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RESEARCH ARTICLE

THE MYTH OF TRIBAL BACKWARDNESS: LAND RIGHTS IN TRIBALS

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ABSTRACT

The indigenous communities of tribal in India are often synonymous to under development and backwardness. Advanced political liberty and civil rights remain a policy agenda for their development. The article focuses on how certain tribal communities have a clear and well practiced land inheritance custom. This inheritance stands important, for it's the women who assume power holding status or some security. The tribal community has few extremely progressive customs that have yet to be determined in it's full awareness to the outside people.

Key words:

Indigenous communities,
Inheritance custom.

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INTRODUCTION

Article 366 (25) of the Constitution of India refers to Schedule Tribes as those communities who are scheduled in accordance with Article 342 of the Constitution. According to these Articles, only those communities who have been declared as such by the President through an initial public notification or through subsequent amending Act of Parliament will be considered to be Scheduled Tribes (Annual Report 2016-17) The list of Schedule Tribes is specific to the State or the Union Territory. A community declared as Scheduled Tribe in one State may not necessarily be so in another State unless notified for that state. There are over 700 Scheduled Tribes so notified. The criteria followed for specification of a community as a Scheduled Tribe² are as under:-

- Indication of primitive trades
- Distinctive culture
- Geographical isolation
- Shyness of contact with community at large
- Backwardness

Although the criteria for specifications as a Scheduled Tribe are well accepted, it will be interesting to examine these criteria in terms of their popular perception. The last one of these i.e. backwardness is usually taken to mean malefic

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economic status but quite often, it has also been interpreted as the backwardness of interpersonal conduct and social interaction. Economic status is normally interpreted as a capacity to incur expenditure on consumption and living. Because of this inherent although unannounced mix up of intent, people tend to treat their social customs and traditions too as a mark of backwardness. Typical social custom could be a product of a particular social setting in a given geographical domain. But these aspects are often forgotten. Therefore, the first thing in any attempt of opinionation about backwardness of tribals' would be to remain unbiased as far as the tribals' social customs or traditions are concerned. Being unbiased would mean that they should not be compared using the analyst's perception of development as a benchmark. These criteria include distinctive culture which could be product of complex social institutions and practices of Kinship in the given geographical setting. For example, ploughing land with crudely crafted wooden implements would give an impression that these are primitive tools adopted by the tribe. We hardly term it as a stage of development and seek to compare it with the implements employed in the developed societies without appreciating that the stage of under development of tribal's is only a manifestation of socio economic exposure, their exposure being restricted and dated. That is why geographical isolation is one of the criteria. If geographical isolation is removed and movement starts, it is bound to enhance exposure. Similarly, the primitive trades correspond to the social requirements. When we call it an under developed society, it only means that the production efficiency of those implements is much less when compared with the equipment

employed by so called 'developed societies'. These should actually mean that they are at a different stage of development in terms of economic or production efficiency. But still, their social or cultural trades may not necessarily be "backward"; in fact many of the customs and practices of tribes are no less developed. This sounds like a paradox. However, if it is carefully examined on the basis of the indices of development, that could help in understand it. An attempt is made here to see the education edifice and examine women's position in terms of tribals' land rights.

Tribals' Sex Ratio

Tribals' constitute 8.6% of the Indian population (2011 census). It comprises of a total of 10.45 crore persons – 5.25 crore male and 5.20 crore female. By itself this does not mean anything significant except that it proves numerical superiority of non-tribals. However, if we go beyond these numbers, it does not throw up mere simplistic figures. For example, sex ratio in tribals is 990 (2011 census) which is higher than the national figure of sex ratio 943. (Sex Ratio, 2011) This is an improvement because in 2001 census the sex ratio was 978 which became 990 in 2011 census. The table below reveals tribals' population in some states. In Jharkhand for example, the number of tribals' is 86, 45, 042, with 43, 15, 407 males against 43, 29, 635 females. The segregated number of rural Jharkhand is also interesting. Against the total rural population of 78, 68, 150, the number of male is 39, 28, 323 against which the number of female 39, 39, 827.

