

Changing Profile Of Tribal Women's Property Right

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Abstract

In agrarian economies arable land is the most valued form of property. Majority of rural families depend solely on this asset. In rural India where agriculture is the main occupation women's status depends on independent land right, so land ownership or right to landed property is an important element of women's empowerment in India. But Legal security of tenure for women in almost all countries whether developed or developing is almost entirely dependent on men. Male's larger control over property reproduces male's authority. Women's exclusion from property right was evident in ancient text in pre-colonial India. The colonial government with the establishment of East India Company (1765) was compelled to fashion a legal judicial apparatus toward improving the status of women. But British officials were highly influenced by regional customary laws where women's right was denied or not safeguarded. After independence law was made on the principle of equality between male and female. The formulation of contemporary inheritance laws on landed property, involved a complex and debatable process of interaction between state and different segment of population, the interplay of varying ideologies and interests and conflicting pulls of scriptural rules and local customs. There was tendency to make uniform system of law but due to prevalence of different personal laws uniformity remains a dream. The scenario is worst in tribal society. The policy of isolation of tribal community formulated and developed by British government has been adopted in the Constitution to safeguard tribal culture. Tradition and customs completely had influenced tribal inheritance law for women. This paper evaluates the question of tribal women's inheritance specially landed property not only in the colonial past but also in rapidly changed and still changing society.

Keywords: gender, law, property right, tribal women.

Introduction

The UN Special Rapporteur on Adequate Housing confirms the dire situation of millions of women across the world: "In almost all countries, whether 'developed' or 'developing', legal security of tenure for women is almost entirely dependent on the men they are associated with. Women headed households and women in general are far less secure than men. Very few women own land. A separated or divorced woman with no land and a family to care for often ends up in an urban slum, where her security of tenure is at best questionable".¹ In

1 UN Special Rapporteur on Adequate Housing, Study on Women and Adequate Housing, April 2002, E/CN.4/2003/55, p. 9,

available on <http://www.unhchr.ch/housing>

many developing countries, more than half of the urban population lives in slums and informal settlements, in sub-standard living conditions, in the absence of basic services and without rights to land and adequate housing. Women headed households form a high proportion of the population in many of such settlements. While lack of security of tenure affects millions of people across the world, women face added risks and deprivations. In Africa and South-Asia especially, women are systematically denied the rights to access, own, control or inherit land and property. The vast majority of women cannot afford to buy land, and usually can only access land through male relatives, thus their security of life is dependent on good marital and family relations.

Millions of women in Asia, Africa and Latin America depend critically on land for a livelihood. About estimated 41% of women headed households live below the locally defined poverty line and close to one third of the world's women are homeless or live in inadequate housing (Agarwal 2002). Exclusion of women from right to land pushes them towards cities. In agrarian economies arable land is the most valued form of property. Majority of rural families depend solely on this asset. In rural India where agriculture is the main occupation women's status depends on independent land right, so land ownership or right to landed property is an important element of women's empowerment in India. But Legal security of tenure for women in almost all countries whether developed or developing is almost entirely dependent on men. Male's larger control over property reproduces male's authority. Women's exclusion from property right was evident in ancient text in pre-colonial India. The colonial government with the establishment of East India Company (1765) was compelled to fashion a legal judicial apparatus toward improving the status of women. But British officials were highly influenced by regional customary laws where women's right was denied or not safeguarded. After independence law was made on the principle of equality between male and female. The formulation of contemporary inheritance laws on landed property, involved a complex and debatable process of interaction between state and different segment of population, the interplay of varying ideologies and interests and conflicting pulls of scriptural rules and local customs. There was tendency to make uniform system of law but due to prevalence of different personal laws uniformity remains a dream. The scenario is worst in tribal society. The policy of isolation of tribal community formulated and developed by British government has been adopted in the Constitution to safeguard tribal culture. Tradition and customs completely had influenced tribal inheritance law for women. This paper evaluates the question of tribal women's inheritance specially landed property not only in the colonial past but also in rapidly changed and still changing society

