



**Report on**

**The Formal and Informal Barriers in the  
Implementation of the Hindu Succession  
(Amendment) Act 2005**

**In the context of  
Women Agricultural Producers of  
Andhra Pradesh, Bihar and Madhya Pradesh**

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## Summary and Key Findings

The Hindu Succession Act 1956 that covers inheritance and succession of property of Hindus, Sikhs, Buddhists and Jains comprising 83.6% of the Indian population was amended in 2005 to grant, among others, rights to women to inherit agricultural land of the parents and husband. This amendment followed almost a decade after five southern states namely Maharashtra, Kerala, Andhra Pradesh, Karnataka and Tamil Nadu had amended their succession laws to allow women to inherit agricultural land subject to various conditionalities.

Eight years have passed by, yet the implementation of the amendments to HSA does not seem to have taken off on the ground. The present study looks at the formal and informal barriers of its implementation with a view to come up with clear recommendations to the stakeholders on what are needed to ensure that women get equal rights to parental and marital property, namely agricultural land.

The study has been done in Andhra Pradesh, Madhya Pradesh and Bihar among women agricultural producers. The sample districts and tehsils were selected from the Agricultural Census 2005-2006 that reported highest number of women's operational holdings. The villages were selected where there are largest women's populations. A total of 1440 women and 360 men were administered a quantitative questionnaire. A selected few women's and men's case studies were also documented. Further, in depth interviews were conducted with 48 women and 12 men across all 3 states. Additionally key informant interviews were conducted with Tehsilders, Patwaris, Gram Panchayat Presidents, staff of the District Legal Services Authority and lawyers. The key quantitative findings are presented below.

Parameter	AP	Bihar	MP
All land received through inheritance	70%	60%	87%
Women's inheritance of land	30%	8%	6%
Women whose mothers inherited land	25%	5%	5%
Women's inheritance from parents	31%	8%	7%
Widow's inheritance from husband	21%	30%	47%
Women wishing to inherit land	23%	10%	5%
Women inherited fraction of her entitlement (in fractions of an acre)	0.009 acre out of 0.042 acre	0.008 acre out of 0.119 acre	0.004 acre out of 0.166 acre
More objection from brothers than parents	39%	79%	33%
Parents who object to daughter's inheritance	28%	70%	25%
Women who do not know about HSA	41%	69%	11%
Men who do not know about HSA	18%	21%	19%
Local government do not recognize women's inheritance rights	50%	62%	23%
Awareness by Patwaris and other revenue staff involved in inheritance processes	negligible	negligible	negligible

The data presented above clearly points out that while inheritance is the dominant way by which land is transferred through generations, women's inheritance of agricultural land has not changed much in one generation or in other words very few women have inherited agricultural land. It also points out that objection from brothers is even higher compared to that of parents. There is relatively larger occurrence of the widows getting husband's land in inheritance in comparison to daughters getting land from the parents. Women's knowledge of provisions of law is quite rudimentary, and perhaps the most startling evidence is that even when women have received land, it is far less than an equal share.

In addition to the data presented above, qualitative interviews with women and men as well as with the key informants revealed a number of key insights: Firstly, it is clear that the Hindu social practice allows the parents to absolve them from honoring the 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 deep and entrenched that neither the daughters feel it's their moral and legal right to claim inheritance of parents' property, nor 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 women their rights. Thirdly, there is little evidence to suggest that even when women do get land either by inheritance, through dowry, or purchase by their marital family (due to reduced stamp duty if in women's name), the ownership by women is more than notional. The women are seldom in possession of the land, title and the Record of Rights (ROR) --- that make it a secured tenure. The decision making controls on use of the land remains firmly in the grip of men – father, brother, husband or father-in-law. Fourth, lack of political will of the state government is clearly visible as there is hardly any pro-active effort on their part to enforce women's right to inheritance and succession. In contrast, what is striking is that women universally expressed the desire to own land, implying that they fully recognize the value of land and property for their wellbeing. Their lack of action to claim is partly due to their ignorance of law, but more importantly perhaps out of their belief in the same patriarchal practices and lack of social support system that is needed in order to help them come forward.

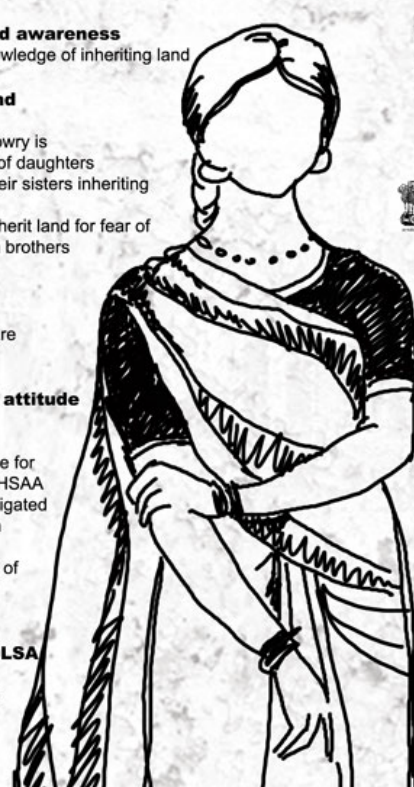
The detailed findings are mentioned below:

1. The Hindu social practice sees dowry and inheritance of the daughter 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 of land and other properties in inheritance is one key way the patriarchal beliefs are deeply anchored in social practice, denying the 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 the 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. This trend is slowly gaining ground, as the commercial value of land increases. Commercial development is thus increasing patriarchal pressure on women.
5. Women's understandings of the current inheritance law and of the claim processes are clearly 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 reflect 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 *Tehsilders* we met in the three states universally 'blamed' the women for not coming forward to claim their legitimate rights. The *Tehsilders* also saw the wide gap in social awareness on equality of women and men's land rights. However, it was clear that the *Tehsilders* 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 the poor women. The DLSA staff expressed the need for legal literacy of women on land rights in order to generate widespread awareness among the women. They recommended engaging with the leadership of the SHG-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 *Sarpanchs* overwhelmingly re-iterated the predominant social norms and did not show any institutional concern about the prevalent practice.

Barriers	Recommendations
<p><b>Legal Knowledge and awareness</b></p> <ul style="list-style-type: none"> <li>Women Lack of legal knowledge of inheriting land</li> </ul> <p><b>Patriarchal norms and attitudes of family</b></p> <ul style="list-style-type: none"> <li>Hindu society believes dowry is the share of inheritance of daughters</li> <li>Brothers resist against their sisters inheriting parental land</li> <li>Women do not want to inherit land for fear of straining relationship with brothers</li> </ul> <p><b>Responsibilities of Gram Panchayat</b></p> <ul style="list-style-type: none"> <li>Gram Panchayats unaware of HSAA and their role</li> </ul> <p><b>Responsibilities and attitude of Revenue Department</b></p> <ul style="list-style-type: none"> <li>Revenue Staff responsible for inheritance not aware of HSAA</li> <li>Tehsildars do not feel obligated to promote awareness on women's inheritance.</li> <li>Administrative processes of inheritance insensitive to women's constraints</li> </ul> <p><b>Responsibilities of DLSA</b></p> <ul style="list-style-type: none"> <li>DLSA's mandate does not include HSAA related issues of poor women</li> </ul>	<p><b>Revenue Department</b></p> <ul style="list-style-type: none"> <li>Revise revenue codes to make it women friendly</li> <li>Train Revenue Staff to implement HSAA for women</li> <li>Organise inheritance camps in villages to ensure inheritance of women</li> </ul> <p><b>Government/NGOs</b></p> <ul style="list-style-type: none"> <li>Run legal literacy programme for Women as part of NRLM</li> <li>Promote mass media campaign on HSAA</li> <li>Institute a paralegal programme to assist women in getting inheritance</li> <li>Inform Gram Panchayats of HSAA and their role</li> </ul> <p><b>DLSA</b></p> <ul style="list-style-type: none"> <li>Include HSAA 2005 in the listed topics for legal advice and legal literacy camps</li> </ul> <p><b>UN Women</b></p> <ul style="list-style-type: none"> <li>Support Civil Society organizations to build models of ensuring women's inheritance</li> </ul>



Landesa

# 1. Introduction

This is a study that examines the formal and informal barriers in women's right to land under inheritance laws. In India, around 75% of rural women are dependent on agriculture for livelihood, yet just about 10% of all women own land. Increasingly more and more land in large parts of the country has come under cultivation by women as men are migrating to towns and cities in search of employment and work. Particularly in rain-fed areas, women are being put in charge of small and marginal farms as virtual cultivators. However, despite their importance to agricultural production, women are the largest group of landless labourers with little real ownership of land and other productive assets.

The specific focus of this study is the Hindu Succession Act, which applies to about 83.6% of India's population.<sup>1</sup> In the absence of a will, the Hindu Succession Act of 1956 (HSA) gives shares of the property to the male and female children, grandchildren and to the wife of the deceased. This significant step was meant to improve women's ability to gain access to land and property. However, women's right to inherit agricultural land was left to state land tenure laws. These laws almost universally allowed only the male children to inherit agricultural land. Changes started to happen in the southern states in the 1980s. Five states, Kerala, Tamil Nadu, Maharashtra, Andhra Pradesh and Karnataka changed their laws between 1986 and 1994 to allow the women to inherit agricultural land. Finally, almost 50 years after the HSA 1956 was passed, the Hindu Succession (Amendment) Act (HSAA) 2005 equalized Hindu sons and daughters' rights to inherit agricultural land across all states of the country except Jammu and Kashmir.

Preliminary evidence suggests that inheritance shares have increased for women belonging to the Hindu community (Deininger et al. 2009).<sup>2</sup> However, neither the HSA nor its amendment are universally applied and hundreds of thousands 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. This research is set on that background and explores formal and informal barriers to implementation of the HSAA 2005 with regard to agricultural land.

Our fieldwork covered three states of India: Andhra Pradesh, Bihar and Madhya Pradesh. UN Women's interest in studying Bihar and Madhya Pradesh (MP) stemmed from the notion that women in these states tend to face particularly challenging environments. These are also states where UN Women is already engaging with the government and civil society groups on women farmers' right to livelihoods. Moreover these states did not adopt the HSAA until its national level implementation in 2005. We included Andhra Pradesh to provide a contrast because 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 which looked at the challenges and barriers to women's entitlement to land, where inheritance was one of the challenges identified. To further examine this issue in a more in-depth manner the same states were considered for this study as well.

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<sup>1</sup> Census of India, 2001

<sup>2</sup> This evidence comes from Maharashtra and Karnataka, which passed similar versions of the HSAA in 1994.

### **Contributions of this study**

- 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) An expanded geographical coverage: Our study has been 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: 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 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: for which we interviewed on-the-ground staff from the revenue department, as well as the women and men agricultural producers themselves.



## 2. Literature Review

### **Purpose and Structure of the Literature Review**

The literature review takes stock of the published studies, articles and reports related to women's inheritance of land in India under the Hindu Succession Act 1956 and its amendment in 2005. It provides context and a theoretical base for our present research. In doing so, the review presents the nature and extent of the existing body of knowledge, and identifies current gaps in research thus providing justification for the present study.

The review is organized in three sections. First, it delineates the key features of the Hindu Succession Act 1956 and the Hindu Succession (Amendment) Act 2005. Together they provide the legal basis of inheritance of property including land by Hindus, Buddhists, Sikhs and Jains. The second section takes stock of the existing literature on the Act and its implementation to identify what is known about how it affects women farmers' inheritance of agricultural land. The third section summarizes the literature available on HSAA in the context of Bihar, Madhya Pradesh and Andhra Pradesh, the three states in which this study has been carried out.

### **Key Features of the HSA and HSAA**

#### **Gender inequalities in Hindu Succession Act 1956**

The existing literature on the implementation of the Hindu Succession Act 1956 and the Hindu Succession (Amendment) Act 2005 is conspicuously limited in the context of women agricultural producers' inheritance of land. Most research has almost exclusively focused on the legal analysis or has looked at the social impact in general of women's inheritance of land and property. Empirical studies on the challenges or barriers that women, especially women farmers face while inheriting agricultural land are few in number and lack contextual diversity.

Land has always been and still remains a critical economic and social asset especially for the rural poor as it is the key input for agricultural production, a source of income and the single most important source of security against poverty. Today, in rural India even though nearly 80% of women are dependent on agriculture for livelihood, only 11% of rural landholders are women.<sup>3</sup>

There are three major ways in which women can gain access to land and in particular to agricultural land: a) by inheriting it from their parents or spouse, b) by receiving government land, or c) by purchasing it in the market. Inheritance in most of India continues to be patrilineal (ancestral property passed through the male line, up to the third generation) and among the majority Hindu community the women inherit land only in the absence of male heirs, typically in the absence of sons, grandsons, and great grandsons in the family.<sup>4</sup> As such, it is not surprising that ever since private property came into existence, the framing of all property laws have been exclusively for the benefit of men, with women being treated as subservient and dependent on men.

The first central legislation pertaining to property and inheritance for Hindus was the Hindu Succession Act, 1956, which addressed some of the property rights of women, yet retained

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<sup>3</sup> Food and Agriculture Organisation of United Nations, 'The State of Food and Agriculture 2010-2011: Women in Agriculture, Closing the Gender Gap for Development, Rome, 2011.

<sup>4</sup> Sons, grandsons and great grandsons constitute a class of coparceners, by being born in the family, but women are not considered coparceners. Joint family property devolves by survivorship within the coparcenary.

the *Mitakshara*<sup>5</sup> tradition of coparcenary that limited women's property rights under inheritance vis-a-vis men. According to this Act, daughters of a Hindu male dying intestate (without leaving a will) could inherit only land from their fathers' exclusive property and not from the joint family or ancestral property. Sons, on the other hand, could inherit their father's exclusive property and in addition had a birth right to an independent share of the ancestral property. As a result, sons were considered coparceners but daughters were not, and sons could demand partition of the joint family property while daughters could not. Moreover, the HSA 1956 did not determine rules around inheritance of agricultural land, which were instead determined by each state. In almost all states, these laws were based on traditions supporting male inheritance of agricultural land.

### **Towards gender equality: amendments by several states**

Intestacy and succession are in the Concurrent List of the Indian Constitution, giving both central and state governments the right to amend or enact laws governing the two subjects. Post 1956, five southern states in India, namely Kerala,<sup>6</sup> Andhra Pradesh, Tamil Nadu, Maharashtra and Karnataka recognized that under the existing legislation women were not treated equally<sup>7</sup> and enacted laws abolishing the earlier *Mitakshara* tradition and providing equal inheritance rights to women in 1975, 1986, 1989, 1994, and 1994, respectively. After these enactments, women were granted independent inheritance rights and the right to a share by survivorship in joint family property, equal with their male counterparts.<sup>8</sup>

### **National Amendment: Hindu Succession (Amendment) Act 2005**

While the southern states set the trend, the national amendment came much later. The HSA 1956 was amended by the Hindu Succession (Amendment) Act (HSAA) in 2005. The HSAA is particularly important for women's inheritance of land and property in rural areas because wills, and even more so registered wills, are virtually non-existent in rural India and are rarely made.<sup>9</sup>

The HSAA addresses some of the gender inequalities embedded in the HSA 1956. Most importantly, the HSAA addresses gender inequalities regarding agricultural land, *Mitakshara* joint family property, parental dwelling house, and widows' rights in a few specific cases. One of the most significant improvements for women derives from the HSAA's elimination of the gender discriminatory Section 4(2) of HSA 1956, the section that had previously granted states the power to determine the rules governing inheritance of agricultural land. A second very important improvement for women derives from the HSAA provision that daughters, including married daughters, are coparceners in joint family property, with the same birth right as sons, to share, claim partition, and (by presumption) to become *karta* (managers), while also sharing the liabilities. A third significant achievement of the HSAA is the deletion of Section 23 of HSA 1956, thereby giving all daughters (married or not) the same right as

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<sup>5</sup> The *Mitakshara* School is followed extensively in India. According to it, a son by birth acquires a right and interest in the joint family property. The interest in the property is restricted to three generations of male lineal descendants, which includes sons, grandsons and great grandsons who all constitute a class of coparceners, based on birth in the family. Under this system, joint family property devolves by survivorship within the coparcenary. Females were not recognized as a coparcenary in the *Mitakshara* law.

<sup>6</sup> Kerala abolished joint family property altogether in 1975.

<sup>7</sup> "Mapping Women's Gains in Inheritance and Property Rights under The Hindu Succession Act, 1956", Lawyers Collective Women's Rights Initiatives, New Delhi.

<sup>8</sup> Sanchari Roy (2008), "Female Empowerment through Inheritance Rights: Evidence from India", London School of Economics.

<sup>9</sup> Bina Agarwal (1995), "A Field of One's Own: Gender and Land Rights in South Asia", Cambridge South Asian Studies.

sons to reside in or seek partition of the family dwelling house. Fourth, HSAA deleted Section 24 of HSA, 1956, which had barred certain widows, such as those of predeceased sons, from inheriting the deceased property if they had remarried. Under the HSAA these widows are also entitled to inherit property including land from their marital families by way of survivorship.<sup>10</sup>

### **Debate on section 4(2): Is it enough for women?**

According to a report by the Lawyers Collective's Women's Rights Initiative, the elimination of Section 4(2) from the HSA has led to two opposing legal opinions.<sup>11</sup> One point of view is that the deletion of this section instead of improving women's inheritance rights on agricultural land has created confusion because the amendment does not provide for explicit application of HSAA to agricultural land superseding any state law that deals with the same and conflicts can arise if national and state legislations are not harmonized. Inheritance and succession have been referred to in the Concurrent List as entry number 5,<sup>12</sup> but since land is a state subject,<sup>13</sup> it is unclear whether the Parliament can legislate on agricultural land. Many contend that agricultural land, including succession, are a state subject and that the state laws will remain until the states themselves abrogate them.<sup>14</sup> Since this matter has yet to be challenged in court, at this point these are merely legal opinions open to interpretation by the courts.

