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1 Land rights for women: making the case

To my brother belong your green fields
O father, while I am banished afar.

Always you said
Your brother and you are the same
O Father. But today you betray me ...
My *doli* leaves your house, O father
My *doli* leaves your house.
These dowry jewels are not jewels
but wounds round my neck, O father.
My *doli* leaves ...¹

Rural women in northwest India, married among strangers miles away from their natal villages, use folksongs to decry their estrangement from the green pastures of their childhood homes – homes to which their brothers, who customarily inherit the ancestral land, have automatic access. In Maharashtra (west India), women divorced or deserted by their husbands can be found working as agricultural labourers on the farms of their brothers who are substantial landowners (Omvedt 1981). Elsewhere in India and in Bangladesh there are similar cases of widows who, deprived of their rightful shares by prosperous brothers or brothers-in-law, have been left destitute and forced to seek wage work or even beg for survival.² Many poor rural women from Rajasthan and Bihar told me: we must get some land to take care of our children ... even a little land. In Bodhgaya (Bihar), in 1979, landless labourer women, agitating alongside their husbands for ownership rights to the land they had sown for years, protested the

¹ These verses are taken from folksongs sung by Hindu women in northwest India when the bride departs from her parents' home. The first was translated by me. The second was given to me by Veena Das (Department of Sociology, Delhi University). *Doli* means palanquin.

² For India: personal observation in Rajasthan (northwest India) and Bihar (east India) during 1986–88; and personal communication on West Bengal (east India) from Vina Mazumdar, Center for Women's Development Studies (CWDS), Delhi. For Bangladesh see Abdullah and Zeidenstein (1982), Cain *et al.* (1979), and Schendel (1981). In one case described by Cain *et al.* (1979: 5–6) a widow was reduced to beggary after her husband's death, although her brother-in-law was the richest man in the village.

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distribution of titles only to men, noting: 'If these men who are today landless beat up their wives so badly, merely using the power derived from being men, then tomorrow when they get the land will they not become relatively even more powerful? We are part of the struggle so we should also get land' (Manimala 1983: 8). And in the hills of Uttar Pradesh (northwest India), women in the Chipko movement have been working along with the men of their community to protect and restore the forests on which their livelihoods depend. At times they have even gone against the wishes of the village men (including their husbands), to resist income-generating schemes that would have destroyed a local forest. 'Planning without fodder, fuel and water', they assert, 'is one-eyed planning' (Bahuguna 1991: 152).

These images, and these voices of lament, protest and assertion that are beginning to resonate across South Asia today, highlight the multiple facets of rural women's relationship with land, and the importance many attach to having a field of their own. For a significant majority of rural households, arable land (an increasingly scarce resource) is likely to remain for a long time yet, the single most important source of security against poverty in rural South Asia, even if it ceases to be the sole source of livelihood for many. Land defines social status and political power in the village, and it structures relationships both within and outside the household. Yet for most women, effective rights in land remain elusive, even as their marital and kin support erodes and female-headed households multiply. In *legal* terms, women have struggled for and won fairly extensive rights to inherit and control land in much of South Asia; but in practice most stand disinherited. Few own land; even fewer can exercise effective control over it. Yet the voice of the disinherited female peasant has until recently gone largely unheard, not only by policy makers but also by grassroots groups and academics. Instead, employment is taken as *the* principal measure of women's economic status, obscuring what has been commonplace in measuring the economic status of men or of households: property ownership and control.

This book argues that women's struggle for their legitimate share in landed property can prove to be the single most critical entry point for women's empowerment in South Asia; and it seeks to bring this issue from out of the wings onto centre stage.

