

## **CHAPTER VI**

### **CONCLUSION**

The main objective of this study is to examine property inheritance laws in the tribal society that is dominated by patriarchal driven customary laws in Sikkim. The study examined the experience of women to understand how patriarchal customary laws enforced gender inequality with respect to PIL: an area where women have for long been denied a fair due. These laws are mostly in favour of the –male gender and always with an agenda to strengthen the existing patriarchal structure of the society. The study was carried out, with the tribal communities in focus, particularly concentrating on the women from the tribal societies of Sikkim.

The study began by analysing different theoretical underpinnings of property rights, that have been shaped mostly by western political philosophers. The study specially focuses on land for it is –considered as real property and plays a significant role in agriculture, shelter, as well as bestows one with an identification, in the given space. At the same time, gender equality and control over property have become a critical issue when it comes to women, for its access is interpreted through the men folk, especially in the tribal societies. Therefore, many initiatives have been taken up at various levels, be it local, national or worldwide. Indian Constitution is a key provider of gender justice. However, customary laws and patriarchal fabric of the society hinders justice and curtails women from benefiting PIL. The gap that exists between the two, is a factor that has not yet been researched upon yet. Therefore, to bridge it, the proposed topic was studied and examined with a special focus on the tribal women of Sikkim.

The proposed research employed both qualitative and quantitative mode of enquiries. Data was collected through primary sources with field survey with the use of open and close-ended questionnaire and data also was collected from secondary sources such as books, journals, reports, etc. The study has been organised into six chapters including introduction and conclusion.

The discussion on Chapter II deals with the conceptual framework of property rights. The notion of property is not immutable because western world attitude is driven by financial security while indigenous people are confined within the concept of preservation of land, for their own identities. Property rights are edified by the western political thinkers from classical to modern context, because in primitive society, private ownership of property was unknown. Gradually with growth of population and subsequent engagement in agricultural activities paved the emergence of private ownership and private property rights. The expediency of laws were also realised and different laws emerged as the guardian for the protection of individual's rights for example, Greek, Roman, Common, Hindu laws, etc.

Classical thinkers, Plato and Aristotle, developed the concept of property rights, in the state of nature. Plato advocates common ownership of property because he envisaged that private property could hamper the unity of the state and is hence, incompatible with the smooth functioning of the governing system. This theory was criticised by Aristotle, on the ground that it ascertained conflict situation among the workers, about their incentive: if lethargic and hard workers were rewarded the same recompense, then there would be chance of conflict.

Furthermore, the seed of individual rights developed from the Enlightenment period with many thinkers who contributed to the concept of property. Hobbes argued that property is created by the state. Without this, there would be no property rights, because state was created in order to protect individual's property. According to Rousseau, private property would create inequality, which gives birth to human ego or self-interest. Individuals need to surrender their life, liberty and the property to the general will, and their rights would be protected by the common force of the society. During the 19<sup>th</sup> century, property rights was referred to as 'bundle of rights', it was considered, not just simply about individual absolute rights, that has been developed in the work of Blackstone and under Roman laws. Property rights are the bundle of sticks in which each sticks represents right to sell, mortgage, and lease, donate, etc. Hence, it also developed the idea of capitalism.

Under classical liberalism, property rights are imprescriptible. State has limited moral authority to interfere with the rights of the people. Classical liberalism intertwined with natural laws and it derived its sources from theological aspects. According to John Locke, right to life, liberty and property are natural rights of the human being, given by nature. They are inalienable rights and generates less interference from the other without prior permission of an individual. The Lockean labour theory of property, states the mixing of one's labour to a piece of land to become the owner of that particular property. Modern liberal thinker, like John Rawls, holds that basic liberties of an individual and right to property is protected by his first principle of justice. Justice as fairness, could be achieved when the least advantaged or marginal people enjoy equal rights and same liberties in the society.

Libertarians also lay emphasis upon self-ownership of property and consider human rights are inalienable. Robert Nozick states that the primary right, is right to freedom and right against coercion from the other, with minimal interference from the state. The principle of utilitarian theory often described by the phrase 'the greatest happiness in greatest number', appears to mean that property helps to attain the greatest happiness. Such rights should be protected by the law or the government. This theory also stresses upon self-ownership of property and one should not interfere with the possession of property by another. If such conditions have not been fulfilled then it leads towards conflict.

