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# RECOGNITION OF THE LAND RIGHTS OF ADIVASI WOMEN IN INDIA

- Titus James and Gatha G Namboothiri<sup>1</sup>

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## ABSTRACT

*This chapter is devoted to understanding land rights for Adivasi women within the Indian legal framework. The situation we examine is a complex and layered landscape created by the unique position of Adivasi women owing to their tribal identity, characterised by legal pluralism, and the underpinning patriarchy in the society. Drawing from the experience of a network of seven member organisations working in Gujarat state in India, we examine the motivations enabling Adivasi women to assert and recognise their rights over land. Any attempt to recognise such land rights is met by a stiff combination of legal, socio-cultural and institutional challenges. This too shall be analysed based on the collective understanding of the network. Finally, we examine the communication, mobilisation and advocacy strategies employed by the network in ensuring the recognition of claims of land rights of the Adivasi women.*

## I. BACKGROUND

*Adivasi*, literally the first people, is a collective term used to recognise and denote the indigenous people in the Indian subcontinent. They are Constitutionally recognised as the Scheduled Tribes (ST) in India (Article 366, Constitution). United Nations Declaration on the Rights of Indigenous Peoples, adopted in 2007 by the UN General Assembly, is the seminal international instrument on the rights of these indigenous communities. Through this Declaration, the human rights framework

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This paper is based on the original report written by Arpitha Kodiveri, who was a Scholar in Residence at the Centre for Social Justice, which is a member organisation in the Working Group for Women and Land Ownership network ([wgwlo.org](http://wgwlo.org)). The authors would like to thank Nupur Sinha and Reena Patel for their valuable feedback and editorial assistance. Feedback from the readers is appreciated and the authors can be contacted at [titusjames.csj@gmail.com](mailto:titusjames.csj@gmail.com) and [gatha.csj@gmail.com](mailto:gatha.csj@gmail.com).

is extended to them by considering their particular location created by a specific set of vulnerabilities. Considering the historical injustice, they have suffered, the Declaration emphasises the need to protect their culture, uphold their rights and provide them space to progress. In addition, several provisions of the Declaration give due weightage and importance to their laws, customs and traditions, unique to the tribal community.

Constituting around 8% of the Indian population, they are one of India's most marginalised and vulnerable groups (Census 2011). Living usually in inaccessible forested areas, they occupied limited political and economic significance in colonial and post-colonial India. They self-determine their culture, language, religion, legal systems, which are often disregarded as being subservient to the formal legal system by the majority. In 1951, when the first census in independent India was carried out, 'tribe' was available as an option for religion, however, it was later removed, forcing the tribes to choose the conventional religions (Markam, 2019).

Similarly, due to non-recognition and lack of effort to preserve, many tribal languages face the threat of extinction today (Mohanty, 2020). The colonisation of India was also a tumultuous period for the *Adivasi* communities, who were repeatedly dispossessed from their lands and thus majorly deprived in multiple ways (Oskarsson, 2018). Such displacement from their customary lands has been one of the primary reasons for the socio-economic marginalisation of the *Adivasi* population (Sama, 2018; Saxena, 2011).

While other minority communities made demands for representation through reservation, enacting anti-discriminatory laws in the Constituent Assembly<sup>2</sup>, tribal representatives emphatically

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<sup>2</sup> Following India's independence from British Government in 1947, the Constituent Assembly of India was elected to write the Constitution of India.

emphasised the importance of land in *Adivasi* communities' lives and a need to protect the same (Bajpai, 2000). They wanted to ensure that the Constitution of free India ensures that tribal land remains inalienable (Constituent Assembly Debates Vol. III). The UN Declaration too recognises their right to the land and resources they have traditionally occupied/accessed and prevents alienation or dispossession of the same.

With the obligation to protect their indigenous identity and rights on the one hand and the domestic Indian post-colonial law, on the other hand, several conflicts between these two have emerged. Jurisprudences across the world are fraught with such conflicts over customary laws and formal legal systems. Scholars such as Gita Gopal suggest that the unwritten customary laws that are fluid and are flexible based on evolving situations give more options to women than the rigid formal legal system (Gopal, 1999; Tripp, 2004). In this backdrop of legal pluralism, we wish to situate this paper on the land rights of *Adivasi* women.

Access to their customary land by *Adivasi* communities is being curtailed more and more, by the Indian state over time. This has reduced their dependence on land that they have been traditionally sharing a symbiotic relationship with. The Fifth and Sixth Schedules in the Indian Constitution collectively provide unique governance mechanisms in 'Scheduled Areas' and certain 'tribal areas' in northeastern India (Manish, 2017).<sup>3</sup> After enacting the Panchayat (Extension to Scheduled Areas) Act, 1996, tribal communities were granted some level of local governance at the village level by devolving certain administrative and financial powers to local village panchayat. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

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<sup>3</sup> Scheduled Areas are the Tribal majority areas designated and administered under Fifth and Sixth Schedules of the Constitution of India. These provide for special measures to safeguard the interests of the tribal communities in these areas.

provides for the recognition and security of individual and community tenure rights to all forest-dwelling Scheduled Tribes and Traditional Forest Dwellers on all forest lands (Menon, 2007).

