

## *Widows versus Daughters or Widows as Daughters? Property, Land, and Economic Security in Rural India*

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My bangles are broken  
my days of shame are gone.  
I have one small son, one calf, one field.  
A calf to feed, a son to nurture.  
but the land, *baiji*, this half acre of earth  
to feed me, to rest my head.<sup>2</sup>

(Malli, a Rajasthani widow I interviewed in 1987)

This paper is woven around two main arguments: One, to ensure effective economic security for widows in India it is necessary to ensure their command over property; and in the context of rural India, the most significant form of property is arable land. Two, we need to see widows not as a category in themselves, but as embodying a stage in most women's life cycle—a stage which is often coterminous with old age. Effective economic security during widowhood would therefore need securing women's property rights prior to the event, not only after it, namely securing their claims as daughters in addition to their claims as widows.

Viewing the issue of widowhood and economic security in this way will need a major shift in the prevalent emphasis of State policy, which in its social security provisioning for women has focused essentially on widowhood, and in relation even to widows focused mainly on pensions. The possibility that unmarried women, or women divorced, deserted or separated may be as vulnerable to poverty and destitution has received little attention in the design of most State social security schemes.<sup>3</sup> And recommendations for improvement in

<sup>1</sup> I am grateful to Jean Dreze, B. Sivaramayya, Marty Chen, Patricia Uberoi, and the journal's anonymous referees for useful comments on an earlier draft.

<sup>2</sup> Broken bangles signify widowhood. *Baiji*: respected sister.

<sup>3</sup> The only exception appears to be Tamil Nadu where there is some provision for pensions for deserted and destitute wives (GOI 1990a).

these schemes have also typically gone little beyond pensions and employment for widows, to the neglect of immovable assets and property rights.<sup>4</sup> Outside the context of these schemes, in relation to property inheritance, not only are widows' claims often violated in practice, but the claims of women in other capacities enjoy even lesser social legitimacy. For instance, most traditional legal systems have placed widows' rights over those of daughters, and the initial thrust of poverty reforms for women also enhanced widow's rights alone.

On the one hand, this dichotomizing of women's needs leaves their interests unprotected not just in contexts other than widowhood but even during widowhood. It assumes the centrality of the conjugal bond in provisioning for women, one which is likely to prove increasingly precarious with weakening marital and kinship support systems. On the other hand, measures which pay no attention to the importance of land in rural livelihood systems are unlikely to prove adequate social security alternatives for most. It is argued here that what is needed is a more holistic approach to providing economic security for rural women, one which includes women at all stages of their lives, and which gives centrality to securing their claims in family land as well as in public land.

In the sections which follow, the paper outlines the importance of landed property for women, and especially for widows; differences in the property rights of widows and daughters in traditional Hindu law and customary practice, as well as in contemporary Hindu law; the gap between contemporary law and actual practice, and the factors underlying this gap; the precariousness of women's rights as widows, and the necessity of securing their rights also as daughters for protecting their interests both before and during widowhood; why widows' claims face less opposition than those of daughters; and, finally, the possible directions for change. The paper will confine itself to women's situation among rural patrilineal Hindu communities.

### **I. Importance of Effective Rights in Property, Especially Arable Land**

In a predominantly agrarian economy such as India, arable land is the most critical form of property, valued for its economic, political

<sup>4</sup> See e.g. GOI (1990a), and Gulati and Gulati (1995). Several presentations at an ILO seminar on social security in November 1995, reflected a similar approach.

and symbolic importance. It is a productive, wealth creating and livelihood sustaining asset. Traditionally it has been the basis of political power and social status. For many, it also provides a sense of identity and rootedness within a village. However, while the importance of command over landed property is well-recognized in household-level analysis, its importance in defining women's situation and gender relations needs elaboration.

Rights are defined here as claims that are legally and socially recognized and enforceable by an external legitimized authority, be it a village-level institution or some higher-level judicial or executive body of the State. Rights in land can be in the form of ownership or of usufruct, associated with differing degrees of freedom to lease out, mortgage, bequeath, or sell. Land rights can stem from inheritance, community membership, transfers by the State, or tenancy arrangements, purchase, and so on. Rights in land also have a temporal and sometimes locational dimension: they may be hereditary, or accrue only for a lifetime, or for a lesser period; and they may be conditional on residing where the land is located. As distinct from rights, a person may, in theory, also have 'access' to land, say through informal concessions granted by kin or friends. But these cannot be claimed as a right and their enforcement sought. 'Rights' thus provide a measure of security that other forms of access typically do not.

By *effective* rights I mean rights not just in law but in practice, and not just of ownership but also of control over how the land is used and its produce disposed of. By independent rights I mean rights independent of male ownership or control (that is, excluding joint titles with male relatives). Although joint titles may be preferable to having no land at all, many of the advantages of having land (such as the control women could exercise over their fields) would not accrue without independent titles.

Independent and effective rights in arable land are important for rural women in general, and for widows in particular, for several reasons, the most critical being the implications for women's welfare. Especially among poor households, land rights can substantially reduce women's risk of poverty and destitution, partly due to the general positive effect of women having access to economic resources independently of men, and partly from the specific advantages associated with rights in arable *land*.

At the general level, there is substantial evidence of a systematic anti-female bias against women and female children in intra-household access to resources for basic necessities such as health care, and in some degree also food (for details see Agarwal 1986,

1994). The extent of this bias varies regionally, being strongest in northwest India and much less stark in south India; but it exists in some degree almost everywhere. It is also found that income controlled directly by the wife in poor households is more likely to be spent on the family's basic needs than income controlled by the husband (see Mencher 1988, among others). In other words, the risk of poverty and the physical well-being of a woman and her children could depend significantly on whether or not she has *direct* access to income and productive assets such as land, and not just access *mediated* through male family members. Even women from rich parental or marital homes would be economically vulnerable without independent resources, in case of marital breakdown or widowhood. In parts of western and northwestern India, not uncommonly, widows can be found working as agricultural labourers on the farms of their well-off brothers or brothers-in-law (Omvedt 1981, and personal observation). Again, in east India there are many cases of women, married into prosperous households, being left destitute and forced to seek wage work or even beg after widowhood (Vina Mazumdar, personal communication). All this highlights the precarious nature of women's class privilege and kinship support systems, even in rich households, and the importance of women having independent control over economic resources.

However, among economic resources arable land is especially important. Access to land (owned or operated), for instance, reduces the risk of poverty;<sup>5</sup> this works in both direct and indirect ways. The direct advantages stem from production possibilities, such as of growing crops, fodder, trees, or a vegetable garden (unless of course the land is of very poor quality), or keeping livestock, practising sericulture, and so on. In addition, land provides indirect benefits, such as increasing access to credit, helping agricultural labour maintain its reserve price and even push up the aggregate real wage rate,<sup>6</sup> and, where the land is owned, serving as a mortgageable or saleable asset during a crisis.

Moreover, for widows and the elderly, ownership of land and other wealth strengthens the support they receive from relatives, by increasing their bargaining power within the household and strengthening their traditional entitlements (Caldwell *et al.* 1988;

<sup>5</sup> See, Ali *et al.* (1981), Sundaram and Tendulkar (1983), and Gaiha and Kazmi (1981).

<sup>6</sup> See, for example, Raj and Tharakan (1983).

Sharma and Dak 1987). As many old people say: 'without property, children do not look after their parents well' (Caldwell *et al.* 1988: 191). Recent research in Bangladesh on mortality rates among widows living in different household arrangements shows that those living as dependants of male relatives, other than adult sons, face significantly greater health risks than widows who are heads of households (Rahman and Menken 1990), and who presumably have some independent means of income.

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

Land reform programmes have systematically ignored such concerns. In fact, even in the late 1970s and early 1980s when the government of West Bengal, in an important land reform initiative (Operation Barga), undertook the registration of tenants, primarily men (rather than, say, both spouses) were registered.<sup>7</sup> Ironically, in the process, widows who *owned* small plots which they were sharecropping out to male tenants would have effectively lost control over such land, or been faced with much greater difficulty in procuring their share of the harvest, a possibility which was brushed aside in implementing Operation Barga on the grounds that: '[T]he number of such widows left alone without any adult male relatives looking after them cannot be very large' (Dasgupta 1984: A-90). This view unquestioningly endorses women's dependency on male relatives, and assumes incorrectly (as elaborated later) that widows will necessarily be well-treated by those relatives. This endorsement of women as dependants is also reflected in existing social security schemes in many states, in which poor widows with adult sons are not entitled to a widow's pension.

It needs emphasis that the welfare case for women's land rights stands even if the plot is too small to support a family. Land-based production can be seen as one element (but a critical one) in a *diversified livelihood system*. For instance, a plot of land which does not

<sup>7</sup> The very few women who were registered were typically widows in households without adult males, who had been able to continue leasing in the land their deceased husbands had sharecropped (personal communication from Nipen Bandyopadhyaya, who evaluated the programme in 1985).

produce enough grain to sustain a person or family could still support trees or provide grass for cattle. Land pooling by those with small plots, for purposes of production or investment, is also possible (as elaborated later).

In any case, there is little immediate possibility of large numbers of rural women finding entirely non-land-related means of livelihood. None of the existing employment projections predict a rapid absorption of female labour into urban industry in the foreseeable future. Since it is predominantly male workers who migrate from rural to urban areas (Bardhan 1977), women's dependence on the rural/agricultural sector remains greater than men's. And women's nonfarm earnings are characteristically low and uncertain. Hence although women's earning opportunities in the rural nonfarm sector clearly need strengthening, for most rural women today, existing nonfarm opportunities can at best supplement not substitute for land-based livelihoods. Moreover, households that do well even in the rural nonfarm sector through self-employment are usually those with some land base (Chadha 1992). Effectively, therefore, land will continue to occupy a place of primacy in rural livelihoods in general and female livelihoods in particular, for quite some time. To this may be added the dependence on village common lands for fuel, etc., even among villagers whose income derives mainly from the nonfarm sector.

The direct effects on welfare apart, in several contexts, land titles to women would increase output by improving production efficiency (thus also enhancing welfare indirectly), such as where women are operating as household heads with the primary or sole responsibility for cultivation and family subsistence, but without titles to the land they are cultivating. This would include not only *de facto* female-headed households in regions of high male outmigration, but also the many widows who are today cultivating plots allotted to them from joint family estates (as part of their inheritance claims to their deceased husbands' lands), but the plots are still in their in-laws' names.<sup>8</sup> Titling women in these circumstances and providing them infrastructural support could enhance productivity by increasing their access to credit,<sup>9</sup> technology, and information on improved agri-

<sup>8</sup> I came across several such cases in Rajasthan in 1987.

<sup>9</sup> There is considerable evidence from Asia that titling can enhance a farmer's access to credit (in terms of sources, amounts and terms) by enabling the use of land as collateral (see e.g. Binswanger and Rosenzweig 1986, and Feder *et al.* 1986). Also see Saito and Weidenmann (1990) on the problems women farmers face in getting credit in the absence of titles.

cultural practices and inputs; as well as by motivating women to make long-term investments in the land.