Marxists theory views that private property is not a natural right as stated by Locke. They stress upon the replacement of private property with socialist property because it is an instrument of exploitation by those who possess property. Further, private property creates class conflict between capitalists and proletariats, who assume the positions of dominant and dependent classes. Abolition of private property is one of the means to end exploitation, which involves changing ownership of property from bourgeoisie to proletariat or from class to common ownership. So, it needs to be abolished with a socialist revolution under the leadership of class-conscious workers.

Moreover, the common theory of Marxists approach seems to be inconsistent with the liberal view of individualistic ownership of property. In this context, different communities are driven by their own system of property inheritance pattern, such as patrilineal, matrilineal and bilateral. In patrilineal system, property is devolved through the male lines, whereas in matrilineal from the female line. In bilateral, both daughter and son get equal property in the family. Property rights of an individual can be enforced by the societal, cultural and legal forces, in the given space. Women's ownership of property, and the concept of empowerment revolve within the domain of economic and socio-political realms.

However, in terms of economic empowerment of women, property plays a significant role, in income-generation through agricultural production and combating the financial crises and poverty reduction. From the social perspective, property rights helps in two levels: household and community. In the household level, it helps in crises situation such as death, illness, divorce and education of children and at the community level, it helps to engage the community's various activities. Similarly, ownership of property, also encourages women to participate and compete in political activities, by using property as a credit. Further, women's property rights need to be protected by the state legislative system or judicial mechanism, in equal manner. Only then, legal empowerment would be possible.

In brief, Chapter II presents that discourse of property rights that have been developed among the various political thinkers. The main debate revolves around the common and private ownership of property. The proponent of common ownership states that it creates some kind of unity in the society and there is a chance of prevention of land fragmentation and alienation, especially among the indigenous people. Earlier the concept of communal ownership of property was practiced among the tribal communities and due to the influence of enlightenment and industrial revolution, the concept was diverted into individual ownership of property. The liberalism and libertarian theory were driven by individual ownership of property, that determine liberty and freedom and utilitarian perspectives with a focus on the accumulation of property itself as a means to achieve happiness. Women having a command over individual property rights would

create happiness. In fact, it is one of the most important means to achieve women empowerment.

Chapter III specifically examined the different feminists discourse and its relevance for women in tribal societies. Feminists, in their movement, were skeptical about the existing society, because they believed the society was male-dominant in social institution, structures and by nature. Their main goal was to achieve equality in all the spheres of the society. It sought to end women's continuous exclusion from gender stereotyped paradigm by throwing away the shackles of differences. They wished for men and women to come under a common measure. Political thinkers from Plato and Aristotle, Hobbes, Locke to Rousseau, identified natural differences between men and women; men being naturally more rational and capable to look into politics and public life, while women into the private sphere. This, because women were believed to be more inclined towards emotional, passive and irrational. Such kind of notions reflected women's vulnerable position in the family and they had to depend upon men for security and social protection.

Access to property rights revolves around the rhetoric of gender inequality which has been a historically and socially accepted trend. Gender discrimination in relating to property rights have often been interpreted through patriarchal or patrilineal ideology and women's rights has been befogged within the socio-cultural system. The various studies have concluded that men and women do not enjoy equal PIL, with the presence of legal provision, as well as discriminatory practices of the countries.

Customary laws act as hindrances in getting PIL, for they set patriarchal social norms and often lead toward inadequacy, for independent ownership of land rights. There is no any custom of providing inheritance of property rights, especially to women, except in a few matrilineal and bilateral inheritance systems. Hence, customary laws could be deemed as an impediment in getting inheritance rights for women in general, and tribal women in particular.

Most of the South Asian countries—Latin American and Sub-Saharan African countries-share the common view of patrilineal and patriarchal structure of the society, in which the father appears to be the sole mediator, with respect to PIL. Agriculture is the prime factor for most of these countries and land is considered as a single source of livelihood and income-generation instrument. Property rights reinforce women's inequality in the credit market, because land is often required for collateral credit purpose for social security, rearing of children after divorce settlements etc. However, in most of the developing countries, large number of male migration explicitly impact upon collateral credit purpose.