Scholars such as Bina Agarwal point out the gendered land ownership prevailing in the society (Agarwal, 2002). A similar situation exists within the *Adivasi* community too where the distribution in land ownership is not egalitarian. Therefore, the analysis of land rights for *Adivasi* women within the Indian legal framework has to consider the historically created challenges kept alive through today's socio-legal scenarios and situations. A fight for the same will be against the state and existing legal framework, *Adivasi* customs, and society's patriarchal foundations, all of which intersect to give rise to a complex and layered legal and socio-political space.

This chapter draws from the field experience of a network, namely the Working Group for Women and Land Ownership (WGWLO) comprising seven member organisations, working in Gujarat state in India, in enabling *Adivasi* women to assert and recognise their rights over land.<sup>4</sup> The field reality has been complemented with secondary literature review, thus rooting the paper in praxis. The understanding of the meaning of land rights for women what comes within the fold of these rights has been drawn from Indian literature which is general in nature but it has been adapted to make it particularly applicable to *Adivasi* women. The primary objective is to analyse the legal, social, cultural, institutional and other challenges faced by *Adivasi* women in asserting and claiming their rights over land in the tribal areas of Gujarat. The insights of this paper are based

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<sup>4</sup> The organisations are Anandi in Devgarh and Bariya, Sarthi in Santrampur, Nyayika in Dang, Utthan in Limkheda but working in Dahod, Aga Khan Support Program in Satbara, Human Development Research Center in Meghraj, Dakshin Gujarat Vikas Snghatan in Vyara.

on the collective understanding of the organisations, which is discussed more at length in our Report (WGWLO, 2014).<sup>5</sup>

The paper has been divided into three parts. Part I discusses the motivation for claiming land rights which differs based on the categorisation of land into revenue, forest, and common land; Part II deals with the associated strategies used by the different organisations while working on this theme and document the learnings of the seven organisations mentioned above to enable and facilitate *Adivasi* women through this process. Finally, in Part III, the experiences of the organisations while employing multiple strategies have been highlighted.

## II. LAND USE AND CATEGORISATION OF LAND

The Constitution recognises specific vulnerable groups such as women, children, Scheduled Castes, Scheduled Tribes and Other Backward Castes. Over 700 communities in India are classified as Scheduled Tribes (ST), which is the legal term for most *Adivasis* (Census, 2011). However, the term Scheduled Tribes in the Constitution is not precisely articulated anywhere in the Constitution. Article 366 (25) defines Scheduled Tribes as those deemed to be so under Article 242. Article 242 talks about the power of the president to edit the list of Scheduled Tribes. Over the years, the 1931 Census definition of “distinctive culture, geographical isolation, shyness of contact with the community at large, and backwardness” has been used in multiple places, reflecting colonial and unevolved attitudes of the time.

*Adivasis* communities have historically lived close to and in a symbiotic relationship with forests. With colonisation and demand for wood, attempts were made to expel the communities living in

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<sup>5</sup> Please find a copy of the full report available at <https://counterview1.files.wordpress.com/2016/05/adivasi-women-and-land.pdf>.

and dependent on forests. To safeguard the rights of these communities and preserve their socio-cultural distinctiveness, several laws have been passed by the Indian state. Article 14 of the Constitution of India (Constitution) guarantees equality before the law and the equal protection of the law. However, it also carves out a caveat that affirmative action for specific marginalised groups will not violate such guarantee.

The listing of areas with a higher density of *Adivasi* communities is made in the V<sup>th</sup> Schedule of the Constitution. The Schedule prescribes distinct administration in these regions but stops short of elucidating the administrative structure. The V<sup>th</sup> Schedule places these areas under the executive power of the states, subject of course to any legislation passed to give effect to the schedule. This gap in appropriate administrative structures was filled after much delay by the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA). By handing over the control of resources and administration to self-governing bodies, PESA empowers the tribal communities in Scheduled Areas to decide for themselves in multiple matters concerning them such as land acquisition, mining leases (regarding minor minerals' only) and so on. In addition, the village councils constituted under the Act have the power to safeguard the customs and cultural traditions of the communities. Though the implementation of PESA defies its spirit, it still holds much potential to be realised (Planning Commission, 2011; Bijoy, 2012).

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) is another landmark legislation that recognises the rights of *Adivasis* and other forest-dependent dwelling communities to access the first time and harness their resources. This move has not been without pushback, but the Act and Rules adopted under it achieve many progressive goals, including access and use rights, titles to traditionally used lands without the right to alienate, joint holding of title by spouses, and so on.

Bina Agarwal (2002), in her book 'Are We Not Peasants Too?: Land Rights And Women's Claims In India', argues for a gendering of land rights and touches upon two critical components of such a rights discourse. *First*, they should be effective legal rights that are socially recognised. Second that they need to be independent rights, i.e., independent from men in the process of claiming such rights. This understanding can be extended to the specific context of *Adivasi* women too. Interestingly, women's land rights also echo in the jurisprudence of economic, environmental and cultural rights in the case of *Adivasi* women as seen in the Madhu Kishwar's case<sup>6</sup> (Manushi, 1982) and Samata Judgement (1997)<sup>7</sup> applicable in Schedule Areas.

