

GENDER DATA GAPS IN AGRICULTURE AND LAND OWNERSHIP: UNCOVERING THE BLIND SIDE OF POLICYMAKING

—Mahiya Shah & Soumya S*

With the introduction of the Sustainable Development Goals in 2015, world leaders have pledged to gender equality by mainstreaming gender into national statistical strategies and prioritising data collection. This makes it evident that the role of data in society is enormous, despite its effects being seemingly invisible in plain sight. In a country like India, where more than half the population engages in the agricultural sector, most of whom are women, accurate data on gender inequality in land ownership is vital for gauging progress on women's economic empowerment. Despite this, a glaring gender-data gap is visible concerning women in agriculture. Studies have not been able to assess the full extent of this gap, primarily because the current estimates based on national-level data sets can be limited or severely misleading. The limitations of currently available data are reflected in inconsistent datasets and policies that neglect the contribution of women on farms and deprive them of land rights, which in effect, ignores their unique position in society and the economy. This paper, while exploring the intersections of gender and religion, discusses the importance of bridging the gender-data gap in policymaking and the ill effects of the same not being done by examining the plight of the invisible female farmers in India. It also briefly looks into the missing data on land owned by women whilst exploring the complexities caused due to personal laws, which deprive them of basic rights meant to be available to titleholders.

* Mahiya and Soumya are fifth-year BA LLB (Hons) students at Gujarat National Law University, Gandhinagar. They would like to thank the editors of SLR and peer reviewers for their guidance and support throughout the editorial process and their peers at GNLU for their valuable inputs and encouragement.

Introduction	202	Consequences of the Exclusion of Women Farmers' from Datasets	211
Gender Data Gaps and the Indian Scenario	203	Missing Data On Land Owned By Women	213
Data and Gender: What is the connection?	204	Complexities of the Law	214
Sustainable Development Goals and the Data Revolution in the Context of Agriculture	206	Hindu personal law	214
Data in Policymaking: Examples from India	208	Muslim Personal Law	220
Invisible Workers in Agriculture	209	Bridging the gender-data gap to realign the approaches of law	222
		Data collection of title-holders	223
		What kind of data must be collected?	226
		Suggestions and Conclusion	227

I. INTRODUCTION

“There is no data available”. This is a common government response for a wide range of issues, be it the prevalence of female genital mutilation in India,¹ deaths due to oxygen shortage during the Covid-19 pandemic,² or manual scavenging.³ Behind this often-blatant assertion that no data exists lies a bigger problem. Governments and public bodies use this as a loophole to shirk responsibilities and dismiss real issues.

The role of data in society is enormous, even though its effects seem invisible. Data helps track social and developmental goals and provides insight into the success of policies. Most importantly, data highlights the challenges marginalised people face. Due to a lack of political agency and representation, the realities of marginalised people go unnoticed. It is this gap that data can attempt to fill.⁴ This implies that a lack of data may even lead to the denial of the basic rights of citizens.⁵ The demand by policymakers, researchers, and NGOs is not merely for data but comparable and reliable data that is available at reasonably frequent intervals. This paper will primarily deal with data and land ownership in the case of Indian women.

¹ Shalini Nair, ‘No Official Data on Existence of Female Genital Mutilation in India, Centre Tells SC’ *The Indian Express* (New Delhi, 28 December 2017) <[² Isha Sahai Bhatnagar, ‘No State Reported Deaths Due to O2 Shortage During Pandemic: Health Ministry’ *Hindustan Times*, 8 February 2022\) <<https://www.hindustantimes.com/india-news/no-state-reported-deaths-due-to-o2-shortage-during-second-covid-wave-says-union-minister-101644313026044.html>> accessed 5 March 2022.](https://indianexpress.com/article/india/no-official-data-on-existence-of-female-genital-mutilation-in-india-centre-tells-sc-5001780/#:~:text=In%20response%20to%20a%20writ,existence%20of%20FGM%20in%20India.> accessed 5 February 2022.</p>
</div>
<div data-bbox=)

³ Malavika Murali, ‘No Manual Scavengers in Country anymore, Govt Tells Parliament’ *Hindustan Times*, 12 August 2021) <<https://www.hindustantimes.com/india-news/no-manual-scavengers-in-india-anymore-govt-101628662829042.html>> accessed 5 March 2022.

⁴ Umar Serajuddin and others, ‘Data Deprivation, Another Deprivation to End’ (2015) World Bank Poverty Global Practice Group & Development Data Group Policy Research Working Paper 7252, <<http://hdl.handle.net/10986/21867>> accessed 5 October 2021.

⁵ Independent Expert Advisory Group on a Data Revolution for Sustainable Development (IEAG), ‘A world that counts: Mobilising the data revolution for sustainable development’ (IEAG 2014).

Land ownership, especially agricultural land ownership, is central to ensuring women's economic and social security and the well-being of families. Studies have discussed the role of women in agriculture as key to achieving sustainable and productive food systems and ensuring household food security.⁶ Globally, and in developing countries, women constitute 43% of the agricultural workforce.⁷ However, while women participate in 50% of farm labour, they only possess 15% of the farmland.⁸

Unfortunately, there is no conclusive evidence to establish why the gap in labour participation and land ownership exists even when our inheritance laws are, at first glance, gender-equal. This paper argues that a gender-data gap concerning women farmers is glaringly visible, leading to an improper understanding of the exact challenges they face in owning land. Inconsistent datasets and policies that neglect the contributions of women on farms reflect how gender data gaps deprive women of land rights. This, in effect, ignores their unique position in society and the economy.

This paper discusses the importance of bridging the gender-data gap in policymaking by analysing ownership of agricultural land by women farmers in India. Part II examines what gender data gaps are and how they affect policy by relying on examples from Indian policy. Part III analyses the invisible position of women in agriculture and explores how the lack of consistent data on women farmers deprives them of resources and beneficial government schemes. Part IV explores how the complexities of law deny women of ownership of property and how grossly inconsistent data sets compound this situation. This paper concludes by observing that, first, a large data gap in the ownership of agricultural land by women exists, cutting across intersections, and that data is one of the most crucial tools in understanding the extent of ownership. Second, progressive inheritance laws alone cannot answer the problems surrounding Indian women's land ownership. Policymakers must collect and use data carefully and efficiently to uncover loopholes in existing laws and envision truly equal laws.

II. GENDER DATA GAPS AND THE INDIAN SCENARIO

Data can reflect the needs of society and can be used to inform law and policy. Every step of the policymaking process, from agenda-setting to the identification of needs, and the search for solutions and implementation, is affected

⁶ Sonia Akter and others, 'Women's Empowerment and Gender Equity in Agriculture: A Different Perspective from Southeast Asia' (2017) *Food Policy* 270.

⁷ Chery Doss, 'If Women Hold Up Half the Sky, How Much of the World's Food do They Produce?' (2014) *Gender in Agriculture* 69.

⁸ Joint Secretariat of the UN Decade of Family Farming, 'Putting Family Farmers at the Centre to Achieve the SDGs' (FAO and IFAD 2019), <www.fao.org/3/ca4532en/ca4532en.pdf> accessed 5 October 2021.

and shaped by data.⁹ Governments face various complex challenges: global warming, rising violence, refugee crisis and growing inequality. These challenges stretch policymaking and governance capabilities beyond limits, necessitating new ways to arrive at the best possible solutions.¹⁰ Colossal data gaps remain everywhere, leaving thousands of people and groups uncounted and uncared for. These gaps limit the government's ability to act in the interests of the people.¹¹

Policy-making lags in harnessing the true power of data in policy creation, where data-driven decisions are the exception rather than the norm.¹² This, compounded by policymakers' limited knowledge of the potential of data, technical weakness, privacy concerns, and an overall lack of quality data, has weakened arguments for data-driven policymaking.¹³ The data sector has grown tremendously with concepts like big data, predicted to transform society on a scale comparable to the industrial revolution.¹⁴ Such developments in the technological arena are also changing the way policies are made and the way they affect citizens. While big data offers efficiency and expediency, there are concerns about ethics and privacy. Big data or any kind of data collection brings with itself ethical and privacy concerns that require specific attention. These issues are beyond the scope of this paper.

A. Data and Gender: What is the connection?

Besides the developments discussed so far, there is an aspect within data and data collection that reflects broader fault lines in societies. Data in most scenarios is understood and analysed as 'uniform', obfuscating the inherent gendered differences in the society it is sourced from.¹⁵ This is understood as a 'gender data gap'. The phrase 'gender data gap' conveys the idea that the majority of data available is based on the male body and male life patterns.¹⁶ It is a "phenomenon whereby the vast majority of information that we have collected globally and continue to collect – everything from economic data to

⁹ Stefaan G Verhulst, Zeynep Engin and Jon Crowcroft, 'Data and Policy: A New Venue to Study and Explore Policy-Data Interaction' (2019) 1 *Data & Policy* <www.cambridge.org/core/journals/data-and-policy/article/data-policy-a-new-venue-to-study-and-explore-policydata-interaction/11718D04E3BA94C7EB87891ACF96D519> accessed 27 September 2021.

¹⁰ *ibid.*

¹¹ IEAG (n 5).

¹² Verhulst (n 9).

