



INHERITANCE, GENDER EQUALITY AND CUSTOMARY TRIBAL LAWS: WOMEN'S PERSPECTIVE

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Abstract: Similar to Tribal women in other State, Himachal tribal women have been long battling for their property rights. The property rights of tribal women are neither equitable or fair, yet they have advanced significantly during the past century. Tribal women continue to enjoy fewer property rights than men, both in terms of quantity and quality. Tribal women hold a wide range of opinions regarding property rights. Numerous diverse religions may be found in India as well as in Himachal, and each one has its own set of guidelines for living. One of these is the ownership of property. There are even subgroups and regional laws and traditions that have their own property rights among the various religions. Christians follow a different set of laws, and neither Sunnis nor Shias have formalized their ownership claims. Furthermore, when it comes to their property rights, tribal women from various states and faiths continue to abide by the customs and laws of their own tribes. To complicate matters further, the Indian Constitution grants the central government and the state governments the power to enact laws pertaining to succession. This implies that each state is free to establish its own property laws, and some already have.

Index Terms - codified, religions, customs, governed, tribes, constitution, property rights, universal civil code.

INTRODUCTION

Gender discrimination has become a key issue in tribal societies where age old customs govern the daily lives of the tribal people, particularly with regard to property inheritance rights. Because Himachal tribal families follow the customs and rules of tribal communities, which are patriarchal in nature, women are not allowed to inherit. Customary law and the patriarchal system thereby support structural violence in society. It seems that numerous Himachal tribes, including Bhot, Lahuala, Kinnauras, Gaddi, Pangwal, and many more, give their daughters property as a present. However, women in tribal societies are not legally guaranteed the ability to inherit property. Customary law establishes the social structure of a tribal community, which is characterized by gender discrimination. This study aims to investigate the characteristics of customary law-governed tribal cultures with a patriarchal system, with respect to gender inequality in obtaining Property Inheritance Laws (PIL) for women in Himachal Pradesh's tribal districts. Individuals' rights over certain objects are referred to as property rights. Both moveable and immovable items may be inherited from the family. Under succession or inheritance rules, parents have the legal right to purchase, possess, sell, or transfer property to their children. The traditional society in India the one hand gives glorified position to women. Yet on the other hand they wanted to keep them subjugated. Tribal women were looked upon as a type of property which can be sold or pawned because they were considered as chattels and they were bound to the patriarchal husband by the tie of eternal duty and obedience. Since women were put in the category of property, she was not given any property rights. Earlier under Hindu Succession Act (HSA) 1956, women were not getting their full rights on their ancestral property and since the amendment of HSA in 2005, daughters have equal rights, they are entitled to get their full rights as coparceners. This means daughters who had limited rights on the property of their ancestors are now coparceners along with the sons and have equal or absolute rights over the property along with brothers. But in case of tribal women HSA is not applicable for them. There is no notification till date regarding tribal women. Tribal customs are applicable for them, but tribal customs are not codified so far as a result, tribal women do not get inheritance rights in any manner. There are very rare cases of tribal women getting inheritance rights.

1. Women Property Rights and Customary Law: A Theoretical Perspective

The present study has adopted the theory of customary law, patriarchy and to find out the socio-legal barriers of property inheritance rights of the tribal women of Kinnaur, Lahaul Spiti, Pangi and Bharmour tehsil of Chamba district in the state of Himachal Pradesh. **Customary Law:**

Unlike the nation's common law, custom is an ancient rule of law for a specific area. Custom is, after all, the mother of all institutions, as a great deal of common law has historically been derived from what has become generally usual throughout the

