

RECENTLY the issue of the personal law governing women of various communities in India has again become an issue of public discussion. Progressive Muslim groups have protested against the custom of talak while a demand for a common civil code has arisen from various quarters.

The case of adivasis is a somewhat unique one. Adivasi women are governed not by the reformed Hindu law but by what the courts consider to be adivasi customary law. Though there has long been a belief that adivasi women have more rights in their own communities than caste Hindu women, this is only partly true. Adivasi women have more independence as regards marriage and divorce, and their ongoing work participation often gives them more actual independence. But adivasi women in most cases have no rights of inheritance and no political rights, for example, of representation in traditional tribal councils. This means that unlike non adivasi women, they cannot legally go to the courts to claim land rights. Reports from places as far apart as Singhbhum district in Bihar and Dhule in Maharashtra have described the resulting oppressions suffered by adivasi women. In August 1982 some women activists filed a writ petition in the supreme court demanding the implementation of fundamental rights for Ho adivasi women of Bihar,* while in Maharashtra the Satyashodhak Communist Party and the Satyashodhak Gramin Mahila Sabha have raised the demand that the Hindu Succession Act, 1956, should be applied to adivasi women also.

These two organizations have a base

**This refers to the writ petition, filed by two Ho women in which one of us from Manushi was a copetitioner. In our petition we have opposed extension of the Hindu Succession Act and other Hindu law to tribals. We have argued in our written submissions that: "Any extension of the Hindu Succession Act, Indian Succession Act or any other succession act at present applied to non tribals would be detrimental to the integrity of the tribe and to the best interests of all tribals, both women and men. While the petitioners are challenging the validity of the restriction*

of inheritance to "male heirs in the male line" to the exclusion of female heirs, they are not questioning the main purpose of the Chota Nagpur Tenancy Act which is to prevent alienation of tribal land by non tribals... The tribals as a group cannot be considered Hindus but animists, and as such they have been explicitly excluded from the application of the Hindu Succession Act and other Hindu personal law. This exclusion safeguards their integrity as a community— Any extension of Hindu personal law to Ho tribals would have the effect of arbitrarily

Adivasi Women And Personal Law

A Report From Dhule, Maharashtra

among adivasis in Navapur and Sakri taluks of Dhule district, and they link their demand with an analysis of the Hindu Marriage and Succession Acts, which, according to them, resulted not so much from upper class women's reform movements as from dalit movements. The evidence they give of this is that Dr Ambedkar was chairman of the original Hindu Code Bill committee.

The other organizations like the Shramik Sanghatana which work among adivasis in Maharashtra, have not yet taken a stand on this issue.

What is the real nature of adivasi customary law and what rights does it give to women? Should the existing Hindu Succession and Marriage Acts be made applicable to adivasi women also? If a new common civil code is to be framed, can it draw from aspects of existing adivasi law as well as from the reformed Hindu law? If so, which aspects of adivasi law should be included and which rejected?

Real answers to such questions can come only from adivasi women, and a real solution to the problems of adivasi women can come only through their own organizations working with the broader movement of adivasi toilers, and the women's liberation movement. With this perspective, and as a step in this, direction, two shibirs were held in Shahada and Taloda taluks of Dhule

district in March 1983. The shibirs were sponsored by the Stri Mukti Sanghatana, an adivasi women's organization which works with the Shramik Sanghatana.

The Shramik Sanghatana is an organization of agricultural labourers and poor peasants in four taluks, Shahada, Taloda, Nandurbar and Akkalkuwa of Dhule district. It has about 10 full time activists and a fairly comprehensive structure of village representatives and youth groups spread throughout the region. Currently, eight of the full timers, six men and two women, are adivasis. The majority of members are Bhil adivasis but Pawra adivasis, dalits, other so called low castes and Muslims of the region are also members.

Adivasi women had played a leading role in the struggles of the Sanghatana from the beginning and after shibirs and other special programmes began to be held for them, they also emerged as leaders of one special struggle, that against alcoholism. (See **Manushi** No. 13). The culmination of this activity came with the formation in August 1980 of the Stri Mukti Sanghatana as a special organization of the adivasi toiling women. At that time, a group of women members of the Shramik Sanghatana, meeting in their Shahada office, got word of the beating and torture of a Muslim woman worker by her employer.

They immediately organized a public

declaring them to be Hindus. This would be repulsive to all principles of secularism and would amount to the majority community arbitrarily imposing its norms and laws on a minority community... It is the submission of the petitioners that such a denial of the right to freedom of religion would be a denial of the fundamental right guaranteed under article 25 of the constitution of India, and would also be in violation of the secular spirit of the constitution enshrined in its preamble."

— Manushi

rally, and announced that they were ready to take up the cause of all oppressed women. They formed their own organization, acting without the intervention of any middle class women, and with the help but not the control of the male activists of the Shramik Sanghatana.

Following this, a number of the leading women activists formed themselves into a team and began to go from village to village, taking up cases of individual atrocities, sometimes calling rallies of women on the spot to hold a spontaneous people's court to deal with the offence, sometimes taking the offender to court in the town. These cases were most often those of oppression of women by men of their own community, because the militant activity of the Shramik Sanghatana previously had nearly brought to an end the worst atrocities of the rich farmers on the adivasis.

