Chapter III

Gender Politics and Land Rights: Critical Issues and Debates

Property is a central source of power in farming. Land is perhaps the most important resource of all: men rely on it for their very existence and it forms the basis for most human activity and development. Gender and land question has to be placed within a broader context to understand the dynamics of the interface between the two. This in turn requires moving beyond the critical assumptions that gender power relations are embedded in conjugal household relations alone. The structure of power that women confront, operate at multiple levels (global, national and local) and within diverse institutional arenas (communities, social movements, markets, state, kin groups, households and so on).

However, the structure of farming culture affords men more power than women. Firstly, property ownership is a source of power. Property relations are social relations, embedded in hierarchies of power and knowledge that reflect membership in a group as well as gender rights and obligations. Owning land provides economic power as well as varying degrees of social, cultural, and political power. Secondly, there is power associated with customs and practices that hold traditional patterns of land transfer in place. Women in farming fare badly in both the aspects of power that has been mentioned. There are precisely two reasons for that. Firstly, because women rarely own land, they have limited independent access to land as an economic resource and the consequent status, prestige and political power land ownership brings. Secondly, the legitimacy of traditional patterns of land transfer implies that women’s disinherited position is relatively unquestioned.

This chapter provides for a macro level study of the relationship between gender politics and land in the context of whole India. It is foregrounded in the contemporary debates about land rights of women in India. The critical role of the women’s movement, in addressing the key issue of land rights of women and its interaction with the state for legal reform have contributed to the unravel gender relations that are embedded in patriarchal practices. However, ‘land’ is implicated in
multiple meanings that are associated with political, economic and social processes. It constructs ideas of gender, identity and citizenship in meaningful ways. The resource access and its use is shaped by rights and obligations defined in relation to kin, neighbourhood and outsiders. It provides legitimacy and a sense of community to those who have access, it is also a reflection of local power relations, capable of excluding those not in favour, or seen to be a threat.  

The focus of this chapter is to locate gender inequalities emanating from the state led distribution of land through land legislation and land reforms. The criticality of ‘land as property’ is studied in the context of disjuncture in devolution rules for land deemed to be under ‘tenancy’ and rules regarding the fixation of ceilings and the forfeiture of surplus land above the ceiling limit. The constraints on women’s access to land are not limited to those emanating from state but also from the patriarchal relations within the households. The institutional reinforcement of patriarchal dominance through land legislation and land reform find resonance in its legitimation through gendered ideologies in customary practices. The intersection of land legislation with customary practices is a point of contestation. In fact, the widespread prevalence of customary practices informs as well as dilutes land legislation and land reform measure.

Land ownership is the central issue in India where agriculture forms the mainstay of the economy and engages approximately sixty per cent of the total population. Apart from being one of the most durable assets that can be used as collateral security in rural areas, land hold a ‘broader social value’ by installing a sense of identity and belonging within the village setting and providing political power.  

While agriculture is the foundation of the rural economy, the tasks involved in land cultivation differ significantly for women and men. The division of labour can be sex-segregated, in which all production tasks related to the cultivation of a single crop are undertaken by one sex, or sex-sequential, in which the labour of both sexes is

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1 S. Berry, No Condition is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa., University of Wisconsin Press, Madison, Wisconsin, 2003.
required at different stages of production to yield output. In India women’s labour is largely sex-sequential and under the control of the male household head, which limits women’s ability to exercise control over the time and intensity of their workload and over the distribution of intra-household resources.

**Importance of Land Rights of Women**

The question of understanding how land rights for women in terms of ownership and control can be the most crucial instrument for women’s empowerment is important aspect of the feminist discourse. Access to cultivable agricultural land can take varied forms: individual ownership through inheritance, gift, or self-acquisition; joint family ownership, usufructory rights to communal or private land, and tenancy rights- temporary or inheritable. While none of these forms does access in itself guarantee control over management and production decisions or the right to alienate the property it provides, at the least, rights to a part of the produce from the land and strengthens the possibilities of control over the land itself. The question of land rights of women is central to gender justice and the case for women’s separate land rights and other forms of productive resources is being built largely on the basis of the arguments discussed below.

**The Welfare Argument**

There are two distinct aspects which need to be considered to follow the welfare argument. First women have restricted access to resources within the household. Second, income spending patterns are gender specific. The debilitating effect of women’s unequal rights to access and control rural land has been well documented. The impact on livelihoods is particularly marked in India, when men migrate to expanding non-agricultural employment opportunities and women comprise a growing percentage of rural population. Women’s literacy rates, child-bearing obligations and cultural constraints make them less qualified than men for non-agricultural employment.
Despite this growing gender divergence in dependence on agriculture, women in agriculture operate as invisible workers. Rural women's ability to access and manage the benefits from land to which they are tied remains highly restricted. The cost of excluding women from the control of land and its resources is significant: when women direct the use of income from productive land, they tend to spend the money in basic nutritional, welfare and educational needs of the family and children. Conversely, where men control the household assets, they tend to spend money on personal goods and to fulfill individual desires. In economic terms land serves as security against poverty- a means to basic needs in both direct and indirect ways. Land access can reduce household’s risk of absolute poverty, partly due to direct production possibilities (for crops, fodder or trees) and partly due to indirect advantages such as facilitating access to credit from institutional and private sources, reducing risk of unemployment, especially for women, helping agricultural labour to maintain its reserve price and push up its real wage rate, serving as the mortgageable or saleable asset during a crisis. A negative relationship between the risk of rural poverty and land access has indeed been well established in several studies. Gender equality in land rights is thus both a livelihood objective in itself and a powerful means to eradicate poverty.

Studies by Ursula Sharma in North India suggest that rather than feeling excluded, women themselves see land as a joint resource, with their contribution leading to male prestige and in turn their own. Conjugal relations, like kinship relations, are not just based on conflicts and bargaining, but also involve cooperation, love and caring. Contributing to this joint activity opens the way for informal negotiation and control by women, rather than formal titles. Problems however arise if the marriage breaks down, as men are then unwilling to give their wives a share, the reason being that land means more than what its economic value may suggest.

For widows and the elderly, ownership of land strengthens the support they receive from relatives by increasing their bargaining power within the households and strengthening their traditional entitlements. A study of rural Bangladesh on mortality rates among widows living in household arrangements shows that those who live with male relatives other than adult sons face greater health risks than widows who are heads of households. One appropriate observation is: “Without property, children don’t look after their parents well”. Thus on grounds of both women’s and children’s welfare, there is a strong case for supporting women’s effective rights in public and private land.

The Efficiency Argument

It has been witnessed that land reform programmes have systematically ignored gender concerns. Though the rationale for land reform is that insecurity of tenure can lead to inefficiencies in production, it has not extended this rationale to women. As agriculture gets feminized, women will be faced with the prime responsibility for farming but without titles to the land they cultivate. The efficiency implications of female inheritance can be separated analytically into five heads- incentive effect, credit and input access effect, efficiency of resource-use effect, gender specific knowledge and talent pool effect, farm size and fragmentation effect.

First, there is the incentive effect. Secure rights in land and control over its produce would motivate and enable women to adopt improved agricultural technology and practices and hence, increase over all production. This is not is not dissimilar to the argument made in land reform discourse favouring security of tenure for tenants to encourage technical instruments in land by increasing the tenants’ incentive and capacity to invest. Second, there is credit and input access effect. Land titles would enhance women’s ability to raise production by empowering their access to agricultural credit as well as women’s independent access to output, saving and cash flows for reinvestment. Third, there is efficiency of resource-use effect. In many

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contexts, women might use resources more efficiently than men. Indeed, the experience of non-governmental credit institutions such as the Grameen Bank in Bangladesh, suggest that women are often better credit risks than men. In discussion on land access and government credit in Bihar, women peasants insisted: “If the land is in women’s names, the loan money cannot be spent on drink or frittered away”. While comparing relative efficiency of men and women, it has been found that potential productivity of women farmers can be enhanced if women farmers had the same access to inputs and education as male farmers. Fourth, there is the gender specific knowledge and talent pool affect. Land titles to women not only increase women’s direct participation in farm management and decision-making but also lead to use of their specific knowledge for positive output effects. Fifth, is the farm size and fragmentation effect. Female inheritance has often been opposed on the grounds that it will further reduce farm size, increase land fragmentation and thus, reduce output. The concerns surrounding the farm size effect are similar to those arising from redistributive land reform. The inverse size-productivity relationship still holds in the post Green Revolution period as found in various studied. Thus, the existing evidence gives no reason to expect that the land distribution in favour of women would reduce output on account of the size effect. Moreover, the problem of land fragmentation again is not unique to female ownership but can arise equally with male inheritance.

The Empowerment and Equality Argument

The argument is rooted in the implication of men’s and women’s relative access to land and how they affect women’s ability to challenge the patriarchal dominance within the family as well as in the society. This equality argument for land rights has two important aspects. Broadly, gender equality is a measure of a just society in which equality of rights over productive resources is essential. Second, equality in land rights would be an indicator of women’s economic empowerment.

