

SECURING WOMEN’S RIGHT TO LAND

THE INDIAN EXPERIENCE VIS-A-VIS THE PROMISE OF THE SUSTAINABLE DEVELOPMENT GOALS

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THE INDIAN EXPERIENCE VIS-A-VIS THE PROMISE OF THE SUSTAINABLE DEVELOPMENT GOALS

Nupur, Aditya Gujarathi, Gatha G Namboothiri, Anusha R, Tanvi Singh and Anahita Surya¹

Centre for Social Justice

Abstract

The introduction of the Sustainable Development Goals marked a watershed moment in the movement to secure land rights for women. Target 5.a. represented the first, concrete global commitment to protecting and promoting women's right to land. However, a global commitment

¹ The authors work with the Centre for Social Justice (CSJ) (centreforsocialjustice.net). CSJ works extensively on upholding the rights of Dalits, Adivasis, Minorities and women, using law as a tool for social change. CSJ has been an active member of the Working Group on Women's Land Ownership (GWLO) since its inception, and has supported GWLO in its capacity building and policy engagement efforts.

Nupur is a graduate from NLSIU, Bangalore. She has been working with Centre For Social Justice since its inception. She is on advisory committee of GWLO Centre For Social Justice has done pioneering work in the arena of pedagogy for teaching law, demonstrating an institutional model for legal empowerment. and law reforms. Aditya Gujarathi is a law graduate (2019) from ILS Law College, Pune. He has been working with the Centre for Social Justice under the YPPLE Program for the past two years. Over the past two years, he has mainly worked on issues related to Adivasi self-governance, disaster policy and conducted various capacity building sessions on a wide range of issues. Tanvi Singh is a law graduate (2019) from Gujarat National Law University. She has been working with the Centre for Social Justice under the YPPLE Program for the past one year on and is placed with the Amreli team where her focus areas include Gujarat's disaster policy, rights of fisher folks and jurisprudence of village common lands in India. Anahita Surya is a law graduate (2018) from the Australian National University. She has been working with the Centre for Social Justice under the YPPLE Program for the past three years. During her time here, she has been working with the Chhattisgarh Unit on various socio-legal issues, including legal entitlements of disaster victims. Anusha R is a law graduate (2019) from SASTRA University, Tamil Nadu. She has been working with the Centre for Social Justice under the YPPLE Program for the past one year. She is involved in Centre for Social Justice's Social Compact work - which aims to engage businesses in the rule of law and ensure entitlements of unorganised labourers. Currently, she's also pursuing her Masters in Anthropology from IGNOU through distance education mode. Gatha G Namboothiri is a law graduate (2020) from West Bengal National University of Juridical Sciences. She has been working with the Centre for Social Justice under the YPPLE Program for the past one year. She works with the Jharkhand Unit on various socio-legal issues. Currently, she's also pursuing her Masters in Womens' and Gender studies from Indra Gandhi Open University through distance education mode.

of this sort, requires concerted state action if it is to result in tangible gains for women. This paper examines this question in the Indian context and assesses the response of the Indian State machinery vis-a-vis the promise of Target 5.a / the SDGs for women's land rights. In order to do so, it analyses the response of four critical pillars of the Indian State responsible for operationalising the SDGs, including Target 5.a.: The Legislature, the Judiciary, the Executive body responsible for guiding policy making on the SDGs (NITI Aayog) and Implementation bodies / institutions responsible for training duty-bearers. We argue that India's current approach to land rights for women falls woefully short of the vision of Target 5.a. We ultimately propose that sincere implementation of the SDG framework provides a roadmap to address the gaps in India's response to the question of women's land rights.

I: Setting the Context

The introduction of the Sustainable Development Goals (SDG) marked a historical moment in the global movement to secure land rights for women. Compared to the Millennium Development Goals (MDG), which reduced the women's empowerment agenda to primary education and maternal health, the SDGs signaled a shift towards recognising the social, political and economic rights of women. It did so not only through the introduction of Goal 5 (the stand alone goal on gender equality), but also through enshrining gender equality as a cross cutting issue across all goals. More importantly, Target 5.a of the SDGs (fostering equal rights to economic resources, property ownership and financial services for women) represented the first articulation of a global commitment to upholding women's land rights. A global commitment of this sort, however, will remain tokenistic unless there is concerted action from individual states. In a country like India, where women's land ownership is considered a direct affront to patriarchal social values, the need for such action assumes greater significance.

It is precisely this dynamic that this paper seeks to examine. We argue that India's current approach to land rights for women falls woefully short of the vision of Target 5.a. We further contend that sincere implementation of the SDG framework provides a roadmap to address the gaps in India's response; yet India has failed to harness the opportunities that the SDGs provide.

Throughout the paper, we have foregrounded our analysis in both Rights and Governance Frameworks. That is, contrary to the dominant paradigm of looking at issues from either the Rights or the Governance Framework, this paper tries to understand the challenges in India's approach to women's land rights from two lenses –

- a) Whether a rights-based legislative regime exists?
- b) Whether this legislative regime is supported by a capable governance machinery that respects the 8 pillars of Good Governance: participation, rule of law, transparency, responsiveness, consensus-oriented, equity and inclusiveness, effectiveness and accountability (United Nations (UN) Economic and Social Commission for Asia and the Pacific, 2009)? As we will argue in subsequent sections, to incorporate these 8 pillars in its operations, an institution needs to exhibit a commitment to the rights and well-being of the people it serves. Subsequent sections will thus examine whether the governance machinery is committed to protecting women's right to land.

The interlinkages between these two lenses is apparent in that rights need a committed machinery to be effectively implemented and rights-based laws and policies are needed to ensure that the governance machinery is sensitive to the principles of equity, inclusiveness, participation etc. Rights and governance are thus both complementary and mutually reinforcing. An equal focus on both substance (rights-based laws) and system (governance machinery), thus becomes necessary to understand India's approach to the SDGs, Target 5.a and women's land rights.

Structure of the paper

With this as the point of departure, this paper will assess the response of four critical pillars of the Indian State responsible for operationalising the SDGs, including Target 5.a.: The Legislature, the Judiciary, the Executive body responsible for guiding policy making on the SDGs (NITI Aayog) and Implementation bodies / institutions responsible for training duty-bearers. Since, the analytical framework adopted by this paper synergises the Rights and Governance Frameworks, the analysis of legislative / judicial response will draw on the Rights Framework, while the evaluation of executive and implementing bodies will be situated within the Governance Framework.

To this end, Section I of this paper will first provide an overview of the extent of women's landlessness in India and the importance of land rights for women. This will be followed by a discussion on the SDG framework and the opportunities it provides to address the issue of women's landlessness. The purpose of this section is to contextualise subsequent sections.

Section II will then assess the response of India's Legislature, and to some extent, Judiciary to women's land rights, while simultaneously examining this response vis-a-vis the promise of the SDGs for women's land ownership. Sections III and IV will subsequently analyse how key executive and implementation institutions have (or have not) responded to the mandate of Target 5.a. Section III will specifically examine the approach of NITI Aayog, the executive body that guides policy making with respect to the SDGs and Section IV will assess the approach of institutions responsible for training duty bearers who implement laws and policies related to women's land rights. Through this analysis, we argue that India has not been entirely successful at converting the promise/opportunities of the SDGs for women's land ownership to concrete

gains. In doing so, we aim to identify specific gaps in India's approach that the state machinery must address if the promise of the SDGs for women's right to land is to be realised.

The extent of women's landlessness in India

Women in India are amongst the most socially and economically marginalised in the world. According to the Women Peace and Security Index 2019, India was ranked 133 out of 167 countries (Georgetown Institute for Women, Peace and Security, 2019). In India, landlessness is both a key determinant as well as an indicator of women's subjugation. However, in the absence of authentic gender disaggregated data, it is difficult to determine the exact extent and nature of the problem (Choudhury, 2021). There are four main sources of official data on women's land rights in India – the National Family Health Survey 2015-16 (NFHS), the India Human Development Survey 2011-12 (IHDS), the Socio-Economic Caste Census 2011 (SECC) and the Agricultural Census 2015-16. Unfortunately, all suffer from methodological weaknesses (Agarwal, Anthwal and Mahesh, 2020; Choudhury, 2021).

