



The Role Of The State In Balancing Customary And Statutory Laws Concerning Tribal Women's Rights In Jharkhand.

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Abstract : A woman who belongs to a tribe has different life experiences than any other woman. Tribal women are said to enjoy certain rights pertaining to marriage and personal life which most women in other societies don't. But sometimes, these women also fall prey to social evils like being branded a witch or becoming victims to sexual and domestic violence. The customary laws which gives them identity sometimes fails to protect their dignity. Apart from constitutional safeguards, the state has passed laws to suit women's requirements. In 25 years of becoming a state, Jharkhand has also enacted laws in favour of women.

This paper highlights this state's intervention through various laws which are specifically passed for protection and empowerment of women. It also assesses its importance in the lives of tribal women simultaneously pointing out challenges which they face. The objective of this paper is to understand intersectionality, the role of the state in welfare of tribal women, its success and limitations, and point at any such interventions further needed. This is a qualitative study based on primary and secondary data sources. The findings of the paper reveals need for such state interventions in the form of statutory laws which act supplementary to customary laws in order to improve quality of life for tribal women.

Keywords- Tribal women, Customary laws, State laws, Welfare, Violence, Intersectionality.

I.INTRODUCTION

India is a diverse country, not just in terms of languages and culture but also in terms of laws. There exist various communities following different laws to govern themselves. Major populations according to religion in India follow their own codified laws. Whereas people belonging to tribal communities follow their oral traditions, which are uncoded, also called customary laws. These laws are an integral part of the identity of communities. Apart from these laws, there are state laws in the form of legislations, regulations, and statutes playing a crucial role in the welfare of its citizens. All of these laws are responsible for the conduct of an individual and the governance of society. A central tension between customary laws and statutory laws lies in the fact that customary laws protect the autonomy and identity of tribes, but sometimes limit women's rights, whereas statutory laws promote constitutionalism and gender equality, sometimes risking tribal autonomy. The role of the state¹, thus, becomes crucial. It is the responsibility of the state to both uphold gender equality and respect tribal identity.

In this context, the state of Jharkhand, which is rich in tribal identities and culture, owes its existence to the tribes residing in the state. As many as 32 recognised tribes are contributing to 26.21% of the total population according to the census conducted in 2011. It is the 28th state of India, formed on November 15, 2000. It is primarily a rural state with almost 76% of the entire population residing in rural areas. Sex ratio among tribals (1003 females per 1000 males) is better than the overall figures(948 females per 1000 males). The state is rich in minerals yet poor. It is sometimes called the mineral curse as its HDI was 0.421 according to a UNDP report in 2011, indicating slow development. However, according to a report by Global Data Lab in 2021, its HDI has improved to 0.577, showing progress.

Jharkhand is known as a tribal state consisting of Fifth Schedule areas. Most of the tribes in the state conduct themselves according to their traditional tribal customs. These customary laws, though unwritten, have a strong grip in society. That is why, despite the existence of formal and state laws, tribals depend on their traditional institutions for governance. Both men and women equally

¹ According to Article 12 of Indian constitution a state includes government and parliament of India, government and legislature of each state, all local authorities and all authorities under the control of government of India. In this paper, state is an mediating authority which includes both state and central government, judiciary, legislature and administrative bodies which strives to strike a balance between different types of laws.

show allegiance to their tribal systems. When it comes specifically to women belonging to tribal societies, there are certain customs that often exclude them from their rights and are unjust. Tribal women in Jharkhand are denied the right to ancestral property. Belief in superstitious practices has led to innocent women being branded witches, the traditional patriarchal setup becomes a barrier for women's social and political participation are a few ongoing problems faced by tribal women. In parallel to the customary laws, there also exist laws rolled out by the state. In addition to constitutional safeguards, various steps have been taken by the state to protect tribal women from injustices and atrocities.