Women are often left out with de facto rights because titling of land is an area is believed to be specifically subjected to male members in the household. Among the South Asian countries, women have to face myriad of problems in the name of customs and practices. For example, women have to completely depend on men in land ploughing system. They are not allowed to plough land due to customary norms and practices or on religious grounds. It creates a kind of dependency situation upon men and also restrains women from independent land holding pattern. Feminist consciousness encompasses various theoretical approaches such as liberalists, radicalists, socialist/Marxists and post modernists. The desideratum of liberal feminism is to bring equal rights in the male-dominated society. They advocate reforms in present practices, instead of revolutionary change in field of legal and political rights. The idea of justice, equality and freedom should be governed, equally in the society. They insisted that women should have equal opportunities, economic and civil rights, as well as property rights with men. The discrimination against women can be decreased through means of legal aspect, which include voting and participation in the labour force, civil and property rights.

Marxists feminists stressed that classicism is the fundamental cause of women oppression. They states that private property creates women's oppression, because those who do not own private property and would have to economically depend upon the capitalist class. So, capitalism is the root cause of subordination of women, and in order to achieve women liberation it must be replaced by a socialist system, free from any form of economic dependency. Radical feminists' quest relies upon emancipation of women by

rejecting all traditional aspects. They identified that men are oppressors and stress on the elimination of patriarchy. As they stated, family is the root cause of women oppression and it needs to be abolished. Patriarchy and inheritance of property rights are intricately related to each other. When the question comes to the pattern of inheritance rights, then son preference appears to be in forefront, and women have to compromise their rights.

Post modernists feminist show skepticism about the primacy of epistemological discourse and also look to deconstruct commonly accepted knowledge or culture. Men and women are the example of common assumption of culture, where knowledge is socially and historically constructed, and it is not given by the nature. Under such traditional epistemology, women are systematically excluded from knowledge construction. But this theory was criticised on the ground that it deliberately encouraged identity slippages and hyphenated the identity of an individual.

In an international level, several initiatives have been taken for gender equality, with regard to property rights. Human rights in international level are acting under the domain of United Nations and under this UDHR, CEDAW, etc., especially address gender discrimination. The series of world conferences declared by United Nation General Assembly declared, International Women's Years in 1975, in 1985 and a third World Conference of Women was convened in Nairobi that urged members to take constitutional and legal steps to eliminate gender discrimination, including property rights. World fourth Conference on Women was held in Beijing 1995, and it asserted women's rights as human rights and committed to specific actions to ensure respect for those rights.

Millennium Development Goals also look into the promotion of gender equality and empowerment of women, with respect to property rights. There are several regional organisations including, SAARC, ASEAN and African Union that also play significant roles in creating gender justice. However, such initiatives have not been applied effectively to address the paradigm of equalities. The reason of the failure to enhancement of gender equality revolves around the variability of PIL, from country to country, as well as, most of the countries are governed by their own customary or

personal laws. States are often unable to tackle the discriminatory inheritance law which governs women. No matter what the status and power of women, male dominance prevails in the sphere of political, social cultural, educational, religious systems. Women's subordination is the oldest, most pervasive and universal form of oppression since history.

In brief, chapter III argues that gender equality in relation to property rights has become a crucial issue of concern, because women are denied from their entitlement for empowerment. Feminist theories argue that the existing society is based on male-bias and they locate their ideas by claiming an egalitarian society, in which both men and women enjoy equal rights. In this context, liberal feminists are driven by the demand of legal equal rights, in order to achieve their goal. Marxists and socialists feminists wished for socialists' ownership of property that would bring equality among the people. Similarly, radical feminists argue that institutions like patriarchy and family must be demolished from the society. Postmodernists are driven by the utopian idea of deconstructing the common assumptions of culture. Several initiatives are taken for the upliftment of women, but due to the presence of customary laws and personal laws, women do not benefit in the grassroots level.

The gist of Chapter IV is to analyse the obstacles in the implementation of Constitutional provision that guarantee equal rights, especially to women in tribal societies. India is home to diverse communities that are governed by their own personal and customary laws. Specifically, the area of inheritance or succession laws, depend upon their customs, cultures or traditional practices and tribal women are still guided by their own customary laws. Community-based laws have its grip on the conventional practices and can be interpreted through a patriarchal structure where women have always treated in minor position.

