

Custom vs. Codified Law: The Struggle for Women's Inheritance in Tribal and North-Eastern Communities

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Abstract

This paper examines the complex interplay between customary law and codified legal frameworks concerning women's inheritance rights in tribal and North-Eastern communities of India. Despite constitutional guarantees of equality, millions of tribal women face systematic exclusion from property inheritance through customary practices that remain largely uncoded and patriarchal. This research analyzes the legal pluralism that characterizes these regions, exploring how traditional practices often supersede statutory provisions, thereby perpetuating gender-based discrimination. Through examination of legislative frameworks, judicial interventions, and ground realities, this study reveals the persistent tension between cultural preservation and gender justice. The paper argues for a nuanced approach that respects cultural autonomy while ensuring fundamental rights, proposing legislative reforms and community engagement strategies to bridge the gap between custom and constitutional mandate.

Keywords: customary law, women's inheritance rights, tribal communities, legal pluralism, North-Eastern India, gender justice

Introduction

India's legal landscape presents a unique paradox where constitutional guarantees of equality coexist with deeply entrenched customary practices that often contradict these principles. Nowhere is this tension more pronounced than in matters of women's inheritance rights within tribal and North-Eastern communities.¹ These communities, protected under special constitutional provisions, operate within legal frameworks that recognize customary law as valid, creating a complex web of legal pluralism that frequently disadvantages women in property succession.

The Scheduled Tribes, constituting approximately 8.6% of India's population, are governed by personal laws rooted in centuries-old traditions.² Similarly, North-Eastern states operate under Article 371 and related provisions that grant special status to customary practices. While these provisions were designed to protect indigenous cultures from homogenization, they have inadvertently created spaces where gender discrimination persists with legal sanction. This research investigates this critical intersection of tradition, law, and gender justice, examining how women navigate between customary exclusion and constitutional promise.

¹ Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press, 1994), 23-45.

² Census of India 2011, "Scheduled Tribes Population Data," Government of India.

Legal Framework: Constitutional Provisions and Statutory Law

Constitutional Safeguards

The Indian Constitution provides robust protections for gender equality through Articles 14 (equality before law), 15 (prohibition of discrimination), and 21 (right to life and dignity).³ However, these universal guarantees exist alongside special provisions such as the Fifth and Sixth Schedules, which exempt tribal areas from certain parliamentary laws, allowing customary law to prevail in matters of inheritance, land transfer, and family relations.

Article 371 extends similar autonomy to several North-Eastern states, including Nagaland (Article 371A), Meghalaya (Article 371B), and Mizoram (Article 371G), explicitly protecting customary law and practices related to ownership and transfer of land.⁴ This constitutional architecture creates a fundamental tension: while the Constitution promises equality, it simultaneously protects systems that may deny that very equality.

Codified Laws on Inheritance

The Hindu Succession Act, 1956, as amended in 2005, grants daughters equal coparcenary rights in ancestral property. However, its applicability to tribal communities remains contested and often excluded.⁵ The Act itself contains exemptions for communities governed by customary law, particularly in scheduled areas.

The North-Eastern Hill University Act and various state-specific laws further complicate the legal matrix. For instance, the Naga Customary Law recognizes only male descendants as legitimate heirs, while the Khasi and Garo communities of Meghalaya follow matrilineal systems that, while appearing progressive, often vest control with maternal uncles rather than women themselves.⁶

Customary Practices: A Regional Analysis

Patrilineal Systems

Most tribal communities in Central India and several North-Eastern groups follow strictly patrilineal inheritance patterns. Among the Nagas, Mizos, and various Scheduled Tribes of Jharkhand, Chhattisgarh, and Odisha, daughters are systematically excluded from inheriting land and immovable property.⁷ The rationale provided centers on maintaining clan integrity and preventing land fragmentation, with women expected to merge into their marital families.

In these communities, widows often face even greater vulnerability, as customary law may recognize their deceased husband's brothers or sons as primary heirs, leaving women dependent on male relatives' goodwill.⁸ The justification often invoked is preservation of ancestral land within the patrilineage, reflecting agrarian economies where land represents not merely economic assets but cultural and spiritual identity.

