

IN December 1980, I went to Singhbhum as a member of the women's enquiry committee sponsored by the All India People's Union for Civil Liberties and by **Manushi**, a journal about women and society, of which I am the editor. The purpose of this committee was to conduct an enquiry into alleged atrocities against tribal women by the Bihar military police, following a clash between demonstrating tribals and the Bihar military police in Gua, Singlibhhum district, which had resulted in police firing in which 14 tribals were killed.

The most frustrating problem faced by the committee was the difficulty in getting the victims to attest to having been raped, even though, in many cases, numerous tribal men from the areas where incidents had occurred, testified before the committee, giving full details about these rape cases. My initial puzzlement at this led me to try and flint out the reasons for this imposed silence.

During the course of this enquiry, I visited many additional villages on the same December trip, and then returned to Singhbhum in June 1981 and again in May 1982 to gather more information. In all, I visited over 20 villages, and spoke to more than 10 women who admitted to having been raped, and to dozens of others too, about the social and economic consequences of being identified by the community as a victim of such a rape. I came to learn that the Ho women who are identified by the community as victims of rape by someone outside the tribe, automatically lose their economic, social and ritual rights. They are considered ritually impure—even water is not accepted from their hands or offered to them. If married, their husbands have the right to divorce them without providing for them. If unmarried, they lose their usufructory right over their parental property. They are usually forced to leave their home as well as their village. Often, the only means of survival most of them have left are begging, prostitution and migration to the cities where they end up as bonded labour in severely exploitative employment such as in the brick kilns.

Challenging The Denial Of Land Rights To Women

We reproduce here a letter written by Madhu Kishwar to Justice Bhagwati, chairman of the committee for the implementation of legal aid. It was admitted into the supreme court as a writ petition on August 20, 1982. It was followed by a formal writ petition jointly filed by Maki Bui, her daughter Sonamuni, and Madhu Kishwar. Maki Bui and Sona are Ho tribals who have challenged the validity of the law which has unconstitutionally usurped the right of Ho tribal women to inherit family land and other related assets. The state of Bihar, which upholds this law, is a respondent in this case.

When I enquired more closely into the matter, I found that Ho women are discriminated against in many other serious ways, on the basis of sex alone. This discrimination is being given dubious legitimacy through a distorted interpretation of customary tribal law. The custom that has the most disastrous consequences for the lives of those Ho tribal women whose families have not already lost their land either to the government or to other usurpers, is that which denies them the right to own or inherit any land. They are being permitted only limited usufructory rights in the family land, whether they are living with their parents as unmarried daughters, or after their marriage, in their marital home.

Among the Hos, at least 80 per cent of the agricultural operations are performed by women. Except for ploughing, which is ritually prohibited for women, all other agricultural operations are essentially carried on by women. In fact, women are the primary cultivators among the Hos, as is the case amongst tribal communities in most parts of India.

Despite their being the mainstay of agricultural operations, even their usufructory rights to land are so limited and subject to the arbitrary decisions of the adult male members of the family, that many women are in effect reduced to the status of mere workers on the family land, and are provided with bare maintenance as long as they are useful as labourers. I give below a summary of what is being

passed off as customary tribal law as it relates to women's rights in land.

1. As an unmarried daughter living in her parental home, a Ho woman has no inheritance right in her family's land. The land can only be inherited by sons or grandsons or other male descendants. Even in cases where there is no direct male heir, the woman still does not get any share in the land. The land goes to the nearest male agnates (relatives on the father's side) and if there are no eligible agnates, then the land becomes the common property of the village community represented by the Munda (headman).

2. If a man dies, leaving a widow or a daughter, she is entitled to maintenance from the next male relative who takes the land and receives the *gomong* (bride price) on the daughter's marriage. This makes them totally dependent on their male relatives for their daily sustenance despite the fact that they may continue to work the land.

3. In theory, a widow has usufructory rights in the family's land for her lifetime. But in practice, when there are adult male heirs, the land is often taken over by them and there is no guarantee that her usufructory rights will be respected. An unmarried daughter has usufructory rights in the family's land only upto the time of her marriage. In both cases, they have no right to dispose of the land as and when they find it necessary. However, the male relatives who inherit the land, should they decide to mortgage

or otherwise dispose of it, do not even need to consult those women of the family who have usufructory rights.

4. In cases where a woman gets raped by a non-tribal man, even her usufructory right in the hand is denied to her.

Consequences Of Denying Ho Women Their Rights In The Land

1. A much larger proportion of Ho women remain unmarried than is the case for women in other non-tribal communities—in order not to lose their rights in their parental land. As wives, their rights in the land are much less secure as they may be abandoned, forced or otherwise forced to leave the marital home without being assured of maintenance.

