

Columns

Women's inheritance: next steps

A look at the disabilities non-Hindu women face

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The livelihood and empowerment prospects of millions of women who depend on agriculture for survival are affected by their legal rights in land. For many these prospects have been enhanced by the recent Hindu Succession (Amendment) Act 2005(HSAA) which deleted the gender discriminatory clause on agricultural land. But this benefits only Hindu women, leaving intact the disabilities facing non-Hindu women, especially Muslim and tribal women — something that should concern all of us who work for gender justice.

Muslim women in India fall under The Muslim Personal Law (Shariat) Application Act, 1937. With this, the Shariat superceded "custom or usage to the contrary" for all property, *except agricultural land*, as the basis of personal law for Muslims in undivided India, except J&K. Earlier, Muslims (like most Hindus before the 1956 Hindu Succession Act) were governed by a mosaic of local customs, laws and practices, some in sync with the Shariat, most at variance with it. The '37 Act, by abrogating custom, enhanced most Muslim women's rights, since typically customs (except among matrilineal Muslims, as in Kerala), were highly discriminatory: some entirely excluded daughters, others placed them (and widows) very low in the succession order. In contrast, under the Shariat, a daughter and widow cannot be excluded by any other heir and are protected by the overall testamentary restrictions, even though their shares are always lower than men's. However, the '37 Act, excluded a critical form of property: agricultural land. Section(2) provides that:

"Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift, or any other provision of Personal Law, marriage, dissolution of marriage, including Talaq, Ila, Zihar, Lian, Khula and Mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions, and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

Later the southern states extended the '37 Act to include agricultural land by deleting the phrase "save questions relating to agricultural land". TN, Karnataka and AP did so in '49. Kerala followed in '63. Elsewhere, however, succession to agricultural land continues to depend variously on customs, tenorial laws, etc, with differing implications across the unamended states.

In some, eg, Maharashtra, Gujarat, and Bengal, there was no strong presumption in favour of custom even before the '37 Act. Here, even without amendment, the Shariat could be presumed to cover agricultural land. The same holds for the parts of AP and Karnataka which were earlier in the former Hyderabad state, and where custom at variance with Mohammedan law was not admitted even before 1937. But in many other states, eg, Delhi, Haryana, HP, Punjab, UP and J&K, highly discriminatory tenorial laws and customs, at considerable variance with the Shariat, continue. These virtually exclude women from rights in agricultural land. For instance, in UP, with one-sixth of

India's population, non-Hindu women's land rights are still subject to the UP Zamindari Abolition and Land Reforms Act '50. Section 171 of the Act, which defines succession to a man's land, gives primacy to the male lineal descendants in the male line of descent. Only in their absence can a widow qualify. Daughters come lower. Tenurial laws in Delhi, Punjab, Haryana, HP and J&K give similar primacy to male heirs. This is contrary to the rights promised to Muslim women by the Shariat.

Notably, on agricultural land, Pakistani and Bangladeshi Muslim women are better off. In Pakistan the '37 Shariat Act was superceded by later laws. Finally, the West Pakistan Muslim Personal Law (Shariat) Application Act of 1962 included agricultural land and extended the Shariat to all of West Pakistan, except 'Tribal Areas' in the NWFP. The Act entitled Muslim women to inherit all property, including agricultural, with shares as prescribed by the Shariat. Pakistani women's groups played a key role in this reform.

Muslims of East Pakistan (now Bangladesh), however, continued to come under the '37 Shariat Act. But here women were not disadvantaged since even before this Act customs contrary to Islamic law were not enforced in (undivided) Bengal: here the Shariat (by presumption) applies also to agricultural land, as outlined in Mulla's *Principles of Mohammedan Law* 1990, and confirmed by my discussions with Bangladeshi lawyers.

Surely in India too it is time to remove this anomaly. Deleting the phrase "save questions relating to agricultural land" in Section 2 of the Shariat Act, would bring all property, including agricultural, in line with the Shariat. Although, women would be entitled to smaller shares than men, still this amendment would go a long way in enhancing Muslim women's rights in this critical livelihood source. Vast numbers of Muslim women depend on agriculture for subsistence, many as de-facto household heads, as more men move to non-farm jobs. Indeed one of the earliest grassroots demands by Indian women for land rights came from poor Muslim women in West Bengal who, in '79, told their panchayat: "Please go and ask the government why when it distributes land, we don't we get a title? Are we not peasants?" These women and millions like them deserve an answer. But government land distribution is limited, and inheritance remains the main source for women's land access.

On other aspects of inequality, the only Muslim countries with full gender equality in inheritance laws are Turkey and Somalia. In some others, like Bangladesh, women have debated whether the constitution should define personal law. My aim here is, however, more modest and the reform suggested vis-a-vis agricultural land is doable within the purview of the Shariat. The precedent for such amendment already exists in southern states.

Tribal women are the second major category facing substantial disabilities in inheritance. Given the non-codification of their laws, tribal communities are governed by customs which (except under matriliney) discriminate against women. And even the limited customary land rights many tribal women enjoyed historically have been eroding. Attempts at gender-unequal codification in some northeastern states have been opposed by women's groups there. It is critical that any codification is along gender-equal lines.

There is a window of opportunity today for reform-minded political leaders, activists and intellectuals to work together, to correct historically embedded gender disabilities. Let this chance not be missed.

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