

Women and Land-holding Rights in India: Gender Discrimination Riddled with Agony

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Abstract

Globally women are deprived of access to land-holding rights and means of production. The discrimination seems pervasive trickling down from top to the bottom of our social fabric of society in India. It goes to an extent, that a family—an agency of the socialization, itself, neglects their daughter/s by keeping her/them away from possession, ownership, succession, inheritance of family property, and by denying equal opportunities for education or employment. There exist many pieces of research in the world pressing upon the need and relevance of securing property and landholding rights for women for empowering them in a real sense. As has been claimed, access to the property and arable land can contribute not only to raising the situation of women rather in education and overall development of the society too. The present study is an attempt to explore various nuances relating to the issue of access to the property by women in India. Existing literature on the topic has been rigorously gone through and highlighted for building a discourse deliberating the need for recognizing property rights for women in India. The paper emphasis how without taking any sympathetic approach towards women empowerment, it is high time to make a call for a right-based approach for women to their landholding rights.

Keywords: *Discrimination, doubly suppressed, ownership inequalities, stridhan, vulnerability, landholding rights, sympathetic approach, right-based approach.*

I. Introduction

“Women constitute half the world’s population, perform nearly two-third of its work hours, receive one-tenth of the

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world's income, and less than one-hundredth of the world's property.”³

In the backdrop of this contextual ‘locating’ of women at the global level, it would be relevant to build a discourse on the importance of women having equitable access to their rights. Unfortunately, if we see the journey travelled so far by India, particularly post-independence, then we found ourselves struggling toward reaching any conclusion about the position of women in India. The journey of women in India seems to be full of fascination as well as frustrations.

Some of the religious beliefs, particularly in Hinduism, have given respectable status and position to women. In Hindu religious texts, a woman is considered to be the manifestation of Goddess/Shakti, and the male is considered to be incomplete without the female (Shakti). Each male deity of the divine trinity has his female counterpart; *Saraswati*(learning), *Lakshmi* (wealth) and *Parvati* (power).⁴ Also, there is no denial in admitting the frustrating part of women’s story in India wherein women seem to be treated as second-rate citizens and a widow as the third-rate citizen. On the front of their property rights, in India, women have always been doubly suppressed and condemned socially, politically, legally, and economically. The existing dichotomy and conundrums of women’ stories in India need to be debated and deliberated rigorously for the sake of desired transformations.

It is being said by many that the reason behind this dichotomy is the existing gap between aspirations of our founding mothers & fathers and achievements thereof. The rigidity of the caste system in India is also one such contributory factor that led Hindu women to lose their independence and to depend on their male counterparts for protection. Indian women have either nil or trifling access over property and other things. Women are deprived of access to land-holding rights and means of production, be it a question of ownership, possession, control, succession, and inheritance. To a greater extent, the family—an agency of the socialization, itself, neglects their daughter/s by keeping her/them away

³United Nations Report, *Program of Action for the Second Half of the UN Decade for Women*, 1980.

⁴ Richa Sharma, *Status of Women in Hindu Society* (10-08-2015) (Sept. 29, 2020, 9:00 PM) <https://www.speakingtree.in/blog/status-of-women-in-hindu-society>. (Last visited on 20-09-2019).

from possession, ownership, succession, inheritance of family property, and by denying equal opportunities for education or employment. Nobel laureate, Amartya Sen once said that: "the absence of claims to property can not only reduce the voice of women, it can also make it harder for women to enter and flourish in commercial, economic and social activities."⁵ Sen has highlighted survival inequalities, unequal facilities (obstacles to education), ownership inequalities, and unequal sharing of household benefits in India. In India, there is a difference in basic facilities including schooling, the opportunities of special facilities, such as higher education or technical training, which happens to be far fewer for young women than for young men.

II. Existing Literature Making a Call for Securing Women's Right to Property

Sonia Bhalotra⁶ sums up that legislation that gives women equal rights to inheritance of ancestral property intensifies preference of son over daughter in fertility and has added to the increased female infant mortality rate. The reports suggest significant increase in parents' proclivity to commit sex-selective abortion in order to manipulate the sex composition of the births in favour of sons.

