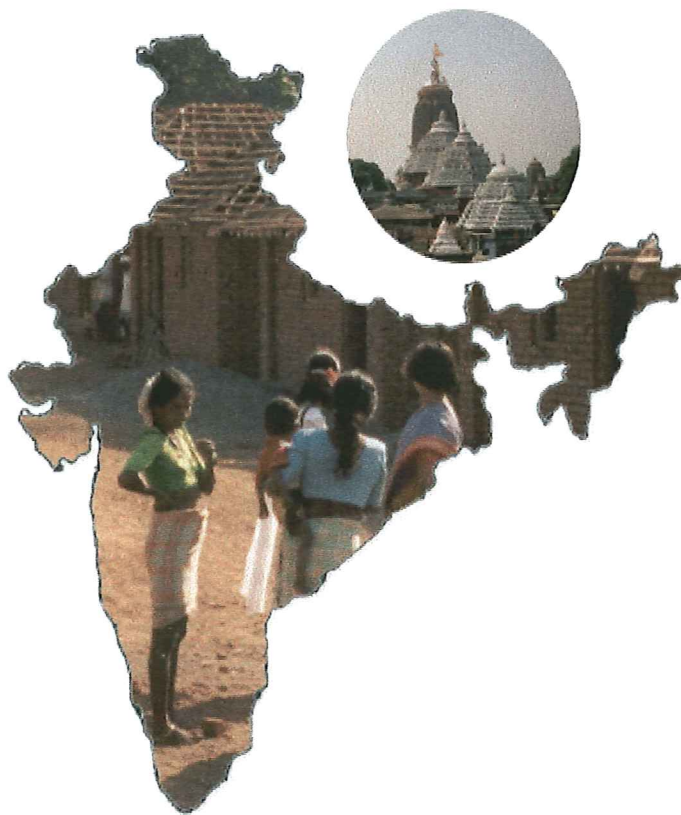


GENDER AND ACCESS TO LAND
- A Case Study on Indian Hindu Women



Diploma 2002

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HOVEDOPPGAVE

<p>Title: Gender and Access to Land - A Case Study on Indian Hindu Women</p> <p>Tittel: Kjønn og Eiendomsrett - Et case-studie om hindu kvinner i India</p>	<p>Identifikasjon/datering</p>
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<p>Abstract: In many societies gender is an extremely important factor for distribution of property and wealth. In most of the societies males control land. In general women do not possess land of their own. So also in India and for Hindu women, even if they have nearly equal rights to property according to statutory law. Customary law, based on traditional norms and values, are contradicting statutory law, and predominate the practices. The inheritance and succession rules follow a patrilineal system. On the other hand inheritance and heirship are the most important way in which women can obtain rights and access to immovable property. This diploma have for its object to look at possibilities for Indian Hindu women to possess, use, own, lease/lend, dispose etc. land and resources related to immovable property.</p>	
<p>Abstrakt: I de fleste samfunn er kjønn en meget viktig faktor når det gjelder fast eiendom og velferd, og i de fleste samfunn i verden kontrollerer menn det meste av fast eiendom. Generelt besitter ikke kvinner eiendom. Dette gjelder også for hindu kvinner i India, selv om alle i følge formell lov (statutory law) har tilnærmet like rettigheter til fast eiendom. Sedvanerett (customary law) er basert på lokale normer og verdier. Denne retten er den framherskende og dominerer i dette tilfellet formell lov. Arvereglene følger farslinjen. Alikevel er arv og arverett den viktigste overdragelsesform for kvinnelig eierskap. Dette arbeidet ser på mulighetene hindu kvinner i India har til å besitte, bruke, eie, leie, disponere fast eiendom og ressurser knyttet til fast eiendom.</p>	
<p>Emneord: Kjønn Eiendomsrett Fast eiendom India</p>	<p>Keywords: Gender Property rights Land India</p>

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PREFACE

This diploma is our final exam in our education program in Land consolidation at the Agricultural University of Norway. It is supposed to mirror five months work for each student.

