

WOMEN'S ECONOMIC EMPOWERMENT IN INDIA

**Policy Landscape on
Property & Assets**

March 2020

ABOUT THE DOCUMENT

The document, Policy Landscape on Property and Assets, is part of a larger study on the landscape of Women Economic Empowerment (WEE) policies in India. It is published along with a main summary document and six other documents, that together look at the domains relevant to WEE - collective action, unpaid work, skill development, quality work, social protection, property and assets, and financial inclusion.

The primary objective of the landscaping study is to map the relevant schemes and policies that are closely aligned with the objective of promoting economic empowerment for women in India. In addition to undertaking a mapping exercise, the authors were tasked with analysing various

central and state government schemes, studying current priorities, international conventions and best practices for promoting women's economic empowerment, and reviewing relevant evaluations to identify implementation and evidence gaps.

The study employs a critical gender lens to identify promising exemplars of transformative policies in terms of design features, implementation efficacy, and impact. It also highlights the gaps in the broader policy landscape of India, with respect to women, as well as in evidence.

Overall, the study aims to inform priorities for addressing critical evidence, data and knowledge gaps to improve the enabling environment for women's economic empowerment, and reduce the barriers for accessing quality work in India.



PROPERTY AND ASSETS

Ownership of property and assets is widely recognised as a factor in empowering women, helping them escape poverty and improving their lives.¹ Access to property and assets give women economic security and is also linked with empowering women economically, since assets can be used as collateral for credit and can be channelised to generate income in the long term.² The same has also been recognised by ODI's women economic empowerment (WEE) framework, with ownership of property and assets being one of the seven primary drivers of WEE, which is also supported by past research in this area.

In India, out of the 42 percent female agricultural labour force, less than 2 percent of women own farm land.³ This gender gap in ownership of property and assets is due to social norms, poor land rights and absence of legal literacy amongst women in India.⁴ Social customs and patriarchal norms mostly allow for only a man to inherit and accumulate property and assets, while a woman, depending on where she belongs, whether she is married/unmarried or whether she is from a tribal community/otherwise, may or may not feel empowered to inherit or accumulate assets.

Studies also show that women's access to property and assets is linked to gains in family welfare, income, and children's health.⁵ The contrary i.e. unequal rights for women have adverse effects on the same. The gender asset gap, which is well documented all around the world, undermines women's bargaining power and capacity to engage in economic activities.⁶ Research from Kerala shows that 49 percent of women with no ownership over property reported being victims of physical violence, as compared to only 7 percent who owned property.⁷ The ownership of assets empowers

women, and gives them the ability and agency to control their socio-economic status to a certain extent.

There are very few laws, schemes and initiatives around the world that transfer property directly to women. However, equal land rights and titles is one approach that has been used widely for improving equity in ownership of property and assets amongst men and women. In Rwanda for instance, the Succession Law of 1999 states that all legitimate children shall inherit equally, without any discrimination of male and female children. Research has shown that such a legal framework significantly reduces the uncertainty surrounding inheritance, along with giving a substantial benefit to women, who otherwise would have been discriminated against while inheriting. Nepal has also introduced several measures providing for a concession in registration fee when the ownership of land is transferred in the name of a woman or is jointly held by a married couple, as well as a tax exemption for single women.⁸

Given the patriarchal structure of our society and the diversity of cultural contexts, religions and sects within the country, there are varying degrees of access that women can have towards owning property and assets in India. Knowing this, the Government of India has attempted to use different instruments to increase access for women, and in this section of the report, we analyse some of them from a gender-specific lens. We begin with the Hindu Succession Act, 1956, a law that applies to the majority community in India, thereby targeting a large number of beneficiaries. In addition to this, we also analyse the Pradhan Mantri Awas Yojana that aims to provide affordable housing to the economically weaker section of society, as well as the Indian Stamp Act, 1899 which facilitates registration of property.

¹ Toward Achieving the Third Millennium Development Goal to Promote Gender Equality and Empower Women, International Centre for Research on Women, 2005, <https://www.icrw.org/wp-content/uploads/2016/10/Property-Ownership-for-Women-Enriches-Empowers-and-Protects-Toward-Achieving-the-Third-Millennium-Development-Goal-to-Promote-Gender-Equality-and-Empower-Women.pdf>

² Toward Achieving the Third Millennium Development Goal to Promote Gender Equality and Empower Women, International Centre for Research on Women, 2005, <https://www.icrw.org/wp-content/uploads/2016/10/Property-Ownership-for-Women-Enriches-Empowers-and-Protects-Toward-Achieving-the-Third-Millennium-Development-Goal-to-Promote-Gender-Equality-and-Empower-Women.pdf>

³ Gender gap in land ownership, Anupam Mehta, National Council of Applied Economic Research, 17/04/2018, http://www.ncaer.org/news_details.php?nID=252

⁴ Gender gap in land ownership, Anupam Mehta, National Council of Applied Economic Research, 17/04/2018, http://www.ncaer.org/news_details.php?nID=252

⁵ Women Business and the Law 2014: Removing Restrictions to Enhance Gender Equality, International Bank for Reconstruction and Development, Bloomsbury Publishing, 2013, <http://documents.worldbank.org/curated/en/893551468147874555/pdf/922710PUB0v20W00Box385355B00PUBLIC0.pdf>

⁶ Deere and León 2003b; Quisumbing and Hallman 2005; Deere and Doss 2006.

⁷ Rights based strategies in the prevention of domestic violence, Pradeep Kumar Panda, Centre for Development Studies, 03/2003, <https://opendocs.ids.ac.uk/opendocs/bitstream/handle/123456789/3039/wp344.pdf?sequence=1>

⁸ Securing Women's Land and Property Rights in Nepal, IOM UN Migration, 28/06/2016, <https://www.iom.int/news/securing-womens-land-and-property-rights-nepal>

BARRIERS FOR WOMEN IN PROPERTY AND ASSETS

The government in India has been undertaking several initiatives to improve women's access

to property and assets through different policies and legal measures. In doing so, these policies and laws try and address the many barriers that impede women's access to and retention of assets. These are summarised below.

| Concerns | Barriers |
|--|--|
| Legal protection | <ul style="list-style-type: none"> • Lack of legal awareness about their inheritance rights and reluctance to inherit property from family members • Complicated inheritance laws that vary by factors such as marital status, religion, region, community norms etc. • Absence of documentation and cumbersome/long-winded and expensive processes that restrict women's access to property |
| Societal norms and gender stereotyping | <ul style="list-style-type: none"> • Stereotypes and cultural norms that further inheritance of property and assets to only male children • Customary practices and institutional barriers like dowry that do not allow women to own or inherit property, or if so inherited or owned, still mandate their control through male members • Male-dominated local administrative offices that discomfit women prone to certain cultural barriers, preventing them from seeking information or accessing their rights • Absence of adequate socio-legal support to women who decide to stand up against societal norms |
| Education/General awareness | <ul style="list-style-type: none"> • Inability to read and write, or understand their rights over property and assets • Excessive paperwork in accessing or registering property that may be intimidating, particularly to illiterate and/or rural women |

PROPERTY AND ASSETS SCHEMES – TRENDS

Property and asset ownership is seen as a major empowerment tool for marginalised groups, including women, as it gives such people increased bargaining power through collateral as well as becoming a source of income generation. Government interventions in India have addressed this issue through both schemes and policies as well as through legislation which empower women to be an equal partner in asset ownership. In many cases, the government also put in place steps to incentivise ownership of property by women as a way of empowering them.

The central legislations on stamp duties and equal ownership of assets for Hindu women are examples of how the government has used law as a means of empowering women. In terms of schemes, there exist many central and state schemes which promote asset ownership among women, many directed at subgroups such as scheduled castes and/or scheduled tribes or farmers. At the state

level, multiple schemes targeted at farmers and agricultural labourers are seen to exist across states. While some promote ownership of land itself (mainly through housing schemes), a large number of them promote access to equipment and machinery. This may also be linked, in some cases, to subsidies which ties in with expanding financial inclusion among beneficiaries as well. The primary central scheme promoting asset ownership is the Pradhan Mantri Awas Yojana (PMAY) which has both urban and rural components. The rural component of the scheme has a higher focus within the government, primarily due to the number of beneficiaries directly impacted by the scheme. However, despite the government's commitment to the scheme, the budget of PMAY (rural) has seen a dip, with an allocation in 2019-20 of Rs. 19,000 crore against Rs. 22,572 crores in 2017-18.⁹ Even so, the expenditure under PMAY as a percentage of available funds has increased over the years, indicating the government's strong focus on the implementation of the scheme.