Showing the importance of ensuring property rights for women, Pradeep Panda & Bina Agarwal⁷ made a valid conclusion that, unlike employment, if a woman owns a property, it is seen to make an unambiguous difference to the incidents of violence.

Similarly, highlighting the status of the right of women to property in India, Pakistan, Bangladesh, Nepal, and Sri Lanka, Bina Agarwal,⁸ argues that the single most important economic factor affecting woman's condition is the gender gap in command over property. Bina builds a dialogue that women's

⁵ AMARTYA SEN, THE ARGUMENTATIVE INDIANS 235 (Oxford University Press: New Delhi, 2005)

⁶ SONIA BHALOTRA *et. al.*, WOMEN'S INHERITANCE RIGHTS: REFORMS AND THE PREFERENCE FOR SONS IN INDIA, (Institute of Labor Economics, Germany, December, 2017).

⁷ Pradeep Panda & Bina Agarwal, *Marital Violence, Human Development and Women's Property Status in India*, 33 WORLD DEV.R No. 5, 823-50 (2005)

⁸ BINA AGARWAL, A FIELD OF ONE'S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA, (Cambridge University Press 1994).

direct ownership and control of land can be crucial for enhancing their well-being, their bargaining power within and outside the household, and their overall empowerment. It can have wide-ranging implications for poverty alleviation and production efficiency. In particular, the book outlines the effects of lack of control over land and property on the lives and livelihoods of women across South Asia.

Pradeep Panda⁹, in his research study on social protection, explores the links of women's ownership of property and inheritance rights and their experience of domestic violence, and found that women who owned property and did not face violence mentioned the role of owning property in protecting them from potential violence.

Jayoti Gupta¹⁰ explored the linkage of women's ownership of property and inheritance rights and their experience of domestic violence, and concluded that women who faced violence did report a change in their situation after claiming the property. Jayoti Gupta also pinpointed that the role of the fathers in ensuring their daughters' right to property seems to be significant.

Reena Patel,¹¹ with the aim to critically evaluate the potential for such a 'rights regime' to enable Hindu women's greater access to the property, argued that women should be entitled to a share in their husbands' property not only as widows upon the husband's death but also during the entire period while the marriage subsists. Reena Patel is building a discourse that although the existing legal and religious normative frameworks do not accord such a right; it is nevertheless possible to argue for the legitimacy of such a claim. Indeed, there is a growing recognition of the need for a regime of marital property in India. The same principle could also be extended to the daughter's share in parental property.

⁹PRADEEP PANDA, DOMESTIC VIOLENCE AND WOMEN'S PROPERTY OWNERSHIP: DELVING DEEPER INTO THE LINKAGES IN KERALA,(Population Council New Delhi India 2006)

¹⁰JAYOTI GUPTA, PROPERTY OWNERSHIP OF WOMEN AS PROTECTION FOR DOMESTIC VIOLENCE: THE WEST BENGAL EXPERIENCE, (Centre for Studies in Social Sciences Kolkata India2006).

¹¹ Reena Patel, *Hindu women's property rights in India: a critical appraisal*, THIRD WORLD QUART., 1255-1268(2006)<https://doi.org/10.1080/01436590600933453>

Debarati Halder and K. Jaishankar¹² feel that succession rights and right to own property of the Hindu women would be stronger if the Hindu Succession Act includes a separate provision for prevention of dowry-based harassment. It should be mentioned that the *stridhan* or the property of women would be solely her own property and any kind of forceful recapture of the property which belongs to the bride would make such ownership null and void, and it would be considered a penal act.

Bina Agarwal¹³ highlighted the status of the right of women to property in South Asia to conclude that the gender gap in the ownership and control of the property is the single most critical contributor to the gender gap in economic well-being, social status, and empowerment. She made a call that better employment opportunities can complement but not substitute the land ownership.