To prevent denial of land right to women and migration of women from rural to urban areas, from agriculture to non-agriculture, Indian state has adopted different policies at different time. This chapter aims to highlight the major laws and policies in the pre colonial, colonial and post-independent India concerning women's right to landed property and evaluates them thus:

Laws of inheritance in pre-colonial period in India

Traditional Hindu law defining inheritance practices can be traced to the ancient text—the Dharmasastras- and the many commentaries on them, of which some took the form of digests and legal treaties. Particularly the Mitakshara and Dayabhaga two legal doctrines dated around the 12th century AD significantly influenced legal

practices. Mitakshara system was based on a contemporary Yajnavalkya smṛiti by Vijnaneswar (from South India). The Dayabhaga system was based on digest, composed by Jimutavahana (a Bengali Brahmin) was popular in Bengal and Assam. On the other hand the Mitakshara was popular in the rest of India. Dayabhaga is younger and were more revised than Mitakshara. Mitakshara system has two types of property: i) Joint family property and ii) Separate property.

Joint family property included ancestral property, which held jointly by four generations of male members- a man, his sons, son's son, son's son's son- who becomes coparceners on birth. Devolution was by survivorship that means the living coparceners have an interest in the property of dead one. In joint family property, one can get individual share only after partition. There were strong restrictions on the alienation of coparceners property (immovable). In case of separate property, individual had absolute rights. Women could not be the coparceners in the Mitakshara joint family property. Only women as wives and unmarried daughters had the rights of maintenance. In man's separate property, however, his widow could inherit a limited estate only in the absence of sons, agnatic grandson and agnatic great grandson and only if she remained chaste. A limited share means, women could enjoy property right only in her lifetime, but could not sale it. A daughter could inherit her father's estate (limited estate) in the absence of male heir and widow mother. In Bombay, sub school (Mayukha, four sub school)² of Mitakshara daughters had absolute right on estate.

In Dayabhaga system, widow and daughter could inherit her husband's property. In joint family property, even after death of her husband, widow and daughter would have co-ownership in her husband's property. The son did not acquire an automatic interest by birth in father's ancestral property, there was no rule of survivorship. The founder of Dayabhaga School, Jimutavahana was in favour of women's right to property.

Women's inheritance through Stridhan³

Both the systems gave some recognition to female property rights in the form of 'stridhan' (literally meaning women's property). There was varied and changing argument regarding stridhana. In the early shastric texts, stridhana included only movables given by parents, brother and other relatives at the time of marriage. From the seventh century onwards the concept Stridhan had widened in its scope

There arose a controversy among the commentators on whether landed property should be included or not in stridhana and what control women would have over it. According to several commentators, the Mitakshara law did not give absolute right to control and alienation of stridhana (immovable). Here also Bombay sub school was exception because in it the property which women inherited from a male of the family into which she born or inherited from a female was her stridhana and where she had absolute right (Kane, 1946:783).

Under these two systems, Hindu women enjoyed very limited control over immovable.

² See e.g. Banerjee (1984:355), first published in 1890s; Mayne 1953 and Kane 1946. It exists in Bombay (Mumbai) From the above four bases, there are two more bases. They are Vyavakara, Mayukha and Nimaya Sindhu. The Bombay school has got an entire work of religious and Civil laws.

³ The word '*Stridhan*' is, as you know, derived from the words *stri* meaning woman and *dhana* meaning property. Essentially a word and concept, which comes down centuries from the Hindu *smritis* but has today, permeated all forms of marriages in all castes and religions.

Law of Inheritance in colonial India

After having establishment of the East India Company (EIC) in India (1665), British were compelled to fashion a legal judicial apparatus for its new dominion. Then colonial administrators and Indian nationalists made a great effort to undertake reform towards improving the status of women. The process of identification of women's position in law got its significance in the period of colonial rule (Nair 1996:5). Themes and perspectives on four principal areas of legislation in the colonial period specifically indirectly affected women's status in the areas of production, reproduction, property and sexuality (Nair 1996).