The NFHS 2015-16 collected gender disaggregated data on land ownership (covering all categories of rural land), but limited its sample size to 15% of sample households and only included households with women aged 15-49 and men aged 15-54 in its sample. Moreover, it clubbed together all land, and therefore did not distinguish between agricultural and other land. IHDS 2011-12, which recorded data on agricultural land, did not record joint ownership, while SECC 2011 only recorded data on the number of women-headed households that own land (Agarwal, Anthwal and Mahesh, 2020; Choudhury, 2021). India's official data indicator for women's land ownership in the context of the SDGs is operational land holdings, as recorded in the Agricultural Census 2015-16 (NITI Aayog, 2021a). This, however, is inadequate since the Agricultural Census did not

collect data on land ownership, but recorded the number of women who manage agricultural land. As a result, there is considerable variation in official statistics on women's land ownership (Choudhury, 2021).

The limited data available nonetheless paints a grim picture of women's landlessness in India. An index created by the Centre for Land Governance has cumulatively looked at all four data sets and concluded that a dismal 12.9% of women in India either own or manage agricultural land (NRMC Centre for Land Governance, 2020; Choudhury, 2021). Similarly, a longitudinal study conducted in 9 Indian states from 2009 to 2014 by international civil society organisation, International Crops Research Institute for the Semi-Arid Tropics (ICRISAT), found that women constitute merely 14% of all agricultural land owners (Agarwal, Anthwal and Mahesh, 2020, p.2)

The importance of land rights for women

Against this background, a renewed commitment to promoting women's right to land becomes important. Securing women's right to land, and particularly agricultural land, not only increases women's economic security but also has a transformative impact on women's "social status, physical security, and their and their family's overall wellbeing" (Agarwal, Anthwal and Mahesh, 2020, p.2). Land-owning women are more likely to have greater bargaining power within the home, and are thus less vulnerable to violence from the family (Agarwal and Panda, 2005; Bhattacharya, Bedi and Chhachhi, 2011; Richardson and Hughes, 2015). Similarly, women who own land are more likely to have greater decisional autonomy, not only with respect to decisions related to the management and use of the land, but also with respect to household decisions more broadly (Valera et al., 2018; Mishra and Sam, 2016). This is particularly pertinent in the context of agricultural land in India, since almost 85% of rural women in India directly rely on agricultural

land for their livelihood (Oxfam, 2018). Scholars have also pointed to the direct link between an effective land rights regime and improved nutrition, health status, and increased incomes (Landesa, 2012a; Kelkar, 2013; Mishra and Sam, 2016). Recognising this relationship, women’s land rights was included as a stand-alone target in the SDG framework.

The promise of the SDGs

The SDG framework

The concept of Sustainable Development was first articulated as “meeting the needs of the present without compromising the ability of future generations to meet their own needs” by the Brundtland Commission in 1983. Almost four decades later, in 2015, the 2030 Agenda for Sustainable Development, or the SDGs were adopted by all UN member states. The SDGs are informed by an inconspicuous commitment to human rights and outline 17 deeply interconnected goals to achieve the vision of a peaceful and inclusive future for all. Each goal is made up of targets, which in turn consist of indicators to measure progress. The SDG framework contains one stand-alone goal on achieving gender equality and empowering all women and girls. Under Goal 5, Target 5.a urges nation states to “undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property.” Target 5.a consists of the following progress indicators:

<p>5.a. Fostering equal rights to economic resources, property</p>	<p>5.a.1 (a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and</p>
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ownership and financial services for women	(b) Share of women among owners or rights-bearers of agricultural land, by type of tenure
	5.a.2 Proportion of countries where the legal framework (including customary law) guarantees women’s equal rights to land ownership and/or control

In addition to this standalone goal and its targets, gender equality and women’s land rights feature as key cross cutting issues across all goals. The SDGs recognise gender equality as both a priority and prerequisite for achieving the SDG vision (UN Women, 2018). *Turning promises into action: Gender equality in the 2030 agenda*, a global monitoring report by UN Women, has identified 10 SDGs and 54 indicators which are directly linked to gender equality (2018).

For example, Target 1.4 (ensuring that all men and women have equal rights to economic resources and access to ownership and control over different forms of property such as land) is directly linked to Target 5.a. A similar priority can also be seen in Target 2.3, which aims to double agricultural productivity through multiple measures, including increasing women’s access to land. Goals linked to inclusive growth and reducing inequality (Goals 8 and 10) are also necessarily linked to Target 5.a since women’s land ownership directly increases women’s social and economic freedom, thereby reducing inequality and promoting growth. Likewise, creating inclusive society by eliminating discriminatory policies, practices, laws and promoting appropriate action (Target 10.3, 16.3, 16.b) also go hand-in-hand with Target 5.a as discriminatory laws and policies continue to hinder women’s right to own land. Gender equality, including securing women’s rights over land, thus underpins the vision and spirit of the SDGs.

Operation of the SDG framework

A core feature of the SDG framework is that it contains a robust internal monitoring mechanism. Nation states have to formulate National Indicator Frameworks/action plans, defining concrete local adaptations of the international indicators. This forms the subject of Voluntary National Reports that nations may submit for review at the UN High-Level Political Forum on Sustainable Development (HLPF), the annual SDG global monitoring meet. Alongside this, all nation states are expected to maintain an SDG Index and Dashboard to regularly track progress towards achieving the SDGs and to identify challenges and associated solutions. In accordance with this framework, India has made a commitment to the international community to track its progress on the SDGs through annual Voluntary National Reports. To do so, India has set the following national indicators to measure progress on Goal 5.

International target	International indicator	Indian indicator
5.1. Ending all forms of discrimination against all women and girls	5.1.1. Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex	Sex ratio at birth (female per 1000 male)
		Ratio of female to male average wage/salary earnings received among regular wage/salaried employees
5.2. Ending violence and exploitation of women and girls	5.2.1. Proportion of ever-partnered women and girls aged 15 years and older subjected to physical, sexual or psychological	Per 1,00,000 women who have experienced cruelty/physical violence by

	<p>violence by a current or former intimate partner in the previous 12 months, by form of violence and by age</p>	<p>husband or his relatives during the year</p>
	<p>5.2.2. Proportion of women and girls aged 15 years and older subjected to sexual violence by persons other than an intimate partner in the previous 12 months, by age and place of occurrence</p>	<p>Rate of crimes against women per 1,00,000 female population</p>
<p>5.3. Eliminating harmful practices such as child, early and forced marriage and female genital mutilation</p>	<p>5.3.1. Proportion of women aged 20-24 years who were married or in a union before age 15 and before age 18</p>	
	<p>5.3.2. Proportion of girls and women aged 15-49 years who have undergone female genital mutilation/cutting, by age</p>	
<p>5.4. Increasing value of unpaid care and promoting shared domestic responsibilities</p>	<p>5.4.1. Proportion of time spent on unpaid domestic and care work, by sex, age and location</p>	

5.5. Ensuring full participation of women in leadership and decision-making	5.5.1. Proportion of seats held by women in national parliaments and local governments	Percentage of elected women over total seats in the state legislative assembly
	5.5.2. Proportion of women in managerial positions	Proportion of women in managerial positions including women in board of directors, in listed companies (per 1,000 persons)
		Ratio of female to male Labour Force Participation Rate (LFPR) (15-59 years)
5.6. Ensuring access to universal reproductive rights and health.	5.6.1. Proportion of women aged 15-49 years who make their own informed decisions regarding sexual relations, contraceptive use and reproductive health care	Percentage of currently married women aged 15-49 years who have their demand for modern methods of family planning satisfied
	5.6.2. Number of countries with laws and regulations that guarantee women aged 15-49 years access to sexual and reproductive health care, information and education	

5.a. Fostering equal rights to economic resources, property ownership and financial services for women	5.a.1 (a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure	Operational land holding gender wise (percentage of female operated operational holdings)
	5.a.2 Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control	
5.b. Promoting empowerment of women through technology	5.b.1 Proportion of individuals who own a mobile telephone, by sex	
5.c. Adopting, strengthening policies and enforcing legislation for gender equality	5.c.1 Proportion of countries with systems to track and make public allocations for gender equality and women's empowerment	

If adequately implemented, indicators under Target 5.a, which urge nation states to both increase women's land holding and reform discriminatory laws, represent a blueprint for India to address

the current situation with respect to land rights for women. However, as the subsequent sections will highlight, India's national response has undermined the vision of Target 5.a.

II: Response of the Indian Legislature and Judiciary to Women's Land Rights / Target 5.a.