nation. In any event, the term "custom" soon narrowed to its current definition of local custom, and judges and lawyers likely contributed more of their opinions about what was right and suitable to it than is widely acknowledged. As such, it tends to limit the growth of the universality and omnipotence of the central government. According to the School of rule, custom is an unwritten rule or right that has been developed through time and with the ancestors' permission. It denotes the customarily accepted mode of doing or carrying out a long-standing task. Legislators became interested in the order or system-creating potential of social usages when they tackled the task of law-making to include a pre-legal society within the jurisdiction of a formal and definitive law governed network.³ To indicate its territorial scope, custom is divided into two categories: general and special. It is regarded as common law or universal custom if it applies to the entire realm. However, a custom is referred to as a specific custom or custom-in-fact when it exclusively applies to certain districts or regions. Legal and conventional customs are the two categories into which a custom with legal effect might be classified.⁴ A legal custom is an absolute legal authority that has the power of law on its own.⁵ On the other hand, a conventional custom is one whose authority is conditional on its acceptance and incorporation in agreements between the parties to be bound by it. In English law, custom exclusively means legal custom while conventional custom is considered to be a usage. In a court of law, statements made by locals, recorded evidence, or proof of current customs are utilized to establish customary law. They are not established by reference to the rulings rendered by the court in analogous matters in the past. The courts acknowledge the dynamic nature of conventions, even though antiquity is one of the requirements for customary law. A court of law has supported the legitimacy of customary laws in several instances. Despite the fact that Article 13 of the Indian Constitution expressly states that a custom that violates a fundamental right is invalid, the Apex Court determined that customs and related personal law were not covered by this provision.⁶ According to an Apex Court ruling, customs remain enforceable until they are declared unconstitutional by a court of law for violating the public peace or until a statutory law replaces them. Legally speaking, "to make a custom good" means that it has to have been in use for all of recorded time, or "so long that the memory of man runs not against it." Additionally, it needs to be ongoing, peaceful, definite, mandated, and in line with other norms.

2. Customary Laws of Himachal Tribal Districts:

The social lives of the tribal people of Lahaul Spiti, Kinnaur, and Pangri, Bharmour in the Chamba District are mostly shaped by the customs and traditions that are prevalent in this area. The locals are very honest, innocent, and fond of the nature. They have strong ties to their traditional ways of life. These tribes have developed specific rituals and rules to resolve conflicts because of their unique way of life. In these tribes, village and family deities acted as a guiding hand in controlling day-to-day activities, with community concerns being handled by consensus. The village panchayats arbitrated disputes among the residents of local villages pertaining to marriage, adoption, inheritance, and divorce. The harsh climate condition and isolation from outer world are the main reason for preservice and development of these customs, so also the tradition to settle them at local level. In Lahaul and Spiti and Kinnaur tribal communities, the joint family structure is quite robust because the polyandry system endures and keeps the family together. In Udaipur, the majority population is Hindu, landholdings are somewhat larger and more productive, and there is a discernible trend toward monogamous marriage. In certain locations, polyandry is still practiced, and brothers who rarely partition their land live with their wives and share house and cattle's. The Primogeniture Custom is in place in Spiti Tehsil. When the father passes away, the older son takes over and the younger brother becomes a monk (lama). If the younger brother declines, he is given some property to live on. If the younger brothers possess their own property and live apart, there is no prohibition. In these tribal societies, succession is governed by customary law, namely Wajib-ul-arz (a village-wise declaration of custom) and Riwarz-e-am (a district-wise statement of custom). These customary regulations grant all male line descendants the right to succeed. These Himalayan tribal regions exhibit both similarities and variances in the inheritance of customary rights. The customary norm shared by these tribes is that women are not allowed to own any type of inherited land. These tribes inherit their customary laws in a patriarchal manner. The landed property may be inherited by male heirs.¹⁰ The Schedule Tribes and Schedule caste of these tribal areas are exempt from the Hindu Succession Act, 1956, and customary laws govern inheritance in these places. If someone is unhappy with a customary law ruling or a clause pertaining to inheritance, they will move to court. While the older generation continues to adhere to customary customs, better educated individuals are more likely to use the legal system.

3. Tribal Women Property Rights and Culture:

The issues relating to women's property rights are primarily shaped by cultural norms. If not, these can be obtained through the standard inheritance system. The literature on cultural perspectives on women's difficulties inheriting land focuses on the problems faced by women as daughters and/or wives, how they are forced to co-share marital property, and how they actively challenge and oppose the intersection of class and gender oppression. The most typical way for women in Indian society to inherit property is through the dowry system. According to Basu's (2005) observations, women in Hindu communities in northern India receive dowries at the time of marriage. In reality, this is a step toward severing their ties to their birthplace, preventing them from ever claiming a piece of property. They ostensibly give up their land rights via this technique. Every time a story emerges about a woman claiming property, it is interpreted as a symbol of "modernity." Many see it as an act of greed and selfishness. Some view it as a result of women's malice in wanting to start family conflicts and their lack of empathy and respect for the birthplace (Saboo, 2019). Reactions from families to women who try to overcome cultural taboos to obtain their rights include "Wohayeehaklene" (there she comes to claim her rights!) (Basu, 2005). This is frequently utilized to create legal platforms for women's disinheritance. The use of testamentary power against females, they being coerced to relinquish their rights in the interest of maintaining cordial relations with their brothers, being given away a token amount in lieu of a huge property or delaying property division indefinitely are included under such acts (Saboo, 2019). The dominance of patriarchal culture is so pre-dominant nationwide, that even conventionally matrilineal communities in the South and North-East are becoming patrilineal (Haq, 2015). As women are left with no property rights in the natal home, no personal economic basis for sustenance, most of them see their status deriving from their husbands. They feel that it is only their marital home where they must try to belong to. Only if these women were asked to independently choose between land ownership rights and clothes and furniture, they would never choose the latter (Saboo, 2019).