³ Constitution of India, Articles 14, 15, 21.

⁴ Constitution of India, Articles 371, 371A, 371B, 371G.

⁵ Hindu Succession Act, 1956 (as amended 2005), Sections 6, 8.

⁶ Walter Fernandes and Gita Bharali, "The Paradox of Matriliney: Women's Inheritance and Control in Meghalaya," *Northeast India Review* 11, no. 3 (2019): 112-135.

⁷ Memcha Devi, "Naga Women and Customary Laws: The Struggle for Equal Rights," *Indian Journal of Gender Studies* 25, no. 2 (2018): 203-224.

⁸ C.P. Chandrashekhara and Jayati Ghosh, "Tribal Women and Land Rights in India," *Economic and Political Weekly* 52, no. 18 (2017): 45-52.

Matrilineal Systems: Progressive in Appearance, Complex in Reality

The matrilineal systems of Meghalaya's Khasi, Jaintia, and Garo tribes present a more nuanced picture. While these communities trace descent through the female line and the youngest daughter typically inherits ancestral property, control often remains with maternal uncles (the *kni* system among Khasis).⁹ Women hold nominal ownership but exercise limited autonomy over property decisions, with brothers and maternal uncles wielding effective control.

This system challenges simplistic narratives about matriliney equating to matriarchy or women's empowerment. Research indicates that while women in these communities have better inheritance prospects than their counterparts in patrilineal societies, they still navigate significant patriarchal structures that limit their economic autonomy.¹⁰

The Conflict: Custom versus Constitutional Mandate

Legal Pluralism and Its Discontents

Legal pluralism—the coexistence of multiple legal systems within a single jurisdiction—characterizes tribal and North-Eastern regions. While anthropologists and cultural relativists argue for respecting diverse legal traditions, feminist scholars highlight how pluralism often operates to women's detriment.¹¹ Customary law systems, being largely uncodified and orally transmitted, lack transparency and are susceptible to manipulation by those in power, typically elder males.

The conflict intensifies when women attempt to assert statutory rights. Village councils and traditional institutions often resist, framing such assertions as cultural betrayal or external imposition. Women seeking legal recourse face community ostracism, making the formal legal route socially prohibitive even when theoretically available.¹²

Case Studies of Conflict

Several landmark cases illustrate this struggle. In *Madhu Kishwar vs. State of Bihar* (1996), the Supreme Court examined tribal women's inheritance rights in Jharkhand, ultimately upholding customary law while encouraging reform.¹³ The judgment reflected judicial reluctance to override customary practices, prioritizing cultural preservation over gender equality—a pattern repeated in subsequent cases.

In Nagaland, the Naga Mothers' Association has consistently advocated for women's property rights, facing significant opposition from traditional bodies like the Naga Hoho, which argue that altering inheritance customs would undermine Naga identity.¹⁴ This represents the broader tension between collective rights to cultural preservation and individual rights to equality.

Judicial Interventions and Limitations

Progressive Judgments

Indian courts have occasionally issued progressive rulings. In *Reena Devi vs. State of Madhya Pradesh* (2016), the court recognized tribal women's inheritance rights under the Hindu Succession Act, though

⁹ Fernandes and Bharali, "Paradox of Matriliney," 120-128.

¹⁰ *Ibid.*, 129-133.

¹¹ Sally Engle Merry, "Legal Pluralism," *Law & Society Review* 22, no. 5 (1988): 869-896.

¹² Govind Kelkar and Dev Nathan, "Gender Relations and Technological Change in Tribal Society," *Economic and Political Weekly* 33, no. 28 (1998): 1847-1853.

¹³ *Madhu Kishwar vs. State of Bihar*, AIR 1996 SC 1864.

¹⁴ *Devi*, "Naga Women and Customary Laws," 210-215.

implementation remains contested.¹⁵ The *Prakash vs. Phulavati* (2016) judgment reiterated daughters' equal coparcenary rights, but its applicability to scheduled areas remains ambiguous.