In the tribal community, an unmarried or widowed woman exercising her usufructory rights over land becomes very vulnerable the rapacity and land-hunger of unscrupulous male relatives who think they can grab the land if they can only get her out of the way. Thus, she is often either forced to surrender her lifetime usufructory right or she becomes a target of violent attacks of various kinds.

In Chaibasa court, many of the lawyers brought to my attention a number of cases wherein single women — unmarried or widowed — had been murdered by their own relatives. In some of these cases, the ostensible reason given for killing them was that they were witches. But the real motivation appears to be to eliminate the woman and take away her land. This is only one of the many ruthless means that male agnates are successfully adopting because the Ho women's legal customary rights to the family's land are so precarious and hence difficult for the women to protect.

Knowledgeable social workers from the area confirmed that there are many ways in which women are 'terrorized or done away with, in order to cheat them of their limited land rights. I personally interviewed a number of Ho women who have either witnessed, or were themselves subjected to, such attacks. I cite some cases as examples :

(i) In Lonjo village (Sonua block, district Singhbhum), I met a Ho woman by the name of Maki Bui, who appeared to be about 50 years of age. Her husband had died about three months before I met her. She told me that she feared for her life, that she might be killed any day by her husband's younger brothers and their sons. She has only one married daughter, and no sons. Her husband's agnates want to take away her land. They are putting all kinds of illegal pressure on her to surrender her lifetime usufructory right to her land. They have threatened that if she ploughs her land, they will forcibly take

her daughter, after her death. However, according to the way things are done in her village, her daughter will not be allowed to inherit the land. These relatives are not even letting her plough her fields. She has put the matter before the panchayat but it is unlikely that she will get any support there. Women are not allowed to be panchayat members. She feels so unsafe in this village that she wants to sell or mortgage her land and go and live elsewhere. But Ho women are not allowed to sell or mortgage their land because they are considered maintenance holders, not title holders. She feels that



Maki Bui and her daughter Sonamuni Kui

away the harvest. Since she lives alone with no kin support in the village, (only her husband's relatives live in her marital village and one of them is the Mukhia), she feels extremely vulnerable when threatened with violence. She says her husband's agnates have threatened to kill her. One night, they even tried to break down her door with an axe, in an attempt to murder her. She knows that if she is murdered, fear will prevent anyone from volunteering to bear witness, since one of her husband's agnates is the Mukhia of the village. She wants her land to go to

as part of the conspiracy to do away with her, her husband's agnates have already started accusing her of being a witch.

(ii) Another case is that of Sumati Kui and Gujri Kui of Kainua (P.S. Tonto). Sumati Kui is a young woman who lives with her old, widowed mother. Sumati Kui chose to remain unmarried so that she and her mother could live-on the family land. She had an affair with Dobro Ho. Through him, she conceived and gave birth to a baby. According to the two women, the baby died soon after birth, but their relatives have implicated them

in a murder case — because they want their land.

Most of the witnesses against her are her near agnates. The following is the testimony which her cousin brother Singrai Tubid gave in court :

“Jugni Kui had filed a case against my father and brother for harvesting the paddy from her field. The case continued for some time... It is true that my father and brother have been quarrelling with Jugni Kui for a long time. Jugni Kui has no son. Sumati is her only child. We are her near agnates. If Sumati Kui were to leave her mother Jugni Kui and go somewhere, then we would inherit all her land. Ever since the land dispute started, I have not been on speaking terms with Jugni Kui...”

But the point is that whichever way the case is decided, the women are likely to end up landless and destitute because (a) if Jugni and Sumati are sentenced to a prison term on the charge of murder, the land will be taken over by the agnates but (b) if they are acquitted, most of the land is likely to have been mortgaged by that time. I was told that they had to spend about Rs 200 for their bail and every visit to the court costs them at least Rs 20. These women can only raise money by mortgaging their land, since they are very poor.

(iii) To cite one more case of the many that I got to know about: Raimuni Kui of village Dolesai (P.S. Majhgaon) was murdered during the night between 7.1.74 and 8.1.74. She was the second wife of Bara Jumbal Kui who had married her in his old age because he did not have a son from his first wife. He owned 60 to 70 bighas of land. The agnates of Bara Jumbal Kui were unhappy with this marriage, because if he had not married, then, as soon as he died, they would have got his land. After her marriage to Jumbal Kui, Raimuni Kui acquired a lifetime usufructory right in her husband's land. The agnates were afraid that in case she gave birth to a son, they would altogether lose their rights in Bara Jumbal Kui's land.

On 7.1.74, she went to Haatgamaria weekly market. On her way back in the

evening, she stopped at Balandia village and had *hadia* in the house of Jogin Pingua, the Mukhia of the village. She wanted to stay on for the night in Jogin Pingua's house, but her husband's male agnates who were accompanying her, persuaded her to come along. On the way to her village, she was murdered in Kharband forest. Her throat had been cut with a *taangi*. All the accused in the case are the agnates who are to inherit the land if there is no direct heir. During the investigation, Jogin Pingua identified the accused agnates who had left his house, in her company, and were to have accompanied her through the forest to her village.