The other opinion is that the elimination of Section 4(2) from HSA does supersede the state laws on agricultural land. As a result, HSAA can remove gender inequalities in the inheritance of agricultural land because it has brought all agricultural land on par with other property and has made Hindu women's inheritance rights in agricultural land equal to those of men's in all states, overriding any inconsistent state laws. This opinion has been explained further by Kirti Singh in an article where she describes how previous court judgments have upheld special laws relating to the devolution of tenancy rights citing Section 4(2) of HSA, and now that this section has been eliminated they will no longer be able to rely on it to deny women rights on agricultural land.<sup>15</sup>

### **Literature on impact of the HSAA and the challenges to its implementation**

In the meantime, social studies research on women's access to land has focused on three interconnected questions, namely what is the impact of strengthening women's property rights on their families and on themselves, what has been the impact of the HSAA, and what are the main challenges to the implementation of this Act. The first set of studies have focused on assessing the impact of strengthening women's land rights on agricultural production, decision making and control over the use of land for agricultural production, households and individual nutrition, household expenditure on children's health and education, and domestic violence. The second set of studies attempt to estimate the effective increase in women's inheritance of land that can be attributed to the HSAA. The

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<sup>10</sup> Bina Agarwal "Landmark step to gender equality", The Hindu, 25 September 2005.

<sup>11</sup> "Mapping women's gains in inheritance and property rights under the Hindu Succession Act, 1956", Lawyers Collective Women's Rights Initiatives, New Delhi.

<sup>12</sup> Concurrent List in VII Schedule of the Constitution- 5: Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

<sup>13</sup> State List in VII Schedule of the Constitution- Entry no. 18

<sup>14</sup> Kirti Singh, "The Women Inheritors", National Confederation of Human Rights Organisations, article is available at: [http://nchro.org/index.php?option=com\\_content&view=article&id=335:the-women-inheritors&catid=15:women&Itemid=25](http://nchro.org/index.php?option=com_content&view=article&id=335:the-women-inheritors&catid=15:women&Itemid=25)

<sup>15</sup> *ibid*

third set of studies explores formal and informal institutional challenges to the implementation of the HSAA. We summarize some relevant findings of these three strands of the literature on women's land rights below.

### **Impact of Property Rights on Women**

An interesting study by Prem Chowdhry<sup>16</sup> conducted in Haryana in 2011 highlighted existing social conditions by way of which women are gaining access to land. Her study identified social situations where women's control or possession and utilization of property and other productive assets were enhanced. These cases include: 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; b) 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'; c) a woman may be given property to take the benefit of the state's tax or ceiling structure, which under the law is more flexible for women owners of property; and d) 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, a source of authority, power, status and mobility and that this can lead to access to education and health facilities and to reduced violence.

A report of the sub-group on land related issues submitted to the Planning Commission in January 2007<sup>17</sup> underscored that the HSAA can have far reaching implications not only for women's status but also for improving production in agriculture. It described evidence to show that lack of assets enhances vulnerability and poverty and 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 house reported considerably less violence.

This is consistent with Nitya Rao's work<sup>18</sup> where she concludes that "If one sees empowerment as a process moving towards equality, from welfare and access through conscientization 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."

Bina Agarwal's studies<sup>19</sup> have further brought out a number of positive effects of conferring inheritance rights over agricultural land. She has argued that gender equality in agricultural land can reduce not just a woman's and her family's risk of poverty, it can expand their livelihood options, enhance the prospects that their children will survive, improve their families' education and health, reduce domestic violence and can empower women. In a study conducted by Agarwal in Kerala,<sup>20</sup> she 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. However, in a more recent article 'Landmark Step to

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<sup>16</sup> Prem Chowdhry (2011), *Reduction of violence against women: property ownership and economic independence in rural Haryana*, UN Women, New Delhi.

<sup>17</sup> Report of the Sub-Group on Land Related Issues" which was submitted to the Working Group on Gender issues, Panchayati Raj Institutions, Public-Private Partnership, Innovative Finance and Micro Finance in agriculture for the Eleventh Five Year Plan (2007-2012) ), Planning Commission, 2007.

<sup>18</sup> Rao Nitya 'Women's Rights to Land and Assets: Experience of Mainstreaming Gender in Development Projects', *Economic and Political Weekly*, 29 October 2005. Pp. 4701 – 4707.

<sup>19</sup> Agarwal Bina, 'A Field of One's Own- Gender and Land Rights in South Asia', 1996.

<sup>20</sup> "Report of the Sub-Group on Land Related Issues" which was submitted to the Working Group on Gender Issues, Panchayati Raj Institutions, Public Private Partnership, Innovative Finance and Micro Finance in Agriculture for the Eleventh Five Year Plan (2007-2012), Planning Commission, 2007.

Gender Equality',<sup>21</sup> Bina Agarwal raised the question that while the HSA 2005 is a landmark legislation, it has yet to be determined if it gives women the security they seek.

Along these lines, Goyal et. al. explored whether inheritance legislation improves women's access to land. Their study focused on land bequests to sons and daughters in the states of Maharashtra, Andhra Pradesh, Kerala and Karnataka, states which had passed amendments in the late eighties and early nineties. Based on household-level data for three generations, they find that although women continue to be at a disadvantage when it comes to inheriting land, as a result of these amendments women are now 9% more likely to inherit some land.<sup>22</sup>

On the other hand, a study by S Galab and E Revathi<sup>23</sup> from the Centre for Economic and Social Studies in Hyderabad done in five states (Meghalaya, West Bengal, Rajasthan, Andhra Pradesh and Madhya Pradesh), found that the HSA has had no considerable impact on women getting land from their natal family. They found that, typically, women do not wish to exercise their rights for fear of estrangement from their natal family. 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*. These women were unaware of the processes involved in obtaining ownership titles. They found that the Revenue Department has not geared itself up adequately to make title deeds to women in case of family property in line with HSA 2005. 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 parents gave land to their daughters when their daughters married landless men and they stayed in the same village as that of the father of the wife.

Finally, it is worth mentioning that a few states have developed special measures to help women obtain documents related to the land they inherited. For example, in West Bengal the *Gram Panchayat Pradhan* issues the certificate confirming the heirs to family property; and in Andhra Pradesh dominant communities have a customary practice of giving land to women (*stridhan*) and this has brought greater equality in inheritance rights to sons and daughters as well as contributing to a higher percentage of women getting land in their names.

### **Challenges in the enforcement of the HSA**

Revathi and Galab's observations on barriers that prevent effective implementation of HSA 2005 are corroborated by several other studies that have looked at formal institutional barriers as well as informal socio-cultural barriers.

#### **Formal barriers**

Kirti Singh in her article titled "*Man's World, legally*"<sup>24</sup> has pointed out that in spite of the extensive amendments to HSA included in the HSA of 2005, the law still contains provisions that favor a woman's in-laws. For example, the self-acquired property of a female Hindu 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 customary and

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<sup>21</sup> Article in The Hindu dated 15/09/05

<sup>22</sup> Aparajita Goyal, Klaus Deininger and Hari Nagarajan, "Do Changes in Inheritance Legislation Improve Women's Access to Physical and Human Capital? Evidence from India's Hindu Succession Act", January, 2010, World Bank, Washington D.C.

<sup>23</sup> S. Galab and E Revathi, "Existing state policies, programmes, interventions and processes and their impact on women's access to land", Centre for Economic and Social Studies, Hyderabad, December 2011.

<sup>24</sup> Kirti Singh, "Man's World, legally", Frontline, Vol 29, Issue 15, 28 August 2012.

traditional belief that after marriage a girl belongs to her husband's family and not to her natal family. She illustrated this point with a recent judgment of the Supreme Court which showed how inequitable this provision is: "the self-acquired property of a woman who had been ill-treated by her in-laws and lived all her life with her parents devolved upon her in-laws."

Studies have also shown that Hindu women continue to be deprived of their inheritance through wills. According to the report of a working group of the Planning Commission on Women's Agency and Child Rights for the Twelfth Five Year Plan, "laws like the HSA would have limited success unless the Right to Will is restricted and relinquishment of property in favor of male siblings is also curtailed".<sup>25</sup> Another study by Rachel Brule<sup>26</sup> in Andhra Pradesh found that there is now an increased focus on the registration of oral wills, which enables the heads of households to make daughters ineligible for inheritance. Wills are therefore a means of using legal institutions to abnegate women's inheritance rights.

A study by Sanchari Roy<sup>27</sup> in 2008, "Female Empowerment through Inheritance Rights: Evidence from India" identified certain formal barriers which could potentially be used to disinherit daughters in the following ways: 1) if a father renounced his rights in the coparcenary (joint) property, his sons would continue to maintain their independent rights to the coparcenary but his daughters, widow or mother would lose out on the possibility to gain from such property; and 2) after partition of the coparcenary, if the father made a gift or willed his share in the coparcenary to his sons, the rights of the female inheritors would cease to exist.

### **Informal barriers**

The existing literature highlights the importance of social and cultural barriers that prevent women's ownership and control over private land and property. Social norms influence women's ability to own land and property especially in communities where economic activities and social responsibilities are defined along gender lines. This can make it very difficult for women to deviate from what her families and communities consider socially acceptable behavior.

Kirti Singh in her article<sup>28</sup> noted that even in the absence of a will, when the HSAA is applicable, women are generally forced to give up their share in favor of their brothers for various reasons. One of the main reasons is the fear of breaking familial bonds. She stresses the need to devise ways to ensure that daughters do not lose their right to inheritance.

N.C. Saxena in his article<sup>29</sup> 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.

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<sup>25</sup> XII Five Year Plan, Report of the Working Group on Women's Agency and Empowerment, Ministry of Women and Child Development, Government of India.

<sup>26</sup> Rachel Brule, "Gender Equity and Inheritance Reform: Evidence from Rural India", 2012.

<sup>27</sup> Sanchari Roy, "Female Empowerment through Inheritance Rights: Evidence from India", London School of Economics, 6 September, 2008.

<sup>28</sup> Same as footnote no. 22

<sup>29</sup> N.C. Saxena, "Land, Livestock and Rights of Women in Rural India, published in Women, Land and Power in Asia", UN Women, South Asia Office, New Delhi, 2013.

In traditional patriarchal societies, such as Haryana, local authorities brazenly deprive girls of their legal right to ancestral property. In May 2012, the *Gram Panchayat* in Jind district in Haryana banned married women from seeking a share in parental property. The *Gram Panchayat* stated, "Every married girl will have to part with her share of parental land and hand it over to her brothers. If she has no brother, she will give it to other family members at her parental home. If a woman violates the diktat, she will face social boycott and have to pay a fine." The *Gram Panchayat* further declared that villagers who purchased land from married women would be ostracized. This case was highlighted in an article "Denying women their due share in family property" by Seema Sindhu.<sup>30</sup> Prem Chowdhry's study in Haryana also finds that in numerous rural families girls are made to sign away their land rights in favor of their brothers or fathers.

The studies discussed above have essentially reinforced each other's findings that property rights of women 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 gain ownership and control over land. Moreover, there appear to be conflicting views on the benefits brought by the HSAA: while some studies point to unambiguously positive results, others express skepticism over its effectiveness. The barriers cited by various researchers can be classified as flaws in legal frameworks even after HSAA, institutional insensitivities towards the implementation of the amendments, and prevailing socio-cultural practices that have moral and institutional force to deprive women of their land rights in inheritance.

A study done by FAO<sup>31</sup> in Madhya Pradesh and Bihar identified certain trends in women's land rights in tribal communities. Unlike the majority Hindus, tribal women do not have inheritance rights to land under customary law among most settled tribes. However, various social arrangements and practices have existed to provide adequate care to women in situations of widowhood, breakdown of marriage, single women and for families having only daughters. The study found that widowed women usually acquire user rights to their husband's property for maintenance for life. On her death, the property passes into the hands of the husband's closest male relatives. Similarly, single women, unmarried women and women who return to their parents' house due to breakdown in marriage, acquire user rights in their paternal property. In case of daughters' only families, the son-in-law would usually inherit their wife's paternal property only if they agreed to settle in their in-law's village. Severe social sanctions for violation of these norms helped in reducing the vulnerability of women in such situations.

### **Existing Research on HSAA in Andhra Pradesh, Bihar and Madhya Pradesh**

A few studies on women's inheritance rights and how the law has affected them in practice have been carried out in Andhra Pradesh. These studies tend to be more quantitative and statistical in nature rather than qualitative and ethnographic studies on the actual processes. There are fewer studies based in Bihar and none in Madhya Pradesh. We describe key findings of relevant studies below.

A study in Andhra Pradesh based on household data from the National Council of Applied Economic Research's (NCAER) Rural Economic and Demographic Survey (REDS) of

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<sup>30</sup> Seema Sindhu, "Denying women their due share in family property", Article available at: <http://archive.dailypioneer.com/columnists/item/51662-denying-women-their-due-share-in-family-property.html?tmpl=component&print=1>

<sup>31</sup> Overview of Socio-Economic Situation of the Tribal Communities and Livelihoods in Madhya Pradesh and Bihar, FAO.

2006<sup>32</sup> found that “20% of Andhra Pradesh’s women owned land, out of which 98.7% had received this land after the amendment was passed.”<sup>33</sup> However, the study also found that “only 1.8% of this population had inherited land” indicating a need for greater enforcement of inheritance rights.

A study by Marty Chen and Jean Dreze carried out in Bihar prior to the 2005 amendment interviewed widows and revenue department officials in the state to understand widow’s inheritance practices<sup>34</sup>. The study found that “irrespective of their caste, all widows interviewed declared that they were rightful heirs to their husband’s share of land and defined their right as use rights rather than ownership rights.” The study also looked at whether the widow could actually exercise her use rights and found that the childbearing status of widows was the strongest determinant: “widows without children faced the most difficulty in exercising their rights, and widows with sons had the least difficulty.” When asked about the land rights of widows, the local officials expressed, “knowledge of the provision of statutory law (which granted full estate rights to widows and daughters) but tended, through their actions and decisions, to reinforce the local status quo or customary practice (which grants only limited rights to widows and few rights to daughters).”

Landesa/Rural Development Institute recently conducted a qualitative study titled “Increasing women’s access to land through implementation of the Hindu Succession Act in Andhra Pradesh: Legal Awareness and Capacity Building in three districts.”<sup>35</sup> The study identified barriers to women’s inheritance of land, attitudes that facilitate the continuance of these barriers, and people’s sources of information about succession laws. It showed that some of the barriers that women face in inheriting land and property are: gender discriminatory practices such as dowry being considered a ‘one time settlement’ to women; insufficient knowledge of the HSA and its 2005 amendment; women’s reluctance to enforce their land ownership rights; and, lack of proactive implementation of the law by Revenue Department officers who tended to follow the department requirements which were not necessarily in compliance with the provisions of the HSAA 2005.

Complementing this, a quantitative study carried out by Landesa/Rural Development Institute in collaboration with UN Women in Bihar and Andhra Pradesh<sup>36</sup> identified lack of legal knowledge as one of the formal barriers in women’s right to own and inherit land. It found that overall awareness of the HSAA was low among the Hindu families surveyed. Only 22% of the families were aware of this law. Compared to men, women were less aware and even more so if the woman did not have a male partner.

Rachel E. Brule in her study in Andhra Pradesh in 2012<sup>37</sup> argued that reforms equalizing women’s land inheritance has failed due to two reasons. Firstly, the legislative changes failed to take into account the cost-benefit calculation of rural women who would rather forgo

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<sup>32</sup> The REDS 2006 project produced a database which forms the fourth round of a rural panel study to help understand the social, economic and demographic transition in India since 1971, 1982 and 1999.

<sup>33</sup> Rachel Brule, Black Market for Brides? From NCAER’S blog on Decentralisation, Rural Governance and Inclusive Growth, available at: <http://www.ruralgov-ncaer.org/blogs/?p=172>

<sup>34</sup> Marty Chen and Jean Dreze, “Recent research on Widows in India: Workshop and Conference Report”, Economic and Political Weekly, at P.2444, Vol.30, No. 39,(10 September, 1995.

<sup>35</sup> Annie George and Arhsathunnisa Sultana Begum, 2012,” Increasing women’s access to land through implementation of the Hindu Succession Act in Andhra Pradesh: Legal awareness and capacity building in three districts”, Landesa/RDI, New Delhi, 2012.

<sup>36</sup> “Challenges and Barriers to Women’s Entitlement to Land in India”, Landesa and UN Women, 2012, New Delhi.

<sup>37</sup> Rachel Brule, “Gender Equity and Inheritance Reform: Evidence from Rural India”, September 2012.



their legal rights than relinquish access to a familial “safety net” which serves as a source of security in case of widowhood, abandonment or abuse. She further explains that marriage normatively and physically displaces women from their natal to husband’s family. In such a situation dowry is traditionally regarded as a daughter’s “fair” share of her parents’ inheritance and in a way serves to sever parents’ material obligations to daughters. Secondly, she found that local officials, especially the Village Revenue Officers, remain more responsive to male household heads who seek to subvert reform than to rural women who should benefit from the reforms. Brule also found that without information and mobilization, HSAAs hardly affected women’s claims, irrespective of educational levels.

To conclude, no studies on this issue have been carried out in Madhya Pradesh, but the results from Andhra Pradesh and Bihar are surprisingly similar in the social barriers they unveiled, even if they may vary in their relative relevance. Key barriers appear to be: the view of dowry as a fair share of property, women’s reluctance to claim their property rights in exchange for familial support in case they suffer from marital breakdown, general lack of awareness of the provisions of the law, a gender insensitive revenue administration, and flaws in the legal framework.

### 3. Brief Outline of States' Land Administration and the Processes to Inherit Land

Land administration is a state subject and it includes: the transfer of rights in land from one party to another through sale, lease, loan, gift, partition and inheritance; the regulation of land and property development; the use and conservation of land; the collection of revenues from land through sales, leasing, and taxation; and the resolution of conflicts concerning the ownership and the use of land. Carrying out these functions requires surveying and mapping of land, land registration, and land valuation.

Land registration typically entails the recording of ownership, possession, or other rights in land, in order to provide evidence of title, facilitate transactions and prevent unlawful disposal. Land records have two components: (1) parcel maps which are graphical sketches depicting the extent and boundaries of individual landholdings and (2) records of rights which are documents defining and describing ownership, occupancy and tenancy rights. These documents are maintained for each village within its *tehsil* and are revised after a certain period of time, typically every five years.