The Supreme Court in *Indian Young Lawyers Association vs. State of Kerala* (2018), though primarily addressing different issues, emphasized that constitutional morality must prevail over customary practices when fundamental rights are violated—a principle with significant implications for inheritance disputes.¹⁶

Judicial Restraint and Cultural Sensitivity

However, courts have often exercised restraint, deferring to customary law in tribal contexts. The judiciary's approach reflects sensitivity to accusations of cultural imperialism but simultaneously perpetuates gender discrimination. In *State of Meghalaya vs. Ms. D Rynjah* (2016), concerning matrilineal succession disputes, courts upheld customary practices despite their discriminatory impact on certain family members.¹⁷

This judicial ambivalence creates legal uncertainty. Women lack clear guidance on whether constitutional guarantees or customary restrictions apply, leading to inconsistent outcomes depending on judicial interpretation and regional variations.

Socioeconomic Implications

Economic Vulnerability

Inheritance exclusion severely impacts women's economic security. In agrarian tribal societies where land represents primary wealth, landlessness translates to poverty and dependence.¹⁸ Studies from the Scheduled Areas of central India reveal that tribal women's exclusion from inheritance correlates with higher poverty rates, reduced educational opportunities, and increased vulnerability to exploitation.

The inability to inherit land also affects women's access to credit, as financial institutions require collateral. This creates a vicious cycle where economic marginalization reinforces social subordination.¹⁹

Social and Psychological Impact

Beyond economic consequences, inheritance discrimination affects women's social status and psychological well-being. Ethnographic research in North-Eastern communities documents how property-less women experience diminished respect within family and community structures.²⁰ The message conveyed—that women are temporary family members who ultimately belong elsewhere—undermines their sense of belonging and self-worth.

Widows and divorced women face particular hardship, as customary systems often provide inadequate support mechanisms for women outside normative family structures. Without property rights, these women become entirely dependent on relatives' charity, a precarious position that discourages women from leaving abusive marriages or living autonomously.²¹

¹⁵ Reena Devi vs. State of Madhya Pradesh, 2016 (Civil Appeal No. 3783).

¹⁶ Indian Young Lawyers Association vs. State of Kerala, AIR 2018 SC 1690.

¹⁷ State of Meghalaya vs. Ms. D Rynjah, 2016 (Meghalaya High Court).

¹⁸ Agarwal, A Field of One's Own, 67-89.

¹⁹ Chandrashekhar and Ghosh, "Tribal Women and Land Rights," 48-50.

²⁰ Fernandes and Bharali, "Paradox of Matriliney," 125-127.

²¹ Kelkar and Nathan, "Gender Relations," 1850-1851.

Reform Initiatives and Challenges

Legislative Efforts

Several states have attempted reform. Himachal Pradesh's move to bring tribal areas under the Hindu Succession Act represents one approach, though implementation faces resistance.²² Proposals in Nagaland to provide daughters partial inheritance rights have encountered fierce opposition from traditional bodies, illustrating the political sensitivity of reform efforts.

The National Commission for Scheduled Tribes has recommended extending the Hindu Succession (Amendment) Act 2005 to tribal areas, but implementation remains inconsistent.²³ The challenge lies in balancing cultural preservation with constitutional mandates—a balance that remains elusive.

Community-Based Initiatives

Grassroots movements show promise. Organizations like the North East Network work with communities to reinterpret traditions in gender-inclusive ways, arguing that customary law evolved historically and can continue evolving.²⁴ By engaging elders and traditional leaders, these initiatives seek internal reform rather than external imposition.

However, such efforts face significant obstacles. Traditional power structures resist change that threatens their authority, and women advocating reform risk social ostracism. The success of community-based approaches depends on sustained engagement and support from enlightened traditional leaders—a challenging prospect in deeply conservative societies.²⁵

Comparative Perspectives

International experiences offer instructive parallels. In many African nations, similar tensions between customary and statutory law regarding women's inheritance have prompted varied responses. South Africa's Recognition of Customary Marriages Act attempts to harmonize customary law with constitutional equality principles.²⁶ Rwanda's succession law reforms, implemented post-genocide, demonstrate how comprehensive legal change can rapidly alter inheritance practices, though in contexts quite different from India's.