3. The loss of usufructory rights of tribal women due to rape by *dikus* (outsiders ; non-tribals) has been increasing as the tribal society becomes increasingly invaded by the outsiders and the immiserization of the tribal peasantry forces the tribals to seek outside employment in order to survive. Women constitute the bulk of this desperate migrant labour force. Wherever they are forced to seek work, be it in mines, in brick kilns, or on irrigation projects, as agricultural labourers or as domestic servants, they are subjected to sexual abuse and exploitation. But even when they are residing in their villages, they are not safe from sexual abuse by male outsiders such as the forest guards and the police.

4. Ho women who have usufructory rights over their land are often dragged into unnecessary litigation by male relatives. The only time when women are allowed to raise money by mortgaging their land is when they need money to meet litigation expenses. Ironically, in all too many cases, they lose their land either way — either by losing the court case or in trying to pay the expenses of litigation. And very often they are dragged to court with precisely this end in view.

Tribal Immiserization And Women's Deteriorating Status

The way in which tribal women are being treated today is of course alien to

the traditional tribal way of life. Anthropological studies consistently describe how traditional tribal societies were far more egalitarian and just in defining the relationship between men and women. Historically, women's relatively favourable status among the tribals deteriorated significantly as the tribal societies were subjugated by outsiders — leading to the economic, social and cultural immiserization of tribals. It is well known that the relative status-economic, social, ritual — of tribal women within their community is generally far superior to the status of women in almost all other communities in India. This is borne out by many indicators — high labour participation of tribal women in agriculture and in gathering forest products; greater freedom of choice in marriage and divorce; greater freedom of movement; predominance of tribal women in marketing; prevalence of bride price rather than dowry. An especially salient indicator is the fact that among Ho tribals in Bihar, as is true for scheduled tribes in general, the sex ratio is in favour of women (1,041 women per 1,000 men) whereas among almost all other communities in India, the sex ratio is in favour of men (all India figure: 935 women per 1,000 men).

The decline in the position of Ho women has a long history. From the 18th century, this area came under British control. The British created a sedentary peasant population by enforcing a series of land settlement regulations to facilitate land revenue collection and exploitation of the area's natural resources, and to make their political and military control easier. With these settlement operations, the tribal society was forced to move from a form of communal ownership towards individual land ownership which placed proprietary rights almost exclusively in the hands of men. This resulted in the corrosion of the tribal way of life and culture, and the tribal society became more stratified. With land ownership vested in men, the tribal family moved towards a more patriarchal power structure .

Originally, the tribals practised

shifting agriculture along with gathering of forest products. In such a situation, it is not land but human labour which is the most valuable resource. Along with the imposition of sedentary agriculture by the British, came forms of outside exploitation, which, among other things, led to the tribals losing a large proportion of their land in the following manner:

1. The government appropriated huge areas of tribal land, declaring them to be “reserved or protected” forests, and severely restricting the original usufructory rights of the tribals to gather forest produce.

2. Huge amounts of land have been taken away from the tribals, for mining operations, without giving them even minimally adequate compensation. In addition, the local tribal population is almost always denied even menial jobs in these mines.

3. Merchants and peasants from north Bihar and other areas are appropriating tribal lands, using a variety of semi-legal and illegal methods.

4. Huge industrial complexes such as Jamshepur and mining towns like Naumundi have destroyed hundreds of tribal villages and rendered tens of thousands of tribals homeless and destitute. The usual promise that the afflicted tribals would be given adequate compensation and jobs in the industry or mine which displaced them from their land, were, as usual, not kept.

5. The construction of huge hydro-electric projects and dams is uprooting hundreds of tribal villages, further accelerating landlessness among the tribals.

This has resulted in a state of acute land-hunger among the tribals. This is not due to an increase in tribal population, as is often suggested. Rather, it is the result of systematic robbery of tribal lands by outsiders. The tribals are being hounded out of their lands without any alternative source of livelihood being provided for them.

In a situation of settled agriculture, where the ever-diminishing stock of tribal

land becomes their most prized possession, labour is no longer so valuable. As men become the sole owners of land, women and their labour contribution get increasingly devalued. They get to be more and more peripheral — economically, politically and ritually. Today, the women have been rendered powerless in the Ho community — excluded from the tribal panchayats and other political institutions. The only thing that keeps these women from being totally suppressed is their continuing major role



in agricultural operations. This gives them a better chance of survival than women have in many other Indian communities. However, their powerlessness rooted in their loss of land rights is threatening their very survival. Therefore, they have no source of support — inside or outside the community.