Moser¹⁴, in his study, highlighted a negative co-relation that has been found between ownership, assets and vulnerability of people. More ownership of assets leads to less vulnerability, while the reduction in ownership right increases the chances of vulnerability.

Hema Swaminathan,¹⁵ aiming to locate women's experiences of property conflicts within the larger context of being HIV affected argued that women's limited ability to access, own, and control property such as land and housing is one manifestation of gender inequity that has serious implications for women and their families. According to Hema, property grabbing, dispossession, or eviction of women after their husbands' death or due to their HIV positive status is slowly emerging as a problem in India.

¹²Debarati Halder and K. Jaishankar, *Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India*, 24JOUR. LAW RELIGION No. 2, 663-687. (2008)<http://www.jstor.org/stable/25654333>. Last visited on 15-7-2019.

¹³ Bina Agarwal, *Gender and Command over Property: A Critical Gap in Economic Analysis and Policy in South Asia*, 22WORLD DEV. 1455-1478(1994).

¹⁴ Caroline Moser, *The Assets Vulnerability Framework: Re-assessing Urban Poverty Reduction Strategies*, 26 WORLD DEV., 1-19 (1998).

¹⁵Hema Swaminathan, *Women's Property Rights and HIV/AIDS in India*, 34EPW 17, April 25, 2009.

Srimati Basu,¹⁶ while identifying the fundamental barriers that impede the ability of legal reforms to improve the status of Hindu women in India found that ideological myths perpetuated male-biased property inheritance. As per Basu, myths which hold that dowry at the time of marriage constitutes women's share of inheritance, that a woman's right to family property is transferred to the affinal household at the time of marriage, that sons deserve greater inheritance because of their care for parents, and that daughter can rely on the lifelong financial support of their natal families are used by women to explain women's disinheritance from the natal property. Basu argues, then, that women do not "internalize the ideological construction of their needs" but negotiate the meanings of those ideologies.

III. Legislative Attempt for Securing Land-holding Rights

Post-independence, a number of statutory provisions have been made in order to safeguard the interest of women. Right from our Constitutional objectives as inserted in the very Preamble of our Constitution i.e. to secure Equality of status and opportunity and to promote fraternity; assuring the dignity of each individual, a number of other constitutional protections have also been given for protecting the interest of women like Article 15(3); providing for the special provisions for the protection of women. Likewise, various other provisions as inserted in Part-IV, Part-IV-A of the Constitution of India.¹⁷ 33 per cent

¹⁶ SRIMATI BASU, SHE COMES TO TAKE HER RIGHTS: INDIAN WOMEN, PROPERTY, AND PROPRIETY, (State University of New York Press, 305 1999).

¹⁷ INDIA CONST. Part-IV:

INDIA CONST. art. 39(a), Constitution of India, which provides for an obligation for State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood); Article 39(d), proving for equal pay for equal work for both men and women,

INDIA CONST. art. 39 Aprovides for promoting justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities,

INDIA CONST. art. 42 providesfor securing just and humane conditions of work and for maternity relief,

INDIA CONST. art.46provides for promoting with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation,

reservation for women in village panchayats and local bodies vide 73rd and 74th Amendments of Constitution of India also safeguarded and aspired for uplifting the status of women in India.

In spite of all these statutory assurances, we observed numerous instances of inequalities wherein women were being doubly suppressed. Amongst Hindus, inequalities in inheritance were brought to the notice of the Supreme Court of India in case of *Madhu Kishwar versus State of Bihar*,¹⁸ wherein the Supreme Court directed the Government of India to comprehensively examine the question on the premise of our constitutional ethos and amend the law accordingly. The 174th Report of the Law Commission of India (May, 2000) on “Property Rights of Women” also pressed for a need to make some reforms in the Hindu Succession Act, 1956. Consequently, in 2005, the Hindu Succession Act, 1956 got amended so as to ensure the wellbeing of Hindu women by making a daughter of coparcener as coparcener herself.¹⁹

INDIA CONST. art. 47 providing for State to raise the level of nutrition and the standard of living of its people

and in Part-IV-A including:

INDIA CONST. art. 51(A) (e), Constitution of India, providing to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women, are such golden knitted assurances of our Constitution for empowering women in India.