A study like this diploma involves a lot of people, even if the final product bears only two names. We would like to mention some the people and organisations that have helped us at different stages of the process.

We would like to thank Children's Future, Norway (CFN / FaF), and Community Aid and Sponsorship Program (CASP) in Raigad. They made it possible for us to see a part of the Indian countryside. Orissa University of Agriculture and Technology represented by the Vice Chancellor (Shri. Sahadev Sahoo) and Dr. Parasar, for helping us to get contacts both on the university and with other organisations near by. The Golden Jubilee Girls Hostel for giving us accommodation. A thank to Jyotirmayee Acharya and Dr. Sanjay K. Dash for giving us knowledge and contacts at OUAT. Most of all the women and men that willingly have let us interview them. Without them there would have been no result of the field work. There would not have been any journey without economical support, so we would also thank those who have supported us economically.

Our supervisor Hans Sevatdal and Håvard Steinsholt have encouraged us and given critical and good advises. We also want to thank our husbands for supporting and helping us during the working period.

It has been a fantastic opportunity to "dive" into another legal system and culture.

Pictures, which do not have a reference, are taken by us during our stay in India.

Ås, 28.May 2002

Leikny Gammelmo

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SUMMARY

Our main research questions in this diploma work have been: According to statutory law and customary law, what are, in principle, the possibilities for Indian Hindu women to possess, use, own, lease/lend, dispose etc. land and resources related to immovable property? To what extent do these principles correspond to reality?

The intention has been to study the situation of Indian Hindu women when it comes to inheritance rights and access to immovable property. We have done this from an institutional point of view. This means to study the statutory law, customary law and other institutions like culture, religion and norms. Our starting point was that the answer to the question "do women need to have improved their rights and access to immovable property and also land generally" is yes. This is not obvious for all people, but we have found that there are several arguments for why women need to have independent rights in land, for instance security.

We have studied this by the means of literature study, especially for statutory law and text of acts and books about acts and legal principles, and field work. We did our field work in India in ultimo January and February 2002, in the states of Maharashtra and Orissa. Our field work had for its object to see, learn, understand, observe, interview, converse and interact with Indian people.

The conclusion is quite clear; according to statutory Indian law men and women have nearly equal access to land. This is by far not the case in reality. Women are widely discriminated; men dominate extensively as the formal group of proprietors. Women do have rights to possess, own, inherit and buy immovable property, according to statutory law, but the practices induced by customary law, religion and culture etc., have not yet followed. Solid conclusions we have made after doing our field work is to say that access to land does matter. To possess land means to have security and status. The women obtain more respect and regards from other family members if they own some immovable property. This can be for the sake of fairness, principles, welfare, and economic development of the community, survival. We have found that there has been a right to land in the Constitution but this was deleted in the 44th Amendment Act 1978, and that there is a suggestion for improved rights for women in the report from the Law Commission of India 174th Report, but this has not come into force. There are of course some aspects that we have not investigated, or that we have not been able to find any answers to. The enforcement mechanisms, which are important, are an example of such a case. We can only say that our field work shows that they work poorly.

One can say that Hindu women, as a rule, do not own land. We were aware of this fact from the beginning of our research work, and it is now confirmed.

1 INTRODUCTION

1.1 BACKGROUND

In most societies in the world land is controlled by male organized groups. In general women do not possess their own land. The inheritance and succession rules follow a patrilineal system. This means that the property is being transmitted from father to son. The phenomenon of women's independent rights to land is absolutely not a "given" fact in many parts of the world. It is said that women, which constitute 50% of the world's population, perform nearly two-thirds of work hours, receive one-tenth of the world's income and own less than one percent of the world's property (Sivaramayya 1999). These numbers must not be seen as real facts, just as an illustration. Nobody can make such calculations. The fact is however that women's share in income and wealth is extremely disproportional. The Habitat Agenda state that they recognize this fact and recommend that the governments of the world remove all possible obstacles that may hamper equitable access to land, and ensure that rights of women and men related to land and property are protected by the law. According to the Beijing Declaration, women should have equal rights to inherit, buy, possess, use and sell property. The Bathurst Declaration gives examples on how the land administration process can contribute to achieving this recommendation through:

