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Cultural Freedom and Legal Exclusion: Gendered Property Rights under Customary Law in Kinnaur, Himachal Pradesh

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Abstract

The socioeconomic and legal status of Kinnaura tribal women in the Kinnaur area of Himachal Pradesh is examined in this essay, with a focus on property rights and customary inheritance systems. Due to their active involvement in home economies, gardening, agriculture, and communal decision-making, Kinnauri women are frequently seen as socially powerful; nonetheless, they are still structurally excluded from owning ancestral land. By examining the cohabitation of legal marginalization and cultural acknowledgment within the context of tribal customary law, the study investigates this paradox.

The research uses a qualitative analytical method, drawing on secondary sources such as census data, ethnographic literature, regional socio-economic surveys, legal texts like the Wajib-ul-Urj (1926), and constitutional articles pertaining to tribal governance. It critically investigates how, despite their significant economic contributions, women's access to resources is shaped by patrilineal inheritance patterns. In order to comprehend gendered property relations within Kinnauri society, the research also examines traditional marital customs and arrangements such udanang and bitho-pono. It contends that the preservation of indigenous cultural sovereignty and constitutional commitments to equality must be balanced in the achievement of gender equality in tribal areas. The study comes to the conclusion that community-led approaches to legal transformation, participatory policy discourse, and structural changes in inheritance systems are necessary for the genuine empowerment of tribal women.

Keywords: customary law, gender justice, tribal women, land rights, Kinnaur, ecofeminism, inheritance law

Introduction

Property ownership has long been recognized as a crucial sign of gender equality. Land rights affect bargaining power in households and communities in addition to economic security (Agarwal, 1994). Despite liberal legislative improvements, such as the Hindu Succession Act, women still have limited property rights in the majority of India's rural areas.

In this regard, the Himachal Pradesh tribal district of Kinnaur offers an especially interesting example. According to anthropological and sociological assessments, Kinnauri culture is generally equal in terms of women's mobility, choice of marriage, and involvement in public life. Women are visible participants in village-level decision-making, orchard management, and agricultural productivity. However, a deeper structural injustice ingrained in traditional inheritance patterns is hidden by this seeming empowerment.

Traditional customary law, which was documented in the Wajib-ul-Urj during the colonial era in 1926, governs property succession in Kinnaur. Ancestral property can flow mostly from father to son under these norms, which often favor patrilineal succession. Because of this, even when daughters and single women make significant financial contributions to family landholdings, they are frequently left out of direct inheritance.

The conflict between gender justice and cultural sovereignty in Kinnaur is examined in this study. It queries:

1. How do Kinnaur's customary inheritance laws affect women's access to land?
2. How does the idea of empowerment in tribal communities change when social freedom and legal exclusion coexist?

3. How does this paradox affect gender-sensitive legal change in tribal areas?

Methodology

The socioeconomic, political, and religious status of Kinnaura tribal women in the Kinnaur area of Himachal Pradesh is investigated in this study. It uses a qualitative analytical methodology that is mostly dependent on secondary sources, including academic literature, ethnographic research, regional socioeconomic surveys, and census data.

In order to comprehend the connection between traditional norms and formal legal systems, the research also examines customary inheritance patterns and constitutional clauses pertaining to tribal government. The study analyzes available data to understand the roles, difficulties, and agency of Kinnaura women in their social and institutional environments by drawing on ideas from feminist political economy and ecofeminist viewpoints.

Socioeconomic Context of Kinnaur

Kinnaur, a Scheduled Tribal district, is situated in Himachal Pradesh's western Himalayan area. The region's social structure and economic habits have been influenced by its hilly topography.

Horticulture and subsistence farming, especially apple growing, which took over as the main cash crop from the 1960s, are crucial to the local economy (Sharma & Sharma, 2012). In agricultural tasks including planting, irrigation, caring for animals, harvesting, and post-harvest processing, women are crucial.

Kinnaur has a literacy rate of almost 80%, which is higher than the national average, according to the Census of India (2011). When compared to other rural areas, women's educational attainment is comparatively high, as seen by the 87.27 percent male literacy rate and the 70.96 percent female literacy rate.

Despite these indicators of social development, land ownership patterns remain predominantly male-dominated due to customary inheritance rules.

Demographic Distribution of Women in Kinnaur:

Kinnaur was declared a Scheduled Tribe area by the order of Government of India in 1957. It covers an area of 6,401 square kilometers, featuring hilly terrain and small deep valleys. Kinnaur shares its northern border with the Lahaul-Spiti district, the northwest with Kullu district, the southwest with Shimla district, the south with the state of Uttarakhand, and the east with China. Administratively, Kinnaur is divided into five tehsils: Nichar, Kalpa, Pooh, Sangla, and Moorang, along with two sub-tehsils, Hangrang and Tapri. The district headquarters is located in Reckong-Peo.