¹⁸ (1996) 5 SCC 102.

¹⁹ Hindu Succession Act, 2005, sec. 6 read as:

Devolution of interest in coparcenary property.

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (w.e.f. 09-09-2005), in a Joint Hindu family governed by the *Mitakshara* law, the daughter of a coparcener shall,—

(a) by birth become a coparcener in her own right in the same manner as the son;
 (b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,

and any reference to a Hindu *Mitakshara* coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

Amendment in Hindu Succession Act in 2005 projected to be of great worth; whereby a daughter of a coparcener for the first time has been declared as a coparcener herself and all the rights related to coparcenary property were granted to Hindu daughter at par with her brothers. The State of Kerala also passed a slightly different amendment in the form of the Kerala Joint Hindu Family System (Abolition) Act that recognized all family members with an interest in the undivided family estate as being independent full owners of their shares from then onwards, i.e. abolished joint family property altogether. Furthermore, in the same year the enactment of Protection of Women from Domestic Violence Act, 2005 was also projected as a welcome step in order to protect the interest of women in India. These two socio-welfare legislations

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force in, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the *Mitakshara* law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation. —For the purposes of this sub-section, the interest of a Hindu *Mitakshara* coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not...

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004. Explanation. —For the purposes of this section “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.

were seen as a light of hope at the end of the dark black tunnel of sufferings of women in India, particularly on the front of their exclusion in landholding rights and for protecting them from domestic violence.

India is one of the signatories to the Convention on Elimination of all Forms of Discrimination against women (CEDAW) as adopted in 1979 by the United Nations and is under an obligation to modify gender-biased laws. To meet this end, India has also taken several measures for improving the conditions of women in India. One such initiative was the ninth five-year plan (1997-2002) of the government of India, wherein department of land resources, for ensuring accessibility and grant ownership of land rights to women, instructed all the States that 40% of agricultural land settled under land reform programmes should be exclusively in the name of women. In the remaining cases, the allotment may jointly be in the name of husband and wife. These initiatives intended to benefit a large number of women in India. During the 10th Five-year plan also, various states introduced a scheme of providing concession in registration and stamp duty to women property buyers.²⁰ Eleventh (2007-12) and twelfth (2012-17) five-year plans also made a call for more ownership rights to women in India.

IV. Land-Holding Rights and Women's Condition: A Far Cry

Given the unawareness, meta-son preference, mounting instances of forlorn women/widows in places like *Vrindavan*, it can be rightly inferred that on the front of land-holding/property rights, no substantial change has been observed in the status of women in India. Hindu women have equal legal rights on papers but, still pervasive social constructions prevent them from making use of these rights. Amongst Hindus, very often a daughter is persuaded, by her family and by her mother herself, to relinquish her legal share in favour of her brothers so that she can continue her relationship with the natal home. Ironically, legal rights in ownership of property as provided by the Hindu Succession Act, 2005 is not being realized due to existing social constructions and prevailing customary practices which, in fact, have hijacked these rights and left this segment of the society in a situation of helplessness. Hindu widows happen to

²⁰ C. SRIDHAR, A NOTE FROM THE CENTRE DIRECTOR, IN PREM CHOWDHARY (ED.) UNDERSTANDING WOMEN'S LAND RIGHTS: GENDER DISCRIMINATION IN OWNERSHIP, (Sage Publications India Pvt. Ltd., 2017).

be more prone to discrimination due to denial of land-holding rights in the true sense of the word. While citing the data of the Ministry of Rural Development for the year 2011, Indu Pathak, in one of her papers, highlighted that:

“It is recognised as a significant determinant of economic well-being, social status and political power. But rural women in India have only marginal rights to agricultural land and to other productive assets. It is an irony that in India, while 83 per cent of rural women provide agricultural labours, only 10 per cent of rural land is actually titled to them.”²¹

Overall, at the world level also, India lags behind in addressing the socio-legal problems in form of pervasive discrimination against women. It is quite frustrating to note that India ranks 95th out of 129 Nations on the gender inequality index (GII) of 2019.²² Undoubtedly, objectives for ensuring undeniable accessibility of women to land rights still remain a far cry. A Study has shown that the Hindu Succession Act, 1956, as amended in 2005, has been largely unsuccessful in improving inheritance of women.²³ Parents may have been reluctant to give daughters any property due to patrilocality and the risk that the property ends up being controlled by the in-laws of the daughters.

The Protection of Women from Domestic Violence Act, 2005 also seems to be a paper tiger in reality. As per the 5th monitoring report brought out by the Lawyer’s Collective and International Centre for Research on Women, the Protection officers are discouraging women from seeking justice and are pushing them into “settlement”. On the question raised by this body during the survey “Is Domestic Violence a family affair?, 57.1 % of Delhi’s Protection

²¹Indu Pathak, *Gender Justice and Law: A Gender Specific Study of Land ownership in Uttarakhand*, 376-377 in PREM CHOWDHARY (ED.) UNDERSTANDING WOMEN’S LAND RIGHTS: GENDER DISCRIMINATION IN OWNERSHIP,(Sage Publications India Pvt. Ltd., 2017).

²²The Gender Inequality Index (GII) is an index for measurement of gender disparity that was introduced in the 2010 Human Development Report 20th anniversary edition by the United Nations Development Programme (UNDP).

²³Supra note 4. See, cited work of Roy (2015)

Officers said ‘yes’, which indicates that they still don’t see it as a social problem.²⁴

As rightly highlighted by Prem Chowdhary that:²⁵

“Despite all this recognition, good intentions, and willingness of the government, women continue to encounter tremendous barriers to arrogate what should be rightfully theirs. It is undeniable that there is a difference between the legal recognition of a claim and its social recognition and between recognition and enforcement. There is also a distinction between ownership and effective control. For women’s empowerment, it is essential to enhance their ability to claim and retain control over their rightful inheritance shares.”

A. A Study Depicting Women’s Confounding Existence

“...[T]he bodies of widows who die in government-run shelter homes in Vrindavan are taken away by sweepers at night, cut into pieces, put into jute bags and disposed of as the institutions do not have any provision for a decent funeral. This, too, is done only after the inmates give money to the sweeper!”

Long back in 2012, the Hindu Newspaper published the above mentioned shocking facts, that had come to light in a survey conducted by the Mathura District Legal Services Authority (DLSA) on the “Plight of Forsaken/Forlorn Women— Old and Widows Living in the religious place like *Vrindavan* in the State of UP.”²⁶

This kind of sorry state of affairs makes us realize about the pathetic conditions of women in India, particularly after the death of her husband, wherein they are subjected to perpetual sufferings. An apparent objection to this published news, which made many feel snubbed, was also the cruel behaviour of sweepers towards dead bodies of widows. Sweepers working in government-run shelter

²⁴THE TRIBUNE,*Protection officers hardly of any help to victims: survey*, Jan., 31, 2012.

²⁵PREM CHOWDHARY,*supra* note 19.

²⁶THE HINDU, *Dignity denied even in death for Vrindavan widows*, Jan. 8, 2012.