4. Tribal Women's Property Inheritance Rights and Patriarchy:

The first writings on the development of the family and the function of patriarchy in property inheritance in human society may be found in the writings of Karl Marx and Friedrich Engels (Coward, 1983). They maintained that a family that was founded on love at first naturally developed into a patriarchal family over time. The main point being made here is that social divisions and the emergence of wealth within the family were the causes of the gradual transformation of the family group's simple relationship into a patriarchal one. They again argued that the first form of family was monogamy. This was based not on natural but economic conditions in the form of private property. As productivity increased, larger surpluses were generated and men started to accumulate private property. As wealth accumulated, it led men to transmit their property to their offspring. For an assurance that the ultimate control on property lay in the hands of patriarch, it was necessary to institute patrilineal mode of transaction. According to Marx (1848), this ultimately resulted in the "mother right" being overthrown. The impact was so great that the inheritance rights were drastically rearranged later on in history. Maternal authority was replaced by the paternal authority (Saboo, 2019). No longer did property pass on from the woman to her clan. The norm of property being transferred from father to son became an accepted one. The overthrow of 'mother-right' turned out to be the greatest historical defeat of the female sex (Beauvoir, 1949).

5. Himachal Tribal Women Property Rights Battle:

One specific instance marked the beginning of the legal struggle for tribal women's property rights. A Chamba district judge issued an order in October 2002 giving property rights to the daughters of a man from the Gaddi tribe. In 2003, the Himachal Pradesh High Court received an appeal from one of the man's sons about this ruling. By upholding the district judge's decisions in favor of the daughters in 2015, Justice Rajiv Sharma established a precedent that will allow other tribal women in the state to inherit property in line with the Hindu Succession Act of 1956. Despite not having met the women involved in the case, Manjari ji from Kinnaur district openly supported its conclusions and played a significant role in disseminating its message to the other women she encountered. As the president of the Mahila Kalyan Parishad Kinnaur district, she has long fought for the property rights of tribal women in Kinnaur. Two Lahaul Spiti petitioners challenged this ruling at the Supreme Court in February 2016; Manjari ji and the MKP petitioned the Supreme Court in 2017 on behalf of the public interest, arguing that tribal women in Himachal Pradesh should have the right to own property under Article 32 (right to constitutional remedies). In 2018, after one hearing, it was withdrawn. According to a person with knowledge of the matter, who wished to remain anonymous, many residents of the state are against granting women the ability to possess property since tribal regions are becoming more desirable places to grow apple orchards. Apple producers and traders worry that if women are given land, the orchards will become dispersed and family incomes will decrease. This author had personally interview with locals and Manjari ji also. The Shimla legal community was unfriendly to Manjari, who had trouble finding an attorney to represent MKP. A year later, in April 2019, MKP was finally enabled to file its petition under Article 226 (which encompasses both fundamental rights and other legal rights) before the high court. "Apple cultivation is entirely dominated by men. However, over 50% of the labor is performed by women, including planting, tilling, weeding, tending to the plants, watering them, and other tasks. Men go to the market with the produce and fetch the money. Women must approach them to request money." If women possess land, she said, they may start their own small businesses by renting it out or using the Kisan Credit Card Scheme to get financing. In the past, Manjari ji would travel alone from town to village, but these days, she finds it harder to ignore the weariness that ages. She is not considering retiring at this moment, though. Although I have a lot to do, I wish to retire. People desire that I continue. Until I run out of energy, I will not stop. She is even more committed to seeing the PIL through, and in the event that the high court issues a negative ruling, she is prepared to petition the Supreme Court. "We are considering meeting with Prime Minister Modi in Delhi as well," she adds.