¹³ *ibid.*

¹⁴ Neil M Richards and Jonathan King, 'Big Data Ethics' (2014) *Wake Forest Law Review* 393.

¹⁵ Sarah E Oerther, 'Gender Data Gaps: Structural Equation Modeling Offers an Alternative to Collecting More Data' (2015) *Humanitarian Technology* 494, 495.

¹⁶ Katie Goh, 'What is the Gender Data Gap – And How can We Tackle it? With Caroline Criado-Perez' (*Huck Magazine*, 8 March 2019) <www.huckmag.com/perspectives/activism-2/what-is-the-gender-data-gap-caroline-criado-perez/> accessed 28 September 2021.

urban planning data to medical data – have been collected on men.”¹⁷ Due to the under-representation of females, inferences are made about the data collected in male-dominated research to inform practice and policy for women.¹⁸

The reason gender data gaps exist is that gender biases have inhibited and affected data collection.¹⁹ Gender data gaps, when superimposed on the highest decision-making powers in the land, may lead to disastrous consequences where the needs and concerns of other genders are ignored or left out. This leads us to a critical point- data can reflect prevailing power structures and norms.²⁰ In short, data that does not consider women may not reflect whether policies for their development and advancement have any effect, making it difficult to measure progress towards gender equality.

By providing a numerical representation of realities, gender statistics in particular are important as they record data disaggregated by sex, laying bare the differences between men and women.²¹ Beyond a mere disaggregation by sex, gender-sensitive analysis of statistics helps question the underlying gender relations reflected in the data.²² In a situation where decision-making is outsourced to algorithms trained on data with biases and knowledge gaps, the disadvantage women face increases.²³

Policymakers may also be unable to see the relevance of the gender perspective as they lack reliable and unbiased data on the individual contributions of women to society and the economy.²⁴ Women’s labour tends to be excluded from economic accounts even though they are the pillars of subsistence economies and pivotal to food security.²⁵ Women make up most of the economy of unpaid care work, which is not accounted for or regarded as productive work that contributes to the economy. Gender statistics on unpaid labour are also

¹⁷ International Telecommunication Union News, ‘Bridging the AI gender gap: Why we Need Better Data for an Equal World’ (*ITU*, 25 September 2020) <www.itu.int/en/myitu/News/2020/09/25/07/06/AI-for-Good-Breakthrough-Days---gender-data-gap> accessed 5 October 2021.

¹⁸ Orlaith Curran, Aine MacNamara and David Passmore, ‘What about the Girls? Exploring the Gender Data Gap in Talent Development’ (2019) *Front. Sports Act. Living* <www.frontiersin.org/articles/10.3389/fspor.2019.00003/full> accessed 28 September 2021.

¹⁹ Sarah Oerther (n 15).

²⁰ Miriam Temin and Eva Roca, ‘Filling the Gender Data Gap’ (2016) *Studies in Family Planning* 264.

²¹ Sreerupa Sengupta and Sutanuka Dev Roy, ‘Data Equality to Gender Equality’ (2018) *ASCI Journal of Management* 111.

²² *ibid.*

²³ Caroline Criado Perez, ‘We Need to Close the Gender Data Gap by Including Women in Our Algorithms’ (*Time* 2020) <<https://time.com/collection/davos-2020/5764698/gender-data-gap/>> accessed 5 October 2021.

²⁴ FAO, *Agricultural Censuses and Gender Considerations - Concept and Methodology* (FAO 1999) <<https://www.fao.org/3/x2919e/x2919e03.htm#b3-1.3%20MEETING%20USERS'%20NEEDS>> accessed 28 March 2022.

²⁵ *ibid.*

critical for formulating and monitoring policies to increase women's involvement in paid work.²⁶ The lack of such data leads to the formulation of inefficient policies on employment and affects the already vulnerable workers of the economy of unpaid care work.

Women in rural sectors of developing countries like India are particularly impoverished. Sustainable development methods have been implemented in these areas to balance productivity and protection of natural resources, boost incomes, and increase food security.²⁷ However, these policies aimed at upliftment seem to have aggravated poverty and worsened the condition of women. An important reason is that development policies are generally formulated in terms of economic criteria overlooking social and human parameters.²⁸ Government surveys do not cover data on the forms of work women do, and consistent guidelines on sex-disaggregated data collection for these topics are unavailable.²⁹ As a result, agricultural statistics frequently under represent or even remove elements critical to understanding rural sector operations and development.³⁰ This drastically limits planners' understanding of the real situation in rural economies and inhibits their ability to respond to gendered issues effectively.

1. *Sustainable Development Goals and the Data Revolution in the Context of Agriculture*

The United Nations Sustainable Development Goals ('SDGs') and its predecessor, the Millennium Development Goals, are effective examples of how data gaps are addressed and tackled. These programmes emphasise the importance of data gaps as a focus area internationally. The SDGs were introduced in 2015, charting out a plan for the growth and development of world society by 2030. The 2030 Agenda specifically calls for a *data revolution* for sustainable development. It calls on governments, policymakers and the international community to improve data collection and dissemination, and modernise and innovate national statistics systems.³¹ The agenda promotes partnerships of multiple stakeholders to mobilise resources and effort for capacity building,

²⁶ *ibid.*

²⁷ OECD, *Gender and the Environment: Building Evidence and Policies to Achieve the SDGs* (OECD 2021) 145-158.

²⁸ Food and Agriculture Organization, 'The Importance of Sex-Disaggregated Data for Agricultural and Rural Development' (Rome, FAO 2002).

²⁹ Anon, 'Gender Data: Sources, Gaps, and Measurement Opportunities' (Data2X, 2017) <<https://www.data4sdgs.org/sites/default/files/2017-09/Gender%20Data%20-%20Data4SDGs%20Toolbox%20Module.pdf>> accessed 19 June 2022.

³⁰ The paper, in s IV(E), will discuss how lack of gender-disaggregated data on agricultural land, and on joint-ownership provide an incomplete picture of how India's agricultural sector operates.

³¹ United Nations, 'Implementing 2030 Agenda Requires 'Data Revolution' to Address Gaps in Collection, Quality, Secretary-General Tells Development Committee, Urging New

while emphasising the importance of data for sound decision-making.³² Thus, the data revolution is an opportunity to harness the power of data in decision making, accountability, and to close the gaps in the access and use of data.³³ Data gaps that exist among the more developed and under-developed countries, private and public sectors, and even citizens and their governments can be bridged.

The SDGs were preceded by the Millennium Development Goals ('MDGs') (2000-2015), stressing the importance of bringing gender perspectives to developmental activities.³⁴ An essential emphasis of the MDGs was to promote the collection of gender-disaggregated data and other gender-based indicators in analysing whether or not inequalities had varied over time.³⁵ India's final report on MDGs expressed the need for creating better approaches to surveying and expanding data sources to identify more vulnerable sections of society.³⁶

SDG5, which deals with the achievement of gender equality and women empowerment, requires data inclusivity and collection of data in all areas of women's activities. This contributes to mainstreaming gender in all development goals. In the context of agriculture, there are two important indicators under SDG5 - Indicators 5.a.1 and 5.a.2. Indicator 5.a.1 deals with the proportion of the total agricultural population with ownership or secure rights over agricultural land by sex. Indicator 5.a.2. deals with the share of women among owners or rights-bearers of agricultural land by type of tenure and proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control. These indicators, especially 5.a.2., stress the need to collect data disaggregated by sex to specifically understand how gender equality has progressed in relation to legal systems that govern land.

The SDGs and their call for data revolution are undoubtedly positive steps toward tackling gender-data gaps, but it is limited by the fact that these are not legally binding³⁷ on any country. This means that countries must voluntarily establish frameworks, strive towards these goals, and bring together all the stakeholders to work in tandem.

Partnerships' (UN Meetings Coverage and Press Releases, 2015) <<http://www.un.org/press/en/2015/sgsm17208.doc.htm>> accessed September 29 2021.

³² UN Women, 'Gender Equality and Big Data: Making Gender Data Visible' (UN Women 2018).

³³ IEAG (n 5).

³⁴ Sreerupa and Sutanuka (n 21).

³⁵ *ibid.*

³⁶ Ministry of Statistics and Programme Implementation, Government of India, 'Millennium Development Goals-Final Country Report of India' (MOSPI 2017) <http://mospi.nic.in/sites/default/files/publication_reports/MDG_Final_Country_report_of_India_27nov17.pdf> accessed 5 October 2021.

³⁷ United Nations, 'The Sustainable Development Agenda' <<https://www.un.org/sustainabledevelopment/development-agenda-retired/>> accessed 28 March 2022.

B. Data in Policymaking: Examples from India

The Mewar Angithi in the state of Rajasthan illustrates the importance of gender-specific data collection in India. The Mewar Angithi is a basic metal device created to be installed in a traditional *chulha* (brick or earthen stove) to give the same airflow mechanism as traditional *Angithi* (fireplace) and High-Efficiency Cook stoves ('HECs'). Despite the heavy promotion and the supposed 'high efficiency' of HECs, the government failed to persuade the women in Rajasthan to make the switch. HECs, as it turned out, required more maintenance and could not accommodate the many cooking styles practised in the region, which women who generally run the kitchen would know more about. The design of the product to be used by women did not even attempt to take into account the requirements and concerns of women. Climate Healers, an NGO based in Phoenix, looked into this data gap and decided to ask women what they expected from a *chulha*, leading to the birth of a 3-stone hearth – the Mewar Angithi. This new device was cheap, safe, and accommodated a Rajasthani household's cooking requirements.³⁸

The Mewar Angithi achieved the HEC's goals of reducing smoke production and the health hazards caused by a traditional *chulha*. The only difference between the government's HEC distribution program and the Mewar Angithi distribution program was that the latter paid heed to women's views in the data collection process, and the scheme they designed using that data proved to be more efficient.