- *Registration of rights to land for all and the enforcement of these rights*
- *Create awareness among the officials in the land administration system that women are disadvantaged in a non-acceptable manner and that their situation can be strengthened through registered rights*
- *The dissemination of information about legal rights and create awareness among the clients of the land administration system about the situation*
- *The specifications for land administration projects which should include a stipulation that the project be designed in a way that will promote women's access to land on equal conditions as men*
- *Basic property rights granted by land title deeds registered under women's personal names which constitute a guarantee for women's equal access to secure loan and credit*

Our particular object of study is India. The country is large, it is more like a continent, and the population is above 1 billion. It is important to realize, and it goes without saying, that studying women's rights and access to land in India is a case far beyond our capacity in just 5 months. Of the population about 80% are Hindus. Religion is an important issue, as religions tend to influence inheritance practices and land tenure. We will therefore concentrate on Hinduism and the specific systems of land rights and succession of rights among Hindus. Of course we cannot cover neither the whole country nor all aspects, thus we want to:

- Delimit the work according to religion and culture
- Describe the most important of the statutory laws and legal principles
- Go to India with lots of questions and try to get an understanding of what gender and distributions of property rights it is all about

In ancient India, Hindu women and men are said to have had equal status (Nanda 1995). That might be so, but in that case, the society has changed so that women have had no rights to land except in their capacity as wives, for a long period. This status could only be established through marriage. The character of women's access to land was therefore dependent upon the marriage system. This has now changed according to the Hindu Law.

Our work is a small part of a larger project run by Fédération Internationale des Géomètres (FIG), Commission 7, task force on "Women's access to land". FIG is an organisation of and for several professions related to land and property rights in private and public sectors, land administrators, surveyors, consultants, planners, researchers, teachers etc. The project aims at mobilizing these professions in the efforts for equalizing rights to property for different segments of society, and especially abolish gender based unfair and harmful distribution of property of basic needs like housing and income (Prof. Sevatdal).

A major reason for joining a project like this has two objectives: (1) it is a great opportunity to learn about another country and (2) hopefully our work will be of use for Com 7 so that something useful might come out of it. Another reason why we wanted to do this work is a genuine interest in the subject. We know there are a lot of women around the world daily facing problems because of weak rights and limited access to land. For us, and women in many other western countries, it is obvious that women and men should have equal rights and access to land and it is an unnecessary question to ask "why". This is not the case for all other women, especially in developing countries. India was chosen because it is an extraordinary country, the women face large problems regarding rights and access to land and we wanted to see some parts of the country.

1.2 SCOPE AND OBJECTIVES OF THE STUDY

Our work is of course a small part of a big subject. We want to find some basic principles for what kind of rights women have according to laws and acts (statutory law), traditional (customary law) and something about the realities; what the situation really is like (in practice). The aim is to describe some aspects concerning Hindu women's rights and access to land in particular parts of India. The subject of women's rights and access to land is an important subject all over the world. During our field studies in Bhubaneswar most of the people we talked to pointed out the importance and necessity that someone did research work like ours.

We have chosen to emphasize inheritance and heirship because that is the most important way a woman can obtain rights and access to immovable property. Other ways could be buying, wedding gift and transference from the husband or other family members.

