

# ARE INHERITANCE RIGHTS OF WOMEN IN AGRICULTURAL LAND A MIRAGE?

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## ABSTRACT

*The participation of women in agriculture is evident from the different data and sources available. Females outnumber the male participation in agricultural labour. Hence, agricultural productivity is increasingly dependent on the ability of women to function effectively as farmers. Which requires the effective de- jure as well as de-facto control over land. However, ownership of land is concentrated mostly in male hands in our society.*

*Before 1956, devolution of both acquired and inherited property was governed by the personal laws of the community. Although equal rights were granted to women in acquired property through the Hindu Succession Act of 1956, rights in inherited agricultural land were specifically exempted from the Act, and were made subject to tenancy and land reform laws of the states. Little effort was made until 2005 to do away with these discriminatory laws. Finally, after 50 years of the 1956 Hindu Succession Act (HSA), the government addressed some persisting gender inequalities in the HSA by bringing in the amended HSA in 2005. One of the most significant amendments in the 2005 Act is deleting the gender discriminatory Section 4(2) of the 1956 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. The 2005 Act brings all agricultural land on par with other property and makes Hindu women's inheritance rights in land legally equal to that of men's across states, overriding any inconsistent state laws. Even though the amendment of legal framework, which deleted gender discrimination on agricultural land, women often fore go this right in anticipation of maternal home's support. They also face impediments in materializing the legal provisions and getting their names entered in the land record. Even ownership does not always turn into control. Decision making remains in hands of the males having control on the household. They are suppressed with their claims due to the tedious and harassing process of approaching the bureaucracy and the courts. Asset redistribution is superior to income redistribution. Asset ownership and control rights are preferable to numerous policy alternatives for women's empowerment. These are likely to bring in changes in public opinion about gender roles and social cultural norms of deep-seated social inequalities of women such as the household division of labour, restraints over women speaking in public, constraints on their mobility, and a*

*pervasive gender-based violence within the home and out-side. In the present paper, the author wishes to study the gap between legal status and ground realities of females right to inheritance in agricultural land and present some arguments and suggestions on this subject<sup>1</sup>.*

## 1. INTRODUCTION

The lowering of woman as a class from the high position she had once enjoyed marked its degradation in no less conspicuous manner. This changed attitude is evident from the tone of *Manusamhita*- the *Veda* of the *Brahmanical* revival<sup>2</sup>. The iniquitous barrier which the Hindus had raised between man and woman, sapped the strength and vitality of national as well as domestic life.

Historically, women had the unfortunate fate of bearing the brunt of discriminations in all spheres of life. Access to good things of life like education, employment, property and opportunity to participate in social and political life, on a footing equal to that of men, were denied to them. Even now, dismissal picture continues in some spheres. But in housekeeping, the child bearing/ caring and in the upkeep of family's spirit and ethos, their responsibilities are practically exclusive. However their biological characteristics, while essential for continuity for continuity of humankind, often are the factors that face male aggression. Development in reproductive technology has rampantly been abused for female foeticide.<sup>3</sup> Examples are not rare in northern India, where the

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<sup>2</sup> R. C. Hajumdar, *Ancient India*, M.B. Publishers Pvt. Ltd., Delhi, Rep. 2007, p. 197.

<sup>3</sup> Ishwar Bhatt, *Law and Social Transformation*, Eastern Book Co., Lucknow, 2009, at p. 515.

female foetus is not allowed to groom because of fear of fraction of agricultural holdings.

As distinct from sex, which is a personal biological factor based on nature, the image of gender surpasses mere distinction between women and men and represents socio- economic, cultural and psychological factors that make one class strong over the other.<sup>4</sup> Gender stands for characteristics of men and women, which are socially determined rather than biologically identified. It determines the social role, access to opportunities, entitlement to resources for these two categories of persons and builds cultural implications upon them. In practice it generates biases in favour of men and against women in relation to birth, sharing of benefits, enjoying of human rights and following of traditions.<sup>5</sup> Iris Marison Young conceptualizes gender justice as an aspect of social justice, which essentially means “elimination of institutionalized domination and oppression.”<sup>6</sup>

## 2. LEGAL STATUS OF WOMEN IN INDIA

It is important to study here the relation of law and society to understand the particular status of women in respect of sharing of space in the canvass of ‘Property Rights’. Legal status of women is largely influenced by the social position she enjoys in contemporary world. Although law is relatively an autonomous instrument, social willingness to receive the message of legal reforms or the congruence between substances of law that touches intimate aspect of life and culture of the community determines the extent of success of law. Aristotle’s view that male is more

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<sup>4</sup> B. K. Nagla, “Sex and Gender : Cognitive Analysis”, Abha Avasthi & A. K. Srivastava (Eds.), *Modernity, Feminism and Women Employment*, Rawat Publications, Jaipur, 2001, at pp. 134, 136-68.

