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## Customs, Rights and Identity. Adivasi Women in Eastern India

**Abstract:** This article traces the trajectory of the changing lives of Adivasi women of eastern and central India, i.e., the erstwhile Chotanagpur Division and the Santal Parganas of the Bengal Presidency under colonial times, and which is today incorporated largely within the state of Jharkhand. In India today, Adivasi women figure among some of the most deprived of people living in the margins, much of their vulnerability arising from unequal access to resources, particularly their right to inherit paternal property, and rooted in their socio-economic norms. Colonial rule, on the one hand, witnessed the increasing marginalisation of tribal women with the weakening of the communal indigenous organisations which left them exposed to exploitation of the market forces. On the other hand, it also enabled the empowerment of a section of Adivasi women who asserted their right to inherit ancestral property. In contrast, the politics of indigeneity in contemporary India have imposed restrictions on Adivasi women's bid to claim land rights.

**Keywords:** *Adivasi women, tribe, land rights, khuntkatti*

At a conference organised by a local college in Chaibasa in the early years of this century, an articulate woman student raised the issue of land rights for Adivasi women, triggering off a heated debate among scholars and activists gathered there. To the acute discomfort of feminist activists, the consensus among the self-conscious and politically-aware Adivasi women students was that the question of land rights for Adivasi women was yet another insidious attempt by *gairadivasis* (the non-Adivasi) to introduce alien concepts and customs within Adivasi society, with the aim of bringing about its ultimate destruction.<sup>1</sup> What was therefore an issue concerning women's rights became enmeshed with the larger problematic of Adivasi identity. It was claimed that the problem of women being deprived of inheritance of paternal property did not apply to Adivasi society which had adequate safeguards for protecting women's rights within the indigenous system. It was further argued that concepts such as patriarchy and paternal property are essentially alien to the mental world of Adivasis and their social organisations and hence could not be used to assess the viability of their institutions.

Predictably, NGO activists were up in arms against such arguments, which they believed were not reflective of all sections of Adivasi women, but were merely echoes of the male power wielders. From their wide field experience they talked of socially-sanctioned witch hunts against widows and elderly women to deprive them of their usufructuary rights over land. Such witch-killings could only be controlled if women acquired the right to inherit ancestral property. They further pointed out that in the villages women were in favour of acquiring inheritance rights, but did not publicly voice their demands for fear of social ostracism.

<sup>1</sup> Jyotsna Tirkey, "Jo Adivasi Mahilayon Ka Mamlā Nahin Hain Who Gairadivasiyon Dwara Mamlā Banaya Ja Raha Hain" ("That which is not a concern of Adivasi women, is made a concern by non-Adivasis", unpublished manuscript, no date).

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<sup>2</sup> Madhu Kishwar, "Toiling Without Rights: Ho Women of Singhbhum", *Economic and Political Weekly*, 22.3 (1987), 95-101, 149-55, 194-200.

Such arguments reflect similar concerns long expressed by feminist scholars, as for instance, by Madhu Kishwar, an editor of the feminist journal *Manushi*. In her report on a field-survey of the Ho women of Singhbhum,<sup>2</sup> published in the *Economic and Political Weekly* in 1987, Kishwar portrayed a dismal reality at odds with the popular image of Adivasi women enjoying equality with and respect of their menfolk. Her study placed the issue of the denial of land rights to Adivasi women in the context of women's daily life, work and status within the family and the community. She argued that both the landless poor women as well as those coming from landed families were vulnerable because of the absence of land rights. The extensive interviews which she conducted made it clear that a section of her interviewees indeed believed that land rights for women could ensure their empowerment, but they feared to make public such demands. Such differing points of view – that of Kishwar's informants and that expressed by women students of the early 21<sup>st</sup> century – bring to focus the sharp schism which is present today in Adivasi society.

<sup>3</sup> Ibid. Also see Govind Kelkar and Dev Nathan, *Gender and Tribe: Women, Land and Forests in Jharkhand* (Delhi: Kali for Women, 1991).

Some scholars have, for long, believed that the status of women in Adivasi society had, in the distant past, differed substantially from that of women belonging to caste societies, and that it was only in recent times that the emulation of cultural and socio-economic values of caste society led to the loss of those very positive aspects of their own.<sup>3</sup> British rule by bringing Adivasis in contact with the outside world was thereby held responsible for pushing Adivasi society into a male-dominated, hierarchical mould. It was further argued that many of the disabilities from which Adivasi women suffer nowadays are not the consequence of their customs, but were due to the erosion of their traditions under the debilitating land policies of the British. Colonial land settlement operations created a new system of peasant proprietorship with increasingly patrilineal forms of inheritance that destroyed the tradition of land being held collectively by the clan. Since colonial times, the so-called 'tribal' areas were opened to exploitative outsiders, such as mining and industrial companies as well as Hindu peasant groups with greater technical know-how. This had led to increasing land alienation. The resultant scarcity of land had changed the balance of power between Adivasi men and women and permitted the land-controlling tribal menfolk to subjugate women, who now had to provide all the labour in ways never before possible. External political structures and a hierarchical colonial government machinery, with an inherent bias against women, fostered a far less egalitarian and far more repressive social structure, with women at the very bottom of the pyramid.

