Issues in Ownership of Land by Women

The role of unequal land rights in determining the status of different caste and caste groups in India is the subject of continuing debate. However, the impact on women’s status of their land rights is seldom fully comprehended. That is why, on the few occasions when land redistribution programmes have been undertaken in different parts of the country, land has been given in the name of male ‘head of the household’ while women have almost never received land in their own names. The patriarchal bias of the social and legal system gives rise to the assumption that once the men of a family have land, the women’s need are automatically taken care of. Just as the landless poor or marginal peasant groups are vulnerable socially and politically in the rural social life because of the marginality of their rights in land, so also women in rural India are especially vulnerable because of their lack of land rights and this is true not only to landless poor women but also of women belonging to the landed families (Kishwar, 2008:253)\(^1\).

To rural women, land rights do not just imply control over an object, that is land, but its meaning is found in social, cultural and economic terms, whether it be higher status, security against absolute poverty, the capacity to challenge male oppression and domestic violence, the ability to improve intra-household distribution of resources, the access to credit, technology, information and other services, ability to nurture the environment by determining land use priorities, or even a symbolic sense of identity and rootedness. The issue of property and land rights then, as a social construct, is also gendered, and hence becomes an indicator of balance of power, not only between classes but also between genders (Rao and Rana, 1997:1308)\(^2\).

Gender and land question has to be placed within a broader context to understand the dynamics of interface between the two. Thus this chapter aims to study the relationship between gender and land rights within the theoretical framework. It focuses on why despite legal provisions; women in rural India are not able to claim their rights to land. It also deals with their role in agricultural economy and efforts made on the part of women’s movement for women’s property and land rights.

In India, about 86 percent of the arable land is private, and 89 percent of rural households own some land (GOI, 1995:35) even though most hold small plots. Unfortunately, no large-scale rural surveys collect gender-disaggregated data on land
ownership and use. But from 1991 survey on widows by development sociologist M.A. Chen, it is clear that few women inherit land; even fewer effectively control any. In Chen’s sample of rural widows across seven states, only 13 percent of the 470 women with land – owning fathers inherited any land as daughters (figures being 18 percent for South India and 8 percent for North India). This means that 87 percent of the surveyed women did not receive their due as daughters. Among widows, of the 280 whose deceased husbands owned land 1 percent inherited some, but this still means that almost half the widows with claims did not inherit anything. And those that did, typically their shares were not entered formally in the village land records (Agarwal, 2003: 202)³.

There is a larger issue of ownership right of women within the male headed households. The issues include both joint ownership with other family members and single ownership. Women’s access to land encompasses not only the legal right to ownership and use but also its physical access and freedom to decide about use, sale, mortgage, and so on. There are yet other issues of inheritance rights in the parental home and in the husband’s family after marriage, and right to land in the event of widowhood (Vepa, 2009: 42)⁴.

The direct effects on welfare apart, in several contexts, land titles to women would increase output by improving production efficiency (thus also enhancing welfare indirectly), such as where women are operating as households heads with the primary or sole responsibility for cultivation and family subsistence, but without titles to the land they are cultivating. This would include not only de facto female headed households in regions of high male outmigration, but also the many widows who are today cultivating plots allotted to them from joint family estates (as part of their inheritance claims to their deceased husband’s lands), but the plots are still in their in-laws’ names (ibid)⁵.

Giving land titles to women means their ability to challenge social and political gender inequalities would be strengthened. In the case of widows this would also enable them to deal better with social disabilities associated with widowhood. In the rural context land usually offers greater security and control over one’s subsistence at the very least than do other income sources. At the very least it provides a space of one’s own, and a safeguard against eviction. Outside the
household as well, land ownership can empower women by improving the social
treatment they receive from other villagers (Mies et al. 1986)\(^6\), and by enabling them
to bargain with employers from a stronger fall- back position. These arguments are
important for women in all contexts.

Thus on grounds of both women’s and children’s welfare, there is a strong
case for supporting women’s effective rights in private and public land, independently
of men. Although such rights are especially important as a poverty alleviation
measure for women in poor rural households, they are also relevant for those of better
– off households, given the risk of poverty following marital breakdown and
widowhood faced by all rural women (Agarwal, 1998)\(^7\).

It need emphasis that the welfare case for women’s land rights stands even if
the plot is too small to support a family. Land – based production can be seen as one
element (but a critical one) in a diversified livelihood system. For instance, a plot of
land which does not produce enough grain to sustain a person or family could still
support trees or provide grass for cattle. Land pooling by those with small plots, for
purposes of production or investment, is also possible (Ibid)\(^8\).

Krishnaji (1992:213)\(^9\) has pointed out that “whatever be the spirit of law and
custom, women fail in general to obtain rights to ownership of (or control over) land”,
adding that even if women were the formal legal owners, management of the land was
taken over by men, “depriving women not only of headship in a formal sense, but of
much else”.

Women without independent resources are highly vulnerable to poverty and
destitution in case of desertion, divorce, or widowhood. In parts of western and
northern India, rural women even from rich families, deprived of their property shares
when widowed, can be found working as agricultural labourers on the farms of their
well- off brothers or brothers in law. Relatives, including sons and brothers, often do
not provide the expected economic security to women who are widowed or whose
marriages break down (Rehman and Menken, 1990)\(^10\). Indeed for widows and the
elderly, the right to the family care can depend critically on whether they have
property to transmit or not.
For widows and the elderly, ownership of land and other wealth strengthens the support they receive from relatives, by increasing their bargaining power within the household and strengthening their traditional entitlements (Caldwell et al. 1988; Sharma and Dak, 1987). As many old people say: ‘without property, children do not look after their parents well’ (Caldwell et al. 1988:191). A research in Bangladesh on mortality rates among widows living in different household arrangements shows that those living as dependants of male relatives, other than adult sons, face significantly greater health risks than widows who are heads of households (Rahman and Menken 1990), and who presumably have some independent means of income.

