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“REVISITING WOMEN’S LAND RIGHTS AND HUMAN RIGHTS IN TRIBAL DISTRICTS OF HIMACHAL PRADESH”

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ABSTRACT:

Women’s land rights are increasingly recognized as a critical component of both gender equality and the broader human rights framework. In the tribal districts of Himachal Pradesh, however, the realization of these rights remains constrained by the interplay of customary practices, statutory law, and socio cultural norms. This paper revisits the status of women’s property and land rights in these regions, examining the extent to which existing legal protections align with constitutional guarantees of equality and international human rights standard. It highlights how traditional inheritance systems and patriarchal structures continue to limit women’s access to, control over, and ownership of land.

By analyzing legal provisions, judicial trends, and ground realities, the study underscore the gap between formal rights and their actual enforcement. It further explores the implications of restricted land ownership on women’s economic empowerment, social status and decision making power. The paper argues that strengthening women’s land rights is essential not only for achieving gender justice but also for promoting inclusive development in tribal areas. It concludes by suggesting the need for legal reforms, awareness initiatives, and policy interventions that reconcile customary practices with the principles of equality and human dignity. This paper seeks to critically examine the status of women’s land rights in the tribal districts of Himachal Pradesh through a Human Rights and Gender Equality lens. It explores the intersection of customary practice and formal legal norms, assessing their impact on women’s access to land and property. Ultimately the paper emphasizes the need for balanced approach that respects cultural diversity while upholding the fundamental principles of justice, equality and human dignity.

Keywords: Tribal women, land rights, inheritance, customary law, human rights, Himachal Pradesh

1. Introduction

Land ownership is a critical determinant of socio-economic empowerment, particularly in rural and tribal contexts.¹ For tribal communities in Himachal Pradesh, land is not simply property but a source of livelihood, cultural continuity, and social identity. However, women in these communities have historically been denied equal rights to land due to deeply entrenched customary laws.²

The issue of women's land rights in tribal areas raises important questions about **human rights, gender equality, and legal pluralism**. While the Constitution of India guarantees equality before the law under Articles 14 and 15, tribal communities are often governed by customary practices that may contradict these principles.³ This tension is especially visible in inheritance laws, where women are frequently excluded.⁴

This paper revisits women's land rights in tribal districts of Himachal Pradesh through a human rights lens, examining the conflict between tradition and modern legal norms.

2. Tribal Land and Its Socio-Cultural Significance

Tribal societies have a unique relationship with land that goes beyond economic value. Land represents ancestral heritage, spiritual beliefs, and community identity. As noted in legal scholarship, tribal land is "deeply intertwined with identity, culture, and economic sustenance." In Himachal Pradesh, tribal regions such as Kinnaur, Lahaul-Spiti, Pangi and Barmour tehsils of Chamba districts are characterized by limited cultivable land and harsh geographical conditions. These factors have historically shaped inheritance practices, often favoring male heirs to prevent fragmentation of land holdings.

Customary laws like the **Wajib-ul-Urj** and Rewaz-a-am system have reinforced male dominance in property ownership. Women, especially daughters, are often excluded from inheriting ancestral property, reflecting a patriarchal social structure.⁵ These norms are justified on the grounds of preserving land within the community and preventing alienation to outsiders. However, such practices reinforce patriarchal structures and deny women economic autonomy, perpetuating gender inequality.

3. Legal Framework Governing Women's Land Rights

3.1 Constitutional Provisions

The Indian Constitution guarantees:

- **Equality before law (Article 14)**
- **Prohibition of discrimination (Article 15)**
- **Right to life and dignity (Article 21)**⁶

These provisions form the foundation of women's property rights as human rights.⁷

3.2 Statutory Laws

¹ Bina Agarwal, *A Field of One's Own* (Cambridge University Press 1994).

² R Sharma, 'Customary Laws in Himachal Pradesh' (2010) *Himachal Law Journal*.

³ Constitution of India, arts 14-15.

⁴ *Madhu Kishwar v. State of Bihar* (1996) 5 SCC 125.

⁵ B H Baden-Powell, *Land Systems of British India* (1892).

⁶ Constitution of India, arts 14,15,21.

⁷ *C B Muthamma v. Union of India* (1979) 4 SCC 260.