II.A REVIEW OF INTERACTION BETWEEN THE STATE AND CUSTOMS IN JHARKHAND

This interaction between customs and the state in Jharkhand can be traced back to colonial times. It is true that customs are not codified into laws, but an attempt to document them began in the reign of the British. After the framing of the civil rules in 1834² by Thomas Wilkinson, this region emerged as a meeting ground of customs, laws, and the state. England has been a land of unwritten law, English officials like Wilkinson, were particularly aware of the law-making potential of customs. The British divided the Santal Pargana and Chotanagpur regions of Jharkhand into regulated and non-regulated districts. This divide was on the basis of distinction between common law and notional law³, which was followed by the non-tribals and tribals respectively (Sen, 2018). In post-independence India, the Adivasis' first encounters with the state were marked by indifference, as their inclusion into the system largely came through exploitation and extraction (Kumar, 2018). Subsequent regulations were framed around the idea of safeguarding and uplifting tribal communities, granting them limited autonomy over resource management and decision-making, provided they made consistent revenue contributions. (Rao, 2007). Following independence, the Bihar Land Reforms Act of 1950 eliminated intermediary tenure holdings, with the exception of Mundari Khuntkattidari and Bhuinhari lands, which remained safeguarded under the CNT Act of 1908 and the SPT Act of 1949. (Kumari, 2025). After independence, the legal and administrative framework imposed in Adivasi regions was highly centralized, marginalizing Adivasi voices even when they sought to defend their own lands and spaces. (Singh, 2024).

In tribal societies where patriarchy defines women's status, land-related policies and laws often fail to deliver justice. Legal systems across the world, including India, are generally hesitant to intervene in personal laws, and even when women hold land titles, they are denied real control over it. (Saboo, 2021). "Customary law" among most adivasi⁴ communities does not transmit ownership of land to daughters or widows, though they have usufruct rights. Women who resort to the formal legal system have to deny their adivasi identity and claim to be Hindus to avail of the Hindu Succession (Sundar, 2005). Therefore, the objective of this paper is to first understand the relationship between state laws and tribal customary laws, and, second, to understand their interaction with tribal women. There are two questions that this paper tries to address. First, what therefore is the role of the state in balancing customary laws and statutory laws presently?; Second, how does this 'balance' affect the lives of tribal women in Jharkhand?

III.METHODOLOGY

This is a qualitative study, based on secondary data. The source of primary data is newspaper clippings, government and international reports. Secondary data is collected from books and previously conducted studies available on government and scholarly websites. The paper is divided into three sections for simplified understanding. It is followed by a discussion that includes a narrative analysis of the presented data.

IV.CONSTITUTIONAL SAFEGUARDS FOR TRIBES

The drafting of the Indian Constitution followed four years of deliberation, during which diverse groups openly debated the vision of a modern India. Through its Fundamental Rights, the Constitution embraced a Western model of social relations, affirming the commitment of a sovereign democratic republic to guarantee all citizens Justice, Liberty, Equality, and Fraternity (Corbridge, 2000).

Beyond the Fundamental Rights guaranteed in Articles 14 to 35 such as the right to equality, freedom, constitutional remedies, and protection against exploitation, the Constitution also contains provisions that specifically safeguard the interests of tribal communities and women. Article 15(4) empowers the state to introduce special measures for the advancement of socially and educationally disadvantaged groups, including Scheduled Castes and Scheduled Tribes, through reservations in education, employment, and targeted development schemes. Article 29 secures the cultural, linguistic, and educational rights of minorities, while also protecting individuals from discrimination in admission to educational institutions on the basis of race, caste, or religion. Article 46 directs the state to promote the educational and economic interests of SCs and STs through welfare initiatives. Article 350(a) ensures the use of mother tongues as the medium of instruction at the primary level. Article 244 provides for the administration of Scheduled Areas and Tribal Areas, with the Fifth Schedule covering most states (including Jharkhand) and mandating the formation of Tribal Advisory Councils, while the Sixth Schedule applies to certain northeastern states such as Assam, Manipur, Meghalaya, and Mizoram. Additionally, Articles 330 and 334 guarantee reserved seats for Scheduled Castes and Scheduled Tribes in the Lok Sabha.

Scheduled tribes and other traditional forest dwellers, act also known as the Forest Rights Act of 2006, is a landmark legislation which recognises rights of forest-dwelling communities to occupy and reside in forest areas, to collect forest produce and the right to participate in the management of forest resources. It recognises forest-dwelling communities as conservationists.