These comparative examples suggest that successful reform requires political will, comprehensive legal frameworks, and sustained implementation efforts. Half-measures or merely aspirational legislation without enforcement mechanisms prove insufficient to overcome entrenched practices.²⁷

Towards a Synthesis: Proposed Solutions

Legal Reforms

A comprehensive national legislation specifically addressing tribal women's inheritance rights could provide clarity currently lacking. Such legislation should:

1. Explicitly extend equal inheritance rights to women in scheduled areas while respecting cultural contexts
2. Establish mandatory minimum inheritance rights that cannot be overridden by custom

²² Report of the National Commission for Scheduled Tribes, 2018-19, Government of India.

²³ Ibid.

²⁴ North East Network Annual Report 2020, Guwahati.

²⁵ Devi, "Naga Women and Customary Laws," 218-220.

²⁶ Chuma Himonga and Christa Rautenbach, "Harmonizing Customary and Constitutional Law in South Africa," *African Journal of Legal Studies* 4, no. 2 (2011): 125-150.

²⁷ Ibid., 140-145.

3. Create accessible legal mechanisms for enforcement without requiring expensive litigation
4. Provide transition periods allowing communities to adapt gradually²⁸

Community Engagement

Legal reform alone proves insufficient without community buy-in. Sustained dialogue with traditional institutions, emphasizing that gender justice need not mean cultural erasure, is essential. Highlighting examples of tribal communities that have reformed inheritance practices while maintaining cultural identity can demonstrate feasibility.²⁹

Educational initiatives targeting both men and women about constitutional rights and the economic benefits of women's property ownership can shift attitudes gradually. Research from Himachal Pradesh indicates that education correlates with increased acceptance of daughters' inheritance rights.³⁰

Documentation and Codification

Many customary law systems remain uncodified, creating ambiguity and vulnerability to manipulation. Collaborative documentation processes involving community elders, women's representatives, and legal experts could create written codes that preserve cultural specificity while incorporating equality principles. Such codification would enhance transparency and accountability.³¹

Economic Support Mechanisms

Recognizing that immediate reform may be politically unfeasible in some regions, interim mechanisms could mitigate women's economic vulnerability. Community-based property rights collectives, microfinance initiatives specifically for tribal women, and targeted welfare programs could provide economic security even where inheritance rights remain contested.³²

Conclusion

The struggle for women's inheritance rights in tribal and North-Eastern communities encapsulates broader tensions between cultural preservation and universal human rights, collective identity and individual dignity, tradition and constitutional modernity. While respecting cultural diversity remains important, this respect cannot justify perpetuating gender-based discrimination that violates fundamental constitutional guarantees.

The path forward requires nuanced approaches that neither dismiss customary law as inherently regressive nor accept discrimination as culturally inevitable. Evidence suggests that traditions evolve and have evolved historically; contemporary tribal communities are not static museums but living societies capable of adaptation. The challenge lies in facilitating this evolution in directions that uphold both cultural identity and gender justice.

Legal reforms providing clear statutory foundations for women's inheritance rights in scheduled areas are essential but insufficient alone. These must be accompanied by sustained community engagement, education, economic support mechanisms, and political will to implement existing protections. The constitutional promise of equality remains unfulfilled for millions of tribal women; honoring this promise while respecting cultural distinctiveness represents one of contemporary India's most pressing legal and social challenges.

²⁸ Law Commission of India, Report No. 258 on "Family Law Reform," 2015.

²⁹ Agarwal, *A Field of One's Own*, 420-445.

³⁰ Study by Himachal Pradesh State Commission for Women, 2019.

³¹ National Commission for Scheduled Tribes Report, 2018-19.

³² Chandrashekhar and Ghosh, "Tribal Women and Land Rights," 51-52.

Ultimately, the question is not whether tribal communities should be forced to abandon their customs, but whether customs that systematically disadvantage half the population can be justified in a constitutional democracy committed to equality and dignity for all citizens. The answer must be a resounding no, followed by patient, persistent, and culturally sensitive efforts to align customary practices with constitutional values.

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