

'Land-rights' for women : The role of village Commons.
Strengthening access, control and viability of land resources by rural women in India.

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This paper attempts, as the title suggests, to contribute to some aspects of a necessarily larger discourse on property rights for women, and it would be useful to outline the scope of the discussion to begin with. Firstly, there is an underlying recognition that the discrimination against women in their access and control over property are part of the larger systems of discrimination and subjugation; those based on caste, on gender, on economic class and even race historically in India. It is also recognized that in order to address the many faces of such discrimination, multi-layered and diverse strategies would require to be adopted at many levels.

This paper will not attempt to provide solutions, but will rather seek, in the first part, to expand the scope of, and raise some overarching questions that must form part of the larger discussion on women and land resources. The language and strategy of a 'rights-based approach' to women and land, and the scope of universalizing such a right will be briefly explored. In the second part, this paper will focus more specifically on how village common lands which contribute critically to the resource needs of rural women, must form an important part of our larger strategies to strengthen the security of resource flows from land to women, in areas where such possibilities still exist. Further in this context, some recent legislative changes set in place by the government in Uttaranchal that run contrary to fundamental design principles of Commons, and that could dismantle such longstanding institutions, will also be discussed in the context of how women would be affected.

The context of 'land-rights'.

The case for women's rights to property has been put forward on the grounds of welfare, efficiency, equality and empowerment (Agarwal 1994). The grounds of welfare are that it would reduce the risk of poverty and destitution for women and their households. The efficiency argument hinges on the assumption that the title to property would improve a woman's access to credit and technology, which in turn would help her increase her productive capacity. The case for equality and empowerment is made in the context of a woman's position relative to men, where a constitutional right could seek to ensure that every person is treated equally by law and prohibit discrimination on the basis of gender. It is further posited that property rights could empower women in economic and non-economic areas as well. That the conferment of this right could strengthen a woman's position in her household, and even her ability to 'challenge social and political gender inequalities'.

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The case for 'independent' rights for women; rights independent of male ownership or control, was put forward by Bina Agarwal (1994), and Jeemol Unni (1999) put forward the case for 'joint' titles to agriculture land and urban housing as well. The case for independent rights raises some important questions on the scope and scale of possibilities in that direction, but the larger question of the need or desirability of proposing reform, legislation and action on this on a 'rights' platform, and the feasibility of universalizing such a right needs to be considered at greater length.

The question of the availability of land has been raised by many. Land reforms enacted in India primarily through the abolition of Zamindari, the Ceiling of landholding as well as regulation of tenancy (about 20 million tenants acquired occupancy rights under various land reform moves in India) were radical and significant steps no doubt, but the proportion of land eventually distributed even in the most successful states of Kerala and West Bengal, was still small (Vaidyanthan 2000). According to mid-1996 figures of the government of India, the area declared surplus (above the ceiling of holdings) for all-India, 'came to only three million hectares or 1.6 per cent of the arable land, and only 0.2 per cent was still available for distribution' (Agarwal 1998).

It is widely agreed that the possibility of extending agriculture into forest lands and increasing the extent of arable land have been all but exhausted in all the states. Such an extension is no longer a possibility at any significant scale. In fact, the extent of land put under the plough historically has already been disproportionately large in most states, with far too little land being designated as village commons such as grazing lands and village forests for cycling nutrients and meeting energy needs. This has resulted in seriously disabling sustainable livestock-agriculture linkages. In addition, by 1980, more than 6 million hectares of waste, fallows, and other categories of 'unused' land (often used, indeed overused, as grazing lands under open access by nearby villages) had been vested in state governments and, in turn, distributed to landless agricultural workers (Census of India 2001 website).

Forest Land under different use and protection intensities in India (Reserve Forest, Protected Forests and Unclassed Forests) comprise only 23.57% of the landscape. These are set aside to ensure, *inter alia*, the stability of the flow of ecosystem services such as drinking water, soil moisture for food production etc. Only 4.75 % of the area is actually under Protected Areas, which are Sanctuaries and National Parks, and this is far below the global average of 12%. Importantly, even within the existing ecosystems and species presently under such protection, we find that there still remain very serious gaps in the proportion, coverage and representation of our rapidly degrading biodiversity. Reducing land under such protection would surely be foolhardy.