The **Hindu Succession Act, 1956** and its amendment in 2005 provide equal inheritance rights to daughters.⁸ However, **Scheduled Tribes are excluded under Section 2(2)** unless notified otherwise, resulting in continued reliance on customary laws.⁹

This creates a dual legal system that often disadvantages tribal women:

- Statutory equality for non-tribal women
- Customary governance for tribal women

As a result, tribal women remain outside the ambit of progressive inheritance reforms.

3.3 Forest Rights Act, 2006

The **Forest Rights Act (FRA), 2006** recognizes joint ownership of land for tribal women and men. It has contributed to improving women's agency and socio-economic status, particularly among widows.¹⁰ While progressive, its scope is limited and does not fully address inheritance inequalities.

4. Judicial Developments and Legal Ambiguity

4.1 Himachal Pradesh High Court (2015)

A landmark judgment extended inheritance rights to tribal women under the Hindu Succession Act, emphasizing gender equality and constitutional morality.¹¹

This decision was seen as a progressive step toward dismantling discriminatory customs.

4.2 Supreme Court Developments (2025)

Subsequent rulings clarified that:

- Scheduled Tribes remain governed by customary laws unless notified otherwise
- Courts cannot override legislative intent regarding tribal autonomy.¹²

At the same time, other judgments have emphasized equality and upheld women's rights based on constitutional principles of justice and equity.¹³

4.3 Emerging Legal Tension

These rulings highlight a persistent conflict between:

Constitutional morality and gender equality¹⁴

Protection of tribal customs and autonomy

The absence of legislative clarity continues to create uncertainty.

5. Human Rights Perspective

5.1 Women's Land Rights as Human Rights

Access to land is closely linked to:

- Economic independence¹⁵
- Food security¹⁶
- Social status¹⁷

⁸ Hindu Succession Act 1956 (amended 2005).

⁹ Ibid s 2(2)

¹⁰ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 - recognizes land rights including joint ownership for women.

¹¹ Bahadur vs. Bartiya, (2015) ILR HP 730.

¹² Nawang & Anr vs. Bahadur & Ors 2025 LiveLaw (SC) 1025 (India).

¹³ Vineeta Sharma vs. Rakesh Sharma (2020) 9 SCC 1.

¹⁴ Navtej Singh Johar v Union of India (2018) 10 SCC 1 (concept of constitutional morality).

¹⁵ Bina Agarwal, A field of One's Own (CUP 1994).

¹⁶ FAO, Gender and Land Rights Database.

¹⁷ Agarwal, 'Gender and Command over Property' (1994).

- Freedom from violence¹⁸

Denying women property rights violates fundamental human rights principles, including equality and dignity.¹⁹

5.2 International Frameworks

India is bound by international frameworks such as:

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)²⁰
Universal Declaration of Human Rights (UDHR)²¹

These instruments mandate equal property rights for women

5.3 Intersectionality

Tribal women face **double marginalization**:

- As women in patriarchal systems
- As members of marginalized tribal communities

This intersectionality intensifies their vulnerability.

6. Challenges Faced by Tribal Women

6.1 Patriarchal Customary Laws

Customary laws often deny women inheritance rights to preserve land within male lineage.

6.2 Fear of Land Alienation

There is a widespread belief that granting women property rights may lead to land transfer to outsiders through marriage.²²

6.3 Lack of Awareness

Many women are unaware of their legal rights, limiting their ability to claim property.

6.4 Implementation Gaps

Even where laws exist, enforcement remains weak due to administrative inefficiencies and social resistance.²³

7. Case Study: Tribal Districts of Himachal Pradesh

In Kinnaur, Lahaul-Spiti, Bharmour and Pangi Tehsil's of Chamba District, a customary laws continue to exclude women from inheritance.²⁴ However, recent activism by women's groups has challenged these norms, reflecting a shift toward gender equality.

Legal disputes in Chamba have also contributed to judicial discourse, highlighting the urgency of reforms.

8. The Role of Social Movements and Civil Society

Grassroots movements have been instrumental in challenging discriminatory practices. Women's groups and NGOs have:

- Raised awareness about legal rights
- Advocated for policy reforms.
- Supported litigation efforts

¹⁸ UN Women, Progress of the World's Women (2019).

¹⁹ Constitution of India, arts 14 and 21.

²⁰ Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, Article 16(h) guarantees equal rights in ownership, acquisition, management, and disposition of property.

²¹ Universal Declaration of Human Rights (UDHR), 1948, Articles 1, 2, and 17- affirm equality, non-discrimination, and the right to own property.

²² Field study observation.

²³ Government of India, Ministry of Tribal Affairs, Report on Tribal Development and Land Rights, 2018.

