Bhayads or Agnates



Tribes of Jharkhand

Inheritance among the Santhals

*The property is divided equally among the sons. It is only the eldest son who gets a bullock and a rupee more than the others.

*The daughters however have no right to any of the property, the idea being that she is expected to get married and be supported by her husband and her sons. She gets a gift, customary and therefore demandable, but it is not inherited. Lately, however with the sanction of courts, only daughters have been given a life tenure of the father's land and this virtually means inheritance by daughters.

* If a man dies without sons or daughters, the property passes to the father if he is alive and if he is dead, to the brothers of the deceased by the same father (not necessarily by the same mother)

*The widow of a childless man is allowed one calf, one bandi (10 to 12 maunds) of paddy, one ebati and one cloth and return to her parent's house, unless sometimes happens, she is kept by her husband's younger brothers.

*If a man leaves only daughters, their paternal grandfather and uncles take charge of them and of the widow and the property remains in their possession.

*There are special rules in case where there is a son-in-law who has married under the *ghardi jawae* forms. If his wife has no brothers and the son-in-law stays on in the house and works for his father in law till he dies then he inherits all the immovable property and half the moveable property the other half of which goes to the relatives of the deceased. If there is more than one such son-in-law, they divide the property between them.



Case Laws

- Kamla Neti (deceased; through legal representatives) -vs- Special Land Acquisition Officer on 9th December 2022.

When the daughter belonging to the non tribal is entitled to the equal share in the property of the Father, there is no reason to deny such right to the daughter of the tribal community.



- *Narayan Soren v. Ranjan Murmu* – A Santhal widow is competent to adopt a child in absence of her husband
- *Haradhan Murmu v. State of Jharkhand* – Three married daughters of the recorded tenant through their husbands, all having been married in ghar jamai form of marriage, had right to inherit the property through their husbands having the status of adopted sons under the customary law of Santhal Pargana.



UNEQUAL LAND INHERITANCE RIGHTS AMONG TRIBAL WOMEN OF JHARKHAND

- Madhu Kishwar, a woman's rights activist challenged the provisions of the Chotanagpur Tenancy Act (CNT), 1908 under which land and property rights are inheritable only by descendants in the male line among the indigenous communities of Jharkhand.
- Citing Chotanagpur Tenancy Act, 1908 Madhu Kishwar, quoted that the Act prohibits tribals from alienating land by sale, gift, will or transfer except with the permission of the Deputy Commissioner (Section 46 (1)).
- Land rights are inalienable and hereditary and must pass-on to the sons; and if a Ho (Mundari tribe) does not have a direct male issue, the land goes to his male agnate; and if no kith or kin, to the village community represented by the Munda.
- Section 7 and 8 of the Act while defining Khuntkhattidar and Mundari Khuntkhattidar exclude females (anyone not in the male line) based on the customs of Mundas and Oraons in which females have no inheritance in the ancestral properties. The proscription applied only to two tenure categories of 'raiyat having khuntkhatti rights' and Mundari khuntkhattidari which are restricted to descendants in the male line and the 'heir male in the male line' respectively.



LANDMARK JUDGEMENTS OF THE JHARKHAND HIGH COURT

- *Prabha Minz v. Martha Ekka and Others* – The defendants failed to prove general binding custom among the Oraon tribe that females were excluded from inheritance.
- *Baga Tirkey v. Pinky Linda and Niraj Karmali* – Section 7 of the Family Courts Act, 1984 which is related to jurisdictional rights, is a secular law. Every custom needs to be proved in a family court. As per the customary law applicable to the tribal community, the family court adequately possesses the power to decide on a matter of divorce.



SPECIAL RECOGNITION OF CUSTOMARY LAWS UNDER THE INDIAN CONSTITUTION

- The constitution of India under Schedule V calls for recognition of customary law even if it is not codified.
- Article 9, Clause 4 and 5 of the constitution says that the Scheduled Tribe be safeguarded from the operation of constitutional rights if they come in conflict with custom.
- Customary law is held to be operative with regard to inheritance, succession, marriage and other social practices in all Schedule V areas and among the tribal communities.
- This principle has been reiterated in PESA too. Further, the Hindu Succession Act under sub-section 2 (2) excludes Schedule Tribes unless otherwise directed by the Central government. This makes both the Hindu Succession Act and the Indian Succession Act non-applicable to the Scheduled Tribes.



RECOMMENDATIONS

- u The Hindu Succession Act, 1956 for Hindu tribals and Indian Succession Act for Christian tribals can be adopted
- u There can be a separate law of succession for tribals taking the features of both
- u There must be some codified law in this respect which can remove the cloud of uncertainty in matters of succession of the tribals.

THANK YOU