



'THIS IS NOT YOUR HOME'

**An assessment of land rights of
tribal women in Jharkhand**

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Preface

When Bhuliya's husband passed away, their daughter was just one year old. After the funeral, she went to her mother's house for a brief visit. As per the custom, in due time, the husband's family asks their son's widow to return. But for Bhuliya, that never happened. After waiting for a month, her mother took her back to the in-laws' house.

This marked the beginning of harassment and violence that Bhuliya would have to experience, seemingly for the rest of her life.

Her in-laws starved her and abused her verbally and physically. They not only alleged that she has a bad character but that she was an evil spirit. They wanted her to go back to her mother or remarry so that the property belonging to her husband could be transferred in the name of his brother. Both Bhuliya's and her daughter's health began to deteriorate. As a result, she soon left her marital home to go back to her mother's house.

She was not welcome there either. Her male cousin constantly passed demeaning comments. He did not let her worship the family God, saying that she belonged to another family. Two years later, when Bhuliya's mother passed away, her male cousin saw this as an opportunity to grab her father's property. He refused to light the funeral pyre until her father's property was transferred to him. The rituals allow only a son or a male mourner in the family to perform the death rites.

By now, Bhuliya had learned of Ekal Nari Sashakti Sangathan (ENSS) and reached out to them. ENSS members encouraged and supported her in conducting the death rituals herself. On seeing the group support, men in the community did not object and instead joined in the death rituals.

Something that connects Bhuliya to thousands of other tribal women in Jharkhand are the intentional acts of violence – subtle or explicit – inflicted upon them. The intent is to put them off so that they do not lay claim to land and property or the wealth generated from it. The nature and intensity of the violence may vary, but such instances of violence against tribal women are not uncommon in Jharkhand. The study suggests that the violence is more pronounced for single women.

A woman from the community said,

‘As girls grow up, they keep hearing this is not your home, you will go one day to your [marital] own home. But when she gets married, she realises that [marital home] is not hers either.’

Women live with this exclusion all their lives, though widows like Bhuliya experience this more starkly and become vulnerable to all kinds of violence.

ENSS receives hundreds of such cases every year. Supported by the Samuel Hahnemann Associates & Research Centre (SHARC), it is a network of more than 27,000 single women in Jharkhand. It is also associated with a national level network of single women which supports single women to come together and empower each other in navigating the challenges of life. In their engagement with women, the network realises that women’s access and right to land and other productive assets are fundamentally linked to their livelihoods, sustenance, well-being and a sense of self. The network has also observed that women face a multitude of challenges when they want to exercise their rights to land.

In this study, we assess the various threads which impact the land rights of tribal women in Jharkhand. We listened to the women recounting their dilemmas, struggles and aspirations. We also listened to the people around them to know their perspectives on the matter – men from their communities, elected leaders, government officials, development workers, advocates, and others. Alongside, we analysed the constitutional and legal contexts of the ensuing problem and came up with action plans for strengthening their land rights.

We are thankful to Oak Foundation for providing the opportunity for Landesa and SHARC to come together and learn from and about tribal women. Landesa is an international organisation that works to strengthen land tenure and believes that land rights are a powerful tool that can be used to improve the lives of men and women living in poverty.

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As we share this report, our heartfelt thanks go to:

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- The legal experts and advocates for sharing their knowledge of complicated legal provisions and the challenges they encounter.
- The land revenue officials for talking to us about the statutory provisions and related bureaucratic and administrative challenges.
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Executive Summary

Whether we see land as an important productive resource or as a site of cultural practices, strong and secure rights over land are a firm springboard for a life of dignity. In India, land rights are governed through a web of tenurial laws, personal laws and customary laws.

In matters related to the ownership of land, our culture and practices have always been discriminatory towards women. However, the women in the tribal communities are particularly disadvantaged, as the customary practices do not support their land rights and the law of the state accepts customary practices of the tribal communities to be legal. The situation becomes further convoluted with a range of historical, social, legal, and institutional bottlenecks.

Within these complicated systems are the struggling women who aspire to own and access land to transform their lives.

It is against this backdrop that we lay out the different nodes mapped in this study. The first purpose of this study is to map the legal landscape of tribal women's connection with land. Following from that, the second objective is to determine the ways in which presence or absence of land rights impacts their strategic interests. Finally, the third objective is to understand the aspirations of tribal women and identify emerging opportunities to strengthen their land rights.

Landesa and SHARC have worked together closely in building and conducting the study. We have drawn narratives from the lives of women in their own voices. We also had conversations with a range of stakeholders to understand the factors that make it difficult to amend laws and social norms, and to identify emerging opportunities to strengthen the land rights of tribal women.

In India, the recognition of equal land rights for women can be traced back to pre-independence policy dialogues. The principle of equality and equity irrespective of caste, class, sex, race and place of birth are deeply enshrined in the Indian Constitution. Our constitution also directs the states to adopt measures of 'non-discrimination' in favour of women and the Scheduled Tribes for neutralising the cumulative socio-economic, educational and political disadvantages they face. Despite progressive commitments and directions by the national level policy bodies, progress on ground has been patchy and discrete.

The tenurial laws – which seek to protect the interest of Scheduled Tribes and strongly regulate the transfer of tribal lands to non-tribals – completely fail to recognise women as independent individuals and subsume their interests to the arbitrary actions of men. The customary rules which determine the inheritance rights of tribal women are generally guided by two fundamental rules. First, that the land must not pass out of the lineage, and second, that under any circumstance, a woman shall not be allowed to inherit the land.

With slight variations, the tribal communities mostly recognise only the maintenance rights of widows and daughters in lieu of claims on the property itself. The disinheritance of women is supported by fiercely discriminatory gender norms that emanate from deep-seated patriarchal values and belief systems. These norms dictate and determine who can access and control land and resources. There are rigid expectations of how women should behave and harsh penalties for those who transgress the

boundaries, thereby pushing them to a condition in which assertion is met with a strong backlash. As we listened to women, their stories, their aspirations and their frustrations bear testimonies of the ways in which the current frame of rituals, beliefs and laws make their lives vulnerable.

The tribal customs which vest the ownership of land with the men of the household, and provide women with only the maintenance rights, make women dependent on men for their survival and livelihoods. As a result, the lawful 'owners in waiting,' who are men by default, see the single woman – whether a widow or a sister or a mother – as a barrier to the men's full enjoyment of their rights. They perpetrate all kinds of violence – sexual, physical, emotional, verbal and financial – to evict women from the land or the property that they are waiting to own. The secondary status accorded to single women serves to make their oppression easier and more intense. It is the life interest of a widow in her husband's land that has been most attacked and degraded.

The denial of land rights to women and the associated violence inflicted upon them, along with nearly absent recourse to justice, presents strong evidence that the vision prescribed by the constitution is facing constant and massive assault in the hands of a patriarchal society. The key question is whether, under the framework of constitutional and fundamental rights to which the nation has pledged itself, women should be subjected to inequality and indignity in the name of preserving the religion or the cultural practices of the tribe. Given that women, including tribal women, are as much citizens of this country as anyone else, and have contributed to its evolution and progress, why then should they be denied the constitutional guarantees of a life of equality and dignity?

The problem is complex, with a host of factors responsible for it, and they all need to be addressed. While there is an inevitable need for an equitable legal framework, interventions beyond the provision of legal access to land are also needed.

Fortunately, there are solutions to this. The long-term goal is to make the entire system more sensitive and engaging in securing fairness, justice and equality for women. This requires review and reform of land laws to make them gender just, and sensitisation of community and other leaders towards the rights and needs of women. Given the pervasive violence and the intensive suffering of women in Jharkhand, there is also a need to build women's knowledge of land-related information and strengthen their collective agency at the same time. Public, private and civil society actors must come together pro-actively and devise innovative strategies.

If carried out sincerely, a land rights program can prove to be an important catalyst and a stimulus in bringing the kind of revolutionary changes that can correct the present plight of women and grant them the rights long due to them.

1 Introduction

Locating the study

‘Man provides the seed, while woman provides the fields’ is a common saying and a widely held belief across rural India. According to this sexual conception, both the field and its produce (women and children) become the sole property of the person who sows the seeds, that is, the man (McElvaine, 2018). Several anthropologists have explained that such discourses serve to place the ownership of woman in the hands of man, reinforcing the ideology behind the creation of a patriarchal society and the subordination of women (Dube, 2001).

Among the different ways in which patriarchy manifests itself globally, ownership of productive resources, including land, is a significant one. Patriarchal norms have long acted to ensure that women do not own land, thereby neutralising the potential power of land and property to transform gender relations.

A host of international treaties, including the International Declaration of Human Rights (1948), the International Covenant on Economic Social and Cultural Rights (1966), and the Convention on Elimination of All Forms of Discrimination against Women (CEDAW, 1979), acknowledge the importance of land rights in realising human rights. Concluding observations and statements by various treaty monitoring bodies, international rapporteurs and working groups have also emphasised on women’s rights to land as fundamental to fulfilling rights to livelihood, housing, food, adequate standard of living, self-determination and cultural participation.¹

Despite increasing recognition of the importance of land rights for gender equality and overall prosperity, the control and ownership of land in India remains largely in the hands of men. Deeply entrenched discriminatory social norms and systemic gender inequalities in structures of power and institutional mechanisms combine to pose significant barriers to women’s land rights. Even where land reform policies and laws do include gender equality goals, they tend to fade when it comes to implementation.

These conversations become paramount in states like Jharkhand, where a large part of the population are tribal women who rely on forest resources and agricultural production for their sustenance. Further, a series of threats – including the ever-increasing large-scale land acquisitions, encroachment by extractive industries on tribal and communal lands, unplanned or poorly planned urbanisation and

¹ The FAO’s Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) of ‘Land, Fisheries and Forests in the Context of National Food Security’ (FAO 2012) lists gender equality as one of ten core principles for implementation.

infrastructure development, climate change and natural disasters – all impact women more starkly owing to their insecure relationship with land.

In the case of tribal women of Jharkhand, the de facto existence of a dual system of statutory law and customary law presents a complicated environment for women's rights. This environment gets further complicated owing to a range of historical, social, legal, and institutional bottlenecks at both the State and central level.

In conducting this study, we have examined the status of land rights of tribal women in Jharkhand through two key questions. First, how legitimate and lawful are the rights, and second, how are the existing rights realised?

To understand legitimacy of land rights we have looked at the existing laws and rules in the light of the history of land reforms in the State. In order to assess the extent to which the rights have been realised, we have explored the complex interactions of these rules with the underlying power relations, value systems and social norms. We have also tried to understand the women's experiences of landlessness and their aspirations, so that the solutions are rooted in their own capacities and goals.

Research methodology

Landesa and SHARC have worked together closely in building and conducting the study. Since we wanted the study to be firmly rooted in women's experiences, we relied on qualitative methods of research to understand concepts, opinions and experiences. The narratives which form the basis of our study were retained in their original voices, as told to us by women. These rich conversations helped us understand their aspirations vis-à-vis access to and ownership of land. They also shed light on the existing socio-cultural, politico-economic, bureaucratic and systemic challenges that women confront in accessing these rights. We also spoke with a range of stakeholders to understand the factors which may make it difficult to amend laws and change social norms. Lastly, talking to the stakeholders helped us identify the possible opportunities to strengthen the land rights for women in Jharkhand.

Research tools

Literature review: We reviewed the constitutional provisions that define the overall context of women and tribes in the country and the laws that govern land in Jharkhand. We also read anthropological studies on the history of tribal communities in the State as well as sociological studies that explore the contexts which support or constrain women's lives. This close reading helped us theoretically understand and foreground the relationship between gender and land rights.

Key Informant Interviews: Our initial plan was to conduct focus group discussions with women belonging to different religions and tribes across each administrative division. However, due to Covid 19 we had to rethink our strategy given the necessary but sudden restrictions on travel and in-person meetings. We then had to conduct personal telephonic interviews with women and with other stakeholders such as advocates, community leaders, elected representatives, revenue officials and CSO leaders (See box 1). While a semi-structured set of questions guided our discussions, we also kept some space to pursue any interesting comment that came up.

In our interviews with community women, our focus was to listen to their experiences, their voices, and their perceptions and aspirations. Initially we thought it would be difficult to have phone conversations with women, but fortunately the women never hesitated to share their stories with us.

The interviews with traditional leaders² (referred to as Gram Pradhans) explored societal perceptions and provisions in customary laws affecting women's land ownership, as well as the difficulties women face while accessing services from land administration officials.

Box 1. Stakeholders interviewed	
Community Women	32
Community Leaders	6
Elected Leaders (Mukhiyas)	6
CSOs	8
Advocates	6
Government Officials	7
Others (State and National level)	8

The interviews with the elected leaders (Mukhiyas) focused on the role of the Gram Panchayats in dispute redressal mechanisms related to land. We also focused on understanding how the traditional and constitutional structures of governance interact with each other on the question of land rights.

The interviews with legal experts centred on understanding the existing legal provisions and weaknesses in the legal system which make it difficult for women to claim their land rights.

Our interviews with the land revenue officials were designed to collect information on government provisions for vesting land to land-poor families as per the existing tenancy laws, the processes involved in updating land records, and related bureaucratic and administrative challenges.

The interviews with the leaders of civil society organisations focused on their experience of working with women on land issues.

Case studies: Through discussion with the women's network, we selected a few stories related to women's access to or denial of land rights. Those narratives have helped us outline the types of complications or challenges that women face, and the extent of their assertion.

² The traditional community leaders refer to the leaders by heredity in a tribal community. In Jharkhand, they are generally referred as Gram Pradhans. The elected leaders assume office through the electoral system as part of the Panchayati Raj. In Jharkhand they are referred as Mukhiyas.

Selection of samples

Administratively, the State is divided into five divisions: Palamu, North Chotanagur, South Chotanagur, Kolhan and Santhal Pargana. We interviewed 32 women from 19 different districts spread across the five administrative divisions where ENSS is active. A local contact of ENSS helped us identify the women we could interview, depending on the availability of a phone connection and their willingness to have a conversation with us over the phone. We made sure that our interviewees represented different social strata, religious beliefs and marital statuses.

Similarly, while reaching out to other stakeholders – lawyers, community leaders, elected representatives and CSO leaders – we were conscious of selecting them from all the five divisions.

Analysis of data

After completing the data collection from primary and secondary sources, we scrutinised the data to identify gaps and returned to have further interviews to bridge them. We then scored and coded the qualitative information for analysis.

Structure of this report

This report is divided into seven sections. This first section serves as the introduction. The second section notes the historical and present social structures, sheds light on the historicity of the tribal resistance, and discusses the constitutional provisions and laws which impact the governance of land, tribals and women in Jharkhand. The third section presents a probing review of the tenurial laws from a gender lens. The fourth section discusses the provisions governing women's inheritance in the customary laws of various tribes. The fifth section provides a reality check through the ground stories and explores the gendered social norms, beliefs and practices that prevent women from owning and controlling land and trap them into a vicious circle of violence. The sixth section discusses the pathways available to women when they exhibit resilience and strive for justice. And finally, the seventh section consolidates the discourse by bringing all the pieces together and exploring the future strategies to build on positive aspects of culture and tradition and move towards realising the constitutional goals of equality and justice.

2 Tribals, women and land: socio-legal facets

The State of Jharkhand (meaning ‘the land of forest’) was carved out of Southern Bihar in November 2000 to fulfil the longstanding demands of the tribals in this region. As of the last census, out of a population of 32.9 million, approximately 26% belong to Scheduled Tribe communities who settled in these hilly terrains at different times in the past (Census of India, 2011). Today, 32 different tribes make their home in Jharkhand, the major tribes being the Santhal, the Munda, the Oraon and the Ho. Most tribal groups follow their own cultural practices where one can observe the influence of Hindu practices on them, although Christianity is significant among the Munda, the Kharia and the Oraon tribes. Around 13% of the Scheduled Tribes of Jharkhand follow the animistic religion, Sarna. The data in Box 2 indicate a higher incidence of poverty and dependence on agriculture in the state, as compared to other states in India. Over time, a declining trend of landholding has been observed among the tribals. The main reasons for this have been the fragmentation of land due to increases in the population, along with indiscriminate land acquisition for development projects that displaces people (Ekka, 2011:12).

Box 2. Jharkhand: The people and poverty

- Hindus constitute the religious majority (67.83%) in Jharkhand, followed by Muslims (14.53%) and Christians (4.30%) (Census of India, 2011).
- In addition to being a vast reservoir of forests, Jharkhand is also known for its mineral wealth, which includes iron, coal, copper, mica, bauxite, graphite, limestone and uranium. The economy of Jharkhand depends on mineral resources, industries, agriculture and tourism.
- 53.4% (26.94 lakhs) of rural households fall under at least one deprivation criteria and it was India’s poorest State in the year 2011-2012 (SECC, 2011).
- With the average land holding of 1.58 hectares, agriculture is the mainstay for nearly 80% of the population in Jharkhand (UNDP Jharkhand Factsheet, 2011), although 38% of households in Jharkhand do not own any land as against 57% in India (SECC, 2011).
- Of the total 27,32,000 operational landholdings in the state, 84% are marginal and small holdings and account for only 42.8% of area. (Agriculture Census 2015-2016)
- While tribal households own 35.7% of operational landholdings, the households belonging to Schedule Castes own 13.43% of operational landholdings. 11.2% of landholdings are operated by women as against 13.9 % in India (NSSO, 2015-16).

The Adivasi people and their history of resistance

Over the centuries, the Adivasi³ people cleared areas of forest, established villages and prepared cultivable fields in cooperation with each other. The different communities governed their own villages and had a symbiotic relationship with land, calling it their ‘Mother Nature.’ The families regarded themselves as the usufructs of the land, and not the owners.

The region remained beyond the interest or control of the empires and kingdoms of the plains until the 17th Century, which witnessed the emergence and consolidation of primary states, or jungle states (Singh, 1987). Initially, the tribal cultivators paid tribute or *chanda* to the kings (or Rajas) as the ‘protectors,’ not as the owners of the land. This arrangement changed during the British colonial period, when the land was put under individual proprietorship and land revenue became the primary source of the State income. The Britishers then introduced the Zamindari System to collect land revenue, which means that ‘zamindars’ – the intermediaries – were recognised as owners of huge tracts of land and were given the right to collect revenue from the peasants. In this way, the original cultivators of land became the tenants of landlords. They lost their control over their ancestral land and were forced to pay regular taxes to the landlords (Gautam, 2019).