Customary law, it is said, is the greatest problem for women when getting access to land and having security of tenure. This law is not codified in contrast to statutory law. An obvious question to start with is why women need to have improved rights and access to immovable property and also land generally. Is it meaningful to ask such a question or not? Women do not have equal rights, but what so? Do they need it? Why should they have equal rights? What is the problem? There are several arguments why women need to have independent rights in land; Agarwal (1994) categorizes them in four main groups:

- 1) Welfare
- 2) Efficiency
- 3) Equality
- 4) Empowerment

As the concept of welfare includes the situation of poverty, poverty is not set up as a separate argument. The welfare argument comes out of an understanding that improved rights in land could reduce women's and their household's risk of poverty and destitution, especially among poor households. Studies shows that in many states in India notable differences have been found in how men and women of poor rural households spend the incomes under their control: women spend almost all their incomes to purchase goods for the family's general consumption and for the children, men usually spend a significant part on their personal needs i.e. tobacco. *In other words, Agarwal says, the risk of poverty and the physical well-being of a woman and her children could depend significantly on whether or not she has direct access to income and productive assets such as land, and not just access mediated through her husband or other male family members.* The equality and empowerment arguments are concerned with women's position relative to men, and particularly with women's ability to challenge male oppression within the home and in the society (Agarwal 1994).

In our interview guide we have used some keywords that tally with the categories Agarwal uses in describing why women need access to land. We asked if access to land matters and if this can be for the sake of:

- Fairness
- Principles
- Welfare
- Economic development of the community
- Survival (food security)

1.3 APPROACH TO THE PROBLEM

This diploma is about Indian Hindu women's access to land and their possibilities to control it and why they need it, from an institutional approach. It is a well-known problem that women in developing countries often have an inferior legal position in relation to husbands, fathers, brothers etc. This becomes an even more acute problem when there is no man present in the household and the woman must be the "head of household", bear

the economic responsibility and take care of the children, all alone. In this diploma we use the term "woman" in a wide sense, i.e. woman in the role of daughter, wife, widow or alone mother because of divorce or for other reasons.

Institutional approach: Taking an institutional approach to the problem of uneven access to land for different groups in a society, in this case women and men, have several implications. First of all, the cause of the existing distribution is sought in the institutions. We do not, or seldom, try to explain the institutions themselves. Secondly, we do not in principle give priority to statutory law over traditional or customary law, but we do start out with statutory law, and then try to come to terms with customary law and the relationship between them. Thirdly, the enforcement mechanisms are included in the concept of institutions. The implication is that not only laws in themselves, but also how they are employed, are important aspects. The word "institutions" in this case consist of cultural, religious and formal rules for behaviour.

Sociologist W.R. Scott (1995) includes values and norms in his definition: *Institutions consist of cognitive, normative, and regulative structures and activities that provide stability and meaning to social behaviour.* An institutional approach (to access and rights to land) simply means applying insight and concepts from a bundle of theories, derived from various social sciences, which all somehow make use of a common key concept "institutions".

Finally, an institutional approach gives a kind of "access" to draw on knowledge and insight from different bodies of social sciences, as well as law. For example how institutions come into being and how they work, but also the problem of how institutional change come about. The importance of such insight might of course be obvious if one want to discuss the possibilities for changing the existing pattern of distribution of rights. We will come back to this last aspect in our conclusions, here we will just point to North (1990), which argue that institutional changes typically are incremental (i.e. small steps at the margin) and take place as the result of the efforts of organisations (or individuals) pursuing their interests. His definition is: *Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that shape human interaction.*

Main research questions: According to statutory law and customary law (local), what are the possibilities for Indian Hindu women to possess, use, own, lease/lend, dispose etc. land and resources related to immovable property? To what extend do these principles correspond to reality?

Some of the research questions, which are derived from the main question, have been:

- Are there any differences between men and women when it comes to statutory law and customary law of inheritance to immovable property?

- Is there something like a common opinion related to male vs. female ownership to land?
- Who are the dominant decision-maker, male / female / both, concerning use/transactions etc. of a property unit?
- What are the mechanisms by which women get / obtain access to land?
- Is there a market for selling and buying land / immovable property?
- Are there differences between women belonging to different strata of the community?
- What does the constitution say about gender aspects concerning land?
- Do women have equal access to registration of land?
- Does access to land really matter? Do women need improved access to land?

