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WHAT IS PREVENTING WOMEN FROM INHERITING LAND?
A STUDY OF THE IMPLEMENTATION OF
THE HINDU SUCCESSION (AMENDMENT) ACT 2005 IN THREE STATES IN INDIA

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Abstract

Past studies have shown that women's land ownership in India can have multiplier impacts on women's social status, reduction of violence on women, familial gender equity and increase in productivity.

Inheritance is the overwhelming way land is acquired in India, but societal practices exclude women from inheriting land. The Hindu Succession (Amendment) Act 2005, an inheritance law that covers 83.6% of the population of India, corrected some of fundamental inequalities in the law bringing the women in equal status to men in the right to inherit land. However, eight years after its enactment, the ground reality is that women still do not inherit land on an equal basis with men.

This empirical study conducted in Andhra Pradesh, Bihar and Madhya Pradesh assesses the barriers preventing full implementation of the Act, capturing social practices and barriers, as well as identifies lacunae in the formal system that prevents the Act's implementation. While there is variation across the states, it cannot be said that the scenario is acceptable in any of the three. The study calls for key interventions in terms of review of the Revenue Codes, training of implementing staff and dedicated state oversight to ensure full implementation.

Key Words:

Barriers to implementation; Inheritance; Land; Quantitative and qualitative research; Women's land rights

1.0 Introduction

This paper reports the findings of the study on the barriers of implementation of the Hindu Succession (Amendment) Act 2005 that provided Hindu, Buddhist, Sikh and Jain women with equal rights along with their brothers to inherit agricultural land. The motivation for the study arises from three circumstances:

- 1) Increasingly in India, agriculture is dependent on women's labour, but in contrast, only 10% of women own any land.
- 2) Inheritance is the primary way men and women receive land in India, and so understanding the trends in inheritance, particularly after the passage of the amendment in 2005, provides information about what is needed to ensure more women receive agricultural land.
- 3) The Hindu Succession Act (HSA) 1956 and its amendment in 2005 cover almost 84% of the Indian population, and thus, if implemented well, can be a game changer in favour of Indian women.

Many scholars have studied the patriarchal practices in India that deny women equal ownership of property, including land.¹ Most people regard dowry, typically paid in cash and/or in kind at the time of the daughter's marriage, as the daughter's share of her parental property, and therefore, parents often do not see the need to transfer any property to their daughters through inheritance. However, the value of the dowry is usually much less than her true property share under the law. Moreover the dowry is not given to the daughter, but to her in-laws as a condition of her marriage to their son. Even so, the societal practice considers that once the dowry is paid, the woman no longer has any further claim in inheritance after the death of her father unless he left a will in her favour.

The Hindu Succession (Amendment) Act (HSAA) 2005 provides for four clear rights to women:

- 1) Women are coparceners at par with men;
- 2) A woman can inherit agricultural land from her parents at par with her brothers;
- 3) A woman can also inherit the self-acquired agricultural land of her deceased husband; and
- 4) A widow who is remarrying can inherit the land of her deceased erstwhile husband.

¹ For an overview of how patriarchy operates within the family and society, see Kelkar & Krisnaraj, *Women, Power and Land in Asia* (2013).

These amendments together have corrected important anomalies concerning land ownership that existed in the Hindu Succession Act 1956. The aim of the HSAA was to clear the way for rural women to legally inherit agricultural land, thus increasing the number of women owning land in India.

With funding from UN Women, the project team conducted research in Andhra Pradesh, Bihar and Madhya Pradesh to ascertain the formal and informal barriers that prevent full implementation of these amendments meant to ensure women's equal rights to agricultural land. The present report discusses these barriers in summary. A full presentation and analysis of the results of this study will be available in a forthcoming report (UN Women & Landesa, 2014).

In the next section, we present a review of previous research and point out the specific contributions this study aims to make. Thereafter, we have included a brief description of the study methodology, findings from the study and overall recommendations to facilitate the full implementation of the HSAA provisions that would increase women's ownership of land.

2.0 Review of Literature

In the context of understanding women's empowerment in terms of economic decision making as well as women's social dignity, status, individual freedom and reduction of violence against women, researchers have conducted a number of studies on women's ownership of land or lack thereof in rural India. In addition, these studies have examined societal benefits, such as higher agricultural productivity and improved nutrition and education of the children. A separate set of studies captured the improvements that happened after the enactment of the HSAA or similar state-level legislation giving women rights to inherit agricultural land. And a third set of studies explored the barriers that prevent women from realizing equal rights to land under inheritance. A brief review of the findings of these studies helps set the context of the present study and its contributions.

A pioneering study by Bina Agarwal (1994) established strong links between a woman's land ownership and reductions in her family's risk of poverty and the expansion of her family's livelihood options. In another study conducted in Kerala, Agarwal found that land in women's names can increase agricultural productivity, given the increase in male out-migration and the growing number of female headed households (Planning Commission, 2007).

In a study conducted in Haryana, Prem Choudhry (2011) highlighted existing social conditions by which women are gaining access to land. Her study identified social situations that enhanced women's control or possession and utilization of property and other productive assets. These situations include the following:

- A woman can be prompted by her husband and/or his family to claim her share of the natal property and acquire it, or her husband may claim her share on her behalf.
- A widow may claim a separate possession of her husband's share, and if she does not remarry, she can go on to establish a "female headed household."
- A woman may be given property to take the benefit of the state's lower tax or ceiling structure, which under the law is more flexible for women owners of property.
- A woman can be in actual control of the property due to the migration of her husband.

The study goes on to point out that possessing land or property as means of production means that women have, in addition to a source of income, authority, power, status and mobility and that this can lead to access to education and health facilities and to reduced violence.

Nitya Rao's study of similar issues in Jharkhand corroborates the same. Her findings conclude, "If one sees empowerment as a process moving towards equality, from welfare and access through conscientisation to participation and to control, the conferment of equal rights to inheritance of agricultural land denotes a control over decision-making processes at par with men" (Rao, 2005, p. 121).

A report of the Sub-Group on Land Related Issues underscored that the HSAA could have far reaching implications not only for women's status but also for improving production in agriculture (Planning Commission, 2007). It also described evidence showing that lack of assets enhances vulnerability and poverty and that those women who do not own any assets are subject to violence, threats of violence and allocation inequalities within the household. In contrast, those who owned both land and a house reported considerably less violence.

