

# LANDLESS DESPITE LAWS : LAND RIGHTS OF WOMEN IN POST - CONFLICT NEPAL AND SRI LANKA

Journal of Social Review  
Volume 3 (1)  
December 2014  
Department of  
Social Sciences

*Anuradha Rai*

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## Abstract

*Women forms around half of the total agricultural force of the world and in most countries, more than 50 per cent of agricultural labourers are women. Nevertheless, very small portion of landholdings throughout world is owned by women. The condition of women in South Asia is even worse as women in most of the South Asian countries have legal rights to own and inherit land, but the legal contradictions and the customary practices dominates women's right to demand their own land. The condition worsens in post-conflict societies where women are denied the right to ownership of land in case of death or disappearances of their husbands. Nevertheless, post-conflict societies create a unique opportunity to challenge the customary law that denies land ownership to women. Many studies illustrates that in post-conflict period, more men than women actively participate in the conflict with more women left to take charge of the households. This paper will look into the customary and legal right of women to own and inherit property in two post-conflict societies of South Asia- Nepal and Sri-Lanka, and percentage of women owning land in the two countries, the legal and customary barriers to women inheritance to land and how the post-conflict opportunities has been used both, by government and women to ensure women inheritance to land and property.*

## Introduction

Land is not only an important asset but a critical resource especially for women as women comprises around 43 percent of total agricultural labour force globally and just over 40 percent of total agricultural labour force in developing world (FAO, 2011). Even though women comprises around half of the total agricultural labour force, less than 20 percent of landholders are women (FAO, 2010). Gender disparities in inheritance and ownership of land have remained a significant issue in most of the countries around the world. In South Asia, 35 percent of total agricultural labour force and more than 70 percent of female labour force is engaged in agriculture but own around 10 percent of total landholdings (FAO Fact Sheet). The denial of women

right to own and inherit land has cultural, traditional and customary sanctions in many countries where women enjoys only the usages right over the land and the authority of that land is vested in the male member of the household. The denial to women's right to land prevails even in the most democratic countries where women have the legal rights to claim equal share in the ancestral land, due to the prevalence and supremacy of socio-cultural practices over the legal provisions.

However, the post-conflict situation opens new obstacles as well as opportunities for women to claim their right and demand recognition to their right to own and inherit land. In post-conflict societies, the number

of female headed household increases with women taking all the responsibilities and decisions related to the family. In those countries where women do not have the right to own and inherit landed property, they face the difficulty of being homeless and landless after the death of their spouses. Hence, right over the landed property becomes a prerequisite for women to deal with the new challenges of post-conflict societies. Realising the problem women faces to her and her family's subsistence, in many post-conflict countries, the demand to enact laws regarding women's right to own and inherit equal share in the property has started.

However, few efforts have been made by the concerned parties and government to recognise women's right to landed property and even in those societies where women do have the legal provisions to inherit land and property, the traditional and cultural barriers do not allow her to do so. South Asia, a region where many societies suffer the problem of continuous conflict and warfare, the status of women is miserable. In almost all the countries of South Asia, a son bias exists where men inherit the land of the family and the traditions contain women to claim such rights. Nepal and Sri-Lanka, two countries where peace has been reached after long period of instability and bloodshed, women have limited right to own land. India, Pakistan, Bhutan and Bangladesh are other examples where few women enjoy right to own and few who had inherited land from their parental property.

## **Women and Land in Nepal and Sri-Lanka**

***Legal and Constitutional Rights of Women to Own and Inherit Land*** : Both, Nepal and Sri-Lanka had a democratic system of government in the pre-conflict period where women were granted right to

equality with men. The various constitutional provisions of both states specifically emphasises that women should not be discriminated on the ground of their sex and should enjoy equal citizenship rights. Besides these, women in both states enjoy the constitutional right to own and inherit land and property.