The revenue department usually prepares and maintains the records. The survey and settlement department prepares and maintains the maps. The registration department verifies encumbrances and registers transfers, mortgages, etc. A few states have a consolidation department in lieu of a survey and settlement department. In many states the urban local bodies update property records for the purposes of taxation.

#### **Land Administration: Structure and Functions**

At the state level, all the land administration work is handled by the Revenue Department. In most states there are large administrative units called divisions that comprise a few districts. The Divisional Commissioner's functions are largely supervisory in nature. He also has quasi-judicial functions. The district is the most important unit of land administration. The Deputy Commissioner (in some states called the District Collector or the District Magistrate) deals with disputes related to land records and the management of public lands and properties. The other revenue officers, namely, the Assistant Commissioners, the *Tehsildars* and the Deputy *Tehsildars* also perform functions dealing with land disputes under the overall supervision and control of the Deputy Commissioner. The Village Level Revenue Officers (VRO) is also known as *Patwari*, *Karmachari* or Village Accountant and maintains the record of any subsequent updating or modification. Once these records have been approved by the *Tehsildar* they become official and are reflected at the *Tehsil* (or circle, block or subdivision) level registers.

#### **Inheritance or Succession and Partition of *Virasat* (Ancestral) Land**

Rights over land may change due to inheritance, wills, partitions or transfers of land. In rural areas, most changes in rights over land take place due to inheritance. The acquisition of property by inheritance is regulated by the personal law of the deceased person. The general practice is to register land in the name of the elder person as the head (*Karta*) of the Joint Hindu Family.

Succession for the Hindus is governed by the HSA, 1956, which bases its rule of succession on the basic principle of propinquity, or the preference of male heirs on the basis of proximity of relationship to the *Karta*, and its amendment HSAA, 2005, which gives daughters equal rights to inherit agricultural land.

The property of a person who dies intestate is passed on to his/her legal heirs as the joint holders. "Joint holders" hold property as co-sharers whose shares are not divided. Each holder has equal rights to this property, except to the extent that they have modified these rights through an agreement among themselves. Many times after the death of person, the

legal heirs avoid informing the *Patwari*. As long as the land remains in their possession, they do not feel any urgency to report the change. They divide or partition the land verbally but do not record partitioning the land. As a consequence, this change of rights over land is not officially recorded.

Joint holders typically request the partition of the property only if they have a dispute. If the parties are unable to agree, any or all of them may seek the ruling of a court to determine how the land should be divided between the joint owners (partition in kind), leaving each with ownership of a portion of the property representing their share. Where such division is not possible, a forced sale of the property is followed by a division of proceeds.

The recording of changes in ownership rights over land due to inheritance or partition is known as 'mutation.' The mutation register is a *Patta Register* where ownership of land is either added or removed. Mutation, however, is not the sole basis of transfer of titles. It is, at best, an additional piece of evidence which along with other proof can establish the rights of a person to a specific property.

It is the duty of the *Patwari* to update the record of rights and register of mutations. Any person acquiring the right to land by succession, survivorship, inheritance, partition, purchase, mortgage, gift, lease or otherwise, must report verbally or in writing his or her acquisition of such rights to the *Patwari* within a specified time limit and the *Patwari* has to extend a written acknowledgement to the person that such a report has been filed.

### **Process of Mutation**

The process for registering the succession of moveable and immoveable properties including agricultural land of the deceased varies from state to state, but it typically includes the following steps:

- A verbal request or an application that in some cases is on a plain paper and in others has a specified format (e.g., Form VI in Andhra Pradesh), along with relevant documents such as the death certificate of the intestate supported by an affidavit of the legal heirs made to the *Patwari*;
- The *Patwari* determines the legal heirs and files his report to the *Tehsilder*. The *Tehsilder* serves notice to the parties for a hearing;
- The statements of parties are recorded at the hearing. The content of the documents are matched with the recorded statements. The *Patwari* submits his report in the prescribed format. If no objections against the proposed mutation are received, the mutation is sanctioned and the land records are updated;
- If objections against the mutation are received, the matter is referred to the *Tehsildar* of the area. Any party adversely affected by an order of mutation may file an appeal before the *Tehsildar* within 30 days of the order. In case of disputes on inherited property among the legal heirs, a civil suit of partition and possession can be filed under code of civil procedure requesting the court to declare the portion of inherited property in favor of the petitioner and then the trial begins. Once the court passes a decree of partition, the mutation can take place accordingly.

### **Process of Partition of Virasat Land**

A partition of *Virasat* land refers to an act, by a court order or otherwise, to divide up a joint ownership into separate portions representing the proportionate interests of the holders of the property. Although the process to partition *Virasat* land varies from state to state, it typically includes the following steps.

- Co-holders must present to the *Tehsildar* an application for partition of their share in a land holding;
- On receipt of the application, the *Tehsildar* shall hear the applicants in person, giving them the opportunity to state any objections they might have, on a day for which due

notice shall be given to the applicants or on any day to which the hearing may be adjourned;

- A copy of such proclamation shall be posted at the headquarters of the *tehsil*, and in the village in which the holding is situated.
- If after hearing the applicant, the co-holders and any other persons who appear, the *Tehsildar* is of the opinion that the applicant has no interest in the holding, or the applicant's title to the holding is disputed, the *Tehsildar* shall reject the application and, possibly, direct the applicant to a Civil Court.
- If the *Tehsildar* does not reject the application, he shall proceed to affect the partition either personally or through an appointed representative. So far as is practical, whole survey numbers or sub-division of survey numbers shall be allotted and recourse to further division shall be allotted to each party. Care should be taken to ensure that the productivity of the area allotted to each party is in proportion to his or her share in the holding.
- After the partition has been completed, the *Tehsildar* shall hear any objections the parties might have and shall either amend or confirm the partition. The partition takes effect at the beginning of the following agricultural year.

## 4. 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, we carried out quantitative and qualitative research on the ability of Hindu women agricultural producers to inherit agricultural land from their parents. Following a request from UN Women, 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<sup>38</sup> by women and the percentage of the land holdings to total female population. In each village, we selected a random sample of 20 families. We interviewed the adult woman head of household in these families, surveying 480 women per state. The Annex 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 1440 women and 360 men.<sup>39</sup> The women's survey collected: (i) individual and family demographics and socioeconomic characteristics; (ii) information on all the plots of land the 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 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 processes, barriers to and impact of their sisters and wives claiming land; (vi) use or likely use of land; (viii) thoughts on women inheriting land; and (viii) 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*, head of elected local *Panchayats*, staff of the Legal Services Authority and a local lawyer in each state. The following table describes who we interviewed.

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<sup>38</sup> Operational land holdings are defined as agricultural land owned and or managed by a person for producing crops. Female operational land holding means number of females that owns and/or manages a crop land for producing crops.

<sup>39</sup> 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 are 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 woman has claimed her rights under HSAA.

**Table 1. Distribution of the qualitative interviews**

State	Districts	Tehsils	Villages	Women	Men	Key Informants Interviewed
Andhra Pradesh	Vijayanagaram	4	One x Tehsil	9	2	VROs, Tehsilders, DLSA staff, lawyer
	Visakhapatnam	5	One x Tehsil	7	2	
Bihar	Madhepura	3	One x Tehsil	8	2	Karmacharis, Circle Officers, Heads of GPs, DLSA staff , Lawyer
	Supaul	2	One x Tehsil	8	2	
Madhya Pradesh	Ujjain	3	One x Tehsil	8	2	Patwaris, Tehsilders, Heads of GPs, Secretary of GP
	Nemuch	3	One x Tehsil	8	2	

**Profile of the Sample**

In Table 2, 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 it 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 we 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 and approximately half of them have no schooling at all. The Scheduled Tribe families were found to be negligible in number, in the sample villages.

**Table 2. Statistical description of the sample**

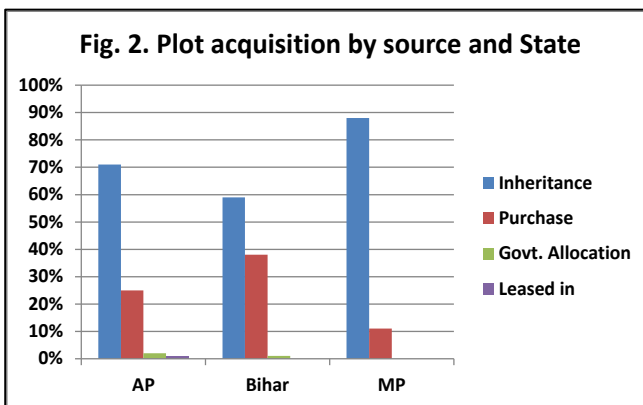
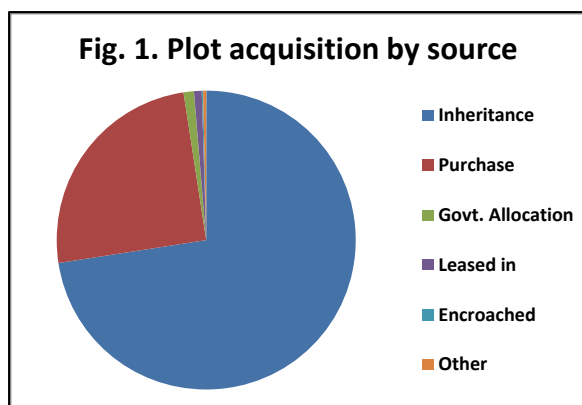
	Overall	Andhra Pradesh	Bihar	Madhya Pradesh
<b>Number of households</b>	1440	480	480	480
<b>Caste</b>				
Schedule Caste	10.5%	2.3%	17.1%	12.1%
Other Backward Caste	66.9%	73.2%	65.8%	61.5%
General Caste	22.7%	24.6%	17.1%	26.5%
<b>Economics Status</b>				
Below the Poverty Line	53.1%	84.4%	50.8%	24.0%
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%
<b>Primary Source of Income</b>				
Agriculture	74.9%	75.0%	75.0%	74.6%
Wage Labor	11.5%	9.4%	16.0%	9.2%
<b>Average household size</b>	6.7	5.8	7.5	6.8
<b>Average number of plots households can access</b>	2.5	2.5	2.6	2.5

<b>Average number of agricultural plots households can access</b>	0.8	0.7	0.9	0.8
<b>Average number of plots households own</b>	2.4	2.4	2.5	2.4
<b>Women's marital status</b>				
Married or cohabiting	93.4%	90.4%	96.0%	94.0%
Widow	5.5%	8.3%	2.7%	5.4%
<b>Women's educational Level</b>				
No schooling	54.4%	55.8%	60.6%	46.7%
Primary	13.9%	12.3%	10.0%	19.4%

## 5. Findings

### Inheritance is the most frequent avenue to acquire land

Highlighting the importance of paying attention to the formal regulations and informal practices that affect who inherits land, our data unambiguously identifies inheritance as the prevalent way in which households acquire access to land. Of the 3362 plots that households reported owning or being able to access, an overwhelming 73% were inherited irrespective of the caste. By contrast, only 25% were purchased and a negligible 2% were obtained through government programmes or leasing.



Inheritance is the dominant mode of acquisition for all types of land: homestead plots, agricultural land, and forest land and, while these results hold for the three states covered by this study, inheritance is considerably more prevalent in Madhya Pradesh than in Bihar.

### Case 1. Land and Property of her Own

Bimala Devi is an elderly 70 year old woman who lives with her husband, two sons and their families in a small house in Balaha village, Supaul district in Bihar. Her only daughter is married to an engineer in Patna. Bimala Devi is the owner of the house and the agricultural land – a total of 7 bighas<sup>40</sup> that she got from her father a few years after marriage. Bimala Devi had got married at a very young age. Her marital family lived in Banaras, Uttar Pradesh. However, she could not live for too long there as she had a lot of problems with her in-laws. At this stage her father who was a zamindar (landowner) called her back to Bihar along with her husband and children and gave her 7 bighas land to settle down. The house was built on 0.5 bigha and the rest of the land is being used for cultivation. Mutation was done and the land was transferred in her name. The land documents are kept with her. Bimala had three other sisters who were not given any land as they had been married into well-off families and did not need their father's support.



Agriculture is the main occupation of the family just like most of the households across Bihar. She however laments that the quality of soil is not that good as it is quite sandy and the crop depends on a good monsoon as the area lacks irrigation facilities.

<sup>40</sup> Bigha is a traditional unit of land in several parts of India. In Bihar, different parts use different sizes for bigha.

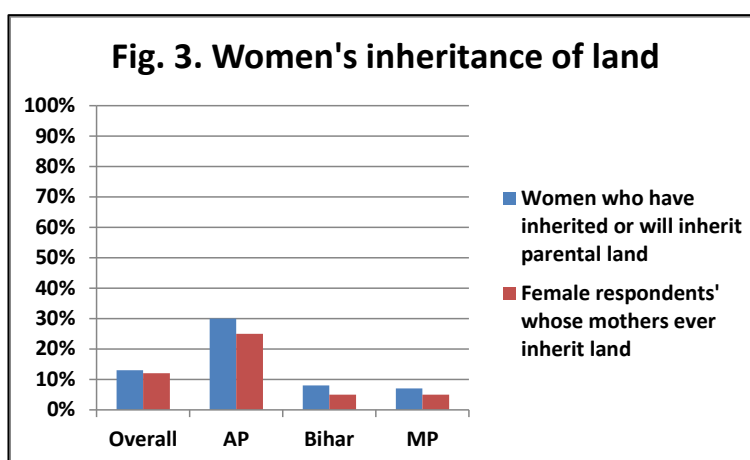


Bimala Devi believes that daughters should get a share of their natal property but said that her daughter will never ask for her share as she is financially much better off than her brothers and the land that they own is really not that much.

### Women do not inherit land

Given how highly inheritance rates as a mechanism to acquire land, women's ability to inherit land is of paramount importance. Yet the data corroborates the dismal picture reported by those working in this field: 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 we 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.<sup>41</sup> 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 1,436 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.



Arguably, such low rates of ownership and inheritance could simply reflect gendered preferences whereby women in these more traditional communities do not wish to own land. Unfortunately, the data we gathered does not allow us to answer this question. However, in an earlier study conducted among a similar group of Hindu, Muslim, and Christian landowning households in AP and Bihar we found that 54% of the women would have liked to own land.<sup>42</sup> 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.

### Women want to have land but are not asking to inherit it

We did ask about women's desire to inherit parental land and in a finding that is consistent with our earlier study mentioned above, 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

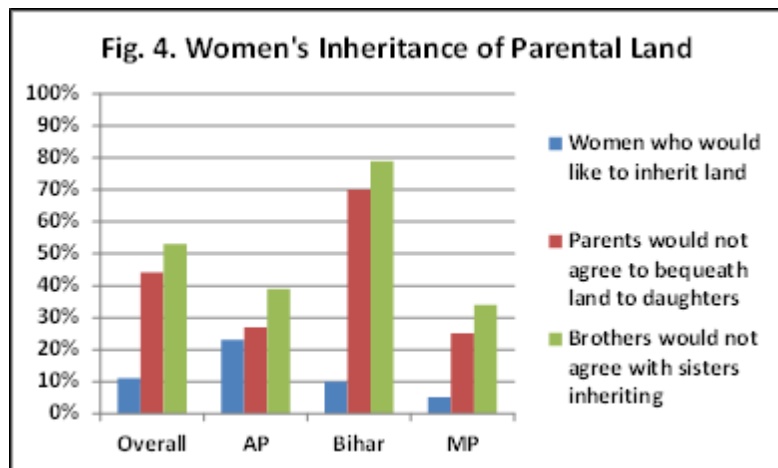
<sup>41</sup> Since this study is focused on the HSAA and women's ability to inherit parental land we do not discuss in detail women's ability to inherit land from their husbands. It is important to note, however, that while noticeably higher, at 31%, the percentage of women who have inherited or expect 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 AP, Bihar, and MP are 21%, 28% and 46%, respectively.

<sup>42</sup> Gender and Land Tenure Security-Challenges and barriers to women's entitlement to land in India, Rural Development Institute and UN Women, 2012.

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 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 was 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.



**Case 2. Patriarchal mind set- “Sisters can never get a share of parental land and property”**

*“If there are no sons in the family then in order for land and property to be inherited either a brother’s son or a relative’s son is adopted, but daughters or sisters cannot inherit”*

Raj Kumar Prajapat, 28 is a full time farmer who lives with his mother, wife, a married brother and three sisters in Morwan village in Jawad *tehsil*, Ujjain district, Madhya Pradesh. After his father’s death Rajkumar and his brother inherited 5 bighas each of the total ancestral property of 10 bighas that was owned by his father. His mother did not get any share of the land. Later he purchased another 3 bighas, out of which 1 bigha each was registered in his, his wife and his mother’s name respectively. This was done mainly because when land is registered in women’s names the registration cost is 3 per cent less than the usual registration fees.

After his father’s demise, Rajkumar’s sisters’ names were also included in the land records along with their brothers as per the state government rules. He is however, confident that his sisters will never claim their share of land and in case they do he will take the matter to court, or sell the property but not give them their share. If matters come to worse he said that in case they ask for their share he will definitely break his ties with them. Rajkumar’s father-in-law owns about 15 bighas of land and he has a son and a daughter. According to Rajkumar *“my brother-in-law will inherit his father’s land and property and not my wife. I will abide by the customary practice.”* He has not heard of HSA 2005 and is not aware of the legal right that women now have to get a share of land and property from their natal family. He firmly believes in the social customs that do not recognise sisters/daughters share in parental property. He said that *“in case there are no sons in the family, then brothers’ son or a relative’s son is adopted”*.

Raj Kumar however justified his belief by saying that women have a right in marital property. In fact this is a common belief that denial of inheritance rights to daughters is justified on the ground that they inherit in their marital homes. However this is not their own right, but comes to them through their husbands. Women inherit more often as widows than as daughters or wives.

While the patterns are similar across the three states covered in this study, it is important to highlight that family opposition to daughters inheriting land is markedly higher in Bihar, where women reported opposition from parents and from brothers in 70% and 79% of the cases, respectively. In contrast, women's desire to inherit land is higher and, perhaps not coincidentally, family opposition is lower in Andhra Pradesh.