The above are examples of the studies connecting women's overall empowerment with ownership of land. Other studies have explored whether inheritance legislation improves women's access to land. Goyal, Deininger and Nagarajan (2010) focused on land bequests to sons and daughters in Maharashtra, Andhra Pradesh, Kerala and Karnataka – the states that had passed amendments giving women rights to inherit agricultural land in the late 1980s and early 1990s. Based on household-level data for three

generations, Goyal et al. found that although women continued to be at a disadvantage when it came to inheriting land, women were 9% more likely to inherit some land as a result of these amendments.

However, another study conducted in five states (Meghalaya, West Bengal, Rajasthan, Andhra Pradesh and Madhya Pradesh) found that the HSAA has had no considerable impact on women inheriting land from their natal families (Galab & Revathi, 2011). This study found that women do not wish to exercise their rights for fear of estrangement from their natal families. None of the women they interviewed had approached the court of law and only a few had opted for enforcing their rights through *Gram Panchayats*.² The women interviewed were unaware of the processes involved in obtaining ownership titles, and the researchers found that the Revenue Department was not adequately prepared to issue title deeds to women in cases of family property, as required by the HSAA. They also found that when it comes to asserting their inheritance rights, village communities and leaders treated widows more favorably than they treated daughters and sisters. On a positive note, the study found that the parents gave land to their daughters when their daughters married landless men and the newly married couple stayed in the same village as that of the wife's father.

N.C. Saxena (2013) reaches the same conclusion that women often have to forgo their claims with regard to agricultural land to ensure the support of their natal family in case they encounter marital problems or their marriages breakup, even though such support may not actually materialize. In the same article, he also mentions that rural women most often lack the wherewithal to claim their rights through the tedious and harassing process of approaching the bureaucracy and the courts.

A number of studies have pointed out several legal and formal barriers to the full implementation of women's right to inherit land under the HSAA. For example, Kirti Singh (2012) points out that that in spite of the extensive amendments to the HSA, the law still contains provisions that favor a woman's in-laws. For example, the self-acquired property of a Hindu woman dying intestate, in the absence of her husband and children, will devolve upon the heirs of her husband and not her own parents. This is mainly because of the traditional belief that after marriage, a girl belongs to her husband's family and not to her natal family. Singh illustrated this point with a recent judgment of the Supreme Court that showed how inequitable this provision can be in certain cases: in-laws can inherit the self-acquired property of a woman who was ill-treated by those same in-laws and actually lived her entire life with her parents.

² Elected local government councils.

In regards to her share of her parents' property, a women's inheritance rights under the HSAA only applies in cases in which her parents die intestate. Therefore, certain formal barriers remain to disinherit daughters, such as those found by Sanchari Roy's study (2008): (1) if a father renounces his rights in the coparcenary (joint property), his sons continue to maintain their independent rights to the coparcenary, but his daughters, widow or mother lose out on the possibility to gain from such property; and (2) after partition of the coparcenary, if the father makes a gift or wills his share in the coparcenary to his sons, the rights of the female inheritors cease to exist. A study by Rachel Brulé (2012) in Andhra Pradesh found that there is now an increased focus on the registration of oral wills, which enables heads of households to make their daughters ineligible for inheritance. Wills are therefore a means of using legal institutions to abnegate women's inheritance rights.

The studies discussed above have essentially reinforced each other's findings that property rights positively impact women's wellbeing and agency as well as that of their children, but that women face a number of social and formal institutional challenges to gaining ownership and control over land. Moreover, there appear to be conflicting views on the effects of the HSAA: while some studies point to unambiguously positive results, others express skepticism over its effectiveness in increasing women's land ownership. The barriers cited by various researchers can be classified as flaws in the legal frameworks, institutional insensitivities toward the implementation of the amendments, and prevailing socio-cultural practices that have the moral and institutional force to deprive women of their land rights in inheritance.

Preliminary evidence suggests that inheritance shares have increased for women belonging to the Hindu community (Deininger, Goyal, & Nagarajan, 2010).³ However, neither the HSA nor its amendment is universally applied, and millions of women still do not inherit parental land. Researchers and policy makers have argued that to address this significant bias against women, it is important to have robust and nuanced information on the barriers to the implementation of the HSAA as well as to identify interventions that can enhance the enforcement of its provisions. The present study by Landesa is set on that background and explores formal and informal barriers to implementation of the HSAA with regard to agricultural land.

Our fieldwork covered three states of India: Andhra Pradesh, Bihar and Madhya Pradesh. Our interest in studying Bihar and Madhya Pradesh stemmed from the notion that women in these states tend to face

³ This evidence comes from Maharashtra and Karnataka, both of which passed laws similar to the HSAA in 1994.

particularly challenging social environments. These are also states where Landesa is already engaging with civil society groups on women farmers' right to livelihoods. Moreover, these states did not adopt the HSAA until its national level enactment in 2005. We included Andhra Pradesh to provide a contrast; earlier studies had found that women in Andhra Pradesh have inherited agricultural land. Additionally, Bihar and Andhra Pradesh were selected for this study to follow-up on an earlier study conducted by Landesa with support from UN Women. The earlier study looked at the challenges and barriers to women's entitlement to land and identified inheritance as one of these challenges. To further examine this issue, the same states were considered for this study as well.

Contributions of This Study

This research has identified several key issues and makes substantial contributions to studies on women's inheritance. Some of the contributions include the following:

- a) A focus on women as agricultural producers: Perhaps the most significant change introduced by the HSAA is the right of women to inherit agricultural land. Theoretically, this is aimed at impacting women agricultural producers who are now almost universally recognized as the backbone of Indian agriculture. Yet surprisingly, no other studies have specifically looked at how women agricultural producers have been affected.
- b) Expanded geographical coverage: Our study was conducted in Bihar, Madhya Pradesh and Andhra Pradesh. Little, if anything is known about the HSAA effects in Bihar and Madhya Pradesh, and the picture is unclear for Andhra Pradesh, where some studies have found positive impacts while others dispute them. Bihar and Madhya Pradesh differ from Andhra Pradesh in two fundamental ways: (1) the rural women's movement has a strong state-wide presence in Andhra Pradesh, while it is nearly absent in Bihar and Madhya Pradesh; and (2) the law itself is nearly 20 years older in Andhra Pradesh than in the other two states being considered.
- c) An explicit effort to ask women what they want: This study is different from existing literature in that it examines flaws in the law and challenges in its implementation by asking the question of what women want and why.
- d) A gender-sensitive exploration of the processes associated with inheriting land: We take an in-depth qualitative approach to identify how the gender insensitivities of the revenue administration mentioned in the literature is manifested.