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<sup>6</sup> Ho is one of the largest tribal communities in India. Women are the primary cultivators in the tribe but the customary law of Ho tribe is extremely discriminatory in granting land rights to women. Unmarried daughters have no inheritance right in their family's land. A widow has usufructory rights in the family's land for her lifetime and an unmarried daughter has usufructory rights in the family's land only till she gets married. Widow or daughter of a deceased man is entitled to get maintenance from the next male relative who got the land. In reality, even these limited rights are not recognised. Women are violently attacked, labelled as *dakins* (witches) or even murdered to take the land away from them. Maki Bui and her daughter Sonamuni, found themselves vulnerable after her husband's death when his male descendants tried to force them out of his land. The two women filed a writ petition challenging the constitutional validity of such customary laws when they faced threats to their life. The Court's interim relief ordered that there can be no interference in Bui's right to cultivate her land, thereby, recognising the right of Ho women to inherit family land.

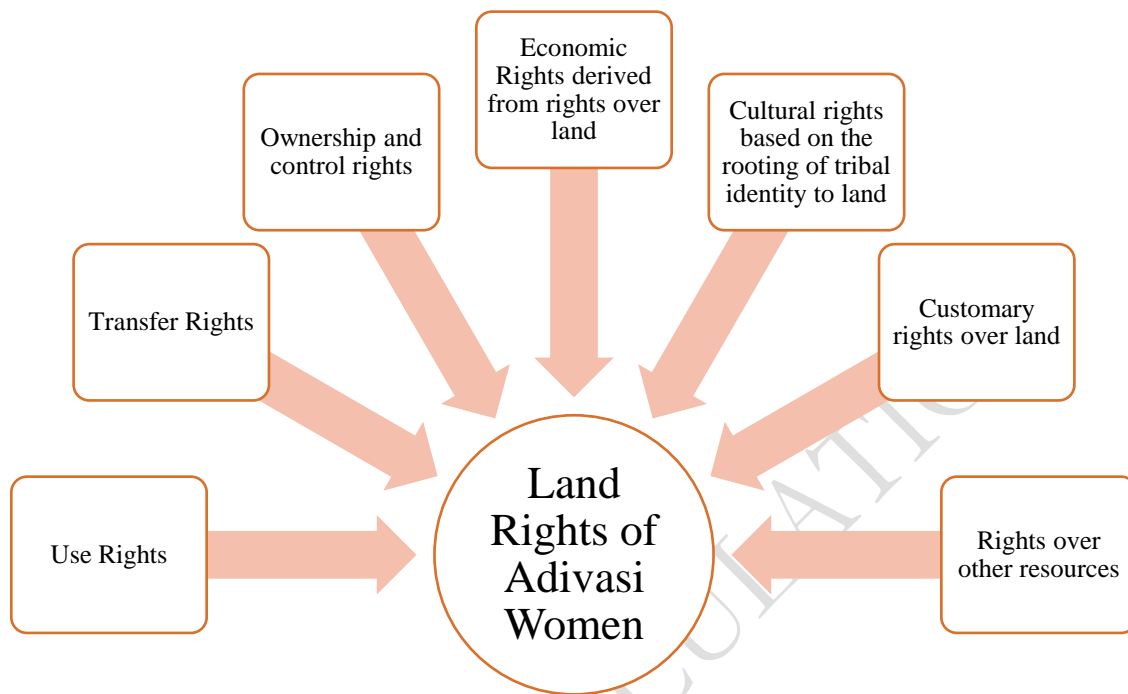
<sup>7</sup> The mining tracts of Visakhapatnam district in the state of Andhra Pradesh is home to many tribal communities. Due to leasing out of huge tracts of mining land to corporates by the government, a Public Interest Litigation was filed so that the communities can regain their land. In a landmark judgement delivered in 1997, the Supreme Court of India upheld the land rights of tribal communities and put an end to all mining activities by private industries. Mining activity was allowed to be undertaken only by the state, an instrumentality of the state or a cooperative society of the tribal communities. Giving emphasis to the ecological imbalance and environmental degradation caused by mining, they imposed obligations on the lessee to take measures for the area and the communities adversely affected by such mining.



As the question of land rights enter into the space of jurisprudence of property rights, it further gets classified into (Agarwal, 2002):

- **Use rights:** Rights to use the land for grazing, growing subsistence crops, gathering minor forestry products.
- **Control rights:** Rights to decide how the land should be used, including deciding what crops should be planted and benefit financially from the sale of crops.
- **Transfer rights:** Right to sell or mortgage the land, to convey the land to others through intra-community reallocations, to transmit the land to heirs through inheritance, and to reallocate use and control rights.

