

CUSTOMARY LAW AND GENDER INEQUALITY: A CASE STUDY OF GOND COMMUNITY OF CENTRAL INDIA

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ABSTRACT

India is deliberated as an anthropological lab due to its local, ethnic, religious, linguistic and racial diversities. Population of India is an integral component of its social fabric. Madhya Pradesh has the major (23.27%) tribal population in the country. The major Scheduled Tribes in Madhya Pradesh are Gond, Oraon and Kanwar. The current study is a challenge to analyze and examine customary and customs laws of women of the Gond community in Central India specifically in the states of Madhya Pradesh and Chattisgarh. The study is primarily based on the customary laws of inheritance and marriage. The study is exploratory and contemporary in nature. Some legal cases are compiled to examine the customary laws that govern the lives of Gond women. The study reveals the Gond tribe had patriarchal, patrilineal, or patrilocal customary law. Inheritance of succession and property of chieftainship is actually in the male line. Matrimony is patrilocal and expert in the household is clearly patriarchal.

Keywords: Customs, Gender Injustice, Gond, Inheritance, Marriage.

INTRODUCTION

There's simply no universally acknowledged characterization of a customary law. It may be referred to as a set of procedures whereby a tribe method the culture of its and also expresses the worldwide view of its. It's "an identified method of immemorial regulations that had developed out of the means of living and organic needs of the individuals, the normal context of that was a situation of a known fact, fused with precedents using to exclusive instances, that were kept in the recollections of the chief and his counselors, their sons and their son's sons (sic), until lost, and until finally they became a part of the immemorial rules...". When individuals reside in organizations, it's normal that they need to develop unified team, daily life and also comply with specific patterns of human behavior. By expertise male learns that a specific method of actions or maybe conduct is favorable to communal existing. In a time program, a design of action emerges, as well as through constant observance to it, it accomplishes conscious and spontaneous following by the participants of the team. When this particular phase is covered, the design of human action is termed as usage.

A customary law is definitely the usual program of conduct of a culture and possesses dos and doesn't according to its norms, usages and practices, systems like taboos, culture, social rituals, sanctions, public ethics and posture of every person. These norms, therefore, retrain the pattern of theirs of actions and manage the cultural, religious and cultural facets of the family and the individual.

No matter the formal status of its, many tribes manage the community of theirs plus community matters based on the customary law and start treating it as essential to the culture of theirs as well as fundamental to the identity of theirs. This particular law strengthens the tribe's age ancient customs along with also binding it collectively via normative regulations through adaptable personal as well as social associations of its fellows. Over institutions like the village council primarily built on such law, the frontrunners regulate the core matters of the community. Tradition is a community's phrase of the worldview of its i.e. the interpretation of it's of the simple fact around it or perhaps what can be known as the philosophy of its, conveyed through the customs of its, community organization and relations, dress, festivals, rituals, language, arts and ornaments. It culminates in the identity of its. Both customary law as well as tradition have transformed as time passes.

As social scientist, *Mayne*, puts it, “A belief in the property of the imperative nature of a particular course of conduct, produces as uniformity of behavior in following it and uniformity of behavior in following a particular course of conduct produce a belief that it is imperative or proper to do so, when from either cause or from both cause, a uniform and persistent usage has molded the life and regulated the dealing of a particular class of community, it becomes a custom.”

Laws may begin as practices with localized program but are slowly acknowledged by the majority of the neighborhood with time in case the society thinks the process is great because of it or perhaps manages to do it no damage. They start to be enforceable and mandatory by the tribal chiefs. Sometime the customary law becomes essential to tribe's identity. In it governs the individual's matrimony, divorce, inheritance, kid custody, etc. and neighborhood associations including tenurial rights over forests, water bodies, lands, along with various other organic resources. Put simply, customary law, in the widest connotation of its, is a body of rules that adjusts the conduct of the individuals vis-à-vis one another as well as vis-à-vis the person as well as society. The social life of the Gond tribe frequently is dependent upon the practices as well as traditions prevailing in the region of theirs. They're directly connected with their early customs and culture. These tribes have the own way of theirs of life that has given way to customs and laws for settling disputes. Among the Gond tribe, affairs of the community were conducted in accordance with the typical consent of the village and in obeisance of household deities. Conflicts of all sorts which include all those associated with marriage, adoption, divorce and inheritance among the households had been settled by the village panchayats.