The early period of Anglo-Hindu Law (1772–1864) is characterized by three main features: 1.) the collection and translation of important Dharmashastric texts by British administrator-scholars like Jones, Henry Thomas Colebrooke, Sutherland, and Borrodaile, in order to “apply” the rules of such texts to govern Hindus. This expanded the political rule of the British, 2.) The use of court pandits in British courts to aid British judges in the interpretation of classical Hindu law, and 3.) The proliferation of case law⁴ that resulted eventually in the “redundancy” of court pundits.

In 1864, just after India became formally part of the British Empire, Anglo-Hindu law entered into a second phase (1864–1947). In this phase the court pandits were dismissed due to the extensive case law³ that emerged during the first phase. During this time a series of parliamentary acts were passed to fix certain aspects of Anglo-Hindu law and to provide it with a legislative foundation. With the disappearance of court pundits, continual growth of case law (on topics involving questions of Anglo-Hindu law), and new legislative foundation, the relevance and interest in Dharmasāstra as the source of law also diminished as the parliament codified what they believed to be Anglo-Hindu law. The gap between the idealized legal system of Dharmasāstra and the diversity of customary laws throughout British-India led to the fixing of regional customary laws by the British officials. This was done through interviews, observations, and discussions with locals. Massive volumes of customary rules which were in theory being enforced were collected throughout British-India and became part of the consultative resources of the courts. The development of Anglo-Hindu law received a warm welcome from the people of India. The British felt that one of their great gifts to India was in fact a more rational system of law and it appears that a lot of Indians agreed. Law was generally not among the colonial legacies that the nationalist movement in India wanted to remove or overturn. By the second half of the 19th century, the British government had codified a series of laws to enable it to extract as much as it could from the acquisition, sale and transfer of lands and forests. Private property rights in land, including the right to sell and mortgage land, came to be firmly established in India by the second half of the 19th century, driven primarily by the colonial State's need to increase land revenue.

Land revenue, the tax that is to be paid by cultivator, was the main source of State revenue when the British started taking control of territory in India. The colonial administration was keenly interested in finding ways to increase tax collection. ‘Survey and settlement’ operations were carried out which recorded, village by village, every field and holding. The surveys not only classified and evaluated the land, but also recorded rights over the land.

Prior to colonial rule, rural communities (including Tribal) enjoyed the use of forests near their villages. Personal use of forest products was typically not taxed by the rulers. Forests were also home to large numbers of forest-dwellers who continued to live generally undisturbed by the rulers. Prior to the introduction of English land law, women often had customary rights to parcels of land for cultivation. Forest and the non-cultivated land were the absolute property of villagers. They used the forest for livelihood collection where the role of women was prominent. Women collected different types of products from forest and sold it in the nearby market. It gave them a kind of independence which they enjoyed a lot. On the other they used wasteland for grazing purpose.

Colonial interest in the forests started with the extraction of teak for the British navy, later extending to timber for India's rapidly expanding rail network. Initially, village communities also had access to the forests, but it was soon clear to the colonial administration that they were competing for the same resources. The Indian Forest Act, first enacted in 1865, asserted the right of the state over forest resources and the forest department was created to manage those resources. Moreover they have started to use the forest for their own interests.

The Forest Act in 1878 recognized forests as valuable property and provided for complete state control. Forests were categorized as 'reserved forests' (reserved exclusively for state use) and 'protected forests', where people were given some use privileges by the forest department which could also be taken away. Rights of existing forest-dwellers could be extinguished through 'permanent forest settlements' by the forest department after providing compensation, following the provisions of the Land Acquisition Act, after which they would be evicted from the forest. Without any notion of legal ownership and written record of rights, these communities were at the mercy of the forest department, which would decide if they had rights or just label led them 'encroachers'. By 1939, 188,500 sq km of land in undivided India had been notified as 'reserved forest', forest-dwellers evicted and the land brought under commercial forestry operations (Milward, 1947).

However, the colonial regime introduced individual titling to facilitate the free transfer of land. Following the patriarchal practices of nineteenth century English law, communal land holdings legally became the property of male household heads while customary rules remained unchanged. Women continued to work on the land as part of the family labourer, but no longer controlled its products. Thus Legal reform had reduced the legitimacy of women's control over economic resources.

