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Adivasi women's rights to land: cultural patterns and new emancipatory discourses*

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1. *Setting the context: indigenous feminism and women's rights to land*

According to the Annual Report of the Un Special Rapporteur on the Rights of Indigenous Peoples, indigenous women experience a complex spectrum of human rights abuses but their specific situation has been neglected in policy and on the ground[1]. The report underlines the multiple forms of vulnerability indigenous women experience, mentioning among them barriers to accessing resources which intersect with gender, class, ethnic origin and right to self-determination.

Nonetheless, the unequal, gendered access to natural resources and economic violence does not feature prominently in current indigenous literature and very few studies on indigenous peoples and self-determination include a gendered perspective on patriarchal structures and the power imbalances within indigenous communities[2].

In this context, one of the main challenges of Aboriginal feminism today is to articulate indigenous women's claims at the interface between their individual and collective identity, taking into account the manifold axes of discrimination they experience as both indigenous people and indigenous women. According to Joyce Green, Aboriginal feminism is an emerging terrain of study and debate which critically engages with the analysis of colonialism, decolonization as well as gendered and raced

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[1] Human Rights Council, Thirtieth Session, *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz*, A/HRC/30/41, 6 August 2015, point no. 5. Also K. Sharma, *Mapping Violence in the Lives of Adivasi Women- A Study from Jharkhand*, in *Economic and Political Weekly*, 2018, p. 44.

[2] R. Kuokkanen, *Self-Determination and Indigenous Women's Rights at the Intersection of International Human Rights*, in *Human Rights Quarterly*, 2012, p. 226.

power relations in both settler and indigenous communities[3]. From this definition, it is possible to infer three key points that constitute the backbone of indigenous feminism, namely, an analysis of social, economic and political condition of women's lives vis-à-vis, first, the mainstream society and, secondly, their own communities, interrogating power structures and patriarchal settings in these milieux. Thirdly, indigenous feminists engage with colonialism and coloniality, not only to examine historically the effect of colonial policies on indigenous women but how colonial oppressive practices were incorporated and replicated by indigenous communities themselves as well as the structures of power, control, and hegemony shaped during the modernist era of colonialism which stretch to the present[4]. Feminist indigenous scholars therefore address violations of human rights linked to their indigenous status (marginalization, dispossession, forced assimilation, erasure of indigenous knowledge) as well as gender-specific violations perpetrated outside and within the community, «in a way that does not disregard the continued practices and effects of colonialism»[5].

Within this theoretical framework, the analysis of women's oppression is manifold, as it takes diachronically into account colonial discriminatory practices and, synchronically, those perpetrated by both the society at large and, internally, the indigenous male leaders and kins[6]. Even so, this latter aspect is particularly controversial: the discourse about indigenous societies of an intrinsically egalitarian nature is recursive even among women activists and this argumentation is developed by making reference to a «separate but equal» theory of complementary roles within those societies, skewed by a subsequent contact with patriarchal colonial settings. In contrast with this, indigenous feminist scholars have underlined the fact that «contemporary Aboriginal women are subjected to patriarchal and colonial oppression

[3] J. Green, *Taking Account of Aboriginal Feminism*, in J. Green (ed.), *Making Space for Indigenous Feminism*, Black Point and London, 2007, p. 21.

[4] On the concept of coloniality of power, see A. Quijano, *Coloniality of Power, Eurocentrism and Latin America*, in *Nepantla: Views from South*, 2000, p. 533-580. For further insights in the concepts of modernity/coloniality and decolonial feminism, see also W. Mignolo, *The Conceptual Triad: Modernity/Coloniality/Decoloniality*, in W. D. Mignolo – C. E. Walsh (eds.), *On Decoloniality: Concepts, Analytics, Praxis*, Durham, 2018, p. 135 ff.; R. Borghi, *Decolonialità e privilegio: pratiche femministe e critica al sistema mondo*, Milano, 2020; A. Escobar, *Beyond the Third World: Imperial Globality, Global Coloniality, and Anti-Globalization Social Movements*, in *Third World Quarterly*, 2004, p. 207 ff.; R. Grosfoguel, *The Epistemic Decolonial Turn*, in *Cultural Studies*, 2007, p. 211 ff.; M. Lugones, *Toward a Decolonial Feminism*, in *Hypatia*, 2010, p. 742 ff.; F. Vergès, *Un femminismo decoloniale*, Verona, 2019.

[5] R. Kuokkanen, *op. cit.*, p. 226.

[6] E. Luther, *Whose 'Distinctive Culture'? Aboriginal Feminism and R. v. Van Der Peet*, in *Indigenous Law Journal*, 2010, p. 42; in a similar vein also J. Green, *op. cit.*, p. 22 whose analysis sharply contrasts with more «romanticizing» narratives such as United Nations Office of the Special Adviser on Gender Issues and Advancement of Women and the Secretariat of the United Nations Permanent Forum on Indigenous Issues, *Gender and Indigenous Peoples' Human Rights*, Briefing Note No. 6, New York, 2010, p. 2 whereby the «separate but equal» theory mentioned below is clearly set out. For a critical analysis on the romanticized conceptualization of tribal life, see also A. Prasad, *Against Ecological Romanticism: Verrier Elwin and the Making of an Anti-Modern Tribal Identity*, New Delhi, 2003.

within settler society and, in some contexts, in Aboriginal communities. Some Aboriginal cultures and communities are patriarchal, either in cultural origin or because of incorporation of colonizer patriarchy»[7]. According to Joyce, several indigenous movements have framed their liberation discourses as drawing from traditional cultural and political mechanisms, presented as being women-friendly in their gendered and acculturated contexts. Indigenous feminist scholars stress the inherent potentially discriminatory nature of some indigenous practices (be them precolonial or incorporated), questioning the «veneration of tradition» which is no longer seen as monolithic[8]. Being perfectly aware of the importance of sustaining culture as a strategy against assimilation[9], several indigenous feminists push for a revival only of those practices which are egalitarian in nature, selecting those that could be empowering for women[10] and problematizing the impact of other practices in creating gendered roles as well as the power structures embedded in these practices. Failing to recognize this aspect, «we run the risk of universalising our own experiences similar to what mainstream feminism has been accused of doing (…) At times, due to the fact that we (as Aboriginal people) are protecting family and culture in the face of ongoing colonialism, we lose the ability to critically examine our own practices because we are worried that anything perceived as negative will be used to further discredit us as peoples»[11].

In the framework of the indigenous struggle for self-determination, indigenous feminists' claims have been often considered divisive and disruptive and women have been accused of being disloyal to their community, inauthentic (given their critique of a flattened, monolithic, supposedly egalitarian tradition) and of introducing alien

[7] J. Green, *op. cit.*, p. 22.

[8] J. Green, *op. cit.*, p. 23: «for Aboriginal people subjected to colonial forces that have included public policy attacks on Aboriginal cultures and social practices, tradition has come to represent a pre-colonial time when Indigenous peoples exercised self-determination. For the most part, this is assumed, and rightly so, to have been a good and appropriate path. But tradition is neither a monolith, nor is it axiomatically good, and the notions of what practices were and are essential, how they should be practiced, who may be involved and who is an authority are open to interpretation. Women around the world have found themselves oppressed through a variety of social, religious, political and cultural practices. Feminism is foundationally about the importance of considering women's experiences, especially through social and cultural practices. Feminism has provided tools to critique oppressive traditions – and to claim and practice meaningful non-oppressive traditions» (*ivi*, p. 25). In the same vein, also E. LaRocque cit. in V. St. Denis, *Feminism is For Everybody: Aboriginal Women, Feminism, Diversity*, in J. Green (ed.), *op. cit.*, p. 45, «we cannot assume that all Aboriginal traditions universally respected and honored women (…) there are indications of male violence and sexism in some Aboriginal societies prior to European contact and certainly after contact».

[9] F. Blaney, *Aboriginal Women's Action Network*, in K. Anderson – B. Lawrence (eds.), *Strong Women Stories: Native Vision and Community Survival*, Toronto, 2003, p. 167.

[10] E. Luther, *op. cit.*, p. 44.

[11] C. Liddle, *Intersectionality and Indigenous Feminism: An Aboriginal Woman's Perspective*, in *The Postcolonialist*, 25 June 2014, available at http://postcolonialist.com/civil-discourse/intersectionality-indigenous-feminism-aboriginal-womans-perspective/ (last access: 16 June 2021).

concepts to indigenous practices[12]. This is one of the reasons why indigenous feminist literature and politics have been facing significant challenges in gaining momentum and support, even among indigenous women themselves.

As pointed out by Kuokkanen[13], «if not entirely disregarded, women's rights, concerns and priorities are commonly put on the back burner to be addressed 'later', once collective self-determination has been achieved. Indigenous women have increasingly confronted these views by contending that securing indigenous women's rights is inextricable from securing the rights of their peoples as a whole».

In light of this framework, following Prem Chowdhry's definition of «empowerment» as «gaining control over sources of power like material assets and self-assertion, and ability to take part in the making of decisions that affect their lives»[14], this analysis intends to investigate the barriers Adivasi women have to face in accessing and controlling a key resource such as land. Underlining how women have to come to terms with patriarchal local arrangements which often mediate entitlement to land, I will, first, conduct a gendered analysis of the state legal framework vis-à-vis the customary legal one in the field of inheritance of landed property. Secondly, I will investigate how women often resort to state institutions and state norms in order to advance their claims, activating processes of interplay and hybridization between customary and state legal sphere. In particular, working on the Indian case law related to Adivasi land tenure, I will try to unpack the role of judicial forums as sites of contestation as well as Adivasi women's engagement with their own communities and state institutions through the judiciary.