- e) An assessment of the overall awareness of the provisions of the HSAA: We interviewed on-the-ground staff from the Revenue Department, as well as the women and men agricultural producers themselves.

3.0 Study Methodology

In order to better understand the barriers that prevent the full implementation of the HSAA and to provide field-based evidence that could inform future ways to improve its implementation, our team carried out quantitative and qualitative research on the ability of Hindu women agricultural producers to inherit agricultural land from their parents. Our fieldwork covered three states of India: Andhra Pradesh, Bihar and Madhya Pradesh.

In each of the three states, we selected two districts with the largest percentage of women cultivators in the state. We identified these districts using data from the Agricultural Census 2005-2006. Within each district we chose four *Tehsils* and three villages per *Tehsil*, for a total of 24 villages per state. We selected the *Tehsils* and villages taking into consideration operational land holdings by women and the percentage of the land holdings to total female population.⁴ In each village, we selected a random sample of 20 families. We interviewed the adult woman of the household in these families, surveying 480 women per state. Figure 1 provides the details of the districts, *Tehsils* and the villages that were included in the survey.

For a more nuanced analysis, we also obtained complementary information by interviewing the husband, brother or father-in-law of 25% of the women interviewed. As a result, our research strategy included interviewing a total of 1440 women and 360 men.⁵ The women's survey collected: (i) individual and family demographics and socioeconomic characteristics; (ii) information on all the plots of land the

⁴ "Operational land holdings" are defined as agricultural land owned and or managed by a person for producing crops. "Female operational land holdings" means the number of females that own and/or manage land for producing crops.

⁵ It should be noted that our original research design intended to do a purposive sampling of women agricultural producers by selecting 120 women agricultural producers who had claimed their inheritance rights on agricultural land; 120 women agricultural producers who were aware of their rights but had not claimed their inheritance rights on agricultural land; 120 women agricultural producers who were not aware of their rights to inherit land; and 120 women agricultural producers who had already received agricultural land from their parents. However, our interactions with NGOs, lawyers and others in the field led us to conclude that finding 120 women who had claimed their share of land, 120 women who had received their share, and 120 women who were aware of HSAA would be almost impossible. As the results of this study confirm, there is very little awareness of the HSAA in the villages and hardly any women have claimed their rights under HSAA.

household can access; (iii) occupational information of all the members of the household; (iv) issues related to land inheritance from parents and husbands; (v) details of the processes, barriers to and impact of claiming parental and husband's land; (vi) use or likely use of land; (viii) thoughts on inheriting land; and (viii) information about the dowry received. The men's questionnaire asked only a subset of these questions, namely those that addressed: (i) issues related to land inheritances for their sisters and wives; (ii) details of the processes, barriers to and impact of their sisters and wives claiming land; (iii) use or likely use of land; (iv) thoughts on women inheriting land; and (v) information about dowry.

In addition, we conducted more in-depth interviews with 16 of these women and with four of the men in each of the three states to understand what circumstances led to women getting land, and what circumstances have prevented them. We also interviewed *Patwaris*, *Tehsildars*,⁶ heads of elected *Gram Panchayats*, staff of the Legal Services Authority and a local lawyer in each state. Figure 2 describes who we interviewed.

Profile of the Sample

In Figure 3, we provide a description of the entire sample as well as how it varies by state. The sample includes a high percentage of families from Other Backward Caste (OBC), and this is particularly the case in Andhra Pradesh where we have a very small number of households from Schedule Caste (SC). The distribution of households by economic status varies by state: the sample in Andhra Pradesh is predominantly made of families who are Below the Poverty Line, while in Madhya Pradesh, the sample has a majority of families who are Above the Poverty Line, and in Bihar, it has a more even combination of families from both Above and Below the Poverty Line. Seventy percent of the households interviewed reported agriculture as their primary source of income. Households vary in size and tend to be smaller in Andhra Pradesh and larger in Bihar. The households included in this study reported being able to access 2.5 plots on average, but only some of them had access to an agricultural plot. Furthermore, in these villages, access to land appears to be directly linked to owning it. Finally, the vast majority of the women interviewed are married or cohabiting. Approximately half of the women interviewed have no schooling at all. The Scheduled Tribe families were found to be negligible in number in the sample villages.

⁶ *Patwaris* and *Tehsildars* are the two key officials who represent the land administration of the state to the people, including women.

4.0 Findings

Inheritance is the most common avenue to land ownership.

To begin with, we wanted to establish how land is owned by people, including women. In India, where most agricultural land is privately held, people secure land in one of the following ways: inheritance, purchase, government allocation or permanent tenancy. As illustrated in Figure 4, we found that inheritance is the most prevalent way that people acquire land. Of the 3362 plots that the households reported owning or being able to access, an overwhelming 73% were owned out of inheritance, irrespective of the caste of the recipient. By contrast, only 25% were purchased and a negligible 2% were obtained through government programmes or leasing. This establishes why women's inheritance of land must be addressed through policy as well as in practice to ensure gender equality and enhancing women's economic and social empowerment.

Women's inheritance of land is dismal: As depicted in Figure 5, only 13% of the women we interviewed, whose parents owned land, reported that they have inherited or expect to inherit land from them. This is consistent with our finding that only 12% of the men surveyed said their sisters will inherit parental land. Women's ability to inherit does not appear to have changed noticeably over time – only 12% of the women we interviewed and 15% of the men indicated that their mothers have ever inherited land.⁷ Women's ability to inherit parental land does appear to vary by state, with numbers being noticeably lower in Bihar and Madhya Pradesh than in Andhra Pradesh. With such a low percentage of women acquiring land through inheritance – the predominant source of land in the region – it is not surprising that of the 1436 women we interviewed whose households had access to land, only 19% own land with documents that include their names. When we looked at how plots are documented, we found that women's names appeared in only 14% of the title deeds or documents.