² After the Kol rebellion in Jharkhand, British realised the importance of customary institutions. Thomas Wilkinson formulated revenue and tenancy regulations in Chotanagpur (the then South West Frontier Province) limiting state interventions and upholding Munda Manki system.

³ Notional Law is another term used for Customary Law.

⁴ This paper uses the word 'adivasi' and 'tribes' interchangeably. The community relates more with the former word. The latter is used by the state to denote indigenous communities.

Scheduled caste and scheduled tribes Prevention of Atrocities Act of 1989 aims to control crime against marginalised scheduled castes and tribes. It investigates and punishes crime. It has provisions for the establishment of special courts for speedy trial and justice in registered cases.

Panchayat (extension to scheduled areas)(PESA) act of 1996 is another landmark legislation for the administration of tribes in scheduled areas. This aims to keep the traditional tribal systems intact while administering the area. It is a way to empower tribes as they are the decision makers while upholding their institutions.

V. JHARKHAND STATE LAWS

Chotanagpur Tenancy Act and Santal Pargana Tenancy (Supplementary Provisions) Act⁵ are land and tenancy laws of the state. These laws are meant to protect land belonging to the tribals. Rules of sale, purchase, and leasing of land is given in these documents. They are very integral to the management of tribal life in Jharkhand. There has been various attempts by the government to amend these laws for the state to interfere and make use of the land (Kumari, 2025) . These acts not only provide enough scope for the operation of customs but also contains specific provisions excluding females from the rights of inheritance (Saboo, 2021).

Jharkhand Witchcraft Prevention of witch (DAAIN) Practices Act of 2001 is a dedicated legislation to curtail incidents of witch hunting in Jharkhand. This act criminalises branding someone a witch and practicing witch healing by imposing penalties and imprisonment. It is designed mainly for the protection of tribal women who fall prey to orthodox superstitions. To support its implementation, the central government launched Project Garima in Jharkhand in 2021 with a budget of 15 crores for freeing the state from witch branding and hunting practices.

Since the adoption of the constitution in 1950, the tribes have been targeted by a wide array of state programs, combining both protective measures and development-oriented initiatives (Corbridge, 2000). Welfare schemes targeting tribes and women in Jharkhand include Mukhyamantri anusuchit janjati gramvikas yojna- this scheme aims for health and socio economic upliftment of tribal dominated villages. It provides financial assistance and training programmes to self-help groups, health initiatives, and entrepreneurship initiatives to promote the holistic development of the village.

Phoolo Jhano Ashirwad Abhiyan targets the emancipation of women from liquor (traditional hadia) selling business. It provides counseling and financial aids to help women initiate an alternate livelihood.

Savitribai Phule Kishori Samridhi Yojana provides educational support by giving financial aid for girl children in school.

Jharkhand Mahila Evam Kishori Kalyan Yojna was launched in the year 2023. It targets mothers and widows to have a healthy, nourished and hygienic social life. It provides food and care kit for mothers, pregnant women, and financial assistance for a widow to remarry. It is an umbrella scheme for women and girls benefiting each section differently.

Adivasi Sanskriti Ewam Kala Kendra scheme focuses on building infrastructure like manjhi bhawan, pargana bhawan, parha bhawan for traditional administrative purposes. It aims to preserve and protect tribal culture by providing traditional venues for cultural activities.

Economic upliftment schemes include working of self help group (SHGs)⁶ which empowers women led groups or individuals through micro financing and credit schemes to start small business. Rural women in Jharkhand are becoming skillful and financially independent because of this initiative. This has also led to the initiative of a commercial brand called 'Palash', which is driven by rural women's handicrafts, harvesting farm products like honey, oil etc.

VI. COURT JUDGEMENTS RELATING TO CUSTOMARY LAWS AND TRIBAL WOMEN IN JHARKHAND

Courts are the last place one can visit against injustices. Tribal women also have sought the court's direction in matters of exclusion and injustices practiced under customary laws. Most cases are related to inheriting land. It is common knowledge that women do not inherit land among tribals according to customary laws. This is reiterated again and again in the customary laws of Santals, Oraons, and Mundas. The commonly referred documents in such matters are Gantzer's revisional survey and settlement operation of Santhal Pargana 1922-35, also commonly known as Gantzer's report, "Oraons of Chhotanagpur" and "The Mundas and their country" by S.C.Roy. The courts have referred to these texts while interpreting customary laws of the tribes. Important court cases revolving around tribal women, inheritance, and customary laws are as follows:

Madhu Kishwar & Ors. Etc vs State Of Bihar & Ors on 17 April, 1996 - This is considered a landmark case as it is for the first time that the Supreme Court directed the state to make legislation in favour of tribal women. This case was filed by Madhu Kishwar, an editor of a magazine called 'manushi', espousing the rights of marginalised women against the unjust provisions of chhotanagpur tenancy act. They claimed that Sections 7, 8, and 76 of the Chhota Nagpur Tenancy Act, 6 of 1908, are ultra vires as they exclude tribal women from inheriting their father's or their husband's property or land, solely on the basis of sex. They put forth various practical injustices like denial of usufructuary rights, exclusion from inheritance due to adultery or widow remarriage, where tribal

⁵ The two acts were passed in 1908 and 1949 respectively for securing tribal land. These are also the basis of contentious Khatiyon or domicile policy in Jharkhand.

⁶ Self help groups are small groups of rural women who save small amount regularly and access credit. They are playing important role in social mobilisation, market linkages exposing various livelihood opportunities.

women become victims or sometimes are targets of violent attacks. "Their discrimination based on the customary law of inheritance is unconstitutional, unjust, unfair, and illegal" (*Madhu Kishwar & Ors. Etc vs State Of Bihar & Ors on 17 April, 1996*).

The supreme court analysed the claimed patrilineal practices, violation of constitutional guarantees, and recognised this discrimination. There was a need to balance fundamental rights with culture. So, it directed the state to make laws to fill the gap and make way for equal inheritance rights of tribal women, so they are not excluded from their inheritance rights.

Haradhan Murmu & Others vs State of Jharkhand & Others (2018) - this case was about inheritance dispute among santal women, their sons, and agnates. These women were sisters, married in the ghar jawai style of marriage. The high court held that the authorities below it erred in rejecting their claims. Here, it upholds customary laws in their right to equal division of property among the Santal women by virtue of their custom.

Prabha Minz (daughter of Late Saran Linda) vs Martha Ekka (wife of Late Ajit Ekka) & Others (2022) - it is another important case as the High Court of Jharkhand declared that the petitioner is entitled to an equal share in her paternal property. The judgment pointed out that the judiciary has taken varied positions when addressing questions of inheritance under tribal customary law. Rather than applying a single, uniform principle, courts have assessed each case individually, and there is no consistent recognition of customs that exclude women from inheriting property. In situations where such exclusion has been accepted, courts have often relied on early ethnographic works such as those of S.C. Roy or on colonial reports like Ganzter's. However, the difficulty with these sources is that they describe conditions from nearly a century ago and are, therefore, somewhat outdated. Even those early texts acknowledged that tribal society was not static. Like any other community, tribal groups evolve over time and are influenced by factors such as education, urbanization, and industrialization. Customs, therefore, cannot be regarded as rigid or permanently fixed; rather, they are dynamic practices that adapt to shifts in people's occupations, beliefs, and ways of life. Most importantly, the judgment also points out the gaps in the continuous and uniform practice of these laws. At times, it has been observed in the texts that the accuracy of customary exclusion of females from the right to inherit, which led to the absence of proof and hence the judgment.

Ram Charan vs Sukhram on 17 July, 2025 - this is another landmark case where the supreme court underlines the gap within tribal customary laws in practicing exclusion of women from the right to inheritance. It asserted that such practices violate the constitutional guarantee of equality and thus it ruled in favour of the petitioners. It says "Unless otherwise prescribed in law, denying the female heir a right in the property only exacerbates gender division and discrimination, which the law should ensure to weed out.... Customs must evolve, cannot remain stuck in time: Hon'ble Supreme Court upholds tribal woman's right to equal inheritance... A custom, if not proved in accordance with law, cannot be the basis to deny a right otherwise available. In absence of a validly established custom, the general law of equality must prevail."