India is a pluralist society in which different communities are governed by their own customs and religious aspects, known as personal laws. For example, Hindus, Buddhists, Jains and Sikhs are governed by Hindu Succession Act 1956, Muslims by the Shariat law and Christians and Parsi by the—Indian Succession Act 1925. Women's

rights are plausibly more susceptible on the ground of personal laws, which basically driven by religious argument. In classical Hindu law, under Mitakshara School, ancestral property devolves in favour of the son by birth and daughters cannot become coparcener. Even if they demand equal rights, that explicitly challenge the deep-rooted patriarchal system.

Under Dayabhaga School, only one mode of succession occurred where father is the absolute owner of property and only after the death of the owner, property would be succeeded by the heirs. Indian society is guided by a deep-rooted patriarchal setting and a socially-accepted notion of male domination further adds fuel to the flame, in perpetuating gender inequality. Hindu Succession Act 1956, was passed on the basis of equal rights of inheritance, but it does not guarantee full property rights in the joint family, in which there exist preference of son coparcenary rights, by birth. In this context, Hindu Succession Act, 1956 was amended in 2005. It sounds more egalitarian for it makes daughters as a coparcener, in the joint Hindu family under section 6. However, it has been argued that though inherent discrimination was formally eliminated, the legislation still leaves women with lesser rights than men, in terms of property rights.

Indian Constitution guaranteed right to property under Article 300a, after 44<sup>th</sup> amendment act 1978. Under this act, property rights no longer remain fundamental rights: it became legal and constitutional right. Feminist consciousness demanded gender equality on the basis of UCC, which was enshrined in the Constitution under Article 44, but this demand disappeared under the shadow of personal laws, which has been channelised by the ethos of patriarchal male domination. UCC is supposed to be a magic wand in relieving women's torment, but opponents argue that it leads to the erosion of traditional culture and norms. It was only in *Sarla Mudgul v. Union of India* that the Supreme Court justified that UCC only touches the personal life of person but it does not touch the religion of the communities.

Post-independence guaranteed special status for Northeast region under the provision of Fifth and Sixth Schedule, by the Constitution of India. Under this provision, most of the tribal states have enacted prohibition on transfer of land from tribal to non-

tribal; the discernible reason behind this, appears to be land alienation and slippage of community identity. The traditional customs and practices favour a male-centric and patrilineal inheritance system, in which tribal women are sidelined. The Constitution of India also conveyed a contradictory provision in relating to tribal people, in a sense that under Article 14, 15 (3) and 16, it enshrines equal rights and on the other hand, it allows the practice of gender-discriminatory customs and norms. Madhu Kiswar's case justified that invalidating of customary laws may create some kind of erosion of identity crises and land alienation. That's why, non-tribal women are not allowed to enjoy the property of tribal women. This case exhibits that women's rights has been overshadowed by the domain of patriarchal ethos, along with the traditional practices and norms of the tribal society.

In a succinct, Chapter IV reveals that woman's rights have been shattered by the various communities-based law, which are considered as highly unjust for women. In the areas like inheritance, marriage, adoption, separation, etc. communities are still guided by their own customary and personal laws. Further, these laws are mediated through patriarchal ethos for their own benefit, especially in inheritance system, in which property normally devolve through male line, in a patrilineal society. With a few exceptions like the communities of Garos and Khasis of Meghalaya, where matrilineal system is followed. Indian Constitution guarantees equal rights, but at the same time, allows tribal people to continue their customary laws. In most of the tribal society, woman do not enjoy PIL under customary laws.

Chapter V examined the issue of PIL and women of Sikkim with special focus on tribal societies. Mostly tribal people are agriculturalist in nature, which is why, land plays significant role for their livelihood and income-generation. According to the District Census Handbook of Sikkim (2014), agriculture is the primary activity of the people of Sikkim and about 15.36% of the total geographical area of the land is devoted to agricultural productivity. Hence, tribal women in Sikkim are also involved in agricultural sectors. Lepcha, Bhutia, Sherpa, Limboo and Tamang are the major scheduled tribe of Sikkim and according to 2011 census, tribal people constitute 33.79% out of 6, 10,577.