The first step towards addressing women's landlessness is ensuring that the legislative landscape recognises and promotes women's right to land. Equally important is that the Judiciary interprets these laws in such a way that affirms the importance of land rights for women. Recognising this, Indicator 2 of Target 5.a measures individual countries' progress towards achieving the SDGs through analysing whether the legislative (and by association, judicial) landscape is conducive for women's land rights. This chapter will thus assess India's response to Target 5.a by undertaking a close analysis of the laws that govern land in India and of judicial interpretations of some of these laws. Here, in specifically analysing whether the legislative and judicial landscape recognises and strengthens women's right to land, we situate our analysis within the Rights Framework.

Legislative Response

Indicator 5.a.2 of Target 5.a of the SDGs measures progress of individual states in securing women's land ownership by examining whether the national legal framework guarantees women equal rights to land ownership and/or control. Applying this framework to the Indian context, this section will review India's legislative landscape and identify provisions that promote women's right to land, and those that hinder it. To do so, we will focus on two categories of laws:

- Laws regulating the distribution of land vested in the State.
- Laws regulating devolution of private land (broadly succession laws)

This chapter will only discuss whether the design or substance of laws promotes or hinders women's right to land. It therefore will not delve into issues that arise in the implementation of these acts, except cursorily wherever relevant.

Laws regulating the distribution of land vested in the State

This section deals with laws where the State directly, either vests or alienates land to or from the citizen. Here, we will look at the Land Acquisition (Right to Fair Rehabilitation and Resettlement) Act, 2013 (LARR) and the Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA).

1. The Land Acquisition (Right to Fair Rehabilitation and Resettlement) Act, 2013

The introduction of LARR was a watershed moment in the struggle for land rights in India. Compared to the older Land Acquisition Act 1894, which LARR repealed, the 2013 Act included multiple progressive provisions, such as the need to obtain consent, higher compensation, rehabilitation etc. From a gender lens, the 2013 Act was celebrated for recognising single women as distinct beneficiaries (Trivedi, 2016, p. 20). However, a closer reading of the Act reveals that LARR's promise for women remains limited. Two key areas are of relevance in understanding this:

The definition of affected family:

The definition of affected family is the bedrock of LARR. It determines who counts as a unit of entitlement under the Act since only affected families are entitled to benefits.

Aspects that promote Women's Land Rights (WLR)

Section 3(c), which defines affected families under the Act, creates two broad categories of affected families - those who own the land being acquired and those who depend on the land being acquired for their livelihood. In recognising those who rely on the land, this provision brings within its ambit a large percentage of landless rural women who depend directly on farming, livestock rearing etc. for their livelihood, and entitles them to rehabilitation under the Act.

Moreover, the proviso to section 3(c), which informs the definition of affected family, unambiguously states that widows, divorcees and women deserted by families shall be considered separate families. This greatly enhances the cause of women's right to land as it recognises the independent right of single women, as unfettered from that of the family.

Aspects that hinder WLR

However, the Act also confers a higher degree of rights on affected families that own land as compared to affected families that do not own land.

Right to consent

According to section 2(2) of LARR, all categories of acquisition except those where the government is acquiring for its own use, require 70-80% of **land owning** affected families to consent. This means that while non-land owning families, under which a large percentage of women would fall, are recognised as affected families insofar as rehabilitation is concerned, when it comes to consent, they have no say in whether the acquisition should take place.

Right to compensation

LARR creates three types of awards for affected families - compensation award, rehabilitation award and resettlement award.

- The compensation award includes either 2 or 4 times the market value of the land, depending on whether the land is an urban or rural area (The Land Acquisition (Right to Fair Rehabilitation and Resettlement) Act, 2013, The First Schedule).
- The rehabilitation award may include a one-time cash package of Rs 50,000, a monthly subsistence grant of Rs 3000 for a period of 1 year, housing unit, cattle shed etc. The rehabilitation grant may also include land equivalent to the acquired land for affected families that own agricultural land in the acquired area or who have been reduced to marginal farmer status due to the acquisition (The Land Acquisition (Right to Fair Rehabilitation and Resettlement) Act, 2013, The Second Schedule).
- The resettlement package refers to the infrastructural amenities that the acquiring body should ensure in the area to which the affected families are being resettled (The Land Acquisition (Right to Fair Rehabilitation and Resettlement) Act, 2013, The Third Schedule).

Of all three awards, non-land owning families are entitled to the resettlement and rehabilitation awards. Since they do not “own” land, they are not entitled to the cash compensation award, which, as mentioned above, can be up 4 times the market value of the land. Even under the Rehabilitation package, non-land owning families are not entitled to land. Considering the meagre cash compensation under the rehabilitation package, and the systemic failure of Governments to provide more substantial resettlement and rehabilitation measures, non-land owning families are effectively rendered destitute at the completion of an acquisition.

Status of single women

While the recognition of single women as separate units of entitlement is positive, when read in light of how the Act distinguishes between land-owning and non-land owning families, the benefits

of such recognition seem less promising. According to the explanation to section 3(m), “An adult of either gender with or without spouse or children or dependents shall be considered as a separate family”. This results in an absurd situation where, in a land-owning family of 2 parents and 1 adult daughter (married or unmarried), the parents would count as 1 family and the daughter would count as another family. More critically, in the example above, the parents would count as a land owning affected family, while the daughter would count as a non-land owning affected family. Since the rights conferred on land-owning and non-land owning affected families differ under the Act, the daughter, as a single person family, would not be entitled to the benefits conferred on her parents for the land that they own.

Titling of compensatory land

The second component to understand LARR’s impact on women is contained in Point 11 of The Second Schedule of the Act.

Aspects that promote WLR

Point 11 states that wherever an affected family is being given land, it may be given in the joint names of the husband and wife. This is significant because the provision enables joint ownership even when the original land, for which the affected family is being given compensatory land, is in the sole name of the husband.

Aspects that hinder WLR

However, point 11 is a “may” provision and is thus discretionary. The language of the provision leaves considerable room for arbitrary action by the authorities.

2. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The FRA was enacted in 2006 to recognise the right of the Scheduled Tribes (India's Indigenous peoples) and other forest dwelling communities to forest land and resources. It seeks to undo the historical injustice suffered by these communities as a result of state and corporate efforts to displace them, and exploit the resource rich forests that they rely on. The Act confers 14 types of rights, including Individual Forest Rights - recognising the right of the farmer to cultivate land and Community Forest Rights – recognising the right of communities over the commons.

Provisions that promote WLR

Recognition of women's right to land through equitable titling

The FRA recognises women's right to land as equal to that of men. It does so by recognising Individual Forest Rights through joint titles, i.e. in the joint names of husband and wife. It also provides Individual Forest Rights titles to single persons, which includes unmarried women, deserted women or widows (The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, section 4(4)).

Representation of women in the Forest Rights Committee

Claims for forest rights under the FRA are at first instance, verified and approved by the Gram Sabha, a council consisting of all adult members of the village. Once approved by the village council, claims are transferred to state authorities for final approval. These village councils are advised by Forest Rights Committees (FRC), constituted under FRA, which also assist in the preparation of claims. The rules made under the Act mandate 1/3rd representation of women in FRCs, thereby making the process of claims approval more gender sensitive (The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007, rule 3).

Provisions that hinder WLR

There is little in the design of the FRA that hinders women's right over land. The obstacles that women face in claiming rights over forest land are instead a result of arbitrary and improper implementation of the FRA. Since this section is concerned with how the substance /design of laws impacts women's land rights, these implementation barriers have not been discussed.

Laws regulating devolution of private land

This section assesses succession/inheritance laws that deal with how private property is distributed in India. India's current family law system, which includes intestate succession, is highly complex. Under the current system, different inheritance laws / personal laws apply to each of India's multiple religious communities as a measure to uphold religious freedom. Since personal laws have historically been discriminatory towards women, this gives rise to the challenge of finding a balance between religious freedom and gender equality. Many quarters of Indian civil society have hence called for standardisation of family laws, or a Uniform Civil Code to apply to all communities (Tariq, 2017). However, as pointed out by others such as lawyer/women's rights activist, Flavia Agnes, there is a risk that a Uniform Civil Code will erase India's tradition of religious pluralism. Activists like Agnes have therefore argued for internal reform of personal laws to make them equitable for women (2016). With this as the context, this section will discuss whether the Indian Legislature has adequately responded to the challenge of making personal laws compliant with Target 5.a.

1. Personal laws governing Parsis and Christians

Devolution of property in Parsis and Christians takes place through the Indian Succession Act, 1925 (ISA).