A long list of schemes that promote women's access to property and assets can be found below.

⁹ Demand for Grants 2019-20 Analysis -Rural Development, PRS India <http://www.prsindia.org/parliamenttrack/budgets/demand-grants-analysis-rural-development>;

PROPERTY AND ASSETS SCHEMES – NATIONAL LEVEL

| Policy Name | Focus Area | Target Group | Geographical Reach | Longwe Framework Bucket | Past Evaluations |
|---|--|--|--------------------|--|--|
| Sub Mission on Agricultural Mechanisation (SMAM) : This is one of the four sub-missions under the National Mission for Agricultural Expansion | Promoting farm mechanisation through subsidies for procurement of agri-machinery and equipment | Rural entrepreneurs, progressive farmers and SHGS Not specific to women | National | Access | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |
| Pradhan Mantri Awas Yojana- Gramin | Housing for rural poor | All the houseless and households living in zero, one or two room houses with kuchha walls or roof as per SECC data subject to some exclusions | National | Welfare (with associated impact on access) | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |
| Pradhan Mantri Awas Yojana- Urban | Housing for urban poor | Beneficiaries include Economically Weaker Section (EWS), Low-Income Groups (LIGS) and Middle Income Groups (MIGS) Not specific to women, but with provisions to enable property registration in the name of women | National | Welfare (with associated impact on access, heightened consciousness and control) | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |

| Policy Name | Focus Area | Target Group | Geographical Reach | Longwe Framework Bucket | Past Evaluations |
|----------------------------|--|-----------------------------------|--------------------|--|--|
| Hindu Succession Act, 1956 | To confer equal coparcenary rights on sons and daughters under Hindu succession laws | Women of Hindu undivided families | National | Control (with associated impact on access, heightened consciousness and participation) | <p>Does Inheritance Law Reform Improve Women's Access to Capital? (2012)¹⁰</p> <p>The study suggested that while the HSAA increased the share of assets of women who were single before the reform, the dowry system tended to deprive them of it. Parents see dowry as a substitute to ancestral property, choosing to will inheritance away from daughters who have been given dowry.</p> <p>Two other studies (i) Gender Equity and Inheritance Reform: Evidence from Rural India, Rachel E. Brulé (2012) & (ii) Report on the Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005(2013)¹¹ report similar findings that very few women ended up inheriting property as a result of the amendment. Both studies pin the absence of awareness and active recognition of women's inheritance rights as the major barrier in women inheriting property.</p> |
| Indian Stamp Act, 1899 | Stamp duty exemptions for women to reduce gender disparity in ownership of property | Women | National | Control (with associated impact on access, heightened consciousness) | <p>Concession In Registration Charges - A Case Of Gujarat, Centre for Rural Studies, NIAR (2013)¹²</p> <ul style="list-style-type: none"> The report suggests that over 70 percent of the respondents noted positive economic, social and personal change upon becoming property owners. However, only 6.6 percent of the people were aware of the stamp duty concession available to women, of which only 50 percent had knowledge of the prevailing rate. Property ownership among women was much higher in cases of general and OBC categories as compared with SC/ST categories. |

¹⁰ Does Inheritance Law Reform Improve Women's Access to Capital, Klaus Deininger, Songqing Jin, Hari K. Nagarajan, Fang Xia, <https://www.irma.ac.in/institute/others/rbi/wp2.pdf>

¹¹ The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005, Landesa Rural Development Institute, UN Women, 12/2013, <https://www.landesa.org/wp-content/uploads/hsaa-study-report.pdf>

¹² Concession in Registration Charges including Stamp Duty to Women Property Buyers: A tool for Empowerment – A Case of Gujarat, Prem Singh, Varsha Ganguly, Saroj Arora, Centre for Rural Studies, 07/2013, http://centre.lbsnaa.gov.in/cis/admin/upload/Publication_Int/Gujarat_book.pdf

PROPERTY AND ASSETS SCHEMES – STATE LEVEL

Apart from the above, some state level schemes are summarised below.

| Policy Name | Focus Area | Target Group | Geographical Reach | Longwe Framework Bucket | Past Evaluations |
|--|---|---|--------------------|--|--|
| Bhoo Odetana Yojana | Providing land ownership to women | Female land less agricultural labourer from Schedule Tribes | Karnataka | Access (with associated impact on welfare) | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |
| Farm Mechanisation Scheme | Financial assistance for the purchase of farm equipment | Farmers | Karnataka | Access | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |
| Land Purchase Scheme for Scheduled Caste/Tribe Women | Providing land ownership to women | SC women between ages 18 to 65 who do not own any agricultural land | Tamil Nadu | Access (with associated impact on welfare) | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |
| Agricultural Mechanisation Programme | Financial assistance for the purchase of farm equipment | Farmers | Tamil Nadu | Access | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |
| Land Distribution to Dalits | Provides ownership of agricultural land to women. | Landless SC women | Telangana | Access | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |
| Housing for Poor | Housing for Poor | BPL families (the property is allocated in the name of the housewife) | Telangana | Access (with associated impact on welfare, heightened consciousness and control) | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |
| Telangana Yantra Laxmi Scheme | Financial assistance for the purchase of agricultural machinery | Farmers | Telangana | Access | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |
| Rythu Radham | Financial assistance for the purchase of agricultural machinery | Farmers | Andhra Pradesh | Access | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |
| Farm Mechanisation Scheme | Financial assistance for the purchase of farm equipment | Farmers | Maharashtra | Access | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |

| Policy Name | Focus Area | Target Group | Geographical Reach | Longwe Framework Bucket | Past Evaluations |
|--------------------------|---|--|--------------------|-------------------------|--|
| Macro- Management Scheme | Financial assistance for the purchase of farm equipment | Farmers | Madhya Pradesh | Access | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |
| Kisan Anudan Yojana | Financial assistance for the purchase of farm equipment | Farmers | Madhya Pradesh | Access | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |
| Krishi Yantra | Financial assistance for the purchase of farm equipment | Small, marginal farmers, HUF proprietorship, joint co-borrower, Co-operative Societies, Trusts with minimum 2.5 acres of land and permanent source of irrigation | Uttar Pradesh | Access | Studies & evaluations on the impact or status of the scheme on women not undertaken/not readily available. |

ANALYSIS

As seen from the tables above, there exist a number of different interventions by the government which seek to promote asset and property ownership by women as a way to empower them economically. In this section, we present a brief analysis of some of the major interventions to provide an understanding of their design and ascertain their degree of success in promoting asset ownership among women. These schemes have been selected basis four factors – targeting, size, differences in design and evaluations undertaken.

Hindu Succession (Amendment) Act, 2005: The Hindu Succession (Amendment) Act, 2005 amended the Hindu Succession Act (HSA) which codified the law of succession among Hindus in India. The 2005 Amendment (HSAA) brought daughters at par with sons, with regards to rights over property inherited upon the death of a parent dying intestate. However, despite the recognition of equal rights under law, lack of awareness, socio-cultural practices such as exclusion by testamentary succession, forceful transfers, and lack of institutional support still inhibit many women from gaining access to property through inheritance. Despite the Amendment having been in force for over 14 years, women's ownership of property through inheritance has not increased significantly. State-specific research has shown certain states doing better than others; however, none of the studies have shown a significant impact on women's ownership of assets as a result of the HSAA.