The question of the proportion of Forest Lands in Uttaranchal as against the proportion of agriculture land in Uttaranchal is sometimes cited to press the case for more land to be given up for agriculture in the state. Uttaranchal has 64.81 per cent of its land area under various categories of Forest Land. Comparisons are made with states like Haryana where the proportion is just 4 per cent. Let us look at averages in other mountain states however, comparisons to which would be more appropriate. The neighbouring state of Himachal has 66.52 per cent under forests, Arunachal Pradesh has 61.55 per cent, Meghalaya has

42.34 per cent, and Manipur for example has 78.01 per cent. It is clear that upland mountain states, due to their ecological and geo-hydrological attributes cannot be brought to bear comparison on extent of arable land with alluvial lowlands.

In this overall scenario of scarce agriculture land, let us look at another exacerbating dimension, that of the unprecedented upward spiral of population growth in the country. Between 1947 and 1991, the population in India more than doubled. Intercensal growth increments have been roughly a quarter, where between 1961 and 1971 the growth was 24.8%, between 1971 and 1981 it was 24.7%, between 1981 and 1991, 23.9%. By 2005, the growth has been another 25%. Even in a nation as large as India, there are in 2005, an average of 333 people to every square kilometer of the country. Global consumption of freshwater, for example, doubles every 20 years; twice the rate of population growth. The question before us, quite clearly is, where is the land that can now be devolved to women as individual private holdings?

As mentioned earlier, the major proportion of cultivable or arable land has already been privatized. India is a land of small farms. About 50% of all operational holdings in 1980 were already less than one hectare in size. The average size holdings by states ranges from 0.37 hectares in Uttaranchal, 0.5 in Kerala, 0.75 in Tamil Nadu, three hectares in Maharashtra and and five hectares in Rajasthan. The productivity of these lands however vary greatly depending on soil quality and depth, topography and rainfall (both extent and seasonal distribution). However, since most of the arable land is under private holdings, a large percentage of rural women have stakes in family land. We know that though under the Hindu Succession Act 1956, a Hindu girl is entitled to inheritance of a share of the parental property, only a small minority of women actually acquire property through inheritance. Marty Chen found, in a survey of widows in seven states, that only 13 per cent of daughters of landowning fathers inherited any land, and even fewer effectively controlled any such land.

Under the prevailing situation of such low availability of land, and such limited female inheritance of land, Jeemol Unni has suggested that it would be more practical to pursue the goal of joint titles for women in land and other productive assets (Unni 1999), which while not giving her full control of the property, would increase her entitlements, and her ability to negotiate. The conferment of a joint title was not proposed as an alternative to inheritance, but as a additional and complementary strategy to strengthen a woman's position both economically and socially, as well as within the family and outside it.

The proposed positions for individual titles and those for joint titles must not be viewed as mutually exclusive ideas, but as complementary strategies that form part of our strategy wherever possible. However, we also need to consider strategies whose ambit goes beyond the pale of private property, and we will come to this later. Within the dimension of private property too, there are certain values that we invoke, and that underlie our positions on women and land; the two major ones being equality and universality. The application of these values however, have their obvious limits (Beteille 2001) and often contain inherent disharmonies with other compelling values that cannot always be reconciled. We need to be clearer about these limits in the actions we propose if we wish that values translate from moral sentiments to policy or be part of a legal system.

Some of the many questions that bear resolution are: What exactly are we proposing when we advocate either the enabling of individual titles for women, or the conferment of joint titles? Beyond the equality principle, under which we propose that equal individual titles come to women from inherited shares from parental property, are we also proposing the welfare angle, where the State must identify and yield additional land to rural women? In the former, we need to contend with the problems such as the further fragmentation of holdings and the operational problems that would arise when the girl marries and shifts to her marital home in a different village. How do we reconcile other compelling but colliding values such as Efficiency when the paddy field turns real estate, and fragmentation becomes more extreme?

If we propose that the State make available additional land, are we proposing that this be a universal 'right' of all rural women in India? Women, we know, are variously placed in these hierarchies of wealth and property ownership, and proposing land as a right to women from the welfare or from the equality angle, will therefore need to be made more explicitly for different settings. Consider then the question of scale in the context of redistribution. Do we propose that more women be given access to marginal holdings? At what size would such holdings become viable for the subsistence of a household? We need to also consider other parallel phenomena such as the unprecedented rates of urbanization being witnessed in the country today. While the census of 2001 revealed that 73.9% of India's population lived in rural areas, it is projected that by 2030, urban people will account for over 50% of its total population. We need to field our proposals in consideration also keeping in view such rapid changes in demographic profiles.