This new system opened the door to many outsiders who ruthlessly exploited the Adivasi people as cheap indentured labourers and used unfair means to grab their land. As Adivasis started losing control over their land and forests, the early community-based systems of control, management and output sharing began to disintegrate. This resulted in unprecedented exploitation of the tribals and led to unrest in many parts of the Chota Nagpur and Santhal Pargana regions in Jharkhand, chiefly inhabited by the Mundas and the Santhal tribes, respectively. The continuous uprisings and revolts, in which women played an important role, led the British rulers to realise that this region must not be governed by the general regulations and acts governing the adjacent areas. They therefore enacted specific laws to safeguard the tribal interests and check their alienation of land to non-tribal people. Following a series of amendments these laws are today recognised as the Chota Nagpur Tenancy Act, 1908 (CNTA); the Santhal Pargana Tenancy Act, 1949 (SPTA); and Wilkinson’s Rule (1837). These laws and their gendered implications are discussed in section 3.

Vulnerabilities of Adivasi women

The question of land right of Adivasi women in today’s Jharkhand is apparently complicated by the nature and extent of changes which have come about in their social, cultural and politico-legal life over the centuries (Karna, 2017).

³ ‘Adivasi’ is the collective name used for the many indigenous people of India. The term ‘adivasi’ is derived from the Hindi word ‘adi’ which means of earliest times or from the beginning and ‘vasi’ meaning inhabitant or resident. The constitutional and the legal term used for Adivasi people is ‘Scheduled Tribes’. Article 366 (25) of the constitution defines scheduled tribes as ‘such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this constitution’.

The most significant transformation, which happened at the behest of the British, was the introduction and establishment of individual property rights across the board. This introduced the idea of ownership of land, emphasising land as a commodity rather than a shared resource which produces food, fodder and timber. Since, in the new dispensation, only men were given proprietary titles to own land, women were automatically excluded from their customary shares and became increasingly dependent on men. Several scholars have observed that this shift from community ownership and shared access of natural resources to increasing fragmentation and privatisation of rights, led to women being increasingly divorced from access and control over land and resources (Jassal, 2001).

The process of relatively faster growth of patriarchy, which gathered momentum during the British political period, was perpetuated over the years leading to a serious crisis in gender relations that one can observe at the present day. The increasing denial of women's customary rights to land, the prevalence of witch hunting, the dwindling practice of bride price, and the gradual acceptance of the practice of dowry with consequent suppression of women's sexuality, together illustrate the falling social status as well as eroding economic stamina of women (Mullick, 2013).

The continuous and overlapping processes of colonisation, industrialisation, urbanisation and globalisation in Jharkhand have made tribal women far more insecure compared to several non-tribal groups and communities. Consequently, poor health, lack of education, restrictions over mobility, limited opportunities for livelihoods, frequent migration, vulnerability to trafficking, and various forms of violence including domestic violence, are a few of the many harsh realities that women confront every day. Many of these vulnerabilities are buttressed by a range of social and cultural norms that dictate how women and men should behave, where they can or cannot go and who will have access to or control over land and other resources.

These changes and vulnerabilities are reflected in our conversations with people. Below are a few excerpts from the interviews we conducted:

- *Anaemia is a big problem in this region. Earlier, people had access to and knowledge of a lot of medicines and nutritional plants that were available from the forest. They were part of their daily meals. But now all of that has changed, and women suffer the most.'* (CSO leader)
- *'Tribal women today have to walk several kilometers to find potable water. They also have to spend four to six hours hunting for firewood.'* (community leader)
- *'Domestic violence is the biggest issue rural women are confronting. Women feel insecure, and that is why they do not speak openly.'* (community woman)
- *'A few months ago, a tribal girl wanted to marry a non-tribal, and the Manjhi Pargana, as a punishment, asked some boys to gang rape her. In another similar case, a girl was burnt with a cigarette.'* (CSO leader)
- *'Generally, it is considered that tribal societies are based on equality, but if we go deeper, we find that it is a myth. A tribal woman has no role in decision making process – neither at the societal level nor at the family level. In fact, she is always fearful of being called out a witch if she contravenes any norm.'* (CSO leader)
- *'Now men as individuals have become the landowner, and women have become dependent. I think even men should not have been given the right on land. Land is in the name of men; so*

men have got the power to evict anybody from the house . . . Now that the woman is weak, the husband tells her to live the way he wants.’ (CSO leader)

The realities of women do vary in nature and intensity depending on religion, caste, class and other factors. In the following sections we consider how these realities intersect with the legal provisions for their land rights and impact their ability to access and own land.

Constitutional and statutory provisions

The overall legal framework of land governance in India and Jharkhand is guided by constitutional provisions that safeguard the rights of scheduled tribes and the women in various ways. The principles of equality and non-discrimination are deeply enshrined in the Indian Constitution through its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution also empowers the State to adopt measures of non-discrimination in favour of women for neutralising the cumulative socio economic, educational and political disadvantages they face. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibit discrimination against any citizen on grounds of religion, race, caste, sex or place of birth; and guarantee equality of opportunity to all citizens in matters relating to employment. Below is a list of several such provisions.

- Equality before law for women (Article 14)
- The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15(i))
- The State to make any special provision in favour of women and children (Article 15(3))
- Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)
- The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)), and equal pay for equal work for both men and women (Article 39(d))
- To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39A)
- The State to promote with special care the educational and economic interests of the weaker section of the people and to protect them from social injustice and all forms of exploitation (Article 46)
- To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A)(e))
- Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat (Article 243D(3))

- Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243D(4))

The Fifth Schedule provides special protection to tribals

Article 244 of the Constitution, read along with the Fifth and Sixth Schedules, recognises that the Scheduled Tribes have suffered historically and require special protection to ensure that these historical wrongs are not repeated, and are reversed. Of the 24 districts in Jharkhand, 15 are enlisted as Fifth Schedule areas.⁴ These areas are effectively tribal homelands, in which the State and the tribes enjoy a great deal of autonomy in matters governing land and culture. The Fifth Schedule grants extensive powers to the Governor, who, by public notification, may direct that a law enacted by the Parliament or the State Legislative Assembly shall not apply to a Scheduled Area, or shall apply subject to certain amendments or restrictions as specified by the Governor. It also provides for the creation of a Tribes Advisory Council (TAC) in each state having Scheduled Areas to advise the Governor on matters pertaining to the 'welfare and advancement' of the Scheduled Tribes. Detailed descriptions of the Fifth Schedule and the TAC in Jharkhand are included in annexure 1.

The Seventh Schedule determines legislative powers related to land

The Seventh Schedule of the Indian Constitution deals with the division of powers between the Union government and State governments, which is effected through three lists: (1) the Union List contains subjects over which the centre (or Parliament) has exclusive power of legislation; (2) the State List contains subjects of local and regional importance over which states can pass laws; and (3) the Concurrent List contains subjects where centre and states share legislative jurisdiction.⁵

Within these three lists, the centre and states have legislative authority over the different aspects of land governance. Most matters related to land – such as land tenures, the relation of landlord and tenant, collection of rents, transfer and alienation of agricultural land, land improvement and agricultural loans – fall under the State List and this also allows states to give recognition to tribal systems of land management. However, issues related to 'wills, intestacy, succession, partition, and transfer of land other than agricultural land', are a part of the concurrent list. Consequently, while centre and states share jurisdiction over 'succession',⁶ transfer of agricultural land exclusively falls under the domain of states.⁷ This overlay allows states to amend personal laws such as HSA 1956 at the state level and simultaneously enact independent inheritance provisions for agricultural land.

The Ninth Schedule provides protection to certain laws from judicial review

The Ninth Schedule of the Constitution contains a list of the central and state laws which cannot be challenged in court. It was primarily introduced by the government to protect the laws related to agrarian reform and for abolishing the Zamindari system. Currently, 284 such laws are shielded from judicial review, and most of these concern agriculture and land issues, though the list also includes other subjects, such as reservation. Interestingly, the schedule also has a retrospective operation, meaning that if laws are inserted in the Ninth Schedule after they are declared unconstitutional, they

⁴ Of the fifteen districts of Jharkhand listed in fifth schedule, twelve are fully covered while three – Palamu, Garhwa and Godda – are partially covered in the Fifth Schedule.

⁵ Constitution of India, 1950, articles 245 & 246

⁶ Concurrent List, entries 5 and 6

⁷ State List, entry 18

are considered to have been in the schedule since their commencement, and thus valid. Consequently, any discriminatory provisions of tenancy laws applicable in a State cannot be challenged in the court on the ground that they violate the fundamental right of equality for women.

However, on 11 January 2007, a constitutional bench of the Supreme Court held that even though an Act is put in the Ninth Schedule by a constitutional amendment, its provision shall have to be tested on the touchstone of the basic or essential features of the Constitution, if the amendment has taken place after 24 April 1973.⁸ On this date the Supreme Court of India had propounded that the Constitution of India has certain basic features that cannot be altered or destroyed through amendments by the Parliament of India.

PESA and the governance of commons

While the Fifth Schedule provides autonomy to the Adivasi communities to preserve and follow their traditional systems of governance, the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) was enacted to extend the three-tier Panchayat Raj System – at the village, intermediate and district levels – to all Fifth Schedule areas.⁹ PESA sought to enable the Gram Sabhas in the tribal areas to implement a system of self-governance with respect to a number of issues such as customary resources, minor forest produce, minor minerals, minor water bodies, selection of beneficiaries, sanction of projects, and control over local institutions.

PESA obliges the state to ensure that any law enacted with respect to panchayats in the Scheduled Areas must give primacy to existing customary law and traditional mechanisms and give primacy to the community in the management of its community resources. However, the implementation of PESA has been challenging, partly because several states including Jharkhand have not formulated the rules under the Act, even though it has been in force for 25 years now.

Policy initiatives to increase women's land ownership

With global discourses around women's rights gaining momentum, a progressive journey towards recognising equal land rights for women can be observed in India's successive five-year plans. The 6th Five Year Plan (1980-85) was the first to talk about women's rights to economic resources and a policy for joint titles to husband and wife in transfer of assets. The 12th Five Year Plan (2012) emphasised on increasing women's access to land from three sources: direct government transfers, purchase or lease from the market, and inheritance. In a strategy document, NITI Aayog (2018) has emphasised the need for an improved asset ownership and economic security of women. It also suggested encouraging joint

⁸ See Vijay Pal Singh, 'Ninth Schedule,' available at <http://www.legalserviceindia.com/articles/nineth.htm>.

⁹ The 73rd Constitutional Amendment or Panchayati Raj Act, 1993 provides for the three-tier Panchayat Raj System at the village, intermediate and district levels. It envisages the Gram Sabha (a body consisting of persons registered in the electoral rolls comprised within the area of Panchayat) at the village level as the foundation of the Panchayat Raj System, performing functions and powers entrusted to the Gram Sabha by the respective State Legislature. The amendment itself did not cover the Scheduled Areas because of the protection provided to them. Thus, Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) was enacted in 1996 to extend the provisions of the 1993 law to Scheduled Areas, with certain exceptions and modifications.

registration with partitionable rights of both spouses or sole registration of land in the name of the woman through concessions in registration fees and stamp duties.

Despite these commitments and directions by the national level policy bodies, the progress on ground has been patchy. While some states have been making a steady progress, others seem to stumble between policy directions given by the rights-based thinking and the age-old patriarchal beliefs which characterise the entire land system.

Reduction of stamp duty on land held in the name of women

As the national policy suggested that states provide incentives for the registration of land in the names of women, several states came forward with provisions to reduce stamp duties and registration fees for land registered jointly in the name of a woman and a man, or individually in the name of a woman only. In June 2017, Jharkhand introduced the scheme of one-rupee token stamp duty for women's registration upon purchase of landed property up to INR 50 lakh. In general, the rate of registration of any immovable properties at that time was 7% of the purchase value (4% stamp duty and 3% court fee).

The scheme, however, was rolled back in May 2020, purportedly because of a heavy loss in State revenue.¹⁰ At the time of repealing, the State Land and Revenue Minister noted that 152,521 women had benefitted from the one-rupee registry scheme and that 238 cases were found where women had benefitted from the scheme more than once.¹¹

Several CSO leaders and advocates we spoke to felt that the scheme was helpful and served to encourage registration of property in the names of women, though a few who were critical thought that the scheme could help only the rich in evading tax and was of no use to real poor – that

Dismal state of land records poses challenges for land titles in name of women

Interestingly, the available records of rights for most parts of today's Jharkhand were created in the pre-independence era, when massive cadastral surveys were first undertaken in 1902 followed by a revisional survey in 1927. The revisional survey and settlement operation in 1930 settled rents for the raiyats of every denomination. These rents were to be paid to the landlord. The record of the cadastral and revisional survey is still the only authentic record of the land in Jharkhand. Although fresh revisional surveys have begun in several areas, and the program to digitise all land records is also underway, these have been completed only for a few districts. During our field visits, we saw a computerised Record of Rights (ROR) of a village. Interestingly, a note at the bottom of this ROR, said that the ROR was not applicable for any legal matters or in court proceedings.

This dismal state of land records makes it difficult for women to access their shares and assert their rights. 'Whenever I ask my brother-in-law to give my share, he eludes by saying that land is still in name of forefathers and he doesn't know the actual share. At the same time, he never takes an initiative to get it done sooner,' shared Leelawati.

Additionally, since in the older records, titles are mostly in the name of men, if the land is to be transferred from a single title of husband or father to a joint title of husband-wife, father-daughter or mother-daughter, there are expenses that need to be incurred as registration fee and stamp duty at the market rate.

¹⁰ See 'Jharkhand government rolls back registration of property for Rs 1 by women.' New Indian Express (16 May 2020), available at <https://www.newindianexpress.com/nation/2020/may/16/jharkhand-government-rolls-back-registration-of-property-for-rs-1-by-women-2143873.html>

¹¹ See 'Re 1 stamp duty scheme misused, Jharkhand loses Rs 1.07 crore.' New Indian Express (2 July 2019), available at <https://www.newindianexpress.com/nation/2019/jul/02/re-1-stamp-duty-scheme-misused-jharkhand-loses-rs-107-crore-1998383.html>

is, the tribals and the landless. As one lawyer observed, 'The real poor do not have purchasing power, so how can they buy land? A study needs to be conducted to see the impact of this scheme.'

Joint titles of land allocated by the government

Land allocation to the poor and the landless has been the priority of several state governments. The Bihar Bhoodan Yagna Act, 1954 provides for the donation of lands and allocation of ceiling surplus lands to landless persons, to be carried out by the Bhoodan Yagna Committee. A large amount of Bhoodan land was acquired, especially in Hazaribagh (328,447 acres), Chatra (210,058 acres) and Giridih (217,062 acres) districts, but of a total of 1,335,739 acres acquired, only 482,881 acres have been settled, and the remaining lies undistributed. Many cases have been filed under Section 83 of the CNTA, bringing even these settlements into dispute (Prasad, 1970:26). A revenue official from the State reported that the Bhoodan Yagna Committee has been defunct for several years.

Although the approach paper to the 9th Five-Year Plan states that preference should be given to women in distribution of ceiling surplus land, it is not clear as to what extent women as individuals have received land distributed by the Governments of Jharkhand or Bihar. There is a clear circular from the Bihar Government stating that when land is distributed, the *pattas* (land titles) should be given in the name of both husband and wife, and the government officials claim that this is being followed. They said that sometimes land is given to single women,¹² but there is no official data to support this claim (Ekka, 2011:74). As evident, Jharkhand does not have any such clear priority. Several officials we interviewed said that the land allocation by the State in case of acquisition and displacement is not granted in the name of women. According to one revenue official interviewed, 'The State doesn't have a policy of joint land allocation, but if someone positions a request, they can consider.'

Titles on forest land

To protect and safeguard the interests of Adivasis, 'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006,' popularly known as the Forest Rights Act (FRA), enacted to correct the 'historic injustice done to them in colonial era'. The Act legally recognises the rights of the forest dwelling tribal communities and other traditional forest dwellers to forest resources, on which these communities were dependent for a variety of needs, including livelihood, habitation and other socio-cultural needs. It also recognises and vests individual forest-dwellers with usage rights – right to live in, cultivate, manage, protect, and regenerate the forest. The rights extended are heritable but cannot be transferred outside the lineage.

The Act provides for both claims and titles to be issued in the joint name of husband and wife where the claimant is married but does not explicitly recognise single women as eligible claimants. 'In our area, 1468 titles have been distributed under FRA, and very few titles have women's names. The applicants were men, so, in most of the cases titles have been distributed in the name of the men of the household. Those in names of women are for widows only,' shared a CSO leader. He emphasised on a need to create awareness in community as well as CSOs about the inclusion of women's name in the titles.

¹² The term 'single women' generally refers to include women who are widowed, divorced, never married or living separately.

Further, the FRA rules require that women constitute at least a third of the Forest Rights Committee positions, and that the one-third quorum of the Gram Sabha must be women. However, some researchers suggest that there is continued resistance to women's active participation in traditional decision-making forums and to transfer the joint claims to the Revenue Record of rights (Parthasarathy, 2020).

Even the women married with men as *ghar-jamai* are disfavoured. In an interview,¹³ Bitiya Murmu, a noted women's rights leader in Jharkhand, recalls that when they were creating awareness about community forest rights claims, Pradhans in majority of villages did not want the *ghar-jamais* to have a share in these titles.

'Several families have been recognised with lesser land holding than what they occupied earlier and thus, the given land was not sufficient to meet-out the requirements of their families,' said a CSO leader. Others also noted that several claims under FRA have been rejected without explaining the reasons and many are lying pending with the department. Another CSO leader noted that the whole process of implementation of FRA is in a standstill mode and it seems that the Forest Department does not want to give forest land to the forest dwelling communities.