I. The backdrop

Two decades ago, the question: 'Do women need independent rights in land?' was not even admitted in public policy discourse in most parts of South Asia. Today, the question is admissible, but the discussion on it is limited and the answers to it disputed. Indeed gaining acceptance for the

idea that women need independent rights in land is itself an arena of struggle, an essential first step in the struggle to translate that need into effective rights in practice.³

To begin with, to argue that women's economic needs require a specific focus, distinct from those of men, is to challenge a long-standing assumption in economic theory and development policy, namely, that the household is a unit of congruent interests, among whose members the benefits of available resources are shared equitably, irrespective of gender. This assumption has (until recently) been shared widely by governmental and non-governmental groups, institutions, and individuals. To go further and argue that women need independent rights in *land* – the most critical form of property in agrarian economies – is to challenge the assumption that women's economic needs can be accommodated adequately merely through the employment and other income-generating schemes that typify development planning. It means admitting new contenders for a share in a scarce and highly valuable resource which determines economic well-being and shapes power relations especially in the countryside; and it means extending the conflict over land that has existed largely between men, to men *and* women, thus bringing it into the family's innermost courtyard.

The process by which the assumption of a unitary household, and more generally of the gender-neutrality of development, has come to be challenged over the past twenty years is a complex one, which will not be detailed here. What is notable is that it has been a process of negotiation and struggle involving multiple actors – academics and researchers, women's activist groups, government policy makers and bureaucrats, and international agencies. It was set in motion by at least three interrelated factors: the building up of gender-specific empirical evidence and analysis, especially since the mid-1970s, which exposed a systematic gender gap in how the benefits and burdens of development were being distributed; the mushrooming of women's organizations loosely constituting a women's movement, since the late 1970s; and changes in the international context. This last included, in particular, the declaration of 1975–85 as the United Nations (UN) Decade for Women, with associated fall-outs in terms of research funding and dissemination, media coverage, and pressure on countries to generate gender-specific data and status of women reports.⁴

³ 'Independent' land rights are defined here as rights that are formally untied to male ownership or control, in other words, excluding joint titles with men. By effective rights in land I mean not just rights in law but also their effective realization in practice, as elaborated later in this chapter.

⁴ Documents (Reports, Action Plans, etc.) from various international and national Conferences, Symposia and Working Groups, that met during 1975–85 to focus on rural women, provide interesting insights into the changing nature of concerns over this period. For a selected compilation of such documents (international, and those relating to India), see

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Indirectly, feminist scholarship and activism in the West were also facilitating factors in promoting the issue internationally.

Today, as a result, the idea that development is not gender-neutral has gained fairly wide acceptance in development enquiry and policy, even though there is no consensus on the causes of the gender gap or on how it could be bridged. At the level of policy, this recognition of gender disadvantage has been reflected particularly in three types of developments:

- the establishment of separate cells, departments or ministries in government bureaucracies to monitor and coordinate women's concerns in the development process;
- the incorporation of policy directives on women and development in the planning process, as in the Indian Sixth Five Year Plan, 1980–85 (for the first time in the history of planning in India), with subsequent plans following suit; and
- the initiation of special programmes targeted at women, especially income-generating and literacy schemes.

However, the approach underlying these directives and programmes treats gender as an *additive* category, to be added onto existing ones, with women as a special focus or target group, rather than seeing gender as a lens through which the approach to development should itself be re-examined. The programmes are essentially couched in welfare terms, under the umbrella of the 'basic needs' approach that gained currency in development thinking in the mid-1970s. This approach emphasizes the provision of 'basic' goods and services (such as food, health care, education) to the economically disadvantaged, but usually without seriously questioning the existing distribution of productive resources and political power, or the social (gender/class/caste) division of labour. Most governments typically deliver such programmes in a top-down manner, involving little dialogue with the people (especially women) themselves on the definition of their needs or the best means of meeting those needs.

