

## **Women's Economic Security and Property Rights: Some Current Issues**

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*While it has long been recognised within the gender discourse that the perpetuation of unequal property structures stems from the need for patriarchal institutions to exercise power over land both as a productive resource and as well as a store of wealth, the legal literature on property rights generally leaves the gender characteristics of property rights undefined, thus failing to recognise that intrahousehold inequalities in property rights impinge upon the distribution of rights and responsibilities within and also without the household.*

*The paper tracks down how property rights issue has largely been neglected in gender discourse and charts out how the issue could be reinstated at the centre of women's movement.*

[**Keywords:** property rights, gender inequality, patriarchal institutions, livelihood security of women, women's movement, gender justice, decolonisation, gender & development, modernisation, globalisation]

### **1. Gendering the Property Rights Discourse**

Many of the economic disparities and insecurities that confront women in society are perpetuated by longstanding social and gender inequalities in property rights which form the base of all issues concerning women and security. Property rights are also closely related to livelihood security for women, particularly in developing countries where women's rights of ownership over economic assets and the legal structures that support the exercise of such rights are both particularly weak. Thus in most situations, women's property rights over economic assets such as land are either insecure or non-existent, and the retention of such rights is also poor in the absence of adequate statutory safeguards. While it has long been recognised within the gender discourse that the perpetuation of unequal property structures stems from the need for patriarchal institutions to exercise power over land both as a productive resource and as well as a store of wealth, the legal literature on property rights generally leaves the gender characteristics of property rights undefined, thus failing to recognise that intrahousehold inequalities in property rights impinge upon the distribution of rights and responsibilities within and also without the household (Poats 1991; Moser 1993; Meinzen-Dick et al 1997).

Although the relevance of property rights issues to women's security is relatively clear, it is nevertheless observed that beyond exceptional empirical studies relating to women's land tenure, there is a noticeable dearth of gender-aware literature on property rights. The reason is probable that many activists within the women's movement feel challenged by the terminologies used in this respect by the economic and legal literature. However, because of the quick pace of global economic change which marginalises women's property rights, the need for women to address property rights issues has become even more pressing. The present paper endeavours to bridge visible gaps between the gender and property rights discourses in order to promote gender-awareness about their common substance. The discussion is organized into four sections. Section 1 identifies aspects of the gender discourse where a proper understanding of property rights can improve the articulation of women's rights. Section 2 reviews the existing economic and juridical discourse on property rights from the evolutionary standpoint, and seeks to identify areas within it where gender questions are relevant. Section 3 identifies current property rights issues that confront the women's movement across many parts of the developing world. Section 4, which concludes the paper, briefly constructs the future terrain which the women's movement must traverse. Although the paper is essentially a synthesis from several coexisting streams within the literature, it is hoped that this will eventually coalesce into greater social awareness about the positions of women vis-à-vis property rights.

## 1.1 Women & Gender Justice

The gender discourse around distributive justice has evolved primarily from the feminist critique of liberal theories that rationalise the presence of gender inequities within their conceptualisations of distributive justice. By relating gender justice to the realisation of women's rights, the gender discourse has opened a vast multitude of questions regarding the present status of women within society, including their property rights. Writing on the subjection of women in way back in 1869, John Stuart Mill had anticipated some of these feminist arguments by stating that political equality of women would be the combined outcome of personal freedom from patriarchal control as well as equal educational and economic opportunities, equal political rights and equal property rights (Mill 1869). On these egalitarian principles, liberal feminist theories thus advocate gender parity between men and women.

Radical feminist theories however disagree with the egalitarian conceptualisation of gender justice, on the ground that it merely focuses on surface economic issues, leaving the structural inequalities that affect women untouched (Young 1990: 18). Their standpoints are partly based on a rejection of the dichotomy between the private and public spheres, which renders women subject to patriarchal control within their personal domain, to which state policy remains neutral (*cf.* Binion 1995). This separation of spheres, they feel, has relegated women to the home, thus preventing their effective participation within the policy sphere. Thus for radical feminists, the achievement of personal autonomy by women is critical to their achievement of political and economic equality. It has also been noted in this respect that social goods such as power or wealth or social respect are always distributed unequally, because of the arbitrary exclusion of certain social groups. These inequalities become a cause of social dominance if the group holding power or wealth or respect is able to use its command over one to establish control over the others (Walzer 1983). Extending this principle into gender relations within the household, feminist theories have thus argued that the social norms that assign the performance of domestic work exclusively to women also undermine their status in other spheres of work and society (*cf.* Armstrong 2002).