Land acquisition and rehabilitation

In the last few years, the government – both at the State and the central level – has been easing the restrictions on the use of tribal land by owners or tenants to allow tribal land to be used for non-agricultural purposes. The government has also relaxed limitations on acquisition of the forest land and made it available for the industrial and commercial purposes, along with the dilution of consent clauses. These changes have met with sharp opposition from the tribal people in the State.

Section 4(I) of PESA provides the right to Gram Sabhas to be consulted before any land acquisition in a Scheduled Area for development projects and requires the acquiring body to resettle or rehabilitate persons affected by such projects. The clause requires that the consultation must be with the 'the Gram Sabha or the Panchayats at the appropriate level'. A report by Government of India notes that because of this vagueness several State governments have sought to protect their power to unilaterally decide where and when to acquire land under the applicable land acquisition laws for public purpose. These states have interpreted Section 4(I) to require consultation with a Panchayati Raj institution at the Panchayat, block or district level, but not the Gram Sabha. Failure to effect the provisions regarding consultation with the Gram Sabhas, in the true spirit of PESA, is perhaps the most serious flaw in the extension of PESA to the Scheduled Areas. (GoI, Undated)

The Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR) also requires the consent of Gram Sabhas before the process of land acquisition can begin for private projects or projects in public private partnership. It also provides that as far as possible, no acquisition of land shall be made in the Scheduled Areas, and where such acquisition does take place, it shall be done only as a demonstrable last resort.

The LARR has detailed provisions for providing compensation to affected families, but women are often at additional disadvantages. Since tribal women do not own or control land, even though they

¹³ See 'Where are the equal rights for women,' available at <https://behanbox.com/if-constitution-guarantees-equal-rights-where-are-these-rights-for-advansi-women/>

may often be its prime users, they are not compensated for the loss of land. Even if substantial land is worked, owned and inherited by the women in some cases, compensation is provided to the head of the family, who is almost invariably a man (Mohanty, 2005). The law also accepts the claim of an 'unmarried adult son' to be treated as a separate family for the purposes of compensation, but makes no similar provision for unmarried adult daughters, and leaves out divorced, deserted, and widowed women, forcing them to depend upon male relatives (Singh, 2006).

The selection of the resettlement site also affects women because very often the new area is completely different from the site they are leaving, and it becomes difficult for women to adjust to the new places. Debashree De (2018) notes how in Dumka district of Jharkhand, displacement of Santhal families had a major implication on gender roles and spaces. In the original village, *dhani* or paddy growing land was seen to be under men's control while *bari* or homestead land was controlled by women. In the new area, *bari* no longer existed as a category so women's rights to land were wiped out without any compensation.

An advocate shared another reason for women to be at the disadvantage, 'The land acquisition officer has to ensure that compensation amount is divided among all legal heirs. However, the brothers and male members of the family do not want to share with their sisters, the compensation received from the government against their parental land. Women, thus, face several problems at the court for years to receive justice.'

Below are some additional quotes from people:

- *'Mining Department has already acquired lots of land from tribals particularly in the Noamundi block. Tribals living there were evicted from their own land. They were the owners of land in those villages but now, they are working as servants in their own land. (CSO leader)*
- *'Women say "land is ours, grain cultivated and harvested is ours," but when market calculates the value for land and in terms of money, the money is given to husband or male member of the family. Lifestyle, livelihood, culture everything goes from women's hands.' (CSO leader)*
- *'Men are of the view that if women are given land, it will lead to land alienation. But we also see the cases where men are actively selling land. This way also, land is going-out of the hands of the community.' (community leader)*
- *'When land is acquired for the project, men get all the benefits. Project authorities give compensation (in terms of job, cash or land) to the male member of the family. One member from one family is given a job and it is mainly the man who gets the job.' (mukhiya)*

3 Tenurial laws and their gendered implications

A recent report by the World Bank notes that in 40% of the world's economies, women face legal barriers to their land and property rights (World Bank, 2020). Even when we see progressive discussions about women at the policy level, nearly all tenurial laws, whether recent or adapted from the colonial times, treat men as the main legal subject and the prime holder of land. In this section, we analyse some important tenurial laws in Jharkhand and see the provisions which overtly disfavour women and disregard their equal rights.

Land affairs of tribals in Jharkhand are chiefly regulated by two laws: Chota Nagpur Tenancy Act (CNTA), 1908 and Santhal Pargana Tenancy Act (SPTA), 1949. In some tribal regions, the Wilkinson's Rule (1837) is applied.

Chota Nagpur Tenancy Act

The Chota Nagpur Tenancy Act, popularly known as CNTA, was enacted in 1908 and covers 15 districts in three divisions of Jharkhand.¹⁴ This Act prohibits any transfer of lands belonging to tribals, by sale or otherwise, to non-tribals, unless first approved by the Deputy Commissioner or the Revenue Department. It also provides for restoration of alienated land to the tribals; and in cases where the land is taken by government and converted for urban use, to give them equivalent lands.

CNTA recognises several classes of tenants of which *Mundari Khuntkatti Dari* and *Bhuinhari* are the special classes of tenancy that do not vest with the State. Under the traditional *Munda Manki* system, when a *Mundari* (a person belonging to Munda tribe) wished to found a new village, he either alone or with some of his kinsmen on the paternal side obtained the jungle tract he desired and brought portions of it under cultivation. The traditional rules allowed him or his male descendants acting jointly, to give portions to other Mundaris either to cultivate as Raiyats or to establish other khuntkatti villages.

Bhuinhars are the descendants of the pioneer families who cleared the jungle, brought that area under cultivation and became owners. The word 'Bhuinhar' means the owner of the soil. Bhuinhari lands are therefore the ancestral holdings of the descendants of the original clearers of the village. With the gradual breakdown of the tribal land system due to the arrival of non-tribals in the region, these tribal tenures are gradually becoming extinct, and now most of the holdings are ordinary raiyati lands. While the CNTA provides recognition and protection to these traditional land tenures, it is unfair to women because it rests on the premise that ownership of land rests solely with men.

¹⁴ Districts Garhwa, Palamu and Latehar in Palamu Division; Districts Chatra, Hazaribagh, Giridih, Koderma, Dhanbad, Bokaro and Ramgarh in North Chotanagpur Division; and Districts Ranchi, Lohardaga, Gumla, Simdega and Khunti in South Chotanagpur Division.

Santhal Pargana Tenancy Act

The SPTA extends to districts of Dumka, Jamtara, Sahibganj, Godda, Deoghar and Pakur, and like CNTA, it recognises the customary system of village headmen to execute various powers related to land rights and dispute resolution. This act classifies villages into *khas* and *non-khas* villages.

A khas village is a village in which there is no *Mulraiyyat* (descendant of the original headman) or headman for the time being, irrespective of whether there was previously a headman in the village. A non-khas village is one which has a *Mulraiyyat* or headman appointed as per section 5 of SPTA. Interestingly, a khas village can over time become a non-khas village if a headman is appointed; and a non-khas village can become khas village if there is no heir of a headman or if the village headman is dismissed from his office.

The office of *Mulraiyyat* is hereditary and possesses special rights. When a *Mulraiyyat* dies, the nearest male heir is entitled to succeed, and if there is no male heir the District Collector may permit a female heir to succeed. There is no provision either in the SPTA or in the rules made thereunder which restricts or debars any female from being appointed as headman. A daughter may, however, become entitled to become headman only if she is married to *gharjamai*, meaning that her husband must have been living at his in-laws' place after severing his relationship with his own family.

Wilkinson's Rule

The Sadar subdivision of Chaibasa, West Singhbhum and Saraikela areas of Jharkhand form the Kolhan region where the Wilkinson's rule applies. After the failure of British to subjugate the Ho tribal community in 1834, Thomas Wilkinson, the then Governor General's agent during British rule legalised the traditional Manki Munda system and debarred the authority of civil courts in the *Kolhan* area.

As part of the Wilkinson's Rule, it was agreed that authorities should not interfere with the local administrative system of tribal community. While the Mundas were responsible for civil issues at the village level, Manaki, one per gram panchayat, looked after criminal issues. It was also decided that the local landlords should be encouraged and protected against the outsiders who were buying *Zamindari* at auction and becoming the new chiefs of villages to which, they had no cultural or social affinity. The rule also prohibited the transfer of any landed property without the Agent's consent on any account whatsoever.

Gendered implications of the tenurial laws

A careful review of the above tenurial laws reveals that all of these fail to recognise women as independent individuals and subsume their interests to arbitrary action of men. There is an urgent need to have these discussions at the policy level to ensure that women are no longer denied their land rights.

The laws refer and speak only to men

The Acts only identify men as the legal subject. Landowner, *Adhbataidar* (sharecropper), Revenue Officer, District Collector, Raiyat, tenure holder and all the other nouns are referred to as men throughout the Acts. A curious word count of CNTA shows that the act uses the pronoun 'he' 177 times and 'his' 276 times. The pronoun 'she' is not used anywhere, while 'her' is used only once.

While some may respond that the masculine pronouns 'he' and 'his' refer to men and women both, we must recognise that the consistent use of masculine pronouns leaves the impression that women are not among the group of reference. Several studies suggest that masculine pronouns, even in the style of a 'generic' usage, make readers think of men. One such study concludes, 'the masculine form in gender-marked languages most often stimulates a male biased mental representation, even if readers have learnt that the masculine form may be considered as generic, and even when language policies attempt to accentuate its generic interpretation' (Gygax, 2009).

It is not surprising in this context that most of the revenue officials and other stakeholders dealing with revenue laws and policies consider men as the default holders of land as well as main actors in land governance.

In general, the acts recognise only men as landholders

In defining the categories of landholders, these Acts assume only men to be the land holders. Below are a few examples from CNTA.

- section 6(1) of CNTA defines a *Raiyat* primarily as 'a person who has acquired a right to hold land for the purpose of cultivating it by **himself** or by male **members of his family**, or by hired servants or with the aid of partners; and includes the successor in interest of persons who have acquired such a right.' Section 6(2) further explains that a person shall not be deemed to be a raiyat unless '**he**' holds land either immediately under a proprietor or immediately under a tenure-holder or immediately under a Mundari-khunt-kattidar.'
- Similarly, section 7(1) of CNTA defines a *Raiyat having khunt-katti rights* as a 'Raiyat in occupation of or having any subsisting title to land reclaimed from jungle by the original founders of the village or **their descendants in the male line**, when such Raiyat is a member of family which founded the village or a **descendant in the male line** of any member of such family.'
- Section 8 of CNTA, again, defines meaning of *Mundari-khunt-kattidar* as a '[male] Mundari who has acquired a right to hold jungle land for the purpose of bringing suitable portions under cultivation by **himself** or by male **members of his family**, and includes, (a) **the heirs male in the male line** of any such Mundari when they are in possession of such land or have any subsisting title thereto, and (b) as regards any portions of such land which has remained continuously in the possession of any such Mundari and **his descendants in the male line**, such descendants.'

It is important to note here that while there is enough evidence of women's participation in the reclamation process of forest land, they do not get the status of raiyat in land having khunt katti rights.

The SPTA follows the same trend. Section 4 of SPTA defines 'raiya' as 'a person not being a landlord, who has acquired a right to hold land for the purpose of cultivating it by **himself** or by **members of his**

family or by hired servants’ and includes the successor in interest of a person who has acquired such a right. In defining a raiyat, the act assumes it to be always a man. It defines a tenant in the same way. To consider another example, section 18, in talking about the rights of a raiyat to erect buildings says that ‘a raiyat may erect kutchha or pucca buildings on **his holding** for the domestic or agricultural **purposes of himself and his family.**’

Section 22 of SPTA notes that if a raiyat is a widow (and some other categories), ‘he’ can give it on trust for cultivation to another raiyat within Santhal region for a year. It is noteworthy that using ‘he’ - a male pronoun - for a widow is not just a sloppy drafting but confirms the deep-seated belief of the law drafters that only a man can be a ‘raiya’ or landholder.

The Acts do not safeguard rights of single women, including widows

Rights of a widow or other single woman – including a woman who is separated, unmarried or divorced – are not defined in the Acts. Rights of all the women are, generally speaking, subject to customary laws of various tribes, which are discussed in the next section.

Ownership rights pass from men to men only

As for Mundari-khunt-kattidar, CNTA recognises male heirs in the male line only, which means that no woman can ever be a Mundari-khunt-kattidar. In defining various landholders, it declares only male to be the natural (and legal) heirs and allows for inheritance to pass along male lines only. The act does not speak of the rights of daughters anywhere.

SPTA allows limited rights to certain women but leaves it to men’s discretion

Section 20 of the SPTA bans transfers of raiyati rights in general but incorporates certain rights though in a limited way. Those Santhal raiyats (all men) whose rights are recorded in ‘Record of Rights’ can validly make a gift to a sister and daughter with the previous written permission of the Deputy Commissioner. Further, an aboriginal raiyat with the previous written permission of the Deputy Commissioner, can make a grant in respect of **his land** not exceeding half of the area of **his holding** to his widowed mother or to his wife for her maintenance after his death. It is important to note that while a raiyat can make gift (which is not to be taken back) to the daughter or sister, he can only grant maintenance rights (and that too from half of his land) after his death to his widowed mother or wife.

The fact that the law allows for gifting of land to a daughter or sister or granting maintenance rights to widowed mother or wife – does not promote the rights of women as individuals. Rather, these gifting and maintenance provisions give men the full discretion to decide whether they want to give the land to women.

CNTA preserves the authority of customs

Section 76 of CNTA explicitly mentions that its provisions will not affect the prevalence of any custom, usage or customary right unless the Act expressly or by necessary implication, modifies or abolishes such custom, etc. Section 23 also provides that if a Raiyat dies intestate in respect of a right of occupancy, the right shall, subject to any local custom to the contrary, descend in the same manner as other immovable property. Since the customs usually conform with and reinforce patriarchal ideology, the women are left at a disadvantage.

CNTA exempts certain women from personal attendance in court

Section 160 of the Act says that a female plaintiff or defendant shall not be required to attend in person if she belongs to a rank or a class which, according to the customs and manners of the country, would render it improper for her to appear in public. This clearly points to the entrenched belief in Hindu or Muslim women observing *parda* (veil) or related to the idea that women should not go to public spaces in any circumstance.

Wilkinson's Rule institutionalises male dominance in land governance

While in nearly all the tribal communities we find that the leadership positions are mostly held by men, Wilkinson's Rule institutionalises such male dominance by only allowing for males in the male lines to be the Munda and Manki, which are the key authority positions in governance of land under traditional system. This closes any space for women's participation in land governance.

4 Inheritance in customary laws

In a framework of an economy of individual property, inheritance is one of the most common ways to access and own land, property and resources. In 1938, a national sub-committee on women's role in planned economy proposed that so long as the system of private property remains the system of social structure; women shall have the same rights as men to hold, acquire, inherit and dispose of property (Kasturi, 2004). We have discussed in previous section about the interplay of constitutional power between the Centre and the State that leads to a labyrinth of laws determining inheritance by women. These laws often have overlapping jurisdiction, making it difficult for a common person to understand which law will apply in a context.

Generally speaking, rules governing a woman's inheritance depend upon the personal or religious laws applicable to the religion to which she belongs. This means that there are different laws determining the inheritance for women belonging to different religions. While the inheritance of Hindu women – a term which also includes Sikh, Jain and Buddhist women in its scope – is governed by the Hindu Succession Act, 1956 (and amended in 2005), inheritance of Muslim women is governed by Muslim Personal Law (Shariat) Application Act, 1937, and that of Christian and Parsi women is governed by India Succession Act, 1925. These laws, however, do not apply to the tribal communities in Jharkhand because of the special constitutional provisions governing the Fifth Schedule areas. Instead, the inheritance matters of the tribal women are governed by their tribe's customary laws, which have never been codified formally. It is relevant to note here that the section 2 of Hindu Succession Act, 1956 specifically notes that this act does not apply to tribal communities, unless they are sufficiently Hinduised.

Whether the laws are personal or customary, all fall short of providing equal rights of inheritance to women. Annexure 2 provides details of inheritance rights of non-tribal women in the three personal laws mentioned above, and in the sections below we discuss the inheritance of women in customary laws.

Customary laws

Customary law, by definition, is intrinsic to the life and custom of tribal peoples and local communities. There are various ways in which customs are defined, but in general a legal custom is the conduct or the established pattern of behaviour that can be objectively verified within a particular social setting and a claim can be carried out in defence of what has always been done and accepted by law.¹⁵

¹⁵ See Customary law, available at https://en.wikipedia.org/wiki/Customary_law.

The essential characteristics of a valid legally binding custom are that it should be ancient; that it must have uniformity and continuity; that it must be certain; that it must be consciously accepted as a right; that it must be reasonable; and that it should not be opposed to morality, public policy or an express enactment. Consequently, a valid customary law exists where a certain legal practice is observed, and the relevant actors consider it to be law. Customs are locally recognised, orally held, adaptable, and evolving. Disputes and punishments are decided upon by elders who have knowledge about these laws and traditions (Judicial Academy, undated).

Most tribal communities in Jharkhand believe that their customs are sanctioned by their ancestors and are guided by two fundamental rules. First, that the land must not pass out of the lineage, and second, that the woman shall not inherit the land under any circumstance. According to scholars, these rules have been determined partly by the belief that the human spirit, after death, resides in the underworld with other spirits of the same clan of the village and these constitute a closely united group. Some tribes such as Oraon specifically believe that if a married girl takes any property from her parents, the spirits remain in contact with such property and inflict sickness or some other affliction upon the family of her in-laws (Mullick, 2005). It is because of these beliefs that the customary rule of inheritance seeks to preserve the property in the hands of the male descendants. We have discussed tribal belief in spirits further in section 5.

Although tribal women are not permitted to inherit land, custom requires that they receive maintenance, which primarily means receipt of food, clothing and shelter, as long as they are alive. With slight variations, almost all the tribes in Jharkhand recognise the maintenance rights of widows and daughters.

Discussed below are the general rules of inheritance for women in two major tribes: Munda and Santhal.¹⁶

Munda Tribes

Rights of sons and widows: When a deceased tribal man leaves behind a widow and adult sons and daughters, custom dictates that the Gram Pradhan must first set apart some land, generally equal to a younger son's share, for the maintenance of the widow. The widow can only have a life interest – in land allotted to her. If, for the rest of her life, she decides to live separate from her sons and independent of any pecuniary benefits from any of the sons, then on her death the maintenance land is divided equally among the sons. But if, as usually happens, the widow chooses to live with one of the sons, then in that case her maintenance land is cultivated and enjoyed by that son. If the son meets all her funeral expenses, he then becomes entitled to those lands.

