



Gender Inequality in Inheritance Laws: The Case of Agricultural Land in India

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In a framework of economy of individual property, inheritance is one of the most common ways to access and own land, property and resources. However, women's rights to inherit land are often mediated by an overlapping web of legal, structural, socioeconomic, and cultural factors. This paper explores the legal complexities related to inheritance of agricultural land by women in India.

Inheritance laws in India find their roots in the diverse religious beliefs of different communities that have co-existed for ages. Beliefs and practices within these religious communities varied with regions, castes, and customs as did the practices related to inheritance. In the twentieth century, when British interventions crystallised certain customs and legal doctrines, the emerging set of laws¹ remained largely conservative with respect to rights of women

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and ensured the existing patrilineal and patriarchal hold over land (Chowdhry 2017: xv).

Post-independence, The Hindu Succession Act (HSA), 1956, passed by the Indian parliament, introduced some progressive provisions, yet it fell woefully short of introducing equal inheritance rights for women and significant inequalities remained.

While the 1956 law granted Hindu women an equal right to inherit property acquired by a decedent, it retained the concept of coparcenary, or joint heirship, in Hindu Undivided Family and excluded women from being coparceners. Consequently, four generations of male coparceners held joint ownership of the coparcenary property, had birth right over it, and could ask for partition of coparcenary, but no female could be a coparcener and, hence, held no birth right in the coparcenary property. The other major shortcoming was in relation to inheritance of tenurial land (meaning agricultural lands which states regulate through various acts) which section 4(2) of HSA 1956 specifically exempted, leaving such rights to be governed according to local tenancy and land reform laws of the states.

It took India 50 years to do away with these discriminatory provisions in the 1956 law. In 2005, The Hindu Succession Amendment Act, 2005 introduced two major changes to strengthen the inheritance rights of Hindu women. First, it amended section 6 of the 1956 law to make women equal coparceners by birth in the joint property of the family. Second, it eliminated section 4(2) of the 1956 law that gave precedence to certain local laws regarding devolution of tenancy rights in agricultural holdings.

While both these changes help to strengthen women's inheritance, the second change is the subject of discussion here because a great deal of confusion still surrounds the application of the second change which acts to deny inheritance rights to women in some states.

Section 4(2) of the unamended HSA 1956 was a distinct source of gender inequality. This section stated that the law did not affect the provisions of any tenurial laws² (i.e. any State law) providing for the prevention of fragmentation of agricultural holdings, or for the fixation of land ownership ceilings, or for the devolution of tenancy rights in such holdings.³ Hence, under section 4(2) interests in agricultural land under tenancy passed according to the order of devolution specified in local tenurial laws, which vary by state.

The 2005 amendment removed section 4(2) of the 1956 law. Many believe that removal of section 4(2) implies that HSA 1956 will apply to inheritance of agricultural land in all states, but the implications of removal of this section are not that simple. In practice, removal of section 4(2) has intensified the confusion over which laws govern inheritance of agricultural land. Some

scholars emphasize that state laws now govern inheritance of agricultural land while others believe it is governed by HSA 1956 (Jindal 2014: 13).

Muslim communities remain unaffected by this change since Sharia law clearly exempts agricultural land from its purview (The Muslim Personal Law (Shariat) Application Act 1937: sec. 2).

The roots of confusion

The Constitution of India creates a three-fold distribution of legislative powers between the centre and the states. This distribution is effected through three lists mentioned in the Seventh Schedule of the Constitution of India (Constitution of India 1950: Articles 245 & 246):

- The Union List contains subjects over which the centre (or Parliament) has exclusive power of legislation
- The State List contains subjects of local and regional importance over which states can pass laws; and
- The Concurrent List contains subjects where centre and states share legislative jurisdiction.

Within these three lists, centre and states have legislative authority over different aspects of land governance. For example, while agricultural land falls under the State List; issues related to wills, intestacy, succession, partition and transfer of land excluding agricultural land, are part of the Concurrent List. Consequently, while centre and states share jurisdiction over 'succession' (Concurrent List: Entry 5), transfer of agricultural land exclusively falls under the domain of states (State List: Entry 18). This overlay allows states to amend personal laws such as HSA 1956 at the state level and simultaneously enact independent inheritance provisions for agricultural land.

The situation is further complicated by the fact that several states – including Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu – had amended the HSA 1956 to include women as coparceners, much before the 2005 amendments to the Act.

Inheritance of agricultural land in Indian states

Inheritance of property is generally governed by personal laws of each religion. While personal laws determine inheritance of all types of property, the 28 Indian states⁴ can broadly be grouped into four distinct categories based on the succession schemes which apply to agricultural land held under tenancy.