<sup>5</sup> *Ibid*, Ishwar Bhatt.

<sup>6</sup> Iris Marison Young, *Justice and Politics of Difference* 15 (1990) .

fitted to rule than female.<sup>7</sup> The fact that from the twilight of civilization women, children and slaves were subjugated by men, had influenced legal norms also. The divide between public and private sphere and allocation of the former to men and the latter to women had rendered women invisible to the law, as viewed by Hilaire Barnett.<sup>8</sup>

### 3. THE CONSTITUTION AND EQUALITY OF GENDER

The policy of protection to women is spread over various parts of the Constitution. Some Constitutional amendments have introduced new provisions for women's welfare and better public participation. Article 14 of the constitution provides that the State shall not deny to any person equality before law or equal protection of the law within the territory of India. Under Article 15(1) and 16 (2), sex is a prohibited ground of discrimination against any citizen in general matter or in respect of public employment or office. The growth of case law has added to its strength in recent times.<sup>9</sup> However, the Court continued protectionist approach of formal equality to allow differential treatment of male and female employees in the matter of promotional rules and other service conditions.<sup>10</sup>

Article 15(3) allows State to make special provisions for women and children. This calls for operation of substantive equality mechanism for their well being.<sup>11</sup> The main objective of this provision is elimination of substantive inequality of the disadvantaged group in the society by positive measures. The speculative example of judicial interpretation of

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<sup>7</sup> Aristotle, *The Politics*, Ta Sinclair, (Tr.), Penguin Book, London, 1962 at p. 125.

<sup>8</sup> Hilaire Barnett, *Introduction to Feminist Jurisprudence*, Cavendish Publishing, London, 1998 at p. 65 .

<sup>9</sup> *Bombay Labour Union v. International Franchises Ltd.*, AIR 1966 SC 942, *C. B. Muthamma v. Union of India*, AIR 1979 SC 1868, *Air India v. Nargesh Meerza*, (1981) 4SCC 335.

<sup>10</sup> *Raghubans v. State*, AIR 1972, P& H 117.

<sup>11</sup> Ratna Kapoor and Brenda Cossman, "On Womem, Equality and the Constitution: Through the Looking Glass of Feminism", 1 *NLSJ* , 1993, at p. 1.

women's right to substantive equality and dignified life is *Vishaka v. State of Rajasthan*.<sup>12</sup> This case testifies, how in situations of legal vacuum that adversely impacts upon women, judiciary can fill the gap by its guidelines and protect women's right to dignified life. In this case, a class action was brought under Articles 14, 19, and 21 for the enforcement of fundamental rights of working women.

#### 4. HINDU LAW AND PROPERTY RIGHTS OF WOMEN

The seed for personal law was sown by the British with the Bengal Regulation of 1772 providing that in disputes relating to family like inheritance, marriage, divorce, adoption etc, the courts should apply the laws of Quran with respect to Muslims and for Hindus, the *Shastric* law.<sup>13</sup>

A Hindu woman, whether a maiden, a wife or a widow has never been denied the use of her property. Even in *Manusmriti* one can see that right to hold property had been respected<sup>14</sup>. Jurists like *Yajnavalkya*, *Katyayana* and *Narada* further promoted the concept of women's right to property. Women's property rights improved and defined during their time<sup>15</sup>. The *Smritikars* created a unique type of property to women, the *stridhana*. Since ancient times *stridhana* was treated as women's separate property<sup>16</sup>. *Jimutavahana* went to the extent of stating that woman has absolute control over her property even after marriage<sup>17</sup>. The ornaments, the wealth she receives at the time of marriage from her father and relatives

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<sup>12</sup> AIR 1997 SC 3011.

<sup>13</sup> Gerald James Larson, *Religion and Personal law in Secular India, A call to Judgment*, Indiana University Press, Bloomington, 2001, at p. 272.