The residue of the real and personal property left by the deceased father is divided by the Panchayat in equal shares among all the sons except that the eldest son usually gets a little land in excess. However, it sometimes happens that a legitimate son takes some action, such as marrying a non-Mundari girl, which causes that son to be declared outcaste, whereupon he automatically forfeits his tribal rights. Such a son is not entitled to a share at partition unless he is restored to the caste by the Panch after he has given up the alien wife.

¹⁶ To discuss the customary practices of inheritance in Munda and Santhal community, we have referred mainly to Handbook of Law prepared by Jharkhand Judicial Academy and have used the resources cited in it.

Widow's maintenance when there is no son: When the deceased landowner leaves no son, but only a childless widow or a widow with daughters only, the widow is allowed a life interest in the property left by the husband. The widow may give temporary leases, such as *Zurpeshgi*, of the real property left by her husband, but she has no authority to sell such property without the consent of all *bhayads* or agnates of her deceased husband. However, if she remarries or leaves the village of her deceased husband and goes to reside permanently with her father or brother, she forfeits her right to enjoy the usufruct of her husband's land, and the rights pass to the nearest agnates. If remarrying, she can only take the jewellery and clothing that she is wearing.

Inheritance rights of daughters: In tribal communities of Jharkhand, daughters do not inherit property. The sons of the deceased owner are not under any obligation to give their sisters anything which their father, either on his death bed or earlier, desired to give to them. The sons are, however, bound to support unmarried sisters until their marriage. An unmarried sister may choose to live in the house of any one of the brothers, and the Gram Pradhan (or Panch) may allot additional land to that brother. The additional land is repartitioned in equal shares among the brothers after the marriage of the sister.

When a deceased Munda man leaves one or more unmarried daughters and no widow or son, each unmarried daughter will be entitled to the personal property left by their father and will be in possession of the lands left by the deceased till their marriage. Neither a daughter's husband nor a daughter's sons are entitled to inherit. Instead, the property will pass to the daughter's grandfather or uncles once she marries. Thus, if the deceased's father is alive, the property passes to him. If he is dead, the brothers of the deceased owner inherit in equal shares. The sons of a predeceased brother take the share that would have been given to their father if he had been living at the time.

Ghardijoa: The *Ghardijoa* is a son-in-law who lives in the wife's parental house until his death and assists his father-in-law with cultivation and other affairs. The *Ghardijoa* gets all the moveable property left by the deceased, and the Panch may also award him some share of the other property. The rest goes to the nearest male agnates. If the Panch awards the *Ghardijoa* any land, he may use it as long as his wife is alive, after which the land passes to the nearest male agnate, as a daughter's sons do not inherit.

If agnates are entitled to inherit, all agnates inherit regardless how closely they are related to the deceased. If there are no living agnates, the land of a deceased bhuinhar passes to living bhuinhars of the same village who belong to the deceased's clan (whether living in the same village or elsewhere). If the deceased is not a bhuinhar or there are no bhuinhar from his clan, the land vests with the state.

Members of the Oraon tribe do not even give land to the son-in-law who lives as the *Ghardijoa*. Among the Oraons, even the traditional notion of the life interest of widows, or of their right to *khorphosh* (maintenance land) is absent.

Santhal tribe

According to O'Malley (1910), a Santhal family shares all they have in common until the death of the father, when the property is divided equally among the sons. The eldest son gets a bullock and a rupee more than the others.

Widow's maintenance when there is no son: If a man dies without sons or daughters, the property passes to his father. If the father of the deceased is not alive, the property passes to the brothers of the deceased by the same father (not necessarily by the same mother). If there are no such brothers, then their sons will inherit. If there are no such sons, then the paternal uncles and their sons inherit.

A widow with minor sons keeps all the property in her own possession, the grandfather and uncles oversee that she does not waste it. If the widow remarries before the sons are married, the grandfather and uncles take possession of all the property; the widow has no right to get anything, except sometimes a calf is given to her out of kindness.

A childless widow is allowed one calf, one cloth, and a small amount of paddy before she returns to her parent's house, unless as sometimes happens, she is married with one of her husband's younger brothers. The brother who marries the widow is not allowed more than one share of the deceased man's property, which he would get in any case. With some adjustments in due course of time, these rules are still followed.

Inheritance rights of a daughter: A daughter, however, has no right to any of the property. She is expected to get married and therefore be supported by her husband and her sons.

If a man leaves only daughters, their paternal grandfather and uncles take charge of them and of the widow, and the property remains in their possession. When the daughters grow up, it is the duty of these relatives to arrange for their marriages and to give them the presents which would have been given by their father. When all the daughters have married, the widow gets the perquisites of a childless widow and goes to her father's house or lives with her daughters.

Taben Jom system: In a custom called Taben Jom, a small piece of land is provided to the unmarried daughter for her maintenance or if she has left her husband's home, she can construct her house and stay there with her children. This land belongs to her so long as she is alive. Though her children can use that land, the owner of the land is always her father and her brothers. An elected leader told us that the system has become defunct because of the scarcity of land in the current times. 'If a daughter is still unmarried by the age of 35 years, she has to live as a servant in her brother's house. She does all household chores yet is treated like a servant,' said Chandra, who works with a CSO.

Ghar Jamai and Ghar di jamai: There are special rules in case where there is a son-in-law who has married under the ghar jamai form or ghar di jamai form.¹⁷ If his wife has no brothers, and the son-in-law stays on in the house and works for his father-in-law till he dies, then he inherits all the immoveable property and half the moveable property; the other half of which goes to the relatives of the deceased. If there is more than one such son-in-law, they divide the property between them. There are instances when a predeceased ghar jamai's son has also been provided entitlement to inherit the property.¹⁸ In effect, the men from outside the family are more likely to gain rights than daughters born to the family.

¹⁷ Ghardi jamai is a temporary household husband who serves a fixed term of years (say five) and goes away at the end, whereas Ghar jamai is a permanent household husband. He goes to his father-in-law for life and is the catalyst by which his wife inherits her father's land.

¹⁸ See Jharkhand High Court. Sogen Murmu vs State of Jharkhand and Ors. (10 October, 2011) available at <https://www.casemine.com/judgement/in/5ac5e4bc4a93261aa794ec5a>

Puniya, a woman from Santhal community says, ‘The system has its own limitations. In instances where a ghar jamai is to receive the land, the cousins of the girl become dabang (domineering) when her mother dies. They refuse to participate in the last rituals and perform *dah karma* (death rites). I know of an instance where the cousin said that he will give light the funeral pyre only when the land is transferred to his name. Unfortunately, the whole village took the side of the male cousin.’

Decline in scope of women’s rights to maintenance over time

Since customary laws are not codified, there is an immense space for their interpretation. Kelkar and Nathan (1991) observe that the life interest of widow in her deceased husband’s land is the right that has been under attack and in which there have been numerous changes over time. What used to be the life interest of a widow in land gradually changed to merely maintenance or corpus rights

by providing only the land sufficient to maintain her till death. They observe three phases in the degradation of widow’s land rights, which evolved over generations (see Figure 1). In the first, the widow has rights equal to those of her late husband. In the second, she has rights over a plot of land sufficient for her own maintenance. In the third, any independent access to land is denied and the widow merely lives on maintenance provided by the male heirs of her husband.

Figure 1. Decline in widow’s rights over time



Inheritance rights of tribal women: Views of the judiciary

Since tribal laws are not codified, various court judgements provide some key insights on how to interpret them. We discuss below a landmark case where the judges of the bench had conflicting opinions regarding women’s constitutional rights versus prevalence of customary laws.

A landmark case: Madhu Kishwar (and Maki Bui and her daughter Sonamuni) vs. State of Bihar (1981)

Both Maki Bui and her daughter Sonamuni, belonged to the tribal community called ‘Ho’. Maki Bui had no son and wanted her daughter to receive the land owned by her late husband. She first tried to get her daughter and son-in-law to come and live with her as the customary law does have provisions for adopting a son-in-law for inheritance purposes. The strategy was resented by her husband’s family, who began to threaten her with violence.

In 1981, Maki Bui and her daughter, became co-petitioners with Madhu Kishwar and challenged the provisions of Sections 7 and 8 of CNTA, which provide for succession of property in the male line. They challenged the law on grounds of it being discriminatory against women and therefore ultra vires¹⁹

¹⁹ A Latin word used in laws to convey if something is beyond the scope or in excess of legal power or authority.

due to the equality clauses in the Constitution. The petitioners in their petition narrated several incidents in which the women were either forced to give up their life interest or became target of violent attacks or murdered. It is an interesting but unhappy line of events that followed thereafter.

The Bihar High Court hoped that the State would amend the laws and directed the State to investigate the matter. In response the State constituted a Tribal Advisory Board, which comprised of elected representatives of tribal areas along with several ministers and officers of the State, to investigate the matter.

Notes from the Tribal Advisory Board

The board, in its deliberations, acknowledged that the tribal society is dominated by males, but at the same time asserted that this does not mean that the female members are neglected. It expressed the concerns that if women are provided rights to ownership, it will increase the threat of alienation of the tribal land in the hands of non-tribals. The Board also recommended that the proposal may widely be publicised in the tribal community and their various sub-castes may be prompted to give their opinion on whether they would like any change in the existing law.

The community leaders condemned the law as another ploy of the non-tribals to grab their land by disrupting the traditional landholding system. They gave the argument that village land belongs to the community and not individuals. Hence, if they adopt the provisions of the Hindu Succession Act, it will go against the spirit of the communal ownership of land and lead to interclan and interlineage conflict. They also said that if the women's right to own land was upheld, there would be great agitation and unrest in the area among the tribal people.

The State High Court in response observed that Scheduled Tribe people were entitled to the benefit of guarantees of the Constitution and noted that the exclusion of women from inheritance would be inappropriate. The court asked the State of Bihar to re-examine the issues once more, but the State reiterated its old stand.

Judgement by the Supreme Court

The matter was then heard in Supreme Court where a three-member bench gave majority judgement (2:1) in favour of the existing provisions. It is interesting to note the reasoning in the majority and minority opinions.

The majority opinion relied on the fact that the State Government can exempt any race, sect or tribe from the operation of the three personal (or central) laws applicable to the case, namely the Hindu Succession Act, Sharia Law and the Indian Succession Act. The State of Bihar had, accordingly, exempted the tribes included in the petition, and therefore neither the Hindu Succession Act, nor the Indian Succession Act, nor Sharia Law was applicable to the concerned tribes. The court said that judicially enforcing on tribals the principles of personal laws applicable to others on an elitist approach or by judicial activism, would be a difficult and mind-boggling effort.

Referring to Article 21 of the Constitution, which enshrines the right to life and includes the right to livelihood, the court said,²⁰ that agriculture is not a singular vocation, but often a joint venture, mainly

²⁰ See Supreme Court of India. *Madhu Kishwar & Ors vs State of Bihar & Ors*, with writ petition (c) no. 219 of 1986 (17 April, 1996), available at <https://indiankanoon.org/doc/1216671/>

of the tiller's family members. 'Traditionally and historically, the agricultural family is identified by the male head, but on his death, his dependent family females (such as his mother, widow, daughter, daughter-in-law, grand-daughter, and others joint with him) have, under the Act, to make way to a male relatives within and outside the family of the deceased entitled thereunder, disconnecting them from the land and their means of livelihood. . . . It is in protection of that right to livelihood, that the immediate female relatives of the last male tenant have the constitutional remedy to stay on holding the land so long as they remain dependent on it for earning their livelihood.'

In effect this meant that as long as the female descendants are still dependent on the land, the male successor's right does not come into operation.

If the petition is accepted, the court said, there will be a deafening uproar to bring other systems of law in line with the Hindu Succession Act and the Indian Succession Act as models. The court therefore concluded that 'there is no scope, thus, in reading down the provisions in Sections 7 and 8 of the CNT Act and include female descendants alongside the male descendants.'

Minority opinion in the Supreme Court

The minority opinion in the same case cited several articles of the Constitution and human rights conventions including CEDAW. It noted that the customs of tribals are also subject to the constitutional mandate of gender equality and held the impugned provisions to be violative of the Constitution. The judge argued that when a male member has the right to seek partition, the right to inheritance should be given to a female and asserted that the denial of her inheritance is absolutely inconsistent with public policy, unfair, unjust and unconscionable.

The judge asserted that it is essential that the customs which are inconsistent with the constitutional scheme must always yield place to fundamental rights. The judge further remarked that the abolition of discrimination based on an equal right to succession is the prime need of the hour and temper of the times. He also noted that the majority judgment only reflects the general reluctance to let women be economically independent and appears to be a great blow to the struggle for gender equity.

Post judgement

In an article, Madhu Kishwar (2020), the main petitioner, reveals that she felt it would be simple to get the Supreme Court to rule that those aspects of tribal customary laws that discriminate against a woman's inheritance rights were unconstitutional. She notes that after the case was admitted on 20 August 1981, the Supreme Court ordered the Bihar government to ensure that, until the court ruled, Maki Bui would continue to enjoy her customary rights as a widow without fear or hindrance. But her in-laws began to harass and intimidate her even more for having dared to take them to Court. They made concerted efforts to drive her out of the village. Finally, she had to leave her village and go far away to live in her daughter's village.

Maki Bui had started off by asking for assistance in passing land to her daughter. But her coming to the Supreme Court had actually endangered her life even further and she could not continue living in her village. Madhu alleges that the local police, Block Development Officer (BDO) and other officials actively supported those who were endangering Maki Bui's life, and even submitted false affidavits in the Supreme Court. Maki Bui and her daughter both died under mysterious circumstances years before the Supreme Court pronounced its judgment. 'Maki Bui's fate came to be a permanent symbol

and reminder of the dangers of political intervention without preparing adequate support within the community,’ writes Madhu.

This case, however, tells us much more. It not only uncovers the overt gender discrimination in legal provisions, but also exposes the patriarchal thinking of people responsible for implementation of the law. It also is an ostentatious example where various State held institutions join hands in conspiring to rob women of their human and constitutional rights.

There are, however, a few other judgements from various High Courts and Supreme Court in India which uphold the women’s rights to equality as guaranteed by constitution and give a ray of hope for continued efforts towards achieving it in practice. A few such judgements are mentioned in annexure 3.

5 Gendered social norms influence land ownership of women

In this section, we discuss the awfully discriminatory gendered norms in Jharkhand that dictate who can access and control land and resources. The deep-seated patriarchal values which influence these norms, are further strengthened by religious beliefs. Consequentially, the society has rigid expectations for how women should behave and imposes harsh penalties on women who transgress the boundaries. This creates conditions in which assertion of land rights is met with a strong backlash that serves to keep women subjugated.

Gendered norms, beliefs and practices

As we spoke to women in Jharkhand, their lives provided a testimony to pervasive violence and oppression. We found that a great amount of suffering is due to the informal norms, customs and practices which run deep in the society and undermine women's claims to land. While women seldom have much scope to change how they are treated, they often exhibit an urgent desire to change these customs and norms.

Belief in spirits, black magic, and witches

Tribals believe that 'bongas' or spirits exercise power over the exigencies of nature, and attempt to influence these spirits through magical or religious practices (Troisi, 1979). They believe that the human spirit, after death, resides in the underworld with other spirits of the same clan of the village in a closely united group. These ancestral spirits are believed to derive nutrition from the offering made to them by their male descendants daily before every regular meal, periodically at certain sacrificial feasts, and annually at the great bone burial festival. This is believed to be a way for the ancestors to maintain their relationship with their land and clan.

After marriage, a woman gives up her relationship with the ancestral spirits of her father's family and gains a ritual relationship with a different set of household spirits. This custom is believed to ensure that a woman will not be the cause of any calamity to her husband's house, which she likely could have caused if she continued having dealings with the spirits of her father's household (Troisi, 1979). In fact, a married woman is not even allowed to enter the sacred place of her father's house.

These beliefs serve to disinherit women and preserve the property in the hands of the male descendants.

Patrilocal system of marriage

Marriage is a deeply entrenched social institution and the patrilocal system of marriage is one that weakens the position of women the most. In the patrilocal system, upon marriage a woman leaves

her own social support network in her natal village and moves to her husband's home. This makes her an easy target for all kinds of violence, which is used to control her and, under certain circumstances, to drive her away from the village. This patrilocal custom also makes a woman the 'movable' person and a man the 'immovable' person. The more stable position of men is often cited as a basis to justify the unequal distribution of land and resources between men and women.

There exists a certain social reluctance towards intra-village marriage; that is, marriage within the same village. A Santhal community leader told us about a common saying, 'a hen and a bride from the same village run to their homes,' implying that a girl who marries must always move to a village different than her native village, otherwise she will run to her parent's home. Thus, her separation from her parents and social network is used to control her and limit her ability to resist whatever demands her husband and his family make, no matter how unjust.

A series of rituals – small and big – act together to normalise the idea of daughters belonging to the marital family. At the time of marriage, a Santhal bride puts some paddy in her cloth and shakes it out just before leaving the natal house. This act symbolises that the girl is now leaving the grain of her father's land and will now be eating the grain of another land.

Another such custom – mostly practiced by Hindus but now also being adopted by tribals – is that of '*alvida saree*.' In this custom, a saree is gifted (by a brother) to a married sister on the death of the parents. This signifies that with the death of the parents she is no longer associated with her parents' family, and this is the final parting gift. After the death of her parents, a daughter reduces the frequency of visiting her natal family and gradually gets disconnected. 'If she visits her natal family after parents' death, she does not get the *maryada* (respect) that she used to get when parents were alive,' said Sukru.

'As girls grow up they keep hearing this is not your home, you will go one day to your [marital] own home. They grow up fearful and weak, thinking that this house doesn't belong to me,' says a woman from the community. In the village of her marital family, a woman knows no one, and she drowns herself in adjusting to the expectations of the marital family. She fears being called out and keeps suffering silently even in cases of extreme violence.