The feminist critique of the social institution of marriage is based on a similar analysis of the marriage contract, whereby the autonomy of women is surrendered by their families to those who wed them, allowing their lives and their productive and reproductive activities to be continually regulated by the patriarchal institutions originally set up to establish dominance over women (Pateman 1988). The implications of marriage and childrearing responsibilities on the lifetime earning potential of women are shown to result in their systematic failure to compete on equal terms in the labour market and to accumulate adequate economic power and wealth, thus reinforcing their economic subjugation (Okin 1991). Radical feminist theories thus see gender inequality as the cumulative result of the unrestrained exercise of individual liberal freedoms by men, which liberal justice systems are unable to address because of their commitment to legal neutrality in all private matters. While many of these questions raised by feminist discourse still remain unresolved, the discourse has been influential in shaping contemporary understanding of gender liberties and rights, including women's need for property rights.

## 1.2 Women & Development

Another important discourse which has informed current perceptions about gender roles and rights has arisen from within development economics. In principle, the early theoretical approaches that laid the foundations for development practice during and after the decolonisation experience were generally gender-blind, because their 'trickle down' theory held that developmental benefits would automatically percolate to all women residing in developing countries. Serious exploration of women's roles in economic development only commenced after Ester Boserup's study of women's work contributions to agricultural activities across many decolonised nations (Boserup 1971). While high gender inequalities in South Asia were seen to originate in the large regional population and the consequent devaluation of women's work within the farming system, the less-densely populated countries of Southeast Asia and Africa that in contrast showed much greater engagement of women in farm-work were also characterised by higher gender equality and much less restriction of women's gender autonomy (*ibid.*: 16-26). Besides providing evidence that gender inequality was socially constructed, the analysis also showed that current modernisation practices involving the induction of new agricultural technology and the switch from subsistence crops to cash crops were having a gender-displacing and de-skilling effect on women, because of the limited access women had to

markets and limited personal mobility (ibid.: preface). The process of urbanisation and migration was also seen to carry gender penalties, as women were forced to switch to informal modes of *bazaar* activities well beyond the reach of their support networks (ibid.: 178-179).

Growing gender concerns that have arisen in development economics more lately have also centered on the impact of globalisation on women. These concerns have also raised important questions about the systemic link between gender exploitation, capitalist development and poverty that accelerates the marginalisation of women. Focusing on women's work within the comparative experience of several developing countries, certain studies have shown that the accumulation of capital during the era of globalised growth is being increasingly financed by the seizure of the labour power of women (cf. Mies 1986, Mies et al. 1988). Globalisation has also caused a shift from earlier Fordist models of capitalist production under which labour services were contracted for the full duration of the production process, to a cheaper and more flexible labour process combining piece-work, part-time work and self-employment (cf. Ramamurthy 2000: 251). Under the new dispensation, women workers who exist on the fringes of the economic system contribute the value of their labour to the process of globalised development without being recompensed by an adequate wage. As the end-result, women's work is increasingly being casualised and underpaid in both the developed and the developing world.

### 1.3 Women & Property Transfers

Other than customary practices of land inheritance and the right to hold personal property in other forms, the traditional property rights held by women have mainly comprised usufruct rights on properties belonging collectively to the family or community. Since usufruct rights have also been vital to the performance of paid and unpaid women's work, they relate closely to the social positioning and status of women in rural communities. Although, because of their non-separable character, there are several methodological difficulties in calibrating and measuring the precise value of women's usufruct rights on collectively-held property, their social value is determined by the scale of the contribution that women make to family subsistence relative to the contribution made by males. Boserup had thus drawn a gender distinction between the subsistence female farming systems still seen widely among indigenous communities in Africa and more labour and input-intensive male farming systems elsewhere that are directed mainly towards the production of cash crops and are therefore able to contribute more directly to family wealth and income (cf. Ramamurthy 2000: 241-242). With a gradual shift from communal to individualised forms of land tenure, the social value of the usufructuary contribution made by women to family subsistence has declined relative to the value of the male's ability to contribute to the private accumulation of wealth (Boserup 1990: 161-174).