PMAY – Gramin: It was launched in 2016 after restructuring the erstwhile Indira Awas Yojana. Multiple assessments of the IAY had pointed to the failures in implementation of the scheme, including leakage in beneficiaries, lack of basic facilities in houses constructed, substandard construction and shortage of funds. Based on these findings, the PMAY was launched as a successor to the IAY. PMAY aims at achieving housing for all and provides beneficiaries with subsidies to construct pucca houses. The scheme also provides additional benefits under other schemes through a convergence mechanism to ensure maximum benefits. For example, the houses can be constructed under NREGA, subsidies can be received for toilet construction under the Swachh Bharat Mission and

LPG connections can be taken through PMUY. The scheme also provides for bank loans up to Rs. 70,000 from the formal banking system in addition to Rs. 1.2 lakh provided under the scheme. While the scheme is implementation intensive, the guidelines attempt to align the incentives of different stakeholders through the use of SECC data, and involvement of Gram Panchayats and social audits. However, unlike the PMAY-Urban component includes a Credit Linked Subsidy requiring ownership of houses in the name of women (either individually or through joint ownership) for EWS/LIG families. PMAY-Gramin does not make special provisions for women; it empowers them indirectly by improving welfare and access. Given that, the scheme guidelines can probably be modified to do more for women by actively incentivising ownership in their name through additional payouts and/or other subsidies.

Indian Stamp Act, 1899: Indian Stamp Act, 1899 is an overarching national legislation which consolidates the law relating to stamp duty. Since transfer of property (other than agricultural land) and registration of deeds and documents is a concurrent list matter, both the central and state governments are competent to legislate upon the same,, and the rate at which stamp duty is levied is decided by the states. Many state governments have made rules that confer benefits on women to reduce gender disparity in ownership of property by reducing stamp duty applicable on property held by women. States such as Assam, Delhi, Haryana, Punjab, Rajasthan, Uttar Pradesh, and Uttarakhand have implemented a policy levying differential rates of stamp duty on men and women. However, since stamp duties constitute a significant share of a state government's revenue, many states have also withdrawn such concessions to women. This was witnessed in the case of Jammu and Kashmir, wherein the government abolished stamp duty on property held by women and later reversed its policy, citing reasons of substantial revenue loss. While well-intentioned, news reports and studies indicate a need for state governments to balance out the revenue loss by commensurately increasing stamp duty applicable to men or through other measures, to ensure the viability of implementing such a policy with respect to women.

(A detailed analysis of the above schemes can be found in the Annexure)

INTERNATIONAL BEST PRACTICES

Countries around the globe recognise the dogged discriminatory practices and social norms that prevent women from accessing land and property rights. Poor access to legal services and a lack of understanding of laws by women simply compound this issue. Therefore, governments everywhere are making efforts to improve the implementation of policies and ensure better enforcement of laws that guarantee women better access to and retention of, their property and assets. The following are international best practices by countries that have made efforts toward improving this indicator for women in their countries:

1. **Recognition of female inheritance of property:**

In Rwanda, the Succession law of 1999 states that all legitimate children under Rwanda's civil law shall inherit equally, without any discrimination of male and female children.¹³ Research has shown that this legal framework significantly reduced the uncertainty surrounding who inherits property, along with giving a substantial benefit to women, who otherwise would have been discriminated against. However, in Zambia, the Intestate Succession Act of 1989, was amended in 1994 to give spouses and children rights of inheritance. The Amendment supersedes customary laws but is not widely known, partly because relatives of the deceased chose to ignore the law. Prior to the adoption of the Act, customary laws governed inheritance of property for those who died without leaving a will. These customary laws were largely gender discriminatory, creating hardships particularly for those married to a spouse from a different ethnic group.¹⁴ According to this Act, surviving spouses have a life interest in and children inherit most of a deceased person's property and estate. In the case of more than one spouse, the spouses must share the life interest of the property.¹⁵

2. **Laws incentivising joint ownership of property:**

Several countries have tried innovative approaches to combating gender inequality with respect to land ownership. Nepal for instance has introduced

several measures providing for a concession in registration fee when the ownership of land is transferred in the name of a woman or is jointly held by a married couple, as well as tax exemptions for single women.¹⁶ Further, Nepalese law also mandates that property to be received by a family as part of the land reform programme is to be transferred only as joint property of the family.¹⁷ Similar reforms can be observed in Africa, such as in Rwanda and Tanzania. The former mandated through their 2008 Land Tenure Regularisation (LTR) programme that legally married wives be recognised as co-owners in title registrations, resulting in an astonishing 76 percent of married women being granted joint land ownership.¹⁸ Though not as internationally acclaimed as Rwanda, Tanzania's Land Act of 1999 also provides that when land is purchased for the occupation of a married couple, a rebuttable presumption exists that the spouses will hold the land in common and the Registrar is required to register the spouses as joint occupiers accordingly

GAPS AND RECOMMENDATIONS

Based on the above analysis, the report makes the following key recommendations:

1. **Right to inherit property (HSAA): Increasing awareness and providing legal aid**

Given that women's ownership of property through inheritance still remains low, the government could consider co-opting civil society organisations to improve awareness regarding the provisions of the law, as well as to run gender sensitisation programmes for local officers like Tehsildars. State and District Legal Aid Authorities could also work with local authorities to improve legal literacy of women and to strengthen their agency in case of property disputes.

2. **Low cost housing (PMAY - Gramin): Increasing incentives for ownership by women**

Benefits received by a family under PMAY - Gramin could be transferred as joint property of a couple, so as to ensure title ownership to the wife as well. This is likely to increase asset

¹³ A quick, cost-effective approach to land tenure regularisation: the case of Rwanda, Thierry Hoza Ngoga, International Growth Centre, <https://www.theigc.org/wp-content/uploads/2019/03/Land-tenure-regularisation-the-case-of-Rwanda-March19-FINAL.pdf>

¹⁴ http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legalframework/inheritance-legal-mechanisms/en/?country_iso3=ZMB

¹⁵ http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legalframework/inheritance-legal-mechanisms/en/?country_iso3=ZMB

¹⁶ Securing Women's Land and Property Rights in Nepal, IOM UN Migration, 28/06/2016, <https://www.iom.int/news/securing-womens-land-and-property-rights-nepal>

¹⁷ Securing Women's Land and Property Rights in Nepal, IOM UN Migration, 28/06/2016, <https://www.iom.int/news/securing-womens-land-and-property-rights-nepal>

¹⁸ Levelling The Field: Improving Opportunities for Women Farmers in Africa, The World Bank, Page 45, <http://documents.worldbank.org/curated/en/579161468007198488/pdf/860390WP0WB00N0osure0date0March0180.pdf>

ownership by women significantly. However, such a change might need additional time restrictions on transfers to avoid misuse.

3. **Lowering stamp duties: Incentivising ownership by women**

Since state governments are often worried about revenue loss when lowering duty rates, the central government could consider supplementing

the shortfall in revenue for states to promote ownership of property by women.

The government could also consider instituting conditions such as minimum holding periods during which land registered in a woman's name cannot be transferred to anyone else, so as to prevent its abuse.



Photo by Smiling at building works, Pepe Pont - Flickr

PROPERTY AND ASSETS ANNEXURE

Detailed Scheme Analysis

Hindu Succession (Amendment) Act, 2005

| | |
|--------------------|--|
| Name | Hindu Succession (Amendment) Act, 2005 |
| Type | Central Legislation |
| Focus area | To confer equal coparcenary rights on sons and daughters under Hindu succession laws |
| Target group | Women of Hindu Undivided Families |
| Geographical reach | National |
| Scheme size | NA |
| Past evaluations | <p>Does Inheritance Law Reform Improve Women's Access to Capital? Evidence from Urban India, by Klaus Deininger, Songqing Jin, Hari K. Nagarajan, Fang Xia, the World Bank, United States of America Department of AFRE, Michigan State University, United States of America Institute of Rural Management Anand (IRMA), India (2012) [LINK]</p> <p>Gender Equity and Inheritance Reform: Evidence from Rural India, Rachel E. Brulé (2012) [LINK]</p> <p>Report on the Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005 - In the context of Women Agricultural Producers of Andhra Pradesh, Bihar and Madhya Pradesh, by Landesa (2013) [LINK]</p> |

BACKGROUND AND OBJECTIVE

The Hindu Succession Act (hereinafter "HSA") was enacted in 1956 to codify the law of intestate succession among Hindus. The Act lays down a uniform and comprehensive system of inheritance and applies to every person who is a Hindu (including Buddhists, Jains and Sikhs) and to any other person who is not a Muslim, Christian, Parsi or Jew by religion. Given its applicability on the majority community, the Act covers a large number of beneficiaries as opposed to inheritance laws relating to any other community.