In this scenario, the issue of women's land rights has, until recently, received little attention in policy formulation. In India, the numerous

CWDS (1985). The Report, *Towards Equality*, on the status of women in India, was also a significant landmark (Government of India (GOI) 1974). Brought out by a Committee set up by the Indian Ministry of Education and Social Welfare, the Report compiled evidence of gender gaps in virtually every sector and made recommendations on how to bridge them. The issue of women's land rights, however, was not raised in the Report, although it included a discussion on gender inequalities in inheritance laws. On the role of international aid agencies in pushing the gender question, see especially White (1992) for Bangladesh. In India, I understand, international organizations such as the UN Food and Agricultural Organization (FAO) played an important role in pushing the government to set up review committees on rural women, such as the 1979 National Committee to Review and Analyse Participation of Women in Agriculture and Rural Development, set up by the Ministry of Agriculture (personal communication, Vina Mazumdar, 1992).

committees and working groups on the status of women that met between 1975 and 1979, focused almost exclusively on three elements: employment, education and health.⁵ It is only in the Sixth Five Year Plan (1980–85) that we see the first limited recognition of women's need for land (and then only in the context of poverty). Several factors appear to have contributed to this recognition. In 1979, at a women's conference in Calcutta, a group of elected women *gram panchayat* (village council) representatives from West Bengal put forward a demand for joint titles (with their husbands) on behalf of destitute Muslim women in their constituencies. They argued that many Muslim women had been evicted by their husbands; women therefore needed the economic security that land provides. This is said to be among the earliest such public grassroots demands. A similar plea was made by landless women in 1980 to a sympathetic Land Reform Commissioner at a camp in West Bengal's Bankura district.⁶ Such demands were subsequently included in the recommendations (placed before the Planning Commission) of a pre-Plan symposium organized by eight women's groups in Delhi in 1980.⁷ Additional pressure came from the 1979 FAO Report of the World Conference on Agrarian Reform and Rural Development (WCARRD) held in Rome, which recommended that gender discriminatory laws in respect to 'rights in inheritance, ownership and control of property' be repealed and measures be adopted to ensure that women get equitable access to land and other productive resources (FAO 1979). These recommendations were incorporated (albeit in very diluted form) in the country review follow-up to WCARRD undertaken by the Indian Ministry of Agriculture and Rural Development (CWDS 1985: 89–94). The result of all this was a policy statement which, as finally incorporated in the Sixth Plan (in a separate chapter on women and development), said that the government would 'endeavour' to give joint titles to spouses in programmes involving the distribution of land and home sites.

However, even this limited formulation, which stops short of granting women independent titles, remained only a promise on paper. In practice, government land-redistribution programmes continued to reflect the old assumption of a unitary male-headed household, and titles were granted principally to men. In India's Seventh Plan (1985–90), although a separate chapter on women and development was retained, the directive on joint titles was not restated, despite strong recommendations for entitling women by a governmental working group on women and development,

⁵ See various Indian documents compiled in CWDS (1985).

⁶ Both incidents were related to me in 1992 by Vina Mazumdar.

⁷ The group brought out a memorandum entitled: 'Indian Women in the Eighties: Development Imperatives' (CWDS 1985: 95–8). The gender-sensitive response of some State planners in authoritative positions within the Planning Commission was of critical importance in ensuring that such recommendations were taken seriously.

during the plan-formulation stage.⁸ Meanwhile, the *National Perspective Plan For Women: 1988–2000 A.D.*, drawn up at the initiative of the Indian Ministry of Human Resource Development, made a number of substantive recommendations for closing the gender gap in access to land, amongst other gender issues needing attention (GOI 1988a). And the report of a National Seminar on Land Reform called by the Planning Commission in 1989, in which I had presented the case for women's land rights, incorporated most of my recommendations on this count (GOI 1989a).⁹

Reports, however, have a tendency to gather dust, their contents forgotten. It is in this context that the passing of the National Commission for Women Act, 1990, is an important step forward. The result of many years of sustained efforts by women's organizations and gender-progressive individuals, this Act has created a Commission with a wide mandate to investigate and monitor 'all matters relating to the safeguards provided for women under the constitution and other laws' (GOI 1990a: 4). In particular, it is mandatory on the government to place any recommendations made by the Commission before both houses of Parliament (or, where relevant, before the state legislatures), along with a memorandum of actions taken or proposed to be taken by the government, and to give reasons in cases of non-acceptance of such recommendations.¹⁰ Of course, it remains to be seen what issues the Commission will focus on, and how much weight will be given by the government to its recommendations.