Unlike the home building scheme after the Gujarat earthquake of 2001, where homes were built without kitchens due to the lack of women in the planning process, the Mewar Angithi illustrates the ease with which policymakers can ensure effective planning and implementation by taking into account the issues that concern women.

Not all policies have made this positive shift. For instance, the Mahatma Gandhi National Rural Employment Guarantee Act, the country's largest employment policy, only collects sex-disaggregated data on the total person-days worked. There is no gender-specific data on supportive services, salary, or employment length. While the program provides gender-disaggregated statistics on training sessions completed and the beneficiaries trained, it misses out on the types of training provided to males and females. The availability of such data could aid in assessing whether skill mismatches amongst women

³⁸ Sailesh Rao, 'The Mewar Angithi: A \$1 Device that Transforms a Traditional Chula into a High Efficiency Cook Stove' (*Climate healers*, 2015) <<https://climatehealers.org/blog/2015-8-9-the-mewar-angithi-a-1-device-that-transforms-a-traditional-chula-into-a-high-efficiency-cook-stove/>> accessed 5 October 2021.

workers are shrinking their employment opportunities. This can then help design targeted, skill-specific programmes to fix this mismatch.³⁹

In another instance, the National Rural Livelihood Mission aims to reach out to 89 million rural poor households to organise one woman per home into Self Help Groups to commence organic farming activities. According to the Ministry of Rural Development's circular, "a total of 57,270 Mahila Kisan have been registered for organic farming through 5816 Local Groups."⁴⁰ Under the State Rural Livelihoods Mission and Mahila Kisan Sashaktikaran Pariyojana (MKSP), the same circular names almost 14.03 lakh women farmers. As can be seen, women are leading the efforts to achieve the government's organic farming goals.

In the fiscal year 2018-19, however, the overall budgetary allocation for MKSP was just Rs 1,000 crore.⁴¹ The trends since 2014 reveal that not only does the policy framework suffer from low levels of allocation and spending, but that the government's priorities in the agrarian sector, particularly concerning women farmers, remain misguided. The overall allocation for women farmers in 2018-19 under the initiatives mentioned above accounted for 2% of the Ministry of Agriculture and Farmers' Welfare's total expenditure that year.⁴²

The income guarantee program of Rs 6,000 per annum under the Pradhan Mantri Kisan Samman Nidhi Yojana introduced in the Interim Budget for farmers holding less than 2 hectares of land falls outside the framework because most women in agriculture do not own land.⁴³ Without dedicated programs for women farmers, the government has been unable to bridge gaps in land and asset ownership, wage disparities, supportive infrastructure, access to financing, subsidised fertilisers, and recognition of entitlements, among other issues.

III. INVISIBLE WORKERS IN AGRICULTURE

According to the United Nations Food and Agriculture Organization ('FAO'), "if women had the same access to productive resources as men, they

³⁹ Surbhi Singh and others, 'Women and Work: How India Fared in 2020' (IWWAGE, 2021) <<https://iwwage.org/wp-content/uploads/2021/01/Women-and-Work.pdf>> accessed 5 October 2021.

⁴⁰ Ministry of Rural Development (2012), Press Release: Year End Review of Deen Dayal Antyodaya Yojana - National Rural Livelihoods Mission at: <<https://pib.gov.in/PressReleasePage.aspx?PRID=1558460>>.

⁴¹ Sakshi Rai, 'Missing: The Woman Farmer' (CBGA, 14 February 2019) <<https://www.cbgaindia.org/blog/missing-woman-farmer/>> accessed 28 January 2022.

⁴² Department of Agriculture, Cooperation & Farmers Welfare, *Annual Report 2018-19* (Ministry of Agriculture & Farmers Welfare Government of India, 2019).

⁴³ Ministry of Finance (2019), Press Release: Highlights of Interim Budget 2019-20 at: <<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1562187>>.

could increase yields on their farms by 20-30%.⁴⁴ This could, in turn, lead to an increase in agricultural output in developing countries by up to 4%, which would, in turn, lower the number of hungry people in the world by approximately 17% or 150 million people globally.⁴⁵

The National Commission of Farmers in The National Policy for Farmers defined the term “farmer” as

*a person actively engaged in the economic and livelihood activity of growing crops and producing other primary agricultural commodities and will include all operational agricultural holders, cultivators, agricultural labourers, sharecroppers, tenants, poultry and livestock rearers, fishers, beekeepers, gardeners, pastoralists, non-corporate planters and planting labourers, as well as persons engaged in various farming-related occupations such as sericulture, vermiculture and agro-forestry. The term will also include tribal families/persons engaged in shifting cultivation, and in the collection, use and sale of minor and non-timber forest produce.*⁴⁶

However, in India, people usually picture a man in the field holding a sickle or hoe when they think of ‘farmers’. Politicians, such as Prime Minister Narendra Modi himself, in their public rallies too, refer to farmers as ‘*bhaiyo*’, which has further contributed to the depiction of this profession as a male-dominated one when the agricultural sector employs nearly 80% women workers.⁴⁷

This significant participation of women in agriculture is due to a growing trend towards urbanization, which has seen men from rural areas migrating to cities in search of better-paying jobs. This has left women, who remain in villages, to take care of the land and engage in agrarian labour, including producing seedlings, sowing, weeding, transplanting, threshing and harvesting.⁴⁸ This growing shift of the male work force towards non-agricultural jobs places the entire burden of farm management on women’s shoulders, and in most cases, women in agriculture are disadvantaged workers. They may be casual

⁴⁴ Food and Agriculture Organization, ‘The State of Food and Agriculture 2010-2011’ (Rome, FAO 2011).

⁴⁵ *ibid.*

⁴⁶ Department of Agriculture & Cooperation, ‘National Policy for Farmers’ (Minister of Agriculture & Consumer Affairs Food and Public Distribution Government of India, 2007) 4.

⁴⁷ Government of India (2012), ‘Press Note: Key Indicators of Employment and Unemployment 2011-2012’, Delhi: Press Information Bureau, <<http://pib.nic.in/newsite/erelease.aspx?relid=96641>> accessed on 5 October 2021.

⁴⁸ Bina Agarwal, ‘Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market’ (2003) 3(1-2) *Journal of Agrarian Change* 184.

labourers or self-employed workers, who, in contrast to self-employed men, are mostly unwaged workers on family farms owned by men. In most cases, women do not own or control farmland.⁴⁹ The following section will examine how the contribution of women in the agriculture sector is also not accounted for by government datasets, and the consequences of such exclusions.

A. Consequences of the Exclusion of Women Farmers' from Datasets

The data collected by the government does not appropriately account for the contribution of female workers to the agriculture sector, which amounts to a significant 15.4% of the national economy.⁵⁰ This has led to an invisible 'gendered' problem in agriculture. National sample surveys that the government carries out often tend to categorise women farmers or entrepreneurs as mere housewives, whereas men in the same occupations are considered employed.⁵¹ The classification of these women as 'housewives' reflects an underlying perception that they do not work or contribute to the nation's economy.

Thus, even when women effectively operate the farms, they face a significant male-bias in accessing loans, information on new technology and techniques, irrigation, inputs, and markets. This has consequences for farm productivity, as according to a 2019 study in *Science*,⁵² agricultural information delivered via cellphones increased the odds of farmers adopting recommended inputs by 22% and yields by 4% across countries, including India. However, women are less likely to gain from such developments as fewer women than men own mobile phones, and even fewer have internet access.⁵³ This is merely an example of how there are consequences for farm productivity when a farmer has inadequate access to information and resources, and as a result, women are likely to be affected negatively.

This lack of recognition of female farmers is also why, for example, suicides by female farmers in India are also under-reported. In several states, including the agriculture-based states of Punjab and Haryana, the National Crime

⁴⁹ *ibid.*

⁵⁰ Neeta Lal, 'India's Invisible Women Farmers' (*The Diplomat*, 14 January 2021) <<https://thediplomat.com/2021/01/indias-invisible-women-farmers/>> accessed 30 September 2021.

⁵¹ Neerad Deshmukh and others, 'Improving the Measurement of Women's Work: Sensitivity of Work Participation Rates to Survey Design' (NCAER, 2020).

⁵² R Fabregas and others, 'Realizing the Potential of Digital Development: The Case of Agricultural Advice' (2019) *Science* 366 <<https://pubmed.ncbi.nlm.nih.gov/31831641/>> accessed 29 January 2022.