The Hindu Succession (Amendment) Act, 2005 (hereinafter "HSAA") was passed to create legislative equality in the Act's treatment of men and women and reflect social evolution.¹⁹ The HSAA conferred on women the right to be co-owner and equal claimant in respect of a dwelling house, and the right to claim as widow after remarriage.

EVOLUTION OF THE ACT

The most significant amendment modified provisions contained in Section 6 pertaining to devolution of interest of coparcenary property. This section was made gender neutral by conferring the same rights on a daughter as that of a son to be

a co-owner and claim equal shares in a property. Additionally, the Amending Act repealed Sections 23 and 24, which precluded women from claiming partition of a dwelling house and debarred certain remarried widows from inheritance, respectively. The Delhi High Court further interpreted the amendment to include the right of women to be 'Kartas'.

The earliest legislation bringing females into the scheme of inheritance was the Hindu Law of Inheritance Act, 1929. Subsequently, the Hindu Women's Right to Property Act, 1937 brought significant changes in the law of partition, alienation of property, inheritance and adoption. Although better rights were given to women in respect of property, it was found to be incoherent and defective in many respects.²⁰ The HSA was then enacted to resolve these issues. The 1956 Act clarified that the death of a man would result in a deemed partition of his share in the joint property, which would then be distributed equally among his children and widow. However, the HSA, too, was realised to have discriminatory provisions given how ancestral property²¹ continued to be inherited by sons alone, with daughters (considered members of the Hindu Undivided Family (HUF), and not coparceners) having no part in it.²²

This resulted in many states, such as Kerala (1976), Andhra Pradesh (1986), Tamil Nadu (1989), Karnataka (1994) and Maharashtra (1994) enacting state-level

¹⁹ 7th Report, The Hindu Succession (Amendment) Bill, 2004, Department Related Standing Committee on Personnel, Public Grievances, Law and Justice, 13/05/2005, <http://164.100.47.5/rs/book2/reports/personnel/7threport.htm>

²⁰ 7th Report, The Hindu Succession (Amendment) Bill, 2004, Department Related Standing Committee on Personnel, Public Grievances, Law and Justice, 13/05/2005, <http://164.100.47.5/rs/book2/reports/personnel/7threport.htm>

²¹ Note: Under the Hindu law, property is divided into two types: ancestral and self-acquired. Ancestral property is defined as one that is inherited up to four generations of male lineage and should have remained undivided throughout this period.

²² 7th Report, The Hindu Succession (Amendment) Bill, 2004, Department Related Standing Committee on Personnel, Public Grievances, Law and Justice, 13/05/2005, <http://164.100.47.5/rs/book2/reports/personnel/7threport.htm>

enactments in order to make the law on inheritance more gender-neutral. The Law Commission of India, in its 174th report, took cognizance of the gender discrimination embedded in Hindu Succession laws and recommended that the law be amended to reflect gender parity.²³ Thereafter, the HSA was amended in 2005 and is the latest amendment to the Act thus far. For the purpose of this analysis on succession laws, HSA will be analysed for its 2005 Amendment, wherein the rights of daughters were extended to bring them at par with that of sons.

POLICY DESIGN

As per the Act, upon the death of a Hindu, who dies intestate, the rights in his or her property devolve equally upon the son and daughter. Most changes in rights over land take place due to inheritance, especially in the rural areas.²⁴ The general practice is to register the property in the name of the eldest person as the head of the Joint Hindu Family,²⁵ known as the 'Karta'. The property of a person who dies intestate is passed on to his/her legal heirs as the joint owners. These joint owners are known as coparceners. Coparceners hold property as co-sharers whose shares are not divided, unless a partition of the property is claimed by any coparcener. Each holder has equal rights to this property. Before the 2005 Amendment was passed, women had limited rights over the property they inherited; post the Amendment women have equal rights over inherited property. They are coparceners by birth, and, as per a recent holding by the Delhi High Court, can be the Karta of a Joint Hindu Family.

However, despite the enactment of HSAA, the law on inheritance still espouses certain discriminatory provisions and the order of succession differs

between men and women, especially with respect to the property inherited from parents and in-laws.

POLICY ANALYSIS

Below, we have mapped the Act to an analysis structure that combines the Longwe Gender Analysis Framework and supplements it with the two lenses on policy design discussed previously - Alignment of Incentives and Implementation Intensity.

Welfare

The HSAA does not directly address the issue of Welfare.

Access

The HSAA guarantees women greater rights over inherited property, thereby increasing their access to property. Thus, it is marked 'Positive' on Access.

Heightened Consciousness

By placing women at par with men in terms of inheritance of property, the HSAA aids Heightened Consciousness.

Participation

The law, by allowing women to be coparceners and Kartas, empowers them to claim partition and make important decisions on behalf of the family. Thus, it is marked 'Positive' on Participation.

| Levels of Recognition/ Levels of Equality | Negative | Neutral | Positive | State Capacity/ Implementation Intensity | Alignment of Incentives |
|--|----------|---------|----------|--|-------------------------|
| Control | | | | Low | Misaligned |
| Participation | | | | | |
| Heightened Consciousness | | | | | |
| Access | | | | | |
| Welfare | | | | | |

²³ 174th Report, Property Rights of Women: Proposed reforms under the Hindu Law, Law Commission of India, 05/2000, <http://www.lawcommissionofindia.nic.in/kerala.htm#chapter2>

²⁴ The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005, Landesa Rural Development Institute, UN Women, 12/2013, <https://www.landesa.org/wp-content/uploads/hsaa-study-report.pdf>

²⁵ The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005, Landesa Rural Development Institute, UN Women, 12/2013, <https://www.landesa.org/wp-content/uploads/hsaa-study-report.pdf>

Control

The HSAA gives equal control over inherited property to women. Thus, it is marked 'Positive' on Control.

State Capacity/Implementation Intensity

The HSA is a central legislation and confers nothing more than a right of ownership. As such, it does not create a general monitoring obligation on the state or the centre. Implementation is carried out by way of local authorities like Tehsildars²⁶ (at the administrative level) or by courts, though only in cases where a dispute has been raised.²⁷ For these reasons, state capability to implement is marked as low.

Alignment of Incentives

The attempt at creating legislative equality receives resistance because of the socio-cultural ethos of the land, which is characterised by the deeply rooted notions of male dominance. These factors are explained in brief:

- **Reluctance to demand inheritance** - Women are often scared of demanding inheritance, since this would be a drastic departure from social norms, and may invite rebuke or severing of family ties;²⁸
- **Exclusion by will** - Despite the law being made more gender-neutral, parents often tend to disinherit daughters by way of wills. According to the report of a working group of the Planning Commission on Women's Agency and Child Rights for the Twelfth Five Year Plan, "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".²⁹ A study by Rachel Brule³⁰ conducted in the state of Andhra Pradesh, corroborated this, as it was observed that there was an increase in the registration of oral wills which often excluded or disempowered women, post 2005;

- **Dowry** - The practice of dowry is very entrenched in India's culture, with parents often providing their daughter and her in-laws with a lot of gifts (including movable and immovable property) at the time of her marriage. As a convention/social practice, dowry remains unquestioned in many parts of India, with parents often using it as an alibi to fulfil their moral and financial responsibilities towards the girl child. A 2013 Landesa Report records that many families see bridal dowry as a substitute for land and other properties in inheritance, denying the women social and economic equality within the family.³¹
- **Forceful transfers** - Reports by Supreme Court Senior Advocate & former Law Commission member, Ms. Kirti Singh (2012)³² and Dr. N.C. Saxena for UN Women (2015)³³ observed that where women, do receive a share in the property through inheritance, they are often forced to give it up in favour of male members of the family or defer to them.
- **Lack of awareness, recognition and institutional support** - Subordination and seclusion of women were found to be one of the major reasons behind women lacking the knowledge, resources and/or power to gain control over resources.³⁴ As the 2013 study conducted by Landesa noted, many women lack awareness about their right to inherit property. Most of the men interviewed for the survey, including religious leaders, did not recognise the existence of any such right.³⁵ Furthermore, and most importantly, the local

²⁶ Note: The Tehsildar occupies the lowest position of administrative responsibility capable of exercising executive power, and is a representative of the land administration under the state. S/he is responsible for property registration of moveable and immoveable property, including agricultural land. As such, s/he is also the first authority to hear appeals in the case of any disputes arising from the same. Therefore, the Tehsildar can be said to carry a certain level of responsibility in handling land claims, including those under the HSAA.