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Gender equality and women’s empowerment is explicitly valued as an end in itself. What is empowerment? Empowerment can be defined as the process by which those who have been denied the ability to make choices acquire such ability. In other words, empowerment is a process of change. The concept of empowerment can be explored through three closely inter-related dimensions agency, resources and achievements. Agency is how choice is put into effect and hence is central to the processes of empowerment, resources are the medium through which the agency is exercised and achievements refer to the outcome of the agency. Entitlement to land would thus, invest women with the agency as well as resources to strengthen their economic and social status. However, effective agency on the part of women can be realized only when women have greater ability to question, analyze and act on the structures of patriarchal constraints in their lives.

**Women’s Movement and the Question of Land**

In the context of understanding the relationship between women land rights and different dimensions of empowerment, it is important to explore the ways in which women’s movements address the gender inequalities in land relationships. In the recent years, women’s movement in India has conceptualized the land question in two distinct but interconnected ways. First, it has recognized the gender question in agrarian reform and second, they have located it in larger issues of legal reform. Historically, the issue of land rights for women has been new. In the decade of the 80s, the land question was peripheral in both academic writings and interventionist policies till the early years of the decade of eighties. At this juncture, the women’s movement in India was pre-occupied with divergent concerns and approaches. In the 1980s, women’s organizations campaigned around specific issues and debated and disseminated theories of women’s oppression. The main concerns ranged from dowry murders and police rape to unionizing women workers. Radha Kumar says that the campaign against violence “launched” women’s movement in India.\(^8\)

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based and autonomous organizations had gained visibility. Socialist and communist parties were becoming increasingly active. Indian feminists soon found themselves trapped by "the cacophony of competing centre and right parties" and discovered the ironic process whereby an agitation gained numerical strength by being joined by political blocs but at the same time found itself constrained, intellectually, morally and strategically, by them. Feminist ideas in socialist student movements found expression in the campaign for land distribution in the Bodhgaya Movement in Bihar (1978) and the Shetkari Sanghathan's movement in Maharashtra (1980). The issue of land rights of women was widely discussed in the Bodhgaya district where women's 'shibirs' (camps) were organized. Though this was a method of consciousness raising which had earlier been used by the Maoists and which grew in the eighties to be widely used by various rural women's organizations.

The marginal presence of the land rights issue in the agenda of the women's organization was largely because the rallying point of mobilization of women was violence. Women's economic position and welfare were conceptualized in terms of wage employment, income-generating schemes and micro credit facilities. The issue of women's property ownership, particularly, land was not prioritized as it was in the pre-independence and the immediate post-independence period.

Women's organizations were skeptical and ambiguous about the implications of advocacy of independent land rights of women in the larger context. Theoretically, the Leftist understanding was based on Engels' writings that emphasized women's entry to the labour force as a necessary condition for their emancipation. They gave centrality to women's employment Left party political organizations viewed the issue in two distinct ways: first, they considered class as primary and second, they thought that the advocacy of individual property rights to be contradictory to their understanding of a socialist society. The paradox is that they did not raise similar objections to redistributive land reform measures that endowed rights in land to landless households through titles to male.

Inspite of such trends of marginalization of the issue, there were scattered attempts to argue for a gender perspective on the land question. The pressure of the
women’s movement to recognize women’s rights to land and the legitimization of their demands in the Sixth Five Year Plan (1980-85) gave fillip to the agenda. The Eighth Five Year Plan (1990-95) documented the need to reform inheritance laws give women equal rights and also directed the state governments to allot 40 percent of ceiling surplus land to women and the rest as joint titles. Policy intervention was important for the resurgence of interest in land reform and agrarian question in the recent years. Bina Agarwal’s book, “A Field of One’s Own” was one example of individual women’s attempt to discuss land rights of women. Its impact on the government was found in the government’s recommendations in the Ninth Five Year Plan (1995-2000). Its commitment was towards developing “the strategies for agricultural development that will focus on the social objectives of employment generation, food and nutrition security, gender equality, poverty alleviation and environmental sustainability. An attempt will be made to bring about effective coordination between agricultural programmes and rural programmes. Women's rights in land will be recognized and women will be given preference in group activities for land conservation and improvement.”

9 On the question of implementation of land reforms, it visualized the restructuring of the agrarian economy in a way conducive to higher rates of agriculture growth with greater equity in the distribution of gains from it. It also laid emphasis that “preference should be given to poor, especially women with respect to wastelands and common property resources.”

10 The National Perspective Plan for Women 1988-2000 A.D., drawn up at the initiative of the Indian Ministry of Human Resource Development, made several substantive recommendations for closing the gender gap in access to land. In 1997, the Ministry of Rural Areas and Employment constituted a Committee on Gender equality in Land Devolution in Tenurial Laws to reform rules governing the inheritance of agricultural land. Agriculture was a state subject and this led to discrepancy in practices in devolution rules. States had different devolution rules

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9 Government of India, Ninth Five Year Plan, Planning Commission, New Delhi.
10 Ibid.
which largely reflected customary practices that were gender discriminatory. Despite gender progressive recommendations, not many states have reformed the devolution rules except for Madhya Pradesh and Uttar Pradesh. In Madhya Pradesh, the policy of joint titles to women has been followed. In Uttar Pradesh, an amendment to the Uttar Pradesh Land Reform Act of 1950 has equalized the position of widow with the son in inheritance of agricultural land. Such initiatives viewed the empowering potential of land rights of women land rights for providing livelihood security and gender justice.

The National Policy for the Empowerment of Women, 2001 also outlined the need for gender mainstreaming in the development process. The Policy acknowledged that the differential access of women particularly those belonging to weaker sections to productive resources. It elaborated that the policies, programmes and systems will be established to ensure mainstreaming of women’s perspectives in all developmental processes, as catalysts, participants and recipients. It further commented that the evolution of property rights in a patriarchal system has contributed to the subordinate status of women. The Policy encouraged changes in laws relating to ownership of property and inheritance by evolving consensus in order to make them gender just.

In the more recent years, the land rights issue has been placed in the agenda of women’s organization through the debates on the need to for legal reform in inheritance laws that also govern land ownership. In the more recent years, the land rights issue has been placed in the agenda of women’s organization through the debates on the need to for legal reform in inheritance laws that also govern land ownership. On a similar argument for legal reform, the central government mandated the Indian Law Commission to recommend changes in the Hindu Succession Act. Based on the Commission’s Report, the Hindu Succession Act was introduced in the Rajya Sabha in December 2004. The Bill’s recommendations reflected the shortcomings of the Law Commission’s Report. It was partial in its vision for gender justice. It followed the pattern of reform as it was in Maharashtra, Andhra Pradesh and Tamil Nadu. It made the then-unmarried daughters as coparceners like sons in
Mitakshara coparcenary and did not ask for any reform in agricultural land or the freedom of testation. Such gender unequal recommendations instigated women’s groups and civil society to be partners in mobilizing support for legal reform.

One of the premier national level women’s organizations, All India Democratic Women’s Association (AIDWA), had been particularly active in the recent reform process for amending the Hindu Succession Act, 1956. The support from the ruling party, the Congress under the leadership of Prime Minister Manmohan Singh and President of the Congress Party and Chairperson of the National Advisory Council, also pushed for the reform of the law. Women’s organizations along with civil society debated and mobilized support for the reform through email, newspapers and newsletter articles. National consultations were held to emphasize on the need for a comprehensive reform that would remove all the gender inequalities in the Hindu Succession Act, 1956. A Memorandum was formulated by women’s organizations in Delhi in January, 2005. It was endorsed by 50 organizations and 122 individuals in the country. At the same time, AIDWA in its independent effort also submitted a Memorandum to the government. This was endorsed by five women’s organizations, including some national level ones. The unique aspect of such mobilization was that it mustered support not only from women’s groups but also permeated to include civil society groups which worked on legal reform, human rights, widow’s rights, poverty alleviation, people’s rights, livelihoods, housing rights etc. The broadening of the base of support clearly gave it the advantage of being the representative of various interests that integrated with gender concerns. In both the cases, the focus was on the demand for equal rights in inheritance of agricultural land, abolition of the Mitakshara coparcenary system and restrictions on the testamentary power to will away all property. The difference between the two memorandums was in their approach to the question of restrictions sought for the use of testamentary power.

