

Land Reforms in India: Volume 11



GENDER DISCRIMINATION IN LAND OWNERSHIP

Edited by
PREM CHOWDHRY



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**GENDER DISCRIMINATION IN
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**Land Reforms in India
Volume 11**

LAND REFORMS IN INDIA

This is the eleventh volume in a series of studies conducted under the aegis of the Lal Bahadur Shastri National Academy of Administration (LBSNAA), Mussoorie. These studies are an outcome of a research programme entrusted to the LBSNAA by the Ministry of Rural Development, Government of India. The primary aim of this series is to assess the current status of land reforms in India.

The collection of basic data was entrusted to successive batches of probationers of the Indian Administrative Service (IAS). The field of study component was divided into four major sections covering respectively the implementation of land ceiling laws, the status of tenant-cultivators, the progress in allotment of government lands to the poor and landless and the position concerning tribal lands and forest rights. In the process the probationers collected village-level primary data by interviewing landowners, tenants, allottees of surplus lands and tribals, and supplemented this data by consulting land records and other official documents.

This material was processed by the LBSNAA's project core group on land reforms comprising scholars from diverse disciplines. The findings were analyzed, refined and integrated into comprehensive all-India and state-level reports which form the bulk of the volumes in the series. In addition, the LBSNAA conducted workshops bringing together administrators, academics, activists and legal experts to explore the various dimensions of land reforms in India.

The series will comprise about 14 volumes in all.

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Foreword

Gender discrimination continues to be a disturbing fact of life. Studies have shown that in the existing mainstream patriarchal set-up, women are systematically denied accessibility and ownership of productive resources. This inequality is embedded within the socio-legal structure. Social movements led by women's organizations at the national as well as international levels have kept this issue alive. As a result, the Planning Commission, Government of India, included a chapter on gender and land rights in the Sixth Five Year Plan.

A major objective of the Centre for Rural Studies is to conduct research on various dimensions of land reforms. The present study is on gender and land rights. It analyzes the inheritance laws of agricultural land in the context of women. It also reviews customary practices prevalent among tribal societies.

We are sure the study will be regarded as a milestone in gender and land issues and will be a valuable guide for a variety of stakeholders.

We are grateful to the Union Ministry of Rural Development, Department of Land Resources, for entrusting this study to the Centre. Special thanks are due to Prof. Prem Chowdhry, editor of this volume. We wish to acknowledge the painstaking efforts of the contributors who went through several rounds of revision of their essays. Thanks are also due to Shri Wajahat Habibullah, IAS (Retd.), Shri Binod Kumar, IAS (Retd.) and Shri D.S. Mathur, IAS (Retd.) who provided the required administrative support for this study. Sarvshri Manoj Ahuja, IAS, Chiranjiv Chowdhry, IAS, L.C. Singhi, IAS, the then Co-ordinators and Vice Chairmen of the Centre as also the current co-ordinator, Ashish Vachhani, IAS, deserve special thanks for their untiring efforts in bringing out this volume.

We would also like to acknowledge the work done by Dr Saroj Arora, Senior Research Officer and staff of the Centre for Rural Studies.

4 June 2008

Rudhra Gangadharan, IAS

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A Note from the Co-ordinator

This study titled *Gender Discrimination in Land Ownership* is carried out by the Centre for Rural Studies, LBS National Academy of Administration, Mussoorie. The basic objective of the study was to examine the existing status of the state laws, legislation and statutes with regard to women's land rights; and to evaluate the extent, condition and forms of agricultural land ownership by women in the rural areas cutting across diverse socio-cultural groups. An attempt has also been made to analyze customary practices operational in relation to gender and land inheritance.

This book includes 14 chapters covering 13 states and a Union Territory. The states covered are (alphabetically) Assam, Bihar, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Manipur, Meghalaya, Orissa, Punjab, Uttar Pradesh, West Bengal and the Union Territory of Puducherry. The chapters cover almost all the major zones of India in the north, south, east, west, centre and the northeast. Out of 28 states and seven Union Territories the chapters cover 13 states and one Union Territory as representative case studies. For the convenience of the readers these case studies have been arranged alphabetically.