Certainly, the recently formulated Eighth Five Year Plan (1992–97) for India has left much of the responsibility for monitoring gender-related issues (including keeping tabs on the enforcement of social legislation), on the National Commission for Women, and on women's groups; the appointment of a National Commissioner of Women's Rights is also proposed (GOI 1992a–b). This Plan document (unlike the Sixth and Seventh Plans) does not have a separate chapter on women and development, but subsumes women's concerns largely under the chapter on social welfare (which also deals with children, the disabled, the elderly, and the destitute), and these concerns are couched essentially in the language of

⁸ This group, set up by the Department of Social Welfare, Government of India, made four recommendations concerning women and land: that land and other property be registered in revenue records in the joint names of both spouses; that single women be given preference in land distribution by the government; that all property acquired after marriage be in the names of both spouses; and that loopholes in the Hindu Succession Act of 1956 be plugged (GOI 1983a).

⁹ These recommendations were based on some initial research I had done on the subject in 1985–86, and published in 1988 in a widely circulated paper (Agarwal 1988) which had previously been presented in several academic and other forums, within and outside India.

¹⁰ For further details on the Act and on how the National Commission for Women came to be set up, see *Women's Equality* (1992).

women as victims, rather than women also as agents of change and contributors to development.¹¹ The Plan makes two specific points in relation to women and agricultural land: one, it recognizes that 'one of the basic requirements for improving the status of women' is to change inheritance laws so that women get an equal share in parental property, inherited or self-acquired (GOI 1992b: 392). However, it does not lay down any specific directives to ensure that this is followed through.¹² Two, and this is the only concrete policy directive, state governments have been asked to allot 40 per cent of surplus land (i.e. land acquired by the government from households owning land more than the specified ceilings) to women alone, and to allot the rest jointly in the names of the husband and wife (GOI 1992b: 34). This sounds good until one recognizes how little land is involved: only 1.04 million hectares (mha) remain to be distributed (GOI 1992b: 34). This constitutes just 0.56 per cent of the country's arable land.¹³

In other words, the process of incorporating the issue of women and land into public policy in India has been extremely slow, involving negotiations between the government, women's groups, individual women academics, and international agencies, as well as between different elements within the government. And today, despite the noted progress, it remains an issue of marginal not central concern.

The situation in other South Asian countries is even more discouraging. Nepal's Eighth Five Year Plan (1992–97) Summary highlights women's employment and the need to encourage their participation in various activities, but contains no reference to women's need for land.¹⁴ In Bangladesh, the latest Fourth Five Year Plan (1990–95) contains two special chapters on women and development, and some others incorporate women's concerns (Government of Bangladesh (GOB) 1990). But the emphasis throughout is on issues such as female employment, literacy, health, nutrition and credit; there is no mention of land for women, not

¹¹ In contrast, although the Sixth and Seventh Plans also mentioned women's concerns in their chapters on social welfare, it was their separate chapters dealing with women's programmes which outlined the primary thrust of policy in this regard; and these were framed much more in the language of equality and rights, and recognized women's productive contribution to the economy. Of course, in these documents, as noted, the issue of women's land rights received marginal (Sixth Plan) or no (Seventh Plan) attention.

¹² Indeed, as will be seen in chapter 5, Indian women of most communities already have considerable *legal* rights of inheritance (although gender gaps remain on several counts). It is in the implementation of laws that action is especially necessary.

¹³ Taking the aggregate of net sown area, fallow land (current and other fallows), cultivable wasteland, and land under miscellaneous tree crops and groves, the country's arable land in 1987–88 was 184.73 million hectares (GOI 1992c). This tallies with the Ministry of Agriculture's method of estimating arable land.

¹⁴ The full Plan document has yet to be released.

