THE FACE AND MASK OF 'AUTONOMY': REINVIGORATING CUSTOMS AMONG THE HO ADIVASIS OF JHARKHAND

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Introduction

'Modernity', despite being contested by tradition as well as post-modernist discourse, has managed to pervade and reshape different societies. However, the cultural changes taking place as a result of modernity are quite amorphous in nature and prove to be very difficult to capture by researchers. Nevertheless, modernity under a political schema does not necessarily annihilate tradition and sometimes only reframes the latter to serve its own purpose. For example, the customary institution of the Ho[1] Adivasis known as the *manki-munda* system[2] (henceforth *M-M* system) was not abrogated, but only reframed by the British for the purpose of revenue collection and administration. The post-Independence Indian state, already on a modernization spree, neither dissolved nor accorded any special status to these customary institutions.

Of late, the Indian state attempted to redefine the role of customary institutions through the Panchayat (Extension to Scheduled Areas) Act (PESA), 1996. In the case of Jharkhand, apart from Wilkinson's Civil Rule of 1837[3], colonial tenancy laws like Chotanagpur Tenancy Act (CNTA), 1908 and PESA recognize the existence of customary institutions. While accepting the presence of customary leaders these laws changed the language of recognition, making the former dependent on the administration's assent (Sundar, 2005: 4432). However, after the creation of Jharkhand on 15th November 2000, the state government passed the Jharkhand Panchayati Raj Act (JPRA), 2001 (subsequently amended thrice in 2003, 2005 and 2010). Deviating from the recommendations made under PESA, JPRA provides for 50 per cent reservation (after amendment in 2010) of seats for women in local bodies. Moreover, in disregard of the customary institutions already existing in many scheduled

areas[4], panchayat elections were conducted in 2010, inviting the ire of customary leaders who instead demanded autonomy in self-governance as per their customs. A more general picture of the rights attributed to the Ho women is drawn in the third section of the essay. In addition to this, it has been noticed that people are apprehensive of the traditional norms of dispensing justice in several cases. Concerns regarding biased role played by the customary leaders and their corruption have been the basis of this disgruntlement.

Against this background, I would like to pose a few questions which will be taken up for inquiry in this paper. Should autonomy based on otherness be left unperturbed even if it victimizes its own people? If not, what should be the basis and nature of intervention? *Prima facie,* the above-mentioned questions raise certain concerns regarding autonomy and social stability—due to the claims put forth by customary leaders that their functioning is organically linked to the Ho culture—as against equality and justice. Underneath, however, rests a protracted debate between modernity and post-modernity wherein the "responsibility to act" is posed against the "responsibility to otherness". Using these phrases, Stephen White argues that in order to reshape societies, critical thinkers like Habermas have shown their interest in finding a basis of intervention, while thinkers like Foucault regard such intervention as an attempt to assert superiority over 'others' (White, 1991). The former's attitude is regarded by White as "responsibility to act" whereas the latter represents "responsibility to otherness". After briefly exploring this broader theme, we will attempt to answer the above-mentioned questions through an empirical analysis of two issues, i.e. women's political rights and quotidian notions of justice in Ho Adivasi society. The enquiry becomes crucial given the fact that the institution of *manki-munda,* for which autonomy is demanded, also plays a significant role in constructing an identity required to consolidate the community in adverse situation (Damodaran, 2002)[5]. Hence, my approach is guided by the principle that while the customary institutions need to be reinvigorated, their abrogation is undesirable.

The paper is arranged into four sections apart from the introduction. The first section sets the stage of inquiry by briefly revisiting the debate between modernity and post-modernity which helps in arriving at the approach used here to analyse the issues at hand. In the next section, a brief historical account on the evolution of *M-M* system as well as state's attempt at introducing local self-governance in the scheduled areas is provided. The third section deals with the empirical evidences in the sphere of women's political

rights and justice where the customary system has presumably failed to mete out 'just' treatment to its own members. Their examples are cited to examine the claim for autonomy and suggest measures to reinvigorate customary institutions. Finally, the paper will conclude by stating that, even though there is no harm in accommodating certain progressive values while conserving customary institutions it will be detrimental to abrogate the latter because of its capacity to create an 'inclusive' identity, that is, the power of customary institutions to forge unity among its members by curbing the potentially divisive factors like class. Jharkhand, being a resource-rich State, has been a site of 'land grab' as well as mining operations. Given this situation, an appeal to the customs and culture helps in forging a viable front to oppose the adversaries.

Revisiting Autonomy of Customary Institutions

Autonomy, as used in this paper, stands for a political position which is articulated on the basis of 'otherness' and asserted on grounds of separate identity. It covers the aspects of self-governance that aspires to retain a separate space for the sacral politics of community as existing in customary norms and institutions. However, analysis of autonomy moves beyond the external layers of this claim fixed on the basis of identity and re-examines it by raising more universal questions about rights and justice. 'Autonomy' in a multi-cultural society is premised on its pledge to preserve 'otherness'. But can autonomy act as a shield to conserve even regressive practices in the name of 'otherness'? Any society claiming to be liberal will answer this question in the negative. But the important question, which arises here relates to the nature and scope of intervention required to make the custom shed its own regressive practices. In an attempt to arrive at the manner of intervention required to reinvigorate the customs the paper will interrogate the "modern" values in juxtaposition to which such questions take place.