A large number of eminent scholars from various states of India were contacted to write on this specific issue. After the completion of the study in 13 states and a Union Territory, contributors of the chapters from different disciplines were invited to discuss the findings of their studies. Since land is a state subject hence recommendations have been drawn up addressing both the central- and state-level policy makers. Chapters included in this volume point out that inheritance laws in almost all the states are gender-biased. Notwithstanding, the assumption that the tribal societies of the northeastern states which are regulated by uncoded customary laws are gender-just proved a myth. Although recently various state governments have taken the initiative to issue land *patta* to specific categories of women (widowed, unmarried and separated) under land

reforms programmes, however, as the findings of these studies reveal, much still needs to be done and the process needs to be accelerated. Out of these 14 chapters, 10 chapters (Assam, Bihar, Haryana, Himachal Pradesh, Kerala, Madhya Pradesh, Meghalaya, Orissa, Puducherry and Punjab) basically review inheritance laws of agricultural land in relation to gender of the respective state/Union Territory. The remaining four chapters (Karnataka, Manipur, Uttar Pradesh and West Bengal) are field-based empirical studies. Thus, despite the fact that, at the national level, our Constitution prohibits discrimination on the grounds of sex, religion, race and caste and at the international level India is a signatory of Convention of Elimination of All Forms of Discrimination against Women (CEDAW), gender discrimination persists and is perpetuated and embedded within the structure itself.

I am sure that this volume will help us understand the genesis of problems and invite attention of the policy makers to take measures to establish a gender-just society.

A large number of people and institutions have helped at different stages to the completion of this study and I wish to thank them for their contributions. First of all, I wish to record my thanks to the Department of Land Resources, Ministry of Rural Development, Government of India, for providing financial assistance to conduct research on an issue of such relevance. I express my sincere thanks to all the contributors for their scholarly inputs on the issue where the availability of data and literature are scarce and scanty. It is their untiring efforts that have led to the formation of this volume. I wish to record my sincere appreciation for Manoj Ahuja, IAS, former Co-ordinator-cum-Vice Chairman of Centre for Rural Studies, who took keen interest in the completion of the study and initiated the process of publication. Although getting resource persons in the area of gender and land initially had remained a difficult task, the effort initiated by Manoj Ahuja has been carried forward by Chiranjiv Chowdhry, IFS, and L.C. Singhi, IAS, former Co-ordinator and Vice Chairman of the Centre. M.H. Khan, IAS, Alok Kumar, IAS, P. Bharat Singh and H. Imocha Singh (from Manipur), A.K. Hazarika (from Assam), Navneet Sehgal, IAS, Binod Kumar Mulik, IAS, S.K. Narula and Amrit Lal Sahu (from Uttar Pradesh) and the associated revenue staff deserve special thanks for their cooperation in facilitating the field visits, providing data and logistic support. The research staff of Imphal University tirelessly remained in the field and assisted not only as interpreters but also enabled us to understand the socio-cultural aspect of the issue. I am, indeed, grateful to all of them.

Sincere thanks are extended to Adesh Kumar, Ramesh C. Kothari, Dalip Singh Bist, Deepak Kumar, S.S. Kharola, Purshotam Kumar, Amarjeet and Suresh Kumar for providing secretarial support in their various capacities with immense patience and cooperation.

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Introduction: Understanding Land Rights of Women

PREM CHOWDHRY

The removal of gender discrimination in laws governing access and control of land and its ownership is now well acknowledged to be crucial for the economic and social empowerment of women. However, contemporary India shows a curious labyrinth of land ownership patterns and land rights for women co-existing in various states. The present collection of chapters in this volume from 14 different states underlines this fact. This is not anything new as differences between regions, within regions, between communities and different caste groups, high or low, have indeed existed historically. The British intervention crystallized certain select customs and legal doctrines which went into formulating legal practice in the colonial period. In this formulation, customs, actual practice and *Shastric* prescriptions (*Mitakshara* and *Dayabhaga* legal doctrines dating back to the 12th century) and Muslim personal law (Shariat) converged in certain communities and regions and diverged in others, all acting within the ambit of a western notion of jurisprudence. Together these acted to ensure, by and large, the existing patrilineal and patriarchal hold over land, thereby severely discriminating against women. As land was a state subject under the British, such discriminatory patterns were consolidated and gained legal usage and recognition.