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even in terms of government allocations for poor women.¹⁵ Similarly, although Pakistan's *Report of the Working Group on Women's Development Program for the Sixth Plan (1983–88)* recommended that all land distributed under the land reform programme should be registered jointly in the names of both spouses, this recommendation was not incorporated into the formal plan document. And Pakistan's Eighth Five Year Plan (1993–98) Approach Paper, in its chapter on 'Affirmative Action for Women and other Disadvantaged Groups' promises women preferential treatment in education and employment, but does not mention implementing their property rights. It also casts gender relations in traditional terms, with the State explicitly undertaking to 'protect the marriage, the family, the mother and the child' and to forego any approaches 'which [could] antagonise male members of the community ...' (Government of Pakistan 1991a: 22, 24).

What is especially striking is the disjunction between public policy formulation and the rights encased in personal law. The idea of women having independent property rights (including rights in land) was accepted by most South Asian countries in laws governing the inheritance of personal property in the 1950s (and even earlier in traditionally bilateral and matrilineal communities).¹⁶ But such acceptance remained confined to inheritance laws that affect private land; in development policy governing the distribution of public land, the issue of women's land rights was not discussed (as we've noted) till the 1980s. Hence the redistributive land reform programmes of the 1950s and 1960s in India, Pakistan, and Sri Lanka, and of the 1970s in Bangladesh, continued to be modelled on the notion of a unitary male-headed household, with titles being granted only to men, except in households without adult men where women (typically

¹⁵ In 1991, however, a Task Force set up by the Bangladesh Ministry of Planning to review the country's development strategies made a modest recommendation that female heads of households, with or without adult sons, and women in households with incapacitated male heads, be given priority in the distribution of government land (see *Report of the Task Force on Bangladesh Development Strategies for the 1990s* (1991)). At present, the Report notes, under the conditions laid down by the Bangladesh Land Ministry in 1987 for the distribution of government land to the landless, women can be given priority only if they are widowed or abandoned and have an adult son who is able to work. It remains to be seen whether the Task Force recommendations will be acted on.

¹⁶ Bilateral inheritance: ancestral property passes to and through both sons and daughters; matrilineal inheritance: ancestral property passes through the female line; patrilineal inheritance: ancestral property passes through the male line. The specific, complex workings of such inheritance systems in South Asia will be discussed in later chapters. The terms 'matrilineal', 'bilateral', and 'patrilineal' will be used throughout the book (unless otherwise specified) to relate to *inheritance* practices, and not to those of descent. In any case, in all the communities referred to in the book, those following any one of these inheritance systems also practised the same type of descent system, with the exception of the Nangudi Vellalars who practised matrilineal descent and bilateral inheritance.

widows) were clearly the heads. This bias was replicated again in resettlement schemes, even in Sri Lanka where customary inheritance systems have been bilateral or matrilineal.

Underlying this disjunction between government policy in relation to public land distribution and the rights in private land granted to women under inheritance laws are likely to be a complex set of factors. These would include the continued assumption in most public policies of gender-congruence in interests within the family; the dominant view that men are the breadwinners and women the dependents; strong male vested interests in all land, including public land; gaps between the central government's policy directives and the shape these are given at the state/province level;¹⁷ and the belief that land distribution to women will further decrease farm size and fragment cultivated holdings, in turn reducing agricultural productivity. The farm size and fragmentation arguments have also been used in many Indian states to undercut post-independence, gender-progressive personal laws,¹⁸ by retaining age-old customary laws that disadvantage women in relation to agricultural land. The weaknesses in these arguments will be discussed later in this chapter. Here it suffices to reiterate the limited progress made in public policy towards entitling women with land and the ambiguities that continue to surround even the idea of doing so.