Nandwana and Nandwana (1998) study shows that where land is recorded, the widow’s name is invariably entered jointly with the adult sons, who effectively control the land. The popular perception is that the widow’s share is for her maintenance and not for her direct control. Widows without sons rarely inherit. Recognising widow’s rights alone is thus inadequate for women to reap the efficiency or welfare benefits that would increase if these are also inherited as daughters.

Ownership of land can take different forms, customarily. It may be in the form of individual rights through inheritance, joint rights, usufructuary rights to communal land, tenancy rights and so on. In most communities, access to land via, inheritance is patrilineal; in some like the Kusasi of north-eastern Ghana it is through clan membership. In both these cases, women are ‘married-in’ from other communities, so do not get land in their own right, though they may receive use-rights through their husband or other male kinsmen. They are deprived of not only independent access to land, but also command over the labour of their ‘social superiors’ and allocation of surplus produce. The cultural institution of marriage in these societies, provide men a dominant role in determining women’s access to land (ibid).

In the Ho tribe also as soon as a daughter marries, she loses her limited usufructuary right over parental land. A married daughter thrown out by her husband cannot claim shelter in her parental home as a right, although some women are given temporary shelter by their brothers. An unmarried daughter has the right to work on and be maintained from her family’s land. But she does not inherit as a son does. He has an inalienable right similar to the right of male coparceners in Hindu joint family property. A daughter is not given an equal portion of land with sons. She is usually
given a piece of land, for her maintenance, which is much smaller than the ones sons get. She may live with her brothers or demand a partition of land and live by herself (Kishwar, 2008:263)\(^\text{17}\). The widow’s right in her husband’s land is similar to that of an unmarried daughter. She does not inherit the land but has the right to be maintained from it. She may live with one of her sons or she may demand a partition of land in which case she would get a much smaller portion than a son gets. D.N Majumdar observes: ‘The widow if she remains with a married son becomes a drudge in the latter’s family! If she remarries, she loses her usufructuary right over her dead husband’s land which goes to her sons, or if there are no sons, to the husband male agnates’ (ibid)\(^\text{18}\).

K.C Roy and C.A Tisdell (2000)\(^\text{19}\) during their field work among Santhals in Sadanandapur village in Midnapore District in West Bengal, were told that if a widow has land in her name, and has a son and a daughter, she gives a share of the property to her daughter. But the daughter after her marriage usually gives up her right to the land in favour of her brother particularly in case of village exogamy.

In a case where a woman decides to exercise her right to land by taking legal action, male members in her natal home, may take various courses of action such as finding loopholes in the current law, forcing her father to disinherit her, or forging her father’s will after his death (Parry, 1979)\(^\text{20}\). They can also try to convince the revenue officer that her marital home where she lives is too far away from her natal home and therefore she cannot exercise her right (Mayer, 1960)\(^\text{21}\).

The male bias in official policies and programmes strongly affects legal decisions and new policy formulation by the government. As Manimala (1983) observes, that even after receiving the government’s permission to have land titles in their names, women in two Rajasthan villages were prevented by the officials from formally registering land in their names on the pretext that land titles can be granted to men only as they are the heads of the families. It is also surprising to note that such a bias has also been found among some matrilineal communities such as the Garos in the north east – especially after the land privatisation program began to be implemented (Majumdar, 1978)\(^\text{22}\).

Chowdhary’s study (1997)\(^\text{23}\) showed that, in rural Haryana inheritance to daughters was possible only in the absence of sons. In certain cases, where sons- in-
law shifted residence to take over land in the absence of brothers-in-law as heirs, were much against the will of the male collaterals. In few cases, the staking of claim by sons-in-law on behalf of their wives led to the exclusion of the couple by the villagers. There was violence and bloodshed in cases where the inheritance rights were sought to be claimed by the jamai (son-in-law). Many lawyers in Haryana had testified to the stream of males with potential female inheritors in tow in the immediate aftermath of the Hindu Succession Act of 1956 to get women to write off their land in favour of their brothers. Several gift deeds and sale deeds were registered in favour of males at this time. This pattern has been generally followed since then. In some cases the land may be registered in the girl’s name but remains in the possession of the brother.

Chowdhary’s study (1997) also showed that in cases where the sister signs away her right, she is invariably taunted after marriage by her husband and in-laws. To avoid this, the girl’s family seeks the prior permission of the husband to be and his family not to lay any claim on inheritance due to her. In many cases, as the study showed, this trend was forthcoming, perhaps because the wife-takers too had daughters and were afraid of establishing a precedent which may recoil on them or they were unwilling to withstand the social taunts (ibid)\(^{24}\).

The force of ideological reality of a woman’s dependence on both her brother and husband prevented her from becoming an independent property holder. In relation to her brother, she signs away her right and in relation to her husband she claims her right. In both cases, she is just an instrument and the land remains de-facto a male possession. The women questioned showed a distinct preference for their brothers. In this connection, a woman’s realisation is that her husband will get the land through her and she will end up losing both, that is the good will of her brothers and the land (ibid)\(^{25}\).

The crucial difference in status is the key factor in women’s overall powerlessness in society. It is idle to imagine that a daughter-in-law can be treated as a full member of her marital family with an equal share in its property, after she has been totally disinherited by her natal family. The powerlessness of the daughter and of the daughter-in-law are two sides of the same coin. A culture which uproots its daughters and in fact sees this uprooting as the pivot of a woman’s life, which labels a
daughter from birth ‘a stranger’s wealth’, ‘a migrant bird’, and ‘a guest’ in her father’s house, views its daughters-in-law at best as bringers of wealth, themselves the wealth of their husbands and parents- in- law, but none as independent owners of wealth (Kishwar, 2008: 313)\(^{26}\).

A woman who has full rights in her parent’s property will relate to her husband and in- laws from a position of relative strength. She will have more of a chance to be viewed as an entity in her right, not as a helpless creature whose only chance of survival and identity lies in ‘adjusting’ to her husband’s and in- laws demands and whims. Parents who refuse to recognise their daughter’s full membership in their family and equality with their sons, have no reason to expect that her in- laws, to whom she is a complete stranger, will automatically treat her as an equal inheritor with their sons (ibid)\(^{27}\).

Sen and Papanek’s analyses in concrete terms, argues that women themselves accept unequal (or no) property rights for girls because of the perception that girls will “go away when they get married” (a commonly heard expression in north India), because male heirs are considered to have a ‘natural’ right to property, and because, in their later years, they (women) will automatically be looked after by their sons (Mukund, 1999)\(^{28}\).

Jayoti Gupta (2002)\(^{29}\) study in West Bengal showed that on opening the discussion on the importance of ownership of productive resources by women, the first demand by the women was: “We want land in our own name”. Various reasons were forwarded by women for such a demand:

1. Old age security if sons do not look after them.

2. The predominant notion that their daughters can inherit land if the mother has it in her own name.

3. Women can use the property to pay for their daughter’s marriage in the absence of the husband, as sons usually inherit the property and may be willing to pay for their sister’s marriage.

4. Lack of security in the matrimonial home as women do not have any legal right to property, be in land, cattle or house.
5. Given the rise in cases of divorce, desertion, and physical violence against women by the husbands, the women expressed the urgent need for secure shelter, be it a legal right to the homestead of their parents, land to cultivate, or a shelter home.

6. The younger women, especially those who have already been divorced, deserted or have remained unmarried, preferred to be given a share in the parent’s property be it land or house or both (given the asset structure of the household) rather than to give dowry to their in-laws.

7. Women felt that they should have independent access to ownership of productive resources to be able to counter the system of dowry, as well as to free themselves of a dependent status all their lives.

8. The women pointed out that apart from ploughing; they participate in all agricultural operations. Women who belonged to peasant households but did not have to work as agricultural labourers also pointed out that they bear all responsibility for the agricultural produce once it is brought home from the field, yet they are not considered agriculturists or cultivators and only their husbands are recorded as cultivators. They felt that ownership in their name would perhaps make a difference to their access and control over the resources of the household.

9. While women do not have ownership rights recorded in their name, they however bear the responsibility of returning debts incurred by their husbands in lieu of land mortgage, etc

10. Women are often not informed about these transactions the husband enters into with the assets of the family. The women felt that this situation could be held in check if they as owners were to be signatories to the transaction.

11. On the question of joint titles the women pointed out rightly that the majority of them did not know of such a provision, and even those who knew about it were under the impression that if as couples they were to separate they would no longer have access to the joint property. While on the other hand the women felt that joint property would give them greater control over the decisions about sale/transfer/mortgage of property, on the other, they
expressed their wish to own property in their single names for greater security and control (Gupta, 2002).

Land rights can improve gender relations are also indicated by women’s favourable position in communities which traditionally practised matrilineal or bilateral inheritance, as in parts of northeast and southwest India (especially Kerala). Girls were also especially desired to continue the lineage. Kerala’s female-favourable sex ratio and high female literacy cannot be delinked from its matrilineal heritage. This strikingly contrasts with women’s situation and son bias among most matrilineal groups. Of course, in matrilineal groups too formal managerial control over land lay with men (usually brothers or maternal uncles). This indicates that the full advantages of women owning land can only be derived if they have decision-making authority over their land, and in public institutions (Rao and Rurup, 1997:40).30

In spite of women’s legal gains in recent decades effective land rights remain elusive, due to complex mesh of factors—social, bureaucratic, and ideological. There is always a strong male resistance to endowing daughters with land. Apart from men’s reluctance to admit new contenders to the most critical form of rural property, there is a structural mismatch in many partilineal communities between contemporary inheritance laws and traditional marriage practices. In most matrilineal and bilateral communities, for instance, marriages within the village and among close kin kept the daughter’s land under the purview of the natal family. Today’s laws recognise daughter’s claims even among those patrilineal groups which do not allow village endogamy, kin marriages, and parents drawing economic support from married daughters, as is the case with upper-caste Hindu communities in northwest India. Opposition to daughters inheriting is greatest here. Opposition is less in the south and northeast where in-village and kin marriages are allowed and sought, and help from married daughters acceptable (ibid).31

Many women also leave their shares in parental land in favour of brothers who, in the absence of effective state social security schemes, provide a form of traditional social security. Where women do not voluntarily relinquish their claims, male relatives may file court cases, forge wills, and even physical violence. And the emphasis in many regions on female seclusion reduces women’s access to judicial, administrative and economic institutions (ibid: 41)32.
Rural women may be aware of the necessity of getting separate legal rights over land, but they lack the means required to claim their rights through the tedious and harassing process of approaching bureaucracy and the courts. They are exploited by their husbands and even their sons but they would not consider challenging them. They generally like to view their husbands as comrades and friends whose good wishes and advice they would like to cherish. They keep fasts for their husbands’ long life, and aspire to die as *Suhagan* (in their husband’s lifetime). They divide men in the neat category of good husbands and bad husbands, without realising the inherent exploitation in the very institution of patriarchy and property customs (Ellis, 1998:170). These norms serve as barriers to women’s ability to exercise direct control over the land women may inherit in their natal village. Thus along with initiating legal rights over land to women they need to become aware about the existing realities of power inequalities within the family, which would require a great deal of political courage (Yojana October, 2011).

The link between gender relations, as an aspect of social relations, and property brings into focus the need to locate explorations of gendered access to property within the cultural and social systems within which they operate, for ‘property is not primarily a relation between people and things, but a relation between people and people- a social relation or a set of social relations (Whitehead, 1984). Since concept of property are ultimately bound up with the concepts of the person, there is a need to look at how kinship systems help to construct men and women in different ways, as different sorts of persons. It is the kinship family system which constructs women in such a way that they are less able to act as fully operative subjects (ibid).

The issue raised is the extent to which forms of conjugal, familial and kinship relations allow a woman an independent existence so that she can assert her rights as an individual. Conjugal, familial and kinship systems appear often to operate so as to construct the position of women as subordinate, such that by carrying kinship (or familial or conjugal) status women are less free to act as full subjects in relation to things and people. This brings out the need to extend the analysis of the law to relations and organisations, and to locate it beyond the public spheres and in the household. The role of kinship, family and household structures as they operate...
towards constructing women’s identity and the way in which particular gendered relations of production and distribution within these structures establish norms for legitimacy (Patel, 2006)\(^{37}\).

Women’s lack of rights in and control over land, housing and property means that women are excluded from participating in community decision making, even though these decisions invariably affect women and their living conditions. In many countries ownership and control of land, housing and property commands social status, community respect and in some instances is closely linked with political power. In turn, it is those who own land, housing and property – predominantly men – are decision makers within the household and in the community. Within the household this means men’s control on household resources and income and how these are to be utilized in the community or village. The virtual absence of women from decision making processes and bodies means that men’s experiences are taken for the experiences of the entire community or household, male interests and needs are promoted and the group interests of women are not prioritized (Meer, 1997)\(^{38}\). It is unlikely that men and women will have the same interests given the gender division of labour which exist in almost every society, where women are responsible for maintaining the household, childrearing and subsistence farming and men are responsible for cash crops or income generation and other public.

Women's lack of rights in, access to and control over land, housing and property can also contribute to women's experiences of violence. Without security of tenure it is difficult for women to leave abusive and violent households (Farha, 1999)\(^{39}\). At the same time, a lack of security of tenure means that women can be forcibly evicted from their homes and lands on the whim of an angry spouse or male relative\(^{23}\), upon marriage breakdown or widowhood which invariably leads women to homelessness, landlessness and destitution, exposing them to further violence (Farha, 1998)\(^{40}\).

Asset redistribution is superior to income redistribution. It provides a basis for overcoming distortions in the functioning of markets and for restructuring gender relations in the fields of property (land) rights, access to technology, healthcare and governance. Asset ownership and control rights are preferable to numerous policy alternatives for women’s empowerment. They are likely to bring changes in public
opinion about gender roles and social cultural norms of deep- seated social inequalities of women such as household division of labour, restraints on women’s speaking in public, constraints on women’s mobility and pervasive gender – based violence within the home and outside (Kelkar, 2011)41

While significant changes have taken place in legal sphere to provide women rights over land, the social framework within which this legal system operates has changed very little. It is the social customs and norms that seem to prevent or inhibit women from making claims over land. As one respondent said ‘the status of a woman in her in- laws house is affected by how much concern her brothers demonstrate, how often they visit her and how many gifts they give her. Sisters accepted periodic gifts from their brothers. Also on the special occasions like marriages, birth of a child and mundane (tonsure) ceremony mama (mother’s brother) has to contribute a lot. On the occasion of Karwachauth (fast kept for husband’s well being) the sisters get the share from the brothers. So how do we claim the land rights then?’

Some women respondents during the fieldwork said that legal ownership alone is not enough. Women must understand their rights as owners as well. Many of the respondents said that illiterate women might not know that they are the owners of the land at first place and may unknowingly deprive themselves of their rights to land. One young woman respondent during the field work said that if the son is asking for the thumb impression of her mother on the land transfer document, she will give without even knowing what she is actually signing for.

Denial of inheritance rights to daughters is justified on the ground that they inherit in their marital homes. Women inherit more often as widows than as daughters or wives. Because as widows they become claimants to their husband’s share of property, dowry given at the time of daughter’s wedding has come to be seen as offering to her in- laws rather than her exclusive personal property (Kishwar, 2008:239-240)42.

Normally sons inherit parental property and family businesses and it is only in the form of dahej that daughters get a share- although an unequal one- in parental property, most women consider dowry as their legitimate due. After marriage, even the parental home comes to be their brother’s and bhabhis’ (brother’s wife) home. Most women feel that a dowry less wedding does not work in their interest because it
only means their brothers end up with an even bigger share of family resources (ibid)\textsuperscript{43}. Thus it is undeniable that there is a difference between the legal recognition of the claim and its social recognition and between recognition and enforcement. There is also a distinction between ownership and effective control. To enhance women’s ability to claim and retain control over their rightful inheritance shares, several aspects are likely to need attention: establishing the social legitimacy of the claim; reducing gender bias in the village level registration practices and village council rulings; enhancing women’s legal knowledge and literacy; providing women with legal aid; improving women’s fall-back position so that they are able to deal with the ensuing intra-family conflict, including providing external support structures that would reduce women’s dependence on brothers and close kin (ibid: xxx)\textsuperscript{44}.

Those women who own resources are isolated individual exceptions, or in pockets surrounded by a culture of women’s deprivation, it may be true that their husbands will wield more control over their property than they will. But even a nominal acknowledgment of the woman’s ownership rights or semi-control by her will be an improvement over the present situation in which exclusive male ownership is not only the practice but the norm. For example, in matrilineal households in certain communities in Kerala, property was passed from mother to daughter but was often controlled equally or more by the mother’s brother. Yet, women’s status was relatively better in terms of greater autonomy, mobility and better rights in marriage than in communities where women are disinherited (Kishwar, 2008: 317)\textsuperscript{45}.

There is clearly a steady rise of women’s work participation in agricultural activities, but significantly not in its ownership. Even those women who have mutations of land in their names do not have the authority or any control over it. There is a disjunction between ownership and control of land in all the states of India including Jammu and Kashmir. Decision making in the cropping patterns, sale, mortgage, purchase of land or the instruments of production necessary for the development of agriculture, remains in the hands of the men of the household. In most cases women’s rights, if claimed, have been written off or bought out by the male members. In others, the land may remain with women, but it remains so only in name; the actual possessors being the male members (Chowdhry, 2009 Introduction:xx)\textsuperscript{46}.
Women in Agriculture Economy

The ownership and control of land in rural areas by women are highly skewed, though they play a significant and crucial role in agricultural development and allied fields including the main crop production, livestock production, horticulture, post harvest operations, agro/ social forestry, fisheries etc. Yet they remain invisible marginalised and ignored especially when their work is not quantified and recognised or is taken for granted.

The nature and extent of women’s involvement in agriculture varies greatly from region to region. Even within a region, their involvement varies widely among different ecological sub-zones, farming systems, castes, classes and stages in the family cycle. But regardless of these variations, there is hardly any activity in agricultural production except ploughing in which women are not actively involved. In some of the farm activities like processing and storage, women predominate so strongly that men workers are numerically insignificant (Agarwal, 2003)\(^47\).

According to Swaminathan, the famous agricultural scientist, “some historians believe that it was woman who first domesticated crop plants and thereby initiated the art and science of farming. While most men went out hunting in search of food, women started gathering seeds from the native flora and began cultivating those of interest from the point of view of food, feed, fodder, fibre and fuel (National Commission for Women, 2008)\(^48\).

Rural Indian women are extensively involved in agricultural activities. However the nature and extent of their involvement differs with the variations in agro production systems. The mode of female participation in agricultural production varies with the landowning status of farm households. Their roles range from managers to landless labourers. In over all 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 (Shiva FAO, 1991)\(^49\)
On an average, a woman devotes 3.5 hours per day for animal husbandry activities against only 1.6 hours per day devoted by men in this category. Women accounted for 93 percent of total employment in dairy production. Depending upon the economic status women perform the tasks of collecting fodder, collecting and processing dung. Women undertake dung composition and carrying it to the fields. Women also prepare cooking fuel by mixing dung with twigs and crop residues. Though women play a significant role in livestock management and production, women’s control over livestock and its products is negligible.

The work she does in the fields is often unpaid as it is a part of family labour. It is because of the widespread devaluation of women’s work that her rights remain unacknowledged. Women’s productive role as peasants or agricultural labourers remains invisible despite their active participation.

Thus it is important to contextualise women’s land rights in the broader trends that have affected agriculture in the recent past. As more men move out of the agriculture, there is a shift towards the feminisation of agriculture. Such feminisation however does not imply an increase in the number of women workers, nor in their ownership and control over land. Rather feminisation here refers to the rise in the proportion of female agricultural workers in the female workforce, and a rise in the share of female to male agricultural workers (Duvvury 1989). As per the National Sample Survey (66th Round), out of 162.83 million households in the rural areas in 2009-10, 19.16 million (11.8%) are female headed households. It may be due to either widowhood or desertion, male out-migration or due to men’s entering into non-farm activities and other livelihoods. This has resulted into the greater dependence of women in agriculture production, besides the burden of all forms of subsistence work and household chores in rural areas (GOI, National Sample Survey [NSS] 66th Round, 2009-2010).50
Table 2.1: Category-Wise Percentage Distributions of Workers (Main+ Marginal) in India (2011)

<table>
<thead>
<tr>
<th>Categories of worker</th>
<th>Rural</th>
<th></th>
<th>Urban</th>
<th></th>
<th>Combined</th>
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<tr>
<td></td>
<td>Female</td>
<td>Male</td>
<td>Total</td>
<td>Female</td>
<td>Male</td>
<td>Total</td>
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<td>Cultivators</td>
<td>28.8</td>
<td>35.2</td>
<td>33.0</td>
<td>3.1</td>
<td>2.73</td>
<td>2.80</td>
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<td>Agricultural labourer</td>
<td>48.5</td>
<td>34.4</td>
<td>39.3</td>
<td>9.0</td>
<td>4.58</td>
<td>5.51</td>
</tr>
<tr>
<td>Household industry</td>
<td>5.0</td>
<td>2.6</td>
<td>3.4</td>
<td>8.8</td>
<td>3.72</td>
<td>4.80</td>
</tr>
<tr>
<td>Other workers</td>
<td>17.7</td>
<td>27.8</td>
<td>24.3</td>
<td>79.1</td>
<td>88.97</td>
<td>86.90</td>
</tr>
<tr>
<td>Total workers</td>
<td>121.8</td>
<td>226.76</td>
<td>348.6</td>
<td>28.04</td>
<td>105.10</td>
<td>133.15</td>
</tr>
</tbody>
</table>

Source: Census 2011, Office of the Registrar General, India.

The analysis of the Table 2.1 above shows that as per census 2011, the total number of workers is 481.7 million. Of this 331.9 million workers are males and 149.9 million are females. Out of the increase of 79.5 million workers during the decade 2001-2011, male workers have accounted for 56.8 million and female workers 22.7 million. The male workers have grown by 20.7 percent and female workers by 17.8 percent. 348.6 million workers are in the rural areas and 133.1 million are in the urban areas. The female workers in rural and urban areas are 121.8 and 28.0 million respectively.

Of the total workers, 118.7 million are cultivators and another 144.3 million are agricultural labourers. Thus nearly 55 percent of the workers are engaged in agricultural activities compared to 58.2 percent in census 2001. This clearly shows that about one-in-two males and two of every three females are engaged in agricultural activities either as cultivator or an agricultural labourer. Of the remaining workers, 18.3 million are in household industries and 20.4 million are other workers. During the decade 2001-2011, the census result shows a fall of about 9 million in cultivators and an increase of about 38 million in agricultural labourers. The household industries have shown an increase of 1.4 million and other workers have increased by nearly 49 million.
Table 2.2: Percentage of female main workers to total female population under broad categories- 1981 to 2011

<table>
<thead>
<tr>
<th>Census Year</th>
<th>Percentage to Total Female Population</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Female Main Workers</td>
</tr>
<tr>
<td>1981</td>
<td>13.99</td>
</tr>
<tr>
<td>1991</td>
<td>15.93</td>
</tr>
<tr>
<td>2001</td>
<td>14.68</td>
</tr>
<tr>
<td>2011</td>
<td>25.5</td>
</tr>
</tbody>
</table>

Source: Census, 2011 Office of the Registrar General, India.

The analysis of the above Table 2.2 shows that the percentage of female under all categories of workers has increased in 2011 as compared to 2001 census. The combined result shows that 41.1 percent of female main and marginal workers are agricultural labourers, 24.0 percent are cultivators and 5.7 percent are household industry workers.

In J&K around 70 percent of the population gets livelihood directly or indirectly from the agriculture and allied Sectors (Govt. J&K, Economic Survey J&K 2013-14)\(^{51}\). Women in J&K, like in other states of northwest India, play an important role in agricultural economy. The female cultivators constitute 42.55 percent while males are 23.96 percent of the total workers in J&K as per the 2011 census. This is better than the all India level where female cultivators are 24.01 percent while male cultivators constitute 24.92 percent of the total workers for the same period (Statistical Profile on Women Labour, 2012-2013).\(^{52}\)

Table 2.3: Percentage of female total workers, female main workers, female marginal workers and female non-workers to total female population as per Census 2011 (J&K)

<table>
<thead>
<tr>
<th>State</th>
<th>Percentage to Total Female Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jammu and Kashmir</td>
<td>Total/Rural/Urban</td>
</tr>
<tr>
<td></td>
<td>Total/Rural/Urban</td>
</tr>
<tr>
<td>Total</td>
<td>19.1</td>
</tr>
<tr>
<td>Rural</td>
<td>20.8</td>
</tr>
<tr>
<td>Urban</td>
<td>14.5</td>
</tr>
</tbody>
</table>

Source: Census, 2011 Office of the Registrar General, India.
The analysis of the Table 2.3 above shows that, the total female workers in J&K are 19.1 percent; most of them are main workers and other workers. The percentage of the total workers which is 20.8 percent is higher in rural areas than that of the urban area, i.e 14.5 percent.

**Women and Land Ownership**

Gender is a major source of unequal power structure and social disadvantage. Few women own land in their own right due to male bias in transfer of land by families, the state and in the functioning of markets. Also few women have financial resources for leasing in land on their own. Hence on the one hand as shown in the census findings, women are major contributors to agricultural production and increasingly so as more men than women have moved out of agriculture resulting in the ‘feminisation of agriculture’ and on the other hand, they have little access to the basic means of production. Women workers who are counted as ‘cultivators’ in the national statistics tends to be largely unpaid workers on the family farms. In 2004-2005, 36 percent of women farmers overall and 39 percent among marginal landholding households, were so counted (NCEUS, 2008).

Caste and tribe bear additional social disadvantages. About 32.3 percent marginal and small farmers belong to the SC and ST categories, compared with 22.7 percent of medium and large farmers. The incidence of landlessness is relatively higher, 12.8 percent among ST households, followed by SC households 11.3 percent as compared with 10 percent of all landless households in India. This is important as they are likely to face discrimination in the delivery of public services such as credit, information, publicly provided inputs and extension services. There are also regional and social limitations to access to institutional credit. In general access is much poorer in the north-eastern and central Indian states. And if the small holders are caste disadvantaged (as SC, ST OR OBC farmers) they either get no credit at all, or obtain it at higher interest rates and unfavourable terms of repayment (Thorat, 2009). Women’s credit access is even lower. Hence, if the farmer is small, SC/ST and female, she can be at the bottom of pyramid in this respect.

During 2013, around 156 million households lived in rural areas, 7.41 per cent of these were landless households. The estimated total area owned by the households in rural India during the year 2013 was 92.369 million hectares, with an average size
of 0.59 hectare land per ownership holding. The highest percent of rural households (75.41 percent) fall in the marginal ownership category, owning 29.75 percent of the total area owned as shown in the Table below.

Table 2.4: Estimated Number of Households and Landless households in Rural Areas in the last two Surveys of NSS

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated number of households (million)</td>
<td>147.838</td>
<td>156.043</td>
</tr>
<tr>
<td>Estimated number of landless households (million)</td>
<td>14.836</td>
<td>11.558</td>
</tr>
<tr>
<td>Percentage of landless households</td>
<td>10.00</td>
<td>7.41</td>
</tr>
</tbody>
</table>

Source: NSS Report No. 571: Household Ownership and Operational Holdings in India

The analysis of the above Table 2.4 shows that the percentage of landless households is 10 percent according to the 2003 survey, whereas the percentage of landless households according to the 2013 survey is 7.41 percent which clearly shows that landlessness has declined in J&K.

Table 2.5: Percentage Distribution of Households by Size Category of Land Holdings for each Household Social Groups

<table>
<thead>
<tr>
<th>Category of holdings (land size class in ha)</th>
<th>Household social groups</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ST</td>
</tr>
<tr>
<td>Landless(&lt;=0.002)</td>
<td>2</td>
</tr>
<tr>
<td>Marginal (0.002-1.000)</td>
<td>68.83</td>
</tr>
<tr>
<td>Small (1.000-2.000)</td>
<td>14.64</td>
</tr>
<tr>
<td>Semi-medium(2.000-4.000)</td>
<td>5.74</td>
</tr>
<tr>
<td>Medium (4.000-10.000)</td>
<td>1.36</td>
</tr>
<tr>
<td>Large (&gt;10.00)</td>
<td>0.03</td>
</tr>
<tr>
<td>All sizes</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: NSS Report No. 571: Household Ownership and Operational Holdings in India

The landholding category for each household social group is shown above in the Table 2.5. The highest proportion of households belonged to the marginal category of land holdings (75.42 percent) and the lowest proportion of households belonged to the large holdings (0.24 percent). This pattern was observed across all the household social groups. Moreover the marginal and the small land holdings together accounted for more than 80 percent of the households across all social groups. It is
seen that the proportion of households in the relatively larger holdings (e.g. semi-medium, medium or large) was higher (more than 10 percent) among other category of households than the remaining social groups of SC’s, ST’s and OBC’s.

The total number of operational holdings in the country has increased from 129.99 million in 2005-06 to 138.35 million in 2010-11 showing an increase of 7.06 percent. The operated area has also increased to 159.59 million ha in 2010-11 from 158.32 million ha in 2005-06 indicating a marginal increase of 0.80 percent. However the average size of the operational holdings has been steadily declining in the country and the average operated size of holding is 1.15 ha. The percentage share of female operational holders has increased from 11.70 in 2005-06 to 12.78 in 2010-11 with the corresponding operated area of 9.33 to 10.34 (Agriculture Census 2011)\(^{55}\). As per the data of agriculture census 2011, the percentage share of the operational holdings of Scheduled Castes population according to the recent census is 12.36 percent and that of the Scheduled Tribe population is 8.68 percent and the area even operated by holding is 8.60 percent in case of SC and 11.42 percent in case of ST population.

In the State of Jammu and Kashmir and in the north-western states in India, the ownership of land by women is highly skewed. The revolutionary land reforms in the state did not significantly help women to become land owners and no gender disaggregated data on distribution and ownership of land could be sought. But the data available on operational land holders in agriculture suggest that there are women operational holders and their number is increasing over the years in J&K. The data from the Ninth Agriculture Census (2010-11)\(^{56}\) show the male and female operational land holders share as 92.55 percent and 7.32 percent of the total operational land holders (14.49 lac) respectively in the State of J&K. This depicts a huge gender discrepancy, but there has been a decrease of 1.06 percent and an increase of 0.16 percent in male and female operational holders share respectively between the two Agriculture Censuses of 2005-2006 and 2010-11 suggesting greater control of women on agricultural land (Chauhan, 2016:27)\(^{57}\). But the percentage of female operational holders is still meagre compared to what is owned and controlled by men.

Thus the ownership and control of land signifies power equations among agricultural communities. The exclusion of women from the line of inheritance, ownership and control of resources confers on them a secondary status in the agrarian
social structure and contributes to their overall subordination in society in spite of their economic contributions and advantages. Women’s participation in agricultural activities has increased during the last 50 years creating a situation where large scale ‘feminisation of agricultural labour force’ has occurred without giving women the corresponding authority of decision-making in the sale, mortgage or purchase of land (Chowdhry, 2009:75)\(^58\).

In the state of Jammu and Kashmir ‘feminisation of subsistence farming’ and ‘masculinisation of commercial agriculture’ has helped to promote the skewed distribution of power and authority. Men as heads of the household successfully exercise their authority in retaining ownership and control of land and other resources while at the same time making extensive use of women’s labour in subsistence farming and also in commercial agriculture. Somehow land reforms may be a necessary condition for effecting development in agriculture.

**Women’s Movement and Government efforts for Land Rights**

Two decades ago, the question: Do women need independent rights in land? was not even admitted in public policy discourse in most parts of South Asia. Today, the question is admissible, but the discussion on it is limited and answers to it disputed. Indeed gaining acceptance for the idea that women need independent rights in land is itself an arena of struggle (Basu, 2005:91)\(^59\). Thus historically the issue of land rights for women has been new. So it is important to explore the ways in which women’s movements address the gender inequalities in land ownership. Women’s movement has conceptualized the land ownership right in two but interconnected ways. First, the gender question in agrarian reform and second in the larger issue of legal reform. In India, agrarian reforms through 1950s and later took place at a time when gender was marginal to the policy agenda and women’s organisations lacked their current visibility. Hence, in most governmental land reform programmes and land transfers, women’s land rights remained marginal.