⁷ Since this study is focused on the HSAA and women's ability to inherit parental land, we do not discuss in detail women's ability to inherit land from their husbands. It is important to note, however, that while noticeably higher, at 31%, the percentage of women who have inherited or expect to inherit land from their land-owning husbands is still well below 100% and that the two modes of inheritance are not equivalent since the latter is likely to take place when women have passed their most productive years. Corresponding figures for Andhra Pradesh, Bihar and Madhya Pradesh are 21%, 28% and 46%, respectively.

Women want to own land, but only a few want to inherit it.

Another important finding involves women's desire to own land. In an earlier study conducted among a similar group of Hindu, Muslim and Christian landowning households in Andhra Pradesh and Bihar, we found that 54% of the women would have liked to own land (UN Women & Landesa, 2012). The main reasons women gave for wanting to own land were its potential to bring in additional income and its value as a safety net in times of crisis. In the present study, we asked about women's desire to inherit parental land, and only 11% of the women we interviewed said they wanted to inherit land from their parents. While at first glance this result might appear contradictory – women want to own land, but they do not want to inherit it – further probing reveals that women who state that they do not wish to inherit land are primarily afraid of straining relationships with their families or being rejected by their communities.

When asked, 44% of the surveyed women said that their parents would not agree to bequeath them a share of their land. And a noticeably higher 53% of the women indicated that their brothers would not agree with the idea of their sisters receiving land. The latter was largely corroborated by the men we interviewed: 45% of the men reported that they would not agree with their parents giving land to their sisters. Among those who do not plan to bestow land to their daughters, the primary reasons stated were that they will get an equivalent share of money or that they will never claim their share of land as it is not a common practice in the community.

Women have limited knowledge of land ownership rights.

Seventy-five percent of the women interviewed said that daughters have the right to inherit land from their parents. However, only 63% knew of the law that granted those rights, and when we asked more specific questions about the law, it was clear that most of them are largely unaware of its provisions. Only 18% of the women interviewed were able to correctly identify who is entitled to inherit land from fathers, and even fewer (14% of the women) knew who inherits land from mothers. Of the women who did not know about the law, 64% were from the Other Backward Caste category, 64% were from families classified as Below the Poverty Line, 60% were agricultural workers, and 56% had never attended school. Women's awareness of their rights varies by state and range from 89% knowing of the law in Madhya Pradesh to only 57% in Andhra Pradesh and 42% in Bihar.

Men's knowledge of the same laws proved only marginally better: 77% of them said they had heard about the law granting daughters the right to inherit land from their parents, but only 26% correctly identified fathers' heirs, and 22% could tell us who is entitled to inherit land from mothers.

Women's right to inherit land is not recognized by their communities.

Coupled with the lack of adequate knowledge of women and men on inheritance rights, about half of the women reported that religious leaders do not recognize daughters' right to inherit parental land, and almost the same number indicated that these rights are not recognized by *Panchayat* officials or by their communities. In fact, women inheriting land is so uncommon that 69% of the women we interviewed and 60% of the men said they did not know any woman who has inherited land from her parents. Along similar lines, 51% of the women and 44% of the men consider it wrong for women to claim land from their parents. Additionally, 61% of the women have signed No-Objections Certificates by which they renounce their rights to parental land granted to their brothers.

When we disaggregate results by state of the respondent, we find that the recognition of women's inheritance rights to land appears to be significantly higher in Madhya Pradesh than in Bihar and Andhra Pradesh. As before, respondents from families who are Below the Poverty Line or belong to Other Backward Castes, as well as those who do agricultural work or have never attended school are less likely to report that the authorities or their communities recognize the right.

When women get land, they do not get equal share.

Since the HSAA stipulates that daughters and sons have equal inheritance rights to their parents' land, we estimated the approximate amount of land that the women we interviewed should have received had the law been fully implemented. This can be calculated by restricting the sample to include only women whose parents had land and then dividing the amount of land their parents owned by the number of children their parents had. When we average these individual figures, we find that women in landowning families should have inherited an average of 11.88 decimals of land. Yet, according to their responses, these women have received or expect to receive an average of only 0.93 decimals of land, a figure that is significantly different and substantially lower than 11.88 decimals that a full application of the HSAA should have yielded, as shown in Figure 6. The size of the gap between the amount of parental land the daughters inherit and what they are entitled to inherit varies by state, but after eight years of the HSAA legislation it continues to be enormous.

One of the most frequent and commonly accepted arguments for why daughters do not inherit land from their parents is that while parents bequeath assets to sons when they die, they transfer resources to their daughters (or more likely to their daughters' future in-laws) at the time of their marriage. These resources, known as dowry, can consist of a combination of cash, jewelry, land and other assets.⁸ While no longer legal, the practice of giving dowry is widely accepted, and the amount of dowry a bride's family offers can influence the type of husband she will be able to secure.

To test the strength of this argument, we take the analysis one step further and find that among this same subset of women – those whose parents owned land – not all women received dowry. But among those who did receive dowry, the average value of the dowry received equals Rs. 35,708, an amount that, once again, is considerably below the value of 11.88 decimals of land, which depending on irrigation and other factors could be as high as Rs.60,000.

Women may get land under special circumstances.

Of the few women who indeed received land, we tried to find out if these women have the possession, title and land record transferred in their names. As part of our qualitative inquiry, we asked the women interviewed if they knew how much land they had received as dowry, which were the plots and whether they had documents to prove this. Their answers were stark. Out of 16 women interviewed, 10 women had received land as dowry, but none of them had documents to prove this. In three cases, the women knew that their fathers had partitioned the land, but the documents were still with their fathers. The women receive an annual share of the produce. Land had not been partitioned in the remaining seven cases, and their fathers continue to be the formal owners.

A few women reported having land that was purchased by their husbands but registered in their names. In Bihar this was done to circumvent a social custom where a man's brothers have a claim on property he purchased. In Madhya Pradesh, it was done because women are charged a lower stamp duty and registration fee when they purchase land.

Only three of the 16 women we interviewed in Madhya Pradesh had inherited land and that was because they had no brothers—there seems to be a general acceptance in Madhya Pradesh that, in the absence of

⁸ It should be noted that when land is offered as dowry, typically the land is not partitioned or mutated, and that if the parcel(s) are partitioned and mutated, the father is likely to keep the land documents until his death.

sons, land can go to the daughters. However, none of the three women who inherited land have been able to complete the mutation process. Worryingly, they reported that as the price of land is increasing, they are receiving pressures from relatives for shares of their parental land. In Bihar, on the other hand, the social practices are clearly on the side of the relatives. In the absence of sons, the claims on husband's property are by the husband's brother and his sons, depriving the widow, as well as the daughters of the deceased.