Women's exclusion from religious and political spheres

Women are forbidden from knowing the house spirits and excluded from participation in worship of family spirits. The spirits of the family and the clan are passed on from father to son; and men alone can relate to the family spirits through prayer and through partaking of the sacrificial animal. Women can assist in certain ceremonies but cannot sacrifice animals or witness the sacrifices. Married sisters and daughters are not allowed into the internal shrine, which is usually cleaned by prepubescent girls. Interestingly, women are also not allowed to consume the head part of the meat, since it is considered most prized part of the body.

Just as women's role in family worship is very limited, so is their role in village collective worship. They cannot enter the sacred grove and cannot participate in the main festival of the agriculture harvest, though they help in preparation of the festival and perform the main dance. Even the worship of the female spirits of the sacred grove is performed by the male village priest.

Earlier we have discussed that in most tribal communities, women are not allowed to be the heads of villages or clan. This exclusion of women from religious and political spheres never allows them to become full members of any clan or family. This creates a broad class of persons with lesser social and political rights (Kelkar and Nathan, 2020).

In a situation where the religious and political leadership at all levels lie with men, women's voices and concerns almost always go unheeded, and their lives continue to be rife with deprivations and violence.

Revered status of a married woman and denouncement of others

A married woman is considered to belong to her husband and acquires a more valued status in comparison to single women, including widows. The rituals of marital decorations and festivities further separate married women from others and give them a revered higher status. By contrast, a widow is considered 'unlucky' and so is forbidden from participating in any ceremonies thought to be auspicious, including weddings and child-naming ceremonies. This treatment of widows is largely true of Hindu and Muslim communities but is also noted to some extent in tribal communities.

There are stigmas attached to divorced and separated women, and they are often subject to question, scrutiny, and even shame. 'People think that the divorcee woman could not adjust with her husband and brought a dishonour to everyone, it must be her fault,' says Sukru. 'If she stays in her marital family, family members treat her with disrespect and everyone expects her to be always attending to one or the other household chores,' she notes further.

Deserted women are the worst off. 'People think that her husband has left her, so she must be bad in character,' notes Leelawati and marvels, 'I think widow women get at least some degree of sympathy, which deserted or divorced or unmarried women miss on.'

Below are a few other verbatim excerpts from our interviews with women.

- *'In case a widow attends any family or community function she is asked to stay away. . . . In our society a widow cannot take food unless all family members have eaten.'*
- *'Just by looking at a woman, without asking a single question, one can figure out if a woman is married or widow.'*
- *'When a woman is widowed, her economic challenges increase and at the same time lots of cultural restrictions and social pressures are imposed on her. She always stays worried and anxious.'*
- *'If a widow talks with a man, people defame her, tag her name with that man and speak ill about her. . . . Young widows are considered to have 'loose character.'*
- *'The condition of a deserted woman becomes like a street dog. She has no place to live inside the house and the world outside remains hostile to her. She has no money to arrange food for herself and children.'*

These statements portray the extent to which single women are unwelcome in the community. As a result, very often people become frozen towards the needs and sufferings of single women and do not appreciate their rights including the rights to land.

Reproduction, remarriage and bigamy

Reproduction is considered the primary role of a woman and her value in the family and community is determined largely by her childbearing capacity. When a couple is childless, people never account for the infertility of the man. Instead, a woman who does not have a child is devalued, labelled as barren, and invites cruelties by everyone in the family and community. Padma shares, 'In our village there is a woman who did not have a child. She had to return to her parents' house.'

When a man wants to marry a second time, he must take permission from the village council. Generally, the village council does not deny the permission if the first wife is in agreement. 'If a woman doesn't give birth to a child, the second marriage of the husband is considered fully justified, and the first wife doesn't have the option to 'not agree.' It is common for men to marry multiple times, but women rarely do so,' said an elected leader.

A CSO leader shared that, in practice, if a man gets involved with another woman, he gets married and later, he may communicate to the village council. The village council usually has no objection for such marriage as it is a part of their culture. Usually, when a man marries for the second time, the rights of first wife are ignored. She loses the respect of her neighbours and lives a life of isolation.

The fact that the formal system of governance does not acknowledge the second marriage, makes things difficult for the deserted women. Even when there are policies for joint titles of land allocation (for example under the FRA), the recognition of these women becomes challenging.

Taboos about certain agricultural tasks

While women do agricultural and farm work, there is a strong taboo against women ploughing the land. 'Once a woman's husband was out of the village for long and she ploughed the paddy fields. The village assembly decided to shave her hair off and make her roam in the village,' noted Sama. Another woman mentioned of an instance where the woman was made to roam naked in the village. These sorts of punishments are aimed at giving women a strong message that they should not dare plough the land.

While these taboos do not check women's participation in other labour-intensive tasks of agriculture, they normalise the dissociation of women from land ownership. The land reform movements had the philosophy of 'land to the tiller' and the tiller was almost always seen as a man. This internalised picture of a man as a tiller and thus landowner, has been a key factor in the provisions that overtly disapprove of women's claims on agricultural land, not just in customary laws in Jharkhand, but also in tenurial laws of several other states. Consequently, any land allocation programmes by the government grant land titles in names of men.

Vicious circle of violence against women

We saw women in Jharkhand experiencing all kinds of violence – physical, emotional, verbal, sexual, economic – and irrespective of caste, religion, place of residence or marital status. Social norms and practices, including the ones discussed above, support the idea that men are superior to women, that men have the natural rights to own land, that men have a right to physically discipline women, and that women and girls should tolerate violence within a relationship.

Economic vulnerability of tribal women, which gets exacerbated by the landlessness and propertylessness, plays an important role in exposing them to the risks of trafficking and forcing them to stay in abusive relationships at the same time. The laws – both statutory and customary – reinforce the norm of women’s dependence on male partners and relatives to benefit from land programmes and agricultural schemes, among other things. Surrounded by the patriarchal relations of dominations from all sides, even the slightest acts of transgressing the norms inflict increased violence on women and hold up the status quo.

Liquor, livelihood and violence

Consumption of *handia* – country liquor prepared by fermenting rice for six to seven days with a mixture of various herbs – is a unique feature of tribal communities. It is a part of the tribal food habit and many people consider it good for health. ‘When it becomes a market commodity, then it is bad,’ says a CSO leader.

Some women shared that their husbands had physically assaulted them when drunk. Ironically, in the absence of any other skills and inability to access land, preparing and selling handia is the only livelihood prospect for some widows. When women are at the centre of the business, handia attracts unruly customers, who, under the influence of alcohol, make her the target of sexual assault.

Witch hunting: The brutal violence on tribal women

Jharkhand is infamous for its tradition of harassing and killing women after branding them as witches. Witches are thought to have mystical or supernatural powers which they use to harm other humans. The woman who is identified as a witch is subject to varying forms of torture and humiliation, mostly in the presence of community elders and other community members (Kelkar and Nathan, 2020). Jharkhand records the highest number of witchcraft related criminal cases in the country. Though such crimes often go unreported, in the period between 2007 to 2015 the State reported 3,854 cases of witch hunts.²¹

Recent studies have brought to the fore the fact that conflict between the two sexes on the issue of control over resources, especially land and ritual knowledge, has always been the fundamental cause of men attacking women by branding them as witches (Mullick, 2013). What witch hunting reflects is an attack on the existing status of women, both in the sphere of social authority in general and in the space of land rights in particular (Kelkar and Nathan, 2020). It is a cruel truth that most witchcraft accusations are directed against women who appear to transgress existing social norms by asking for greater role in decision making or demanding property ownership rights (De, 2018: 18).

In their study in Jharkhand, Kelkar and Nathan (2020) find land seizure as the most frequently motivating factor in witch accusations and persecution. They note that the practice is rooted in the social belief that people may possess supernatural powers and use these powers to cause harm to others. For such beliefs to result in witch hunts, three conditions are needed: first, the belief that there are human beings who cause harm to others; second, the idea that such harm can be caused by

²¹ See Jharkhand High Court. Court on Its Own Motion vs. The State of Jharkhand, W.P. (PIL) No. 3684 of 2015 (29 June, 2016), available at <https://indiankanoon.org/doc/153561904/>.

witches who acquire supernatural means; and third, that the community accepts persecution of witches to counter such powers.

In the tribal communities of Jharkhand misfortune is attributed to the actions of bongas or spirits. There are two kinds of spirit: the benevolent (light) ones and the malevolent (dark or evil) ones. The evil bongas who cause misfortune are believed to be invoked by the witches. Witches are suspected of using their feminine charm to seduce bongas, making them swear that they will not appear when divination is performed. Thus, it is the witches who are blamed for the trouble (Troisi, 1979). Communities believe that killing the witch or driving her out of the village will get rid of the evil bonga, and thus, remove the cause of trouble. The witches who cause misfortune are for that reason deprived of human concern and instead become a threat to society.

Another disturbing factor which makes it more likely that the community will commit violence against suspected witches is the fact that in most tribal communities, it is common for people to sanction personal or non-official settlement of disputes without relying on formal procedures of State governance. Often, the village societies and leaders themselves fully believe in witchcraft and are willing to carry out persecution of witches.

The community healers who take care of the community are also the witchfinders and, just as the village leader is almost always a man, the witchfinders are also almost exclusively men. In all cases the punishments directed at witches are illegally enforced by a mob or self-appointed community courts.

A community leader provided the following sequence of indicative steps that go in persecution of a woman as a witch, though the steps may vary depending on the individual case.

1. When a woman becomes a widow, her in-laws (especially her brothers-in-law) start seeing her as a financial burden and an obstacle in the way of their full rights over land.
2. The concerned people around the target woman speak disparagingly about her and demean her by repeatedly laying accusations on her, passing demeaning comments and attacking her dignity. There already are stigma attached to widowhood, so she is an easy target.
3. The gossip in the village starts, and the target woman is seen as responsible for any misfortune in the village, be it the illness of a child, a fire that causes damage or the death of an animal.
4. To establish that the target woman is a witch, the witchfinder (locally called '*ojha*') plays a key role. As noted, the witchfinder is almost always a male.
5. In a public gathering, the witchfinder performs certain rituals and announces that the target woman is a witch. As he performs, he maintains that his body is simply possessed by one of his positive spirits who speaks through him.
6. Since there is no material evidence, the community requires the target woman to confess. Most of the time, extreme violence and torture are inflicted on target woman to extract a confession. The violence may include tying her to a tree, beating her incessantly, burning parts of her body, forcing her to drink urine or eat human excreta, inserting pointed metals into her vagina, shaving her head, parading her naked in the village, raping her and even killing her. Once accused, there is no getting away for the woman other than to confess. Denials will only increase the torture and she must eventually confess to being a witch.

7. If the woman is not killed, she is thrown out of the village, and lives a life of destitution. The accusation sticks to her and has consequences for the remainder of her life. Nobody goes near her and she becomes an object of contempt.
8. Her family accusers then succeed in taking her out of any claims on land and property.

Jharkhand enacted the Prevention of Witch (DAAIN) Practices Act in 2001, but the police officers continue to treat such cases as internal family disputes or property matters unless a grievous offence is committed. This makes it difficult to lodge a criminal complaint under the first information report (FIR) process (Sharma, 2018). 'Although the Prevention of Witch Practices Act is there, it is not effective. As a result, people are not afraid of this law. They are practicing witch system as a part of their culture, and lack of proper enforcement of law has increased the morale of those involved in it,' says a CSO leader. Another CSO leader shares that there were a few cases where *Ojhas* – the witchfinders – were suspected but they were soon freed because of absence of proof. Even when the entire village has witnessed the abuse inflicted upon the accused woman, no one comes to give a statement to the police.

Witch persecutions and the threat of witch accusations serve to reinforce women's conformity to patriarchal gender norms that prevail in society. In the patriarchal hierarchy, the half of the population that stands vulnerable to being declared witches are at a distinct disadvantage, and persecution and witch hunts are ever present dangers (Kelkar and Nathan, 2020). Almost every woman we interviewed understood the risk of witch hunts and shared the fear that they themselves or the other women could be accused. The attacks on just a few women are quite sufficient to make most and perhaps even all women remain fearful of being ostracised.

Single women are more vulnerable to violence and witch persecution

'While journey of 'singleness' for all women may be different depending on a range of social and personal factors, something that unites them across caste and religion, is the stigma attached to them and the vulnerability they suffer,' says a CSO leader. 'The general notion is that single women do not belong to anyone . . . and no one wants to be accountable for them,' she adds.

The tribal custom which vests ownership of land with the men of the household, and provides women with only the maintenance rights, makes women dependent on men for their survival and livelihoods. As a result, the lawful 'owners in waiting' who are men by default, see the single woman – whether a widow or a sister or a mother – as a barrier to full enjoyment of their rights. They consequentially perpetrate all kinds of violence – sexual, physical, emotional, verbal and financial – to evict them from the land or the property that they are waiting to own. The secondary status accorded to single women serves to make their oppression easier and more intense.

For example, if a woman becomes a widow, the family of in-laws, including the brothers-in-law, who will fully own the land after she is gone, makes every effort to ensure that the widow leaves the house – either by marrying someone else or returning to her natal family or staying alone somewhere else. Widowed women often have to move back to their natal families due to lack of choice.

Samsun Nisha, a community worker, says that the reaction of the widow's in-laws is, 'When we have lost our son what will we do with the daughter-in-law?'

Shila, who continues to stay in her marital house despite all the suffering inflicted by her in-laws, says, 'Women are forced to stay at in-laws' house as they have no option to go back anywhere. If she leaves the in-laws' house, she and her children will lose any share in the property.' She also noted that if a woman leaves the marital home, it becomes difficult for her to access her share of the land and keep a track of what is happening.

Most divorced and separated women have to shift their home to their natal families, with or without their children. 'The cost of moving place of residence to one's natal family is high. The woman has to take care of her parents and the children of her brother, do household chores and provide labour in the agricultural fields', notes Jaishree.

Most interviewees shared that if a woman returns to her natal family, even then she is at the mercy of her parents, brothers and sisters-in-law, and even neighbours. Malti says, 'If a widow is in her natal family there also people blame her for the situation. Neighbours make allegations and think that it is the woman's fault that she could not adjust in the in-laws' family.'

Jaishree recounts the story of Manka, a widow who lived with her brother's family and says, 'Sometimes Manka's brother used to beat Manka and even their mother (because she used to support the daughter). Finally, Manka had to leave and started working in a brick kiln.'

Hansda told us about Sarswati. After separating from her husband, Saraswati started living with her natal family. Her family members did not give her enough food to eat so she started working as a wage labourer to meet her requirements. 'My grandmother used to give her food, but after my grandmother expired, Saraswati's condition turned from bad to worse. Soon she fell sick and passed away'.

Severe restrictions are imposed on single women's mobility and interaction with others. They are not expected to have an opinion or independent will. If they have an opinion, they are not expected to express it or act on it. In general, women's social network is limited compared to men, and a single woman's domain is even further curtailed. Kalpana, who is a widow, shares, 'I cannot even go out to market. I fear that if I do not listen to them, they would call me a witch.'

The fear of being called a witch came from nearly all the single women that we interviewed. This fear plays an important role in keeping women compliant with the established norms and prevents them from claiming their land rights.

Assertion, backlash and the maintenance of status quo

In December 2019, an article appeared in the New York Times quoted Kalliopi Mingeirou, who leads the U.N. division focused on ending violence against women and girls (Gupta, 2019). He said that backlash has helped normalise violence and harassment, either by dismantling legal protections or by hollowing out support systems.

That is exactly what we see in the stories of the women in Jharkhand.

When women demand their rights, including those related to land, they suffer serious backlash. Maki Bui's story (in section 4) is a testimony to this, but many stories and statements of women confirm various forms of backlash. Women are maligned and disowned. They reported use of subtle forms of

coercive power such as ridicule, verbal abuse, stigmatisation, ostracism, and character assassination, and overt forms of violence such as hair pulling, beating, physical torture and rape.

In several instances, women were forced to silently settle for receiving much less than their entitlements. When they claimed their shares, they were offered meagre financial compensation and were pressurised to waive their rights to property. They were not given shares if the property was already sold.

‘If a married woman asks for her share in land, the man says – How can you ask for land? Is it your land? Have you got it in your dowry? I cannot give land in donation,’ tells a CSO leader. A woman noted that when a young widow cannot dare to ask for her share in land, she waits for her son to grow up and ask for his share.

After death of her husband, Ratna once went to the village leader to talk about her struggles in meeting her basic needs and the challenges posed by her in-laws since her husband’s death. Her elder brother-in-law became very angry at this and beat her with a stick. ‘He called me a prostitute, and a witch, I was scared, there was nobody to protect me,’ says Ratna.

‘I know of women who could not bear the abuse and committed suicide,’ shared a CSO leader.

Both the actual dispensing and perceived fear of physical, emotional, psychological and intellectual violence is used to tame and control the ‘erring’ women into submission. ‘Backlash helps to preserve gender stereotypes and maintain the ongoing system. It limits women’s aspirations on one hand and at the same time imposes self-administered controls on expression of new behaviours,’ says a CSO leader.

The cultural norms that grant impunity to the perpetrators also contribute towards the normalisation of gender-based violence. Women themselves are conditioned to consider it permissible and inevitable to a great extent. This contributes to severe under-reporting of instances of violence. Even when women want to report, they have difficulty in accessing support resources and avenues to hold perpetrators accountable.

These patterns of violent behaviour play a key role in maintaining the disparity in power relations, preventing women from asserting any access to land, and pushing them into vulnerable positions.

6 Women's aspirations for land and justice

Rituals and customs that appear small and harmless by themselves play a critical role in shaping attitudes and beliefs. Decision makers are not immune to these influences, and their biases become entrenched in law and policy along with their implementation.

Since independence, there have been many legal provisions to safeguard the rights of scheduled tribes and of tribal women, but at the ground level, justice has remained a distant reality, primarily because of the patriarchal mindsets reinforced by the gendered norms and practices. In our discussions with women, we tried to find out whom do the women approach in case they face a problem – including gender-based violence – or a dispute, and how does the system treat them. Their responses reveal a gamut of challenges that women face while seeking justice. At the same time, their stories speak volumes about women's resilience and aspirations.