Perhaps most importantly, I would urge that we see the issue of land 'rights' in the context of the recent shift from the language of **policy** to the language of **rights**, not only in the field of human rights, but also in the field of development at large. The Constitution of India created new rights for all its citizens which 'contributes to the regulation, if not elimination of invidious social distinctions' (Beteille 2001). The removal of such distinctions was the objective with which many rights were guaranteed to the citizens in the Constitution. From this very clear objective, the scope of rights are now sought to be extended to aspects such as elementary education, and more recently, the right to work, and a qualified right to information and so on. International agencies such as the UN are initiating a move to treat the right to development as a universal human right, though even what is meant by the word 'development' is often not agreed upon.

The rights-approach presumes a universality of application, which is arguably more suitable for application in concepts such as citizenship, which is based for example, on equal rights and obligations, rather than on privileges and disabilities of the old feudal or patriarchal systems. Or in aspects such as the common humanity of all human beings, irrespective of gender, caste or class. The limits of the application in other things such as property are required to be explored and understood, because the principle of universality cannot wish out the existence of scarcity (Hirsh 1997).

More questions have been raised by me here than have been sought to be answered. The attempt to address and resolve these must be our collective endeavour. The main

objective of laying out the many dimensions and complexities of our subject under discussion, was to lead to and help place the critical role that village common properties do and can play towards achieving greater access, control and viability of land holding by rural women.

The role of village commons: Van Panchayats in particular.

The role of village commons in the overall strategy to strengthen the resource flows from land to women, must be seen in combination with the arrangement of secure titles for women on private family owned lands. Not only can this provide access to a larger land base, but do so in a manner that buttresses and supports the productivity and viability of the myriad small and marginal holdings that rural women and their families subsist on, and that characterize our agricultural landscape.

We know that in many states, the landless households and those with small land holdings rely heavily on village common lands for their subsistence needs, indeed their survival. The extent of dependence varies between different agro-ecological, as well as private land-holding settings across various states, but the dependence of poor rural households on the commons is well known. The study of Jodha (1986) in seven states indicated that Common Property Resources, such as grazing lands and village forests contributed 15 to 23 per cent of poor people's incomes. The part of his study in western Rajasthan showed that 66-79 per cent of animal grazing, 29-41 per cent of fodder, and 59-68 per cent of fencing and thatching material came from village commons. The study in West Bengal by Beek et al (1999) indicated that 19-27 per cent of the needs of the rural poor came from village commons.

The critical contribution of the commons to food security in mountain areas needs also to be taken into account. Mountain agriculture is entirely dependent on nutrient cycling from forests through livestock, and it is estimated that the ratio of support area in terms of forests and grazing lands per unit of agriculture land ranges from 1:4 to 1:6. (John Wyatt-Smith). Without the supply of sufficient nutrients from forests, mountain agriculture, and hence food-grain production is just not viable. Food from livestock, either from milk or meat is also almost entirely dependent in many states either on village commons or on Reserved or other categories of State controlled Forests. The contribution of village commons in dryland areas as life-sustaining options in times of drought and stress, in the context of food security have also been discussed by Kannan et al (2000).

In the context of rural women, more so landless women and those with marginal and small land-holdings, the commons hold a critical place in their subsistence and survival strategies. The division of labour puts the burden of providing for subsistence needs of fuelwood, fodder, leaf-litter, grazing livestock, drinking water, and even food squarely on women. It is they who must interface the most with common properties, either village forests or grazing lands where they are available, or 'collect' from Reserve Forests and open access lands, to meet such needs. The livestock-agriculture links makes even food production from private agriculture land critically dependent on the commons.

However, the area under commons as well as the productivity of such common lands has been declining over time. The reasons for decline in area range variously from large-scale

encroachments in certain areas, and also to the assignment of these lands non-community purposes by the government. For example, the ratio of commons to net sown area in Karnataka fell from 39 per cent in 1970-71 to 29 per cent in 1995-96 (Damodaran 2001). The reasons for the decline in the productivity and the progressive degradation of such commons range from desperate over-use (the area being proportionately far short of need), and often conflict and failure to protect due to unclear title. The brunt of all this is borne by women.

I move now to the Van Panchayats of Uttaranchal, which are not only illustrative of the critical role that commons play in the physical access of land, its control and governance by women, but also illustrative of recent trends that have the potential to dismantle the commons.