'Modernity' itself is a contested notion and is insufficient to provide answer to all problems associated with custom. Located in the Enlightenment movement of Europe, modernity propagated a value system which poses a systemic challenge not only to the existing feudal norms and aristocratic privileges but also to the agrarian 'mode of production'. Nevertheless, modernity with its embedded notions of rationalism and 'individual liberty' also has a relentlessly ethical agenda susceptible to camouflaged and deprave use. For example, acts like waging war for protecting "liberty" can

hardly earn repute as they serve as the pretext for expanding neo-colonialism by the Western powers. Akeel Bilgrami sounds convincing in his assertion that 'many of the developments of the West were not always rational, but are rather a result of the greater might of some worldly forces over others' (Bilgrami, 2015: 9). Likewise, acceptance of Charlie Hebdo's caricatures as representative of the genuine jibes of secularism hardly convinces critics like Mahmood Mamdani, who, in his article in *The Hindu* said that he did not regard them as 'blasphemy' but as 'bigoted' (15/01/2015: 9). Even though it seems that political systems sustaining "modern" values have triumphed, it has found serious contenders in oriental societies and also amongst the "others" living in the occident. However, this paper does not aim to defend any practices of the non-Western or Western societies which are presumably regressive in nature and victimizes its own people. This paper rather attempts to edify the insidious nature of traditionality and suggest measures for its amelioration by conjoining it with values which cannot be regarded as exclusively "modern".

There are certainly several hazards in pursuing modern values in an unqualified manner. In societies like India modernity can be used by the Hindu right-wing 'to fix' the minorities by pushing the logic of a secular state to its limits emphasizing a form of absolute secularism by pushing ideas like a universal civil code' (Nandy, 2003: 36). Hence, the Indian state is rightly dissuaded from pervading certain spheres of individual and community life. Despite this, certain institutions of the state, namely the judiciary has found it 'just' to venture into this restricted zone. However, this intervention appears to be discriminatory. Whereas, the Court rightly takes cognizance of the rights of a divorced Muslim woman it has shown reluctance in recognizing the rights of Adivasi women who are denied this right in the name of custom[6]. Nevertheless, there were many cases among the Hos when daughters enjoyed a share in father's property with the full approval of the village panchayat (Majumdar, 1937: 36). Even the British courts ruled in favor of women litigants in cases involving the latter's right to mortgage or sell property under their possession (Das Gupta, 2015: 101). As far as reaction from the intelligentsia is concerned, they hold different opinions in the two cases. While accepting the regressive nature of religious practices, they, for their sympathy towards 'otherness', want the solution to emerge from within. But the same class has reacted even more cautiously over the issue of customary practices, many a time avoiding intervention which may presumably lead to disintegration of the tribal world-view and social fabric (Corbridge, 1988; Corbridge,

2000; Hebbar, 2003)[7]. In fact, cultural autonomy has been projected in public imagination as a litmus test for liberal credentials of the state. Hence, in the context of cultural autonomy the classical dilemma of liberalism resurfaces. On the one hand, liberalism is supposed to preserve cultural autonomy, whereas on the other, it requires to intervene against the regressive practices for the sake of justice. In talking about women's political rights and dispensing of justice outside the customary fold we are seeking for a secular intervention in a given religio-cultural group, that is Ho Adivasis. In fact, unlike in the case of mainstream religions like Hinduism, Islam, Christianity and others, secular and spiritual spaces are more vividly defined in the case of Adivasi societies. In the case of the Ho Adivasis particularly, the secular domain is headed by the *manki* and *munda* whereas the spiritual space is under the guidance of *pahan* or the *deuri* (the religious head in a village). Nevertheless, in constructing the Ho identity by merging the secular and spiritual domains and interpreting the provisions for women's representation as an assault upon cultural autonomy, the customary leaders have only devised a tool to protect their privilege.

The above remarks point towards the challenges to customs, either religious or cultural, when they are degenerative. However, the question remains as to what should be the basis and nature of this intervention. This question brings us back to the debate between the modernists and the post-modernists with several scholars subscribing to one viewpoint or the other. Whereas Habermas and others subscribed to the idea of 'responsibility to act', Foucault, Derrida and others nurtured the belief in 'responsibility to otherness' (Flyvbjerg, 1998: 214). This debate is not new in India and can be meaningfully replicated in the context of the *Uniform Civil Code.* Scholars like Partha Chatterjee have argued for an introspective dimension to this problematic and an evolution of panacea from within (Chatterjee, 1998: 360). In the same vein, Martha Nussbaum argues for the role of leadership in inculcating progressive values in the people (Nussbaum, 2015). Nevertheless, these options are largely curtailed not only by the internal politics of the community but also by external developments. For instance, threat perception from other communities—either politically motivated or real—curtails the ability of the leaders to propagate 'political morality'[8] and, thus, the opportunity for a community to be guided by progressive forces to evolve as a 'just' entity.