In addition, titling women would strengthen their ability to challenge social and political gender inequities. In the case of widows this would also enable them to deal better with the social disabilities associated with widowhood. Although employment and other means of earning could help in similar ways, in the rural context land usually offers greater security and control over one's own subsistence than do other income sources. At the very least it provides a space of one's own, and a safeguard against eviction. Outside the household as well, land ownership can empower women by improving the social treatment they receive from other villagers (Mies *et al.* 1986), and by enabling them to bargain with employers from a stronger fall-back position. These arguments are important for women in all contexts, but become especially relevant for those who are widowed, given their particular social vulnerability.

With the decline in communal land (Agarwal 1997), privatized land has acquired an importance today which it did not have even a century ago. In India, by my rough estimate, about 86.6 per cent of arable land today is in private hands.<sup>10</sup> And in 1992 an estimated 89 per cent of rural households owned some land (GOI 1995: A-35). Although most owned very small plots, even small plots (as noted) unless totally barren, can be important for supplementary income. Women's access to this land is critically dependent on their inheritance rights, given that land markets are often constrained and land is not always readily available for sale (Rosenzweig and Wolpin 1985), even if women had the means to purchase some (which most do not). Historically (as discussed below), widows were granted few inheritance rights in landed property, and daughters even fewer. To understand the situation today, a brief look at this historical situation appears necessary.

## II. Widows, Daughters and Inheritance Rights Historically

Prior to colonial rule, the inheritance of property, including land, was governed by local customs which varied by region, religion, caste, and sometimes even family, forming a complex mosaic. But the vari-

<sup>10</sup> Calculated from India's 'Land Use Statistics' for 1990–91 (GOI 1994). In 1950–51 the percentage was 78.7 (GOI 1994).



ations did not make for dramatic differences in relation to women's claims, except between patrilineal and matrilineal groups. Existing evidence (discussed in Agarwal 1994) suggests that virtually the whole of India practised patrilineal inheritance, the exceptions being a few communities in the northeast (in present-day Meghalaya and Assam) and southwest (mainly Kerala), practising matrilineal or bilateral inheritance.<sup>11</sup> Among the patrilineal Hindu groups, on whom I will concentrate, historically the inheritance rights of both widows and daughters were extremely limited, those of daughters being weaker than those of widows. And rights in *landed property* were particularly restricted.

Hindu inheritance practices among patrilineal groups are usually traced to the ancient legal treatises—the *Dharmashastras*—and the many commentaries on them. Although it is now widely recognized that this classical *shastric* literature provided prescriptions about appropriate practice rather than descriptions of actual practice, the *shastras* are a useful reference point since they drew upon custom to some degree and in turn shaped custom. And especially as formalized under the *Mitakshara* and *Dayabhaga* legal doctrines, dated around the twelfth century AD, they significantly influenced practice in the British period and the formulation of contemporary Hindu law.<sup>12</sup> The *Dayabhaga* system held sway mainly in Bengal and Assam, and *Mitakshara* system (which later branched into four sub-schools) held sway in the rest of the country.

The *Mitakshara* system distinguished between two types of property: joint family property<sup>13</sup> and separate property. The former consisted principally of ancestral property (that is, property inherited from the father, paternal grandfather, or paternal great-grandfather), plus any property that was jointly acquired or was acquired separately but merged into the joint property. A community of interests and rights was recognized in the joint family property, held jointly by (a maximum depth of) four generations of male members—a man, his sons, sons' sons, and sons' sons' sons—who became

<sup>11</sup> Bilateral inheritance: ancestral property passes to and through both sons and daughters; matrilineal inheritance: ancestral property passes through the female line; patrilineal inheritance: ancestral property passes through the male line.

<sup>12</sup> See especially Kane (1946), Mayne (1953), and a detailed discussion in Agarwal (1994).

<sup>13</sup> The joint family here is a legal concept and need not coincide with joint residence or any other aspect of a common household economy that may be implied in a sociological use of the term.



coparceners on birth. Devolution was by survivorship: the living coparceners had an interest in the property of deceased ones, and the individual shares could be determined only at partition; these shares decreased in case of births and increased in case of deaths among the members of the coparcenary.

Over his separate property, by contrast, a man had absolute rights of ownership and disposal. This included property which was self-acquired (if acquired without detriment to the ancestral estate); property inherited from persons other than his father, paternal grandfather, or paternal great-grandfather; specified categories of gifts received by him; and his share of ancestral property on partition, *provided* he had no son, son's son, or son's son's son; in the presence of any of these members, the partitioned share was deemed as ancestral property in his hands.

Women could not be coparceners in *Mitakshara* joint family property, their rights in which included only maintenance as incoming wives, and as widows or unmarried daughters; and when they married, daughters were entitled to marriage expenses and associated gifts. In a man's separate property, however, his widow could inherit a limited estate, but only in the absence of sons, agnatic grandsons, and agnatic great-grandsons,<sup>14</sup> and only if she remained chaste. A limited estate (also termed a limited interest) allowed the woman to enjoy the property for her lifetime, but she could not alienate it (such as by gift, sale, or mortgage), except under severe necessity, and (within reasonable limits) for pious and religious acts, especially those seen as conferring spiritual benefit on the deceased. A daughter (an unmarried one got preference) came even after the widow. That is, for a daughter to inherit her father's estate required the absence both of the noted male heirs and of the widowed mother. And, like the widow, the daughter could receive only a limited estate, except under the Bombay (Mayukha) sub-school of *Mitakshara* which allowed her an absolute estate.<sup>15</sup>

Under the *Dayabhaga* system, a man was deemed absolute owner of *all* his property (no distinction being made between, say, ancestral

<sup>14</sup> Agnates are individuals of either sex who have descended through the male line and trace descent from a common male ancestor. In other words, they are so related to the deceased that there is no intervening female link. For instance, a daughter is an agnate but a daughter's child is not, while a son's son and son's daughter are both agnates.

<sup>15</sup> See e.g. Banerjee (1984: 355), first published in the 1890s, Mayne (1953), and Kane (1946).

and self-acquired property) and could dispose of it (that is sell, mortgage, or gift it)<sup>16</sup> as he wished. Division of property among heirs could take place only at the man's death, and the property went in the first instance equally to his sons. The share of a predeceased son devolved on the son's sons, or, failing this, on the son's son's sons. As under *Mitakshara*, a widow who remained chaste could inherit in the absence of these male heirs, but only as a limited interest, with the right to manage but not alienate the property. Daughters again came only after the widow, unmarried daughters getting first preference, and inherited only a limited interest. However, in contrast to *Mitakshara* law, *Dayabhaga* recognized the widow and (after her) daughters as heirs even when the man's ancestral estate had not been separated before his death. Hence, unlike under *Mitakshara*, women inherited an interest in all property, irrespective of it being joint or separate.<sup>17</sup> This also meant that the probability of a widow or daughter inheriting some property was somewhat greater under *Dayabhaga* than *Mitakshara*.

Both systems recognized female property rights in terms of *stridhan* (literally, a woman's property) but its scope was limited. Under *Dayabhaga*, although a woman had absolute control over her *stridhan*, this effectively included only movable gifts that a woman received from parents and brothers, from relatives and others at the time of marriage, and from her husband after marriage. And under *Mitakshara*, although by some interpretations *stridhan* could include (in addition to such movable gifts over which she had absolute control) immovables, received as inheritance or on partition of the deceased husband's estate, these could only be held by her as a limited interest (for details see Agarwal 1994).

According to both *Mitakshara* and *Dayabhaga*, therefore, Hindu widows could inherit immovable property such as land only under highly restrictive circumstances and (barring a few exceptions linked to the Bombay sub-school) could at best enjoy a limited interest in it; and daughters came only after the widow, married daughters coming after unmarried ones.

<sup>16</sup> Testamentary disposition was recognized only later, under the British.

<sup>17</sup> Under *Dayabhaga*, the father and sons were not coparceners in a joint estate (as they were under *Mitakshara*), but sons who inherited on the father's death could hold their inherited property jointly as coparceners, each holding a clearly defined share. Each such coparcener had full rights of disposal over his share, and his interest in which, while still undivided, could pass on his death to his own heirs, male or female.

Actual practice and *shastric* prescriptions appear to have converged in some regions and communities and diverged in others. The evidence surveyed in Agarwal (1994) of women's customary rights in land among patrilineal Hindu communities in pre-colonial India suggests that in some regions, mainly in south and west India, the rights were greater than we might expect from *shastric* prescriptions. In particular, land donations by women to temples, recorded in temple inscriptions between the tenth and seventeenth centuries, indicate that a number of women, particularly of elite backgrounds in south India, possessed landed property. But from the inscriptions it cannot be inferred that the average Hindu woman, even in the south, was commonly endowed with immovable property; nor that even elite women enjoyed equality with men, either in their inheritance rights or in their freedom to use the property as they wished. Most women donating to temples were widows drawing upon wealth inherited from husbands, typically for the latter's spiritual benefit. Temple donations, seen as religious and pious acts, were accepted both legally and socially. Women were not equally free to use their wealth in other ways.

Efforts in the early decades of the twentieth century, by newly founded women's groups and liberal lawyers, to push for legislation to strengthen women's property rights, again initially bore fruit only in terms of *widow's* rights. The Hindu Women's Rights to Property Act of 1937 gave the Hindu widow a right to intestate succession equal to a son's share in separate property among those governed by *Mitakshara*, and in all property among those governed by *Dayabhaga*. It also gave her the same interest as her deceased husband in the undivided *Mitakshara* coparcenary, with the same right to claim partition as a male coparcener. She could hold her share, however, only during her lifetime, after which it went to her deceased husband's heirs; it was also subject to forfeiture on remarriage. And the Act *explicitly excluded agricultural land* which, as a result of government legislation in 1935 (discussed later), came under provincial jurisdiction.<sup>18</sup> Moreover, *daughters were completely excluded* from the purview of the Act. It

<sup>18</sup> A few states subsequently (some prior to, others soon after Independence) extended the Hindu Women's Right to Property Act 1937 to include agricultural land. These included Bihar, Hyderabad, Orissa, the United Provinces, and Bombay. However, the efficacy of this extension was undercut by a clause that such legislation would not affect any rule of succession prescribed for tenants' rights in agricultural land by any special law then in force.

was not until the Hindu Succession Act of 1956 (HSA) that daughters were legally sought to be placed on par with widows.

### III. Inequalities in Contemporary Hindu Inheritance Laws

The Hindu Succession Act of 1956 (applicable to all states other than Jammu and Kashmir<sup>19</sup> and covering about 86 per cent of the Indian population) governs the property rights of Hindus today.<sup>20</sup> In the Act, 'Hindus' are defined as including Sikhs, Jains, and Buddhists, but there are special provisions for Hindu matrilineal communities customarily governed by the *Marumakkatayam* and *Aliya-santana* systems, and for the patrilineal Nambudiri Brahmins; while tribal communities of the northeastern states of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, and Nagaland are not covered by the Act and continue to be ruled by their local customs, which are still largely uncodified (GOI 1983). The discussion below essentially relates to the HSA as applicable to the majority of 'Hindus', outside the context of the special provisions.