### **Case 3. A policeman denies land rights to daughters--- Does not recognise Indian law.**

The present day dowry system in India symbolizes the denial of inheritance of women and the desperation of parents to push their daughters out of their homes after marrying them off, no matter how this affects their well-being. Failure to do so is considered a stigma on the family's reputation. Since the woman is being sent as a disinherited dependent, the receiving family has to be compensated. It is only in the form of dowry or *dahej* that daughters get their share – albeit an unequal one- in parental property, most women consider dowry as their legitimate due.



The above is the common thinking amongst most Indian Hindu families especially those living in rural areas. Jai Krishna Yadav is no exception and he firmly believes that *“daughters have been given dowry, which represents their rights in parental property.”* Jai Krishna Yadav, 51 is in the state police forces and is posted in Begusarai district. His village Barahi is in Udakishanganj block in Madhepura district, Bihar where he lives with his wife, son, daughter-in-law and his grandchildren. His elder daughter has been deserted by her husband and lives with him while the younger daughter lives with her in-laws.

Jai Krishan Yadav appears very clear and firm in his conviction that only sons can and should inherit father's property including agricultural land. Daughters get dowry which includes gold ornaments, cash, vehicle, household goods required by her in her new house. Gifts are also given to her husband, in-laws and his relatives. He believes that giving dowry is very important as this ensures daughter's well-being in her new home. In his case too he said that *“I have given my daughters more than their share; my son shall inherit my property and the ancestral agricultural land. Since they have been given dowry, hence they have no right over family land and property.”*

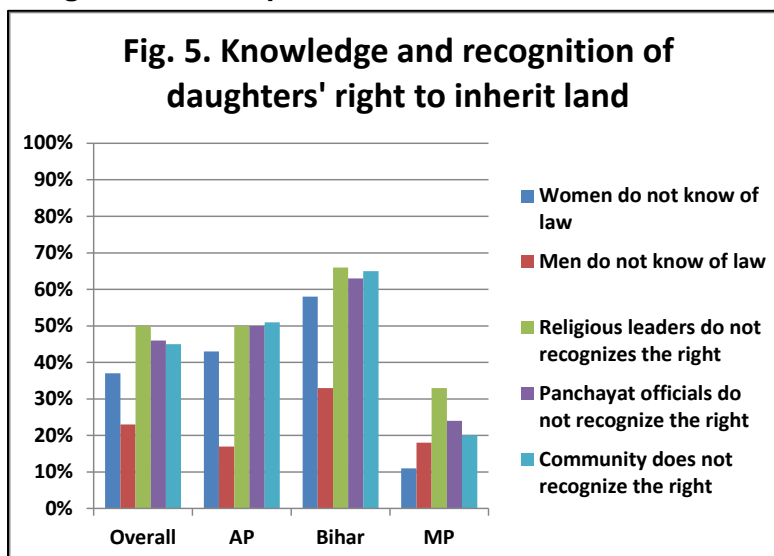
### **Assessing women's rights to inherit parental land**

With the HSAA, Hindu women's rights to inherit land are recognized by law. For these rights to be effective, however, (i) Hindu women need to know of their inheritance rights; (ii) their families, authorities, and communities need to be aware of, recognize, and enforce Hindu women's inheritance rights; and, (iii) Hindu women need to be able to enforce these rights. To be able to enforce their rights women need to be aware of where to present their claims, need to be able to get to that forum easily, need to have the ability and the means to present their claims, their cases need to be heard, the process should not take a very long period of time, and decisions in their favor need to be implemented. We use survey data to explore these issues in more detail.

## Women's limited knowledge of their rights to inherit parental land

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 vary by state and go from 89% knowing of the law in Madhya Pradesh to only 57% in Andhra Pradesh and 42% in Bihar.



## Recognition of women's rights to inherit parental land

We asked men the same questions and the numbers are only slightly 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.

Just as worrisome, 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. In fact, 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.

Of particular relevance is the lack of knowledge of the officers responsible for implementing these processes. Key informant interviews revealed that the *Patwaris*, *Panchayats*, and Village Revenue Officers are all men and that they are not aware of the actual clauses of the HSA 2005. While Officers at the Block-level know the act and its amendment, this knowledge has not trickled down. This is hardly surprising since we found no attempt to orient Village Revenue Officers and *Gram Panchayat* staff on this law and its provisions.

Moreover, the staff of the Legal Service Authority, a statutory authority charged with providing legal services to the poor, is not aware of the provisions of the HSA. As a result, they do not look for or take up any of these cases, nor do they cover them in their

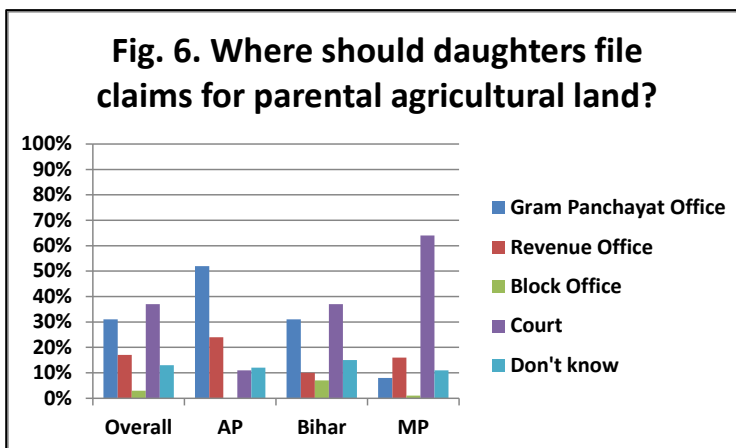
sensitization programs. The Legal Service Authority organizes legal awareness camps in the villages but so far it has not done any work regarding HSAA. Their legal volunteers at the village level are not aware of the HSAA.

### Women’s ability to enforce their rights to inherit parental land

To gauge the extent to which women understood the process to claim agricultural land from their parents, we asked them where a daughter should file her claim for parental land.

Women’s responses varied noticeably, suggesting this process is not clearly known and

understood. Thirty seven percent of the women said the claim should be filed at the court, a somewhat similar proportion of the respondents, 31%, said the claims needed to be taken to the *Gram Panchayat* Office, and 17% of the women told us it should be the Revenue Office. Thirteen percent of the women simply said they did not know. As Figure 6 shows, the distribution of women’s responses vary quite dramatically by state, with the majority of women in Andhra Pradesh indicating it should be the *Gram Panchayat* office at the same time that women in Madhya Pradesh overwhelmingly cited the court, and women in Bihar seemed to diverge in their knowledge.



the *Gram Panchayat* office at the same time that women in Madhya Pradesh overwhelmingly cited the court, and women in Bihar seemed to diverge in their knowledge.

Importantly, our data strongly suggest that women do not interact directly with the relevant government agencies tasked with addressing inheritance cases. Only 36 women in the entire sample said they had claimed parental land, and only 6 of these women reported being the ones who had handled most of the paperwork. The other women relied on their husband, children, or other relatives to file the claim.

To measure one aspect of women’s ability to enforce their inheritance rights, we had asked them how long it takes to process a claim and how much the process costs. Unfortunately, we don’t have reliable figures to report: the number of women who have filed a claim is too small and often even these women lack complete information because they are not the ones handling the cases.

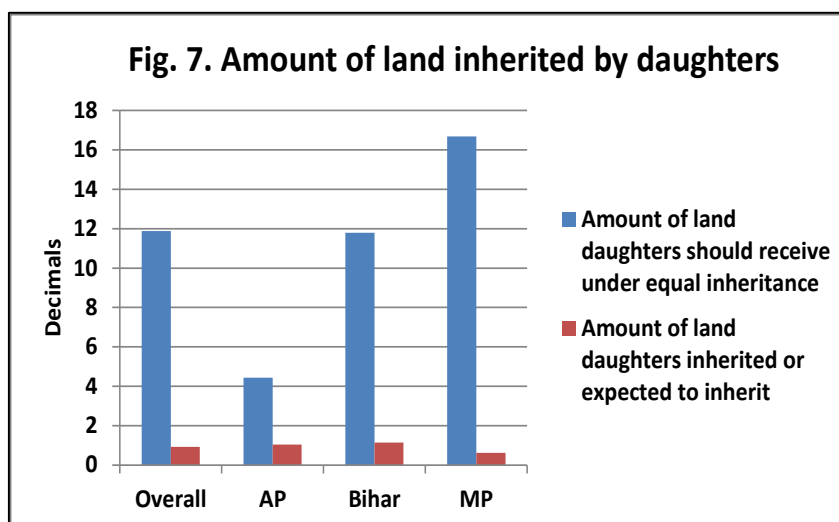
When we asked them for suggestions on what would improve women’s ability to inherit land from their parents, their suggestions included: having parents write a will that includes them – if the objection is only from their brothers--, having daughters’ names included in the application for succession—something that revenue officers are supposed to do, and increase women’s ability to deal with the court.

### Women do not receive an equal share of inheritance

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 the 11.88 decimals that a full application of the HSAA should have yielded. As Figure 7 suggests, the size of the gap between the amount of parental land 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,<sup>43</sup> and other assets. 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 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.



### Special circumstances under which women may obtain land

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 3 cases, the women knew that their fathers had partitioned the land but the documents were still with their fathers. They 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.

<sup>43</sup> 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.

#### Case 4. Dowry as an alibi to deny inheritance rights to sisters?

K. Rama Rao, 60 lives in Kurukutti village in Vizianagaram district in Andhra Pradesh. He lives in a large joint family with his wife and 5 sons all of whom are married. Rama Rao belongs to a well to do family and being the only son of his parents had inherited quite a bit of land from them. He has educated his 5 sons, out of whom the two elder sons have government jobs while the three younger sons work in their farms.

Rama Rao has 4 sisters, each of whom was given 2 acres of land as dowry along with other gifts. Giving land to daughters at the time of their marriage is a common practice in Andhra Pradesh. It is seen as *stridhan*, which as per Hindu customary practice is that portion of wealth, which is the exclusive property of women and passes from mother to daughter. The traditional *stridhan* is determined by norms in each community and usually includes items such as gold, cows, and a piece of land, clothes and utensils. However Rama Rao's sisters besides getting land at the time of their marriage also asked for a share of the ancestral land and as a result each of them got an additional 3 acres each. Hence his sisters got 5 acres of land each from dowry and inheritance leaving Rama Rao with 30 acres of land. The land has been registered in his sisters' names.



Rama Rao is not very happy with the fact that his sisters have sold the ancestral land they had got from natal family for their children's education and marriage. He too had to sell 17 acres out of the 30 acres left with him for his children's education and to meet other expenses. Apparently his land earlier used to be very dry and rocky and nothing could be grown there. The land became cultivable only after 1990 when bore wells were drilled in the field. Today the land is registered jointly in his and his wife's names.

Rama Rao has a traditional patriarchal mind-set. He believes that only sons should inherit parental property as they take care of their parents till their death unlike daughters who get married and become part of another family where their responsibilities lie. He strongly feels that daughters can inherit parental land and property only in the absence of brothers. He feels this way despite being aware of the Hindu Succession Act that was enacted by the state government in 1986. Rama Rao equates dowry with inheritance of land by daughters which is the prevalent practice in the state where land is also given as dowry.

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 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 dead person.

### **Women's land share more notional than concrete**

A person's land ownership is secure only when he possesses the land he owns, he has the title and a land record for the same. In our in-depth interviews, we ask women whether they possess the land; whether they have the papers; whether the papers are under their control; where the papers were; and, if the land was inherited, whether the land was demarcated.

Our findings suggest that women's land inheritance is more notional than physical. In Andhra Pradesh, where giving land as dowry is common, the number of cases in which women has actual possession of the land and women have the papers remains low. While women tend to know how much land their parents gave them, they rarely have the papers to prove it and their land is unlikely to be demarcated. Nor are daughters likely to have completed a mutation and possess the documents for land inherited from their parents. When asked why, women expressed that the technical and bureaucratic complexities, the cost, and the hassles of follow up have often deterred them from obtaining the papers. This is complicated with obstacles created by objections from their brothers and the bribes asked by revenue officials that often make their efforts more difficult.

### **Perspectives from the Key Informants**

*Patwaris* (*karmacharis* in Bihar) and *Tehsildar* are the two key officials who represent the land administration of the state to the people, including women. We explored a number of issues with them.

These officials' interaction with the women in the village or at their offices is a rarity. 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.

The *Patwaris*, the state's last mile representative nearest to people have very little idea of the provisions of the HSAA 2005 and its implications for their work. They could vaguely articulate that women have equal inheritance rights as men. 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. In the case of *Tehsildars*, we found the *Tehsildars* are very much aware of the HSAA and its provisions. However, they do not feel there is any proactive role for them as inheritance is a family matter, and the *Tehsildar* has no say on it. 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 feel that the challenge lies within the society that is not allowing the women to seek her share, and also with the women, who for the sake of family harmony are not coming forward themselves. The *Tehsildars* did not recognize that they can do more to help the women seek and claim their inheritance. But all of them agree that if a woman stakes a claim, the *Tehsildar* can use his or her administrative power to ensure that she gets her share. At the same time the *Tehsildars* did not feel that the *Patwaris* need to be trained on HSAA, or that the process of inheritance had to be more transparent, sensitive or favorable to women.

Interviewing the *Patwaris* and *Tehsildars*, we could clearly see the disconnect: The *Patwaris* felt they needed training and orientation on how to implement HSAA, the *Tehsildars* did not feel that way and all the *Tehsildars* we met unequivocally placed the challenge on the women themselves. The *Tehsildars*, being a judge in the revenue court, were of the opinion that the *Tehsildar's* office can only take up cases that are presented to them directly. The



*Tehsildars* clearly saw themselves performing a judicial function rather than a development function.

The *Sarpanch* and the *Gram Panchayat's* staff also echoed the sentiment of the *Tehsildar*, saying that the barrier was with women who do not want to claim their share. The *Sarpanch*s 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's staff we met believe that the lack of legal literacy among women on basic land issues is one factor that impedes the implementation of the HSA 2005. They also revealed that sensitizing rural women on their inheritance rights is not part of their approved topics. As a result, their staff and volunteers are not oriented on HSA related issues and sensitizing the villagers, and women in particular, on HSA is not in their program's agenda.

The study findings offer a few critical insights. Firstly, it is clear that the Hindu social practice allows the parents to absolve them from honoring the daughter's inheritance right at par with their sons by the alibi of paying dowry at the time of the daughter's marriage. The practice is so deep that neither the daughters feel it's their moral and legal right to claim inheritance of parents' property, nor 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 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 by some means the 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 more than notional. The women are seldom in possession of the land, title and the ROR--- that make it a secured tenure. Fourth, lack of political will of the state government is clearly visible as there is hardly any pro-active effort on the part of the state to enforce women's right to inheritance. In contrast, what is striking is that women universally expressed the desire to own land, implying that they fully recognize the value of land and property for their wellbeing. Their lack of action to claim it 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.

## 6. State Level Analysis - Andhra Pradesh

### Summary

Andhra Pradesh is one of the most highly populated states in southern India and, as a result of its economic development and its location near the sea coast, its population continues to grow steadily. Although the state has one of the most advanced IT and telecom sectors, close to 67% of its population live in rural areas and according to the Andhra Pradesh Census 2011 only 67% of its people are literate. This rate is lower than the national average of 74% and it is a source of concern. Worryingly, the picture is worse when one uses sex-disaggregated data: while male literacy stands at 75%, only 59% of the women are literate.

To prove ownership and possession of land, there are two important documents in Andhra Pradesh: the *Pattadar* Pass Book (PPB) and Title Deed (TD). It is essential for all who own agricultural land to have both of these documents. Although many of the farmers in Andhra Pradesh have inherited land, they often lack the PPBs and the TDs. Years after the death of the land owner, it is common for the PPBs and TDs to remain on the name of the former owners with the name of the current owners found only in revenue records.

#### Process of Mutation in Andhra Pradesh<sup>44</sup>

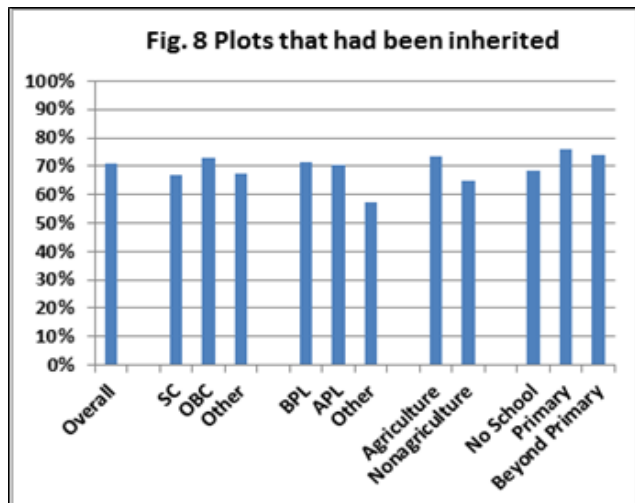
- The Village Revenue Officers (VROs) maintain the land records. They identify land owners and make entries in the land record of rights of the person in whose name the title deed is. When there is no consensus on who should be heirs to the land, VROs present the case to the *Tehsildar*;
- The persons acquiring land through inheritance must apply to the *Tehsildar* using Form-6A along with a copy of their *Adangal* and *Pahani*, PPB and TD, if they have one or four passport-size photos if they do not have a PPB or TD. *Adangal* is the register showing the area, classification value and assessment of a land holding with the name of its holder. *Pahani* is a record that contains details of the land such as information about its owners, area, assessment, water rate, soil type, nature of possession of the land, liabilities, tenancy and crops grown;
- The *Tehsildar* issues an acknowledgement in Form-6c to the applicant (Section 4(1) & Rule/18 (1));
- The *Tehsildar* gives notice to the concerned persons using Form 8. These notices are pasted on the notice boards of the *Gram Panchayat*, Village *Chavidi*, *Tehsildar* Office, and *Mandal Parishad* Office (Section 5(3), rule 19).
- Any objections must be filed within 30 days of receiving notice (Rule 19);
- The VRO records the parties' statements. He matches the contents of the documents submitted with the recorded statements;
- The VRO submits his report in the prescribed format to the *Tehsildar* for approval;
- The *Tehsildar* conducts the enquiry on a specified date. At least 45 days are given from the date in which notice was received to conduct the enquiry (Rule 19(1) & (20));
- If there are disputes, and the *Tehsildar* upholds the objection, a rejection memo is issued to the party who can later file an appeal;
- If there are no objections against the proposed mutation, the mutation is approved and it is recorded in the Record of Rights – IB Register & Amendment Register;
- Once the *Tehsildar* approves the mutation, the maps are updated;
- In case a partition is needed, the Government collects a fee of Rs.250 for every survey

<sup>44</sup> Andhra Pradesh Record of Rights and Pattadar Passbooks Act 1971.

number and issues a *challan* (receipt), a copy of which must be attached with the application form submitted to *Tehsildar*;

- After the partition, the *Tehsildar* issues orders to issue PPBs and TDs;
- After incorporating the required changes in form I, IB, VII registers; the *Tehsildar's* Office prepares the PPB and TD. (Section 10A & Rule 13);
- The PPB is signed by the applicant, the VRO and the *Tehsildar*. The TD is signed by the applicant, the Revenue Divisional Officer, the VRO and the *Tehsildar*;
- Once the applicant has signed Form-17 Register, the PPB and TD are handed over to the applicant;
- The VRO registers the name of the persons receiving the PPB and TD in the *Pahani/Adangal* (Section 10A & Rule 30).