We want to find answers to our questions by studying 1) statutory law, 2) customary law and 3) reality. To do this we have done a combination of literature study and case studies, with field work in India. In the beginning we divided the work into four main parts:

- 1) Literature study, which is always an important part of the whole working cycle, to find basic information on India, what kind of rights women in India have to own and control land, and may be find important events in the past that can explain today's situation
- 2) Interview foreign students at Noragric, Centre for International Environment and Development Studies, at our university. What is the situation like in their home country? Have they any ideas about this subject and other questions related to our work? The outcome of these interviews did not give us any useful information. Thus we have chosen not to use it in the thesis.
- 3) Case studies, which means to go to India to do field studies and find out how women understand their rights. After being in India we realize that this part was very important, and it gave us an understanding about the society we are unable to get by reading books.
- 4) Try to understand the relationship between statutory law and reality, in the form of customary law and practice, in a discussion and conclusion part.

In our search for knowledge and information, literature study and field work have been the main sources. We have been studying:

- Indian legislation on property, succession, marriage and women's rights
- Different literature from India concerning succession, immovable property, women's rights
- Anthropological literature
- Literature written by Indian women
- Travelling descriptions

For a more detailed list of the literature and use of Internet, see Reference list page 62.

A roughly schedule for our work:

Generally in 2001	Search for literature, develop main question and searching for contacts
8.March 01	Norwegian Agency for Development Cooperation (NORAD), regional aid conference at Ås, Norway. Subject: Development, environment and agriculture.
June 01	FIG Commission 7 meeting in Gävle, Sweden Participating at working group on "Women's access to land".
Nov./Dec. 01	Planning of field work
Jan. 02	Preparing the last things for field work, make sure that the appointments in India are understood by both parts, them and us, and get accommodation at OUAT.
23.Jan.-March 02	Field work in India: Raigad, Maharashtra, ultimo January 2002 Bhubaneswar, Orissa, February 2002
Apr./May 02	Writing
01.June 02	Handing in the finished product

Field work: At an early stage of the process it was clear that we wanted and had to go to India to fulfil the diploma work the way we wanted it to be. India is a country with poor and slow communication network which is most of the time out of order in one way or another. We experienced this already when we were in Norway trying to establish Indian contacts. Our advisor, some other lecturers at our university and ourselves tried to get in contact with various people and NGOs in India. We had some names, e-mail addresses and homepages. The problem was however that we never succeeded in following these given traces; nobody answered either our faxes or our e-mails. Then, through a colleague, our advisor got in contact with an Indian woman, Jyotirmayee Acharya, writing her PhD at the Norwegian University of Science and Technology, (NTNU) in Trondheim. She helped us to establish contact with the Vice Chancellor, Shri. Sahadev Sahoo, at Orissa University of Agriculture and Technology (OUAT), in Bhubaneswar. The contact in Raigad we got as a coincidence. At the Indian Embassy in Oslo we got some brochures, and one of them was telling about a Norwegian organisation working in Mumbai and Raigad (our airplane was supposed to land in Mumbai). The organisation is called Children's Future, Norway (CFN) and cooperates with an Indian organisation called Children Aid and Sponsorship Program (CASP). We got in touch with them, and in no time we had established a contact. They made a program for us so we could meet and talk to village women who had got the ownership to their houses through CASP-CFN programs. The program for our stay in Raigad is to be found in appendix 1.

1.4 METHODS OF ANALYSIS

To analyse and express the collected data is a complex work. To analyse the data means categorising collected information with the purpose of describing and understanding the data we have found. Every data

analysis involves in one way or another classification or comparison. All analysis implies simplification (Halvorsen 1993). The main problem is how to deal with the results and how to do the analysis. There are two ways of analysing, one may say:

- 1) The simplest way of analysis is numerical description of the data followed by finding probable solutions to the phenomenon observed and trying to increase the understanding of the given conditions/situations (Halvorsen 1993).
- 2) Qualitative analysis is a time consuming and elaborate process. Raw material exists in a shape of unstructured information, and it is necessary to analyse the written material. There are no fixed rules for analysing qualitative interviews. Concerning the existing material one have to think systematically and comprehensive.