<sup>14</sup> Kanaka Latha Mukund, "Turmeric Land, Women's Property Rights in Tamil Society Since Early Medieval Times", XXVII/17, *Economic and Political Weekly*, 1992 WS-2

<sup>15</sup> *Ibid.*

<sup>16</sup> Alladi Kuppaswami(ed.) *Mayne's Hindu law and Usage*, Bharat Law House, 12th ed. 1986 at p. 840.

<sup>17</sup> D Bh IV, I, 18.

constitute her share. The gifts from her own and husband's family would also be added to her own.

It was *Gautama Dharmasastra* who first called women's property as *stridhana* share. Mayne also opined that the original bride price payable to the parents appears to have become transferred into the dowry for the wives<sup>18</sup>. Apart from this *stridhana*, a married woman could receive gifts from strangers; she could also make her own contributions by doing other skilled labor. Yet she had no absolute control over her property because her right to dispose of the property is restricted. This was done to control her. If there was no control, she would become independent<sup>19</sup>. So it is clear that women did not enjoy property rights in the ancient period. Yet woman was allowed to keep her *stridhana* as her separate property<sup>20</sup>.

#### **4.1 Hindu Women's Right to Property Act, 1937**

The Hindu Women's Right to Property Act, 1937 was passed in 1937 and was amended in 1938. It was prospective in application<sup>21</sup> and applied to property other than agricultural property and impartible estates, which either under a custom or otherwise, went to a single heir. It applied to Hindus governed by the *Mitakshara*, *Dayabhaga* and customary law of Punjab. Section 2 of the Act expressly repealed the pre- Act customs and rules of laws that were contrary to the provisions of the Act. The Act stated in the preamble that it was expedient to amend the Hindu law in order to give better rights to women with respect to property.<sup>22</sup> The Act governed the devolution of the property of a male Hindu only and not the property of a female.<sup>23</sup> Consequently, the property of a female Hindu

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<sup>18</sup> See *supra*.

<sup>19</sup> *Ibid*.

<sup>20</sup> *Ibid*.

<sup>21</sup> *Krishtappa v. Ananta Kalappa Jarathakhane* AIR 2001 Kant 322.

<sup>22</sup> Poonam Pradhan Saxena, *Family Law Lectures, Family Law II*, Lexis Nexis Butterworths Wadhwa, Nagpur, 2007, at p. 402, 03.

<sup>23</sup> *Sham Lal v. Amar Nath* AIR 1970 SC 1643.

devolved according to the rules of Hindu Law, which provided a distinction between inheritance to *stridhan* and non *stridhan* properties. This further widened the gap between succession to the property of a female and a male Hindu. Secondly it effected the both the separate and property as well as the undivided share of a male Hindu in coparcenary property. For succession to the property of a male Hindu, earlier the widow succeeded only on failure of his male issue. Now, she inherited with him, taking a share equal to his. If there were more than one widows, all of them together, took a share equal to that of a son<sup>24</sup>. Similar to the right of a son a widow also had a right to claim a partition, but the similarity ended there, as he took an absolute interest and she got a limited interest and if she died without there being a partition, the doctrine of survivorship applied and her interest was taken by the surviving *coparceners*<sup>25</sup>.

#### **4.2 Reforms towards Gender Equality in Hindu Law**

Limited ownership of female was converted into full ownership under the Hindu Succession Act 1956. The history of Hindu Law reform starts with the Hindu Law committee (Rau Committee) set up in 1941. It was followed by second Committee in 1944. The committee finally submitted its report to the Federal Parliament in 1947. The recommendations of the committee were debated in the provincial Parliament. There was strong opposition against the introduction of monogamy, divorce, abolition of coparcenery and inheritance to daughters from the orthodox Hindu community. The Congress legislator from West Bengal argued that only women of the lavender, lipstick and vanity bag variety were interested in the Bill<sup>26</sup>.

There were also fears among the orthodox Hindu men that if women were given property rights families would breakup. In 1948 there was an All

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<sup>24</sup> *Bhiwra v. Renuka* (1949) ILR Nag 400.

<sup>25</sup> *M.P. Obanna v. KB Anjaneyulu* 2000 (1) HLR 52 (AP).

<sup>26</sup> Bina Agarwal, *Redefining Family Law in India*, Routledge DelhI,2007, at p. 306-354.

