

Adivasi Women and the Equality Quest/ion – Revisited

Over years, courts have compelled Adivasi women to deny their indigenous identity in the quest for equality in inheritance laws; but a Supreme Court decision last year re-inquired whether they must sacrifice one for the other.



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Editor's Note: This piece revisits critical arguments [raised in a piece last year](#) on women's day, and addresses a crucial jurisprudential development over the year that followed.

IN A PREVIOUS [PIECE](#), I had opened the question of equality for women belonging to Adivasi and other traditional forest dwelling communities. That piece noted that this quest for equality by women had been most prominently seen in matters of inheritance rights to land and property. And also how this question is pitched to fit the framework set for women from dominant communities, with no regard to Adivasi women's unique sense of identity, or the social, economic and emotive connect with their communities and the lands they occupy. Over the years, courts have generated a jurisprudence under which Adivasi women have been compelled to deny their indigenous identity by demonstrating their proximity to Hindu culture. Assuming that customary laws governing tribal communities would be necessarily discriminatory, the courts have, in a number of cases, tried to address the question by circumventing the exemption clause under the [Hindu Succession Act, 1956](#).*

While Section 2(2) of the 1956 Act excludes women from tribal communities from its purview, courts developed an extraordinary mechanism to convert that express exclusion to inclusion of a unique kind. If the women could prove that their community was *sufficiently Hinduised* or sufficiently Hindu-like, they could receive the benefit of the 1956 Act, despite an express provision to the contrary.

Several tests were developed to evaluate *sufficient Hinduisation*, wherein it could be shown that the communities practiced Hindu customs** — but the method was as arbitrary as it was unrealistic. In this quest, Adivasi women have had to choose between their individuated desire to be equal with others in their community, and their other tribal identity which originates from the same communal-social pool. To gain one, they have had to lose the other, and in this process, suffer the blame of dishonour and relinquish a complete sense of self.

An unexplored route in the quest for equality

I discussed the dangers of this enterprise in the previous piece. The need to write a follow-up to it arose in July last year when the Supreme Court took a stand different from its earlier — liberal and reformist disposition — which generated the jurisprudence of choice. Speaking through Justice Sanjay Karol, in [Ram Charan v. Sukhram](#) (2025) the Court has embarked a break from the previous line of reasoning, moving towards an alternative wherein a Constitutional route for the quest for equality can be carved. This piece will traverse that line of argument to understand how, instead of forcing Adivasi women to pick one aspect of their identity over another, it is possible to synthesise a Constitutional rationality to which they were always entitled.

The woman, in this case, had to wait for three decades to receive her fair share of the ancestral property. In this struggle, she was also made to believe that she had to choose her individual right over her tribal identity, something she was unwilling to do. After an interminable wait, the Court finally decided that it was not prudent for the law to compel her to make that choice.

In appeal from the Chhattisgarh High Court, the short question in front of the Supreme Court was whether a tribal woman or her legal heirs would be entitled to an equal share in her ancestral property. Observing that in our contemporary times, courts should not have to intervene for equality between the successors of a common ancestor, the Court clarified that the question of the parties adopting Hindu customs and way of life was no longer in play. Reiterating Section 2(2), it forthrightly concluded that the 1956 Act has no application to tribal women. This legal position has been confirmed in [another recent judgment](#) of the Supreme Court.

The next possibility was the application of custom. Customs, by their very nature, are inchoate, and hence in order to apply a custom, it must be proved. No satisfactory proof of custom was provided in the instant case. But to presume that tribal customs necessarily make exclusions based on gender, the Court noted, was a patriarchal predisposition, and appeared to be an inference from Hindu law which had no place in the absence of cogent proof. An assumption that tribal women would necessarily be excluded by customary practices, which was taken by the lower courts in the instant case, was a misplaced one.

In *Ram Charan*, the Court found a gap — codified Hindu laws could not be applied, and the parties were unable to prove customary laws either including or excluding women from rights of inheritance. In such a scenario, the Court noted that the statutory principle of *justice, equity and good conscience* as recognized by the [Central Provinces Laws Act, 1875](#) could be made applicable. Although the 1875 Act was repealed in 2018, the savings clause in the repealing Act protected any rights that would have accrued prior to the repeal.*** Since the right accrued in favor of the Adivasi woman upon the death of the male ancestor before the 1875 Act was repealed, her right of inheritance crystallized under the principle of *justice, equity and good conscience*. This principle — although limited in scope and supplementary in nature — allows the courts to arrive at a *just* outcome, one that does not discriminate and reinforces a basic idea of fairness in judicial dispensation of power.

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Had the Court concluded with this finding, the judgment would have had a limited application. It is [not the first time](#) that the principle of *justice, equity and good conscience* has been applied by the courts in such matters. But the Court has taken the argument further in finding this to be a question of violation of [Article 14](#) of the Constitution of India, read in conjunction with [Articles 15\(1\), 38](#) and [46](#). In *Ram Charan*, the Court held:

“There appears to be no rational nexus or reasonable classification for only males to be granted succession over the property of their forebearers and not women, more so in the case where no prohibition to such effect can be shown to be prevalent as per law.” (at Para 20)

With this reading, the Court has concluded that it is the collective ethos of the Constitution in ensuring that there is no discrimination against Adivasi women.