Attempts to recognise land rights for *Adivasi* women within the Indian legal framework face stark challenges in ensuring that they are effective and independent (Oskarsson, 2019; CEDAW Shadow Report, 2014). The diagram below illustrates the inclusive yet not completely exhaustive understanding of land rights used in this paper. This understanding does not include the change in the meanings of land rights based on the divergent interests attached to the land, which can be determined by its categorisation and livelihood.



(Diagram 2: Inclusive understanding of land rights used in this paper.)

*Categorisations of land into revenue land, forest land and common land<sup>8</sup>*

The motivation for claiming land rights differs based on categorising land into revenue, forest, and common land. The difference in the motivations for claiming land rights can be located in the interests attached to each category of land and the institutional and legal structures that restrict or enable these interests from being recognised. These categorisations are:

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<sup>8</sup> The motivations listed under each land categorisation highlight the dominant motivations of *Adivasi* women, drawn from the experience of the network. This may or may not apply to situations involving non-*Adivasi* communities.

- a. *Revenue Land*: Revenue land is agricultural land where permission for non-agricultural activity needs to be sought and is subject to land revenue and comes within the governance jurisdiction of the revenue department.<sup>9</sup> The primary motivations for *Adivasi* women claiming land rights in revenue land include:
- i. To ensure better economic security with the potential to procure loans against the land and begin the agricultural activity,
  - ii. To provide better financial security to their children, particularly in the event of being deserted or widowed,
  - iii. To be independent in their decision making in all aspects, which begins with and is built on economic independence, resulting from the recognition of such land rights, and
  - iv. To reduce the degree of hostility and intimate partner violence (IPV) and within their families and communities.
- b. *Forest Land*: Forest land refers to any land that comes within the “dictionary definition” of forest, is recorded as forest land and comes within the purview of the forest department (Godavarman Thirumulpadu judgement).
- c. *Common Land*: The following are the working definitions of the ‘commons’ or ‘common land’:
- A resource available to people, especially in the context of pasture, wastelands and lands that are not privately owned (Puppala, Chaturvedi, Priyadarshini & Kumari, 2015).

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<sup>9</sup> India has 28 states. Each state is divided into administrative divisions called districts. A Collector is the administrative and revenue head of the district. *Mamlatdar* is the Head of a Taluka (another administrative division) which consists of average 50 or more groups of villages. *Talati* is an officer at the village level. Revenue department consists of the *Talati*, *Mamlatdar*, and the Collector. They are appointed under the Land Revenue Code of each State.

- Common land (a common) is land owned collectively or by one person, but over which other people have specified traditional rights, such as allowing their livestock to graze on it, collect firewood, or cut turf or shrubs for fuel.
- The term ‘commons’ is applied to other resources over which a community has rights, including access rights (Ganguly, 2011). The rights exercised are such as pasture (right to graze cattle, horses, sheep or other animals on the common land, right to fish, right to cultivate river bed in a specific time of the year, right to take sufficient wood for the commoner's house or holding; usually limited to smaller trees, bushes and fallen branches, right to take sods of turf for fuel).

The motivations for the claiming of land rights in forest land and common land overlap and are as follows:

- i. The need to reduce the hostility being faced from forest guards in forest areas which emerge from policies that restrict the use and access to its resources,
- ii. The need to be able to access forest land for grazing and collection of firewood and other minor forest produce,
- iii. To prevent the forest department from encroaching on traditional lands, through the establishment of formal rights on land within the forest,
- iv. To be able to secure their rights over commons in the case of grazing and access to other resources which the forest department is presently restricting, and
- v. Lastly, to avoid arrests and criminalisation of daily activities like grazing and collecting firewood by claiming ownership and other rights on land with which the community can control resource use instead of the forest department.

### III. CHALLENGES IMPEDING THE LAND RIGHTS OF ADIVASI WOMEN

There are multiple challenges faced on various fronts that adversely affect the land rights of *Adivasi* women. This section explores legal, socio-cultural and institutional challenges based on the collective understanding of network members.

#### A. Legal challenges

The common legal hurdles are primarily procedural and a lack of clarity in terms of the space that *Adivasi* women occupy. In some cases where the categorisations of land are not clearly determined, the procedural aspects for the recognition of land rights require interaction with multiple institutional structures with overlapping jurisdictions of the revenue and forest departments. The legal challenges stretch from gathering legal evidence to the actual realisation of their rights.

#### *The tussle between customary law and the formal legal system*

The recognition of land rights of *Adivasi* women falls within the realm of both customary and the formal legal system (Fernandes & Bharali, 2009). In the formal legal system, inheritance of revenue land rights is recognised in the codified personal laws (such as The Hindu Succession Act, 1951) and FRA in the case of forest land (Agarwal, 2002; Prakash, 2007). On the other hand, customary laws of *Adivasi* communities are uncodified and can be flexible to handle unique situations.

Instances of clashes between the customary and formal legal system have been identified, in particular, in the following situations:

- In cases of bigamy, customary law recognises the right of the second wife while the formal legal system does not include such considerations, so the *Talati* (a revenue officer) refuses to register their rights over land.