Perspectives from the Key Informants

As a part of the study, we interviewed key land administration officials: *Patwaris* (called *Karmacharis* in Bihar and Village Revenue Officers in Andhra Pradesh) and *Tehsildars*, who by mandate are the functionaries responsible to mutate the land under inheritance. These officials' interactions with women, either in the village or at their offices, are rare. In general, the majority of the land administration officers in these three states were men. Their interactions are almost entirely with men, whether at their offices or at the villages.

There is no expectation, either by the state or by the community, for these officials to be gender sensitive. We asked about their trainings and learned that they receive capacity building sessions on land systems including maps, land classification, land use, land records, mutation processes, land conversion, and similar other topics, and also on revenue collection related matters. The officials indicated that women's issues are not included in the training nor are women's concerns discussed.

In particular, the *Patwaris'* ignorance of the HSAA are quite stark. The *Patwaris*, the state's last mile representative nearest to people, have very little idea of the HSAA's provisions and its implications for their work. The *Patwaris* have never received any training on the provisions of HSAA or on how these provisions can be enforced, and what their roles should be. They could only vaguely articulate that women have equal inheritance rights as men.

In contrast, we found that the *Tehsildars* were very much aware of the HSAA and its provisions. However, they did not feel there was any proactive role for them in the HSAA's implementation, as inheritance is a family matter on which the *Tehsildar* has no say. The *Tehsildars'* universal refrain was, "If a woman comes forward and asks for her share, the *Tehsildar* can take up the case and ensure that she gets her share." The *Tehsildars* unequivocally felt that the challenge lies within the society that is not allowing the women to seek their share, and also with the women, who for the sake of family harmony are

not coming forward. The *Tehsildars* did not recognize that they could do more to help the women seek and claim their inheritance. But all of them agreed that if a woman stakes a claim, the *Tehsildar* could use his or her administrative power to ensure that she got her share. At the same time, the *Tehsildars* did not feel that the *Patwaris* need to be trained on HSAA nor that the process of inheritance had to be more transparent, sensitive or favorable to women.

In interviewing the *Patwaris* and *Tehsildars*, we could clearly see the disconnect: The *Patwaris* felt they needed training and orientation on how to implement HSAA while all the *Tehsildars* we met unequivocally placed the challenge on the women themselves. The *Tehsildars*, being judges in the Revenue Court, were of the opinion that the *Tehsildar*'s office can only take up cases that are presented to them. The *Tehsildars* clearly saw themselves performing a judicial function rather than a development function.

The *Sarpanches*⁹ and the *Gram Panchayats*' staff also echoed the sentiment of the *Tehsildars*, saying that the barrier was with the women who do not want to claim their share. The *Sarpanches* agreed that the women who stake claim on their land share would be treated badly in the village and suggested that the *Gram Panchayats* may not be able to protect these women. One *Sarpanch* also said that there is no one championing the women's cause in the villages, except where the women are organized and working collectively.

The District Legal Services Authority (DLSA) is a statutory agency of the judiciary tasked with providing legal aid to the poor. One of the several assistances they provide is to sensitize and inform the poor on their legal entitlements. The DLSA staff we met believed that the lack of legal literacy among women on basic land issues is one factor that impedes the implementation of the HSAA. They also revealed that sensitizing rural women on their inheritance rights is not part of their approved topics of sensitization. As a result, their staff and volunteers are not oriented on HSAA-related issues, and sensitizing the villagers, and women in particular, on HSAA is not in their programme agenda.

Variations across the States under Study

We present below the variations of the findings across the three states in Figure 7, from which a number of important state level variations should be highlighted. Firstly, although inheritance is surely the predominant way of land ownership in all the three states, Bihar seems to be an outlier in that land

⁹ The *Sarpanch* is the elected head of the *Gram Panchayat*.

ownership by purchase (at 38%) is significantly higher than in the two other states. Secondly, Andhra Pradesh represents a far higher proportion of women obtaining land by inheritance—30% in comparison to just 8% and 6% respectively in Bihar and Madhya Pradesh. However, the increase in women's ownership of land by inheritance, between two generations, at only 5% in Andhra Pradesh, cannot be said to be very significant, while the same for Bihar and Madhya Pradesh are even less. Therefore, as a natural social process, women are not likely to receive land under inheritance.

Moreover, among the women who did inherit land, Andhra Pradesh presents a significantly positive picture, in which the number of women getting land from their parents is larger than the widows getting land under inheritance from their deceased husbands. Madhya Pradesh and Bihar present the opposite case, in which much larger numbers of widows are receiving the land of their deceased husbands than women receiving land in inheritance from their parents.

Third, in all the three states, the brothers seem to be a greater obstacle against women getting land under inheritance than the women's parents. This presents a new situation where, social action has to address the brothers as well as the parents.

Fourth, the difference between women's entitlements to land under inheritance and what women have or expect to receive, seems significantly large in all three states. This means that while the promise of equal inheritance is far from being fulfilled, the apparent positive results from Andhra Pradesh tend to bely the fact that behind a relatively larger number of women actually receiving land, they cannot be said to be receiving the equal amount of land under inheritance to which they are entitled. This coupled with the fact that a much lower number of widows are receiving land under inheritance in Andhra Pradesh, it cannot be unequivocally said if the law is getting implemented or an existing social practice (of giving land to the daughters in dowry) is occurring.

Finally, women and men's knowledge of law as well as the *Patwaris'* knowledge of the law does not show any significant variation across the states.

Revenue Codes have not been changed to ensure women's land ownership in inheritance.

The Revenue Code is the state government's process document to be followed by the Revenue Department officials in discharging their responsibilities on any land-related transactions. A section in the Revenue Code is dedicated to mutation of land under inheritance. The process is more or less similar in

the three states and has three major phases. Firstly, after the death of a land owner, the *Patwari* pays a visit to the household, prepares a list of legal heirs and submits the list to the *Tehsildar*. In Madhya Pradesh, the *Patwari* additionally must announce the list at the *Gram Sabha*¹⁰ and get a written endorsement from the *Gram Sabha*. At the second stage, the *Tehsildar*, upon receiving the list, issues notice to all the persons named, to appear and stake their claim to inheritance. This notice is also publicly displayed. Each person having claim to the land, upon receiving the notice or having seen the public display must personally appear and stake claim to the land before the *Tehsildar*. At the third phase, upon hearing all such claims, if any, the *Tehsildar* passes a judgment declaring the land be mutated to the persons he/she thinks has a *bona fide* claim under the law .