The Method of Social Anthropologists: Social anthropologists want to analyse and describe to get knowledge. They try to understand without involving their own opinion and what is reasonable for them. Judging what is good or bad, right or wrong, will be incorrect in a social anthropologic study. Her or his aim is to be objective and try not to treat anybody with favour. This is also an aim for us. The Indian social system was unknown for us and very different from our own system in Norway. Our work cannot be useful if we do not describe the situation objectively as far as possible.

The interviews: In our questionnaire and during the interviews we always tried to treat the interviewees in a way so they could answer more than yes or no, so called open-ended interviews. However we had to try to make them answer all the questions. This would make it possible to compare the answers afterward. In the end of the interview we asked them if there were something else they wanted to tell us, something the questions had not included.

Ethics: A basic dilemma in every research work is the question of ethical aspects especially how to use personal information in the work. The ethical questions are also about drawing the line between personal integrity and the requirement for information (Halvorsen 1993). According to Thagaard (1998) several ethical questions have to be asked, questions which also where of importance in our work, such as:

- Which ethical challenges are connected to the contact between the researcher and the interviewee?
- How close relation is it ethical trustworthy to establish during the time of data collection?
- Which ethical problems does the researcher have to face during the analysis and the expression of the collected material?

Ethical challenges are primarily connected to the close contact between researcher and subject. The quality of the collected material is dependant upon close contact. How close this contact can and should be, is an ethic balance. There are several ethical dilemmas connected to improper use of this close contact. The researcher

should try to get the interviewee to bring personal information within the frames of acceptable ethics. At the same time he or she must respect the limits set by the person in question. This occurs because the interviewee should not be leading astray, to give sensitive information that she/he would regret in the future.

In both interview and observation there are ethical dilemmas connected to the researcher's apparently friendly and confidential approach. This relation comes to an end with the finishing of the project; the researcher leaves the area and the situation. The subject stands back alone with possible problems and repercussions of the research process.

Afterwards ethic dilemmas can show up for the researcher, in connection with the analysis of the collected text-material. In which ways is the interviewee presented in the analysis? The researcher is responsible for not misusing the trust with faulty presentation of the data. When the researcher withdraws from the situation, there is no longer a mutual relationship of influence. The relation has been changed from subject/subject-situation to subject/object-situation.

The professional background will always influence a researcher. Although the researcher tries to impersonate the situation of the interviewee, she will evaluate the situation from outside. The perspective of the researcher will be different from the self-understanding of the interviewee. Examples can be those situations where the interviewee does not recognize herself in the finished text. It is not ethical acceptable to hide behind the image that the interviewee will not read the text when it is published (Thagaard 1998). Kimmel (1988) emphasize in Thagaard (1998) that formal guidelines not can be used as substitute for ethical balancing. The researcher must make up one's mind about those ethical dilemmas that appear. The problem is that there are seldom adequate answers to ethical questions. Every choice of method implies ethical consequences a researcher must evaluate.

1.5 TYPES OF OWNERSHIP

Ownership *denotes the relation between a person and an object forming the subject matter of his ownership* (Divekar 2001). It consists in a complexity of rights. Ownership is often compared with a corn ear and therefore called a bundle of rights. Generally ownership is not absolute, but it does have some attributes:

- The right to have and get possession
- The right to prevent interference by others
- The power of alienation
- The liberty of using the object according to owners will
- The liberty of enjoying the fruits and to avail of the object owned
- The liberty of changing the objects form and even destroying it

Every immovable property is vested either in one person (individual, body corporate or corporate sole) or in two or more persons jointly, called co-owners (Divekar 2001). Co-ownership in property is broadly of three types:

- 1) Joint tenants
- 2) Tenants-in-common
- 3) Coparceners

Other types of ownership of property can be mentioned just by names:

- Benami ownership
- Beneficial ownership
- Contingent ownership
- Contingent ownership
- Corporeal
- Dual ownership
- Equitable ownership
- Incorporeal
- Legal ownership
- Sole ownership
- Trust ownership
- Vested ownership

We shall define some of these types of ownership here, as they are important for this subject.