- In case of conflict, when negotiations are underway in the office of the *Panch* (the village head) based on customary law, parties approach the courts. The hierarchical relationship between the formal legal framework and customary law results in the equivalent of what is known as ‘forum shopping’ in commercial law, a practice not appreciated by courts (Fitzsimmons, 2006).
- There are instances where *Adivasi* women identify themselves as ‘*Hindu Bhil*’ or ‘*Hindu Bariya*’. In such cases, their identity traverses both formal and customary legal boundaries, bearing markers of both religious and *Adivasi* identity.<sup>10</sup> This can create conflicts between the religious personal laws which will operate through the formal legal system and *Adivasi* customary laws.
- Another area of conflict is the management of common property resources (Roy, 2005). Cases can arise where grazing land management is based on customary norms that conflict with its management by the forest or revenue department. This has been resolved by recognising such rights over common land with the passing of the FRA when it comes to forest land. However, this conflict remains unresolved when commons do not fall within ‘forest’ areas. Commons which fall in non-forest areas are still governed by weak regulation that exists in revenue laws.

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<sup>10</sup> The personal laws of the Hindu religion have been codified under several legislations such as Hindu Marriage Act (1955), Hindu Succession Act (1956), Hindu Minority and Guardianship Act (1956), and Hindu Adoptions and Maintenance Act (1956) which will take a formal legal recourse for any disputes and conflicts. Whereas, the *Adivasi* identity will invite uncoded customary laws, thus leading to a conflict between both legal systems.

- Further, the practice of ‘*Ghar damaad*’ or ‘*Ghar jamai*’<sup>11</sup> (i.e., the custom of the husband moving in with the bride’s parents) is an accepted customary practice. However, it harms the rights of daughters over land as rights often get transferred to the son-in-law.
- Customary norms allow usurping land rights of a woman labelled as witches or *Dakin* or *Dayan*. However, this is not recognised in the formal legal system as labelling women as witches is a criminal offence.<sup>12</sup>

Such situations with multiple legal systems, constantly in clash over rights and redressal mechanisms, and characterised by ‘legal pluralism’ results in a complex relationship between the formal legal system and the customary legal system with regard to land rights (Kapur, 2011; Cotula & Mathieu, 2008; Cornwall & Molyneux, 2006; Falk Moore, 1978). The laws which prove to be more advantageous for women, whether customary or formal, is region-specific (Fernandes & Bharali, 2009).

In India, the formal legal system is progressive on several counts in recognising women’s rights over land and challenging the boundaries of customary law (Roy, 2005). However, customary laws that recognise the right of the second wife in the context of bigamy among some *Adivasi* communities is a difficult argument for institutional structures of the formal legal system to incorporate. This is because of the fluid nature of customary laws that can take into account special situations, unlike the rigid formal system of adjudication (Gopal, 1999). Therefore, scholars such

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<sup>11</sup> In India, the custom is for a bride to leave her parents’ home and live with her husband and his family. However, some times the husband lives with his wife’s family. Such a man with his in-laws is called a Ghar Jamai or Ghar Damaad.

<sup>12</sup> A social evil plaguing India is the branding of women as witches or ‘*dakins*’ or ‘*dayans*’. Once labelled, these women are subjected to violence and torture. Several states have enacted laws to counter the labelling of witchcraft which results in the death of many women even today.

as Gita Gopal have found that the claims to land under customary laws are more robust in several parts of Africa (Gopal, 1999; Tripp, 2004). Thus, there is a constant tussle of hierarchy between the two legal systems.

### *Gathering of Legal Evidence and its Manipulation*

Two hurdles exist in the processing of claims to land rights. *Firstly*, there is a lack of awareness on the legal evidence requirements for such processes (E.g., survey number, death certificates and others). This can be countered through the Right to Information Act, 2005 or RTI<sup>13</sup> or requesting it from the *Talati*, who holds the land records. *Secondly*, there is a lack of access to legally recognised evidence which is primarily due to the prevalence of corruption in the departments. The network members observe instances where the *Talati* asks for money to provide the information while sourcing land records. In such cases, the RTI is an effective tool to claim the information needed from the appropriate source.

In many cases, the legal evidence is also manipulated at the level of the *Talati* or *Mamlatdar* when these officials are alerted by the *sarpanch* (who is the head of the village-level constitutional body of local self-government) before the paralegals could intervene. The additional burden of costs incurred in gathering legal evidence can prevent women from filing their claims for recognition of land rights unless supported by an external source. In our experience, the *Mahila Sangathan* (Self-help Groups of women) assist the women and help to provide financial assistance.

### *Multiplicity of Authorities*

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<sup>13</sup> Right to Information (RTI) is an act of the Parliament of India under which, any citizen of India may request information from a "public authority" (a body of Government or "instrumentality of State") who is then required to reply within time limits set in the legislation. This is the equivalent to freedom of information requests, in many jurisdictions.