6. The Empowerment of Women through Property Rights:

Property rights and women's empowerment are closely related (Agarwal, 1994; Pillai, 1995 and Basu, 2005). Agarwal (1994) distinguished three main types of benefits—welfare, efficiency, and equality—for women possessing autonomous land rights. Women can fully realize their identities and abilities in all areas of life through the multifaceted process of empowerment (Anal, 2018). Women's earnings will positively impact household nutrition and help lower poverty, mortality, and morbidity because, first of all, they tend to devote a larger amount of their income to providing for their families. According to the results of another study, it can be viewed as a continuum of multiple interconnected and supportive elements. They included things like knowledge of one's circumstances, rights, and possibilities; involvement in family, community, and societal decision-making; and control and availability of resources (Pillai, 1995). Secondly, granting women direct ownership may improve their ability to obtain loans and technical assistance. Women are typically timelier in repaying debts, so this will ultimately result in higher returns. According to Agarwal (1994) women also have a greater awareness of environmental preservation issues. Thirdly, there is symbolic significance in acknowledging women as equal heirs. This is probably going to have an impact on women's involvement in the social and political spheres (Basu, 2005). Having a useful resource, like land, can affect a wide range of situations. These could include resistance to aggression, household decision-making, fertility, and nutrition (Basu, 2005). According to Basu, women who had even a small amount of land for dwelling during Kerala's land reforms had far more security than those who had nothing at all (Anal, 2018). In a similar vein, widows with less property received greater consideration and deference from their family than widows without property (Basu, 2005). The land rights of women are essential to development. There is a clear association on a global scale between poverty in society, gender inequality, and the disregard for, and violation of, women's rights. This failure keeps poor countries from discovering a fair and sustainable path to development, which furthers gender inequality by increasing women's reliance on men. Women can be empowered to take charge of their own lives and realize their full potential as citizens and economic agents by strengthening their secure rights to land. Most people agree that securing women's rights to land and property is essential to promoting efficient and long-lasting human development (Haq, 2015).

7. Meaning Of Tribe:

The word 'Tribe' denotes a group of people living in primitive and ruthless conditions. These tribes are a social group, living in fixed territory, having no such specialization of functions and the people living in these social groups are known as tribes or tribal people. The hon'ble Supreme Court has noticed the definition of a Tribe, in *State of Kerala v. Chandramohan*¹³ and drawn attention to the case of *Kartik Oraon*; referring to words of W.H.R. Rivers¹⁴ "Tribe" is defined as "a social group of a simple kind, the members of which speak a common dialect, have a single government, and act together for such common purposes as 'warfare'.

Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent. It has been noticed that the term is seldom applied to societies that have achieved a strictly territorial organizational large States but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties.

8. Tribes in Himachal Pradesh:

In Himachal Pradesh largest population of tribes resides in Kinnaur, Lahaul Spiti, Bharmour and Pangi Tehsil of Chamba district. In Chamba district, Gujjars, Gaddis and Pangwals live in great majority. The second district of major population of the tribals is in Kinnaur. In this district only Kinner tribe resides, wherein Lahaul, the name the tribe is known as Lahaula tribe and in Spiti, Bhot tribe. The official list bears the following main tribes to be found in Himachal Pradesh.

1. Gaddis
2. Gujjars
3. Kinners or Kinnauras
4. Bhot, Bodh
5. Lahaulas and Bhots
6. Pangwals.

Some other tribes like Lamba, Khampa, Jads, Gujjar and Swangla are also found in Himachal Pradesh but not in a great majority and population. However above five tribes are the main tribes of Himachal Pradesh. Each tribe has its own system of administration and own culture and belief, which they had followed from years and still it's in practice in tribes. This study is about rights and specially property rights of tribal women of Himachal Pradesh. The tribal people speak their own dialect and at present use Hindi as the second language. The festivals of tribal community are also different. The lifestyle of tribal are found very different from the other communities. This was reflected through their dressing sense, outfits, ornaments, and practices. The people of tribal areas live under very harsh conditions and their economy is based on horticulture, agriculture and animal husbandry. Tribal population comprises of 6% of total population of the state. However, the ST population is quite dominant in Lahaul Spiti, Kinnaur and Chamba rural districts of the state. The rule of inheritance differs in these two regions of Lahaul Spiti district. While in Lahaul sub division male line of descent with equality among all brothers is followed, in Spiti the rule of primogeniture is followed.