In Nepal, women are guaranteed equal right through various constitutional provisions. Article 19 (1) of the Interim constitution of 2007 states that all citizens have the right to acquire, own, sell and dispose property. Article 20 (1) of the Nepalese constitution says that there should be no discrimination against women on the basis of their gender. Article 20 (4) says that sons and daughters have equal right in their ancestral property. Property and inheritance laws in Nepal are governed by the Muluki Ain or the National Code. The country code of 1963 was amended in the year 2002 to correct the discriminatory customary practices. Nevertheless, some sections of these laws are contradictory and confirm the discrimination against women as it rejects to recognize their independent right to inherit and own property on equal basis with the male members. According to the new amended code on women and inheritance rights, a woman's inheritance status is defined by her marital status. If she is married, she has no claim on parental property. A married woman receives equal share to her husband's inheritance with her sons. Section 16 of the Chapter on partition of property states that, if the daughter marries after inheriting the parental property, she has to relinquish the property after deducting 10 percent for marriage cost. Section 2 of the Chapter on female property states that an unmarried daughter, having obtained her share of parental properties, can dispose of only 50 percent of her immovable property on will while disposal of the remaining 50 percent requires the consent of a male guardian.

Women in Sri-Lanka also enjoy the constitutional right to be treated equal to men. Article 12 (1) states that all persons are equal before the law and are entitled to the equal protection of the law. Further, according to article 12 (2) no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds. However, the land rights of women are governed by the general law, customary law and personal law. According to the general law on matrimonial property right of 1923, òa married woman is capable of holding, acquiring and disposing of any movable or immovable property as if she were a female sole, without the consent or intervention of her husband. This applies to all property belonging to her at the time of marriage and property acquired or devolved to her after marriage. She also has the same remedies and redress by way of criminal proceedings for the protection and security of her separate property, (Gender and Land data, FAO). The customary law applies to ethnic Sinhalese who follow the Kandyan law for marriage, further differentiated into *diga* and *binna* marriages. Muslims follow their own personal law relating the property and land right of women.

Thus we see that in both countries, women do have the constitutional right of equality but have very limited right to own and inherit property. Furthermore, the lack of a uniform law to govern women's right to property and contradictory and complex legal provisions restrains women to come forward and claim their share. This has its impact on the number of women inheriting land in both Nepal and Sri-Lanka.

***Women and landholdings in Nepal and Sri-Lanka :*** Although, women in both Nepal and Sri-Lanka constitute a major portion of agricultural labour force, few of them own the land on which they work. According to FAO data, in the year 2006,

43.7 percent of the **total female** population was **economically active in Nepal** and 65 percent of the workforce in agriculture included women. Although, there is lack of data on percentage of women working as an unpaid family labour in subsistence agriculture, women are responsible for 70 percent of the livestock production, carrying out activities like food preparation, feeding, cleaning sheds and preparing milk products. Compared to all this work they do and their reliability on the agricultural activities for their livelihood, women in Nepal own only 8-10 percent of total landholdings (CBS, 2006; Malla, 2000 cited in World Bank 2008).

In Sri-Lanka, in the year 2007, 39.2 percent of women were economically active (DCS, 2008). Women accounted for 38 percent of the total work force in the agricultural sector and over 60 percent of all women engaged in agriculture work in plantations. More than 70 percent of rural women work in subsistence production, although much of their contribution is unpaid family work. It is estimated that 56 percent of the women work as unpaid family workers (FAO, 2003). Most women in Sri-Lanka own land, though the landholdings own by women are much smaller compared to their male counterparts. According to a study conducted by ICRW in 2006 in three locations, 30 percent of women own property of which 54 percent own only a house and not the land it was built upon (RDI, 2008).

***Customary Practices regarding Women's Right to Land :*** In many societies, the customary practices dominate the legal provisions as people see these practices related with their cultural identity and bypass the law to protect and preserve it. As women are seen as the carriers of the traditions and customs in many societies, they face many challenges in their way of demanding their rights and seeking justice and rule of law.

In most societies, these customary practices are prejudiced to women and do not recognise their independent existence. Women existence is seen in relative terms with the male members of the family and they are considered dependent on men of the family which gives her very limited rights as an individual and resulted into women not enjoying any right to own or inherit property.

Similar is the case in Nepal where the customary rights do not recognise women's right to own and inherit property. The family system followed in Nepal is patrilineal where ancestral land and property of the family is passed only to the male members of the family. Women belong to their father's patrilineage until marriage where they did not have any right to property by birth as is the case with the male child. After marriage they are passed to the patrilineage of their husband and there too they have no claim in the property of the family of her in-laws. Hence, throughout the life they have to depend on the father, husband, sons or other male members of the family for their subsistence. Women do have control over the *daijo* and *pewa* that is little piece of land and other gifts that is given to them by their parental family at the time of her marriage (ADB, 2001).

