



WOMEN'S RIGHT TO AGRICULTURAL LAND REMOVING LEGAL BARRIERS FOR ACHIEVING GENDER EQUALITY

-Dr. Ashok Sircar

Women's land rights (WLR) have been and continue to be a live agenda in social development discourse of India. The importance of WLR has been discussed in the context of agriculture; poverty reduction; reduction in gender based violence; women's well-being and agency. There now exists a vast academic literature and experience of collective action to point that women's land rights can significantly contribute to achieving greater gender equality. The Sustainable Development Goals (SDGs) capture the above under three targets that are connected to the goals of ending poverty and hunger, and of achieving greater gender equality.¹ This policy brief outlines the gaps that exist in the realisation of women's land rights on agricultural land and calls for immediate collective action aimed at removing the structural barriers in inheritance, leasing, and joint ownership of privately held land in favour of women.

Women's land rights in India are mediated through various personal laws and customary practices. The Hindu personal law in its present form allows women the right to own land and independently manage its affairs.² Presently, the law includes ownership of agricultural land by women, thanks to the amendment in 2005. However, even now states like Uttar Pradesh and a few others do not follow the amendment.

The Muslim personal law does not allow for women's share in agricultural land, except in a few states which have recently amended this.³ Muslim women get one third of the share of the estate property, while men get two thirds of it.

Under the Indian Succession Act (ISA) 1925⁴ Christian widows get one third of the estate property and the male and female linear descendants get two thirds of it, equally divided among them. The Tribals have their own customary practices, which typically deny women their land share, again, barring a few exceptional situations.⁵

While the personal laws and tenurial land laws make unequal provisions for women's land share, the societal practices irrespective of these laws, deny women their land share even when it is permitted under law. Land transfer in India occurs mostly through inheritance and women face severe discrimination from their families in this respect. Several research studies have shown that families are most likely to deny the married daughters, widows, unmarried women their land share in estate and tenurial land. The other two mechanisms, namely, state distribution of land jointly to women and men, and market incentivisation for women in buying land are of very limited scope in India.⁶ Any corrective action either through the state or market is, therefore, necessarily limited. All these together results in abysmally poor land ownership of women in India varying between 9-13 per cent according to various estimates.⁷ It's important to note here that clearly disaggregated data on women's land ownership and operational access to different kinds of land - homestead land (rural-urban) and tenurial land is still not presented in our national statistics. There are huge definitional issues and data gaps associated with them.

The literature on inequality in land ownership can be contrasted with another set of literature, which focuses on the impact of land ownership in enhancing women's security, agency, well-being and productive contribution. A set of studies on the impact of land ownership on gender based violence indicates that land ownership is likely to reduce gender based violence at home.⁸ In some of these studies, women have spoken about how land ownership provides them with an enhanced sense of security. There also exists a vast literature showing that as agriculture is increasingly feminised and women's contributions to the sector increase, women need clear land titles to harness their full productive potential. It would worth mentioning here a 2006 study⁹ in Uttar Pradesh according to which only 6 per cent of women own land, less than 1 per cent have participated in government training programmes, and just 2 per cent have access to institutional credit, and only 8 per cent have control over agricultural income. However, along with ensuring land ownership by laws, training, easy access to credit are equally important to reduce gender inequality by increasing income of the women farmers as well as enhancing their control over agricultural income.

Recommendations:

This policy brief makes the following recommendations to enhance women's land rights in India:

- ▶ **The Union Government should amend Indian Stamps Act 1899 and Indian Registration Act 1908, to exempt payment of stamp duty and registration fee in case of a single ownership being converted to joint ownership of husband and wife.**
- ▶ **The State Governments should strictly implement Hindu Succession Act (HSA) 2005, and clearly partition the land, giving exclusive and identifiable land titles to women.**
- ▶ **The state governments should liberalise tenancy restrictions on crop land, with top priority to women and their collectives.**
- ▶ **The Union Government should institute a policy aimed at collecting sex-disaggregated data on women's land ownership of all kinds of land to inform appropriate policy making.**

It may be emphasized here that land rights for women in India is not a substitute to improving their education or raising their income. It can, however, facilitate women's access to other such socio-economic goods known to have a positive impact on women's health, nutrition, freedom and agency. Land rights often provide women the power to seek these impacts. Besides, as history shows, property rights being fundamental to organising a society, women's equal share in property rights has the power of societal transformation.