²⁴ Wajib-ul-Arz, Kinnaur and Lahaul/Spiti Districts, Settlement Records. Riwayat-i-am, Chamba District, Punjab Settlement Records.

- These efforts highlight the importance of **community-driven change** alongside legal reforms.²⁵

9. Balancing Customary Laws and Human Rights²⁶

A key challenge lies in reconciling:

- **Respect for tribal autonomy**
- **Protection of women's rights**

9.1 Need for Legal Reform

There is a growing demand for:

- Inclusion of tribal women under inheritance laws
- Gender-sensitive interpretation of customary practices²⁷

9.2 Community Engagement: Reforms must involve:

- Dialogue with tribal communities
- Awareness campaigns. Gradual transformation of social norms.

9.3 Gender-Just Customary Laws: Customary laws should evolve to reflect constitutional values of equality and justice.

10. Recommendations

1. **Legislative Intervention**
Extend inheritance rights to tribal women through appropriate legal amendments.
2. **Awareness Programs**
Educate women about their legal and human rights.
3. **Strengthening FRA Implementation**
Ensure effective enforcement of joint land ownership provisions.
4. **Judicial Activism**
Courts should adopt a progressive interpretation of laws in favor of gender justice.
5. **Community Participation**
Engage tribal leaders in reform processes to ensure cultural sensitivity.

11. Conclusion

Women's land rights in tribal districts of Himachal Pradesh remain a complex issue at the intersection of law, culture, and human rights. While constitutional principles advocate equality, customary practices continue to restrict women's access to property.

Recent judicial developments reflect both progress and limitations, highlighting the need for comprehensive legal reform. A human rights approach requires that gender justice should not be compromised in the name of tradition.

Ultimately, achieving equality in land rights will require a combination of legal reform, social change, and community engagement. Empowering tribal women with property rights is not only a matter of justice but also a crucial step toward sustainable development and inclusive growth.

²⁵ Oxfam India, Women and Land Rights in India: Status and Challenges, 2020.

²⁶ Upendra Baxi, The Future of Human Rights (Oxford Univ. Press 2002).

²⁷ Joseph Shine v. Union of India, (2019) 3 SCC. 39 (India).

REFERENCES:

1. Bina Agarwal, *A Field of One's Own* (Cambridge University Press 1994).
2. R Sharma, 'Customary Laws in Himachal Pradesh' (2010) *Himachal Law Journal*.
3. Constitution of India, arts 14-15.
4. *Madhu Kishwar v. State of Bihar* (1996) 5 SCC 125.
5. B H Baden-Powell, *Land Systems of British India* (1892).
6. Constitution of India, arts 14,15,21.
7. *C B Muthamma v. Union of India* (1979) 4 SCC 260.
8. Hindu Succession Act 1956 (amended 2005).
9. *Ibid* s 2(2)
10. Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006- 11. recognizes land rights including joint ownership for women.
12. *Bahadur vs. Bartiya*, (2015) ILR HP 730.
13. *Nawang & Anr vs. Bahadur & Ors* 2025 LiveLaw (SC) 1025 (India).
14. *Vineeta Sharma vs. Rakesh Sharma* (2020) 9 SCC 1.
15. *Navtej Singh Johar v Union of India* (2018) 10 SCC 1 (concept of constitutional morality).
16. Bina Agarwal, *A field of One's Own* (CUP 1994).
17. FAO, *Gender and Land Rights Database*.
18. Agarwal, 'Gender and Command over Property' (1994).
19. UN Women, *Progress of the World's Women* (2019).
20. Constitution of India, arts 14 and 21.
21. Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, Article 16(h) guarantees equal rights in ownership, acquisition, management, and disposition of property.
- Universal Declaration of Human Rights (UDHR), 1948, Articles 1, 2, and 17- affirm equality, non-discrimination, and the right to own property.
22. Field study observation.
23. Government of India, Ministry of Tribal Affairs, *Report on Tribal Development and Land Rights*, 2018.
24. *Wajib-ul-Arz, Kinnaur and Lahaul/Spiti Districts, Settlement Records*. *Riwaz-i-am*, Chamba District, Punjab Settlement Records.
25. Oxfam India, *Women and Land Rights in India: Status and Challenges*, 2020.
26. Upendra Baxi, *The Future of Human Rights* (Oxford Univ. Press 2002).
27. *Joseph Shine v. Union of India*, (2019) 3 SCC. 39 (India).