In retaining the regressive practices many traditional Ho leaders responded to a perceived threat from 'enemy from without' who

could take advantage of fault lines emerging along the issue of gender equality[9]. Furthermore, the panchayat elections are opposed by certain Adivasi organizations which claim that Adivasi 'democracy' is primordial in nature with inherent qualities to preserve the social fabric. Nonetheless, historians working on the evolution of the customary institutions have clearly stated that the British transformed the indigenous customs into customary law and 'the colonial ideology and institutions hybridised the tribal customs into an Anglo-tribal customary law' (Sen, 2012: xi). Having discovered the nature of the arguments provided by the Adivasi organizations, the question of women's representation and justice are taken up as 'ethical-political' issues which require attention following Stephen White's approach to overcome the dilemma of "responsibility to act" and "responsibility to otherness". Deriving from a close scrutiny of Lyotard and Walzer, White proposed an "inter-subjective dialogue" among values to arrive at a position guided by "care" (White, 1991).

The community itself is urged to be the prime mover in determining the nature of "care" wherein its members should shed regressive practices while not relegating themselves to subservience of everything offered by "modernity". A clue for such a possibility appears in the issue of "absorption" of Adivasis into Hindu fold. Whenever an Adivasi adopts some Hindu religious practices, it is assumed that a cultural "assimilation" is accomplished on some unequal basis. While this assumption is not entirely correct, a more feasible answer has to be found in the *finitude*[10] of social conditioning of a section of the tribal middle class, who, due to their close proximity to the Hindus, have started imitating many Hindu practices but without sharing the same religious consciousness which their Hindu counterparts hold.[11] Moreover, the Adivasi customs themselves evolved dialectically through interaction with cultural "others" as well as state intervention. Some of the "regressive" provisions are grounded in such interactions and, in the following section, we will try to understand their genesis.

A Brief History of the *M-M system*

Historiography of West Singhbhum ventures into a century or two preceding the colonial triumph of 1837 over Kolhan. The territory itself was colonized by the Ho Adivasis after removing the Saraks and Bhuiyans who were the early settlers (Sen, 2012). Primarily due to this reason, the history of West Singhbhum is coterminous with that of the Ho Adivasis. Several land settlement records, village

records, historical accounts provided by the British military officers and other sources have become the basis of Ho social history in modern times. On the basis of colonial ethnography historians have unambiguously stated that the Ho Adivasis are not the original inhabitants of present-day West Singhbhum (largely comprising erstwhile Kolhan and Porahat) (Das Gupta, 2011; Sen, 2011). In fact, the area was colonized by the Hos gradually since the tenth century onwards by displacing the Saraks and Bhuiyans from their settlements (Sen, 2011). This claim is validated by the absence of *khuntkattidar*[12] families in many villages of South Kolhan because the Hos ostensibly occupied already established villages. But there are evidences of original Ho villages also in Northern Kolhan (Das Gupta, 2011: 28).

Most of the historical accounts fail to provide a reliable clue as to the emergence of customary institutions of the *manki-munda*. The ambiguity associated with the *M-M system* is so prominent that some scholars doubt its supposedly organic nature (Hebbar, 2011:17) while others consider it to have developed organically among the Hos but manipulated severely during the colonial era (Das Gupta, 2011). Irrespective of such differences, there is consensus about the roles played by customary leaders which comprised both inter- and intra-village duties like allocation of village land to the landless, arbitration in case of disputes, and so on. Till they developed contact with the neighbouring principalities of Singhbhum, Saraikela, Kharsawan and Mayurbhanj, the Hos enjoyed an autonomous existence. Even though these principalities imposed a nominal amount of rent or tribute to be collected by the customary leaders, they never encroached upon the autonomy of the Hos. Owing to disturbances and conflict among the different principalities and with various Ho groups taking one side or the other, the British intervened to ensure short-lived peace in 1821. Ultimately, however, Kolhan was annexed by the British in 1837 and this led to active and structural intervention in Ho customary institutions (Das Gupta, 2011). The M-M system was revised to collect revenue, while at the same time stripping the customary leaders of many judicial and police powers, at least in criminal matters (Sen, 2011). While the Hos accepted the imposed revenue on most occasions they never shied away from contesting the colonial rule at any opportunity. It is, hence, clear that there was intervention in the material domain (land revenue) of the Hos during the colonial period. The British, apart from their intervention to curb the savage practice of witch-hunt, also attempted to codify the Ho customs (Sen, 2012). Thus,

several customary practices which received social sanction under the logic of Ho social evolution were reshaped according to external interventions.

Indigenous or 'sacral' politics to emphasize upon the role of customary institutions has revived itself in the past few years in the tribal-dominated areas of Jharkhand. It is claimed that the Adivasis use their participation in state-conducted elections to assert their autonomy or 'keep the state away' (Shah, 2007:130). Likewise, in West Singhbhum, which is recognized as a scheduled area, there is an arguably popular demand among the Ho tribal groups for the revival of their customary institutions according to PESA. Presently, customs are used to construct an identity crucial for consolidating the community in their resistance against the grabbing of '*jal, jungle and jameen*' (water, forest and land) (Sundar, 2009: 15). However, this claim can hardly go uncontested given the incidents of desertion by customary leaders. The president of the *Manki-munda Sangh*, Antu Hembrom, assisted the companies operating around Chaibasa, the district headquarters, in acquiring land. On being alerted of Hembrom's role, the villagers caught hold of him and punished him publicly by making him ride a donkey and garlanding him with footwear. However, despite several odds, identity politics has emerged as a viable tool to consolidate voices of dissent. In the absence of an alternative factor the ability of customary leaders to unify people against corporate powers is of great importance in their struggle to protect land, water and forest. Nevertheless, caution should be applied in not over-looking the power relations and class distinction within the community[13].