Andhra Pradesh was one of the first states of India to recognize women's rights to land and property. In 1985, the Andhra Pradesh Legislature adopted a Bill that conferred Hindu women equal rights to property. These rights are largely captured in sections 29-A, 29-B, and 29-C of its Hindu Succession Act<sup>45</sup>. Section 29-A stipulates that in joint families governed by *Mitakshara* law, daughters are, by birth, coparceners in their own right and have the same rights in the coparcenary property as they would have had if they had been sons. This provision makes daughters' rights to ancestral property direct and absolute. Section 29-B provides for the devolution of such interest by survivorship. Section 29-C gives preferential rights to acquire property in certain cases.<sup>46</sup> The amendments made by Andhra Pradesh have resulted in revenue courts granting daughters shares in coparcenary property. Even in cases of partition where final decrees have yet to be passed and are still pending, the courts have upheld the rights of daughters to claim a share of coparcenary property as per Section 29-A. The more recent, country-wide HSAA, 2005 has been effective in Andhra Pradesh since September 9, 2005.



However, almost three decades after the Hindu Succession (Andhra Pradesh Amendment) Act 1986 granted Hindu women equal rights to property, inheritance of parental land in Andhra Pradesh remains heavily biased against women.

## Findings

### Inheritance is the most frequent avenue to acquire land

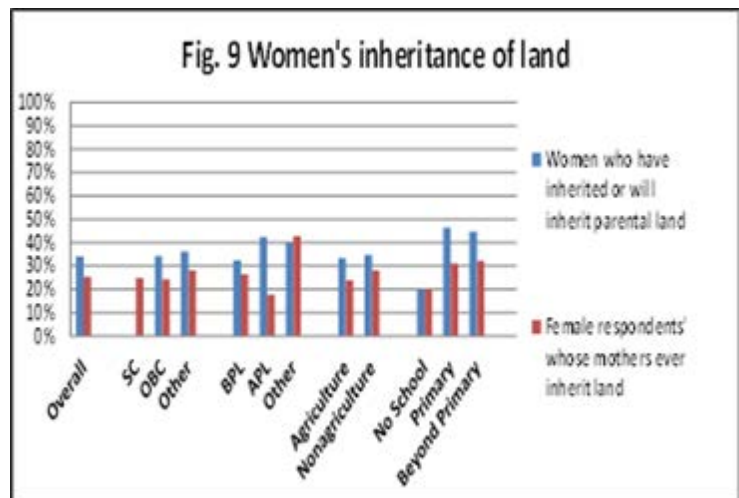
Eighty five percent of the households we interviewed in Andhra Pradesh have at least one plot of land that was inherited. By contrast, of the 1922 plots reported in our survey only 25% had been purchased and fewer than 3% were plots received from the government or leased. While inheritance is the most important avenue to acquire land regardless of household demographics, it is more prevalent among households from Other Backward Castes and households dedicated to agriculture.

### Women do not inherit land

<sup>45</sup> The Hindu Succession (Andhra Pradesh Amendment) Act 1986.

<sup>46</sup> Ranganathan et al, 2007

Compared to the women we interviewed in Bihar and Madhya Pradesh, those in Andhra Pradesh had the highest rate of parental land inheritance: among the women whose parents owned land, 34% reported that they have inherited or will inherit land. Consistently with this figure, 25% of the female respondents and 23% of the male respondents in Andhra Pradesh said that their mothers had inherited land from her parents. While these rates are surprisingly low considering that women in this state have had equal rights to inherit land for 27 years, they are more than four times higher than the rates we found for Bihar and Madhya Pradesh. Interestingly, the intergenerational improvement in women's inheritance of land appears to have taken place among in households Above the Poverty Line.



### Case 5. “Daughters too like sons must inherit land and property”

Aruna Kumari is the proud owner of 75 cents of land which she got as dowry from her father along with Rs. 35,000/- in cash when she got married to her maternal uncle i.e. mother's brother. In fact that same piece of land was given to her paternal grandmother as dowry when she had got married in the same village as Aruna. She has been given a pattadar pass book, but the registration process is yet to be completed.

Aruna, 36 is an aware confident young woman who lives in a joint family along with her in-laws, husband and two children, a son (14 years) and a daughter (12 years). They live in Kurukutti village in Salur mandal, Vizianagaram district. Her family owns 3 acres of land which is cultivated by her father-in-law and her husband to grow bananas, while her two brothers-in-law live in Kakinada town. Her sister-in-law is married. The land has not been partitioned and is in her father-in-law's name. They plan to lease-in 2 acres of land from those who do not do farming to grow cotton at an annual rent of Rs. 2000.



Unlike most women in her village Aruna has heard of HSAA 2005 and of the fact that daughters have equal share in parental property. This has been possible because of her active role in politics and the fact that she is a member of the Telegu Desam Party and is an elected member of the Mandal Parishad<sup>47</sup> Territorial Constituency. At one of the meetings organised for elected representatives of Mandal Parishad she got to hear about the Hindu Succession Act from the District Collector “...during that meeting they told us that women are getting equal share in property including agricultural land with men....”. She agrees with the underlying principle of the Act that daughters have equal rights to land ownership as their brothers. She also feels that even though girls shift to other villages after marriage, that should not be the reason to deny them their inheritance rights “...if daughter was married in another village, her parents can continue to cultivate the land given to the daughter and give

<sup>47</sup> A Mandal Parishad is constituted for a revenue mandal, as such mandal parishad and revenue mandals are coterminous.

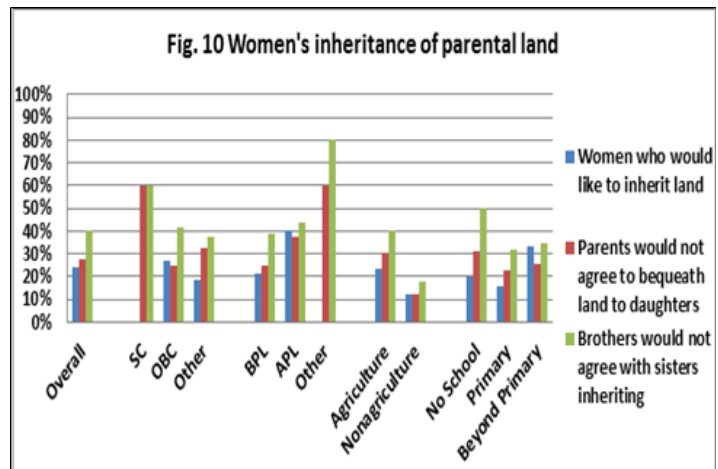
her the earnings from the produce.....". Besides being an active member of the Mandal Parishad she is also the President of Vigneswara Mahla Sangham. As a group they got a loan of Rs. 150,000 from Andhra Bank which was distributed equally to all members for meeting expenses related to children's education and agriculture.

Being an elected member of the Mandal Parishad, President of an SHG and the owner of land have given Aruna a sense of empowerment and self-confidence enabling her to assert herself at home and in her community.

### Women want to have land but are not asking to inherit it

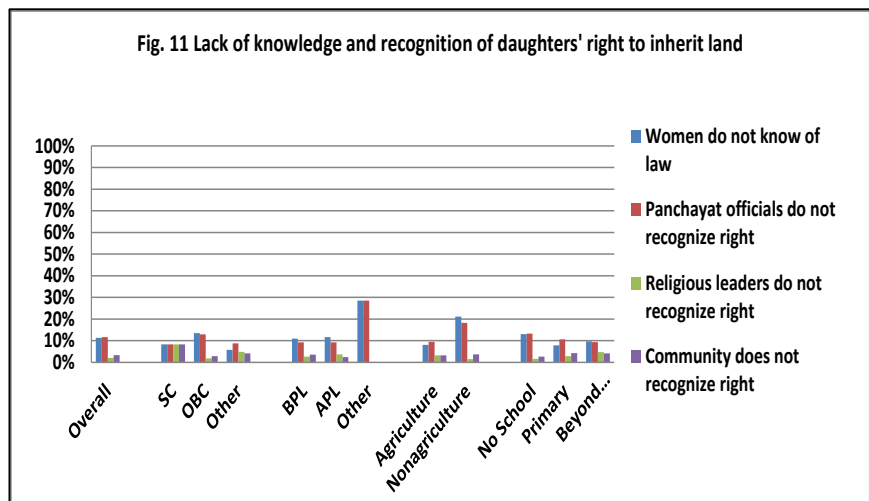
Although women expressed a desire for land as a source of additional income and because daughters should have the same rights as sons, less than one fourth of the women we interviewed in Andhra Pradesh said they wish to inherit land from their parents. Breaking down the analysis by caste, income, occupation, and education, we find that women were more likely to express a desire to inherit land if they were more educated or their households are Above the Poverty Line, dedicated to agriculture, or from Other Backward Castes.

Those who reported no interest in inheriting land believe that their families will take care of them. Interestingly, when asked about their families' openness to bequeathing land to them, 27% of the women interviewed said their parents would not agree and a notable 40% reported that their brothers would object. Family objection appears to be high across the board but more prevalent among Scheduled Castes, agricultural households and for women with no schooling.



### Women's limited knowledge of their rights to inherit parental land

Most of the respondents in Andhra Pradesh said that daughters have the right to inherit land from their parents. However, only 5% of men and 14% of women are able to answer the four basic questions we asked about daughters' rights to inherit parental land, exhibiting a fairly universal lack of awareness of the provisions of the law.



### **Case 6. Unequal share of land to daughters, if at all**

*In spite of the law on equal inheritance by sons and daughters of parental property and land, the marriage and dowry practices and the traditional patrilineal customs have remained largely unchanged. There is therefore a mismatch between marriage practices and customs and inheritance laws, with the strength and biases of marriage and dowry practices often overriding inheritance laws. Daughters' dowry is seen as her portion of inheritance, even though it maybe typically absorbed by the new husband and his family.*

*"Though I inherited land from my husband, after my death my sons will inherit and not my daughter".* This is the reply given by G. Chinnatalli, 65, an unlettered widow who lives with her two sons, daughters-in-law and their children in Madugula Koduru village in Madugola mandal in Vishakhapatnam district when asked about who will inherit her land. Her only daughter is married and lives in another village. They belong to Kappu caste that is primarily agrarian.

She is presently the owner of a 1 acre plot of land which her husband had inherited. Her father-in-law had 10 acres of land which had been divided amongst his 4 sons (2 acres each) and the remaining 2 acres had been sold for the daughter's marriage. Out of the 2 acres of land inherited by her husband, 1 acre was sold for the marriage of her sons and daughter. On the remaining acre of land paddy is cultivated by her sons and she helps out too whenever needed. They get around 10 bags of paddy which are consumed by the family. Besides working on their own field, her sons also work as agricultural labourers and get paid Rs. 150 per day. Chinnatalli too works in others fields for half day from 6 am to 12 noon and gets Rs. 70 per day.

Chinnatalli has not heard about HSAA and the fact that daughters now have equal rights to ancestral land as sons. When told about this Act she vehemently opposed it by saying... *"I don't agree with it as only sons should get father's property and if needed a small share of the land could be given to daughters too".* She felt that land can be given to daughters if they are not well off or in case the father has a lot of land. She explained with the example that *..."if I had 20 acres of land with me, I would give 8 acres each to my two sons, 2 acres to my daughter and keep 2 acres with me."* Lack of legal awareness and also patriarchal conditioning shows that women are not yet ready to assert their rights.

Though Chinnatalli owns land herself and is proud of the fact, yet she does not believe in her daughter inheriting it *"...after my husband's death I was entitled to the land as his widow and so the land is now registered in my name. After my death my two sons will inherit it and not my daughter. This is because I have given her dowry. I am yet to give my consent for division of this property since I am the owner of this house and 1 acre land."*

### **Lack of recognition of women's rights to inherit parental land**

The vast majority of the female respondents reported not knowing whether their rights to inherit parental land were recognized by government officials, religious leaders, or even their community. Splitting the analysis by demographic variables we find that women from Other Backward Castes are more likely than those from other castes to state that their rights are not recognized, as are those who are classified as Below Poverty Line. Women with no education are also more likely to say that governmental, religious, and community agents do not recognize their rights to inherit land.

### **Case 7. "Daughters and Sons should get equal share of land and property"**

*"I shall give my daughter land and it will be registered in her name. If my son-in-law turns out to be a good person and looks after my daughter well, then we might register the land in both their names"* according to G. Padmavathi, a 37 year old mother of two daughters in

Vishakhapatnam district. She belongs to the powerful Kapu caste whose main livelihood is agriculture and farming.

Her husband has inherited 1 acre of land from his father. Earlier her father-in-law owned 50-60 acres of land, most of which was lost over time. When she got married he only had 4 acres which got divided amongst her husband and his three brothers. Land was not given to his three sisters; instead land had been sold for their marriage. Other than this 1 acre inherited land, Padmavathi is the proud owner of ½ acre plot of land which her husband had bought with the dowry she had got with her when she got married i.e. a cash amount of Rs. 1,50,000.

Her husband cultivates their 1.5 acres of land to grow paddy, and grams like arhar and black gram. At times they also give out their land on lease to other farmers and get a part of the income generated. For example if Rs. 50,000 worth of sugarcane is grown, they get Rs. 15,000/-. Padmavathi works as an anganwadi teacher and gets a monthly salary of Rs. 3700/-. This has also given her an exposure to the outside world and as such she has heard about the HSAA 2005 and completely agrees with its underlying contention that both sons and daughters have equal rights over parental property and land. She believes that even if she had a son, she would have divided her land equally between them.

### **Women's dowry often is not equivalent to an equal share of the inheritance**

We conducted qualitative interviews with 16 women in Andhra Pradesh. Nine of these women had received land as dowry. But in seven of these nine cases, they are not in control of that land. The land has not been mutated and even among those whose parents' had initiated the mutation; the documents are in their fathers' possession. In some cases the brother of the woman tills her land and gives her an annual share of produce. In two cases, the women have leased the land out and receive rent. All of these women said that sons have the moral right to inherit parental land and girls can receive land as dowry.

### **Case 8. "For daughters it is dowry vs land inheritance"**

*Dowry for women and inheritance for men has been the cultural norm among most communities. To give the impression that women are not deprived from inheritance, dowry has often been represented as a compensatory wealth for inheritance.*

Neelaveni, 38 is an unlettered woman farmer who lives with her husband and two children, a son and a daughter aged 18 and 17 years respectively. They belong to the backward Koppala Velama caste (warrior caste). They live in Balagudaba village in Parvathipuram mandal in Vijayanagaram district, where farming is the main occupation. She along with her husband farm a 3 acre land which he inherited from his father. This piece of land however is still registered in her father-in-law's name....*"when there are elder people in the house land will be in their name only..we don't have a pass book too...."*. Her father-in-law besides giving land to his three sons had also given 1.25 acres to his eldest daughter as dowry. That plot of land has been lease out by her sister-in law.

Neelaveni and her husband grow paddy on their patch of land from where they manage to produce about 60 bags for which they earn around Rs. 900 per bag. Since they invest about Rs. 15,000 per acre, the profit margin is not much.

Besides farming Neelaveni is also a member of a



DWCRA SHG which function as thrift and credit savings group. She regularly attends SHG meetings and it is at one such meeting that she heard about the Hindu Succession Amendment Act 2005 for the first time. Though she knows that sons and daughters have equal inheritance rights to parental property and land she is strongly against daughters inheriting land from their natal family. She believes that only sons have the right to inherit ancestral land as daughters get dowry at the time of marriage and gifts during festivals and other times when they visit their maternal home. However, in case of no sons then daughters will inherit..... *"We don't care about such Acts in this village as we follow our social traditions. It is not possible for a daughter to get equal share in the parental land along with the sons. Instead they are given dowry. When my daughter gets married I will give her Rs. 7-8 lakhs in cash as dowry but will not give her land. Besides cash we will also give our son-in-law 24 grams of gold. The cash will be given to her in-laws and her mother-in-law can buy her gold with this money."* She further said that though daughters do not get a share of their parental land, they have a right in their husband's property.

Neelaveni is the only daughter of her parents who have expired. Her five brothers have inherited 2 acres of land each which they cultivate together in the same village as Neelaveni. She said that rather than claiming her share of land she would rather maintain good relations with her brothers. She also explained that if she owned land in her name that property would go to her daughter and not her son as per their cultural practices and norms....*"I want my son to inherit our land as he will give us food; will the son-in-law give us food?"*

### **Women's ability to enforce their rights to inherit parental land**

We asked women about the steps that can be taken to strengthen a woman's ability to inheriting land from her parents. Most of them said that the best way for women to be able to claim land is having parents write a will or having women's names included in the application for succession. Only a small fraction mentioned filing claims in courts or asking revenue offices.

We also asked women where claims had to be filed. Even though nearly 70% of the respondents identified the *Gram Panchayat* offices as the institution in which to file a claim, only 2% of the women we interviewed in Andhra Pradesh had ever thought of the possibility of claiming land and even fewer did so. Those who did file a claim did it through their husbands, showing that even when women claim land they have little participation in the process.