The Act purported to lay down a law of succession whereby sons and daughters would enjoy equal inheritance rights, as would brothers and sisters. In fact significant gender inequalities persist. Also, although in the Act daughters for the first time are placed on par with widows, in relation to agricultural land (as elaborated below) daughters continue to be more disadvantaged than widows in northern India.<sup>21</sup>

Under the Act, in the case of a Hindu male dying intestate, all his separate or self-acquired property, in the first instance, devolves equally upon his sons, daughters, widow, and mother. In addition (and simultaneously with the mentioned four categories of heirs), if there is a predeceased son, his children and widow get the share he would have received if alive; the children of a predeceased daughter get her share likewise; and the children and widow of a predeceased

<sup>19</sup> Here, the Jammu and Kashmir Hindu Succession Act 1956 applies, which (with some modifications) contains most of the provisions of the Hindu Succession Act of 1956.

<sup>20</sup> For details of the Act see especially Mulla (1982).

<sup>21</sup> The terms 'northern India' and 'north India' are used here and elsewhere very broadly to distinguish the northern parts of India from the southern peninsular (viz. 'south India') and the northeastern (mainly tribal) states. In the discussion, however, further divisions within 'north India' (e.g. northwestern, western, central, and eastern) are referred to where warranted.

son of a predeceased son similarly inherit a share as representatives of the deceased in question. All these are the primary or Class I heirs under the Act, that is they have the first right to the property of the deceased. Other 'classes' of heirs follow.

For joint family property, if the deceased male was earlier governed by the *Dayabhaga* rules of inheritance the same rules of succession as above apply to this property as well. For those previously governed by *Mitakshara* law, however, the concept of *Mitakshara* coparcenary property devolving by survivorship continues to be recognized, with some qualifications. For a male with an interest in *Mitakshara* coparcenary at the time of his death and who leaves behind Class I female heirs, or male relatives specified in Class I as claiming through Class I female heirs, his interest devolves not according to the *Mitakshara* principle of survivorship but according to the HSA, and his share in the joint property and hence the shares of his heirs are ascertained under the assumption of a 'notional' partition (that is, as if the partition had taken place just prior to his death). If the deceased does not leave behind Class I female heirs or claimants through such female heirs, the devolution is according to the *Mitakshara* rules. Either way this does not affect the *direct* interest in the coparcenary held by male members by virtue of birth; it affects only the interest they may hold in the share of the deceased. A man has full testamentary power over all his property, including his interest in the coparcenary.<sup>22</sup>

In the case of a Hindu woman dying intestate, if she has children or grandchildren from predeceased children, all her property in the first instance devolves equally upon her sons, daughters, children of predeceased children, and husband. If she has no living children or grandchildren from predeceased children, the property devolution differs by the source of acquisition: that inherited from her parents goes to her father's heirs; that inherited from her husband or father-in-law (as a widow of a predeceased son) goes to the husband's heirs; and that acquired in ways other than these passes to her husband, and, failing him, to his heirs. The Act gives all female heirs absolute ownership and full testamentary rights over all their property, not just a limited interest in it.

<sup>22</sup> Punjab is the only exception: here the customary law has been upheld under which a male cannot will away his share of ancestral agricultural land (see 'Kaur Singh Gajjan Singh v. Jaggar Singh Kehar Singh', AIR 1961, Punjab 489); and Joginder Singh v. Kehar Singh: AIR 1965, Punjab 407).

The rights of women (be they widows or daughters) in a deceased man's property, may, however, be legally circumvented in several ways. Disinheritance through a will is the most obvious. Although gender-neutral in principle, the provision of virtually unrestricted testamentary powers can be used to disinherit potential female heirs. Also if a man wills all his property to a stranger, both widows and daughters would be totally disinherited, but sons, because of their direct claims as coparceners, would still be entitled to their share in the joint estate.<sup>23</sup>

Two other aspects of the HSA particularly disadvantage women: the continued recognition of *Mitakshara* joint family property; and the special treatment given to agricultural land. In a few states, subsequent amendments of the Act reduced inequalities in relation to joint family property, or changed their character, but in most states the inequalities persist unaltered. The nature of these inequalities in the original Act, and after amendment if any, is discussed below.

### (1) Joint Family Property

As noted, the HSA does not recognize women as coparceners (except where it was subsequently amended). Sons thus have an indefeasible right in such property, but daughters do not. In addition, sons have a right in the deceased father's share of the coparcenary if the man dies intestate. Daughters and other Class I female heirs have only the latter right, that is the right to the man's share of the coparcenary. Hence if a male coparcener were to renounce his claims in the coparcenary property, his sons would still retain their independent entitlements in the joint estate, indeed their shares in it would increase, but widows, daughters and other Class I female heirs who have only a right in such property through the male coparcener, would stand disinherited from it. A man can also convert his separate or self-acquired property to coparcenary property, and again Class I female heirs who would otherwise have enjoyed equal shares with sons in such property would be substantial losers. In addition, after partition, the father can gift his share in the coparcenary property

<sup>23</sup> Although not linked to inheritance *per se* (which is the subject of discussion here) it is notable that Hindu law does not recognize the concept of community of property after marriage. Hence, on divorce, a woman gets no property benefit from any economic contribution she makes during her marriage toward increasing her husband's wealth.



to his sons, thereby defeating the rights of female heirs. Moreover, unlike sons, married daughters (even if facing marital harassment) have no residence rights in the ancestral home. And while daughters who are unmarried, separated, divorced, deserted, or widowed do have residence rights, they cannot demand partition of the dwelling house, if the males choose not to partition.

Since the passing of the HSA, some states have amended the Act in relation to women's rights in the joint family property. For instance, the Kerala Joint Hindu Family System (Abolition) Act of 1976 deemed all family members with an interest in the Hindu undivided family estate as holding their shares separately as full owners from then onwards. This Act not only struck a final blow to the remnants of matrilineal joint estates; it also eliminated the joint property advantages that men enjoyed among patrilineal Hindus in Kerala. Amendments in a few other states have been less radical: Andhra Pradesh in 1986, Tamil Nadu in 1990, and Maharashtra and Karnataka in 1994, amended the HSA to recognize unmarried daughters (that is, daughters who were unmarried when the amendments came into force) as coparceners by birth in their own right, giving them claims equal to those of sons in joint family property, including the right to a share by survivorship.<sup>24</sup>

Leaving aside Kerala, these amendments have increased the potential property shares of daughters who were unmarried when the relevant amendment came into effect (and in the long run have increased the shares of all daughters), and also given daughters direct rights in some property which cannot be willed away by the father. At the same time, however, the amendments have *decreased* the shares of several other Class I female heirs, such as the man's widow and mother, since the coparcenary share of the deceased male from whom they inherit thereby declines. In other words, while the amendments reduce inequality between sons and daughters on some counts, they increase inequality between daughters and other women on the same counts. A more egalitarian step would have been to abolish joint family property altogether (as done in Kerala). It is notable that these amendments constitute one of the rare instances of the daughter's rights being given precedence over the widow's rights in Hindu law.

<sup>24</sup> See The Hindu Succession (Andhra Pradesh Amendment) Act 1986 (Act No. 13 of 1986); The Hindu Succession (Tamil Nadu Amendment) Act 1989 (Act No. 1 of 1990); The Hindu Succession (Maharashtra Amendment) Act 1994 (Act No.



In states where the HSA has not been amended, the original enactment continues to be in force. And none of the amendments address the inequalities stemming from the special treatment accorded to agricultural land.

### *(2) Agricultural Land*

Although the HSA covers owned agricultural land, certain other interests in agricultural land, such as those stemming from 'tenancy rights', are exempted. The Act said:

... nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.

The overall gender implications of this exemption, and its particular implications for daughters, are crucial to the present discussion, as elaborated below.

In the HSA, two factors in particular have led to a disjunction between Hindu women's legal rights in property in general and their rights in agricultural land in particular. (i) The Government of India Act 1935 vested all legislative powers in relation to agricultural land exclusively in the provincial (state) legislatures. Thenceforth women's inheritance rights were to be determined by personal law on all matters of property other than agricultural land, their rights in which would depend on the land-related laws prevailing in the province in which the land was located. Even The Hindu Women's Right to Property Act 1937 (as noted) did not apply to agricultural land. (ii) Land reform policies have been based both on the principle of redistributive justice and on arguments regarding efficiency (land to the tiller, prevention of fragmentation, etc.); but on neither count are gender inequalities taken into account.

As a result, today in most of the north Indian states, the succession rules for Hindus relating to land held under tenancy have a different order of devolution than the HSA specifies. For example (see Table 1) in the tenorial laws of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Delhi and Uttar Pradesh (all located in northwest India), the specification of devolution shows a strong preference for agnatic succession, with priority for agnatic males. In all these states

40 of 1994); and The Hindu Succession (Karnataka Amendment) Act 1990 (Act No. 23 of 1994).

tenancy devolves in the first instance on male lineal descendants in the male line of descent, and the widow inherits only in their absence. Moreover in the first four states daughters and sisters are totally excluded as heirs. In Delhi and Uttar Pradesh, daughters are recognized but come very low in the order of heirs. Also, in all these states, a woman (in any capacity) gets only a limited estate, and after her death the holding goes to the heirs of the last male landowner. She also loses the land if she remarries (in a widow's case) or abandons it (that is, fails to cultivate it for a specified period, usually a year or two).

In Uttar Pradesh, moreover, because of the very broad and ambiguous definition of 'tenants' under the UP Zamindari Abolition and Land Reforms Act, 1950 (UPZALRA), the devolution rules mentioned above apply also to owner cultivators, thus excluding virtually all agricultural land from the purview of the HSA.<sup>25</sup> In other words, in a state containing one-sixth of the country's population, most agricultural land is legally inheritable principally by males. The same is true for Delhi.

In states other than the above, the tenancy laws either explicitly mention that the devolution of tenancy land will be according to personal law, or it can be inferred that personal law applies since the order of devolution is not mentioned at all (Table 1). It may be noted that the term 'personal law' here and in Table 1 specifically means (in the case of Hindus) the Hindu Succession Act of 1956, and not some form of 'customary law'.

Not only are the inheritance laws for agricultural land highly gender unequal in large parts of the country, but most tenancy and other land reform laws are included in the Ninth Schedule of the Indian Constitution. This means that they cannot be challenged on grounds of violating fundamental rights. Although presumably so included to protect them from entrenched class interests, this also effectively protects them from being constitutionally challenged on grounds of gender discrimination.<sup>26</sup>

<sup>25</sup> This ambiguity stems, in particular, from the way *bhumidars* were defined and categorized under the UPZALRA. *Bhumidars* were noted to pay land revenue to the government and not rent, and had full proprietary rights to their land; they should therefore have counted as land owners subject to the devolution rules of the HSA. The UPZALRA, however, places them along with tenants in relation to devolution rules (for details see Agarwal 1994).