9. The Constitutional Protection:

The philosophy of tribal welfare policy incorporated into the Constitution of India is with a view to attain equality, justice and opportunity of self-attainment. The constitutional safeguard for the tribes is of protection, political and developmental in nature. Article 15 of the Constitution prohibits discrimination against tribals. Provision under Article 16, provide for equality of opportunity in matters of public employment, protection from the social injustice and all forms of exploitation of Scheduled Tribes is contemplated and provisions are made for the administration, control and welfare of Scheduled Tribes. There are other Constitutional provisions, which safeguard the rights of tribal women. They are Article 15E which empower the state to make provisions for women and children to help them to achieve the fundamental right of equality as enshrined in Article 14 of the Constitution. All these constitutional provisions safeguard the interest of tribal people and in particular the tribal women. It would be pertinent to examine, the relevance of the Seventy-third Amendment to the Constitution in the context of empowerment of tribal women in particular and the tribal society in general. The Amendment which is directed primarily at promoting village level democracy through Panchayati Raj Institution was not applicable to areas which fall under the fifth and sixth schedule of the Constitution at the inception of 73rd Amendment. In terms of political empowerment nearly Seven Lakh women occupy positions as members and chairpersons of grass-root democratic institutions in India, following the reservation clause in 73rd and 74th Amendment providing one-third seats at district, taluk, village and municipal level for women. This is for the first time in the history that an opportunity has been provided for such substantial entry of women in public life and large numbers have come forward to tackle the challenge of leadership at all levels of Panchayats. Despite all these constitutional provisions tribal women are still discriminating in many matters. Fight for justice by females or cry for gender equality is not a fight against men. It is a fight against traditions that have chained them – a fight against attitude that is ingrained in the society – it is a fight against proverbial Lakshaman Rekha which is different for men and different for women. Men must rise to the occasion. They must recognize and accept the fact that women are equal partners in life. They are individuals who have their own identity. Today, in the 21st century, we are still unable to boast of a society where there is total gender equality or gender equity. All too often, universal human rights are wrongly perceived as confined to civil and political rights and not extending to economic and social rights, which may be of more importance to women. Civil and political rights and economic and social rights are integral and complementary parts of one coherent system of global human rights. Women's equality cannot be achieved through equal opportunities due to unequal status of women in society, which exist. Human rights are not protected unless there is gender justice, which exist. Human rights are not protected unless there is gender justice. Talk of gender justice remains like pious platitudes that like blunt axes are passed around by all and sharpened by none.

Here it is apt to quote Krishna Iyer, J.: "The fight is not for woman's status but for human worth. The claim is not to end inequality of women but to restore universal justice. The bid is not for loaves and fishes for the forsaken gender but for cosmic harmony which never comes till woman comes."¹⁶ Gender justice means that no one be denied justice or discriminated only because of one's gender (sex).¹⁷ Gender injustice refers also to the obvious or hidden disparities among individuals based on the performance of gender.¹⁸ No comparative study has ever been made in the status of tribal. Their status is totally different because of the unequal provisions in the customary personal laws. Moreover, no empirical study has been made regarding the property rights of the tribal women of Himachal Pradesh.

10. Tribal Women's Rights in Customary Law and Judiciary:

The Schedule Tribes of Himachal Pradesh as well as India are governed by Customary laws in matters of inheritance, marriage and succession. Inheritance rights of tribal women is neither covered under the Hindu Succession Act, 1956 nor under the Indian Succession Act, 1925. They are governed by the local customary laws which are safeguarded under several provisions under the Indian Constitution. The Customary tribal laws continue to discriminate against tribal women in the matter of succession. The sources of customary laws may be understood systems of traditional rules and standards that are thought to be fundamental to the