Institution of private rights to property has also allowed the intergenerational transfer of wealth through the customary rights of inheritance or as *inter vivos* gifts made during the lifetime of the parents. Since property acquired during the parental lifetime is customarily deemed to have been earned by the males, the dominant mode of inheritance has tended to shift from matriliney to patriliney, strengthening the role of the patriarch. Evidence is found that such property rights transitions are rapidly occurring even among indigenous community groups that have held on to communal land rights and matrilineal rights of inheritance, and that the pace of transition has been quickened by technological change and economic development (Boserup 1971, 1990; Agarwal 1994; Quisumbing, Otsuka et al 2001). Changes in land tenure and property rights that weaken the social bargaining position of women also increase their marginalisation and subordination in a system where gender property rights are already unequally balanced.

## 2. Understanding Property Rights

Since property rights assume given forms at different stages of the development process, the transition from primitive to modern forms of property tenure is often regarded as being inexorable. While radical writers are generally aware that the economic gains recorded by society as a whole are recompensed in reality by the dispossession of particular class or gender groups, the mainstream approach views this order of succession purely in efficiency terms. The next section explores the mainstream approaches to property rights within economics and legal anthropology from a critical standpoint. As noted earlier, theoretical literature on property rights does not yet have a gendered form, although it may be sensitive to class questions. While

methodological objections would inevitably arise if women were to be classified in class terms, the presence of a great mass of women among the ranks of the urban and rural poor serves to illustrate that poverty and destitution which are class-constructs have a gendered dimension. Hence the processes through which the poor yield ground to the rich during evolution of economic systems are also the cause of gender destitution.

## **2.1 The Origin of Property Rights**

*For a considerable duration of time, the origins of private-property land tenures were believed to vest in the rights of first tillage that are characteristic of pioneer agriculture (Grossi 1981, cf.Ostrom 1999). This early juridical position invested great importance on individual property rights wrested directly from a state of nature. Similar positions are also echoed in non-juridical literature of the early period. Rousseau's conceptualisation of the origins of society postulated a 'social contract' formed by the association of free individuals, thus giving individual rights primacy over those of the collective (cf.Rousseau 1993). Ricardian rent theory provided a justification for rent extraction by landlords in the exercise of private land rights, by defining a preceding pioneer stage when rent-free or marginal lands had first been brought under the plough. It was not until the late-19<sup>th</sup> century that juridical scholars began to recognise that individual property rights had arisen through evolution from precursor forms of joint-property. Historical coexistence of private agricultural holdings with pastures and forests as village commons was also noted in studies of diverse village structures including the villages in India (cf.Maine 1861). Despite these early insights, property law mostly evolved around juridical concepts of private property.*

*The Marxian approach asserts the historical specificity of property rights to the existing mode of production. From this view (cf.Engels 1884: preface), investiture of private property rights in ancient times is perceived to have commenced with the disintegration of primitive communities in which the social order was dominated by consanguinary kinship groups, and their subsequent replacement by the non-sanguinary social institutions of class and state. The Marxian analysis also recognises that this investiture was contemporary to the accumulation of social wealth in terms of enhanced human skills and labour productivity, which led in turn to the expansion of physical output. Institution of property rights was conducive to the process of wealth accumulation by extending the command of property owners over the labour of others obtained through the mechanism of exchange. While the resulting heterogeneities in social command over property also led in time to the evolution of class groupings linked by the ownership of wealth rather than by kinship, the state evolved primarily as an institution of legal governance for the control and regulation of property rights.*

*While private property rights are believed to have evolved in the first instance in the relation to livestock holdings (cf.Engels 1884: ch.4), the pastoral manner of life practised by primitive societies did not initially require maintenance of secure private tenure on land. In the Marxian analysis, the origin of the family is thus attributed to the investiture of heritable property rights particularly in relation to land, which came when the old pastoral ways were abandoned for sedentary agriculture. The primacy of private property over natural or common property established individual rights of possession over lands originally allotted to the family by their kinship group. As these rights grew in scale and social recognition, full private ownership of land emerged. Consequently, the appearance of agricultural society in place of pastoral society was accompanied by institutional change and social reorganisation.*