<sup>26</sup> The only ground on which the Ninth Schedule can be challenged is if it violates the 'basic structure of the Constitution' (GOI 1990b: 39). However, there have as yet been no clear pronouncements (other than on the concept of secularism) on what constitutes the Constitution's basic structure.

TABLE 1  
*Devolution of Agricultural Tenancies in Land Enactments, by State*

State	Agricultural tenancies: 1st order heirs <sup>1</sup>	Relevant Act
<i>Northwest India</i>		
Delhi <sup>2</sup>	Male lineal descendants in the male line of descent	The Delhi Land Reforms Act 1954 (Act No. 8 of 1954)
Haryana	Male lineal descendants in the male line of descent	The Punjab Tenancy Act 1887 (Act No. 16 of 1887), amended up to 1969; and the Pepsu Tenancy and Agricultural Land Act 1955 (Pepsu Act 13 of 1955)
Himachal Pradesh	Male lineal descendants in the male line of descent	The Himachal Pradesh Tenancy and Land Reform Act 1972 (Act No. 8 of 1974)
Jammu and Kashmir	Male lineal descendants in the male line of descent	The Jammu and Kashmir Tenancy Act 1980 (Act No. 2 of 1980)
Punjab	Male lineal descendants in the male line of descent	The Punjab Tenancy Act 1887 (Act No. 16 of 1887), amended up to 1969; and the Pepsu Tenancy and Agricultural Land Act 1955 (Pepsu Act 13 of 1955)
Rajasthan	Personal law applies	The Rajasthan Tenancy Act 1955 (Act No. 3 of 1955)
Uttar Pradesh <sup>2</sup>	Male lineal descendants in the male line of descent	The Uttar Pradesh Zamindari Abolition and Land Reforms Act 1950 (UP Act No. 1 of 1951), amended up to 1987
<i>East, West, and Central India</i>		
Bihar	No specification of the order of devolution; but the tenancy laws state that the devolution of occupancy rights shall be in the same manner as other immovable property, unless custom to the contrary is established	The Bihar Tenancy Act 1885 (Act No. 8 of 1885) amended up to 1987; and The Chota Nagpur Tenancy Act 1908 (Bengal Act No. 6 of 1908)
Gujarat	No specification of the order of devolution; can be presumed that the personal law applies	The Bombay Tenancy and Agricultural Lands Act 1948 (Act No. 67 of 1948)

TABLE 1 (contd.)

State	Agricultural tenancies: 1st order heirs <sup>1</sup>	Relevant Act
Madhya Pradesh	Personal law applies <sup>3</sup>	The Madhya Pradesh Land Revenue Code 1959 (Act No. 20 of 1959), as amended in 1961
Maharashtra		
– Vidarbha region	Can be presumed that the personal law applies: see explanatory note <sup>4</sup>	The Bombay Tenancy and Agricultural Lands (Vidarbha region) Act 1958 (Bombay Act No. 99 of 1958), as amended up to 1981
– Bombay region	No specification of the order of devolution; can be presumed that the personal law applies	The Bombay Tenancy and Agricultural Lands Act 1948 (Act No. 67 of 1948)
– Marathwada region (earlier in former Hyderabad state)	Can be presumed that the personal law applies: see explanatory note <sup>4</sup>	The Hyderabad Tenancy and Agricultural Lands (Amendment) Act 1957 (Bombay Act No. 32 of 1958)
Orissa	No specification of the order of devolution; but the tenancy laws specify that devolution of occupancy rights shall be in the same manner as other immovable property, unless custom to the contrary is established	Orissa Tenancy Act 1913 (B and O Act No. 2 of 1913)
West Bengal	No specification of the order of devolution; can be presumed that the personal law applies	The Bengal Tenancy Act 1885 (Act No. 8 of 1885); and West Bengal Land Reforms Act 1955 (Act No. 10 of 1956)
<i>South India</i>		
Andhra Pradesh	Andhra area: no specification of the order of devolution; can be presumed that the personal law applies. Telangana area: For Hindus the HSA applies <sup>5</sup>	The Andhra Pradesh (Andhra area) Tenancy Act 1956 (Act No. 18 of 1956)  The Andhra Pradesh (Telangana area) Tenancy and Agricultural Lands Act 1950 (Act No. 21 of 1950)

TABLE 1 (*contd.*)

State	Agricultural tenancies: 1st order heirs <sup>1</sup>	Relevant Act
Karnataka	No specification of the order of devolution; can be presumed that the personal law applies	The Karnataka Land Reforms Act 1961 (Act No. 10 of 1962), amended up to March 1980
Kerala	No specification of the order of devolutoin; can be presumed that the personal law applies	Kerala Land Reform Act 1963 (Act No. 1 of 1964)
Tamil Nadu	No specification of the order of devolution; can be presumed that the personal law applies	The Tamil Nadu Tenants and Ryots Protection Act 1949 (Act No. 24 of 1949); The Tamil Nadu Cultivating Tenants (Protection) Act 1955

## Notes:

<sup>1</sup> The term 'personal law' as used here means the Hindu Succession Act of 1956, for Hindus; the Muslim Personal Law (Shariat) Application Act of 1937 for Muslims, and so on; it does not imply some form of 'customary law'.

<sup>2</sup> The definition of land under tenancy in these states is very broad and effectively covers all agricultural land (see discussion in text).

<sup>3</sup> When initially passed, the Madhya Pradesh Land Revenue Code of 1959 specified an order of devolution wherein the Class I heirs (for both owned and tenancy land) were as follows: son; widow (or widower); predeceased son's son and widow; son and widow of predeceased son's predeceased son; and widow of predeceased son's predeceased son. Since the 1961 amendment, however, devolution is according to personal law for the lands of both tenure holders and occupancy tenants.

<sup>4</sup> Section 54 of the Bombay Tenancy and Agricultural Lands (Vidarbha region) Act 1958, specifies that if the deceased tenant was a member of an undivided Hindu family, the tenancy would devolve to the surviving members of that family; otherwise it would pass to 'his heirs'. In the case of an occupancy tenant the holding would be inherited in accordance with his personal law.

Since the HSA had already been passed in 1956, that is prior to this Tenancy Act, I am taking the view that even for Hindu tenants who are not occupancy tenants, the HSA would apply (with the relevant provisions with respect to survivorship applying if the tenant was a member of an undivided Hindu family).

Similarly under the Hyderabad Tenancy and Agricultural Lands Act 1950, as amended by the Hyderabad Tenancy and Agricultural Lands (Amendment) Act 1957, Section 40 specifies that if the deceased tenant was a member of an undivided Hindu family, the tenancy would devolve on the surviving members of that family; otherwise it would pass to 'his heirs'. This 1957 Act does not contain a separate specification for an occupancy tenant. But here also, since the HSA had already been passed, I am taking the view that if the tenant was a member of an undivided Hindu family, the relevant provisions in the HSA with respect to survivorship would apply.

<sup>5</sup> Section 40 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act 1950 (Act 21 of 1950) says that the tenancy of the protected tenant (that is the person holding lands as a tenant at the commencement of the Act) will devolve on '(a) his legitimate lineal descendants by blood or adoption; (b) in the absence of any such descendants, his widow for so long as she does not remarry.' The commentary in this section clarifies that in case of a conflict with the Hindu Succession Act of 1956, the succession of the separate property of the Hindu tenant will be according to the HSA (see The Andhra Pradesh Local Acts: 1802–1981, Vol. 16, Asia Law House, Hyderabad, pp. 101–2).

#### IV. The Gap Between Contemporary Law and Practice

Legal inequalities apart, there are major gaps between contemporary law and present-day practice in the recognition of women's land rights, again to a greater extent for daughters than widows.

##### *(1) Widow's Inheritance in Practice*

The perception that a widow has a right to a share in the deceased husband's land appears to be fairly widespread, both among villagers,<sup>27</sup> and among widows themselves in several regions (Misra and Thurkal 1994). In practice also, the claims of many eligible widows are now beginning to be recognized, but a large proportion still do not inherit, and those who inherit do so mostly on severely restricted terms.

In a recent study on widows in seven states, out of 280 households with widows where the husband had land, 51 per cent of the widows inherited some (although there were important regional variations, as discussed later), but this also means that almost half of those eligible were disinherited (Table 2).<sup>28</sup> Moreover, in a rural Hindu household the extent and nature of rights that a widow enjoys in her husband's land are usually contingent in practice on a variety of factors, such as whether or not she remains single and chaste; whether she has sons, and her sons (if any) are minors or adults; whether the deceased husband has partitioned from the joint family estate before his death; and so on, as elaborated below.

(a) *Forfeiture on remarriage.* Practice still adheres closely to traditional Hindu law, and a widow usually loses her right to her husband's land if she remarries outside the family, is unchaste, or leaves her husband's village on his death.<sup>29</sup> Although most communities allow widow remarriage in principle, and there are notable regional and community-wise variations in practice (Agarwal 1994), in overall terms remarriage does not appear to be common: in Chen's sample

<sup>27</sup> Personal communication from Marty Chen in 1993, and from a former *sarpanch* (head of the village council) in Jhunjhunu district, Rajasthan, 1993.

<sup>28</sup> Chen's sample consists of Hindu widows in all the states except Kerala where some Muslim Mapilla households are also included.

<sup>29</sup> See Harper (1971), Mayer (1960), Parry (1979), Nandwana and Nandwana (1994), and Misra and Thurkal (1994).

TABLE 2  
*Rural Widows Who Inherited Land as Daughters and as Widows*

Region/State	Total sample <sup>1</sup>	Father owned land <sup>2</sup>	Women who inherited as daughters		Husband owned land	Women who inherited as widows	
			No.	%		No.	%
<i>Northern India</i>	262	229	18	8	193	98	51
Bihar	71	70	2	3	57	16	28
Rajasthan	49	42	2	5	39	27	69
Uttar Pradesh (hills)	50	50	1	2	45	23	51
West Bengal	92	67	13	19	52	32	62
<i>Southern India</i>	283	241	43	18	87	45	52
Andhra Pradesh	79	77	12	16	37	18	49
Kerala	104	65	28	43	15	10	67
Tamil Nadu	100	99	3	3	35	17	49
<i>All regions</i>	545 <sup>3</sup>	470	61	13	280	143	51

<sup>1</sup> For all states, other than Kerala, the sample consists only of Hindu widows. In Kerala, it also includes some Muslim Mappila households, who in north Kerala traditionally followed matrilineal inheritance practices.

<sup>2</sup> In Kerala the sample also includes cases where the mother owned land, to take account of matrilineal inheritance.

<sup>3</sup> This is a sub-sample consisting of currently-widowed women. The original sample consisted of 562 ever-widowed women spread over fourteen villages, two each in the seven states listed above.