While the post-Independence Indian state ignored the existence of customary institutions, an initiative was taken as late as 1995 to redefine their role and space in local self-governance. In order to extend the provisions of Article 243 to the scheduled areas, the Central government, under clause (1) of Article 244, constituted a committee in 1995. A tribal Member of Parliament, Dilip Singh Bhuria was appointed as its chairperson with the widely experienced B. D. Sharma as one of the members of the committee. A four-tier structure rather than the usual three-tier structure was suggested for scheduled areas. It was to consist of gram sabhas with traditional village councils or nominated heads, village panchayats, intermediate panchayats and district councils. More importantly, the committee made the process of election optional in choosing the local representatives in its quest 'to blend the traditional with the modern by treating the traditional institutions as the foundation on which

the modern infrastructure should be built' (Jha & Mathur, 1999). Based on such noble recommendations of the Bhuria committee, the Panchayat (Extension to Scheduled Areas) Act was passed by the Parliament on 24th December 1996.

Usually, PESA is regarded as a progressive legislation due to its sensible provisioning of governance in the context of tribal society and culture. However, it can be criticized for its conspicuous silence on the issue of women's representation. This gap, nevertheless, is filled by the otherwise controversial Jharkhand Panchayat Raj Act (JPRA). As amended in 2010, the JPRA provides for 50 per cent reservation of seats for women (see Section 21 of JPRA). Likewise, on the issue of 'justice' Clause 4 (d) of PESA recommended 'customary mode of dispute resolution' without giving due weightage to its social impact. Protest by the customary leaders against the JPRA on the ground of its incongruence with PESA is well founded given the attitude of the Jharkhand government towards the Adivasis[14]. But the contestation between Adivasi organisations and the State should not culminate into the withdrawal of progressive provisions like women's representation. While there is a need to reinvigorate customs according to universal principles of justice, the "otherness" cautions us against any hurriedly crafted strategy like that of the JPRA, which, despite bringing women to the public domain, has not really ensured their empowerment.

Interrogating 'Custom': Experiences from the Field

In this section we will analyse the two contexts against which the autonomy of customary institutions is interrogated. The first domain is that of women's representation in local bodies given their subjugated position in the traditional Ho social system; and, the second sphere is that of 'justice' in case of practices like witch hunting as well as instances where the customary system has failed to act impartially. These two cases, as a ground for interrogating autonomy of customary institutions, are guided by an approach which seeks to address the injustices prevailing in such societies rather than actively craving for a just order as per some universal guidelines provided by 'modernity'. The unequal status of Ho women draws one's attention to structural discriminations whereas the issue of justice has more to do with loss and benefit accrued to the individual. In the following sub-sections, a configurative analysis of the two cases has been attempted.

(a) The issue of women's representation

Many Adivasi societies of peninsular India are known for unequal socio-economic status accorded to their women folks. The absence of land rights, save the usufructuary rights[15], and denial of political rights point towards this discrimination. Apart from peripheral rights in land to sustain themselves on family land in the absence of male heirs, the Ho women do not enjoy any rights upon land. For example, in a household without a male heir, an unmarried Ho girl can cultivate her father's land till she is married, after which the land passes on to other male relatives of the deceased. However, inter-group disparities regarding rights also exist. For example, women in the Santhal tribal society are accorded land rights on par with their male counterparts. But the women belonging to Munda, Ho and Oraon tribes are not accorded land rights largely owing to the patriarchal nature of society. Several works pertaining to land rights of Adivasi women have been conducted earlier. Ritambhara Hebbar, through her ethnographic study of Mirra village, studied gender-related issues, especially land and forest, under the construct of 'homecoming' (Hebbar, 2005). Stating the centrality of women's labour in not only constructing the home, but also regenerating it through her labour on land and forest, Hebbar builds the case for granting land rights to Ho women. Likewise, gender discrimination in the customary rules governing Ho society has also been critically analysed by scholars like Madhu Kishwar who asserted that 'the bias that makes women's labour invisible and exaggerates the importance of men's labour is in part a result of treating the nineteenth century British Victorian family norm as a ubiquitous norm' (Kishwar, 1987: 97).

   Later on, scholars like Sanjukta Das Gupta (2011) have asserted that the British attempt to bring more and more land within the ambit of revenue and recognition of *manki-munda* as their agents for collecting revenue, further consolidated the male ownership of land. Due to this multi-layered discrimination in the nature of laws governing land ownership in the Ho society, many scholars from developing societies argue for an analysis using 'intersectionality'. The proponents of this approach apart from regarding it as a tool for analysis also view intersectionality as a methodology capable of interrogating the multiple layers of power. Vrushali Patil, however, has elaborated upon the limitations of this approach by arguing that patriarchy is not entirely located in the locally-constructed social norms but is also derived from ideologies and practices prevailing

elsewhere (Patil, 2013). In the case of Ho Adivasi women, land rights were denied by customs and religious beliefs aimed at keeping intact the control of descent group. Moreover, the debilitating colonial land policies promoting patrilineal forms of inheritance further accentuated their marginalization (Das Gupta, 2015: 94). The perception that colonial provision on land revenue acted as the main culprit is also vindicated if we dwell on the nature of ongoing activism for ensuring land rights. While one approach is to frame the demand on the basis of recognition of individual rights, another approach subscribes to the 'erosion of customary rights in land and their restoration to the pre-colonial situation' (Bosu Mullick, 2013: 218). Even though there is a close relationship between property and political rights of Ho women we confine our analysis to the latter and investigate the changed scenario after panchayat elections. This will provide an opportunity to present a case for reinvigorating the customary institutions on a basis derived from engagement with both modern and post-modern values.