While the economic impact of colonial rule, i.e., the intrusion of outsiders and land alienation did, in fact, lead to the marginalisation of tribal women, I would argue that women's subalternity was not only a colonial innovation, but was also intrinsically related to the social-economic systems of the major Adivasi communities which practised settled cultivation. The introduction of colonial legislations, moreover, had a complex impact upon Adivasi societies. On the one

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hand, colonial legal policies resulted in the homogenisation of diverse customs and practices, leading to the reification of 'tradition', including that relating to the status of women. On the other hand, it also enabled a questioning of, and attempting to restructure tradition whereby, in certain situations, Adivasis, both women and men, asserted the right of women to inherit ancestral property and to leadership positions within their community institutions. This can be contrasted to the situation in post-Independence India where the politics of indigeneity often ensures the suppression of Adivasi women's rights over ancestral property, though not their usufructory rights, in the interests of community solidarity.<sup>4</sup> This transition within Adivasi society will be explored in the following three sections. The first outlines the land systems in 19th century Jharkhand, the second highlights some of the challenges faced by the tribal 'patriarchy' under colonial rule, while the final section traces the post-Independence developments.

<sup>4</sup> Nandini Sundar, "Adivasi Politics and State Responses: Historical Processes and Contemporary Concerns", in Sanjukta Das Gupta and Raj Sekhar Basu, eds., *Narratives from the Margins: Aspects of Adivasi History in India* (Delhi: Primus Books, 2012), 237-254.

### Adivasi Land Ownership in Jharkhand

The Adivasi pattern of land inheritance in Jharkhand, particularly among the larger land-owning groups, as depicted in the studies of the colonial administrators and ethnographers and anthropologists of the 19<sup>th</sup> and 20<sup>th</sup> centuries, was discriminatory against women in various ways. Adivasi communities were deeply attached to their own village, membership to which conferred upon them a distinct social and cultural identity. Survival in hostile surroundings required security, economic sustainability, social cohesion and co-operation. The village ensured all of these requirements, and very importantly, by housing the ancestral spirits, it conferred upon its residents a sense of continuity and belonging across generations. Thus, to the Hos, the Mundas, the Santals and the Oraons, the village did not merely signify a geographical space that they occupied. It was a religiously defined boundary, a cultural space, blessed both by village spirits and by ancestors and it determined the nature of their relationships both within and outside their own community.

The village organisation was partly designed to ensure control of the village founders over local resources. Generally speaking, the founding families, the *khuntkattidars*, enjoyed in Chotanagpur special privileges and rights which had a ritual status, being interwoven into the religious observances and customs of the people. Customary laws prevented the descendants from the mother's side and other later settlers from gaining access to the village land. The primacy of the original descent group was institutionalised by reserving for itself the posts of the key village functionaries, namely that of the headman, variously known as the *munda* or the *manjhi*, and the priest (the *pahan* or *deuri*). Although their position was hereditary, their status was that of *primus inter pares*, the first among equals.

Tribal egalitarianism is therefore a valid concept when applied to the original descent group. Even so, gender inequalities imposed limits on the egalitarianism of

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the original descent group. It can be argued that women's subalternity in Adivasi society did not arise from external factors, but was intrinsic to the social norms of the communities. The customary tribal laws regarding land and inheritance appeared to reinforce the rights of the patrilineal male descendants to the lands cleared by an ancestor. Primogeniture in the male line was strictly practised and the daughters and descendants on the wife's side of the family were excluded from inheritance. This ensured the control of the families of the original settlers over precious village resources. That this practice was integral to the traditional tribal organisation was reaffirmed by several colonial observers. For instance, S. J. Manook, an Assistant Commissioner of Singhbhum in the mid-19<sup>th</sup> century, noted that the major tribal communities could not dispose of their land as they chose, and it had to descend to their sons and grandsons; in the absence of a direct male issue, the land went to the mother (i.e. with a life interest) or next of kin.<sup>5</sup> The Chotanagpur Commissioner, E.T. Dalton, had similarly observed that the prevailing custom of inheritance among the Hos of Singhbhum was an equal division of property among the sons.<sup>6</sup> Thus, women's disqualification to landed property arose primarily from the need of the descent groups to keep intact their control over land. Since daughters passed out of the patrilineal family through the act of marriage, they were debarred from participating in the sacrificial offerings to ancestral spirits of their father's family and, therefore, had no claim to a share of the property left by their father or any other member of their father's clan.