Sri-Lanka is a multi-ethnic country with different ethnic groups following different customary practices regarding land rights to women. Sinhalese people in Sri Lanka who follow the Kandyan law differentiate between *diga* and *binna* marriage. A *diga* marriage is patrilocal and it generally does not recognize women's rights in matters of marriage, divorce, property and inheritance. In *binna* marriage is metrilocal where bride and groom move to the bride's house and the girl share equal property right after the death of her father with her brothers, unmarried sisters and married sisters through *binna* system.

Tamils from the Jaffna peninsula follow Thesavalamai law, and are entitled to patrimonial inheritance but loses this right if she has been given dowry. Though, women shares property with her husband, they cannot sell, transfer, or gift their property without the written consent of their husbands (Jayanthi Liyanangi, 2002 cited in WID, 2003). FAO document (URL: <http://www.fao.org/docrep/009/ag114e/AG114E10.htm>) on rural women in post-conflict rural economy has described the situation of Tamil women and their right to land that, "The customary law, *Tesawalami*, governs inheritance of property and matrimonial rights of Tamil women in Jaffna. Under *Tesawalami* a woman can own property individually, is entitled to patrimonial and non-patrimonial inheritance, can acquire property during marriage and can keep the dowry she received. Control of her property, however, is in the hands of her guardian, and as the guardianship of a woman passes from the father to the husband, the husband maintains control of her property. The woman cannot invest in the property, mortgage, lease, or sell it without the prior permission of her husband. A woman cannot enter into contracts without his consent and women are treated as "minors" in the Courts of Law. Thus effective control rests with the husband".

The Muslims in Sri-Lanka follow the Muslim Personal Law regarding women right to land and property which do not give women the equal share and equal right to property. Muslim law discriminates against women and girls in matters of inheritance and ownership of land. Husbands and wives as surviving spouses do not receive equal shares of inheritances (Goonesekera 1990, 167), and the wife is required to share her part of the inheritance with other wives in a polygamous marriage.

Thus, we see that both in Nepal and Sri-Lanka, there are some instance of women getting landed property; nevertheless, in both

cases women do not have the full right over the landed property and do not enjoy the decision making right over that property. In both cases, women who have own property to take permission from the father, husband or sons before taking any decision on that land for selling or making contracts (FAO). A widow has the right to get her share in her husband's property but she loses this right in case of remarriage or disloyalty to the deceased husband. The customary practices in both cases transcend the cultural, ethnic and religious differences to discriminate with women right to land. As a result, few women acquire, inherit and own land. Efforts have been made by the democratic governments of both countries to pass laws to the effect to grant women equal right to property. Nonetheless, the social sanction prevails over the constitutional and legal provisions.

### **Women and Land Right in Post-Conflict Scenario**

Post-conflict societies create many new challenges for woman and the problem of livelihood for her and her family is among one of them. As women in many societies do not have the control over land and resources, the death and disappearance of the male members of the family worsens their struggle. There are instances and illustrations where women, in post-conflict societies, have not only been denied any right over the land of the family, but had been thrown out of the houses in case of death of their husbands during the conflict.

Both, Nepal and Sri-Lanka have been the victim of decades of civil war that resulted into the killing thousands and causing the displacement of a major section of the population. Armed Conflicts and displacement have given rise to many land and property issues especially for women. They have no access to their land and

properties due to several reasons like the destruction of land and property, loss of legal documents, lack of transferring legal ownership and lack of access to legal services in post conflict period. As a result, they face problems to prove the legal ownership to their own land.

Nepal's decade long conflict between the Maoists and the government ended in November 2006 and resulted into the killing of around 13,000 people (INSEC, 2006 cited in Shakya, 2009) and injured many thousands. The conflict also has a toll on the lives of women as the social, political and economic structure of the state was eroded. The number of women headed households in Nepal increased from 12.4 percent in 1996, 13.2 percent in 2003 to 26.6 percent in 2011 (IMF, 2003; Nepal Living Standards Survey III, 2011). Being a patriarchal society, the women in Nepal did not have the right to land and property on their own. As a result, the post-conflict situation put their in the troubled position to take care of their families in the absence and death of their husbands and in the lack of social and economic security.