The legal battle for land rights initiated by social activist Madhu Kishwar was regarded by the tribal community as a conspiracy to grab tribal land using gender as a divisive tool[16]. Such excuses on the part of the community foreground autonomy at the expense of addressing many internal anomalies. Now, the question arises: Is 'otherness' in this context used as a strategy to perpetuate discrimination? If yes, what should be the basis of addressing this discrimination? Our attempt to find an answer to these questions will be guided both by an analysis of debates between different feminist schools as well as empirical evidences on women's representation. Carol Gilligan (quoted in White, 1991: 95), stating the position taken by "difference feminism", argues that interventions in such situations should be guided by the ethics of "responsibility and care" rather than an "ethic of justice". Whereas the latter is guided by the notion of balancing claims and rights against one another as per universal principles, the former evolves out of connectedness, compassion, and sensitivity to context. The qualities associated with the attitude of care are that of "holding" and not grasping or acquiring. Emphasizing the same nature of intervention which is more informed of the local context, Antje Daniel argues that Black feminism and postcolonial feminism have contributed significantly in framing a movement's objectives, opportunities, and choices socially and culturally (Daniel, 2016: 58).

Strengthening further the attitude of care and holding, Seyla Benhabib (quoted in White, 1991:103) argues that even in the discourse of *otherness* differences exist which defy universality. Hence,

the intervention should be based on the standpoint of "concrete other" and should be designed by replacing "justice" with "care". However, Benhabib's viewpoint is criticised by Nancy Fraser, who instead argues that 'an intense concern for the unique life history of each individual is largely out of place in the world of politics' (quoted in White, 1991). Hence, for Fraser "collective concrete other" will shift the focus to group identity from individual and the basis of intervention will be now based in the "ethic of solidarity" rather than "ethic of responsibility and care". While Fraser's views are appealing in a situation where "ethic of solidarity" targets an "enemy from without", it looks inapt in dealing with "enemy from within". Criticizing Fraser, White (1991) argues that resistance, even if articulated as a 'counterpoint to the dominant patterns of interaction', can still be guided by the attitude of care (White, 1991). He identifies the "threshold" level as the original domain of politics wherein the contestation will inform the adversaries of the unjust treatment meted out to them. In doing so, White is again pushing and confining the issue of gender equality to that of some sub-societal level. Especially, in a society where the private sphere overlaps with the public sphere, having customary inequality as the ubiquitous norm makes emancipation through care less feasible.

Customs in Ho Adivasi society have been primarily asserted to preserve male domination rather than removing the practices which reproduce patrilocality. Customs are ambivalent to the traditional role of women when they contribute materially to the well-being of the family. In the present times when the Ho women engage in the work of preparing and selling *diyang* (rice beer) in the market, unlike for the case of only household consumption earlier, the traditional social norms are never invoked to oppose this practice, given its economic value. But a woman entering the public domain is perceived as a direct threat by most of the customary leaders. Even during the early twentieth century, the higher classes among the Hos mostly belonging to the customary leaders adopted many lifestyle changes, but seldom encouraged these traits within the village due to the possible threat to their own status (Majumdar, 1937: 195). There exists a tendency among scholars to locate within Ho women's conventional role a sense of empowerment which tends to placate them and discourage from asking for economic and political rights otherwise unavailable in traditional system. Majumdar while recording the women's situation as that of *drudgery*, locates a virtue in their role as it seems to maintain the agility and health of the Ho women in remote areas and poor background (Majumdar, 1937: 13).

This narrative seldom recognizes, or rather chooses to ignore, the fact that women do not enjoy privileges available in a customary set-up without the consent of the male. Thus, women's representation in a customary society can only come through a negotiation for redefined positionality, if not through mere confrontation with customary institutions. Sujata Hazarika, in her study of the PRIs in Assam has found that women's representation in local bodies only makes sense if 'aspirations emerge to create democratic support structures that can support an ambience of extreme political awareness and participation among women' (Hazarika, 2008: 355).

In fact, the attempt to redefine their position can provoke retaliation which is typical of tribal societies[17]. In this regard, I shall mention the practice of witch-hunt, which, it is argued, is mainly evoked against 'independent, strong-willed women" who "may have challenged the status quo, which was enough to trigger resentment against them' (Singh, 2016). In a more nuanced study on the practice of witch hunt Shashank Sinha regarded this problem to be a result of 'new dispossessions' due to industrialization and mining projects (Sinha, 2005: 118). He argues that further tensions emerged in the Adivasi society making the vulnerable women an easy target, with mainly land but also social issues like family disputes and other squabbles as its root cause. Sinha further argues that the structure of violence in the cases of witch hunt has evolved 'from killing around the mid-nineteenth century to fines, dispossession, banishment or killing in the early twentieth century, to fines, beating and occasional killing around mid-twentieth century' (Sinha, 2015: 119). Thus, the connections between land grabbing and witch craft accusations are more visible and apparent now than earlier. The problem of confrontational attitudes vis-à-vis reforms gets further compounded by the fact that the 'Adivasis signal their acceptance of the state by subscribing to *accepted* means of protest' (Kumar, 2016: 45). Though the reservation of panchayat seats for women can be seen as a big intervention to improve their condition, serious doubts persist regarding its potential in the present form. During one of the Focus Group Discussions (FGDs) in Noangaon, the respondents revealed that the elected *mukhiya* Anjana Tamsoy is nothing more than a puppet in the hands of her brother-in-law who virtually behaves as the *mukhiya*[18]. In such cases, the question remains: whether the assured reservations are sufficient to achieve the desired results or more meaningful interventions are required to ameliorate women's position? Interestingly, a woman being introduced to politics is not exclusively a gendered decision and in several instances, it provided