The common feature in all the above-mentioned cases is that the judiciary is recognising tribal women's equal right to property and inheritance. At times, it also questions the continuity of the customs in such matters, because clearly there are cases where customs allow women to inherit (as in the case of *Haradhan Murmu & Others vs State of Jharkhand & Others (2018)*). The court has placed the onus to prove the exclusion of women to inherit on the other party (*Ram Charan vs Sukhram on 17 July 2025*). The courts have found the silence of laws in such matters rather than continuous and uniform custom. The courts have also pointed out the need to legislate on this issue, keeping constitutional guarantees in mind.

VII. DISCUSSION

As pointed out by the judiciary, the state has an important role to play in balancing the two important laws in Jharkhand i.e., statutory laws and customary law. A wide range of legislation and policy commitments exist in support of women's rights and those of other poor and marginalized groups, creating both legal and administrative spaces for them to assert their claims. (Rao, 2007). The state is undoubtedly intervening, but mostly in the way of welfare schemes. The DAAN act also has poor ground performances. Laws affecting the lives of both tribal men and women, like PESA, FRA, are severely underimplemented. Even though the PESA Act was passed almost twenty years ago and the FRA about ten years ago, these landmark legislations have had little effect on improving the livelihoods of Adivasis. (Sankaran, 2017). Despite amendments, the rules for PESA is yet under deliberation as it fails to appeal to the tribals. According to Times of India, there were efforts by the government in 2017 to make unfavorable amendments in the existing land laws of Chotanagpur and Santal Pargana, which did not receive the governor's assent and hence was withdrawn. The communities and their customary rights have been by and large ignored in the state (Sharan, 2005). Jharkhand is one of the poor performers in the implementation of the Forest Rights Act. If the state is not able to protect tribal's interests, how will it protect tribal women's interests?. The state seldom uses its legislative powers to empower tribal women and ensure gender equality. Despite the judiciary's cognizance of matters of gender inequality, the state rarely legislates against customary discriminatory practices. Gender equality among tribals does not mean loss of tribal identity; it means a balance of both culture and dignified rights. Therefore state is in a crucial situation, which it must recognise and act on.

One of the ways to empower tribal women is to educate them. The intervention of the state regarding tribal women in Jharkhand has mostly been in the form of policies. So on the bright side, the state has rolled out various schemes and scholarships in the field of education to encourage girls to get educated. Financial support, like Savitri Bai Phule Kishori Samridhi Yojna, Manki Munda Scholarship Yojna, Valmiki Scholarship scheme, Mukhyamantri Shiksha Protsahan Yojna etc. that the state provides, has empowered girls to pursue their ambitions. An important and focused legislation was the DAAN Act, meant to deter violence against women being branded as witches. The NCRB's *Crime in India Report 2022* shows that approximately 85 people were killed in witchcraft-related murders across the country. Between 2012 and 2022, a total of 1,184 people died due to violence linked to witch-hunting, with the majority of victims (22.6%) coming from Jharkhand. According to an article in Scroll, there are inadequacies in the law. Even with this Act in place, individuals accused of witchcraft continue to face persecution, torture, and murder, and the practice persists to this day.

VIII.CONCLUSION

Tribal women are marginalised on multiple levels. Their tribal identity, gender identity, poverty, lack of quality education, poor healthcare, discriminatory customary practices, and crimes against them push women away and away from development. Women and girls continue to face the most widespread and enduring forms of inequality, including gender-based violence, economic discrimination, disparities in reproductive health, and harmful traditional practices. (Debarati Charkraborty, 2021). They stand vulnerable within their own community. In many traditional social structures, women are often disadvantaged when it comes to property rights, and in times of scarcity, these rights are usually the first to be contested, highlighting the need for their protection. Struggles for women's land rights reflect broader conflicts over institutions, social status, identities, roles, rules, and practices—not only between men and women, but also among different groups of men. (Rao, 2007). They need the protection of the state, change in the mindset of society to move forward. Bringing positive legislation, striking a balance between the two laws to promote gender equality, and ensuring proper implementation, is one of the ways to empower them. The state stands successful in bringing one positive legislation, and bringing schemes and scholarships for tribal women's education. But, firstly, it lacks proper implementation of the acts. Secondly, it is not bringing in other important legislation to secure women's right to property. The state seems to be working on temporary benefits rather than permanent ones. There is a need for such statutory legislation to improve a tribal woman's quality of life and truly empower them.

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