This pattern was followed in post-colonial India when under a federal scheme, legislative jurisdiction was put under three different lists: a union list, a state list and a concurrent list. Agriculture and land-related

legislation was put under the state list, while laws relating to property and succession were put on the concurrent list. With the states empowered to enact laws which they deemed necessary for their respective regions, such a categorization has had the effect of promoting rather than negating gender-discriminatory land practices. All states have taken important measures in relation to agricultural labour, tenants and other farmers, land ceilings, allocation of surplus lands, distribution of *pattas* (official documents stating land title and the terms on which land is held) and other land reforms but, as the chapters in this volume reveal, none have accommodated women as such. On the other hand, the concurrent list which includes laws passed by the Parliament cannot be touched upon by the state legislatures; any modifications suggested by the states need the assent of the President of India. Consequently, the one succession-related law, so far the most gender-equitable law, that the states have not been able to modify is the Hindu Succession Act (HSA) passed by the Parliament in 1956. Repeated attempts at amendment of this Act, made by certain state governments, were blocked by the Centre by withholding the President's assent.

The 1956 Act is related to the 'Hindus'—a term which included in its scope Sikhs, Jains and Buddhists. This still left vast numbers of religious communities such as the Muslims, Christians, Parsis, Jews and others, comprising about 24 per cent of the total population of India, out of its ambit. These remained governed by their personal laws and local customs which are still in large part uncoded. Today inheritance for Hindus is governed by the HSA of 1956 and inheritance for the Muslims is governed by the Muslim Personal Law (Shariat) Application Act of 1937, which accommodated the daughter by giving her half the share of the son. However, there is a considerable gap between scriptural dictates and actual practice. Many Muslim communities follow customs similar to those prevalent among Hindus in their region of residence, which means an exclusion of a daughter from inheritance of landed property, except among the Mappilas of Kerala where customary practice means matrilineal inheritance. The Parsis, on the other hand, are governed by the Indian Succession Act of 1925. Amended specifically for Parsis in 1991, this Act gives them greater gender parity in inheritance; Christians (other than Christians in Punjab, Himachal Pradesh and those falling under uncoded laws in the northeastern states) are likewise governed by the relevant provisions of the 1925 Act, which treats a son and daughter's share equally, but has no restriction on testation.

I

The Hindu Succession Act, 1956, a progressive Act, introduced for the first time the notion of a woman—as a daughter (obliterating any distinction between married and unmarried daughters), sister, widow and mother—as an equal and absolute owner of property, with full rights at her disposal. Earlier, women could inherit as widows (and very rarely as daughters), and that too only in the absence of four generations of agnatic males. Also, this inheritance was limited. She could enjoy property only during her lifetime and after her it reverted to her husband's heirs. She could not alienate property except in highly restricted circumstances of legal necessity, benefit of the estate, for religious or charitable purposes and finally with the consent of the reversioners.

There were, however, certain significant pockets of matrilineal and bilateral inheritance in southwest India, especially Kerala (customarily governed by *Marumakkatayam* and *Aliyasantana* systems) and also in pockets of Karnataka, and northeast India, especially Meghalaya, where women's property rights were not the exception but the rule. Such communities received special considerations under the HSA, as the tribal communities of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland were not covered by this Act. The chapters on the northeastern states in this volume indicate how this region continues to be ruled by local customs which remain uncoded in large part and are given to differing interpretations that discriminate blatantly against women.

Although the 1956 Act was a substantial move forward, it still fell woefully short of introducing equal inheritance rights for women and significant inequalities remained. Briefly speaking, one of the major limitations lay in the retention of the *Mitakshara* coparcenaries, which did not include females as coparceners in joint Hindu family property. They enjoyed only maintenance rights as wives, widows or unmarried daughters. The male, however, becomes a coparcener at birth. The one concession made under the Act was to give women an equal share in a man's 'notional' share of the individual joint family property. This share in reality may not materialize as it is contingent upon the partition of the joint family property, for which only a man can ask. The woman does not have the right to ask for the partition of the joint family property. Under the Act, only the father's share, that is a half share in the property will devolve equally on the son and daughter. In other words, the son inherits three-fourth share, one half by virtue of right by birth and one-fourth by succession under the Act; whereas the daughter gets only one-fourth.