Tribal people follow their own religion: some of them follow Buddhism, and some of them are also followers of Christianity and Hinduism. Hindu Marriage Act, 1955, Indian Christian Marriage Act 1972 and Hindu Succession Act 1956 (amendment 2005) are extended to Sikkim but most of the tribal people still follow their own customary laws in areas of inheritance, marriage, separation, etc. Among the Bhutia community, a prominent example to be traced back to, is the Dzumsa system of Lachung and Lachen of North Sikkim. This system is based on a self-governing system. Under this, all the administration of justice is enacted through the head chief of the village (Pipon). Gender discrimination on the ground of becoming pipon still exists-woman cannot become chief of the Dzumsa but they can participate in voting procedures.

Tribal people of Sikkim are also predominantly governed by the patriarchal and patrilineal family structure. In such societies, inheritance system is exclusively rooted in the male prerogative, for example, from father to son, grandson, brother, etc. In a patriarchal society, the father is the head of the family and the supreme decision-making process. The rule which laid down by the patriarchal male dominated set-up seldom offer disadvantages to own or access of property for women. Undoubtedly, intestate property of father is inherited by the eldest son who takes charge of the family.

The discriminatory institution of the patriarchal system often contributed to the subservience position of women. It continually emulates and perpetuates gender inequality in ownership pattern. Under such circumstances, land tenure is always registered in the name of male head of the household and women are sidelined from their land rights. Tribal women do not have legal inheritance of property rights. She neither inherits property in natal family nor in conjugal family, because men are still perceived as natural inheritors of the property. In some cases, they acquire property as a gift from parents under the will of her father or other relations. In most families, if daughters remain unmarried, then only can they get small portion of property as a gift from their parents.

During monarchical period, law was passed by the king such as the Revenue Circular Order No. 1 of 1917, which mainly focused on prohibition of transfer of land

belonging to Bhutia Lepcha to any other person. Under the Married Women Property Regulation Act, 1962, women cannot have interest in ownership of property, if she marries to non-local. Such immovable property need to be disposed either by sale, mortgage or could enjoy in her life-time. Women are still interpreted through this laws, which are by its core foundation, gender-biased. Democratic principles contribute to the notion of gender equality in all spheres, but gender disparity, in relating to property rights is still contested, with scope of democracy in Sikkim.

When Sikkim became part of Indian Union in 1975, the state's unique traditional laws, customs and practices of the people were preserved and protected under Article 371F (k) of the Indian Constitution. This Article protects several privileges in local autonomy of governances, land alienation of indigenous people and preserves traditional culture and customs. In this context, Constitution of India was faced with a contradictory situation. On the one side, it allows the state to practice its customary laws and on the other side it states the fundamental rights of individuals to enjoy equality and liberty in a multicultural society. The issue of equal rights of women and predominant provision of customary laws sounds to be fettered within the polemics of community identity.

Empowerment of women through property rights is assumed to be the means of ameliorating the economic security, especially for rural women. Sikkim Government also enacted Succession Act in 2008, which provide equal PIL for Sikkimese women. However, this Act is driven by the old traditional practices in which women cannot have interest in property, if they marry non Sikkim subject. Ironically, the government has not fully implemented the act. In fact, its enforcement would be unjust and unconstitutional on the ground of gender justice.

The desideratum of feminist consciousness inspires for an egalitarian society and aims to distort the existing knowledge-created-space for women, to demand for equal rights. Under the banner of 'daughters of soil of Sikkim', Sikkimese women demanded equal inheritance rights but their voice arguably was unaddressed beneath the dominant patriarchal society. This demand was criticised on the ground that if brought into practice then it automatically violates the traditional laws of Sikkim. There are less number of

cases that have been registered related to property rights which gives results to women's inaccessibility and inapproachability to the Courts, NGOs, and Women Commission, because most of the women are unaware of their rights and obligation. Undoubtedly, State Commission for Women and other NGOs have played significant role in creating legal awareness about their rights. However, women in remote areas need to take more into consideration. Another, plausible reason might be the existence of joint family system or patriarchy, in which property remains in head of the family.