Category I: These are states such as Madhya Pradesh, Rajasthan and Telangana where tenorial laws explicitly mention application of personal laws for inheritance of agricultural land held under tenancy. Here inheritance of

agricultural land for Hindus, Muslims and other religious communities is governed by their respective personal laws. For example, Rajasthan allows devolution of tenancy “in accordance with personal law” (The Rajasthan Tenancy Act 1955: sec. 40). Similarly, in Madhya Pradesh tenancy will pass “subject to his⁵ personal law” (Madhya Pradesh Land Revenue Code 1959: sec. 164). Telangana tenurial law also specifies that personal laws will govern inheritance of agricultural land for Hindus (Andhra Pradesh (Telangana area) Tenancy Act 1950: sec. 40). These states illustrate a referential incorporation of personal laws and establish clear, definite and unequivocal succession schemes for agricultural land (*Bhajya v. Gopikabai* 1978).

Category II: In most states in southern, central and north-eastern India, state laws are silent regarding inheritance of agricultural land. Scholars assume that by default personal laws will govern succession of agricultural land in these States (Agarwal 1995). This category includes Andhra Pradesh, Bihar, Chhattisgarh, Gujarat, Goa, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Tamil Nadu, and West Bengal.

Category III: These are states where tenurial laws enumerate separate succession rules for devolution of agricultural land. This category includes states in the north-western region: Punjab, Haryana, Himachal Pradesh, Uttar Pradesh, Uttarakhand and Delhi (Union Territory).⁶ Women’s inheritance rights in these states are much inferior to male heirs as compared to states in Categories I and II. This is further discussed in the following section.

Category IV: This includes tribal areas and regions within Indian states mostly found amongst the north-eastern states. States like Assam, Meghalaya, Mizoram, and Tripura fall under the Sixth Schedule,⁷ which allows these states to adopt local rules in accordance with their customary practices. The union and state laws are not enforceable in these regions unless approved by the district councils. Tribal regions in other states fall under the Fifth Schedule⁸ of the Indian Constitution, which along with the Sixth Schedule regulates governance of tribal areas (Constitution of India 1950, article 244). Even in states like Arunachal Pradesh, Manipur, Nagaland and Sikkim a large part of the population is tribal and thus governed by customary laws. The majority of customary practices in these regions remain uncodified (Chowdhry 2009: xxviii).

Inheritance of agricultural land for women

In Category I states, women’s inheritance rights mirror the guarantees enshrined in their respective personal laws, which means for Hindu, Buddhist, Jain, and Sikh women in these states, rights to inherit agricultural land are identical to HSA 1956 (as amended up to 2005). Rights of Muslim women

emanate from the Shariat Act, 1937, while the rights of Christian (and Parsi) women emanate from the Indian Succession Act, 1925.

The silent states in Category II are open for interpretation and may either encourage or fail to prohibit existing discriminatory practices. For example, in states like Bihar, Jharkhand and Odisha, tenancy laws specify that occupancy rights of agricultural land will devolve “subject to any custom to the contrary,” which means that any prevalent customary method of inheritance will override the order of devolution in personal laws. (Bihar Tenancy Act 1885: sec. 26; The Chota Nagpur Tenancy Act 1908: sec. 23; The Orissa Tenancy Act 1913: sec. 30). These states give precedence to customary practices in devolution of agricultural land and leave wide discretion to admit customs that are non-egalitarian (Chowdhry 2009: xxii).

The north-eastern states and tribal regions that fall within the Fifth and Sixth Schedule have varied customs, most of which discriminate against women as compared to other categories of states. Merely a handful of tribes follow traditions which are comparatively more favourable to women than caste societies (Chowdhry 2009, xxviii).

Category III states, with specific inheritance provisions in their tenurial laws, include Punjab, Haryana, Himachal Pradesh, Uttarakhand, Uttar Pradesh and the union territory of Delhi. Table 1 lists relevant laws that govern inheritance in these states.

Table 1. Category III State laws governing inheritance.

State	Legislation
Uttar Pradesh	Uttar Pradesh Revenue Code, 2016: secs. 108-110
Uttarakhand	Uttaranchal (The Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950) (Adaptation and Modification Order, 2001) (Amendment) Act, 2003 (as amended up to 2016): secs. 169-173
Himachal Pradesh	Himachal Pradesh Tenancy and Land Reforms Act, 1972: sec. 45
Punjab	The Punjab Tenancy Act, 1887 (as amended up to 1977): sec. 59
Haryana	The Punjab Tenancy Act, 1887 (as amended up to 1977): sec. 59
Delhi	The Delhi Land Reforms Act, 1950 (as amended up to 1966): secs. 50-54

Analysis of the provisions in these states reveals systematic patriarchal biases which exclude women from inheritance lines of agricultural land. While inheritance laws in general discriminate against women, the discrimination in

tenurial laws of these states is severely pronounced. These discriminations include the following major types:

1. Primacy to the male lineal descendants: Most of the Category III states give primacy to male lineal descendants⁹ as successors to agricultural land in a patrilineal system, and women come very low in the order of devolution. Male heirs in the family are preferred over female heirs, including daughters, irrespective of their closeness in relations to the decedent.