tribal people. Tribal customary law can be thought of as a pattern of behavior followed by individuals and communities and sometimes passed down from one generation to the next. The community members' consistent adherence to customary laws gives them power (Ghosh, 2007, 130). Personal laws lack this element and instead tend to be region- and territory-specific with legal recognition. In *State of Bombay v. Narasu Appa Mali* case, the Court expressed that it could not interfere with the personal laws or customary laws of any community. The traditional theories of justice, along with customs and traditional practices favored male-centric and patrilineal inheritance interests. This can be considered as a form of violence, because women are at a large disadvantage, as far as land is concerned (Saradmoni, 1986; Bunch, 2004; Chowdhry, 2005; Chakraborty, K., 2006; Bhadra, 2006). However, these rights are derived from customs and traditions, and they have equal validity in framing the laws (Menon, 1998, 16). The notion of equal validity of sources of law creates some kind of gender discrimination, unable to incorporate women's rights especially inheritance rights. The Indian society carries the settings of patriarchal, patrilocal and patrilineal characters: patriarchy denotes the power of a cultural relationship, with enhanced man's supremacy. The notion of patriarchy is a widely known norm. Such traditional and social structure of ownership in property inheritance ensures the governance of men, limiting a women's right (Gonsalves, 1993; Anita, 2007; Saxena, 2008; Rao, 2008b). Most of the tribal communities in India also follow the patriarchal social structure. They too have son preference, but there is likely less discrimination pattern between daughter and son (Baghel, 2011, 21). Tribal societies share the same experience of inheritance of property rights, where tribal women do not inherit land (Kaushik, 2007), except in the case of a few tribal communities, where matrilineal inheritance is common or under special circumstances. Customary law does not recognize the right to property for women, because it appears that malecentric societies do not allow them such rights (Anita, 2007, 199). The discernible reason in denying property rights for women can be seen as prevention of land-fragmentation and agricultural holdings, as well as land shortage (Owen, 1996; 118 Saxena, 2008; Malik, 2009). In a male-dominated society, the female child is unwelcome: they are subjected to subordination inside and outside their homes and are treated unequally. Women are therefore, the economically weaker sections of the society (Banerjea, 2006, 8). Though, legal statutes extend equal rights in theory, but in reality, if daughter and son get equal rights, it might lead to land fragmentation (Anita, 2007; Mohsin, 2010). So, such kind of dilemma also encourages women's subordination position in the tribal society. The Constitution of India provides contradictory provision with regard to tribal society, in the sense that Article 14 has enshrined equal rights and on the other hand, allows the practice of norms and customs (Mehrotra, 2006, 65). Customary laws are paramount among the tribal communities. Even the Constitution of India give special provision under the Fifth and Sixth Schedule, because tribal people are categorized as backward, in the context of social, economic and political sphere. Women do not enjoy the advantages of these laws; in fact, tribal women are still governed by the archaic system of customary laws of their tribe, in spite of the Constitutional provision, not able to achieve the gender equity (Bano, 2003; Banerjea, 2006; Malik, 2009). Large masses of women are untouched and unaffected by the provision of the Constitution. Similarly, tribal societies also fail to address gender disparity, in many areas such as women's access to resources, because of the male-bias along with historical and cultural context and discriminatory customary laws (Mehrotra, 2006, 66-68). Tribal women suffer from certain disabilities. For instance, in agricultural activities, women are not allowed to plough land on the basis of religious ground, because they considered as impure (Chauhan, 1990; Baghel, 2011). However, among the tribal people their identity, culture and norms are paramount. Hence, tribal women are demanding equal inheritance right but the customary laws been re-interpreted by men to suit their need. This has become an obstacle to gender equity, because their tradition has not changed (Farnandez, 2010, 47). Patriarchal ethos of the customary law ignores gender justice, that also plays an important role in the management and control of the natural resources including land. Statutory laws somehow protect women's rights vis-à-vis community-based laws, which basically share patriarchal ideologies that support men's supremacy (Owen, 1996; Agnes and Ghosh, 2012). Further, in conflict between formal and personal laws, formal is always seemingly uniform in nature. Srimati Basu (2012) argues that, laws by itself are too inadequate to secure women's rights. Those women who claim legal right to inheritance of property in the family would often be called haklenewali (the woman who takes her rights). Such woman is seen as driven by some kind of "overreaching greed, selfishness, lack of empathy and love for the natal family and a desire to cause family conflicts" (Basu, 2005a; 2012b). There is a notion that women seize parental property rights, grab the property and destroy their natal family (Basu, 2005a, 167). It shows that patriarchal settings and traditional practices remain as the obstacle in getting inheritance of property rights for women. Most of the tribal population faced major problems in the migration of non-tribes to the tribal concentration areas as well as in development activities such as construction of dams which result into land alienation (George and Sreekumar, 1994, 122). Land plays significant role for tribal people for agricultural activities and livelihood purpose and it also could enhance the social status of tribal women. Rao's (2008b) study of Santal women in Dumkha district, Jharkhand, shows that land for them is not merely an economic resource but also secures social position and identity. However, men have distinct advantages. She examines that community identity of the Adivasis has also been responsible to denying women's rights on land. After 77 years of freedom, tribal women still have little hope of achieving equality before the law. They requested a loaf of equality at least to receive scraps of subsistence in the landmark case of *Madhu Kishwar v. State of Bihar* 21. In this lawsuit, the Chota Nagpur Tenancy Act of 1908's Sections 7, 8 and 76 were contested as being unconstitutional and discriminating against women. The native women are not eligible for inheritance under this Act. The State Government was ordered to take the necessary action after this case was filed before the Supreme Court. According to the State level Tribal Advisory Board, if a tribal woman were to inherit property, her husband—who is from a different tribe—would be elevated to the status of the land's rightful owner. The Bihar Tribal Council reviewed the situation on the Supreme Court's instruction and came to the same conclusion. As a result, there is still sex-based discrimination, and tribal women are not allowed to inherit because the property would pass to another tribe. In the end, the judgement made by a majority of two against one is retrograde. According to Ramaswami J, Sections 7 and 8 of Act 22 violate Article 14 of the Constitution. According to him, laws are in place in every State that forbid the sale of tribal lands to non-tribals. However, the majority viewpoint of Punchhi and Kuldip Singh JJ was conservative yet cautious, providing little relief for women. For as long as the right to livelihood and the female offspring of the last male holder are still recognized and acceptable, the exclusive right of male succession under Sections 7 and 8 must be deferred. Some example underlies the rampant gender discrimination that exists in tribal communities in India at large, and raises questions about the rights of tribal women to inherit ancestral property, and be compelled to subscribe to decisions taken against their will, eg: Mangola Singh, a member of the Buksa Tribe in Uttarakhand, is the eldest of her three siblings. Calamity struck at just 11 years of age when she lost her parents. Soon after, she worked relentlessly

