

**Institutional impact on women: Political process, legal reforms and judicial in Jharkhand****Dr.Chandrashekhar Roy**

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**Abstract-**Man provides the seed ,while Woman provides the field is a common saying and a widely held belief across rural india.The state of Jharkhand[meaning ‘the land of forest’ was covered out southern Bihar in November 2000 to fulfil the long standing demand of the tribals in this region.As of the the last census,out of population of 32.9 milion, approximately 26% belong to scheduled Tribe communities who settled in these hilly terrains at different times in the past[census of india,2011].The continuous and overlapping processes of colonisation, industrialisation, urbanisation and globalisation in Jharkhand have made tribal women far more insecure compared to non-tribal groups and communities,consequently,poor health,lack of education,restrictions over mobility,limited opportunities for livelihoods,frequent migration,vulnerability to trafficking and various forms of violence are few of the many harsh realities that women confront every day.Many of these vulnerabilities are buttressed by a range of social and cultural norms that dictate how women and man should behave,where they can or cannot go and who will have access to or control over land and other resources.The overall legal framework of land governance in India and Jharkhand is guided by constitutional provisions that safeguard the right of scheduled tribes and the women in various ways.The principles of equality and non-discrimination are deeply enshrined in the Indian constitution through its Preamble Fundamental Rights,Fundamental Duties and Directive Principles.The study also raises prominent questions assessing the Institutional impact on Woman;political process,legal reforms and judicial in Jharkhand.

**Keywords-**Rehabilitation,PESA. Tenurial laws, landholders, Munda Tribes, Tribal Women, Violence.

Introduction-Over the centuries,the Adivasi people cleared area of forest,established village and prepared cultivable fields in cooperation with each other.The different communities governed their own village and had a symbiotic relationship with land ,calling it their ‘Mother Nature’.The families regarded themselves as the usufructs of the land,and not the owners.The region remained beyond the interest or control of the empires and kingdoms of the plains until the Century,which witnessed the emergence and consolidation of primary states,or jungle state.Initially,the tribal cultivators paid tribute or chanda to the kings as the ‘protectors’,not as the owners of the land .This arrangement changed during the British colonial period,when the land was put under individual proprietorship and land revenue become the primary source of the state income.The Britishers then introduced the zamindari system to collect land revenue ,which means that ‘zamindars’-the intermediaries-were recongnised as owners of huge tracts of land and were given the right to collect revenue from peasants.In this way,the original cultivators of land became the tenants of landlords.They lost their control over their ancestral land and were forced to pay regular taxes to the landlords.This new system opened the door to many outsiders who ruthlessly exploited the Adivasi people as cheap indentured labouers and used unfair means to grab their land .As Adivasis started losing control over their land and and forests,the early community-based systems of control,management and output sharing began to disintegrate.This resulted in unprecedented exploitation of the tribals and led to unrest in many parts of the Chota Nagpur and Santhal Pargana regions in Jharkhand ,chiefly inhabited by the Mundas and the Santhal tribes ,respectively .The continuous uprising

and revolts, in which women played an important role, led the British rulers to realise that this region must not be governed by the general regulations and acts governing the adjacent areas. Constitutional and statutory provisions- The overall legal framework of land governance in India and Jharkhand is guided by constitutional provisions that safeguard the right of scheduled tribes and the women in various ways. The principles of equality and non-discrimination are deeply enshrined in the Indian Constitution through its Preamble, Fundamental Right, Fundamental Duties and Directive Principles. The Constitution also empowers the state to adopt measures of non-discrimination in favour of Women for neutralising the cumulative socio economic, educational and political disadvantages they face. Fundamental Rights, among other, ensure equality before the law and equal protection of law, prohibit discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Below is a list of several such provisions.