India Anti- Hindu Code Convention. It was argued that the introduction of women's share would result into disintegration of Hindu family system which had been working as a co-operative system for ages for preservation of family ties and property. It was also pointed out that the inclusion of daughter in the line of inheritance is due to European influence<sup>27</sup>.

Although the top male congress leaders opposed the Bill, Jawaharlal Nehru and Dr.Ambedkar were committed to the Bill. Nehru personally believed in women's claims to equal property rights<sup>28</sup>. Dr.Ambedkar had to struggle much due to the strong resistance from the citadel of upper caste Hindus<sup>29</sup>. In spite of the initial set back the Congress party could enact four separate Hindu Codes<sup>30</sup>. The most contested area was women's property rights<sup>31</sup>. As far as the State is concerned unification of Hindu Law was paramount rather than women's inheritance rights. This is reflected in the words of Archana Parashar. She said that the hidden agenda was unification of the nation through uniformity in law. Establishing the supremacy of the State over religious institutions was another important consideration. This could be best achieved by re-defining the rights of women<sup>32</sup>. There was strong opposition among the congress itself against conferring inheritance rights to daughters. Consequently the coparcenery system under the Mitakshara law was left

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<sup>27</sup> Paras Diwan, "Daughters Right to Inheritance and Fragmentation of Holdings" SC (J) 1978, at p. 15.

<sup>28</sup> *Ibid.* Bina Agarwal.

<sup>29</sup> *Ibid.*

<sup>30</sup> The Hindu Marriage Act 1955, The Hindu Succession Act 1956, The Hindu Adoption and Maintenance Act 1956 and The Hindu Guardian and wards Act 1956.

<sup>31</sup> *Ibid.*

<sup>32</sup> Archana Parashar, *Women and Family Reform in India*. Sage Publications, New Delhi,1992, at p. 103.



untouched<sup>33</sup>. As a result women were denied rights in the ancestral property of a Hindu Joint Family. Only male members could become coparceners and property devolves on them through survivorship. Women are totally excluded from inheritance. So inequality continued in the matter of property rights even after the commencement of the Constitution<sup>34</sup>. The daughters had equal rights only in the separate or self acquired property of their father. However the father can easily disinherit a daughter by executing a Will.

Women's right to property has been substantially improved by the Hindu Succession Act 1956. The concept of women being entitled to a limited estate when they acquire property by inheritance is abolished and women are entitled to an absolute estate like men when they inherit any property. Again the daughter of a predeceased son and the daughter of a predeceased daughter are raised to a higher rank. They became Class – I heirs and get a share along with the son, and other Class – I heirs. The daughters are included in the Class – I in order to remove the discrimination on the basis of sex. Similarly succession to a women's property or stridhanam of whatever nature is made uniform irrespective of the nature of stridhanam. In the same way the distinction between male and female heirs in the case of succession has been taken away and now they are treated on equal basis if they belong to the same degree of relationship. Women will no longer be disinherited on the ground of unchastity.

Under Section 14 of The Hindu Succession Act 1956, the limited interest of Hindu female is converted into absolute rights. If she gets property from her husband she can sell it and the purchaser gets absolute right in the property. Formerly she was not given the power of alienation<sup>35</sup>. The

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<sup>33</sup> Madhu Kishwar, "Codified Hindu Law, Myth and Reality", xxix/33, *Economic and Political Weekly*, 2145, 1994.

<sup>34</sup> *Ibid.*

<sup>35</sup> See Section 14 of the Hindu Succession Act 1956.

provision has been given retrospective effect. Consequently the limited estate becomes absolute. Another important change brought out is to the explanation Section 6 of the 1956 Act. Upon the death of a coparcener the property devolves upon his mother, widow and daughter along with his son by testamentary or intestate succession and not by survivorship. This rule confers on the women an equal right along with the male members of the coparcenary<sup>36</sup>. It is important to note that Section 6 still retains the *Mitakshara* coparcenery excluding women from survivorship as a result father and sons hold the joint family property to the total exclusion of the mother and daughter despite providing a uniform scheme of intestate Succession. The stringent restrictions under the *Shastric* law on female inheritance were finally taken away by the Parliament to make it conform to the Constitutional mandate of equality. The disability of women in inheriting the father's property was undone under Section 6 of the 1956 Act<sup>37</sup>. The legislation has defined women's property in the widest possible manner. The property includes both movable and immovable property acquired by a female by inheritance, partition, in lieu of maintenance, arrears of maintenance, gift from any person, a relative or not, before or after marriage or by her own skill, exertion, by purchase or by prescription or in any other manner whatsoever and also any such property held by her as *stridhanam* immediately before the commencement of the Act. Similarly section 15 is the first statutory enactment that deals with succession of Hindu female's property when she dies intestate before the Act the property of women dying intestate was governed by customary Hindu law. She had only limited interest which would be terminated on her death. It is heartening to note that the Act provides two different laws