2. Women hold a limited interest: In all these states, women hold a limited interest in the land in any capacity, which means after the woman's death her interest goes to the last male owner or his heirs rather than to her own heirs. In addition, she loses the land if she remarries or does not cultivate the land for a specific period of time (usually one to two years).

3. No recognition of women as primary heirs: Punjab, Haryana, Himachal Pradesh and Delhi fail to recognise women as primary heirs. Even the rights of the widows in these states are subservient to direct male descendants of the ancestor. Two states in Category III have relatively equitable provisions: Uttarakhand recognizes a widow as a primary heir, and Uttar Pradesh is the only Category III state that recognises daughters along with widows as primary heirs.

4. Differentiation between married and unmarried daughters: While Uttar Pradesh recognises daughters as primary heirs and Uttarakhand recognises them as secondary heirs, the two states give superior rights to unmarried daughters as compared to married daughters. Thus, daughters must effectively choose between retaining rights to land or entering into marriage.

Varying interpretations by the courts

In this context of legal plurality and unclear application, numerous state court judgments have sought to clarify the relationship between union law and state law. However, divergent court opinions on repealing the limiting scope of Hindu succession law have emerged overtime.

In *Nirmala v. Government of NCT* (2010) the Delhi High Court declared that removal of section 4(2) from HSA 1956 allows the HSA to override any other law in force before its commencement, in so far as it is inconsistent with HSA. The judges opined that excluding females as primary heirs to agricultural land in the Delhi Land Reforms Act, 1950 is inconsistent with the coparcenary status of daughters and the order of succession given in HSA 1956. It held that “the provisions of the HSA would, after the amendment of 2005, have overriding effect over the provisions of section 50 of the DLR Act and the latter provisions would have to yield to the provisions of the HSA in case of any inconsistency.” It also mentioned that the omission of section 4(2), by virtue of

the amendment of 2005, is very much a conscious act of Parliament and it is clear that Parliament did not want this protection given to the Delhi Land Reforms Act, 1950 and other similar laws to continue.

In *Roshan Lal v. Pritam Singh* (2012) the Himachal Pradesh High Court referenced the continued social struggle for changing the ancient Hindu Law for a more gender equitable, consistent and coherent system of jurisprudence. It noted that the whole object and intent of removing section 4(2) is to offer absolute rights for women, regardless of the nature of the property a woman holds. The judges realised that a very wide interpretation given to state power to legislate on "transfer and alienation of agricultural land" (State List: Entry 18) would render the concurrent power to legislate on "succession" of land (Concurrent List: Entry 5) devoid of any meaning. The decision clarifies that "transfer of property other than agricultural land" is specified as a subject in Entry 6 of the Concurrent List. Hence Parliament is clear that only states can legislate transfer and alienation of agricultural land. However, when it comes to succession (or inheritance), intestacy or testamentary, both union and state governments have power to craft laws applicable to all types of land and property, including "agricultural land."

However, Allahabad High Court in Uttar Pradesh had a different opinion. In 2015, in *Archna v. DoC, Amroha*, the Allahabad High Court asserted that the three lists in the Indian Constitution symbolized "fields of legislation" rather than the power to legislate. Since there is a high probability of overlapping laws amongst the lists, it is imperative to scrutinize the true nature of the legislation and disregard any incidental encroachment on another legislative field and added that even in case of repugnancy the state law prevailed since it was duly passed with Presidential assent. The court stated that "HSA 1956 was applied on joint Hindu Mitakshara property only and not on agricultural land, which is an exclusive domain of State legislature and Parliament has no power to enact any law in this respect." It also held that section 4(2) was only by way of clarification and thus, it cannot be said that after its deletion, Hindu Succession Act, 1956 *suo moto* applies to agricultural land.

Amidst this kerfuffle, the Supreme Court of India provides an additional explanation in *Babu Ram v. Santokh Singh* (2019). The court distinguished between transfer and succession of land. It explained that succession takes place by the operation of law while transfer occurs through an instrument. States are competent to legislate on transfer of agricultural land while Centre and states share jurisdiction on succession of any kind of land. Thus, the Supreme Court of India upheld that HSA 1956 applies to agricultural land as well. However, the Court also clarified that it has not ruled on the question of whether a pre-existing state law that governs agricultural succession will be superseded by HSA 1956 in the future.

Interestingly, this dialogue also surfaced during the parliamentary debates when the HSA was discussed. The parliamentary proceedings note one of the Lok Sabha members pointed out that merely removing section 4(2) fails to address the inequality with respect to agricultural land. However, the Act was passed without any clarity of its impact on succession of agricultural land in different states.