⁵³ Purvi Mehta, 'Empowering India's Women Farmers: Bridge the Gap' (*Hindustan Times*, 28 March 2022) <<https://www.hindustantimes.com/ht-insight/economy/empowering-india-s-women-farmers-bridge-the-gap-101647511783243.html>>; Anoo Bhuyan, '4 in 5 Bihar Women Have Never Used the Internet' (IndiaSpend, 17 December 2020) <<https://www.indiaspend.com/gendercheck/4-in-5-bihar-women-have-never-used-the-internet-702855>> accessed March 25, 2022.

Records Bureau ('NCRB') recorded zero women farmer suicides even though they are agricultural states with thousands of female farmers. Despite the fact that women comprise well more than half the agricultural workforce, in 2019, out of 5,957 farmer suicides, a total of 5,563 were male, and 394 were reported to be female. Among agricultural labourers,⁵⁴ NCRB reported 4,324 suicides in 2019, of which 3,749 were male, and 575 were female.⁵⁵ The NCRB is the only government agency that collects and analyses crime data, which includes death by suicide. However, its statistics are not an accurate representation of the reality in this area, due to which this data is unreliable.

Since women lack recognition as farmers, widows also face difficulty obtaining the rights to the land they have cultivated. According to a survey conducted by the Mahila Kisan Adhikar Manch, approximately only 35% of widowed women had tied down the rights to their family house, and 33% of these widows were not even aware that they qualified for a pension.⁵⁶ Such figures further corroborate that women are prevented from accessing institutional rights and the land they are entitled to, since they are not conventionally 13igi-tizel3d as farmers.⁵⁷

Additionally, a lack of data and recognition also prevents the formation of new gender-specific policies to aid female agricultural workers. For instance, in 2011, M.S. Swaminathan introduced the Women Farmers Entitlement Bill to provide for the gender-specific needs of women farmers. It aimed to protect their entitlements, and empower them with rights over agricultural land and water resources and access to credit, among other things.⁵⁸ The bill, however, lapsed in 2013 due to the absence of sufficient government support. The National Policy on Farmers 2007,⁵⁹ along with improving the economic viability of farming, also sought to pledge high priority to the "recognition and mainstreaming of women's role in agriculture" and incorporate "gender issues" in agriculture. Unfortunately, its implementation has been very abysmal as the conditions of female farmers are still below par.

These conditions seem to have worsened due to the pandemic, which has left women workers more economically vulnerable than their male

⁵⁴ Farmer/cultivator are those whose profession is farming and include those who cultivate on their own land as well as those who cultivate on leased land/other's land with or without the assistance of agricultural labourers. On the other hand, 'agricultural labourers' are those who primarily work in the farming sector agriculture/horticulture) whose main source of income is from agriculture labour activities.

⁵⁵ National Crime Records Bureau, 'Farmer Suicides in India' (NCRB 2020).

⁵⁶ Mahila Kisan Adhikaar Manch, 'Social Security of Women Farmers from Suicide Affected Households: A Situational Analysis' (MAKAAM, 2018) <<http://www.soppecom.org/pdf/Farmer-suicide-survey-makaam-survey-english.pdf>> accessed 12 October 2021.

⁵⁷ *ibid.*

⁵⁸ The Women Farmers' Entitlements RJ Bill (2011) Bill No. LV of 2011.

⁵⁹ National Policy (n 46).

counterparts. The Centre for Monitoring Indian Economy (CMIE) reported that women accounted for 10.7% of the workforce in 2019-20 but suffered 13.9% of the job losses in April 2020, the first month of the lockdown.⁶⁰ By November 2020, while most men recovered their lost jobs, women were less fortunate. 49% of the job losses by November were of women.⁶¹ The economy's recovery seemed to have benefitted all, but it benefitted women less than it did for men. These statistics led most people to believe that the pandemic caused women to 'disappear' from India's labour sector, when this is in reality a fallacy caused by inefficient data collection.

IV. MISSING DATA ON LAND OWNED BY WOMEN

Land is regarded as the primary factor of production. Even though it possesses no productive ability on its own, it is not only a vital agent of production but also the key to women's economic and social empowerment. In India, nearly 98 million Indian women have agricultural jobs, but around 63% of them, or 61.6 million women, work as agricultural labourers dependent on the farms of others, according to the 2011 Census.⁶² Only 13.9% of landholdings in India are owned by women, as recorded by the agricultural census of 2015-16. The Women's Land Rights ('WLR') index by the Centre for Land Governance⁶³ put India's average WLR at a mere 12.9%. This is among the land that the government surveys. According to data compiled in 2020 by the National Council for Applied Economic Research, around eight Indian states and two Union Territories (including Delhi) have not surveyed major areas of their geographical territory, ranging from 2% in Rajasthan to 75% in Delhi.⁶⁴ The Digital India Land Records Modernization Programme, which aims to offer states financial and technical assistance to update and 14 digitise land records, has only been able to survey 3% of the country's total geographical area in over a decade.⁶⁵ Land left un-surveyed leaves people vulnerable to eviction without compensation as they do not legally hold the title of the land. This is especially true for women whose lack of title over land will make them vulnerable to

⁶⁰ Mahesh Vyas, 'The Bitter Truth of Female Labour Participation' (CMIE, 2018) <<https://www.cmie.com/kommon/bin/sr.php?kall=warticle&dt=2018-10-09%2009:49:57&msec=456>> accessed 10 October 2021.

⁶¹ *ibid.*

⁶² Ministry of Home Affairs, '2011 Census Data' (Office of the Registrar General & Census Commissioner, India 2011).

⁶³ Cadasta Foundation, Foundation for Ecological Security, National Risk Management Center, 'Effective Mapping Protocol for Forest Rights Mapping in India' (*Center for Land Governance*, 2018).

⁶⁴ National Council of Applied Economic Research, 'The NCAER Land Records and Services Index' (NCAER 2020) <<https://www.omidyarnetwork.in/wp-content/uploads/2020/02/Overall-Report.pdf>> accessed 28 January 2022.

⁶⁵ Department of Land Resources Ministry of Rural Development, Government of India, 'Survey/ Resurvey- Physical Progress' <<https://dilrmp.gov.in/faces/rptstatewisephysical/rptSurveyresurveyStatus.xhtml>> accessed 28 January 2022.

being evicted and dispossessed. Women's economic dependence on men makes relocation more difficult and could be worsened by social isolation.

A. Complexities of the Law

The unavailability of women-centric data despite the active participation of women in agricultural activities inevitably leads to ineffective policies. In India, about 90% of agricultural land is transferred only through inheritance.⁶⁶ However, less than 10% of women in agriculture have ownership or control over land in India.⁶⁷ Even with women constituting a significant majority of small-scale farmers and food producers, they have limited ownership of the property they cultivate.⁶⁸

A reason for the ambiguity surrounding ownership of land stems from the conflicting provisions of India's laws and the legislating powers of the Centre and State legislatures. This section examines Hindu and Muslim personal law and the respective laws enacted regarding inheritance. The discussion will help analyse how the lack of data affects policymakers' ability to identify a wide gamut of problems that complicate the inheritance of agricultural land for women.

1. *Hindu personal law*

All Hindu individuals are entitled to give their separate property to the desired beneficiary by will, but in the absence of a will, the laws of succession are applicable and govern the inheritance of property. The Hindu Succession Act, 1956 ('HSA') governs such inheritance of land for approximately 79.8% of the population in India.⁶⁹ In the case of self-acquired property, the Hindu father enjoys unfettered discretion to will it to anyone he wishes. Earlier, the father and his male lineal descendants made up the coparcenary for the joint property. Female heirs, daughters, and widows were not regarded coparceners and did not get a share or have the right to demand partition in Mitakshara joint family property before a landmark amendment in 2005.⁷⁰ In most states' traditional Mitakshara system, rights to ancestral or joint family property

⁶⁶ Sheikh Saaliq, 'What's troubling the main (and unnoticed) driving force in India's farmlands?' (*News18*, 6 March 2018) <<https://www.news18.com/news/immersive/women-farmers-of-india.html>> accessed on 05 October 2021.

⁶⁷ Govind Kelkar, 'The Fog of Entitlement: Women's Inheritance and Land Rights' (2014) *Economic and Political Weekly* 51,51.

⁶⁸ *ibid.*

⁶⁹ Census (n 62).