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<sup>36</sup> Sruthi Pandey, "Property Rights of Indian Women", available at. <http://muslimpersonallaw.co.za/inheritancedocs/property%20rights%20of%20indian%20women.pdf>

<sup>37</sup> Amrito Das, "Notional Partition, A critique., Section 6 of The Hindu Succession Act 1956", *J AIR* , 2004 at p. 149.

based on the sex of the intestate. This double scheme is the traditional method intended to protect the family property<sup>38</sup>. The property of a female Hindu dying intestate shall devolve according to the rules set out under section 16. Any property inherited by a female Hindu from her husband or from her father –in –law shall devolve in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub section 1 but upon the heirs of the husband. This separate scheme of succession reflects a strong patriarchal and orthodox outlook<sup>39</sup>.

### **4.3 Amendment of 2005 and Equal Property Rights**

The Hindu Succession Amendment Act, 2005 was enacted to enlarge the rights of a daughter, married and unmarried both and to bring her at par with a son or any male member of a joint Hindu family governed by the Mitakshara law. It also sought to bring the female line of descent at an equal level with the male line of descent, including children of pre-deceased daughter of pre-deceased daughter. By the way of the amendment Act, the daughter of a coparcener has been admitted in coparcenary and after the commencement of the Amendment Act the daughter is a coparcener in her own right. The daughter now has the same rights and liabilities in the coparcenary property as the son. This means that a daughter along with a son is liable for debts of joint family. The daughter is also entitled to dispose of her share of the coparcenary property or her interest thereof by way of a will<sup>40</sup>.

Since the daughter has been made a coparcener by way of the amendment she has been put at par with the son and gets a birth right in the ancestral property owned by the coparcenary. For example, the daughter would have

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<sup>38</sup> Section 15 of HAS.

<sup>39</sup> Indira Jaising, , “Mapping Women’s Gains in Inheritance and Property Rights under the Hindu Succession Act, 1956, a report by *lawyers collective women’s rights initiative*, at pp. 12-13.

<sup>40</sup> *Ibid* at pp. 5.

a birth right in the separately owned by her paternal grand-father, and if he dies intestate leaving behind his son (the father of the daughter) then the daughter shall have an interest in the said property as a coparcener and would be entitled for partition along with the right to demand partition from her father. According to this amendment if the daughter dies intestate; her interest in coparcenary would devolve by succession in accordance with section 15 of the HSA and if the daughter is left alone by deceased male coparcener, she shall inherit his entire property of which she would become absolute owner and after her death, if she dies intestate shall devolve upon her heirs as per section 15. Further, the daughter now has the right to dispose of her interest in coparcenary by making a will and if she is a lone heir she shall become absolute owner of the property and shall also have a right to alienate it during her life time.

This amendment also created a right to have a share in the joint property during the partition favour of children of the daughter and her pre-deceased daughter, in case of their death, that is to say a son of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a predeceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son are also now included in Schedule to HSA as Class I heirs. The said heirs, not being coparceners, would not have right to demand partition but they would be entitled to their share as provided in amended section 6 of the HSA.<sup>41</sup>

With the deletion of Section 24 of the HSA the widow of a predeceased son or widow of a predeceased son of a predeceased son or a brother's widow shall have a right to succeed the estate of male Hindu dying intestate even if she has remarried on the date of the opening of succession.<sup>42</sup>

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<sup>41</sup> *Ibid* at p. 13 and 14.

<sup>42</sup> *Ibid* at p. 21.

