

‘Women didn’t receive rights without struggle’



Bina Agarwal, author of *A field of her own* has been working on inheritance, women’s property and land rights since the 1980s. She chaired a 1998 committee initiated by the Rural Employment Ministry to make devolution rules in land tenure laws gender equal. Recently she spearheaded an initiative on a landmark legislation passed in Parliament this session called the Hindu Succession (Amendment) Act 2005. She spoke to **SONU JAIN** on the ramifications of the amendments and the behind-the-scenes activity in the run up to the Act.

• Can you explain the major achievements of the 2005 Act?

There are at least two major achievements and some smaller ones. First, by deleting Section 4(2) of the 1956 Hindu Succession Act (HSA), the 2005 amendment has removed gender inequalities in the inheritance of agricultural land, and made Hindu women’s land rights legally equal to men’s across states. Before this, the inheritance of agricultural land was subject to state-level tenurial laws which were highly gender unequal in 6 states — Delhi, Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, and Uttar Pradesh.

These inequalities adversely affected millions of women. We tend to forget how many women are farmers, critically dependent on agriculture for survival. Second, making daughters, especially married daughters, coparceners in joint family property is of huge importance both economically and symbolically. Economically, it provides women security by giving them birth rights in joint family property that cannot be willed away by fathers. Symbolically, it signals that daughters and sons are equally important members of the parental family. It undercuts the notion that after marriage the daughter belongs only to her husband’s family. It creates a permanent link with her parental family. This will enhance women’s self-confidence and social worth.

• How did the 2004 Hindu Succession Amendment Bill originate?

The initial Bill introduced in the Rajya Sabha on 20 Dec 2004 was based on the 174th Law Commission Report. Prior to that report, the Law Commission had sent questionnaires to many individuals and organizations. I also filled one. The questionnaire’s responses were progressive, but the Report was quite conservative.

For instance, 88% of the respondents wanted abolition of gender discriminatory clauses on agricultural land. The Report’s recommendations bypassed this altogether. Again on Mitakshara joint family property, 73% supported abolishing the system, but the Report recommended only that unmarried daughters be made coparceners. Although the 2004 Bill reflected the current government’s commitment to enhancing gender equality, it did not go beyond the Law Commission’s recommendations, and fell far short of equality.

- **What was the problem with the initial draft of the 2004 Bill?**

While the move for reform was laudable, the amendments proposed left many gender inequalities intact. I argued for the removal of inequalities in agricultural land inheritance, abolishing the Mitakshara joint property system altogether, and partially restricting the right to will away property. But the second best option, if joint family property was retained, was to include married daughters also as coparceners.

- **What was your involvement in the final shape with its far-reaching consequences?**

I talked with two NGOs — the Human Rights Law Network and the Housing and Land Rights Network — and we jointly launched a campaign, starting with a nationwide consultation with women's groups, grassroots groups and people involved in land reform, women's rights and human rights. We organised a one day meeting in Delhi in January 2005 at which a draft memorandum I had prepared was discussed, slightly revised and finally endorsed, personally or by email, by 50 organizations and 122 individuals. We submitted the memorandum to the Prime Minister, to Sonia Gandhi, the Law Minister, and the Parliamentary Standing Committee on Law and Justice. We sent copies to every Lok Sabha and Rajya Sabha member. In February the Standing Committee invited us to depose before them. The deposition lasted over 2 hours.

The chairman, Mr Natchiappan, was very open to my arguments for a comprehensive amendment and especially on agricultural land. I provided followup notes and wrote more letters to Mrs Gandhi. Some lawyers and MPs were also very supportive. The Standing Committee's Report (which drew on many of the arguments in our Memorandum and deposition, as well as on the material and deposition of some national women's organizations, especially AIDWA) is largely the basis for the revised bill passed in Parliament this August.

- **Would you call this build-up a grassroots movement?**

A. There is growing grassroots demand for women's land and property rights in India today. Although the process of comprehensively amending the 1956 HSA was initiated largely by individuals and groups in Delhi, the endorsement and support of grassroots groups from across the country was absolutely critical for the impact of our demands. This is not unusual historically. Even for the 1956 HSA, women's groups and individuals lobbied widely. Women did not receive these rights without struggle.

- **What major amendments preceded this one?**

Before this, five states amended the HSA. First Kerala abolished joint family property altogether, making the inheritance of all property, including land, equal for sons and daughters. Tamil Nadu, Karnataka, Andhra Pradesh, and Maharashtra followed, but they retained the Mitakshara coparcenary system, making only unmarried daughters coparceners. They left out married daughters and agricultural land. The current amendment, passed as a Central government Act, will also benefit women in these four states.

- **Are there still some inequalities left?**

By including daughters as coparceners, the widow's property share will decline. This anomaly would disappear if we abolished the Mitakshara coparcenary altogether. Then all property would go equally to class I heirs, of which the widow is one. Also, given male bias, an implicit inequality arises from the unrestricted right to will. A man can will away everything a woman might get. I feel the right to will should be restricted on at least one-third property so that women are assured some inheritance. In Spain, France and several countries, testamentary freedom is partially restricted.

- **The main opposition argument is that land fragmentation will increase? What do you think?**

The fragmentation argument is misleading and can't be applied selectively to women. Even when sons inherit fragmentation can occur. In practice, when sons get a share, most families continue to cultivate jointly. The same can hold for daughters. The unit of ownership need not be the unit of cultivation. And just as sons who migrate to cities retain their land rights, so daughters marrying into another village can maintain their claim and get a share of the harvest from the family, or lease out the land. This would give women some economic security, however small.

- **What does land mean for women?**

Owning land has critical implications, not just for women's economic situation, but their political and social empowerment. For instance, in my recent research with a colleague on Kerala, we found that owning a house or land dramatically reduced the risk of marital violence. The incidence of physical violence was as high as 49% among propertyless women, but 18% among landowning women and 7% among those owning both house and land.

- **Do you foresee opposition to the Amended Act?**

There will no doubt be opposition in implementation. In fact, the land fragmentation and joint family stability arguments go back to the 1940s when the Hindu Code was being debated. Changing social attitudes takes time. Legal awareness will require a campaign too. But legal reform is also important in and of itself since it reflects our vision of the kind of society we want.