As per the data of 2011 Census, Kinnaur has 660 villages, out of which only 234 are inhabited. The total population of Kinnaur is 84,121, with 46,249 males and 37,832 females. There are 48,746 people belonging to Scheduled Tribes, making up 57.95 per cent of the total population, while 14,750 belong to Scheduled Castes, accounting for 17.53 per cent of the population. The population density is low, at 13 inhabitants per square kilometer. From 2001 to 2011, the population growth rate was 7.61 per cent. The sex ratio in Kinnaur is 819 females per 1,000 males, which is the lowest in Himachal Pradesh. From 1901 to 1971, Kinnaur had the highest sex ratio in Himachal Pradesh. In 1951, the sex ratio in Kinnaur was recorded at 1070, which was the highest ever in Himachal. However, it has declined continuously from 1971 to 2011. After 1971, Kinnaur’s sex ratio has declined by 92 points. Interestingly, the lower sex ratio in Kinnaur is not due to a preference for male children or female feticides.

Instead, it is linked to the high female literacy rate in the region. During fieldwork in Kinnaur, it was observed that many people believe the high literacy rate is one reason for the low sex ratio. They are of the opinion that women after completing their education, often move out of the region for better opportunities or settle elsewhere after marriage, reducing the number of women in the area, which affects the sex ratio. However, there are no visible linkages in terms of data available. The literacy rate in Kinnaur is 87.27 per cent with female literacy at 70.96 per cent the highest among tribal women in Himachal Pradesh.

Customary Law and Inheritance Systems:

Customary law

Customs, like law, in its widest connotation, is a body of rules which regulates the conduct of the human being's *vis a vis* each other and *vis a vis* the individual and the society. Law can be imposed from above by some coercive authority, such as a king, a legislature, or a Supreme Court or law can develop "from the ground" as customs and practice evolve. Law imposed from the top - authoritarian law - typically requires the support of a powerful minority, law developed from bottom up - customary law - requires widespread acceptance.

Customary law is recognized, not because it is backed by the power or some strong individual or institution, but because everyone's expectations –given- that other also behave as he expects. Alternatively, if minority coercively imposes law from above, then that law will require much more force to maintain social order than is required when that law develops from the bottom through mutual recognition and acceptance.

In India's tribal cultures, customary law is essential to regulating social interactions. The Wajib-ul-Urj, a colonial administrative record that codified pre-existing local norms, had formal documentation of inheritance patterns in Kinnaur.

Property is normally passed down from father to son under the inheritance structure described in this article, which usually follows patrilineal succession. Women are not allowed to inherit ancestral land unless there are special circumstances, such no male heirs.

In many parts of India, girls have equal inheritance rights under the Hindu Succession Act, 1956, however in some tribal areas where customary rules are respected and upheld, its provisions may not automatically apply. These safeguards originate from constitutional pledges to protect indigenous cultural customs and local government structures.

However, the persistence of such laws raises important questions about the compatibility of cultural preservation with constitutional guarantees of gender equality.

Property rights of women and girl child

Since Kinnaur is not covered by the Hindu Succession Act of 1956, the girls do not legally inherit any property, and the mutations are still recorded in an antiquated way. However, it is difficult to envision a rich tribal culture and a full social life without the prominent and uninhabited participation of women. Women successfully manage the home and are frequently referred to as Goine. She effectively has a say in all family concerns; in reality, nothing can happen without her approval or awareness. Women therefore have a crucial part in economic activities.

Udanang

Gifts from parents and other family members at a woman's wedding are referred to as udanang. Every village resident, including the bride's family, gathers and presents the bride with udanang in the form of money, clothing, or grains. The fabric payment can be made in choli, chhali, or dhori. Traditionally, women have exclusive rights to these goods and cash. When a woman passes away, her sons inherit the property; if there are no sons, the

husband inherits it. With his wife's permission, a husband may alienate such property. In general, a wife's property belongs to her husband, and the husband owns it just as well as his wife.

Bitho – pono

Bitho-pono is the term for the bridegroom's parents giving a woman some land and a separate home or chamber in her name at the time of marriage. With the assistance of a middleman known as Majomi, this is carried out with legal consent. If a wife is forced to leave the family due to a second marriage or a disagreement with her husband's parents, she can rely on this property by living apart.

Transfer of the property through will

In Kinnaura tribal society, a daughter had no claim to ancestral property when her brothers were present. A properly written lifetime will could pass a father's property to a daughter who has no male offspring. Through a valid document, a father might also give his daughter and son-in-law a hibba (gift) of his property while he was still alive. They did not obtain any legal title, not even by physical possession, in the absence of such a deed.