<sup>5</sup> S. J. Manook, 3 September 1895, Revenue Proceedings Nos. 113-114, January 1896, Government of Bengal, West Bengal State Archives, India.

<sup>6</sup> Edward T. Dalton, *Descriptive Ethnology of Bengal* (Calcutta: Indian Studies Past and Present, 1973 [1872]), 211.

Within Adivasi society, the restricted property rights of women were sanctified through religious beliefs, as the anthropologist Sarat Chandra Roy had shown in his study of the Oraons.<sup>7</sup> According to Oraon tradition, the living and dead members of the same exogamous clan in any particular village together formed one village family. Oraons believed that the human spirit, after dissolution of the physical body, lived in the underworld together with the spirits of the deceased ancestors of the same clan of a village. The spirits were believed to derive nutrition from the essence of the offerings made to them by their male descendants daily before every regular meal, periodically at certain sacrificial feasts, and annually at the great 'male bone burial' festival. Thus, the spirits of the dead remained in contact with their property and were concerned that it went to their male descendants. If after marriage a daughter of the family stealthily took away to her husband's place any property belonging to her father or brothers, she would be pursued by the spirit of her father's village and sickness and other affliction was sure to be caused in her husband's family.

<sup>7</sup> Sarat Chandra Roy, *The Oraons of Chota Nagpur: Their History, Economic Life and Social Organisation* (Ranchi: Bar Library, 1915).

Exclusion from property rights did not, however, imply a loss of social and economic freedoms. Unlike caste society, Adivasi communities in Chotanagpur and Santal Parganas did not restrict the freedom of women in material pursuits.<sup>8</sup> Women were not precluded from ownership of movables and widows and unmarried daughters also had a right to maintenance.<sup>9</sup> Nor was there any social prejudice regarding women's participation in different aspects of the household

<sup>8</sup> For details see Kelkar and Nathan, *Gender and Tribe*, Shashank S. Sinha, *Restless Mothers and Turbulent Daughters: Situating Tribes in Gender Studies* (Kolkata: Stree, 2005), Sanjukta Das Gupta, *Adivasis and the Raj: Socio-economic Transition of the Hos, 1820-1932* (Delhi: Orient Blackswan, 2011), 42-46.

<sup>9</sup> Dalton, *Descriptive Ethnology of Bengal*, 211.

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and the village economy. Adivasi women, in fact, enjoyed a lot of respect in these domains. This has been reflected in nearly all contemporary studies on tribal societies carried out in course of colonial rule. It had been observed, for instance, that Santal women “were supreme in household affairs”<sup>10</sup> and also that in household matters a tribal woman’s voice was as important as her husband’s. Her influence was often decisive while arranging marriages.<sup>11</sup> The same was the case with the Hos. Hayes, the Deputy Commissioner of Singhbhum thus observed, “A Kol or Ho makes regular companion of his wife. She is consulted in all difficulties and receives the fullest consideration due to her sex”.<sup>12</sup>

Women enjoyed a large area of unrestricted freedom beyond the domestic sphere as well. In by far the greater spheres of life, an Adivasi woman was free to enjoy her life as a woman. She could go about alone, she could dance in public, she could take and sell her wares to the market, she could smoke and drink in public, she enjoyed sexual freedom, she could also participate in village meetings on equal terms with the men. This stood in sharp contrast to the restrictions on movement imposed on women belonging to caste societies, particularly to the upper castes. Nor were there many restrictions on women in participating in the economic concerns of the village – in agriculture or fishing. Collection of forest produce, particularly timber used by Adivasis as fuel, was often largely done by women as was the making of rice beer which was of vital significance in the day-to-day life as also in the collective cultural life. Fishing, in particular, was a communal activity and wives accompanying husbands on fishing expeditions, or sisters their brothers did not as a rule assist each other alone, for it was a joint activity and the women helped the men irrespective of their relationship. However, such assistance was usually confined to the village or clan group.<sup>13</sup> Conventionally a division of labour in fishing was adhered to. Women usually carried pots of liquor, or *diang*, and the men carried the nets and the traps. Fishing in deep water was done by men, while women usually fished in slow running water. Similarly in the case of agriculture, men normally undertook ploughing harvesting, threshing and husking rice, while women carried out the weeding and transplanting. However, there was no rigid division of labour among Adivasis of Singhbhum, and as the anthropologist D. N. Majumdar observed in the mid-20th century, increasingly men’s occupations were done by women.<sup>14</sup> In many ways a woman’s life in tribal society seemed to him to be a drudgery. The basis of economic division of labour appeared to be that the men did the more creative and interesting work, while the women performed the routine tasks. In all economic operations, men led and women followed. Thus the ploughing was done by men, the breaking up of the clods of earth was done by women. Sowing was done by men, weeding by women.<sup>15</sup> The distribution of the produce, like its apportionment, was arranged by men while the women carried out the instructions. The men cleared the forest, the women followed them for gathering fruit and roots. The men planted the fruit trees and vegetables, the

<sup>10</sup> W. J. Culshaw, *Tribal Heritage: a Study of the Santals* (London: Lutterworth Publishers, 1949), 29.