The first *shibir* was held at Katharde in Shahada on March 12 and 13. The second *shibir* was held at Talwe in Taloda on March 16 and 17. About 30 women attended each *shibir*. Most of the women were adivasis. There were also some non adivasi activists.

At a general theoretical level the idea was brought forward that women's oppression is due both to capitalism and the oppression by the rich farmers of the toilers and of women as toilers, and to patriarchy or patriarchal social structures which give men power over women. Various concrete examples of this were brought forward, and each *shibir* was initiated with accounts by women from each of the villages represented of their own lives and struggles against oppression.

With regard to the issue of personal law, the discussion compared adivasi customary law as it is actually practised with the official law applicable to Hindu women.

The intention was not to compare the actual position of adivasi and caste Hindu women, but to focus on the creation of a new law. Discussion about reform in the law is going on, and so is discussion about creating a genuine

toilers' state in which people will have control over their own lives. This will involve not only taking over control of the means of production but also the creation of a new society including egalitarian and liberatory social practices.

This was the main theme of the discussion, but caste Hindu women present made it clear that the actual practice among Hindus is very far from the legal ideal, and that most of the legal rights given to Hindu women following legal reform in independent India have not been implemented.

During the discussion, there was a general revulsion among the women present about going to the official courts,

law, that is, some kind of common civil code, was also felt. At present people who move outside adivasi areas to areas where there is no *panch* become subject to the courts. It was felt that something like an adivasi *panch*, that is, a community based people's court with jurisdiction over personal law issues, should exist for everyone and in every village, to save the expense and time involved in going to courts.

However there is one important respect in which the adivasi *panch* should be reformed. Women should be allowed to become members. It was recognized that making women *panch* members would be insufficient if they are



which were seen as expensive, time-consuming and corrupt. For this reason alone, the idea of simply making Hindu law applicable to adivasi women was disliked. It was felt that movement activity should be directed towards reform of existing adivasi practices.

The custom by which the adivasi council or *panch* is the arbiter on personal law issues was generally approved. However the need for a reformed overall

asked to administer an unjust law, so adivasi law needs to be changed in many respects.

Adivasis still have bride price instead of dowry which is given by caste Hindus. The custom of bride price in part reflects the economic role of women in adivasi society, and of course among adivasis there is nothing like the horrible atrocities connected with the rising dowry demands of today. But it would be wrong to think

that bride price represents any kind of women's liberation or higher status for women. In fact it represents a purchase of the woman, and people speak of "marrying a son" but "selling a daughter." Therefore just as Hindu law today forbids the practice of dowry, so also bride price should be prohibited.

According to Hindu personal law the age of marriage should be 18 for a girl and 21 for a boy, otherwise the marriage is not legal.* Adivasi law does not recognize such an age limit. It was felt that if marriage is to be the personal choice of husband and wife, both should be of an age to make a reasonable choice.

According to Hindu law the marriage of a girl over 18 years is to be by the mutual consent of the couple. Among adivasis, parents normally choose. There is an accepted practice of legitimizing marriages in which a boy and a girl choose to run away together. It was felt that the choice of a boy and a girl should be the norm in every case.

Among adivasis, marriage is most often arranged by the children's parents, often when the children are very young. Just as among caste Hindus, the marriage ceremony embodies patriarchal practices, with crucial rituals being performed by the fathers of the boy and the girl. This, it was felt, should be changed. Adivasi marriages are very lengthy and expensive affairs. It was felt that some ceremony and celebration in which the whole community participates should take place to embody the joyful nature of the occasion but the expense should be shared on a community basis, not simply by the couple's parents.

The performance of the *saptapadi* makes a Hindu marriage settled and binding. After that ceremony the marriage can be broken only through divorce or found invalid by other legal means. After discussion, it was realized that there is no such single final ritual in adivasi marriages. Up to the very last minute the marriage can be broken off, and even after the ceremony is completed, if the girl does not go to the boy's house, the marriage is considered not to have taken place. This

*Hindu law does not declare a child-marriage invalid. Offspring of such a marriage are recognized as legitimate

means that Hindu marriages have a more settled character while the adivasi custom has great flexibility. The adivasi custom was felt to be better in this respect.

A Hindu marriage can be found by the court to be invalid for a number of reasons including insanity or impotence, or a *sapinda* relationship between husband and wife. Adivasis also recognize that insanity or disease of one of the spouses can render marriage invalid and they also prohibit first cousin marriage, but they do not recognize other *sapinda* prohibitions. Since there is no scientific reason for prohibiting *sapinda* marriage or first cousin marriage, the adivasi custom is more rational in this respect.

Adivasi customary law allows a man to have more than one wife at one time. This should be prohibited as it is by Hindu law. Divorce is difficult to get by Hindu law, but relatively easy among adivasis. It was felt that in this respect adivasi custom is more favourable to women, with the exception of the provision that a woman must return the bride price if she wants a divorce. This is a major burden for her.

Following divorce, the custody of children among adivasis goes to the father, once the children are weaned.

