

Land Rights of Hindu Women in India

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Abstract

Access to and ownership of property especially land enhances women's status and position in any community or society. The issue of women's land rights is not only important today, it is likely to become increasingly so over time. In India agrarian transition has been slow, uneven and highly gendered. There are also serious gender inequalities in intra- household allocations from resources controlled by men, and a notable potential for production inefficiencies with gender unequal land distribution. This paper focuses on the links between gender inequities and ownership of land. Despite progressive legislation few Indian women own land, even fewer effectively control it. Several factors- social, cultural, administrative and ideological are found to lie beneath the persistent gap between women's legal rights and their actual ownership of land and between ownership and control. This paper attempts to understand the land rights of Hindu women in India.

Keywords: *Gender, Land rights, Inheritance, Hindu law and customs.*

Introduction

The concern in safeguarding the rights and privileges of women found its best expression in the Constitution of India. The Constitution of India was ahead of its time, not only by the standards of the developing nations, but also of many developed

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countries, in removing all discriminations against women in the legal and public domain of the republic (Basu, 2003).

In India, the chief form of income generating property is agricultural land. The Hindu Succession Act 1956, though granted rights to women in their parental property denied women equal rights in ancestral property, i.e, a share in most agricultural land. In addition the various state governments have resorted to a number of legal measures to further obstruct women's ownership of land (Kishwar, 2009: 310).

The issue of women's land rights has, until recently, received little attention in policy formulation in India .It is only in the Sixth Five Year Plan (1980-85) that the first limited recognition by the government of women's need for land: the plan stated that the government would 'endeavour' to give joint titles to spouses in programs involving the distribution of land to the landless. In the Seventh Five Year Plan (1985- 90) the directive on joint title was not restated. While the Eighth Plan (1992- 97) makes only two specific points in relation to women and agricultural land: One, it recognises that "one of the basic requirement for improving the status of women" is to change inheritance laws so that women get an equal share in parental property, but it lays down no directives to ensure that this is implemented. Two, it asks the state governments to allot 40 percent of surplus land (i.e land acquired by the government from households owning more than a specified maximum) to women alone, and to allot the rest jointly in the name of both spouses (GOI,1992:34).

In India, all religions follow their own laws; some of them have been codified giving more space to women. Hindu Succession Act (HSA) was passed in 1956, granting equal rights to Hindu women in the parental property. A large number of people of both Hindu and Muslim religions follow Customary

Laws, many of which deprive women right to property and inheritance. In much of Hindu societies, property is inherited by male heirs and transmitted through them. Traditionally daughters had only the right to maintenance and to a marriage in keeping with the status of their natal families. Male children had coparcenary rights in ancestral property. They acquired a share in such property at birth and were entitled to ask for their shares even during their father's lifetime. According to the law of 1956, daughters were still not coparceners but along with sons were entitled to a portion of the father's share of ancestral property as inheritors. More often than not, however, a daughter's dowry and the expenses on her wedding have been viewed as a substitute for her share in her father's property. In fact the same logic is applied to a daughter's share in her father's individually acquired property as well (Dube, 1997:38).

From the tenth century onwards, the *Dayabhaga* and *Mitakshara* Schools became the chief source of Hindu Law. Under *Mitakshara*, from the joint family property women were only entitled to maintenance as incoming wives (including as widows) and as unmarried daughters, upon marriage a daughter was also entitled to marriage expenses and associated gifts. In a man's separate property, however, his widow could inherit a limited estate, but only if she remained chaste. A limited estate meant that the woman could enjoy the property for her lifetime, but she could not normally alienate it, except in a period of severe necessity and for performing pious and religious acts, especially those seen as conferring spiritual benefit on the deceased. A daughter came even after the widow and a daughter's son after the daughter. That is, for a daughter to inherit her father's estate required the absence both of the noted male heirs and of the widowed mother (Agarwal, 1997:86-87).

The *Dayabhaga* system was different from *Mitakshara*

in some important respects. A man was deemed absolute owner of all his property and could dispose it off as he wished. The son did not acquire an automatic interest by birth in the father's ancestral property, nor was there any rule of survivorship: each heir took a definite and non- fluctuating share. Division of property among heirs could take place only at the man's death and the property went in the first instance equally to his sons and then son's son. A chaste widow could inherit in the absence of these male heirs, but only as a limited interest, with the right to manage but not alienate the property. Daughters came only after the widow, again unmarried daughters getting first preference and inheriting only a limited interest (ibid:88).