<sup>11</sup> William George Archer, *Tribal Law and Justice: A Report on the Santal* (New Delhi: Concept Publishing House, 1984), 129.

<sup>12</sup> Dalton, *Descriptive Ethnology of Bengal*, 202.

<sup>13</sup> Direndra Nath Majumdar, *The Affairs of a Tribe: A Study in Tribal Dynamics* (Lucknow: Universal Publishers, 1950), 59.

<sup>14</sup> *Ibid*, 65.

<sup>15</sup> *Ibid*, 67.

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women collected the fruits and sold them according to the needs of the family. When men did the rougher work, the women supplemented their labour.

There were, however, certain economic taboos which were, however, inviolable. Women were denied the right to touch the plough or the bow and arrow – implements of vital necessity in agriculture and hunting. A woman could not touch the plough for if she did the plough would lose its virtue. Ploughs were therefore never taken inside the house, but were placed under some big tree near the village burial ground or *sasan*. Similarly, touching the bow and arrow was proscribed for Adivasi women. An occupation normally forbidden to women was the rearing of cocoons for tussor silk. It was also taboo to touch a woman while rearing cocoons and strict sexual continence was insisted upon during this activity. The men thus retired to a quiet part of the forest while rearing cocoons in order to follow their profession unhindered. Nor could women take part in any productive enterprise – work in the fields or prepare rice beer – during their menstrual period.

Women's subalternity in Adivasi society related particularly to taboos on participation in the ritual life of the people. The ritual domain, both familial and collective, was severely restricted for women. Among Santals, a significant family-centred ritual was ancestor worship in the 'sacred closet' or the *bbitar* within the dwelling place. According to the Santal Guru Kolean's narrative, "the sacred closet is for ancestors to stay hidden in ... In this closet they make a small enclosure and that is the real place for the ancestors to stay hidden in".<sup>16</sup> Women had only limited entry to this sacred place. These traditions persisted even as late as the 1920s and '30s, despite the many changes that the village society had meanwhile undergone.

The new bride similarly had to undergo numerous rituals before being formally admitted to the family. Among the Hos, for instance, the bride's formal admittance to the clan group, or *killi*, required participation in certain ceremonial gatherings and tribal feasts. As long as she was not formally admitted to the *killi* she had certain disabilities with regard to the family, the clan and the village. She would not be allowed to enter into the family's sacred enclosure, the *ading*, the abode of the sacred spirits, the Oa Bongas. Nor could she perform the traditionally prescribed daily rites, otherwise it was feared that the family spirits would become enraged and harm the members concerned. During the time of the Maghe and Baha festivals when the whole village took part in the ceremonial feasting, the bride could be formally admitted to the clan through the ceremonial worship of the village deity, Dessauli, and Sing Bonga (the Supreme Spirit) by the village priest or through worship done by the family itself. Only then would she be allowed to enter the family *ading*. Another striking discrimination against women was in respect of the practice of erecting stone slabs or *sasandiri* over burial places. This was an important ritual confining and perpetuating the indissoluble link of Adivasis with their ancestral village. No *sasandiri* was, however, put up in the memory of unmarried girls and spinsters. Nor was it erected in the memory of married women in the burial ground of her husband's village. Another instance of women's

<sup>16</sup> Paul Olaf Bodding, Lars Olsen Skrefsrud, Sten Konow, *Traditions and Institutions of the Santals* (Delhi: Bahumukhi Prakashan, 1994 [1942]), 89.

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exclusion from collective ritual was the non-existence of any direct role of theirs in communal sacrifices, though they did participate in the preparation.

Taking into account all these complexities, the romanticised view of a homogeneous and egalitarian tribal society in pre-colonial and colonial times does not hold. Although Adivasis of Chotanagpur differed from the Hindu caste hierarchical society, their village organisation was not characterised by equality among all sections of the tribal population. Egalitarianism did exist among the core group of founding families in the village, but, in general, clear lines of differentiation had been created over the issue of control of village resources.

