

Recommendations of the Workshop

The Constitution of India safeguards the rights and privileges of women, confers equal rights and opportunities on men and women in the political, economic and social spheres and prohibits discrimination against any citizen on the ground of sex, religion, race, and caste, etc. Guided by these constitutional principles and directives and to safeguard the interest of women a National Perspective Plan for Women (1988-2000) was drafted by the Department of Women and Child Development, GOI with the aim of providing equity and social justice for women. At the international level, India is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). With this it has reasserted its commitment to remove discrimination against women in all forms, including the legal framework, by suitably modifying gender-biased laws.

It has been widely realized that to remove gender discrimination in accessibility and ownership of resources, including productive resources such as land, there is a need to change land-related laws. Therefore, for the first time, the Ninth Five Year plan (1997-2002) document included a section on 'Gender and Land Rights' and emphasized the need for land ownership by poor women. It has also pointed-out that the gender inequalities inherent in land inheritance laws and ceiling laws and suggested corrective measures. A Report of the 'Committee for Gender Equality in Land Devolution in Tenurial Laws' (1998) gives detailed information for a number of states on this aspect.

In continuation of the above initiatives, the Centre for Rural Studies, LBSNAA, Mussoorie on behest of Ministry of Rural Development (MoRD) conducted a two days workshop on 'Gender Discrimination in Land Ownership' on 5-6 February 2004. Eminent bureaucrats, academicians, advocates, researchers, and social activists attended the workshop. In order to remove the gender disparity in land ownership the following recommendations have been drawn up by the participants. These are enlisted in a broader framework and wherever necessary, specific suggestions have been made. The recommendations are addressed both to Central and State policy makers. Some of the problems/issues were area specific and separate recommendations have been made in such cases.

1. Agricultural land is a major source of livelihood and sustenance for a large number of rural population, particularly women. However, laws relating to land favour men and are discriminatory to women. To ensure accessibility and ownership of land rights to women, Ministry of Rural Development, Govt. of India has issued an instruction to all the states that 40% of agricultural land settled under land reform programme should be exclusively in the name of women. In the remaining cases, the allotment may be jointly in the name of husband and wife. Many of the states did not follow the instructions and therefore, for a large proportion of the agricultural land, which has been distributed under the land reform programme and under Government schemes, the desired goal has not been achieved as women could not get benefit out of it. For effective and proper implementation of this programme, the members recommended:
 - Emphasis on this aspect needs to be given at the state level. For that, specific instructions should be sent to all concerned officials, including at the village level (such as patwari/lekhpal and amin, etc.), and monitored regularly. This instruction needs to be enforced and monitored separately at the State Govt. and Govt. of India level. At village level a committee, consisting of the poor women, the land less and, SC/ST with changing composition, needed to be constituted to ensure the progress of allotment of land to women under land distribution schemes of the Government.
 - *The provision of 40% of land in the name of individual women should have specific provisions for widows, separated/ divorced, deserted and unmarried women. The proportion for each category can be fixed based on the composition of population of each category out of the total population.*
 - *Sensitization of government officials who are directly involved in implementation of land laws is necessary to change their patriarchal mindset. It is important to make them aware that land is an important means of livelihood and sustenance for a large number of rural women. It is, therefore, essential to provide land rights to women.*

2. It was further added that one of the reasons for ineffective implementation of the instruction of Government of India for distributing land in the name of women is due to the fact that some states may not whole-heartedly enforce the Central Govt. instructions. This ultimately leads to the non-compliance. Recommendations given in this regard are:
 - The programme can be implemented effectively by way of a notification/state order/standing order by every state administration.
 - In case of non-implementation or ineffective implementation of the programme, bureaucrats needed to be made accountable.
 - Need for an enactment of law so that implementers can be made accountable.

3. In most states, the existing laws relating to land ownership and accessibility are gender discriminatory. This has been revealed by various studies conducted by Centre for Rural Studies in different states. A Report of the 'Committee for Gender Equality in Land Devolution in Tenurial Laws' prepared by Prof. Bina Agarwal and others had given specific recommendations regarding changes to be made in the legal statutes. This committee reviewed the existing gender inequality in land laws of five northern states (Haryana, Himachal Pradesh, Punjab, Jammu & Kashmir and Uttar Pradesh). These states have still not acted on these recommendations and members of the workshop also agreed that states need to bring changes in the statutes of the existing laws as per the recommendations of the committee report. Brief summary of the recommendations is as follows:
 - i. Amendment of the tenurial laws by state governments to ensure gender equality.
 - ii. Amendment of the main inheritance laws (the HSA and the 1937 Shariat Act) so that (a) all property is treated uniformly. This would mean bringing agricultural land under the purview of their respective laws for both Hindus and Muslims, and abolishing joint family property in the HSA. (b) Equal shares of males and females in all property.
 - iii. Partial restriction on the rights of testation as the existing provisions fully ignores the interest and rights of women. At least a part of the testation should be made mandatory for women.
 - iv. Ensuring that if women relinquish their claims (as they often do in favour of brothers) the relinquishment is done through a formal deed of law rather than informally. This would provide some protection to women against their shares being taken over by relatives, by default.
 - Participants of the workshop added that due to poor economic conditions of rural women, a provision could be made to reduce the cost of such formal deeds.
 - Participants were also of the view that the order of devolution of agricultural land should specify order of heirs. Widow, married and unmarried daughters along with sons should be included in the first category of heir in the devolution process.