⁷⁰ The authors in this paper have centered this discussion around coparcenary property as the HSA Amendment of 2005 deals primarily with coparcenary property and does not extensively deal with self-acquired property. It is not to be assumed that most agricultural property is coparcenary property. According to section 8 of the HSA, in case of a Hindu male dying intestate, his property devolves first upon the class I heirs which includes daughters too and

are limited to a group called the coparcenary, which includes only male relatives of a family. This had historically curtailed women's capacity to inherit equally with males in the event of intestate succession.⁷¹ Further, state land tenure regulations govern women's right to inherit agricultural land. Only male children were almost always allowed to inherit agricultural land under these restrictions.⁷²

The effect of the Hindu Succession (Amendment) Act, 2005:

In 2005, the Lok Sabha enacted the Hindu Succession (Amendment) Act ('HSAA'), which gave over 400 million Hindu women in India equal rights to the joint property in a Hindu Undivided Family.⁷³ The HSAA, aimed at being more sensitive toward women's rights, eliminated section 4(2) of HSA, a discriminatory section that granted states the power to determine the rules governing the inheritance of agricultural land. Section 4(2) gave precedence to specific local laws regarding the devolution of tenancy rights in agricultural holdings. Section 6 of the HSAA determined that the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son, including over agricultural land.⁷⁴ The amendment had also omitted Section 4(2), which gave precedence to certain local laws regarding devolution of tenancy rights in agricultural holdings. The Amendment also saw the removal of Section 24 of HSA, which had prevented certain widows, such as those of predeceased sons, from inheriting the deceased's property if they remarried, allowing them to inherit property, including land, from their marital families through succession. In the absence of a will, the property is now divided among the deceased's male and female offspring, grandchildren from predeceased children, and wife. The Amendment also sought to equalise Hindu sons' and daughters' rights to inherit agricultural land across the country.⁷⁵

However, despite the introduction of gender-positive laws, only 16% of women in rural landowning households possess any land, accounting for only 14% of all landowners and 11% of the land.⁷⁶ Hundreds of thousands of women still do not receive parental land since neither the HSA nor its Amendment is universally applied. Socially, this is because even when there is no will and the

mothers. We are also excluding the controversial provisions of Section 15 of the HSA that provides for succession for females dying intestate from the scope of this paper.

⁷¹ Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge University Press, 1994).

⁷² The Punjab Tenancy Act, 1887, The Himachal Pradesh Tenancy and Land Reforms Act, 1972.

⁷³ Sourav Mishra, 'Agricultural Land Rights for Women' (*DowntoEarth* 2005) <<https://www.downtoearth.org.in/news/agricultural-land-rights-for-women-10149>> accessed March 28 2022.

⁷⁴ Hindu Succession (Amendment) Act 2005, s (6).

⁷⁵ Hindu Succession Act, 1956, s 6.

⁷⁶ Bina Agarwal, Pervesh Anthwal & Malvika Mahesh, 'How Many and Which Women Own Land in India? Inter-Gender and Intra-gender Gaps' (2021) 57(11) *The Journal of Development Studies* 1807.

HSA applies, women are frequently obliged to give up their portion in favour of their brothers due to the deep cultural biases and apprehension over severing familial ties. According to a report for the Twelfth Five Year Plan by a working group of the Planning Commission on Women's Agency and Child Rights, "laws like the HSA would have limited success unless the Right to Will is restricted and relinquishment of property in favour of male siblings is also curtailed."⁷⁷ However, from a legal perspective, the primary cause for poor implementation of the land rights given to women is the confusion caused by the elimination of Section 4(2). The amendment, instead of improving women's inheritance rights over agricultural land, has created further ambiguity because the HSA now does not provide for the explicit application of HSAA to agricultural land, superseding any state law that deals with the same, and conflicts can arise if there is no harmony between central and state legislations. The Concurrent List has entry number 5 for inheritance and succession,⁷⁸ but since agricultural land is a state subject,⁷⁹ it is doubtful whether Parliament can legislate on agricultural land in this regard.

The Constitutional Conundrum: Agricultural Land as a Subject of the State List:

The Constitution of India places succession and transfer of land in the Concurrent List, which means that both the Centre and the states can make laws on these subjects, while agricultural land falls under the state list. On the other hand, the HSA, which applies to about 80% of Indians, touches upon both agricultural and non-agricultural property. Article 254 of the Constitution provides that when a law is made on a subject in the Concurrent List, it is the central law that prevails over the law made by the state.⁸⁰ Since agricultural land is explicitly a state subject, the elimination of Section 4(2) in the HSA has stirred great confusion. This has led to a difference of opinion on the treatment of agricultural land - some claim it must be given the same treatment as other property, while others assert that it must remain under state laws.⁸¹

For instance, Uttar Pradesh (UP) legislation repealed outdated laws related to land tenures and revenue in the State laid down in the UP Zamindari Abolition and Land Reforms Act, 1950 and the UP Land Revenue Act, 1901 and enacted the UP Revenue Code, 2006. The UP Zamindari Abolition and Land Reforms Act, 1950 failed to recognise daughters as principal heirs of

⁷⁷ Ministry of Women and Child Development, XII Five Year Plan Report of the Working Group on Women's Agency and Empowerment (Government of India, 2011).

⁷⁸ The Constitution of India 1950, sch VII, list 3, entry 5.

⁷⁹ The Constitution of India 1950, sch VII list 2, entry 18.

⁸⁰ The Constitution of India 1950, art 254.

⁸¹ Rudroneel Ghosh, 'Empowerment Target: Ensure Gender Equality in Agricultural Land Inheritance' (*The Times of India*, 15 August 2020) <<https://timesofindia.indiatimes.com/blogs/talkingturkey/empowerment-target-ensure-gender-equality-in-agricultural-land-inheritance/>> accessed 30 January 2022.

agricultural land before the 2006 UP Revenue Code. At the time of independence in 1947, the idea of land reform was 'Land to the Tiller,' and a tiller was generally considered a man. According to the new enactment, an unmarried daughter has the same inheritance rights as a son, but a married daughter has fewer. As a result, daughters in Uttar Pradesh are forced to choose between marriage and inheritance. This contradicts the HSA, which provides that no distinction should be made between married and unmarried daughters.⁸²

Shipra Deo and Robert Mitchell's analysis shows how disagreement among the courts regarding the inheritance of rights of agricultural land has also contributed to the inconsistency in applying these laws, thus leading to incomplete land rights for women.⁸³ The Supreme Court has said explicitly that daughters, regardless of their marital status, shall have the same right to inherit family property as sons under the HSA have.⁸⁴ However, various High Courts differ in their opinion. The Delhi High Court in *Nirmala v State (NCT of Delhi)*,⁸⁵ ruled that the removal of Section 4(2) from the HSA allows the HSA to take precedence over any other legislation in place before the section's removal insofar as that law conflicts with HSA. It also stated that the repeal of Section 4(2) was a deliberate act of Parliament since it was apparent that Parliament did not want the unequal treatment of women enshrined in the Delhi Land Reforms Act, 1954 and other comparable statutes to remain. In contrast, in the case of *Archna v Director of Consolidation, Amroha*,⁸⁶ the Allahabad High Court upheld the view that with agriculture being a state subject, the revenue codes hold primacy over the Hindu Succession Act when it comes to succession and thus, the tenurial law of the State would prevail over HSA. The court justified that a Union law must take precedence over conflicting state legislation when the two laws deal with the same issue and are diametrically opposed. The court reasoned that the tenurial law of UP and HSA are not repugnant because they deal with different subjects, though the analysis⁸⁷ is admittedly a bit difficult to follow, and the President of India's assent to the UP Act allows that Act to prevail.

Consequently, different states seem to follow different laws for land inheritance leading to greater ambiguity in the data related to land ownership. For

⁸² Shipra Deo and Robert Mitchell, 'Inheritance of Agricultural Land by Women: There Is Distance Yet to Travel' (*Live Law*, 26 October 2021) <[www.livelaw.in/columns/the-hindu-succession-act-1956-hsa-hindu-womens-right-to-property-act-1937-the-hindu-law-of-inheritance-amendment-act-1929-184347#:~:text=Inheritance%20Of%20Agricultural%20Land%20By%20Women%3A%20There%20Is%20Distance%20Yet%20To%20Travel,-Shipra%20Deo%20and&text=A%202000%20report%20by%20Law,\(Amendment\)%20Act%2C%201929](http://www.livelaw.in/columns/the-hindu-succession-act-1956-hsa-hindu-womens-right-to-property-act-1937-the-hindu-law-of-inheritance-amendment-act-1929-184347#:~:text=Inheritance%20Of%20Agricultural%20Land%20By%20Women%3A%20There%20Is%20Distance%20Yet%20To%20Travel,-Shipra%20Deo%20and&text=A%202000%20report%20by%20Law,(Amendment)%20Act%2C%201929)> accessed 28 January 2022.

⁸³ *ibid.*

⁸⁴ *Vineeta Sharma v Rakesh Sharma* (2019) 6 SCC 164.

⁸⁵ 2010 SCC OnLine Del 2232 : (2010) 170 DLT 577.

⁸⁶ 2015 SCC OnLine All 262 : (2015) 4 ADJ 90.

⁸⁷ Shipra Deo (n 82).

instance, in Punjab and Haryana, the general rule of succession under the state tenancy law⁸⁸ is that succession goes first to the last owner's direct male lineal descendants to the exclusion of female descendants. Failing them, it then goes to the collaterals, among whom the right of representation exists, with all heirs sharing equally by degrees. The local custom bans females and their offspring with varying degrees of strictness. Near male collaterals usually exclude daughters and their sons and sisters and their sons. In Delhi, while widows are given inheritance rights over agricultural land, daughters are deprived of the same. The state law prescribes that in case of the death of a landowner, his interest in his holding shall first lie with the male lineal descendants, and if none are alive, only then would a female relative be considered for the inheritance of said land.⁸⁹

Similarly, in Himachal Pradesh, succession tenancy rights in case of death of a tenant lie with the male lineal descendants first, then the tenant's widow, then the tenant's widowed mother and finally his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives. The enactment does not mention tenancy rights for the tenant's daughter.⁹⁰ Thus, these separate rules of succession for agricultural land in individual states are a reason why most women are denied the right to ownership of land prescribed in the HSA.