2. *The «spectre» of the propertied woman*

I had the chance to experience first-hand the divergencies among indigenous movements and activists, especially as regards women's rights. From the interviews that I conducted in Jharkhand in 2017, it clearly emerged a varied attitude towards

[12] J. Green, *op. cit.,* p. 25; also S. Das Gupta, *Gender and 'Tribe' in eastern India: Custom and movements for rights in the 19th and 20th centuries*, webinar held at the University of Turin on 5 May 2022.

[13] R. Kuokkanen, *op. cit.*, p. 236.

[14] P. Chowdhry, *Persisting Gender Discrimination in Land Rights*, in P. Chowdhry (ed.), *Understanding Women's Land Rights: Gender Discrimination in Ownership*, New Delhi, 2017, p. 1.

Adivasi[15] women's rights among the very same women activists. According to A. K.[16], a society such as the Adivasi one, whose livelihood is also based on the collection of forest produce, cannot survive without the participation of women to economic and decision-making processes: their role is therefore crucial for the well-functioning of the community. In addition to this, according to the activist, movable and immovable properties are managed in common within Adivasi families by men and women and the latter enjoy significant economic rights. On the contrary, according to the activists of Aali (Association for Advocacy and Legal Initiatives), women's rights, especially those related to access to land, are hampered by some discriminatory and patriarchal practices still followed by some communities[17]. Prof. Das Gupta argued that, according to the politics and rhetoric of indigeneity, the indigenous Adivasi legal system already has enough protective measures in place for women, and any discourse of women's land rights is considered corrosive as this kind of argument is seen as alien to the Adivasi society[18]. Even the question of patriarchy or paternal property is considered by several indigenous movements as being alien to the world of Adivasi. Nonetheless, according to the Adivasi feminist approach, the gendered paternal connotation of land hampers women's status within their community and the discourse on women's rights to land has been significantly restricted due to a progressive fundamentalisation of politics, both right-wing and indigenous. Paradoxically enough, both politics have been played on the bodies and rights of women, who have been first victimized and infantilized and then accused of being disruptive of the traditional Hindu family or the indigenous Adivasi community by claiming their rights. In this regard, particularly telling is the case of the Jharkhand Mukti Morcha, the major political party representing

[15] On the complexities of the label «Adivasi» and its political bearing see C. Correndo, *Razionalizzazione del pluralismo giuridico e Panchayati Raj in India*, Napoli, 2020; W. Fernandes, *Tribal or Indigenous? The Indian Dilemma*, in *The Round Table*, 2013; N. Sundar (ed.), *The Scheduled Tribes and Their India- Politics, Identities, Policies and Work*, New Delhi, 2016; N. Sundar, *Adivasi Politics and State Responses: Historical Processes and Contemporary Concerns*, in S. Das Gupta – R. S. Basu (eds.), *Narratives from the Margins: Aspects of Adivasi History in India*, Delhi, 2012; W. Van Schendel, *The dangers of belonging- Tribes, indigenous peoples and homelands in South Asia*, in D. J. Rycroft – S. Das Gupta S. (eds.), *The Politics of Belonging- Becoming Adivasi*, London and New York, 2011.

[16] I collected this information during the period of fieldwork that I undertook in 2017 in New Delhi and in Jharkhand, India, on the issue of the Panchayati Raj system and its implementing policies. The fieldwork developed over February, March and April and I worked in two districts (Ranchi and West Singhbhum). I managed to collect 40 interviews (among which journalists, activists, lawyers, social workers and local chiefs): all the interviews were recorded but, despite having received explicit consent from some of the people interviewed as regards the publication of their names, I have decided to anonymize them completely, in order to protect their identity and their activity. I interviewed A. K. in Ranchi on 14 March 2017: she is a social activist working for a non-profit organization engaged in development issues and advocacy of Adivasi rights. Previously, she was a member of the Jharkhand State Commission for Women.

[17] Interviewed in Ranchi on 15 March 2017.

[18] S. Das Gupta, *Gender and 'Tribe' in eastern India*, webinar.

Adivasis in Jharkhand. Nitya Rao[19] stresses the fact that, within the very same movement, women's rights have been restricted over time, in favor of a supposedly communal identity, built over masculine solidarity bonds. According to the author, the party offered women inheritance rights in marital rather than natal property, on condition of monogamy, restricted access to divorce and tribal endogamy. This framework is built over the infantilizing assumption that women can get easily manipulated by non-Adivasis and lured into marriages of convenience resulting in the alienation of Adivasi land to non-Adivasis.

Far from being just a commodity, land (and property patterns) define(s) social status and political power in the villages, structuring relationships within and outside the household, and yet, for many women, «effective rights in land remain elusive»[20]. Unpacking the concept of «household» and refuting its conceptualization as a unit of congruent interests «among whose members the benefits of available resources are shared equitably»[21] are critical steps towards acknowledging the fact that women's economic rights need a specific focus.

At a global level, women's land and housing rights have been a major concern for women's movements globally, which underlined the importance of carrying out a broader, intersecting discourse on discriminatory inheritance patterns, gendered control over economic resources and the appropriation of indigenous lands[22]. Indigenous women may be indeed doubly vulnerable, as their access to land is mediated through customary law and their community retaining control over traditional territories and resources[23]. Women's rights interact with violations of collective land rights and when these communities are forcibly displaced and dispossessed of their territory women may be more affected due to their traditional role in collecting fuel and water[24] and their vulnerable position within customary land

[19] N. Rao, *Kinship Matters: Women's Land Claims in The Santal Parganas, Jharkhand*, in *Journal of the Royal Anthropological Institute*, 2005, p. 728.

[20] B. Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia*, Cambridge, 1994, p. 2.

[21] *Ivi*, p. 3.

[22] V. Patel – R. Khajuria, *Political Feminism in India- An Analysis of Actors, Debates and Strategies*, Friedrich-Ebert-Stiftung India Office, New Delhi, 2016, p. 14. Also, «the ownership or non-ownership of means of production expressed in amounts of land, is a determinant for access to employment and to the monetary yield that it offers in other sectors of the economy» (I. Breman in N. Rao, *Good Women Do Not Inherit Land: Politics of Land and Gender in India*, London and New York, 2018, p. 147).

[23] E. Scalise, *Indigenous women's land rights: case studies from Africa*, in *State of the World's Minorities and Indigenous Peoples*, 2012, p. 53.

[24] Mentioning the displacement of Batwa communities in Uganda to make way for a national park, Scalise stresses the fact that women had to travel more than half a day to look for a suitable alternative water source and that many women and girls were assaulted during the eviction procedures or in internally displaced people's camps (E. Scalise, *op. cit.,* p. 53). Also, «the gendered effects of those violations become manifest in situations where indigenous women lose their traditional livelihoods, such as food gathering, agricultural production, herding, among others, while compensation and jobs

tenure arrangements, which are often tethered to kinship relationship and social power structures. As a matter of fact, the gendered position of women within social networks deeply affects their ability to claim land rights as well as their chances to access formal and informal political forums; in turn, wielding political weight at the local level may influence their ability to control resources and land[25]. In some areas, local state governance institutions may co-exist with customary institutions: the control of male leaders on the latter may have an impact also on the effective participation of women in state institutions, regardless of any guaranteed quotas, as formal forums may end up replicating discriminatory power dynamics unfolding in customary institutions[26].

With regard to the Indian context, Nitya Rao underlines the fact that the Indian state does not have adequate resources to provide social security to its citizens[27]: in light of this, social groups such as families and castes, as well as local institutions of governance intervene as a backup means for daily support and allocation of benefits.

This echoes the analysis of Sareen[28] on the construction of authority through mediating access to services at the local level, whereby «access» means, in a broader sense, the «ability to derive benefits from things»[29]. He underlines how, in unstable state-building contexts, mediating access to resources is the battlefield where governmental and non-governmental institutions compete over the authority. These continuous negotiations and reconfigurations of power may lead to what has been defined as «governing without government», that is hybrid state configurations whereby non-governmental groups exercise political and economic regulation gaining their legitimation through regulating access to resources[30]. Defining authority as «successfully legitimized power» emerging from a process of subjection which is grounded in a particular cultural frame[31] helps understand how mediating and negotiating access to land can contribute to both crystallize patterns of power and facilitate the accumulation of resources in the hand of few to the detriment of more vulnerable groups.

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following land seizure tend to benefit male members of indigenous communities. The loss of land and exclusion of women can create vulnerability to abuse and violence, such as sexual violence, exploitation and trafficking. Additionally, the secondary effects of violations of land rights, such as loss of livelihood and ill health, often disproportionally impact women in their roles of caregivers and guardians of the local environment» (*Report of the Special Rapporteur,* point no. 16).

[25] A. Griffiths, *Delivering Justice: The Changing Gendered Dynamics of Land Tenure in Botswana*, in *The Journal of Legal Pluralism and Unofficial Law*, 2011, p. 236.

[26] C. Johnson – P. Deshingkar – D. Start, *Grounding the State: Devolution and Development in India's Panchayats*, in *The Journal of Development Studies*, 2007, p. 943.

[27] N. Rao, *Women's Rights to Land and Assets Experience of Mainstreaming Gender in Development Projects*, in *Economic and Political Weekly*, 2005, p. 4701.

[28] S. Sareen, *Who Governs Local Access in Jharkhand? Mechanisms of Access to Government Services*, *in Forum for Development Studies,* 2016.

[29] *Ivi*, p. 5.

[30] *Ivi*, p. 4.

[31] *Ibid.*

Among the Santal Adivasi communities, for example, patrilineal ties have become mediators of entitlements and access to key resources[32]. Kinship relationships are therefore crucial at the local level and women often have to come to terms with this, negotiating their rights to land[33].

As a matter of fact, women appropriate terms, constructs and procedures of law in formulating opposition to patriarchal structures; in particular, on the one hand, law is regarded as a force for status quo and a hegemonic tool elitist in nature, but on the other hand the legal instrument is often mobilized in that it can offer the language and the locale for resistance[34].