Women aspire to own land

When women gain control over land, they gain the independence necessary to exercise their agency, confront injustice and inequality, and acquire power to pursue productive livelihoods (Kelkar and Krishnaraj, 2013). Their independent right to own and control land and other assets are integrally linked to measures to change the ideology and structures of patriarchy within the family and in social relations.

The women we spoke to realise the value of independent access to land and desire to see their names on land titles. All women, irrespective of their class, caste and marital status perceive access to and ownership of land as a very important component of their well-being and independence. Women frequently said that ownership of land would make them happy; it would increase their respect and enhance their status; they would feel fearless, secure, confident, and independent; and they would not be threatened to leave the house. Some verbatim excerpts from women are produced below:

- *'Ownership of land enhances women's status in the society as well as in her in-laws' house. She can construct a house, and no one can evict her including her in-laws. She can live in or rent the house.'*
- *'Through land a woman can create employment for herself as well as others who work on her land. She can cultivate the land. She can lease the land. She can earn by producing crops or vegetables and feed herself and her children.'*
- *'If she falls sick, she can go to doctor for her treatment as she will have some cash income.'*
- *'In exigencies such as wedding of daughter or any health needs or giving bribe to secure children's job, she can sell the land and arrange financial resources.'*

- *'If a woman gets land, she will become a raiyat (landowner). Her family members will start taking care of her.'*

Women understand that for them, ownership of land can make the difference between being self-reliant and dependent; between being able to live with dignity or experience humiliation; between possessing a safe and stable home or being homeless; and between having a voice in family decisions or being ignored.

Stories of women's resilience

Women are not always silent spectators of power and resources in male hands. They manifest their individual and collective agency in numerous ways to claim their rights. A CSO leader notes that tribal women in Jharkhand have a history of resilience. 'They have fought great battles along with the men folk and have never feared difficult circumstances. So, ability to struggle is in their blood,' he says.

Nima was fortunate that her parents supported her when her husband passed away and she did not want to live in her marital home. When she came to live with her parents, they encouraged her to learn some skill and become self-dependent. She started volunteering at a tailoring shop and helped the owner stitch clothes for free. Later she purchased a sewing machine and opened a tailoring shop.

Sukru, who stays in Hazaribagh town, was not as fortunate. Her brother was not happy when she and her son began to stay with Sukru's parents and would abuse her every now and then. Due to increasing conflicts, she decided to live separately in a rented room. Sukru says, 'It was difficult to earn to survive. I took home tuitions for very small children and started making food in someone's house. It is difficult for a woman to live like this, but I don't want to look back.'

We found that women's resilience increases manifold when they come together as a collective. Association with NGOs and consequent organising on ground has been a boon for each participating woman – more so when they are single. Several women spoke about the strength they received from their collective or the local CSOs. Most importantly, for the single women who were part of ENSS, the collectivisation has broken the walls of isolation and gives them a sense of identity and strength. The ability to associate and relate to other single women helps them conquer their fears. An environment of empathy and support quite evidently helps them feel stronger and encourages them to proactively extend their help to others.

Below are the testimonials of the advantages that women see in collective functioning.

- *'There are people who cannot raise their voice alone, but such people can raise their voice through organisations such as Samvad. . . . I got a new identity through my association with Samvad organisation. Hence, I deal with people and the government machinery with confidence.'* (community leader)
- *'I used to hesitate to go anywhere. Then I learned from the women at ENSS and prepared my Aadhar card, recorded my marital status as widow, and applied for widow pension.'* (single woman)
- *'Legal Cell Advocates [facilitated by ENSS] intervened to resolve my land dispute with my brother-in-law. They could help organise a village assembly.'* (community woman)

- *'Revenue officials do not hear a woman when she goes to them. But when you go in a group, they are bound to listen and behave properly.'* (ENSS member)
- *'We trust ENSS more than anyone else. Once ENSS ran a postcard campaign to the PM office. The PM has responded to our letter.'* (single woman)
- *'Men holding responsible positions in the village do not want women to progress. They try to create problems. But once women have the resolve to do something, they beat all odds.'* (ENSS member)

'When women come together in their struggles, they do support each other. They derive strength from each other and give it back to each other. . . . Their togetherness helps them navigate the difficult realities. . . . Together they can act to bring about the larger changes including changes in rigid social norms, which are otherwise very difficult for women to challenge individually,' says a CSO leader, who has been working with women collectives for long.

A few women did receive help

Women rarely go to the Circle Office of the Revenue Department, but we interviewed one woman who had a good experience with the Circle Officer. She reflects: 'My land was encroached upon by my cousin. He created so many problems that I had to lodge an FIR against him at the local police station. I even had to visit Sub Divisional Magistrate and [District Magistrate] office to get possession of my land. The Circle Officer has given me the copy of the khatian recorded in my name', says Priya.

Another woman noted the support she received from her employer. When she was forced to leave her marital family and was not welcome by her brother, a Mukhiya helped her get work as a cook in a school. The school authorities were kind and allowed her to stay in the school premises and admitted her daughter to the school.

There also have been a few instances where Gram Pradhan and Mukhiya have helped a woman through providing shelter or arranging for other basic needs. 'When a woman comes to me, I generally try to talk to the other party immediately, and resolve the issue,' said a female Mukhiya.

A few CSOs working in the area have been of great help to the women in guiding them and standing with them through the challenges. However, a CSO leader noted that if CSOs do not work carefully, the tribal men often exhibit resistance, specifically when the CSOs talk of women's rights. They consider CSOs to be outsiders and thus expect CSOs not to interfere in tribal ways of life. 'That also is a way to maintain the existing power relations', he observes.

Traditional leaders have a strong role in land issues

All Fifth Schedule villages have their traditional system of governance alongside the formal systems established as part of PESA. For example, in the Munda community, the traditional leader called Munda or Gram Pradhan is assisted by a *Dakua* (messenger / informer), a *Pahan* (priest), a *Pujar*

(assistant priest) and a *Mahto* (a revenue functionary). The Mahto assists the Munda in discharging land related responsibilities. In case of a problem, a woman can go to Gram Pradhan of the village.

If any dispute is not resolved at the village level, it goes to court of the *Parha Raja* for consideration. Several villages belonging to the same clan have a Parha Raja as their leader. There are 22 clans in the Khunt katti region, and each has its own Parha Raja.

Next most senior in authority is the *Maharaja*, which is the highest position in the line of traditional authority. 'The position of Maharaja can be equated with the present day Prime Minister,' notes a community leader.

Like Mundas, the Santhals have a defined system of governance and a range of positions including *Manjhi Haram* (village headman) and *Naike Haram* (village priest) to carry out specific functions. With rare exceptions, these positions are hereditary and passed on in the male lineage.

Alongside the traditional community head, called Gram Pradhan, villages in Scheduled Areas have an elected head (as part of Panchayati Raj system), called Mukhiya, in each panchayat. Interestingly, while a traditional community head is almost always a man, more than 51% of all the elected representatives in Jharkhand are women. Jharkhand law reserves 50% of Panchayati Raj positions for women. This reservation has allowed many women to come out of their households and actively participate in their community's development and well-being, while facilitating their individual growth.

A Gram Pradhan has a greater role in collection of rents and taxes, resolution of disputes, and protection of land, trees, rivers and other natural resources, while a Mukhiya oversees the development schemes of the government. We were told that women do not attend village meetings presided over by the Gram Pradhan. These meetings are mostly concerned with social, cultural or land issues. However, the meetings presided over by the Mukhiya primarily relate to government schemes, and women can attend these meetings.

Although Gram Pradhans are the custodians of all land related documents and manage land issues, their role has decreased over time. A Gram Pradhan who was not happy with increased control of government over land issues said, 'We opposed online system of land management in 2016-17 as it is an intrusion in the domain of Gram Pradhan and curtails our authority.' Another Gram Pradhan in Santhal Pargana area said, 'Since beginning, Gram Pradhan has been the custodian of village land records, but for our village, the Circle Office has taken away the village land records. I have requested the Circle Office several times to give me back the land record, but that has not happened. With taking back of land records by Circle office, it feels as if our hands are cut.'

A woman Mukhiya noted that she receives applications for land related family disputes every day. We wondered how the Mukhiya and Gram Pradhan coordinate between themselves. Some said that the office of Gram Pradhan and Mukhiya work in close coordination, and in case of disputes they work jointly. But others strongly expressed their dissatisfaction with the system. One Gram Pradhan told us, 'In the Gram Sabha meeting we select deserving people for the benefit of land or house allocation or any other scheme, but when they are approved from Mukhiya or Panchayat office, we find that the names of deserving people have been changed.' He feels that the political aspiration and individual interest of Mukhiya and active role of middlemen hijack the rural development programmes.

Though the cooperation between Gram Pradhan and Mukhiya varies with individuals involved, it appeared that the power of Gram Pradhan is still unchallenged. In words of a Mukhiya, 'Earlier a Pradhan was regarded as the Chief Minister of the village, but today he has no financial power. However, his decision is final in the village and everyone obeys that.'

Traditional village assemblies are patriarchal

Disputes related to land and family matters such as divorce and marriage are settled by villagers themselves under the chairmanship of the Gram Pradhan.

Antana tells us that in a village assembly all the male heads of the households gather together, but women are not permitted. Only a woman whose matter is being discussed can attend such an assembly. At the most, she can be accompanied by one other woman. In effect, it is men speaking between themselves and taking a decision on an issue which concerns women.

'The decision taken by the men participants in the Gram Sabha is considered as final,' says a Gram Pradhan and adds that if the problem is not resolved at the village level, then it is taken to the higher level assembly. There, again, no women are included.

When a village assembly is organised for the settlement of problems, Handia [local rice beer] and mutton must be served. In addition, says Sabita, 'When the work is done, concerned woman has to pay INR 2000 or 3000 to the Munda.'

A community leader justifies this money saying, 'A leader invests time and leaves all his other works to attend to the case. Many a time he and his associates travel from a distance to participate in the meeting, and their expense needs to be covered.'

There are several instances when Pradhan gives a biased decision. He favours those who are stronger and powerful in terms of money and political linkages. 'Thus, despite spending so much money, a woman is not sure if she will get justice,' says Sabita.

Some verbatim excerpts below reveal the other intricacies of accessing justice through traditional system.

- *'Organising a panchayat meeting is expensive. The party which organises panchayat must serve a grand feast including chicken or goat meat along with the liquor for large number of people. Thus, if a woman wants to organise a panchayat she needs to go to her natal family so that they bear all the expenses.'* (village woman)
- *'When panchayat is called, nobody speaks in favour of poor and helpless people, especially when they are women. Speaking in favour of poor means inviting enmity with the dominant group in the community. Once there is enmity, it becomes difficult for a person to live in that village.'* (CSO leader)
- *'Once the case is resolved, the party gives money out of willingness to Gram Pradhan. The accused is fined, though the amount of fine is meagre.'* (Gram Pradhan)

Formal system is not women friendly

As far as possible women try to settle all their disputes, including land disputes, within the village. It is considered rather improper for anyone to take a dispute outside the village boundary. If a woman approaches the formal justice system for any issue, people think that she has brought a bad name to the community.

‘The family thinks, how she could dare to drag us to police station? Let us teach her a lesson’, says Manika.

None of the community women we interviewed had an experience of going to the police station to lodge a complaint. A leader at ENSS says, ‘the reasons are many,’ and lists the following reasons – women themselves consider violence against them to be normal and have an attitude of condoning violence by men; women are not aware about their own rights and are distanced from formal systems and processes; there is absence of support systems and lack of resources.

Some women leaders said that the police personnel themselves are patriarchal and think that a woman should always compromise with her husband’s family. Those who had an experience of going to police station remember it as a frustrating experience. Below are a few excerpts from women leaders at ENSS, who have tried to help other women in the past.

- *‘A woman has to face lots of problems at the police station as all police personnel are male. She cannot tell male police personnel about her problems.’*
- *‘Instead of helping a woman, the officers in police station expect her to write a complaint, even when she comes in a traumatised state and when no other option seems open to her.’*
- *‘The police do not want to take women-related cases easily. They think that when women are getting food and clothes, women should not require anything else.’*
- *‘If a woman goes alone to police station, police officer and Gram Pradhan both scold her. Most often she comes back without getting any solution to her problem.’*
- *‘Police asks for bribes. If woman’s in-laws hold some power, then they make a phone call to police station and instruct them not to take any action. They convince the police officer that the daughter-in-law is at fault.’*

A CSO leader says that the formal legal system such as court and police are insensitive to the tribal value system and style of life. They mostly behave rudely and cause more humiliation. Debasree De (2018) notes that given that tribal communities historically do not have much restriction on sexual ties between men and women, the non-tribal *dikus* (outsiders) envisage the sexual behavior of the tribal women as promiscuous and associate them with ‘free sex.’ Whenever tribal women went to the police station to report a case of sexual exploitation, the patent answer they got from the police officers is that they should take it lightly as they were reputed to be lax about sexual mores (Srivastava, 2010).

Women are not aware of land affairs

In a context where land is chiefly considered to be men's domain, women are unaware of the simple matters related to land. They are unaware of the parcels that their household owns; the documents that are essential to prove land ownership; the offices that can be approached to address land issues; and others. Women's limited knowledge coupled with the prevailing discriminatory norms often results in the reinforcement of power imbalances and women's subordination to male partners and relatives.

Several women we spoke to recalled instances where they were not allowed to know about the land details of the family. When Nirmala asked her husband about the family land he didn't share any details and instead made caustic comments. When he passed away a few years later, Nirmala didn't have a clear idea of the land that belongs to the family. 'Even today, my in-laws don't tell me the details. They don't discuss matters related to land before me', said Nirmala.

A CSO leader opines that land issues are a bit complicated. She also thinks that women are systematically kept away from knowing even the basic details of land. 'Everyone thinks that a woman should have no concern if she has a place to stay and is getting food to eat. Nobody has ever taken an initiative to educate women,' she notes.

Priya, who is non-tribal, signed a set of papers on her brother's request, and realised a year later that those papers declared her 'no objection' to her brother selling the ancestral property after their father's death. She did not know that her brother required her concurrence to sell the father's property. She was shocked when she asked her brother about her share and her brother told her that he had already sold the land.

'Lack of awareness and lack of guidance makes me feel helpless,' says Sudha whose husband is mentally challenged; she is incessantly abused by her in-laws.

Several CSO leaders and advocates recognise the need to create awareness, not just amongst women but also amongst other stakeholders.

An advocate shared that women absolutely do not have any idea of the various kinds of courts or the advocates available in the court. 'Only those women who get some support from men in the family can think of visiting an advocate or accessing formal systems of justice.' He also adds that most of the women who visit him are hardly aware of the technical details of the dispute.

'Women themselves rarely speak. It is the male member accompanying her, who speaks with the advocate,' he tells us.

He thinks that in addition to raising awareness of women, it is also important to conduct gender sensitisation of the cadre of advocates so that the advocates are aware of the progressive thinking and the priorities at the national and global level. The advocates should also refer to the reformist judgements given by courts in support of women's rights.

Even when women are aware of their rights, they rarely claim

All the advocates that we consulted said that even when women know about their rights, they do not claim them. This is especially true for non-tribal women. When women claim their rights, they usually want to claim from their marital families and not their natal families.

‘In maximum cases, women do not want to file partition suit against their father and brother. Even if they are poor and facing severe financial constraints, they think it is their fate,’ said an advocate.

‘Some Hindu women who are aware of their rights are claiming their share. But it is extremely difficult for them to manage the court fee and the consultation fee of the advocates. The fact that civil cases may take ten or more years for settlement make things even more challenging,’ shared another advocate.

‘In most cases, women come to a compromise with their brothers and give up their shares by registered gift deed at the time of partition Even if there is a very forward-looking person who decides to give property to his daughter, gives the property of lesser value to the daughter and one of bigger value to the son,’ noted the same advocate.

The paradox of opinions

Land undoubtedly amounts to more than a mere physical or productive asset to be owned by any individual. Since, it is closely related to the notions of identity, power, honour, authority, and prestige, it is understandable if people have conflicting thoughts around ownership of land by women.

To the community leaders and elected representatives, we asked whether, in their opinion, women should receive land rights as daughters and wives. While some respondents thought there is no need for women to own land, there were others who thought that women would immensely benefit from it. Interestingly, there were a good number of respondents – both men and women – who had conflicting opinions. They agree that independent ownership of land makes women’s lives better and the benefits translate to entire families and communities; but also remain skeptic that it will create unrest and tear the basic fabric of their society.

Below are several excerpts from our conversation, and these help us deduce that even when people know that ownership of land is bound to benefit women in numerous ways, they fear the change in gender relations and the change in the power of women which would come with stronger connection between women and land.

No, there is no need for women to own land

- *‘After marriage, a daughter or sister comes to her parents’ family and expenses are incurred by parents and brothers on her meals, transportation, clothes given to her as a gift, etc. So, she cannot be entitled for any rights over land.’ (community leader)*
- *‘Even if a woman’s name is entered in the land records, it will not bring much difference in her life. At the most, she will feel happy thinking that she owns land.’ (community leader)*

- *'Land is immovable. A girl marries and joins her marital family. So, if the matter is seen from that angle, then I do not think that woman should be given land in her natal family. Married woman already has land in her marital family.'* (community leader)

Yes, it will help women

- *'If a woman owns landed property, there will be decline in her exploitation and divorce rate. If law is framed in this regard, women's conditions will improve.'* (community leader)
- *'If a woman owns land, huge social change is likely to take place and violence against women will decline.'* (elected leader)
- *'There will be lot of changes in the condition of a woman if she owns land. First of all, she will not be evicted from the house.'* (community leader)
- *'Of course, women should have land in their name. It will give them a social security. They will be empowered and enjoy more power in their families. Fewer incidences of disputes among the brothers and sisters of a family will be seen.'* (elected leader)

But ...