Source: Marty Chen (personal communication of results from her 1991 survey).

of 562 ever-widowed women surveyed in 1991, only 13 per cent in the northern states and 6 per cent in the southern ones had remarried (Chen and Dreze 1995). Remarriage is especially uncommon among widows with children (Dreze 1990). Apart from the likely unwillingness of a new husband to accept responsibility for children from the first marriage, and the widow's concern with how the children would be treated by him,<sup>30</sup> the fear of losing her claim and her children's claims to the deceased husband's property, also makes remarriage unattractive.

The one form of remarriage which might enable the widow to retain her rights in her husband's property is levirate (a union with

<sup>30</sup> See Dreze (1990) for examples of widows voicing these concerns and for some case studies of children from a first marriage being illtreated by the husband. See also, Chen and Dreze (1995).



the deceased husband's, usually younger, brother<sup>31</sup>), which is still practiced in northern India, especially in the northwest. But a leviratic union means that the deceased husband's brother can take control over the woman's land. Hence although levirate appears to be more common when the widow is young and childless, or has only one child and the brother-in-law is unmarried, cases of unwilling widows with several children being forced to cohabit with married brothers-in-law, who then take over their land, are not unknown.

A case in point is a Punjabi Jat widow I spoke to in Kithoor village (Rajasthan, northwest India) with five minor children (one son and four daughters) who inherited 3.2 acres from her husband, and who was strongly pressured by her husband's younger brother (already married but sonless) to establish a leviratic union with him. When a daughter was born from this alliance, however, he abandoned the woman, enticed away her fourteen-year-old son (his nephew) who now lives with him, and through forgery got her land transferred to the boy's name, thereby gaining effective control over it. He now gives her a part of the wheat grown on her land, but no part of the crops grown for cash, leaving her to fend ineffectively for herself and her daughters. I found her in a state of acute despair: she said it was only the thought of her minor daughters being left destitute that kept her from suicide.

Widows in fact have typically resisted leviratic unions. Indeed, at the turn of the century the British received many petitions from Punjabi widows against being forced into such unions, which were common especially among the Jats (Chowdhry 1989). Non-leviratic widow remarriage in the Punjab still appears to be uncommon, especially but not only of widows with children, if the somewhat dated but detailed sample survey by Agarwal (1972) in 1963 is indicative: he found that 25 per cent of ever-widowed women had remarried, of whom 88 per cent had contracted leviratic unions. Most of the non-leviratic remarriages were of childless widows and none were of widows with more than two children, while some of the leviratic unions were of widows with even four children. In fact, ever since widows were granted absolute rights over their inheritance under the HSA, levirate has strengthened in the region and even spread to castes which earlier disliked the practice (Chowdhry 1989).

<sup>31</sup> A leviratic union with the older brother is often forbidden, but rare cases of such unions may exist, as also of unions with the husband's agnatic cousin.

In many other parts of northern India also, as noted, levirate is common (see Table A8.3c in Agarwal 1994), and among the Garwalis it was the rule a few decades ago (Berreman 1962). It is notable, though, that in South India the practice is rare and some communities explicitly forbid it. Whatever be the initial underlying reasons for this regional difference, the function that levirate serves in northern India, of keeping the landed property on which the widow has a claim within the control of her marital family, is served in the south by close-kin marriage.

(b) *Linked with sons.* A widow's inheritance claims are typically dependent on her having sons. If she has only daughters or is childless she usually gets nothing but maintenance.<sup>32</sup> Hindu communities of northwest and central India rarely allow childless widows or those with only female children to inherit the husband's estate, and those that do, allow only a limited estate.<sup>33</sup>

On the face of it, there appears to be a contradiction here between what is specified in Hindu law (both traditional and contemporary) and what is enforced in practice. Traditionally, under *Mitakshara* as well as *Dayabhaga*, it is in the *absence* of sons that widows could inherit, and under contemporary law (the HSA 1956) widows are Class I heirs *on par* with sons and daughters. However, in practice today, as noted, there is a substantially greater likelihood of a widow with a son being able to claim her deceased husband's estate, than one with no son. This indicates that in practice (especially in northern India) there has been only a marginal deviation from traditional Hindu law (although a notable deviation from contemporary law), since what is really being recognized is the primary rights of sons, with a widow's share being seen basically as contributing toward her maintenance, rather than for her independent use. The emphasis on the widow having a son in order to inherit is also one means of keeping the land in the agnatic line (which was ensured under traditional Hindu law by allowing widows only a limited estate, whereas contemporary law allows them an absolute estate).

Indeed, the need to have a son in order to establish her claim often leads a sonless or childless Hindu widow to adopt a son, usually

<sup>32</sup> This is the widespread perception among widows and other villagers I spoke to in Kithoor village Rajasthan in 1987. Also see Hershman (1981) for Punjab, Harper (1971) for Karnataka, Minturn (1993) for Uttar Pradesh, and Misra and Thurkal (1994) for Bihar.

<sup>33</sup> See Madan (1989), Mayer (1960), and Parry (1979).

the husband's brother's child, and designate him as heir. Gough (1981) notes several cases in her village study in Tamil Nadu. And in Ramkheri village (central India), of the nine widows who had inherited land, Mayer (1960: 244) found that three had adopted their husbands' agnates as heirs, two others had young sons in whose names the property would be registered when they were old enough to work it, two had invited a daughter's husband to live uxorilocally to work the land which the daughter and son-in-law would later inherit,<sup>34</sup> while only two had no heirs living with them and farmed the land through tenants or labourers. In other words, males remain the effective claimants of land in the hands of widows, in most cases. Sometimes disputes over control of the property can erupt even between widows and their adopted sons, as noted by Gough (1981), who also found that in such cases the court usually favoured the adopted son, or there was an out-of-court settlement, with the land being divided between the contending parties or with the woman agreeing to pay an income to the son.

Cases are also found where the adult son refuses to recognize the mother's claim. An extract from an interview by Erica Moore and a widow in the Alwar district of Rajasthan in 1988, is illustrative:<sup>35</sup>

- Q: How much land does your son have?  
 A: Twenty bighas.<sup>36</sup>  
 Q: When your husband died, did half the land go into your name and half in your son's name?  
 A: No, all in the son's name . . .  
 Q: Can't the *panchayat* help you?  
 A: There is no *panch* who can help me.  
 Q: Have you gone and asked any of them?  
 A: We have said it many times, but no one helps us. They don't say anything . . .  
 Q: If your son gave you five bighas, then you could get the crop.  
 A: They don't give it, don't give it.

(c) *Non-registration or joint registration.* Where women do inherit, they seldom receive independent shares. A widow whose husband had not separated from the joint estate before his death is likely to be given only use rights to a part of his share, without her name being entered in the records. If she has minor sons she may be allowed use of the

<sup>34</sup> Uxorilocal: where the husband takes up residence with the wife and (with or near) her parental family.

<sup>35</sup> Personal communication from Erica Moore, Michigan (USA), 1989.

<sup>36</sup> Different regions of India typically use one of the following two conversion rates: 1 bigha = 0.2 acres or 0.33 acres.

husband's estate as a trustee on behalf of her sons till they grow to adulthood, after which she is expected to live with one of them.<sup>37</sup> I also came across more than one case in Kithoor village (Rajasthan) of a widow with a minor son cultivating a small portion of her deceased husband's share in the joint estate which was formally still in the name of the father-in-law.<sup>38</sup>

If the joint property is partitioned before the husband's death, a widow with sons is more likely to be able formally to register her claims in her husband's land, but usually this is done jointly with the sons. For instance, Nandwana and Nandwana (1994) found in their survey of two villages in Rajasthan, that sixteen out of the fifty-seven Hindu widows surveyed (that is, 28 per cent) had their names in the land records in relation to their deceased husbands' lands. Of these, one was sonless and the land was solely in her name; the remaining fifteen were registered jointly with their adult sons. In addition, one widow had inherited as a daughter from her sonless father. A similar picture obtains from my survey in March 1993 of land records in three villages in Jhunjhunu district (Rajasthan): of the thirty-six women with land in their names, thirty-four had registered as widows and two as daughters. Of the widows, all the twenty-seven who had sons were registered along with their sons. I understand from a former *sarpanch* of this region that the registering of widows' claims has only become common here over the past four or five years.

(d) *Limited control*. Having land in her name does not give the widow full control over it, to use, mortgage, sell, or will it as she wants. In other words, she does not usually get the absolute estate to which she is entitled under contemporary law. Where the woman has served as a trustee of the land on behalf of her minor sons, on adulthood the sons are likely to partition the land during their mother's lifetime. In such cases a part of the land may well be marked out as hers, but it is generally expected to be cultivated by the son she lives with, rather than designated for her independent use.<sup>39</sup> Even in the earlier mentioned surveys in Rajasthan, where we noted that land was form-

<sup>37</sup> See Gupta (1974), Harper (1971) and Hershman (1981).

<sup>38</sup> Typically, village land records are poorly maintained and usually out-of-date (Wadhwa 1989), and land partition among heirs is often done orally (Misra and Thurkal 1994).

<sup>39</sup> Jean Dreze (Delhi School of Economics), personal communication, 1992; and Chen and Dreze (1992).

ally registered in the widow's name, and this was clearly a step forward, the popular perception among the villagers was still that this land was meant for the widow's maintenance rather than for her to manage or transfer as she wished.

Of course even a limited interest in land, although not the same as full property rights, has significance, since it gives the woman a right to the produce which can be an important source of economic security. It also restricts the access of her deceased husband's relatives to that piece of property for the duration of the woman's lifetime. Even women's limited interest in land can thus be opposed strongly by their husbands' kin.

In general, therefore, while the claims of a greater number of widows now appear to be recognized, a large percentage still do not inherit, and the rights of those who do inherit are seriously circumscribed.

### *(2) Regional Variations in Widows' Inheritance*

Within this overall restricted inheritance of land by Hindu widows, however, there are some notable regional variations within northern India, and between north and south India. We see from Table 2 (based on Chen's survey), for instance, that in the northern states, of the widows with landowning husbands the percentage who inherited was as high as 69 in Rajasthan and 62 in West Bengal, but as low as 28 in Bihar. Again, Dreze (1990, and personal communication) found in his 1988 survey of three villages in north India (one each in West Bengal, Gujarat, and Uttar Pradesh), that in the West Bengal village, in five out of nineteen landowning Hindu households with widows, all the land that the family owned was in the widow's name;<sup>40</sup> and in two others the land was still in the deceased husband's name but seen as belonging to the widow. These together constituted 37 per cent of the cases. Five of these seven widows with land had adult sons. This contrasts with Dreze's Gujarat and Uttar Pradesh villages, where virtually no widows with adult sons had land in their own names, although there were cases where a small share of the family land was allotted for a widowed mother and cultivated by whichever son she lived with.

<sup>40</sup> Unfortunately, in four of these cases there was no information on how the women got the land; the fifth had inherited it from her husband.