The interaction between women’s organizations, civil society and the state evolved as a bargaining space for women’s inheritance rights. At the level of negotiation with the Parliamentary Standing Committee on Law and Justice, the
Chairman Mr. Natchiappan was receptive to the demands made by women’s groups and civil society, as mentioned in Appendix IV. The Natchiappan Report incorporated inputs from such groups in negotiating the terms of the Bill on Hindu Succession Act. However, the bargaining with legislators was problematic as the Bill involved removing gender imbalances in agricultural land. Land was a political issue and entrenched property interests would be affected. Bina Agarwal observes that since the Bill was tabled on the last day of the monsoon session, the speed with which it was passed proved favourable. The support of significant state actors neutralized the vested property interests. The lack of familiarity with the Hindu Succession Act and appropriate legal knowledge created much confusion about the centre-state relations in respect of inheritance of agricultural land. All these factors compounded to the smooth passing of the Hindu Succession (Amendment) Act, 2005. The role of the women’s movement in partnership with other allies, civil society and state, thus paved the way for the enactment of reformed property laws in India.

The women’s movement has now engaged with the government on the issue of bringing back land reforms to the centre-stage of politics. Various representations by local women’s groups and consultations have compelled the government to look in to a gender perspective on land distribution. In response, the Government has constituted in January, 2008, a National Council for Land Reforms comprising eminent people drawn from different walks of life and with the Prime Minister as the Chairman. Simultaneously, a Committee on State Agrarian Relations and the Unfinished Task in Land Reforms was also constituted. Women’s organizations are actively participating in the deliberations of the two committees so that women a comprehensive policy on land reforms can be formulated sans the gender inequalities. Women’s movements have contributed to the politicization of women’s interest in

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12 The researcher participated in the Consultative Meeting on Women’s Concerns in Land Reforms at NIRD, Rajendranagar, Hyderabad, 17th-19th September 2008. Women’s organizations, civil society, individuals participated in large numbers to discuss the complex ways in which land rights can enable women to transcend patriarchal constraints. Recommendations were made on the need to reconstitute the terms of the land reform agenda. Propositions for amending land legislation, linking disinheritance with other matrimonial laws, negotiating with customary practices to include women, documenting best practices in agriculture and recognizing women’s contribution to work were made
land. It has placed women's centrality in diversified livelihood strategies and increased their political agency.

THE CONTEXT OF WOMEN IN AGRICULTURE

Rural Indian women are extensively involved in agricultural activities. But when it comes to the question of access and control of the land they cultivate, they are systematically marginalized. Women's contribution to the production system in the rural sector is not supported by their rights in land. While women constitute a very large section of primary producers in the rural sector and participate in agriculture and allied activities all the time, they are hardly ever acknowledged as labourers. Here, the reference is to under-valuation of her work in the household and also her direct contribution to family income as a worker participating in land preparation, seed selection and seedling production, sowing, weeding, transplanting, threshing, winnowing and harvesting. Despite their increasing participation rates, women's productive role remains invisible in so far as her contribution as peasant, agricultural labourer or rural primary producer is concerned. The work she does it often unpaid as it is part of family labour or it is underpaid. It is because of the widespread devaluation of women's work that her rights remain unacknowledged. This relation between women's access and control of land and perceptions of women's contributions to income for land are linked to women's bargaining power in intra-household decisions and external participation.

Women's land rights have to be contextualized in the broader trends that have affected agriculture in the recent past. The pressure of globalization, the failure of recent structural policy changes and the reversal of earlier policies of enhancing food security and self-reliance has led to a crisis in the agrarian sector. In the following sections, some major developments that have impacted women's work in agriculture have been discussed. Broadly, they are feminization of agriculture, out-migration of males, increasing female headed households and the growing non-profitability in agriculture.
In overall farm production, women’s average contribution is estimated at 55% to 66% of the total labour with percentages, much higher in certain regions. In the Indian Himalayas a pair of bullocks works 1064 hours, a man 1212 hours and a woman 3485 hours in a year on a once hectare farm, a figure that illustrates women’s significant contribution to agricultural production. Globalisation has brought with it a visible shift from agriculture to capital intensive systems and consequently, women have to bear disproportionate burden of displacement and health hazards. Women carry the heavier work burden in food production, and because of gender discrimination get lower returns for their work.

### Table 3.1


<table>
<thead>
<tr>
<th>Categories of worker</th>
<th>Rural</th>
<th></th>
<th></th>
<th>Urban</th>
<th></th>
<th></th>
<th>Combined</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Female</td>
<td>Male</td>
<td>Total</td>
<td>Female</td>
<td>Male</td>
<td>Total</td>
<td>Female</td>
<td>Male</td>
<td>Total</td>
</tr>
<tr>
<td>Cultivators</td>
<td>36.46</td>
<td>42.19</td>
<td>40.14</td>
<td>4.26</td>
<td>2.99</td>
<td>3.21</td>
<td>32.51</td>
<td>31.34</td>
<td>31.71</td>
</tr>
<tr>
<td>Agricultural labour</td>
<td>43.4</td>
<td>27.48</td>
<td>33.20</td>
<td>11.03</td>
<td>3.42</td>
<td>4.71</td>
<td>39.43</td>
<td>20.82</td>
<td>26</td>
</tr>
<tr>
<td>House hold industry</td>
<td>5.44</td>
<td>2.83</td>
<td>3.77</td>
<td>12.93</td>
<td>3.50</td>
<td>5.10</td>
<td>6.36</td>
<td>3.02</td>
<td>4.07</td>
</tr>
<tr>
<td>Other workers</td>
<td>14.70</td>
<td>27.49</td>
<td>22.90</td>
<td>71.77</td>
<td>90.09</td>
<td>86.98</td>
<td>21.70</td>
<td>44.82</td>
<td>37.52</td>
</tr>
<tr>
<td>All workers</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
<td>100.00</td>
</tr>
<tr>
<td>Total workers</td>
<td>111.46</td>
<td>199.20</td>
<td>310.66</td>
<td>15.59</td>
<td>76.26</td>
<td>91.86</td>
<td>127.05</td>
<td>275.46</td>
<td>02.51</td>
</tr>
</tbody>
</table>


With occupational change and out-migration of male members of the household, women are getting more and more involved in agricultural work. The Tables 3.1 shows that amongst rural women, the percentage of marginal workers (defined as working for less than 183 days per year) has increased significantly from 8.1 per cent in 1991 to 14.2 percent in 2001. During the same period, there was a sharp fall in the percentage of main workers (more than 183 days a year), especially male workers, coming from rural areas. The Tables thus show a casualization and
feminization of the workforce in rural areas, with the number of marginal women workers becoming larger and more significant, while male main workers in rural areas have declined.

Table 3.2

Per Thousand Distribution by Household Type for each Size Class of land cultivated for Women-headed Households in Rural Areas (1999-2000).

<table>
<thead>
<tr>
<th>Size class of land cultivated (in hectares)</th>
<th>Self Employed in</th>
<th>Sub total</th>
<th>Agricultural laborer</th>
<th>Other labour</th>
<th>Sub-total</th>
<th>Other</th>
<th>Total</th>
<th>Per 1000 distribution of household</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Agriculture</td>
<td>Non-agriculture</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0.00</td>
<td>16</td>
<td>105</td>
<td>121</td>
<td>391</td>
<td>88</td>
<td>480</td>
<td>397</td>
<td>1000</td>
</tr>
<tr>
<td>0.01 - 0.40</td>
<td>321</td>
<td>66</td>
<td>388</td>
<td>276</td>
<td>61</td>
<td>336</td>
<td>275</td>
<td>1000</td>
</tr>
<tr>
<td>0.41 - 1.00</td>
<td>614</td>
<td>41</td>
<td>656</td>
<td>160</td>
<td>26</td>
<td>187</td>
<td>156</td>
<td>1000</td>
</tr>
<tr>
<td>1.01 - 2.00</td>
<td>720</td>
<td>16</td>
<td>736</td>
<td>114</td>
<td>9</td>
<td>123</td>
<td>141</td>
<td>1000</td>
</tr>
<tr>
<td>2.01 - 4.00</td>
<td>815</td>
<td>15</td>
<td>830</td>
<td>16</td>
<td>0</td>
<td>16</td>
<td>134</td>
<td>1000</td>
</tr>
<tr>
<td>4.01 &amp; above</td>
<td>905</td>
<td>38</td>
<td>943</td>
<td>0</td>
<td>23</td>
<td>23</td>
<td>34</td>
<td>1000</td>
</tr>
<tr>
<td>All</td>
<td>221</td>
<td>81</td>
<td>302</td>
<td>310</td>
<td>68</td>
<td>378</td>
<td>318</td>
<td>1000</td>
</tr>
</tbody>
</table>


Table 3.2 shows that the average size of female headed households is smaller than men headed households. In fact, out of 1000 household of women cultivator 909 are headed by women having less than one hectare. The conclusion from a reading of Table 3 and 4 shows that with the pressure of population on land, the average size of land holding is declining. It raises questions about the how much land actually contributes to household livelihoods. The place of women as contributors to agrarian production systems is vital to the understanding of their marginalization in the economy.
Table 3.3
Average Area of Land Possessed and Average Household Size by Size Class of Land and Sex of the Head of the Household (Rural Areas), 1999-2000.