## The Impact of Colonial Rule

Colonial rule significantly impinged upon tribal society in various ways. Although Adivasis had never been completely insulated from the regional economy, the expanding linkages to the wider polity and economy under colonial rule created new stresses and strains within the tribal village society which, in turn, led to a distortion and gradual decay of their communal organisations. The penetration of the market economy, the commercial exploitation of the mineral and forest wealth of the region, the intrusion of alien outsiders, extension of railways, urbanisation and the introduction of British law and justice all left their mark on the tribal society, and thus, on the status of tribal women. The extension of the economy certainly widened women's sphere of economic activities but did not substantially affect their ritual status within the tribe. Simultaneously, the colonial period witnessed an increasing marginalisation of tribal women. The weakening of the traditional communal organisations deprived women of the protection of the village community and left them exposed to exploitation of the market forces. Gender inequalities, therefore, tended to be sharpened as a consequence of colonial rule.

While alien concepts of the market economy threatened Adivasi societies, social transformation through the introduction of English education and Christianisation<sup>17</sup> enabled certain sections of the Adivasis to grapple with these changes and reinvent their community identity. Throughout the 19<sup>th</sup> century the colonial government made a concerted attempt to identify custom and establish rights of Adivasis which would be in keeping their traditions.<sup>18</sup> Such an attempt inevitably led to a homogenisation of laws relating to tribal areas since the customs of dominant communities were taken to be the standard that was sought to be applied uniformly over various different communities with divergent traditions and histories. As Carol Upadhyay argues, the provisions regarding 'tribal custom and usages' in fact largely drew upon the model of tribal social organisation developed by colonial administrators and missionaries, especially by the German Jesuit missionary Father Hoffmann, during the late-19<sup>th</sup> and early-20<sup>th</sup> centuries.<sup>19</sup>

<sup>17</sup> For details on Christianisation among Adivasis, see Marine Carrin and Harald Tambs-Lyche, *An Encounter of Peripheries: Santals, Missionaries and Their Changing Worlds* (Delhi: Manohar, 2008).

<sup>18</sup> For a discussion of the framing of colonial land settlement laws concerning Adivasis of Chotanagpur see Carol Upadhyay, "Law, Custom and Adivasi Identity: Politics of Land Rights in Chotanagpur", in Nandini Sundar, ed., *Legal Grounds: Natural Resources, Identity and the Law in Jharkhand* (Delhi: Oxford U. P. 2009), 30-55. For the Hos of Singhbhum, see Sanjukta Das Gupta, "Rethinking Adivasi Identity: The Chota Nagpur Tenancy Act (1908) and Its Aftermath among the Hos of Singhbhum", in Biswamoy Pati, ed., *Adivasis in Colonial India: Survival, Resistance and Negotiation* (Delhi: Orient Blackswan, 2011), 88-111.

<sup>19</sup> Upadhyay, "Law, Custom and Adivasi Identity", 34-36. Also see, Vinita Damodaran, "Colonial Constructions of the 'Tribe' in India: The Case of Chotanagpur", in Biswamoy Pati, ed., *Adivasis in Colonial India: Survival, Resistance and Negotiation* (Delhi: Orient Blackswan, 2011), 83-86.

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The 19<sup>th</sup> century colonial discourse of rights was not specifically concerned with women's rights. Patriarchy and primogeniture tended to be fixed as the principal guiding feature of tribal property rights, and, as land gained a market value land ownership came to be viewed as the single most significant signifier of wealth, even in tribal communities. Moreover, throughout the 19<sup>th</sup> century Adivasis came to be gradually alienated from their lands as a result of both government acquisition of forests and the slow, yet steady, intrusion of non-tribals into the Adivasi regions. These changes increased the vulnerability of Adivasi women, yet paradoxically served to empower certain sections of Adivasi women who attempted to claim legal rights for themselves. Such attempts were particularly significant among Christianised tribal communities.

Several instances of challenges to the conventional land-holding mores can be found in the colonial archives, particularly in the regional record rooms in Jharkhand where village records of civil disputes give an intimate picture of the quotidian life of Adivasis. The land settlement report of 1897 in Kolhan Government Estate, for instance, cites a large number of cases in which daughters had been found sharing in the father's property with the full approval of the village community.<sup>20</sup> In 1907-08, a group of fourteen women in Choya village in Gumra pir, Kolhan, claimed headship of the *lakehiraj* (rent free) village after the death of their father, who had been the former headman. The Deputy Commissioner, however, felt that the principle of allowing a Hindu widow a life interest should not be treated as a precedent in the case of a tribal family since it was 'recognised' in tribal custom that no female could inherit the village headmanship.<sup>21</sup> Despite such instances, therefore, the colonial government refused to legislate in favour of women's claims and the Chotanagpur Tenancy Act (CNTA) of 1908, which aimed at safeguarding local customary rights and usages, and reaffirmed the hold of tribal males on land. Enacted nine years after Birsa Munda's *ulgulan* (rebellion), it intended to provide a degree of protection to the Chotanagpur Adivasis by making *khuntkatti* tenures secure against encroachments of landlords by fixing their rents in perpetuity and making illegal the sale of these lands for any purpose other than arrears of rent. Rights in land were thereby legally recognised as 'hereditary and inalienable' and had to descend on the sons and the next male kin. In practice this meant that the more powerful families in the village could grab the land.