This kind of interaction can be aptly illustrated through the conceptual paradigms of *living customary law* and *interlegality* which, by highlighting the porous nature of the living customary law, can in fact explain the overturned role of state law and institutions as a site and tool of resistance.

Diala[35] questions the stereotype of an insulated customary sphere and the horizontal definitions of living customary law, confined to individuals' interactions in communities: drawing from Moore's definition of social fields and semi-autonomous social fields[36], he provides a new theorization of this paradigm arguing that «in this competitive, normative interaction, people adapt customs to socioeconomic changes, especially state law. This interaction, competition, and adaptation to socio-economic changes in social fields produce living customary law». The members of a single social field, not being immune to the influences and norms of «other forces» from outside the field, may end up adopting hybrid forms of state law, religion, and values occasioned by globalization[37]. What remain stable are the foundational values that inform customary norms and their process of adaptation to modernity[38].

In line with this, Hoekema argues that «national law and local law do not exist the one next to the other as self-contained entities» but there is constant bilateral interpenetration between them[39]. Even if it «often seems to be a one-way penetration only, from the powerful top to the bottom», «the minorities are not just helpless victims. They appropriate majority concepts and build these actively into their own

[32] N. Rao, *Kinship Matters*, cit., p. 729.

[33] *Ivi*, p. 728.

[34] See S. E. Merry, *Resistance and the Cultural Power of Law*, in *Law & Society Review*, 1995, p. 14; B. Rajagopal, *The Role of Law in Counter-hegemonic Globalization and Global Legal Pluralism: Lessons from the Narmada Valley Struggle in India*, in *Leiden Journal of International Law*, 2005, p. 348; R. Kapur – B. Cossman, *Subversive Sites – Feminist Engagements with Law in India*, New Delhi, 1996.

[35] A. Diala, *The concept of living customary law: a critique*, in *The Journal of Legal Pluralism and Unofficial Law*, 2017, p. 157.

[36] S. F. Moore, *Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study*, in *Law & Society Review*, 1973.

[37] A. Diala, *op. cit.*, p. 157.

[38] *Ivi*, p. 158.

[39] A. Hoekema, *European Legal Encounters between Minority and Majority Cultures: Cases of Interlegality*, in *The Journal of Legal Pluralism and Unofficial Law*, 2005, p. 6.

legal outlook»[40]. This process of dynamic mutual adaptation and hybridization of legal orders is called «interlegality», meant as a «social factual process of mutual adaptation and learning by both sides from the other system of doing justice and in the course of that learning process taking over some elements from the other»[41]. The concept, as coined by Boaventura de Sousa Santos, moves from the understanding of different legal orders as separate entities, introducing the idea of intersecting legal spaces[42].

In light of this, the appropriation by indigenous communities and indigenous women of some aspects of state law as well as the deployment of forum shopping strategies does not automatically imply the abdication of indigenous jurisdiction, but rather a strategic use of state legal tools to advance specific claims[43]. Having multiple identities and perceiving different legal systems, subjects of law therefore become main actors in the construction of legal knowledge, transforming the meaning of law through emancipatory practice[44]. Along the lines of a critical postmodern approach

(l)egal subjects (…) possess a transformative capacity that enables them to produce legal knowledge and to fashion the very structures of law that contribute to constituting their legal subjectivity. This transformative capacity is directly connected to their substantive particularity. It endows legal subjects with a responsibility to participate in the multiple normative communities by which they recognize and create their own legal subjectivity[45].

This transformative capacity can be also linked to the concept of relational rights as put forward by Nedelsky: a nuanced conception of rights[46] which stresses the

[40] *Ibid.*

[41] A. Hoekema, *Taking the Challenge of Legal Pluralism for Human Rights Seriously*, in G. Corradi – E. Brems – M. Goodale (eds.), *Human Rights Encounter Legal Pluralism-Normative and Empirical Approaches*, Oxford and Portland, Oregon, 2017, p. 86; for a comment see also I. Hadiprayitno, *Who owns the right to food? Interlegality and competing interests in agricultural modernization in Papua, Indonesia*, in *Third World Quarterly*, 2017.

[42] B. De Sousa Santos, *Toward a New Legal Common Sense*, London, Butterworths, 2002, p. 437.

[43] Also K. Inksater, *Transformative Juricultural Pluralism: Indigenous Justice Systems in Latin America and International Human Rights*, in *The Journal of Legal Pluralism and Unofficial Law*, 2010, p. 115. In a similar vein, when describing Adivasi women's assertion for autonomy in Kashipur, Sahu reports that the women interviewed did not want to act independently from the state but, rather, they expected that the state should respect and protect Adivasi notion of freedom, fostering their own conception of development without displacing indigenous communities from the region (S. Sahu, *The Rhetoric of Development and Resistance by Tribal Women in Kashipur*, in *Social Change*, 2019, p. 72).

[44] *Ivi*, p. 110.

[45] M. Kleinhans – R. A. Macdonald, *What is a Critical Legal Pluralism?*, in *CJLS/RCDS*, 1997, p. 38.

[46] «So rights are not about protecting individuals or enabling their autonomy from one another, but instead facilitate an autonomy enabled and supported by the relationships on which individuals depend, through their connectedness and mutual reliance» (S. Mnisi, *Reconciling Living Customary Law and*

process by which they come into being, the terms of the struggles conducted by women within their communities and their complex interweaving with customs. The traditional polarity between customs and rights (and also between customs and state law) should be therefore overcome, considering change and empowerment as possible also within the confines of living customary law[47]. The dynamism of customary law has been underlined also by other writers, who stressed its responsive potential to change and its flexible character[48], in contrast with a more classical scholarship which sees customary law as crystallized[49].

3. *Land policies in India between agrarian reforms and personal laws*

The discussion on article 19 (the fundamental right to property) within the Constituent Assembly was mostly focused on its ability to protect against forcible confiscation of land without adequate compensation, hence restricting the property question mainly to its landed form and addressing almost exclusively land reform and land redistribution[50]. The legal strategy behind this was to provide a backup to the proposed abolition of *zamindari* (the feudal system of agrarian land relations) and directing the redistribution of the surplus to the landless. This massive reform quickly became one of the most significant banners of the newborn state, with a view to counteract the land revenue regimes introduced by the colonial state and the resulting landlordism which caused much rural indebtedness. Nonetheless, the right to property, as conceived in the constitutional framework, was built on the individual rather than on the group, in that «any prior claim to title could not and did not find room in either the Constituent Assembly debates or afterwards in the public debate»[51]. Accordingly, the redistributive function of article 19 became limited only to a tort or compensatory logic.

The constitutional fabric as regards landed property is further complexified by other aspects, first of them being the fact that agriculture and land-related legislation have both been included under the State List (Schedule VII, List II.14 and List II.18) whereas laws related to property and succession are encapsulated within the Concurrent List (List III.5 and List III.6). Not only has this setting created several legal glitches and mismatches, but while several states have taken important measures as regards agricultural labor, land ceilings and allocation of surplus land, many have left

Democratic Decentralisation to Ensure Women's Land Rights Security, Policy Brief- Institute for Poverty, Land and Agrarian Studies, 2010, p. 2).

[47] *Ibid.*

[48] J. C. Scott as well as C. Toulmin and J. Quan, mentioned by N. Rao, cit., *Good Women Do Not Inherit Land,* p. 202.

[49] B. Agarwal, *op. cit.*, p. 291.

[50] K. Kapila, *Nullius: An Anthropology of Ownership, Sovereignty and the Law in India*, Chicago, 2022, p. 15.

[51] *Ivi*, p. 16

women's rights to land behind[52]. This was done in spite of the fact that 70% of farming is done by women in the face of a significant percentage of men migrating for seasonal work, which testifies to a progressive feminization of agriculture[53]. This is why, for instance, the gender dimension was included in the Ninth Five Year Plan (1997-2002), which features a section on the removal of gender discrimination in accessibility and ownership of resources such as land. The centrality of the problem is well illustrated, for instance, by the fact that many Dalit women are engaged in the cultivation of land, but only an abysmal 1.5% owns the land: in addition to not being able to purchase it due to low financial resources or culturally constrained gender roles, they cannot have access to redistributive land operations, managing to enter at best a collective land leasing on the part of the state[54].

Another factor of complexification as regards land is closely linked to the legal framework of personal laws in India, under which the regime of succession falls. In light of the system of personal laws, religious communities (Hindus, Muslims, Parsis,

[52] P. Chowdhry, *op. cit.,* p. 4.

[53] A. Khadse, *Environmental Justice and the Caste Question*, webinar hosted by the School of Global Affairs, King's College London, 5 November 2021, available here https://www.youtube.com/watch?v=HrsacpK-y4Y.

[54] In the framework of the massive reforms to land law adopted in the period after independence, state governments decided to restrict or ban agricultural land leasing with a view to protect tenant farmers from being exploited by wealthy landlords. The outcome of this reform was mixed as these restrictions made it more difficult for landless and land-poor marginal farmers to access land, spurring informal leases that heightened their land insecurity. Entering an informal leasing prevents them from accessing credit and financing, as well as exposes them to arbitrary eviction. In 2016, the national policy-making body, NITI Aayog, issued a *Model Land Leasing Act* with a view to facilitate leasing of agricultural land and the recognition of farmers cultivating on leased land to enable them to access institutional credit. Even if the Commission circulated the model law among the states pushing for adoption, very few of them actually moved towards the Act (C. S. Rao, *Tenancy Transition and the Effect of Liberalisation on Agricultural Land Leasing*, in *Social Change*, 2019, p. 434–452; Expert Committee on Agricultural Land Leasing, *Report of the Expert Committee and Model Law on Agricultural Land Leasing*, NITI Aayog, 2016; IANS, *A few states move towards model agricultural land leasing Act: Official*, in *The Business Standard*, 23 November 2018, https://www.business-standard.com/article/news-ians/a-few-states-move-towards-model-agricultural-land-leasing-act-official-118112301020_1.html; Land Portal, *Millions of Indian farmers benefit from formalized land leasing law*, 24 October 2019, https://landportal.org/news/2019/10/opinion-millions-indian-farmers-benefit-formalized-land-leasing-law). In 2004, the extant poverty eradication program of the Government of Kerala (the Kudumbashree Mission) added a new component to its backbone, envisaging collective farming by Joint Liability Groups. The amended program was then able to help poor women to lease land in a group, «promoting lease farming as an important livelihood activity of neighborhood groups of women that are comprised of small and marginal women farmers and landless agricultural laborers. Joint Liability Groups (JLGs) of women farmers are formed under the collective farming initiative to help women cultivators access agricultural credit from the banking system» (T. Haque – J. L. Nair, *Ensuring and Protecting the Land Leasing Right of Poor Women in India*, Landesa Rural Development Institute, 2014, p. 5).