*It was nevertheless quite usual for primitive agricultural societies to divide the territorial lands controlled by the community into public and private domains. While privately held farmlands provided direct subsistence to the families that cultivated them, public lands remained in common ownership and corporate use by the community for religious and social purposes (cf.Morgan 1877). It was from the public domain that the concept of state eventually developed, since as the communities developed in terms of power and size, the size of the public domain became commensurately large. Property rights and land tenures accordingly became more complex, with ownership in common, ownership in severalty and individual ownership becoming recognised property rights. Despite the evolution of multiple ownership forms, it was still quite usual for unoccupied lands and wastelands to remain as the common property of the community until their alienation by the modern state.*

## **2.2 Property Rights Structures & Domains**

Property rights include the rights of access, withdrawal, management, exclusion and alienation in respect of the asset or resource over which they are exercised (cf. Ostrom 1999). While the rights of access and withdrawals represent minimal user-rights, the right to manage the property, to allow or exclude other users from access and to alienate it from other users through repossession or through disposal represent ownership

rights (Schlager & Ostrom 1992). When property rights are privately held, all such rights can be exercised by the private rights holder with the backing of the legal institutions of the state. On the other hand, these rights may alternately be apportioned by formal or informal arrangements between several users, or may be foreclosed through policy actions by the state. Nevertheless, the discussion of property rights within mainstream economics has generally focused on private property under the dominant economic paradigms of market rationality and individual self-interest. Since market arbitrage is seen as being inherently superior to other forms of property holding that involve nonmarket exchange, mainstream economics also makes out a case for privatisation of property. Private property rights are thus believed to improve the private incentive for efficient property management, because of direct association between the private benefits derived by the rights holder and the time and labour they have expended on upkeep of the property (Demsetz 1967). There are however many instances where economic decisions are multi-layered, in which case the markets may fail to yield efficient outcomes. In such cases, the achievement of social efficiency rests on the functioning of supportive social institutions which include alternative structures of property rights.

Property rights are usually equated in jurisprudence with the statutory concept of ownership, under which all enforceable rights are deemed to vest with the individual property owner. Under customary practices however, property rights are often held in bundles where plural user-rights may be assigned by underlying institutional structures that combine statutory forms of property ownership with the rights-of-use sanctioned through custom, common law, religious law and other normative institutions (Meinzen-Dick and Knox 2001). Existing plurally among these are rights of access to the property and rights to extract usufructs from it, which may also devolve upon non-owners, as well as the right of the property-owner to modify the property, the right to exclude users, and the right to transfer the property to other uses or users (Schlager and Ostrom 1992). The enforceability of each of these property rights would depend on the strength and legitimacy of the institutions from which social support is drawn. Wherever the legal authority is perceived to be weak in the enforcement of statutory property rights, alternative rules of custom and common law may find wider social acceptance (Meinzen-Dick and Bruns 2000).

*While property rights issues have thus maintained presence in the juridical and economic literature for more than a century, the evolution of private property institutions from older systems of communal property has usually been seen as being indicative of progress and social advance.* Defined in juridical terms, a property right is the enforceable authority to undertake particular actions in specific domains (Commons 1968). Such rights may also be exercised independently of private rights of ownership, although full ownership invests the property owner with all actionable rights. For property rights to be enforceable, secure backing from the collective community would have to support the exercise of rights (Bromley 1991). Since property rights may be held individually, collectively or by an exclusive community, the assets and resources over which they are exercised may lie within the private, public or common domain.

In keeping with the plural forms in which property rights exist, there is also plurality within the institutional domains that secure property rights (McCulloch et al 1998). When property rights are in the public domain and vest with the state, they are secured by state legislation that prescribes a punitive framework for violations of public rights. In the case of private property, the rights of property holders are codified by statute and the onus for punishing violators falls upon the state as the guarantor and protector of private property rights. Thus the legal norms and the modes of legal redress for property rights held *de jure* are enforced by the legal institutions of the state. For property rights held and exercised in *de facto* form, the scenario differs radically. Institutional sanction for the exercise of such rights is drawn not from the legal system, but from local usage or common law. In practice, *de facto* property rights may include customary usage rights even when the public or private property is held *de jure*. Conversely, *de facto* rights may be curbed by extension of the *de jure* domain, such as when common lands are sequestered and appropriated for public or private use or when statutory property rights are enforced.