However, a challenge to tradition continued to be posed by tribal women, who in certain cases disputed their menfolk in the colonial courts over formal land rights. Tribal women attacked customary rights in various ways. The settlement papers of 1913-18 in Kolhan Government Estate reveal instances of land being registered in the names of Ho women.<sup>22</sup> There were instances when married women sought their right to continue their title over parental property although, according to custom, they held usufructuary rights only so long as they remained unmarried.<sup>23</sup> In some cases, women even denied that they were married so as to remain in possession of their maintenance plots. There was also an instance of a

<sup>20</sup> J. A. Craven, *Final Report on the Settlement of the Kolhan Government Estate in District Singhbhum of the Year 1897* (Calcutta: Bengal Secretariat Press, 1898).

<sup>21</sup> Tanaza Papers, K11 S1 13823 of 1907-08, Papers Relating to the Resettlement of the Kolhan Government Estate 1913-18, Chaibasa Collectorate Record Room, Chaibasa.

<sup>22</sup> Craven, *Final Report on the Settlement of the Kolhan Government Estate*.

<sup>23</sup> Case No 68 of 1906, Court of the Deputy Collector, Serial 229 of 1906, Records of Kolhan Suits and Appeals, Class I, Chaibasa Collectorate Record Room, Chaiabasa.



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widow staking a claim to the right to the first husband's property even after marrying a second time. Furthermore, Ho women claimed the right to gift, mortgage and sell property under their possession, subverting tribal norms. In many such civil suits, the colonial settlement court in Chaibasa ruled in favour of women litigants.

A similar tendency of a rethinking regarding the laws of inheritance could be noted among Santals. Taking credit for this change, the Swedish missionary Boddington wrote: "the Santals are changing and in many ways developing ... They feel that the old rules do not cover all present day circumstances and do not always carry them satisfactorily through, and they wish something more just and advanced; this is the case with regard to the rights of their women".<sup>24</sup> W. G. Archer, the Deputy Commissioner of Santal Parganas from 1942 to 1945 similarly observed such a tendency during his tenure. He stated that the patrilineal system of inheritance had been gradually changing in Santal Parganas and pointed out that the revision settlement operations of 1922-35, popularly known as *Gantzer Settlement Report* had recorded women as owners, ignoring local customs. Quoting from Gantzer, Archer asserted:

The rules against female succession among the Santals whether Christian or non-Christians are changing owing to the force of public opinion, and the rules which have been previously accepted, cannot be treated as hard and fast and binding for all time. The change which is occurring is in the direction of ameliorating the condition of women and giving them a more assured footing in the family.<sup>25</sup>

<sup>24</sup> Paul O. Boddington, "Some Remarks on the Position of Women among the Santals", in Joseph Troisi, ed., *The Santals: Readings in Tribal Life*, Vol. 6 (New Delhi: Indian Social Institute, 1979), 248-249.

<sup>25</sup> Archer, *Tribal Law and Justice*, 684-685.

Nevertheless, there was continuous opposition to women's attempts to secure land rights. During the settlement operations the male agnates opposed the registration of land in the names of women owners. In some cases they refused to recognise the claims of widows as sole owners. They were required to be registered in their late husbands' names so as to indicate that they had inherited their late husband's property which would revert to her male relatives after their death. In another case, a widow wished to enlist her daughter's name as a *keborposbdar* (a holder of a maintenance grant) for certain plots sufficient to maintain her until her death.<sup>26</sup> Taking into consideration both tribal custom and women's claims to land rights, Gantzer fixed certain rules of property in his settlement report. He stated:

<sup>26</sup> *Ibid.*, 685.

where a Santal women has been recorded as wife of so and so, she holds a widow's right as if she were a Hindu widow. Where a Santal woman has been recorded as daughter of so and so she may be taken to have full rights of inheritance somewhat in the manner of a women inheriting *stridhan* [moveable property received on marriage] property under the Hindu law. The question of succession in such cases is still somewhat in doubt as the system is new, but there seems little doubt that if she dies issueless, Santal sentiment would prefer that the property should revert to her nearest male relations.<sup>27</sup>

<sup>27</sup> *Ibid.*, 686.