Christians and Jews) are granted the right to govern family and property matters of their community members according their religious-based personal laws[55].

In the field of Hindu succession laws, the amendment to the *Hindu Succession Act* (HSA) enacted in 2005[56] brought in unprecedented changes to the joint Hindu family scheme. Before the major reform of Hindu personal law occurred in the years 1955-1956, the position of widows and daughters under *Mitākṣarā* was governed by, respectively, the Hindu Women's Right to Property Act[57] and the Hindu Law of Inheritance (Amendment) Act, 1927[58] according to which daughters were only entitled to a share in separate property on intestacy (s. 2). Following the enactment of the Hindu Succession Act (Hsa) in 1956, daughters had equal rights in the separate or self-acquired property of the father, but they were denied any right in the ancestral properties[59].

In 2005, in order to bring uniformity of succession and equal treatment among the heirs, s. 6 of the amending Act stipulated that the daughter of a coparcener would by birth become a coparcener in her own right in the same manner as the son and that she is to be considered as the full owner of the properties so inherited.

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[55] T. Herklotz, *Walking a Tightrope: Balancing Law, Religion and Gender Equality in the Aftermath of the Indian Supreme Court's Triple Talaq Ban*, in *Journal for Law and Islam*, 2017, p. 180. For an analysis of the system of personal laws in India and its peculiar constitutional arrangement, see, among others, F. Ahmed, *Religious Freedom Under the Personal Law System*, New Delhi, 2016; D. Amirante, *La democrazia dei superlativi. Il sistema costituzionale dell'India contemporanea*, Napoli, 2019; D. Francavilla, *Il diritto nell'India contemporanea- Sistemi tradizionali, modelli occidentali e globalizzazione*, Torino, 2010; P. S. Ghosh, *The Politics of Personal Laws in South Asia: Identity, Nationalism and the Uniform Civil Code*, London and New York, 2018; W. Menski, *Comparative law in a global context: the legal systems of Asia and Africa*, London, 2000; W. Menski, *The multiple roles of customary law in the shaping of the intercultural state in India*, in *Revista general de derecho público comparado*, 2019 with respect to the role of Hindu customary norms in the Indian legal system; W. Menski, *Uniform Civil Code Debate in Indian Law: New Developments and Changing Agenda*, in *German Law Journal*, 2008; G. Solanki, *Beyond the Limitations of the Impasse: Feminism, Multiculturalism, and Legal Reforms in Religious Family Laws in India*, in *Politikon*, 2013; Y. Sezgin, *Human Rights Under State-Enforced Religious Family Laws in Israel, Egypt and India*, Cambridge, 2013; Rina Verma-Williams, *Postcolonial Politics and Personal Laws: Colonial Legacies and the Indian State*, New Delhi, 2006; P. Viola, *Costituzionalismo autoctono: Pluralismo culturale e trapianti giuridici nel subcontinente indiano*, Bologna, 2020. In a critical vein, see also A. Parashar, *Women and Family Law Reform in India*, New Delhi, 1992.

[56] The Hindu Succession (Amendment) Act, 2005 (39 of 2005).

[57] The Hindu Women's Right to Property Act, XVIII of 1937.

[58] The Hindu Law of Inheritance (Amendment) Act, India Act II 1929.

[59] For a diachronic and synchronic analysis of Hindu laws of succession see B. Agarwal, *Gender and Command Over Property: A Critical Gap in Economic Analysis and Policy in South Asia*, in *World Development*, 1994; F. Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India*, in F. Agnes (ed.), *Women and Law in India- An Omnibus Comprising*, New Delhi, 2004, p. 82; S. Basu, *She Comes to Take Her Rights: Indian Women, Property, and Propriety*, Albany, 1999; J. D. M. Derrett, *Hindu Law Past and Present*, Kolkata, 1957; D. F. Mulla, *Principles of Hindu Law*, revised by S. A. Desai, Delhi, 2017; J. Mayne, *Treatise on Hindu Law and Usage*, revised by R. Misra, New Delhi, 2005.

It is interesting to note that the Indian Supreme Court[60] clarified its interpretation of s. 4.2 of the Hsa[61] maintaining that «the word 'property' in Sections 6 to 8, 14 and 15 and other sections in that Act would include agricultural land», therefore, ex s. 4.1[62], this has «an overriding effect for Hindu female claiming parity with Hindu male for succession to the agricultural lands held by the father, mother, etc. and sub- s.(2) does not stand an impediment for such a right of devolution».

As regards the excerpt about tenancy rights in s. 4.2, it should be read in conjunction with the several state laws regulating rents and land leasing. For example, the tenancy laws of Andhra Pradesh, Madhya Pradesh, Odisha and Tripura specifically point out that land lease right shall be heritable, but not transferable except to banks, government, co-operatives, or financial institutions by way of mortgage for loan[63], while succession to tenancy rights in Maharashtra is regulated by the Maharashtra Rent Control Act, 1999 repealing the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947[64]. This Act is significantly different from the general rules of succession laws, as those who may normally qualify as heirs under the succession laws may not be qualified as successors to the tenancy rights under the 1999 Act, which provides for a minimum period of cohabitation with the deceased as a basis to qualify[65].

4. *Land policies in Jharkhand: a closer look at the Chotanagpur Tenancy Act*

As it has been previously underlined, this legal framework is further complexified when it comes to tribal laws and, especially, the provisions related to land and succession among tribal communities. It is important to note that Adivasi law is not personal law: the Indian Constitution makes room for the recognition, protection

[60] *Madhu Kishwar & Ors. Etc vs State of Bihar & Ors*, 1996 SCC (5) 125.

[61] «For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings».

[62] «Save as otherwise expressly provided in this Act, (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act».

[63] Expert Committee on Agricultural Land Leasing, *Report*, p. 41.

[64] Maharashtra Rent Control Act, 1999 (Mah. Act NO. 18 of 2000); The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Act No. 57 of 1947).

[65] *Ganpat Ladha v. Sashikant Vishnu Shinde* 1978 AIR 955; *Parubai Manilal Brahmin and Ors. v. Zaverbhai Tapodhan* (1964) 5 GLR 563; *Jaysen Jayant Rele & Ors v Shantaram Ganpat Gujar & Ors* AIR 2002 Bom 462; *Dharamvir Joshi v Jayant Patwardhan* Civil Revision Application No. 225 of 2015 and Civil Application No. 349 of 2015; *Vasant Pratap Pandit v Anant Trimbak Sabnis* 1994 SCC (3) 481.

and application of customary norms[66], in particular Scheduled Tribes norms, but it is undebatable that the primary site of difference within the constitutional fabric is religion [67], on which basis the several personal laws are recognized.

The fact that there is no explicit recognition of tribal laws as a self-standing category is indeed problematic, especially if combined with the explicit exclusion of the members of the Scheduled Tribes from the purview of personal laws[68]. On one hand, from some interviews that I conducted among Adivasi activists, it emerged that judges often consider Adivasi litigants as Hindu[69] therefore applying Hindu personal law to the case despite explicit provisions to the contrary. According to M. N. Karna, on several occasions, if there is proof of a sufficient «Hinduisation» of an Adivasi (for example on the basis of him/her practicing cremation instead of burial, or living by Hindu religious practices) the judges usually apply the Hindu personal law to the case at stake[70].

Some authors contend that Hindu personal law could actually turn out to be more favorable, especially to women, as against discriminatory Adivasi customary law[71]. Nonetheless, the activists that I interviewed fear that extending the scope of Hindu personal law to Adivasis may result in a process of legal colonization, progressively erasing the legal specificities of Adivasis and eventually leading to their assimilation into the mainstream (i.e. Hindu) society[72].

On the other hand, the fact that Adivasi communities are still ruled by local customs which remain largely uncodified paves the way to arbitrary interpretations and sometimes abuses. As stated by Upadhya, «procedurally, customary law is supposed to be proved in the courts through evidence of existing practices, statements of local people, or recorded evidence, but in arguing and deciding cases related to inheritance, succession, marriage, and other such matters of personal law, lawyers and the courts usually rely on (…) old ethnographic sources, as well as previous judgments, as

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[66] In addition to art. 13.1, see also article 341 read with article 366(24) and article 342(i) read with article 366 (25).

[67] K. Kapila, *op. cit.*, p. 37.

[68] P. Chowdhry, *op. cit.*, p. 5. As regards the ST exclusion, section 2.2 of the Hindu Marriage Act (Act no. 25 of 1955) and section 2.2 of the Hindu Succession Act provide that «Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs».

[69] See for example *Ganesh Matho v. Shib Charan and Doman Sahu v. Buka* AIR 1931 Patna 305.

[70] M. N. Karna, *Understanding Women and Land Rights in Jharkhand*, in P. Chowdhry, *op. cit.*, p. 188.