A similar ambiguity toward this issue is found among groups which have otherwise been strong advocates of redistributive land reform, namely Marxist political parties and left-wing non-party organizations, most of whom still see class issues as primary and gender concerns as divisive and distracting.¹⁹ At the same time, most women's organizations (whatever their political persuasion), with some recent exceptions, have been preoccupied with employment and non-land-related income-generating schemes as *the* means of improving women's economic status and welfare, paying little

¹⁷ In India, the term 'state' relates to administrative divisions within the country and is not to be confused with 'State', used throughout the book in the political economy sense of the word. In Pakistan and Sri Lanka these administrative divisions are termed provinces.

¹⁸ The term 'gender-progressive', as used here and subsequently, relates to those laws, practices, policies, etc., which reduce or eliminate the inequities (economic, social, political) that women face in relation to men. Individuals and organizations that work toward this end are also so described. 'Gender-retrogressive' has the opposite meaning.

¹⁹ It is noteworthy that in West Bengal when the CPI(M) (Communist Party of India (Marxist)) government carried out 'Operation Barga' (launched in 1978), a major land reform initiative which sought to provide tenants with security of tenure by systematically registering them, primarily men were registered. A similar male bias has characterized the programmes of most left-wing non-party groups, among the notable exceptions being the Bodhgaya (Bihar) peasant movement initiated in 1978 by the Chatra Yuva Sangharsh Vahini, a Gandhian-socialist Youth organization which also took up the issue of women's land rights (see chapter 9 for details).

attention to the issue of property rights.²⁰ Several years ago, when I began research on this subject and raised the question of women's land rights with a number of left-wing women's groups across South Asia, the responses of most were either that 'we haven't really thought about it', or that advocating individual property rights went against their vision of a socialist society. Yet, to my knowledge, this latter argument has not been used in South Asia against redistributive land reform or peasant struggles through which (typically male) heads of landless households gain rights in land.²¹

This neglect of women's land-related concerns by both governmental and non-governmental institutions mirrors a parallel gap within academic scholarship, where the relationship between women and property has remained virtually unattended and little theorized. For instance, the social science literature on rural South Asia of relevance to this discussion falls broadly into three categories. First, a vast body of economic development and political science studies document a strong interdependence between the rural household's possession of agricultural land and its relative economic, political and social position. Characteristically, these studies focus on the household as the unit of analysis, neglecting the intra-household gender dimension.

Second, there is a substantial body of (primarily descriptive) sociological and anthropological literature on South Asia, especially that relating to kinship and marriage. From this, a picture can be constructed of some aspects of women's position in different communities, socio-economic strata and parts of the subcontinent. But even in the best of ethnographies up to the 1970s, the analysis is typically ungendered. Women appear

²⁰ Among the exceptions is the Shetkari Sanghatana's Mahila Aghadi, the women's front of the Shetkari Sanghatana – a farmers' organization founded in Maharashtra (west India) in 1980 (see chapter 9 for details). Also noteworthy is the role played by *Manushi* (a women's journal from India) in reporting such initiatives, and by one of the journal's founders, Madhu Kishwar, who in 1982 filed a petition in the Supreme Court of India challenging the denial of land rights to Ho tribal women in Bihar (see Kishwar 1982, 1987).

²¹ Joshi (1974) who explains the background to the formulation of land reform programmes in post-independence India and Pakistan, makes no mention of any resistance to redistributive reform on these grounds. Rather he notes (1974: 167): 'The fundamental question of land policy was the question of removing [the] discrepancy between ownership of land and its actual cultivation'; ownership being largely concentrated in the hands of a minority of landlords and cultivation being done by peasants with usually limited or no proprietary rights. However, in a personal communication to me in 1992, Joshi added that a minute section of the left did express unease about measures that could strengthen individualistic tendencies among the peasantry, but this was not a widely shared concern: the preoccupation of most was with the need to break the stranglehold of 'feudal' elements.

What was discussed widely, though, both by the Planning Commission and various political parties, was the need to encourage (largely voluntary) cooperation among the peasantry in various forms, including joint cultivation, the joint ownership of non-land assets, cooperative marketing and distribution, etc. (On this debate and the limited success of efforts in this direction, also see Frankel 1978.)