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While it is true that impact of colonial rule was partially responsible for the changing attitude of the Santals, it appears that the government generally preferred to adopt a policy of non-interference. Whenever any objection arose against registering a daughter's name as owner, the officers recorded her as enjoying rights of usage and maintenance and not as owner. Gantzer pointed out:

In dealing with such cases of this nature the custom adapted in a particular locality must be carefully considered. It would be unwise to force upon an unwilling litigant a decision in advance of custom. If a change in custom has been well established and generally accepted it will of course be treated as the customary law of the locality in mitigation of the harshness of the ancient tribal law.<sup>28</sup>

<sup>28</sup> Ibid., 685.

Here we find that the 'customary law of the locality' is contrasted to the 'ancient tribal law'. When custom was 'adapted in a particular locality', it apparently ceased to be 'tribal', i.e. 'ancient' and 'harsh'. This would imply that the British were aware that new customs were being produced under the colonial impact. Thus under colonial rule, there were new trends in various phases and forms: homogenisation of tribal customs, impact of Hindu customs, economic changes pertaining to land availability and land market, alien intrusion, the legal concept of ownership, spread of Christian ideas of women's protection. All of these went in direction of acknowledging land rights to women as well, at least in certain cases where the whole community felt the impact, and at times even despite British reluctance and preoccupation with avoiding open challenges to 'custom' and 'tradition' – things that they themselves had profoundly altered. The British legal culture was based on customary law; hence they needed to ascertain (and fixate) what the customs were in a certain area over a certain period. Tradition and custom thus served as areas of shared sovereignty: the British imposed new laws and spread new ideas, but they became 'custom' and acquired a legal value only when local society accepted them.

### Post-Independence Developments

After Independence, the Congress government declared its intention of replacing the old policy of status-quo and adopting the policy of development and tribal integration, while preserving the tribal people's distinct social and cultural heritage. What was aimed at was creating conditions in which tribal societies could grow naturally, free from both external impositions and internal inhibitions.<sup>29</sup> Specifying the rights and privileges of the tribal communities, the Fifth and Sixth Schedules of the Constitution provided a degree of protection for tribals in the 'partially

<sup>29</sup> B. K. Roy Burman, "Perspective and Programme for the Development of Adivasis", in *The Tribal People of India* (New Delhi: Publication Division, Government of India, 1973), 180.

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excluded areas' of middle India and autonomy to the 'excluded areas of the northeast respectively. The Constitution provided a framework with a three-pronged strategy of improving the situation of the 'Scheduled Tribes' consisting of protective arrangements, affirmative action and development, while preserving the tribal people's distinct social and cultural heritage.

In practice, however, there was a renewed phase of conservatism and the post-Independence government in India continued with the earlier colonial policy of non-interference in the internal affairs of Adivasi societies. However, a number of laws on the rights of unmarried Adivasi women and widows did emerge in the Chotanagpur region. K. S. Singh argues that this was enabled through the application of the Hindu Succession Act to sections of Hinduised tribals and of Christian laws to converted tribals.<sup>30</sup> However, in more recent times, such initiatives have tended to be thwarted on one account or the other.

<sup>30</sup> K. S. Singh, "Land Rights of Tribal Women", *Human Science, Journal of Anthropological Survey of India*, 37.3 (1988).

Despite constitutional provisions for the protection of Adivasi landholdings, Adivasis of Jharkhand and other states of central India have since Independence encountered the threat of land alienation which occurred in two ways: first through fraudulent acquisition by non-tribal landlords, moneylenders and traders, and secondly in the form of sales and leases to state-sponsored industries, mining interests and commercial interests. Such land-alienations are particularly significant for Adivasi women experience greater vulnerability in face of displacement. The specific problems of Adivasi women acquire a different contour when confronted by changes in the political climate of the country, which in turn affects gender relations and roles.

As Tanika Sarkar points out, a consequence of the fundamentalisation of politics by the Hindu right-wing is that women's individual rights have come under scrutiny in contemporary India. Their attempts to claim rights are portrayed as countering the larger interests of the family and the nation. In the fundamentalist discourse, equality has been further redefined to mean harmony. A woman who chose to exercise her right as an individual was depicted as betraying these interests, and causing disharmony.<sup>31</sup> Likewise, regional political parties and identity movements in Jharkhand have increasingly imposed restrictions on Adivasi women's bid to claim land rights for themselves. Male agnates have successfully resisted woman's land rights on the ground that land belongs to the lineage that had reclaimed it. They have asserted that the transfer of interest to women will undermine the foundation of the tribal social order.<sup>32</sup> Even within their own localities, Adivasis today are losing ground to outsiders, a process that has significant economic and political implications. Moreover, one of the ways non-tribals fraudulently acquire tribal land is through marriage with tribal women, whom they then desert after the completion of the transaction.<sup>33</sup> Resistance to women's land rights thus also arises out of a desire to restrict alienation of tribal land. The Supreme Court's attempts to intervene in favour of land rights for tribal women have, therefore, not received the support of even reformists in tribal

<sup>31</sup> Tanika Sarkar and Urvashi Butalia, eds., *Women and the Hindu Right: A Collection of Essays* (Delhi: Kali for Women, 1995).