Clearly there sex ratio is adverse to the male here. Jharkhand has a tribal population of 26.2%. The story is different in case of Tripura where tribal population is 31.8%. In this state out of total rural population 11, 17, 566 the male tribals' number is 5, 63, 908 against the female tribals' number of 5, 63, 658. The following table gives the data about sex ratio adverse to male among tribals'. It defies usual perception of sex ratio being adverse to female. The table above reveals that the several states, sex ratio is greatly favourable to girls/ female among tribals' even though the state per se may not give the same picture. In Bengal and Kerala, when the acceptance of girl child in the society is relatively greater than states like Rajasthan and Punjab, the same trend is among the tribals' too. However, this establish social acceptance of girl child among tribals.

Tribals' Literacy Rate

However, the story in case of literacy rate is not the same. Against the total ratio 73% for the tribals, the ratio for ST male literacy is 80.9% against the female literacy rate of 64.6%. Within literacy rate it is interesting to see the age distribution figures. The following table indicates that:-

This clearly indicates that in the overall terms, the literacy rate among ST male is 68.5% against ST female 49.4%. But figures with respect to ST in the age group 10 to 14 are 88.3% and 84.4%. Similarly, the figure for the adolescent group (10-19 years) is 87.1% ST male against 79.9% ST female.

Table 1. Tribals' population & Sex Ratio

State	Total Rural Urban	Tribals	Male	Female	Sex Ratio Tribals	Sex Ratio All India
Rajasthan	Total	9238534	4742943	4495591	948	928
	Rural	8693123	4454816	4238307	951	
	Urban	545411	288127	257284	893	
Arunachal Pradesh	Total	951821	468390	483431	1032	938
	Rural	789846	390625	399221	1022	
Tripura	Total	1166813	588327	578486	983	960
	Rural	1117566	563908	553658	982	
	Urban	49247	24419	24828	1017	
West Bengal	Total	5296953	2649974	2646979	999	950
	Rural	4855115	2428057	2427058	1000	
	Urban	441838	221917	219921	991	
Jharkhand	Total	8645042	4315407	4329635	1003	948
	Rural	7868150	3928323	3939827	1003	
	Urban	776892	387084	389808	1007	
Odisha	Total	9590756	4727732	4863024	1029	979
	Rural	8994967	4428522	4566445	1031	
	Urban	595789	299210	296579	991	
Chhattisgarh	Total	7822902	3873191	3949711	1020	991
	Rural	7231082	3577134	3653948	1021	
	Urban	591820	296057	295763	999	
Kerala	Total	484839	238203	246636	1035	1084
	Rural	433092	213208	219884	1031	
	Urban	51747	24995	26752	1070	

(Source: Annual Report 2016-17 Ministry of Tribal Affairs)

Table 2. Literacy Rate

All categories (age groups)	Total			Scheduled Tribe		
	Person	Male	Female	Person	Male	Female
All ages	73.0	80.9	64.6	59.0	68.5	49.4
10-14	91.1	92.2	90.0	86.4	88.3	84.4
15-19	88.8	91.2	86.2	80.2	85.7	74.6
20-24	83.2	88.8	77.3	69.2	79.6	59.0
Adolescent (10-19)	90.0	91.7	88.2	83.6	87.1	79.9
Youth (15-24)	86.1	90.0	81.8	75.0	82.9	67.1

(Source: Annual Report 2016-17 Ministry of Tribal Affairs)

Although the percentage of literacy is lower than the general population, the gap between male-female is highly comparable in the same cohort. Once we agree that women have greater acceptability in the tribal societies, it becomes an intriguing observation as to why they lag behind in education. Their literacy and enrolment ratio are inferior to the national average, as the table above shows. We do observe that the difference between male and female is not more adverse than one for the general population. However, not the progressive efforts are afoot to minimize the difference. This is apparent from the data about adolescents (both 10-14 and 15-19 age as well as the overall adolescent 10-19 group). But the tribal society that is more liberal in accepting girl's children (sex ratio wise) drifts away from education is in fact intriguing. This deserves to be looked into.