[71] See M. Kishwar, *Toiling Without Rights: Ho Women of Singhbhum*, in *Economic and Political Weekly*, 1987, p. 95-101 and also *Madhu Kishwar & Ors. Etc vs State of Bihar & Ors* (1996 AIR 1864), *Dr. Surajmani Stella Kujur vs Durga Charan Hansdah & Anr* Appeal (crl.) 186 of 2001 and *Rajendra Kumar Singh Munda vs Mamta Devi* F.A. No. 186 of 2008.

[72] As explicitly envisaged in *Narmada Bachao Andolan vs Union of India and Others* W.P. (C) No. 319 of 1994: «The gradual assimilation in the main stream of the society will lead to betterment and progress».

authentic proof of tribal practices. As a result, the 'customs' recorded in these colonial-era texts have been affirmed as legal and valid, 'fixing' them and creating rigidity where the law was supposed to allow for flexibility»[73]. As a result, «particular 'customs' connected with the received model of tribal social organization have become symbolic of tribal identity itself»[74].

The convoluted legislative and political history of Jharkhand and its Adivasi communities further complexifies this situation. From the late eighteenth century until the end of the nineteenth, the Chotanagpur area is marked by a series of agrarian uprisings or «tribal rebellions», against the entry of landlords (*zamindars*) and moneylenders in the region as a direct consequence of the British Permanent Settlement[75]. The grant of absolute proprietary rights to the landlords spurred the birth of landlordism in India, against the prevailing Adivasi custom of communal ownership. This caused much indebtedness among Adivasi communities, linked to a sharp rise in rent demands on the part of the landlords, loss of control over land and increasing insecurity of peasant tenancies[76]. The colonial state then adopted a series of tenancy laws, culminating in the Chotanagpur Tenancy Act 1908 (Cnta), with a view to quash these revolts, confirm the rights of the «original settlers» and regulate the activities of these new economic actors operating in the area. The Cnta is currently in force in Jharkhand and is applied in the divisions of Palamau, North and South Chotanagpur and the Kolhan, while the Santal Pargana division is disciplined by the Santhal Parganas Tenancy Act, 1949[77] (Spta), which is the other pillar tenure law in force in Jharkhand.

[73] C. Upadhya, *Colonial Anthropology, Law, and Adivasi Struggles: The Case of Jharkhand*, in S. Patel (ed.), *Doing Sociology in India: Genealogies, Locations and Practices*, New Delhi, 2011, p. 274.

[74] *Ibid.*

[75] Following the Permanent Settlement of 1793, the present landholders were declared to be permanent, on condition of their paying a fixed amount of rent to the British administration. The *zamindars* were therefore empowered to collect rent from the tenants (*raiyats*) in their respective estates and to transfer the amount to the Government (S. S. Sinha, *Restless Mothers and Turbulent Daughters: Situating Tribes in Gender Studies*, Kolkata, 2005, p. 101 and Authority of the Accountant General (Audit), *Revenue Audit Manual of Land Revenue*, Ranchi, p. 2).

[76] C. Upadhya, cit., *Colonial Anthropology, Law, and Adivasi Struggles*, p. 270; also M. Carrin, *Jharkhand: Alternative Citizenship in an «Adivasi» State*, in P. Berger – F. Heidemann (eds.), *Modern Anthropology of India: Ethnography, Themes and Theory*, New York, 2013, p. 110; S. Das Gupta, *Agrarian Expansion Under Colonial Rule and Its Impact on a Tribal Economy*, in E. Basile – I. Mukhopadhyay (eds.), *The Changing Identity of Rural India: A Socio-Historic Analysis*, New Delhi, 2008, p. 248; D. Schewerin, *Control of Land and Labour in Chota Nagpur*, in D. Rothermund – D. C. Wadhwa (eds.), *Zamindars, Mines and Paesants*, New Delhi, 1978, p. 35.

[77] Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act XIV of 1949).

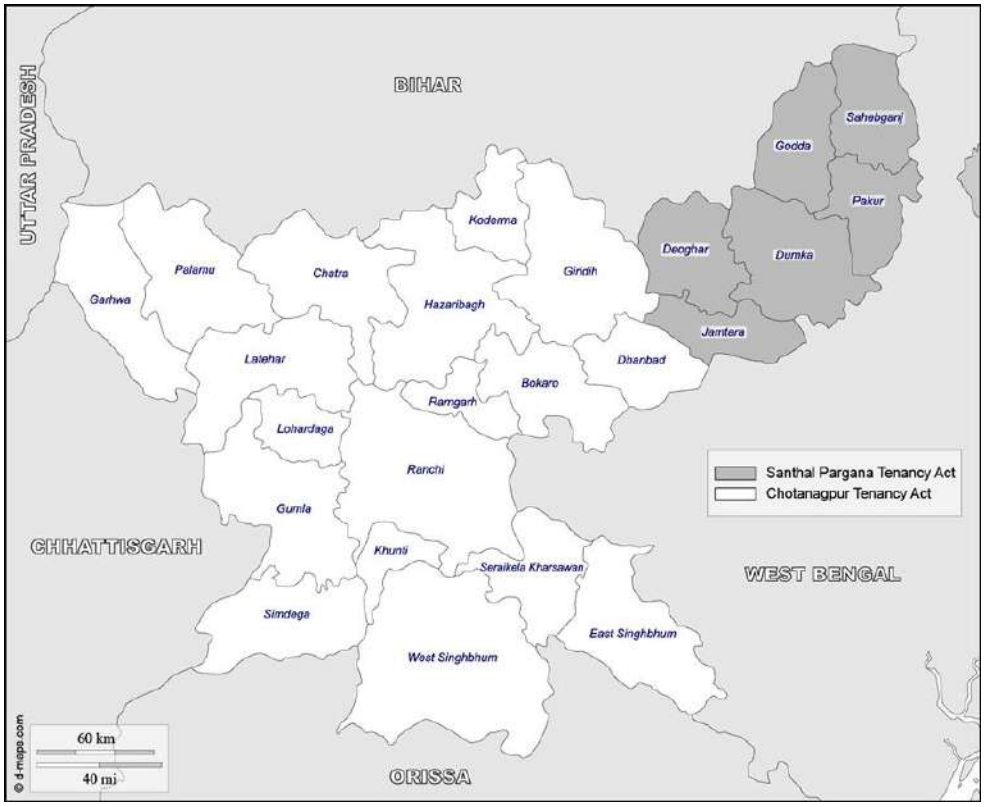

Table 1: district-wise application of the two tenure laws in Jharkhand

The Cnta created the special tenure category of *Mundari khuntkattidars*, considered the original settlers of the land: their legislative understanding is rooted in a multiplicity of colonial and missionary ethnographic works, among which stands the analysis of the German Jesuit missionary Father John Hoffmann, who worked in Chotanagpur from 1893 to 1915. His famous *Encyclopaedia Mundarica* served as a starting point for the drafting of the Act, being an extensive collection of linguistic and ethnological material on the Munda tribe, along with a *Special Memorandum on the Land System of Munda Country*, prepared by Hoffmann upon government's request to frame the new tenurial law[78]. Along with official ethnographic collections, the genealogies and oral speeches of the village families collected by colonial revenue officers during the long agrarian disputes over land in Chotanagpur served as the primary material for the framing of indigenous land rights in the Cnta. As reported by Das Gupta, colonial officers collected innumerable oral testimonies supporting cases filed by tenants of Kolhan and Porahat estates, with a view to arrive at an «authentic» version of Adivasi

[78] C. Upadhya, *Colonial Anthropology, Law, and Adivasi Struggles*, cit., p. 271.

custom, and in particular *khuntkatti* right-holders[79]. As underlined by Upadhya, it is nonetheless difficult to ascertain to what extent these representations of «traditional» customs and usages reflect the reality of that time[80].

According to these anthropological accounts, Adivasi social and cultural identity was built around membership to a village, which determined also the relationships within and outside the community[81]. In the Munda *khuntkatti* villages, the land was collectively controlled by the founding lineage (*khunt*) and there were no individual rights in land, which could not be alienated to outsiders. The original clearers of jungle who set up the village and their male descendants (among the Mundas: *khuntkattidars*, also known as *bhuinhars*) formed the dominant group, who could claim special privileges within the village[82]. The lineages who had settled later, the *parjas*, had to pay rent to the former[83]. Among the Mundas, the superior status of the original settling group in the village as well as their dominance in socio-economic and political matters was also marked by the fact that the key posts of headman (*munda*) and priest (*pahan*) were held by members of such group. Only the founding clan was entitled to build its own graveyard, or *sasan*, which marked the transition of the land from the wild forest (*bir*) to the «tamed» village land (*hatu*), and erect their own memorial stones (*sasandiris*). It is interesting to note that, when the British colonial revenue officers tried to map indigenous land rights in the 19th century, Mundas presented their *sasandiris* as their title-deed to land. These stones were seen as a proof confirming «a claimant's membership of the original clan which founded the village»[84] and the historical relationship of the clan with that land[85].

After a series of experiments in tenure legislations (such as the Chotanagpur Tenancy Act of 1869), the Cnta 1908 was adopted, in order to protect *khuntkatti* tenures «against the encroachment of landlords, by fixing their rents in perpetuity and

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[79] S. Das Gupta, *History or Tradition? Exploring Adivasi Pasts in the 19th Century Jharkhand*, in *Rivista degli Studi Orientali*, 2018, p. 103.

[80] C. Upadhya, *Negotiating Policy Research, Academic Knowledge, and Political Movements: One Researcher's Experience*, in *Review of Development and Change*, 2008, p. 16.

[81] *Ivi*, p. 101.

[82] S. Das Gupta, *From Rebellion to Litigation: Chotanagpur Tenancy Act (1908) and the Hos of Kolhan Government Estate*, in *Irish Journal of Anthropology*, 2016, p. 35.

[83] M. Carrin, *op. cit.,* p. 111 and C. Upadhya, *Law, Custom and Adivasi Identity: Politics of Land Rights in Chotanagpur,* in N. Sundar (ed.*), Legal Grounds: Natural Resources, Identity and the Law in Jharkhand*, New Delhi, 2009, p. 35.