<table>
<thead>
<tr>
<th>Size Class of Land</th>
<th>Men Per 000 distribution of hh</th>
<th>Average area of land</th>
<th>Women Per 000 distribution of hh</th>
<th>Average area of land</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00</td>
<td>70</td>
<td>0.00</td>
<td>83</td>
<td>0.00</td>
</tr>
<tr>
<td>0.01-0.40</td>
<td>492</td>
<td>0.09</td>
<td>668</td>
<td>0.07</td>
</tr>
<tr>
<td>0.41-1.00</td>
<td>197</td>
<td>0.67</td>
<td>137</td>
<td>0.63</td>
</tr>
<tr>
<td>1.01-2.00</td>
<td>121</td>
<td>1.39</td>
<td>62</td>
<td>1.4</td>
</tr>
<tr>
<td>2.01-4.00</td>
<td>77</td>
<td>2.64</td>
<td>34</td>
<td>2.64</td>
</tr>
<tr>
<td>Above 4.01</td>
<td>42</td>
<td>7.23</td>
<td>16</td>
<td>6.78</td>
</tr>
<tr>
<td>Total</td>
<td>1000</td>
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<td>1000</td>
<td>0.42</td>
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<tr>
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<td>1227336</td>
<td>-</td>
<td>143461</td>
<td>-</td>
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</tbody>
</table>


As pointed out in Table 3.3, while 94.3 percent of women headed households were small and marginal landowners (less than 2 hectares) in 1993-94, this increased to 95 percent by 1999-2000. In case of male-headed households, there was a sharper decline from 14.9 percent being medium and large farmers to only 11.9 percent. Thus, for both female and male headed households the average size of landholding has declined though the quantum of land owned by women is about half that of men. 13 There is also a trend of rapid increase in the number of female headed households over the period as also an increase in the proportion of women-headed households to total households. Such an observation definitely points to the feminization of agriculture and therefore the urgency of recognizing women’s productive labour in agriculture and asserting their rights in land.

According to Census of India 2001, there are about 402.5 million rural workers of which 127.6 million are cultivators and 107.5 million are agricultural labourers. In other words pure agricultural workers constitute nearly 58.4 per cent of the total rural workers, of which 31.7 percent are owner cultivators and 26.7 percent are mainly agricultural wage earners. The latest available agricultural census data also reveal that about 78

percent of operational holdings in the country are marginal and small, having less than 2 hectares. About 13 percent holdings have 2 to 4 hectares and 7.1 per cent have 4 to 10 hectares of land. The relatively large holdings above 10 hectares number only about 1.6 percent of the total operational holdings. However, of these, 1.6 per cent of the large holdings occupy about 17.3 per cent of the total area, while 78 percent of holdings which are less than 2 hectares, operate only about 32.4 percent of the total area. This speaks of inequality in the distribution of operational holdings. Also there is inequality of income between agricultural and non-agricultural workers, which is evident from the fact that percentage share of agriculture in current total GDP is only 24.2, while the percentage share of agricultural work force to total work force comes to about 60 percent.

The Agricultural Census data clearly bears out the fact that Indian agriculture is dominated by small and marginal farms, which are basically subsistence farmers. They provide mainly for self consumption. However, some of these farmers have to sell their produce immediately after harvest at low prices and buy the same products later at high prices. According to 55th of National Sample Survey, agricultural labour households constitute nearly 32.2 percent of the total rural households. The self-employed in agriculture account for 32.7 per cent of the total rural households. In fact, the proportion of agricultural labour households increased from 30.3 per cent in 1993-94 to 32.2 percent in 1999-2000. While that of cultivating (self-employed) households declined from 37.8 percent in 1993-94 to 32.7 per cent in 1999-2000. The proportion of female-headed households increased from 9.7 per cent in 199394 to 10.4 percent in 1999-2000. Nearly 62.6 per cent of the rural households belonged to less than Rs. 470 monthly per capita expenditure class. Nearly 4.6 percent rural households reported that none in the family was having any work, 27.7 per cent reported that only one male member was, usually working, while 27.8 households indicated that one male and one female member were usually employed.

Of the female households, 22.8 percent reported that none of their person was usually employed and 39.6 percent mentioned that only one female member was usually working. The NSSO data further revealed that 7.2 percent of the rural households did not possess any land and 51 percent households possessed less than 0.4 hectare. About 19.1 percent household possessed between 0.41 and 1 hectare and 11.5 percent between 1.01
and 2 hectare. Only 11.2 percent possessed land above 2 hectare. Thus by and large Indian farming is dominated by small and marginal farmers. In fact, the proportion of rural households not possessing any land or which possessed less than 0.4 hectare land was quite high in the states of Bihar, Goa, Maharashtra, Sikkim and Tamil Nadu. Also the proportion of agriculture labour households was quite high in some of these states. It was 38 percent in Bihar, 41.7 percent in Maharashtra and Karnataka and 45.2 percent in Tamil Nadu.

According to the Census of India (2001), there are nearly 127 million cultivators, 107.5 million agricultural labourers and 6 million other farm workers engaged in livestock, forestry and plantations. Of the total agricultural labourers, 38.0 per cent were female and 61.9 percent male workers. Also among livestock, forestry and plantation workers, 78.3 percent were male workers and 21.7 percent were female workers. About 99.2 percent of agricultural workers were reported to be unorganized and unprotected. The effects of increased commercialization of agriculture are impacting on women labourers in certain more indirect ways. While consumer goods, advertisements, video parlors, television, etc. have invaded villages; increasing seasonal migration has also exposed rural workers to more affluent areas and to cities. One of the noticeable impacts of this is an increased desire for consumer goods. Spiraling demands for dowry are seen as one of the easiest and fastest ways to meet this desire. Dowry is thus spreading to communities where it did not exist before. In tribal families, where a bride price was the practice, the girl’s family now has to buy the groom all the goods that make a fat dowry. The bride price is only a token. Mortgaging and selling of land to meet the dowry demands of the bride groom’s family has become an important mechanism by which poor and marginalized farmers lose their land. A study on land rights for women in West Bengal recently found that 39.9% of the households surveyed have had to part with land or raise loans at high interest rates in order to pay dowry. In addition, the people who were selling or mortgaging their lands for dowry were agricultural labourers and marginal farmers.  

In the present dispensation there has been a decline in occupations associated with allied sectors, particularly with the privatization of the commons, forest, water and forest.

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14 In an interview with Dr. Jayoti Ghosh, who quoted the study in 2007.
These were the spaces that had been used by women extensively for domestic purposes as well as home based production of various kinds. With diversion of lands to corporate farming and for non-agricultural purposes such as setting up of SEZs, the common land is becoming inaccessible for women in the rural settings. Women’s livelihood issues are intimately connected to access to natural resources like land.

The agrarian transition in India has been a gendered process. A fall out of such a transition has been the movement of labour from agriculture to non-agriculture. This has had a gender specific impact. The male workers have shifted out of agriculture. The substantial dependence of women on agriculture for sustenance has increased along with their growing participation in agricultural work. Women constitute 40 percent of the agricultural workforce and their percentage is rising. Today 53 percent of all male workers, 75 percent of all female workers and 85 percent of all rural workers in agriculture. An estimated 20 percent of rural households are de facto female headed due to widowhood, desertion or male out-migration. The agrarian distress and its impact on farmers is witnessed in the alarming rise of peasant suicides. There have been approximately 16,000 suicides by farmers per annum between 1997 and 2006 owing to the volatility of the market and ensuing indebtedness and destitution. The fact that two-thirds of these suicides are by male of farmers indicates the growing number of female headed households in this sector. This has led to the feminization of agriculture. Therefore, building the case for greater need for the issue of property rights in land for women.

Women’s non agricultural employment has been decreasing over the decades. The gender gap is increasing as the non agricultural sector is not homogeneous and the nature of work varies from being skilled and highly remunerative to unskilled and low paid. Women in such a situation have been recipient of the lower category. A Report of the National Commission on Self Employed Women and Women in Informal Sector suggests that women’s engagement in the non farm sector has been low paying. In spite of this, women’s productive role remains largely invisible in so far as her contribution as peasant, agricultural labour, rural primary producer is concerned. The

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gross devaluation of women’s work is reflected in the unpaid and unremunerative consideration of her work as ‘service’ to the family and therefore is aggregated as part of family labour. With globalization and the structural adjustment programmes in place, the impact on women’s lives has been tremendous. Such policy changes have further complicated the patriarchal framework of negotiation. The profitability on the agricultural sector has been declining over the decades. While agricultural growth rate came down to 2 percent in the Ninth Plan period and have further declined to 1.8 percent in the Tenth Plan.\(^{17}\) This has made women more vulnerable.