homes had been projected by many as responsible for the sufferings of dead bodies of those women. However, to the contrary, in fact, sweepers were seen with all respect by these women inmates as revealed by Dr. Laxmi Gautam. Dr. Laxmi is known as ‘angel of *Vrindavan*’ for her tireless commitment towards addressing the sufferings of forlorn women during and after their lives. It was Dr. Laxmi only who carried out the painstaking survey of the forlorn women/widows in the city of *Vrindavan* with others for the Mathura District Legal Services Authority (DLSA). During the field visit, Dr. Gautam shared her experience as to how national media haunted her for media bite over these findings of their survey report which she was not supposed to comment on, being a *sub-judice* matter before the Supreme Court of India.²⁷ Dr. Gautam shared as to how ‘a wrong translation from Hindi to English language’ changed the entire focus of the sufferings of widows as captured by her in her survey report written in Hindi. The media was prompt enough to pick the word “cut into pieces” and generated a debate on the role of sweepers who, according to Dr. Gautam, happened to be rather helping hands (only male accessible to them at the shelter) for those poor women inmates living in the Ashrams. While narrating the whole episodic story of sufferings, Dr. Laxmi said that:

“During my visit to one such government-run shelter home, in my interaction with a forlorn widow hailing from the State of West Bengal, I came to know about this pathetic treatment is given to the dead body. Cremation was in itself a burden on the inmates. An average height of Hindu woman being about 5 feet and if one died in the late evening; since by that time the sweeper would have already left, the body would be placed in the same room for the whole night. The next day also, the sweeper would attend that dead body after

²⁷The Co-author is pursuing her Ph.D research as an ICSSR fellow at Department of Law, CU, Haryana on Hindu Women’s Property and Educational Rights with special reference to ethnographic study of destitute Women living in *Vrindavan* town of U. P. State. Mentioned herewith are some initial findings of this qualitative research. Excerpt showing above are the initial findings of the interaction of Co-author Ms. Narinder (ICSSR fellow) with one of the key-informants (Dr. Laxmi Gautam) of her qualitative research. Co-author would like to acknowledge the support she received from her supervisor in this study

completing his routine work in these Ashrams at around 2:00-3:00 pm. Since the bodies of these women were not generally found in healthy condition and were not put in ice, so by that time their bodies would become stiff enough to make it difficult for that sweeper to put the dead body into the jute bag which is hardly of 2.5 feet to 3.0 feet in length. The only option left with the sweeper would be to forcefully stroke the stiff parts of the body so as to enable him to pack it properly into that jute bag and to cremate thereafter outside the crematorium—a place where Hindu women are not allowed to enter as per customary practice.”²⁸

Since Dr. Laxmi had submitted her report in Hindi and the Newspaper had reported it in English so mistakenly it got written ‘...cut into pieces’ instead of hitting forcefully (resultant in breaking of bones) for enabling him to put the body into a jute bag.²⁹

Fortunately, taking cognizance of the report, the Apex Court had made certain guidelines including making it imperative for the administration to record the last rites/cremation of women dying in these government-run shelter homes at *Vrindavan*. It was a much-needed step taken by the honourable Court as dignified and graceful cremation falls under the ambit of basic rights of an individual. Equally important was the need to go behind the veil for finding out the root causes behind such inhuman treatment meted to these women. Women’s sufferings need to be taken seriously. In the present case, Justice Altamash Kabir, the then Executive Chairperson of the National Legal Services Authority (NALSA), had been kind enough to ask the U.P. State Legal Services Authority to survey the causes behind the miserable condition of the women. In that survey, it was found that in most cases widows are denied remarriage even after the death of their husband in childhood or young age. While some are

²⁸*Ibid.*

²⁹ Touched with the sorry state of women at *Vrindavan*, eventually Dr. Laxmi started doing dignified cremation, at her own, of unclaimed dead bodies of women in the town of *Vrindavan*. As per Dr. Laxmi, fear in life come from living souls and not from dead bodies. For her commitment and dedication, Dr. Laxmi also got conferred with the prestigious award of ‘*Nari Shakti Puruskar*’ in the hands of Sh. Narendra Modi, the Prime Minister of India in year 2014.