Provisions that promote WLR

Amongst Christians, the ISA guarantees equal devolution of property to daughters and sons while the widow gets 1/3rd share (Indian Succession Act, 1925, Part V Chapter II). Amongst Parsis, the devolution of land amongst daughters, sons and the widow is equal. Furthermore, there is no distinction between the rights of a married and an unmarried woman (Indian Succession Act, 1925, Part V Chapter III). Christian and Parsi law also does not distinguish between paternal and maternal sides for devolution of property (Indian Succession Act, 1925, Part V Chapter II; Indian Succession Act, 1925, Part V Chapter III).

2. Personal laws governing Muslims

Inheritance of property amongst Muslims is governed by the Muslim Personal Law (Shariat) Application Act, 1937 (The Shariat Act). The Act states that all matters regarding intestate succession (amongst other matters) will be governed by Shariat, or Muslim Personal Law. Passed in 1937, the Act aimed to supersede prevalent customs amongst different Muslim groups, and uniformly apply the Shariat to all Indian Muslims.

Provisions that hinder WLR

Share of women in intestate property

Devolution of property under Shariat is a highly complex system. Further complicating this is that within Shariat, there exist multiple schools prescribing different rules for different sects of Islam. A detailed examination is beyond the scope of this paper. In general, women's share in the family property is usually half (or less) of that of their male counterpart (Working Group on Women's Land Ownership (WGWLO), 2006). The fact that Muslim Personal Law is codified and supersedes custom represents a powerful opportunity for reform. Codification allows for state intervention aimed at reforming/reimagining/reinterpreting current understandings of women's inheritance

rights under Shariat, and making it more equitable for women. However, the Indian State has not taken the initiative to do so.

Exclusion of Agricultural Land

Another challenge is that agricultural land was explicitly excluded from the ambit of The Shariat Act. This means that community-wise custom and state-wise tenorial laws that lack uniformity continue to apply to agricultural land (WGWLO, 2006; Deo and Dubey, 2019). Custom and tenorial laws tend to be highly discriminatory towards women (WGWLO, 2006; Deo and Dubey, 2019). Whether they are more discriminatory than Shariat is difficult to say since all states and communities have their own tenorial laws and customs. However, the exclusion of agricultural land signifies that any attempts at reforming Muslim personal law would remain incomplete since agricultural land, almost 60% of all land in India, would not be covered (World Bank, 2019).

3. Personal laws governing Hindus

Laws governing Hindus, Sikhs, Buddhists, Jains and certain other communities are governed by the Hindu Succession Act, 1956 (HSA).

Provisions that promote WLR

Recognition of daughters as equal inheritors

Section 6 The HSA was amended in 2005 to give married and unmarried daughters an equal share in the family's ancestral property. Before the Amendment, only sons could inherit ancestral property. The Amendment also repealed a provision in the Act that disentitled female heirs from claiming a partition of the dwelling until the male heirs decided to divide their share. The

Amendment was hence instrumental in the fight for women's land rights in India and in the movement for gender sensitive reform of personal laws.

Applicability of HSA to Agricultural Land

Furthermore, the Amendment also explicitly brought agricultural land within its ambit. This was significant because prior to the 2005 Amendment, devolution of agricultural land was governed by state wise archaic tenorial laws that are highly discriminatory towards women (Deo and Dubey, 2019). Read with the amended section 6, this significantly expanded the scope of women's land rights in India. However, as will be discussed later, the legal position with respect to the applicability of HSA to agricultural land is unclear. As a result, agricultural land continues to be governed by tenorial laws in many states (Deo and Dubey, 2019).

4. Personal Laws Governing India's Scheduled Tribes

Scheduled Tribes or Indigenous People in India are governed by customary tribal law. The Fifth Schedule of the Constitution of India guarantees the protection of cultural and traditional practices of the Scheduled Tribes, which includes cultural and traditional practices that regulate inheritance.

Provisions that promote WLR

In recognising the customary practices of the Scheduled Tribes, the Indian legal system upholds the rights of Scheduled Tribe women in a manner that accounts for their intersectional gender and indigenous identities. The HSA also clearly excludes the Scheduled Tribes from its ambit unless the Central Government notifies that the HSA will apply to a particular Scheduled Tribe community (Hindu Succession Act 1956, section 2). This is significant because customary practices in India tend to be more sensitive to the lived realities of Scheduled Tribe women. For

example, customary inheritance laws of Scheduled Tribe communities that permit bigamy entitle the second wife to an equal share in the husband's property (WGWLO, 2014). This therefore recognises the rights of the second wife, whose rights and needs would be rendered invisible had the Indian legal system not allowed for this degree of pluralism.

Provisions that hinder WLR

Despite this progressive legislative intent, the authors' experience suggests that officials on the ground routinely apply the HSA to Scheduled Tribes Communities. This is done in an attempt to "Hinduise" these communities, or bring them within the fold of the Hindu majority, and thus further the agenda of Hindu cultural hegemony. However, since this is an implementation flaw and not a legislative shortcoming, a detailed discussion of this is outside the scope of this paper.

Judicial Response

In assessing whether India's laws promote land rights for women, it is equally important to understand whether the Judiciary has furthered or undermined the cause of women's land rights. In India's human rights based constitutional framework which recognises gender equality as a fundamental right, this becomes even more important. This is since the Judiciary is expected to ensure that laws and policies do not violate constitutionally enshrined fundamental rights. This section will analyse landmark cases on the HSA from the lens of evaluating judicial response to the issue of women's land rights. A comprehensive overview of judicial response to all relevant areas (including LARR, FRA and other personal laws) is not possible in the limited space available for this paper. We have therefore focused on judicial interpretations of HSA as representative of judicial trends and attitudes towards women's land rights.

Judicial Interpretations that promote WLR

The Judiciary and Recognition of daughters as equal inheritors

Ever since the 2005 Amendment to the HSA, courts have grappled with whether daughters are entitled to an equal share in ancestral property if the father/intestate died prior to the commencement of the amended Act on 9.9.2005. In *Prakash v. Phulavati* (2016) 2 SCC 36, a two-judge bench of the Supreme Court² found that the amended provisions apply only if the father died after the Amendment came into effect. On the contrary, in *Danamma @ Suman Surpur v. Amar* (2018) 3 SCC 343, another 2-judge bench of the Supreme Court found that daughters would be entitled to an equal share in the ancestral property even if their father died prior to the commencement of the amended Act. In light of conflicting judgments, a three-judge bench of the Supreme Court settled the question in 2020 in the case of *Vineeta Sharma v. Rakesh Sharma* (2020) SCC Online 64.³ The court concluded that the amended provisions would apply regardless of whether the death of the father occurred before or after the 2005 Amendment. The court argued that since the right of inheritance accrues at the time of birth, the date on which the father died is immaterial. In doing so, the court effectively expanded the applicability of progressive provisions of the HSA to a much larger group of women.

Judicial Interpretations that hinder WLR

The Judiciary and applicability of the HSA to Agricultural Land

The Judicial position on the applicability of the HSA to agricultural land, however, has not yet been settled. Despite the 2005 Amendment that explicitly brought agricultural land within the ambit of the HSA, archaic state tenurial laws that are grossly discriminatory towards women

² The Supreme Court is the apex court in India

³ In the case that 2 equal strength benches of the same court give conflicting judgments, the matter is settled by a larger bench of the same court.

continue to regulate the devolution of agricultural land (Deo and Dubey, 2019). The root of the conflict is that according to the Seventh Schedule of the Constitution of India, only states have the power to legislate on agriculture while both states and the centre are empowered to legislate on intestacy and succession.

Since the succession of agricultural land sits at the intersection of these two areas, the High Courts⁴ and the Supreme Court have passed conflicting judgments on whether state-based tenurial laws or the central HSA apply to agricultural land. For example, the Allahabad High Court held that the state tenurial law would supersede the HSA (*Archna v. Deputy Director of Consolidation, Amroha and Others* 2015 (4) ADJ 90), while the Delhi High Court and Himachal Pradesh High Court held that the HSA would override state tenurial laws (*Nirmala and Others v. Government of NCT of Delhi and Others* 170 (2010) DLT 577(DB); *Roshan Lal v. Pritam Singh and Others* 2018 HPHC 056). The Supreme Court considered this question in *Babu Ram v Santokh Singh* AIR 2019 SC 1506 and held that agricultural land would be covered by the HSA as per post 2005 Amendment Act. However, the court remained silent on the Constitutional conflict between state tenurial laws and the HSA. As a result, the exact legal position remains mired in uncertainty, allowing states to apply discriminatory tenurial laws to devolution of agricultural property.