Some change at the policy level has, however, taken place to strengthen the legal right of women. According to the Community Self Reliance Centre, the National Movement for Timely Constitution Writing and Land Reform saw of more than 1,000 poor women (and more than 100 men) from 50 districts coming to Kathmandu. This historic event saw working women raising their concerns and their demand directly with members of the various political parties. The major outcomes, as noted by the centre, were as follow:

É It has been agreed that both the husband and wife would have joint ownership of land provided by the state and a policy announcement has been made which makes

it easier for women to be granted joint ownership of their husband's land.

É The Government of Nepal directed the implementation of the joint ownership certificate of land which was announced in the budget speech of 2011/12. Each district has already developed a campaign plan in respect of joint ownership. The issue of joint ownership is also included in the ToR of the Landless Problem Solving Commission.

É The cost to the wife of effecting this transfer of ownership is a tax of 100 NPR. In addition a 40% discount in the land registration fee will be granted to village women living in remote areas.

É There is a general agreement, from government level downwards, that work will continue to be undertaken over the coming years.

However, the impact of these reforms and changes in the existing policies to promote the joint ownership and recognition of equal land right to women will be decided only in coming future which would need full support of the government, social acceptance of these laws and awareness among women about the new laws.

Sri-Lanka has been hit by two decades of civil war that killed 64,000 and displaced around three million of the population and a natural disaster like Tsunami in the year 2004 which killed tens of thousands and other 443,000 displaced. The absence of male members of the family in the conflict affected areas has put more burdens on women to take all the responsibilities and decisions of the family. Those women who do not own the land and property rightfully after the death of their husbands, face more challenges to earn the subsistence for their families compared to those women who acquire land. The Tamil women in Sri-

Lanka, the Sinhalese women married through *diga* and the Muslim women, all suffer alike in the absence of equal land right.

Though, the state in Sri-Lanka is allocating new lands to more than 300,000 internally displaced population, majority of which are women, they are facing systematic gender discrimination in the process of reallocation of land. In Sri Lanka, the application of the -head of the household, which is seen to be synonymous to the male member of the family, has resulted into the discrimination against women in matters of housing and land rights. The acceptance of the concept of -head of the household in administrative procedures put women to the secondary to men. The acceptance of male members as the head of the family further excludes women from applying for state land which is granted to landless peasants. The CEDAW committee in its recent review of 2011 has realised these constraints and has urged the Sri-Lankan government to abolish the concept of -head of the household and to recognise the joint ownership of land and property (The Global Initiative, 2012).

The positive steps being taken by the government in Nepal and Sri-Lanka to enforce new laws to guarantee equal land right to women is appreciable. Nevertheless, merely legislation of new laws is not sufficient. The government of Nepal and Sri-Lanka should work to formulate laws that not only eliminate the customary prejudices but also the legal contradictions for the smooth implementation of new laws. Strong commitment to the enforcement of gender sensitive land policies is what is necessary for the empowerment of women in these post-conflict societies.

## Conclusion

In Nepal conflict and poverty have led many women to follow prostitution and in post-

conflict, sex trade is much more rampant there. Sri-Lankan women are comparatively in better condition than women in Nepal, as they own some land and property, though, less compared to the male members of their family. Bina Agarwal, while making the case for "Why Property Rights for Women Matter", asserted that, "*The benefits of possessing land are compounded for women, who are more dependent on agriculture than men, since men have been increasingly migrating to non-farm jobs. Land in women's hands not only enhances their own livelihood options, but also the welfare of their families. Many studies reveal that women tend to spend a larger proportion of their incomes from employment or assets on family needs, especially children's needs than men*".

Despite the recognition of the fact that the denial of women right to land makes her more insecure and vulnerable to many forms of violence, and this increases during the conflict and in post-conflict, less has been done by the respective governments to change the discriminatory customary and legal practices. No government recognises the urgency of women right to land and property in the post-conflict period which leads to women struggling to hunger and malnutrition and other health problems and in many cases thrown out on the streets leading them to get entrapped in prostitution and human trafficking. The post-conflict reconstruction policies do not take into notice that women, who constitute more than half of the population in post-conflict Nepal and Sri-Lanka need immediate and effective security measures and land is one of the most important one. It is disappointing to see that in almost all the societies, women are not considered as the head of the family in case of death or disappearance of the husband with all the rights including the right to property passed to her. These discriminatory practices should be abolished and women

should be given equal land and inheritance right as enjoyed by the men and it should not be compensated through dowry or other likely measures.

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