PROPERTY INHERITANCE SYSTEM UNDER CUSTOMARY LAW

Inheritance in Gond community is not administered through the Hindu Succession Act, 1956 or any additional law enacted by means of the Government of India or the state governments of Madhya Pradesh and Chattisgarh. In fact, the Hindu Succession Act, 1956, under section 2(2) specifically excludes certain Scheduled Tribes. In the Gond community, inheritance is governed by customs and customary laws as per which devolution of property is patrilineal. Thus, all moveable immovable property whether ancestral or self-acquired devolves through the male line, with a few exceptions described below. The mode of inheritance can be generalized as follows in reference to Gond tribal community women:

1. When departed is endured through sons, assets are inherited through son or son of predeceased son.
2. When the departed leaves behind no son but is survived by daughters along with a widow, his possessions goes to the widow and not to his daughters regardless of the daughters' marital status. The deceased' widow can retain ownership only up to her life time and on her remarriage or death the property returns to her husbands, brothers or their sons. Generally, Gond customs do not allow disposal of the land by the widow by way of sale, gift, mortgage etc. A widow is only a limited owner of the land as per traditional Hindu law as such she cannot execute a will. The widow not entitled to alienate suit property. However, there have been instances where widows have alienated their property by way of gift, mortgage etc. This happens because of lack of clarity of customs.
3. When the deceased is survived by more than one widow and has no son or daughter property will be inherited by all the widows in equal shares.
4. Daughters aren't permitted to a stake in their father's property.
5. Though there are many instances of inheritance by unmarried daughters in Gond community, this happens only when the deceased has neither son nor widow. The inherited property however remains with the daughter only up to her marriage.

UNDERSTANDING CUSTOMARY LAWS THROUGH CASE LAWS

The Supreme Court in the matter of *Madhu Kishwar and others v. State of Bihar along with others* , on sub-section (2) of Section 2 of the Act of Hindu Succession Act, 1956 held,....therefore neither the Hindu Succession Act, or the Indian Succession Act, or even the Shariat law is appropriate to the tradition governed tribals. In addition to the custom, as well as properly realized, differs from customers to region and people to area.

In the matter of *Chuiyya s/o Jhadi and another v. Mangari Bai and another*, the Madhya Pradesh.

Court however trade through the issue of inheritance of property of father by daughter belonging to "Gond tribe" held, "It is true that the requirements of Hindu Succession Act, 1956 don't affect the users of the Scheduled Tribe following section 2(2) this Act. It is also true that groups are Scheduled Tribes. In the absence of son, the daughter was entitled to inheritance

and she used to get “limited Estate” and on her death it used to pass on to the reversionary of her father. That rule has been abrogated. As per the Hindu Succession Act, 1956 Section 14 deliberates complete heritable ability over the female heir. There is no definite evidence that amongst the Gond a daughter is excluded from inheriting the property of her father. There should be no disparity in the rights of man and woman in matters of succession and inheritance. This is recognized in all the systems. It is for the person setting up the plea of exclusion of daughter from inheritance to prove and establish that there is such a caste custom. A custom is a rule which has through long custom attained the law force. It must be ancient, certain and reasonable. The daughter is entitled to the share in the lands in dispute.

Similarly, in the matter of Sukhmani and others v. Jagarnath, the Madhya Pradesh High Court applying the equity principles, justice along with good conscience, finding no provision of law governing right to succession among Gond tribe held, “The trial Court had rightly held that the daughters are entitled to a share in the property of father in the Gond community and they along with Sonamati and the respondent succeeded to the property of Jatu. After the death of Sonamati half share of Sonamati was also transmitted to the appellants as there was no prohibition in law to succeed the property of their step-mother. In fact, sections 5 and 6 of the Central Provinces Law read together would show that in absence of any law governing the right to succession, the principles of equity, justice and good conscience shall apply. For all these reasons, this Court comes to the conclusion that the appellants and the respondent are entitled to 1/6th share each in the suit property.”