The high percentage of widows inheriting from husbands, noted for Rajasthan and Bengal in Chen's study (and also suggested for Bengal by Dreze's study), need probing. In Rajasthan this could well be a result of the earlier-mentioned shift in government policy, observed by some villagers, towards registering widows' claims in recent years. And in West Bengal the reasons could lie in factors such as the *Dayabhaga* inheritance system that historically held sway in Bengal and which was somewhat more favourable toward women inheriting than the *Mitakshara* system prevailing elsewhere in the North;<sup>41</sup> the social reform movements in Bengal in the nineteenth century; and the less strict norms of female seclusion relative to northwest India, which would allow Bengali women greater freedom in asserting their claims.<sup>42</sup>

The above patterns for north India contrast with those for south India, in the likelihood of widows inheriting. In Table 2, in all three southern states surveyed, about half or more of the widows with landowning husbands inherited some land, and although none have a percentage as high as Rajasthan, none come as low as Bihar either. In other words, the recognition of widows' claims in a substantial proportion of cases is a much more consistent pattern in the south than in the north. Even in medieval south India (as noted earlier) a number of sonless widows of wealthy families had inherited their husbands' estates and enjoyed some degree of freedom in using their wealth for endowing temples.

### (3) *Daughters' Inheritance in Practice*

As daughters, women's claims appear to enjoy little social legitimacy within patrilineal communities, and the greatest likelihood of their inheriting is still in sonless families, usually involving uxorilocal post-marital residence. And even then, the woman does not typically gain full ownership of the land, but serves as a trustee on behalf of her son who ultimately inherits; occasionally her husband (the son-in-law) is designated heir (Agarwal 1994). Sonless Hindu couples may also adopt a male child (usually an agnate's son) and designate him as

<sup>41</sup> As noted earlier, under *Dayabhaga*, a sonless widow was entitled (as a limited interest) to her husband's entire estate, while under *Mitakshara* she had a limited interest only in his separate property.

<sup>42</sup> For instance, veiling in their marital homes is not customary among Hindu women in Bengal, as it is in northwest India.

heir, thus bypassing the daughter. Cases of daughters inheriting land directly and unconditionally from parents are therefore rare, especially in northern India, and most relate to sonless families (Agarwal 1994). In Ramkheri village (Madhya Pradesh, central India), out of 146 persons with land registered in their names, 121 (83 per cent) were sons inheriting from fathers, eight were adopted male heirs, and only seventeen were women. Of the women, only five were daughters (three inheriting from widowed fathers and two from widowed mothers), while nine were widows, and three were sisters inheriting from childless widower brothers (Mayer 1960). All the above instances of daughters inheriting land add up to only a small proportion of those eligible. Most village studies relating to Hindu communities mention only one or two cases or none at all.

Chen's survey (Table 2) again shows only a small percentage of daughters inheriting. In four states (Bihar, Rajasthan, Uttar Pradesh hills, and Tamil Nadu) less than 5 per cent of the sample widows inherited as daughters, and in three states (West Bengal, Andhra Pradesh, and Kerala) the percentage although greater, was still less than 30. Nevertheless, the north-south contrast was marked: 8 per cent of the women in the northern states, relative to 18 per cent in the southern ones, inherited as daughters. The noticeable (albeit not dramatic) deviation of West Bengal from the typical north Indian pattern of very few daughters inheriting is similar to that noted earlier for widows in Dreze's study. Kerala, again, as might be expected (given a significant presence of traditionally matrilineal groups there), has a higher percentage of women inheriting as daughters than the other states. Yet even in Kerala a significant majority of women, although legally eligible, do not inherit as daughters. This could be due, at least in part, to the presence of some patrilineal communities in Chen's Kerala sample: she does not say what proportion of her Kerala widows are drawn from matrilineal groups.

Inheritance aside, in rich families fathers or brothers sometimes grant women usufruct rights to some land, or gift them small plots, especially, but not necessarily, as a part of their dowry (Agarwal 1994). On the whole, though, land gifts in dowry are rare and tend to be confined to the southern states. It is interesting that in some tribal communities, unmarried daughters customarily have usufruct rights to land, as among the Ho and Santal tribals of Bihar; and a number of Ho women today choose to remain unmarried for the sake of this access (Kishwar 1987). Similarly, one of the important reasons why many Tibetan women in Ladhakh, in Phylactou's (1989)



study, remained unmarried and became Buddhist nuns, was because they were then entitled to an independent house and independent usufruct rights in fields allotted to them by their natal families.

Although most rural women in Hindu families, especially among the upper castes, would not have the same choices either of remaining unmarried or of enjoying usufruct rights in family land as a result, such examples do suggest that if women were given a choice between economic security through marriage and economic security through having a field of their own, many may well choose the latter, if having both were not possible.

### V. Obstacles to Achieving Effective Land Rights

What accounts for the vast gap between women's (especially daughters') legal entitlements and their ability to claim and control landed property in practice? A range of factors—social, administrative and ideological—severely restrict women. These obstacles, examined in detail in Agarwal (1994), are summarized here. Some of them particularly affect women's claims as daughters, others affect most women, including widows, in greater or lesser degree.

First, in most traditionally patrilineal communities there is a strong male opposition to endowing women, especially daughters, with land. Indeed, when the Hindu Succession Act was passed in 1956, several ethnographers documented the negative responses to it. For instance, every single household surveyed in Jhatikra village near Delhi, disapproved of the provisions allowing daughters to inherit the patrimony (Freed and Freed 1976). In Himachal Pradesh, the inheritance law 'struck the valley as so unfair that they petitioned the government not to introduce the law, but without avail' (Newell 1970: 51). In Uttar Pradesh, the Rajputs felt that the Act was 'a very serious breach of village customary law, which has always held that no wife, daughter, or daughter's husband could inherit land. This rule was a very important one and still is adhered to with deep emotion' (Minturn and Hitchcock 1966: 28).

Apart from the reluctance to admit more contenders to the most valuable form of rural property, an important factor underlying such resistance is a structural mismatch between contemporary inheritance laws and traditional marriage practices. Among matrilineal and bilateral communities in South Asia, historically families sought to keep their land within the purview of the extended kin either by

strict rules against land alienation by individuals, or where such alienation was possible (as among the bilateral communities), by other means, such as post-marital residence in the village, and/or an emphasis on marriage with close-kin, especially cross-cousins. In fact, proximity of the post-marital residence to the natal home was virtually a necessary condition for recognizing a daughter's share in landed property. Contemporary laws as framed by the modern State give inheritance rights to daughters as individuals among most communities, including in traditionally patrilineal, patrilocal ones.<sup>43</sup> Marriage customs, however, are still under the purview of the local kin group and, on the relevant counts, have remained largely unchanged.

This mismatch between inheritance laws and marriage practices is greatest among upper-caste Hindus of northern India who forbid marriages with close-kin and practice village exogamy, preferring marriage alliances in distant villages. Many such communities, moreover, have social taboos against parents drawing on the economic support of married daughters even during crises. Hence, in the northern states (and especially the northwestern ones) endowing daughters is seen by Hindu parents as bringing no reciprocal economic benefit, while increasing the risk of the land passing out of the hands of the extended family. Opposition to titling daughters tends to be greatest here. Resistance is less in south and northeast India where marriages within the village and with close-kin are allowed and sought, and seeking financial help from married daughters is also possible.

Second, many women forego their shares in parental land in favour of brothers for the sake of their potential economic and social support. In many parts of India visits by a brother are often a woman's only regular link with her natal home where she is married into a distant village, and especially where it is socially taboo for parents to accept her hospitality. After the parents' deaths the brother's home often offers the only potential refuge in case of marital breakup or widowhood. A woman's dependence on this support is directly related to her economic and social vulnerability. Economically, low access to personal property (especially productive assets), illiteracy, limited income-earning skills and earning opportunities, and low wages for available work, can all constrain women's access to

<sup>43</sup> Patrilocal: where the wife normally takes up residence with the husband and with or near his patrilineal kin.

earnings and potential for independent economic survival. Socially, women's vulnerability is associated partly with the strength of *purdah* or female seclusion practices and partly with the extent of social stigma attaching to widowhood or divorce. Although both economic and social factors vary in strength by community, region, and circumstance, typically, in anticipation of such support women give up their claims in parental land. Cultural constructions of gender, including the definition of how a 'good' sister should behave, the widespread feeling that it is 'shameful' for her to claim her share, also discourages women from asserting their rights (Hershman 1981). In practice, the evidence on the support that brothers actually provide is mixed: ethnographies give examples both of brothers helping a sister in need, and of their neglect and duplicity.

Third, dependence on brothers or other male relatives is accentuated by rural women's need for male mediation outside the family, particularly where there are physical and social restrictions on women's mobility and behaviour. In many communities these restrictions are explicit in the norms of *purdah*; in many others, they are implicit and subtle, manifest less in the veiling of women and more in the gender segregation of space and the gendered specification of behaviour. In fact, among Hindus strict veiling is limited to some communities and regions—being stronger among the upper-caste in northwest India, than elsewhere; and even here it varies in extent by the woman's class, age, and kinship context. As a daughter in her parent's village, for example, a woman is not expected to veil. More pervasive than veiling are the behavioural strictures which define where women can go, whom they can speak with and in what manner, how they should dress, and so on. Although such gendering of space and behaviour is strongest in communities which explicitly endorse *purdah*, its more subtle manifestations constitute an implicit code of expected female behaviour in many regions, even where (as in south India) *purdah* is not endorsed.

All this circumscribes rural women's interaction with men and institutions, their mobility, their domain of activity and knowledge, and their access to education and to economic (markets, banks, etc.), judicial and administrative institutions. This, in turn, limits women's ability to claim and control land. The implications of these constraints for widows are mixed. On the one hand, widowhood adds its own forms of cultural constraints within the community. On the other hand, especially where the widow heads her household, she is free from kinship-related authority structures within the immediate

family. How this duality balances out in terms of women's ability to claim and control land needs probing.

Fourth, male relatives often take pre-emptive steps to prevent women from getting their inheritance. Fathers have been found to leave wills favouring sons and disinheriting daughters; and brothers have been known to forge wills or manipulate statements before the revenue authorities to make it appear that the woman has relinquished her right (Parry 1979, and Mayer 1960). Where pre-emptive methods fail, intimidation is attempted. A common tactic is to initiate expensive litigation which few women can financially afford (Kishwar 1987). Some women drop their claims, others may press on, even risking mortgaging the land to pay legal fees. Already in the late 1950s, land disputes involving women were rising in parts of India (Mayer 1960). Today direct violence is also increasingly used to deter women from filing claims, or from exercising the usufruct rights to land that some customarily have. Indeed in eastern and central India, the murder of women, especially widows who have some land, through accusations of witchcraft, is on the rise (Chaudhuri 1987; Kishwar 1987).