It has been observed from the study that male entitlement on land property appears to be maximum, because the land is registered in the name of male members in the family. Daughters do not inherit property but some of them may receive property as gift from their parents. The main obstacle to women's access to justice with regard to property rights are social norms that limit both women's understanding to their rights and their options for seeking redress when rights are denied. Property rights is optimal in contributing to the overall wellbeing of a women in areas like, life security, bargaining power, economic security and food security.

It provides life security in the future too because if her children have no other source, it would be their medium of earning the basic needs. It also affects bargaining power of an individual in household matters, through the power to over-sell, lease or mortgage to enhance an independent life. Further, it helps in of financial instability. Command over property would less likely make a woman vulnerable to domestic violence. Therefore, in order to escape from violence, women need to know their socio-economic rights including property rights.

In brief chapter V shows, that customary law is paramount to tribal people of Sikkim. In the areas like inheritance or succession, marriage, divorce, etc, most of the tribal society still follows their own customs and practices. Further, tribal people base their lives on a patriarchal and patrilineal system, in which household decisions are taken by the head of the family and inheritance system, also devolves from male lineage. Under such circumstances, tribal women enjoy limited rights especially in the inheritance system, because there are no customs of providing property rights.

Land is interpreted through the male member and the main reason of denial of property to women is restriction of tribal land alienation. There are various Acts that have been passed by the state government related to PIL, but women least benefit from these rights. Under the—Constitution of India, tribal people enjoy special provision under Fifth and Sixth Schedule which protect and preserve the unique identity, traditional laws, customs and practices. Therefore, the issue of equal rights of women and predominant provision of customary laws sounds to be fettered within the polemics of community identity.

On the basis of comprehensive analysis of the issue under examination, the study makes certain significant observations as follows. Our analysis suggests that property rights is a fundamental institution in the society whose ownership and possession ensure empowerment. The notion of property rights and its various perspectives infer that it is a means to achieve empowerment for individuals in the society. Property in terms of land is considered as the natural resource that plays a significant role in agricultural activities, in providing shelter and denoting one's identification, status, responsibility, power, self-reliance and confidence. Women with ownership of property rights would enjoy liberty and freedom and it gives some kind of sovereignty. Property right is an inalienable right, which is given by nature to everyone with minimal interference from the state and from other occupancy.

Property rights are prerequisite for the economic empowerment of women in terms of income-generation from agricultural production. It also acts as a collateral credit during financial and poverty alleviation. From a social perspective, property rights would empower women in terms of providing pride, respect, wellbeing, and improves bargaining power. Similarly, woman with property rights would be highly engaged in political arena and participation in political process that helps to encourage representation, in decision-making level.

The study also argues that most of the developing countries in South Asia and Africa, gender inequality in relating to property rights have become a critical issue, because it is often interpreted through patriarchal and socio-cultural system, in which

customary and personal laws are signified as hindering factor. Several initiatives adopted under the provision of United Nations such as Commission on Status of Women, series of World Conferences, CEDAW, etc, comprehensively work in women's issue, but most of the women, especially from the rural areas are unaware and don't implement such initiatives. In this context, feminists consciousness challenge the traditional and existing society in which women are sidelined from the knowledge construction, and their socio-political and economic rights.

India is home to diverse communities. On top of that, different communities are governed by their own community-based laws in the areas like inheritance/succession. These laws are driven by the traditional setting including patriarchal or male hegemonic structure where women have to negotiate for their rights in the given space. The Indian Constitution provides gender justice but amendment of personal and customary laws violate the religious faith and hamper identities of the communities. Further, Indian Constitution itself is contradictory in nature for it provides gender justice, and carries principle of equality on the one hand, and on the other, it allows the communities to preserve and protect their culture, customs and norms. Hence, Indian feminists argue that reform should come from the community itself because it cannot be possible to impose laws from outside or the government. Numerous laws have been enacted for the protection of the rights of women but the problem lies within the practical implementation of such laws, because it merely reduced to paper work.

Women do not get equal status with men in respect to inheritance/succession, social status, and religious responsibilities, as well as in administrative systems. Various legal, economic and political rights have been enacted to provide equality between a man and woman from local to global level legislatures. Tribal people have their own rules and norms known as customary laws where women somehow remain marginalised in areas such as inheritance/succession. In order to get justice for women, these conventional practices need to be transformed to bring gender equality among tribal communities.