The other glaring shortcoming in the Act was in relation to tenurial laws. In a woman's right to inherit agricultural land, exception was granted to 'tenancy' land. The devolution of such land is subject to state level tenurial laws which differ from state to state and are governed by custom. Similarly, the 1937 Shariat Act which governs inheritance for the Muslims left out agricultural land, owned or tenanted, from its purview. Subsequently, some of the southern states extended the provisions of the 1937 Shariat Act to also cover agricultural land. For instance, legislation in 1949 covered Tamil Nadu, parts of Karnataka and parts of Andhra Pradesh. Kerala followed suit in 1963. In all other regions, the treatment of agricultural land for Muslims depends variously on customs, tenurial laws or other pre-existing laws. Also, the laws dealing with the fixation of ceilings and the forfeiture of surplus land above the ceiling limit, as also the fragmentation of agricultural holdings, all of which are state subjects, have been used to strengthen men's claims at the cost of women.

The 1956 Act also gave unrestricted testamentary rights to Hindu males in their separate and self-acquired property, as well as their share of the joint family property, which can and has been used to deprive females of their rights. The chapter on West Bengal recounts several such cases. The Shariat, on the other hand gives restricted testamentary rights and the amount of property that a Muslim can bequeath or will away is limited to one-third of his property. Therefore, wives and daughters cannot be completely disinherited as they can be under the Hindu law.

II

The 1956 Act, even though limited, succeeded in raising great resentment and grave insecurities among the male populace, especially in those regions where the majority of land is owned directly by landowners. Consequently, in states like Punjab and Haryana, dominated by peasant proprietors, and not tenants, the devolution of agricultural land came to be governed by the provisions of the HSA. In these states, in a series of cases in the aftermath of the 1956 Act, sisters successfully claimed their inheritance having contested the claims of the collaterals. Significantly all these were cases in which the sisters did not challenge the brothers, there being none, but effected land claims in opposition to distant collaterals. I cite one of the earliest cases from Punjab decided in the wake of the 1956 Act in which the sister successfully claimed her inheritance as illustrative of this.¹

The case decided in 1960 concerned the inheritance right to certain plots of land in village Sultanwind *tahsil* in Amritsar district. Sahib Singh, the last male owner of the lands under dispute, had died in December 1918. The widow Nihal Kaur succeeded to the lands, but on her remarriage soon thereafter she was divested of them and they passed to Sahib Singh's mother Kishen Kaur who died on 12 November 1942. On her death a dispute arose between Sahib Singh's sister Jeo and Sahib Singh's agnatic relation Ujjagar Singh as to the ownership of the lands. Jeo filed a suit asking for ownership. The court upheld her claim.

Similar decisions taken in the wake of the 1956 Act made it clear that inheritance of land cannot be denied to daughters or sisters. Here, it may be emphasized that statistically such cases are insignificant. Most authors writing for this volume have observed this. Elsewhere also studies indicate that women shy away from taking recourse to law to claim their inheritance.² Reasons for not taking resort to courts of law range from considerations of 'the prestige of the family' to getting 'a bad name among relatives and others'. In Haryana also I observed that all such court cases relate to situations where women had no brothers. Such attempts therefore have been confined only to those cases where some tradition exists. Indeed, a member of the Haryana Vidhan Sabha testified to the 'greed' among people who after the 1956 Act wanted their sons to marry only those girls who had no brothers.³

The states of Punjab and Haryana made several attempts to abolish or amend the 1956 Act. The Haryana Assembly passed a resolution in 1967 and the Punjab Assembly in 1977, both requesting the central government to change the said Act. The Centre did not oblige. In 1979 the Haryana Assembly tried to force the issue by unanimously passing a Bill, amending the Act of 1956 and sending it for the President's approval. This was not granted. Ten years later, in August 1989, another amendment in the Succession Act was proposed.