### **2.3 Customary Property Rights**

Communal land rights that had originated in customary systems of swidden farming were still widely in vogue among indigenous communities in South Asia till as little as a century and a half ago, but are now confined for historical reasons to the indigenous communities in northeast India. These farming systems generally took root in large contiguous areas with low population and relatively poor soils - such as hill regions - over which the concerned community had secured territorial control. Subsequently, under a system

of swidden rotation, lands would be left fallow for long to very long periods as a costless and labour-saving means for recovering soil fertility after a period of sustained cultivation. As a part of the colonial policies for forced sedentarisation, several land settlements conducted by the state during the 19<sup>th</sup> century served to demarcate lands in current cultivation from those held in reserve. Besides introducing legal land rights, legal settlement of cultivated land with the individual cultivators allowed the reserve land to be sequestered under the legal principle of *res nullius* and subsequently to be taken over by the state for forest and mineral development under the various Forest Acts. Excepting northeastern India, where special political dispensations allowed the indigenous communities to continue customary forms of land tenure, all other indigenous communities in India were sedentarised under policy coercion and their non-tenure lands made part of the state reserve.

It would nevertheless be wrong to think that communal farming systems were technologically static. The cultivation of cereal crops – particularly rice – in swidden areas needed technological adaptations ranging from terracing to irrigation, which could only be made by lengthening the duration of land occupation. Also, the declining quantum of land against the growing population gradually shortened swidden cycles to the extent that cultivator families found it worthwhile to make the labour and capital investments required to sedentarise the wet-farming of paddy fields. Thus the institutional innovation that allowed this to happen was the specific assignment of property rights to families that cultivated particular wet-fields, while all other livelihood-related activities such as dry-farming, livestock husbandry, fuel and fodder collection, etc. were carried out on the reserve land held under communal property rights.

Induced transitions of this kind that have been witnessed among community farming systems both in northeastern India and in many other swidden regions across the world (*cf.* Hayami 1997; Boserup 1965: 91-92; Quisumbing, Otsuka et al 2001: 7-10] have had an impact on the land rights of women. In most indigenous societies like those of the Naga in northeastern India, women do not inherit a share in ancestral landed property which only passes down the male line and reverts to the patrilineal clan in the event of there being no male successor (Shimray 2004). Very rarely, some land may be gifted *inter vivos* as a wedding gift by parents to a daughter, if it has been acquired either through personal purchase or through means other than ancestral inheritance. Matrilineal descent systems through which land passes in inheritance from mothers to their youngest daughters do survive among the Khasi and Garo in northeast India but have long vanished among the other indigenous communities in India.

Matrilineal and patrilineal systems of property rights found elsewhere among indigenous communities in the developing world have broadly similar features, although variation may exist between the matrilineal systems of inheritance and descent. Thus among the matrilineal Minangkabau in Indonesia, the inheritance of ancestral property also passes down the line of matrilineal descent from mother to daughter, thus giving women strong property rights to paddy-land (Quisumbing, Otsuka et al 2001: 21-22). In contrast, ancestral inheritance among the matrilineal Akan in Ghana descends from the male landholder to his brother or matrilineal nephew, rather than to his son. Even though the line of inheritance is still traced matrilineally through them, women among the Akan do not hold land rights (*ibid.*: 20). Thus in almost all prevalent systems of customary property rights, property brought by a woman to the marriage is considered to belong personally to her, while assets acquired within the span of the marriage are considered to be the joint property of both spouses (*cf.* Quisumbing & de la Brière 2000: 3). All ancestral property is deemed to belong to the clan and passes down along the customary line of descent, while property acquired through the family's own efforts is deemed to belong to the unitary family rather than to the matrilineal or patrilineal clan, and may therefore be bequeathed to chosen offspring (*cf.* Agarwal 1994). Since the system of joint families is absent among all indigenous communities, the concept of joint ownership of property along with immediate first-order relatives is also virtually absent. On the other hand, the system of extended families is fairly widely prevalent since it is analogous to membership of the kinship clan.

### ***3. Contemporary Gender Property Rights Issues***

As seen from the foregoing discussion, property rights have assumed plural forms at all stages of economic and social evolution. Private property rights emerge distinctly as a patriarchic institution designed to facilitate the accumulation of social and economic power and its transfer across generations. Private property structures are neither universal nor immutable across all societal levels, as seen in the adherence of village communities to common property and usufruct rights in several spheres of livelihood activity. Nevertheless,

the transmutation of erstwhile common property domains to public or private domains as part of the development process has a particularly regressive impact on women's autonomy, since it leads to a greater command of patriarchic institutions over the labour of women. Consequently, as both historical and statistical studies of development show, men gain far more from the process of development than women, because of the leverage they have over women in terms of property rights.