[84] S. Das Gupta, cit., *History or Tradition?,* p. 103. For further insights and a comparison with other Adivasi communities, see L.N. Bhagat, *Supply Responses in Backward Agriculture- An Economic Study of Chotanagpur Region*, New Delhi, 1989; C. Correndo, *op. cit.*, p. 179 ff.; S. Das Gupta, *Adivasis and the Raj: Socio-economic Transition of the Hos 1820-1932*, Hyderabad, 2011; A. K. Sen, *From Village Elder to British Judge: Custom, Customary Law and Tribal Society*, Hyderabad, 2021; N. Sundar, *'Custom' and 'Democracy' in Jharkhand*, in *Economic and Political Weekly*, 2005, p. 4430-4434; M.P. Yorke, *Decisions and Analogy: Political Structure and Discourse among the Ho Tribals in India*, London, 1976.

[85] C. Correndo, *op. cit.,* p. 203; see also B, Verardo, *Rebels and devotees of Jharkhand: Social Religious and Political Transformations Among the Adivasis of Northern India*, London, p. 50 ff.

making the sale of these lands illegal for any purpose other than arrears of rent»[86]. The Act also gave statutory recognition to existing customs regarding the use of forest, the status of village headmen, the rights of cultivators to reclaim cultivable wasteland and succession, as well as restricted the transfer of tribal lands to non-tribals and disciplined the issue of *hukuknamas* (or record of rights which functioned as settlement deeds as well as records of rights and obligations for headmen as per s. 127, chapter XV Cnta). Despite recognizing the high variability of customs in the region, the British felt the need to record customary tenurial arrangements followed (according to their analysis) in the area of the Chotanagpur and encapsulate them in a legible model[87]. Nonetheless, in the process of codifying «customs», the British redefined and reinvented them along Western lines, subjecting customs to imperialistic needs. On the basis of anthropological, colonial and missionary accounts, the colonial administrators objectified and ossified the traditional Munda social system and used it as a model to frame the customary provisions existing in the area, glossing over regional variations in the land system[88] and applying its norms to all the inhabitants of Chotanagpur rather than only to Mundas living in traditional *khuntkattidar* villages[89]. As a result of this «inscription of 'customary law' in formal law, what was presumably a variable and flexible system of social organization and land use came to be identified as the singular 'aboriginal' system of the region. Moreover, what was probably a highly adaptable kinship-based system of control over land and resources was reinterpreted through the language of property rights»[90]. For instance, even if at the time of the drafting of the Cnta, the system of the unbroken *khuntkatti* village was barely surviving, its basic land tenure concepts and rules were applied to all villages and tribes in the region[91].

[86] S. Das Gupta, *From Rebellion to Litigation,* cit., p. 36.

[87] S. B. C. Devalle, *Discourses of Ethnicity: Culture and Protest in Jharkhand*, New Delhi, 1992; N. Sundar, *'Custom' and 'Democracy' in Jharkhand*, cit., p. 4431; C. Upadhya, *Community Rights in Land in Jharkhand*, in *Economic and Political Weekly*, 2005, p. 4435.

[88] K. S. Singh, as cited in J. P. Gupta, *The Customary Laws of the Munda and the Oraon*, Ranchi, 2002, p. 118; C. Correndo, *op. cit*., p. 175 ff.; A. K. Sen, *From Village Elder to British Judge*, cit., p. 10.

[89] C. Upadhya, *Negotiating Policy Research,* cit., p. 16.

[90] C. Upadhya, *Law, Custom and Adivasi Identity*, cit., p. 35.

[91] C. Upadhya, *Colonial Anthropology, Law, and Adivasi Struggles*, cit., p. 271. Usually, a *khuntkatti* village becomes «broken» when it is sold by the headman to a moneylender or a *zamindar* to pay his debts, thus the new owner of the village starts to collect revenues from the *khuntkattidars* and the *raiyats*. According to the Revenue Department, this is actually the main difference between a pure and a broken setting, that is, in this latter arrangement the *khuntkattidars* pay the rent directly to the superior tenure holder (the *zamindar* or the Bihar government, after the Independence), while in the former the *chanda* is collected by the headman and then transferred to the government (C. Upadhya, *Law, Custom and Adivasi Identity*, cit., p. 38; S. C. Roy, *The Mundas and their Country*, Bombay, 1970, p. 242). Since the *chanda* was not considered as a proper rent in itself (unlike the one paid to the zamindar), but a sort of tribute paid to the British administration for the occupation of the land, the Mundari *khuntkattidars* were believed to hold the land not under the state, but in their own right (*ivi*, p. 37).

From the existing anthropological records, it appears that the Adivasi communities of Chotanagpur are generally patrilineal, patronymic, patriarchal, patrilocal and monogamous in nature[92]. According to the classical colonial writings of S. C. Roy and Hoffmann, the members of an undivided Munda family share in common all they have until the death of the father. During his lifetime, sons do not generally separate and they bring their separate earnings to the common family fund. Even if the sons cannot claim a partition of this fund during their father's lifetime, he may nonetheless decide to make a partition of family property, out of which the eldest son gets a slightly higher share than his brothers. Apart from this, the sons get shares of movable and immovable property, and a similar share of personal and real property is taken by the father. In addition to this share, an unmarried son will get some cash or cattle as a basis for his marriage. Females are not entitled to inherit but the father may decide to give them cash or movables, but not land. If he effects a partition, usually the unmarried daughter gets a share of land by way of maintenance till her marriage, but since she is expected to live under the control of either the father or one of the brothers until she gets married, the actual control of this land is exerted by her guardian. Likewise, the guardian will take the goods she received as brideprice as a compensation for the marriage expenses he had. After her marriage, the land she has been given by way of maintenance (*khorposh*) are redistributed among her brothers[93].

Upon the death of the father, the panchayat is convened and the properties are divided. The widow with sons gets a small portion of land by way of maintenance and some cash for her subsistence; she only has a life-interest in this land and if she decides to live separately from her sons, this portion of land will be divided among them upon her death, but if she decides to live with one of the sons, the land will be cultivated and practically enjoyed by that son. If he pays for all the funeral expenses, he becomes then entitled to that land. If the widow has no sons or only daughters, then she is allowed a life-interest in the properties left, she can dispose of movable goods for her subsistence but cannot sell any real property without the consent of her husband's agnates. If she decides to leave the village, she loses any usufructuary right on the land which then goes to the said agnates, and if she remarries, she forfeits any right on movable and immovable properties.

As regards the couple's children, the sons get an equal share in the properties (with the exception of the eldest son getting some surplus land). If the father effected a partition in his lifetime and since then other sons were born, the panchayat makes a re-partition of the property. The father's share as well, identified after the partition, is divided among the sons.

Daughters do not inherit, but their brothers are compelled to support unmarried sisters till their marriage. If the unmarried sister chooses to live with one of the brothers, he receives some additional land from the panchayat, which will be then

[92] S. S. Sinha, *Restless Mothers and Turbulent Daughters*, cit., p. 34.
[93] Also confirmed by Aali in the interview I had in Ranchi on 15 March 2017.

repartitioned among the brothers upon her marriage. If the deceased father leaves only a daughter with no widow or sons, the daughter will be entitled to his personal property and will remain in possession of the lands until her marriage[94]. It is important to note that a daughter's husband and sons are not entitled to inherit, apart from the case of *gharjamai*, that is, a man who marries into a family with no sons in order to help his father-in-law with the cultivation and is then entitled to a share of the land, as per the panchayat's decision. He remains in possession of the land until his wife's death, upon which the land returns to his father-in-law's agnates. In the absence of any agnate, the full possession of the land goes to the *gharjamai*[95].

This customary framework was illustrated into the early anthropological accounts and since these texts were considered to be the most authentic sources on Munda tribes they served as a basis not only for the drafting of the Cnt and Spt Acts but also for the construction of the Adivasi identity[96]. As stressed by Upadhya, «Roy's books are still frequently referred to by the courts and are quoted in judicial decisions and legislative documents dealing with questions of tribal custom. Although a number of ethnographic studies have been carried out since these works were published, the accounts of tribal kinship systems presented in these early works tend to be reiterated in subsequent writing»[97]. However, the inclusion of the customary practices, so interpreted, within the abovementioned Acts and their interpretation on the part of the judiciary has raised several issues. As a matter of fact, the inscription of this patriarchal model of Adivasi customs in the Cnta determined the exclusion of Adivasi women and their rights from positive law and, despite the several amendments undergone by the two Acts, as of today women's rights in land still do not feature prominently in the legislation[98].

5. *Progressive trends in recent case law*

Disputants living in legally plural arenas often find themselves navigating between several judicial options, following strategies of forum shopping and choosing between co-existing normative orders and institutions, on the basis of the expected outcome and the constraints faced in the different fields. The choice is informed not only by a preference for the legal principles involved in the fora, but also on the basis

[94] S. C. Roy, *op. cit.*, p. 245. See also S.S. Sinha, *Adivasis, Gender and Migration: Re-situating Women of Jharkhand*, in S. Arya – A. Roy (eds.), *Poverty, Gender and Migration*, New Delhi, 2006, p. 168; S. Das Gupta, *Adivasis and the Raj*, cit., p. 44 and P. R. N. Roy, *Handbook on Chota Nagpur Tenancy Laws*, Allahabad, 2015, p. 413 ff.

[95] M. N. Karna, *op. cit.*, p. 192 ff.

[96] C. Upadhya, *Colonial Anthropology, Law, and Adivasi Struggles*, cit., p. 274.