### **Women's familiarity with the relevant land administration processes**

Our qualitative interviews suggest that while women could not clearly articulate critical parts of the HSAA, they were more versed on the processes of mutation and partition. Women could articulate the name of the documents involved (the *Pattadar* Pass Book, the title deed, the *Pahani*, and the *Adangal*). They also knew that the Village Revenue Officer had the key role in both processes. We cannot determine, however, how well they know the processes beyond these facts.

When we asked women about their interactions with the VROs, most were able to identify their VRO, but had not had more than casual encounters with them. They understood this as falling under men's domain and indicated almost universally that their husbands (or brothers) would know more.

This was confirmed by the men with whom we talked: they have interacted with the VROs many times, have visited the *Tehsildar's* office, and know a lot more about the steps involved in petitioning a mutation, dispute resolutions, partitions, and other land related matters. The information asymmetry between the men and the women on these issues was stark. Yet



men's awareness of the provisions of the HSAA 2005 is no better than women's. Their knowledge is limited to the fact that the women have equal rights to land.

### **Voices of the Revenue Officials**

In case of inheritance, there are two main parts to the process: establishing the legal heirs of the deceased and processing claims of inheritance. The VRO is responsible for preparing the list of heirs and sending it to the *Tehsildar*. If there is no consensus as to who are the legal heirs of the land, the VRO records the case and informs the *Tehsildar*. After this, each heir or claimant has to individually lodge her or his claim to the *Tehsildar*. We have described the process to settle claims at the beginning of this section.

We wanted to understand what this process looked like in the field. What the revenue officials said was consistent with the responses we obtained when we interviewed women and men. Although the VROs are not fully aware of the HSAA 2005, they do know of Andhra Pradesh's 1986 Act. Still, following social norms, the VROs feel no obligation to take proactive steps that might benefit women. Typically, the VROs prepare the list of heirs by talking to members of the family. They often talk to both men and women but if they hear women say that they do not want a share of the land, they drop the women's names from the list. Even when daughters' names are included among the legal heirs, to claim their rights they would have to apply for their individual share of land to the *Tehsildar*, something they are highly unlikely to do.

According to the VROs, when there is consensus in the family to have daughters inherit land, they do get a share, but it is unlikely to be an equal share. Daughter's shares are determined by their brothers and if their brothers do not agree they are unlikely to receive a share. This was confirmed by the *Tehsildars* who conveyed that if a woman wishes to inherit land, she typically has to act against social norms. This requires courage and tenacity to pursue the claim with the *Tehsildar* and quite often the lower court. Married women may be able to count with support from her husband and her marital family if they are in favor of her petition. For widows this becomes doubly difficult.

When we asked *Tehsildars* for a way to address these issues, one of them suggested having a rule that makes it compulsory to include women's name in the legal heir list prepared by the VROs, and either dispensing of the individual claim application for women, or modifying the rule empowering *Tehsildars* to take *in camera* evidence of the women, no matter what her written statement may be.

### **Voice of the District Legal Service Authority staff**

The staff of DLSA provides three types of legal services to the poor. First, the DLSA takes up the brief on behalf of the poor in district courts, fighting their causes. Second, the DLSA provides free legal advice to the people. Finally, the DLSA organizes awareness camps in the villages. Currently, the list of topics on which DLSA works does not include HSAA related issues.

While the staff of the DLSA we interviewed in both districts acknowledged that women face strong social barriers to claim their share of parental land, they believe that given that women's Self-Help Groups and their Federations are strong in Andhra Pradesh, providing legal literacy campaigns and training to the leadership of these collectives can make a significant difference. This has been the DLSA's experience on legal campaigning against domestic violence, where these women's groups have increasingly taken up the fight against domestic violence as one of their social action agendas. We asked if it was possible to include the HSAA 2005 as one of the topics on which the DLSA works and their answer was 'yes.'

## 7. State Level Analysis - Bihar

### Summary

Located in the landlocked east, Bihar is the third most populous Indian state and the twelfth largest in size. Bihar's population density is the highest in the country. Its recent history has shown a period of high economic growth, though nearly 85% of its population is rural. Fifty eight percent of its population is under 25 and 64% of its habitats are literate.

Bihar is known for its land related violence from the extreme right, where *Ranvir Sena*, a land mafia nurtured by the landed gentry uproots Dalits from their land and takes possession, and from the extreme left, where armed Maoists guard against such violence and in the process add to it by capturing and recapturing land from the landed gentry.

According to the Bihar Land Mutation Act, 2011, mutation entails altering entries in the *Khatiyani* and *Khasra* Register on account of the transfer of rights of a person in a holding or a part thereof by way of inheritance or succession, intestate or testamentary, and the partition of the holding. The *Khatiyani* is the updated Record of Rights that reflects changes in the rights of a person in a holding or a part thereof since the last published Record of Rights. The *Khasra* Register refers to the register of such records.

### Process of Mutation in Bihar<sup>48</sup>

- Persons who wish to mutate land in their name must apply to the *Anchal Adhikari* (Circle Officer) to change the *Khatiyani* and *Khasra* registers in their name. Alternatively, they can request it at the camps that *Anchal Adhikari* organizes from time to time. This is called a petition;
- When a petition for mutation is received, the *Anchal Adhikari* issues a receipt of acknowledgement and allots a serial number to the case;
- On receipt of the application for mutation, the *Anchal Adhikari* initiates a mutation proceeding by giving an order of enquiry to the *Karmachari* (equivalent to a *Patwari*) and the Circle Inspector;
- The *Karmachari* submits to the *Anchal Adhikari* his independent report recording information on the land and the legal heirs of the deceased;
- On receipt of the order for enquiry with regard to the mutation petition, the *Karmachari* enquires in the prescribed manner and submits the report of the enquiry in the prescribed form to the Circle Inspector;
- On receipt of the enquiry report from the *Karmachari*, the Circle Inspector examines the veracity of the enquiry report of the *Karmachari* and records his findings in the prescribed manner along with his recommendations;
- The Circle Inspector submits the enquiry report of the *Karmachari* along with his own findings and recommendation in the prescribed form to the *Anchal Adhikari*. If the *Anchal Adhikari* is not satisfied with the enquiry report of the *Karmachari* and the Circle Inspector, he may enquire himself in any manner he deems fit and record his findings in the prescribed manner;
- On receipt of the enquiry report from *Karmachari* and Circle Inspector or upon his own enquiry, the *Anchal Adhikari* invites any interested person to present objections, either in the regular mutation court held in his office, or in the camp courts organized for the disposal of mutation cases from the area where the holding or a part thereof is situated;

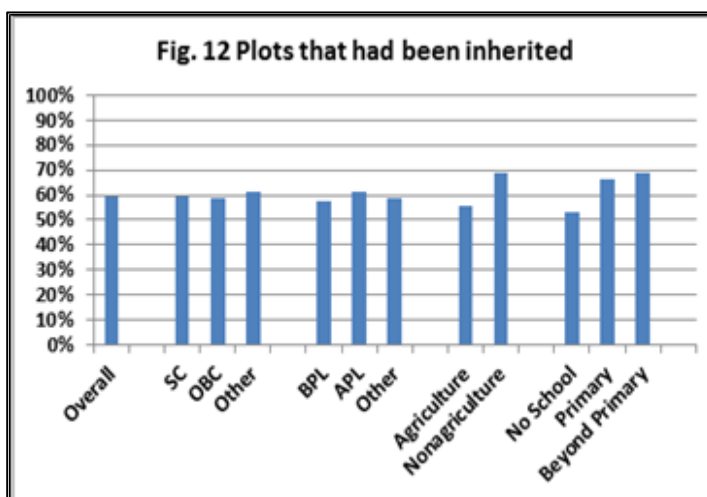
<sup>48</sup> Government of Bihar, 2011.

- On receipt of an objection, the *Anchal Adhikari* gives reasonable opportunity to the parties concerned to adduce evidence, if any, and of being;
- Once the objections have been resolved or if no objections have been received, the *Anchal Adhikari* disposes of the mutation case;
- If the mutation petition is rejected, the *Anchal Adhikari* records in the order sheet the grounds on which he has rejected it and informs the petitioner in the prescribed manner;
- If the mutation has been approved, the *Anchal Adhikari* issues correction slips to give effect to his orders for mutation in the prescribed form and intimates the petitioners. The *Karmachari* alters the entries in the *Khatiyani* and *Khasra* register of the revenue village in which the holding or a part thereof is situated reflecting the order for alteration given in the correction slip;
- Mutations claimed on the basis of partition other than by the court or registered deed, are not allowed unless there is consent for partition by all co-sharers;
- An appeal against the order of the *Anchal Adhikari* can be made to the Land Reforms Deputy Collector within thirty days. The Land Reforms Deputy Collector hears the appeal, provides both parties with an opportunity to present their case, and passes an order as he deems fit;
- A second appeal, called a revision, can be made to the Collector/ Additional Collector of the district. An application for revision is filed before the Collector/Additional Collector of the district by any person aggrieved by an order of the Land Reforms Deputy Collector within 30 days from the date such order was issued;
- The Collector/Additional Collector shall not pass any order modifying, altering or setting aside an order of any authority or officer unless the concerned parties have been given a reasonable opportunity of being heard.

Neither the laws nor the process described above explicitly discriminate against women. The mutation process is, by and large, a technical quasi-judicial procedure devoid of any social concerns. However, given that the *Anchal Adhikari*, Circle Inspectors and *Karmcharis* are typically men and that in the villages they tend to interact only with men, it is not surprising that the administrative processes are not women friendly, or in any way proactively take into account women's concerns and this can be problematic as it reinforces the gender biases in land inheritance that the HSA was meant to eliminate.

## Findings

As seen in Table 2, our sample for Bihar is mostly made of households designated as Other Backwards Caste (66%) and Below the Poverty Line (51%), with an average household size of 7.5 members. Seventy five percent of households in Bihar cite agriculture as their primary source of income. On average, households can access 2.6 plots and have documents for 2.5 plots. Only 4.91% of the plots have documents that include women's names and only 7% of the women have plots titled solely under their names. The vast majority of the women we interviewed are married. Just over 60% of them have no schooling and 53% are involved in agricultural work as their main occupation.

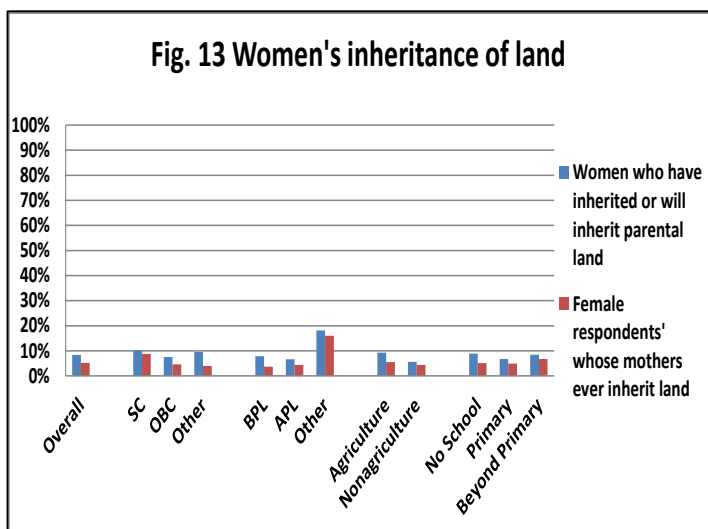


### Inheritance is the most frequent avenue to acquire land

As in the other states, most households who own land have acquired it through inheritance. Households who are agricultural workers are less likely to have inherited land and so are those in which women have no schooling.

### Women do not inherit land

Among those whose parents own land, only 8% of the female respondents have inherited or expect to inherit land from their parents. This is consistent with responses from the men we interviewed in Bihar, 12% of whom indicated that their sisters had inherited or would inherit land from their parents. The proportion of women inheriting parental land is low across the board—disaggregating the analysis by caste, economic status, occupation, or education does not uncover much difference. The only group with slightly higher numbers comes from households that do not fit in either the APL or BPL groups. Furthermore, it appears as if traditions have not changed much given that only 5% of male and female respondents indicated that their mothers had inherited any land from their parents.



### Case 9. “Uma Devi---A proud owner of land through inheritance”

Uma Devi Mahto is a frail looking 65 year old woman who lives in Dandari village in Singheshwar block in Madhepura district. She lives with her husband Chandrashekhar Mahto, her two sons, their wives and children. Her husband Chandrasekhar Mahto belongs to Saharsa district. They got married when she was only 15 years old. At that time her husband was working in a private firm in Nepal. Uma Devi seems to be a plucky and determined woman. She had continued with her studies even after marriage and had studied till Class 10 after which she wanted to do a teachers training course, but was discouraged by her father-in-law. She made sure that all her four children i.e. 2 sons and 2 daughters had studied till Class 12. She even sold 1 bigha of land to finance her younger son’s engineering course.

Though she may look frail on the exterior, when Uma Devi started talking she seemed very confident and proudly told us that she is the owner of the land and the house where they are now living. Being one of two sisters, she inherited 1 cottah<sup>49</sup> land from her father but is yet to get the mutation done, primarily because she feels that is a long drawn and cumbersome process and fraught with corruption “...there are difficulties.

One has to go to the block many times...and mutation requires money...”. Despite the fact that she inherited land from her father, she firmly believes that it is only sons can inherit and are the natural heir to parent’s property and agricultural land. “I would like my sons to inherit my property. But, if a father has only daughters, then they inherit the property.”



<sup>49</sup> Cottah is a unit of area approximately equal to 1/20 of a bigha.

Other than the land inherited by her, Uma Devi is also the legal owner of 3 bighas of land that her husband had bought after he returned to India to settle down in his in-laws village. This land was registered in Uma Devi's name primarily to avoid a social custom where a man's brothers have a share in his individually purchased property. Uma Devi like most other married women in Bihar believes that a woman has a right over her husband's property. She is quite aware of her status as a land owner and of the fact that she has inherited land. Being educated she is quite articulate, confident and plays an active role in the decision making process in her house.

**Case 10. "A separated woman demands share in her husband's property, does not want share of her parent's land"**

Supriya Rani currently lives with her parents in her natal village Barahi in Udakishanganj block in Madhepura district. She was earlier married to a man called Prakash Ranjan and has two children with him a son and a daughter. After his demise in an accident, she married her brother-in-law Manoranjan and has a son with him. However, her second marriage did not last very long and soon she was abandoned by her husband who got married to someone else and threw her out of the house along with her young son, while the elder two children were kept with them. Three years have passed since she was forced to leave her marital home leaving behind her children. During this time her in-laws have neither called her back nor have they allowed her to meet or even talk to her children.

Supriya keeps herself busy by working in her father's field a total of 10 bighas, out of which 5 bigha was inherited and the remaining 5 bighas were bought by him. Her father works with Bihar police. She mainly does sowing, transplanting, weeding along with household chores.

Supriya has a brother who she believes will inherit her father's land as sons are natural heir to father's property; while daughters get dowry. She is unaware of the fact that that legally daughters have equal rights to land along with their brothers. On the other hand she strongly believes that women have a share in their husband's property and said that she will fight tooth and nail to get a share of her marital property especially since she has three children. Her father-in-law is financially well off and has 8 bighas of land, out of which 5 bigha was inherited and 3 bigha was purchased.

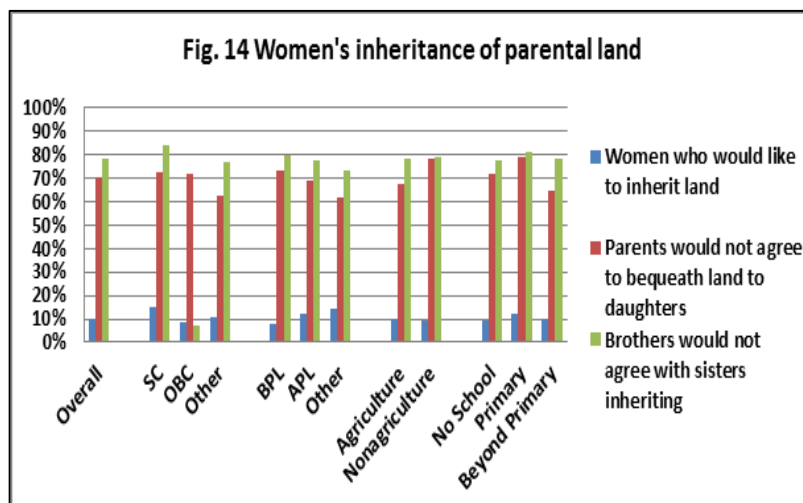
Though she does not want to go back to her marital home she wants her two children back and her share of the land for the sake of her children. While she is struggling for share in her husband's property her father wants her to go back to her marital home and is in favour of mutual settlement. The undercurrents of tension relating with her parents can easily be sensed when she laments *"I am not getting encouragement from anywhere"*. Supriya feels helpless as she is unaware of how to take legal action against her in-laws and has not received any support from her father or brother.



Lack of education and general restrictions on women's interaction with institutions which are primarily composed of men create a mystique and illusion about legal actions. This is the case with nearly most rural women whose interaction with the male dominated institutions and in Supriya's case with the legal institutions is highly restricted, thus creating a barrier in their right to accessing land and property.

## Women want to have land but are not asking to inherit it

A picture similar to those from the other states emerges in Bihar where even though women would like to own land, only 10% of women whose parents own land reported that they would like to inherit parental land and the pattern is consistent across different demographics. A stark 54% of the women whose parents own land reported that they will sign or have signed a no-objection certificate (NOC) that legally passes their claim



to their brothers. The most frequently stated reasons given by female respondents for why women are not interested in inheriting parental land are fear of straining familial relations, the belief that daughters inheritance is dealt with via dowry, and cultural or religious barriers.

### Case 11. Gender stereotypes--“Sons are the natural heir to land and property, daughters are entitled to dowry”

Babita Kumari is a young 20 year old mother of a 4 month old son. She belongs to a very poor, scheduled caste family in Bihar's Supaul district in Basaha village. In the same house also lives Rukmini Devi along with her five young daughters. But unlike Babita who is well dressed and wearing a clean saree, Rukmini lives in the cattle shed with her daughters. She looks tired, dejected and sad. When probed further it was found that both Babita and Rukmini are married to the same person Lalit Paswan. Lalit married Babita when Rukmini could not give birth to a son. Today Babita lives in the main house which has two rooms and enjoys a high status in the family.