Tenancy-in-common: Each owner has a certain undivided share in the property. If one of them dies intestate his share will pass to his heirs as on intestacy (Divekar 2001).

Hindu coparceners: Two or more persons inheriting property jointly constitute a coparcenary; this is formed by inheritance only (Divekar 2001).

Dual ownership: Separate ownership for land and building or any other structure on land is recognized. There is no rule of law that whatever is fixed or built on the soil becomes a part of it and is subjected to the same rights of property as the soil itself (Karnatak High Court in Divekar 2001). Therefore it is possible that the owner of the land is one and the owner of the building thereon is different. For instance, if the owner of the land gives it on lease and the lessee constructs a building thereon, the lessee will be the owner of the building. This type of ownership we saw in Pen; the houses are owned individually and the village owns the property they stand on.

1.6 CONCEPTS OF IMPORTANCE

Rights vs. Access: Rights can be considered as claims that are legally and socially recognized by an external authority like government or village council. These include rights of ownership and rights of use. Access is a broader term. It can be obtained through rights of ownership and use, and it can be gained through informal concessions granted by individuals or kin (I. Nyborg, NORAD conference 2001).

What do we mean by rights in land?

Agarwal (1994) define rights as claims that are legally and socially recognized and enforceable by an external legitimized authority, be it a village-level institution or some higher-level judicial or executive body of the State. Rights to land can be in the form of ownership or of usufructs, associated with differing degrees of freedom to lease out, mortgage, bequeath and sell.

What do we mean with access to land?

"Access" to land, as distinct from rights in land, is a term very loosely used in the literature. To clarify it we will try to give a more distinct description. Access can be through rights of ownership and use, but it can also be through informal concessions granted by individuals to kin or friends. For instance, a man may allow his sister to use a plot of his owned land out of goodwill, but she cannot claim it as a right and call for its enforcement (Agarwal 1994).

Ownership vs. Control: If a woman has ownership to land this does not mean that she also controls it. To control mean to decide what to do with it, like selling. There can be legal or social constraints that restrain the woman's control over her own land (I. Nyborg, NORAD conference 2001). The problem related to ownership and control can be described as the gap between ownership and control, because that is what it really is. For a woman it is not obvious to control the property that she owns, and if she controls some part of the family property, she does not necessarily have ownership to it.

Law vs. Practice: The Indian civilization has a long history with deep religious roots that gives directions for how people should live and act. A high percentage of the population is illiterate (see page 17). The only way for them to learn about their rights is through their *ancestors*, as they call it by themselves, and the community. This leads to a gap between law and practice. People do not know about the changes in the laws as long as no one tells them about it.

1.7 STRUCTURE OF THE REPORT

Chapter 1 Introduction: In this section we want to make an understanding of why we have done this work, what questions we have been working with, and how we have gained knowledge and information.

Chapter 2 Historical perspective: The history is the mother for today's situation. To understand why it has become this way, it is important to understand and know the history. It shows that women for a long period of time have been neglected and ignored. We will concentrate on the ways women have been refused rights and access to land especially through the inheritance rules in Hindu law.

Chapter 3 Basic Principles in Statutory Law: Knowledge about laws gives information about what rights women can claim. It does not tell about what is normal or how it does work, but how it should be in the ideal world.

Chapter 4 Field work: This section gives glimpses of reality. We try to reproduce what some Indian people know and feel and how they act in relation to their rights or lack of rights. To illustrate the reality we have used the interviews we did in India.