forced to leave the marital home and native place by the family members just to avoid division of share in the family property or to avoid maintenance in old age and bearing the burden of a non-productive family member, many others leave their homes due to physical and mental torture.³⁰ While citing the main reason behind these sufferings of women in *Vrindavan*, Dr. Laxmi said that: “the lack of access of women over their rights particularly their land-holding or property rights happen to be one big reason behind these women leaving their houses or being forced to leave their houses.” To the utmost surprise, one of the reasons accountable for forcing women; mostly widows, to leave their house is their assured claim over family property/land-holdings.³¹ A large number of these forlorn widows are from the State of West Bengal. To some extent, the applicable liberal *Dayabhaga* School in West Bengal secured women’s rights over family property. So, maybe in order to get rid of their claims, the family members; very often on the death of her husband forced them to leave the house. The kind of hardship being faced by these widows is something which cannot be portrayed in words.

Ownership of Property has largely been the domain of men worldwide and there is great resistance to granting land rights to women. Daughters; who earlier could not claim rights on their father’s property can now demand an equal share in their father’s ancestral property. But, it is observed that in states like Punjab and Haryana, people do not seem to accept the change.

For example, on the idea of a woman owning land in the Jat community of fertile northern plains of Punjab, “if she should insist on her right to inherit land equally under civil law, she would stand a good chance of being murdered.”³²

³⁰Tempted over this sensitive and unexplored socio-legal issue, on being carried out a qualitative research on these forlorn widows, the Co-author in her initial findings, has found that the devil resides in the societal attitude towards women and in particular reluctant behavior of patriarchal society towards acknowledging women’s right over property. The research found that most of the women living in the vicinity of Vrindavan are hailing from West Bengal. Surprisingly, the Bengal followed the more liberal *Dayabhaga* School which differ considerably from *Mitakhshara* School on the question of women’s standing as property owner.

³¹*Ibid.*

³²M. Das Gupta, *Selective Discrimination against Female children in Rural Punjab*, 13 POPULATION AND DEV. REV. No. 2).

V. Bridging the Gap by the Supreme Court of India

As a follow-up monitoring over the pathetic conditions of forlorn women living at *Vrindavan*, the Apex Court of India again noted that there was "no" improvement in "pitiable" living conditions of widows in shelter homes at *Vrindavan* in Uttar Pradesh, the social justice bench comprising Justice Madan B. Lokur and Justice U. U. Lalit of Supreme Court of India in February 2015 remarked that: "It appears that no substantial progress has been made despite our orders. Civic facilities are poor and something has to be done. The condition of widows is very bad."

The bench referred to various reports filed by the NALSA, Mathura District Legal Services Authority and National Commission for Women (NCW) on "pitiable" condition of four shelter homes meant for widows in the temple town of Uttar Pradesh.

While adjudicating the long-pending issue relating to the retrospective implementation of amendments of section-6 of the Hindu Succession Act as carried out in the year in 2005, a three-judge bench headed by Justice A.K. Sikri had taken note of existing conflicting judgments in November, 2018 and referred the matter to a three-judge bench to settle the law.³³ These conflicting judgments include the case of 2015 in the matter of *Prakash v. Phulavati*, wherein a two-judge bench of the Supreme Court of India had held that if the coparcener (father) had passed away prior to 9 September 2005 (i.e. the date on which the amended section 6 of Hindu Succession Act came into effect), his daughter would have no right to the coparcenary property.

However, contrary to this, there exists another authority of the Supreme Court in the matter of *Danammav. Amar*, wherein in the year 2018, a two-judge bench had held that the two daughters in this matter would get a share in the property, even if their father had passed away in 2001. Eventually, this existing legal complication as caused by these two contradictory cases was referred to a three-judge bench of the Supreme Court in the case of *Vineeta*

³³See, <https://theprint.in/judiciary/daughters-equal-right-to-ancestral-property-here's-what-landmark-sc-judgment-says/479728/>. Last visited on 14-8-2019.