Participants further suggested that argument can be made that there is discrimination in inheritance laws of agricultural land which is a direct violation of international law and UN Convention such as CEDAW to which India is a signatory. This could be reworked and discussion can be initiated on a comprehensive bill to protect the rights of women.

4. The language of the Land Reforms Act, which is in deference to the prevailing cultural ideology, prioritizes sons and usually excludes women in matters of inheritance. Social justice demands elimination of all such language usage. Explicit provisions favouring women would lead to creation of more confidence among them and initiations in seeking the benefits of law.
 - Therefore, the language is to be modified accordingly to make the provisions explicit so that the rights, interest and benefits created and conferred relate to and include daughter, widow or whatever the case be. And it could generate a psychology that women are co-sharers in inheritance and should not be left on the goodwill of men.

5. The role of law in the area of agricultural land inheritance has not operated to empower women, be it widows or daughters. There clearly seems to be limitations of law. For instance, practice of levirate in north India provides social protection to a widow but it further drives her into the fold of their husband's family and to give up her land right under the garb of social custom. Similarly, an eastern state like West Bengal has enacted a very progressive law by making provisions of land rights for widows. But this has led to serious threat to their lives by their relatives who would inherit landed property after her death. In case of daughters/sisters also, custom of village exogamy makes them handicapped in inheriting the land rights.
 - The question is how can law ensure the rights of the individual without at the same time alienating her from the community.
 - Implementers particularly administrators need to ensure that economic rights of women do not get defeated by means of other social holds over them.
 - Even if legal provisions of land rights to widows are provided under the land reforms programme, further steps are needed to ensure their life security also.
 - At state and district level, a Social Welfare Board and at village level panchayati raj institutions need to be mobilised to cater to such emerging phenomenon. Non government organisations could also do the job if they get a facilitative environment from the government.

6. Generally women are not involved in decision making processes related to land management including probate process and when they are involved they lack the necessary skills or opportunities to assert their land rights existing under the different laws. Recommendations in this regard are:
 - The system of registration of title deeds and other documents should be effectively implemented. And in the process of land registration, women's rights and their involvement must be ensured.
 - To make women effective landowners and managers, it is necessary that women functionaries should be appointed at the grass root level in the revenue and agricultural departments.
 - There is an urgent need to create and spread legal awareness of gender related land laws and government policies on land ownership among men and women. This awareness should not be limited to just educating women, but should also aim at empowering their lives.
 - Small groups such as SHGs and local level NGOs can provide a strong support network at the village level. They should continue with their already positive efforts to educate women about their legal rights and encourage them to exercise these rights.
 - Wherever village development committees (VDCs) are formed under the Joint Forest Management, a specific percentage of women scheduled castes, scheduled tribes and land less need to be given representation.

7. Gender discrimination in the ownership of resources including land further leads to the discriminatory practices in other spheres such as education, health, skill and ability to gain employment, etc. To combat these problems such issues can be included in the syllabus of school children. This will create awareness and help to remove the gender discriminatory practices in general and in ownership of productive resources in particular.

8. One of the basic purposes of the land reform programme has been to provide equitable distribution of land resources to the rural people including women. Recommendations made by the group members are:

- The government should provide schemes for purchase of land through loans under poverty alleviation programmes to women's self help groups and women preferably single women. This would enable landless or near landless women to have small plots of agricultural land in their own names.
 - Women can cultivate land on lease owned by SHGs, individually or collectively. This is one way through which women can have some access to land.
9. Injustice to women's rights has given rise to more social problems than one recognizes. Increasing dowry demands is one of them. It is a well-known fact that the practice of dowry does not give any thing to the girl whereas inheriting land empowers her economically. State specific studies from different parts of India indicate a strong negative correlation between dowry and women's rights to land. Dowry is also becoming a source of land alienation as part of the land is generally sold or mortgaged to provide for the dowry. The expenditure for dowry thus impacts on the issue of land and land rights, as they are closely related with each other. Therefore, the way the dowry prohibition act is implemented becomes an important area of concern.