In some patriarchal communities, local officials actively deprive women of ancestral property that they are legally entitled to. For instance, the Gram Panchayat in Haryana's Jind district forbade married women from claiming a share of their parent's property in May 2012. The Gram Panchayat declared that every married woman would have to part with her share of parental land and hand it over to her brothers, and any villager who purchased land from married women would be ostracised.⁹¹

Are progressive laws all we need to positively impact female land ownership?

Years before the 2005 amendment that gave women the right to a share by survivorship in joint family property, equal with their brothers', several Southern states (and Maharashtra) have provided for progressive amendments in the HSA.⁹² Kerala, for instance, abolished the Joint Hindu Family system in

⁸⁸ The Punjab Tenancy Act, 1887.

⁸⁹ The Delhi Land Reforms Act, 1954, s 50.

⁹⁰ The Himachal Pradesh Tenancy and Land Reforms Act, 1972.

⁹¹ Seema Sindhu, 'Denying Women their Due Share in Family Property', <<http://archive.dailypioneer.com/columnists/item/51662-denying-women-their-due-share-in-family-property.html?tmpl=component&print=1>> accessed 24 December 2021.

⁹² These amendments were affected through the following Acts: The Hindu Succession (Andhra Pradesh Amendment) Act, 1986, The Hindu Succession (Tamil Nadu Amendment) Act, 1989,

1976⁹³ and recognised all members of the family having an interest in the joint family property as independent and full owners of their respective shares.⁹⁴ Unfortunately, the problem of indeterminacy of the inheritance of agricultural land is still present. When it comes to states in southern, central and north-eastern India, the situation is such that state laws are silent on the inheritance of agricultural land.⁹⁵ Scholars interpret this to mean that, by default, the inheritance of agricultural lands will be governed by personal laws.⁹⁶ These realities further add to the argument that laws surrounding the inheritance of agricultural land have let down women by the lack of congruence between the central and state laws.

The proof of progressive laws leading to better rates of female landownership lies in the example of Andhra Pradesh, wherein land inheritance rates for women were much higher after the enactment of a reformative state law that gave them equal inheritance rights about 20 years ago.⁹⁷ According to a study, 34% of women in Andhra Pradesh had inherited or expected to inherit parental land, compared to 8% in Bihar and 7% in Madhya Pradesh.⁹⁸

While better laws alone have not always solved the problems of Indian women's land ownership, the seemingly favourable findings from Andhra Pradesh mask an important fact. Despite a significantly higher number of women receiving land, they are not receiving the same quantity of land under inheritance to which they are entitled. With fewer widows obtaining land through inheritance in Andhra Pradesh, it is not possible to say whether the legislation is being strictly implemented or if existing societal practices are coming into play. Andhra Pradesh had a substantially more positive image among women who did inherit land, with more women inheriting land from their parents than widows from their deceased husbands. In Madhya Pradesh and Bihar, on the other hand, widows receive far more land from their deceased spouses than women who inherited land from their parents.⁹⁹

The Hindu Succession (Karnataka Amendment) Act, 1994 and the The Hindu Succession (Maharashtra Amendment) Act, 1994.

⁹³ The Kerala Joint Hindu Family System (Abolition) Act, 1975.

⁹⁴ Sanchari Roy, 'Female Empowerment through Inheritance Rights: Evidence from India', (Department of Economics London School of Economics, 6 September 2008) <www.dagliano.unmi.it/media/roy.pdf> accessed 28 January 2022.

⁹⁵ Shipra Deo and Akansha Dubey, 'Gender Inequality in Inheritance Laws: The Case of Agricultural Land in India' (Landesa, 29 October 2019) <<https://cdn.landesa.org/wp-content/uploads/Gender-Inequality-in-Inheritance-Laws-The-case-of-agricultural-land-in-India-1.pdf>> accessed 28 January 2022.

⁹⁶ Bina Agarwal, "Gender and Legal Rights in Agricultural Land in India" (1995) *Economic Political Weekly*, A39.

⁹⁷ The Hindu Succession (Andhra Pradesh Amendment) Act, 1986.

⁹⁸ Ashok Sircar and Diana Fletschner, 'Cultural Barriers in India Impede Women's Legal Right to Inherit Land' (Landesa, 4 March 2014) <www.landesa.org/the-right-to-inherit-isnt-working-for-indian-women/> accessed 24 December, 2021.

⁹⁹ Ashok K Sircar and Sohini Pal, 'What is Preventing Women from Inheriting Land? A Study of the Implementation of the Hindu Succession (Amendment) Act 2005 in Three States

Such barriers to land ownership for women have contributed to the lack of representation of female farmers in government data. The 2020 report by FAO tracking the progress on food and agriculture indicators noted that in countries where formal laws and customary laws co-exist, women's land rights are less protected. In countries where some aspects of customary laws override constitutional provisions, women's rights (especially inheritance/ matrimonial rights) are less safeguarded. Where customary laws are recognised, women's rights are very often not protected if it conflicts with formal law.¹⁰⁰ It is thus necessary to study and address the extent to which the intersection of customary and formal laws creates many challenges for women to own property. Bridging the gender-data gap can assist policymakers in tackling the disconnect between the law and socio-cultural diversities that affect how women obtain land ownership.

The Hindu Succession Amendment Act came into force over 15 years ago, but there is little clarity on whether this landmark shift in the law has had the intended results. The discussion in the previous sections has shown divergence in the laws that are not visible at first glance. What gender-disaggregated data can do in this scenario is present a clear picture of who gets the property and who does not, and how these situations differ across regions. Gender data can quantify the differential impact this amendment has had on women. This is crucial in the case of agricultural land, from which a significant majority of women eke their livelihood. Defining these gaps can accelerate the rate at which policymakers and the public understand the multitude of reasons for this phenomenon and encourage them to push for change.

2. *Muslim Personal Law*

Ownership of land for Indian Muslim women operates in a framework of laws, customary norms, and other social and religious norms. In reality, customary norms prevail in most cases even if they contravene the principles of equality that the Constitution guarantees.¹⁰¹ Muslim women in India face several intersectional disadvantages - their gender, status as a religious minority, and social and economic disadvantages. Shia and Sunni laws of succession differ in various effects but in general, Muslim women have inheritance rights to ancestral immovable property, even though it is unequal to those of men. A vast majority of Muslims in India belong to the Sunni sect and are governed

in India' (2014) Landesa, India, Paper Prepared for Presentation at the 2014 World Bank Conference on Land and Poverty.

¹⁰⁰ Pietro Gennari, 'Tracking Progress on Food and Agriculture-Related SDG Indicators 2021' (FAO 2021).

¹⁰¹ Niti Saxena and Soma K Parthasarathy, 'Claiming Space, Claiming Rights: Inheritance and Land Rights for Muslim Women in Uttar Pradesh, India' in Bina Fernandez, Meena Gopal and Orlanda Ruthven (eds), *Land, Labour and Livelihoods: Indian Women's Perspectives* (Palgrave Macmillan 2016).

by the Hanafi school of Islamic Law, while others in the Shia sect come under the Itna Ashari School. The Muslim Personal Law (Shariat) Application Act ('Shariat Act'), enacted in 1937, governs Muslims in India.

Despite the Quran's recognition of women's property rights, most women are not, in reality, able to exercise these rights due to "male-oriented and protectionist interpretations of customary provisions".¹⁰² Under Muslim personal law, men get two-thirds of the share in the property while women only get one-third of the share. A 2013 Bharatiya Muslim Mahila Andolan survey reported that 82% of the women surveyed did not own any property in their name.¹⁰³

However, when it comes to agricultural land, this provision is not applicable. Under Section 2 of the Shariat Act, women get no share of the agricultural land¹⁰⁴ (both tenanted and owned) except in a few states where the law has been amended. This express exclusion occurred since agricultural land was a state subject, and the impetus has fallen on the states to enact such laws. Several states, including Tamil Nadu¹⁰⁵ and parts of Andhra Pradesh¹⁰⁶ and Kerala,¹⁰⁷ have omitted the words "save questions relating to agricultural lands", and the Shariat Act has been made applicable to all land owned by Muslims, including agricultural lands.

While these efforts have resulted in greater land ownership for Muslim women, there is not enough data or academic work that can point to the extent to which reform is required. For example, data collected by the International Crops Research Institute for the Semi-arid Tropics ('ICRISAT') from 2010 to 2014 had an overwhelming sample size of 95% of Hindu households and only 1.1% of Muslim sample households.¹⁰⁸ The result of this exclusion is an inability to even suggest changes to improve Muslim women's rights with respect to Muslim men. It also makes it challenging to make insightful comparisons with the status of women in other communities, and Indians as a whole.

The availability of quality data might have enabled us to answer how many women own land (including agricultural land). It will help reflect if amendments in the Shariat Act as enacted by Kerala and Tamil Nadu have ensured women their rightful share over agricultural land and if customs have changed. Have these amendments brought agricultural land out of the limbo between central and state laws? The overarching theme that has been visible in both the

¹⁰² *ibid.*

¹⁰³ *ibid.*

¹⁰⁴ The Muslim Personal Law (Shariat) Application Act, 1937, s 2.

¹⁰⁵ Muslim Personal Law (Shariat) Application (Tamil Nadu Amendment) Act, 1949.