In such a situation where women are located in rural areas, it is significant for them to have access and control over land as a means for empowerment. The reliance on the state to mitigate in such situations of gender inequality can hardly be underestimated. State is a potential source of arable land. It needs to reconceptualise land reforms as a means to create conditions in which people can construct livelihoods from a variety of sources, both agricultural and non-agricultural in more effective and productive ways.

And yet, while the trends towards democratization have revitalized the national debate on agrarian reform and provided greater voice to women’s advocates, the dominant anti-state rhetoric does not bode well for women and nor are there any reasons to believe that, in such a situation, processes of devolution and decentralization will necessarily enhance equity and gender justice in access to resources. These trends raise many urgent questions about power configurations at the local level, and the political and institutional obstacles in ensuring greater gender equity in access to resources, particularly land.


\(^{17}\) Government of India, Ninth Plan, Planning Commission, New Delhi.
GENDER AND LAND: POLITICS OF LAND LEGISLATION AND LAND REFORMS

There are three primary sources through which women can become landowners - family, state and market. However, all these three sources are not gender bias free. The unequal land rights scenario shows how politics and structure intersect each other to justify gender inequality. But the potential in creating agency remains an untapped resource. Land rights to women through the first channel of operation, i.e., family is achievable when women get rights in landed property through inheritance. The Hindu Succession Act is clearly the modus operandi here and has been discussed at length in chapter II of the thesis.

The role of the state in distribution of land is an important space which can be used in a positive way for women’s land rights. Land reform was initiated as an instrument to remove such motivational and other impediments to an increase in agricultural production as arises from the agrarian structure inherited from the past and secondly, to eliminate all elements of exploitation and social injustice within the agrarian system so as to ensure equality of status and opportunity to all sections of the population. While delineating the land policy, the First Five Year Plan noted: “Problems of the land reform may be viewed in two ways, namely, (i) from the point of view of agricultural production and (ii) from the point of view of different interests in the land. The first aspect is the subject of land management legislation and the second of land reform legislation. To fulfil its broader objectives, land policy should include both the elements, for it is only in an economy in which production and employment expand, that the community can fully realize the benefits of changes in social and economic structures. Although between the two aspects of policy, there is no conflict of principles land reforms will be fruitful in the measure in which each step is marked by balance of emphasis.”

Land reforms were initiated in three different phases after Independence. During the late 1940s and 1950s the main agenda was to abolish the intermediaries. The second phase, which was started just after this aimed at eradicating tenancy, especially sharecropping. In the third phase which started from the Second Five Year Plan onwards,

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20 Government of India, 1951.
the priorities were to regulate the size of the holdings that an individual could possess through the land ceiling legislation and then distribute among landless labourers and marginal farmers the surplus land generated.

**LAND LEGISLATION**

Legislation designed to redistribute agricultural land among the rural populations, either by granting title to individual owners or use rights to individuals or groups collectively, is responsible for keeping women a landless class. 21 There are mainly two factors that have led to a distinct disjunction between women's legal right in property, in general and their rights in agricultural land. First, legislature powers are divided between the Union and State legislatures under the federal principle and on enactments relating to agricultural land, the state governments continue to have considerable legislative powers. According to the Constitution, agriculture is a state subject. The Union government only gives directives and the required support; it is the responsibility of the state governments to pass legislation related to land rights, revenue and other aspects of agriculture. Legislation affecting women's rights in certain categories of agricultural land varies by states reflecting regional differences in social histories, norms and practices. Second, land reform policies have been undertaken with the primary twin objectives of ensuring redistributive justice and on arguments regarding efficiency but interestingly both overlooked the inherent gender inequalities in such public land distribution efforts of the state.

Since independence, state legislatures have been entrusted with the power to enact land laws but subject to some restrictions. Under the Constitution of India, if the state legislature wants to modify any laws on topics which have been included in the 'Concurrent List' of the Constitution and which have already been enacted by the Parliament, the modification need the assent of the President of India. The Hindu Succession Act of 1956 is one such piece of legislation. Hence, if states want to pass laws modifying the Hindu succession rules for owned agricultural land this will need the

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President’s consent. However, state legislatures can continue to enact laws relating to
tenancy rights, ceiling laws, etc. (which are excluded from the Hindu Succession Act.),
without needing such assent. What this has meant is that woman’s legal rights in
agricultural land still shows vast disparity by region, especially in relation to two factors:
(1) Devolution rules for land deemed to be under ‘tenancy’; and
(2) Rules regarding the fixation of ceilings and the forfeiture of surplus land above the
ceiling limit.

Devolution of Agricultural Land under Tenancy

The importance of tenancy as a component of land reform calls for an urgent need to
revisit the debate on it. The states can be broadly classified into two major groups—those
which recognize tenancy and regulate its conditions, including rent, period of lease etc.
and those which prohibit tenancy outright. There is evidence that despite prohibitions,
tenancy exists significantly. Historically tenancy arrangements have been informal, short
term and insecure. More often than not, such tenancies were exploitative and lacked any
legal protection. The Famine Inquiry Commission of 1944 has documented that farmers
who were share-croppers were subject to arbitrary eviction and rack renting.

Despite legal restrictions on land leasing, people lease out and lease in
agricultural land on informal basis in almost all regions of the country. According to the
60th Round of National Sample Survey, the leased-in area formed about 7 percent of the
total operated area, while 11.5 percent of the rural households leased- in land. However,
there are other micro studies that point out that the NSS data only partially captures the
incidence of tenancy which varies between 15 to 35 percent. Informal tenants who do not
have any security of tenure fail to cultivate land efficiently. The NSSO data has further
documented that share-cropping continues to be the dominant form of leasing in most
states, while in relatively developed states of Haryana, Punjab, Uttarakhand, Tamil Nadu,
Andhra Pradesh and in most irrigated areas, fixed cash tenancy is more common. About
90 percent of the leased in area is unrecorded and informal. At all India level, 35.8
percent of the total rural households leasing in land are landless labourers and 47.5
percent have land below 0.5 hectares and 8.2 percent have land between 0.5 to 1.0
hectares. Therefore, more than 90 percent of total number of tenants belongs to the
category of landless labourers and marginal farmers. Nearly 57 percent of the leased in area in Kharif season and 54 percent in Rabi season were not short term leases, i.e., for less than 2 years and did not have any tenurial security. The restrictive nature of Tenancy is elaborated in Appendix III.

Sharma in his study of Palanpur village of Moradabad district in Uttar Pradesh finds out that 28 percent of all cultivated land consisted of leased area.23 Out of 143 households, 106 were either leasing out or leasing in or both. However, the main factors influencing leasing out land ranged from response to change in family labour availability, drought powers, cash resources, debt situation etc. Improved access to land and access to additional income for livelihood were major concerns. Another study of Uttar Pradesh’s districts of Ghazipur, Aligarh, Jalaun and Sitapur also testifies that 95 percent to 100 percent of the total lessees were marginal and small farmers.24

Nielsen et al in a study of land leasing by women Andhra Pradesh showed that large rural population decide to lease in land to improve the well being of their household as it adds to their income and improves their family sustenance options.25 Sometimes it also enables them to diversify their resources of food crops and reduces their reliance on wage labour. Cash based land leases is beneficial to land owners. The sharecroppers however have limited bargaining power. Nevertheless, women self help groups and land owners freely negotiate the leases and the agreed terms and conditions of lease are economically driven.

The Hindu Succession Act of 1956 exempted from its purview tenancy rights in agricultural. Consequently, there is a major problem in several states between state land enactments affecting the devolution of certain categories of agricultural land and the personal laws affecting the devolution of all other property. The orders of devolution relating to land held under tenancy differ both according to succession rules and the personal laws in many states. As noted in Appendix III of the thesis, the tenurial laws in North -west Indian states like Haryana, Himachal Pradesh, Jammu and Kashmir, Delhi

23 Naresh Sharma, Tenancy, Poverty, Inequality and Land Reforms, in Proceedings of the Workshop on Land Reform and Rural Poverty, August 10-11, LBSNAA, Mussorie, 2004
and Uttar Pradesh the specificities of devolution shows a strong preference for agnatic succession, with the priority for agnatic males. In all these states the tenancy devolves in the first instance on the male lineal descendants in the male line of descent. The widow inherits only in the absence of male heirs. In addition, in the first four states mentioned, daughters and sisters are actually excluded as heirs. In Delhi and Uttar Pradesh daughters and sisters are recognized but are placed low in the order of heirs. Moreover, in these six states, a woman can hold only a limited interest in land, in that after her death the holding goes not to her heirs but to her heirs of the last male landowner. She also loses the land if she remarries or abandons the land that is she fails to cultivate for a specified period, usually a year or two.