As demonstrated here, India's legislative and judicial response to women's land rights, and hence compliance with Target 5.a can be most accurately described as chequered. While some laws like the FRA actively promote women's right to land, others like LARR are both enabling and discriminatory. When it comes to personal laws, similar patterns emerge. Measures to reform

⁴ The highest court in the states is the High Court. Decisions of the High Court are appealed in the Supreme Court. Judgments of the Supreme Court are binding on all states, whereas judgments of the High Court are only binding in its state jurisdiction. High Court judgments are however highly persuasive in other jurisdictions.

Hindu, Christian and Parsi law and to protect the customary laws of the Scheduled Tribes have been somewhat successful in upholding women's inheritance rights. However, a similar claim cannot be made about Muslim Law. Similarly, despite positive moves by the Judiciary to expand the applicability of provisions related to Hindu daughters' right to inheritance, judgments on the relationship between HSA and tenurial law have undermined these very measures. What becomes clear is that despite positive steps, India has not adequately incorporated the SDG agenda on land rights in the national context. Subsequent sections will develop this analysis by looking at key institutions and their response to women's land rights/Target 5.a.

III: Response of NITI Aayog to Women's Land Rights / Target 5.a.

In the previous chapter, it became resoundingly clear that India's legislative framework towards women's land ownership leaves much to be desired. Against this context, the need for commitment to the SDG framework (including Target 5.a) and concrete action towards its realisation in India becomes even more pronounced. In other words, the SDGs hold immense promise for landless women in India. At the same time, if this promise is to result in tangible gains for women, it is critical that NITI Aayog, the institution tasked with guiding policy compliance with the SDGs, shows this commitment to the SDG framework.

This section will thus assess NITI Aayog's commitment to the issue of women's land rights / Target 5.a. Our analysis in this section, and the subsequent section, is rooted in the Governance Framework in that it specifically examines NITI Aayog's institutional commitment to the vision of Target 5.a. As discussed above, for an institution like NITI Aayog to embody the 8 pillars of Good Governance (participation, rule of law, transparency, responsiveness, consensus-oriented,

equity and inclusiveness, effectiveness and accountability) it needs to demonstrate a commitment to the well-being of the people it serves, including landless women.

Through looking at policy documents authored by NITI Aayog, this section will establish that NITI Aayog has failed to prioritise women's land rights in its policy approach to three critical areas – agriculture, women's economic empowerment and women's health. These areas have been chosen due to their close nexus with the issue of women's land rights. To undertake this analysis, we reviewed the following 8 documents.

- **Raising Agricultural Productivity and Making Farming Remunerative For Farmers, 2015** (Policy blueprint for reform in the agricultural sector.)
- **Transformation of Aspirational Districts – A New India by 2022, 2020** (Strategy document aimed at improving development outcomes in underdeveloped Districts,⁵ with a specific focus on health and nutrition, education, agriculture and water resources, financial inclusion and skill development and basic infrastructure.)
- **Moving The Needle - The Women Entrepreneurship Platform, 2021** (Report on NITI Aayog's flagship program, designed to provide support and mentoring to women entrepreneurs through bringing together multiple stakeholders on a single web platform)
- **SDG India Index and Dashboard 2020-21, 2021** (Report on India's progress towards achieving the SDGs, based on a set of pre-decided national indicators)
- **SDG India Index and Dashboard 2019-20, 2020**
- **SDG India Index and Dashboard 2018-19, 2019**

⁵ All Indian states are divided into administrative units, known as Districts

- **Strategy for New India @ 75, 2018** (NITI Aayog’s strategy document for transforming the economic landscape by 2022-2023. The document defines a set of objectives, spanning across 41 crucial areas aimed at achieving sustainable growth)
- **India Voluntary National Report, 2020** (Multi-stakeholder annual report of activities undertaken by the Indian State to operationalise the SDGs, to be reviewed at the UN High-Level Political Forum)

Subsequently, this section will highlight how this approach is reflected in NITI Aayog’s plan to operationalise the SDGs in India. For this, we will review how NITI Aayog has assigned ministries to various SDG goals and targets. In doing so, we will uncover how NITI Aayog’s entire action plan for gender equality only accounts for women in their roles in the domestic sphere, thereby obscuring women’s economic needs such as their right to land.

About NITI Aayog

The National Institution for Transforming India (NITI Aayog), was formed via a resolution of the Union Cabinet on January 1, 2015 to act as the policy ‘Think Tank’ of the Government of India. The main purpose of NITI Aayog is to promote research and innovation and provide strategic policy vision for the government. When it comes to the SDGs, the role of NITI Aayog is one of guiding SDG compliant policy, inter-departmental coordination, periodic data collection and measuring national progress on the SDGs. This includes identifying national indicators which best capture the essence of the SDGs. In this process, it is expected to coordinate between Central Ministries, States/Union Territories (UTs), Civil Society Organisations (CSOs), academia and the business sector to achieve India’s SDG targets (NITI Aayog, n.d.)

NITI Aayog’s Approach to key policy areas

Agriculture

Ideally, any national plan aimed at improving agricultural outcomes must have the land rights for women agenda at its centre. Agricultural planning cannot take place without accounting for women's land rights for the following reasons:

- It is by now well established that there is a direct relationship between women's land ownership and agricultural productivity (Agarwal, 2003). According to a study by the Food and Agriculture Organization, agricultural output on land farmed by women in developing countries is 2.5 to 4% higher than that of land farmed by men (2011). Target 2.3 of the SDGs, which talks about increasing agricultural productivity through promoting women's land ownership, also recognises this relationship.
- 33% of the agricultural labour force and 48% of self-employed farmers in India are women (Oxfam, 2018). Together, rural women produce 60-80% of India's food (Oxfam, 2018). As women are major actors in the agricultural economy, any policy discussion on the future of agriculture cannot take place without taking active measures towards securing the livelihoods of women farmers. As we know by now, land ownership has direct positive impacts on agricultural livelihoods (Food and Agriculture Organization, 2011).

Thus, as recognised by the SDG framework, women's land ownership is a policy priority/an end in itself, as well as a means to achieving other outcomes in the context of agriculture. However, a closer examination of NITI Aayog's approach to agriculture highlights that NITI Aayog has completely ignored the question of women's land rights as both a means to greater agricultural output as well as an independent priority of its own.

Women's land rights and agricultural productivity

NITI Aayog's erasure of the relationship between agricultural productivity and land rights for women is most evident in a policy paper prepared by NITI Aayog's Agricultural Task Force (2015). This paper does not mention anything on women's land ownership. While the paper was released in 2015, before India's SDG implementation plan was fully developed, a similar trend of ignoring women's land ownership in discussions on agricultural productivity is evident in NITI Aayog's later policy papers as well. In the 2018-19 India Index Report, while discussing measures for doubling agricultural productivity under Goal 1, NITI Aayog restricts its ambit to merely providing women with equal access to land but not ownership (NITI Aayog, 2019a). This approach continues in NITI Aayog's vision for developing underdeveloped Districts, where land ownership of women is not used as an indicator for measuring agricultural progress (NITI Aayog, 2020b).

NITI Aayog's approach to increasing agricultural productivity is instead limited to measures such as the use of agricultural inputs and technology, shifting production to high value commodities and increasing farmers' access to credit (NITI Aayog, 2020b; NITI Aayog, 2015). For example, the majority of the indicators chosen for transforming Districts through agriculture revolve around certified quality seed distribution and encouraging judicious use of water through agricultural inputs (NITI Aayog, 2020b).

However, access to agricultural inputs and credit are in fact significantly influenced by land ownership (OECD, 2018). Most schemes in India that are intended to provide farmers with agricultural inputs and credit only cover land-owning farmers in practice (Chatterjee and Krishnamurthy, 2020). This means that landless women, who represent a majority of the agricultural workforce, are deprived of the benefits of agricultural inputs and access. Moreover, if

women do not directly exercise control over land through ownership, measures aimed at providing agricultural inputs and credit are going to be meaningless in practice. As a result, the efficacy of agricultural inputs and credit without securing women's land ownership, remains limited at best.

Women's land rights as an independent priority

Apart from the benefits it has for agricultural productivity, the rights-based vision of the SDGs mandates that women's ownership of land must be an independent priority of its own. That is, regardless of the impact it has on agricultural productivity, it is important for any agricultural policy to secure the livelihoods of those who cultivate the land (a large percentage of whom are women) through upholding their right to own land. NITI Aayog does, to some extent, recognise this. However, its plan to do so is both limited in vision and devoid of a gender lens.