an opportunity for men to enter into power contestation. The male counterparts fielded their women in the elections to contest the primordial legitimacy of the customary head[19]. This verifies the division within the ranks of villagers where potential competitors perceive the panchayat elections as an opportunity to contest the existing power relations.

It has often been asserted that the Ho women also have opposed the panchayat elections. The issue of Ho women folk opposing the elections can be explained by emphasizing the hegemonic nature of custom where the consent of the exploited is given under some sort of "false consciousness". Essentiality of women's representation is vindicated by their "lived experience" of "homecoming" and their ability to emerge as the custodian of the ordinary Ho women. However, this change in role can hardly be materialized until the Ho society uproots its structural bias against women and accepts their political role beyond the four walls. Given the disregard[20] for increased women's participation, the panchayat elections have arrived as an opportunity for the Ho women and their progressive male counterparts to carve out an equal space for the former. The question of women's representation is proposed here as a gender question not to be understood as the typical male-female dichotomy. It rather needs to be resolved through the active alignment of male and female members against patriarchal customary institutions. The issue of women's political rights in Ho Adivasi society is exactly the one which confirms to the conviction that 'not all manifestations of otherness should be fostered; some ought to be constrained' (White, 1991: 133). Thus, the demand for autonomy should make room for this deviation from the customary "normal". With more and more women like Lakshmi Hessa challenging male domination and women like Rani Tiria working on equal footing with adivasi male counterparts, there exist enormous opportunities to overcome the hostility of customary leaders and create a more gender-sensitive political discourse.

(b) Custom and the issue of justice

Intervention in the sphere of justice pose more serious challenges to the Ho social structure due to the belief that the traditional system of dispensing justice is embedded in the communitarian ideology whereas the modern system subscribes to an individual-centric approach embedded in liberal ideals. It is due to this apprehension that we need to frame a ground for intervention which remains

sensible to its 'otherness' while addressing the problems in custom. The M-M system has been appreciated by its protagonists for its process and ability to dispense justice in a speedy and non-expensive manner. Customarily, in a Ho village, *munda* is the immediate authority to hear a case. If the case could not be resolved by the *munda* to the satisfaction of the accused, then the *munda* refers it to the *manki.* If not satisfactorily resolved by the *manki*, the case can be further referred to *teen manki* which is the final customary authority. If the case remains unresolved even after this, it could be taken to the court. However, following this procedure is not mandatory, but only conventional. The belief is that, imparting justice is not only intended to address the grievances, but also instill a sense of community within the inhabitants. This narrative takes for granted the uncorrupted nature of the customary leaders who can be assumed to be above worldly attachments like money, power, prestige, etc.

The tribal laws themselves are not 'indigenous to their culture' and gradually increasing contact with outside actors has reduced their importance (Majumdar, 1937: 170-171). Apart from this, there existed a dissatisfaction with the method of settling disputes by the tribal officers because of their dishonesty (Majumdar, 1937: 183). However, the increased litigation during colonial period can be largely attributed to the outsiders who, in order to take advantage of the ignorant aborigines and evade local panchayat, produced their cases in the court (Majumdar, 1937:183). A measure suggested then by Majumdar to make the administration of civil justice efficient was to make the tribal officers responsible to the people rather than the administration (Majumdar, 1937:185). Even today we can notice that village *mundas* and *mankis* are the first authorities to be contacted by the police in any civil or criminal case. In post-Independence India, the spurious activities of the village leaders have resulted in illegal alienation of tribal land (Sharan, 2009: 83). But the authority of the *munda*, acting in concert with village elders, in matters of justice was never seriously contested till the values of individualism proliferated among the Hos. Even though the institutions of police and courts had been introduced much earlier, the traditional nature of society left members with limited options to pursue them. With increasing reliance upon non-traditional sources of livelihood (like government jobs) and increasing monetization more and more families approach the courts in case of disputes or grievances against the customary institutions.