1. Equality before law for women [Article 14]
2. The state not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth any of them [Article 15i]
3. The state to make any special provision in favour of women and children [Article 15 {3}]
4. Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state [Article 16]
5. The state to direct its policy towards securing for men and women equality the right to an adequate means of livelihood [Article 39[a]], and equal pay for equal work for both men and women [Article 39[d]]
6. To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities [Article 39A]
7. The state to promote with special care the educational and economic interests of the weaker section of the people and protect them from social injustice and all forms of exploitation [Article 46]
8. To promote harmony and the spirit of common brotherhood amongst all the people of India and
9. Not less than one-third [including the number of seats reserved for women belonging to the scheduled castes and the scheduled tribes] of the total number of seats to be filled by direct rotation to different constituencies in a Panchayat [Article 243D {3}]
10. Not less than one-third of the total number of offices of chairpersons in the Panchayats at each level to be reserved for women Article 243d {4}]

#### **The Fifth Schedule provides special protection to tribals**

Article 244 of the constitution, read along with the Fifth and Sixth schedules, recognises that the scheduled Tribes have suffered historically and require special protection to ensure that these historical wrongs are not repeated, and are reversed. Of the 24 districts in Jharkhand, 15 are enlisted as Fifth Schedule areas. These areas are effectively tribal homelands, in which the state and the tribes enjoy a great deal of autonomy in matters governing land and culture. The Fifth schedule grants extensive powers to the Governor, who, by public notification, may direct that a law enacted by the Parliament or the state Legislative Assembly shall not apply to scheduled Area, or shall apply subject to certain amendments or restrictions as specified by the Governor. It also provides for the creation of a Tribes Advisory Council

in each state having scheduled Areas to advise the Governor on matters pertaining to the welfare and advancement of the Scheduled Tribes.

### **The Seventh Schedule determines legislative powers related to land**

The Seventh Schedule of the Indian Constitution deals with the division of powers between the Union government and state government, which is effected through three lists: [1] the Union list contains subjects over which the centre [or Parliament] has exclusive power of legislation, [2] the State List contains subjects of local and regional importance over which states can pass laws, and [3] the Concurrent List contains subjects where centre and states share legislative jurisdiction. Within these three lists, the centre and states have legislative authority over the different aspects of land governance. Most matters related to land -such as land tenures, the relation of landlord and tenant, collection of rents, transfer and alienation of agricultural land, land improvement and agricultural loans-fall under the state list and this also allows states to give recognition to tribal systems of land management. However, issues related to 'wills, intestacy, succession, partition, and transfer of land other than agricultural land', are a part of the concurrent list. Consequently, while centre and states share jurisdiction over 'succession', transfer of agricultural land exclusively falls under the domain of states. This overlay allows states to amend personal laws such as HAS 1956 at the state level and simultaneously enact independent inheritance provisions of agricultural land.

### **The Ninth schedule provides protection to certain laws from judicial review**

The Ninth schedule of the Constitution contains a list of the central and state laws which cannot be challenged in court. It was primarily introduced by the government to protect the laws related to agrarian reform and for abolishing the Zamindari system. Currently, 284 such laws are shielded from judicial review, and most of these concern agriculture and land issues, though the list also includes other subjects, such as reservation. Interestingly, the schedule also has a retrospective operation, meaning that if laws are inserted in the Ninth schedule after they are declared unconstitutional, they are considered to have been in the schedule since their commencement, and thus valid. Consequently, any discriminatory provisions of tenancy laws applicable in a state cannot be challenged in the court on the ground that they violate the fundamental right of equality for women. However, on 11 January 2007, a constitutional bench of the Supreme court held that even though an Act is part in the Ninth schedule by a constitutional amendment, its provision shall have to be tested on the touchstone of the basic or essential features of the Constitution, if the amendment has taken place after 24th April 1973. On this date the supreme Court of India had propounded that the Constitution of India has certain basic features that cannot be altered or destroyed that the Constitution of India has certain basic features that cannot be altered or destroyed through amendments by the Parliament.

### **Policy initiatives to increase women's land Ownership**

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

of persons registered in the electoral rolls comprised within the area of Panchayat] at the village level as the foundation of the Panchayat Raj System, performing functions and powers entrusted to Gram Sabha by the respective state Legislature. The amendment itself did not cover the scheduled Area because of the protection provided to them. Thus, Provisions of the Panchayats[Extension to Scheduled Areas] Act,1996[PESA] was enacted in 1996 to extend the provisions of the 1993 law to scheduled Areas , with certain exception and modifications. Registration with partitionable rights of both spouses or sole registration of land in the name of the woman through concessions in registration fees and stamp duties.