- *'But simply framing law will not be enough, the law must be implemented in letter and spirit.'* (community leader)
- *'No, if sisters and daughters start getting equal [to men's] share in the parents' landed property, it will not be appreciated in our society. It will invite land disputes and unrest.'* (community leader)
- *'If such law is introduced in a tribal society, the community will oppose. A girl gets married and goes out of the village. In case tomorrow she gets married outside the caste or community, the land will go out of our family, community, and ancestors will become angry.'* (community leader)
- *'I will not give any comments in this regard because if a woman owns land, both negative and positive impacts may be seen in the society. So, I am not comfortable with this issue.'* (community leader)
- *'If land is partitioned in the name of women, then family land will be fragmented. This will be a problem in our society.'* (elected leader)
- *'Yes, they should be given land. But it may create some social and familial problems. All women after their marriage receive rights in their marital houses. So, why should they be given rights over their parent's property? If they demand, there will be social tension. I think our present system is good.'* (elected leader)

7 In conclusion: Issues and strategies

After our conversations with women and other stakeholders, it became increasingly clear that for many families, land simultaneously represents an important productive resource and a site of cultural practices, and that strong and secure rights over land are a firm springboard for a life of dignity. Women realise that land security has a tremendous potential for facilitating income gains, improving food security and acting as a safety net in times of hardship.

There are several key presumptions that determine men's and women's ownership and control of land in India. A chain of suppositions that have been most detrimental for women's independent rights, namely that land belongs to the household; that household heads are men; that the interests of all household members are always aligned; and that family resources are shared equitably within the household. The policies of land governance – including those determining land distribution, inheritance and acquisition have presumed these ideas for long. But these presumptions are often incorrect. In practice, it therefore matters greatly who holds the legal rights to the land or property, and this is especially important when a household dissolves for any reason, including death, divorce, alcoholism, violence or migration.

The security of land rights can be ascertained by answering two key questions: first, how legitimate and lawful are the rights, and second, how are the rights realised? Below, we examine our findings on tribal women and land in relation to these key questions and discuss the vulnerabilities and potentials which the findings entail. In the light of this analysis, we suggest long-term and medium-term strategies aimed at achieving broad change, as well as medium-term and short-term strategies to reduce the vulnerability of women.

Women's land rights in formal laws

Women's land rights can exist only to the extent to which they are first guaranteed by law. Their full enjoyment also depends upon their social recognition, including by women themselves, and such recognition requires understanding the nature of the rights. This understanding must encompass the scope of land rights such as rights to own, access and use land, and whether the rights are granted for a clear and extended period. The understanding must also include a cognizance of situations that terminate or limit land rights due to cultural or religious norms, or a change in a woman's social or marital status, or a change in the leadership or structure of her community.

The Constitution of India is undoubtedly the most significant touchstone for determining the legitimacy and scope of women's rights. The principle of gender equality is enshrined in the Constitution and it empowers the states to adopt measures of positive discrimination to benefit women as well as Scheduled Tribes. Over the years, the country has adopted a progressive approach and has committed to several international treaties, conventions and human rights instruments that guarantee women equal rights in law and practice and ensure removal of harmful practices. Key among these are the 1979 Convention on Elimination of All Forms of Discrimination Against Women

(CEDAW) and the 1995 Beijing Declaration and Platform for Action. Most recently, India has subscribed to the UN's post-2015 Sustainable Development Goals (SDGs), of which Goal 5 lucidly maintains: 'Gender equality and the empowerment of all women and girls is a goal in itself as well as a catalyst for achievement of all the other goals.' SDG Indicator 5.a challenges countries to 'Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.'

With global discourse around women's rights gaining momentum, Indian policy makers have also been taking initiatives to improve the land rights of women. This development is conspicuous over the successive five-year plans. The 2016 Draft National Policy for Women recommends prioritisation of women in all government land redistribution, land purchase and land lease schemes. Recently, in a strategy paper, NITI Aayog (2018), has emphasised the need for improved asset ownership and economic security of women and reiterated the need for encouraging joint registration with spouses or sole registration of land in the name of the woman through adoption of registration fee and stamp duty concessions.

Despite such pronouncements in the Constitution and national policies to strengthen land rights of women, the states have responded unevenly. Most State tenurial laws treat men as the primary subject and the law provisions generally strengthen the patriarchal hold over land, which naturally acts to women's disadvantage. More importantly, the country has adopted a plural legal system in which all family related matters, such as marriage, adoption, divorce, maintenance and inheritance, are governed by a set of personal laws that are guided by respective religious beliefs and practices. The Hindu Secession Act excludes its application to the members of Scheduled which are instead governed by the tribal customary laws as discussed earlier in section 4. Thus, in addition to being marginalised in the mainstream land policies, tribal women suffer the inherent biases towards women's land ownership in the customary laws of the various tribes.

The customary laws of inheritance and succession of most tribes in Jharkhand are guided by two fundamental rules: first that the land must not pass out of the lineage, and second that the woman shall not inherit the land under any circumstance. On the land owned by men, women only receive rights to maintenance. Since their land rights are mediated through men, they become vulnerable to breakdowns in relationships (either through divorce, widowhood or otherwise) and subject always to the changing priorities of male landowners. As a consequence, they are deprived of the strength of a vital economic and social asset and pushed to economic and emotional dependence, which often results in lives of vulnerability, humiliation and abuse.

The inheritance laws of tribes in Jharkhand display the huge gap between the ideals of equality enshrined in the Constitution and the discriminatory realities that blight lives of women. It is disturbing to note how these discriminatory realities are embedded in the legal framework of the country.

As discussed above, SDG indicator 5.a.2 aims to realise women's rights to land in the law and uses six proxy areas to determine this. In the box 3 below, we mention the position of Jharkhand in relation to these six areas. Clearly the State fares poorly in each of these indicators, telling us that land rights of tribal women in Jharkhand are nowhere near being 'lawful' and 'secure.'

Box 3: Legal status of women's rights to land in Jharkhand

Legal and Policy Questions	Situation in Jharkhand
Is the joint registration of land compulsory or encouraged through economic incentives?	State does not have any policy to encourage joint registration of land. Distribution of ceiling surplus land and allocation of titles at the time of rehabilitation are all done in name of men. Although the Forest Rights Act has the policy of joint titling of Individual Forest Rights, in practice it is rare to see joint titles of forest land.
Does the legal and policy framework require spousal consent for land transactions?	The State has no such policy.
Does the legal and policy framework support women's and girls' equal inheritance rights?	The customary laws that govern land rights of tribal women are explicitly patrilineal and forbid women to inherit land.
Does the legal and policy framework provide for the allocation of financial resources to increase women's ownership and control over land?	The State has no such priority. A policy for reduction in stamp duty, in case of land registered in name of a woman, was introduced in 2017, but was withdrawn early in 2020.
In legal systems that recognise customary land tenure, does the legal and policy framework explicitly protect the land rights of women?	Tenurial laws governing tribal land explicitly disfavour women. Nor do customary land laws provide land rights to women. To the contrary, they act to ensure that land does not go to women and provide women and girls with maintenance rights only.
Does the legal and policy framework mandate women's participation in land management and administration institutions?	Key positions in traditional systems of governance are held by men. Women generally do not participate in traditional village assemblies. The State mandates that 50% of elected leaders within the Panchayati Raj system must be women, but elected leaders have a limited role in land management in tribal areas.

Realisation of rights

Laws and legal systems do not function in a vacuum. They operate and derive their legitimacy in the hands of administrative systems and the established social practices. A position paper by the United Nations (2017) notes that realisation or enforceability of land rights requires that 'states must ensure that women be fully informed of their land rights and that they have access to justice to enforce them without discrimination, including in official bodies, courts and other relevant dispute resolution bodies, such as customary institutions.'

We noted above how there is a huge gap between the constitutional promises and the legal framework determining land rights of tribal women in Jharkhand. This gap only widens when we

consider constitutional promises in the light of the actual realisation of rights. According to the India Human Development Survey (2018) conducted by NCAER, 83% of agricultural land in India is reportedly inherited by male members of the family and less than 2% by the females, with the remainder being acquired through other means.

This gender gap in inheritance of agricultural land points to appallingly lax enforcement of even the existing 'inferior' rights that women have through tenurial or personal laws. Women are usually not aware of their rights, and even when they have rights – especially in the case of non-tribal women – they fail to claim them because the claiming often involves a long and humiliating struggle against one's own family members. Women are raised in a culture of submission and self-denial and find it extremely difficult to resist the family and social compulsion to forego their inheritance rights in favour of brothers. The expensive and complicated course of legal recourse further obliges women to silently relinquish their rights.

In case of tribal women, customary law provides that women have only rights to maintenance, which means that they have the right to reside on the property and the right to fulfilment of basic needs as long as they are alive. Women have maintenance rights in the father's land and property when they are unmarried, and in the husband's land and property when they are married or widowed. This makes women dependent on men for their survival and livelihood. As a result, the lawful 'owners in waiting,' who are men by default, see the single woman – either a widow or a sister or a mother – as a barrier to the men's full enjoyment of their rights. Such men consequentially perpetrate all kinds of violence – sexual, physical, emotional, verbal and financial – to evict the women from the land or the property that they are waiting to own. Any assertion by women is met with severe backlash since it is construed as a challenge to male authority and a disruption of the social order which needs to be controlled.

Men dominate the traditional systems of governance that are expected to provide justice. It is mostly men who hold the positions of leadership, who participate in village assemblies, and who pronounce the judgements. In a system where men communicate with men, women's voices often go unheard. The state's formal system of justice also has its own difficulties of being complicated, expensive and exhaustive. The formal system of justice is also not free from oppressive patriarchies that women must encounter if they choose to access the system.

In conclusion, the denial of legal rights to own land and the consequent violence subjected to them, along with the near absence of any recourse to justice, essentially means that the vision of equality prescribed by the Constitution faces a constant and massive assault in the hands of patriarchal structures within the family and the larger community.

Emerging issues and strategies

Our Constitution guarantees equal rights to all, including women and tribals, but at the same time adopts a plural legal system that leaves issues of inheritance to the personal laws of various religions and the customary laws of the Scheduled Tribes. Those same personal laws and customary practices leave women vulnerable to discrimination and violence. The key question is whether, in an era that promotes the recognition of fundamental rights, women should continue to be subject to the inequality and indignity in the name of preservation of religion or autonomy of the tribe. Given that

women, including tribal women, are as much citizens of this country as anyone else, and have contributed to its evolution and progress, why then should they be denied the constitutional promises of a life of equality and dignity? 'The question of independent land rights of tribal women have also been ignored by almost all the tribal rights movements in Jharkhand and in other states of India,' accepts a senior leader who has been leading the land rights movement in India.

Post-independence, there have been several instances where discriminatory aspects of the personal and customary laws related to women's inheritance were presented for judicial scrutiny. In most of the cases courts have held that discrimination under the personal laws of various communities is based on reasonable classification (Agnes, 1999). However, in the recent years there has been a welcome trend of courts upholding the rights of women and girls. For example, in a judgement on 11 August 2020, the Supreme Court held that daughters and sons are equally important members of the parental family and have the same rights and liabilities.²² The court also asserted that a daughter's marriage does not change her position. Similarly, in another judgement on 28 September 2018,²³ the Supreme Court proclaimed that:

'[A]n individual, as the basic unit, is at the heart of the Constitution. All rights and guarantees of the Constitution are operationalised and are aimed towards the self-realisation of the individual. This makes the anti- exclusion principle firmly rooted in the transformative vision of the Constitution, and at the heart of judicial enquiry. Irrespective of the source from which a practice claims legitimacy, this principle enjoins the Court to deny protection to practices that detract from the constitutional vision of an equal citizenship.'

We, as a society, need to hear these pronouncements and inform our actions with these spirits.

Almost every Indian system that aims at regulating human behaviour and society has contributed to the prevailing situation, which manifests injustice, arbitrariness and unfairness towards women. We undoubtedly need to do better, especially because women themselves aspire to have rights, including rights to land. They have been showing their spirit and trying various ways to assert their interests.

The examination of issues specific to women and land substantiates the need for an equitable legal framework, and also demands interventions beyond the provision of legal access to land rights. The problem is complex and a web of factors contribute to the unequal treatment of women; all these factors need to be addressed.

Fortunately, there are ways out. There are strategic changes that require a long-term vision and sustained efforts. But there also is an immediate need to reduce women's vulnerability and suffering. When we think about the change strategy, it is important to note that it is not just the tribal or the economically vulnerable women who require protection but that women overall deserve a better treatment. It is against this backdrop that we suggest some strategies.

²² See Supreme Court of India. Vineeta Sharma vs Rakesh Sharma, diary no.32601 of 2018 (11 August, 2020), available at <https://indiankanoon.org/doc/67965481/>

²³ See Supreme Court of India. Indian Young Lawyers Association vs The State of Kerala, writ petition (civil) no. 373 of 2006 (28 September, 2018), available at <https://indiankanoon.org/doc/163639357/>

Strategies in the long term

The long-term goal clearly is to travel the distance that makes the entire system more gender responsive and better focused on promoting and securing fairness, justice and equality for women. Some of the efforts will be intrinsically related to the overall land governance system and empowerment approaches that State adopts for women. We suggest here several approaches that will directly facilitate stronger and secure land rights for women.

Review and reform land laws: In any civilised society, law is important not only for regulating the behaviour of individuals, groups, communities and societies, but is also an important tool and instrument used to guide, lead or initiate social change. There is an urgent need to review all tenurial laws from a gender perspective so that they can be revised to use language that expressly includes women. More importantly, provisions in laws such as CNTA and SPTA that recognise only a 'male in the male line' as the tenure-holder and see only males as subjects, need to be expunged.

Make the customary laws 'gender just': While the customary laws of the Scheduled Tribes pertaining to property ownership and inheritance are not uniform, the common thread among them is patriarchy. According to custom, land granted to women is societally agreed based on the principle of 'need' as defined by the society, and not on the principle of 'equality' between men and women. Although it cannot be concluded that the customary laws should be rejected in their totality, for they have their benefits too, the inequitable concept of women's needs must be replaced with a concept of equality in line with the constitutional spirit.

Explore the possibility of codification of customary laws: Each of the 32 Scheduled Tribes in Jharkhand differs in its culture and socio-economic development. It is very difficult to codify each tribe's customary law, but codification has its own benefits too. There is a need to further study the scope and preparedness for codification of such laws. The study should include judgments bearing upon customary law as pronounced by the courts in Jharkhand and elsewhere. A codification should necessarily be preceded by an engaging discussion with community and community leaders so that laws can be transformed to become sensitive to the rights and interests of women and curtail practices and principles that expose women to abuse.

Engage with the political leadership in the State: Political leadership plays a key role in deciding the policies and the course of development of a country. The goal of promoting the equal treatment of women and the equal respect for the personal aspirations of women requires considerable political will. A well-focused education of ministers might serve to bring women's rights some needed political attention and promote the discussion and adoption of progressive policies that can be implemented responsibly.

Make the Tribal Advisory Committee more functional: In states like Jharkhand, the TAC can play a significant role in promoting women's equality. At the time of this writing, it appears that the Jharkhand TAC has been dissolved and its reconstitution is in process. It also appears that until now the TAC has mostly been an assembly of men. Thus, it is necessary to put in place regulations to require that at least half of TAC members are women. Instead of being limited to the political representatives from the ruling party, the TAC should also include academicians, intellectuals and the civil society representatives from tribal communities.

Improve the interface between tribal self-governance institutions and statutory panchayats: In Fifth Schedule areas, the office of traditional governance system and the statutory panchayats run in parallel, with little or no formal coordination. It will help to devise a formal way of coordination between the traditional institutions, statutory panchayat office and the local revenue office.

Update land records: Many land records in the State are obsolete and do not reflect the ground realities. It is important to update the land records to eliminate the excuse that women cannot claim their rights – either of title or of maintenance – because the land is not yet partitioned.

Prioritise women for land allocation: In all government land transfers, women's independent and joint claims should be recognised and prioritised. There is a need for explicit recognition and prioritisation of all single women in the land allocation programmes, whether they focus on poverty alleviation, income generation (crop cultivation, fish cultivation), resettlement or otherwise.

In the short- and medium-term: There is no time to waste

Given the pervasive violence and the intensive suffering of women in Jharkhand, there is a need to act urgently on several fronts. The public, private and civil society actors must come together pro-actively and devise innovative strategies. Those innovations can be tested before applying them to a larger scale. Some of the suggestions below require engagement with the community, several require action from the government, and some require CSOs and other stakeholders to come together.

Make land administration responsive to women's needs: Alongside the legal framework, land administration machinery is the main instrument of land policy implementation. Effective, accessible, transparent and accountable land administration agencies are crucial to effecting social justice. There is a need to sensitise the entire land administration machinery – including senior officials as well as ground level officers – so that they are able to see the close connection between women and land and do not marginalise or neglect women's issues for lack of awareness and sensitivity. This will go a long way in making the land policies and their implementation responsive to the needs of women. Equally important is to recruit more women as officials at each level of the revenue machinery.

Track sex disaggregated data for land titles: One of the major hurdles in assessing land rights of women is the absence of sex disaggregated data. The State should include a column of gender in all land titles and land records to enable the State to track the exact status of land ownership by women. Without measurement, performance cannot be improved.

Implement programs to build women's land literacy: Women realise the power of land as an asset, but rarely know about their legal rights or the procedures for realising their rights. Despite strong patriarchal beliefs, tribal women are showing great interest in recording their names on land titles. A comprehensive land and legal literacy program can help women understand the intricate aspects of land, and they can use this knowledge to access information in their family or in revenue offices, and subsequently assert their rights.

Develop collective agency and leadership for women: In all patriarchal environments, the first person a woman approaches is another woman – either in the family, in the village, in an adjoining village or in a CSO. Women provide powerful narratives of their reliance on sisterhood to withstand the patriarchal forms of dispossession. There is a need to strengthen and broaden the existing collective spaces and create new ones, where women can share and support each other. A cadre of women

from within such spaces can be trained as land leaders who have the practical knowledge needed to address land related issues of women. This would also reduce the dependence on private middlemen who use their understanding of land administration processes to cheat women.

Promote women's access to legal services: The complexity of legal systems narrows women's access to justice as they often lack basic knowledge about legal procedures and their rights. Organisations such as Mahila Samakhya and ENSS have been running a sort of women's court already. There is a need to thoroughly explore this model and build capacity of women to carry out such services at a large scale. States such as Gujarat have recently institutionalised a type of women's court which can be studied and adapted in Jharkhand.