The crux of the ongoing debate between the economic and gender discourse on property rights is now reached. Formal economics tends to look at this transmutation of gender property rights as being the inevitable result of economic advance. This is essentially a positivist view, to which normative and ethical considerations do not apply. Nevertheless, the fact that transmutation of gender property rights widens gender inequalities and hence augments the power of patriarchy has a welfare dimension that cannot be ignored by economics. It is important to note that the reordering of gender power equations also has far-reaching social and economic consequences for women that extend well beyond the immediate livelihood impact of the property rights change. Hence, it becomes imperative not only to protect the property and usufruct rights of women from further erosion, but also to restore some of the rights they have earlier lost. The next section accordingly identifies gender property rights areas where concerted action by the women's movement is urgently needed. The moves to secure limited improvements in relative gender positions within these areas through the mechanism of institutional and administrative reforms have largely been thwarted by patriarchic institutions. A more radical programme is therefore needed, which must be synthesised within the women's movement.

### 3.1 Legal Inheritance Systems

Customary property rights and the social norms that define them in South Asia generally have to be understood within the broad context of joint property, since the customary family-form through most of this region is that of the joint family rather than the nuclear or unitary family. Two common law systems of inheritance generally practised either in their doctrinal version or in some modified form across most of India delimit women's property rights in broadly similar ways. Besides her personal dowry, i.e. the wedding gifts received from her natal family, a woman is also deemed to hold personal property rights over voluntary gifts given in love to her by her parents and natal relatives, her husband and her in-laws. A woman thus has personal property rights over all movable property received by her in the form of *inter vivos* gifts or *stridhan*. However, her right to inherit and hold immovable property such as land is circumscribed by the doctrinal need to prevent property division. Under the more widely prevalent doctrine of *mitakshara*, while a widowed woman has a right to maintenance by the successors of her deceased husband's estate, she is only entitled to succession if she has no living sons and cannot pass on the property to her own successors (cf. Agarwal 1994: 212). While the alternative doctrine of *dayabhaga* which prevails mostly in eastern India is more liberal in the matter of a widowed woman's right to pass on her own immovable property, it is equally rigid in restricting the property rights of widows with living sons to maintenance rights only. Thus in general, a woman with a living spouse only holds usufruct rights in the property of an undivided or joint family. By extension of these norms, any income earned by a married woman from her own work as well as any subsequent gifts she receives subsequently are deemed to belong jointly to her spouse's family, since these have been earned or received within the joint home. Hindu common law makes no provision for divorce.

Although the Hindu Succession Act which replaced common law inheritance systems in 1956 legally entitles women to succeed to a share in parental property along with her other siblings, her share is not alienable from theirs and must be held jointly. In practice, this provision has been used socially to forestall any claim a woman may make to joint title over the immovable property held by her husband and his family (Unni 2004). In Nepal, also a Hindu state, the National Code of 1963 provides that a woman may inherit a share of parental property at the age of 35 if she has remained unmarried till then. However, upon her subsequent marriage, the property reverts to her parents except for a minor deduction on account of wedding expenses (WPRN 1997). Under the patriarchal systems of inheritance practised under Islamic common law in several regions of South Asia, a widowed woman inherits no share in the property of her deceased spouse but is entitled to inherit a share in paternal property equivalent to half the share of her brothers (cf. Quisumbing & de la Brière 2000: 22). Many women in countries like Bangladesh and India however renounce this property share in favour of their brothers, against the assurance of being looked after by them in the event of divorce or widowhood. Although the Shariat Personal Law enactment in India in 1937 had extended women's property rights beyond those allowed under Islamic customary law, agricultural land has remained

outside the purview of both Islamic and Hindu succession laws (Agarwal 1994). Hence the rights to hold and inherit agricultural property continue to be governed largely by preexisting provincial and customary laws.

### ***3.2 Development & Gender Property Rights***

As a consequence of better worldwide understanding of women's traditional work roles beginning with the studies made by Ester Boserup, several gender adaptations have been made to subsequent development practice. Women are now being increasingly seen as autonomous economic agents who need to be independently reached by gender equity and poverty alleviation programmes which leverage their household functions in order to create an economic and social security net around rural families. Simultaneously, these programmes also seek to improve their economic participation in economic activities by strengthening their command over productive resources (*cf.* Peña et al 1996).