This particular Court in terms of Mst. Sarwango along with others v. Mst. Urchamahin addition to others and urchamahin, working on Section 6 of the Central Provinces Laws Act, 1875, retained that in deficiency of slight law of inheritance or maybe customized prevalent in the Gond tribe, Courts have to determine if the child has any perfect to the home of the father of her as per the concepts of justice, good conscience and equity.

The Court “In the present case, both the parties have failed to prove any law of inheritance or custom prevailing in their Gond caste i.e. member of Scheduled Caste whom Hindu Law or other law governing inheritance is not applicable. In absence of any law of inheritance or custom prevailing in their caste governing the inheritance the Courts are required to decide the rights. According to justice, equity and good conscience in term of Section 6 of the Act.

Plaintiffs Sawango and Jaituniya are daughters of Jhngal, nearest relative rather the respondents, who were daughter-in-law of brother of Jhngal and legitimate or illegitimate son of Balam Singh, son of Dakhal. In these circumstances, plaintiffs Sawango and Jaituniya would be the persons' best entitlement to inherit the property left by their father. The Courts below are required to decide their rights of inheritance in accordance with the provisions of Section 6 of the Act applicable to the State of Chhattisgarh and undivided State of Madhya Pradesh.”

In *Daduram and others v. Tirith Kumar and others* The Court held that in nonappearance of any law of inheritance usual in the Gond group courts have to establish rights based on justice, good conscience and equity in terminology of Section 6 of the Central Provinces Laws Act, 1875. The Central Provinces Laws Act, 1875 is ratified to control the tradition, specific home of women, dower, marriage, adoption, betrothal along with additional customs along with system. Sections 5 and 6 of the said Act read as follows: -

“Section-5: - Rule of decision in cases of certain classes.

In questions regarding inheritance, special property of females, betrothal, marriage, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions or any religious usage, the rule of decision shall be the Muhammadan Law in cases where the parties are Muhammadans, and the Hindu Law in cases where the parties are Hindus, except in so far as such law has been by the legislative enactment altered or abolished, or is opposed to the provisions of this Act: Provided that when among any class or body of persons or among the members of any family any custom prevails which is inconsistent with the law applicable between such persons under this section, and which if not inconsistent with such law, would have been given effect to as legally binding, such custom shall, notwithstanding anything herein contained, be given effect to.”

“Section-6: - Rules in cases not expressly provided for.

In cases not provided for by section 5, or by any law for the time being in force, the Courts shall act according to justice, equity and good conscience.” The Supreme Court in *M.V. Elisabeth and others v. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa* kept that in which a statute is quiet over a subject material

as well as judicial treatment is needed, Courts need to make an effort to correct grievances based on what's seen to be concepts of justice, good conscience and equity.

It was observed, "The judicial power of this country, which is an aspect of national sovereignty, is vested in the people and is articulated in the provisions of the Constitution and the laws and is exercised by courts empowered to exercise it. It is absurd to confine that power to the provisions of imperial statutes of a bygone age. Access to court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where statute is judicial and silent treatment is needed, Courts make an effort to correct grievances based on what's seen to be concepts of justice, equity as well as moral conscience."

Now, the question is what is meaning and significance of the expression "justice, equity and good conscience". The foundation of the formulation of "justice, equity as well as good conscience" is based on Romeo canonical energy sources of the 16th Century. Later, it was used in Italy, Franc and Germany. It appealed to the English authorized system that modified it and integrated it in itself. The preamble to the Act of Succession enacted in 1536 applied the expressions.