### ***4.3.1 Deletion of Provisions Exempting Agricultural Holdings under HAS***

There seems to be two different opinions regarding this deletion by the amendment of 2005. One point of view is that, by deleting this section confusion has been created since the legislature has failed to provide any express provision that states or confirms the application of HSA to agricultural property over and above any state law that also deals with the same. These laws, which provide for prevention of fragmentation of agricultural holdings, fixation of ceilings and devolution of tenancy rights, apply to the inhabitants of the state uniformly, irrespective of their religion. For example, the whole of the agricultural land (unless otherwise provided) would be subject to a uniform law, and the religion of the land owner or the tenant, as the case maybe, will be of no consequence. The deletion of Section 4(2) along with an implied presumption that after amendment the HSA would apply to all kinds of property including rights in agricultural land would now mean that diversity would exist state wise with respect to laws governing agricultural property. Moreover, a conflict may also arise over central or state legislations that are diverse in content. Inheritance and succession is specified in list III, entry (v) while land is a state subject. Whether the Center is competent to legislate on agricultural land is itself a matter of dispute. Normally, if there is a subject on which both Center as well as state can legislate, in case of conflict, the central legislation prevails. But as provided under Art 256 of the Constitution, the Center should be competent to legislate on it. This confusion is bound to crop up paving way for immense litigation in this area.<sup>43</sup>

However, the other point of view explains that deletion of Section 4(2) from the HSA is definitely a right step towards removal of gender inequalities in the inheritance of agricultural land. Previously, Section

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<sup>43</sup> *Ibid* at p. 22.

4(2) had exempted from the overview of HAS significant interests in agricultural land, the inheritance of which was subject to the devolution rules specified in State level tenurial laws. In States where these laws were silent on inheritance HSA would apply. But, in Delhi, Himachal Pradesh, Punjab, J&K and UP the tenurial laws specify inheritance rules that were highly gender unequal. Here, primary preference was given to male lineal descendants in the male line of descent and the women came very low in the order of preference of heirs. But the amendment of 2005 brought all agricultural land at par with other property and made Hindu women's inheritance rights in land legally equal to men's across the states, overriding any inconsistent state laws.<sup>44</sup>

These amendments are not free from criticism. There are various arguments against equal property rights. The risk of fragmentation is an oft-repeated argument. This contention is misleading and cannot justify selectively disinheriting women. Fragmentation can occur even when sons inherit. In practice, many rural families continue to cultivate jointly even when parcels are owned individually. Another argument is that women migrate on marriage. But one might ask that if men retain their claims despite job-related migration, why shouldn't women, on marriage-related migration? They could lease out the land to their family or someone else, or cultivate it cooperatively with other women. This would give women some economic security, however small. If a woman's marriage breaks down, she can now return to her home of birth by right, and not on the sufferance of relatives. This will enhance her self-confidence and social worth and give her greater bargaining power for herself and her children, in both parental and marital families<sup>45</sup>.

### ***4.3.2 Equal Right to Agricultural Land- Ground Realities***

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<sup>44</sup> *Ibid.*

<sup>45</sup> N.C. Saxena, "Inheritance Rights of Women in Agricultural Land", *Think Tank available on* [http://www.cfo-connect.com/title\\_detail.asp?Art\\_id=945&cat\\_id=6](http://www.cfo-connect.com/title_detail.asp?Art_id=945&cat_id=6), as visited on 14 January 2014.

Even though the legal framework has been amended in favour of women as recently as 2005, with the deletion of the gender discriminatory clause on agricultural land, women often forego their claims in anticipation of receiving support from their natal families in case of marital problems or their marriages breaking up, even though such support may not actually materialise. Women also face impediments in operationalising the statutory codes and getting their names included in the records. In addition, ownership does not always translate into control, as is the experience of matrilineal societies of Meghalaya where control is exercised by the maternal uncle. Even when women have land mutations in their names, they may not have actual control over that land. Decision-making in cropping patterns, sale, mortgage, and the purchase of land or the instruments of production remains in the hands of the men of the household<sup>46</sup>.

Thus, the issue is not only legal, it is also cultural. As women's control over loans, income, and assets goes down, their access to social resources such as knowledge, power, and prestige diminishes. Disparity in gender status gets intensified with the emergence and deepening of other forms of stratification. Subordination and seclusion of women is more noticed in communities where social differentiation and hierarchy based on ownership patterns or on prestige are more pronounced. Rural women may be aware of the necessity of getting separate legal rights over land, but they lack the wherewithal to claim their rights through the tedious and harassing process of approaching the bureaucracy and the courts. They are exploited by their husbands and even by their sons but they will not consider challenging them. They generally like to view their husbands as comrades and friends whose good wishes and advice they will like to cherish. They fast for their husbands' long life and aspire to die as a

