



India

Condensed from Scoping Study on Women's Land Rights (India) by Association of Voluntary Agencies for Rural Development (AVARD). For more details of the study, contact: avard@bol.net.in.

Women in India have a multitude of rights to fight for, not least of which are their rights to the land on which they depend for their livelihood.

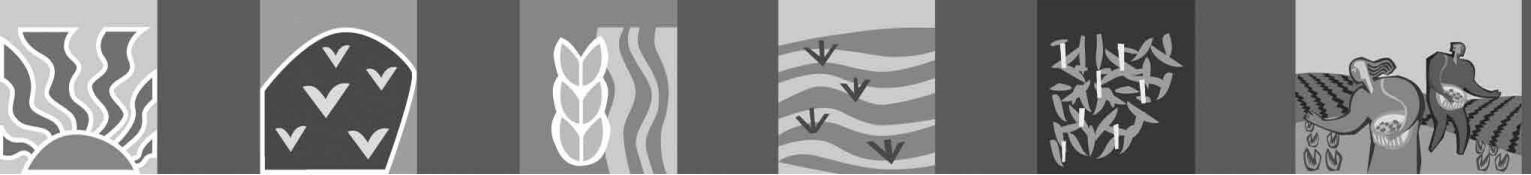
Land rights refer to the inalienable ability of individuals to freely obtain, utilize, and possess land, as long as activities on the land do not impede on other individuals' rights. Land rights equate to security and enhance human capabilities – and in the case of women, these are vital to their empowerment.

But because of the prevailing patriarchal culture in India that favors men, women have been largely denied vital access, ownership, and control over land. There are forced evictions and exclusion in cases such as husbands marrying another wife, domestic violence, and destruction of homes due to armed conflict.

Discriminatory laws, non-representation of women in decision-making bodies related to land,

Women in India
Photo by Ekta Parishad





and the low level of awareness about land laws and rights create more complexities for women.

According to Wickeri and Kalhan (2009), land ownership can be a critical source of capital, financial security, food, water, shelter, and resources. With land ownership, women can earn income and allocate resources more fairly within the household.

Land rights are an integral part of Land laws. “Land law” refers to the legal mandate set forth by a country with regard to land ownership, while “land rights” refer to the social acceptance of land ownership. Laws are important but they must be backed up by cultural traditions and social acceptance. Therefore, a country’s laws concerning land ownership and land rights must be in agreement.

Status of women’s land rights

The common perception that the status of women in India has improved significantly is not true. The United Nations Development Programme (UNDP) Human Development Report (2013) places India at 135th place on the Gender Development Index out of the total 187 countries listed.

The report also shows that women workers in India, on an average, get only 31% of the wages of their male counterparts. The sex-ratio (2011) at 940 females per 1,000 males is extremely low and reflects persistent discrimination against girls starting from early childhood, even in such basic matters as nutrition and health care.

For instance, they have lower rates of economic participation (e.g., in the labor force), literacy, and share in earned income and an abysmally low share in positions of power and influence in public life. Gender-related development indicators such

as maternal mortality rates and sex-selective abortion have likewise thrown a harsh light on the predicament of Indian women.

The situation is even worse in the context of land rights. Despite equality with men being declared under the law, Indian women continue to face wide-ranging disadvantages with regard to property rights. Hardly any attention has been paid to legal and institutional impediments in the acquisition of land through inheritance allotment, tenancy, or the situation of women who continue to have no assets. This despite the fact that a very large proportion of rural female workers are cultivators and that many farming households are headed by women, due to male migration, death, or desertion among other reasons.

The Constitution recognizes equal rights for men and women but Kanakalatha Mukund (1999) points out that, although women in India have the legal right to own land, very few actually do so as a result of the patriarchal practices that prevail to this day.

Indian women have been left out of laws regarding the distribution of public land and are forced to rely on the small possibility of obtaining private land from their families. Small indeed, as inheritance laws that favor men are among the key issues behind inequality in land rights.

Women comprise nearly half of the population, yet they own only 7% of the land. About 84% of rural women in India depend on agriculture for their livelihoods.

A ray of hope is the distribution of *Bhoodan* (“land gift”) land to women. According to an information leaflet on the Bihar Bhoodan Committee, as many as 50,000 women have been allotted land titles in their name in the state by this Committee.



Acts like the Rights to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 raise hope. Overall, the trend is positive but the pace is very slow.

The most recent advance towards equality in land rights, including rights to land ownership, in the country was the Hindu Succession (Amendment) Act 2005. This Act aimed at removing the gender discrimination in the Hindu Succession Act 1956. In the amendment, daughters and sons now have equal rights to obtain land from their parents.

Legally and socially, the Act not only legally mandated equality in land succession, it also validated women's roles as equals in society.

Religion likewise plays a role in women's status in India and, consequently, their rights to land. Hindus constitute 80.5% of the total population, while Muslims account for 13.4%. The latter are governed by personal law that is unfair to women. Other smaller religious groups are also governed by traditional laws and practices.

There are some communities in India (in Kerala and Meghalaya) that are matriarchal, but the rest of Indian society is patriarchal. Thus, disparity and inequity in land rights between men and women prevails.

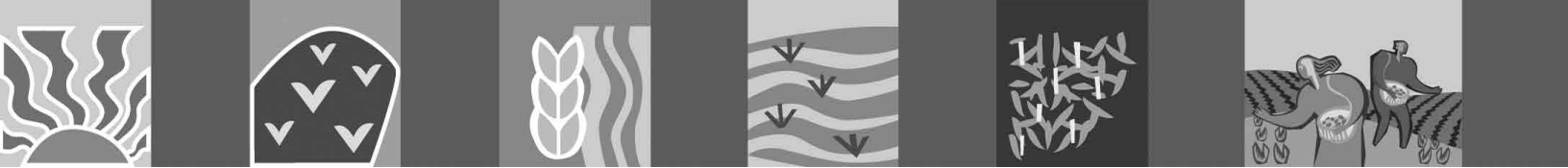
At the same time, India is a union of 28 States and Union Territories (UTs) and, with land being a state subject, any act passed by Parliament has to be endorsed by the states prior to implementation. Many states have not endorsed acts such as the Hindu Succession (Amendment) Act 2005, hence have not implemented them. The issuance of joint land/house site titles in the names of both husband and wife is being implemented in some states but not in all.

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In the matter of giving women a permanent stake in land distributed through government programs, the Sixth Plan (1980-85) recommended that states give joint titles to husband and wife in the transfer of assets like land and house sites under such programs. This was formalized as a policy directive in the 1985 Conference of Revenue Ministers.

The National Perspective Plan for Women (1998-2000) further recommended that the allotment of government wastelands, government land, ceiling surplus lands, village common land, developed house sites, and tenements should invariably be done in the name of women or jointly in the names of the husband and wife. It also stipulated that the rights of women, as co-owners of property, should not merely be confined to land but also to others associated with any group set up to advise the implementation of this plan.

Recommendations for the issue of joint *pattas* (titles) are being implemented by several states including Andhra Pradesh, Assam, Bihar, Gujarat,



Maharashtra, Goa, Daman and Diu, Tripura, Tamil Nadu, and Madhya Pradesh.

As Agarwal (2003) has pointed out, the impact of single titles being granted to women is likely to be greater but pragmatic considerations have prevented this from happening. The effectiveness and impact of the existing transfers (joint or single) are still to be analyzed (Srivastava, 2008). Most of the states, however, have not implemented the recommendation of issuing joint *pattas*. These are generally still issued in the name of adult males. Even in states like West Bengal, where considerable land reforms have taken place, this issue has yet to be addressed.

In most cases, the male head of the household is considered to be the *bargadar*¹ and only his name is entered into the records of rights, despite women undertaking more agricultural activities than the male head.

Also, awareness of existing provisions on women's land rights is seriously lacking and rarely does it translate into implementation. Government initiatives to address these wide-ranging disadvantages women face have been given only meager attention.

Even the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), which is a potential source of empowerment for women, has yet to overcome traditional patterns of gender inequality and female subordination.

In Indian society, a whole gamut of patriarchal norms and practices such as patriarchal inheritance, patrilocal residence, gender division of labor, gender segregation of public spaces, and

¹ A person who cultivates the land of another person on condition of receiving a share of the produce of such land from that person (West Bengal Act X of 1956).

discouragement of widow remarriage continue to prevail.

One of the most critical problems in relation to women's land rights is non-availability of segregated data about the operational landholdings owned specifically by women. This shows the general apathy and attitude of the government, as well as Indian society in general, towards the land rights of women.

The definition of women's land rights does not recognize every unmarried adult daughter as an independent unit deserving separate rehabilitation. In an undivided family, only the head of the household is treated as beneficiary and adult (female) members are left out. This creates problems for tribal communities where land is generally in the name of the father only. Households headed by women do not figure in the consideration of policy makers. This is particularly harsh towards widows, deserted women, and unmarried women – rendering them, in effect, invisible.

As already mentioned, the overall trend is positive but it is not taking off at the desired speed. However, with growing public awareness as well as a powerful and independent media, things are changing for the better and are expected to gain momentum in due course. On the whole, the outlook is positive and the balance is slowly but surely tilting towards more equitable land rights for women.

Assessment of key factors promoting or impeding women's land rights

In a vast land like India, which is struggling with many concerns, the issue of women's land rights has not emerged prominently in the public sphere. More attention is being devoted to food



security, health, education, and participation in governance. Thus this critical issue relating to the empowerment of women remains below the radar. The government has fulfilled its promise of legislation but is weak at implementation.

As mentioned, the government passed the Hindu Succession (Amendment) Act, 2005 which provides equal rights to men and women. Many state governments have also started issuing *pattas* in the joint names of husband and wife.

However, the real problem lies in the fact that any act passed by the Parliament has to be endorsed by at least half of India's 28 states to enable implementation at the national level. Besides, land in India is a state subject so the legislation process is a longer one. Any delay in approval on the part of the states delays the whole process. This can be overcome only by strong advocacy and engagement with the states.

Political parties look at larger issues, but because they have a constant eye on votes in a highly stratified and diversified society like India's, they are more interested in populist measures. When it comes to women, these parties are more oriented towards welfare and security measures rather than their land rights.

Local governments have taken steps to fight for women by issuing house site titles in the name of both husband and wife, but this is just a small step. Securing true land rights for women is still a distant dream.

In terms of representation in national as well as local governance and decision-making bodies related with land rights, it is expected that the increasing presence of women in such positions will make a difference.

Meanwhile, donor agencies and international institutions have so far played a limited role as far as women's land rights are concerned. They can only fund some of the relevant activities of civil society organizations/activists engaged in awareness generation and organizing people. Thus, there is not much room for them to make a difference in the fight for women's rights.

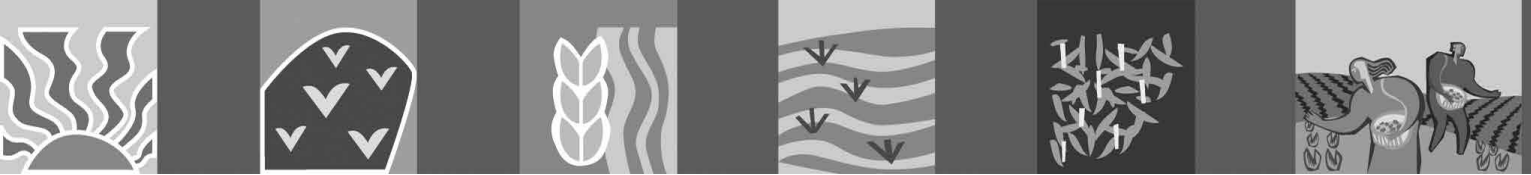
Civil society and social movements also tend to be more oriented towards the land rights of the landless, particularly of tribes and castes, irrespective of gender. Land rights for women are an extremely exclusive subject that has yet to emerge in the public consciousness. Other issues related to women, like participation in local self-governance, protection from domestic violence, safety and security, are gaining more attention.

The private sector, with its profit motive, is an even greater hindrance. Private firms are more interested in grabbing land and thus have the least interest in women's land rights. Media is also not very much interested in what, to them, is a non-priority issue.

Given this scenario, the growing trend of women's empowerment in the country and the recently concluded parliamentary elections provide good opportunities to raise the land rights issue. Now is the time for greater awareness generation and advocacy in a democratic manner, through means such as peaceful marches by women's groups.

Key opportunities and strategies to advance women's land rights

With the rise in literacy and level of awareness among women, as well as constitutional provisions providing more space for women for participation in decision-making processes, the issue of land rights for women is finally gaining attention.



The age-old patriarchal society and traditional values are diminishing slowly but surely. Thus, the time is now ripe to raise the issue. Besides, events like the awarding of land titles to women by the Bihar Bhoodan Committee, have prepared a concrete and solid ground to be followed by Bhoodan committees of other states.

The provision of issuing joint titles in the name of husband and wife likewise opens the opportunity to step up demand for its strict implementation in all the states of the country.

The election of a new government also provides an opportunity to CSOs and activists to get the issue of land rights for women included in their manifestos.

One of the key strategies needed is to increase awareness among women, particularly in rural areas, of their rights and the role of land in their empowerment.

Keeping in mind the vast expanse and huge population of the country, there is a need to organize women at different levels – local, state, regional and national – to get the message of women’s land rights across.

This task can be accomplished by CSOs and social activists in association with like-minded organizations/institutions working for the development and empowerment of the women sector.

Recommendations

Based on the situation of women’s land rights in India, the following recommendations were put forward in the draft national land reforms policy:

- In all government land transfers, women’s claims should be directly recognized.

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- All new homestead land distribution/regularization to landless families should be only in the name of women rather than as joint titles with the husband.
- Uncultivated arable lands under government control should be given to women’s groups for cultivation under group titles.
- A loan-cum-grant scheme should be provided, with 50% as a low-interest loan and the other 50% as a grant.
- Surplus land should be distributed among landless women.
- The Hindu Succession (Amendment) Act, 2005 should be more speedily implemented.
- Compensatory land in case of displacement should be in the joint names of man and woman or exclusively in the name of the woman.
- At least 50% of land titles given to forest communities in compliance with the Forest Rights Act should be in the name of women.
- States should promulgate laws to protect women’s rights to adequate housing and land.
- Management of common property resources at the village *panchayat* (local institution of self-government) level should be entrusted to women’s groups.
- Adequate representation of women in bodies responsible for decision-making on land



disputes and matters related to tenure and security of lease should be standard practice.

- Awareness programs to educate women about land laws and land rights should be conducted.
- A special help line should be set up at appropriate levels as a support mechanism which women can approach to resolve any issue related to their land rights.
- The government should undertake the task of providing at least homestead land of at least 10 cents (0.04 ha) to nearly 8 million households that do not have a house of their own.
- Common property resources should be entrusted to landless women groups for utilization and management.
- A Women's Land Rights Commission should be established at the state level. ■

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