Due to a lack of clarity in the categorisation of land as revenue or forest land, there are overlapping jurisdictions in the management and governance of land. This issue surfaced in cases where the categorisations were not explicit. Where laws are particular to the nature of categorisation of land, this can create uncertainty while claiming land rights. To resolve the uncertainty, member organisations file RTIs applications either on behalf of individual women (such as to understand the nature of the categorisation of land) or collectively to address a systemic issue when there are multiple cases of similar nature. However, RTI responses may not be prompt and might require the applicant to refile the application or go for appeal. All of this would cause much delay in the process of claiming land rights.

#### *Transfer of Adivasi Land to non-Adivasis*

Most areas across the tribal belt of Gujarat are categorised as schedule V areas (in reference to the Vth Schedule of the Constitution of India) where land cannot be sold or alienated to non-Adivasis. Nevertheless, there have been instances of such alienation in the form of surrendering land as security for debt to non-Adivasis, sale of land to non-Adivasis by the Adivasi community, and claiming forest land by the forest department through planting trees and afforestation initiatives on such lands. This violates provisions of schedule V which seek to protect the rights of Adivasis over their customary lands and waters.

#### *B. Socio-cultural challenges*

The challenges at the organisational level have been varied based on the stages of intervention.

#### *Challenges faced during the organisation's introduction to the community*

Claiming of land rights is seen as an act of resistance to the existing patriarchal paradigm within the community (Kameri-Mbote, 2005; Tripp, 2004). When the member organisations start to build trust and rapport with the community for the first time, they encountered several views in the community that looks at issues such as the need to recognise land rights as a catalyst for conflicts within the family and society by challenging the customary norms and systems. Members in the community have also accused the organisations of intervening in a matter considered a private affair of the family. Thus, there is stiff resistance from the men in the family to recognise the rights of *Adivasi* women to land. At times, the resistance also takes multiple forms of violence against the women.

#### *Challenges faced due to identities of women within the family*

The nature of challenges is also dependent on the role that a woman occupies within the family as a widow, a single woman, daughters, wives, sister or sisters-in-law (Ber, Horen and Patel, 2010). In the experience of the member organisations, it has been observed that *Adivasi* women's role and identity within the family brings different degrees of vulnerability to domestic violence marginalisation and social harassment within their communities.

If a woman has brothers, then she is often denied land rights because she will be married and will be given a share in the land of her husband's house. As examined before, the practice of '*Ghar damaad*' has an adverse impact on her claim to rights over land, and she is often threatened with the ending of relationships with her family. Widows and single women are also labelled as *Dayan* or *dakins*. Since they have no support system, this specific vulnerability prevents them from asserting their rights over land. Single women (such as those who have not been married and have no other family alive or whose husbands have left them and they have no children) are also vulnerable to the practice of being labelled as a witch.

A deep nexus exists between the claim of land rights and increased instances of domestic violence (Grabe, 2010; Bhattacharya, Bedi & Chhachhi, 2011; Espinosa & Santos, 2013). Daughters and wives are more likely to be subjected to such violence if claims were made over land. This has been observed in the areas where the network operates too.

It has been analysed through various studies that legal rights over land dissuade violence (Panda & Agarwal, 2005; Richardson & Hughes, 2015). Hence, women are also motivated to claim their rights over land to ensure that they have more decision-making power with land use (UN Women, 2013). In the experience of the network, many widows and single women were motivated to claim their land rights to be economically and socially secure. If the widow had a child to support, then that acts as a motivation for her to ensure economic freedom and empowerment. Being successful in their claims on land rights would also ensure better access to resources, including support schemes by the government. It is also observed that married daughters claim their rights over land to have an additional source of income or livelihood if they are widowed or deserted by their husbands.

#### *Labelling as Dakin/Dayan*

The member organisations observe that the act of claiming land rights triggers a process of labelling the *Adivasi* women as *Dakin* or *Dayans*. The violence accompanying this labelling varies depending on factors such as the size of land being claimed or the woman's support system in her village. The nature of violence inhabits a spectrum that ranges from verbal abuse to murder. This practice very quickly changes her identity to that of an outcast in the community and threatens her land and life.

Hence, it acts as a robust social deterrent for woman, especially widows, to claim their rights over land. Interestingly, women whose rights are recognised are better positioned to challenge the nature of violence as they are economically independent (Grabe, 2010; Bhattacharya, Bedi & Chhachhi, 2011; Espinosa & Santos, 2013). So, even if the claim for land rights acts as a trigger for such labelling, it also acts as a solid foundation to challenge this practice.

#### *The threat of ending relationships*

Claiming of land rights is seen as symbolic of conflict within a family. Formally entering the name of the daughter/wife/widow into the title over land is seen as an act of defiance where the family ties are challenged through the physical asset land. In many cases, relationships end or adversely gets affected through this process. Negotiations help alleviate such impact, yet this threat acts as an initial deterrent to women to assert their claims over land.

#### *Intercommunity Dynamics*

Many times, a claim of land rights by women brings inter-community dynamics to the forefront. For instance, the OBCs who hold land as collateral for debts given to the *Adivasis* then change the ownership documents to transfer the land to their names. This further deepens the divide between the communities legally classified into these categories. Therefore, when a woman makes a claim for land right, the issue has to be initially settled between the two communities of *Adivasi* and OBCs. This might even result in conflicts between these two communities. Thus, women might be reluctant to raise a claim to land rights if it has the potential to disrupt the peace and harmony in the village.