As a part of the study, we examined the Revenue Codes of the three states to understand if the codes have undergone any change to incorporate the amendments made in the HSAA. We found nothing has changed in the document to ensure that no woman is deprived of her share under inheritance. Combined with almost total ignorance of the law on the part of the *Patwaris*, and the *Tehsildars*' perception that they have no proactive role to ensure women's equal inheritance, the formal institutional process has not taken cognizance of the progressive changes in the law.

A Few Overall Insights

The study findings offer several critical insights. Firstly, it is clear that Hindu social practice allows the parents to absolve them from honoring their daughter's inheritance right at par with their sons with the alibi of paying dowry at the time of the daughter's marriage. The practice is so deeply held that neither the daughters feel it is their moral and legal right to claim inheritance of their parents' property, nor do the parents and the brothers feel morally and legally obligated to honour the women's inheritance rights. Secondly, the people and institutions that are mandated to change the oppressive social practice at least by enforcing the law of the land remain prisoners of the same practice and or take recourse to systems and procedures that reinforce the existing social practices denying the women their rights. Thirdly, there is little evidence to suggest that even when women do get land either by inheritance or by dowry or by way of purchase by the family to enjoy reduced stamp duty, the ownership is rarely more than notional. The women do not have secure tenure; they are often not in possession of the land or title nor are they listed in

¹⁰ *Gram Sabha* is a constitutional body that includes all adults of the village. The *Gram Sabha* meets a number of times in a year to deliberate on development priorities of the village as well as to finalize the list of beneficiaries for a few specific national programmes. *Gram Sabha*'s consent is also necessary now under the new law for land acquisition. In Madhya Pradesh, the *Gram Sabha*'s endorsement of the legal heirs list is compulsory under law.

the Record of Rights. Fourth, lack of political will of the state government is clearly visible as there is almost no pro-active effort on the part of the state governments to enforce women's right to inheritance.

In contrast, the women interviewed universally expressed the desire to own land, implying that they fully recognize the value of land and property for their wellbeing and empowerment. Their lack of action to claim is partly out of their ignorance of the law, but more importantly perhaps, out of their belief in the same patriarchal practice and lack of social support system they need to come forward.

5.0 Conclusions

The Hindu Succession (Amendment) Act 2005 recognizes the right to inheritance of agricultural land for all women agricultural producers. A careful reading of the findings of this study, however, points to significant and persistent gaps between women's legal rights and their actual inheritance of land, and between the limited ownership rights women do enjoy and their effective control over land. The gaps are, by and large, due to (a) gendered identities and practices, which often restrict women's ability to articulate as well as to exercise their right to inherit land; and (b) institutional practices, which are not gender neutral, rather they are essentially based on conventional male ideals. The following conclusions capture the inferences on the basis of the findings:

1. Hindu social practice sees dowry and a daughter's inheritance as intricately linked. The father of the bride is morally obligated to pay dowry at the time of his daughter's marriage, and the dowry is regarded as her share of the natal family's property. Dowry as a substitute for land and other properties in inheritance is one key way that patriarchal beliefs are deeply anchored in social practice, denying women social and economic equality within the family. This probably works as the strongest social barrier against women's equality.
2. Even when the women receive land in inheritance, it is invariably much less than an equal share. Women are likely to get more land as widows than as daughters. There seems to be a larger level of social acceptance emerging that a widow has moral rights to claim and get her late husband's share of land. However, this is not yet a dominant social trend.
3. Even though most of the women reported wanting to own land, they also said they did not want to inherit it from their parents. The most common reasons given were that their parents or brothers would not agree, and it was important for them to have their families' support in case they ever

encountered problems with their marriage. Patriarchal practice ensures that women remain dependent on their brothers and parents in case they face problems within marriage rather than depend on their own agency supported by ownership of assets that provide her with a dignified existence.

4. While some parents may be willing to give land to their daughters, the resistance from brothers against their sisters inheriting parental land can be stiff. This is in contrast to the same men supporting or even encouraging their wives' claims for their share of land from their parents.
5. Women's understandings of the current inheritance law and of the claim processes are rudimentary and fragmented. Land has historically been a male domain, and it continues to be so.
6. The burden of dealing with the administrative and quasi-legal processes to claim inheritance rights combined with the social backlash this would entail appears to be too heavy of an obstacle for most women. The complicated administrative systems and procedures are thus working as a formal barrier to most women.
7. The administrative processes related to mutation and partitions of land are largely insensitive to women's constraints. An important but perhaps not sufficient exception is the changes instituted in Madhya Pradesh, involving endorsement of the *Gram Sabha*.
8. Social barriers also are reflected in the way the *Patwari* and the mutation process works. The *Patwaris'* primary efforts appeared to be to complete the procedure, not to protect the women's interest, as envisaged in the law. The *Patwaris* are handicapped because they have not received any orientation on the HSAA. All the *Patwaris* we met in the three states expressed their desire to get more clarity on HSAA and, in particular, on how it changes the processes on the ground.
9. The *Tehsildars* we met in the three states universally "blamed" the women for not coming forward to claim their legitimate rights. The *Tehsildars* also saw the wide gap in social awareness on equality of women and men's land rights. However, it was clear that the *Tehsildars* see themselves as a judicial authority and do not feel obligated to promote such awareness or to adjust the process of mutation.
10. While the District Legal Services Authority has the mandate to provide legal assistance to the poor, their mandate does not include HSAA-related issues of poor women. The DLSA staff expressed the need for legal literacy of women on land rights in order to generate widespread awareness among

women. They recommended engaging with the leadership of the Self Help Group Federation on this issue.

11. The *Gram Panchayats* are almost universally clueless on what they can do in connection with implementation of the HSAA. The *Sarpanches* overwhelmingly re-iterated the predominant social norms and did not show any institutional concern about the prevalent practice.