to look after her brothers. At the time of one of her brother's marriages, both brothers defiantly stated that she had no right over their ancestral land. They eventually sold a small chunk of land without telling her. Their decision was supported by other members of her community as well. Everywhere in Tribal areas women are facing such issues in India under existing customary laws of inheritance, the legal remedies available to them and Judiciary helping in such matters. But Judiciary too, despite acknowledging that customary tribal laws are discriminating towards women, has failed to tackle this degrading practice. For instance, as evidenced in *Haradhan Murmu v. State of Jarkhand*, the Jarkhand High Court was of view that to bring about any significant changes with regard the personal/customary laws of the Santhal tribe, it must be done keeping in mind the local context where the consequences of amending such laws needs to be carefully considered. Different court has different opinion regarding tribal women's inheritance rights; For instance, the apex court in the case of *Labishwar Manjhivs Pran Manjhiand others*²⁴ held that when the evidence disclosed that parties belonging to the Santhals Tribe were practicing Hindu customs and not that of the Santhals, then the provision of Hindu Succession Act would apply with regard to inheritance of property. The Patna High Court in *Case of Budhu Majhi and Another's Dukhan Majhi and Ors*²⁵ held that it is not necessary that the parties must be completely Hinduised. Even they had been sufficiently Hinduised so as to be governed by the Hindu law of succession, it is enough in matters of inheritance and succession. The Himachal Pradesh High Court in *Bahadurvs Bratiya and Ors.*²⁶ Justice Rajiv Sharma in this case held that gender discrimination violates fundamental rights and daughters are entitled to equal share in the properties. It concluded that the daughters in the Tribal areas in the state of Himachal Pradesh shall inherit the property in accordance with the Hindu Succession Act, 1956 and not as per their customs and usages. Madras High Court on October 2017 in connection with the property matter come to the support of tribal women in their struggle for equal succession rights. The court has also made it clear that tribal women in the state are not excluded from the provision of the Hindu Succession Act and, therefore, they cannot be denied the right to inherit family properties. Justice S.M Subramaniam remarked, "The legislature was not intended for any inequality or unconstitutionality in the schedule tribe women are concerned". The court further said, nothing has been shown about the custom and practice prevailing in the community. The court added that but the tribal women are deprived of Hindu Succession Act. Therefore, Section 2 (2) of the Act will not come in the way of inheritance of the property by the daughters belonging to the communities where Hinduism and Buddhism are followed. In Recent Supreme Court Judgement²⁷ A Bench led by Justice M.R. Shah and Justice Krishna Murari said that there was no justification to deny a woman belonging to a Scheduled Tribe community the "right of survivorship" under the Hindu Succession Act. "When a daughter belonging to a non-tribal is entitled to the equal share in the property of the father, there is no reason to deny such right to the daughter of a tribal community. Female tribal is entitled to parity with male tribal in intestate succession,". The court found it jarring that tribal women were still denied an equal right to their fathers' property 70 years after the Constitution came into existence. As per Section 2(2) of the Hindu Succession Act, the statute, which guarantees equal shares for male and female heirs, is not applicable to Scheduled Tribe members. The court, while expressing its inability to change the law as it stands now, directed the Centre to examine the provisions of the Hindu Succession Act and, if necessary, amend the statute to extend it to the Scheduled Tribes. They further said "We hope and trust that the Central government will look into the matter and take an appropriate decision taking into consideration the right to equality guaranteed under Article 14.