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The East India Company carried the concept to India. Throughout 1688, the Judges appointed in Bombay underneath the company's Law were "to be themselves based on decent conscience". The Royal Charters of 1683, 1687, 1726 as well as 1753 additionally applied the expressions "Equity as well as Good Conscience" as well as Right" and "justice. The Regulation of 1781 enjoined that in all of cases for what no instructions had been because of the respective Judge "do action based on justice, good conscience" and equity. The concepts had been being put on just where good law or maybe customized didn't aid the Court to dispense judicial justice.

Indeed, the term "Justice" eludes a precise definition. It's the perpetual and constant disposition to render to each male his due. The Courts are to administer "commutative justice" and "distributive justice" as well. The phrase "commutative justice" suggests that virtue whose item is rendering to e preamble to the Act of Succession enacted in 1536 applied the expressions.

Everyone what is owned by him, as almost as might be, or perhaps that which governs contracts. In order to render commutative justice, the judge should carry out equality in between the people, so that nobody might be gained by another's loss. The expressions "distributive justice" suggests that virtue whose item is distributing punishments and rewards to every one based on his merits, watching a simply proportion by evaluating one individual or maybe point with an additional, so that neither identical individuals have unequal matters neither unequal individuals elements equal. "Equity' is a process of rules or law additional consonant compared to the typical law that views up for time actually being as to a simply regulation of the mutual rights as well as responsibilities of males living in a civilized society, vide Halsbury's Laws of England, Vol. 14,, 3rd Edn, p. 464.

"Equity' according to Blackstone means "that portion of remedial justice which was formerly exclusively administered by a court of Equity as contra-distinguished from that portion which was formerly exclusively administered by a court of common law" – vide Blackstone's Commentaries, 429-437. The meaning of the expressions "Justice, equity and good conscience" was summed up by Lord Hobhouse in *WaghelaRajsanji v. ShekhMasludin* "Justice, equity as well as fresh conscience" might be translated to imply the guidelines of English Law and also discovered appropriate to Indian modern society iong and some 4).

In the matter of *Mohammad Baqar and Others v. Naim-Un-Nisa Bibi and Others* the Supreme Court held. "The burden of proving a custom in derogation of the general law being heavily on the party who sets it up."

Following the principle set out in the case of *Gondul v. BachanRaiand others* where the plaintiff plead that the Hindu Succession Act, 1956 provisions would not relate as parties associated to the Gond tribe and by the custom prevalent in the Gond tribe, widows were not entitled to alienate the suit property, the Court stated that the burden to prove that the customary law excludes the woman from alienation of property inherited from her husband was on the

plaintiff and it will be banned as of to the Court as to begin through the presumption that law of customary leading the parties ignores the women as of alienating the property.

In instance of Babulal v. Reshmabai the Bombay High Court held that tribal women have a right to their parents' property. Perceiving that inequality of gender is 'anathema' to the Indian Constitution, the Bombay High Court Nagpur bench lately alleged about a tribal household daughter that she has the same rights as a son to her parents' property. The High Court has additionally kept that as in case when expected regulations leading tribes except women as of professing shares in property, such exclusion are impermissible under the Indian Constitution. The milestone presiding was conveyed through the bench of single-judge consisting of Justice Rohit Deo though experiencing a home disagreement among siblings related to the Gond tribe whereby the sisters demanded their share in the assets of the their father, who passed away unheard. The case admitted by the sisters was contrasted by their brothers appealing the Gond tribe was ruled by the provisions and Hindu Succession Act customary laws or maybe the Indian Succession Act can't be used in the case of theirs. An additional argument that the customary regulations of the Gond tribe don't allow women to get some stake in her parents' assets was admitted by brothers.

Disagreeing with the contentions upraised through the brothers, Justice Deo perceived, "Gender inequality is anathema to constitutional philosophy and morality. Obliteration of inequality is a cherished goal of the Indian Constitution. Custom or usage which prima facie is not gender neutral would have to muster the test of the right to equality prohibition of discrimination and the right to life and liberty of the Constitution of India."