Under both these systems of law, there was also some recognition of female property rights in the concept of *Stridhan* (literally meaning a woman's property) which included women's right over ornaments, valuables and moveable and immovable property. More precisely *Stridhan* was defined as "what was given before the nuptial fire, what was presented in the bridal procession, what has been received by her from her brother, her mother or her father, are ordained the six fold *Stridhan* for woman's property" (Kant, 2008: 38).

Different Schools defined *Stridhan* differently. But it usually included any gifts made to a woman by her natal family or by strangers, and anything earned by her. Under some schools, it also included gifts made to her by her husband or his relatives. Just as a male's separately owned property passed by succession to certain defined heirs whom he could not disinherit, so too *stridhan* passed to certain defined heirs. The set of heirs to *Stridhan* was substantially different from that of heirs to a male's property. This list differed from school to school, but, generally, a woman's child figured first. In some Schools daughters were preferred to sons and unmarried daughters to married daughters,

this being suggestive of *Stridhan* as a possible hangover from a matrilineal system. The husband and his heirs came next, and the woman's natal family last. However, most schools laid down that if the *Stridhan* was originally gifted by the woman's natal family, it reverted to them (Kishwar, 2009).

There were varied and changing interpretations of what *Stridhan* could include, how much control a woman could be allowed over it, and how it would devolve on the woman's death. Broadly, it appears that in the very early Shastric texts, *Stridhan* could consist only of movables given to a woman by her parents, brothers, or relatives before or at the time of her marriage and by her husband after marriage. Over this property she was allowed absolute control and it devolved on her female heirs in the first instance. In some later texts, especially from the seventh century AD onwards, there was a tendency to enlarge the scope of *Stridhan* in terms of the content and source of the gifts. This also led to considerable controversy among the commentators on whether landed property should be included in *Stridhan* and what control women should be allowed over it. *Vijnaneshvara*, the proponent of *Mitakshara* law, proposed the most extensive additions to *Stridhan*, including in it any property (movables and immovables) that the woman received, whether by inheritance, purchase, partition, or chance. He was, however, silent on the question of a woman's power of disposal over any property included in her *Stridhan* (Agarwal, 1997:89).

The real problem began where inheritance rights were concerned since this had to do with immovable property, especially land. Women could not inherit such property mainly because a patriarchal society wanted to keep intact properties within patrilineal families. While the *Mitakshara* is generally considered to be more liberal in acknowledging that when women inherited property this could also be *stridhan*, basically

women had, at best, only usufruct rights in family property. This, of course, has tremendous relevance even for contemporary society since this denies women access to the most important productive resource in the Indian economy, viz, land. Widows normally had the right to maintenance by the heirs of the husbands, and virtually no share in the family property, except in cases where the husband had already separated from the joint family. In the case of widow without sons, the *Mitakshara* gives a conditional and restrictive right to the husband's property, whereas the *Dayabhaga* gives her this right unconditionally. Even now, when a son in a joint family dies, the right of his widow and her children to the family property is governed by the Dayabhaga or Mitakshara system (Agarwal, 1994:212).

Agricultural Land

Although the HSA covers owned agricultural land, certain other interests in agricultural land, such as those stemming from 'tenancy rights', are exempted. The Act said: nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

The overall gender implications of this exemption, and its particular implications for daughters, are crucial to understand. In the HSA, two factors in particular have led to a disjunction between Hindu women's legal rights in property in general and their rights in agricultural land in particular. (i) The Government of India Act 1935 vested all legislative powers in relation to agricultural land exclusively in the provincial (state) legislatures. Thenceforth women's inheritance rights were to be determined by personal law on all matters of property other than agricultural land, their rights in which would depend on

the land-related laws prevailing in the province in which land the land was located. Even the Hindu Women's Right to Property Act 1937 did not apply to agricultural land. (ii) Land reform policies have been based both on the principle of redistributive justice on arguments regarding efficiency (land to the tiller, prevention of fragmentation, etc); but on neither count are gender inequalities taken into account (Agarwal, 1988).