Fifth, the logistics of dealing with legal, economic and bureaucratic institutions are often formidable and work against women staking their claims. Village women's typically low level of education, and the noted restrictions on their interaction with the extra-domestic sphere and with institutions constituted principally of men, the complicated procedures and red tape involved in dealing with judicial and administrative bodies, and so on, all work to women's disadvantage, as does their relative dearth of financial resources.

Sixth, local-level (largely male) government functionaries, responsible for overseeing the recording of inheritance shares, often obstruct the implementation of laws in women's favour. Social and official prejudice tends to be particularly acute against inheritance by daughters: widows' claims are somewhat better accepted. Male bias on these counts is found in greater or lesser degree at all levels of legal and administrative institutions (for examples, see Agarwal 1994).

The gap between legal ownership rights and actual ownership is only one part of the story. The other part relates to the gap between ownership and effective control, especially managerial control, attributable to a mix of factors. Patrilocal marriages in distant villages make it difficult for women to directly supervise or cultivate

any land inherited in the natal village. But problems of directly managing land inherited even in the marital village (say as a widow) are compounded in many areas by purdah or the more general gender segregation of public space and social interaction; high female illiteracy; and high fertility (which increases women's childbearing and childcare responsibilities). Moreover, male control over agricultural technology, especially the plough (there are cultural taboos against women operating the plough), and male bias in the dissemination of information and technological inputs, disadvantage women farmers. Often added to this is the threat and practice of violence by male relatives and others interested in acquiring women's land. Pressure on women to sharecrop their land to relatives (at below market rates) is usually high, as are the difficulties of ensuring that they get their fair share of the harvest.

However, the strength of these constraints to women claiming and managing land varies notably by region. There are geographic differences in the social acceptance of women's land claims (stemming in part from differences in traditional inheritance rights); in prevailing marriage practices; in the restrictions on women's freedom of movement and interaction; in women's literacy and fertility rates; and in the extent of land scarcity. Obstacles stemming from these factors are greatest in northwest India and least in south India, with western, central and eastern India and northeast India, coming in between.<sup>44</sup> These broadly constitute four geographic zones, in terms of the strength of opposition women are likely to face in effectively exercising their legal rights in landed property.

The obstacles relating to public land, that is land under government and community jurisdiction, are of a somewhat different nature. They stem more directly from the consistent male bias in land reform programmes, resettlement schemes, and various land development projects, and only indirectly from individual family members who may be rival potential beneficiaries. Government officials typically resist the allotment of public land to women on the grounds that allotments can only be made to household heads, whom they assume are men (Lal 1986). This bias is found in the policies and programmes of all the political regimes in India, including communist ones.

<sup>44</sup> For a mapping of these cross-regional patterns, see Agarwal (1994).

## VI. Widows' Claims Versus Daughters' Claims

Although in overall terms women's rights as both widows and daughters are precarious and strongly circumscribed by the factors outlined above, socially widows' rights have always enjoyed greater legitimacy, and recent surveys indicate the registration of widows' claims in a fair proportion of cases, albeit jointly with their sons. The same cannot be said of daughters' claims.

Table 2 strikingly brings out this difference. Only 13 per cent of the widows with landowning fathers inherited as daughters, while 51 per cent of those with landowning husbands inherited as widows. Even in Kerala the claims of widows appear in aggregate to be better recognized than those of daughters.

The social distinction made between a widow's claim and a daughter's claim is also apparent in official attitudes. The views of the *gram panchayat* secretary of Kithoor village in Rajasthan, who was somewhat more progressive than most villagers I met there, are indicative: he told me that he usually pressured daughters to sign away their shares in favour of their brothers, but sought to persuade widows to keep their shares. Caste *panchayat* rulings in northwest India also reflect the view that family property should be inherited by sons and not daughters,<sup>45</sup> that a woman must remain in the village if she is to inherit her husband's land (Standing 1987), and that widows should be favoured over daughters.

However, for several reasons outlined below, a strengthening of women's rights only as widows is inadequate for their economic security if they continue to be disinherited as daughters.

### (1) Need for Securing Daughters' Claims

First, widowhood occurs relatively late in life for most women. In India, according to the 1981 census (see GOI 1987: 47–8), widows constituted 11 per cent of the rural female population over the age of ten, 53 per cent of whom were sixty years of age or older, and 76 per cent were over fifty. Hence, once disinherited as daughters, most rural women *for the major part of their lives* have no landed property of

<sup>45</sup> Personal communication by villagers during my fieldwork in Rajasthan in 1987.

their own, while males whose inheritance claims as sons are well recognized do. This places women in a significantly weaker bargaining position *vis-a-vis* men, both within and outside the family for much of their lives, including when they are widowed.

Second, women who inherit as daughters at an early age are in a better position to manage and invest in the land, gain experience in farm management, and increase their assets, than if they inherit only as widows in old age.

Third, in practice although not in law, as noted, widows' claims are subject to particular conditionalities, such as having sons, not remarrying and remaining chaste, and/or (in some communities) accepting a leviratic union. The importance of having sons to establish their claims in their husband's property often leaves those with only daughters few alternatives to returning to their natal homes. In the south Indian community he studied, Harper (1971) found that 80 per cent of widows without sons returned to their natal homes. But they return to a situation of dependency unless their property rights are established, and, especially in north India, widows are rarely welcome for extended or permanent stays.

A significant difference between traditional matrilineal and patrilineal communities was precisely that rights as daughters were strongly emphasized in the former, which also protected women in widowhood. For instance, in Kerala's matrilineal communities, the husband either visited the woman in her natal home, as among the Nayars of central Kerala; or where (as among the Nayars and Tiyyars of north Kerala) the woman joined her husband in his matrilineal estate she returned to her maternal home on widowhood or divorce. Older women, when they returned, could even take over the management of household affairs (Agarwal 1994). While property devolution and marriage patterns have changed substantially since then, recent research indicates that, where families can afford it, Nayar daughters still inherit a house, although the picture on agricultural land is mixed.<sup>46</sup>

Fourth, it is especially in regions where women's rights as daughters are relatively stronger, as in south India, that we also see other positive indicators of women's status, including their situation as widows. For instance, the percentage of widows in the rural female population is greater in the southern states relative to the northern,

<sup>46</sup> Personal communications: Caroline and Filippo Osella, and Joan Mencher, 1992.



especially the northwestern ones. Possible reasons for this, suggested by Dreze (1990: 28–33), include not just lower age differences between the spouses and acceptance of levirate in north India, but also north India's lower female life expectancy rates in general and lower survival chances of widows in particular. More specifically he argues (1990: 32–3):

A low incidence of widowhood tends to go hand in hand with a low female–male ratio, and both can be seen as indications of particularly sharp female disadvantage. In fact, it would not be surprising if the regions where the relative survival chances of *women* vis-a-vis men are lowest are also regions where the special disadvantages of *widows* are particularly acute.

Estimates by Mari Bhat (1994) based on census data, of relative mortality rates of widows and married women (both in the 45+ age group), bears out the greater vulnerability of widowed women in general and of widows in north India in particular. He finds that at the all-India level, widows have 85 per cent higher mortality than married women; and regionally the gap in mortality rates between widows and married women is much higher in the northern states (especially Punjab, Haryana and Uttar Pradesh) than in the southern ones. Although widowers also do worse than married men, the number of widowers is much less than of widows, given the much higher remarriage rates among men than women.

It needs recognition, too, that the assumption of strong marital bonds, wherein the husband and his family were customarily obliged to ensure the wife's maintenance, and after the man's death his widow's and children's maintenance was to be provided by his kin, appears to be increasingly less valid. Today, separation, desertion, and even divorce of women, especially but not only when men migrate to towns in search of jobs and women stay behind, are not uncommon. And kinship support systems for women, whatever women's marital status, are becoming increasingly less dependable, the worst affected being elderly widows.<sup>47</sup>

Fifth, securing a woman's property rights as a daughter would increase her bargaining power within marriage, and add to her choices in case of marital breakdown or widowhood, including the ability to decide whether or not she wants to live alone or with

<sup>47</sup> See e.g. Fernandes and Menon (1987), Dreze (1990), and White (1992). I also noted during fieldwork in Rajasthan in 1986–87 that even when elderly widows shared the same roof as their married sons or other relatives, they often did their own cooking and firewood collection, and few felt respected members of the household.

relatives. Life as a dependant, be it as a widow or in another capacity, is often one of social and economic hardship in terms of the treatment meted out by those providing support. Assumptions that a woman will be 'looked after' by male relatives, take little account of how negatively women themselves might experience such dependence. Indeed, even women living with husbands have been known to find ways of clandestinely obtaining some cash which they can control independently, such as by undertaking income-earning activities secretly, or selling small amounts of household grain and hiding their earnings from their husbands so that they would not have to ask the men for money every time a household vendor came to the house or the children were in need (see Agarwal 1994, for examples).

The widespread disinheritance of women as daughters is thus a critical gender disadvantage which affects women at all stages of their lives, and cannot be made up by measures focused only on widowhood.

### *(2) Why Daughters Face Greater Opposition*

Why are women's inheritance claims as widows less opposed than their claims as daughters? Several factors impinge on this, including the cultural emphasis on the relative strength of marital vs natal bonds for women. But the most important reason, in my view, relates to the desire to keep the land within the extended family and lineage. In northern India, where close-kin marriages are forbidden in most communities, land given to daughters is perceived as lost to the patrilineal descent group. A widow's claims are viewed with less antagonism, since there is a greater chance of the land remaining with agnates: as noted, if she is sonless she can be persuaded to adopt the son of the deceased husband's brother (whose potential hostility is thereby neutralized), or (in parts of north India) she can be persuaded or forced into a leviratic union, or made to forfeit the property if she remarries outside the family.

In other words, in the north the noted increased recognition of a widow's property claims does not appear to be a recognition of women's *independent* land rights. Rather it appears to rest precisely on the fact that she is usually not in a position to exercise her rights independently of her sons, and the property can subsequently pass down the patriline. In contrast, land inherited by a woman as a daughter would pass to her husband and children and through them

to another lineage. In south India the acceptance of both close-kin marriage and intra-village marriage can allow even land inherited by daughters to remain under the overall purview of the natal family. This reduces hostility toward daughters inheriting, although it still does not *guarantee* such inheritance.

More general opposition to a daughter's claims is also couched in terms of a concern with land fragmentation, or with the daughter inheriting 'twice', or in terms of the popular fiction that daughters receive their inheritance share as dowry. Consider each of these concerns.

It is often argued that if women (especially daughters) were to receive their share of the family land, it will further reduce farm size, increase land fragmentation, and thus reduce output. Is this fear valid? The concerns surrounding the farm-size effect are similar to those arising from redistributive land reform, namely the effect of redistributing land from big to small farmers. Those opposing redistribution argue that the impact would be negative on farm output and on the adoption of new technology. However, existing evidence from South Asia indicates otherwise. Small-sized farms typically have a higher value of annual output per unit of cultivated area than large-sized ones: this inverse size-productivity relationship which was strong in the 1950s and 1960s (the pre-green revolution period) has sustained in the post-green revolution period, even if somewhat weakened.<sup>48</sup> Small farmers have also adopted the new technology in most areas where large farmers have done so, although after a time lag (Lipton and Longhurst 1989).