[97] *Ibid.*

[98] M. N. Karna, *op. cit.,* p. 188.

of non-legal criteria such as physical and financial accessibility as well as cultural preferences[99]. Nonetheless, forum shopping has often been considered as being non-women-friendly, reflecting dynamics of power usually playing out against women whereby men tend to choose the most favorable forum at the expense of women who may not be able to access this forum due to financial or cultural restraints. This is the reason why, as a first step, many women approach more accessible and less costly community fora, getting to formal courts only if they fail to get a satisfactory outcome. Nonetheless, «they can also iterate between fora by moving from community forum to court and back again to the community, or by making claims in several fora simultaneously in order to increase their bargaining power»[100]. Women therefore may frame their claims by resorting to a mix of statutory, cultural and religious norms, strategically using the different legal fora available. Thus, «the coexistence of formal law side-by-side with customary law can contribute to improving women's situations, even though women rely mainly on informal institutions to solve their disputes»[101].

From the interviews that I collected, it emerged that women victims of violence very rarely activate the state machinery or call the police to report the facts, preferring the more flexible and quicker jurisdiction of the village panchayat.

The *gram pradhan* that I interviewed in an Adivasi village in the Ranchi district reported that in case any family issue arises (mostly, domestic violence) women usually meet in a *mahila sabha* and try to solve the dispute by facilitating a mediation between the litigants. If they cannot find a solution, the issue usually goes to the *gram sabha* of the village[102].

It may also happen that a single woman or a woman victim of violence approaches the panchayat and gets some land for her maintenance, but most of the time the solutions shaped by the panchayat are compromising, patriarchal and non-women-friendly[103]. Fines are usually pecuniary and of a modest entity and sometimes they may also impose the marriage between the perpetrator and the abused victim. In contrast, other activists argue that the more egalitarian nature of the Adivasi society determines a less oppressive customary justice dispensed by the *munda* in the village panchayat and a related less strong need to create the so-called *jani panchayats* or *mahila sabhas* to address women's issues[104]. Nonetheless, from my experience, women's participation in village panchayats is scanty, and this is one of the reasons why the

[99] I. W. Anying – Q. Gausset, *Gender and forum shopping in land conflict resolution in Northern Uganda*, in *The Journal of Legal Pluralism and Unofficial Law*, 2017, p. 354.

[100] I. W. Anying – Q. Gausset, *op. cit.*, p. 355.

[101] *Ivi*, p. 356.

[102] Interview with S. S., 17 March 2017, Ranchi district.

[103] Interviews to Aali, Ranchi, 15 March 2017 and Adivasi Women's Network, Ranchi, 17 March 2017.

[104] Interview with N., 27 March 2017, village of Bara Guira; interviews with V. K., 14 March 2017, Ranchi.

reforms introduced by the Panchayat (Extension to Scheduled Areas) Act, 1996[105], providing reserved quotas for women in elective panchayats, were warmly welcomed by Adivasi women[106].

Given this complex background, despite recognizing the difficulties women meet in accessing formal courts and the preference usually granted to local councils or Adr bodies, the role of the formal courts as sites of contestation as well as a tool of *empoderamento*[107] for women is fundamental: judicial fora stand as a site where Adivasi women can engage with their own communities and state institutions at the same time, reshaping their identity as indigenous women and their legal subjectivity. According to Merry, Hirsch and Lazarus-Black[108], courts are crucial places where the culture of the dominant group is not only performed but at times also shaped. Legal procedures and trials are, in Merry's view, «cultural performances, events that produce transformations in sociocultural practices and in consciousness»[109] and, along the theoretical lines developed by Mather and Yngvesson, places where people and events are defined and specific meanings are attributed to them within a ritualized context[110]. In the same vein, also Hirsch and Lazarus-Black argue that legal procedures contribute to the making of hegemony (and, I would add, counter-hegemony), regulating relationships and language in a way that may contrast with the norms of interaction in other places[111].

The inclusion of the Mundari *khuntkatti* system in the Cnta determines a specific exclusion of women's land and inheritance rights from the purview of the Act, which according to an inflexible, ossified reading of Munda customs, considers the patrilineage to be the «owner» of the land, thereby excluding women from land rights on ancestral properties. Furthermore, the Cnta leaves an open, flexible cross-reference

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[105] The Provisions of The Panchayats (Extension to the Scheduled Areas) Act, 1996, Act no. 40 of 1996.

[106] On this point see C. Correndo, *op. cit.*; N. Gopal Jayal, *Engendering local democracy: The impact of quotas for women in India's panchayats*, in *Democratization*, 2006; N. Gopal Jayal, *Left Behind? Women, Politics, and Development in India*, in *The Brown Journal of World Affairs*, 2008. Also, N. Rao, *Custom and the Courts: Ensuring Women's Rights to Land, Jharkhand, India*, in *Development and Change*, 2007, p. 307: «Women are not represented in the village council, nor are they present in the courts at the district level as officials, lawyers or judges. Legally they have equal access to the state institutions, but their participation in village meetings is restricted».

[107] Rachele Borghi borrows this word from transfeminist, post-porn activism as it was coined in the context of grassroots, collective struggles and is less linked to neoliberal feminism and Western-driven development policies (*op. cit.*, p. 13).

[108] S. E. Merry, *Law and Colonialism*, in *Law & Society Review*, 1991, p. 889-922; S. F. Hirsch – M. Lazarus-Black, *Contested States: Law, Hegemony, and Resistance*, New York, 1994.

[109] S. E. Merry, *Law and Colonialism,* cit., p. 892.

[110] Cit. in S. E. Merry, *Law and Colonialism*, cit., p. 892. This is particularly evident in colonial times «when ordinary people's problems are handled in courts which embody laws or procedures of the metropolitan country, their problems are reinterpreted in the language of these new institutions, judgments are rendered in these terms, and penalties are imposed or withheld» (*ibid.*).

[111] S. F. Hirsch – M. Lazarus-Black, *op. cit.,* p. 11.

to customs in s. 76, whereby it states that «Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by its provisions». Given this context, judges have generally kept a conservative approach towards customary norms, upholding this exclusion of female Adivasis, as they very rarely do fresh enquiries into existing practices or community interviews about costumes[112].

Indigenous inheritance law was challenged before the Indian Supreme Court in 1982 and 1986 by two Public Interest Litigations which still represent a milestone in the use of strategic litigation to advance women's rights in India. These cases are particularly interesting in order to demonstrate first how women manage to navigate in a plurilegal context to better advance their claims and, secondly, how blurred the boundaries of state and customary law are.

In 1982, the activist Madhu Kishwar, along with two women from a Ho Adivasi community in Bihar, challenged Sections 7, 8 and 76 of the Cnta as being violative of the right to equality and the right to life[113]. The same was done in 1986 by an Oraon woman, Juliana Lakra, who filed a petition in the Supreme Court. The two petitions were heard together by a three-member bench as they were both focused on the issue of equality between female and male tribal members in the matter of intestate succession[114].

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[112] C. Upadhya, *Negotiating Policy Research,* cit., p. 18.

[113] It is interesting to note that the Ninth Schedule of the Constitution contains a list of central and state laws which cannot be challenged in court. This was done with a view to shield from judicial scrutiny mostly those laws related to agrarian reform and abolition of *zamindari* system, which were heavily challenged before the courts after the independence. Fearing that this plethora of cases could endanger the whole agrarian reform, the legislator inserted art. 31-B by the First Constitutional (Amendment) Act 1951 which states that «without prejudice to the generality of the provisions contained in Article 31-A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provisions is inconsistent with, or takes away or abridges any of the rights conferred by , any provisions of this part». The shield provided by this article was abused by central and state governments, which used it to exclude from the purview of the judicial review several laws not concerned with property rights, devoiding the article of its original socioeconomic purpose. As far as the Cnta is concerned, the legislator provided a constitutional shield to it, limited to Chapter VIII—sections 46, 47, 48, 48A and 49 as well as Chapter X—sections 71, 71A and 71B and Chapter XVIII—sections 240, 241 and 242. In *I.R. Coelho (Dead) By Lrs vs State Of Tamil Nadu & Ors* (Appeal (civil) 1344-45 of 1976), the Supreme Court held that «all amendments to the Constitution made on or after 24th April 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Article 14, Article 19, and the principle underlying them. To put it differently even though an Act is put in the Ninth Schedule by a Constitutional Amendment, its provision would be open to attack on the ground that they destroy or damage the basic structure if the fundamental right or rights is/are taken away or abrogated pertains or pertain to the basic structure».

[114] R. Shukla, *Succession, gender equality and customary tribal laws*, in *Info Change News and Features*, 2005, available at https://groups.google.com/g/glrf-tribal/c/ij37ybPF0Cw?pli=1 (last access: 18 June 2018).

According to the provisions challenged in court, the only people that can be considered *raiyats with khuntkatti rights* (*raiyats* in occupation or having title to the land) are the descendants in the male line of the original founders of the village. Furthermore, according to section 8, a Mundari *khuntkattidar* is a Mundari who has acquired a right to hold jungle land for the purpose of bringing portions of it under cultivation by himself or by male members of his family (male heirs in the male line). Finally, *ex* section 76, the Act will not affect custom, usage or customary right not inconsistent with its provisions.

The state government constituted a Tribal Advisory Board to assess the desirability of an amendment to the Act. According to the committee, «though tribal society was dominated by males, female members were not neglected. A female member has the right of usufruct in the property owned by her father till she is married, and in the property of her husband after marriage. However, she does not have any right to transfer her share to anybody. In case a widow dies issueless, the property will revert to the legal heirs of her late husband». The board reiterated patriarchal arguments according to which granting inheritance rights to female descendants would result in the fragmentation of property as well as its alienation to non-tribals and that a potential amendment to the law would cause great unrest[115].