Proactively provide safe spaces for women to obtain land services: The Revenue Department could establish helpdesks dedicated to assisting women in each circle office, creating spaces where women can obtain any information or service related to land. The District Legal Services Agency (DLSA) also needs to be sensitised about the land rights of women so that such agencies can support women. Government can also collaborate with some CSOs for awareness generation through Information Education and Communication (IEC) activities.

Combat witch hunting and systematically support single women: The severe plight of the single women in the State needs immediate and urgent intervention. Since 2001, the state has had in place the Prevention of Witch (DAAIN) Practices Act, which provides measures to halt witch hunting practices. There is an urgent need to spread awareness of this Act and implement it in a true spirit. In addition, the government can collaborate with CSOs to establish systems of support for single women, including the provision of free legal assistance.

Sensitise elected and traditional leaders regarding the needs of women: The ongoing legislative and institutional reforms also need to engage with elected and customary leaders to deconstruct and reconceptualise the traditional notions of land access, control and ownership. Leaders must be helped to understand why and how to intervene at points that will make the most difference for women. Thus, it is important to sensitise all elected as well as traditional leaders in villages. Similarly, it is important for all revenue officials to understand the national obligations to strengthen land rights of women, the role land revenue administration can play and the ways to encourage women to fully avail themselves of land administration services.

Build on the role of civil society organisations: CSOs can play a crucial role in initiating a dialogue amongst various stakeholders, proposing innovative ideas to government, collaborating with government to pilot new approaches and cooperate in their implementation. It is important to engage with CSOs on the importance of land rights to achieve gender equality and support them to play a proactive role in bringing about a social change. They can engage with traditional leaders to shift their mindset and beliefs about women's land rights. They can also play a crucial role in building strong grassroot Adivasi women's organisations with clear focus on women empowerment and its connections with land rights.

Epilogue

When we were conceptualising the study in January 2020, we met with a very senior advocate who is practicing in the Jharkhand High Court and has authored several books on revenue laws in Jharkhand. We wanted to understand the basic issues regarding land rights of women in the State, and thus the meeting. We had taken a prior appointment, so he knew that we wanted to discuss about women's rights.

As soon as we opened the conversation, his firm stance was that there are absolutely no issues in the State, women have all the rights and the law nowhere prohibits women from owning land. As an evidence, he showed us the detailed Record of Rights of a non-tribal village, which he had in his office. He offered to show us the names of women by ourselves. When we looked at the document, in the first 50 names we could find only three names of women. The gender of the owner was not mentioned before the names, but still given the gendered segregation of names, we were sure to be not making a mistake. He also thought that the CNTA and SPTA – which govern the tribal matters – are completely fine and raise no discriminatory issues. He also referred to the judgement by the Supreme Court, discussed earlier in Section 5, where the court held that the 'there is no scope in reading down the provisions of the CNTA and include the female descendants alongside the male descendants.'

The conversation that we had with the senior advocate underscores the gigantic challenge of introducing measures to strengthen land rights of women in a society that remains in the clench of patriarchic values. Though the challenge is grave, the call to deal with the challenge needs to be taken urgently and sincerely. Land tenure and property rights interventions often have the ability to shift long-standing social and power dynamics. If carried out sincerely, a land rights program for women can prove to be an important catalyst in bringing the kind of revolutionary change that can correct the existing bias and violence against women and girls and grant them the rights, dignity and equality long due to them.

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Annexure 1

Fifth Schedule of the Constitution and Tribes Advisory Council

The Fifth Schedule of the constitution identifies special privileges for those areas (known as scheduled areas) where most of the population belongs to Scheduled Tribes. It authorises the executive power of the Central government to give directions to the State government for the administration of these Scheduled Areas. Currently several parts of the ten states are covered by this schedule: Andhra Pradesh, Chhattisgarh, Himachal Pradesh, Madhya Pradesh, Gujarat, Maharashtra, Odisha, Rajasthan and Jharkhand. Out of total 24 districts in Jharkhand, 15 are covered under the Fifth Schedule. Of these 15 districts, 12 are fully covered and the three districts are partially covered.

Fifth Schedule provides for the creation of a Tribes Advisory Council (TAC) in each state having scheduled areas (and if the President directs, also in states having Scheduled Tribes, but no scheduled areas). A TAC consists of no more than 20 members of which three-fourths must be representatives of Scheduled Tribes in the Legislative Assembly of that State. The duty of the TAC is to advise on matters pertaining to the 'welfare and advancement' of the Scheduled Tribes 'as may be referred to them by the Governor'.

Fifth Schedule grants extensive powers to the Governor, who, by public notification, may direct that a law enacted by the Parliament or the State Legislative Assembly shall not apply to a Scheduled Area, or applies subject to certain amendments or restrictions as the Governor specifies. It also empowers the Governor to make regulations to restrict or prohibit transfer of land by or among members of Scheduled Tribes, regulate allotment of land and regulate money-lending. The Governor may only make such regulations on consultation with the concerned TAC and subject to the final assent of the President.

The Prime Minister's office in 2014 set up a high-level committee to examine the socioeconomic, educational and health status of tribal communities in India. In its report, available on the website of Ministry of Tribal Affairs, Government of India, the committee cites several shortcomings in the structure and mandate of the Tribal Advisory Councils (TACs). Firstly, the TACs can only make recommendations on issues referred to it by the Governor. Secondly, it functions only in an advisory capacity and has no power of implementation. Thirdly, they are not accountable to the tribal population given that they are appointed by the Governor or the State Government.

The report also refers to a detailed study by the Asian Indigenous and Tribal Peoples Network (2012) which analyses the minutes of the meetings of the Tribes Advisory Councils and reveals that the meetings of the Councils are almost tokenistic and critical issues (such as land alienation) are rarely discussed.

The report mentions an interesting instance when in 2012, two members of the Jharkhand TAC walked out of a Council meeting on the grounds that the Chairman of the TAC was uninterested in taking up serious problems of the tribal population. The protesting members wanted a discussion on land

acquisition at Nagri for construction of the India Institute of Management (IIM) and the National University for Study and Research in Law. The Chairperson, however, did not allow discussion on the subject, stating that it be brought before the Council in writing first. The instance brought to the fore the extremely limited powers of agenda-setting within the TAC.

Annexure 2

Rule of inheritance in personal laws

Personal laws determining inheritance find their roots in diverse religious beliefs of different communities who have co-existed in India for ages. Beliefs and practices within these religious communities varied with regions, castes and customs, as did practices related to inheritance. In the twentieth century, when British interventions crystallised certain customs and legal doctrines, the emerging set of laws remained largely conservative with respect to rights of women and ensured the existing patrilineal and patriarchal hold over land (Chowdhry 2017: xv).

The inheritance of property in India is largely governed by the personal laws of people belonging to different religions. Discussed below are the inheritance rights of women in these laws.

Hindu Law

The Hindu Succession Act, 1956 sets rules of succession applicable to a large majority of Indians belonging to Hindu, Sikh, Buddhist and Jain religions. Section 2 of the act specifically says that it does not apply to tribal communities. However, if the member of the Scheduled Tribe has been 'sufficiently hinduised' then they are governed by the Hindu law of succession and inheritance.

Per this act, when a man dies without a will, his property devolves to his heirs according to four categories – Class I, Class II, agnates (if two people are related by blood or adoption wholly through males) and cognates (who are related to the intestate by blood or adoption but not wholly through males). In the absence of any Class I heirs, the property devolves upon Class II heirs. If a man leaves no Class I or Class II heirs, the property devolves to agnates, and then to cognates.

A Hindu wife is entitled to an equal share of her husband's properties like other surviving, entitled heirs. If there are no other sharers, the wife has full right to inherit the entire property of her deceased husband. A married Hindu woman also has exclusive rights over her individual property, and she is the sole owner and manager of her assets whether these are earned, inherited or gifted. She is also entitled to maintenance, support and shelter from her husband, and if they stay in a joint family, then from the joint family. If the couple is divorced, all issues related to maintenance and permanent alimony are ordinarily decided at the time of divorce. Divorce severs her connection to the husband, and she does not have any right in his estate if he dies without a will. If during the lifetime of the first wife, the husband remarries without a divorce, the second marriage is considered void. The second wife does not inherit anything and the rights of the first wife are not affected. However, the children from second marriage get a share along with other legal heirs.

The inheritance rules for Hindu daughters have evolved over time. If a person dies without leaving a will, all legal heirs have an equal right to the property. Class I heirs have the first right and these include the widow, daughters and sons, among others. Each heir is entitled to one equal part of the property, which means a daughter has the right to an equal share in father's property. A share of a

predeceased daughter, which she would have got had she been alive at the time of partition, is allotted to her surviving children.

When the inheritance rules were codified in the Hindu Succession Act, 1956, the law divided the property of the deceased person into two types – the property vested in the joint Hindu family, and the self-acquired property of the deceased person – and treated daughters' rights in these property types differently. While it provided that daughters possess the same rights as sons with regard to a person's self-acquired property, the law excluded daughters from any right to property belonging to the joint Hindu family.

This exclusion of daughters changed 49 years later when, in 2005, the Hindu Succession Amendment Act provided equal rights and liabilities to daughters – irrespective of their marital status – in property of the joint Hindu family, with right to claim partition or dispose their share of the coparcenary property by way of a will. By presumption, they could also now be *karta* (manager) of the joint Hindu family. However, there continued to be some dilemma about applicability of the amended provisions, and was cleared after a landmark judgement in September 2020, when the Supreme Court held that all daughters – irrespective of their marital status – become members of their coparcenary at the time of their birth, including daughters born before the 2005 amendment.

Mothers have stronger rights than sisters. Since a mother falls under the Class I heir category, she is entitled to receive an equal share of property of her predeceased son like other surviving entitled sharers. In addition, a widowed mother is entitled to maintenance from her children who are not dependents. Sisters belong to the Class II heir category. After her brother's death, she would inherit along with other Class II heirs only if there is no Class I legal heir and the father of the deceased has also expired.

Hindu succession law contains some gender bias. A major disadvantage to Hindu daughters is posed by the provision of will which is overwhelmingly used to deprive daughters of their rights. An advocate shared an instance where a Hindu woman had approached him. The woman wanted to claim her share in her father's property which was valued at INR one crore, at Ranchi. 'We served a notice to the brother, after which brother contacted me and showed the will that his father had left. The will was a valid document, where the father had given the entire property to his son. So, I didn't take up the case.'

Another major bias in HSA is that if a woman dies intestate, her self-acquired property goes to husband's heirs, not her parents. In case of a man, the property is inherited by his relatives, not the woman's heirs.

Muslim Law

Inheritance for Muslim women is governed by Sharia law. There are four sources of Islamic law governing this area— the Quran, the Sunna, the Ijma and the Qiya. When a man dies, both men and women become legal heirs, but the share of a female heir is typically half of that of male heirs. While two-thirds share of the property devolves equally among legal heirs, one-third can be bequeathed as per his own wish. The share of inheritance of a Muslim woman is half that of a man.

It is generally considered that upon marriage, a woman receives mehr²⁴ and maintenance from husband, as well as inheritance, while a man only has the inherited property. This is the justification given for the rule that the woman should have a lesser share in the inherited property. However, Azma, a woman we interviewed noted that the law of mehr is hardly respected by the family of Muslim bridegrooms. 'This practice has degenerated into promising a sum as inconsequential as Rs. 1 or 2 as den mehr, and even if this is not paid, the woman asks Allah and the Maulana to forgive her husband,' she adds.

A Muslim wife without any children is entitled to receive one-fourth the share of property of her deceased husband, but those with children are entitled to one-eighth the share of the husband's property. If there is more than one wife, the share may diminish. In case of divorce, her parental family has to provide maintenance after the iddat period (about three months).

Muslim daughters inherit differently than sons. A son always takes double the share of a daughter in the property of a deceased father. However, the daughter is the absolute owner of the inherited property. In the absence of a son, the daughter gets half the share of the inheritance. If there is more than one daughter, they collectively receive two-thirds of the inheritance. *One of the women we interviewed notes that a Muslim girl rarely gets that share.*

A Muslim mother is entitled to receive one-third share of her deceased son's property if the latter dies without any children but will get a one-sixth share of a deceased son having children.

Christian Law

The Christians are governed by Sections 31 - 49 of the Indian Succession Act, 1925, according to which the heirs inherit equally, irrespective of gender.

If the Christian husband leaves behind both a widow and lineal descendants, the widow gets one-third of the property, while the remaining two-thirds go to the descendants. If there are no lineal descendants, but other relatives are alive, one-half of the property goes to the widow and the rest to those relatives. And if there are no relatives, the entire property goes to the widow.

A Christian man can legally marry a second time only after the death of the first wife or after legally divorcing her. If he has a second wife while his first wife is alive or not divorced, the second wife and her children will have no right over his property. However, the children of a legally divorced wife have an equal share over their father's property as that of the second wife and her children.

A Christian daughter has an equal right as her brother to the deceased father's property. She also has full right over her personal property upon attaining majority.

If a Christian man dies without a will and has left no lineal descendants, then after deducting his widow's share, his mother will be entitled to receive an equal share as other surviving entitled sharers. These sharers could be the brother, sister, the widow of such sibling, or the children of any predeceased siblings.

²⁴ Under the Muslim Law, Mehr is a gift of cash or wealth in kind which the husband gives to the bride as a part of the marriage contract and which must be paid to ratify the marriage.

Annexure 3

Various court judgements related to rights of tribal women

A female recorded as raiyat cannot be disinherited in the name of customs

In Joseph Munda vs Most. Fudi & Ors on 17 March 2009,²⁵ the Jharkhand State High Court has held that the customary law of inheritance that only male descendants will inherit the land left by their ancestors cannot be applied in case of female heirs whose name has been entered into record of rights. It was in case of a female whose name was entered in records during revisional survey of 1928 and thereby she had acquired the status of a recorded raiyat in respect of the suit land. The court also noted that if the custom alleged to have been prevalent is strictly made applicable in the facts of the present case, it will amount to serious violation of constitutional right of livelihood of a female, whose right was recognised and she has already acquired the status of recorded tenant.

It is not for a tribal woman to prove that she is not excluded from inheritance

In Babulal S/O Bapurao Kodape and ... vs Sau. Reshmabai Narayanrao ... on 4 January 2019,²⁶ the Bombay High court says that 'gender inequality is an anathema to constitutional philosophy and morality. Obliteration of inequality is a cherished goal of the Constitution of India. A custom or usage which prima facie is not gender neutral would have to muster the test of Articles 14, 15 and 21 of the Constitution. An insistence that a female tribal who is a natural legal heir must plead and then prove that under the customary law, she is not excluded from inheritance would run counter to the constitutional imperative that the age-old apathy, prejudices and gender discrimination directed against women must be addressed and minimised if not entirely eradicated. The court, thus, held that it would be the burden of the person who asserts such exclusion from inheritance under the customary law to so plead and prove.'

Daughters in the tribal areas shall inherit the property in accordance with the Hindu Succession Act

In Bahadur vs Bratiya And Others,²⁷ High Court of Himachal Pradesh on 23 June 2015 concluded that daughters in tribal areas in Himachal Pradesh shall inherit the property in accordance with the Hindu Succession Act, 1956 and not as per customs and usages in order to prevent the women from social injustice and prevention of all forms of exploitation. In this case, which was about the inheritance claim of a woman belonging to the Gaddi tribe in Himachal Pradesh, the court said that the material placed on record did not prove that the custom in the Gaddi tribe excluded daughters from right in property. The court, more importantly, observed that even if it is assumed, for argument's sake,

²⁵ See Jharkhand High Court. Joseph Munda vs Most. Fudi & Ors , Second Appeal No. 132 of 1988 (R), (17 March, 2009) available at <https://indiankanoon.org/doc/1409829/> .

²⁶ See Bombay High Court. Babulal S/O Bapurao Kodape And ... vs Sau. Reshmabai Narayanrao ..., second appeal 388 of 2016, (4 January, 2019), available at <https://indiankanoon.org/doc/51827725/>.

²⁷ See Supreme Court of India. Mirza Raja Shri Pushavathi ... vs Shri Pushavathi Visweswar ..., 1964 2 SCR 403, (19 March, 1963), available at <https://indiankanoon.org/doc/75362100/>

that such a custom does exist, it would be in derogation of section 4 of the Succession Act. The Court then invoked the constitutional philosophy underlying Articles 15, 38, 39 and 46 of the Constitution to hold that gender discrimination violates fundamental rights and daughters are entitled to equal share in the properties.

To immunise customs from constitutional scrutiny, is to deny the primacy of the Constitution

In *Indian Young Lawyers Association & Ors. vs. The State of Kerala & Ors.*,²⁸ on 28 September 2018, the Supreme Court of India notes that custom, usages and personal law have a significant impact on the civil status of individuals. Those activities that are inherently connected with the civil status of individuals cannot be granted constitutional immunity merely because they may have some associational features which have a religious nature. To immunise them from constitutional scrutiny is to deny the primacy of the Constitution. The court further notes that our constitution marks a break from the past characterised by a deeply divided society resting on social prejudices, stereotypes, subordination and discrimination destructive of the dignity of the individual. It speaks to the future of a vision which is truly emancipatory. The constitution's transformative potential lies in recognising its supremacy over all bodies of law and practices that claim the continuation of a past that militates against its vision of a just society.

²⁸ See Supreme Court of India. *Indian Young Lawyers Association vs The State of Kerala*, writ petition (civil) No. 373 of 2006, (28 September, 2018), available at <https://indiankanoon.org/doc/163639357/> .

‘As girls grow up, they keep hearing this is not your home, you will go one day to your [marital] own home. But when she gets married, she realises that [marital home] is not hers either.’ - [A community woman](#)

‘While journey of ‘singleness’ for all women may be different depending on a range of social and personal factors, something that unites them across caste and religion, is the stigma attached to them and the vulnerability they suffer.’
- [A CSO leader](#)

‘If a married woman asks for her share in land, the man says – How can you ask for land? Is it your land? Have you got it in your dowry? I cannot give land in donation.’ - [A CSO leader](#)

‘Of course, women should have land in their name. It will give them a social security. She will not be evicted from the house and violence against women will decline.’ - [An elected leader](#)