In India, women work mostly in the informal labor markets and in agriculture. These women bear great economic risks and shocks, and yet, with few exceptions, had no protection from the state or the legal framework. Where they worked for wages, they had no work security, little or no access to social security or assistance, and no access to care services. Their contact with the law was frequently negative. They were harassed by officials for bribes when hawking petty goods without licenses or collecting raw products from protected forests.

Another important issue must be noted that during British colonialism all parts of India were not under the direct rule of the British. During British colonial rule there were in fact two India: the British India and the princely India. The latter, consisting of a third of the Indian subcontinent, were ruled by the native princes and constituted a relatively autonomous domain. In these princely states sometimes progressive legislations were introduced especially in the domains of family and personal laws. The personal law which governed both Hindus and Muslims were highly gender-biased and discriminatory towards women but British rulers did not want to interfere in these personal laws. But rulers of princely states undertook some steps to redress such gen-

der-oppressive personal laws. For example, the princely state of Baroda was the first to introduce provisions for divorce. Foreseeing on similar such progressive legislations during colonial period in the other princely state of Mysore, historian Janaki Nair writes: "Mysore introduced, and took several measures to implement, an Infant Marriage Prevention Act as early as 1894, without the bitter debates that occurred in British India over the Age of Consent Act. A bill according rights to women under Hindu Law, which extended property rights, granted maintenance, adoption and related rights, became law with relatively little opposition in 1933, a full four years before even a partial bill was passed in the Central Legislature." (Nair:1996).

Inheritance law for women since independence

The formulation of contemporary inheritance laws on property, specially landed property involved a complex and debatable process of interaction between state and different segments of population, the interplay of varying ideologies and interests and the conflicting pulls of scriptural rules and local customs. In the early part of this century, this debate and complexity created problems in Hindu Code Bill (HCB) in India, where women right in property was not highlighted. Today, laws governing the inheritance of landed property vary region wise and religion wise. It had been started during colonial period. Though there was a tendency to make a uniform system of law but because of different personal laws uniformity remains a dream. In case of inheritance of agricultural land, partly the variation stems from enactments by provincial (state) legislatures.

In the early decades of twentieth century different women organizations like Women's Indian Association (WIA), All India Women's Conference (AIWC) and the National Council of Women in India (NCWI) worked for social reform legislation, especially on women's rights to divorce and to inherit and control property. (Kane,1946). But their efforts came upon strong opposition from the orthodox Indian members of the Assembly. And the Hindu Women's Right to Property Act of 1937 when passed, it was a compromise. (Kane, 1946). According to it the hindu widow who had previously been excluded from inheritance, would have a right to intestate succession equal to a son's share in separate property among those governed by Mitakshara and in all property among those governed by Dayabhaga. It also gave the hindu widow the same interests as their deceased husband in the undivided Mitakshara co-parcenary, with the same right to claim partition as a male co-parcenary, but she could hold this share only as a limited interest. Limited interests means, women could enjoy this ownership only during her lifetime, after which it went to their deceased husband's heir. It was subjected to forfeiture on remarriage; it explicitly included agricultural land on the ground that after the 1935 Act agricultural land came under the provincial jurisdiction. Here daughters were excluded from the purview of Act.

In 1941 the government of India set up the Rau (Hindu Law) Committee to suggest how the Hindu Women's Rights to Property Act of 1937 should be amended specially to clarify the right given by it upon the widow and to remove injustice done by it to the daughter. The committee felt that all controvercies were hidden in this Act. Instead the Committee strongly recommended a changed code of Hindu Law that would cover inheritance, marriage etc. The Code predicted by the Committee, would be one 'which ...recognize (d) that men and women are equal in status with appropriate obligations as well as rights'(GOI,1941).