The Existing Practices— Both Illegal And Unconstitutional

1. The practice of denying to Ho tribal women their legitimate rights to inherit and own their lawful share in their family’s land constitutes discrimination against

women on the basis of sex alone. This violates articles 14 and 15 of the constitution. These articles mandate equality before the law for all persons, and prohibit discrimination on grounds of sex. This unjust practice has been sanctioned by the government due to its misunderstanding of customary Ho tribal law. However, even if the government were correct in its identification of this practice as part of tribal customary law, it would still be violative of the fundamental rights mandated in the constitution, since article 13 clearly states:

(2) “The state shall not make any law which takes away or abridges the rights conferred by this part, and any law made in contravention of this clause, shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires, (a) ‘law’ includes any ordinance, order, by-law, rule, regulation, notification, *custom* or *usage* having in the territory of India the force of law.” (*emphasis mine*)

2. The constitution in article 300A, states that “No person shall be deprived of his property save by authority of law.” There is no authority of law or legal mandate for this practice of denying Ho tribal women their property rights. The only claim that has been made is that tribal customary law sanctions this discriminatory practice. But this is a direct violation of due processes of law, indeed of any legal sanctions whatsoever.

Furthermore, there is no evidence that traditional tribal custom supports such discriminatory practices. In fact, it is a more recent distortion that came into tribal society as a result of the influence and intervention of outsiders, and increasing land-hunger. The tribe itself has no written record of these supposed customary practices. The only written records available are those written by the intruding outsiders, for example, the British land settlement records, gazetteers, census reports and anthropological studies. There is good evidence to believe that British settlement records are suspect because of the way they took away the existing rights of women when creating

the initial individual land ownership records which superseded the traditional tribal communal ownership practices.

All the available records are an inadequate basis for deciding cases in courts of law since they not only give widely varying descriptions of tribal practices but also fail to indicate the sources of their information and the methods used in collecting and assessing this information. In addition, there is no evidence of any tribal oral tradition in support of the assertions made in the various governmental and anthropological studies. Therefore, any court decisions based on such dubious records do not constitute due process or authority of law.

In fact, there is another way that tribals are being denied their right to due process of law. The highest court of appeal presently allowed these tribals in land matters is the commissioner's court at Ranchi, according to Chhota Nagpur tenancy act. They have no access to the channels of appeal available to all citizens, namely, the high court and the supreme court. This blockage of their constitutional right to appeal has also accelerated the pace of land alienation.

In addition, the complete exclusion of women from the tribal village panchayats, even when the matter in dispute relates to a matter so fundamental as a woman's right to her share in the family's land, is obviously a denial of her rights under due process of law.

3. The framers of the constitution of India emphasized the need for special laws to promote the interests of the weaker sections of the people, and in particular, of the scheduled tribes, and of women. The directive principles of state policy assert that they shall be protected from social injustices and all forms of exploitation (article 46, article 15 (3) (4)), and that nothing in any other part of the constitution shall prevent the state from making any special provision for their advancement. (article 16 (4)).

However, in this case, it is clear that the supposed special provisions allowing



Women threshing paddy

tribals to be governed by their customary practices in matters of inheritance are not only based on an arbitrary selection of tribal practices but also override the constitutional rights of Ho tribal women, and only allow for discrimination against them. This has promoted backward social development instead of advancement.

Moreover, in almost all other matters, including those where special protections and provisions are imperatively needed, tribal customary practices and rights have been superseded by national and state criminal and civil laws. For example, it is well known that till very recently the right to gather forest produce was acknowledged as an important tribal right over the forest land they inhabited. Today, the exercise of most of those same rights is being defined as theft, because the provisions of various forest and criminal acts have unilaterally and arbitrarily overridden traditional tribal rights and practices.

It is ironical that while the constitutional provisions emphasize special protection for tribals, the thrust of government policy is to recognize the legality mostly of those tribal practices which will perpetuate injustice, exploitation, poverty and misery for the

tribal population, especially for the women.

4. Most Indian women have some statutory legal rights. For example, those stipulated in the succession act of 1956. In the absence of any valid statutory regulations providing for succession rights to land for Ho tribal women, the least that needs to be ensured is that these women get the benefit of the constitutional rights of all citizens. Considering that the bulk of the labour performed on the family land is done by women, common law rights as applied to family assets and their apportionment to individual members require that women's labour contribution be recognized as determining their share in the family land.

As the editor of **Manushi**—a journal that devotes itself to the cause of women's rights in India, the plight of these Ho women who are made to live in fear for their very lives and who are being driven from their land into destitution, is of vital interest to me. I think it is vitally important that this case be placed before the supreme court in order to put an end to these unconstitutional practices. I am ready to assist the court in whatever manner is necessary with regard to this case. □