The members felt that something drastic needs to be done to curb dowry. Recommendations drawn to curb dowry are:

- If women are given land rights on marriage, they will have their share of land with them and this would have an impact in terms of reducing demands for dowry.
 - Coparcenary right to daughter in agricultural land.
 - Maintenance of a list of gifts given at the time of marriage.
 - Need for forming a dowry prohibition committee, in which women's organisations play an active role. Such measures will also ensure the accountability of Govt. officials taking dowry for self or for someone else.
10. In any large-scale project involving displacement, land is usually allotted to the adult male head of the household. This is a gender discriminatory practice.
- Government of India is in the process of finalising the National Policy on Displacement and Rehabilitation. It should be ensured that the policy is gender sensitive and takes into account the interest and rights of women.
 - Women, particularly marginalised ones, who are affected/displaced by development programmes, needed to be given priority in land allocation/compensation under Resettlement and Rehabilitation package.
11. The concept of women's land ownership should not be restricted only to agricultural land rather it should include right to residence also. There are cases when due to family violence or marital discord a woman stands outside the house and has no place to go. Sometimes women are denied their rights as the man claims not to be married. Recommendations of Law Commission Report clearly speak of women's right to residence as both married and unmarried daughters, their right to the ancestral house and to ask for partition right. Following recommendations have been made in this regard:
- The distinction between right to agricultural land and right to residence should be abolished and should be treated in the same manner, as the existing laws contradict the basic tenets of the constitution. Therefore the fundamental duty is to bring it in consonance with the constitution. An example of new land laws introduced in Tanzania that are gender sensitive was also discussed. The law says that property that is used by

both the husband and wife can not be sold, mortgaged, leased or given away without the written consent of both or all in case of polygamous marriage spouses.

- The kind of provision made in land laws by Tanzanian government can be adopted and implemented by Indian states also, so that a male would not be in a position to either sell, mortgage, or give away from the landed property without the consent of the spouse.
- Registration of marriage must be made mandatory.
- In case of divorce, a woman should be entitled to half of the landed property.

12. Similarly, the concept of 'community property' needs to be adopted so that husband and wife are jointly treated as owners of marital property. This change will help to make women effective owners and controllers of property and shall help to stem their disinheritance from property. Under most community property systems, the wife is deemed as the automatic owner of one half of the community property, and thus, inherits her portion. Because she is already the owner of the property during her husband's life, he has no right to dispose of her half share of the community property by gift to his sons or by drafting of a will.

13. To have a clear picture of gendered practices in land ownership and assess the impact of land reform policy on women's status, maintenance of sex segregated data should be made mandatory for all types of land- records of the revenue department.

- It should include indicators such as land ownership, land holdings, land use pattern, area operated and extent of tenancy, etc.
- This process could be facilitated by computerization of land records.

14. With the insertion of Article 243 D of the Indian Constitution, one-third of the seats are reserved for the women in panchayati raj institutions. These local level institutions are the lowest tier of democratic institution at the village level and also play a greater role in land related issues pertaining to women. Training provided to women panchayat members have many lacunae and do not equip them fully to handle the panchayat and related activities.

- Women village pradhan and panchayat members need to be educated in many of the issues and equipped with proper training and information on land related issues.
- Need for speedier and effective implementation of the Panchayat (Extension to the Scheduled Areas) Act 1996 in the fifth scheduled areas.
- PRIs may be linked with legal aid cells so as to ensure that women who bring their land related problems to the gram panchayats or to other legal redressal forums have ready access to legal advice and services.

15. The term 'land to the tiller' introduced during the inception of land reforms programme often refers and relates to male cultivators only. With the increasing feminization of agricultural activity, a large number of rural women in India are engaged in the agricultural sector. However, they have no accessibility to, and ownership rights in land or any other productive resource and they are not referred as cultivators. Similarly, lack of owning productive resources such as land, also creates hindrance in accessibility of various govt. programmes. The recent Government policy of issuance of Kisan credit cards usually to male farmers is one such instance. This is based on the definitional notion that only the male head of the household is the owner of agricultural land.

- There is a need to replace the concept of 'land to tiller' with 'land to the cultivator'. It is important to highlight and challenge such nuances.

16. In the sixth schedule areas of the northeast states, land related issues are governed by customary laws. These customary laws are not gender just. It was suggested that Ministry of Rural Development should direct these states to examine these customs which are an impediment in building a gender just society. It was also suggested that in any land related programme the District Autonomous Councils, Chief Executive Officers and women's organisations should be involved and persuaded to examine these existing customs and modify to make it gender just keeping in view the guidelines of CEDAW. Most of the northeast states excluding Nagaland, are under the sixth schedule area. Some of the specific recommendations for these scheduled areas are:

- i. Need for an intensive survey of the agricultural land of those districts that are still left unsurveyed, preparation of cadastral maps, and maintenance of records of land rights, and tenancy, etc.
- ii. Identify, amend and redefine the prevailing customary laws on land and inheritance on the principle of gender equity, which at present is highly gender discriminatory.
- iii. Competent authorities should be specified who would issue documents certifying different types of land under occupation of a person/family/clan, etc. granted to her/him.
- iv. Other land reforms measures such as tenancy reforms, imposition of land ceiling, land distribution and other associated reforms can be undertaken once these initial measures are implemented.