While it has been argued that the obliteration of gender inequities within households and societies through the realisation of private property rights by women would also eliminate many insecurities relating to the livelihood and well-being of women, it is nevertheless also necessary for women to secure the gender-based usufructuary rights that are often crucial to their survival as productive agents in subsistence economies. Gender disparities within common property rights are known for instance to have significantly affected the outcomes of policies for natural resource management 'in terms of efficiency, environmental sustainability, equity and empowerment of resource users' (Meinzen-Dick et al 1997). Women's economic roles depend disproportionately on their access to common and family-held property, since customary rights generally circumscribe the inheritance of land by women. Tenurial shifts from common property to private property titles accordingly devalue women's work. Within common property systems too, there has been a similar transition. Strengthening of patriarchal control over property and the weakening of women's property rights have led to changes in land tenure and customary property rights. Overall, such changes that weaken the social bargaining position of women also increase their marginalisation and subordination in a system where gender power is already unequally balanced.

Development practice has also been considerably reshaped for two decades by globalisation and the new focus on market-friendly policies. There have consequently been new adjustments within the subsistence agrarian systems of the developing world. With the emphasis on increasing primary agricultural exports against overall decline of public expenditure on the rural sector, peasant farmers now have to compete in the global market against the heavily subsidised agricultural exports of the developed economies (Razavi 2003: 3-4). Although this has sparked an angry debate between development practitioners and thinkers, gender concerns have had limited presence within the debate. Thus through most of this period, women have been viewed primarily as reproductive rather than productive agents. Lately, the policy shift towards the recognition of women's productive roles seen within new development initiatives such as micro credit programmes has been based on the 'gender efficiency argument' (*ibid.*). This has come at a time when there has been growing concern over the slow agricultural response to globalisation. In mainstream thinking, the muted response of the farm sector is ascribed to the 'inefficiencies' generated by the gender divisions of work within agricultural households. It must also be recognised however that such inefficiencies also owe their presence to the unequal access that women have to land, capital and markets, as fallout of patriarchal land tenure systems and the lack of women's property rights. Gender inequalities of this nature have a debilitating impact on the economic roles of women in the agrarian sector (*ibid.*).

### ***3.3 Securing Women's Property Rights***

Among the primary constituents of women's autonomy are women's property rights. Formal property rights - particularly land rights - are primarily acquired by women through the process of lineal inheritance, succession (in the case of widowhood), or through *inter vivos* gifts received from spouses and parents during their lifetimes (*cf.* Meinzen-Dick et al 1997). Much more rarely, land and non-land rights may also be acquired through market transfers, when the women concerned have been able to earn enough income and thus have accumulated capital to transact in property markets. Informal property rights, which include nonexclusive rights of use, may be acquired through shares held in common property, or through rights of occupation. Besides functioning as the authority for legal recognition of property rights, the state may also occasionally transfer formal property rights to women, through land reforms for instance, or through legal recognition of

occupation rights. The land categories included within legal frameworks for land rights can be rural farmland, homesteads or urban properties. Because of anthropological diversity within human communities and simultaneous presence of customary structures that are at different stages of development, the lineal systems of property inheritance found across the developing world may range from matriliney to patriliney, although over the course of institutional evolution, patrilineal systems have gained ascendancy over systems of matrilineal inheritance in most parts of the world (*cf.* Agarwal 1994).

It may be noted that legal reforms by themselves have so far been inadequate in the recognition of the property rights of women on same terms as those of men. Even where the requisite legal structures exist, longstanding social conventions and practices constrain their implementation. Economic deprivation is thus accentuated among women, who are thus also driven increasingly into more insecure social positions. Both the institutionalisation of property rights reforms and the social awareness of women about their economic rights under law are thus equally imperative to the social security of women.

It has been pointed out therefore that in the context of South Asia, where land is still the most important productive resource for women, secure property titles are virtually the only means for securing the economic and social upliftment of women (Agarwal 1994: 11). Because of gender disparities within between social norms and customary law systems, it has been seen that there are systematic differences between the manner in which men and women acquire and exercise land rights. The usufructuary land rights exercised by women are normally non-exclusive and have a temporary character, and are therefore less secure by nature (Place and Swallow 2000). Women also face considerable difficulty in retaining these rights in the event of divorce or widowhood, and are easily reduced to states of comparative destitution in such events.