Tribal Land Rights Issue

One of the popular myths about tribals' is that they are mostly matrilineal societies. True, the Meghalaya tribes such as Khasi, Laheng, Garo, Jaintia etc. do have the concept of matrilineal inheritance of property. Some other tribes viz. Angamis (Naga tribes), Akas (Arunachal), Mizo etc. do have defined rights to property so as to maintain the family left behind by the deceased. But majority of tribes have patrilineal inheritance of property. These could be some accommodation by way of certain specific provisions for daughters or the widow, but in general, the inheritances are male progeny centric. This is important because it was the inheritance law- The Hindu Succession Act- that ensured patrilineal inheritance of immovable property. Hence one can observe that in tribals, women are considered as an asset since they are hard working. This is manifested in the practice of bride money. (Roy Burman, 2012) But even with this debilitation, inheritance matters are clearly established. inheritance laws are a powerful tool to empower women. In the general domain, the way the Hindu Succession Act has since been amended only establishes recognition of scope to liberalize the legal provisions in favour of female inheritors. And it hasn't happened overnight. The coparcenary concept that determines the interest in the inheritable property started including daughters only after amendment in the Hindu Succession Act in 2005. It would not, per se, apply to the self acquired property. But a self acquired property becomes ancestral property in subsequent generations. Hence, it is important to keep this in view, while discussing inheritance law. Education is taken as a single most important means to address the gender bias issues- with education and resultant exposure awareness about rights gets generated. This awareness can get transformed into positive action to demand, reiterate and eventually establish the rights in favour of women. But the inheritance laws by themselves are not a monolithic proposition. There are issues within it too. Two main issues relevant here are as follows:-

- Inheritance in the case of death of the father who held the property.
- Transmission of rights consequent upon marriage of the daughter.

The first case is commonly known as it follows the predominant mode of transmission of property rights on patrilineal pattern (except of course the matrilineal tribes where inheritance is by the daughter). But the second case is more interesting. Usually the immovable property comprises

of land and house. Among some tribes, say Angami in Nagaland, cattle also is treated the way landed property is treated. But the mother's personal property consisting of jewellery, clothes etc. constitute a different class of property which are inherited by daughters (for example in Dimas tribes in Assam). Other items are shared differently between sons and daughters. But in some tribes, there are privileges to the daughters even in patrilineal inheritance schedule. For example in Lushai (Mizos) tribes, daughter inherits in precedence to mother if there are no male progeny. But in Mizos, generally a widow is not interfered with; if she can take care of herself or her children, she is allowed to do so and retain the house too. The position completely changes if the widow remarries. Similarly, in Angami (Nagaland), she can enjoy the property of her husband as long as she refrains from remarriage. In Chakmas, the widow doesn't inherit but can't be denied the benefits from husbands' property, as long as she does not remarry. (Devika Bahadur, 2016) This means that in tribes, particularly in North East, a widow is accommodated with patriarchal lineage to enable her to maintain herself or her off springs; these cease when she remarries. This points out that the widows' maintenance has been provided for. This has been a more evolved position when compared with initial provisions of the Hindu Succession Act. So far it would sound as usual since legal provisions under Hindu Successions Act too now give rights to daughter. But here in case of disputes (which do erupt quite often), the usual court route is followed. Among the tribals, the tribal customary institutions do the initial mediation. But even if the matter goes to court, the tribal practices are given consideration. That makes the system more "widow friendly" among these tribals when compared with the general population. This reconfirms the common perception that the tribal societies are egalitarian in nature (Puja Mondal,) and gender based inequalities are far less if not absent, in comparison with other Indian women. Perhaps in this also the basis is the principles of contract marriage, with much less taboo associated with divorce and remarriage. Tribal Women had no significant role in political -institutional spheres. They were not represented in village councils or panchayats. However, women enjoy greater freedom and their social institutions are less interfering in tribals, although in property matter, there are discriminatory practices. (Ibid)

Summing Up

When we compare the tribals' with the rest of population, we have interesting but far less regressive observations. They have better sex ratio than rest of India. That speaks of greater acceptability of women in the society. They have been making demand for educating women which will empower them. This is amply manifested through the inheritance laws of NE tribals' where even in non matrilineal societies, re-assuring accommodation for women is there. This makes us infer that the tribal societies are much less regressive and debilitating when compared with rest of the developed population even if we call the tribals less developed.

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