.In 1944 government re-established the Rau Committee to prepare a Hindu Code. In this time the AIWC started a countrywide campaign in favour of codification and submitted a draft memorandum to the Committee. In August of 1944, the Committee came out with a Draft Code which declared the “abolition of Mitakshara right by birth and principle of survivorship; equal property shares for the sons and widow of the deceased, and half of the son’s shares for the daughters in all intestate inheritance; an absolute estate for widow;(as opposed to a limited interests) introduction of monogamy as rule and legislation of divorce under certain circumstances” (GOI,1947). It is important to note that despite the above declaration again women’s succession to agricultural land was excluded from the scope of Draft Code and the issue had been left the jurisdiction of the provinces individually. To registered protest against this discriminatory declaration black flag had been demonstrated in five cities. Reactions among women were mixed. AIWC and NCWI supported this Code in several aspect but women belonging in orthodox associations (All India Hindu Women’s Conference) opposed it. Among men, although some supported the Code, the majority included lawyers and pundits opposed it on the ground that, the abolition of Mitakshara could adversely affect different enterprise of society in several ways which were a) the provision of divorce would weaken the family bond; b) if women were given absolute estate whether they would be capable of handling the property or not. c) married daughters already received a share as dowry and unmarried daughters only needed maintenance. Despite this mixed reaction, the Rau Committee submitted a revised draft of Hindu Code Bill (HCB) in April 1947 and 1948 in new parliament but the bill was hotly debated in the parliament

Most top Congress leaders of independent India were strongly opposed the Bill. In the face of such opposition Prime Minister Jawaharlal Neheru, although committed to the Bill, dropped it in 1951. Dr. Ambedker, the Law minister and the framer of Indian Constitution resigned from assembly in protest. However, after 1951, riding on strength of a Congress Electoral victory, Neheru finally won passage for the important aspect of Hindu Code Bill in four separate Acts⁴. Of these The Hindu Succession Act form the basis of Hindu succession law today.

The result was The Hindu Succession Act (HSA) enacted in 1956. it was the first initiative to provide a comprehensive and uniform system of inheritance among Hindus and to address gender inequalities in the field of inheritance. It was a process of codification and a reform at the same time. Before independences HAS Act streamlined Hindu Women’s Right to Property Act 1937 and plugged many loopholes which were there in the earlier Act. It was the first post independent enactment of property right among Hindus. Under the old Hindu Law, widow had right only to the “streedhan”. It was her absolute property. She could only inherit properties as a life-estate with very limited powers of alienation. Even under the 1937 Act, the concept of “limited estate” continued. Section 14 of HSA 1956 converted the concept of ‘limited owner’ to ‘absolute owner’ for women. The Act was supposed to lay down a law of succession whereby sons and daughters could enjoy inheritance right.

However, it is unfortunate that, HSA 1956 had inherent in it some gender inequalities. All the testamentary rights enacted under this act were gender neutral in principle but in practice, it discouraged women’s inheritance. There were two major sources of these gender inequalities—

a) Continued recognition of Mitakshara joint family property and b) The special treatment given to agricultural land.

a) *Joint family property*-In the originally enacted Act there was no recognition for women coparceners. Here women were in a most disadvantageous position in the following way

- i) since only males can be coparceners in the joint family property, sons have an indefeasible right in such property, but daughters do not. In addition, sons have a right to succeed to the deceased father's share of the coparcenary if the man dies intestate. Daughters and other Class I female heirs have only the latter right that is the right in man's share of the coparcenary. In other word property entitlements of sons are greater than those of daughters or other Class I female heirs.
- ii) If a male coparcener were to renounce his rights in his coparcenary property, his sons would retain their independent entitlements to the joint estate, indeed their shares in it increase. But daughters, widows, and other Class I female heirs who only have right in such property through male coparceners, would stand disinherited from such property.
- iii) If a male coparcener were to renounce his rights in his coparcenary property, his sons would retain their independent entitlements to the joint estate, indeed their shares in it would increase, but daughters, the widow and other Class I female heirs who only have a right in such property through the male coparcener, would stand disinherited from such property. a man can also convert his separate or self acquired property to coparcenary property, and again his Class I female heirs who would otherwise have enjoyed equal share with his sons in such property, would be substantial losers. In addition, after partition, the father can make a gift of his share in the coparcenary property to his sons, there by defeating the rights of female heirs.
- iv) If a man wills his property(including his separate or self acquired property) to a stranger, his Class I female heirs would be totally disinherited, but sons, because of their direct claims as coparceners, would still be entitled to their share in the joint estate.
- v) Unlike sons, married daughters (even if facing marital harassment have no residence rights in the ancestral home. And while daughters who are unmarried, separated, divorced, deserted or widowed do have residence rights, they cannot demand partition of dwelling house, if the male choose not to partition.” (Agarwal, 1999, 17)