There are states where the personal laws determine the devolution of tenancy laws. These states include Rajasthan and Madhya Pradesh. Here, personal laws apply to all communities. In the Telengana region of Andhra Pradesh, the Hindu Succession Act applies to the Hindus. Daughters have however been recognized as heirs in a few judgments in Rajasthan. Again, there are states such as Gujrat, Bombay region of Maharashtra, West Bengal, Karnataka, Kerala, Karnataka, Andhra region of Andhra Pradesh and Tamil Nadu, in which personal laws apply as they do not specify the order of devolution in their laws dealing with tenancy land. Bihar and Orissa are two such state where tenancy acts specify that occupancy rights shall devolve in the same manner as other immovable property, “subject to any custom on the contrary”. Second, in most states, the land reform laws dealing with owned land do not mention the order of devolution at all. There are some states which broadly provide a definition of ‘tenants’. For example, in Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, there is preference given to male lineal descendants. In fact, it is interesting to not that Uttar

26 In U.P. although the deceased man’s widow comes only after the male lineal descendents in the male line, the sonless widow of male lineal descendents counts among the first order heirs and inherits her deceased husband’s share provided she has not remarried.

27 Section 40 of the Andhra Pradesh (Telengana area) Tenancy and Agricultural Land Act 1950 says that the tenancy of the protected tenant will devolve on “his legitimate lineal descendants by blood or adoption and in the absence of any such descendants, his widow for so long as she does not marry”. In case of conflict with the Hindu Succession Act of 1956 the succession the separate property of the Hindu tenant will be according to the Hindu succession Act.

28 For the region of Maharashtra also, there is no clear specification of the order of devolution.

29 Bihar Tenancy Act 1885 and the Chotanagpur Tenancy Act of 1908.
Pradesh which contains one-sixth of country's population, has majority of its agricultural land as legally inheritable principally by males. (Appendix IV)

Fixation of Ceilings and Assessment of Surplus Land

Land ceiling as a redistributive programme is of as much relevance today as it was fifty years ago. There are various estimates on the potential of availability of ceiling surplus land. The NSS Report on Household Ownership Holding (2003) finds that 80.40 per cent of the farming community comprising the small and marginal categories own 43.50 per cent of the land area, the medium and large farmers who constitute 3.5 per cent own 37.72 per cent of the total land. The States so far have declared 2.7 million hectares surplus out of which 2.3 million (87 per cent) hectares were taken possession of and 1.9 million hectares were distributed to 5.5 million households (37 per cent to the Scheduled Castes and 16 per cent Scheduled Tribes). There has been no further progress in the implementation of land ceiling legislations. The estimates of LBSNAA put the potential of ceiling surplus land at approximately 21 million hectares.

Land reform enactments have not been gender neutral. In fact, the fixation of ceilings has reflected assumptions of a male ideology, which systematically undermines women's agency.30 There are some general characteristics, which are found in these enactments. First, a ceiling is fixed in relation to a family unit consisting up to five members. Additional land is however, allowed to families of over five members, subject to a specified maximum. Again, in most states special consideration is given to adult sons. The definition of 'family', additional allotments for adult sons but not daughters and in not allowing the wife to be counted as an independent unit where the husband is counted as one- are some of the factors responsible for the entrenchment of gender inequalities in land reform legislation.

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30 'Agency' is defined as the ability to define one's goal and act upon them. Agency is about more than observable action; it also encompasses the meaning, motivation and purpose, which individuals bring to their activity, their sense of agency, or 'the power within'. While agency tends to be actualised as decision making in the social science literature, it can take a number of other forms. It can take a number of other forms. It can take the form of bargaining and negotiation, deception and manipulation, subversion and resistance as well as more intangible, cognitive process of reflection and analysis. It can be exercised by individuals as well as collectivities.
There is inter-state variation in the definition of 'family'. Appendix V of the thesis shows the definitional differences on the operational concept of 'family' in land reform enactments across the country. In the state like Haryana, Punjab, Delhi, Rajasthan, Uttar Pradesh and Andhra Pradesh, the 'family' is defined as constituted by the cultivator and his or her spouse, minor sons and unmarried minor daughters. In other states like Bihar, Himachal Pradesh and Madhya Pradesh, 'family' includes the cultivator and his or her spouse and minor children. In Tamil Nadu, it includes the cultivator and his or her spouse, minor sons, unmarried daughter and orphaned minor grand-sons and orphaned unmarried grand-daughter in the male line of descent. In Kerala it includes the cultivator his or her spouse and unmarried minor children.

In almost all states adult sons get special considerations. In Delhi, Haryana, Punjab, Uttar Pradesh, the parental household can hold additional land on account of each adult son.\textsuperscript{31} In some states like Himachal Pradesh, Bihar, Gujarat, Madhya Pradesh, Maharashtra, Andhra Pradesh and Tamil Nadu, each adult son counts as a separate unit and is entitled to hold a specified extent of land in his own right. However, in Kerala, both the unmarried and adult son and the unmarried adult daughter count as a separate unit. Unmarried adult daughters have usually not received any recognition at all. They neither count as a part of the family unit nor as separate units. Even daughters do not figure in these enactments. There continues to be no uniformity across states on these counts and gender discriminatory ceiling laws continue to prevail.

The assessment of ceiling surplus land is also gender discriminatory. The aggregation of the holdings of the land of both spouses in the category of 'family land' is indeed problematic. Although there have some guidelines which recommends that "where both husband and wife holds lands in their own names, the two will have rights in the properties within the ceiling in proportion to the value of the land held by each before the application of the ceiling",\textsuperscript{32} there has been arbitrariness in deciding how much land would be declared surplus and forfeited. As a result the wife's right in land has been forfeited without her having a say in the matter. From this discussion it is evident that

\textsuperscript{31} In Haryana, the allotment for the adult son is made to the parents if the son is living with the parents but he counts as a separate unit if living separately.

there is a strong case for re-examining and amending the existing land related laws across the country to ensure uniformity and gender equality in rights to this critical economic resource in the context of growing landlessness (as elaborated in Appendix VI). One aspect of woman friendly land reforms would have to focus on ensuring the ownership rights of women and single women headed households in case of both agricultural and homestead property.

Customary Laws and Practices and Land Rights

The existence of customary laws in contradiction to state laws creates an anomalous situation. Such customary practices are often sanctioned by the state. Many customary practices effectively limit women’s capacity to assert their legal rights over property and the state legitimizes the subordination of women’s rights in agricultural land and other property, by retaining such customary laws of various regions.

In Punjab and Haryana, the custom of ‘karewa’ in which widow is accepted as wife by one of the younger brothers of the deceased husband or the husband’s elder brother, or his agnic first cousin, has not only led to the problem of polygamy and mismatches marriages but also restricted the widows’ right to determine who she wants to marry. The primary reason to continue this custom is to retain land and property within the family. The purpose is to transfer the control of land from the widow who succeeded life estate in the absence of male descendants, to her husbands’ brother to a patrilineal family member. Though the Hindu Succession Act 1956 granted absolute right of inheritance to widows instead of the earlier limited ownership, which she could not be deprived of even after her remarriage, the practice of ‘karewa’ still continues to be widely legitimized.

The manner in which the state has contributed to reinforcing ‘karewa’ in rural areas can be seen from the directive issued by the Ministry of Defence and Finance in a letter dated November 24, 1972 which stated: “In the case of officers, as well as the Junior Commissioned Officers (JCOs) and Other Ranks (ORs) if a widow remarried her deceased husband’s own brother and continues to live a communal life with and/or contributes to the support of other eligible heirs, she will continue to be eligible for the special pension. On remarriage with any other person, the widow will forfeit her right to
the special family pension but will be given pension equal in amount to the ordinary family pension as though the serviceman has died in normal circumstances. The directive also applies to special assistance provided by different states like Punjab, Bihar, Uttar Pradesh and Rajasthan which have allocated little surplus land on a priority basis to war widows. Clearly, such a directive resulted in strengthening of ‘karewa’.

**LAND REFORM: THE QUESTION OF ‘WOMEN’**

The state distributes land in various ways: as part of traditional land reform measures, typically taking away land from those owning more than specified ceiling and endowing the landless with the ceiling surplus land and in resettlement schemes as compensation for land lost due to displacement. Both these forms of distribution are gender biased. The macro-level analysis in this section of land redistribution programmes to bring visibility to the problems connected with women’s struggles for land and survival.

The experience of land reforms in India reflected some structural contradictions which constrained the realization of women’s equal rights to productive resources in the agrarian contexts. Land reforms were introduced in India in the decade of the 1950s. While the national guidelines were laid down and many of these measures could not be challenged by any state in the Indian Union, land reform was made a state subject. Each state could decide on the procedure and implementation within these broad national principles. The land reform measures adopted by the Indian Union or respective states are not in accordance with any personal law of any community. In matters of inheritance, marriage, divorce, adoption and maintenance or spousal support, personal laws prevail over their jurisdiction. However, the study revealed that women across communities continue to share similar experiences when it comes to being recognized as individuals or equal citizens of the nation. Again, in matters of women’s rights to inheritance of agricultural land, states either have their own policy or refer it to the principles of personal laws. The task of the study is to understand the implications of these contradictions in realizing the demand for women’s equal rights to land and productive resources and towards the goal of individuation of rights of women.