The Constitution of India guarantees equal rights through fundamental rights but at times special provision that are enshrined for Northeast region through Fifth and Sixth

Schedule for the preservation of identity appear to compromise women's inheritance and succession rights. Sikkim constitutes three dominant ethnic communities such as Lepcha, Bhutia and Nepalese. Even after the merger with India and institutional practice of democracy, patriarchal customary laws dominate in the practice of inheritance/succession, marriage, divorce, etc. For example, the Dzumsa system, that is still prevalent in Lachung and Lachen of North Sikkim, is the traditional administrative justice system based on customary laws. It is a local-self governing system of this particular village, constituted by the Papon and Gyapon, who are elected for a period of one year. Under such self-governing systems till now, women have no preference to become Papon though they can participate in the election process.

Tribal communities of Sikkim are guided by the patriarchal family system in which the father appears to be the supreme decision-maker. However, all the movable or immovable property of the father is inherited by the sons in the family. In the case of two or more sons, then equigeniture method is followed. Daughters rarely get property from parents, if they get then it would be gift from the parents or some of them have self-acquired. In some of the family, if daughters remain unmarried then only she can get some portion of shares. In some cases, women retain their positions as the custodian of family property in her life time.

In 1961, registration of documents relating to transfer of immovable properties was started in Sikkim and this was passed under the provision of Revenue Order 1 of 1917. Further Married Women's Property Regulation Act 1962 was passed by the state government which states that Sikkimese woman forfeit ownership of property, if she marries a non-Sikkimese. Such immovable property need to be disposed either by sale, mortgage or can be enjoyed in her life-time. Sikkimese women's rights are still interpreted on the basis of these laws, which basically are based on gender discrimination.

The proliferation of the democratic system led to a critical understanding on the ground of gender equality. Gender equality with respect to PIL though introduced, yet somehow impacted upon customary laws of tribal communities. When Sikkim merged

with Indian Union in 1975, special provision was also inserted under Article 371F (k) in order to preserve the identities and rights of the indigenous people. This Article guarantees several privileges to Sikkim including local autonomy in governance, laws restricting people of non-Sikkimese origin to settle in and restriction of tribal land alienation.

Sikkim Succession Act, 2008 was passed by the state government which provides equal PIL for women in Sikkim. Under this act, unmarried daughters along with sons have equal share in ancestral property of father. Divorcee and widows also-share equal proportion with others heirs if she has no source of income and has children to look after. Further, this act introduced on the basis of traditional practices proclaims that under act 2, women: who marry to persons without a Sikkim Subject Certificate cannot acquire any interest in property. But, this has not been fully implemented in state of Sikkim. Proponents argue that such laws would go against the provision of Constitution, which basically deals with the principle of gender equality. If such laws have been enacted in state of Sikkim, it may lead to a form of injustice, for under such circumstances, women have to compromise with their rights. Similar experience has been shared by the women of Jammu & Kashmir, according to Permanent Residents Disqualification Bill, 2004, in which those women who marry non-Kashmiris cannot own property rights.

Demand of equal PIL was made by Sikkimese women in 2010 under the banner of 'Daughters of Soil of Sikkim', which gave alarm to the state government, as well as innocent women. This movement came across with much criticism on that ground that if equal PIL will come into force then it automatically violates the old laws of Sikkim. Such old laws are the guiding principles of administration in present Sikkim. Government has not reacted against the movement started by the Sikkimese women till now.

The Government is continuously taking initiatives with regard to safeguarding traditional laws of Sikkim by announcing on 11<sup>th</sup> November 2014 that only Sikkimese-born girls marrying Sikkimese men can be provided with Sikkim Subject. Furthermore, they also made an important announcement that married Sikkimese women required to submit the Sikkim subject of their father's, as well as husband's on 25<sup>th</sup> January 2015, for

any government facilities. Under the Notification No. 66/Home/95 dated 22 November 1995, daughters-in-law were also included into the Sikkimese fold, but now the government has denied this, on the ground of the protection of local status. Again the government also announced on 12<sup>th</sup> June 2015 that non-Sikkimese women married to Sikkim Subject holders can also be provided with Certificate of Identification. So, in this context demand of equal PIL become very critical issue between the gender equality and state autonomy.