²⁷ Basis stakeholder conversations with Adv. Sriram Parakkat, Adocate on Record, Supreme Court of India.

²⁸ Gender Equity and Inheritance Reform: Evidence from Rural India, Rachel E Brule, 06/09/2012, https://rachelbrule.files.wordpress.com/2012/09/brule_paper1_final.pdf

²⁹ Report of the Steering Committee on Women's Agency and Child Rights for The Twelfth Five Year Plan (2012-2017), Planning Commission of India, http://planningcommission.gov.in/aboutus/committee/strgrp12/str_womagency_childrights.pdf

³⁰ Gender Equity and Inheritance Reform: Evidence from Rural India, Rachel E Brule, 06/09/2012, https://rachelbrule.files.wordpress.com/2012/09/brule_paper1_final.pdf

³¹ The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005, Landesa Rural Development Institute, UN Women, 12/2013, <https://www.landesa.org/wp-content/uploads/hsaa-study-report.pdf>

³² Man's world, legally, Kirti Singh, Frontline, 28/07/2012, <https://frontline.thehindu.com/static/html/fl2915/stories/20120810291502200.htm>

³³ Women, Land and Agriculture in Rural India, Dr. Naresh C. Saxena, UN Women, 2012, http://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

³⁴ Women, Land and Agriculture in Rural India, Dr. Naresh C. Saxena, UN Women, 2012, http://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

³⁵ The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005, Landesa Rural Development Institute, UN Women, 12/2013, <https://www.landesa.org/wp-content/uploads/hsaa-study-report.pdf>

officers charged with handling the property were also equally unaware/misinformed. It was observed that women are often refused institutional support for inheritance claims.³⁶

PROGRESS IN IMPLEMENTATION

The Amendment has been in force for nearly 14 years, yet, studies conducted by various organisations show little progress in terms of increase in ownership of property by women. Some studies even express scepticism over the Act's effectiveness since these new legal rights have given impetus for new forms of legal manipulation.³⁷ Most studies are carried out in specific states and do not have nation-wide coverage. The figures of state-specific research vary, although not significantly, since land administration and processes to inherit land may be different in each state.

In a study conducted by Landesa,³⁸ in the context of women agricultural producers of Andhra Pradesh, Bihar, and Madhya Pradesh, it was observed that only 19 percent of women, eligible for inheritance after the 2005 Amendment, actually owned land with documents that include their names, and even the ones that inherit land, do not receive an equal share. It attributed inefficacy of the law to factors such as lack of legal knowledge, patriarchal social norms and attitudes, lack of formal documentation, limited interaction with government officials, perceptions of vulnerability to losing land, and lack of equal authority regarding decisions on land use. Other such reports,³⁹ covering different states, have yielded similar findings regarding women's ownership of property.

However, in their paper, Deininger, Goyal, and Nagarajan,⁴⁰ use data from the 2006 nationally

representative Rural Economic and Demographic Survey, and observed that while the 2005 amendment did not fully eliminate the underlying inequality, it increased women's likelihood of inheriting land by 22 percent. Even in cases where the actual inheritance is not yet observed, the fact that a woman can expect to inherit property may increase her bargaining power or affect her marital prospects. The research also suggests a link between this increase in bargaining power and increased age of marriage as well as 0.3 years of more education for girls.

EVALUATIONS UNDERTAKEN

There are no evaluations of the Hindu Succession (Amendment) Act, 2005 undertaken by any department of the Government of India. However, there are several surveys and reports that have been conducted/authored by different organisations.

Deininger, Goyal, and Nagarajan⁴¹ suggest that the HSAA increased the share of assets of women who were single before the reform, however, due to the prevailing dowry system, the Act lost potency since fathers tended to will away property from daughters, as dowry was considered a compensation for the same. Landesa⁴² and Rachel E. Brulé⁴³ suggest that very few women ended up inheriting property as a result of the Amendment. Both studies pin the absence of awareness and active recognition of women's inheritance rights as the major barrier in women inheriting property.

All studies agree that prevailing socio-cultural practices heavily undermine any legislative reform aimed at increasing women's access to and ownership of property.

³⁶ The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005, Landesa Rural Development Institute, UN Women, 12/2013, <https://www.landesa.org/wp-content/uploads/hsaa-study-report.pdf>

³⁷ Gender Equity and Inheritance Reform: Evidence from Rural India, Rachel E Brule, 06/09/2012, https://rachelbrule.files.wordpress.com/2012/09/brule_paper1_final.pdf; The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005, Landesa Rural Development Institute, UN Women, 12/2013, <https://www.landesa.org/wp-content/uploads/hsaa-study-report.pdf>; Man's world, legally, Kirti Singh, Frontline, 28/07/2012, <https://frontline.thehindu.com/static/html/fl2915/stories/20120810291502200.htm>

³⁸ The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005, Landesa Rural Development Institute, UN Women, 12/2013, <https://www.landesa.org/wp-content/uploads/hsaa-study-report.pdf>

³⁹ The fog of entitlement: Women and land in India, Dr. Govind Kelkar, 2013, <https://www.landesa.org/wp-content/uploads/The-Fog-of-Entitlement-Women-and-Land-in-India-261-Kelkar.pdf>; Are we not peasants too? Land rights and women's claims in India, Bina Agarwal, 2002, <http://ccc.uchicago.edu/docs/AreWeNotPeasantsToo.pdf>; Does Inheritance Law Reform Improve Women's Access to Capital, Klaus Deininger, Songqing Jin, Hari K. Nagarajan, Fang Xia, <https://www.irma.ac.in/institute/others/rbi/wp2.pdf>

⁴⁰ Does Inheritance Law Reform Improve Women's Access to Capital, Klaus Deininger, Songqing Jin, Hari K. Nagarajan, Fang Xia, <https://www.irma.ac.in/institute/others/rbi/wp2.pdf>

⁴¹ Does Inheritance Law Reform Improve Women's Access to Capital, Klaus Deininger, Songqing Jin, Hari K. Nagarajan, Fang Xia, <https://www.irma.ac.in/institute/others/rbi/wp2.pdf>

⁴² The Formal and Informal Barriers in the Implementation of the Hindu Succession (Amendment) Act 2005, Landesa Rural Development Institute, UN Women, 12/2013, <https://www.landesa.org/wp-content/uploads/hsaa-study-report.pdf>

⁴³ Gender Equity and Inheritance Reform: Evidence from Rural India, Rachel E Brule, 06/09/2012, https://rachelbrule.files.wordpress.com/2012/09/brule_paper1_final.pdf

CONCLUDING NOTE

The 2005 Amendment is definitely a step in the direction of reducing the gap between men and women with respect to inheritance of property. However, reports show little improvement in the percentage of Hindu women acquiring property through inheritance. Despite the amendment, laws on inheritance still espouse certain discriminatory provisions. The HSA must, therefore, be further amended and made completely gender neutral.

Further, stakeholder interactions and secondary research indicate that the progress made by the HSAA has been inadequate due to the presence of several barriers in effective implementation. These barriers may be countered through (i) increasing legal literacy and ensuring legal support services to women; (ii) keeping regular records of women's shares in land; (iii) providing social support for women from outside the family and; (iv); changing social attitudes through gender sensitisation, particularly at the community and local administrative level.