Besides Lalit and his two wives and their six children, his parents also live in the same house. Babita's father-in-law Chaturanan Paswan works as a chowkidar at the Grameen police post. He owns 3 bighas of land which is cultivated by his son Lalit. Most of the crops cultivated i.e. paddy, lentils and wheat are consumed by the family.



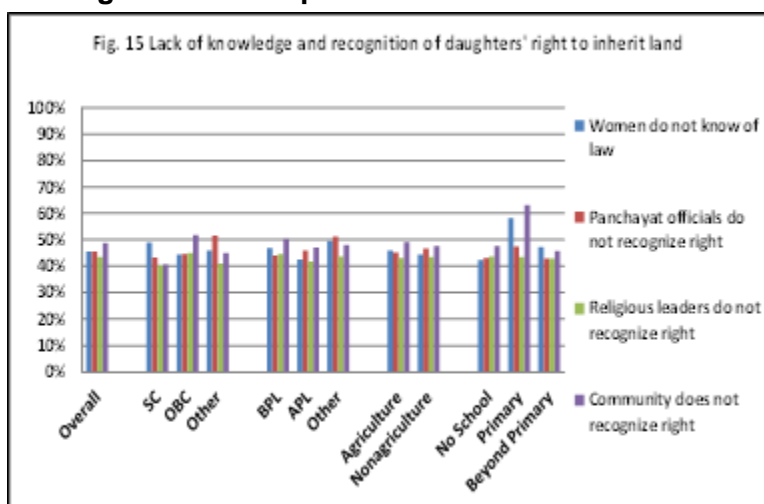
Compared to her marital home, Babita's natal home in Madhubani district is financially better off. Her father owns about 15 bighas of land and her mother has a job with the water works department of the state government. They also own a PDS (ration) shop. She has 2 brothers and 4 sisters. Like most other women in rural Bihar or in other parts of the country Babita too believes that the son is the natural heir to father's property as well as agricultural land women ( as daughters) do not have the social sanction as inheritors of parental property. Daughters get their share of parental property during marriage as dowry. She feels that land should always remain with the son. A wife on the other hand has an equal share in her husband's property according to her. Gender ideologies, or beliefs and stereotypes of the expected characteristics of a particular gender, provide a barrier for women to gain property rights.

It is important to point out that 70% of the women whose parents own land said their parents would not agree to give them land and 79% say their brothers would object. When we asked men, only 1% of said they believed their sisters wanted land from their parents, and 63% of those whose parents own land said that they would not agree to their sisters inheriting parental land. Family opposition appears to be stronger for women with no education and among households who are primarily engaged in agriculture or classified as Below the Poverty Line or Scheduled Caste.

While the quantitative study shows that the number of women inheriting parental land in Bihar is very low, qualitative interviews suggest that some women do receive land and that this is more likely to happen when there are no sons in the family, when the son-in-law is too poor, or when he is a resident son-in-law (son-in-law residing in his in-law's house). But even in these cases, it is common to find that the mutation has not taken place or that when it has, women are not in possession of the documents.<sup>50</sup>

### Women's limited knowledge of their rights to inherit parental land

43% of the women we interviewed in Bihar and 67% of the men reported knowing of a law giving daughters the right to inherit parental land. But only a much smaller group (19% of women and 33% of men) was able to correctly state that sons and daughters can inherit land from either parent and only 13% of the women and 27% of the men answered correctly the few basic questions we asked about the law's provisions regarding land inheritance that affected women.



Of the 16 women with whom we had more extensive qualitative interviews in Bihar, only two could describe the mutation and partition process. Others only said that the *Karmachari* and *Anchal Adhikary* were the two main persons involved, but they could not articulate the processes. Here too, women and men referred to these processes as being in the male domain. And while the men have incomplete knowledge of the processes—they knew only of the steps up to the *Anchal Adhikary* and were not aware of the appeal process—they were considerably more informed than the women.

### Recognition of women's rights to inherit parental land

As discussed earlier, for rights to be exercised they have to be recognized. Of the women we interviewed in Bihar, over 40% said that daughters' rights to inherit parental land were not recognized by *Panchayat* official, religious leaders, or the community.

<sup>50</sup> We also found a couple of cases of women whose husbands had purchased land and registered it in their wives' names primarily to avoid a social custom where the husband's brothers have a share in his individually purchased property. These women had knowledge of their status as a land 'owner' and possessed the documents to prove it.

### **Women's ability to enforce their rights to inherit parental land**

When asked about what steps can be taken to help women get their share of land, 48% of the women said that women can file a claim in court, 25% said they can have their names included in succession, and 31% said they don't know what can be done. When asked where a daughter should file her claim for parental land, 47% said at court, 39% said at the *Gram Panchayat* Office, and 19% said they didn't know. Of those who thought to file a parental land claim, most of them didn't know where it would be filed and assumed their husbands would take care of everything.<sup>51</sup>

### **Voices of the Revenue Officials**

The *Karmachari* we interviewed saw himself as playing an important role in recording the rights of heirs to ancestral land. He is responsible for altering the entries in the *Khatiyani* on account of transfers of rights or titles of a person to the property by way of inheritance or succession. Yet the *Karmachari* had no information about HSAA, 2005. He has not come across any case where women have filed a claim to inherit a share of their fathers' land. He also adds that there is no emphasis or instruction from the *Anchal Adhikari* to implement the HSAA 2005.

We interviewed an *Anchal Adhikari*. He feels that social customs are biased towards men and that women are not willing to come forward to claim their inheritance rights because they do not want to break ties with their natal family. He thinks that the *bureaucracy is not indifferent towards women and that if women present claims they will favor them*. While the government is registering land on women's names when they allocate it to *Mahdalits*, according to this *Anchal Adhikari*, no orders related to the implementation of HSAA 2005 have been issued. He recommended that information on HSAA 2005 should be widely disseminated through seminars, workshops, and meetings. He especially advised that Self-Help Groups be mobilized for this purpose.

Finally, the *Sarpanch* with whom we spoke, echoed the advice of the *Anchal Adhikari*. He told us "wide publicity is required. The best would be to educate the SHG leaders." He has not come across any case where daughters have asked for a share of their parents' land as a matter of right. He said that Bihar's tradition do not bestow daughters the right to inherit land. It is the son who inherits fathers' land. Daughters get dowry. They want to maintain cordial relations with all the members in her natal family. Therefore, they would not ask for share in parental ancestral land.

### **Voice of the Legal Services Authority Staff**

At first, DLSA staffs from the Madhepura and Supaul districts were unwilling to talk about this issue since no orders have been issued on its implementation. Yet informal discussions with them provided insights on measures that could be taken to guarantee justice to poor women.

According to the DLSA staff, apart from social barriers, women face a number of additional barriers: they often lack awareness of legal processes, do not receive legal aid, and cannot cope with hard-to-access adjudicating systems. The DLSA staffs believe that their role is to assist people when they come and seek assistance but not to pro-actively seek to assist women or men with their legal problems. They recommended that a band of legal volunteers

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<sup>51</sup> Our qualitative interviews suggest that women also struggle when trying to claim a share of their husbands' property. Some don't know how to file an application, others reported filing a claim with their *Anchal Adhikari*, not receiving a favorable result, and later filing a claim at the district court. They are either living with their parents or being pushed to return to their in-laws. Not surprisingly, others reported being worried that if their husbands deserted them they would have no place to live.



is organized and that they reach out and provide legal aid to women on HSAA and other legal issues. They also suggested that the *Vidhik Sahayta Samiti* (district legal aid committee) could run a campaign on the HSAA as part of their awareness programs.

## 8. State Level Analysis - Madhya Pradesh

### Summary

Madhya Pradesh is located in the center of the country and has a greater than average population of scheduled castes. Seventy one percent of its population is literate. Before the HSA 2005, Madhya Pradesh's legislation had determined that agricultural land should be treated as personal property. As a result, formally, women had equal rights to agricultural land. However, this has not been matched by the reality on the ground.

As can be noticed in the tables below, Madhya Pradesh has made important adjustments to the administrative processes related to the mutation and partition of land in order to protect women's interest. For example, there are explicit and clear instructions to serve notice of mutations to women and to include the name of eligible women in the land records. Furthermore, Madhya Pradesh's process to determine legal heirs includes the *Gram Sabha* as the institution charged with approving the list of heirs and making recommendations on mutations to the *Tehsildar*.

### Process of mutation in Madhya Pradesh

- After the death of the *Bhumiswami* (landowner or tenure holder), his heirs apply either orally or on plain paper to the *Patwari* to change ownership due to inheritance and to get the *Bhoo Adhikar Avam Rin Pustika* transferred on production of a death certificate of the *Bhumiswami* with details of property held by him;
- The *Patwari* identifies the heirs of the deceased with the help of the *Sarpanch*. He serves notice to the concerned parties to attend a special *Gram Sabha*, propose the name of heirs of the deceased and initiate steps for effecting mutation in favour of the new owners. Typically, a quorum is needed in *Gram Sabha* for public consent on the proposal. Signatures of the *Gram Sabha* members are taken by the *Gram Panchayat* who sends the papers from house to house;
- The *Patwari* records the parties' statements. He matches the contents of the documents submitted with the recorded statements;
- The *Patwari* submits his report in the prescribed format to the *Tehsildar* for approval;
- If the mutation is rejected in *Gram Sabha* the parties can go to court to get the mutation done;
- If there are no objections against the proposed mutation, it is sanctioned and the land records are changed. Following the mandate of the State, daughters' names along with the sons are added as legal heirs in the mutation record.

### Process of partition in Madhya Pradesh

- Co-holders must apply to the *Tehsildar* for partition of their share in a holding;
- On receipt of the application, the *Tehsildar* shall hear the applicants in person on any day of which due notice shall be given to the applicants or on any day to which hearing may be adjourned, requiring them to appear before him and state any objections they might have. The date of the hearing must be specified in the notice and shall not be less than 30 or more than 60 days from the date of the receipt of the notice by each of the co-holders;
- A copy of such proclamation shall be posted at the headquarters of the *Tehsil* and in the village in which the land holding is situated;
- After hearing the applicant, the co-holders and any other persons who appear, the *Tehsildar* shall reject the application if he is of the opinion that the applicant has no interest in the holding in respect of which the application is made, or if the applicant's title to the

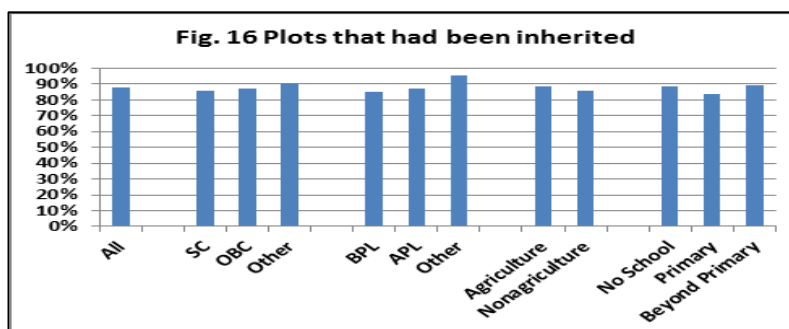
holding is disputed. If the latter, he shall direct the applicant to have the issue decided by a Civil Court.

- If the *Tehsildar* does not reject the application, he/she shall proceed to affect the partition. So far as is practicable, whole survey numbers or sub-division of survey numbers shall be allotted to each party and care should be taken to ensure that the productivity of the area allotted to each party is in proportion to his share in the holding.
- After the partition has been completed, the *Tehsildar* shall hear any objections which the parties may make, and shall either amend or confirm the partition. The partition shall take effect at the beginning of the agricultural year that follows the date of the confirmation of the partition or its amendment.

## Findings

Table 2 provides a statistical summary of the households included in our Madhya Pradesh sample. These households are more likely to be Above the Poverty Line than households in our samples for Andhra Pradesh and Bihar (64% compared to 38% and 15%, respectively)

and they exhibit higher levels of education. The households we interviewed in Madhya Pradesh are primarily agriculturalists, have an average household size of 6.8 members and have access to an average of 2.5 plots.



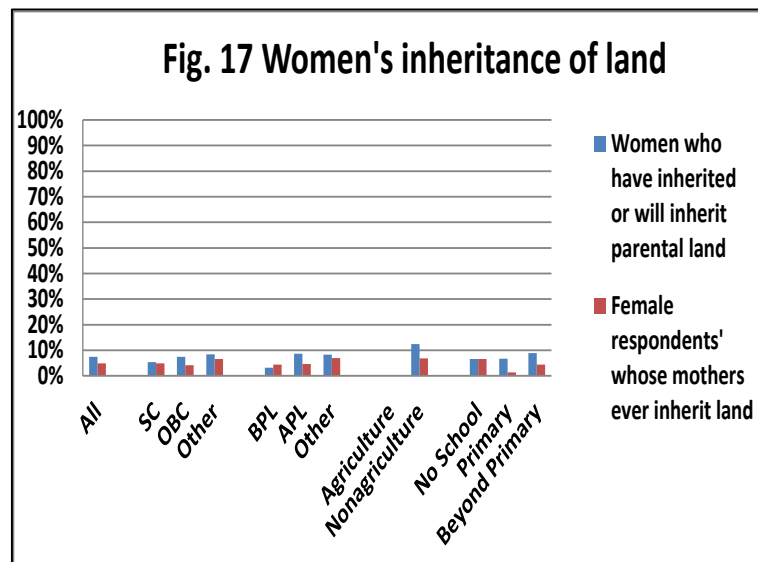
## Inheritance is the most frequent avenue to acquire land

Inheritance is by far the most important method of land acquisition in Madhya Pradesh: 88% of plots were acquired through inheritance. This result is consistent with relatively minor variations across caste, income, economic activity or education.

## Women do not inherit land

Only 7% of women we interviewed in Madhya Pradesh have inherited or expect to inherit land from their parents—

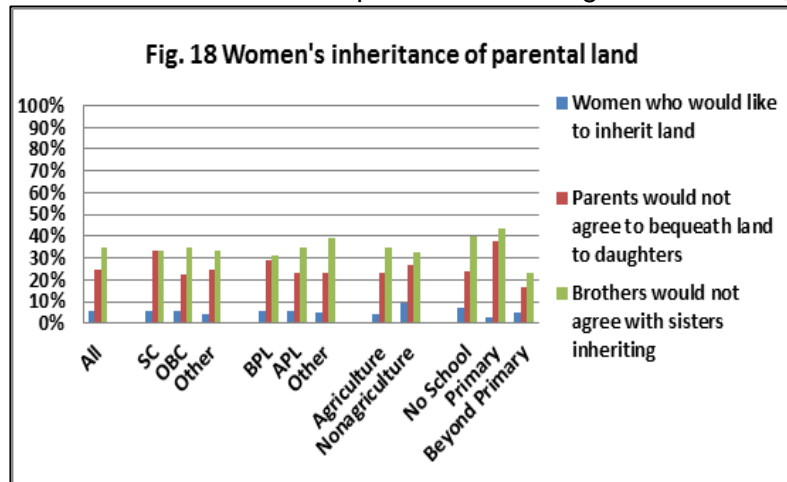
the lowest ratio of the three states. While the numbers are low across the four dimensions we considered, they are the lowest for households designated as Below Poverty Line and for those dedicated to agricultural work. Furthermore, our data suggest the same patterns hold for the previous generation.



### Women want to have land but are not asking to inherit it

Of the women we interviewed in Madhya Pradesh whose parents own land; only 6% indicated a desire to inherit parental land. Of those who reported not wanting to inherit land, 72% of them said it was

because they were afraid of straining relationships with their natal family. Even though women's desire for inheriting land does not vary with demographics, the belief that family members would oppose to them inheriting parental land does. Parents' opposition appears to be stronger for women with a primary education and for those in households that are classified as Scheduled



Caste or Below the Poverty Line. Brothers, on the other hand, are more likely to oppose their sisters inheriting land when their sisters have little or no schooling, when their households are dedicated to agriculture or when they are classified as Above the Poverty Line.

### Case 12. Brothers object against sister getting land in inheritance

*"The traditional systems must continue otherwise relationships between brothers or sisters will get spoilt especially where money and land is concerned."*

This is the opinion of Nirbhay Singh Jat, a young 23 year old who lives in a joint family with his mother, his wife, married brother and his family, a younger brother and 2 unmarried sisters in Nayagaon village, Jawad *tehsil* in Ujjain district in Madhya Pradesh.

Nirbhay belongs to a farming family and they own 22 *bighas* of land, out of which they cultivate 12 *bighas* and have leased out 10 *bighas*. After his father's death the ancestral land was divided equally into 6 portions for the three brothers, mother and two sisters. This was done according to the state government rules wherein the land will get divided equally amongst survivors of the immediate family and their names will be included in the land records. The division of land at least is done on paper. Nirbhay has heard about HSAA and understands the implications of it, especially the fact that daughters too have the equal right as brothers to inherit land and nothing can be done with the consent and signatures of his sisters.

Nirbhay's wife too comes from a land owning family; her father owns 15-20 *bighas* of land which will be inherited by her two brothers as per societal norm. Nirbhay will never interfere in his wife's family matters.

However, in spite of knowing about the law, Nirbhay who actively participates in local politics and attends Gram *Panchayat* meetings has a very traditional mind-set and is in favor of the existing social and cultural practices especially with regard to women's access and control of property and land. According to him it would be

foolish for daughters to ask for a share of the parental property because they get much more than the value of their portion of inherited property in the form of gifts and emotional support



throughout their lives. He mentions that the relationship between brothers and sisters is very special and usually no auspicious events can take place in the brothers' house in the absence of their sisters. In particular there are four occasions when brothers have to play an important role for their sisters, namely, marriage of sisters; birth of her children; marriage of sister's children and death in sister's family. In addition there are festivals like *rakhi* and *bhai dooj* which are celebrated every year to strengthen the bond and relations between siblings. In other words brothers provide material and emotional support to their sisters throughout their lives. In such a situation, in the traditional Indian society thus, it is very rare for daughters to ask for their share of land and property.

Interestingly, and in contrast with women in Andhra Pradesh and Bihar, 94% of the respondents in Madhya Pradesh plan to sign or have signed a No-Objection Certificate in favor of their brothers.