Customary law states that property passed to the son-in-law's closest male relative upon the death of the daughter or her spouse.

If husband died leaving behind his childless widow. The widow inherits all moveable and immoveable property of her late husband. She had the right to enjoy the property during her lifetime or for so long she did not remarry.

In emergent need, though she could sell or mortgage it with the prior consent of the inheritor next to line. On she acquired property, however, there is no such restriction. Likewise, if a person died leaving behind no male offspring, his daughter inherit the property again the same condition.

Himachal Tribal Women Property Rights Battle:

The legal fight for the property rights of tribal women began with one particular case. In October 2002, a Chamba district judge granted property rights to a Gaddi tribe man's daughters. One of the man's sons appealed this decision to the Himachal Pradesh High Court in 2003. Justice Rajiv Sharma set a precedent that will enable other indigenous women in the state to inherit property in accordance with the Hindu Succession Act of 1956 by affirming the district judge's rulings in favor of the daughters in 2015. Manjari ji from Kinnaur district publicly endorsed its findings and was instrumental in spreading its message to other women she came across, even though she had not met the women involved in the case. She has long advocated for the property rights of tribal women in Kinnaur as the head of the Mahila Kalyan Parishad Kinnaur district. In February 2016, two Lahaul Spiti petitioners challenged this decision at the Supreme Court; in 2017, Manjari ji and the MKP petitioned the Supreme Court on behalf of the public interest, claiming that Article 32 (right to constitutional remedies) should grant tribal women in Himachal Pradesh the right to own property It was withdrawn in 2018 following one hearing. Many state residents are opposed to allowing women to own land since tribal areas are becoming increasingly popular locations for apple orchards, according to a person with knowledge of the situation who preferred to remain anonymous. Apple growers and merchants fear that if women are granted land, the orchards would spread out, and family earnings will decline. Manjari ji and villagers were individually interviewed by the author. Manjari struggled to locate a lawyer to represent MKP because the Shimla legal community was hostileA year later, in April 2019, MKP eventually granted permission to petition the high court under Article 226, which covers both basic rights and other legal rights. "Men are the only ones who cultivate apples. But women do more than half of the work, including planting, tilling, weeding, caring for the plants, watering them, and other chores. Men take the produce to the market and collect the money. To ask for money, women must go up to them According to her, women who own land can use the Kisan Credit Card Scheme to obtain finance or rent it out to launch their own small companies. Manjari ji used to go from town to village by herself, but these days it's more difficult for her to avoid the aging fatigue. However, she is not currently thinking about retiring. I want to retire even though I have

a lot of work ahead of me. People want me to go on. I won't stop until my energy runs out. She is even more determined to see the PIL through, and she is ready to appeal the Supreme Court if the high court renders a negative decision, "We are considering meeting with Prime Minister Modi in Delhi as well," she adds.

Discussion: Cultural Empowerment vs Structural Inequality

Women in Kinnaur often enjoy significant social freedoms. They participate actively in agricultural labour, contribute to household income, and engage in community events and decision-making processes. Marriage practices in some areas also reflect relatively flexible norms compared with mainstream patriarchal systems.

However, these freedoms coexist with structural limitations regarding property rights. Women's inability to inherit land directly places them at a disadvantage in terms of economic independence and long-term security.

This situation illustrates the distinction between social recognition and legal empowerment. While women may be respected within cultural traditions, the legal framework governing property ownership continues to privilege male heirs.

Furthermore, the social sensitivity surrounding customary law complicates efforts toward reform. Many community members fear that altering inheritance systems could undermine cultural identity or lead to external acquisition of tribal land.

Policy Implications

Addressing gender inequality in tribal inheritance systems requires nuanced approaches that respect both constitutional equality and cultural autonomy.

Possible policy strategies include:

- Introducing community-based dialogue platforms involving women, elders, and local governance institutions.
- Designing legal safeguards that grant women inheritance rights while restricting land transfer to outsiders.
- Encouraging documentation of women's perspectives and experiences to inform policy debates.
- Promoting education and awareness programs on gender rights and economic security.

Such reforms must emerge through participatory processes rather than externally imposed legal interventions.

Conclusion

The case of Kinnaur highlights a complex intersection between culture, law, and gender. While women in the region often enjoy greater social autonomy than women in many other parts of India, they remain excluded from formal ownership of land under customary inheritance practices.

This paradox reveals the limitations of symbolic empowerment and underscores the importance of structural rights in achieving gender equality. Land ownership is not merely an economic asset but also a source of social status, security, and decision-making power.

Future reforms must therefore strike a careful balance between protecting tribal cultural identity and ensuring that women receive equal rights to property and inheritance. Ultimately, meaningful change must emerge from within the community itself, guided by the voices and experiences of Kinnauri women.

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