#### *Bigamy*

Another practice among the *Adivasis* is bigamy. As stated before, customary law in the *Adivasi* community usually recognises the social and economic rights of the second wife. However, due to sankritisation and imposition of non-*Adivasi* values, the socio-economic rights of the second wife are getting curtailed within the *Adivasi* community. Thus, the practice of bigamy is still practiced by *Adivasi* men, but there are cases of uneven distribution of property rights between different wives.

### *C. Institutional challenges*

There is prevalence of corruption at different levels of the Revenue Department. *Talatis* and *mamlatdars* ask for money for processing claims. They could even delay the process if money is not given. They can also take more time with such cases mainly because of the patriarchal mindset that challenges the need to recognise women's rights over land. Network members recorded instances where *Talati* demanded money up to Indian Rupee 6,000<sup>14</sup>.

At the Forest Department, there could be a denial of processing claims over forest land due to overlapping jurisdictions of such land. In addition, there could be arrest for forest offences in cases where other forest rights, particularly those of use and access, are exercised. The forest department claims that land is forest land based on plantations that they place. This technique results in a complication while land rights based on its being revenue land are processed.

## **IV. ORGANISATIONAL STRATEGIES**

There were many commonalities in strategies adopted by the seven organisations to overcome the challenges described above.

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<sup>14</sup> Indian rupee 6000 is equivalent to \$ 82.03.

### *Strategies while connecting with communities for the first time*

Most of the network organisations started their work by conducting a campaign in the villages. Some of the network organisations operate through the institutional mechanism of Self-Help Groups (SHGs), within which they have set up a specific committee that attends to legal issues or issues affecting women. These committees attend to these cases and also provide support to paralegals in the legal aspects. Thus, the SHGs act as a nodal body in organising campaigns. The campaigns are conducted using innovative exercises to interact with the community members. Though they face resistance from community members, they use this as an opportunity to collect details of cases where women want to assert their rights over land. Thus, their initial method of interaction proves to be effective in numerous ways.

### *Stakeholder identification and involvement*

Member organisations work with multiple stakeholders at various stages of intervention. By working closely with stakeholders who are involved or affected by the realisation of land rights, the organisations can preempt conflict or resistance from within the family or other institutional structures and strategise accordingly to resolve the conflict.

With a realisation on the need to focus on establishing local leadership in ensuring that the recognition of land rights of *Adivasi* women is taken forward, network organisations work with paralegals who belong to the local community. Paralegals assist in gathering legal evidence, negotiating with the family and other stakeholders, following up to ensure the right is recognised and so on. Working with individuals from the local community enable the network organisations to experience the entire array of challenges that come with a wide variety of cases, allowing them to react in a more informed and intuitive manner to cases. Another such stakeholder is the

government department and its representatives. Member organisations in the network also actively work with women paralegals as they can relate better to the issue at hand and effectively engage with more women in the community. The network also works with women who have raised claims over land or won such claims.

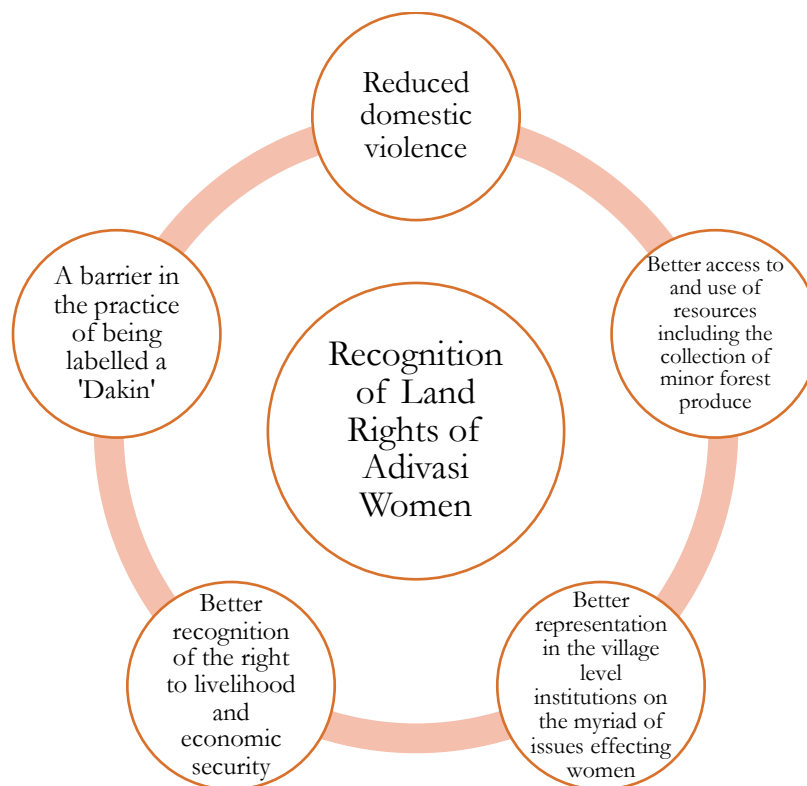
#### *Non-adversarial methods of conflict resolution*