<sup>32</sup> K. S. Singh, "Tribal Women: Resurrection, Demystification and Gender Struggle", in Aparna Basu and Anup Taneja, eds., *Breaking Out of Invisibility: Women in Indian History* (New Delhi: Indian Council of Historical Research/Northern Book Centre, 2002), 227.

<sup>33</sup> Virginius Xaxa, "Women and Gender in the Study of Tribes in India", in Mary E. John, ed., *Women's Studies in India: A Reader* (New Delhi: Penguin books, 2008) 480.

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<sup>34</sup> Dev Nathan, "Jharkhand: Factor and Futures", in Ram Dayal Munda and S. Bosu Mullick, eds., *The Jharkhand Movement: The Indigenous People's Struggle for Autonomy in India* (Copenhagen: International Work Group for Indigenous Affairs, 2003) 130.

<sup>35</sup> In the case, 'Gopal Singh Bhumij vs Ginibala Bhumij', Ginibala Bhumij had to "show that the family and/or other Bhumij's of the village and/or neighbouring villages have adopted Hindu religion and have been following all rites and customs normally followed by Hindus". Srimati Basu, *She Comes to Take Her Rights: Indian Women, Property and Propriety* (Delhi: Kali for Women), 2001.

<sup>36</sup> Madhu Kishwar, "Toiling Without Rights", 101.

<sup>37</sup> For a discussion of witchcraft in Adivasi societies see, Ajay Skaria, "Shades of Wilderness: Tribe, Caste and Gender in Western India", *The Journal of Asian Studies*, 56.3 (August 1997), 726-745; Kelkar and Nathan, *Gender and Tribe*; Soma Chaudhuri, *Witches, tea Plantations and Lives of Migrant Labourers in India* (Lanham, Maryland: Lexington Books, 2013); Shashank S. Sinha, "Adivasis and Witchcraft in Chotanagpur, 1850-1950", Unpublished Ph. D. dissertation, University of Delhi, 2010.

<sup>38</sup> Nitya Rao, *Good Women Do Not Inherit Land: Politics of Land and Gender in India* (Delhi: Orient Blackswan, 2008).

<sup>39</sup> Bina Agarwal, "Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market", *Journal of Agrarian Change*, 3.1 (January and April 2003), 184-224.

societies who seek for changes in women's position in tribal society.<sup>34</sup> To escape these restrictions, there have been situations as Srimati Basu has shown, when Adivasi women have had to assume a Hindu identity as a convenient device in order to secure property.<sup>35</sup>

The tools employed to control 'deviant' women are social ostracism, accusation of witchcraft and outcasting. 'Ostracised' women do not find anyone to plough their fields, thatch their roof, assist them in essential rituals, or even to procure food in times of scarcity.<sup>36</sup> Controlling deviant women through organised acts of violence, such as witch hunts is a common practice throughout tribal regions, and as recent researches have shown, the threat of being declared a 'witch' is a powerful weapon to induce conformism.<sup>37</sup> As Nitya Rao argues, in Adivasi societies throughout eastern India today the construct of the 'good woman' is popularised as one who does not make attempts to claim or inherit land.<sup>38</sup>

### Concluding Remarks

The issue of women's land rights as a form of empowerment is very significant today and is likely to become more so in the future. India's agrarian transition has had serious gendered inequalities embedded within the process arising particularly from unequal land distribution. Bina Agarwal argues that land rights could indeed make a notable difference to women's bargaining power within the home and community and enable them to better negotiate the wage labour market and she notes that empowerment has emerged wherever rural women have gained access to land.<sup>39</sup> She strongly asserts that women's land rights deserve policy attention even if women themselves do not identify this as a priority. It is critically important to recognise that the deprived may have incomplete information about the options available to them. Yet, the dangers of intervention is revealed in Madhu Kishwar's own experience when as the editor of *Manushi* she filed a petition in the Supreme Court in 1981 on behalf of a Ho woman Maki Bui and her daughter, Sonamuni, who lived in Lonjo village in Singhbhum District whereby they challenged the denial of equal inheritance rights to women of the Ho tribe. The upshot of this move was constant harassment of Maki Bui from her male agnates and non-availability of any assistance on part of the local administration. Finally she was forced to move from Lonjo village and a few years later died in mysterious circumstances. This tragic tale outlines the dangers of intervention from outside without adequate support within the community. Thus perhaps the need of the day is to develop a new social consensus in favour of Adivasi women's land rights within the community and family.