Pradhan Mantri Awas Yojana (Gramin)

| | |
|--------------------|--|
| Name | Pradhan Mantri Awas Yojana (Gramin) |
| Type | Centrally Sponsored Scheme (central and state governments in the ratio 60:40 in plain areas and 90:10 for north eastern and hilly states) |
| Focus area | Providing pucca houses with basic amenities to houseless people and those living in kutcha houses |
| Target group | All the houseless and households living in zero, one or two room houses with kuchha walls or roof as per SECC data, subject to some exclusions |
| Geographical reach | National |
| Scheme size | Union Budget 2019-20: Rs. 19,000 crore ⁴⁴ Funds released 2018-19: Rs. 19,900 crore ⁴⁵ |
| Past evaluations | No evaluations of PMAY have been published so far |

BACKGROUND AND OBJECTIVE

The Ministry of Rural Development has been administering the PMAY (Gramin) since its restructuring. PMAY-G is structured as a centrally sponsored scheme with a minority funding component resting with the states. The objective of the PMAY (Gramin) is to provide pucca houses, with basic amenities, to the houseless and those living in dilapidated houses in rural areas, by 2022. In order to achieve this objective, financial assistance is provided for the construction of pucca houses.

EVOLUTION OF THE ACT

The precursor to the PMAY is the Indira Awas Yojana (IAY) which was earlier a part of the

Rural Landless Employment Guarantee Programme since 1985. It was then made into a component of the Jawahar Rozgar Yojana⁴⁶ in 1989 before being declared as an independent scheme in 1996.⁴⁷ A Planning Commission impact evaluation report in 2013 made many observations about IAY including poor awareness and inadequate funds, while also noting that livestock possession among beneficiaries increased across the states, while sources of income stagnated.⁴⁸ A key observation made in the report was about the poor facilities (sanitation, clean fuel) in the IAY houses, with the report recommending changes in the guidelines followed for construction.⁴⁹ Further, a Comptroller and Auditor General (CAG) report in 2014 also made vital observations, such as leakage in terms of beneficiaries, substandard construction quality, and leakage of funds allotted for the programme. A key observation made was that while the scheme aimed for convergence with other

⁴⁴ Demand 82 of Budget 2019-20, Ministry of Rural Development, Government of India, [https://www.indiabudget.gov.in/budget2019-20\(l\)/ub2019-20/eb/sbe82.pdf](https://www.indiabudget.gov.in/budget2019-20(l)/ub2019-20/eb/sbe82.pdf)

⁴⁵ Demand 82 of Budget 2019-20, Ministry of Rural Development, Government of India, [https://www.indiabudget.gov.in/budget2019-20\(l\)/ub2019-20/eb/sbe82.pdf](https://www.indiabudget.gov.in/budget2019-20(l)/ub2019-20/eb/sbe82.pdf)

⁴⁶ Report 216: Evaluation Study of Indira Awas Yojana, Planning Commission of India, 2013, https://niti.gov.in/planningcommission.gov.in/docs/reports/peoreport/peo/peo_iay.pdf

⁴⁷ Framework for Implementation: Pradhan Mantri Awas Yojana – Gramin, Ministry of Rural Development of India, 2016, https://pmayg.nic.in/netiay/Uploaded/English_Book_Final.pdf

⁴⁸ Report 216: Evaluation Study of Indira Awas Yojana, Planning Commission of India, 2013, https://niti.gov.in/planningcommission.gov.in/docs/reports/peoreport/peo/peo_iay.pdf

⁴⁹ Report 216: Evaluation Study of Indira Awas Yojana, Planning Commission of India, 2013, https://niti.gov.in/planningcommission.gov.in/docs/reports/peoreport/peo/peo_iay.pdf

schemes, these guidelines were not followed on the ground. Monitoring and evaluation through the MIS was also poorly done.⁵⁰

Based on these reports and multiple recommendations, the IAY was restructured in 2016 into the PMAY in its present form, and currently has an urban and rural component to address housing needs across the country. For the purpose of this analysis, the rural component (Gramin) will be considered due to the number of beneficiaries targeted under it, as opposed to its urban counterpart, and PMAY in this document will refer to the rural component.

POLICY DESIGN

The Ministry of Rural Development (MoRD), under Government of India funds the scheme which is implemented by the states. States prepare Annual Action Plans (AAP) and submit it to the MoRD. The AAPs are comprehensive documents and include details of the roadmap proposed by the states for time-bound completion of the sanctioned houses, as well as explain the convergence with other schemes. Once the AAPs reach the central government, an Empowered Committee scrutinises and approves them based on a number of parameters including budgets, activities planned and timelines. The process laid down is explained below.

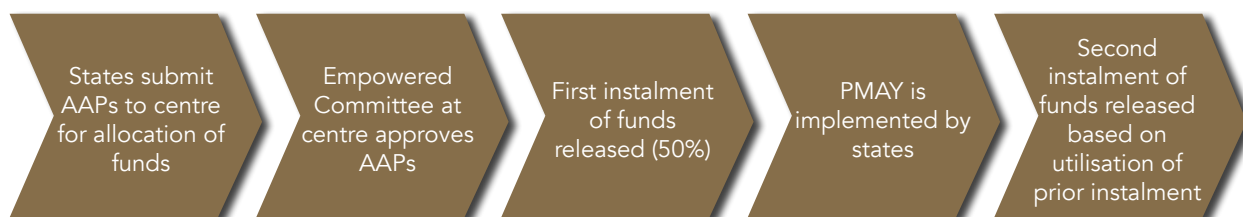


Figure: Process of implementation of PMAY and release of funds

The scheme guidelines lay out the implementation support mechanism, wherein a National Technical Support Agency (NTSA) for rural housing has been setup. The NTSA's responsibilities are quite broad, and range from monitoring & implementation, Information, Education and Communication (IEC) activities, data analytics, conducting training workshops, to planning and designing houses for each state depending on the geography of the state.⁵¹ At the state level, there may be technical support institutions which aid beneficiaries in construction of houses, however, it appears that such units aren't mandated by the guidelines. To

ensure implementation at the state level, states are to setup State Programme Management Units to supervise construction and monitor activities under the scheme, and ensure effective implementation. A similar unit at the district and blocks levels is also setup according to the scheme guidelines.⁵² Apart from this, states are also supposed to constitute committees at the state and district levels to ensure PMAY's implementation and general oversight.

The scheme places considerable responsibility on gram panchayats (GP) for the implementation of the scheme. This is summarised in the figure below.



Figure: Role played by Gram Panchayats in the PMAY

⁵⁰ Performance Audit of Indira Awaas Yojana, Comptroller and Auditor General of India, 2014, https://cag.gov.in/sites/default/files/audit_report_files/Union_Performance_Indira_Awaas_Yojana%20_37_2014.pdf

⁵¹ Framework for Implementation: Pradhan Mantri Awaas Yojana – Gramin, Ministry of Rural Development of India, 2016, https://pmayg.nic.in/netiay/Uploaded/English_Book_Final.pdf

⁵² Framework for Implementation: Pradhan Mantri Awaas Yojana – Gramin, Ministry of Rural Development of India, 2016, https://pmayg.nic.in/netiay/Uploaded/English_Book_Final.pdf

Since a large part of the implementation responsibilities rest on the GP, the state governments orient them to fulfill these roles effectively. This includes training and capacity building, provision of requisite IEC material, provision of administrative expenses, etc. SHGs created under various government interventions, including the National Rural Livelihoods Mission (NRLM) also play a vital role in spreading awareness about the scheme, in construction activities and w.r.t conducting social audits.

The PMAY modified key features of the IAY when it was restructured. The area of houses was increased from 20 sqm to 25 sqm, with a dedicated area for cooking. It also enhanced unit assistance from Rs. 70,000 to Rs. 1.2 lakh in the plains, and from Rs. 75,000 to Rs. 1.3 lakh in the hilly states. The beneficiaries are also facilitated in accessing loans of upto Rs. 70,000 from banks. These are apart from the other assistance provided through convergence with other schemes. For instance, toilets in the houses can be constructed using the benefits under the Swachch Bharat Mission, drinking water connections can be provided under the National Rural Drinking Water programme and so on. To ensure this is done, the guidelines task the state and district level committees with conducting periodical reviews on this aspect of the scheme. The guidelines also require that the house be constructed by the beneficiary himself/herself or under his/her supervision. The use of contractors is disallowed.