There was state wise variation regarding the amendment of HSA1956. “Some states have amended it in relations to women's rights in joint family property, for example the Kerala Joint Family System(Abolition) Act of 1976 deemed all family members with an interest in the Hindu Undivided family estate as holding their share separately as full owners from then onwards”(Agarwal,1999, 17). Subsequently this Act was amended in Andhra Pradesh, Tamil Nadu, Maharastra and Karnataka. This amendment increased unmarried daughter's direct rights to the property and daughter's direct rights in some property which cannot be willed away by the father. So it can be said that in one hand the amendments had reduced inequality between sons and daughters and on the other increased inequality between daughters and other female heir.

It is significant to observe that despite many declaration, enactments and subsequent amendments revolving around the issue of women's land right gender inequalities in matters of ownership of agricultural land continued to remain unaddressed.

b) Agricultural land- Although the HSA covers owned agricultural land, but some important aspect of it (such as 'tenancy right') from which women can inherit right in land are exempted from its purview. Section 4(2) of the Act provide that:

...nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the preservation of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holding.

Both in the HAS and prior to it, two factors had led to a disjunction between women's legal rights in property other than agricultural land and their right in agricultural land. These are as follows:

- Division of legislative powers between Union and provincial legislatures under federal structure. Therefore, women's inheritance right in tenancy land depends on state-level tenurial laws.
- Land reform policies (land to the tiller, fixation of ceilings, prevention of fragmentation etc) have been based on both redistributive justice and efficiency but never gave attention to gender inequalities.

The Government of India Act 1935 gave all legislative power concerning agricultural land exclusively to the provincial legislature. Consequently, women's inheritance right to agricultural land depended upon the land related law of the concerned province. One best example of it was the Hindu Women's right to property Act 1937 that did not pay attention to agricultural land, although some states extended the Act to cover agricultural land. Since independence, state legislatures have continued to enjoy the power to enact land laws. But there was some restriction. The restriction was, at the time of any modification state required the permission of the President of India. Same rule was applicable for the Hindu Succession Act (HSA). But the rule was not followed at the time of change, consequently Act acted against the women's inheritance of agricultural land. State legislation can continue to enact laws relating to tenancy rights, ceiling laws (which were excluded from the purview of HSA) without taking such permission from the presidents. For that reason women's legal rights in agricultural land still demonstrate region wise disparity. This disparity mainly relates to transfer rules for land deemed to be under tenancy and Rules regarding fixation of ceilings and the forfeiture of surplus land above the ceiling limits.

Recently the Central Government has proposed certain amendments in HSA as The Hindu Succession Bill 2004. The main objective was to give the daughter independent birthright as the son. However, it also leaves untouched person's unrestricted testamentary right over his/her property. This right is gender-neutral. However, in practice the provision can be used to disinherit female heirs. In September 2005, the central government passed the Hindu Succession (Amendment) Act 2005. According to this, Hindu women have equal right of inheritance as son in landed property.

Inheritance law of tribal women

The recent Hindu succession Amendment Bill, making the daughter a member of co-parcenary will make no difference to tribal women, since customary tribal laws continue to discriminate against women in the matter of succession-(Sukla,2008,1)

The *Hindu succession Amendment Bill* 2004, passed by Lok Sabha made a significant move towards gender equality regarding succession among Hindus. But unfortunately it did not make any change in tribal law of inheritance. Customary practices inform tribal social and economic universe. These practices are not codified. Codified laws are not implemented properly in practice in spite of legal enforcement through police, judicial courts and prison because tribal remain relatively impervious when it comes to defending their tradition. Indian Constitution because of its professed adherence to principle of cultural diversity and plurality does acknowledge the importance of customs in tribal life.