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

As the national policy suggested that states provide incentives for the registration of land in the name of Women ,several states came forward with provisions to reduce stamp duties and registration fees for land registered jointly in the name of a woman and a man , or individually in the name of a woman only.In June 2017,Jharkhand introduced the scheme of one -rupee token stamp duty for women's registration upon purchase of landed property up to INR 50 lakh.In general, the rate of registration of any immovable properties at that time was 7% of the purchase value[4% stamp duty and 3% court fee].The Scheme,however,was rolled back in my 2020,purportedly because of a heavy loss in state revenue.At the time of repealing, the state land Revenue Minister noted that 152521 woman had benefitted from the one rupee registry scheme and that 238 cases were found where woman had benefitted from the scheme more than once.Several CSO leaders and advocates we spoke to felt that the scheme was helpful and served to encourage registration of Property in the names of women,though a few who were critical thought that the Scheme could help only the rich in evading tax and was of no use to real poor-that is the tribals and the landless.As one lawyer observed, The real poor do not have purchasing power, so how can they buy land ? A study needs to be conducted to see the impact of this scheme.

### **Joint titles of land allocated by the government**

Land allocation to the poor and the landless has been the priority of several state governments .The Bihar Bhoodan Yagna Act,1954 provides for the donation of the land allocation of ceiling surplus lands to landless persons, to be carried out by the Bhoodan Yojna Committee.A large amount of Bohdan land was acquired , especially in Hazaribagh [328447 acres],Chatra [210058 acres] and Giridih [217062 acres]district ,but of total of 1335739] acres acquired ,only 482881 acres have been settled ,and the remaining lies undistributed.Many cases have been filled under section 83 of the CNT ,bringing even these settlements in to dispute [1970:26]. A revenue official from the state reported that Bhoodan Yojna committee has been defunct for several years. Although the approach paper to 9<sup>th</sup> Five -year plan states that preference should be given to women in distribution of ceiling surplus land , It is not clear as to what extent women as individuals have received land distributed by the Government of Jharkhand or Bhar. There is a clear circular from the Bihar Government stating that when land is distributed,the pattas[ land titles] should be given in the name of both husband and wife , and government officials claim that this is being followed. They said that sometimes land is given to single woman, but there is no official data to support this claim. As evident , Jharkhand does not have any such clear priority. Several officials we interviewed said that the land allocation by the state in case of acquisition and displacement is not granted in the name of woman. According to one revenue official nterviewed , The state does not have a policy of joint land allocation, but if someone positions a request ,they can consider.

### **Titles on forest land**

To protect and safeguard the interests of Adivasi, 'The Scheduled Tribes and other Traditional Forest Dwellers [Recognition of Forest Right] Act, 2006, 'popularly known as the Forest Right Act [FRA], enacted to correct that 'historic injustice done to them in colonial era'. The Act legally recognises the rights of the forest dwelling tribal communities and other traditional forest dwellers to forest resources, on which these communities were dependent for a variety of need, including livelihood habitation and other socio-cultural needs.

It also recognises and vests individual forest-dwellers with usage rights-right to live in, cultivate, manage, protect, and regenerate the forest. The rights extended are heritable but cannot be transferred outside the lineage.

### **CONCLUSION**

After our conversations with women and other stakeholders, it became increasingly clear that for many families, land simultaneously represents an important productive resource and site of cultural practices, and that strong and secure rights over land are a firm springboard for a life of dignity. Women realise that land security has a tremendous potential for facilitating income gains, improving food security and acting as a safety net in times of hardship. Law and legal systems do not function in vacuum. They operate and derive their legitimacy in the hands of administrative systems and the established social practices. A position paper by the United Nations [2017] notes that realisation or enforceability of land rights requires that 'states must ensure that women be fully informed of their land rights and they have access to justice to enforce them without discrimination, including in official bodies, courts and other relevant dispute resolution bodies, such as customary institutions. There are strategic changes that require a long-term vision and sustained efforts. But there also is an immediate need to reduce women's vulnerability and suffering. When we think about the change strategy, it is important to note that it is not just the tribal or the economically vulnerable woman who require protection but that women overall deserve a better treatment. It is against this backdrop that we suggest some strategies. For examples-Review and reform land laws, Make the customary law gender just, Engage with the political leadership in the state, Make the Tribal Advisory committee more functional, Make land administration responsive to women's needs, Develop collective agency and leadership for women, Promote women's access to legal services, Build on the role of civil society organisations.

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