¹⁰⁶ Muslim Personal Law (Shariat) Application (Andhra Pradesh) (Andhra Area) Amendment Act, 1949.

¹⁰⁷ The Muslim Personal Law (Shariat) Application (Kerala Amendment) Act, 1963.

¹⁰⁸ Agarwal, Anthwal & Mahesh (n 76).

situation of women with regard to Muslim Personal law and Hindu Personal law is the lack of harmony between the central and state laws. While such a situation arises from the placement of agricultural land as a state subject in the Constitution, the initiative to change disadvantageous provisions for women is long overdue. Agricultural land, especially in rural areas, is the most essential and, at times, the only form of property.¹⁰⁹ The alarming data gap observed here regarding the land ownership rates of Muslim women points to the lack of attention given to their unique position in society.

3. *Bridging the gender-data gap to realign the approaches of law*

In the preceding sections, the paper has made the following crucial observations. First, since agricultural land is a state subject under the Constitution, states across India have enacted varying provisions or not addressed the inheritance of agricultural land under Hindu and Muslim personal laws. Second, amendments in the HSA that aimed to provide equal inheritance of land for sons and daughters have failed to achieve the same due to conflicts with state legislation. Third, policies have not accounted for the socio-cultural and customary causes that lead to the denial of agricultural property to women. Thus, there is a lacuna in the implementation of laws. Finally, there is not enough data to thoroughly assess the status of women's ownership of agricultural land and determine the exact reasons for the denial of their land rights.

These observations all point to the need for legal policy to quantify the impact of laws and precisely define the limitations of existing laws. Policymakers will require data from every state that are consistent and comparable to observe and correct inconsistencies. Granted, judicial precedents and activism drive forward laws, but these operate slowly and gradually and cannot immediately reflect trends in society like data can. Publicly available data can also create urgency for legal reform by converging information from across the country. Data can also pave the way to hold governments and policymakers accountable, presenting the bigger picture that may not always be clear. Data that reflects the gendered dimensions of society, alongside religion, caste, and other social factors are necessary to bring effective change in the system. Thus, the push must be for evidence-based policies that take into consideration data over several years to track and understand changes and suggest corrective action.

Consistent gender-disaggregated data, in the context of this paper, can be crucial in aiding policymakers in identifying the target population that requires a change in laws. For instance, when women are not even identified as farmers by official datasets, it becomes impossible for policymakers to locate their

¹⁰⁹ Jennifer Brown and others, 'Addressing Legal Rights in Karnataka' in Prem Chowdhry (ed), *Gender Discrimination in Land Ownership* (Sage Publications 2009).

struggles or devise solutions. Gendered data also plays a vital role in gender-mainstreaming policies and ensuring that each step of the policymaking process is responsive to the needs of all genders.¹¹⁰ The upcoming section illustrates how a few of India's prominent datasets have fallen short in collecting this gendered data and how inconsistencies in the data make them incomparable and ineffective.

B. Data collection of title-holders

Lack of data and gender gaps in datasets are significant barriers to tracing the gap between law and practice. To date, no existing study in India has provided assessments that look at multiple facets of landownership and can be used for conclusively determining gender gaps in land ownership.¹¹¹ Current estimates on national datasets can be seriously misleading and restrictive in terms of data collected. India's state-level land revenue surveys consider operational holdings at the household level as the primary unit. When the Agricultural Census in India compiles data from these state land revenue surveys, there is no sex-disaggregated data for titleholders within a household. The lack of appropriate data on land ownership by women can also be ascribed to the fact that the method of data collection is lacking. The National Family Health Survey (NFHS) 2015-16 has been collecting information from only 15% of sample households, which is women in the 15-49 years age group and men in the 15-54 years age group. It clubs together all lands, agricultural and non-agricultural. The significant differences in survey data and the data in land records worsen ambiguity in available data. The numbers in the NFHS-4 carried out in 2015-2016 appeared to be quite inflated, so much so that they were almost four times those of the India Human Development Survey (IHDS) of 2011-12.¹¹² While these and other national analyses¹¹³ show more land ownership among women in the southern states, NFHS-4 figures show that 50% of women in Bihar and 23% in Kerala own land. Such inconsistencies in available data are lamentable.

¹¹⁰ Gender mainstreaming has been defined in the 1997 agreed conclusions of ECOSOC as: "The process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality." Economic and Social Council, "Gender Mainstreaming: Report of the Economic and Social Council" (A/52/3, 18 September 1997).

¹¹¹ Jennifer Brown (n 109).

¹¹² *ibid.*

¹¹³ Pranab Ranjan Choudhury, Manoj Kumar Behera, Saumya Sharma, Tajamul Haque, 'Administrative and Open-Source Data for Monitoring Land Governance' (National Resource Management Centre, 2017).

Data collected in the India Human Development Survey (IHDS) also misses crucial figures. First, this survey also does not track the size of landholdings by gender, which would aid in determining the extent of gender inequality in the region. Second, instances of shared ownership are not recorded, which significantly narrows the scope of data analysis. Information on joint ownership is necessary to understand intra-household gender dynamics and the effectiveness of implementing laws providing women coparcenary rights. Third, the IHDS-II overlooks the additional landowners in families with more than three landowners. Although the effect may be minor, because only a small percentage of families report three landowners, what is collected may be skewed.¹¹⁴ Women are more likely to be left out since their rights are less recognised socially. It also creates uncertainty when more than three individuals own a plot of land.

In most cases, a woman co-owner tends to get excluded by the respondents of the survey. In this scenario, tracking joint-ownership can be important for assessing women's land rights. Joint ownership has been argued as a beneficial way to improve women's access to land,¹¹⁵ especially since social norms remain against women's single ownership of land and dissuade them from transferring titles to daughters.¹¹⁶ Unfortunately, joint ownership with husbands may give women little control over land use and make it difficult for them to claim individual shares in case of divorce or domestic violence.¹¹⁷ Data on how different kinds of ownership operate in reality can help align policy measures and ensure women can control land and use it according to their needs.

All the datasets that review and approach women's right to land ownership in India seem to have wide variations in numbers at the district and state levels.¹¹⁸ Pranab R Choudhury connects these variations to the differences in regions, historical backgrounds, social and cultural diversity and the fact that state succession laws determine the inheritance of agricultural lands.¹¹⁹ The family is treated as a unit, and land is registered for the benefit of the family's head, who is most often a male.¹²⁰ While some datasets focus on property and estate land, others collect data on rural land only, and some combine the

¹¹⁴ Agarwal, Anthwal & Mahesh (n 76).

¹¹⁵ Jeemol Unni, 'Property Rights for Women: Case for Joint Titles to Agricultural Land and Urban Housing' (1999) *Economic and Political Weekly* 1281.

¹¹⁶ Oxfam India, 'When Women Farm India's Land: How to Increase Ownership?' (Oxfam India, 2013) <<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/304918/bn-when-women-farm-india%27s-land-increasing-ownership-301013-en.pdf>> accessed 28 January 2022.

¹¹⁷ Dr Naresh C Saxena, 'Women, Land and Agriculture in Rural India' (UN Women, 2012) <www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2015/southasia/reportstudies/06_economic%20empowerment/un_women_land_agriculture_in_rural_india%20pdf.ashx?la=en> accessed 28 January 2022.

¹¹⁸ Pranab R Choudhury, 'Why We Don't Know How Much Land Women Own' (*Indiaspend 2021*) <www.indiaspend.com/land-rights/why-we-dont-know-how-much-land-women-own-734247> accessed 6 October 2021.

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

two. For example, the Land and Livestock Holdings Surveys provide data on operational land holding only in rural areas, while IHDS is conducted in villages and urban areas. These stark discrepancies result in a glaring gender data gap, which means that despite favourable policy intentions, women are not frequently recognised as landowners and much less as farmers.

At this point, it is essential to acknowledge how it is crucial to study the variations of land rights among women of different religions. Data that is merely disaggregated on the basis of sex will disregard important social realities; for instance, how caste identities of women affect ownership of land. Regarding caste-based disaggregated data on land rights, the Agriculture Census, IHDS, Population census and The Socio-Economic Caste Census (SECC) are the major databases.¹²¹ The SECC is noted for covering the whole of India and for its disaggregation across the lines of caste and education. Unfortunately, land ownership data collected in the SECC is not disaggregated by sex. SECC was only done once in 2011, and the caste data¹²² has still not been made public. The government sought to mend the flaws found in the data by forming a committee that would convert the data into publishable findings. However, the committee took no action since it never met.¹²³ Now, the Centre has ruled out the possibility of conducting another SECC along with the Population Census, citing the previous SECC experience, administrative, operational and logistical reasons, including an inability to reconcile different caste categories in different lists.¹²⁴ This implies that policymakers are unable to visualise the specific challenges women from disadvantaged castes face, leaving out an entire section of women from their purview.