When encountered with resistance from the family, revenue or forest department or village community, most organisations in the network resolve conflict through non-adversarial methods such as negotiation, mediation, and conciliation. This is often conducted by the paralegal handling the case and has proved to be effective in most cases. The cost and time incurred had the case been taken to court often acts as a deterrent in approaching an adversarial dispute resolution system (Iyengar, 2007). The same pattern was visible in the experience of the organisations too. The dispute is also resolved by the local *Panch* (who is an elected member of the village-level constitutional body of local self-government) with a representative from the organisation or a paralegal being present to assist.

#### *An intersectional approach to rights*

Member organisations in the network also focus on creating an institutional structure that enables discussions of a wide range of issues from which specific issues can be narrowed down for specialised groups to focus. This ensures a holistic and intersectional approach that enables the understanding that recognition of land rights does not sit in isolation. Thus, there is a positive impact of the recognition of land rights on other rights of women, such as in the countering violence against women, focus on women's health, and promote community development.

One strategy adopted by the organisations to facilitate this was to fuse land rights with other claims such as widow pension schemes and microinsurance. In most instances, land rights recognition results in reduced domestic violence and better decision-making within the community. Therefore, claiming land rights is an effective method to counter such discriminatory practices, particularly against widows and single women.



*(Diagram 4: Nexus between the assertion of land rights and its positive impact on other rights)*

#### *Using legal framework*

All organisations use the language of the existing legal framework in their introductory campaigns, negotiation processes, and resolving disputes. It proves to be an efficient platform to challenge societal norms and customary law couched in a patriarchal structure that is at the root of most conflicts. The organisations have been successful in gathering information using the Right to



Information Act, 2005. They use the RTI in gathering both information and evidence from the *Talati* and *Mamlatdar* to understand if the death of the husband or other family member is registered for the claiming the inheritance. It is also used as a threat to ensure that the *Talati* is more cooperative in sharing such information. There is active work on implementing specific legislation such as the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) to avoid the atrocities by the forest department which affect women the most. There is also an emphasis on incorporating government social schemes that allow for the granting of land rights and schemes that increase access to farming equipment and seeds.

#### *Using local art forms and artists*

Organisations also use local art forms and artists to create and spread awareness. The police department has commissioned a theatre group travelling through different villages to spread awareness about witchcraft and have been successful thus far and is a locally driven exercise. Information about the rights of women over land was discussed through the means of a community radio that has been established in Dang.

## V. CONCLUSION

In this paper, we have situated the issue of land rights of *Adivasi* women in India as characterised by legal pluralism. We have analysed this issue by converting the experiences of a network of organisations working on this issue into learnings. We have also examined several challenges that hinder the realisation of *Adivasi* women's land rights. One of the major impediments to realising the land rights of *Adivasi* women is their marginalised and disempowered position in society. The socio-cultural context interacts with the legal and institutional challenges to perpetuate the marginalisation of the communities.

However, the co-existence of legal systems does not mean that an aggrieved party gets to pick the best out of the two and proceed in each situation. Since law reflects power relations, it certainly reflects the imbalance of power relations between different social groups. Therefore, the legal system could be ill-equipped to handle situations where the power imbalance causes particular vulnerabilities. The legal system could also remain inaccessible to many people or simply provide unfair answers.

The approach to the conflict created due to the co-existence of different legal systems does not have to be one where we struggle to create a hierarchy or cherry-pick. It does not have to be filled with tensions and frictions. On the contrary, if such spaces are used creatively, we can expand and strengthen the opportunities to secure rights for tribal communities (Maru, 2006; Roy, 2004; Tripp, 2004). Through the experience of using a paralegal model in the pluralistic legal system in Sierra Leone, Maru argues that despite being applied unfairly at times, customary law has a far more practical impact there than formal law in the context of Sierra Leone, where paralegals engage with both customary law and formal legal system depending on the case. Their focus is on empowering the community about their rights and options. Thus, the law can also be used to shape power relations effectively. Scholars such as Wily, on the other hand, advocate for the incorporation of customary principles into statutory law, thereby retaining the power with the communities to manage the land rights matters (Wily, 2012; Tripp, 2004; Palmer 1998).

Given the socio-cultural realities of India, extensive awareness drives might help in strong community mobilisation to realise their rights, using diverse approaches and tools. Thus, focusing on using the existing laws as empowerment and capacity building tools is vital to destabilise the

gendered power imbalances between community members. Legal empowerment programmes by civil societies have proven to be highly effective for empowering communities in legal issues.<sup>15</sup>

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<sup>15</sup> Gleeson, Goodwin and Maru

[india.org/html\\_articles/challenging\\_the\\_denial\\_of\\_land\\_rights\\_to\\_women.htm](http://india.org/html_articles/challenging_the_denial_of_land_rights_to_women.htm) (Last accessed on: 19 May 2021).

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