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All land transfers (sale, gift, lease, etc.) except by way of inheritance must undergo a registration process in India. The registration process requires a registration fee, and a stamp duty to be paid to the state government. The Indian Stamps Act 1899, Indian Registration Act 1908, and the rules made by state governments from time to time govern the property transaction which determine stamp duty and registration fee. The registration fee and stamp duty are computed as a percentage to the actual market value of the land. The rate varies from state to state, and usually ranges between 6-8 per cent of the land value.

This payment is required even if a husband wishes to transfer a piece of land from his single ownership to joint ownership with his wife. Under the Indian law, this is treated as a gift. In Uttar Pradesh, for example, through a campaign called AAROH Abhiyan, a few thousand rural women were able to persuade their husbands to agree to a change in land ownership from single to joint.¹⁰ But the move did not progress, as the families realised, that they will have to pay out several thousand rupees to get this changed into a reality. This is not particular to UP, the transfer rules are more or less the same in most states and only the nature of exemptions differ. In Kerala, a husband and wife cannot jointly own a piece of land.¹¹

It is certain that the stamp duty and registration fee act as great disincentive that must be done away with.

Also, joint ownership of land by husband and wife should be seen and treated as 'Joint Tenancy' in the registration document, and not 'Tenancy in Common', because in the latter case, the rights to the land do not automatically confer to the survivor upon the death of one of them. Joint tenancy automatically confers full right of the entire land to the survivor.

It is important to note that transfer from single to joint ownership of land is dependent on the mutual agreement of the husband and wife, and understandably, of the entire family, particularly in the case where the couple has adult sons and daughters. Therefore, the state policy should provide for an enabling provision, but not a compulsory provision. However, the enabling provision can be very useful to grassroots women movements, which are working on issues of gender equality.

- ▶ **The State Governments should strictly implement Hindu Succession Act (HSA) 2005, and clearly partition the land, giving exclusive and identifiable land titles to women.**

Hindu Succession Act 2005, allows women to own estate and agricultural land. This has come about after a long discourse on women's land rights in India, pioneered by Bina Agarwal.¹² However, ten years of its implementation saw three major barriers in the way of ensuring clear land ownership by women. For example, Uttar Pradesh still does not honour this provision on agricultural land, and claims that since agriculture is a state subject it would continue to follow UP Zamindari Abolition and Land Reforms Act 1950. This Act honours the inheritance rights of widows, daughters and sisters only after the rights of all male descendants are exhausted.¹³ Even then, the right is not absolute for these women as after their demise the property goes back to the male descendants. Delhi, Haryana, Punjab, Himachal Pradesh follow the same practice in their agricultural land related laws¹⁴, where rights of female survivors (widow, daughter, daughter-in-law of a pre-deceased son, etc.) are honoured after the rights of male descendants in their agricultural land related laws.

A different scenario exists in Rajasthan and Madhya Pradesh, where the state laws on agricultural land recognise that inheritance will follow personal laws.¹⁵ Here, it is seen that the names of widows and daughters routinely appear in the record of rights, but the possession of the land continues to remain with male members of the family. The women neither have a clear land share nor a clear title on the inherited land.

A third scenario exists among the *Adivasis*. Indian law recognises that *Adivasi* customs would govern their women's land rights, resulting in women being deprived of their property rights. On the other hand, state laws regarding inheritance of agricultural land in general do not make distinction on the basis of religion, except in those few states, where the law of inheritance of agricultural land follows Hindu, Muslim or Christian personal laws. In such scenarios, state laws should apply to *Adivasis* for their agricultural land. A recent judgment by Himachal Pradesh High Court is a case in point here. In June 2015, Himachal Pradesh High Court, setting aside the customary practices, ruled that *Adivasi* women in Himachal Pradesh will inherit property including agricultural land as per HSA 2005.¹⁶

It has become critical that inheritance of agricultural land be brought under a uniform code; through which women become coparcenary and have equal rights at par with men as per Hindu Succession Amendment Act 2005. Himachal Pradesh example indicates that if HSA 2005 can be broadened to include the *Adivasi* population, its scope can be further widened to cover nearly 88 per cent of the population of India.