And the varying judgments above add to the haze rather than provide clarity. The consequences of repealing section 4(2) of HSA 1956, thereby removing its limited application on agricultural land, continue to lie in a grey area. These decisions leave room for extensive legal interpretation and discretion, especially in states under the third category, and inevitably propagate ambiguity, inconsistency and inequality for women in these states.

Towards gender equality in inheritance

To ensure gender equality in inheritance, a gender review of all laws – including personal laws, state laws and customary or any other laws – is a necessary first step. Equality enshrined in legal instruments would pave the way for women to assert their rights in the midst of complicated social contexts.

The central government could support this move toward equality by constituting a Land Reforms Agency to carry out this review, specifically with a gender perspective. Such an agency should work in close collaboration with states to encourage and help them to amend state laws and remove any provisions that grant inferior rights to women and girls.

The civil society and other agencies in the states – especially in the north-western states in Category III – should also play an active role in revealing the disparities in state laws and advocating for changes. The states in Category II – which are silent on devolution rules of agricultural land – should clarify their stand by exhibiting an overt commitment to acceptance of gender progressive provisions.

Importantly, intensive efforts are needed to sensitize various stakeholders – the political leaders, bureaucrats, judicial officers – towards accepting women's claims as lawful and just. These stakeholders will play a crucial role in bringing about change, and their commitment to just outcomes must be strengthened and reinforced.

And finally, the strength of women's voices must not be underestimated. There should be concerted initiatives to raise awareness among women and communities. The collective voices of women can certainly go a long way in securing their rights and helping the country abide by its commitments through Articles 14 and 15¹⁰ in the Indian Constitution.

It would not be out of place to note that, in addition to commitments made in the Indian Constitution, the country is a signatory to several international conventions, including the Convention for the Elimination of All Forms of Discrimination Against Women and the Beijing Platform for Action, which require the country to adopt rules and undertake efforts that guarantee equal treatment of women, including with regard to land and shifting harmful cultural practices.¹¹ Besides being a fundamental human right, gender equality is an unequivocal Sustainable Development Goal (SDG 5) to which India has committed along with the global community. Undertaking reforms to grant women equal rights to economic resources, including land and inheritance, is an important target of this goal.

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Notes

¹ The set of colonial laws that partly reformed the traditional customs and practices but largely incorporated them into the colonial legal framework included The Hindu Widow's Remarriage Act, 1856, The Transfer of Property Act, 1882, The Indian Succession Act, 1925, The Hindu Inheritance (Removal of Disabilities) Act, 1928, The Hindu Law of Inheritance (Amendment) Act, 1929, The Hindu Women's Rights to Property Act, XVIII of 1937, and The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946.

² Legal regime that governs the mode or system where land is owned by an individual who is said to "hold" the land.

³ Section 4(2) of the Hindu Succession Act, 1956 provides: "For the removal of doubts it is hereby declared that 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."

⁴ This is subject to the coming into force of The Jammu and Kashmir Reorganization Act, 2019 on October 31, 2019 which divides the state of Jammu and Kashmir into two union territories. This legislation received Presidential assent on August 9, 2019.

⁵ This refers to the "Bhumiswami," which generally means the landowner. Under the Madhya Pradesh Land Revenue Code, 1959, specific classes of people holding land from the state government were recognized as Bhumiswami. Use of "his" as a pronoun signifies how the land related laws almost universally consider a male as the default landowner.

⁶ The State of Jammu and Kashmir also falls under the same category, but with the recent conversion of the State to a Union Territory, we have not discussed it here.

⁷ The Sixth Schedule to the Constitution of India came into force after many debates in the constituent assembly. The idea and aim behind the Sixth Schedule was to empower tribal communities to administer the tribal areas of Northeast under the provision of articles 244(2) and 275(1) of the Constitution. It empowered for creation of autonomous structure for the tribal areas. The Indian Constitution recognizes, protects and aims to strengthen the rights of "Scheduled tribes." The Sixth Schedule covers Assam, Tripura, Meghalaya, and Mizoram in the north-east part of India.

⁸ The Fifth Schedule was enacted at the same time as the Sixth Schedule. The Indian Constitution recognizes, protects and aims to strengthen the "Scheduled areas" designated by the state. The Fifth Schedule covers areas of Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.

⁹ "Lineal descendant" refers to a blood relative in the direct line of descent, such as children, grandchildren, great-grandchildren, etc.

¹⁰ Article 14 of the Indian Constitution states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 15 states that the State shall not discriminate against any citizen on grounds only of race, religion, caste, sex and place of birth.

¹¹ CEDAW Art 14 calls for equal treatment for women in "land and agrarian reform"; Art 5(a) calls on States to work to change social and cultural practices that limit gender equality.