The scheme also reserves 5 percent of the central allocation for special projects proposed by states, which may include rehabilitation of people due to law and order problems or disasters, and settlement of families affected by various issues such as border problems or occupational hazards.⁵³

POLICY ANALYSIS

Below, we have mapped the PMAY to an analysis structure that combines the Longwe Gender Analysis Framework and supplements it with the two lenses on policy design discussed previously - Alignment of Incentives and Implementation Intensity.

Welfare

PMAY provides beneficiaries with housing and shelter which is a material improvement for them. However, the scheme does not directly target women, except giving priority to female headed households in beneficiary identification.⁵⁴ Hence, it is marked 'Neutral' on Welfare.

Access

By providing access to house ownership to the identified poor, PMAY increases beneficiaries' access to collateral in terms of assets. However, since the scheme does not target women specifically, it is marked 'Neutral' on Access.

Heightened Consciousness

PMAY has no component directly addressing the issue of Heightened Consciousness.

Participation

PMAY has no component directly addressing the issue of Participation.

Control

PMAY has no component directly addressing the issue of Control.

| Levels of Recognition/ Levels of Equality | Negative | Neutral | Positive | State Capacity/ Implementation Intensity | Alignment of Incentives |
|--|----------|---------|----------|--|-------------------------|
| Control | | | | High | Somewhat Aligned |
| Participation | | | | | |
| Heightened Consciousness | | | | | |
| Access | | | | | |
| Welfare | | | | | |

⁵³ Framework for Implementation: Pradhan Mantri Awaas Yojana – Gramin, Ministry of Rural Development of India, 2016, https://pmayg.nic.in/netiay/Uploaded/English_Book_Final.pdf

⁵⁴ Unlike PMAY-G, the urban counterpart of PMAY makes ownership by women (either independently or jointly) mandatory for EWS/LIG categories for availing loans under the Credit Link Subsidy Scheme

State Capacity/Implementation Intensity

As a scheme, PMAY is implementation intensive and requires strong state capability to implement, mainly on account of the following reasons:

- **Beneficiary identification** - The scheme guidelines state that beneficiaries are first identified through data from the SECC's housing deprivation parameters, which are then verified by Gram Sabhas. The process also includes creating a priority list of the eligible households. Once this is done and the Gram Sabhas identify the beneficiaries, they have to forward the list to the Block Development Officer (BDO) or the authority incharge. Such lists are then publicised in GPs for a one week, followed by a 15 day period for filing objections (wrongful deletions or change in priority ranking without due process). Any complaints are then looked into by a separate authority at the district level. Once this is done, wait lists and selected lists are prepared and targets are set under the scheme. Due to the discretion available to officers in the government and verification processes involved in Gram Sabhas, the scheme is prone to collusion and corruption. In any case, the entire process requires high state capacity for effective execution and is implementation intensive.
- **Support services** - The scheme guidelines have a detailed list of support services to beneficiaries, ranging from sensitisation and awareness campaigns about the scheme, assistance for construction and bank loans, designs of houses suited to the region and geography and so on. The states are also responsible for facilitating interactions with other departments for the convergence aspect of the scheme. All of these activities require high state capacity in order to be implemented effectively.
- **Monitoring** - Given the geographic scale and magnitude of the resources and activities to be supported by PMAY, it requires rigorous monitoring to measure the success in implementation. While some aspects can be done remotely, it places significant administrative load on the government due to the sheer scale

of the scheme. The MIS setup for monitoring the progress has to be updated with periodical data which has to be gathered from the ground, adding to the burden of the local government. Further, the scheme adds to the responsibilities of the Social Audit Unit under NREGA since they are also tasked with auditing PMAY.

Alignment of Incentives

The key stakeholders in the implementation of the scheme are the beneficiaries, the Gram Panchayats, BDOs and other officials involved in the identifying beneficiaries and monitoring, as well as the people charged with construction of houses. While there is a strong incentive to collude and direct funds to non-deserving parties, the use of SECC data, the involvement of Gram Panchayat's in finalising lists, and the availability of a complaints mechanism is likely to check collusion. Needless to say, the inter-caste hierarchy and other power dynamics in villages may still lead to leakages.

The fact that contractors are disallowed and houses are required to be constructed by the beneficiaries themselves and/or under their supervision, also helps reduce leakages. The use of social audits adds to quality control. The payouts also involve multiple instalments (to be decided by individual states), which are disbursed from the state's nodal agency bank account on verification of a certain level of construction. To prevent diversion of funds to other family needs, the guidelines also set a time limit on the construction of houses.

PROGRESS IN IMPLEMENTATION

Having been restructured in 2016, the scheme as it stands is relatively new. Budget allocations for the same since its launch are shown in the table below:

The 2019-20 interim budget also included a Rs. 2,500 crore component of interest to NABARD for financing of the scheme.⁵⁶ The Centre for Budget and Governance Accountability's report on the PMAY budget in 2019-20 states that while allocations have been lower than what was planned, expenditure as a

| Year | Budget Estimates | Expenditure |
|---------|------------------|------------------------|
| 2016-17 | 15,000 crore | 16,070 crore (actuals) |
| 2017-18 | 23,000 crore | 22,572 crore (actuals) |
| 2018-19 | 21,000 crore | 19,900 crore (RE) |
| 2019-20 | 19,000 crore | NA |

Source: Yearly expenditure budgets of the Union Government⁵⁵

⁵⁵ Expenditure Budget, Ministry of Finance, Government of India, <https://www.indiabudget.gov.in/>

⁵⁶ Expenditure Budget 2019-20, Ministry of Finance, Government of India, <https://www.indiabudget.gov.in/ub2019-20/eb/sbe82.pdf>

percentage of available funds has increased over the years, and indicated that budget allocations need to be increased.⁵⁷

A release by the government also gives the statistics on the number of houses constructed, and these

are presented below (note that houses completed under IAY after launch of PMAY were sanctioned in or before 2015-16).

| Year | Houses completed under IAY (in lakh) | Houses completed under PMAY (in lakh) | Total Houses Completed (in lakh) |
|---------|--------------------------------------|---------------------------------------|----------------------------------|
| 2014-15 | 11.93 | NA | 11.93 |
| 2015-16 | 18.23 | NA | 18.23 |
| 2016-17 | 32.12 | 0.02 | 32.14 |
| 2017-18 | 6.36 | 38.18 | 44.54 |
| 2018-19 | 1.06 | 5.34 | 6.4 |
| Total | 69.7 | 43.54 | 113.24 |

Source: PIB release by MoRD, GoI⁵⁸

EVALUATIONS UNDERTAKEN

While there are many evaluations of IAY, no published evaluations on the PMAY have been undertaken till date.

CONCLUDING NOTE

The above indicates that while the scheme has achieved a considerable portion of its target in terms of houses built, its success is yet to be determined through a rigorous independent

evaluation. However, an analysis of the design suggests that the scheme built on the weaknesses of its predecessor, the IAY, and has made an attempt to rectify the mistakes made in its implementation, and resulted in convergence across schemes and stronger monitoring. While the scheme does not specifically target women, it improves their welfare and access by providing pucca dwellings to households. Having said that, the scheme guidelines can probably be modified to do more for women by actively incentivising ownership in their name through additional payouts and/or other subsidies.