The main sources of customary laws are customs, traditional practices, usages which have been practiced from generation to generation, by particular communities. This law is based on unwritten laws. Under this system, women are always categorised in a subservient position and they are treated as the property of the men in the society, especially with regard to inheritance right. When it comes to the question of women and control of property, it has been observed that women hardly take a control over property. On the other hand, women who do not have ownership of property ultimately depend upon the male members in the family.

It has been observed that the male entitlement appears to be maximum than female. Most of the land is registered in the name of the father, father-in-law, brothers and sons. Daughters do not inherit property but some of them receive it as a gift from parents. The study found that the main obstacle to women's access to justice with regard to property rights are social norms, that limit both women's understanding of their rights and their options for seeking redress, when rights are denied. Norms and culture are embedded in such a way within the families and communities that it perpetuates gender inequality and limits the extent to which women's rights are realised, in practice. This social norms or conventional practices negatively impact upon the administration of women's justice. However such aspects become the challenging factor in demanding of property rights for women.

In general, those women who do not have entitlement of property are likely in a vulnerable position in the family. Further, they have to face torture from the husbands or family members. However, tribal women in Sikkim rarely face such kind of problems. If

title of property belonged in the name of male members, then they'd have to follow their decisions. The inference can be drawn from the study that women hardly have authority and control over property. If women own property, then it would bring some changes in their lives, such as improvement in living standard in family and society, respect, economic benefits, social development, etc. In the context of decision-making, the father is the head of the family: he makes major decisions. The study shows that women cannot completely take a decision in the household matters but they can share responsibility with men. Mostly their voice has not been taken into consideration. Land is considered as a pivotal asset for the economic life for the survival of any community.

However, education is the key to create awareness among any marginalised groups in a society. The collected data reflects that almost all the respondents have positive attitudes towards inheritance of property rights for women. In-fact, women who have not even completed their formal education staunchly support the rights of women. So, they challenge the existing laws which do not benefit the welfare of women. Furthermore, the study also shows that property inheritance right is necessary for women because it safe-guards against financial instability, helps as insurance in getting old age care, or its acts as a symbol of respect and strength in the family, as well as in the society. Women in remote areas are not aware about their rights. So in order to create such awareness among them educational facilities, various government skills and programmes, counseling or leadership programmes need to be established.

Ownership of property empowers women on the ground that it enables financial assistance by selling, mortgaging or by leasing, which lead to income-generation. It secures economic aspects which ultimately improves education, family health and well-being. It also politically empowers by encouraging participating in political processes and representing in decision-making process. The lack of an opinion prevents women from ensuring their rights, therefore by engaging in the political process, they can introduce gender equality. Further, women with ownership of property have greater bargaining power in intra-household activities. The study conjures up women's position to command over property that indubitably would bring life security, bargaining power, economic and

food security, among the tribal women. If women do not have any source of income, then land would be an alternative for them.

On the basis of the study, PIL and women in tribal society of Sikkim, certain policy initiatives may bring changes to the current situation and enables the drawing of a few recommendations. Easy access and approachability for the women to the administrative justice system of judiciary executive and bureaucracy may transform the existing situations. Civil society and media would play critical role in getting PIL to women. Women's representations in state legislatures, panchayat raj institutions and decision-making bodies also could bring changes. Like other states, Sikkim government can encourage female land registration by providing concessions in registration and stamp duty. Furthermore, a task-force and judicial commission need to be constituted to bring reformation in customary laws specifically associated with persistence of patriarchal attitudes, deep-rooted gender stereotypes, etc.

In another level, the support from international donor agencies—such as World Bank, Food and Agricultural Organisation, USAID, for the execution of various plans and schemes, is needed. Organisations related to women's property rights, especially in rural areas, need to be encourage to empower women in multiples areas. State Women's Commission, and different NGOs need to play significant roles in creating awareness about various legal facilities provided by the governments and other developmental agencies in grassroots level. Lastly, implementation and enforcement of existing laws appears to be challenging factor in getting equal rights for women. In this context, an effective and gender sensitive property inheritance laws need to be introduced by the state government.