The institution of Van Panchayats or Village Forest Councils in Uttaranchal were established during the British rule about a hundred years ago in Kumaon. Today, about 12,073 Van Panchayats have been reported to have been set up between 14,633 revenue villages (up from about 6,777 in 2001, under a drive by the state Forest Department to create new Van Panchayats). There is no other state in India with such an extensive institutional arrangement for village commons. However brilliant such an arrangement may seem today, it was actually a reluctant response to a violent mass protest in Kumaon for 'rights' of villages to hold and access village forests for their subsistence needs. The British Government's taking over of all land that was not private land, and putting it under Reserve Forests had led to this protest. This meant that all standing village commons were void, and in order to meet their survival needs of fuelwood, fodder, humus for their agriculture, rangelands for their livestock such as sheep, goats, yaks, horses etc, they would have to 'steal' from forests that were customarily theirs for generations. When the protest led to incendiary attacks on large tracts of timber forests, the government conceded and in the 1920's provided for villages to be given fragments of Class I Forests (those without commercially valuable timber) to be managed as Village Forests or Panchayat Van.

Later, in 1931, the constitution of such village forests were clearly provided for in subsection (2) of Section 28 of the Indian Forests Act 1927. Van Panchayats continued to be formed under these provisions, and to operate under various Panchayat Forest Rules. They were formed mostly out of Revenue Wastelands titled Civil and Soyam Land, or from Reserve Forest land where there was no Revenue Land available for such allotment. The formation and conformity to Rules was administered by the Revenue Department so far under the Panchayat Forest Rules 1976.

Almost two thirds of the forest area under Van Panchayats are located in districts in Kumaon. In the western districts of Uttarkashi and Tehri, which did not come under direct British rule initially, most forests remained under Reserve Forest categories, and the few Van Panchayats that were formed were constituted more recently. Even as late as 2001, Uttarkashi had only 2 per cent of its land under Van Panchayats, and Tehri 0 per cent. In such areas, village communities had to depend on Reserve Forests either through recorded Rights, or through Concessions and Privileges, that allowed them to collect fuelwood, fodder, leaf litter, and to graze their livestock for their subsistence needs.

The areas that did have Van Panchayats, the longer-standing ones being in Kumaon, were basically left to their own devices, and by and large managed by village communities as per their circumstances till the year 2001, when the new Van panchayat Rules were legislated. Till then the arrangement was largely bedevilled on two counts: i) the distribution of Van Panchayats was disproportionate between villages; less than half the villages possessed any land under Van Panchayats, while some villages had disproportionately large holdings, and ii) the demarcation between village forests was often unclear and conflicting with previous titles, leading to a situation of protracted legal and physical conflict.

In the late 1980's Joint Forest Management (JFM) was conceived and formulated to enable village communities that lived close to degraded Reserve Forests and depended on them, to participate in activities to revegetate and protect such forests, and to partake of some of the benefits that flowed from them. However, circa 2001, using the language of 'co-management' and 'participation', the Govt. of Uttaranchal put in place JFM on existing Van Panchayats or commons already owned and administered by local councils. This was immediately followed by the amended Van Panchayat Rules 2001, which effectively turns all Van Panchayats and all their existing stock and income into a JFM and project mode.

The two most basic design principles that characterize successful commons are the elements of local self-governance, and the prime objective of meeting subsistence needs of the collective owners of the common property. A look at some of the salient features of the Van Panchayat Rules 2001 that now put all Van Panchayats under the direct control and administration of the State Forest Department indicate the direction to which the institutional arrangement has now been pointed:

- Everything a Van Panchayat does or wishes to do, has to be approved by the DFO (The District Forest Officer who is the executive head of the Forest Department at the district level). Annual plans, Annual budgets, Annual statements of Accounts and Annual Reports, and Annual Evaluation and Monitoring Reports are to be prepared by the Van Panchayat and submitted by them (all at different months in the year) to be approved by the DFO. No work or decision can be taken that is not already in the Micro-plan (which is a five year plan broken up into yearly plans, that need to be approved every year) duly approved by him.
- A Forest Guard is now designated the Secretary of every Van Panchayat. He will maintain all records and jointly operate the Van Panchayat Bank Account.
- The Forest Department now will take a percentage of any income to Van Panchayats. This has to be seen in the context of the fact that most Van Panchayats do not have enough land under their Van Panchayat to meet even their present subsistence needs, let alone harvest only the increment to ensure the needs of future generations. Over and above what the Forest Department will take as an Administrative Fee (10% of Gross income from any source), 20% of all income will, irrespective of the viability of the particular Van Panchayat, also go to the Zilla Panchayat for 'development work/public utility work' wherever it pleases.
- The DFO can dissolve any Van Panchayat, if in his opinion, they are not managed properly, or if they 'misbehave' (Van panchayat Niyamavali 2001).