The Supreme Court judgement went finally in favor of the customary system: the Court refused to strike down the provisions of the Cnta arguing that this «elitist approach» would lead to a plethora of similar claims, asking to bring customary norms under the legal umbrella of the Hindu personal law. The Court further held that under art. 32 of the Constitution the law debarring women belonging to the ST communities is valid and not *ultra vires* of the constitutional guarantee to equality and constitutional protection[116]. Nonetheless, the Court observed that the right to livelihood is integral to the right to life[117] and that widows would become destitute after the death of their husbands and lose their livelihood, if the land reverts to the male descendants. Since this would be violative of art. 21 of the Indian Constitution, the court declared that female relatives of the last male tenant could hold the land as long as they remain dependent on it for their livelihood. The exclusive right of male succession in Sections 6 and 7 of the Act was held to remain in suspended animation so long as the right to livelihood of female descendants remains valid. The Court therefore carved out an «intervening right of female dependents/descendants under section 7 and 8 of the Act (…) by suspending the exclusive right of the male succession till the female dependent/descendant chooses other means of livelihood manifested by abandonment or release of the holding kept for the purpose».

In this context, even more interesting is the minority opinion of the Court, issued by J Ramaswamy: he replied to the point raised by the Bihar Tribal Advisory Board

[115] C. Upadhya, *Negotiating Policy Research*, cit., p. 19.
[116] *Ivi*, p. 20.
[117] N. Rao, *Good Women Do Not Inherit Land,* cit., p. 261.

according to which female inheritance would lead to the fragmentation of landed properties, arguing that «when a male member has the right to seek partition at his behest, fragmentation of family holding is effected, why not the right to inheritance/succession be given to a female?». He therefore proposed to read down sections 7 and 8 with a view to preserve their constitutionality by including female descendants in the term «male descendants» on the principle of equality. Also, he tried to harmonize the interpretation of the Hindu Succession Act and the Indian Succession Act, maintaining that «the general principles contained therein, being consistent with justice, equity, fairness, justness and good conscience, would apply to them» and that ST women would succeed to the estate of their parents, brothers, husbands, as heirs by intestate succession and inherit the property with a share equal to that of a male heir with absolute rights[118]. If women wanted to alienate the land, their brother or any male lineal descendant would enjoy a pre-emption right over it. Given their unwillingness to purchase the land, the woman is then entitled to alienate it to a non-tribal, subject to the permissions and provisions of the law applicable in the area.

Despite the quite conservative nature of the judgement, the limited acknowledgement in the majority opinion of the fact that the right to livelihood is integral to the right to life, the progressive minority opinion and the invitation addressed to the Bihar government to amend the law with a view to protect women's inheritance rights mobilized the public opinion and shed new light on women's rights to land. Male Adivasi leaders welcomed the judgement with agitation, as they thought that any potential change to the Cnta would result in the disruption of indigenous culture.

If we take into consideration more recent judgements, a more progressive and bolder attitude on the part of the courts will emerge. *Babulal S/O Bapurao Kodape and ... vs Sau. Reshmabai Narayanrao*[119] issued by the Bombay High Court in 2019 is far more innovative and is indicative of a progressive trend in judicial decisions on women's rights and customary norms, especially at apex levels. In this judgement, the Court argued that gender inequality is violative of the constitutional morality and that any custom should pass the equality test posed by art. 14, 15 and 21 of the Constitution, as per art. 13 according to which any pre-constitutional law shall be void, if inconsistent with the Fundamental Rights part. The Court clarified that «law includes custom or usage having the force of law», adding also that it is the burden of the person who

[118] *Ibid.*

[119] *Babulal S/O Bapurao Kodape and ... vs Sau. Reshmabai Narayanrao* on 4 January 2019, Bombay HC, Second Appeal 388 of 2016. The Supreme Court clarified on several occasions that the burden of proving a custom in derogation of the general law lies on the party who sets it up (*Mohammad Baqar and Ors. v. Naimun Nisha Bibi & Ors.* AIR 1956 SC 548; *Saraswathi Ammal v. Jagadambal and another* AIR 1953 SC201).

asserts women's exclusion from inheritance under the customary law to prove it, and not the opposite.

In *Joseph Munda vs Most. Fudi & Ors*[120] the Jharkhand High Court maintained that the customary provisions excluding women from inheritance cannot be applied to those female heirs whose name has been entered into record of rights. The court further noted that this custom can significantly impair the right to livelihood of a female, whose right had been by all means recognized and she had already acquired the status of tenant (*raiyat*).

In another famous case related to the inheritance claim of a woman belonging to the Gaddi tribe of Himachal Pradesh[121], the one-member bench, first, noted that the material presented by the plaintiff did not prove with enough clarity that Gaddi customary law explicitly excluded women from inheritance. The judge further added that, if such custom ever existed, it would be in overt violation of the constitutional philosophy, as it violates fundamental rights. The Court eventually concluded that daughters in tribal areas of Himachal Pradesh should inherit properties as per the Hindu Succession Act, which is more protective than tribal customs as regards female properties and inheritance.

The application of the Hindu personal law is recursive in this kind of cases: in *Labishwar Manjhi vs Pran Manjhi and Ors*[122] the Supreme Court held that if there was enough evidence that the parties belonging to a Santhal Tribe were following Hindu customs and not Santhals', then the Hindu Succession Act would apply to matters of inheritance. In the case of *Budhu Majhi and Anr. vs. Dukhan Majhi and Ors.*[123], the court observed that even a partial Hinduisation of the parties was enough to trigger the application of the Hindu personal law in the matter of succession.

The constitutional shield was used by the Indian Supreme Court also in *Indian Young Lawyers Association & Ors. vs. The State of Kerala & Ors*, whereby the Court observed that immunizing customs from constitutional scrutiny amount to denying the primacy of the Constitution itself, which is not acceptable[124]. It further notes that «our Constitution marks a vision of social transformation. It marks a break from the past – one characterized 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 in nature».

On the overall, from an analysis of more recent judgements it can be inferred that courts try to overcome the customary law *impasse* by:

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[120] *Joseph Munda vs Most. Fudi & Ors* on 17 March 2009, Jharkhand HC, Second Appeal No. 132 of 1988.

[121] *Bahadur vs Bratiya and Others* AIR 2016 H.P. 58. See also *Mirza Raja Shri Pushavathi ... vs Shri Pushavathi Viswesvar* 1964 2 SCR 403.

[122] 2000 8 SCC 587.

[123] AIR 1956 Pat 123.

[124] *Indian Young Lawyers Association & Ors. vs. The State of Kerala & Ors* on 28 September 2018, Supreme Court of India, Writ Petition (Civil) no. 373 of 2006.

a. assessing the cases against the constitution (constitutional test), leaning mostly on art. 14, 15 and 21 to quash discriminatory provisions
b. reversing the burden of proof, so that women are no longer required to refute the existence of discriminatory customary provisions but those who claim that such norms exist have to submit in courts valid proof of it.

6. *Conclusions*

The picture presented in the paragraphs above prompts some further reflections. First, there has not been so far any significant reform in the field of land tenure and inheritance for Adivasis. As underlined by prof. Nongbri[125] in a lecture on gender, customary law and women's representation among tribal communities in North East India, the sanctity in which Adivasi customary law is cloaked should be dismantled, in favor of the enactment of women-friendly legislative reforms which could spur women's participation in politics and an effective control of resources and assets, protecting at the same time the virtuous aspects of customary law itself.

Secondly, the strategies adopted by the courts are not homogenous nor consistent, and mostly hinge upon the legal sensitivity of the single judge. This lack of consistency emerges, for example, from the elusive tactics often adopted by the lawyers, who have to plead in court that their clients (mostly, urban middle-class Adivasi women) are Hindus in order to circumvent the application of discriminatory customary norms. If, on the one hand, this can be a quick shortcut to get more egalitarian outcomes, on the other hand, in the long term, may bring about the erasure of Adivasi legal specificities. Furthermore, not being comprehensive as a strategy, it leaves completely out rural women and women who cannot access legal assistance and formal courts.

Nonetheless, what has been presented in the previous paragraphs provide the framework and a starting point for new emancipatory discourses. Adivasi women navigate between plural legal arrangements in order to advance their claims, exploiting this intersecting space and the counter-hegemonic potential of state law and institutions to reshape their legal subjectivity.

The cases presented above are particularly telling in their highlighting new emancipatory strategies followed by women's groups in order to create awareness, challenge the traditional meanings of state law and the genuine character of a supposedly indigenous culture.

[125] Tiplut Nongbri, *Gender, Customary Law & Women's Representation in Politics*, 3rd Gangmumei Kamei Memorial Lecture, 21 October 2022.

This particularly virtuous cycle of challenging and resignifying customary norms in formal courts could potentially end up not only in substantial reforms, providing the bases for legislative amendments, but also in triggering debates at the local level on what is customary law and who makes it. In light of the mechanisms of interlegality highlighted above, feminist strategic litigation could become a quick instrument to accelerate social acceptance of women's claims at the local level and to renegotiate and rearticulate their roles within and outside the family.

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ABSTRACT: The present article investigates how Adivasi women often resort to state institutions and state norms in order to advance their claims, activating processes of interplay and hybridization between customary and state legal sphere.

In particular, working on the Indian legislation and case law related to Adivasi land tenure and inheritance, the paper unpacks the role of judicial forums as sites of contestation and identity resignification as well as Adivasi women's engagement with their own communities and state institutions through the judiciary.

ABSTRACT: Il presente contributo intende investigare come le donne adivasi spesso ricorrano a istituzioni e norme statali per portare avanti le loro istanze, attivando in questo modo processi di interazione e ibridazione tra la sfera statale e quella consuetudinaria.

In particolare, partendo dalla legislazione indiana e dalla giurisprudenza in materia di diritti fondiari adivasi e successione, l'articolo sviluppa un'analisi sul ruolo delle corti come luoghi di contestazione e risignificazione identitaria, che consentono di rimodellare anche il ruolo delle donne adivasi all'interno delle comunità di provenienza e nei confronti delle istituzioni statali.

KEYWORDS: indigenous feminism – land rights – interlegality – inheritance – India.

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