The bench additionally overruled the disagreement when a tribal female prefers a stake in the home well then she's to confirm that the tribe's customary regulations enable her to create likewise statements. An persistence that a women tribal who's an all-natural authorized heir has to plead then confirm that underneath the customary law she's not omitted as of legacy will run counter to the imperative of the Constitutional that the old age indifference, prejudices as well as perception of the gender heading beside women has to be resolved as well as lessened if not completely eradicated," Justice Deo stated.

"In view of the constitutional philosophy which seeks to minimize if not eliminate gender discrimination, I hold that if a female tribal who is a natural legal heir seeks equal share in the property of her father or mother, it would be impermissible for the Court to start with the

assumption that the customary law governing the tribe excludes the females from inheritance and to then insist that the female tribal must plead and prove a custom that she is not so excluded," the judge alleged. The bench consequently, terminated the petition filed via the brothers along with permissible sisters of their to privilege a mutual stake in parents' assets.

MATTER OF MATRIMONY

Gond modern society is split into 4 exogamous, patrilineal descent organizations recognized for anthropological terms as Phratries. Every Phratry (Saga in Gondi) traces the origin among the 4 categories of gods that appeared out of the primitive cave following their release through the hero, Lingal. The phratry is split into a selection of exogamous clans (Pari). A clan involves a team of individuals that think they're descended in the male type from the same ancestor. Consequently, nobody is able to marry someone belonging to an equivalent clan or Phratry. Defilement of the exogamy principle is regarded as incest. Not merely will offenders plan being penalized through the Gods, though they're additionally omitted as of the tribal society. A lot of the Gond clans accept the labels of plants or animals that indicate totemic origins. Many Gond clans nevertheless observe totemic taboos and also stay away from consuming the skin of particular creatures.

Kinship as well as matrimony practices with the Gonds reflect wider regional patterns. The greater part might be the cross cousin matrimony (e.g., marriage with one's mother's brother's daughter) so regular of South Indian society. Organizations which were affected by northern individuals including the Marathas, nonetheless, stay with northern traditions in deciding matrimony associates. Likewise, northern Gonds permit what exactly are known as "levirate" marriages, which is remarriage of a widow to the brother of the late husband. In southern India, this is not permissible and the southern Gonds comply with given specific proscription.

Gonds usually marry on arriving at actual physical maturity, by the choice of mates built upon shared option, governed by the endorsement of tribal council. Today the Gonds progressively comply with the Hindu custom of arranged marriages once the kids continue to be small. A bride-price is compensated through the groom's dad. The wedding ceremony of Gond comes with a number of important ceremonies, in general, although, rites comply with the locality marriage traditions. The central right of the wedding of the Gond ceremony is made up of the groom strolling with the bride of his 7 times occasions near a party posting initiated in the wedding booth centre.

Gond modern civilization is patrilocal as well as the brides are living with the family of the groom till time that is such as they shift right addicted to a home of their very particular. Even however the prolonged family is pretty customary among the Gonds, the nuclear family is starting to be additional prevalent. Inheritance permits down the type of male, by every son getting identical stakes.

Along with the assigned matrimony, different types of matrimony with the Gonds may comprise desertion of an unmarried girl by means of a boy, or maybe the girl's detention along with her involuntary marriage to the captor of her. This kind of marriages should afterwards be legalized by the family as well as village conventions of the associates.

Likewise, divorce is acceptable among the Gonds and it is fairly readily received, though it should be from the panchayat.

CONCLUDING REMARKS

Gonds have a system of patriarchal, patrilineal and patrilocal custom laws. Descent of the social group, inheritance and succession of chieftainship is restricted to the male line. Marriage is Patrilocal and authority in the family is strongly patriarchal. However, by way of case laws, the Gond community is evolving and Gondi women are getting rights equal to male members. The conclusion of Bombay High Court in the instance of Babulal v. Reshmabai is an exemplary judgment and must be followed by Madhya Pradesh High Court for securing equal property rights of women of the Gond community and aid the constitutional viewpoint and that seeks to reduce, if not wipe out gender discrimination.