6.0 Recommendations

Based on the findings and conclusions drawn from it, we would like to make some recommendations to the state and national governments of India and civil society organizations. As we have seen, barriers to the full implementation of the Hindu Succession (Amendment) Act 2005 are present both in the formal institutional domain and in the domain of social practices and norms. Our recommendations cover both.

1. The Revenue Department of the three states should institute a thorough review and revision of the processes of mutation and partition on the principle of providing equal treatment to women as per the statutory commitment made under the HSAA. The revision should provide clear guidelines as to how these processes shall ensure women's equality in rights to agricultural land.
2. The staff and officials responsible for providing mutation, updating land records and partition, should undergo dedicated training on the new guidelines on how to implement the HSAA with the clear motive of protecting and ensuring women's right to agricultural land under inheritance.
3. The District Legal Services Authority should include the HSAA as one of their listed topics on which to provide legal advice, conduct legal literacy campaigns, and fight cases in favor of women's inheritance of land.
4. The judges of the lower courts, including *Tehsildars*, should be sensitized on the importance of women's land rights.
5. The *Gram Panchayat* and *Panchayats* at the Block-level should be informed on the provisions of the HSAA, and of their responsibilities in this regard, in particular on equality of women's land rights under inheritance.

6. Wherever possible, a paralegal program should be instituted to pro-actively assist the women to claim and pursue their rights to inherit agricultural land.
7. Legal literacy on HSAA and related issues in combination with other legal rights of women should be packaged as a program for the Self Help Group Federations.
8. Madhya Pradesh's good practice of *Gram Sabha* endorsement of the legal heirs of a deceased person should be replicated in other states.
9. To overcome the social barriers and complicated administrative procedures, the Revenue Department should conduct village-level camp courts especially to ensure women's right to agricultural land. This will help hundreds of thousands of widows and other single women to come forward and claim their rights.
10. While inheritance rights are critical for women, it does not take away the issue of women's property ownership under marriage, which will ensure most productive use of land besides providing dignity and security to women. Therefore, inheritance and property rights under marriage should be seen as complementary.
11. Land administration at the state-level are still in the era of regulation and revenue generation, and often fail to take cognizance of the pro-poor social and economic development functions of land rights as a whole, and that of women in particular. A serious national campaign is needed to bring back land as a development agenda.

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Tables and Figures

Figure 1. Sample composition

State	District	Tahsil	Villages*
Andhra Pradesh	Vijayanagaram	Bobbili	Alajangi, Chintada, Piridi
		Parvathipuram	Addapusila, Balagudapa, Narsipuram
		Saluru	Kurukutti, Mokhasamamidi Palle, Pedaborabonda
		Seethanagaram	Burja, Chinabhogila
		Seethanagaram	Pedabhogila
	Visakhapatnam	Madugula	Kaspa Jagannadhapuram, Madugula, Madugula Koduru
		Nakkapalli	Chinadoddigallu, Nakkapalle, Upmaka Agraharam
		Rambulli	Dimili, Gokivada, Rambulli
		Yalamanchili	Eti Koppaka, Regupalem, Yalamanchili
	Bihar	Madhepura	Kishanganj
Kumarkhand			Belari, Belsandi, Belsarhs
Murliganj			Amari Dharhra, Belo, Bhatkhora
Singheshwar			Bairbana, Burhawe, Dandari
Supaul		Pipra	Balha, Basaha, Belokhra
		Raghopur	Basi, Bauraha, Daulatpur
		Supaul	Amha, Bairo, Bakaur
Madhya Pradesh	Neemuch	Tribeniganj	Babhanganwa, Bagheli, Barahkurwa
		Javad	Athana, Khor, Morwan, Nayagaon
		Manasa	Bhatkhedi, Kanjarda, Kukdeswar, Padada
	Ujjain	Neemuch	Bhadbhadiya, Bisalwaskalan, Cheeta Kheda, Sawan
		Badnagar	Badganwa, Bhatpachlana, Kharsodkalan
		Mahidpur	Jharda, Jhutawad, Ranayarpeer
		Tarana	Kanasiya, Kytha, Makdon
Ujjain	Narwar, Tajpur, Talod		

*The sample included 20 women per village.

Figure 2. Distribution of the qualitative interviews

State	Districts	<i>Tehsils</i>	Villages	Women	Men	Key Informants Interviewed
Andhra Pradesh	Vijayanagaram	4	One x <i>Tehsil</i>	9	2	Village Revenue Officers, <i>Tehsildars</i> , District Legal Services Authority staff, lawyer
	Visakhapatnam	5	One x <i>Tehsil</i>	7	2	<i>Karmacharis</i> , Circle Officers, Heads of <i>Gram Panchayats</i> , District Legal Services Authority staff , Lawyer
Bihar	Madhepura	3	One x <i>Tehsil</i>	8	2	<i>Patwaris</i> , <i>Tehsildars</i> , Heads of <i>Gram Panchayats</i> , District Legal Services Authority staff , Lawyer
	Supaul	2	One x <i>Tehsil</i>	8	2	<i>Patwaris</i> , <i>Tehsildars</i> , Heads of <i>Gram Panchayats</i> , Secretary of <i>Gram Panchayat</i>
Madhya Pradesh	Ujjain	3	One x <i>Tehsil</i>	8	2	<i>Patwaris</i> , <i>Tehsildars</i> , Heads of <i>Gram Panchayats</i> , Secretary of <i>Gram Panchayat</i>
	Nemuch	3	One x <i>Tehsil</i>	8	2	<i>Patwaris</i> , <i>Tehsildars</i> , Heads of <i>Gram Panchayats</i> , Secretary of <i>Gram Panchayat</i>

Figure 3. Statistical description of the sample

	Overall	Andhra Pradesh	Bihar	Madhya Pradesh
Number of households	1440	480	480	480
Caste				
Schedule Caste	10.5%	2.3%	17.1%	12.1%
Other Backward Caste	66.9%	73.2%	65.8%	61.5%
General Caste	22.7%	24.6%	17.1%	26.5%
Economics Status				
Below the Poverty Line	53.1%	84.4%	50.8%	24.0%
Above the Poverty Line	38.8%	14.6%	37.7%	64.2%
Antyodaya	1.5%	0.0%	2.5%	1.9%
None	6.7%	1.0%	9.0%	10.0%
Primary Source of Income				
Agriculture	74.9%	75.0%	75.0%	74.6%
Wage Labor	11.5%	9.4%	16.0%	9.2%
Average household size	6.7	5.8	7.5	6.8
Average number of plots households can access	2.5	2.5	2.6	2.5
Average number of agricultural plots households can access	0.8	0.7	0.9	0.8
Average number of plots households own	2.4	2.4	2.5	2.4
Women's marital status				
Married or cohabiting	93.4%	90.4%	96.0%	94.0%
Widow	5.5%	8.3%	2.7%	5.4%
Women's educational Level				
No schooling	54.4%	55.8%	60.6%	46.7%
Primary	13.9%	12.3%	10.0%	19.4%