### **Case 13. "Daughters should claim only if financially not well off"**

*"Society looks down on those families where daughters have claimed their share of parental land and property in spite of having brothers. Daughters should only claim if they are not economically well off in their marital home."* Dhapu Patidar, 40 firmly believes that land should be inherited by sons only and not daughters as such a custom did not exist in their culture. She belongs to a landed family in Kharsodkalan village in Badnagar *tehsil*, Ujjain district, Madhya Pradesh and lives with her husband, two daughters and a son. Her two elder daughters are married. The patidars are the most dominant caste group in the village and together own more than 200 *bighas* of land.

Dhapu's father-in-law had inherited 80 *bighas* of land which he divided between his three sons; the eldest got 22 *bighas*; the middle son (Dhapu's husband) got 20 *bigha* while the youngest son with whom her parents-in-law live got 30 *bighas* of land. The remaining 8 *bighas* he has kept for himself. Her sister-in-laws were not given any land as they had been married into rich families and were financially well off. They never felt the need to ask for any monetary help from their father.

Dhapu however believes that though a woman does not take any share of land from natal family, she has a right to her husband's land, whether inherited or purchased by virtue of marriage. Besides the land inherited by her husband, Dhapu has been given 5 *bighas* of land in her name by her father-in-law which he has purchased as small holder farmers can get loans easily and at cheaper rates. A similar amount of land has also been given to her younger sister-in-law. This land has been registered in her name and she has the relevant documents with her. Dhapu is really proud of being a land owner and of the fact that she is responsible for cultivating all 25 *bighas* of land that they own as her husband works as a school teacher. Her self-confidence and self-esteem shows in the way she speaks as she is articulate, confident and active in decision making processes both within her household as well as those related with agriculture.

Though the farming is done by hired laborers, Dhapu plays a supervisory role and also in most of the post-harvest activities such as winnowing, cleaning, drying, shelling, milling etc. The main crops grown on her land include garlic, chickpeas, soya bean and wheat. Though the marketing of the agricultural produce is done by her husband, she plays an important role in deciding where to sell and at what price. She is also aware of the annual income that they get from selling the produce.



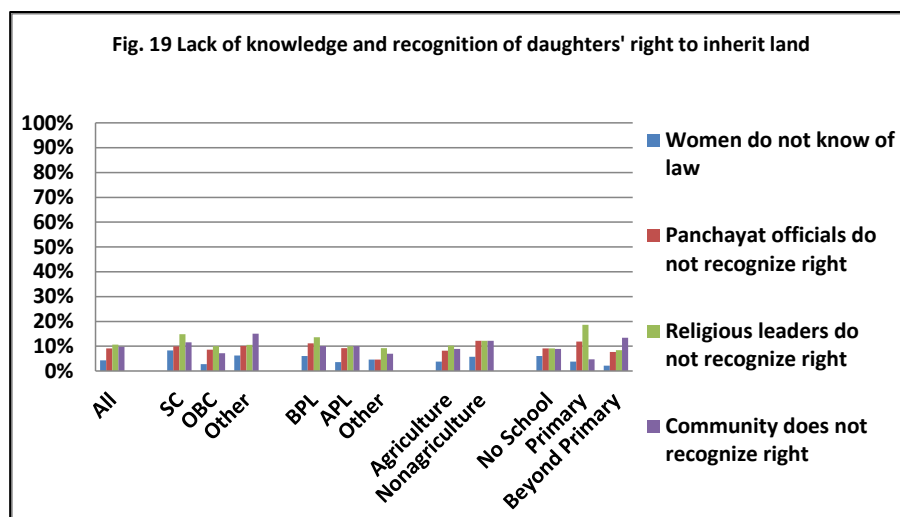
However, in spite of her active role in farming and being a land owner she is against the idea of daughters inheriting land from their natal family. This despite the fact that she is aware of HSAA which gives equal inheritance rights to men and women. She gave her own example by saying that her father has 80 *bighas* of land in Ratlam district and they are 5 sisters and 2 brothers. Her father has informed her and her siblings that he would be dividing the property soon. She and her sisters will not stake their claim to their father's property as they believe that "women should have rights over their husband's property and can take their share from natal property only if their marital home is economically weak. Let the law talk about equal inheritance but our values are different. Society looks down upon the family where daughter's stake claim in parents property. Brothers have the responsibility to help sisters throughout their lives in every respect, which is often more than the value of her share of land. My father has 80 *bighas* land and it will be divided between my two brothers. I will not claim my share of agricultural land." However as far as her own land is considered i.e. the 5 *bighas* given to her by her father-in-law, that plot she said would be given to her daughters if they are financially weak; she would give it to them even if they did not ask for it.

On the other hand, in our qualitative interviews we found a certain degree of social acceptance to daughters' claim for parental land if they had no brothers. However, as the value of land has increased, women with no brothers have been increasingly harassed by relatives such as uncles and cousins deterring them from claiming parental land.

### Women's limited knowledge of their rights to inherit parental land

Ninety one percent of the female respondents in Madhya Pradesh correctly indicated that daughters have the right to inherit land from their parents and nearly as many knew of a law that gives daughters this right. However, when we asked a few basic questions about the provisions of the law, only 13% of women and 15% of men were able to answer those questions correctly.

**Recognition of women's rights to inherit parental land**  
Even though women's knowledge of the law is at its lowest in Madhya Pradesh, the women we interviewed in this state reported a higher recognition of their right to inherit parental land by government officials, religious leaders, and the communities.



### Case 14. Daughter gets land from father in return to her services

Pushpa Sain is a 46 year old divorcee who lives with her parents in Nayagaon village in Jawad *tehsil* of Neemuch district in Madhya Pradesh. She left her husband when she was only 25 years old and returned to her parents place along with her infant daughter Tina.

Pushpa now lives alone and sustains herself by working as an agricultural labourer for 10-15 days a month at a daily wage rate of Rs. 100. She also works as a mid-wife and does embroidery from where she earns about Rs. 60-70 every month. Her daughter Tina has got married and she now lives in neighbouring Chhittorgarh district in Rajasthan.

Pushpa is also the owner of 2.5 bighas of land that was willed to her by her father. Being one of two daughters, after Pushpa divorced her husband she came back to her parents' house and looked after her old and sick parents, while her other married sister did not help them either financially or otherwise and hardly visited them.

As a result Pushpa's father before his demise gave his land to her, which was challenged by her sister demanding a share in her father's property on the insistence of her in-laws. At this stage Pushpa was supported by the village elders and ruled out any division of property against the will of the deceased. Pushpa however, not wanting to wholly deprive her sister from parental property gave her some money and household goods.



Contrary to the general assumption that Tina would inherit her mother's property, she said that her daughter would inherit her property only if she took care of her in her old age.

### **Women's ability to enforce their rights to inherit parental land**

When asked about the steps one could take to ensure that women can claim land, around half the women said one should go to court and about a third of them didn't know what to do. We then asked them where one should go to claim parental land, and 76% of the women said one should go to court.

### Case 15. Land inheritance after long years of struggle

Kamala Bai is an old and unlettered woman who has seen long years of struggle to get ownership rights over land that belonged to her father and had been usurped by her uncle and cousin brothers. Her husband also had his share of trouble and had to leave his native village Pachore due to a family dispute and settle down in his in-laws village, Ranayarpeer in Mahidpur block of Ujjain district. He sold the 20 *bighas* of land he had inherited and bought 14 *Bighas* in Ranayarpeer village. Kamala bai lives in the same house as her two married sons but has her own separate kitchen. Her only daughter is married and lives in Balaghat district.

Agriculture is the main source of livelihood for her family where they earn about Rs. 60,000-Rs. 70,000 from the wheat and soya bean grown. They also have a few orange and guava trees, most of the produce being consumed by the family. They also have a small grocery shop.

Kamala Bai's father had 40 *bighas* of agricultural land which was to be inherited by her along with her two sisters as she did not have a brother. In Madhya Pradesh, succession of family property including agricultural land by daughters has social sanction when there are no sons to inherit. However, after his demise her uncle and cousin brothers laid their claim on the land and in collusion with the local *Patwari* got the land transferred in their names in the land records as their three cousin sisters had moved away to other villages after marriage. When Kamala bai



got to know this she decided to take action against her uncle and cousin brothers in order to claim her share of ancestral land. She was aware of HSA 2005 and knew that women had equal rights as men to inherit land. *"I knew that we will inherit our father's property including agricultural land. My father had told us that after his death, government will transfer land in our names and that we should take our share. That is why I claimed for my share in land."* When the *Patwari* refused to help her she filed for her claim of land in Mahidpur *Tehsil* office as well at the district court in Ujjain. Her sisters had forfeited their share to her as she was financially not well off. She was supported by her husband and her sisters in the legal battle where she was able to get back only 2.5 *bigha* of land. In the meanwhile her cousins colluded with the *Patwari* yet again and changed the names in the village records. Kamala bai got to know this after 4 years but by that time she decided not to take the matter to court again as she did not have the money to fight the case. She had spent around Rs. 20,000 in the previous case and still did not have any document or receipt as proof of her ownership of land. However she was happy that at least her name had been added in the village map.

Staking claim on her rightful share of her father's land and taking the legal route to get it back from her cousins had however soured her relationship with them. She does not meet them anymore and though they live in the same village they hardly ever interact with each other. She is not allowed to visit their house *"...my relation with my family is broken, as they are very angry with me."* In spite of this bitter experience she strongly feels that daughters are the successors to parental land if there are no sons, who according to her are the natural heirs to fathers' property.

### Case 16. "I want my share in parental land"

*"I shall go to court if my brothers do not give my share of land and property".* So spoke



Pragya Khati, 52 years who lives in Kukdeshwar village in Neemuch district. She belongs to a wealthy family where her father-in-law owned 60 bighas of land which got divided between his two sons who got 20 bighas each. Her sister-in-law's name has also been added in the list of inheritors. Pragya who strongly believes in women's right to inheritance said *"I told the Patwari to add her name in the land record....but sister-in-law refused to claim her share. She has also not even given the no objection certificate."*

Besides the 20 bighas that her husband got as his share of ancestral land from his father, Pragya's husband also bought 6 bighas of land which he registered in her name. They mainly grow wheat, garlic and psyllium flowers.

Pragya's natal family too lives in the same village. Her father who had inherited 45 bighas of land has divided it between his two sons. Pragya and her sister (who is no more) had not staked their claim to that property even though she is aware of HSA 2005. Instead they had given no objection certificates. Her father had also purchased 36 bighas of land which is yet to be divided.



According to Pragya in most rural areas of India, sisters generally do not ask for a share in their parental property because they expect lifelong emotional support and care from their natal family especially their brothers. They feel that taking a share of land would definitely sour relations with them and create a rift between them. However, at the same time she also believes that if brothers do not follow the traditions and customs of society and if they do not look after their parents or sisters then the sisters should take their share of land. She spoke from her own bitter experience where her brothers after taking their share had not bothered about their two sisters and even the parents who now live in a separate house in the same village. She was unhappy that her brothers do not come to her house for festivals like Rakhi and nor do they give gifts as token of their love for them. This has made her determined to ask for her share of land and property which legally belongs to her *"....brothers don't visit me during raksha bandhan...they go by my house but do not visit me...won't I feel bad?...therefore I have decided that I will now ask for a share of my family property and shall take legal action by going to the court if my brothers do not give my share..."*. Sisters would never ask for their share if brothers were caring and fulfilled all their responsibilities she further said.

### **Madhya Pradesh's incentives to register land under women's names**

The government of Madhya Pradesh provides families with incentives to register land under women's names by reducing the stamp duty from 8% to 6% if they do so. Of the 16 women with whom we conducted in-depth interviews in Madhya Pradesh, four had benefitted from this incentive. In two of the cases, their husbands had bought new land and registered the plots under their wives' names to avail themselves of the discount in the stamp duty. In addition, they later obtained a *Kisan* Credit Card for their wives as well. *Kisan* Credit Cards are a way in which farmers can obtain working capital. Any owner of agricultural land can obtain a *Kisan* Credit Card and with it get a loan of up to Rs. 75000/- per acre in a season. In the other two cases, the land was purchased by their fathers-in-law and registered under the daughters-in-law's names to receive the reduced stamp duty, but they did not obtain a *Kisan* Credit Card and therefore the benefits were small.

### **Extent of legal awareness on the HSAA and the inheritance and partition processes**

Women's knowledge of the law is limited to rudimentary information that the law provides equal inheritance rights to land for women and men, including agricultural land. The women with whom we spoke were unaware of specific provisions and did not know that the law gives them the right to inherit agricultural land from both their natal and their marital family.

The women knew that their names could be included in the *Khata* land record, something they had learned by watching the *Patwaris* take note of all the heirs' names, including women's names, and presenting them to the *Gram Sabha*. This practice has started in 2010 and seems to have made a difference for women. They noted that the *Patwaris* talked to women, that they wrote their names and that the *Gram Sabhas* gave their stamp of approval. If institutionalized, these simple acts are likely to make a difference.

### **Voices of the Revenue Officials**

One of the roles of the *Patwaris*, consist of identifying the legal heirs to the deceased's property and presenting this list to the *Gram Sabha*. In the absence of quorum in *Gram Sabha* meetings, the *Patwaris'* proposals go uncontested. The *Gram Panchayats* collect signatures of the *Gram Sabha* members to endorse his proposal. Typically, the list he prepares includes names of the women in the family. However, at the hearings, the brothers often produce letters or notes from their sister forfeiting their rights. These documents are accepted by the *Tehsilders* and consequently mutation is given in the name of the men.

The *Tehsilders* we met confirmed this observation. Irrespective of the land record and the *Patwaris'* list of legal heirs, the final settlement depends on deposition and submission of each claimant in front of the *Tehsilder's* court. The women do not appear, so the case is decided ex-parte. In many cases, the brothers produce a note from their sisters forfeiting their right to land. Since there are no objections to the list the *Patwari* has prepared, and since the family's decision is final in matters of inheritance (unless an objection is filed), the *Tehsilder* is legally bound to issue the rights of land to the claimants, typically the sons. The *Tehsilders* expressed their limitations in the absence of women coming up and claiming their rights.

According to the *Sarpanch* with whom we spoke, the *Gram Panchayat* and his *Panchayat* Secretary assist the *Patwari* in determining the legal heirs of the deceased and the *Sarpanch* calls the *Gram Sabha* to meet. The list prepared by the *Patwari* typically reflects the families' preferences for whose names should be considered as heirs. Often this list is endorsed by the *Gram Sabha* who, the *Sarpanch* remarked, looks forward to an amicable understanding within the family and is not trying to ensure women's rights are considered. The *Sarpanch* suggested that if the government is serious about implementing the HSAA, it must notify the *Gram Panchayats* with clear instructions about what they and the *Gram Sabha* should do in this regard.

## 9. Conclusions

The Hindu Succession Amendment Act, 2005 recognizes the right to inheritance of agricultural land for women agricultural producers. A careful reading of the findings, 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. They are essentially based on conventional male ideals.

12. The Hindu social practice sees dowry and inheritance of the daughter 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 of land and other properties in inheritance is one key way the patriarchal beliefs are deeply anchored in social practice, denying the women social and economic equality within the family. This probably works as the strongest social barrier against women's equality.
13. 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.
14. 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 the 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.
15. 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. This trend is slowly gaining ground, as the commercial value of land increases. Commercial development is thus increasing patriarchal pressure on women.
16. Women's understandings of the current inheritance law and of the claim processes are clearly rudimentary and fragmented. Land has historically been a male domain, and it continues to be so.
17. 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.
18. 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.
19. Social barriers also reflect 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.

20. The *Tehsilders* we met in the three states universally 'blamed' the women for not coming forward to claim their legitimate rights. The *Tehsilders* also saw the wide gap in social awareness on equality of women and men's land rights. However, it was clear that the *Tehsilders* see themselves as a judicial authority and do not feel obligated to promote such awareness or to adjust the process of mutation.
21. 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 the poor women. The DLSA staff expressed the need for legal literacy of women on land rights in order to generate widespread awareness among the women. They recommended engaging with the leadership of the SHG-Federation on this issue.
22. The Gram *Panchayats* are almost universally clueless on what they can do in connection with implementation of the HSAA. The *Sarpanchs* overwhelmingly re-iterated the predominant social norms and did not show any institutional concern about the prevalent practice.

## 10. Recommendations

Based on the findings and conclusions drawn from it, we would like to make a few recommendations to the state and national governments and civil society organizations. As we have seen, barriers to a full implementation of the HSAA are present both in the formal institutional domain and in the domain of social practices and norms. Our recommendations cover both domains.

1. 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 our statutory commitment made under the HSAA 2005. The revision should provide clear guidelines as to how these processes can ensure women 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 HSAA 2005 as one of their listed topics of legal advice, legal literacy campaign, and fighting cases of women's land inheritance.
4. The judges of the lower courts needs to be sensitized on the importance of women's land rights.
5. The *Gram Panchayat* and *Block Panchayats* must 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 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 SHGs-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 must 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 complimentary.
11. Land administration in states 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.

## ANNEX

**Table 3. 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	
		Madhepura	Kishanganj	Alamnagar, Anandpur, Barahi
			Kumarkhand	Belari, Belsandi, Belsarhs
			Murliganj	Amari Dharhra, Belo, Bhatkhora
Bihar	Singheshwar	Bairbana, Burhawe, Dandari		
	Supaul	Pipra	Balha, Basaha, Belokhra	
		Raghopur	Basi, Bauraha, Daulatpur	
		Supaul	Amha, Bairo, Bakaur	
	Tribeniganj	Babhanganwa, Bagheli, Barahkurwa		
Madhya Pradesh	Neemuch	Javad	Athana, Khor, Morwan, Nayagaon	
		Manasa	Bhatkhedi, Kanjarda, Kukdeshwar, Padada	
		Neemuch	Bhadbhadiya, Bisalwaskalan, Cheeta Kheda, Sawan	
	Ujjain	Badnagar	Badganwa, Bhatpachlana, Kharsodkalan	
		Mahidpur	Jharda, Jhutawad, Ranayarpeer	
		Tarana	Kanasiya, Kytha, Makdon	
		Ujjain	Narwar, Tajpur, Talod	

Note: the sample included 20 women per village.