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<sup>46</sup> *Ibid.*

*suhagan* (a married woman) in their husband's lifetime. They divide men into neat categories of good husbands and bad husbands, without realising the inherent exploitation in the very institution of patriarchy and property customs. These norms serve as barriers to women's ability to exercise direct control over the land they may inherit in their natal village. Thus along with initiating legal rights over land to women one will also have to make them conscious about the existing realities of power inequities within the family. This will require a great deal of political courage.<sup>47</sup>

Asset redistribution is superior to income redistribution. It provides a basis for overcoming distortions in the functioning of markets and for restructuring gender relations in the fields of property rights, access to technology, healthcare, and governance. Asset ownership and control rights are preferable to numerous policy alternatives for women's empowerment. These are likely to bring in changes in public opinion about gender roles and social cultural norms of deep-seated social inequalities of women such as the household division of labour, restraints over women speaking in public, constraints on their mobility, and a pervasive gender-based violence within the home and out-side.<sup>48</sup>

## 5. CONCLUSION AND SUGGESTIONS

While there are a growing number of contemporary laws, which give inheritance rights to daughters when they are recognized as individuals among the communities, the process of marriage and the traditionally patrilineal customs have remained largely unchanged<sup>49</sup>. Thus, there remains a mismatch between marriage practices and inheritance laws, with the strength and biases of the marriage practice often overriding

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<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> Bina Agarwal, "Gender and Command over Property: A Critical Gap in Economic Analysis and Policy in South Asia" *World Development* 22 (10): 1994, at pp. 1455-1478.



inheritance laws.<sup>50</sup> Levels of education, oftentimes products of restrictions on women's interaction with institutions which are primarily composed of men, create a mystique and illusion about legal actions.<sup>51</sup> Women working on land without titles have led to the creation of a new form of *zamindari* (landlordism) system. Time is ripe to convert the de- jure status of gender equality in property rights, into de-facto status. However there are some positive chords being played with the heartening change among rural women of states like Haryana, when they have quietly started claiming their inheritance and share in the property for which the government had given them equal rights<sup>52</sup>. For the accessibility of these rights at a better level here are some suggestions being put forth-

- Land access can reduce a household's risk of poverty.
- Land transfers to women are likely to benefit not just women but also children. Evidences are there that women spend, especially in poor households, most of the earnings they control on basic household needs, while men spend a significant part of theirs on personal consumption, such as alcohol and tobacco etc.
- Women with assets such as land have greater bargaining power, which can lead to more gender-equal allocations of benefits even from male incomes.
- In case of desertion, divorce, or widowhood women without independent resources are highly vulnerable to poverty. Even they may be found working as agricultural laborers on the land of their male relatives.
- Better knowledge of women about traditional seed varieties and the qualities of trees and grasses. If they have greater control over land and farming, this knowledge can be used for better use of land.

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<sup>50</sup> [http://en.wikipedia.org/wiki/Women's\\_property\\_rights](http://en.wikipedia.org/wiki/Women's_property_rights) as visited on 14 January, 2014.

<sup>51</sup> Bina Agarwal, "Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market", *Journal of Agrarian Change* 3(1), 2003, at pp. 184-224.

<sup>52</sup> Prem Chowdhry, "Women Claim Rights in Khap Land", *The Tribune*, Chandigarh, 07 March, 2014, at p. 11.

- Empowerment through control over landholdings can have impact towards decrease of incidents of domestic violence<sup>53</sup>.
- Giving women rights on holdings can result in strengthening their bargaining power and decision making in home and in labour market.
- Giving only the property rights to the women, in agricultural land is not sufficient but more efforts should be made to get entered their names in the land records.
- The harmonious interpretation of State agricultural law and succession law is sure to bring into light the real image of equal property rights.
- The parents should resist from spectacularly spending on the marriage of their daughter rather they should make efforts to give her “her” share.

At last to quote Justice Sujata V. Manohar: “...It is not easy to eradicate deep seated cultural values or to alter traditions that perpetuate discrimination. It is fashionable to denigrate the role of law reform in bringing about social change. Obviously law, by itself, may not be enough. Law is only an instrument. It must be effectively used. And this effective use depends as much on a supportive judiciary as on the social will to change. An active social reform movement, if accompanied by legal reform, properly enforced, can transform society.”

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<sup>53</sup> *Ibid.*