Figure 4. Plot acquisition by source

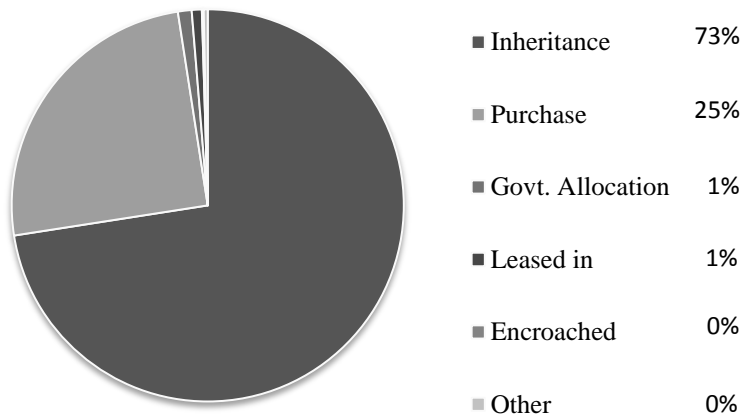
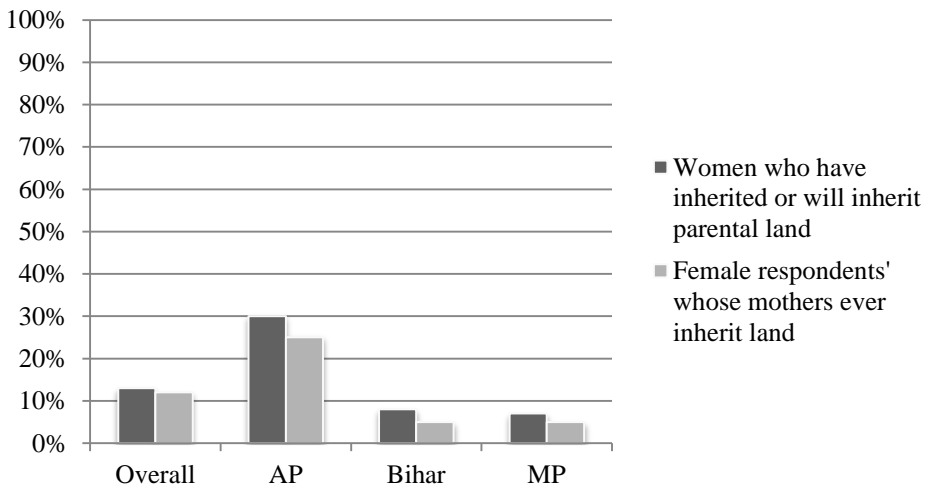


Figure 5. Women's inheritance of land



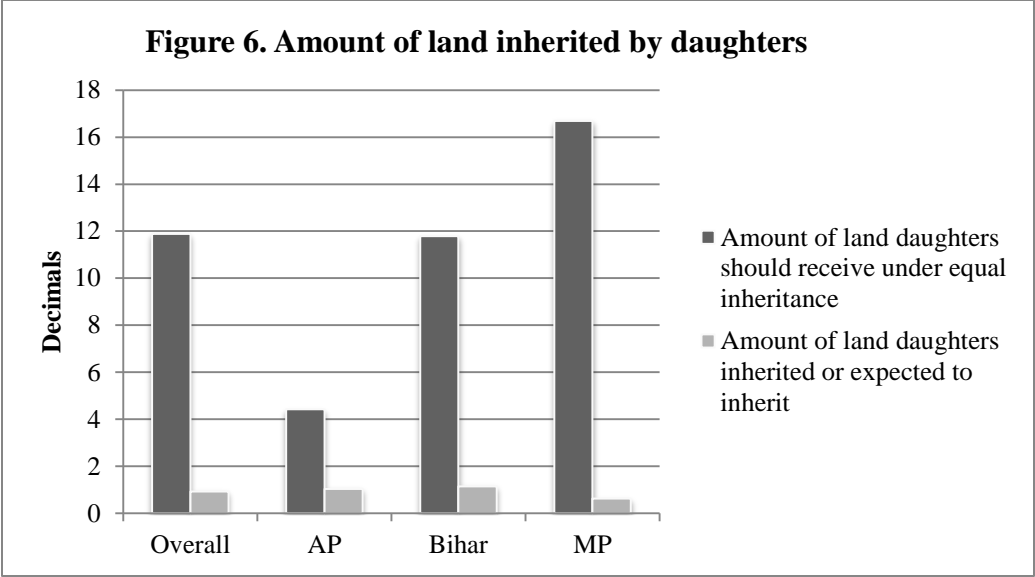


Figure 7. Variation across states

Parameters	Andhra Pradesh	Bihar	Madhya Pradesh
Land acquired by inheritance	70%	60%	87%
Land acquired by purchase	24%	38%	10.5%
Women inheriting land	30%	8%	6%
Women whose mothers have inherited land	25%	5%	5%
Women's inheritance of land from parents	31%	8%	7%
Widow's inheritance of land from husband	21%	30%	47%
Women wishing to inherit land	23%	10%	5%
Brothers objecting to sisters' inheritance of parental land	39%	79%	33%
Parents objecting to daughter's inheritance of land	28%	70%	25%
Women's inheritance of land as compared to entitlement under HSAA	0.9 decimals out of 4.2	0.8 decimals out of 11.9	0.4 decimals out of 16.6
Women who do not know the law regarding women's inheritance rights	41%	69%	11%
Men who do not know the law regarding women's inheritance rights	18%	21%	19%
Local government officials who do not recognize women's inheritance rights	50%	62%	23%
Awareness of law of women's inheritance rights among <i>Patwaris</i> and other revenue staff involved in inheritance processes	Negligible	Negligible	Negligible