Moreover, incidents of witch hunt raise questions about the capacity of the quotidian nature of justice to get over its irrational

basis because such practice is simultaneously linked with the culture of spirit propitiation. Nevertheless, it will be wrong to unconditionally attribute this practice to custom. H.R. Trevor-Roper (quoted in Nandy, 2003: 64), in the European context, has attributed the rise in the practice of witch-hunt to the weakening of the institutions of church and Christendom. Likewise, scholars like Kishwar (1987) and several others have cited instances where there were firm economic reasons behind the practice of witch-hunt. Consequently, scholars have argued that the practice of witch-hunt is more prevalent in Santhal tribal groups where women enjoy land rights (Bosu Mullick, 2013: 217). It is further stated that, in Jharkhand, 'the phenomenon of witch-hunting is more likely in a situation where women do have a relatively high status and where that status is being degraded'. Even state officials in Jharkhand have identified 'superstition, health, illiteracy and property' as the main reasons behind instances of witchcraft (Singh, 2016). Usually, disadvantaged women like widows and others who enjoy usufructuary rights upon land are targeted to release the land in favour of agnates of the deceased. Besides this, witch-hunt being a practice which generally victimizes women, the customary system of justice also has an inbuilt bias against women. The grip of such injustice can be imagined from the fact that the victims of witchcraft who somehow managed to escape death are reluctant to take recourse to law[21] for the fear that their relatives who have stayed back in the villages may be targeted and ostracized (Sinha, 2015: 108).

The issue of disgruntled members approaching the courts arises mainly due to the fact that the customary leaders either act in a partisan manner or impose disproportionate penalties on them. One such incident took place in Simbia village where the *munda* punished a girl and her family for beating up another woman. The accused refused to comply with the punishment and, hence, a social boycott was imposed against her family. After a few days the *manki* (a superior authority to resolve disputes) came to resolve the issue. At this, the village *munda* questioned how the *manki* could take up the case *suo motu* while not being recommended by him. Later on, it was found that the accused had bribed the *manki* to appear in her favour[22]. Also, there are instances where the *munda* acted in vengeance to impose unjust penalties on the accused. For example, in Kondua village, a boy charged with molesting a girl from the *munda's* family was fined heavily (around Rs 30,000) and his family was also asked to arrange for a social feast in the name of tradition. The discourse of customary justice is rife with such examples which

makes its rationalization imperative. But the hazard of introducing modern institutions will be felt in the genuinely local cases where justice can be imparted as per the social fabric and its sensibilities. Moreover, the rationalization of justice through modern institutions of police and courts of law is hardly promising. All they can do is to save the individual from injustice inflicted by a corrupt customary leader while dragging the individual in perpetual misery due to its expensive procedure. Whereas justice can be ensured by simply manipulating the custom according to universal principles like human rights, this method of imparting justice is grounded in the notion of individual rights and will not be able to sustain the plural characteristic of justice required to maintain 'otherness'. But, why should we be concerned to preserve an 'otherness' which inflicts injustice over its own members? The answer rests in the earlier mentioned reason that, this 'otherness' acts as a source of articulating unity among the members. Hence, while working on a way to ensure justice we need to 'foster' rather than 'constrain' the otherness for the sake of its member.

In proposing such a notion of justice we find White's position guided by 'care' and defined in terms of 'finitude' to be quite applicable. We know that the power-seeking customary leaders leave little scope for reinvigorating the customary institutions. Nevertheless, few options can still be tried. The first one is being discussed for quite some time now, i.e., codification of customary laws (Bosu Mullick, 2013: 220). This requires an intervention which is well-informed of the socio-economic realities, and listing of cases with prospect of monetary benefits for the customary leaders. Also, the apprehension related to loss of vitality and strength of customary laws due to codification can be addressed by leaving the petty cases out of its ambit. The second option can be through constituting a bench of village elders (actually, this was the original custom) rather than relying upon a single customary head more susceptible to personal interests. While this solution does not ensure curbing of corruption entirely, the structure itself will make it difficult for the judges to go corrupt. However, there should be zero-tolerance towards practices like witch hunt which violate basic human rights.

Conclusion

Even though the preceding account on customary institutions of *Manki-munda* in West Singhbhum creates an impression that they have outlived their utility, at least the institution of *munda* plays

an intimate role in the daily affairs of the village. Moreover, these institutions play a crucial role in constructing Ho identity, which has the potential to overcome differences and helps in the consolidation of discontent whenever there is an assault upon livelihood of the people in this resource-rich district. When the state is desperate to sign off concern for people for its obsession with 'development' with the inherent component of human cost, cultural notions are revived through a call to custom. Nevertheless, whenever an attempt is made to curb the anomalies embedded in customs, the latter's ability to invoke in the public imagination the idea of an assault on autonomy by external forces comes in the way. Hence, an attempt at reinvigorating the customary system has to deal with this paradoxical utility of cultural autonomy. Due to this reason the interventions meant to correct the ills of the community should not be entirely guided by modern values. Such interventions should rather emerge through a more guided dialogue between discourse of 'modernity' and 'post-modernity' so that a middle path could be carved out. Furthermore, this logic informs us that attempts to introduce provisions like Uniform Civil Code[23] should be preceded by an endeavour to verify the presumable secular and spiritual issues and intervene in the former while leaving the latter aside. An intra-religious debate between the representatives of respective spheres will be an important development in this direction. In the second section of this paper I engaged theoretically with this exercise and identified a position, which while preserving autonomy also provides scope for reinvigorating custom by shedding its regressive practices.