As a result, today in most of the north Indian states, the succession rules for Hindus relating to land held under tenancy have a different order of devolution than the HSA specifies. For example, in the tenorial laws of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Delhi and Uttar Pradesh, the specification of devolution shows a strong preference for agnatic succession, with priority for agnatic males. In all these states tenancy devolves in the first instance on male lineal descendants in the male line of descent, and the widow inherits only in their absence. Moreover in the first four states daughters and sisters are totally excluded as heirs. In Delhi and Uttar Pradesh, daughters are recognised but come very low in the order of heirs. Also, in all these states, a woman (in any capacity) gets only limited estate, and after her death the holding goes to the heirs of the last male landowner. She also loses the land if she remarries (in a widow's case) or abandons it (that is, fails to cultivate it for a specified period, usually a year or two) (ibid).

Not only are the inheritance laws for agricultural land highly gender unequal in large parts of the country, but most tenancy and other land reform laws are included in the Ninth Schedule of the Indian Constitution. This means that they cannot be challenged on grounds of violating fundamental rights. Although presumably so included to protect them from entrenched class interests, this also effectively protects them

from being constitutionally challenged on grounds of gender discrimination (ibid).

Hindu Succession (Amendment) Act 2005

1. With regard to agricultural land, one of the most significant amendments in the 2005 Act is deleting the gender discriminatory Section 4(2) of the 1956 Hindu Succession Act (HSA). Section 4 (2) exempted from the purview of the HSA significant interests in agricultural land, the inheritance of which was subject to the devolution rules specified in state-level tenurial laws. In some states the tenurial law explicitly mention the HSA, but in states where these laws are silent on inheritance, the HSA applied by default.
2. The 2005 Act brings all agricultural land on par with other property and makes Hindu women's inheritance rights in land legally equal to men's across states, overriding any inconsistent state laws. This can benefit millions of women dependent on agriculture.
3. The 2005 Act include daughters as co-parceners in the *Mitakshara* joint family property, with the same birthrights as sons to shares and to claim partition, while also sharing the liabilities.
4. The Act also gives all daughters (married or not) the same rights as sons to reside in or seek partition of the family dwelling house. The Act deletes Section 24 of the 1956 HSA, which barred certain widows, such as those of predeceased sons, from inheriting the deceased's property if they had remarried. Now they can so inherit (Vepa, 2009).

Implications

1. Gender equality in agricultural land can reduce not just a woman's but the whole family's risk of poverty, increase her livelihood options, enhance prospects of child survival, education and health, reduce domestic violence, and empower women. Bina Agarwal's recent research in Kerala shows that

women's risk of physical violence from husbands is dramatically less if they own land or a house: the incidence is 49 percent among women without property, but 18 percent among landowning women, and 7 percent if they own both land and house. Land in women's hands can also increase agricultural productivity, given male out-migration and growing female-headedness.

2. Gender- equal inheritance laws benefit a large number of women. NSS Data indicates that at least 78 percent of rural families own some agricultural land, and if we include homestead plots, 89 percent own land. Although most of them are small fields, they do provide supplementary subsistence.

3. Though the risk of fragmentation is considered to be one of the factors against women's inheritance, fragmentation can occur even when sons inherit. In practice, many rural families continue to cultivate jointly even when small plots are owned individually.

4. Though women migrate on marriage, they could lease out the land to their family or someone else, or cultivate it co-operatively with other women.

5. Making women co-parceners is of great importance to women. It can enhance women's security, by giving them birthrights in property. This will enhance her self-confidence and self-worth, give her greater bargaining power for herself and her children, both in her paternal and marital families.

6. Under the 2005 Act, married daughters will also benefit by the deletion of Section 23 since now they will have residence and partition rights in the parental dwelling house. In particular, women facing spousal violence will have somewhere to go, which acts as a confidence booster (ibid).

The argument often used against giving daughters property is that it will breed animosity between brothers and sisters, destroying the harmonious and conducive brother-sister

relationship. Sister's one-way dependence on brothers is occasioned by the powerless and insecure position of those sisters. The status of a woman in her in-laws house is affected by how much concern her brothers demonstrate, how often they invite her and how many periodic gifts they give her (Kishwar, 2009). The commonly held belief is that daughters go away after marriage and only sons look after parents in their old age, so son's should inherit the parent's property. But this position makes women dependent and their vulnerabilities increase in the crises situation. The new provisions related to equal property and land rights to women in their parental and ancestral property would go a long way in strengthening their economic condition and improving their status in the family and society.

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