Women activists in South Asia and elsewhere have therefore argued for the granting of secure land rights to women (*cf.* Gupta 2002). While the need for instituting property titles for women has been also widely endorsed in studies of the experience of women in development, certain issues still remain intractable. Women in India have by and large been ignored by the land titling programmes undertaken during land reforms, which secured permanent property rights for the landless. Land rights and other land-related matters in India are the subject of provincial laws which do not come under the direct jurisdiction of the central government. Barring a few legislations like the Hindu Succession Act that have given gender weight to certain statutory property rights, most matters relating to the marital rights, divorce and maintenance rights, as well as the rights of inheritance that may be exercised by the women belonging to each religious community continue to remain within the purview of highly heterogeneous personal laws, and have not been brought under a uniform civil code (*ibid.*).

Recognising that the principal institutional handicaps faced by women in India are rooted in the weaknesses of the existing systems that regulate the legal rights of inheritance, feminist studies have thus suggested the enactment of new legislation that confers secure and independent titles to all women in relation to the landed property currently held and controlled by their families (*cf.* Agarwal 1994). It is anticipated that this measure would also allow women to control and decide the uses of land according to their own economic priorities. Though acceptable in principle, the measure is difficult to execute because of the hazards of negotiating personal laws which find protection in the constitution. Since the impetus of land ceiling reforms is over and there is no balance of surplus lands available that can be redistributed by the state to women under a new titling programme by the state to women, critics say that such an approach would not be practicable (Agnihotri 1996). It has been argued instead that a system of joint titles to agricultural land could be instituted which would give women property rights on the lands currently cultivated by their families. The principle has also found state endorsement as an objective for legislative reforms during the 10<sup>th</sup> Five-Year Plan (GoI 2002: 240). Nevertheless, the actual experience of women has been uninspiring.

In West Bengal - one of the first Indian states to introduce a programme of joint titling in 1992, the pace of progress has been considerably slowed by institutional resistance encountered during implementation. Constant difficulties have thus arisen in the identification of eligible women beneficiaries and in recording joint property titles, in the division of property rights between spouses, in informing women about their joint property rights, in interpreting the juridical validity of joint property rights and ensuring legal compliance from spouses (Gupta 2002). Since the order does not apply retrospectively to land titles issued under the land reforms programme between 1979-1992 when most ceiling-surplus land were distributed, a vast number of rural women are excluded from its purview. The principle of joint-titling has not extended to the other major component of the land reforms programme in West Bengal which had secured permanent tenure for *barga* sharecroppers (*ibid.*). Consequently a very large number of rural women who contribute their labour to

sharecropping operations have been unable to secure legal protection for their usufructuary or property rights.

#### *4 The Feminist Agenda*

Many of the recent gains made by women in development have sought to augment the work-participation of women without altering their gender situation. Changes in property relations and land rights have been particularly difficult to achieve. With more and more women being compelled to work today within gender-unequal environments, the net value transferred by women's labour to the economic system has thus increased without commensurate gains accruing to women. It is also seen that the women's movement has been far more successful in achieving personal empowerment for certain groups of women than in achieving strategic empowerment for women as a collective group. From the feminist point of view, the limited successes secured in achieving better health, education and wage rights for women represent palliatives offered by the patriarchal state in lieu of structural change in gender rights. Success in the latter objective has to be preceded by strategic change in gender property rights.

Similarities between radical discourses in political economy and feminism suggest that there is considerable room for constructive dialogue between the two. One particular area where the two streams coalesce relates to property rights. While gender is not a class formulation, the relation of women from all classes with the means of production is similar to the relation which exists between the means of production and the poor. Since neither the poor nor women have secure property rights, they can only contribute labour to the production process and thus face higher levels of exploitation. Women nevertheless face special limitations on their economic work-roles and functions, which Paula Kantor has recently categorised into women-intensive or women exclusive constraints (Kantor 2002: 287-289). Limitations like the lack of access to productive resources and human skills affect the poor and women alike but are generally more intensified among women. On the other hand, constraints like domestic work responsibilities, gendered work-roles and limited personal mobility are exclusive to women and apply generically to all women. It is because the latter constraints play a more definitive role in defining the identity of women, that this identity is constructed by gender rather than by class. Since property rights insecurities are women-intensive rather than women-exclusive, the gap between the property rights and gender discourses disappears. There is thus a strong case for gendering the property rights discourse.

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