In the Strategy for India @ 75 policy paper, NITI Aayog recognises landlessness as a distinct challenge facing the agricultural sector. To remedy this, NITI Aayog suggests that states adopt the Model Agricultural Land Leasing Act 2016. The proposed Act seeks to regularise the relationship of small and marginal tenant farmers with the land that they cultivate through land leasing agreements (NITI Aayog, 2018). However, the Act is silent on how it proposes to secure lease rights for women farmers. This is significant because we know from experience that in a family of tenant farmers, lease rights are more likely to accrue to the man unless the legislative scheme actively intervenes. Moreover, land leasing falls significantly short of ensuring secure and stable rights to land since lease rights are limited in scope when compared to ownership rights. To effectively implement land leasing measures, NITI Aayog proposes country-wide digitisation of land records (NITI Aayog, 2018). However, measures such as land digitisation are particularly disadvantageous to marginalised groups like women who may not have the documentation to prove

their ownership/possession, thereby resulting in wrongful disentanglement from land (Ramanathan cited in Chandran, 2020).

Underpinning NITI Aayog's inability to see the interlinkages between agricultural policy and land rights for women is its failure to recognise women as economic agents with a right to land. That NITI Aayog has not even included data on women's agricultural land ownership, but merely on women's operational land holding, as a national indicator under Target 5.a is testament to this (NITI Aayog, 2021a; NITI Aayog, 2020a). NITI Aayog similarly has not devised any measures for collecting gender disaggregated data in its plans for land digitisation (2018). The first step towards addressing any issue is ascertaining the extent of the problem through accurate data. The fact that NITI Aayog has not undertaken any efforts to collect data on women's land ownership ultimately shows a lack of commitment towards addressing the problem of women's landlessness and thus towards the vision of Target 5.a.

Economic Empowerment

Economic empowerment is another policy area that must necessarily prioritise women's land ownership. Multiple studies have highlighted the link between women's land ownership and economic empowerment. Specifically, these studies show that women's land ownership directly results in women generating greater income and having more control over such income, especially in the agricultural context. (Valera et al, 2018; Landesa, 2012b). Despite this, NITI Aayog's policy approach reduces the broad ambit of women's economic empowerment to entrepreneurship and skill development / labour force participation. This is a marked departure from the vision of the SDG as expressed under Target 1.4 and Target 5.a, which situate land ownership at the heart of economic freedom/empowerment of women.

Entrepreneurship

A core feature of NITI Aayog's approach to women's economic empowerment is promoting women's entrepreneurship. NITI Aayog's flagship Women's Entrepreneurship Portal (WEP), which aims to bring together multiple stakeholders on a single web portal to provide support and mentorship to women entrepreneurs, is at the centre of this approach. In WEP's vision statement, NITI Aayog recognises lack of collateral as one of the biggest barriers to women's entrepreneurship. However, its proposed solution to this is to increase women's access to credit. There is no mention of how secure land ownership can provide women with the necessary security to undertake entrepreneurial endeavours (NITI Aayog, 2021b).

NITI Aayog's failure to appreciate the primacy of land for entrepreneurial activity can, to some extent, be attributed to the urban bias of NITI Aayog's approach. WEP, being an online portal, caters largely to an urban audience. This assertion is corroborated by the fact that almost 70% of the registered users of the platform are from metro cities and only 6% are from Tier three cities (NITI Aayog, 2021b). Since rural women do not feature as entrepreneurs in NITI Aayog's imagination, the primary economic need of rural / agriculture dependent women i.e. land is missing from NITI Aayog's conceptualisation of women's entrepreneurship.

This is further evident in how NITI Aayog only cursorily mentions rural women's Self Help Groups (SHGs) / women's collectives in the WEP manual. Here, it discusses how SHGs can be given skill-based training to operate small home-based enterprises (NITI Aayog, 2021b). However, as Agarwal's study on women's collective farming in Kerala shows, women's collectives, if given control over land and support from the State, can be transformative spaces for

women's economic empowerment in the agriculture sector (2020). Such examples of rural entrepreneurship are entirely absent from NITI Aayog's entrepreneurship policy plan.

Labour Force Participation

In addition to entrepreneurship, increasing women's labour force participation through skill development and promoting industry participation features in NITI Aayog's approach as a panacea for women's economic empowerment. This is highlighted in various documents by NITI Aayog such as Transformation of Aspirational Districts – A New India by 2022 and the 2020 Voluntary National Report, where economic empowerment of women is sought to be achieved through skill development programs that improve their employability in industries (2020b; 2020c). Another commonly used indicator by NITI Aayog is the ratio of female labour force participation in the skilled as well as unskilled sectors (FLFP) (NITI Aayog, 2020c; NITI Aayog, 2021a).

This approach ignores that the foremost economic need of 80% of economically active women in India, who are engaged in the agricultural sector, is secure access to land (Oxfam, 2018). In reality, vocational skills training programs designed to help women enter the workforce, do not automatically lead to greater participation of women in the workforce. According to a study conducted by the Evidence for Policy Design at the Harvard Kennedy School on skill development programs in India, women are less likely to receive job offers after such programs than men. Even women who do receive job offers as a result of skilling programs are often unable to accept job offers due to resistance from their families (Moore and Prillaman, 2019). Similarly, in light of labour laws and practices that are highly discriminatory towards workers, promoting industry labour force participation barely qualifies as a strategy for economic empowerment (Aajeevika Bureau, 2020). Moreover, women rarely have control over the income they earn as it is often

usurped by male members of the family (Mayoux, 2000; Ortiz-Ospina and Roser, 2018). Non-agriculture labour force participation measures thus seek to push women away from agriculture, their current source of livelihood, to more insecure economic activities.

Health

Scholars such as Bina Agarwal outline the importance of land ownership for women, especially agricultural land, as being instrumental for their individual as well as family's health and well-being (Agarwal and Panda, 2005; Mishra and Sam, 2016). It is also well established that securing women's right to land is directly correlated with improved nutrition status, and hence the health of women and their families (Landesa, 2012a; Kelkar, 2013, Allendorf, 2007). It is further hypothesised that land ownership increases women's autonomy over health related decisions, thus leading to better health outcomes (Mishra and Sam, 2016). Despite this evidence, NITI Aayog's entire approach to women's health revolves around improving women's nutrition and access to primary health care (2018). Land ownership is absent from this articulation. Such measures only meet the immediate needs of women in their limited identities as pregnant women, new mothers and women seeking contraceptive options. They do little to improve women's autonomy over health related decision-making.

Thus, despite India's commitment to Target 5.a, land rights for women does not seem to be a policy priority area for NITI Aayog. It is therefore not surprising that NITI Aayog's concrete SDG operationalisation plan, as captured in its allocation of nodal ministries and schemes for the various SDG targets, is not suited to achieving land rights for women (2019b). A closer examination of this plan further highlights how NITI Aayog constructs women solely as victims of violence or machines for reproduction. In the limited circumstances where women's economic agency is

recognised, they are seen as capable only of operating small home-enterprises that contribute to the family's supplementary income. NITI Aayog therefore renders invisible women's identities as economic actors with a right to land.

To illustrate this, we will assess the following against the vision of Target 5.a:

- The policies chosen by NITI Aayog to achieve Goal 5 (the stand-alone goal on gender equality)
- The way in which NITI Aayog has assigned Ministries to other targets (that directly or indirectly impact women and their right to land).

NITI Aayog Ministry Allocations and the targeted gender equality goal: Goal

5

The Department of Women and Child Development (WCD) has been given the charge of Nodal Ministry for Goal 5 in its entirety. Yet, the schemes identified to achieve targets under Goal 5 limit the vision of Goal 5 for women to the domestic realm.

Of all the schemes identified for the 9 targets, five categories emerge:

- 1) Schemes targeted at addressing gender violence
- 2) Health related schemes for women and children
- 3) Schemes targeted at easing women's burden in the household
- 4) Schemes targeted at educating the girl child
- 5) Vocational and technical training for women

Here, the erasure of women as asset owning economic agents is striking. Most schemes dealing with the empowerment of women are concerned with preventing violence against women and improving maternal health, and thus with women's roles as mothers and wives. However, as discussed above, in ignoring the question of land rights for women, NITI Aayog not only disempowers women economically, but also fails to address one of the root causes of gender-based violence and women's ill health (Agarwal and Panda, 2005; Landesa, 2011; Bhattacharya, Bedi and Chhachhi, 2011; Landesa 2012; Kelkar, 2013; Richardson and Hughes, 2015; Mishra and Sam, 2016). The schemes that are aimed at economic empowerment conform to the pattern discussed above, and only include programs on vocational and technical training. However, as shown in the previous section, these schemes do little to reconfigure the resource ownership asymmetry that continues to marginalise women.