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In comparison to the amount of privately owned land in India, the amount of land available for distribution by the government is minimal. The effects of redistribution of land have not been gender neutral. Land reforms in India have been seen to have differential impact on men and women.\(^{34}\) However, the effect of prior land distribution programmes on women’s land ownership is worth reviewing both as a cautionary tale and because opportunities may still exist in some state to amend titles for land already distributed.

What underlies the gender bias in land reform? In classic land reform terms the claimant is identified as the one who tills. As Daniel Thorner elaborated: “We may begin [land reform]….by putting forward one fundamental principal: land and the fruits thereof are to belong to those who do the tilling, the tillers being defined as those who plough, harrow, sow, weed and harvest”.\(^{35}\)

With the gender division of labour, such a definition is not all encompassing. It may hold well if applied to the household but not for individuals. Since women do not plough, they get excluded from it. Here, the ‘plough’ is a marker of power relations. The process of ‘othering’ helps to understand the construction of certain occupations as masculine and helps to explain deep seated opposition to women’s participation in them. Thus, continued gendering of institutions reinscribe notions of gender that lead to women’s subordination rather than liberation. The state defines the legitimate claimant of land as the male head of the household. Why should all the other functions and agriculture related work in which women by all accounts play a major and even crucial role be underplayed?\(^{36}\) Again, the land reform endorses the unitary household model where transfer to male is assumed to benefit all family members. The social perception underlying these policies is that women have lesser capabilities.

In the 1970s, the Committee on the Status of Women in India received many representations from women regarding the discriminatory features of some of the new land laws. In a camp of women agricultural labourers in 1980, in Bankura district in West Bengal, similar comments were made by a number of poor peasant women. In another

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\(^{34}\) K. Bardhan, ‘Women’s Work, Welfare Tradition and Change in India’, *Economic and Political Weekly*, December 24-28, 1985

\(^{35}\) D. Thorner and A. Thorner, *Land and Labour in India*, Asia Publishing House, Bombay. 1962

study of land reforms in Bihar, it has been agreed that though various progressive land reform laws have been passed, rather than enforcing the legislations the state machinery has been such as to encourage violation of the ceiling laws. There is an assumption of women’s dependency, which underlies the fixation of ceiling as well as land distribution in resettlement schemes. However, women’s interests were invariably compromised particularly because of the patriarchal and patrilineal forms of the family existing in the greater part of the country. Intra family relations were not the concern of land reform.

The Kerala land reform experience shows that despite the progressive nature of the Kerala Land Reform Amendment, 1969, the legislation addressed class concern and conveniently ignored the need to mediate gender specific constraints. The legislation chose not to intervene in the intra-family relations and thus, families had the important role to decide whose land was to be surrendered when excess was registered. In this state, where redistribution of ceiling surplus land was the least effective of the provisions and the bulk of the reform activity has long ceased, the government has barely taken notice of the central government’s directives. And though mainstream development scholarship has emphasized on the role of the land reforms in Kerala’s ‘achievements’, feminist insights have gone unnoticed. Sardamoni had warned in the early 1980s that women were a major casualty in the land reforms. In the six villages in the district of Palakkad, she found that the women owned much of the land that was either transferred due to absentee landlordism or the ceilings provision. In three of these villages, more than one-fourth of those who lost land were widows. Female agricultural labour

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37 Bihar was the first state to introduce legislation for abolishing the Zamindari system. However, The Zamindari Abolition Law was passed in 1952. Besides, there were other progressive laws like the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961; Bihar Tenancy Holding (Maintenance of Record) Act, 1973; and The Minimum Wages Notification.

38 The Kerala Land Reform Amendment Act of 1969 amended the Kerala Land Reforms Act of 1964. It abolished tenancy by enabling tenants to purchase ownership rights over leased-out land and cultivators were given ownership rights over their homestead sites. A ceiling of 10 standard acres was fixed for a family for five, which include a cultivator his or her spouse and unmarried minor children. In addition every adult member male or female was allowed to hold 7 acres of land. Unmarried adult daughters were recognized as separate units.


40 Rules under the Kerala Land Assignment Act, 1960, pertaining to the assignment of land in municipal and corporation areas were amended in 1997 to make joint pattas mandatory for married people applying for assignment of land.

grew at a much higher pace than male agricultural labour between 1965 and 1975, including the period immediately following the land reform period. This implied that while male agricultural labour grew at the same rate as rural households, female agricultural labour grew at twice the rate and thus, there was greater negative impact on women.

There is a vast gender disparity in ownership and control over landholding in Kerala. A household survey in selected localities in Thiruvananthapuram revealed that only 21 percent of women owned land, though 30 percent owned a house.\(^\text{42}\) Statewide data from the agricultural census for 1995-96 showed a sharp disparity in the number and area of operational holding of land with men and women.\(^\text{43}\) Women hold less than a third of the number and area of operational holdings held by men, but also that as the size of holdings increase, women's share of the number of holdings and area decline. Disparity in women's landholding is more pronounced when we turn the area of holdings. In the above 10 hectares category, women hold less than 10 percent of the total operational and less than 5 percent of the area of operational holdings.\(^\text{44}\)

In a study on women's access and rights to land in Uttar Pradesh, it was found that the land reform laws, namely, the Uttar Pradesh Zamindari Abolition and Land Reforms Act (1950), Land Consolidation Act, 1954 and Uttar Pradesh Imposition of Ceiling on Landholdings Act, 1960, propelled a radical orientation towards the status of agricultural tenants.\(^\text{45}\) However, there were very few protective clauses for women and not many efforts were made to grant land rights to women. The disjuncture between land legislation and actual practice of distribution of land was evident from the fact that very few women benefited from government allotment of land.\(^\text{46}\)

\(^\text{42}\) Ibid, pp. 21.
\(^\text{43}\) However, the Agricultural Census takes the household, that is, a commensal unit, as the unit of enumeration. As the members of a single household are not recognized as joint holders, individual holdings stand in for household. Further operational holdings do not refer to title or ownership as they include, owned and tenanted holdings.
\(^\text{45}\) The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (as amended) conferred heritable and transferable rights on one class of tenants such as bhumidhars. Section 4 of the Act gave ownership rights to tenants free from all encumbrances. The intermediary interests were vested in the state. Therefore, it safeguarded the tenants' interests in land.
Upper Krishna Project (Karnataka) and the Upper Iravati Project (Orissa) - has been typically male biased. In male-headed households, all land transfers are to men alone. In the five of the six states, except Karnataka there is no provision for widows. Another five of the six have special provision for adult sons but the only two have such provision for adult unmarried daughters, in one of which the daughter has to be 35 years in age. Thukral concludes that in the policies governing Tehri dam oustees, when the woman is the ‘khata holder’ (the holder of the title) and is entitled to a plot of land together with her husband, compensation has gone to the husband. In the absence of any affirmative clauses including women, who seldom possess ownership rights, they are automatically left out. The experience of peasant struggle reveals that “by raising the question of land rights of women, rather than the peasant movement being divided, what is observed is its strengthening”. Further this has also led to greater democratization within the movement as it attacks feudal landlordism. Nathan concludes that “equal property rights for women including the right to land, are essential for women to become full participants in the movement in their own right, and to prevent the strengthening of patriarchy that would inevitably follow a successful distribution of land solely to men”.

Land distribution programmes and their implementation experience started a debate in the academic circles on whether women should be given ‘independent’ or ‘joint’ rights in land. The case for independent land rights for women in this discourse is built on the basis of several arguments, particularly issues such as welfare (security against property); efficiency (access to credit, technology and institutional support which increase productivity) and equality and empowerment (enabling challenges to male oppression). Gender equality and women’s empowerment in this discourse are explicitly valued as an end in itself. That land rights can improve the treatment of women from other family members by strengthening their bargaining power.

49 E. Thukral, op. cit., pp.121.
50 Ibid, pp.1501.
51 Nathan op. cit. pp. 549.
52 Ibid.
DEBATE ON INDEPENDENT, JOINT AND COLLECTIVE RIGHTS IN LAND

Conceptually, this debate deals with the problem of concretizing and realizing women's access to land. The first approach has its focus on individual ownership rights and the concept of private property is central here. It envisages women's ownership of land as distinct and separate from that of men. The second approach to the question of land rights in the form of joint titles favoured that land and agriculture as the means of construction of new forms of social relations which necessitates the understanding of the ways in which women have been historically related to land. A serious drawback of the first approach is its reliance on the state to alter existing inequities in agrarian relations. This state-centric focus runs the risk of relying on yet another legislation on land reform. The second approach on the other hand, addresses the problem of landlessness by focusing on empowering the landless and the effort is also to reaffirm and build on women's contribution in agriculture. To that extent it assumes state cooperation in making available some land for collective farming, the onus of completing the hitherto unfinished process of land redistribution gets shifted to the state and its agencies.