An inclusive, equal law for women

The quest for equality for women belonging to Adivasi and other traditional forest dwelling communities has been a long, difficult one; patriarchy rooted in codified and uncodified laws has made rapid inroads on the heels of ‘development’. Popular belief that Adivasi cultures are less discriminatory is no longer supported by fact, with discrimination and oppression becoming endemic both inside and outside their communities. But what the Supreme Court demonstrates in *Ram Charan* is that — under our Constitutional morality — we can no longer begin this inquiry with the legal assumption that tribal customary laws exclude women and are necessarily discriminatory.

It is the fundamental law of the land that all individuals are equal and that they must receive equal protection of laws. If a party claims otherwise, then it would have to prove that custom as an enforceable law in the court. And even if they are successful in doing so, *“customs, like law, cannot remain stuck in time”* and must necessarily ascribe to the Constitutional principles which underline all our codified and uncodified laws (as noted in Para 19 in *Ram Charan*).

With this reading, the Court has concluded that it is the collective ethos of the Constitution in ensuring that there is no discrimination against Adivasi women. As part of their composite and multi-layered identity, women continue to struggle, along with the men of tribal communities, for recognition of their autonomy and self-governance over their tribal homelands. This enduring historical struggle, which is facing unprecedented threats today, had a landmark moment in 2006 when the [Scheduled Tribes and Other Traditional Forest Dwellers \(Recognition of Rights\) Act, 2006](#) was enacted. The 2006 Act is a legal instrument of inclusion, which is a necessary condition of its formulation and is also essential for its enforcement. The Act is rooted in the principle of equality and autonomy as it creates a unique space for forest dwelling communities to practice their property systems regardless of differences in ideology.

The 2006 Act imbibes a holistic approach towards fostering gender equality. The forest rights articulated in Section 3 encapsulate the kaleidoscope of activities and relationships which constitute the Adivasi way of life, which rights can be secured as *“individual or community tenure or both.”* Forest rights where ‘individual’ tenure is granted, such as forest titles to land for habitation, self-cultivation and livelihood, must be held as joint titles, holding the name of both the spouses, which naturally must extend to equal rights to inheritance of such titles. Where forest rights are granted as community rights, such as ownership of minor forest produce, grazing, the right to protect and conserve their community forests, and so on, active participation of women in the exercise of such tenure is statutorily mandated as well.

Parallely, the Act also secures a political space for women by mandating their participation in the Gram Sabha and Forest Rights Committee. Each of these activities ensure that the person holding the title is capacitated to be an autonomous individual who also participates in collective wisdom of the community without having their own identity and survival under threat. It provides every individual to which the Act is applicable with a sense of security, without which they will be unable to exercise autonomous political will.

The language of these provisions and their manner of formation break away from the otherwise patriarchal laws which generally treat women as dependents and conceptualize them as an individual autonomous unit standing on a par with men (and other genders) and at the same time as integral members of the collective. Thus, Gram Sabha is defined as a village body of all adult members with *“full and unrestricted participation of women.”* (under Section 2(g) Decision-making bodies under the aegis of the Gram Sabha, whether the Forest Rights Committee which plays a central role in the rights recognition process, or the Committee which conserves the community forest resources, are properly constituted only when a minimum of one-third of the members are women.

Equal recognition of women’s land rights and equal participation in self-governing institutions forms an important constituent of the statute and the struggle it represents. Without the adequate participation of women, decision-making mechanisms at multiple levels lose their authority. Viewed as a whole, the scheme of the 2006 Act recognises that when women are excluded from having rights in ownership and inheritance of forest titles, they are also omitted from having a socio-political power which empowers them in the public sphere. Thereby, both equal recognition of women’s land rights and equal participation in self-governing institutions form important constituents of the

statute and the struggle it represents. The quest for equality lies in this synergy between the individual and the collective — between the *personal* and the *political*.

Without sacrificing one for the other

Advocating for equality in the private sphere — especially within family — is perhaps the most difficult struggle for women. The private sphere is a space of vulnerability, where a person's self-worth is regularly interrogated. Relationships are emotive and often defined by paternalistic practices. So, when women ask for equal recognition within the familial space, they are often blamed for self-indulgence, or worse for the breakdown of family.

In Adivasi communities, women who are asserting their right to equality bear an additional burden of the breakdown of the community and the Adivasi way of life itself. As with their composite identities, the demand for equality made by these women cuts across boundaries and bleeds from the *personal* into the *political*. The Forest Rights Act, 2006 and the *Ram Charan* judgment of 2025 shine a light on how Adivasi women can claim the fullness of their self-determination as women and at the same time as integral members of their Adivasi communities and way of life, without sacrificing one for the other.

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References:

* Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

** For example, in the cases of *Chunku Manjhi and Others v Bhabani Majhan and Others* AIR 1946 Patna 198 or (1946) ILR 25 Pat 44; *Bidhu Majhi and Another v Dukhan Majhi and Others* AIR 1956 Pat 123; *Bahadur v Bratiya and Others* 2015 SCC OnLine HP 1555 : AIR 2016 HP 58 : *Labishwar Manjhi v Pran Manjhi and Others* (2000) 8 SCC 587. Factors such as family members having Hindu names, family offering pindas to deceased ancestors, women applying sindoor, among others constituted the test.

*** 4. Savings.— The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to; and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing.