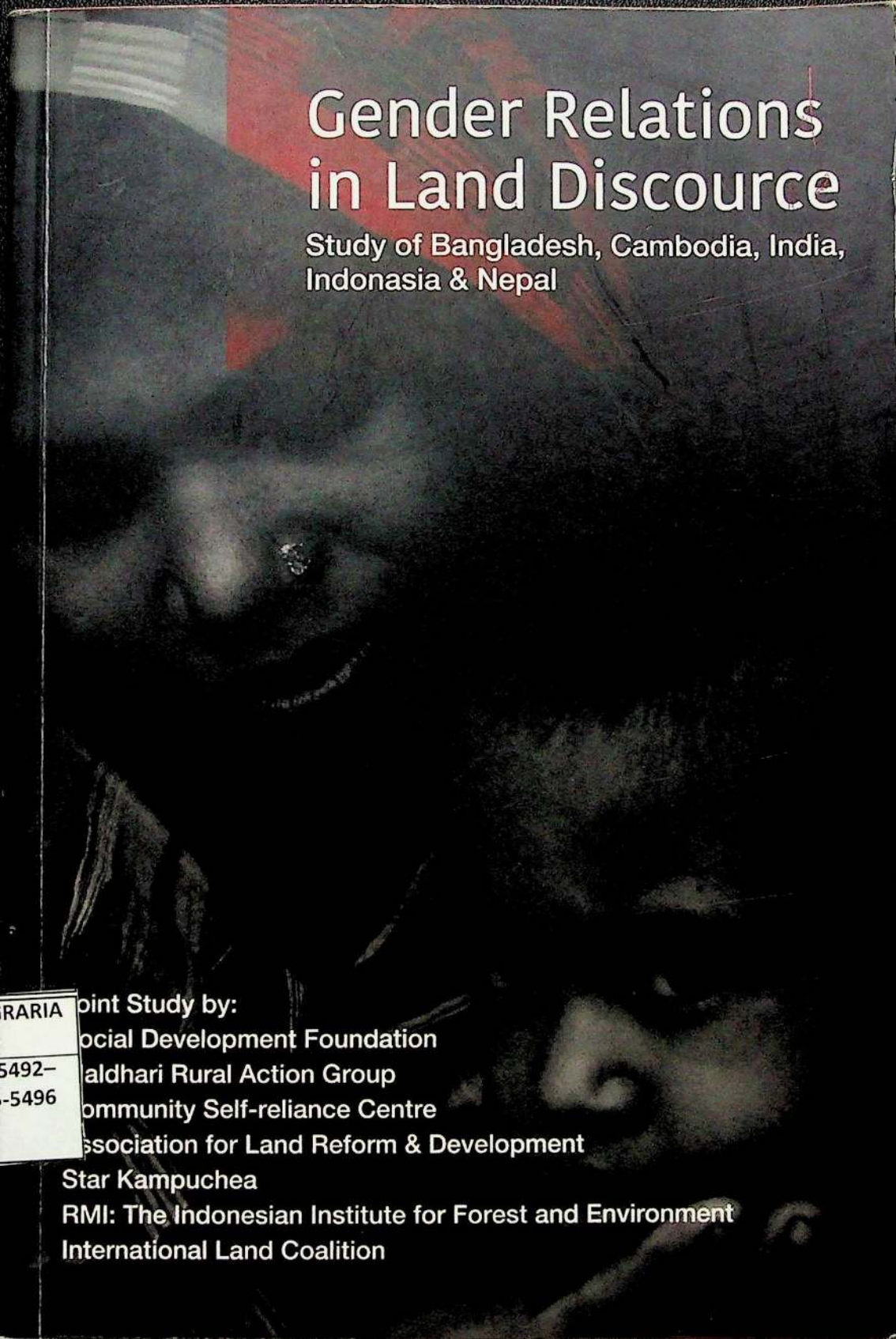
Gender Relations in Land Discource

Study of Bangladesh, Cambodia, India, Indonasia & Nepal



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International Land Coalition

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Compilation & Editing
Sunila Singh and Vidya Bhushan Rawat

Gender Relations in Land Discourse

Compiled and edited by

Sunila Singh

Vidya Bhushan Rawat

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PREFACE

The study titled Gender Relations in Land Discourse raises issues of gender and land at a crisis when New Economic Policy is in force and vast agricultural land are getting diverted to development projects making land market volatile. In addition the forest lands have been taken away by the forest department by displeasing tribal and traditional forest dwellers from their historical inhabitation. The changes in land policy have a direct bearing on women's position and ability to take advantage of the existing land laws. The study focuses on the changes taking place in the area of land and gender issues in relation to agrarian change in society, and its crises. The increasing misogyny, ways of gender inequality are highly prevalent in development discourse, land rights and control over other resource by women are unabated. The factor is that the land rights discourse is also marred by feminine capital—the way women are socialized not to claim property rights from their families. Although women have accumulated skills and attitude to develop their livelihoods—through farm and none-farm productivity, yet women are represented as deficit in land holding pattern and control of land as economic resources. The average Dalit and Adivasi women still caught in a loop of exploitation and alienation from land resources. The specific groups of women —Adivasis, Dalits, single, sexually oriented as ethnicity and class are crucial in defining gender land relations and rights influences, in order to intersect ways of control over resources. Therefore, women's land rights require wider new discourses that address the wider cross-section heterogeneous reality by transforming embedded gender relations through diversity of lived experiences of women as they are victimized and subjugated in the wider context of material, economic and political equations where male domination as cultural norm are highly prevalent in various parts of Asian continent.

This study is a compilation of laws, successful community initiatives and customary practices from Bangladesh, Cambodia, India, Indonesia and Nepal, under the Commitment Based Initiative-4 of the International Land Coalition and its partners. The initiative is a unique regional platform of the CBOs, within the Coalition on a particular issue as well as those who are not necessarily ILC members including IGOs, GOs and international organisations working or supporting the issue. International Land Coalition has made ten such

commitments on which the member organisations are building up regional alliances.

Most of us have worked in our respective countries and communities and building up a common international understanding on issues as diverse as this may be a difficult task but not impossible as South Asia and South East Asia have enormous commonalities despite being hugely diverse regions. The five countries which are part of this report have substantial number of the indigenous population including the Dalits-Adivasis in India and Jan-jaatis, Dalits in Nepal. Cambodia is totally dominated by the indigenous population while Bangladesh and Indonesia though are Islamic countries yet have areas concentrated by the indigenous communities. In terms of religious identities, Buddhism, Hinduism, Islam and diverse indigenous traditions have made huge impact on the communities. Most of the indigenous communities actually follow Buddhism and their own customary practices.

This study is not a classical academic work but purely based on the information provided by our partner organisations and some resources traced through secondary information. It was felt that there need to be a common ground for the organization to work together and influence policies and agenda regionally but also important to strengthen their local movements, as well as leadership, emerged from communities impacted. For that to happen, it is essential that we not only learn through but also from the failures. There may be good laws in one country while not being implemented fairly. Customs are always vilified but, in many societies, they have a protective shield towards women and vulnerable too. A regional alliance which intend to work together need to be well informed about such laws and practices which can be replicated in their own countries. We all know about the issues but many times are unable to think about the solutions. Some time, a good cultural practice or certain feature of a particular law could be inspiring for others and hence serve the purpose of collectivization. Our collective approach respect individual as well as the ethnic diversity of our region. We are joining hand to help us understand and resolve our issues in a better informed and democratic way so that the communities that we are working get benefitted and community leadership is strengthened and made well-informed. Hence, we feel that the aim of our coming together is not merely putting a collective voice at the regional level but also to help our grassroots women leaders in gaining international exposure which will also provide an opportunity to those who work internationally to directly interact from the voices of people on the

ground. Aim of this study was to strengthen the understanding of organisations and communities engaged in Women's access and ownership to Land and other productive resources.

This study could not have been completed without the active involvement of our colleague Dr Sunila Singh, who not only followed up with all the organisations, the country-leads engaged in it but also searched for country specific data and other information to make it useful for all.

All the lead organisations and the individuals engaged in this study need our special mention for their involvement. Ms Kalpana Karki from CSRC, Nepal, Ms Rowoshan Jahan Moni, Ms S K Ripa from ALRD, Bangladesh, Ms Chet Charya, Ms Ly Sokheang, Star Kampuchea, Mr Indra Hastura, Ms Madhha Tillah, from RMI - The Indonesian Institute for Forest and Environment, Indonesia. I would also like to acknowledge the support of Mr Dinesh Desai, MARAG India, colleagues in Social Development Foundation and Ms Anu Verma, NES India facilitator.

We cannot ignore that a lot of new ideas were generated during our regional workshop in Kathmandu, Nepal. I would like to make special mention to our two highly committed individuals from International Secretariat and RCU Ms Michelle and Mr Harafik who have been very supportive of this work.

All this would have been impossible unless the International Land Coalition's International Secretariat was not supportive. Their persistently encouraging the new ideas and democratization of the entire movement helped us build this regional collective effort to fight for Women's Land Rights and related issues. I would like to express my gratitude to ILC Director M.J.Taylor for standing with us and supporting these initiatives.

Vidya Bhushan Rawat

Delhi

Coordinator,

Regional Initiative on Women and Land Rights in Asia,

An International Land Coalition, Asia initiative

Women's Share of Inheritance and Ownership - A Dispossessed Equation

Contextual: Women and Land:

Land demands particular attention, women's access to and control over land has in particular, is related to improved household food security and nutrition, greater investment in education, greater gender equality, bargaining power and decision making, increased social status and social capital so no.[1] Therefore, land is key element to a life with dignity and a basis for entitlements which can ensure an adequate standard of living and, personal empowerment.

Evidently, most important economic factor affects women is the 'gender gap' in command over property, particularly land.[2] Since then, there have been numerous studies of the impacts of women's property rights. A broad consensus has emerged that strengthening women's property rights over land, livestock, and other non-land assets are important for both poverty reduction and equitable growth. Nonetheless, the situation continues to remains grim with on women's property rights and land ownership in most of the Asian countries. The accumulation evidence from South Asia and other Asian countries demonstrate that women are disadvantaged in both statutory and customary land tenure systems.[3] Land legal mechanism and/or policy reform has typically focused on changing household rights to land, not those of individuals within the household but only to male members. Thus, strengthening household rights to land does not automatically imply that women within those households have equal and secure land rights.

It is noteworthy to examine, gender specific empirical evidences and analysis throughout the world has exposed a systemic gender inequality when it comes to

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[1] UN, 2013; WB, FAO and IFAD, 2006; UNDP, 2008.

[2] Bina Agrawal, Are We Not Peasants Too, Land Rights and women's Claims in India, Population Council, Inc, 2002.

[3] Prem Choudhry, Gender Discrimination in Land Ownership, SAGE Publishing, 2009.

land and other productive resources which, are intimately related to women's poverty and exclusion. The obstacles which prevent women from effectively enjoying these rights are complex and to a large extent context specific. Still, many overarching similarities are apparent. Barriers which prevent women's access to, control and use of land and other productive resources often include inadequate legal standards and/or ineffective implementation at national and local levels, as well as discriminatory cultural attitudes and practices at the institutional and community level.

The other challenge that poses in South Asia, the Dalit women faces at intersection of multiple forms of discrimination, which mean overlapping oppression often creates specific forms or ways of experiencing discrimination, leaving them in a situation of further disadvantage—denial of rights at all levels, more so accesses to rural residence, land and natural resources. Even if Dalit communities owned land, it is small plot of land less than hector, with inadequate accesses to credit, seeds and other farm inputs, Dalits often get into debt by mortgaging their lands to money lenders or upper castes people, gradually their lands are grabbed by the powerful people, and Dalits are evacuated from their homesteaded. In addition, the intergenerational segregation and alienation of Dalit communities from land ownership and general usage of land has resulted in their socio-economic dependence on dominant caste communities.

Henceforth, a broad consensus was emerged at international level United Nation (UN) Decade for Women (1976 to 1985) that strengthening women's development and including women's property rights has been crucial for reducing poverty and achieving equitable growth by promoting gender-neutral grains— (all identity of marginalized women, ethnicity, caste, class, disability, including spatiality). Although gender-neutral development and policy received fair recognition, yet a few nationally representative data that exist on women's property rights in Asia, shows women's accesses to land continue to hinder.

Besides, the participating countries—Bangladesh, Cambodia, India, Indonesia and Nepal in this study are signatory to the Convention on the Elimination of all forms of discrimination against women (CEDAW) adopted in 1979 by the United Nation. With this, it reasserts its commitment to remove discrimination against women in all forms, including legal spears, by suitably modifying gender biased or discriminatory laws. And laws guided by specific countries constitutional principles and (directives), and international commitments—UN Instruments

and bindings—Sustainable Development Goals (SDGs) have aimed to remove gender inequality and promote women's land rights as human rights. The Universal Periodical Review (UPR) also binds countries to follow and ensure with the frame work of women's rights in its reviews. The governments, therefore, are expected to engage periodically to enforce them in their respective countries. For example the National Development Policy (2011) in Bangladesh, National Strategy Development Plan (2014-2018), Cambodia, National Perspective Plan for Women (1988-2000 and 2016), India, Indonesia's the policy on Gender Equality and Empowerment been adopted at several levels at different time frame, and National Action Plan on Gender Equality (2004), Nepal have been drafted all of them have emphasised to removal of gender discrimination and promotion of gender equality. In the case on Bangladesh's Fourth Fiver year plan (1990-95), India's Ninth Five year plan (1997-2002) and Nepal's Eight Five Year Plan (1992-97) have advocated women's need for land, accessibility to women's ownership and resources and suggested corrective measures and amend/or change in land-related laws. Regardless of the policy and legal provisions recognition, good intentions, and willingness of the governments, women continue to encounter serious barriers, to claim rightful property share-land rights. It is undeniable that there is a difference between the legal recognition of a claim and its social recognition and enforcement.

Acceptance of idea of independent rights in land:

Decades back questions were raised do women need independent rights in land, which was not even discussed in public policy discourse in most part of Asia than. Presently, in contemporary Asia the discussion are admissible, policy and laws have been drafted, however, answer to independent rights in land is still under dispute. The idea of women independent right in land is itself an arena of struggle; in order to translate into effective rights in practices. The public policy formulation and the rights covered in personal laws are conspicuously inarticulate. However, the idea of women having independent property rights—including rights in land has been accepted by most of the Asian counties law governing inheritance of personal property —both traditionally and matrilineal communities. But such acceptance remained confined to inheritance law that affects private land, in development policy governing the distribution of public land; the issue of women's land rights was not discussed till the 1980s. Thus redistributive land reform programme of the 1950s and 1960s in India and of the

1970s in Bangladesh continued to be modelled on the notion of unitary male-headed households, with titles being granted only to men, expect in the case of absence of adult men where women (widow) were granted titles, hence nearly 20 per cent of women have some form of legal ownership rights over land. Deprivation of land rights is synonymous with poverty and inequality[4]. So, underlying the cessation, of government policy and in relation to public land distribution and the rights in private land granted to women under inheritance laws are likely to be multifaceted issues.

Objective and Methodology:

The secondary data research consists of two components. The first component identified existing specific governments laws and policies aimed at addressing the land rights of women. The second component is to find out have gender specific and neutral laws and policies have made any changes in women's land ownership and their rights.

Therefore, this scoping study was to assess the gender specific legal mechanism and policy available to women's land, property and commons rights. Further to examine the implementations of laws, gaps, gender relations and women's property status. In addition, the distinction between ownership and control of property within the households with regards to their equal participation in decision making were assessed. Thus the country studies have analysed the policies and laws that addressed the concern of women's land rights within the overarching framework of land polices and their implications for providing accesses to women and land.

This study has attempted to examine secondary sources of established literatures, review of legal policies and programmes undertaken by specific counties on women's land rights. Further the study also draws and depended on empirical studies done by various authors, including referred to field study notes of the researcher/s. Literatures were identified through academic publications, journal, databases, internet search engines and targeted searches of development practitioners' publication depositories etc. Literatures were also sourced through academic and professional networks of institutions. Searches were conducted

[4] The Women's Foundation, Nepal, 2018.

based on search criteria derived from the conceptual framework. Literatures from the participating countries were broadly used to identify possible lessons, relevant experiences of cases to analyse gender implications. While, researching, the gender marginalization and exclusion, specific identity-based discrimination that affect women's livelihoods and economic development was also given due importance.

The strategic actions through rights base approach— policy advocacy, campaign on land legal literacy, awareness generations on land rights to women would ensure and it would create pathway to gender equality with gender perspective and women's equal participation and engagements in land related decisions with in homes and in community.

This report is targeted for land advocates and for other stakeholders (rural women, civil society, traditional authorities, religious leaders and ethnic council, political leaders, and including policy-makers so on).

Key Findings of the study:

- Land ownership is very minuscule in all participating countries, average percentage ranges from 14 to 20, women owning the land.
- Super imposition of traditional patrilineal practices in inheriting landed property, has deprived rights to women.
- Significant barriers to realize the legal claim on landed property, women do not enjoy their rights to access and control productive resources.
- Personal laws governs and control women's property rights, women have direct bearing in deprivation of land and other property resources.
- Customary laws too deprive women's right to land the laws varies region to region and community to community
- Customary marriage practices, status, lack of decision making power have excluded land ownership to women. And, determinants of women accesses to land from natal family under different situation…
- Women entitled to land rights mainly through inheritance…but major inheritance share controlled by men and joint land ownership.

- Uneven legal instruments protection with in the regions and same regions, with un-codified instruments in practice.
- Persisting significant gaps in legal frame work
- Processes of incorporating the issue of women and land into public policy has been discouraging, and remains issue of marginal concern among policy makers, particularly for Dalit women.
- Voluntary giving up of claims—in parental ancestral land in favour of their brothers is common in Bangladesh, India and Nepal.
- Lack of awareness and knowledge on laws that protect women's inheritance rights and other land related laws to secure land right.
- Challenge in implementation and enforcement, where good laws exist, due to sociocultural hindrance.
- Market-led land reforms and macroeconomic policy and the global economic system are aiding women to purchase land in Bangladesh, Cambodia and India, Nepal aided by the World Bank and other international agencies.

Conclusion:

Land rights are defined as claims that legally and socially recognised and enforceable by the external legitimised authority— village level intuitions (autonomous council in case of India) or higher level body of the State. Respective counties study has demonstrated that land rights have (can) stem from inheritance, transfers or distribution from the State, tenancy arrangements, land purchase, and so on. The studies have pointed out very distinctions features—differences between legal recognition, of a claim and its social recognition, and between recognition and enforcement. A woman may have legal rights to inherit property, but this may remain on papers merely if claim is not recognised as socially legitimate or if law is enforced, and ownership and effective control.

A major part of the remaining challenge revolves around implementation and enforcement of policies and laws. Even in countries where good laws exist, women frequently do not enjoy their rights to access and control productive resources. Implementation is too often hindered by sociocultural norms and women's lack of knowledge of their entitlements. There is no one-size-fits-all

solution; but lessons have been learned. "Socioeconomic contexts determine the appropriateness of different types of rights to land and property – including individual rights, joint-titling and group rights. Continued efforts are needed to promote gender-sensitive legislation, enforce existing legislation, make judicial systems more accessible and responsive to women, and provide legal literacy and aid to women seeking to claim their rights. It is, therefore, the concern here is women having effective and independent rights in land, effective rights not just on laws but also in practices. Thus, even small plot can be critical which in diversified livelihoods, which would benefit directly and indirectly to women, to take care of their rural livelihoods of farm and nonfarm earnings activities, and also serve as collateral credit at the time of crises.

References List:

Ahmad Nashih Luthfi and M. Fauzi, Agrarian Chronicles in Indonesia, KPA, 2018.

Assessing Inheritance Laws and their Impact on Rural Women in Bangladesh, International Land Coalition, Agust 2014.

Barriers to women's land and property access and ownership in Nepal, International Organization for Migration, 2016.

Capacity Building for Resettlement Risk Management, Compensation and Valuation in Resettlement: Cambodia, People's Republic of China, and India, Asian Development Bank, 2007.

Impact of joint land ownership and land entitlement to women in Nepal, College of Development Studies, 2013

Locally Present Land Tenure Typology in Nepal, Community Self-reliance Centre, Katmandu, 2018

Md. Raisul Islam Sourav, Unjust Land Right of Women in Bangladesh, *International Research Journal of Interdisciplinary & Multidisciplinary Studies (IRJIMS), 2018.*

Not about us without us: Working with grassroots organisations in the land field, UN-HABITAT, Global Land Tool Network, 2009.

Rajendra Pradhan, Ruth Meinzen, and Sophie, Property Rights, Intersectionality, and Women's Empowerment in Nepal, International Food Policy Research Institute, January 2018.

Rowshan Jahan Moni, Women's Land Rights and Access to Commons in Bangladesh, A case of Securing Commons (Khas land) from Northern Bangladesh, July 2017

Shah I Mobin Jinnah, Land and Property Rights of Rural Women in Bangladesh, Community Development Association (CDA) January 2013.

Shahra Razavi, Liberalisation and the Debates on Women's Access to Land, Third World Quarterly, Vol. 28, No. 8, 2007, pp 1479 – 1500.

Study on Women's Land Rights - Bangladesh

Association for Land Reform and Development

The Legal Framework- Bangladesh

Introduction

A South Asian country Bangladesh, situated in the shore of Bay of Bangle blessed by nature, is one of the most suitable grounds for agriculture. Nature makes it the heaven of plenty of golden crops which make land as the major resource for the people of Bangladesh and most of the people of this country directly or indirectly dependent on agriculture for their livelihood. Gradually with the growing tendency of population land scarcity has reached at its peak. Now-a-days, access to land is critical as only 10% owns 50% of land, leaving small peasants dispossessed and landless. In effect, power gap is increasing between these land holders and landless peasants. On the other hand, in Bangladesh, the socio-cultural prospect towards women is prejudiced due to the classic patriarchal social structure. Both religious and social values hinder women's ownership of land. Various types of social and religious limitations are imposed on their life from their right to mobility and freedom. In many cases a female child even not gets equal treatment like equal food, equal health care and the opportunity of education from her family as well as from the society where she belongs. In such a socio cultural and religious context, day by day they are lagged behind and their access to and control over resources faces multi facet challenges and mostly right to the ownership of land is denied. Usually there has been a class based power gap between land holders and landless men then what the actual scenario of women's access to and control over land in this socio-economic context is a fundamental question as women are treated as subordinate to men. Hunger, malnutrition, illiteracy, limited access to productive resources, physical violence put women insubordination in every term.

Even in socio-political context, corruption in land governance system, land grabbing by the elite groups, commercialization of land, impact of globalization and violence against women related to land gradually constrained threat and further shrunken scope and space for ensuring women's equal right to land and

family property. Although Constitution of Bangladesh also recognizes equal rights for women, several laws-policies and socio-cultural context of the country ignores women's equal rights in all aspects of life. Nevertheless, land grabbing of both rural and urban land by domestic actors is a problem in Bangladesh. Land encroached by elites correspond to both bureaucratic elites, political party members, judiciary and law enforcement agents and agencies with false documents and obtained court decrees to confirm their ownership, often with the help of corrupted officials in land administration and management departments. In this context, loopholes of existing state laws, obstacles in implementation further posed immense challenges to establish women's land rights especially poor and single widow women without adult son are in more vulnerable situation. Their social status, poverty, lack of education and judicial discrimination makes them helpless to fight against the elite land grabbers who ignore legal safeguards and due process with impunity in order to gain rights illegally. As a result they become victim of eviction and land related violence's.

In Bangladesh, there are several hurdles to implement the number of existing national and international legal frameworks with its full extent due to lack of political will and commitment as well as social patriarchal mind-set. Moreover, no uniform civil law exists in Bangladesh to govern family law matters, such as marriage, divorce, division of property, or inheritance. Family law in Bangladesh is governed by the personal laws applicable to each religious community. A study shows that women's involvement in agriculture is nearly 88% (HDRC, 2002); however, they own only 4% (Unnayan Anneshan, 2007) of total land. Another statistics shows that women contribution in food production is 80% (HDRC, 2002), but till now women are not recognized as farmer which again drops them in disadvantaged position. Different national and international initiatives have already been taken to ensure equal rights for women; however, these initiatives have little impact on women's land rights as well as on their livelihood.

Case Study: Khadija, rich peasant widow, called me into her house. She was clearly upset: 'I inherited nine bigha (three acres) of land from my mama (uncle) who brought me up, but my sons have registered my land in their names, they took my fingerprint.

The government has also set in motion a project to digitise all of Bangladesh's land records, with support from the European Commission has chipped in €10m, or $13.3m, to make the public records transparent this would make women's claim official. A small step towards making those greedy brothers

behaves better, perhaps an important move. Sources: **Women and property rights. Sources:** The Economist, August 21, 2013.

Status of women land holding and other assets:

In Bangladesh, among the total population 49.4% are women and round 64.4% of rural women are involved in agriculture, whereas rural men involvement is around 52.8%[5]. However, women have ownership on total land only 2-4% of total land.

In Bangladesh Land Status Report 2015, Prof. Abul Barakat claims that in Bangladesh for 150 million people have 37.4 million acres of land and 60% of the total land is used for agricultural purpose.

Legal provisions favour land holding and assets for women: The Constitution of Bangladesh in favour of women holding land and assets.

The Constitution of Bangladesh establishes that 'all citizens are equal before the law and are entitled to equal protection of the law' **(article 27).** It recognizes equal rights of women in all spheres of life and also includes a number of legislations to protect equal rights of women. It also articulated that 'women shall have equal rights with men in all spheres of the State and of public life' (in **article 28 (2)**) and 'nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens' (in **article 28 (4)**). Prior to that some other articles including article **11, 15, 19(1), 20(1), 28(1)** include equal right, freedom, respect and dignity in all aspect of human life without distinction as religion, race, caste, sex or place of birth. **Article 13** is about the principle of ownership which states that 'the people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms-

a) State ownership, that is ownership by the State on behalf of the people through the creation of an efficient and dynamic nationalized public sector embracing the key sectors of the economy;

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[5] Report on Labour Force Survey (LFS) Bangladesh 2013. October 2015. Bangladesh Bureau of Statistics (BBS)

b) Cooperative ownership, that is ownership by cooperatives on behalf of their members within such limits as may be prescribed by law;

c) Private ownership, that is ownership by individuals within such limits as maybe prescribed by law'.

Article 42(1) is also about right to property which declares 'subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized or requisitioned save by authority of law'.

Government initiatives towards Pro-women policies and Laws

Bangladesh has adopted a set of laws and policies over the past decades many of which dates from the colonial period but more have been added gradually since 1947 during the Pakistan period and in particular, following the independence of the country in 1971. Some of these significant laws and policies are: East Bengal State Acquisition and Tenancy Act, 1950; Land Reform Ordinance, 1972; Land Reforms Ordinance, 1984; The Acquisition and Requisition of Immovable Property Ordinance, 1982; Agriculture Khas Land Management and Settlement Policy, 1997; Vested Property Return Act 2001; The Forest Act, 1927, **National Women Development Policy 2011,** Water Act, 2013 etc.).

The **Khas Land (government owned land) Management and Distribution Policy** guarantees joint ownership of husband and wife, and the **Char Development and Settlement Project (1987)** also grants land titles in the joint names of both husband and wife, with the wife's name coming first.

A **National Women Development Policy** has been adopted in 1997 for the Advancement of Women. Later the policy had been adapted for two times in 2004 and 2008 to get better result in terms of women's equal rights. This policy does not recognize equal rights to land or other natural resources rather it recognizes right to control own property which a women achieve through her earnings, inheritance, loan or land and market management. In **National Women Development Policy, 2011** it has been said in article 25(2) that *"women should have full right to control her property which she achieve through earnings, inheritance, credit or land and market management"*, thus again equal inheritance right is ignored by the policy makers. **National Food Policy Action Plan 2008-2015** also recognizes women participation in agricultural and other rural activities in **article 2.5** which is about income generation for women and disabled.

7th Five-year Plan of Bangladesh

Though not exactly to address or stop only land related violence, Bangladesh has taken some measures to stop violence against women and establish equal rights for women in accordance with CEDAW. In response **Domestic Violence Act (Prevention and Protection) 2010** was enacted and came into action. Bangladesh government has also prepared a law regarding Nari O Shishu Nirjatan Daman Ain, 2000 (**Suppression of Violence against Women and Children, 2000**).

No specific gender law/s favour women and girls on inheritance property right:

The straight answer is NO. There is no specific gender law/s that has been amended in favour of women and girls on ancestors' property rights. Although women and girls' property rights is mentioned in some laws and regulation, they are highly patriarchal in nature and do not provide equal opportunities to access to land for women and men and girls and boys.

Although **the Constitution** of Bangladesh guarantees equal rights and dignity for men of women in all aspects, there is no specific gender law(s) that has been amended in favour of women and girls on ancestors' property right yet.

Regarding women and girls on inheritance/ancestors' property right, Bangladesh follows the Personal Law(s) - Muslim, Hindu and Buddhist law(s) which is discriminatory against gender perspectives.

In accordance with land rights, some laws and polices like the **Khas Land Management and Distribution Policy, 1997** and **Char Development and Settlement Project, 1987** have been adapted; however, they are not fully in favour of girls and women's ancestor property rights. For more details, please see the answer of question #2.

There is demand from Civil Society Organizations (CBOs) to adapt a law in favour of women and girls on ancestors' property right, and even they have drafted a specific gender law named 'Uniform Family Code'; however, government rejected the draft law.

Customary laws women's land position:

Customary laws are not recognized by our state law except Chittagong Hill Tracts (CHT). The CHT Regulation 1900 is one of the laws that recognized some customary provision. Two broad types of customary law are of particular relevance to the indigenous peoples of the CHT. One of these is their custom-based family law, which is primarily administered by the "traditional" indigenous institutions of the Karbari, the mauza Headmen, and the "circle" chiefs whose offices are formally recognized as being an integral part of the CHT administrative set-up. The other is the custom-based right of the indigenous peoples over the natural resources that they regard as their commons, irrespective of their formal legal classification. The customary law, The CHT Regulation 1900, follows the patriarchal nature in practice and women and girls hardly have access to hold this administrative provisions that has trickle-down effect into women and girls' land ownership and property rights.

Till now all circle chief are king. Most of the headmen and karbaries are men. However, last few years, in line with the gender norms and practices and continuous supports from different national and international actors, some competent women, although yet number is very few, have been getting appointment as Headmen and Karbaries.

Among Indigenous people of Bangladesh, Garo, Khasi and Marma communities follow favourable customary laws to women in terms of property rights. Among them the indigenous Garo in Mymensingh and Khasi in Sylhet community follow matrilineal customary practice through which property and descent inherited by daughters though the control of that property is in the hand of male members of family. Among indigenous communities in Chittagong Hill Tracts (CHT) Marma women inherit property equally.

The other indigenous daughters including Chakma, Tripura and Tanchanga daughters cannot claim ancestral property if there is a son.

Personal law that favours women's property rights:

Bangladesh is largely governed by the Civil and Criminal Procedural codes inherited from British colonial rule. During the British rule, the principle religious communities particularly Muslims, Hindus and Christians in the sub-continent were allowed to accept and uphold Personal Laws in the matter of divorce, dowry maintenance, guardianship and custody of children. After Indian independence

in 1947 the Personal Laws were recognized and applied by the courts in cases where religion and communities' normative system were in place. When Bangladesh gained independence in 1971, it adopted the same Personal Laws under the Bangladesh (Adaptation of Existing Laws) Order, 1972. As a result, followers of different faiths came under different provisions that are incorporated into statutory laws. The Personal Laws that governs family life are sometimes discriminatory against women with regard to marriage, divorce, custody of children, alimony and property inheritance. Especially the latter is subject to strict regulations by personal laws[6].

Comparison of Women Sharers in Personal Law

Sharer	Muslim	Hindu	Christian
Wife	1. If a late person doesn't have any children or doesn't have any grandson or generations down wards than wife entitled of one fourth of the property. For any children the wife will get one eighth of property. 2. If a late person have son or grandson or daughter than wife (One or More than one) will get one eight of the property.	After passing the Hindu Women's Right to Property Act, 1937 the widow also can enjoy life time enjoyment opportunity but not gain ownership. According to the Act. the widow only can access to enjoy property during her life time. She has no power to transfer, sale or donate or anything else of the property, which upon their death reverts to the male	As a wife of a late person: 1. If a late person have children then wife will have one third of the property. 2. If a late person doesn't have children, father, mother but have sister and brother then wife will have two third of property. 3. If a late person doesn't have children, father, mother, sister and

[6] Cultivating Women's Rights for Access to Land, country analysis and recommendation for Afghanistan, Bangladesh, Burkina Faso, Ethiopia, Ghana, Guatemala, Malawi, Mozambique, Uganda, Vietnam (Action Aid, International food security Network, European community, 2005), p.18

Sharer	Muslim	Hindu	Christian
		heirs of the person who they inherited from.	brother then widow will have the ownership of whole property.
Daughter	1. If a late person has only one daughter and no son then the daughter will get half of the property. 2. If a late person doesn't have son and he has more than one daughter then they will get two third of the property together. 3. If a late person has daughter and son then daughter will get ½ of his brother that means daughter and son ratio is 1:2.	As a daughter of a late father: 1. If a late fathers have son, grandson and great grandson than daughters are not entitled of property. 2. If the above mentioned are absent and wife alive then daughters can enjoy the property life time with their mother equally but not gain ownership.	As a daughter of a late father: According to the Succession Act, 1925 Son and daughter will have equal rights on father's property.
Mother	1. If a late person have children or have any grandson or generations down wards then mother will get one sixth of property. 2. If a late person doesn't have any children then mother entitled of	As a Mother of a late son: If a late person have son, grandson, wife, daughter and father then mother will not entitled for property	As a mother of a late person: 1. If a late person have son, daughter and father then mother will not get any property. 2. If a late person have no wife, son, daughter and father, brother and sister then mother will

Sharer	Muslim	Hindu	Christian
	one third of the property.		have the whole the property. 3. If a late person doesn't have son, daughter, father, brother or sister then mother will get one third property and late person wife will have two third property.
Sister	According to Muslim inheritance Law, Sister is not the Quranic shareholder.	A sister cannot be an owner to her brother's property.	If a late person has no son, daughter and father, but have brother and sister then wife will have two third and one third property would be shared among brothers and sisters equally.

Indigenous people of Bangladesh practice their customary laws. Among them numerous groups like Chakma and Santal follow discriminatory customary laws against women in terms of property rights where only son inherit land property. Among them the exceptions are the Garo, Khasi and Marma communities where women inherit property though the control of that property is in the hand of male members of family.

Laws that obstructs land rights to women:

Unequal treatment of women in Bangladesh is legitimated by several laws, accords, and policies, even though social values, customs and attitudes which reflect gender-based discrimination in the mainstream society. Legal framework, however, related to equal rights and opportunities of women is focused from two facets means international framework and national framework. There are number

of laws, treaties, conventions and policies both at national and international levels for the protection of equal rights and opportunities. However, there also have several hurdles to implement these frameworks with its full extent due to lack of will and commitment by policy makers and socio-political context of Bangladesh. As a result, when some national and international initiatives have been trying to facilitate women's equal rights in every aspect of life, patriarchal values and social customs constantly drop back women in the mainstream society.

SL	Laws/ Regulation	Obstructs, or denies property, land rights to woman/women
1	Policy Adaptation	Bangladesh is largely governed by the Civil and Criminal Procedural codes enacted during British rule. During the British rule, the principle religious communities in the sub-continent were allowed to accept and uphold Personal laws in the matter of divorce, dowry maintenance, guardianship and custody of children. After Indian independence in 1947 the Personal Laws were recognized and applied by the courts in cases where religion and communities' normative system were in place. When Bangladesh gained independence in 1971, it adopted the same Personal laws under the law continuation Order of 1972. As a result, followers of different faiths came under different provisions that are incorporated into statutory laws. The personal laws that governs family life are sometimes discriminatory against women with regard to marriage, divorce, custody of children, alimony and property inheritance. Especially the latter is subject to strict regulations by personal laws.
2	Convention on all Forms of Discrimination against Women (CEDAW)	Most significant advancement is the ratification of UN Convention on all Forms of Discrimination against Women (CEDAW) by the Government of Bangladesh keeping reservation with particular reservations on the article 2 and 16 (1) (c) which are about marriage, divorce and inheritance right of women. Government put reservation on these articles considering the religious sentiments. Interestingly, article 14 is ratified by the government which contains equal rights of women regarding access to land and other property. Due to the

		reservation on article 2 and 16 (1) (c) proper implementation of article 14 is facing immense challenge which makes it quite malfunctioning and ineffective tool to protect equal rights and opportunities for women's access to and control over land. Reason for the reservation on article 2 and 16 (1) (c) is that these two articles contradict with religious Islamic law of inheritance, widely practiced in Bangladesh.
3	National Women Development Policy	In this policy the most notable thing is the incorporation of full right to control property, but this is only applicable for those property which women achieve through own earnings, inheritance, credit or land and market management. In National Women Development Policy 2011 it has been said in article 25(2) that *"women should have full right to control her property which she achieve through earnings, inheritance, credit or land and market management"*, thus again equal inheritance right is ignored by the policy makers. National Women Development Policy 2011 does not recognize equal rights to land or other natural resources rather it recognizes right to control own property which a women achieve through her earnings, inheritance, loan or land and market management.
4	Khas Land (government owned land) Management and Distribution Policy	Though the Khas Land Management and Distribution Policy recognizes joint ownership of husband and wife, however, some provisions, rules and procedure ignore women's right; likewise application procedure proscribes a single women or widow applying for Khas land. A woman can only apply jointly with her husband and in absence of her husband she can apply with her son. This is really disgraceful for women when state itself undermines women as an individual. In case of Cluster Village Program and Char Development and Settlement Project similar facts are found. Even though there also has the provision of joint ownership, actual scenario is that there has little

			evidence of proper implementation of joint ownership policy.
5	Vested Property Return Act 2001		The uniqueness of "Vested Property Return Act 2001" is it recognizes and allows women heir to claim property as co-sharer though Hindu inheritance law; however, the Hindu inheritance law doesn't permit women to inherit any parental property.
6	CHT regulation	1900	CHT 1900 regulation is particle in nature. There is no provision for women and girls in this regulation to be a Circle chief, *Headmen and Karbaries.*

Religious disapproval of property:

Bangladesh's legal system is secular on paper, but the areas of marriage, divorce, alimony and property inheritance are based on what is called personal law, which varies according to an individual's or family's religion. Muslim women are allowed to buy or be gifted property or access to khas land (fallow plots owned by the government), but the main route through which they acquire it is inheritance. The Muslim law of inheritance is mostly based on the local school of sharia, wherein a daughter is bequeathed only half what her brother inherits. A widow receives one-eighth of her husband's property if they have children and one-fourth if they do not.

Hindu law, culture and patriarchal society deny Hindu women's individual identity. In Bangladesh existing Hindu law is yet to be modified. In Hindu religion, the law is considered as a branch of Dharama (ethical principles). Hindu women do not get any right from their customary law rather they suffer from discrimination. In Hindu law there are two systems of inheritance. Mitakshara system and Dayabhaga system. The Dayabhaga School of law governs the system of inheritance for Hindus in Bangladesh which only gives Hindu women life interest in the property. In respect of Stridhan (women's property) a Hindu woman can deal with her property in any way she desires and after her death will pass on to her own heirs.

In our country Bengali Buddhist are following Hindu inheritance law. So Muslim and Hindu personal laws obstructed, or denies property, land rights to women.

The customary law is not approved except CHT Regulation 1900. So there is no scope any or particular community to disapprove or obstruct property or land rights to women. Please see above questions answers.

Redressal mechanisms available to seek property and land rights

Community and Personal:

From historical period in Bangladesh, community mediation, in the name of Salish, a traditional alternative dispute resolution process at community level, has been predominantly practiced by the rural community people. This redressal mechanism could be a voluntary submission of arbitration or mediation, or even a blend of both.

However, in this traditional redressal mechanism women's participation in decision-making is always ignored and their arguments never counted. Patriarchic belief, attitude and values are more acute in rural societies and it is even rare to get justice in favour of women. Due to corruption women hardly ever get fair dealing in case of land related dispute, inheritance property rights or even on their own property. Violence against women e.g. rape, killing, acid throwing is often a result of land related dispute and in rural arbitration, hardly there has been evidences of justice of these crime. Typically, women are blamed for being the victim and justice always denied or often women get punishment blaming them unchaste in this patriarchic system. Seldom women get very low amount of financial support from the accused family or person and paradox is that most often this money is distributed among the powerful elite of the *Salish (arbitrators)*. All these factors force women not to claim their rights over land and other natural resources which is a big obstacle to establish women's rights to land.

State law:

Bangladesh is largely governed by the Civil and Criminal Procedural codes inherited from British colonial rule. During the British rule, the principal religious communities particularly Muslims, Hindus and Christians in the sub-continent were allowed to accept and uphold Personal Laws in the matter of divorce, dowry maintenance, guardianship and custody of children. After Indian independence in 1947 the Personal Laws were recognized and applied by the courts in cases where religion and communities' normative system were in place. When Bangladesh gained independence in 1971, it adopted the same Personal Laws

under the Bangladesh (Adaptation of Existing Laws) Order, 1972. As a result, followers of different faiths came under different provisions that are incorporated into statutory laws. The Personal Laws that governs family life are sometimes discriminatory against women with regard to marriage, divorce, custody of children, alimony and property inheritance. Especially the latter is subject to strict regulations by personal laws.

Court cases on property right litigation: Struggle for Establishing Claim over Vested Property

Khagendra Sarker, a villager at Ishan Gopalpur of Faridpur died in 2002. Since then, his wife Lipika Sarker (Age) and her three sons started facing lot of troubles and harassments particularly in maintenance of the lands owned by the family. But agony started much before when the then Pakistan government promulgated Enemy Property Ordinance two and half a decades ago. In 1969, government land administration forcibly took possession of 1.04 acres of agricultural land along with another property (0.205 acres of land with a two storied building) at Faridpur municipality area belongs to Sarker family in the name of Enemy property. In 2012, Vested Property Return Tribunal was set in Faridpur district for settling the claims (in form of written applications) to return the vested property to its original owner/co-sharer/successor. In the same year,' Lipika Sarker and her three sons Ujjal Sarker, Sagar Sarker and Utpal Sarker filed an application (case no 4 of 2012) before the tribunal claiming the property back to them. Tribunal gave verdict in favour of the family and passed a decree on May 2013 to government administration for returning the possession of land. Legal provision is that government administration (deputy commissioner) has to execute the decree within 30 days. But there was no measure from administer in more than 4 years. At last, 4 July 2017 when the possession of the land finally return to the family.

The other piece of land (20.5 decimals) was listed in the Gazette of Vested Property in 2012. An application (case no 1451 of 2012) was submitted. The storied building had been built in the land when government took the possession of the land. Tribunal, on 24 September 2013, gave its verdict in favour of the family and passed a decree on 30 September 2013 to deputy commissioner of Faridpur for returning the possession. The government authority (office of deputy commissioner) made an appeal in appellate tribunal against this verdict and decree but the appeal was denied and verdict and decree of the tribunal that

was passed in favour of the family was sustained. According to the Vested Property Return Act, deputy commissioner is bound to implement the decree passed by tribunal within a month. But deputy commissioner instead of following the mandatory provision of law, on 1 March 2015 sent a letter to land ministry and similar one on 23 April 2015 for instruction. Land ministry, after almost 8 month in a circular dated 28 October 2015, instructed to follow the provisions of law in lieu of sending letters for instructions from ministry unless 'substantial necessity of government'. And law minister opined (signing a note regarding the case on 13 November 2018) that a writ could be filed in the high court division of the supreme court against the denial order of appellate tribunal. Eventually, in spite of clear provisions for returning the properties within one month after the decree passed, till now no measure has been taken from the district administration for executing the decree of 30 September 2013. Hundreds of families in different districts have the similar fates, they got decree from tribunal but are still waiting for its execution.

Following the India-Pakistan war in 1965, the then Pakistan government introduced the Enemy Property (Custody and Registration) Order II in East Pakistan (presently Bangladesh), which was widely criticized as a tool for appropriating the land of the minority population and forcing them to cross the border to India. In a study (2006), Abul Barkat, Professor of Economics at Dhaka University with his fellow researchers found that some 1.2 million or 44 per cent of the 2.7 million Hindu households were affected by the infamous Enemy Property Act, 1965 and its post-independence version, the Vested Property Act 1974. ALRD has been among the few Organisations who played a pivotal role in advocacy and lobbying for repealing the discriminatory Vested Property Act and for enactment of a law for returning the vested properties to their deprived owners. ALRD took the first initiative to carry out a study on the impacts of Vested Property Act. A research team led by Professor Dr. Abul Barkat conducted the study for ALRD in 1993-94. The findings of the study were shared and discussed in different places of the country and the larger civil society groups including human right activists, NGOs, journalists, lawyers involved themselves in the campaign. Deputations were given to the lawmakers and government authorities at different levels. Meetings, seminars, and other formal and informal awareness building activities were held all over the country. The government formed a parliamentary commission to examine the issues related to the Vested Property Act. The VPA was repealed in 2001 by the new law "Vested Property

Return Act 2001". The victims formally got back their constitutional right through this act. Fifteen years have passed since enactment of the said law. In addition to that a remarkable change had been made in an amendment of that act in 2011 for its actual implementation. But according to available information, the resolution of the disputes and end of injustice which have been piled up for over 50 years concerning huge number of victims are yet to be made. Nonetheless in some districts a good number of victim families have been able to access justice and got back their ancestral properties or are in the process of getting back their properties which were vested before or after the independence. Also, it is clear from civil society evidences and media reports that a host of complications have arisen due to noncompliance, corruption and complexities. Faridpur case of Lipika Sarker is one of the example how a family faces sufferings of that.

According to annual report of land ministry, 118,173 cases have been filed in Vested Property Return Tribunals, out of which 8089 cases were disposed of up to June 2016. Total 26,224.195 acres lands were released following tribunal's verdict. Earlier after repealing `Kha' schedule of Vested Property, total of 742,421.24168 acres of land had been released. The disposal cases increased during July 2016 to June 2017, when 7,135 cases were disposed of in the tribunals. Which means upto June 2017, 15,224 families' cases were disposed of from 118,173 cases regarding releasing Vested Property. 8,187.52 acres of property have been released from 220,191.74 acres in the gazettes of schedule 'Ka' of Vested Property between July 2016 and June 2017. However still a pile of cases (applications) remain unattended due to lack of Judges, corruption and negligence's by government authorities, government pleaders etc. And non-compliance of the tribunals' verdicts and decrees remains one of the key impediments in implementation of the Vested Property Return Act. ALRD along with its allies is now addressing this issue through a localized and decentralized measure, i.e. engaging the local partners, actors and rights defenders and using Right to Information Act.

CEDAW and its ratification:

Most significant advancement is the ratification of UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) by the Government of Bangladesh keeping reservation with particular reservations on the article 2 and 16 (1) (c) which are about marriage, divorce and inheritance right of women. Government put reservation on these articles considering the religious

sentiments. Interestingly, article 14 is ratified by the government which contains equal rights of women regarding access to land and other property. Due to the reservation on article 2 and 16 (1) (c) proper implementation of article 14 is facing immense challenge which makes it quite malfunctioning and ineffective tool to protect equal rights and opportunities for women's access to and control over land. Reason for the reservation on article 2 & 16 (1) (c) is that these two articles contradict with religious Islamic law of inheritance, widely practiced in Bangladesh.

Customary laws and rights of the indigenous people over their commons:

Customary laws are not recognized by our state law except Chittagong Hill Tracts (CHT). The CHT Regulation 1900 is one of the laws that recognized some customary provision. Two broad types of customary law are of particular relevance to the indigenous peoples of the CHT. One of these is their custom-based family law, which is primarily administered by the "traditional" indigenous institutions of the Karbari, the mauza Headmen, and the "circle" chiefs whose offices are formally recognized as being an integral part of the CHT administrative set-up. The other is the custom-based right of the indigenous peoples over the natural resources that they regard as their commons, irrespective of their formal legal classification.

The Government of Bangladesh does not recognize indigenous peoples as 'indigenous'. In 2011 the National Parliament enacted the 15th Amendment to the Constitution of Bangladesh denying recognition of indigenous people as full citizens of this country. Article 6(2) of our Constitution states, "The people of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshis". Again Article 23A provides, "The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities." Article 6(2) explicitly denies the indigenous peoples as citizens of Bangladesh while Article 23A categories and alienates indigenous people from Bengalis making them second class citizens of the State. Thus the Government has categorically denied the existence of indigenous peoples in Bangladesh, though the term was used earlier by the same government and also mentioned in different national legislations.

Indigenous people of Bangladesh practice their customary laws. Among them numerous groups like Chakma and Santal follow discriminatory customary laws against women in terms of property rights. Many indigenous communities in

Bangladesh exercise customary inheritance law where only son inherit land property. Among them the exceptions are the Garo, Khasi and Marma communities where women inherit property though the control of that property is in the hand of male members of family.

For more details please see Answer of the question #4.

Good practices related to access to Commons: Landless widows got approval to obtain khas (government owned) land in Beel Kuralia

Mst. Tushtojan Begum, a landless widow living in a village named Dhoroil Mollikpath of Beel Kuralia in Chatmohor has been possessing 25 decimal of agricultural khas (government owned) for years. But she has no legal title of this land. The long cherished dream of her family of owning legally a piece of land is now on the way to become true as government has decided to allocate the land to her name. She along with other 230 landless families including 28 widows of Beel Kuralia are about to get the allocation of almost 70 acres of land. On 29 January 2018, government khas land distribution committee approved these families to be allocated the lands parmanently. These land were actually possessed by these family after they freed along with other hundreds of land pieces from illegal grabbing of local influential land grabbers throughout a series of violent confrontations with them by landless people of Bilkuralia.

Background: More than 4 hundred acres of agricultural khas lands were illegally possessed by the local influential for decades till the landless people of Beel Kuralia[7] unitedly freed the lands in 1992 and took possession of the lands. Bangladesh government adopted a policy in 1987 to distribute agricultural khas land among the landless families and before that the practice was to lease out public properties to the landless, vulnerable people or person in possession. In 1992, landless people of Beel Kuralia started movement for getting allocation of 371 acres of khas land that was occupied by land grabbers. Under the banner of LDO (landless development organisation) formed in 1994, they organised the landless people of 15 villages in the upazila and continued movement for getting khas land. Following their movement, the government demarked 371 acres of

[7] Beel Kuralia is of the main constituent beels of Chalan beel, one of the largest inland depressions of marshy character and also one of the richest wetland areas of Bangladesh. Its total area is 18 sq km.

khas land and 101 acres of water body of the mouza in 2005. A total of 1313 landless people submitted application to the district administration for getting khas land. Total 1,165 families have been allocated almost 300 acres of khas land till 2017. Despite a provision of government khas land distribution policy that denies a widow getting allocation if she has no able son, many widows got allocation of the lands. The government committee approved them without being checking whether they meet the criteria thanks to the united stands of the landless people. ALRD has been providing legal aid to the landless families through LDO since 1993.

Acknowledgement of women farmers:

Traditionally women are involved with agriculture, food production and management, seed preservation raring domestic animals, family gardening and so on but in Bangladesh women are not recognized as farmer. Therefore, women are deprived of getting small credit, seeds, fertilizer and other benefits provided by our government.

Since women are significantly involved and dependent on agriculture, immediate actions such as a specific law need to enact to recognize them as farmer.

Conclusion:

It is observed that even though women's contribution to agriculture is significant their landlessness has made them marginalized. The SDGs of women's empowerment, health, education, environment, social development, etc. would not be possible to achieve if women's access to land is not ensured. So, the government should formulate short, medium and long term targets to ensure their land rights. Women's right to land and farming should be ensured first to protect food security and sovereignty for the countrymen.

Recommendations

- Withdrawal reservations from Article 2 and 16(1)(C) of CEDAW;
- Adopting uniform family code ensuring women's equal rights to land and also marriage, divorce and other family rights;
- Amendment of Khas Land Distribution Policy ensuring rights of the women headed families including childless widow and divorced women without any able son;

- Recognition of women agricultural workers as farmers;
- Customary laws should be adopted ensuring ethnic minority women of the plains.
- Taking effective measures in speeding up implementation of Vested Property Return Act giving special focus to cases filed by women.
- Amending National Women Development Policy, 2011 accommodating all the clauses of CEDAW to ensure women's equal rights to all spheres of life including property and inheritance rights.
- Implementation of CHT Accord ensuring indigenous women's rights in the CHT.
- Documentation needs to be improved, but more importantly, the lessons should be shared among countries, highlighting the positive stories.

Reference

"Are women the secret weapon in the battle for food security?" *The Guardian,* Poverty Matters Blog, 5 March, 2013, available at http://www.guardian.co.uk/global-development/poverty matters/2013/mar/05/women-secret-weapon-food-security,

"Bangladesh, women and distribution of inherited property" Your Commonwealth, ASIA, 25 July 2011 Available at http://www.yourcommonwealth.org/2011/07/25/bangladesh-women-and-the-equal-distribution-of-inherited-property/

ANGOC POLICY DISCUSSION PAPER - Asian NGO Perspectives on Agrarian Reform Paper prepared by Antonio B. Quizon on behalf of the Asian NGO Coalition, August 2004.

Asia's women in agriculture, environment and rural production, available at http://www.fao.org/sd/wpdirect/wpre0104.htm,

Available at http://www.km4dev.org/profiles/blogs/gender-policy-in-community-radio-stations-of-bangladesh-2nd,

Bangladesh Food Security and Land Governance Factsheet, *IS Academy*, Available at

http://www.landgovernance.org/system/files/Bangladesh%20Factsheet%20-%202012.pdf,

Barakat Abul, Hoque Ebadul, Shiq-uz-Zaman, Roy Devashis, Halim Sadeka, Huda Shamsul, Bangladesh Land Status Report 2015, Ramon Publishers, Dhaka

Barkat Abul, Shafiqueuz Zaman, Selim Raihan, *Political Economy of Khas Land in Bangladesh* (Dhaka: ALRD, 2001)

CEDAW articles, available at http://www.ncwnz.org.nz/assets/Uploads/CEDAW-Articles.pdf

Cultivating Women's Rights for Access to Land, country analysis and recommendation for Afghanistan, Bangladesh, Burkina Faso, Ethiopia, Ghana, Guatemala, Malawi, Mozambique, Uganda, Vietnam (Action Aid, International food security Network, European community, 2005),

Election Manifesto, 2008 of Bangladesh Awami League, available at http://www.votebd.org/information/parliament/2008/al_manifesto_2008_en.pdf,

Election Manifesto, 2008 of Bangladesh Nationalist Party, available at http://kanakbarman.wordpress.com/2008/12/19/manifesto-of-bnp-2008/,

Executive Summery Violence against Women and Girls: the Chittagong Hill Tracts, (CHTC, IWGIA, Bangladesh Indigenous Women Network: Dhaka, 2013),

Halim, Sadeka, *Access to justice: Situation of Rural women and Urban- rural Migrant Workers in Bangladesh, in "legal Empowerment- a way out of Poverty,"* the Norwegian Ministry of Foreign Affairs, December 2006-issue2

Halim, Sadeka, Situation of Indigenous Women & ILO Convention on Discrimination, Indigenous people's right to mother tongue & culture, Solidarity, Bangladesh Indigenous Peoples Forum, 2007.

Halim, Sadeka, *Status of Hindu Women: Spheres of Human Rights Violation in Bangladesh*, (Delhi: 2009)

International Covenant on Economic, Social and Cultural Rights of 1966, available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx,

Jahan Moni Rowshan, Ripa Shanjida Khan & Sumaiya Tamima, Scoping Study on Women and Land Rights in Bangladesh, Land Watch Asia & ANGOC, 2013

Ministry of Environment and Forest, Government of the People's Republic of Bangladesh, *Climate Change and Gender in Bangladesh*, available at http://cmsdata.iucn.org/downloads/gender.pdf,

National Food Policy Action Plan 2008-2015, available at http://www.nfpcsp.org/agridrupal/sites/default/files/The National Food Policy Plan of Action %282008-15%29.pdf,

National Women Policy 2011, available at http://www.mowca.gov.bd/National Women Policy 2011.pdf, accessed on 09.04.2013

Parvin, Shahnaj, Access of Rural Women to Productive Resources in Bangladesh: A Pillar For Promoting Their Empowerment, *International Journal of Rural Studies,* April, 2008, Vol.15 no.1 (ISSN 1023-2001)

Rahman, Mostafizur Khan, FerdousAra, Women Participation and Empowerment in Local Government: Bangladesh Union Parishad perspective, *Asian Affairs*, January-March, 2006: Vol. 29, No 1 :73-00, available athttp://www.cdrb.org/journal/current/1/3.pdf,

Report on Land Ownership Patterns in Bangladesh with USA, UK, China and India, *Assignment Point*, Available at http://www.assignmentpoint.com/arts/sociology/report-on-land-ownership-pattern-in-bangladesh-with-usa-uk-china-and-india.html

SARWAR, MD. GOLAM, *Women's Rights to Land in Bangladesh: Roles, Limitations and Transformation* (Dhaka: UnanayanOnneshan, 2007), available at http://www.unnayan.org/reports/Women Land Right in Banglades h.pdf,

Securing the Right to Land: A CSO Overview, *ANGOC*, 2009, p.51

Tobacco Workers are Suffering from Tuberculosis, *Daily ProthomAlo*, May 31, 2013

UN Charter, available at http://www.un.org/en/documents/charter/chapter1.shtml

Universal Declaration of Human Rights 1948, Available at http://www.un.org/en/documents/udhr/

Women's Land Rights - Cambodia

Star Kampuchea Farmer Nature Net

Situation of women's assets land and other property:

Land and land-based natural resources are the foundation of livelihoods for millions of people and are related to social, cultural and spiritual identity. Access to and control over land also contributes to a number of developmental pathways and the Sustainable Development Goals. Land rights are directly related to increases in agricultural productivity, which is linked to economic growth and poverty reduction. Land rights are also linked to more sustainable resource use, soil conservation, and reduction in vulnerability, and have potential for reduced land related conflicts.[8]

According to 2010 Cambodia Demographic and Health Survey (CDHS) report of National Institute of Statistic (NIS) found that nearly half of women still view that important decisions should be made by men (RGC. 2013). Moreover, the report also shows the per cent distribution of women age 15-49 by ownership of a house and land, according to background characteristics. Owning a house is more common among women than owning land. Overall, 62 % of women own a house and 54 % own land. The majority of women who do own assets own them jointly; 43 % of women own a house jointly, and 35 % own land jointly (CDHS of NIS. 2014). The report further emulates, there are variations in ownership of a house and land by age, residence, region, education, and wealth. Ownership of houses and land increases with age. 80% of young women age 15-19 do not own a house, and 82 % do not own land. Ownership of a house or land is more common in rural than in urban areas: 58 % and 34 % of urban and rural women, respectively, do not own a house, and 65 % and 41 %, respectively, do not own land.

Cambodia Socio-Economic Survey (CSES) 2015 report demonstrate the number of 573,000 households by sex of household heads own land per parcel. Women-headed households for one parcel was higher than male-headed households at 74.6 % to 65.3% respectively; as for ownership of two-five parcels of land, the women-headed households are lower than men-headed households at 25.3% to

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[8] UNCCD, 2011; Deininger et al., 2007.

34.5% respectively; while for six parcel was 0.1% to 0.2% respectively (CSES. 2015). In 2008 female headed households were at 46.6% of 2,841,897 households and 51.6% of 2,188,663 households in 1998 respectively.

In the CSES 2016, agricultural land by sex of household head and zone shows that Tonle Sap zone has the largest share of agricultural land in 2015, followed by the Plain zone. For Phnom Penh, the share of agricultural land is smallest as most of land in Phnom Penh is designated as industrial commercial and service areas. Of the total 3,561,000 hectares in Cambodia, approximately 13% (452,000 hectares) was owned by women-headed households (CSES of NIS. 2016). Therefore, women play a significant role in making a living for households particularly from agricultural sector and other sectors. As reflect in the research on Analysis of Gender- Responsive Policies in Forestry, Land, Agriculture, Disaster Risk Reduction and Climate Change Adaptation in 2010 found that rural women (in target area) are responsible for 80% of food production and play a key role in ensuring the food security of their families. They make up 51%[9]of the primary workforce in market-oriented agriculture produce. Despite of their significant contribution in household income, women continued to suffer from gender inequalities in access to land-based resources, paid employment, financial capital and skill training so on. Land registration and issuing land titles are therefore a critical resource for women as it can make a different on their ability to be self-reliant as well as participate and influence decision making in marital, family and livelihood matters. Land ownership can potentially bring a positives impact for women as it can strategically contribute to balanced and equitable gender and power relations[10]. Land Administration Sub-sector is a systematic land registration that shows that female land owners outnumber male owners. 20 % of the land titling was made in the wife's name, 5 % in the husband's name alone, and 70 % consist of joint ownership titles.

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[9] National Strategic Development Plan 2014-2018

[10] Velasco, E and S. Tous. October 2010. Analysis of Gender- Responsive Policies in Forestry, Land, Agriculture, Disaster Risk Reduction and Climate Change Adaptation. Study Supported by Oxfam Great Britain in Cambodia.

Legal provisions favour women:

Very three specific legal provisions are favourable towards women i) The Law on Marriage and Family, which was amended 1989 stipulates equal rights to both spouses in all property acquired by the earnings and effort of either spouses during the marriage. ii) The Land Law of 2001 affirms the Khmer people's right to land which is national land law was amended in 2001 mandates that the land titling and ownership should show both the names of husband and wife if the land has been acquired within their marriage. iii) Civil Code Art. 1270 was amended in 2007, mandates Common Asset/ property Division through the court will in case of any party of spouse claim, also inheritance rights is included.

Law of Marriage and Family 1973, article 68; if a wife is pregnant, a husband may not allow divorce until one year after child birth.[11] This counteracts with the inheritance law of 1972 where a husband can gain access to wife's inherited land. This could be argued as denying women their rightful property as the land could be fair gain in divorce to either the woman or the man.[12]

Matrilineal system and property share:

In Cambodian culture, after marriage men shift wives house. The parents of the women distribute asset or land to their daughters. However, daughters don't become sole owners of their land instead the land will be co-owned or co-registered on the both spouses name. Both spouses together cultivate land or utilize the assets equally. However, this practice has been reducing due the land dispossession by the parents.

Convention on the Elimination of All Forms of Discrimination against Women states in article 13-16, that States are to ensure that men and women are treated equally in their right to family benefits are treated equally in land and agrarian reform as well as in land resettlement schemes enjoy adequate living conditions, particularly in relation to housing, have equal rights to conclude contracts and to administer property have the same rights for both spouses in respect of the

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[11] Family and Marriage Law, 1973

[12] Inheritance Law, 1972

ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.[13]

Remedial measures:

- Sub-degree on the Organization and Functioning of the Cadastral Commission, No.47ANK/BK, May 31, 2002
- Sub-degree on Sporadic Registration, No.48ANK/BK, May 31, 2002)
- Inter-Ministerial proclamation on the Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes, No.02PNK/03 November 26, 2003.
- Proclamation on Procedure of the Exchange of State Immovable Property at Ministries, Institutions and Province/Municipalities, No.386 SHV/TR, October 20, 2004.
- Order on Strengthening the Management of State Property, No.02BB, June 13, 2005
- Sub-degree on the Procedure of Land Registration of Indigenous Communities, No.83ANK/BK, June 09, 2009

Litigation:

Legal remedies for grant corruption, Litigation Lesson from Contesting Corrupt Land Grab in Cambodia, Bunthea Keo, October 2016[14],

CEDAW, article 14 (rural women) and GR 34:

Yes, it is ratified. Women's rights to access land and other natural resources are protected under international law. Cambodia ratified CEDAW on 15 October

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[13] Convention of the elimination of all for of discrimination against women, Article 13-16

[14] This paper is the ninth in a series examining the challenges and opportunities facing civil society groups that seek to develop innovative legal approaches to expose and punish grand corruption. The series has been developed from a day of discussions on the worldwide legal fight against high-level corruption organized by the Justice Initiative and Oxford University's Institute for Ethics, Law and Armed Conflict, held in June 2014.

1992, and thus are automatically protected under domestic law by way of Article 31 of the Constitution of the Kingdom of Cambodia (the "Constitution"), which explicitly incorporates international human rights law into domestic law. As a party to CEDAW Cambodia is obligated to provide legal measures to guarantee and protect women's equal rights in all aspects of development. To Strengthen the CEDAW legal mechanism, Cambodia in 2011, signed the Optional Protocol which establishes procedures whereby women may file complaints requesting investigation of violation of their rights. However, women's rights are not fully protected in practice. Violence against women and land grabbing are two most serious issues in Cambodia today.

Customary laws and rights of the indigenous people:

Initially, Land Law 2001 essentially applied to communal title for the Indigenous population with their natural resources. In order to register the communal land title, there is the Sub-decree No. 83 on Procedure of Registration of Land of Indigenous Communities and the Circular of the Ministry of Rural Development on the Procedures and Methods of Implementing National Policy on the Development and Identification of an Indigenous Community was introduced under artcile 15. However, the sizes of ancestral land claim by indigenous communities have been always reduced when it comes to the land registration with the MLMUPC and the ancestral domain was not accepted rather the communal land claim allows.

The 2002 Forestry Law includes specific provisions covering the rights of indigenous communities. These provisions include article 15, requiring the companies receiving forest concessions do not interfere with "customary user rights taking place on land property of an indigenous community that is registered with the state consistent with the Land Law".[16] This law provides the rights to access and use the forest by the indigenous peoples. The rights to manage the forest are not granted, i.e. the period of community forestry is limited to 15 years the extension can be reviewed after that.

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[15] Sub-decree No. 83 Procedure of Registration of Land of Indigenous Communities

[16] Forestry Law, 2002

The 2008 Protected areas law came into force in January 2009 and defined the framework for the management, conversation and development of protected areas. The original four categories of protected areas are expanded with additionally including the national parks, wildlife sanctuaries, protected landscapes, multiple-use areas, Ramsar sites, biosphere reserves, natural heritage sites and marine parks, which had been defined by previous regulations on natural resource management and environmental protection. [17] This is beneficial to the Indigenous as it protects their original land and natural resources.

The Royal Government of Cambodia adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), recognize the indigenous peoples existence in the Kingdom. The RGC also has formulated a number of laws for protection and promotion of the rights of indigenous peoples. For example, Land Law 2001, Forestry Law 2002, Sub-decree on IP community land registration, National Policy for Development of Indigenous Peoples, etc. However, the implementation has always questioned for example up to now the communal land titles, only 24 have been titles given since the land laws adopted in 2001 and there are more than 500 communities titles still not in the processes.

[17] Protected Land Law, 2008

Case Study: An Urban Informal Settler on the Side of a Railroad

A 35 year-old woman with two children lives beside the railroad track. She moved in the area in 1991 and purchased the land for building her house in informal market when the land was swampy. She made substantial improvements on land and the house, and her husband had a job as a taxi driver nearby in the city. When government announced the right of way of 25 meters from the centerline and demanded her to move without compensation, she was shocked. While agreeing to move, she demanded for compensation. Her request was rejected and she would have to face the harsh reality, that is, all her investments in the land and the house would be gone. Because they could not afford the land nearby, they had to move to a remote area. Living in a remote area would mean the loss of the source of income as a taxi driver.[18]

Women farmers' accesses to entitlements:

As stated in Constitution Law, Article 31 "Khmer citizens are equal before the law, enjoying the same rights, liberties and duties regardless of race, colour, sex, language, beliefs, religions, political tendencies, birth origin, social status, wealth or other situations. The exercise of personal rights and liberties by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and liberties shall be in accordance with the law. Women farmers can become members / leaders of agricultural associations/ cooperatives or community forestry and fisheries. They have access to agricultural loans and technology although in reality they face may challenges because of their limited schooling and persistent patriarchal attitudes that constrain women's personal growth and development.

Conclusion:

With women having security of property to their name there are able to access a livelihood and have the independence away from being supported by their spouse and/or family.

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[18] Improving tenure security for the urban poor in Phnom Penh, Khemro and Payne. 2004, Cambodia:

Six groups of people, most of whom are poor and marginalized including women, are not entitled to compensation under the law. This raises a serious question on the rationality of such legal restrictions.

The land titling program has been initiated with support from the World Bank and other international development agencies, the program intends to secure owner or holder's rights to their land through documenting and registering such rights under market driven land rights.

Recommendation:

- Strengthen the capacity of government at all levels to ensure proper law enforcement.
- Disseminate information on the Collective Land Title (CLT) process so communities are clearly aware of how to register for collective land.
- Review of the existing procedures for CLT for indigenous communities with a simpler process taken into consideration.
- Faster the land registration process for the citizens.
- Raise awareness among communities of women's rights, especially in relation to land rights and leadership, through education and training and workshop.

Women's Land Rights: Inadequacy and Ineffective Control – India

Social Development Foundation

Background:

Women land rights are essential to gender equality:

India is arguably amongst the most complex democracy in the world, with long history of commitment to women's welfare and empowerment through constitutional provisions, legislations, policies and plans and civil society actions, even while deep levels of structural gender prejudices persist with in families, communities, societies and economic spears of development.

Women's access to, use and control over land and other productive resources are essential to gender equality and to an adequate standard of living. These resources improve and ensure that women are able to manage their day-to-day needs and necessity and those of their families. Over and above, land and other productive resources are also integrally linked to food security, sustainable economic development, as well as reduce gender-based violence in incomparable cases, by promoting over all development of human living standers. On the contrary, the situation demonstrates number of barriers that prevents women from accesses to land and resources, by putting women in dispossessed position permanently. So, the vulnerable circumstance makes it more difficult to secure formal rights to land as well productive resources.

In accessibility to land and other productive resources are intimately related to women's poverty and exclusion by promoting gender discrimination and inequality. The obstacles which prevent women from effectively enjoying these rights are complex and to a large extent it is context specific[19]. And, discriminatory cultural attitude and practices at the institutional and community level further strengthen dispossession to land rights.

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[19] UN Women-OHCHR, Geneva, 2013.

Gender disparities with regard to land and other productive resources are invariably linked to men's ownership, as heads of households, control and manage land in almost all communities— tribals and ethnic groups, Dalits, minority groups, general groups as well. By implicitly reflecting ideas that women are incapable of managing productive resources such as land effectively, with belief of productive resources given to women are "lost to another family" in the event of marriage, divorce or (male) death.

In the contrary, India being agrarian society where 69 percent of its population lives in rural areas, agricultural is the main sources of livelihoods for larger number of rural population including women. In recent year's women farmers have increased to three fold— 80 percent of rural women are engaged in farming, contributing significantly to agricultural production, yet they do not enjoy significant landownership rights. Therefore, women's lack of ownership of productive resources—land and common property resources weakens their bargaining capacity with in household as well as in public spears or community. This further excludes them from sociopolitical and legal intuitions and women continued to be discriminated against. Studies have suggested that countries where women lack land ownership rights or access to credit have on average 60 per cent and 85 percent more malnourished children, respectively.[20]

The other barriers which prevent women's access to, control and use of land and other productive resources often include inadequate legal standards and/or ineffective implementation at national and local levels. Land and inheritance laws in most of states in India are biased. Similarly, situation may be seen in northeast and tribal pockets of other states where customary laws are in practice. There is need to revisit the land laws in order to remove the existing anomalies[21].

Even so, women's movements in the country have been demanding women's empowerment, gender and development for the last several decades at national and international forums to establish gender parity, and land rights has been key

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[20] Organisation for Economic Co-operation and Development (OECD) Development Centre, "Gender equality and the MDGs: what are the missing dimensions?" 2010, available from www.oecd.org/dev/poverty/45987065.pdf (accessed 22 July 2013); and Netherlands, Ministry of Foreign Affairs, Women's Economic Empowerment to Foster Food Security: Case Studiesfrom Developing Countries (2011).

[21] Trust Law, Thomson Routers, 2016.

agenda along with other critical concern. India has ratified and signatory to Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1993—an international treaty. Therefore, to improve the conditions of women, India has also taken several measures and launched various programmes. During the Ninth Five Year Plan women and their land rights emerged as an important agenda. To ensure accessibility and grant ownership of land rights to women, the Government of India Department of Land Resources, during the Ninth Five Year Plan (1997-2002) issued instructions to all the states that 40 percent of agricultural land settled under land reform programme should be exclusively in the name of women. In the reaming cases, the allotment may be jointly in the name of husband and wife.

Though, the government programme has been benefited to a few thousands of women. During Tenth Five year Plan (2002-2007), various states introduced a scheme of providing concession in registration and stamp duty to women property buyers. This scheme too benefited several thousand women across the states[22], to make women self-reliant. United Andra Pradesh government launched a scheme in 2009 to lease land and land purchasing programme to women members of Self-help groups.

Disinheritance, powerless and persisting inequalities:

Gender specific laws governing access, control of land and its ownership is though, well acknowledged, it is also decisive for the economic and social empowerment of rural women. However, land ownership patterns and land rights for women seen to be a questioning muddle that exists in various states of modern India. The discriminatory practices in land ownership, accesses and control over resources, holds strong attitude of patrilineal and patriarchal western notion of jurisprudence. As land was a state subject under the British, such discriminatory patterns were consolidated and gained legal usage and recognition. This pattern was followed by post-colonial India under a federal scheme, legislative jurisdiction was put under three different lists— union list, state list and concurrent list. Agriculture and land-related legislation was put under the state list, while laws relating to property and succession were put on the concurrent

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[22] Delhi was one of the pioneering state which implemented the schme in 2002, latter on Andhra pradesh, Assam, Gujarat, Haryana, Madhya Pradesh, Rajasthan, Puduherry, Punjab, Uttar Pradesh and Uttarkhand followed the suite.

list. With the states empowered to enact laws which they deemed necessary for their respective regions, such categorization has promoted gender-discriminatory land practices rather than negating.

Even though, every state has taken important measures in relation to agricultural labour, tenants and other farmers, land ceilings, allocation of surplus lands, distribution of *pattas* (official title on which land is held) and other land reforms, but none of them have accommodated women as such. On the other hand, the concurrent list which includes laws passed by the Parliament the Hindu Succession Act (HSA) 1956, has been so far the most gender-equitable law, cannot be touched upon by the state legislatures; any modifications suggested by the states need the assent of the President of India. Repeated attempts at amendment of this Act, made by certain state governments, were blocked by the Centre by withholding the President's assent.[23] The 1956 Act, the term refers to Hindu though—it has included Sikhs, Jains and Buddhists in its scope.

The vast number of religious communities such as the Muslims, Christians, Parsis, Jews comprising about 24 per cent of the total population of India are governed by their personal laws and local customs which are still, uncodified. Many Muslim communities follow customs similar to those prevalent among Hindus in their region of residence, which means an exclusion of a daughter from inheritance of landed property, is governed by the Muslim Personal Law (Shariat) Application Act of 1937. Consequently, some of the southern States extended the provision of 1937 Shariat Act to cover agriculture land. The Mappilas (the Muslims) of Kerala follow customary practice of matrilineal inheritance. The Parsis, on the other hand, are governed by the Indian Succession Act of 1925. Amended specifically for Parsis in 1991, this Act gives them greater gender parity in inheritance; other than Christians in Punjab, Himachal Pradesh and those falling under uncodified laws in the northeastern states are governed by the relevant provisions of the 1925 Act, which treats a son and daughter's share

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

equally, but has no restriction on testation There are also certain significant pockets where matrilineal inheritance is followed— in certain community of Kerala, Meghalaya and small region of costal Karnataka, in these pockets women's property rights are rule. Hence, these communities received special attention in HAS.

The introduced 1956 Act, women's property right—included sisters, widows, and mother as equal and absolute owner of property with full rights to its disposal. The good intension of 1956 Act, however, had its deficiency— alienated introducing equal inheritance rights for women, non-inclusion of females' as coparceners in joint Hindu family property, they enjoyed only maintenance rights— as wife, widows or unmarried daughters, male however, becomes coparcener by birth. The other glaring inadequacy in the act was in relation to tenurial laws. The 1956 Act provided unrestricted testamentary right, (sometimes referred to as a will trust or trust under will) to Hindu males in their separate, self-acquired property, also in share of joint family property which, deprive women their rights, hence these disadvantages contributed to significant gender discrimination and inequality of land and property ownerships.

Hindu Succession Act 2005: Limited scope with unequal status:

The Hindu Succession Act was amended in 2005, abolishing the highly gender-unequal inheritance of land, which was earlier subject to state-level tenurial laws. By removing some of the most glaring inequalities, and granted women's equal rights as men in all property, including agricultural land, also land under tenancy, owned or tenanted, ancestral or self-acquired. This amended law made daughters married and unmarried equal to sons in joint Hindu family property, to claim right to potion of property. It also gave daughters—married and unmarried to reside or seek partition of family dwelling household. Further, the amendment removed the bar placed on certain widows to inheriting property of deceased even though they remarried. However, certain anomalies persist relating to unequal status of women beneficiaries, state law concerning the fixation of ceiling, and fragmentation of agricultural land holdings. The amended law also failed to take into account of the unrestricted testamentary right are used to disinherit women from self-acquired property. Henceforth, the Hindu Succession Act governs most of India and majority of Indians, but several communities' e.g. tribal and ethnic groups and areas e.g. northeast and pockets of tribal areas lie outside its scope.

Patterns of marriage and dowry system:

Indeed, the social norms regarding acceptable marriage partners and post-marital residence clearly make a difference to female inheritance of landed property. The different norms of marriage practices followed in south India have a different fallout effect on land inheritance of women. In the south, traditionally, marriages with close kin, especially cross-cousins, are accepted and among some communities preferred. Both close kin and in-village marriages reduce the possibility of property distribution outside the family and geographically, if the daughter inherits land. This makes for a far less opposition to daughters inheriting land in southern states. It is because of this attitude and practice that the few pro-women amendments that were carried out in these states did not attract any notable public opposition as in the northern states. It is therefore, significant that the south Indian states were the first to amend the HSA 1956 by bringing the rights of daughters on par with sons in joint Hindu family property.

Jammu and Kashmir, and Sikkim present's different status quo, women those marry non- Kashmiri and Non-Sikkimies loses their property, even the children born to women in their wedlock are subject to discrimination—no entitlement to property rights.

The element of dowry has been constantly equates to moveable articles given as property. Women and men have always been opinion that the girls receive their share of patrimony at the time of marriage in the form of dowry. This is used as a justification for continuing to deprive a woman of her inheritance rights. This narrative is so relevant, in my several field study with Self-help groups of Assam, every rural women in the region vehemently opposed giving land or property to daughters, by saying 'Maati' (land) is for sons, and daughters are given dowry. Similarly, I came across same narrative when I did series of gender training with senior security men police officials of northern States, each one them disagreed to women landownership saying inheritance—land and property are meant for sons.., if we give away land to daughters, where does son and daughter in law will go! These significant narrative lies in showing that the so-called property which a rural woman takes as dowry does not generate income in the same sense as land does. In northern states like Punjab, Haryana, Madhya Pradesh, Rajasthan, and Uttar Pradesh it is quite inconceivable for a daughter to be given land as dowry.

Selling of land or other assets to raise money for a daughter's dowry and wedding expenses, is all that a woman is entitled to; customarily, the daughters have only

been entitled to maintenance and to be 'suitably betrothed and married'. In my field study among Self Help Group women—tribal and non-tribal in Assam, majority of them viewed land is lost resort that they sell to get their daughters married off. Increase of dowry among all castes and classes, has been general widespread tendency to cultural convergence all over India which is visible even among groups that formerly did not practice the system of dowry.

> It is often believed that the dowry system does not exist among the tribal communities, but in reality this has proven dowry practice does exists...cash raging from hundreds to thousands has been given as dowry. Considerable amount spent on marriage celebration depending on the economic status of the household—jewellery, cattle, household goods etc., are part of dowry. Gond and Oraon tribes have admitted in the study that dowry compensated their share in the land[24].

The only way in which land might be used indirectly as dowry is if the guardian is forced to sell his land in order to offer the necessary money for dowry and pay the expenses of the marriage.

The lower castes and classes borrow money from landowners either at high rates of interest, or are forced to enter into a feudal-like debt bondage system. This has become noticeable even in areas showing increased commercialization or capitalist development in agriculture. Other small landowners who emulate their richer brethren by incurring expenses on dowry and marriage beyond their means, end up either by selling their land or becoming heavily indebted to the extent of permanently impairing or at least putting their production process under pressure for all times to come.

Besides, accumulated studies demonstrate that from different states women themselves do not want to claim their inheritance, because they have accepted dowry as a substitute for property as a legal clime. Therefore, women's main concern is to establish themselves in the new family and acquire a status there; dowry is looked upon as a necessary contribution towards this process. Moreover, realizing the increasing 'heavy expenditure' which marriage entails, women tend to view dowry, and not property, as their due. This attitude observed to be cut across all levels of class, also among educated or uneducated women across India.

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[24] Private field Study in 2015.

Customary laws, Fifth and Sixth Schedule:

The tribal areas in states of—Andhra Pradesh, Gujarat, Maharashtra, Chhattisgarh, Jharkhand, Madhya Pradesh, Himachal Pradesh, Odisa and Rajasthan are covered by the Fifth Schedule, whereas, certain part of Mizoram, Assam, and Tripura, and complete Meghalaya are covered by Sixth Schedule—which provided autonomy to the areas and allowed the tribes to frame their own rules in accordance with their customary practices. Arunachal Pradesh, Nagaland, Sikkim and some parts of Mizoram, do not fall under any special category they are governed by their own customary laws, all of them are notoriously gender-discriminatory. Land in Arunachal Pradesh and Nagaland is governed by the customary laws, whereas Sikkim has its own land revenue laws. Although, Nagaland and major part of Mizoram are not covered under the Sixth Schedule, land, forest and customs are protected under article 371 G in Nagaland, whereas 371A in Mizoram of the Indian constitution. This heterogeneity of land tenure system which not only differ widely from the other non-tribal regions, also shows verity of land ownership patterns co-existing within community based and tribals have customary rights, in other places an individual landownership pattern prevails. So, the customary land laws of the many of these states do not permit to sell land to the non-tribal.

Patriarchal dictates and land ownership:

The dominant role played by cultural and customary practices in all the tribal states, deprive women of their legal rights. In a patrilineal system, notwithstanding the law of the land, the customary law dictates that the land can only be inherited by the descendants who can trace their origin from a common ancestor in the male line. The Koya tribe of Andhra Pradesh is dominated and exploited in its own land, Koya women are disempowered in the sense that they are not given land at the time of marriage according to their customary law as a decent is from male line. Women do get land from their marital family, but only for maintenance purposes. Koya girls do not have the right to inherit either property of the parents or husband. In Rajasthan daughters of Bhil and Meenas do not have the right to ancestral property under their customary laws. The prevalent of *nata prata*—customary practices of marriage among Bhil, deprives land rights to women, it is believed that if women enters into *nata* the children are deprived of their rights to the fathers land and property. For instance, in Nagaland, more than 98 percent land belong to the community, which consist of 90 percent of Schedule Tribe,

almost all of them are Christian, both men and women work on the community land but women have no entitlement to ancestral land. In case Sikkim also there is glaring discrimination, if a woman marries to non-Sikkimies she cannot purchase land, neither, she can transfer land to any of her children born out of such wed lock.

Nonetheless, daughters and sisters who are made to observe clan and territorial exogamy in marriage stand excluded under the customary law. Observance of clan exogamy makes a daughter/sister an outsider, belonging to another clan and territorial exogamy makes it difficult, if not impossible, for her to take over the effective possession of her land, in case she inherits it. Therefore, most of the customs followed in these areas are highly regressive and anti-women, except for certain strands of the tribal tradition which are comparatively more favourable to women than caste societies. Also, the patriarchal embedded customary law denies women inheritance rights and restricts their participation in the decision making in public domine. In addition, the large scale projects in the tribal areas encompass huge displacement of population; the resettlement element shows that land is allotted to head of the household—usually adult male.

Tribal women and land tradition

There are around 20 major Schedule Tribal groups in Gujarat and among them Bhil, Dubla, Dhodiya, and Gamit are prominent groups. The two prominent tribes are Gamit and Kotwadias and the Gamit tribe, practices joint family system. As per rule followed among Gamit, the land is not divided until the father or the head of the family is deceased. The property is inherited equally by the male children, and it is the eldest son who becomes head of the household on the death of father. There are also prevails of gharjamai (son-in-law live with wife's parents' house) system among the Gamits and the land is distributed among the daughters of the family. The Kotwadias, are mostly nuclear family who are concentrated in the districts of Surat, Valsad, Bharuch, and the Dangs. Sons inherit the property equally, while the eldest son successes the authority, and women land inheritance not allowed[25].

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[25] Official Narrative, Tribal Development Department, Government of Gujarat.

Gender biases, states analogy:

There are certain general characteristics that are common to most states. For instance, Census 2015 notes that almost 85 percent of women farmers are devoid of property rights, it is evident from various empirical studies that demonstrate patriarchal set up in the society which negates the entitlement to women farmers across India despite of several land laws and policies. Even those women who have mutations of land in their names do not have the authority or any control over it. There is a blatant disjunction between ownership and control of land in all the states. Decision-making in the cropping patterns, sale, mortgage, purchase of land or the instruments of production necessary for the development of agriculture, remains in the hands of the men of the household. In most cases women's rights, if claimed, have been written off or bought out by the male members. In others, the land may have remained with women, but it remains so only in name; the actual possessors being the male members.

Studies on landownership, underline's women face discrimination in relation to their rights of inheritance is more visible. For example, in the tenurial laws of northern Indian states of Haryana, Himachal Pradesh, Punjab and Uttar Pradesh, Delhi and Jammu and Kashmir, the specified rules of devolution of land show a strong preference for patrilineality succession. In all these states the tenancy devolves in the first instance on the male line of descent. The widow inherits only in the absence of these male heirs. In addition, daughters and sisters are either excluded totally, or as in Uttar Pradesh (and Delhi), come very low in the order of heirs. In all these states, a woman, in any capacity, can hold only a limited interest in the land; after her death the holding goes not to her heirs but to the heirs of the last male landowner. She also loses her land if she remarries or fails to cultivate it for a specified period, usually a year or two[26].

- The West Bengal, Karnataka, Kerala Tamil Nadu, Andhra Pradesh, Gujarat and Maharashtra indicate personal laws are applied to devolution of tenancy land, as these states have no order of devolution, however, this differ from state to state.
- In states like Bihar and Orissa, where tenancy Acts specify that occupancy rights shall devolve in the same manner as other immovable

[26] Land reforms in Uttar Pradesh, The Economic, July 2006.

property, subject to any custom to the contrary, the room is left wide open to admit gender customs that are non-egalitarian, if established.

- Puducherry emphasize the male pronoun for a tenant and never a female.
- In Uttar Pradesh the term 'tenants', as defined under the Uttar Pradesh Zamindari Abolition and Land Reform Act of 1950, is so broad that this category includes *bhumidar*s, *sirdar*s and *asami*s (permanent, heritable and transferable tenures), and the land occupied by them covers almost all agricultural land. Hence forth, almost all agricultural land is legally inheritable by males.
- For Muslims in Punjab, Haryana and Himachal Pradesh, the devolution even of owned land favours male lineal descendants, since customs to this effect have always been strong here[27].

In United Andhra Pradesh Hindu Succession Act amended in 1986, had been major step forward introducing gender just inheritance law. It made daughters coparceners in the joint family property same as the sons. The 2005 amendments of the HSA further enabled to inherit agriculture land on the same basis of sons. Several other measures were followed waste land distribution to women. However, lack of implementation and cultural reticence made fall short of the targeted aim. The state also took various reformative steps to strengthen Self-help groups for betterment of livelihoods by providing land to women as a major component through two programmes Land Purchas Programme (LLP) and Land Access Programme (LAP). Therefore, the state governed and operated land related policies and programmes by classifying land policy at two levels—redistributive land reform (women were neglected), and distribution of government land to landless (women were included); including market assisted land reforms. Land purchase programme activity was taken up in 190 villages of 128 mandalas in the united Andhra Pradesh with the help of World Bank funding.

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[27] The legislation in 1949 covered Tamil Nadu, parts of Karnataka and parts of Andhra Pradesh. Kerala followed suit in 1963. In all other regions, the treatment of agricultural land for Muslims depends variously on customs, tenurial laws or other pre-existing laws.

By 2008-09, 4539 acres of land was purchased which benefited 5,303 landless poor women including Dalit and tribal women[28].

> Thirty one landless women were given land under Indira Kranti Patham (earlier known as Velugu) in Nandigama Mandal in Krishna district. The impact of the LPP was evaluated vis-à-vis the control group of non-beneficiary women from landholdings households. Women beneficiaries under LPP were given register land patta (official title document). The purchase land was of good quality but only 11 percent land was irrigated. About 90 percent of the land was under good crop. About 20 percent women could access agriculture programmes which benefited them 81 percent of the women got credit from bank and the average credit accessed was around 22, 000 from formal sources of credit. Women could find larger space within household. At least 65 percent of women received support and help from their spouses doing domestic chores. Women were able to participate in decision making process in private and public domine—such as farm related activities, personal body control, household matters and controlled imperative decisions different levels[29].

In case of Assam which is governed by customary law as well legal provision, both the mechanisms have not benefited women, they could not become decision makers and remained subverts. The land ownership remained with male members of the family. Majority of the women in Assam are completely ignorant about land rights entitlements. This is very evident from my field study in different districts, the Self-help group women of both tribal and non-tribal, were not even aware how much land their family possess[30], though, all of them work on their family agricultural land throughout the year, since Assam being predominantly agriculture based state. The situation of Muslim is as similar of Hindu women to claim the share in property is challenging. As the Sixth Schedule allows establishment of village/district councils, the traditional tribal never practice a private land ownership system to earn livelihoods. However there are variations in landholdings by different tribes including, Dimasas who are predominantly Hindus follow their own customary laws including laws of inheritance with

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[28] Society for Elimination of Rural Poverty, was responsible to implement LPP it,is an autonomous institution set up by the state .

[29] ibid

[30] Private field notes.

autonomy, through culture of transformation, where male controls every aspect of productive resources—land, market, education, religion etc., by strengthening patriarchal values depriving women from every role of decision making responsibilities.

State of Goa is the only region in entire country has a common Civil Code known as the Portuguese Civil Code which governs all rights of women, including right over property both natel and marital despite of all creed, caste, or ethnicity. Notwithstanding, the Common Civil Code the land or property rights has been in state of alienation. Land rights for rural women have been abridged, limited or denied in multiple ways, as that is followed in other states, which have been mediated through massive bunch of laws. Evidently, the matrimonial property owned by both the spouses, and it is managed by male spouse, unless it is impediment. Hence, the equal property rights are severely compromised either parental or matrimonial share.

Jammu and Kashmir which is Muslim majority state in India enjoys special status under Article 370 of the Indian Constitution, this provided fair degree of autonomy to the State to have its own constitution. The land ownership among gender groups has similar malaise of land related laws of inheritance which includes the customary laws, personal laws, statutory laws, and those codified into statutory laws as part of the democratic institutions, land reform legislations, as well as the recent efforts by the state making gender sensitive and inclusive land laws. However, the glaring discrimination is special privilege that state entitles that only permanent residents can buy land in the state. Even though State has seen some successful land laws and tenancy reforms however the gender inequalities remain to persists in land celling too.

Land holding by women is declining in other states too, and chances of inheriting land rights extremely limited in Gujarat, Uttarakhand, and Karnataka. There has, been sporadic and limited attempts have been made to tackle the issue of land rights for women in Bihar, Maharashtra and West Bengal. Tamil Nadu which has given coparcenary rights to daughters along with sons under HAS in 1989, even here too the studies shows there is limitation in inheritance of property by women, daughters (married or unmarried). The Christians and Muslims in the state follow draconian land laws which are highly gender discriminative. Rajasthan has peculiar situation, the government functionaries apply provisions of HAS in

certain places and customary laws and practices of the Hindu law in other places, which gives in heritance right to only male members.

Apart from tribal populations there are matrilineal Hindu and Muslim communities as well as other Christian communities like the Syrian Christians of Kerala who continue to be governed by exception clauses and inequitable customary and regional laws of inheritance.

Labelling women as witches and violence:

Land and property are also emerging as root cause of labelling women as witches, there are several cases have been reported from various states where notoriously witch hunts are being practiced. Ferocious practice is adopted to silence demanding women by punishing most severely or killing. Violence is inflected on women to disinherit women from the land and property. The witch hunting is now not only practices among tribal women it is also spread to non-tribal regions, where male members of close relatives level such accusations deprive widows of their rightful share of land by stigmatizing as witches.

Kasoori Devi is a widow from, Bhagalpur district, Bihar. Kasoori Devi was labled as d*ayan* (witch) by her near close family members, in order to grab her property. Kasoori Devi was economically well off. She had five bigas of land, owned house, a livestock. Her close relative assaulted her on several intervals, humiliated and paraded her, made her drink human urine robbed her belongings—jewellery, livestock, money etc. They also tried to kill her by accusing her as a *dayan* whenever a family member fell ill, death of livestock or failure of crop. The humiliation, and torture inflicted on her was to grab her property and land. The intimidate threat of violence on her lead to loss in her memory, latter she was thrown out of her village; she lives in old age home run by local NGO[31].

In Haryana where a married woman, an only daughter of a widow, came with her husband and settled in village Bandh of Karnal where she had inherited land from her mother. Her husband's landholding in village Kasandi, being much smaller, was given out on *batai* (share cropping). This arrangement, with great difficulty, lasted only for two years. The male collaterals did not allow

[31] Private field study, 2016.

them to settle down. They were openly taunted; quarrels were picked with them on the slightest pretext. Socially they were unwelcome everywhere; animals were let loose in the fields; their crops were destroyed; water channels were cut and water diverted elsewhere; special irrigation arrangements made from the neighboring tube wells for two hours would dry up after only half an hour. Out of sheer helplessness the woman had to sell off the land at a much lower market price to the tormentors, that is, her late father's male collaterals and move back with her husband to his village. With most of the legal impediments removed from women's inheritance rights, the situation is one of potential violence and bloodshed. Even the murder of women in such cases, where the inheritance rights may be claimed, is openly acknowledged. In such cases of violence, the police officers confess to the impossibility to marshal witnesses, and collect evidence to take action against the offenders, because such crimes are committed with the connivance of the *biradari* (the community)[32].

Land reform and celling:

Although, ostensibly the various land reforms measures of the 1950s and 1960s were to give land to the poor (landless parents), the real outcome seems to have been the consolidation of a sturdy and powerful owners-cultivators class. With the abolition of Zamindari and other types of intermediaries, land ownership has come to be increasingly concentrated in the hands of these powerful and large erstwhile residents' cultivators and tenants. Since, effective land ownership or tenancy rights are vested exclusively in the hands of men, whatever the land records or the laws of inheritance may indicate, the Hindu and Indian Succession Acts are supposed to have conferred near equal property rights on women as early as 1956 and subsequent gender specific assets laws. The laws, however, are dead letter—especially in rural areas—with regards to property in land. The studies have shown that at best, women appeared to be interlocked as landowners; actually they are used as pawns in *benami* transfers to help the male head of the family.

So, the glaring shortcomings in the laws dealing with the fixation of ceiling and the forfeiture of surplus land above the ceiling limit, as also the fragmentation of agricultural holdings, all of which were used to strengthen men's claims at the

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[32] *Prem Chowdhary*, Reduction of Violence against Women: Property Ownership & Economic Independence in Rural Haryana, UN Woman Study, *2012*.

cost of women. A ceiling is fixed in relation to a family unit consisting of up to five members. Additional land is allowed to families of over five members, subject to a specified maximum. In most states an adult son gets additional allotment but not an adult daughter.

- In Bihar, Himachal Pradesh and Madhya Pradesh each adult son counts as a separate unit and is entitled to hold a specified extent of land in his own right. Also, the husband is counted as an independent unit but not his wife, even when she owns land in her own right, if the land is above the ceiling limit it is the wife who loses the land not the husband.
- In Kerala, both an unmarried adult son and unmarried adult daughter, count as separate units.
- In Puducherry, the unmarried daughters, whether major or minor, are considered to be members of the family which warrants larger holding.

Most states however did not give any consideration, while fixing land ceilings for the maintenance needs of unmarried adult daughters and married minor daughters, while giving consideration to all sons, whatever their age or marital status.

Over the years, some of these ceiling Acts have been challenged in the court, though without any success. One of the grounds for challenging them has been the charge that they discriminate against women and are therefore unconstitutional. This has not been found tenable in law. The first amendment to the Constitution of India, enacted in 1951, had introduced a provision to protect the land reform legislation from being challenged by entrenched class interests. It had therefore provided that none of the provisions mentioned in the ninth schedule of the Constitution would be void, on the ground that they infringed on the fundamental rights granted by the Constitution of India. However, in protecting land reforms from being challenged, this amendment also entrenched gender inequality. Consequently, the ceiling laws included in the ninth schedule, although blatantly discriminatory against women, cannot be challenged.

Glaring land ownership gap:

Access to land is contested into two strategic spheres: ownership of land and secondly the ability to control and use the land for livelihood purposes. The ability to use is viewed separately, as the question of ownership is generally not relevant

to Dalit members as many are barred from owning and using land of non-Dalit communities for their livelihood. The impact of historical subjugation and exclusion of Dalits from landownership is clearly visible at all level in India. Thus, 58.4 percent of rural Dalit households are landless, much higher than households in any other social group[33]. Landlessness is particularly severe among Dalits in Haryana, Punjab and Bihar, where more than 85 percent of Dalit households do not own any land other than homestead land. More than 60 percent of Dalit households are landless in Tamil Nadu, Gujarat, Kerala, West Bengal, Maharashtra, united Andhra Pradesh, and Odisha[34]. Dalits are often ignored in the case of land distribution while land ownerships are high amongst other caste communities; it is low amongst the Dalit community. According to civil society study submitted to Government of India (GoI), in 2011, over 60 percent of Dalit and over 80 percent of Dalit Women are landless. Limitation to Dalit women's access to own and control land is directly linked to the demand for them to maintain their position as daily wage labourers for other dominant caste communities. In rural India, 61.8 percent of the Dalit women are agricultural labourers, while only 19.9 percentages are cultivators[35].

Land acquisition, alienation impact:

Land acquisition from tribal has emerged as a very significant issue. It is estimated that over 80 percent of the people displaced post independent era due to mega projects— public sector infrastructures dams, industry and extraction in the tribal regions (states), according to civil society data. The studies have established state after state, the commercial interest, under neoliberal regimes has further opened up vista for establishing developmental projects in the country. More and more private companies— national and international are venturing into these areas, which are rich in minerals, mines, iron, coal and forest etc., in such situation more land would be required for development projects. And, these areas are principally, inhabited by the tribal/ethnic communities.

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[33] Dalit women in South Asia, Accesses to Economic Rights, Asia Dalits Rights Forum, UN Women, Fund for Gender Equality.

[34] Ibid.

[35] Ibid

In Selui B Hydel Project in Kolasib district, Mizoram has displaced 150 households. Most of these households were dependent on community land for their livelihoods, by engaging in zhum cultivation. Deceptively, land was the only sources of livelihoods to 150 families in the region, and the families were not compensated with land; this has rendered them landlessness and by creating livelihoods cries to Mizo women[36].

To acquire the land in these areas require deep understanding on tenurial system and sociocultural ethos of the tribal communities, as their lives revolve around natural resources and land is central imperative. Evidently, the tribal areas are conspicuous by the absence of land records, as tribal are heterogeneous in nature—each tribe has its own characteristic, such situation has made acquisition of land easy, therefore land is shrinking and alienated tribals from their livelihoods. The resettlement mechanism shows that in such situation the land is usually allotted to male head of the household. Moreover under land acquisition law only those households who had land title are given land or land. And those own community lands are not considered for any compensation. The resettlement and rehabilitation package totally alienated women from getting compensation of land or assets, by upholding gender discriminatory practices, and by putting women under livelihood threat.

Common property resources and dispossession:

Common property resources play a significant role in rural women's lives, particularly wherever forest based produce are available. Women in these forest track region engage themselves in collecting, processing, storing and marketing of these produce, also preserve and protect forest resources. However, women have been traditionally left out in land, water, forest and governance, so, women's equal rights have become very insecure. The Forest Rights Act 2006, (FRA) emphasis community ownership of forest and forest produce. However the provisions made under the Act on joint ownership are largely remained silent or do not present encouraging picture in implementation of Act in right spirit across the tribal and tribal belt region in the country. Empirical data from various sources suggest that denied joint ownership of the agricultural land under FRA 2006, systematically barred women from accessing common property resources.

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[36] Private field notes

Whereas, FRA 2006 is the only instrument that recognizes joint entitlements ownership of land and community ownership of forest and forest resources. The Act is also silence on land entitlements and/or ownership to single women—whether widowhood, divorced and unmarried. Thus, state governments and its agencies—forest department have seized these rights, by denying land access to most marginalized—women and communities, which is quite obvious in given situation of market driven land predictable.

The state specific acts, policy and programmes of particularly Maharashtra, followed by Gujarat, and Rajasthan, have made minuscule difference to women. The forest lands, grassing lands, and other such lands were distributed and listed in the joint names of husband and wife. This specific clause gave a boost to most of the Dalits and tribles, those are landless agricultural labourers, and this transfer of land rights had given both men and women not only renewable sources of livelihoods but also a strong sense of dignity. However even here the acts or policy or programmes gave importance to male beneficiary, the underlying patriarchal mindset was inevitable. The single women—unmarried, divorce, widow, etc., are no way seen to figure in these policy or programmes, for their gendered land relation or gendered economic security.

Sustainable Development Goal:

Sustainable Development Goals (SDGs) indicator development and tracking has been limited to international agencies as of now, the country level practical actions tracking and monitoring are yet to begin. However, there has been some initiative in Assam, State has set up a Centre for SDGs under the Planning and Development Department and an integrated framework for implementation has been adopted. The state has also developed its own vision for realizing the SDGs, namely, ASSAM 2030. A pilot is being undertaken in a few villages and towns for demonstrating full attainment of the SDG agenda through Self- help Groups to achieve gender equality at all front. Further, a robust technology platform is also being set up for tracking the progress pertaining to the SDGs

Conclusion:

In conclusion the vast narratives from established sources points that there is huge gender gap on women land right, established common elements are—disinheritance, inadequacy in implementation of laws, powerless and ineffective landownership, no matter how much work women do in peasant family. The

powerlessness of women and the devaluation of their labour on the family land and the household is in part a product of exclusive male control over land. Therefore, the men in family who own and control land become much more powerful than the women or other members of the family who work on the land. On the other hand the near total inheritance from property rights in land—the dominant from of income generating property in India—is perhaps the key factor in ensuring women's subordination and oppression.

Women's land rights in India are mediated through various personal laws and customary practices. The Hindu personal law in its present form allows women the right to own land and independently manage its affairs including ownership of agricultural land. While the personal laws and tenurial land laws make unequal provisions for women's land share, the societal harmful customary practices deny land share even when it is permitted under law.

However, there are certain universal features that are common to most the states. There is definitely and clearly a steady rise of women's work participation in agricultural activities, but significantly not in its ownership. The percentage of land holders who are women has increased from 12.79% in 2010-11 to 13.87% (20.25 million) in 2015-16, with a corresponding increase of 1.2 percentage points in the operated area. "This shows that more and more females are participating in the management and operation of agricultural lands", accords to Agriculture Ministry[37].

For instance the joint study conducted by the University of Maryland and the National Council of Applied Economic Research, (NCAER), indicates 42 per cent of the agricultural labour force in the country, signifying increasing feminisation of agriculture, and yet they own less than 2 per cent of its farm land, most such land is owned by either men or undivided families. Further the study reviles that 83 percent of the agricultural land is reportedly inherited by male members of the family and less than 2 percent by their female counterparts, with the remainder being acquired through other means. A region-wise disaggregation of the data shows persistently low female ownership of farmland in all the regions

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[37] The Hindu, October 03, 2018.

ranging from 28 percent in the hills, to only around 8per cent each in the east and west[38].

Even though land operation is increasing, those women who have mutations of land in their names do not have the authority or any control over it, suggests several empirical data. Majority of mutation of lands though, have taken place it is either under land reform measures and government scheme of giving concession in the stamp duty to women. Both measures have increased women's landholding in records in several states, however, women have no/or partial decision or control over the land, making wives, sisters, mothers as *benamis* in family landed property.

There is a blatant disjunction between ownership and control of land in all the states. Decision-making in the cropping patterns, sale, mortgage, purchase of land or the instruments of production necessary for the development of agriculture, remains in the hands of the men of the household. In most cases women's rights, if claimed, have been written off or bought out by the male members. In others, the land may have remained with women, but it remains so only in name; the actual possessors being the male members.

Following two testimonies are clear message that there is increase in feminization of farming, management and operation of agricultural lands in the country.

- Jayanti Pradhan, a farmer and entrepreneur from Sambalpur in Odisha, who grows mushrooms, makes vermin compost and trains others in organic farming. She work on four acres of land but it was in her father's name, so it automatically went to her brother, even though she who actually cultivates the land.
- Shahjahan Begum Mehboobani grows corn, onions, tomatoes and vegetables on her three-acre plot in Dharwad district of Karnataka. She's also a responsible member of her local gram panchayat.

Therefore, both the women do not have *patta* on their name, accesses to any befits has been impossible—such as a loan, to be part of any government scheme,

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[38] National Council of Applied Economic Research, Quality Reliance Impact, April 2018.

certification for marketing purposes, an identity card which shows that they are farmer too– for every purpose[39].

The dominant role played by cultural and customary practices in all the states have depriving cascade of women's legal rights. In a patrilineal system, notwithstanding the law of the land, the customary law dictates that the land can only be inherited by the descendants who can trace their origin from a common ancestor in the male line. Male members of the family do not trust or give property "land" to women as they are married to other family and migrate to other place[40], various studies supports the version across the communities and regions.

Studies on land and asset ownership have established that women do not voluntarily forego their inheritance claims, male relatives have been known to file court cases, forge wills or resort to threats and, even physical violence to control women's share of assets.

There is very clear evident are found that by and large women are total ignorant of land related legal provisions that favours equal property rights to them, even if a few of them are aware of equal right they do not wish to claim their property from their father or brothers, for the welfare of their brothers and they do not wish to create hostility in the family, in the name of 'peace'... Incidentally in a one of the focus group discussion with Matrilineal Garo women in West Garo Hill district reveled that even though the assets and land related discussion are held mutually with their brothers, women don't go against brothers decision/s as they do not wish to facture their relationship with their brothers.

The enactment of HAS, state-wise indicates unmarried adult daughters receive no recognition at all and they do not count as part of the family unit or as separate units. In other states such as Haryana, Punjab and Uttar Pradesh married minor daughters also receive no recognition.

Land related laws of inheritance, which includes statutory laws, personal laws, customary laws, those codified into statutory laws, land reform legislations and effort made by the state in making gender specific inclusive land laws, including

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[39] Testimony shared at Kisan Mahila Diwas, October 16, 2018

[40] Field visit of various studies.

specific state tenancy act, all these, seems to have been unattractive, situation remain to be discriminatory for women cutting across class, caste, and religion in Indian states.

The other two mechanisms, namely, state distribution of land jointly to women and men, and market incentive land purchase for women have been in limited scope in nature. For instance, the laws dealing with the fixation of ceilings and the forfeiture of surplus land above the ceiling limit, as also the fragmentation of agricultural holdings, all of which are state subjects, have been used to strengthen men's claims at the cost of women.

Women's land ownership and operational access to different kinds of land - homestead land (rural-urban) and tenurial land is still not presented in national statistics. There are huge definitional issues and data gaps associated with that.

Unless the states and communities are able to identify, examine and redefine the prevailing customs and other laws relating to land and inheritance, the principle of gender equity will remain elusive.

Recommendations:

Three major elements have been promoting in persistent gender discrimination in land rights—patriarchal legal enactments, ineffective implementation in gender specific laws, and societal attitude and disapproval. It is therefore, one need to work unitedly to arrest gender discrimination in land rights and make way to gendered land relations and economic towards women's empowerment.

a) The detailed analysis of various studies, documents, shows that attainment of land rights to rural women is restricted, trimmed and often denied in various ways. This requires intervention to ensure implementation gender specific laws, in order to bring about gender parity, equality, and empowerment of women. For this legislative, judicial and administrative reforms are required.

b) Languages of the land reform programme need to change to gender neutral language—implicit and explicit. For e.g. the word *'kisan'* automatically refer to male cultivators, the *kisan* credit card usually issued to male farmers another such instance. As women's participation in agricultural activities increasing, women farmers need to be recognized as farmers to avail land reform programmes benefits.

c) Some of the regions shows that they are not entirely deficient in gender just laws, yes several additions can be made to existing laws, and also new laws required in the case of pastoral and on commons, along with a new codified unify form law required that will apply to all regions, religious and ethnic groups and communities which are governed by diversity of laws.

d) Proper measures to be under taken to equip and educate all rural women, panchayat representatives, CSOs, CBOs, with proper training and information especially on land related issues.

e) Educate women, local administrators, as mandatory about land rights and encourage women to exercise their land rights.

f) Legal literacy training related to land rights need to be ensured, to equip women to understand the legal recourse to exercise their land rights.

g) The Panchayats at local level need to be linked to legal aid cells or other redressal forums, so as to ensure women with legal advice and service on land related dispute.

h) Creating and strengthening of gender disaggregated database on public, private, and also institutional land holdings across all caste, and communities.

i) Sex-segregated data should be made mandatory, on all types of land records of revenue departments.

j) Land rights should be assured to socially vulnerable and marginalized group of landless women despite of their varied identities such as single women—unmarried, widow, divorced, separated, and women frame suicide affected household as well as women headed households etc.

k) To provide sufficient cultivable land in the name of Dalit women for socio-economic well-being, pursuing all possible measures including the distribution of surplus land and government revenue lands within a specific timeframe.

l) Enact legislation on Dalit women's access to land for leasing and renting

m) Appoint special courts to initiate proceedings against all illegal occupants of government and surplus lands, and to take punitive measures against them for violating the land rights of Dalits.

n) The public land distribution programme, leasing of unused lands, potentially cultivable land, celling surplus land. Illegally occupied by trust, and religious institutions, need to be identified and made available to socially excluded vulnerable and marginalized.

o) Put stop to land acquisition by private and governmental agencies or conversation of agriculture land for industrial, real estate and other purposes.

p) Remove encroachers of common property lands.

q) Devise policy to protect common property resources and to ensure equal rights of all local communities without caste, ethnic and gender bias.

r) Women's control over grazing lands, forest, fodder, fuel, irrigation credit and information.

References List:

Action Aid Johannesburg, From Marginilisation to empowerment: The Potential of Land Rights to Contribution Gender Guatemala, India and Sierra Leone, 2013.

Aggarwal A. "Special Economic Zones: Revisiting the Policy Debate." Economic and Political Weekly, 2006.

Agrawal, Bina, A Field of One's Own, Gender and Land Rghts in South Asia, 1998.

Agrawal, Bina, Are We not Peasants Too, Land Rights and Women's Crises in India, 2002.

Agrawal, Bina, Food sovereignty, food security and democratic choice: critical contradictions, difficult conciliations, The Journal of Peasant Studies, 2014.

Challenges and Barriers to Women's Entitlement to Land in India, Landesa, UN Women, New Delhi, 2012.

Chowdhary, Prem, Reduction of Violence against Women: Property Ownership & Economic Independence in Rural Haryana, UN Women, accesses from UN Women site, September 2018.

Chowdhry, Prem. (Ed.). Gender Discrimination in Land Ownership, New Delhi, 2009, accessed Google search engine August 2018.

Deininger K, Goyal A and Nagarajan H, "Inheritance Law Reform and Women's Access to Capital: Evidence from India's Hindu Succession Act 2012.

Dr. Sircar, Ashok , Do Tribal Women have land rights? www.academia.edun

Dr. Sircar, Ashok , Oxfam India Policy Brief, Women's Right to Agricultural Land Removing Legal Barriers for Achieving Gender Equality, June 2016.

Draft National Land Reforms Policy, Department of Land Resources, Ministry of Rural Development Government of India July, 2013.

Engendering the Eleventh Five Year Plan 2007-20012, National Alliance of Women, 2008.

Forsythe L, Morton J, Nelson V, Quan J, Martin A, and Hartog M, Strengthening Dry land Women's Land Rights, Thematic Paper 1 in the series 'Women's empowerment in the drylands, UNDP, UNCCD & University of Greenwich, 2015.

From Shadows to Self, NGO Country Report: Beijing + 10, India women's Watch, New Delhi, 2005.

Governing land for women and men, Food and Agriculture Organization of the United Nations Rome, 2013.

Madhu Kishwar & Ruth Vanita, In Search of Answers, Indian Women's Voice from Manushi, 1984.

Rao, Nitya, Luise Rurup, A Just Right, Women's Ownership of Natrual Resources and Livelihoods Security, FES, 1997.

Rawat, Vidya Bhushan and Leena Dabiru, Land Rights are Human Rights

Rawat, Vidya Bhushan, Land for Development, understanding free prior informed consent, Peoples Literature Publication, 2017.

Realizing Women's Rights to Land and other Productive Resources, OHCHR and UN Women, 2013.

Realizing women's rights to land in the law a guide for reporting on SDG indicator 5.a.2, food and Agriculture Organization of the United Nations, Rome, 2018, www.fao.org (accessed November 2018)

Relationship Power: A Mixed Methods Approach to Understanding Structural Inequities and Violence Against Women, Psychology of Women Quarterly, May 2014.

Rural Development Institute (RDI) for the World Justice Project December 2009

Saxena, N C, Women, in Rural India, UN Women, 2012, New Delhi

Shelly Grabe1, Rose Grace Grose1, and Anjali Dutt, Women's Land Ownership and

Singh, Sunila and Rawat, Vidya Bhushan, Land Reforms in India, New Delhi, 2018

Women's Inheritance Rights to Land and Property in South Asia, A Report by the

Women's Resource Access Programme Voices from the Field, ILC, IFD, SDF.

Web portal and search engines accessed:

Agricultural Censes, *agcensus.nic.in/document/agcen1516/T1_ac_2015_16.pdf (accessed in October 2018).*

Land Committee Report *dolr.gov.in/sites/default/files/Committee%20Report.pdf, 2006.*

Landesa, the formal and informal barriers in the implementation of The Hindu succession Act (Amendment), Rural Development Institute, 2013.

Landportal.org Land & Food Security recounted

Land & Gender recounted | Land Portal

United Nations sustainable development agenda www.un.org

UN Women, OHCHRC

www.landesa.org

https://www.devex.com/news/sponsored/women-s-right-to-inherit-land-in-india-81203

http://www.tandfonline.com/loi/fjps20

www.ncaer.org/news_details.php?nID=252

https://www.researchgate.net/.../294871850_Women_Land_Rights_Mapping_in_India

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Rural women and land rights: A situation in Indonesia

RMI: The Indonesian Institute for Forest and Environment

Situation and context:

Land owned by women is only 15.88 per cent out of 44 million plot of land as of 2018. Female farmers in Southeast Asia, including in Indonesia, provide 50-90 per cent of them engaged in rice production. Therefore, women's right to land and property is central to women's economic empowerment, as land is a base for food production and income generation, as collateral for credit and as a means of holding savings for the future. In the urban and semi-urban setting, land and property rights are important not the least to get access to public utilities. Land is also a social asset that is crucial for cultural identity, and participation in decision making.

Land is not only just a physical element, once it is sold and released, it could destroy the people's survival (Rachman, 2012). The exclusion, land alienation land grabbing by the powerful parties, have changed the landscape and ecosystems, which have tremendously impacted on people's livelihoods. The change of land pattern have been prompted the companies to own plantations, also possess mining licenses with allowance permits. Therefore, every year, around 230 thousand ha of agricultural land is converted into large-scale plantations areas, mining land, and also for infrastructure requirements (Wardah, 2011). Such land conversions are made based on the approved government policy which allows private investment on land— as per New Order era. This has certainly, severely impacted on small farmers' land tenure.

The Indonesian Farmers Union (2017) states that 56.12 per cent of small farmers, control below 0.4 ha land. This minimal land tenure has threatened family livelihoods, especially, where larger number of landless farmers work as farm laborers, where they are exploited, paid low or no wages, further severely affecting women. In addition, the inaccessible to land rights and lack of livelihoods opportunities, rural distress, all have pushed rural vulnerable out of their origin leading to large scale migration, to look for alternative

decent livelihoods in other destinations. The land polices of the both central and regional, discriminate small and landless farmer, from social and political exclusion, which has resulted in inequality in the land tenure which has prompted agrarian conflict in Indonesia. Thus, the Consortium for Agrarian Reform (KPA) has documented in 2017 that there have been 659 agrarian conflicts occurred in various regions of Indonesia covering an area of 520,491.87 ha, involving 652,738 households. Most of these agrarian conflicts have occurred in the plantation sector, 612 people have been victims of violent abuses, which, includes 18 women have been implicated with criminal offence, and 54 women have been persecuted under various charges. Women's National Commission in 2011 has indicated that 395 women have been victim of land eviction, these women have been intimidated—physical, psychological and sexually, arrest and detentions have been imposed.

Available data regarding the control of property and land by men and women are considered under the Status of Ownership / Mastery of Residential Buildings. Data derived from the 2010 Population Census (SP2010) indicates, occupied households as ownership of property, and it has not included agricultural land that are controlled and cultivated by the farmers. Hence forth, in total 77.72% male own property and 77.61% female own property in both urban and rural areas. However, the data reflects in rural areas both men and women own almost equal share of property 87.04% and 89.03% respectively.

The percentages of households that occupy their own homes and those have evidence of ownership of land with a female and male head of household appears to be equally balanced. Thus, 70.99 per cent female-headed households and 71.12 per cent headed by men in urban and rural areas own asset—land and other properties. While households that occupy their own houses and have proof of ownership, based on sex gender disaggregated data SHM shows more or less equal percentage, men owning 46.98 per cent and women 44.81 per cent.

Legal provisions in favour of women land holding:

There are two rules that provide protection of assets—agricultural land and property (housing and other property) for both men and women. Law 5/1960 concerning Basic Regulations on Agrarian Principles and Law 1/1974 is concerning Marriage. Article 9 paragraph 2 of the Basic Agrarian Law (BAL) clearly states that men and women are citizens who have the same opportunity to obtain land rights and its benefits. Likewise in Article 35 paragraph 1 and 2 of

Law 1/1974 concerning Marriage, there are known assets and joint assets during marriage (male and female). The inherited assets of each man and woman are in the possession of the husband and wife concerned. However, the practice of implementation of this rule differs in different regions. Therefore, the implementation is influenced by several of reasons—culture and religious beliefs practiced by some families and/or communities by creating gender discrimination has impacted unequal proportion land rights among women and men.

Customary laws in favour of women:

Customary law that places ownership rights of assets or inheritance (land and houses) for women can be seen in Minangkabau people in Padang - West Sumatra. And among Malalo Tigo Jurai - Padang indigenous people, and law is known as sako and pusako. Sako is the title of custom for kinship given to council leaders and it is packaged with customary rights commonly referred to as pusako, as an inseparable part of Adat titles. Pusako is divided into two parts — high and low Pusako. Pusako high is inherited from ancestors such as land, and indigenous rice fields, while low pusako is property / income that is self-cultivated a property after marriage. Women in this case have ulayat rights over sako and high pusako, inherited from ancestral land, rice fields and rumah gadang. Not only that, as matrilineal (descendants based on maternal line), the name of the tribe or traditional title is also attached to the successor / daughter.

Obstruction to access land rights:

Legally women are entitled to inherit or own land and property, however, practices of gender discrimination, based on culture or religious beliefs etc., prevents women from owning or control of land rights.

Religious sanctions to women and girls land rights:

In the country six religions are recognized by the state, and there are other religions that are not under the recognized religions by the state. Every religion has its belief in regulating land / asset rights to women and girls. Similarly, there are several cultures in the country that regulate land rights or assets to women, including Islam religion has Compilation of Islamic Law which has its own provisions while governing women's land rights. However, Islam religion in the country does not reject ownership of land and assets to adult female members in the family. Over all women and girls are protected by property rights. Adult

unmarried women has right to make written agreement of equal share with their grooms, before marriage regarding their property right either inherited or brought at the time of marriage. This written agreement is approved by both partners to share equal rights. However, written agreements (or legal deed) on land or assets do not eliminate the husband's obligation to his wife in the household.

International instrument CEDAW and GR 34

Convention on the Elimination of all forms of Discrimination against Women (CEDAW) was ratified in 1984. Country has suitably modified specific laws to protect women from discrimination. Therefore, RI Law Number 07 of 1984 entitles legal standards to protect principle of gender equality, and eliminate all forms of discrimination. The other laws that protect women security and gender equality are... Law on the Elimination of Domestic Violence (PKDRT), the Law on Child Protection and Justice, Impress Gender Mainstreaming (PUG) and the draft Law on Sexual Violence.

For administrative purpose country has divided into 74,957 villages with a female population of more than half. Based on CEDAW or Law No.7 / 1984, and the Village Law Number 06 of 2004 article 14 paragraph 2 is specifically on the (ah) point that women as part of the village community have equal women members representation in the village planning processes, to access the village budget, to monitor the implementation of village planning and development. Attempts have made to include CEDAW Article 3 concerning the principle of regulation and Article 26 concerning the implementation of village government has included elements of gender equality and justice. Likewise, women's involvement in village meetings (article 54) and women's representation in the Village Supervisory Agency (BPD) are listed in the Elucidation of article 58. Although government has good intention in formulation of CEDAW principles in domestic laws, policy reforms and administrative procedures at village level, ineffective implementation at every level, are seen to be the barrier due to strong patriarchal and discriminatory cultural practices.

Customary laws and rights of the indigenous people:

The Government recognizes the existence of the Customary Law Community (MHA) in the country through 1945 Constitution (UUD 1945). Recognition in the 1945 Constitution before being amended is stated in Article 18 and its explanation. At the time of the amendment to the 1945 Constitution, recognition

of the MHA was included in article 18B paragraph (2). Although recognized in the 1945 Constitution, in practice there are forestry sectoral regulations (Forestry Law 41/1999) which do not pay attention or recognize the existence of the MHA. For example, customary forests are categorized as state forests within the territory of customary law communities.

The Constitutional Court won a judicial review lawsuit against Law 41/1999 concerning Forestry as stipulated in decision No. 35 / PUU-X / 2012. The Court considers the provisions of customary forests in the law to be contrary to the constitution. For instance, article 1 paragraph 6 which previously reads "Customary forests are state forests within the territory of customary law communities" into "customary forests are forests within the territory of customary law communities". Following up on the MK 35 Decision, a number of regions have been proposed and enforced by local regulations regarding the recognition of the MHA. Presently, the Draft Law on the Recognition and Protection of the MHA in the Indonesian Parliament is being argued for its recognition.

Provision of non-recognition and recognition women as farmers:

Professions / jobs whether as farmers, fishermen or laborers are often associated with Law No. 1 of 1974 concerning Marriage which in Article 31 states that the husband is the head of the family and the wife as a housewife. The status of the head of the household is interpreted as the main breadwinner while the wife even if she works is considered as an additional breadwinner who tends not to be recognized as a profession / job due to her status as a housewife. We can see in labor guarantees / benefits, or government social programs that put forward the head of the household is male - husband as the beneficiary, including in terms of agriculture. Although women contribute to working as farmers or farm laborers, they are never considered as farmers because the status as an "additional income earner" is inherently indirectly narrows women's space for information or assistance in agricultural tools and knowledge.

In 2013, a special law was amended Farmer Protection and Empowerment, the Republic of Indonesia Law Number 19 of 2013. Although this Law still has pros and cons related to several things, this Law explicitly recognizes the status of women's existence as farmers as written in General Provisions Article 1 "Farmers are Indonesian citizens individuals and / or their families who carry out Farming

Business in the fields of food crops, horticulture, plantations, and / or livestock" means anyone who does both male and female farming is recognized as a farmer.

In addition, in Article 72 "Establishment of Farmer Groups pay attention to the existing customary Farmer institutions and pay attention to the involvement of female Farmers". In other words, the government accommodates the involvement of female farmers in farmer groups, which so far tend to be dominated by male farmers.

Socio-cultural elements, advocate women as house wife though they are engaged in productivity as farmers or fisherwomen. Legislation rules such as Law 19/2013 About Farmer Protection and Empowerment and Law 7/2016 concerning Protection and Empowerment of Fishermen, Fish Cultivators and Salt Farmers are not explicitly stated about farmers and fishermen of male and female sex. Along with that, the identification of women in their work is usually listed as housewives. Work as a housewife is rooted in Law 1/1974 concerning Marriage. The consequence of this identification is that women who are farmers and fisherwomen have limited access to benefits. Access restriction on women lies in gaining access to capital, technology, education and training and so on. At this time to get access is determined by an access recipient card. Some organizations are engaged in advocacy and negotiation with government that farm and fisherwomen be recognized and include them as farmers and fishery women in their identity cards (KTP) so that women can access to available resources.

CASE STUDY:

Use of commons and control

Sasi Mothers in Misool, Raja Ampat, Papua. Sasi means prohibition. Sasi is carried out by opening and closing sasi. At the time of opening the sasi, it is permissible to take fish and marine biota at the sasi location. Likewise, it is not permissible to take or catch fish or marine biota when closing sasi. The results of the sasi are used for various purposes such as the church (renovation and maintenance), the mother's uniform and the cost of educating the poor children in the village.

Sasi mothers were first formed in 2013. Sasi members are women in Kapatcol village. The sasi initiatives of mothers come from women who are trying independently in utilizing coastal resources. The initiative of the mothers was facilitated by NGOs to determine the location of the sasi and the quality of

the results of the sasi. Women collected in the sasi mothers' access and utilize certain coastal areas in the village. The coastal area as a place for sasi contains among others sea cucumber, lola, lobster, bia kima and batulaga. In addition to sasi mothers, in Kapatcol Village Sasi Kampung is also available with the practice of opening and closing sasi.

Conclusion:

Land ownership and control is crucial for women, especially the rural women, who play role as key player in the survival of women and the families. The bond with the land builds an understanding about the meaning of land for rural women, as well as actions taken when the bond is released. It had been proven that women play an active role in the struggle carried out by the community. Even in some cases, women play role as leaders during the informal struggles in reclaiming rights to land and natural resources. Albeit, these women leaders have to face challenges and obstacles that are heavier than men, due to the concept of gender that is applied in their communities, which do not support the role of women in the public sphere.

The implementation of land policies and agrarian reform carried out in Indonesia has caused rural women to be increasingly eliminated in the process of obtaining land rights. The issuance of various policies which in fact collide with each other and have not been consistent with each other, the existence of rubber articles in laws that are easily twisted for the interests of certain parties, as well as articles that have a variety of interpretations, add to the chaotic implementation of policies in the field. This is what worsens the situation of inequality and land tenure for rural women, so that they are increasingly marginalized as priority beneficiaries in the agrarian reform program. Yet, it is very clear that poor rural women who work as landless farmers are the priority group for agrarian reform. If they become the main focus of the program, thus social justice will be created, and improvements or rearrangements in the structure of land tenure inequality will be realized.

Thus, until today, Indonesia is experiencing a situation of inequality in the control of land and natural resources. Inequality of land tenure for women, especially poor rural women, is mainly caused by exclusion and gender injustice. Exclusion causes rural women to lose the benefits of land, both through policies, pressure, markets, and legitimacy in land grabbing. In

addition, a patriarchal system that places the role and position of women in the domestic sphere is further intertwined with the indigenous system and the interpretation of religion or belief in Indonesian society. This worsens the situation of inequality experienced by rural women. So that various forms of gender injustice, namely sub-ordination (nomination), marginalization (marginalization), multi-burden, violence, and negative labeling, must be experienced by rural women in relation to the problem of inequality in the control of land and resources it faces.

Recommendation:

- Policies and implementation of agrarian reform policies are carried out in an inclusive and gender-equitable manner, and specifically provide more space for the recognition of women as landowners to adjust to the actual conditions in the ground, so that at each stage, active involvement of women and marginalized groups as priority beneficiaries of agrarian reform can be examined and ensured.
- Supports given from the Community Oganizations, especially in areas where agrarian conflict occurs, or areas with problems in the agrarian realm, should have a gender justice perspective in order to be able to evaluate the situations in sensitive manner, and can put issues in context. Then therefore, they can provide appropriate and correct recommendations to the government. In many places, an understanding of gender justice is required for men, even for the women themselves, and youth groups, in order to support one another.
- Synergy between communities, community organizations, and the government is very important to be built during the agrarian reform implementation. The involvement of civil society is very important, for instance the involvement of communities in the Agrarian Reform Task Force (GTRA) from the central to the district / municipality level.
- Massive campaigns to mainstream women's recognition in informal sectors to change the general paradigm, one of which is to reinforce the idea that women are also farmers and fishermen, and are not merely housewives.

References:

Agarwal, B. 1996. A Field of One's Own: Gender and Land Rights in South Asia. *Land Economics.* Vol. 72, No. 2 (May, 1996), pp. 269-273. [Online] dapat diakses pada https://www.jstor.org/stable/3146971. Badan Pusat Statistik (BPS). 2010. Sensus Penduduk 2010. [Online] dapat diakses pada http://microdata.bps.go.id/mikrodata/index.php.

BPS. 2014. Laki-laki dan Perempuan di Indonesia Tahun 2014. [Online] dapat diakses pada http://bps.go.id/.

Borras, S.M. & Franco, J.C. (2010). Contemporary Discourses and Contestations around Pro-poor Land Policies and Land Governance. *Journal of Agrarian Change*, 10 (1), 1- 32.

Elmhirst, R. (2011). Introducing New Feminist Political Ecologies. *Geoforum,* 42, 129- 132.

Fakih, M. 1998. *Analisis Gender dan Transformasi Sosial.* Yogyakarta: INSISTPress. Fonjong, L., Lawrence Fombe, and Irene Sama-Lang. 2013. "The Paradox of Gender

Discrimination in Land Ownership and Women's Contribution Poverty Reduction in Anglophone Cameroon". *GeoJournal.* Vol.78 No.3, pp.575-589.

Fraser, N. 2000. Rethinking Recognition. New LeftReview 3. May-June 2000.

Fraser, N & Honneth, A. 2003. Redistribution Or Recognition?: A Political-Philosophical Exchange. Verso Publishing.\

Hall, D., Hirsch, P., and Li, T.M. (2011). *Power of Exclusion: Land Dillemas in Southeast Asia.* Singapore: NUS Press.

Hukum Online.com. 2018. BPN Akui Pemetaan Kepemilikan Lahan Masih Menjadi Persoalan. 30 Maret 2018. [Online] dapat diakses pada https://www.hukumonline.com/berita/baca/lt5abcd9b1c09fd/bpn-akui- pemetaan-kepemilikan-lahan-masih-jadi-persoalan.

Jpp.go.id. 2018. TORA dan Perhutanan Sosial: Rakyat Makin Banyak Dapat Akses Ekonomi dan Kepastian Hukum. 7 September 2018. [Online] dapat diakses pada https://jpp.go.id/teknologi/lingkungan-hidup/324965-tora-dan-perhutanan- sosial-rakyat-makin-banyak-dapat-akses-ekonomi-dan-kepastian-hukum.

Polanyi, K. 2001. *The Great Transformation: The Political and Economic Origins of Our Time*, 2nd ed. Foreword by Joseph E. Stiglitz; introduction by Fred Block. Boston: Beacon Press.

Khomsan, A. Dkk. 2015. *Indikator Kemiskinan dan Misklasifikasi Orang Miskin.* Jakarta: Yayasan Pustaka Obor.

Kompas.com. 2012. Dua Persen Penduduk Indonesia Kuasai 56 Persen Aset Nasional. 26 April 2012. [Online] dapat diakses pada https://nasional.kompas.com/read/2012/04/26/0630461/Dua.Percent.Pendudu k.Indonesia.Kuasai.56.Percent.Aset.Nasional.

Komnas Perempuan. 2011. Teror dan Kekerasan Terhadap Perempuan: Hilangnya Kendali Negara, Catatan Kekerasan Terhadap Perempuan Tahun 2010. [Online]

dapat diakses pada https://www.komnasperempuan.go.id/file/pdf_file/Catatan%20Tahunan/9.PP5_CATAHU%202011.pdf.

Konsorsium Pembaruan Agraria (KPA). 2017. Catatan Akhir Tahun 2017 Konsorsium Pembaruan Agraria: Reforma Agraria di Bawah Bayangan Investasi Gaung Besar di Pinggiran Jalan. Jakarta: KPA.

Li, T.M. (2014). What is Land? Assembling a Resource for Global Investment. Royal Geographical Society. Institute of British Geographers.

Luthfi, A.N. (2012). *Kebijakan, Konflik, dan Perjuangan Agraria Indonesia Awal Abad 21.* Yogyakarta: STPN Press.

Menlhk.go.id. 2018. Pemerintah Dorong Penyelesaian Penguasaan Tanah Dalam Kawasan Hutan Untuk Reforma Agraria. 6 Juni 2018. [Online] dapat diakses pada http://www.menlhk.go.id/siaran-

228--pemerintah-dorong-penyelesaian- penguasaan-tanah-dalam-kawasan-hutan-untuk-reforma-agraria.html.

Mongabay.co.id. 2018. RUU Pertanahan Bagaimana Perkembangannya?. 1 November 2018. [Online] dapat diakses pada https://www.mongabay.co.id/2018/11/01/ruu-pertanahan-bagaimana- perkembangannya/.

Mongabay.co.id. 2018. Akhirnya Inpres Moratorium Perkebunan Sawit Terbit. 20 September 2018. [Online] dapat diakses pada http://www.mongabay.co.id/2018/09/20/akhirnya-inpres-moratorium- perkebunan-sawit-terbit/.

Mongabay.co.id. 2018. Kementerian Agraria Mulai Distribusikan Lahan Bekas HGU. 8 November 2018. [Online] dapat diakses pada https://www.mongabay.co.id/2018/11/08/kementerian-agraria-mulai- distribusikan-lahan-bekas-hgu/.

Mongabay.co.id. 2018. Begini Nasib Masyarakat Dongi Kini. 24 Jan 2018. [Online] dapat diakses pada https://www.mongabay.co.id/2018/01/24/begini-nasib-masyarakat-dongi-kini/.

Rachman, N.F. 2012. *Landreform dari Masa ke Masa.* Yogyakarta: Tanah Air Beta dan KPA.

Ratnasari. 2018. Perempuan Kepala Keluarga, Eksklusi Berlapis, dan Perjuangan Atas Tanah: Studi Kasus Pada Lahan Eks Hak Guna Usaha (HGU) Perkebunan PT. Hevindo di Desa Nanggung, Kecamatan Nanggung, Kabupaten Bogor, Provinsi Jawa Barat. Tesis. Program Studi Kajian Gender, Sekolah Kajian Stratejik dan Global, Universitas Indonesia.

Ribot, J. C. dan Peluso, N.L. (2003). A Theory of Access. *Rural Sociology,* 68:2, 153-181.

Serikat Petani Indonesia (SPI). 2016. Membangun Kebijakan Pangan Yang Sensitif Gender. [Online] dapat diakses pada

http://www.spi.or.id/membangun- kebijakan-pangan-yang-sensitif-gender/.

Shohibuddin, M. (2018). *Perspektif Agraria Kritis Teori, Kebijakan, dan Kajian Empiris*. Yogyakarta: STPN Press.

Siscawati, M. 2014. Memahami Disposesi dan Kuasa Eksklusi dalam Ekspansi Perkebunan Kelapa Sawit Melalui Tutur Perempuan. Makalah dalam diskusi persiapan penggalian narasi perempuan adat dalam Inkuiri Nasional Komnas HAM yang difasilitasi oleh Sajogyo Institute pada Juni-Juli 2014.

Solidaritas Perempuan (SP). 2017. Kertas Lobi Solidaritas Perempuan Atas Sistem Perlindungan Pertanian Bagi Perempuan Petani. [Online] dapat diakses melalui https://www.solidaritasperempuan.org/kertas-lobi-solidaritas-perempuan- 2017/.

Suara.com- 2017. Gunarti: Jika Kendeng Ada Pabrik Semen Keturunan Kami Sengsara. 4 Maret 2017. [Online] dapat diakses pada https://www.suara.com/wawancara/2017/04/03/070000/gunarti-jika- kendeng-ada-pabrik-semen-keturunan-kami-sengsara.

Syahrul, D.S. 2014. Konflik Agraria Komunitas Adat To Karunsi'e Dongi dengan PT. Vale Indonesia Tbk Kabupaten Luwu Timur, Provinsi Sulawesi Selatan: Wajah Perempuan Adat To Karunsi'e Dongi. Bogor: Sajogyo Institute's Research Report.

Tessa, A. 2018. Afirmasi Sertifikasi Tanah Atas Nama Perempuan dalam Ramadanu, M.S. dan Harfianty (ed). *Tanah Bagi Rakyat Laki-laki dan Perempuan Indonesia*. Yogyakarta: STPN Press.

Wardah, F. 2011. Organisasi Pemuda: Kebijakan Pemerintah Tidak Menguntungkan Petani. [Online] dapat diakses pada : https://www.voaindonesia.com/a/96667.html.

Wiradi, G. (2009). *Seluk Beluk Masalah Agraria, Reforma Agraria dan Penelitian Agraria*. Yogyakarta: STPN Press.

Women and land right: Obstacles to ownership – Nepal

Community Self-Reliance Centre, Abhiyan

Introduction

The concept of property is directly related to right, dignity and integrity of an individual. The term 'property' has its origin in French word 'proprius' meaning one's own. The right to property, in general, is known as the right to possess, use, and enjoy a determinate thing, or the right of ownership.[41] With the advancement in technologies and change in society, newer and broader laws are required to address the issues of property right. And accordingly, efforts for creating a just and equality based society with the help of legal instruments has been seen evidently in Nepal mainly after restoration of democracy in 1990s. The Constitution of Nepal, promulgated in the year 2015 guarantees one of the most elaborated and extensive form of fundamental rights, which is a cornerstone for establishment of equal and righteous society, one of them being right to property under Article 25.

Status of women holding assets, property and land:

Population of women in Nepal exceeds population of male by a sex ratio of (number of males per 100 females) 91.6 according to national census of 2011. In abstract number, there are 796,422 more females than males in the country. The data generated by the same census suggests that the female ownership over fixed assets altogether is 19.71% which includes ownership of land or house or both in the name of female member of the household and among which, 26:77% is recorded in the urban areas while the percentage stands for only18.02 in rural areas.[42]

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[41] Black Law Dictionary 9th edition

[42] National Population and Housing Census 2011

Constitutional Provisions Regarding Right to Property:

The Constitution of Nepal, which is the fundamental law of land has guaranteed right to equality as the fundamental right, which enriched the concept of equal protection of law. It also contains right against discrimination in the applications of general law on any ground[43], ensuring gender equality. Additionally, it promulgates special right through special law for the protection, empowerment or advancement of women[44]. Similarly, right to property has also been guaranteed as fundamental right to every citizen who contains the right to acquire, own and sell, and otherwise dispose property, subject to the existing laws[45]. In the current constitution, Article 38 of the Constitution is exclusively dedicated to Rights of women under which Sub Article (1) provides that every woman shall have equal lineage right without gender based discrimination and Sub Article (6) states that the spouse shall have the equal right to property and family affairs. However, there is no specific provision for women under Directive Principles and Policies in the present constitution regarding land and property.

Special Legal provisions:

The *Muluki Ain* of 2020, which mainly dealt with civil laws and family laws and was in operation for more than half a century is being replaced by Country Civil (Code) Act 2017 along with its procedures which shall come into effect from 17 August, 2018 and shall revoke 13 prevailing Acts and amend 36 prevailing Acts. The woman's right to property has been elaborated in Country Civil (Code) Act

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[43] Constitution of Nepal, Article 18, Right to equality: (1) All citizens shall be equal before law. No person shall be denied the equal protection of law.
(2) No discrimination shall be made in the application of general laws on grounds of origin, religion, race, caste, tribe, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language or region, ideology or on similar other grounds.

(3) The State shall not discriminate citizens on grounds of origin, religion, race, caste, tribe, sex, economic condition, language, region, ideology or on similar other grounds.

[44] (4) No discrimination shall be made on the ground of gender with regard to remuneration and social security for the same work.

(5) All offspring shall have the equal right to the ancestral property without discrimination on the ground of gender.

[45] Ibid, Article 25.

2017 to some extend assuring an environment where woman's property can be best realized compared to the past.

Legal provisions in relation to woman's right to land holding and assets in Country Civil (Code) Act 2017 are as follows:

Freedom and Right, Every citizen shall, subject to law, have the right to acquire, own, sell, dispose, acquire, business profits from, and otherwise deal with, property[46]. Property shall be used to run the family: The joint property of the spouses shall be used to run the family, based on earning capacity and mutual understanding[47]. (2) Unless otherwise provided in law, the spouses shall consult and seek assent from other spouse while selling or otherwise dealing with one's own property.

The Civil (Code) Act under Chapter 10 on partition provides the following provisions:

While partitioning a joint property, the husband, wife, father, mother, son and daughter shall be considered coparceners.[48] Every coparcener shall have equal right to property. If any woman is pregnant while partitioning the property and the child born is to be a lawful coparcener, then the child to be born shall also be considered coparcener and property shall be partitioned. However, if a still born child is born, then the property of the child shall be divided equally among other coparceners[49]. Also the children's right is protected as, the children born out of void, voidable and dissolved marriage can claim property from their parents.[50] The children whose father is unidentified shall receive the share only from the mother's property until the husband is identified.[51]

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[46] Country Civil (Code) Act 2017, Sec 20(7)

[47] Ibid Sec 90(1)

[48] Ibid Sec 205(1)(2)(3)

[49] Ibid Sec 206

[50] Ibid Sec 207

[51] Ibid Sec 208

Husband and wife, if so desires, can receive their share in property and live separately in situation such as, if one kicks the other out from home and/or if one tortures another mentally or physically[52]. A widow, at any time if she so desires, can live separately after taking her share of property. If a widow remarries, then the part of her property from former husband goes to children from her former husband and if none, she herself can keep the property.[53] Chapter on property have guaranteed protection for property in other ways such as: The joint owners cannot change the status quo of the property on their individual discretion.[54] The owner of the property can exchange the property with others without or without increasing the amount[55]. Thus, above mentioned are the elaborate legal provisions on property with special regard to women in the existing laws.

Law amended in favor of women and girls on ancestral property rights:

11th amendment in *Muluki Ain*, 2020 regarding women rights Bill was passed in 21st session of parliament. Before 11th amendment of *Muluki Ain* 2020, it did not bring any progressive reformation in the field of women's property right as such. This *Muluki Ain* was seemed to be more regressive than previous *Muluki Ain* 1910, as the previous code had the provisions of equal share of property as like brothers after attaining the age of 35 years. But under *Muluki Ain*, 2020 the daughter who is attaining the 35 years of age, was entitled only half of share of property while her brother could get full share of property. However, after the first women's conference of International women Year 1975 A.D., held in Mexico City, *Muluki Ain*, 2020 was amended where, the system of half share of property for the daughter was eliminated, and she was entitled equal share of property as like her brother if she remains unmarried and attains the age of 35 years. The son was by birth recognized as coparcener of the ancestral property while, in order to be eligible as coparcener a daughter had to complete 35 years of age and should remain unmarried.

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[52] Ibid Sec 213

[53] Ibid Sec 214

[54] Ibid Sec 261

[55] Ibid Sec 431

Customary laws applicable to women in favor land and other assets rights:

There are various customs practiced in Nepal which has been codified as a law which inclines towards women right to property. Giving and receiving of gifts in auspicious occasions such as marriages is an age old practice in Nepal which is practiced in every nooks and corner of the country regardless of geographical location, financial capacity or literacy level. The major problem in exchange of such gifts in form of dowry lies when it is compelled from someone and not given voluntarily. The extremism, extravagant expenses and social evils that dowry sometime entails is something that is to be deterred by the law. Because exchange of gifts is so common in Nepal, Country Civil (Code) Act 2017, Part 4, Chapter on property, provisions for it. The movable and immovable property of a woman has earned before marriage, she received from her parents' family, her mother's parents' family and the property that she has increased from it, which is commonly known as *Daijo* or dowry[56], the movable or immovable property given to her with a deed of consent coparceners of all the heirs by her husband or the coparceners on the side of her husband, and the movable and immovable property given to her by other relatives or friends on the side of her husband and property she has increased from it which is commonly known as *pewa*[57]. This property is recognized as a personal property of woman over which she has sole ownership.

Laws that obstructs, or denies property rights:

Legally there is no any law which obstructs or denies property right to women. The Constitution itself has guaranteed equality between and among its citizen and other Acts such as, Domestic Violence (Crime and Punishment) Act, 2008, Gender Equality Act, 2015, Country Civil (Code) Act 2017 etc. are in place to rather promote and protect every sphere of rights of a woman.

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[56] Country Civil (Code) Act 2017, Sec 256(g)

[57] Ibid, Sec 256 (h)

Religious views with regard land rights:

There is no such religious disapproval of property rights of women and girls in Nepal but rather Nepal is a country where *Laxmi*, Goddess of wealth is worshiped and women therefore are often regarded to be lucky in terms of wealth. Also, the practice of registering property in the name of either woman alone or through a joint ownership is gradually increasing in Nepal because today, several proactive and protective measures to promote women's access, ownership, and control over land and property are being taken both at governmental as well as non-governmental level.

Redressal mechanisms seeking property and land rights:

Constitution of Nepal provisions for 3 tiers of court in the country, namely, District Court, High Court and Supreme Court in its Article 127 as a protector of rights of individual where anyone can file a case to get remedy in case of breach or violation of right. Additionally, Article 46 of the constitution provides for Right to constitutional remedies where the victims can file writ petition, application for restoration of violated rights.

Case study:

Meera Dhungana and Meera Khanal Vs HMG Ministry of Law, Justice and Parliamentary Affairs:

One of the landmark cases with regard to woman's right to property is Meera Dhungana and Meera Khanal Vs HMG Ministry of Law, Justice and Parliamentary Affairs[58], the directive order given by the Special bench in this case opened the gate way of the genesis of legislative reform concerning gender justice. The petitioners challenged the constitutionally of section 1 and 16 of the chapter on partition share Muliki Ain, 2020 which discriminates against the women's equal property right. The petitioner filed writ petitions under Article 23 88 (1) of the Constitution of Kingdom of Nepal, 1990 challenging even though Article 1(1) of this constitution provides that all laws inconsistent with the constitution shall ipso facto be void in tune of Article 131, but the inconsistent laws are in existence till the date. The petitioners claimed that the impugned section 1 and 16 of the partition are inconsistent with Article 11(2)

[58] NKP 2009, Writ no. 131

of the Constitution of Kingdom of Nepal, 1990, Article 2 of UDHR-1948, Article 26 of ICCPR-1966, Article 3 of ICESCR-1966, and Articles 1, 15 and 16 of CEDAW-1979. The petitioners therefore, requested the Supreme Court to declare void and ultra-vires the impugned legal provisions.

But the Supreme Court has categorically stated that declaring section 16 of the chapter on partition ultra-vires and providing daughter equal share of the property was not the solution to the problem. The court issued a directive order to the government to present a bill in the legislature reviewing the law relating to property rights within a year from the date of the decision. The judgment also stressed the point that the society may not digest such a big and sudden changes in the prevailing social practices, modes and values, and directed the government for enactment of just provisions having due regard to the constitutional provisions of equality.

Alternatively, the court feared that the son would be entitled only to the father's property and hence the situation then would be discriminatory against interest of the son. Nevertheless, after the decision of this case as the issue of directive order in the name of government for introducing appropriate bill of regarding women's right to property initiated the public debate in order to eliminate discriminatory legal provision. Thus, it has also been reflected in many ways in the new Country Civil (Code) Act.

Case study:

Rama Panta Kharel and Others v. Office of Prime Minister and Council of Ministers and Others[59]

Similarly, the petition of Rama Panta Kharel and Others v. Office of Prime Minister and Council of Ministers and Others, challenged Section 5 (2) of the Social Reform Act which allowed the payment of certain ornaments to the groom side. Section 11 which prohibited pompous display of dowry tacitly allowed the payment of the same whereas, the petitioner claimed, it was necessary to totally eradicate dowry to its totality. The claimant also maintained that these provisions were inconsistent with Art 11 of the Constitution and human rights instruments including the provisions of CEDAW.

The Court disagreed with the claim of the petitioners that the impugned sections were inconsistent with Art 11 of the 1990 and Art 12 of the Interim

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[59] NKP 2003, Writ No. 063-WS-0019

Constitution. It, nevertheless issued an order to incorporate the Social Practice Reform Act in the school and college curriculum, in order to sensitize and raise awareness among school going children in particular the college going students on the intention, objective and provision of the Act along with its economic aspect. It asked the Nepal government to determine the level of students to be targeted in the Act. The Court also directed the government to uphold or cause to uphold the law in letter and spirit and establish mechanism deemed necessary for effective monitoring of the implementation of the provision of the Act.

Further, the Court also issued a directive order in the name of the Prime Minister and Council of Ministers to include the provision prescribed under the Social Practice (Reform) Act, 2033, under the provision of code of conduct of the government employees to ensure its strict compliance. The Court directed that where any civil servant performed anything contrary to the Act, such act should be deemed to be contrary to his conduct warranting departmental actions against such employee. It also required that each employee submitted his/her accounts pursuant to Section 15 of the Act where such employee performed any social events.

The Convention on the Elimination of all Forms of Discrimination Against Women, (CEDAW) and actions with regard to Article 14 and GR 34

The Convention on the Elimination of all Forms of Discrimination against Women, (CEDAW), 1979 was ratified by Nepal on 22 April, 1991. Nepal is a monism country as Nepal Treaty Act, clearly provisions that treaty provisions are enforceable as good as laws, in case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepali laws.[60] And thus it becomes mandatory for Nepal as a party to CEDAW to abide by it and implement the provisions thereof by making necessary provisions. With regards to Article 14 and GR 34 of CEDAW, a formulation of draft Bill on Rural

[60] Nepal Treaty Act, 1990, Sec 9

Woman's rights has been initiated by Ministry of Women, Children and Senior Citizen and is under process and is yet to be finalized.

Non-acknowledgement of women Farmers:

Though Nepal is an agriculture dominant economy and two third of population is solely dependent upon agriculture, the rules and policies in favor of farmers are still in its embryo stage. The campaigns and movements are being conducted and the voices are being raised for the definition, categorization and identity of farmers themselves and in such situation, acknowledgement of female farmers is a distant dream at the moment. Nevertheless, gradually the awareness with regard to need and importance of farmers and addressing to their problems is being generated. The government of Province 1 recently presented its policy and program where innovative policies such as providing an identity card to poor farmers with a unique number which will help the government to conduct survey and address their needs has been introduced which will ultimately contribute in benefitting the farmers. And gradually women farmers will also be acknowledged and their rights will be protected with the help of policies and laws in their favor.

Case studies

Before concluding, we would like a share successful case story of 2 familes with regard to Joint Land Ownership (JLO) and how it has contributed in women's access to property and ultimately changed their life for good.

On 15 May, the VDC hall of Khayermara VDC of Mahottari was full. It was attended by local leaders, the VDC secretary, local school teachers, and representatives of other local organizations. A banner read "*Samyukta Purja Sibir*" (JLO encampment), piquing the interest of passersby. The event was a JLO camp organized in honor of the couples who already had JLO, in hopes that other couples would similarly be motivated to register for JLO. Ten couples were recognized during the program. They in turn shared their experiences, particularly about how their lives had changed after acquiring JLO. The entire audience was enthusiastic to hear about the story of one elderly couple – Daulat Singh Ghising, 68 years old, and Sancha Maaya Ghising, 65 years old. They have been married since 1970, living in public land. In 2006, they bought 0.167 hectares of land. Seven years later, they got a JLO. A man of few words, Daulat merely smiled, and said, I felt good. Sancha Maaya blushed a little while telling her story: My husband used to terrify me and would pick quarrels with me. He would threaten to leave the house. Many times he

did leave, but returned. He would get short-tempered by small things. But after we got JLO, he ceased yelling at me and terrifying me. And they're happy together.

Another story is of Dol Maya Karki who lives in Kisan Nagar of Mahottari district. My parents forced me to get marriage with a farmer- Netra Bahadur Karki. Comparatively, my husband's family was richer than mine. They had 2 hectares of land. However, there was no happiness in my family because of having two mother-in-laws. My mother-in-law was not satisfied with my work at home. The total land of the family was registered on my step mother-in-law's name and she thought herself as a superior person of the family. Unfortunately, she became ill one day and we were compelled to sell our 0.63 hectare of land for her treatment, but she did not survive. After her death, my family members partitioned properties including the land. Whatever the land we got from the family was registered in my husband's name. I could not say anything because of fear.

I heard the name of village land right forum (VLRF). I was totally unaware on what it did. I found that there was a joint land ownership (JLO) encampment organized by VLRF. I got the information on JLO and its importance through the encampment. When I came back to home, I requested to my husband for JLO but he was not convinced with my proposal. Then, I shared my problems with the members of the VLRF. They came to my house and convinced my husband as well. Then, he was ready to acquire the JLO after this VLRF intervention. My husband and I got the JLO on 21 May 2017 from district land revenue office, Mahottari. Now, we have 0.133 hectare of land. I felt now strong when I got the joint land certificate. My husband also cares for me and we are happy at this time.

Conclusion:

Therefore, to conclude, there are provisions and practices of ascertaining woman's rights to property and control over resources. Although the fact that creating of just and righteous society where male and female are seen as equal and even the tiny little disparity to be wiped out is a long way to go. But certainly, slowly yet steadily, Nepal is marching towards it and timely legal reforms and adequate legal provisions will always have an instrumental role in this regard.

Enriching Land Rights Movement

Ensuring Gender Justice

Women in Asian countries like India, Nepal, Bangladesh, Cambodia and Indonesia constitute more than 50% -70% of agricultural workforce and engaged in all kind of menial work. Yet they are not recognised as farmers. There is a cultural bias against them and despite several progressive legislations socio-culturally women remain at the receiving end. According to a report published by World bank[61], in 2014 in Cambodia about 75% women were employed in the agricultural sector, while similar conditions persist in Nepal, as the 80% of women farmers work is undervalued and unacknowledged. In India too, over 70% of the work done on the field by women farmers remains unrecognized. In Bangladesh, female agricultural workers are calculated above 59%.

Women do two-thirds of the world's work, receive 10 % of the world's income and own one (1) % of the means of production and land (UN CSW 56th session, March 2012). According to OHCHR and UN Women report, realizing women's rights to land and other productive resources 2013, the landownership statics indicates that less than one per cent of land is owned by the women at the global level.

This Women and Land Rights Initiative, brings a unique opportunity to share the positive stories from each country including some progressive laws that have helped the cause of women's access to land and other natural resources. We can also add in our work the additional task of positive cultural practices to high light the issue as well as replicate the same in the other countries where such things is not being in place yet.

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http://documents.worldbank.org/curated/en/315891468206036629/pdf/879290BRI0AES000Box385207B00PUBLIC0.pdf

Our Goal

The envisaged goal is to ensure women's access to, control and ownership over land and other natural resources to achieve socio economic - cultural independence and food sovereignty

Our Objectives

To strengthen women's access over Common Property Resources both at government as well as at the community level. (change in policy through NES). Gender sensitisation on the issues of Common Property Resources and women's access to them. Help building a gender narrative on CPR issues.

To enhance capacity and competence of women's leaders on regional and global level in advocating women's access to and control over land (Mobilise)

The Strategy

To Mobilise

- **Regional scoping studies on Women's land right status (data collection and analysis on land-related policies, laws and practices** The country specific chapters are being written by the respective organisations. Each of the country specific chapters will focus on a) Introduction, b) findings, c) Conclusion, d) Recommendations.
- **Enhance the Capacity of Grassroots Women :** This strategic activity is built on the previous year progress/achievement made where a number of grassroots women enhanced their capacity either in terms of leadership skills or empowerment aspect such as cooperatives etc.

To Connect

- **Sharing and Joint Action & Regional Learning Exchange:** To strengthen the initiative, the working group will influence the Government and policy makers. To reach that purpose, the group needs to engage with regional institutions as the allies, such as International Women's Rights Action Watch (IWRAR), CSOs at national level as well as other relevant actors at the regional level

To Influence

- **Sharing and Engaging with Regional and Global actors:** Study results on Women's land right status will be consulted in national and regional levels. In the national consultations, ILC's National platforms (NES) will be used to further promote the ideas that emerged from Women and Land Rights Initiative. In the regional level, consultation will engage with various regional actors mentioned at stakeholder analysis section.

Our Activities

- Advocacy, campaign through workshops and interface with CSOs/NGOs and in-depth country specific research study on accesses to women's land rights.

Target group for advocacy and lobby: relevant state agencies

- NHRIs, UN treaty bodies, International Women's Rights Action Watch(IWRAR) Asia Pacific, WGWLO etc.
- National Human rights commission and National Commission for women, SC and ST commissions, minority commission.

Target group for campaign

- CSOs and NGOs working on land rights, local elected councils etc.

Participating partners in the programme

India

- Bhartiya Jan Sewa Ashram
- Ekta Parishad
- Maldhari Rural Action Group
- Social Development Foundation
- Swadhina

Bangladesh

- Association for Land Reforms and Development
- ARBAN

Nepal

- Abhiyan
- Community Self-reliance Centre

Indonesia

- RMI: The Indonesian Institute for Forest and Environment

Cambodia

- Cambodian Indigenous Youth Association (Cambodia)
- FNN
- Highlander Association (Cambodia)
- Star Kampuchea

POINT OF CONTACT

Mr. Vidya Bhushan Rawat

Social Development Foundation, Delhi

sdfindia@gmail.com

Ms. Rowshan Jahan Moni

Association for Land Reforms and Development, Dhaka

rowshanmoni@alrd.org

Ms. Kalpana Karki

CSRC Nepal

Kalpana@csrcnepal.org

Ms. Mardha Tilah

RMI: The Indonesian Institute for Forest and Environment

tilla@rmibogor.id

Ms. Chet Charya,

Star Kampuchea

Star-director@starkampuchea@org.kh