Despite being quite promising in getting over this dilemma, White's position proved to be wanting in the specific context of Ho customary institutions. However, a proper way to address the issue of women's political rights as well as dispensing justice as articulated from the above analysis helps us arrive at a two-fold solution. In case of political rights of Ho women, while the attitude of 'care' should be owned more by the customary leaders as well as the Ho male, the political means suggested by Nancy Fraser should become the basis of women's activism. What is worth considering in the sphere of justice is a discriminatory coding of customary laws as well as collegium system for hearing of cases. It can be said that both the suggestions are in line with the idea of preserving 'otherness'. However, the materialization of these proposals rests on the dialogue between subjectivity associated with *Ho* customs and the quest of Ho society to organize itself in a non-discriminatory manner. Thus, in building a case for reinvigorating traditional institutions or customary practices

we need to intervene through piecemeal measures which enable the custom to internalise the values established on parameters of justice.

Acknowledgements

Notes

1. I use the terms tribe and *Adivasi* interchangeably in this paper despite being aware that academicians and activists use the term 'Adivasi' to refer to 'original' inhabitants, free from evolutionary implications as well as colonization by the British and outsiders. On the other hand, the term 'tribe' is more of an official construct used for administrative purposes. Furthermore, the term *Adivasi* is embedded in the ideology of indigeneity and carries the notion of identity and culture.

2. This is the customary self-governance system which prevails among the Ho Adivasis. The *manki* heads a group of villages called as *pir* while the *munda* is the village headman.

3. Wilkinson's Rules, i.e. Regulation XIII of 1833 was originally introduced for the South West Frontier Agency (SWFA); it was later introduced in Kolhan in 1837 with its incorporation in SWFA. Even though the M-M system is not explicitly mentioned in Wilkinson's civil rule his letter dated 13th May 1837 mentions customary institutions.

4. Earmarked for the purpose of administration, these are the geographical areas having dominant or substantial Adivasi population. The Constitution of India recognizes such areas under Schedule V and VI. Whereas Schedule V deals with the administration of scheduled areas in other parts of India, Schedule VI applies to the governance of North-Eastern states.

5. Vinita Damodaran argues that tribalism is reinvented 'in a complex oppositional context where indigenous populations are threatened by forces of progress and modernity' (Damodaran, 2002).

6. Responding to the writ petition filed by Madhu Kishwar & Ors. Etc. vs. State of Bihar & Ors., the Supreme Court (by majority), in its judgment dated 17th April 1996, upheld the denial of land rights to Adivasi women as per custom. However, the dissenting judge Justice K. Ramaswamy pointed towards the granting of similar rights to Santhal Adivasi women.

7. While the state is still guided by the age-old perception of tribal egalitarianism and isolation, these scholars have objectively dealt with the tribal situation.

8. A term used by Martha Nussbaum. She explains "political morality" as a phenomenon under which public leaders like Mahatma Gandhi and Martin Luther King could have used their wide acceptance to counter the misuse of religious sentiments and nurture a morality which informs a more secular politics of the nation (Nussbaum, 2015).

9. It is argued that if Ho women are accorded land rights then outsiders will be able to grab Adivasi land by marrying Adivasi women.

10. By 'finitude' I mean the everydayness of certain interactions which makes way into the mind of the subject without relegating them to the realization that he/she is integrated into the mainstream Hindu fold as a backward section.

11. My argument is that the Adivasis do not go beyond simple imitation of the rituals from other religions. Even though they imitate Hindu rituals it does create among them a sense of assimilation as per caste hierarchy, a point made by G.S. Ghurye. My article throws more light on this aspect (Kumar, 2018).

12. A *khuntkattidar* family is one whose ancestors are believed to have originally established the villages by clearing the forest.

13. Stuart Corbridge has provided an account of tribal people accessing reservation benefits in state jobs. This has resulted in the emergence of tribal elites which makes class distinction visible in the community (Corbridge, 2000).

14. Nandini Sundar, argues that the state government in Jharkhand has reiterated that the customary institutions have died out and there is no need for any special law for scheduled areas (Sundar, 2005).

15. The permission of limited land use by Ho women under certain circumstances is known as usufructuary rights. For a detailed account on Ho women and land see Kishwar (1987).

16. Two writ petitions were filed in the Supreme Court of India by Madhu Kishwar and two Ho women, Sunamuni and Muki Dui which sought declaration that Sections 7, 8 and 76 of the Chotanagpur Tenancy Act, 6 of 1908, are *ultra vires* to Articles 14, 15 and 21 of the Constitution of India.

17. Wide prevalence of 'witchcraft' among the Santhals, in comparison to Chotanagpuri tribes, is attributed to the fact that women are accorded property rights in the former.

18. Focused group discussion conducted by me in Noangaon village, West Singhbhum district, Jharkhand on 7th March 2013.

19. In Noangaon panchayat it was found that the brother-in-law of the woman *mukhiya* virtually acts as the *mukhiya* and enters into a power contestation with the village *munda*.

20. Some of the customary leaders openly expressed their displeasure towards the women representatives and went to the extent of charging them of promiscuous behaviour. The *munda* of Karkatta expressed such a view about the women *mukhiya* (Routrai Sundi, Karkatta, West Singhbhum district, Jharkhand, 5th April 2013).

21. Jharkhand Witchcraft Prevention Act, 2001.

22. Field interview conducted with Arvind Munduia, Kathikuda village, West Singbhum district, Jharkhand on 3rd March 2013.

23. Article 44 of the Indian Constitution proposes uniform civil codes which will be applicable to every individual irrespective of their religious affiliation. Ever since independence this provision has proved to be mired with contention as its implementation is construed as an assault on religious freedom. As a result, there is a deadlock in its implementation.

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