

For Women in Nepal:

The Right to Land

by Samjhana Shrestha

is the Right to Livelihood

More than 80 percent of the population in Nepal depend on land for their livelihood. It is the single most important resource that provides security from poverty in the agriculture-based economy of Nepal. In addition, there are other direct and indirect benefits to owning a piece of land. Some of the benefits are specific to women. For example, with a secure land title, their status in the community is improved. They gain self-



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Women take part in at least 80 percent of the food production process

confidence to demand what is due them in government programmes for access to improved technology, education, health care, etc. It also enables women to avail of credit that in turn enables them to invest in land on a long-term basis. With secure and independent land of their own, women have better bargaining power within and outside the household.

More than 90 percent of women in Nepal engage in agricul-

tural production, contributing in all stages of agricultural production including management and decision-making. They are the primary source of labour in small and medium farms and in large farms their labour contribution is more or less equal to that of men. However, women rarely have a legal title to the land they till. Without a title they are not viewed as farmers but continue to be perceived as homemakers by the government and the general public at large. This perception is ingrained in every aspect of the sociopolitical and economic outlook towards women. At the heart of it is the issue of unequal rights of women to land. Women in Nepal have the most unequal right to land in South Asia.

In the following sections, I will briefly review the present restrictive law on property rights for women and the continued opposition to amend it. I will illustrate here that the present property law is contrary to achieving the main national objectives of raising agricultural production and developing the country.

PROPERTY RIGHTS LAW FOR WOMEN

According to Nepal's code (*Mulki Ain*, amended in 1975) a

woman can accumulate wealth from two sources: *Stridhan* and *Ansa*. *Stridhan* literally means a woman's wealth. The source of this wealth could be her own earnings, dowry from the parents, and gifts from the husband and his family at the time of marriage (known as *Pewa*). A woman has absolute right over her *Stridhan*. She can engage in independent legal contracts using such property.

Ansa refers to any property (immovable and movable) inherited either from parents or husband. A woman is entitled to her *Ansa* under the following conditions:

- ◆ A married woman over the age of 35 has the equal right to ancestral property with the husband if he is alive and with son(s) if he is dead.
- ◆ A married woman has equal right in the ancestral property if her husband is not alive provided that she is 35 years of age or married for at least 15 years.
- ◆ A woman seeking divorce may not claim a share in the husband's property. She is given maintenance for five years at the maximum.
- ◆ A married woman does not have any right to the property of the natal home.
- ◆ An unmarried woman has an

equal right to the parental property with her brothers, but only if she is at least 35 years and continues to remain unmarried.

The Family Law in Nepal covers marriage, divorce, and property rights. It is set up to keep family property within the agnatic group (relatives on the father's side). This is evident from several inequalities present in the current law on property rights:

Firstly, it does not recognise a daughter's share in parental property unless she is 35 years old and is unmarried. If she subsequently marries she then forfeits her right over the *Ansa* in favour of the male descendants.

Secondly, a woman mainly inherits property through marriage. The possibility of inheritance depends on her age, length of marriage and her fidelity to her husband—even after his death. A widow forfeits her share of *Ansa* if she remarries or is alleged to be engaged in sexual activities.

Thirdly, a divorced woman does not have the right over the property of her parents or the former husband. If the divorce is based on infidelity she even forfeits the right to claim five years of inheritance.

Fourthly, a woman does not have complete control over her inherited property. She can dispose of only half of the inherited property as she pleases. For the other half, she needs permission of her father or brothers. A widow or a woman living separately needs to seek consent from the adult sons to dispose of the property.

Finally, if the property is still undivided, a woman cannot enter into financial contract on the basis of her eventual share in the ancestral property. But an indebted husband can draw upon his wife's joint share of the estate, thereby

effectively reducing her share.

In short, a woman's rights over her *Ansa* is conditional, restrictive and precarious in nature and primarily depends on her age, length of marriage, marital status and sexual conduct. On the other hand, a man's right to the ancestral property is

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What is perceived to be a traditionally male task, land preparation is also being done by many women.

established by birth and is not restricted by any of the above factors.

During the last five years, women activists have lobbied to end discrimination on the property rights issue. A petition was filed with the Supreme Court stating that such discrimination violates the country's constitution, which guarantees equal rights to women. The Supreme Court acknowledged this discrimination and instructed the government to present an appropriate bill in the parliament within one year. Following the guidelines, a task force was formed under the Ministry for Women and Welfare to draft the bill. It was prepared with the cooperation of social scientists, religious organisations, and women activists. As required by the established procedure, the draft bill was then submitted to the Ministry of Law and Justice (more than a year ago) which is the agency responsible for presenting it to the parliament. However, the Ministry of Law and Justice failed to

introduce the draft bill to the parliament for discussion and voting by the members of the parliament has since lapsed.