11. CONCLUSION:

Since the beginning of civilization, women's property rights have been the focus of ongoing debate and remain a hot topic. A stain and slur on the welfare state of today is the existence and continuation of gender discrimination. Because of the evolving idea of gender equality and the influence of the west, it sparks a lot of heat and passion. This study's primary goal is to investigate property inheritance rights in Himachal's tribal districts, which are predominately governed by patriarchal traditional laws. In order to understand how patriarchal customary laws enforced gender inequality with regard to property inheritance rights, the study looked at the experiences of women, where women have long been denied access to gender justice. These rules tend to favor men and are always intended to reinforce the patriarchal system that already exists in society. The study was conducted with a focus on women's property rights in tribal groups, with a specific emphasis on the women from the Himachal Pradesh tribal areas. The study began by analyzing different theoretical underpinnings of property rights, that have been shaped mostly by western political philosophers. The study specially focuses on land for it is –considered as real property and plays a significant role in agriculture, shelter, as well as bestows one with an identification, in the given space. At the same time, gender equality and control over property have become a critical issue when it comes to women, for its access is interpreted through the men folk, especially in the tribal societies. Therefore, many initiatives have been taken up at various levels, be it local, national or worldwide. Indian Constitution is a key provider of gender justice. However, customary laws and patriarchal fabric of the society hinders justice and curtails women from benefiting. Mostly tribal are agriculturist in nature, which is why, land play's significant role for their livelihood and income generation. Tribal people follow their own religion: some of them follow Buddhism, some of them are followers of Hinduism. This study shows, that customary law is paramount to tribal people of Himachal Pradesh. In the areas like inheritance or succession, marriage, divorce, etc., the tribal people still follow their own customs and practices. Further, tribal people base their lives on a patriarchal and patrilineal system, in which household decisions are taken by the head of the family and inheritance system, also devolves from male lineage. Under such circumstances tribal women enjoy limited rights especially in the inheritance system, because there is no custom of providing property rights. Enforcement of law is an important aspect of social life of an individual. Directly or indirectly, it affects the quality of life and persons lives. If properly managed, it enriches, liberates, civilizes human life but if ignored or mismanaged, it can destroy and dehumanize the society. Enforcement means 'by and large put in action'.

Our analysis suggests that property rights is a fundamental institution in the society whose ownership and possession ensure empowerment. The notion of property rights and its various perspectives infer that it is a means to achieve empowerment for individuals in the society. Property in terms of land is considered as the natural resource that plays a significant role in agricultural activities, in providing shelter and denoting one's identification, status, responsibility, power, self-reliance and confidence. Women with ownership of property rights would enjoy liberty and freedom and it gives some kind of sovereignty. Property right is an inalienable right, which is given by nature to everyone with minimal interference from the state and from other occupancy. Property rights are prerequisite for the economic empowerment of women in terms of income-generation from agricultural production. It also acts as a collateral credit during financial and poverty alleviation. To increase awareness on women's property rights, and provide tribal women with information on their other fundamental rights and how to access legal services as well as basic legal

assistance. States parties should train judiciary, as well as legal aid and paralegals, on the rights to property of tribal women and sensitize public authorities, traditional leaders and grassroots communities on women's property rights issue. Public officials responsible for inheritance claims should be targeted. Awareness campaigns should highlight the importance of women's participation in land access. Legal and functional literacy programs, formal education, and the introduction in the school curricula of gender and property right issues, can be useful tools, as well as involving men in campaigning. Engaging with media to raise visibility on women's land rights issues can be critical. Reaffirm Tribal women's right as a fundamental and priority human rights, and proactively address patriarchal and discriminatory attitudes and practices.

- Public orientation programme based on law should be popularized to make it accessible to women.
- Lawyers and other in the judicial system are to be targeted for education about violence against women.
- Awareness on women's right and our duty in this regard should be created in different sections of our society.
- Wherever necessary adequate number of orientation/training courses should be organised for the govt. Functionaries and voluntary workers at the grassroots level to educate and sensitize them on different issues of women and human rights.
- Effective machinery at different levels for enforce of legal provisions should be set up and outlined provisions should be strictly followed.

Lastly want to end with the quote of Krishna Iyer, J.: "The fight is not for woman's status but for human worth. The claim is not to end inequality of women but to restore universal justice. The bid is not for loaves and fishes for the forsaken gender but for cosmic harmony which never comes till woman comes."

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