However, in order to realise women's land rights, the aforementioned is only a necessary but not a sufficient step. The task is complete only when women are provided with clear land titles in inheritance. This would require a critical change in the process of inheritance, where, the state role does not end with just entering the names of women in the

land record, but have to go one step further to complete the partitioning of the land and giving clear titles to women.

- ▶ **The state governments should liberalise tenancy restrictions on crop land, with priority to women and their collectives.**

Agricultural tenancy was banned or restricted in most states during the 1950s to prevent the spread of absentee landlordism, and to end the feudal production relations on land. Presently, tenancy is not explicitly prohibited in five states, banned in three states and restricted in the rest of the states.¹⁷ In recent decades, informal leasing has replaced long term tenancy. Informal leasing typically takes place for a season or two, or for a year, against a fixed sum of cash lease rent per acre. Though sex-disaggregated data is not available, 13 per cent women's operational holdings of agricultural land as per agricultural census includes a significant amount of leased in land.

In many states, women Self Help Groups (SHG) are engaged in various land based livelihood activities to supplement their family income. Kerala and Andhra Pradesh are now often quoted as large scale successes where women's groups are able to raise significant income through agriculture, horticulture, and poultry activities.¹⁸ A number of livelihood efforts led by civil society organisations also adopt the same strategy.¹⁹ In most of these cases, the women SHG take a piece of land on lease and pay rent. In Kerala, where tenancy is fully banned, these women groups under the state programme called Kudumbashree make use of 40,218 hectares (99,381 acre) of land to produce various food grains.²⁰ Almost all of it is done by taking land on lease.

Several studies have shown that the present day lease arrangements do not reflect a feudal agrarian structure, meant mostly to support bonded labour and subsistence, but are very much part of the market-based agricultural system, where both participants enter into a temporary oral contract based on market terms available to them. In addition, studies show, this arrangement is no less productive than family run farms using wage labour. Therefore, this new situation calls for modification in law.

Several official documents now recognise the importance of liberalising tenancy restrictions. The 12th Plan document, the draft land reform policy of GOI in 2013, for example, clearly called for a blanket liberalisation of tenancy.²¹ More recently, Niti Aayog appointed an expert committee on land leasing that has clearly recommended removing leasing restrictions.²²

Land leasing must be allowed in law. Whether there should be a blanket liberalisation of leasing for all kinds of purposes, particularly, non-agricultural purposes must be debated, but leasing in by landless and marginal farmers, women, and especially women's groups must be allowed. This would promote private investment in agriculture and help enhance livelihoods security.

- ▶ **The Union Government should institute a policy aimed at collecting sex-disaggregated data on women's land ownership of all kinds of land to inform appropriate policy making.**

The question, 'How many women own land in India?' returns incomplete answers. According to 2011 census, the

number of women cultivators (including main cultivators and marginal cultivators) is about 3.59 crores. Agricultural Census 2010-11, on the other hand, captures female operational holdings at about 1.76 crores. Neither the 'Cultivators' nor 'Operational holdings' capture land ownership. This is the first problem.

The second problem is that the above data refers only to agricultural land. It does not capture ownership of homestead land in rural areas. Homestead land refers to land, where there is dwelling unit, plus land for other domestic use - fruit trees, animal sheds, kitchen garden, etc. It's important to note that 41.63 per cent of households in rural India only have a homestead land of their own.²³ The question that needs to be asked is: how many women own the homestead land they live in? National statistics do not capture this data.

The third problem is that national statistics do not capture ownership of land by women in urban areas. In urban areas, private ownership of land is used mainly for two purposes—dwelling units and commercial purposes. The question, 'How many women own land in urban areas?' can't be reliably answered since it is not captured in any national statistics.

The fourth problem relates to data on government land distribution programmes. From the mid-nineties, government land distribution in most states mandated that land allocated by the government shall be jointly owned by husband and wife. However, there is no reliable data to capture if women indeed received land in joint titles with their husbands. Micro studies reveal that often this norm has not been adhered to during implementation.

Non-availability of sex-disaggregated data limits the scope of policy making and social action in several ways. Firstly, it limits the scope of women targeted welfare and development programmes, because, women continue to be hidden under the household as targets. This is why, for example, agriculture related interventions - bank loans, kisan credit cards, technology assistance, and extension services remain focused on men.