Like other tribes, the Santal perceives women as object or property. In their language women are '*jinis kanako*' to be transferred from father to husband.

"Hence, they do not have any right to property of their father and husband whether movable or immovable. This custom codified during the British rule by Gantzer, in his settlement of 1922-23, has been interpreted mechanically by Santal Pargana Tenancy Act, formulated after Independence in 1949. This Act does not provide any room for women to inherit land on the excuse that Santal Tribal Law is quite definite in not allowing women to inherit" .(Rao and Rana-1997:1308).

This Act did not have any provision for women property inheritance.

The policy of isolation of tribal community formulated and developed by British government has been also adopted in Article 244 of Indian Constitution. Reason behind it was preservation of tribal culture. Obviously customary practices are one of the most important elements of their culture. Another important feature of Constitution is the provision of setting up The Tribal Advisory Council for welfare and development of the community. Initially the tribal policy based on tribal welfare, from seventies the emphasis was shifted to development. In 1961, the Dhebar Commission was set up by the government of India to suggest a guideline for practical policy regarding tribe. Now since 18th July 2002 second Scheduled Area and Scheduled tribes Commission has been appointed and it recommended measures for implementation of provisions contained in the Fifth and Sixth Schedules of Constitution and suggest measures for making self-government. Previously in 1958, our late Prime Minister, Jawaharlal Neheru had laid five principles known as 'Panchasheel', even today hold good position. Actually different developmental measures have taken for them in different time after independence are not new, it is continuation of British government' policy. For example panchayat Act 1996 again has stressed on the following:

- a) State legislation consonance with customary law
- b) A village shall ordinarily manage its affaire in accordance with their tradition and custom.
- c) Every Gram Sabha shall be competent to safeguard and preserve the tradition and customs of the people.

From the above discussion it is clear that tradition and customs are more important in the life of tribal people, which even today govern their life. Santal or tribal women are totally excluded from the share of father and

husband in patrilineal society. In fact, the tribal women do not have any right to agricultural land even today. Here it is important to note that since seventh plan a special emphasis has been laid on tribal women and children.

In this connection one case I want to present here.

In 1982, Madhu Kishwar, Sonamuni and Muki Dui (the widow and married daughter respectively) and the member of the Ho tribe challenged the customary law (sections 7, 8 and 76 of the Chotonagpur Tenancy Act) operating in Bihar and other states of the country. This was excluding tribal women from inheritance of land or any property belonging to her father or husband and mother. Juliana Lakra, Oraon Christian tribal women from Chotonagpur area, also challenged this provision through a writ petition in the apex court, in 1986. These two petitions raised the issue of gender equality in matter of landed property. Both petitions pertained to tribe in the state of Bihar. The case came up for hearing in 1986. The state Bihar agreed that steps would be taken to remove this kind of discrimination.

From the above discussion it can be concluded that women in Indian society were deprived from the very beginning. From the very beginning these laws concerning women's equal inheritance and government policies always not in favour of women. There remains a gap between legality and its implementations.

Government policy of land distribution programmes

The Government's land allocation programme also provide means by which women can gain rights to land. States distribute land in the following ways: The traditional land reform measure-Taking away land from the people who had many land than specified ceiling and giving it to landless peasant, Giving land to the displaced people and rehabilitation and resettlement scheme.

Land Reform: Land policy was a major developmental issue during India's freedom movement, especially following the infamous Deccan Riots. The Congress party promised 'land to the tiller'. Land reform is seen as a major tool of asset redistribution towards poverty alleviation (Chenery et al. 1970), enhancing production through tenant efficiency and small-farm efficiency (Rudra 1982), agricultural growth (Alesina and Rodrik 1994), and agricultural capital formation (Raup 1963).

Article 39 of the Constitution of India deals with the redistribution of land and land reform. Land administration and land policy is within the purview of state governments. Policy on land reform was for the first time spelt out in the First Five-Year Plan (1951-56). The plan's explicitly stated objectives were to reduce disparities in income and wealth, eliminate exploitation, provide security to tenants, achieve social transformation through equality of status, and enable different sections of the population to participate in development.