- The expectations are well summed up in section 19 (e) of the new Rules, where the Van Panchayat is duty-bound “to abide by the directions and execute orders passed by the Panchayat Van Vikas Adhikari (the DFO’s new clothes) regarding conservation and improvement of forests.”

Two central themes of the Van Panchayat Rules 2001 are clearly visible; the vesting and centralizing of micro-level control of the Van Panchayats by the state, and the setting up of Van Panchayats for commercial production rather than meeting subsistence needs. There is an urgent need, and a widely felt one, to curb the trend to put these Commons for market driven uses. When the Commons are led or nudged into production modes that are designed to meet commercial needs of distant markets- for timber, fuelwood, pulp wood, medicinal plants, fodder- at the expense of subsistence needs of local communities, especially the poor and landless, then these very people who own the Commons are used as labour in planting, protecting, harvesting and transporting for the market. They are reduced from owners of the Commons to mere labour that would lead to the divesting women of control over land and unraveling of the Commons arrangements.

In the context of governance and control by women as well, we see that since women interface with the commons most for subsistence needs, the instrumentality of women's agency in co-managing the commons for such needs is also most obvious. Policy and legislation is required to further ensure that women are given their place as co-owners of their common lands and forests; with the right to inherit their share in their natal and in their marital home, depending on where they reside, regardless of their marital status, thereby ensuring a women’s right to common land as well.

There is a growing chorus that Van Panchayats should be handed over to the women of the community as exclusive Women's Van Panchayats, on the plea that this would result not only in better management and ensure the primacy of subsistence needs of the community, over commercial interests, but also be a welfare measure. Even the government of Uttaranchal seems to have joined this rhetoric, and has gone ahead with setting up some new Women's Van Panchayats, some as small as 2 hectares, and some in addition to existing ones in the same village. This is at best tokenism, and at worst, subterfuge of true democracy, which is the overarching principle even for the values of equality and universality invoked by us in the context of women and land.

While we recognize women's agency and the need to involve all women in decision making processes to ensure elements representation of interests, and the primacy of subsistence needs, the commons are a fundamental expression of democratic governance at the village level. While everyone in the village has a 'right' to use the commons, they can be somewhat re-distributive in nature in that the poor rely more on and use the commons more than do the economically better off. Proposing exclusive Women's Van Panchayats or management exclusively by any segment of a community, will actually result in defeating the very purpose of a Commons. Democracy, and institutional arrangements for it at the village and hamlet levels are best designed for direct and participative democracy, rather than representative democracy, which are more suitable for large and unwieldy constituencies (block, district, state levels and beyond). In direct democracy the decisions on all policy matters are taken by the general body, or all the rightful owners or participants. The Panchayat, or committee should at best be an

executive committee that helps execute the decisions taken by the general body and not actually be empowered to take such decisions themselves.

The second aspect is that for direct democracy to work, the decision making should directly involve and represent the interests of all the various co-owners and interest groups. Therefore all the adult women and men of a village community must be part of the decision making process. Women's involvement in the governance of village commons must grow well beyond such tokenism.

In other states where there are forest dependent communities, villages have to meet their subsistence needs of grazing, fuelwood, and fodder through Privileges and Concessions on forestlands, or from degraded open-access lands, and not from land on which they have 'rights'. As there is no ownership and subsequent regulation of use or management, over-intensive and unregulated use is leading to the rapid degradation of land and the natural resource-base. Wherever possible, the provision of Common lands for rural communities should be given priority by state governments. Such land should be of sufficient area to use and manage as village commons to meet their livestock and grazing needs as well as subsistence needs. A thumb rule would need to be worked out for every eco-region based on the local intensity of use and conditions.

Finally, the importance of the contribution of the commons in strengthening and making more viable the small and marginal land holdings in many parts of the country, through assuring nutrient and moisture flows to agriculture land, thereby enabling income diversification (Damodaran 2001) is also required to be taken cognizance of in our larger discourse on women and land-rights and fielded as a complementary strategy. In a state such as Uttaranchal, where nearly three fourths of all land-holdings are sub-marginal or marginal, the average size of landholding is just 0.37 hectare per largely undivided family (Misra 2001), and where the reliance on forest for agriculture and livestock is absolute, village forests are the keystone of the agrarian and forest based existence of the communities here, and women in particular. Dislodging this keystone would have very serious consequences.

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