More concerning are the schemes identified to address Target 5a. The schemes are as follows:

- Deen Dayal Antyodaya Yojana (DAY) – National Rural Livelihood Mission (NRLM)
- Deen Dayal Antyodaya Yojana (DAY) – National Urban Livelihood Mission (NULM)
- Pradhan Mantri Jan Dhan Yojana (PMJDY)

The focus of DAY is on increasing livelihood options for the poor through providing institutional support and promoting micro-enterprises, while the PMJDY is a direct benefit transfer (DBT)/ cash transfer scheme. None of these schemes include any provisions for increasing women's access to and control over land. However, without the opportunity to participate in decision-making regarding household expenditures, which we know is enhanced by land ownership, such schemes remain largely tokenistic (Valera et al, 2018; Mishra and Sam, 2016).

NITI Aayog Ministry Allocations and targets where gender is a cross cutting issue

While the conceptualisation of women's needs in NITI Aayog's operationalisation of Goal 5 is important to understand NITI Aayog's institutional commitment to women's land rights, it is equally critical to examine how this has been done for other goals where gender is a cross-cutting issue. This section will do so through mapping the ministries to which various goals and targets have been assigned in the NITI Aayog Framework. As representative of larger trends, we have analysed ministry allocations to Goals 2, 4, 10 and 16. These goals have been chosen because collectively, they capture a number of policy areas that should ideally prioritise women's land rights.

Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture

Goal 2 can be roughly split into two interrelated categories – improving nutrition and promoting sustainable agriculture. While WCD has been given the charge of addressing malnutrition in women and children under Targets 2.1 and 2.2, it is entirely absent from the operationalisation of all agriculture related aspects of Goal 2. As highlighted above, any action plan that talks of increasing agricultural productivity without actively foregrounding women's land ownership will be incomplete. The only land related measure in NITI Aayog's operationalisation of Goal 2 is the introduction of land digitisation under Target 2.3. However, there is no indication in NITI Aayog's plan that it intends to address the gendered impacts of land digitisation (as discussed above) as WCD has not been included as a relevant ministry for this particular aspect.

Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.

From the lens of securing land rights for women, Target 4.7 is the most relevant among the targets under Goal 4. Target 4.7 talks of the need to ensure diversity/value-based education aimed at promoting human rights, sustainable development, gender equality and peace and non-violence amongst other things.

This is important because women's land rights cannot be secured unless an attitudinal shift takes place. Gita Sen draws on the work of Srilatha Batliwala to argue that empowerment refers to the process of gaining control or power over both resources (physical, human, intellectual, financial and the self) and ideology (beliefs, values and attitudes) (Batliwala, 1993 cited in Sen, 1997). Therefore, unless values and attitudes that deprive women of economic resources like land are challenged, structural changes such as progressive legislation will remain largely meaningless in practice. Landesa's 2014 study provides a useful illustration of this phenomenon. According to the study, only 13% of the 1436 Hindu women with land owning parents surveyed reported that they had inherited or expected to inherit property from their family (Sircar and Pal, 2014). This is despite the 2005 HSA Amendment which gave daughters an equal right in Hindu ancestral property. It is thus worrying that WCD has not been included as a relevant ministry under Goal 4.7.

Goal 10: Reduce inequality within and among countries

13% of the total population of women in India live in extreme poverty (Azcona et al, 2020). Moreover, there is ample evidence to suggest that securing land rights for women, especially over agricultural land, is an effective strategy for reducing economic inequality (Landesa, 2012b). Land

ownership has also been proven to give women significantly greater bargaining power both within and outside the home and to act as a protection against gendered violence (Agarwal and Panda, 2005; Bhattacharya, Bedi and Chhachhi, 2011; Richardson and Hughes, 2015). Against the backdrop of increasing feminisation of poverty, it is concerning that WCD does not feature at all in NITI Aayog's Goal 10 operationalisation.

Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, inclusive and accountable institutions at all levels

Goal 16 assumes particular importance in the context of women's land rights as cumbersome land administration processes and ill-equipped/opaque institutional systems are formidable barriers to land rights in India (Mishra and Suhag, 2017). As a result, a large percentage of land holders either do not have any documentation of land title, or only have informal documentation. The status of land ownership of many is thus highly insecure. For women, these barriers are exacerbated due to lack of access and patriarchal attitudes. A study by Landesa and UN Women found that since women are culturally excluded from official spaces, they are less likely to visit Government Offices than their male counterparts. Naturally, this has a direct negative impact on women's "ability to access or maintain control over land" (UN Women and Landesa, 2012). There is thus an urgent need to simplify land administration processes and take active measures to sensitise land administration officials/institutions from a gender perspective.

Despite this, there is no mention of WCD in NITI Aayog's Goal 16 implementation plan. There is one mention of simplifying land records through the Digital India Land Record Modernisation Program under Target 16.6 (develop effective, accountable and transparent institutions at all

levels). However, WCD has not been included as a relevant ministry here, suggesting that NITI Aayog has not considered the gendered impacts of digitisation (discussed above). Moreover, Target 16.b talks about promoting and enforcing non-discriminatory laws and policies for sustainable development. Yet, there is nothing to suggest a specific ‘land rights for women’ focus or a gender focus at all under this target.

It is thus evident that the land rights for women lens is entirely absent from NITI Aayog’s policy articulation on a number of crucial issues. Furthermore, it is also apparent from NITI Aayog’s SDG ministry allocations that NITI Aayog has not accounted for women’s economic needs, such as the right to land, in its SDG operationalisation agenda. Ultimately, this highlights a lack of commitment to upholding women’s right to land and therefore undermines faith in NITI Aayog to operationalise Target 5.a.

IV: Response of Implementing Bodies to Women’s Land Rights / Target 5.a.

Of equal importance to NITI Aayog’s understanding of gender is the stance of other institutions that are responsible for training duty-bearers. As capacity-building bodies, these institutions not only hold immense power to influence the broader discourse on women’s land rights, but also shape how laws and policies are implemented on the ground.

In a similar manner to the previous section, this section will analyse the institutional commitment of these bodies to assess whether India’s governance machinery has adequately imbibed the spirit of Target 5.a. While in the previous section, we relied on NITI Aayog’s policy documents to evaluate institutional commitment, in this section we will do so through looking at the capacity

building curricula that our selected institutions use for training duty-bearers. We will analyse the institutional commitment of state and national level bodies of the following institutions.

- Gender Resource Centres (GRC) / State Resource Centre for Women (SRCW)
- Institutes of Rural Development / Panchayat Training Institutes
- Judicial Academies
- Legal Services Authorities
- Premier Law Universities

While efforts were made to review these institutions for the same set of states for each institution, the lack of information available online meant that we were not always able to do so. We have, therefore, randomly selected states for each of the institutions, in addition to the National Body wherever applicable, based on the availability of information online.

Gender Resource Centres / State Resource Centre for Women

The GRC / SRCW was initially introduced as an independent and autonomous body of WCD and was to play a crucial role in sensitising duty bearers to gender issues, including women's property rights. However, many GRCs were shut down as funding was cut in 2016. We have analysed the capacity building material of some GRCs that do still exist – Meghalaya, West Bengal and Gujarat. As a caveat, we must mention that a lot of the material available online is old. This may be because websites have not been updated in a while, or it could mean that the GRCs are no longer functional despite functioning websites.

Meghalaya GRC's 2016-17 and 2017-18 Annual reports (the only reports available on their website) mention very few capacity building initiatives for state duty bearers. Most activities mentioned are awareness or capacity building programs for members of the public. None of the

sessions mentioned include anything on land rights (Meghalaya Gender Resource Centre, 2017; Meghalaya Gender Resource Centre, 2018). Similarly, the list of recent events on the West Bengal SRCW website does not include anything on women's land rights (West Bengal Gender Resource Centre, n.d.). The Gujarat GRC seems slightly better. A trainer of trainer event report for District level functionaries does, to some extent, recognise the relationship between land and gender discrimination (Gujarat Gender Resource Centre, 2013). However, the session report does not contain any practical inputs on laws that either promote or hinder women's right to land. A report on a state level consultation with civil society held in 2009 is more promising. The report extensively foregrounds the land lens in discussions around gender equality, and contains concrete recommendations from civil society organisations (Gujarat Gender Resource Centre, 2010). Links to all other more recent training material/reports on the website are non-functional.