Immediately after independence, four major policy interventions were thought of as components of land reform. These were (1) abolition of intermediaries; (2) tenancy reforms; (3) fixing of ceiling on landholding; and (4) consolidation of holding. Unfortunately, the land reform programmes of all political parties in India have

demonstrated strongly male biased. All over India it was gender biased. As noted the male household head is the typical recipient. Sons get special importance at the time of fixing ceiling and redistribution of land. As a result in most states, unmarried daughters are totally excluded. But there is some variation in states like Kerala because of matrilineal tradition. There both unmarried daughters and sons count as separate units. In the land reform policy, gender inequalities arise from the controversy surrounding the definition of family.

Definition of families vary region wise. In Uttar Pradesh and Andhra Pradesh families are defined as constituted by the cultivators and their spouses, minor sons and unmarried minor daughters. In Bihar and Himachal Pradesh, it includes cultivator, spouse and minor children. In all the states adult sons enjoy special advantages. For example in Delhi, Haryana, Punjab and Uttar Pradesh, the additional land of the parental household is kept for adult son. Only in Kerala, both the unmarried adult son and daughter count as separate unit. Except for few states like Jammu and Kashmir, West Bengal, Karnataka, Kerala, unmarried daughter is hardly recognized as a claimant of landed property. In 1971, a committee was constituted under the chairmanship of Union Agricultural Ministers which recommended that the definition of family across the state would be universal. It should include a man, his wife, minor children. The Chief Minister's conference on Ceiling on the agricultural holding, held in July 1972, declared that family be defined as including a man, his wife and a minor child. The declaration incorporated gender equitable rule. Unfortunately even today there has not been any universal rule on this issue; gender discriminatory ceiling laws prevail in most of the states. In land reform policy the only scheme that government had adopted for women empowerment is the distribution of vested land in the name of husband and wife, known as 'Joint title.

Resettlement Scheme

Four resettlement projects, the Sardar Sarvovar Project (Across Gujrat, M.P, Maharashtra; the tehri project (Uttrakhand); the Upper Krishna project (Karnataka); and the upper Iravati project (Orissa) were gender biased. In every project male got preference. All the land was transferred to the male headed household and in the name of male.

Poverty alleviation Programme

The policy in different five year plans was not consistent towards women's right to land. In the first five year plan women received little attention. On the Sixth five year plan (1980-85), Government of India announced the joint title in the agricultural land and homestead land. However in the Eighth five year plan government decided that, mother and son should have equal right in parental property and accordingly directed state governments to redistribute 40% of ceiling surplus land to women alone. In the Ninth Five year Plan (1997-2002), there was a section on ' Gender and Land Right', with the explanation why land is important for poor women and in another section plan recommended amending the tenurial laws to ensure equality of inheritance in agricultural land. (Government of India 2002: section 2.1.130 to 2.1.134 and 2.1.90). However the plan was not implemented.

Conclusion

From the above discussion it can be concluded that women in Indian society were deprived in many ways at

different periods. The laws concerning women's equal inheritance and government policies were not always in favour of women. There was gap between legality and its implementation. It has been also discussed how Mitakshara and Dayabhaga in pre colonial India influenced legal practices and discriminated against women. Under Mitakshara women's right was limited. The founder of Dayabhaga gave recognition to women's property right. But we have seen the importance of Stridhana. Then it has been discussed how colonial rulers paid attention to the formation of Anglo Hindu Law. Emancipation of women's status was one of their aim. Colonial rulers introduced titling to facilitate transfer of land; it was not in favour of women in our country. Following the patriarchal ideology of the ninth century this legal reform had reduced the legitimacy of women's control over economic resources. The formulation of contemporary inheritance law on landed property varies region and religion wise. The Hindu Succession Act was first initiatives to provide a comprehensive and uniform system of inheritance among Hindus. However the HSA 1996 was not completely gender neutral. Tribal women were in worst condition, because even today they follow customary practices. The policies and practices and were discriminatory.

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