The existing evidence thus gives no reason to expect that land shares for women would reduce output on account of the size effect. And the problem of fragmentation again is not unique to female inheritance, but can arise equally when men inherit: in both cases it calls for land consolidation. There could of course be a negative output effect of female inheritance insofar as women face gender-specific disadvantages as managers of farms, when operating in factor and product markets. But again the answer lies in easing these constraints by infrastructural support to women farmers, rather than in disinheriting them. In fact, the experience of non-governmental credit institutions such as the Grameen bank in Bangladesh suggests that women are often better credit risks than men (Hossain 1988).

<sup>48</sup> See Berry and Cline (1979), Agarwal (1983) and Boyce (1987) for studies relating to India, Bangladesh and Pakistan.

Also, supporting women as farm managers would enlarge the talent and information pool within the occupation.

There is another mistaken view, commonly voiced by those opposing a Hindu daughter's inheritance rights in the patrimony, that contemporary laws allow women to inherit twice, namely from fathers (as daughters) as well as from husbands (as widows), whereas men, they imply, inherit only once, namely from fathers. In fact in the laws of all communities in India, men, too, are entitled to inherit from both fathers and wives (as sons and widowers). Although it may well be the case that where women are systematically disinherited they typically have little property to pass on to husbands or sons, this situation would change within a generation if women's inheritance claims began to be honoured.

Another popular argument is that daughters receive dowries which are a form of pre-mortem inheritance (Goody and Tambiah 1973). But for several reasons dowry and inheritance cannot be equated among patrilineal groups in India (as detailed in Agarwal 1994). One, whether or not dowry is given, and how much is given depends on the discretion of parents and brothers; unlike inheritance it cannot be claimed as a right. Indeed, the taking and giving of dowry is illegal today. Two, except in rare cases among wealthy families in south India, dowry has almost always been in the form of moveables, while inheritance by men includes immovables, if the family has any. Three, even moveable dowry is seldom considered entirely the woman's own, and is rarely in her exclusive control. In most parts of north India a substantial portion is customarily taken away by the parents-in-law,<sup>49</sup> and in south India although dowry is more commonly in the woman's control, some part of it (including her jewellery) can still be appropriated by her in-laws (see e.g. Ram 1991). Four, there are no clear rules concerning what share of the family wealth should be given as dowry, unlike the usually clear specification of rules governing inheritance shares in the family estate; and there is no obvious relation between the amount of dowry given to daughters and the shares of sons in ancestral property on partition. The likelihood is that the values of daughters' dowries are typically lower than the inheritance shares of sons.<sup>50</sup> All said, there-

<sup>49</sup> See e.g. Madan (1989), MacDorman (1987), Minturn and Hitchcock (1966), and Sharma (1984) among others.

<sup>50</sup> A rare study which examined relative dowry and inheritance shares is Schuler's (1987) on the Chumik of Nepal. She found that in families with both sons and daughters the total value of the daughters' dowries, including land, on average came to only 10 per cent of the family's assets; the sons received the rest.

fore, inheritance and dowry in India cannot be equated in legal and economic terms, and moveables, whether given in dowry or as inheritance, cannot be equated in economic or social terms with the transfer of landed property.

## VII. Concluding Comments

Over time, the importance for women of asserting their inheritance rights in private land, and their claims in communal land, will grow, for several reasons, including the likely increase in female-headed households due to male outmigration or due to increase in marital instability; the limited expansion of rural women's economic opportunities in nonland-related occupations; and the erosion of kin-support systems, as brothers and other relatives become less able or less willing to provide for female kin.

Dependence on male kin, in any case, tends to prove socially costly for women in terms of the treatment they receive as dependants, especially, but not only, as widows or divorced women. And it appears necessary to question the longstanding view that as long as women have some male relative to support them they have no need for independent incomes. As shown in the paper, independent command over land would reduce rural women's economic and social vulnerability and increase their livelihood choices, both as widows and as daughters.

The noted obstacles to the enforcement of women's claims, however, clearly indicate that for women to gain effective rights in land will require contestation both within and outside the household, and on diverse aspects: legal, administrative, social, and ideological. The issues that warrant specific focus include not only establishing legal equality, but enhancing women's ability to claim and keep control over their rightful inheritance shares; reducing gender bias in the recording of women's shares in village land records; increasing women's legal knowledge and literacy; improving their fall-back position so that they are better able to deal with any associated intra-family conflict, including through external support structures that would reduce women's dependence on brothers and close kin; and so on. Similarly, it is necessary to take measures to counter existing male bias in the government's distribution of public land and in infrastructural support for farmers. The ideological struggle to establish women's claims (particularly as daughters) is likely to be especially complex. It would be part of an overall effort to change perceptions about women's needs, roles, and abilities.

In all this, the lesser social opposition to daughters' claims in the southern states, and the greater gender equality in property laws prevailing there, suggest that these states could prove useful starting points. Further, the experience of those involved in grassroots initiatives for social change in India indicates that for tackling the noted obstacles, the role of collective action is likely to be primary. For instance, the local bureaucracy is more likely to accurately register individual women's claims in family land if there were collective pressure on them, say from gender-progressive groups, especially women's organizations. Such organizations could also play a vital supportive role in providing women with information on laws and contacts with lawyers, should legal action be necessary; and in improving effective (not just nominal) female presence in village decision-making bodies. Women elected to all-women panels in village councils in parts of India (especially where supported by local women's organizations), are found to be more sensitive to women's concerns, and to give priority to local women's needs, in ways that male village council members and bureaucrats typically do not (Gandhi and Shah 1991).<sup>51</sup> Village women are also more likely to take their grievances to female representatives than to all-male bodies. Here the Seventy-third constitutional amendment in 1992, under which one-third of the seats in the elected village *panchayats* will be reserved for women, holds promise.

Local gender-progressive organizations could similarly strengthen women's fall-back position in intra-family conflicts over women's land claims, through economic and social support networks and programmes which reduce women's dependence on male relatives, especially their brothers in whose favour women usually forfeit their claims. The observation of a woman member of the Bangladesh Rural Advancement Committee (a development NGO which provides credit and technical support to poor village women and men, organized separately into small groups) is indicative: 'Well the *samity* [organization] is my "brother"' (Hunt 1983: 38).

More generally, group support could take at least two forms: through separately constituted groups which provide specialized legal and other services to village women, and through organizations comprised of village women themselves. Initiatives of both kinds are likely

<sup>51</sup> Goetz (1990) similarly found that in Bangladesh, female field-level development administrators were much more able to appreciate and accommodate women's concerns than male administrators.



to be important not only for women from landed households seeking their inheritance claims, but also for landless women seeking rights in public land by challenging male bias in government land allocations.

However, the difficulty posed by patrilocality-cum-village exogamy to daughters claiming, retaining their claims, and self-managing land, does not lend itself to obvious solutions, given the rigidity of social norms and ideologies justifying such practices. We might expect, though, that as some success is achieved in establishing daughters' inheritance rights, post-marital residence patterns could become somewhat more flexible. For instance, uxorilocal residence by the son-in-law is an accepted practice among patrilineal communities where a brotherless daughter inherits her father's estate. In this context, a more gender-progressive approach by the State in the distribution of public land to women could also be helpful.

Equally, again in relation to public land, there would be advantages in promoting land ownership and/or management by groups of women, rather than by women individually. Although individual ownership can allow women the freedom to bequeath, mortgage, or sell the land as they wish, it also carries the risk of the land being appropriated by rapacious moneylenders or male relatives. An alternative arrangement to individual titles in the transfer of public land, or of land acquired by a peasant organization through a land struggle, could be for poor peasant women to hold the title as a group—each participating woman having use rights in the land but not the right to individually dispose of it. Daughters-in-law and daughters resident in the village could share these usufructuary rights; daughters leaving the village on marriage would lose them, but could re-establish their rights should they need to return to their parental homes on marital breakdown or widowhood. In other words, land access could be linked formally to residence, as was the case among some tribal communities (such as the Garos of Meghalaya), the difference being that here the land would belong not to a clan but to a group of poor women. This would strengthen women's ability to retain control over the land. Collective ownership would also be a means of creating a more communal and egalitarian basis of land access. More generally, containing the trend toward the individual privatization of what is currently communal land, especially village common land, would help protect the welfare interests of poor households, and especially of women in these households.

Group ownership of land need not imply joint management, just as individual ownership need not preclude joint management. Women



holding joint ownership rights could either cultivate separate plots allocated on a household basis, or cultivate as a group, with each woman contributing labour time and sharing the returns. Or there could be some combination of individual and group management, such as family-based female cultivation along with joint investment in capital equipment and cooperation in terms of labour-sharing and product-marketing. Group investment through resource pooling could be advantageous even when women own land individually by reducing the resource crunch they may face at the individual level. In fact, there are several successful instances of small women's groups in India and elsewhere in South Asia voluntarily cooperating to undertake land-based joint production and investment activities.<sup>52</sup>

In such initiatives, and more generally to enhance women's ability to function as independent farmers, infrastructural support for women is critical, in the form of access to credit, production inputs, information on new agricultural practices, marketing, and so on. Again, the promotion of women's cooperatives for the provisioning of such services could prove important.

While various forms of group coalitions and collective initiatives appear necessary for empowering women to establish effective rights in land, bringing about collective action is seldom easy. A number of complexities (detailed in Agarwal 1994, 1997) impinge on it, especially those posed by class- (and caste-) associated conflicts of interests among women, and the fact that even to attend group meetings often requires challenging existing norms of expected female behaviour, including *purdah* practices in some communities. In this context, it is notable that in several instances of collective action around environmental issues, the more active women have been widows or unmarried women, as observed, for instance, in the Chipko movement in Uttar Pradesh (Sharma *et al.* 1987), and in some of West Bengal's forest protection committees formed under the government's Joint Forest Management initiative (Guhathakurta and Bhatia 1992). The potential role that older widows in particular could play in organizing women's groups, or participating in other collective initiatives, thus needs probing. It would also be interesting to see whether there is a predominance of widows among the women elected to the village *panchayats* under the new reservation policy.<sup>53</sup>

<sup>52</sup> See Singh and Burra (1993), Mazumdar (1989), and Chen (1983) for examples.

<sup>53</sup> The Constitution (Seventy-third Amendment) Act 1992, provides for reservation for women of one-third of all seats in *Panchayati Raj* institutions (the district, block and village-level bodies for local self-governance).

Each such step toward women's participation in public decision-making can prove important not only for widows but for women at all stages of their life cycles. This interrelationship between women's vulnerabilities at different stages of their lives, is in fact why ensuring women's economic security as daughters would prove complementary to and critical for ensuring their economic security during widowhood as well.

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