The discriminatory law on property rights thus remains in effect. This is despite the fact that in the recent election campaign, the winning party (Nepali Congress) and the opposition party (CPL-UML) promised to implement the Equal Property Right Bill. But within a month of winning the election, the Minister of Law and Justice, Mr Taranath Ranahat, was quoted in a daily newspaper saying that "even on the threshold of the 21st century our society is feudal and it (giving property rights to women) would not be practical to break the tradition and change society just like that."¹

ECONOMIC JUSTIFICATION FOR GENDER EQUALITY IN PROPERTY LAW

One of the strong reasons for opposing a change in the present property law is that the *Stridhan* Act already provides that women may own the land independently. Thus, it is argued, they are adequately protected.

The main problem with this reasoning is that the *Stridhan* is based on voluntary contributions by her natal family and her husband (and his family). It is not obligatory or regulated by any law.

More than 20 years of evidence show the bias against women and girl children in the allocation of resources within households in Nepal. A family does not provide a son and a daughter equal access even to basic necessities such as food, education, and health care. It is unrealistic to rely on voluntary contributions and altruism of the family to allocate a woman adequate land or any land at all, the most valuable resource in the family. Land given to a

daughter is viewed by the natal family as a loss with virtually no reciprocal benefits.

Stridhan can also be acquired through a woman's own earning. The assumption here is that she has skills, education, opportunities for employment, and time to engage in income-generating activities. The socio-economic data on time allocation patterns indicate that women in Nepal spend an average of 47 percent more than men on housework and activities related to agricultural productivity.² Thus, it might not be possible for women to engage in income-generating activities without further deterioration in their well-being. Nepal is one of the few countries where women's life span is shorter than that of men.

Furthermore, studies suggest that access to even a small piece of land is important for rural off-farm income generation, even though it may not be sufficient for livelihood. In all states of India, rural households with land were able to earn substantially more from off-farm activities than the landless households.³ Thus, even for ensuring the entry of rural women into the nonfarm sector, an initial strengthening of their right to land might prove to be necessary.

Nepal faces a serious challenge in providing food for its population. The population is currently growing at a faster rate than the rate of productivity growth in agriculture. With farmers already utilising marginal lands for agricultural production, it is not possible to increase agricultural output by expanding the land area. The only other means to increasing output is by increasing the yield. There is a potential for significant gain in agricultural production by increasing productivity, as this is

lower in Nepal than in most other Asian countries. For example, rice yield per hectare in Nepal is 2.5 tons as compared with 3.6 tons per hectare in Asia.

Some of the necessary factors for increasing agricultural productivity include institutional support, increased use of inputs, knowledge of improved agricultural technology, long-term investment in land, increased efforts in cultivation.

Access to land for women might be one of the crucial links to achieving the national objective of increasing agricultural productivity, improving food security and developing the national economy.

The present restrictive and conditional rights to property for women hinder the potential to increase agricultural productivity. Women cannot access collateral-based credits to improve the land or to purchase inputs. Lack of credit also inhibits long-term investments on land. Moreover, women do not benefit from the knowledge of extension workers as the know-how is usually directed towards the landowner. The problem is likely to aggravate further with an increase in male migration from the hills to urban centres. Men who have migrated hold the legal title while women will have to manage the farm without the public sector support that are

conditional on legal ownership.

There is also evidence suggesting that women put more efforts into cultivating the land they own compared with the property owned by the family. Thus, the current form of ownership of property in Nepal where the male family member has the title to land even though it belongs to the family as a whole may also restrict the growth in agricultural productivity.

An indirect benefit when women hold independent land titles is its contribution to the farmers' welfare. It is well documented that compared to men, women spend a greater proportion of their earnings on the household expenses. There is direct correlation between children's welfare in such areas as nutritional level, lower infant mortality, educational level and women's direct access to income. The risk of poverty and the physical well-being of a woman and her children could depend significantly on whether or not a woman has direct access to income and productivity assets such as land, and not just access mediated through her husband.

Thus, access to land for women might be one of the crucial links to achieving the national objective of increasing agricultural productivity, improving food security and developing the national economy. For these compelling reasons, equality in women's rights to land needs to be a top national priority. ♻️

¹In *Kathmandu Post*, 4 June 1999.

² Bajraharya, B., "Gender Issues in Nepali Agriculture: A Review", HMG Ministry of Agriculture/Winrock International, Research Report Series no 25, June 1994.

³ Agarwal, B., *Field of One's Own: Gender and Land Rights in South Asia*, Cambridge University Press, Cambridge, 1994.