National and State Institutes for Rural Development

National and State Institutes for Rural Development (NIRD and SIRD) are responsible for training village level elected and non-elected government officials as well as administrators in charge of land revenue matters. Whether practical aspects of laws governing women's land rights are included in the training programs of Institutes for Rural Development, therefore, has a direct bearing on whether women receive their entitlements in practice.

The 2015 National Training Policy for Rural Development and Panchayati Raj, the guiding document for NIRD and SIRD capacity building programs, does not include anything on women's land rights (Gyanmudra, 2015). Similarly, NIRD's model learning material booklet for village-level elected members only briefly mentions the HSA in the section on laws relevant to women's empowerment. However, there is no mention of daughters' equal rights in ancestral property, as

introduced by the 2005 Amendment. None of the other sections, including one on the role of the Women, Child and Social Welfare Standing Committee of the local elected body, contain anything on women's land rights (National Institute of Rural Development and Panchayati Raj, 2020). Furthermore, only 1 out of almost 50 manuals listed in an E-Repository of Training Manuals and Handbooks on Gender Responsive Governance prepared NIRD talks about women's ownership of land (Centre for Gender Studies and Development, National Institute of Rural Development and Panchayati Raj and UN Women, n.d.). When we come to the states, the general training curricula of Rajasthan, Tripura and Kerala State Institutes of Rural Development do have some sessions on women empowerment, with a specific focus on gender based affirmative action in local government elections (Indira Gandhi Panchayati Raj and Gramin Vikas Sansthan Jaipur, n.d; State Institute of Public Administration and Rural Development Tripura, 2020; State Institute of Rural Development Kerala, 2017). However, none of the sessions include any inputs on women's land rights.

Premier State-Funded Law Universities

Law colleges are at the coal face of shaping the attitudes and competencies of future lawyers, judges and bureaucrats. Whether these individuals are equipped to use the law to secure women's right to land, and challenge it where necessary, is contingent on whether colleges include topics related to women's land rights in their curricula. Since detailed course outlines are not available online, we have focused on two leading law colleges – National University of Juridical Sciences, West Bengal (NUJS) and Gujarat National Law University (GNLU) and analysed course outlines provided to us by alumni.

On reviewing the course outlines of the Property law course offered by NUJS and GNLU, we found that these courses cover technical aspects of mortgage, lease, transfer of property, easements etc. without any discussion of how property laws impact women (National University of Juridical Sciences, West Bengal, 2015; Gujarat National Law University, 2017) . Other areas where one would expect a discussion around women’s land rights include Family Law, Land Laws (land acquisition, land ceiling provisions etc.) and courses on Law, Poverty and Development/Law and Impoverishment. NUJS’s and GNLU’s family law courses do cover women’s right to intestate succession but, according to alumni, fall short of offering a gendered critique of these provisions (National University of Juridical Sciences, West Bengal, 2016; National University of Juridical Sciences, West Bengal, 2015; Gujarat National Law University, 2020; Gujarat National Law University, 2021). Similarly, GNLU’s Land and Agricultural Law course at least acknowledges the need to analyse land laws from a gendered perspective in its course objectives. However, none of the sessions or compulsory readings include anything on gender (Gujarat National Law University, 2018). Likewise, while the NUJS Law and Impoverishment curriculum focuses heavily on gender in a section on Law and Development Induced Development, it does not cover anything on land as a structural determinant of women’s poverty and India’s legal approach to this question (National University of Juridical Sciences, West Bengal, 2019).

Judicial Academies

As institutions tasked with training judicial officers, the National and State Judicial Academies (NJA and SJA) occupy a pivotal role in informing how laws related to women’s land rights impact women on the ground. For this, it becomes important to review the training programs of these institutions.

NJA conducted 7 gender sensitisation training and 130 workshops for judicial officers from 2018-2021. However, none included anything on women's land rights. Even the sessions on family law did not cover women's rights in intestate succession (National Judicial Academy, 2020; National Judicial Academy, 2019; National Judicial Academy, 2018; Ministry of Women and Child Development, 2020). A similar trend can be seen in training programs of the SJAs of Kerala, Chhattisgarh, Rajasthan and Gujarat. None of the training programs scheduled for 2019-2021 in Kerala, Chhattisgarh and Rajasthan included targeted sessions on women's land rights (Kerala Judicial Academy, 2019; Kerala Judicial Academy, 2020; Chhattisgarh State Judicial Academy, 2019; Chhattisgarh State Judicial Academy, 2020; Rajasthan State Judicial Academy, 2019; Rajasthan State Judicial Academy, 2020; Rajasthan State Judicial Academy, 2021). Rajasthan had one session on Gender Justice in 2020. However, the reading material for this session only cursorily mentions the HSA. While the Gujarat State Judicial Academy did cover women's property rights as part of its Gender Justice and Family Law and Gender Justice and Matrimonial Litigation workshops in 2018-19 and 2019-20, only 3 out of 147 sessions were on this topic. (Gujarat Judicial Academy, 2018; Gujarat Judicial Academy, 2019; High Court of Gujarat, 2018; High Court of Gujarat, 2018).

Legal Services Authorities

A discussion on the operationalisation of laws relating to women's land rights must necessarily take into account the activities of the National and State Legal Services Authorities (NALSA and SLSA). Legal Services Authorities (LSA) are responsible for providing legal aid and awareness to marginalised groups, including women. A review of the capacity building material used to train LSA lawyers and paralegal volunteers is therefore necessary to understand the extent to which laws related to women's land rights are implemented on the ground.

Of the three-part legal services lawyers training manual prepared by NALSA, only Part 2 covers women's land rights as part of a section on property rights under personal laws (National Legal Services Authority, 2015; National Legal Services Authority, 2016; National Legal Services Authority, 2018). The training module for the training of paralegal volunteers does not have any material on women's land rights (National Legal Services Authority, 2017).

While the inclusion of women's property in Part 2 of the module is a positive step, it means little till the SLSAs incorporate it in their operational capacity building plans. The LSA lawyer training material uploaded on the websites of Chhattisgarh and Rajasthan SLSAs does not include anything on women's land rights (Chhattisgarh State Legal Services Authority, n.d.; Rajasthan State Legal Services Authority, n.d.). Both have almost identical material which draws heavily from Part 1 of NALSA's training module (National Legal Services Authority, 2015).

Compared to the other two states, Jharkhand seems to fare better in terms of incorporating a land rights for women lens; however only marginally so. The paralegal volunteers training published in 2017 (the only training manual available on the website) contains one session on property rights including inheritance (Jharkhand State Legal Services Authority, 2017). However, it is unclear whether a gender perspective has been adopted here. Other training material on the website includes two reading/learning booklets prepared by the Jharkhand SLA in 2019 – one for a “Regional Training Programme [on] Sensitisation of Family Court Judges for 13 States” and one on “Landmark Judgments of Supreme Court of India on Family Matters”. While the Regional Training booklet contains an entire section on women's property rights under Personal Laws, the judgments booklet contains only 1 obscure case on women's property rights out of a total of 57 cases (Jharkhand State Legal Services Authority, 2019a; Jharkhand State Legal Services Authority, 2019b).

In the absence of a land rights for women lens from training curricula of almost all critical institutions, it is unlikely that duty bearers will have the necessary competencies to protect women's right to land. At the same time, the fact that the training designs of these institutions are silent on women's land rights indicates a lack of institutional commitment. The efficacy of the implementing bodies analysed here in achieving Target 5.a thus remains limited.

V: Conclusion

As this paper has argued, India's national response to the mandate of Target 5.a (securing women's right to land), is far from what is required to achieve the SDGs. Situating our analysis within both the Rights and Governance Frameworks, we have evaluated India's response in terms of both substance (existence of right-based laws) and system (existence of a committed institutional machinery). What emerges from this analysis is that despite some positive steps by the Legislature and Judiciary, Executive/ Implementing bodies have failed to operationalise the vision of Target 5.a / the SDGs more broadly.

However, as we have consistently maintained throughout the paper, the answer to India's policy and institutional gaps when it comes to women's land rights lies in a renewed commitment to the SDG framework. Practically, this would mean reviewing and amending laws and policies as per Indicator 5.a.2 of Target 5.a and collecting gender disaggregated data on women's land ownership. This would also require NITI Aayog to take more active measures to promote women's land ownership, both in guiding policy discussions and in inter-departmental coordination aimed at realising the SDGs. Similarly, a renewed focus on the SDG vision would also mandate that duty-bearers be adequately trained to advocate for women's right to land. In presenting these ground realities, this paper has sought to identify specific gaps in India's approach to women's land rights/

Target 5.a and thus pave the way for more comprehensive discussions around how exactly these shortcomings can be remedied.

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