There is no provision allowing the woman to have custody or obliging the father to pay any child support money if she does have custody. If a woman chooses to marry again, her second husband will refuse to take custody or support her children by her first marriage. In Hindu law, custody may be awarded to either parent. It was felt women should have priority in custody of children.

In Hindu law the wife and daughter of a deceased man who has not made a will are legally entitled to equal shares of the property along with sons. In adivasi law, woman has no right to inherit land. A man's land goes to his sons. His widow has the right to cultivate it as long as she lives but if she marries again or if she has relations with another man, she loses this right; The panch decides disputes on the issues, and even on the testimony of a small boy about her relationships with men, her right to cultivate the land can be taken away. If a widowed or divorced girl has no land to cultivate, her brothers often give her some land, but this depends on good will of her brothers. She has no right to claim a share of her father's land. Adivasi women thus seem to be effectively landless as are Hindu women in practice. □

RUMMY

*Neighbour, wife and me
Are playing rummy,
Cards in hand,
Cigarette between lips.
The swirling fan
Lets a smouldering splinter
Fall on the wife.
She screams:
"Can't you be careful ?
Your smoking has burnt
My skin."
Banteringly the neighbour retorts
In this land
Where wives are burnt like coal
Whats a splinter ?
Come, let's shuffle the cards
And begin again"*

—Sanjeev Sethi

Of Lady Secretaries And Gentlemen Bosses

—A Report From Madras

LADY secretaries, like school teachers and nurses, are in a profession where 90 percent of employees never get beyond the starting point, and though they work a hard 9 to 5 day, slowly become a part of the unnoticed office furniture.

A case in point is that of secretaries in Bharat Petroleum Corporation, a public sector, government of India undertaking. Secretaries are recruited as if management staff in job group A along with male management staff. Though according to company rules, all new recruits in management category are eligible for progression to job group B after three years, it is only the male management staff who get the benefit of rules, and lady secretaries are completely ignored.

Recently there was a spate of promotions in the company. A number of clerical promotees, who are clerical staff promoted to management category, were promoted to group B. However lady secretaries, with the exception of

the chairman's and the administration manager's secretaries, who were moved to Group B, were overlooked. The majority of lady secretaries are stagnating in the same positions they were recruited to in the days when the company had not been nationalized, and was known as the Burmah Shell oil storage and distribution company.

The women who took up the matter with the management directly or through the management staff association were told that they could be progressed to group B only if they moved out of their function and were prepared to be transferred. One lady secretary was sought to be appeased with the offer of switching to the post of a sales representative which is also a group A post, and therefore would not mean a promotion. Of course, no such conditions are laid down for the male management staff recruited along with the secretaries.

The management justifies this gross



anomaly and patent discrimination by saying that the Administrative Staff College of India, Hyderabad, which conducted a study on job progressions and submitted a report, did not recommend promotion of lady secretaries. The contents of the report have not been made available to the employees concerned.

Suggestions that lady secretaries, while continuing in the same function, be given officers' grades by increasing their seniority, have fallen on deaf ears. Obviously the management's stand is that a secretary is recruited and retired as a secretary, and if she does not like it, she can leave it.

Name Withheld

Horrorscope

*Misery glowering through chinks
In a shuttered face
Upon a future that ends here*

*Lips taut against
Seething syllables
Boiling up in the cauldron within*

*Where living water struggles
To break through
The cloying oil of generations*

*Jawline set enduring
Resentment, suffering
Hatred born of a glimpse of freedom*

*Caged in by cliches
She is longing
That knows itself doomed*

*Not yet resigned
Though it will be*

*Unless it ends in a blaze
Of kerosene.*

—Ananda Amritmahal

Nepalise Protest

Tara Devi was the wife of Khem Bahadur, a watchman in Jyoti Tools Company, in Naraina, Delhi. She was 18 years old and had a three year old daughter. The family lived on company premises. On June 26, at 7 p.m., Bahadur went out to do some marketing. When he returned at 9 p.m., he was told by his employer Neeraj Chopra that Tara Devi had received an electric shock while trying to save her daughter from being electrocuted, and that she had been taken to All India Institute of Medical Sciences. He rushed there but Neeraj Chopra and the police tried to prevent him from going inside and meeting his wife. By the time he managed to push them aside and go in, Tara Devi had already died.

The police have not registered any case. A representative of All India Nepali Unity Society went to the hospital and insisted that a post mortem be conducted. Later, Tara's daughter told us that Neeraj Chopra had put his hand over Tara's

mouth and forced her to go inside the company' building from where she was brought out dead. The story Chopra has told sounds extremely unlikely since the little girl is quite well which would not have been the case had Tara died in trying to save her from being electrocuted. We suspect that Tara may have been molested or raped and then murdered by Neeraj Chopra. When we went to conduct an enquiry, and tried to talk to him, he threatened us, and insulted us, saying we are not educated enough to question him.

The police have refused to show the post mortem report to Khem Bahadur. On July 31, about 800 Nepal ise staged a protest demonstration at the company premises and at the local police station. The police assured us that they would soon hand over the post mortem report but they have not done so till date.

—All India Nepali Unity Society
(translated form Hindi)