Coming around to the SDGs, these indicators reflect how databases surrounding agriculture and ownership of women of agricultural land suffer from gender-data gaps. India's 2020-2021 SDG Index and Dashboard¹²⁵ has recorded that only 13.96% of operational landowners are female. This data is from the Agricultural Census (2015-16). This figure was 12.79% in 2011, which is far from desirable. India's reporting on SDG indicators also falls short of the standard set by UNSTAT's metadata, the information repository on data relating to SDG Indicators. For Indicator 5.a.1, as discussed in Part II of this paper,

¹²¹ Pranab R Choudhury and Shipra Deo, 'Women's Land Ownership and SDGs in India' (Landesa, 2017) <<https://www.ncaer.org/ILF2020/Presentations/Day3Session4/ShipraandPranab.pdf>> accessed 28 January 2022.

¹²² Ajachi Chakrabarti, 'Losing Count: The Discredited Excuses for Dodging a Caste Census' (*The Caravan*, 1 November 2021) <<https://caravanmagazine.in/commentary/caste-census-2021-secc-obc>> accessed 28 January 2022.

¹²³ G Sampath, 'Why is the Government Against Caste Census?' (*The Hindu*, 28 September 2021) <www.thehindu.com/news/national/explained-what-are-the-governments-objections-to-a-caste-census/article36713236.ece> accessed 28 January 2022.

¹²⁴ *ibid.*

¹²⁵ NITI Aayog, 'SDG India Index & Dashboard 2020-21' (NITI Aayog 2021) <www.niti.gov.in/writereaddata/files/SDG_3.0_Final_04.03.2021_Web_Spreads.pdf> accessed 06 October 2021.

the data must be reported gender-disaggregated as the proportion of the total agricultural population that owns agricultural land using periodic and reliable datasets. However, in India, this is reported as the ‘percentage of female operated holdings’ using Agriculture Census data.¹²⁶ The Agriculture Census data does not fit the prescribed standards; it does not consider agricultural labourers and only cites the gender of the head of the household. Most importantly, operational landholding is considered instead of land ownership.¹²⁷ The basic statistical unit of data collection in the Agriculture Census is operational holding that includes “all land which is used wholly or partly for agricultural production and is operated as one technical unit by one person alone or with others without regard to title, legal form, size or location”.¹²⁸ This evidently does not fit the standards set and, in extension, does not help advance the SDGs as it ought to. The 2021 Sustainable Development report reveals that India has a long way to go in keeping up with the SDGs. Ranking 120 out of 165 countries participating, the country score is far below the regional average (India’s country score; 60, Regional Average; 65.7). SDG 5 achievements are stagnating, with significant challenges remaining.¹²⁹

1. *What kind of data must be collected?*

Throughout this paper, the authors have observed how gaps in the law are often imperceptible due to the lack of discussion around how such laws actually impact various stakeholders, in this case, the women. The authors have endeavoured to show how data can help improve the implementation of laws by providing an accurate representation of the ground realities. What is required is not large quantities of data but quality data that is consistent. The collection of quality data would throw light on the prevalent issues, bringing them to lawmakers’ and policymakers’ attention. This will be a crucial step toward rectifying the existing situation for women in the agricultural sector. For example, the paper has observed how it is possible to reconcile the extent of ambiguities in Hindu personal law resulting from the conflict between central and state laws if the impact of legal amendments is studied and quantified. A Data2X study¹³⁰ on gender data gaps and methods to collect data for policy design offers important insights on the kind of data required to close such gender data

¹²⁶ Pranab R Choudhury, ‘Why We Don’t Know How Much Land Women Own’ (*Indiaspend 2021*) <www.indiaspend.com/land-rights/why-we-dont-know-how-much-land-women-own-734247> accessed 6 October 2021.

¹²⁷ *ibid.*

¹²⁸ Department of Agriculture and Farmers Welfare, ‘Need of Data by Operational Holding’ <<https://agcensus.nic.in/acindianeedoph.html>> Department of Agriculture & Farmers Welfare accessed 28 January 2022.

¹²⁹ ‘India SDG Dashboard, Sustainable Development Report 2021’ (UNSTATS 2021) <<https://dashboards.sdgindex.org/static/profiles/pdfs/SDR-2021-india.pdf>> accessed 5 October 2021.

¹³⁰ Data2X, Gender Data: Sources, Gaps, and Measurement Opportunities (Data2X 2017) <<https://www.data4sdgs.org/sites/default/files/2017-09/Gender%20Data%20-%20Data4SDGs%20Toolbox%20Module.pdf>> accessed March 28 2022.

gaps. Individual-level data disaggregated not only by sex but by age, income, education, residence, and other socioeconomic and demographic characteristics are extremely important for well-targeted policy design. Data that is representative of the population is important, particularly to understand outcomes of often-marginalised and un-surveyed groups such as women.¹³¹

An example of the collection of individual-level sex-disaggregated data bringing substantial change in policy making is the case of Nepal. In Nepal, the policymakers attempted to address gender gaps in asset ownership by including questions on land, livestock, and property owned by women in the national census. Two constitutional amendments passed in 2002 and 2007 helped significantly improve Nepali women's land ownership rights, stating that sons and daughters had equal rights to inheritance regardless of their age or marital status.¹³² In addition, Nepal introduced a 10% tax exemption for land registered in a woman's name in 2008 to encourage the adoption of property and inheritance rules. The exemption, designed to encourage families to share their land with their daughters, sisters, and brides, was later raised to 25% in cities and 30% in rural regions.¹³³ As a result, women's land ownership grew threefold between 2001 and 2009.¹³⁴ While cross-country comparisons may not be viable, the case of Nepal is an example of how the collection of sex-disaggregated data helped recognise issues and led to an attempt to rectify the same by policymakers.

V. SUGGESTIONS AND CONCLUSION

How do women fare in terms of land inheritance, especially in the case of agricultural land? This paper has examined this question by looking at it from a variety of angles. Unfortunately, no large-scale surveys collect gender-disaggregated data on land ownership and use. There is a dearth of academic studies, especially in the case of Muslim women's rights, which again reinforces the problems that arise from not having data.

One way to bridge the data gap is to collect more data disaggregated by gender and sex. Even before that, it is crucial to acknowledge that a gender-data gap exists in all datasets presently employed in India. Merely collecting data without considering the implications or presenting sex-disaggregated data without understanding the context and root of the problem is not the solution. The biggest requirement is to recognise how most studies still concentrate

¹³¹ *ibid.*

¹³² International Organization for Migration, 'Barriers to Women's Land and Property Access and Ownership in Nepal' (IOM 2016) <https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/DOE/LPR/Barriers-to-Womens-Land-Property-Access-Ownership-in-Nepal.pdf> accessed on 28 March 2022.

¹³³ Data 2X (n 130).

¹³⁴ *ibid.*

on households as a unit of analysis and neglect intra household gender dimensions.¹³⁵ It is not enough for laws and policies to consider gender as an additive category that has to be superimposed onto other existing categories and treat women as a special target group.¹³⁶ Addressing existing problems through a gendered lens is necessary for any substantial change. This paper used basic statistical data to convey how the lack of data makes policies gender-blind. It also reflected how data could expose inherent problems in the law. It is high time to implement methodologies that reflect the effectiveness of laws, and data can play a fundamental role in this effort.

The absence of uniform data impacts the quality of life for women in agriculture despite notable progress in inheritance laws toward gender equality. The majority of landowning women obtained their land via their married families, notably as widows, and not through their paternal families, despite being allowed equal coparcenary rights with brothers in the joint family property.¹³⁷ Much more still needs to be done in terms of data collection and policy implementation, and the immediate demand should be to make data as gender-disaggregated as possible. In terms of policy, there is a long way to go to improve women's property position if India is to move towards gender equality in land ownership, as targeted in SDG 5. The first step is to align India's statistical methodology with the SDGs' design, and to make data collection gender-sensitive. Consistency is key to ensuring that the data collected is used most effectively and efficiently.

All stakeholders, including gender equality activists and other civil society groups, must join the gender data revolution, not just as data users and producers but also as advocates for more and better gender data. Such long-term collaborative coalitions may help address data gaps and guarantee that the data obtained helps accomplish the SDGs, eventually making women and girls visible and counted in all their variety.

The issues that occur when gaps form between the central government's policy directives and how states shape such directions must be given a particular focus.¹³⁸ It also must be kept in mind that a Uniform Civil Code may not be the complete solution to ensuring equality of ownership of land among women from all sections of the society keeping in mind the diversity and divergent backgrounds among Indian women. As observed in the paper, the challenges facing women across India are different and require careful, pointed approaches for correction. A blanket law will only worsen the differences.

¹³⁵ Bina Agarwal, 'Who Sows? Who Reaps? Women and Land Rights in India' (1998) *The Journal of Peasant Studies* 531.

¹³⁶ Bina Agarwal, 'Gender and Command Over Property: A Critical Gap in Economic Analysis and Policy in South Asia' (1994) *World Development* 1455.

¹³⁷ Agarwal, Anthwal & Mahesh (n 76).

¹³⁸ Bina Agarwal (n 135).

When amendments are brought to inheritance laws, there must be a special emphasis on agricultural land. Making laws merely gender-equal does not translate into equality in all categories of lands, especially with the Shariat Act excluding women from taking a share in agricultural land. Thus, there needs to be a centralised approach to ensure amendments at State and Central levels give weight to agricultural land. Most importantly, it is vital to ensure that women are aware of their rights and are afforded the autonomy to navigate the social and political barriers that prevent them from owning land.