Data on homestead lands and dwelling units is enormously important with respect to planning for enhancing women's security. Ownership of homesteads and dwelling units by women enhances their status in the family, reduces gender based violence, and acts as a fall back mechanism at times of crisis. Therefore, national statistics must capture this data to assist policy planning.

As the country has embraced the SDGs, the importance of Women's land rights in particular to agricultural land can't be ignored as it finds mention in 3 of the 17 SDG targets. While the progress in India on the legislative front has been significant, time has come to specifically remove barriers in law and implementation. This would not only help achieve SDGs, but will also enhance women's empowerment, and bring about social transformation.²⁴ Removing barriers to granting of land rights to women is a call not only for governments but also to civil society organisations and social movements since many of the barriers are rooted in social and cultural practices.

Notes

- 1 The three targets are, 1.4, 2.3 and 5.a connected to ending poverty, hunger, and gender equality.
- 2 Hindu Succession Amendment Act 2005 made women coparcener in her parental property; as well establish her right to dispose of her share by amending section 30 of the Act.
- 3 Bina Agarwal (2005), 'Women's inheritance-Next Steps', The Indian express, October 17 URL: http://www.indianexpress.com/archive_full_story.php?content_id=80167
- 4 Rural Development Institute (2009), 'Women's Inheritance Rights to Land & Property in South Asia', Rural Development Institute
- 5 Bina Agarwal, op.cit.
- 6 State distribution of land accounts for 1% of India's agricultural land, and 4% of rural households. See H Mander (2013), 'Reviving Land Reforms', *EPW*, 13.
- 7 N.C. Saxena (2012) *Women, Land and Agriculture in Rural India*, New Delhi, UN Women, 34
- 8 P Choudhury (2012), 'Infliction, Acceptance and Resistance; Containing Violence on Women in Rural Haryana', *EPW*, 43; Govind Kelkar (2011), 'Gender and Productive Assets: Implications for Women's Economic Security and Productivity', *EPW*, 59-68
- 9 Women farmers in Uttar Pradesh – A Survey (October 2006); Survey partner Gorakhpur Environmental Action Group (GEAG), Vinobha Sewa Ashram (VSA), Disha Samajik Sansthan, Pani Sansthan, and Samarpan Jan Kalyan Samiti; Supported by Oxfam India Trust (Lucknow).
- 10 <http://www.downtoearth.org.in/coverage/land-for-ladies-44973> accessed on 30th April 2016.
- 11 Kerala has abolished joint property system by an amendment in 1975.
- 12 Bina Agarwal's works on women land rights in India starting from her book, 'A field of One's Own' and her articles like 'Are we not peasants too' and others are considered to have strongest intellectual influence on women's movement in India asking for land rights.
- 13 N C Saxena, op.cit.
- 14 Ibid.
- 15 Ibid ; Ashok Sircar, 'Do Tribal Women Have Land Rights? A study of land rights of Tribal Women in Madhya Pradesh', World Bank conference on land and Poverty, Washington DC, 14-18th March 2016, P-22.
- 16 2015, Tribal Women Have the Right to Inherit as per Hindu Succession Act 1956: HC', Outlook, 26th June <http://www.outlookindia.com/newswire/story/tribal-women-have-the-right-to-inherit-as-per-hindusuccession-act-1956-hc/904104>
- 17 NITI Ayog (2016), 'Report of the Expert Committee on Land Leasing', New Delhi, 6, section 1.2
- 18 Landesa (2013), 'Women Transforming Indian Agriculture', a collection of Case Studies, India, 9-36
- 19 Several civil society organisations like Deccan Development Society (Andhra Pradesh), Loka Kalyan Parishad (Kolkata), and Tamil Nadu Women Farmers Collective, have successfully demonstrated the power of women's collective leasing in increasing women's independent income, and empowerment.
- 20 <http://www.kudumbashree.org/?q=cf2> accessed on 30th April 2016
- 21 Government of India (2013), 'Draft National Land Reform Policy', GOI, 23, section ii; Also see 12th Five Year Plan Document, Vol.2, 20, section 12.58
- 22 Niti Ayog, Op.cit, 18, section 1.3.6
- 23 V Rawal (2008), 'Ownership Holding of Land in Rural India: Putting the Record Straight', *EPW*, 2008, 3
- 24 For the close connection between women's empowerment and social transformation, see Amartya Sen (1999) *Development as Freedom*, New York, Anchor Books, 189-203

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