The debate⁴ which followed the introduction of the Bill sought to defend this amendment on the basis of 'the long established tradition of brother/sister love' which was projected to be 'in grave danger of being severely disrupted'. Significantly, this defence of tradition has a wider significance, as this brother and sister love can only be sustained if the sister relinquishes her inheritance rights. The speakers also laid emphasis on the 'enormous increase in the fragmentation of landholdings' and the creation of uneconomic holdings. Figures provided by the Haryana government showed that the 16 per cent figure of below-5-acres uneconomic holdings of 1956 had increased to 73 per cent in 1975. Female inheritance

introduced in 1956 was held responsible for this. This biased and highly motivated hypothesis completely ignored other realities working behind this phenomenon. These extended from a natural process of inheritance in view of the increase in population in those 20 years leading to subdivision of land among heirs on account of the break-up of joint and extended families into separate households during the lifetime of the head, to the resumption of rented land for self-cultivation, and the impact of the Green Revolution, which in the opinion of economists activated a division of holdings (Bhalla 1977). Interestingly, these are the same arguments which were recycled by some of the members of different political parties in the parliamentary debate that followed the recent pro-women amendments to the 1956 Act, the Hindu Succession (Amendment) Bill, 2004, passed recently in August 2005.

The spate of protests which followed the moves made by the Haryana government towards amendment could not be ignored and the proposal had to be withdrawn. In Punjab also, in the wake of the agitation, the demand for the promulgation of the Sikh personal law that denied land rights to women and advocated remarriage of a widow with her brother-in-law had been put forward. All these moves stand defeated as of now, but not the spirit that had moved them. This continues unabated cutting across differences of gender, class, caste and even political parties. Quite clearly, the moral economy of the peasants, the cultural valuation of women and the ideological constraints are all inextricably working for the conservation of men's rights. Despite the law and some court cases, there is nothing to indicate that a sizeable number of females have been able to exercise their rights. It appears that the amendment in these two states has been proposed more out of the fear of landowning males who remain apprehensive of the potential female claims than the actual claims made.

The chapters in this collection indicate that there are certain general characteristics that are common to most states. For instance, there is clearly a steady rise of women's work participation in agricultural activities, but significantly not in its ownership. Even those women who have mutations of land in their names do not have the authority or any control over it. There is a blatant disjunction between ownership and control of land in all the states. Decision-making in the cropping patterns, sale, mortgage, purchase of land or the instruments of production necessary for the development of agriculture, remains in the hands of the men of the household. In most cases women's rights, if claimed, have been written off or bought out by the male members. In others, the land may have remained with women, but it remains so only in name; the actual possessors being the male members.

Most chapters also underscore the dominant role played by cultural and customary practices in all the states in depriving women of their legal rights. In a patrilineal system, notwithstanding the law of the land, the customary law dictates that the land can only be inherited by the descendants who can trace their origin from a common ancestor in the male line. Daughters and sisters who are made to observe clan and territorial exogamy in marriage stand excluded under the customary law. Observance of clan exogamy makes a daughter/sister an outsider, belonging to another clan and territorial exogamy makes it difficult, if not impossible, for her to take over the effective possession of her land, in case she inherits it.

Indeed, the social norms regarding acceptable marriage partners and post-marital residence clearly make a difference to female inheritance of landed property. The chapters indicate that the different norms of marriage practices followed in south India have a different fallout effect on land inheritance of women. In the south, traditionally, marriages with close kin, especially cross-cousins, are accepted and among some communities preferred. In the northern states, marriages with close kin are forbidden or strongly disapproved. Both close kin and in-village marriages reduce the possibility of property distribution outside the family and geographically, if the daughter inherits land. This makes for a far less opposition to daughters inheriting land in southern states. It is because of this attitude and practice that the few pro-women amendments that were carried out in these states did not attract any notable public opposition as in the northern states.

It is significant that the south Indian states were the first to amend the HSA by bringing the rights of daughters on par with sons in joint Hindu family property. The chapter on Kerala shows the Joint Hindu Family System (Abolition) Act of 1976 which declared all family members with an interest in the Hindu undivided family estate as holding their share separately as full owners. The Act was certainly a blow to the matrilineal joint estate but it also eliminated any advantages that sons enjoyed over daughters in joint Hindu family property among patrilineal Hindus in Kerala. More recently, Andhra Pradesh in 1986 and Tamil Nadu in 1989 have amended the HSA to recognize unmarried daughters as coparceners by birth in their own right, giving them claims equal to sons in joint family property, including the right to a share by survivorship.

However, there has also been some disturbing blurring of the differences between northern and southern states. The Kerala study argues that among the matrilineal Hindu groups there has been a very general and gradual shift towards dowried virilocal monogamous marriages. The authors argue