*Sharma v. Rakesh Sharma & others*³⁴ wherein, the Supreme Court ordered in favour of the retrospective implementation of the amendments irrespective of the death of father prior to the date of its implementation. Court also noticed that since matters have already been delayed due to legal imbroglio caused by conflicting decisions, the daughters cannot be deprived of their right of equality conferred upon them by Section 6 of Hindu Succession Act, 2005. In this case, the Supreme Court also held that all the pending matters relating to this concern be decided, as far as possible, within six months. Justice Arun Mishra, one amongst the three-judge bench said that: “a daughter always remains a loving daughter. A son is a son until he gets a wife. A daughter is a daughter throughout her life.”³⁵

VI. Conclusion

With one half of the population in India constantly deprived of the ownership of the land/property and inheritance rights over property, there is no denial in saying that women have miles to travel for securing their equitable access to land-holding rights. Gender discrimination in the ownership of productive assets and immovable property like land can be seen all over the world. The patriarchal mind-set of society is one of the main reasons behind the pitiable condition of women in India.

Empowering women is perhaps the most preferable objective to be achieved by any nation for ameliorating the persisting gender discrimination. Unless and until the historically discriminated women population is not secured with their basic rights, the aspirations of our founding mothers and fathers would remain unmet. When we try to put ‘empowerment’ in words, then at a very fundamental level, it means gaining control over sources of power, self-assertion, and ability to take part in decision-making that affects their lives which *inter alia* demands for equal opportunities, equal capabilities and equal access to resources.³⁶ Without taking any sympathetic approach towards women empowerment, it is

³⁴

See,https://main.sci.gov.in/supremecourt/2018/32601/32601_2018_33_1501_23387_Judgement_11-Aug-2020.pdf. Last visited on 13-08-2020.

³⁵*Ibid.*

³⁶PREM CHOWDHARY, *supra* note 19 at 1.

high time to make a call for a right-based approach for women. Land-holding rights are on the highest pedestal to build a discourse on it. The land has always been considered the most important form of property. It is seen as the single most important source of security against poverty as highlighted by Bina Agarwal.³⁷

Given the persisting gender discrimination and doubly-suppressed status of women, challenge before the contemporary Indian society is not only to create a congenial environment for women with security for their equitable access to their property rights but also to foster such mechanism that brings an attitudinal change in society which *inter alia* happens to be a challenging task. As very aptly said by Swami Vivekananda that: “country and that nation that does not respect women have never become great, nor ever be in future.” Though it sounds a bit annoying because of delay, certainly, it needs to be internalized that the modern human society can’t afford to postpone the desired changes any further. It is high time that the nation should respond to the situation by safeguarding the land-holding rights of women in letter and spirit. Policy-makers and civil society may bring the desired transformation by launching a civil movement in sync with *Beti Bachao Beti Padhao*.³⁸ The whiff of emancipation has already been seen by various path-breaking legislative and judicial steps, now it needs to be accelerated by civil society for treating women at par with men in a real sense as far as their accessibility to land-holding rights is concerned. A statute may also be enacted for Indian women of all religious beliefs, ensuring their equitable access to land-holding rights so as to uplift their status. These kinds of statutes may easily be a ground reality if we may succeed in re-thinking and passing of long-pending bills *viz.* the Constitution (108th Amendment) Bill, 2009 providing for 33 percent women reservation in the *Lok Sabha & State Assemblies* and two other Bills—Constitution (110th,112th Amendment) Bills, 2009, respectively seeking for increasing representation of women in rural panchayats and urban local bodies from existing one-third to

³⁷Bina Agarwal, *Are we not peasants too? Land Rights and Women's claims in India?*?21
SEEDS NEW YORK: POPULATION COUNCIL 2002)

³⁸*Beti Bachao Beti Padhao*, an initiative taken by Government of India in 2015, has witnessed tremendous results with a higher Gross Enrolment Ratio (GER) of girls than boys at elementary level. (Girls-94.32 & Boys 89.28). Data as has been shared by Finance Minister Nirmala Sitharaman during her budget speech in February, 2020.

half of the total number of seats. Given the proven fact that women across the world have upper hand in handling the household affairs, it is imperative to have an inclusive approach for ensuring equitable rights for women.