The question of property rights in land for women is central for livelihood systems in agrarian India. Within the 'gender and land rights' discourse, the individual rights versus joint rights in land is very important to understand the politics underlying redistribution of productive resources. Bina Agarwal argues for the 'independent' rights which are defined as rights independent of male ownership or control. She says that the conferment of independent rights would make it easier to gain control of the land in case of dispute, that women's land-use priorities are different from men's. Independent ownership rights also mean assurance of their independent right to livelihood and therefore decision making power. While theoretically, these arguments are powerful, the practical aspect is a different question altogether. Even Agarwal notes that about 86 per cent of arable land in India is already in private hands and the question of where the land to be distributed to women is to come from has to be addressed directly. On the other hand, Indu Agnihotri argues for 'joint titles' to agricultural land. She raises a practical question: "If land reform per se has ceased to be on the agenda for most political parties except those on the Left......where would the land that women should be in control of be

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made available from"?54 “According to mid-1996 figures of the Government of India the area declared surplus to date, all India came to only 3 million hectares or 1.6 per cent of the arable land and only 0.2 per cent is still available for distribution”.55 It is that even if all the land is allotted independently to women only a minute fraction of the female population would benefit.

From the debate it follows that joint titles present problems: it makes it difficult for women to gain control over the produce to bequeath the land as they want and to claim their share incase of marital conflict. Access and control of land through Joint titles rest on assumption of good family relationships many women complain that joint title implied that for retaining the land, women get tied to the man. Even if women were members of the joint patta, more often than not, the benefits of land as a productive resource were utilized by the husband. Decisions regarding production, credit and marketing are mostly taken by the husbands as they continue to be owners of other resources such as capital and cash. Women are also reluctant to ask for their share of profits from the land that have joint titles. The earning is subsumed under family income. There is no clarity as to how to divide such a title land in case of separation or divorce. Another fall out is that joint titles takes no account of women who live outside the context of marital relationships. Individual titles are not premised on such familial relationships.

Individual titles provide women with more flexibility in pursuing their own agendas. However, given some of the problems that resource-strained small landholder woemn with individual titles might confront- for example, their lack of investible funds, and difficulties of investment in capital equipment if the farm is small, an alternative model is that of group title/ patta, based on an optimum institutional arrangement that would be some collective form of investment and cultivation that would bring women smallholders together, thereby cutting across households. Agarwal says: “Group ownership of land need not of course imply joint management, just as individual ownership need not preclude joint management. For instance, women jointly holding ownership, rights in land could cultivate the land either in separate plots allocated on a

55 B.Agwal, op.cit. pp. 121.
household basis or cooperatively as a group, either each women putting in labour time and sharing the returns. Or there could be some combination of individual and group management, such as family based female cultivation along with joint investment by the women’s group in capital equipment, and cooperation in terms of land sharing, product marketing etc. Women functioning in groups would be in a better position to mobilize resource either from among themselves or through available governmental or non-governmental schemes (for investing in irrigation and other inputs). Group investment when linked with group management could further strengthen women’s hands in this respect”.

Individual titles for women thus, need to be pursued in tandem with institutional innovations to forge new form of collective investment and cultivation that reduce the risk of individual enterprise for women and yet provide mechanism for their greater independence and autonomy from male dominated households. Such institutional innovations are premised on the prior existence of active and well-funded non-governmental organizations that can act as facilitators.

It is clear from the above discussion that the question about the joint or individual titles is in fact not as straightforward as it appears. Implicitly, it is a question about the conceptualization of conjugal relations and the forces that bind agrarian household together. The two positions, by Agarwal and Indu Agnihotri in fact bring to the forefront some of the tensions within the current, second generation feminist conceptualizations of the household, where the first generation feminist critique has established in both theoretical and empirical terms, serious flaws in the previously dominant unified paradigm. While most feminists would agree that households are sites of struggle and inequality there is certainly less agreement as to how the given inequalities and tensions as well as common interest and cooperative behaviour should be understood and conceptualized. Do conflictual and bargaining models sufficiently capture the common interests that all household members have in the overall economic success of their household? What makes women stay inside the patriarchal household even though they are allocated fewer resources? Is it really pure despotism on the part of the male

56 B. Agarwal, op. cit. pp. 121.
household head and 'false consciousness' on the part of the junior household members that binds the household together.\textsuperscript{57}

These are not questions to which any definitive answer can be provided. However, the gender biases in land transfers from the state can indeed be removed if one takes into consideration the positive implications of land access to women for gender relations. This would entail the recognition of the structures and practices of families as crucial in determining gender differentiated patterns of access to land.

\textbf{GENDER PERSPECTIVE FOR LAND DISTRIBUTION}

A gender perspective which challenges the conventional economic analysis underlying the rationale of land distribution programmes can be useful to push for alternative needed to reduce existing biases in women's access to land. Conventional policy discourse neglects gender differences in several ways. An analysis of the gendered perspective will enable to build strong arguments for the case of land rights to women. The gender perspective challenges the assumption of a unitary household model which treats the household as an undifferentiated unit in which the governing principle is common preferences and interests. It highlights the role of harmony and cooperation rather unequal power relations and conflict. Consequently, economic resources have been distributed in favour of male household heads as the inherent assumption of these development policies has been that resources will be shared equitably among all members. These inequalities have taken the form of unequal allocation of productive resources as well as gendered division of labour.

The gender perspective challenges the failure of conventional economic analysis to recognize gender differences in expenditure patterns and resource use. There are a number of links between women's well-being, agency and resources on one hand and a variety of demographic and welfare outcomes on the other. There is evidence to suggest that women may use resources at their disposal differently than men.\textsuperscript{58} In fact, attempts


to explain these findings have varied between those who emphasize gender differentiated preferences and those who suggest they may reflect gender differentiated interests. The former tend to emphasize socialization processes by which women acquire a more 'connected' sense of the self and pursue more altruistic forms of behaviour while men define themselves in more 'separative' terms and display more self interested forms of behaviour. This interpretation is supported by findings from a wide range of contexts that men are likely to retain a greater percentage of their income on collective welfare. On the other hand, it has also been pointed out women's fortunes are more closely bound up with the fortune of their families and children. The ideology of maternal altruism may thus merely disguise self -interested forms of behaviour (investments in family as a form of 'social capital') or distract attention from non-altruistic forms of discrimination against daughters. Alternatively, such constraints may be used favorably by women in situation of 'patriarchal bargain'. Inequalities in access to independent resources could mean that women have a greater stake in nurturing their family networks and thus discriminating in ways that are likely to secure their status in the family.

Finally, a gender view challenges the assumption that women's class can be derived simply from their family's property status and class position. There is some truth in the fact that the living standards of women are affected by their father's or husband's class positions. But to the extent that women, even from the propertied households, do not own property themselves, their class positions remain vicarious: a well placed marriage can raise it, divorce or widowhood can lower it. Even women who are married into rich households find themselves in economically vulnerable positions when there is a breakdown of marital relationships. But when women own property and there is an such marital exigency, women's ability to challenge vulnerability strengthens.

It is within this broader understanding of households and their positioning within the social economy that the 'women and land' question needs to be placed. In some contexts and for some groups of women, mechanism that secure and extend women's rights to household land can provide appropriate form of access and entitlement, yet

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59 D. Kandiyoti, 'Bargaining with Patriarchy', *Gender and Society, 2*(3), 1988, pp. 274-290. She defines 'patriarchal bargain' as a set of concrete constraints in which women strategize in any given society that may exhibit variations according to class, caste and ethnicity.
without having to venture down the risky path of individual rights where rural power relations are less menacing. In other contexts, where rural class structures and power relations are less menacing, it may be more feasible to experiment with alternative institutional arrangements that require and enhance women's greater autonomy from male dominated households.

The unequal distribution of property rights in land has left little room for dispute that the agrarian reforms have reinforced a patrilineal framework of family relations. By constructing family created programmes where power rested male heads of households, the state seems likely to erode even further the rights which women had secured through peasant struggles. Thus, it becomes clear that in India gender relations were not fundamentally changed to enable women to have effective access to land and other productive resources. Community and social constraints have been reinforced by institutional constraints to perpetuate unequal land rights. Lack of political will and bureaucratic negligence are two important factors that are responsible for gender blind implementation of land reform. Despite gender progressive land legislations in some states, administrative machinery has successfully subverted it in favour of male entitlements to land. When legal changes and gender mainstreaming of policies are supported by political will and administrative efficiency an agency for change is possible. One needs to acknowledge that land rights are undoubtedly very important for women but at the same time with the increasing land scarcity, combined with diversified livelihood systems, conscious attempts to open opportunities and shift macro-policies to support women's work in rural economy and consequently the gendered valuations of work and worth is the need of the day.