However, owning to intense lobbying by women’s organisations, academics and policy makers, joint titles and other land-based legal entitlements found a place in the Five Year Plans since the 1980s. It is only in the Sixth Five Year Plan (1980-85) that we see the first limited recognition of women’s need for land. Several factors appear to have contributed to this recognition (Agarwal, 1998)\(^60\).
Chapter-2 Gender and Land Rights: Understanding Relationship

In 1979, at women’s conference in Calcutta, a group of elected women gram panchayat (village council) representatives from West Bengal put forward a demand for joint titles (with their husbands) on behalf of destitute Muslim women in their constituencies. They argued that many Muslim women had been evicted by their husbands; women therefore needed the economic security that land provides. This is said to be among the earliest such public grassroots demands (ibid)\(^{61}\).

A similar plea was made by landless women in 1980 to a sympathetic Land Reform Commissioner at a camp in West Bengal’s Bankura district. Such demands were subsequently included in the recommendations (placed before the Planning Commission) of a pre-Plan symposium organised by eight women’s groups in Delhi in 1980. Additional pressure came from the 1979 FAO Report of the World Conference on Agrarian Reform and Rural Development (WCARRD) held in Rome, which recommended that gender discriminatory laws in respect to ‘rights in inheritance, ownership and control of property’ be repealed and measures be adopted to ensure that women get equitable access to land and other productive resources (FAO 1979)\(^{62}\).

These recommendations were incorporated in the country review follow-up to WCARRD undertaken by the Indian Ministry of Agriculture and Rural Development (CWDS 1985:89-94). The result of all this was a policy statement which, as finally incorporated in the Sixth Plan said that the government would ‘endeavour’ to give joint titles to spouses in programmes involving the distribution of land and home sites (ibid:94)\(^{63}\).

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” (1994)\(^{64}\) 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) according to which women’s rights in land will be recognised and women will be given preference in group activities for land conservation and improvement (GOI, Ninth Five Year Plan, Planning Commission)\(^{65}\).
The approach paper to the draft Ninth Plan clearly states that preference will be given to women in the distribution of ceiling surplus land and legal provisions made for protecting their rights on land as part of the overall anti poverty effort.

The National Perspective Plan for Women (1988-2000 A.D)\(^6\) recognised the need to highlight such concerns and laid down a series of action points, which included the framing of appropriate legislation. The Plan has recommended the further steps to accelerate the process of empowerment of women:

i) the allotment of Government wastelands, government land and surplus ceiling land, village common land, developed houses sites, allotment of Indira Awas Tenements etc, should invariably be done in the joint names of husband and wife or single title of ownership given to women and Scheduled Castes, particularly those who are widows, unmarried or victims of harassment.

ii) the rights of women, as co-owners of property should not merely be confined to land but also to other productive assets like trees and houses. The land records should show entries of both husband and wife. The \textit{pattas} should be issued in the name of women as a matter of preference.

iii) land reforms and distribution are basic requisites for economic development. Potential women beneficiaries should be associated with any group set up to advice the implementation machinery.

The Department of rural Development have received comments of various State Govts. regarding implementation of issuing joint \textit{pattas} while distributing surplus land, out of Land Ceiling Act and other types of land to be distributed among landless poor. The following states started implementing the scheme: Andhra Pradesh, Assam, Bihar, Gujarat, Maharashtra, Goa, Daman and Diu, Tripura, Tamil Nadu and Madhya Pradesh.

The National Commission for Women, which was set up in 1992 to review the Constitutional and legal safeguards for women and recommended remedial measures, has repeatedly stressed the need to eliminate gender bias from our laws.

In the 11\textsuperscript{th} Five Year Plan, the Working Group on Land Relations recommended that 10 cents of land be distributed to each rural household which did
not own a homestead. Further the land was to be given in the woman’s name. There are no readily available figures on how much land has been distributed under this initiative and in which states, but the programmes of some states deserve mention. Kerala, for instance, has had a longstanding programme of giving ownership rights to the land on which a homestead stands, as a part of its land reform program. As many as 4.46 lakh agricultural labour households had benefitted from this and the percentage of landless families declined from 15.7 percent in 1971 to 4.8 percent in 2002-2003.

The various women’s movements are now engaged with the government on the issue of bringing back land reforms to the centre stage of politics. It took almost half a century to amend (2005) the Hindu Succession Act (HSA, 1956), giving Hindu women equal inheritance rights to agricultural land and overriding the state tenurial laws. Daughters including married daughters also became coparceners in joint family property though the same was not implemented in J&K. However, legal changes remain a vision only, suggested by the ground realities and diverse forms and levels of engagement on women’s land rights (Kannabiran, 2014: 103). Women movements have contributed to the politicization of women’s interest in land (Tagore, 2010).

To conclude this chapter, it can be pointed out that in spite of the large scale participation of women in agricultural activities and their economic value for society, they are being denied actual ownership and control of land or freedom to take effective decisions to make improvements on it. One reason for this is the primacy of agnatic descent in the male line as per the customary laws. Other reason is that in those cases where female children do have customary access to land they usually give up such rights in favour of their brothers. Granting women, legal rights to land would require a generational change in the cultural environment within which we live. Also more women’s organisations have to take up cases of discrimination in matters of inheritance and women’s rights to land in particular. The main reason behind all these issues is the discriminatory inheritance laws determining women property rights and gender-insensitive land laws. The next chapter deals with the inheritance laws which discriminate women in terms of property and land rights. Since this study focuses on Scheduled Castes women who are Hindus, the chapter will focus mainly on the inheritance laws of the Hindus in India and subsequently in Jammu and Kashmir.
END NOTES


5 Ibid


8 Ibid


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16 Ibid


18 Ibid


24 Ibid

25 Ibid


27 Ibid


31 Ibid

32 Ibid


36 Ibid


43 Ibid


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61 Ibid

Ibid