Indian Stamp Act, 1899

| | |
|--------------------|--|
| Name | Indian Stamp Act, 1899 |
| Type | Central Legislation |
| Focus area | Stamp duty exemptions for women to reduce gender disparity in ownership of property |
| Target group | Women |
| Geographical reach | National |
| Scheme size | NA |
| Past evaluations | Concession In Registration Charges Including Stamp duty to Women Property Buyers: A Tool For Empowerment- A Case Of Gujarat, Prem Singh, Varsha Ganguly, & Saroj Arora, Centre for Rural Studies, NIAR (2013) [LINK] |

⁵⁷ Numbers that count: An assessment of the Union Budgets of NDA II, Centre for Budget and Governance Accountability, 02/2019, <http://www.cbgaIndia.org/wp-content/uploads/2019/02/Numbers-That-Count-An-Assessment-of-the-Union-Budgets-of-NDA-II-1.pdf>

⁵⁸ 1.07 crore rural houses constructed over the last four years under Pradhan Mantri Awaas Yojana – Gramin with the objective of “Housing for All by 2022”, Ministry of Rural Development, Government of India, 01/08/2018, <http://www.pib.nic.in/Pressreleaseshare.aspx?PRID=1541010>

BACKGROUND AND OBJECTIVE

The Indian Stamp Act, 1899 (hereinafter “ISA” or “the Act”) was enacted with a three-fold objective of:

1. Raising revenue by taxing instruments;
2. Penalising by rendering an unduly stamped instrument, to be inadmissible in evidence and;
3. Penalising evasions of Stamp duty.⁵⁹

The ISA is a central legislation and provides a broad framework for achieving its objectives. State governments are empowered to make rules to carry out the purpose of the Act. The text of the Act does not provide concessions to women on stamp duty. It is the state governments which do so, though state-level actions.

EVOLUTION OF THE ACT

The ISA was enacted in 1899. It has been amended several times with the latest amendment being passed in 2019. Since transfer of property (other than agricultural land) and registration of deeds and documents is a concurrent list matter,⁶⁰ both the central and state governments are competent to legislate upon the same. Under the scheme of ISA, many state governments have made rules that confer benefits on women to reduce gender disparity in ownership of property by reducing stamp duty applicable on the property held by women. States such as Delhi, Haryana, Assam, Punjab, Rajasthan, Uttar Pradesh, and Uttarakhand have implemented a policy levying differential rates of stamp duty on men and women. Certain states also introduced policies to the same effect, however, withdrew the conferred benefit at a later stage. These states

include Arunachal Pradesh, Jammu and Kashmir, and Madhya Pradesh. A minority of states have made no such rules benefitting women. These states include Andhra Pradesh, Bihar, Maharashtra, Karnataka, Kerala, Tamil Nadu, Tripura and West Bengal and union territories like Andaman & Nicobar and Daman & Diu.

POLICY DESIGN

Payment of stamp duty is a mandatory step in the process of registering a property. Once the instrument for a transaction is drafted, stamp duty is to be paid to the government-authorized collection centre. The rate of stamp duty is prescribed as a percentage of the value of the property. Once, the payment is made, the issuing authority marks the original instrument with a stamp acknowledging payment. This acts as the proof of sale or purchase of the property.

Stamp duty in case of a gift deed is generally the same as that in the case of regular sale. However, if the gift deed is executed between kin or some specified close relatives, a few states provide exemption in duty rates. For instance, in Maharashtra, the government has capped stamp duty on gift deeds to specified close relatives at Rs. 500.⁶¹

POLICY ANALYSIS

Below, we have mapped the Act to an analysis structure that combines the Longwe Gender Analysis Framework and supplements it with the two lenses on policy design discussed previously - Alignment of Incentives and Implementation Intensity.

| Levels of Recognition/ Levels of Equality | Negative | Neutral | Positive | State Capacity/ Implementation Intensity | Alignment of Incentives |
|--|----------|---------|----------|--|-------------------------|
| Control | | | | Low | Somewhat Aligned |
| Participation | | | | | |
| Heightened Consciousness | | | | | |
| Access | | | | | |
| Welfare | | | | | |

⁵⁹ The Indian Stamp Act, Krishnamurthy, 12th Edition, 2017.

⁶⁰ Item 6, List III – Concurrent List, Schedule VII, Constitution of India.

⁶¹ Maharashtra Govt’s U-turn over stamp duty on gift deed, The Times of India, 19/05/2017, <https://timesofindia.indiatimes.com/city/mumbai/maharashtra-govts-u-turn-over-stamp-duty-on-gift-deed/articleshow/58737771.cms>

Welfare

The Act has no component directly addressing the issue of Welfare.

Access

By providing states the discretion to set differential rates with respect to stamp duty where property registration is in the name of the woman, the Act makes it cheaper and easier for a woman to acquire property. Therefore, it is marked 'Positive' on Access.

Heightened Consciousness

The Act makes it more beneficial for a property to be registered in a woman's name and incentivises men and women to proactively get properties registered in a woman's name. Thus, it is marked 'Positive' on Heightened Consciousness.

Participation

The Act has no component directly addressing the issue of Participation.

Control

The Act gives concessions to women acquiring property, intending to increase women's ownership of property. Thus, it is marked "Positive" on Control.

Alignment of Incentives

The incentives of different stakeholders are not completely aligned. However, the alignment varies by state depending on the state-specific provisions of the respective Stamp Duty Acts.

- **Beneficiaries** - Some states consciously encourage registration of property in the name of women or joint ownership by reducing stamp duty rates. However, there remains a high probability of the provision being prone to misuse in the states that allow for lower stamp duties/exemptions in transfer of property to identified close relatives, with male family members choosing to register property in a woman's name, before inducing her to register it in the male family member's name again. Anticipating this, a few states have inserted time bound clauses, which mandate that property registrations done in the name of the woman not be transferred to others for a period of a year or more.

- **State government** - Stamp duty collections contribute greatly to a state government's revenue. While a reduction in stamp duty may help in incentivising women to own property, it reduces the state's source of revenue on which it is heavily reliant. While the situation may be remedied by increasing the rate of stamp duty applicable to the property held in men's names, it can also lead to lower declarations of property values to reduce payments of stamp duty.

PROGRESS IN IMPLEMENTATION

As mentioned above, many states have undertaken these measures to increase the asset ownership of women. The state of Jammu and Kashmir, in May 2018 became the first state to completely abolish stamp duty on immovable property acquired by women. However, it was forced to reverse its decision in 2019, citing reasons of loss of revenue and misuse of the provision by business establishments.

EVALUATIONS UNDERTAKEN

As per a report published by the Centre for Rural Studies at the Lal Bahadur Shastri National Academy of Administration (LBSNAA),⁶² conducted in the state of Gujarat, stamp duty concessions afforded to women have led to increased asset ownership by women.⁶³ The report suggested that over 70 percent of the respondents noted positive economic, social and personal change upon becoming property owners. However, it further suggested that only 6.6 percent of the people were aware of the stamp duty concession available to women, of which only 50 percent had knowledge of the prevailing rate. The report also highlights that property ownership among women is much higher in cases of general and OBC categories of people as compared with SC/ST categories of people. Although, the data suggests that 80 percent of the surveyed women had properties registered in their name, it failed to trace whether or not there was an increase in this number after concessions were made available by the government.

While no such survey has been carried out by the government, the Ministry of Women and Child Development⁶⁴ regards stamp duty concessions as effective incentives to increase women's ownership of and access to property.

⁶² Concession in registration charges including stamp duty to women property buyers: A tool for empowerment – A case of Gujarat, Prem Singh, Varsha Ganguly, Saroj Arora, Centre for Rural Studies, 07/2013, http://centre.lbsnaa.gov.in/crs/admin/upload/Publication_Int/Gujarat_book.pdf

⁶³ Concession in registration charges including stamp duty to women property buyers: A tool for empowerment – A case of Gujarat, Prem Singh, Varsha Ganguly, Saroj Arora, Centre for Rural Studies, 07/2013, http://centre.lbsnaa.gov.in/crs/admin/upload/Publication_Int/Gujarat_book.pdf

⁶⁴ Gender Budgeting Handbook, Ministry of Women and Child Development, Government of India, 10/2015, <https://wcd.nic.in/sites/default/files/GB%20-%20Handbook%20October%202015.pdf>

CONCLUDING NOTE

Tax incentives in favour of women do provide them with better access to property. Stamp duty concessions, by design, incentivise male family members to register property in female family members' names, thereby increasing women's

ownership of property. However, policies that allow for transfer of property among relatives at lower duty rates reduce the effectiveness of the Act and leads to misuse. Having said that, rigorous research is yet to be conducted showing the actual impact of stamp duty concessions, and there is more work to be done on this front.

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