Chapter 5 Discussion and conclusion: In this final section we want to summarise the most important findings.

Glossary: In the end we have made two glossaries. The first explains some of the words or terms used in the text in English. The second is a list of words in English translated to Norwegian.

2 HISTORICAL PERSPECTIVE

2.1 INTRODUCTION

2.1.1 Some historical milestones

A part of understanding a country's situation is to know some of its history. It has been said that Indian history is the answer to the question about how the country became what it is today. Some of the milestones from the past can explain today's situation in landownership and access to land.

2500 BC	The Indus civilization was fully developed
1750 BC	The Indus civilization collapsed
500 BC	The Aryan civilization had spread from the West to the Ganges valley
320 BC	The Mauryan Empire. Chandragupta Maurya ruled many of the Kingdoms. Then his grandson Ashok took over and he ruled almost the whole subcontinent and is regarded as one of the greatest monarchs of the world.
320 AD – 600	Regime of the Guptas often called The Golden Age of India.
	In the Maurya Empire and the regime of the Guptas India was governed as a kind of constitutional monarchy. The various kingdoms of India were divided into provinces, districts and village units. Several important influences of these early periods are still evident in India, such as in the village panchayat- and court system, the landownership and revenue system.
12 th century	The establishment of the Mogul dynasty. Religious differences between Muslims and Hindus eventually became the root cause of the division of India into two dominions.
1600	The East India Company was formed in the reign of Queen Elizabeth.
1650 – 1750	The Dutch were the most powerful
18 th century	The Mogul Empire broke down.
1784	British Government control
19 th century	The whole of India was directly or indirectly ruled by Britain
1917	The Indians began to demand self-government
1920 – 1945	The congress was led by Gandhi
1947	The Indian Independence Act and India attained independence
1950	India became a sovereign democratic Republic

Figure 1: A resume of events in the history, which can have connection with the shape of ownership to land and the view of women and their rights (made upon information in Young 1990)

2.1.2 During the British regime

During the British regime, India became politically and socially integrated, but the British Government did not venture to interfere with the personal laws of Hindus or of other communities. In this period social reform movements raised the issue of amelioration of the woman's position in society. The Hindu Law of Inheritance Act 1929 is the earliest legislation bringing females into the scheme of inheritance heirs (<http://www.nic.in/lawcom/>). This Act, conferred inheritance rights on three female categories:

- Son's daughter
- Daughter's daughter
- Sister (thereby creating a limited restriction on the rule of survivorship)

Another landmark legislation conferring ownership rights by women was the Hindu Women's Right to Property Act (XVIII) 1937. This Act brought about revolutionary changes in the Hindu Law of all schools, and brought changes not only in the law of coparceners but also in the law of partition, alienation of property, inheritance and adoption. The Act of 1937 enabled the widow to succeed along with the son and to take an equal share. But the widow did not become a coparcener, not even when she was a member of a joint family. The widow was entitled only to a limited estate in the property of the deceased with a right to claim partition. A daughter had virtually no inheritance rights (<http://www.nic.in/lawcom/>).

2.1.3 The legislative body

The constitution was passed by the Constituent Assembly on 26 Nov 1949 and is fully applicable since 26 Jan 1950. India is a federal democratic republic consisting of 35 states and 593 districts (<http://www.censusindia.net/>). The union government is divided into three districts, but they are not entirely separated. The branches are the executive, the legislative and the judicial. The executive leadership is drawn from and is responsible to the legislative body. *The Constitution provides for a judiciary that is free from executive or legislative interference in its deliberations* (Young 1990). A Governor appointed by the President administers each state, while the President through a Minister administers each territory. The bicameral parliament is composed of the Council of States, Rajya Sabha, and the House of the People, Lok Sabha. The Council of States consists of 250 members. The House of People is composed of 550 members, i.e., 530 members from the States and 20 members from the territories (<http://www.legalserviceindia.com/constitution/>).

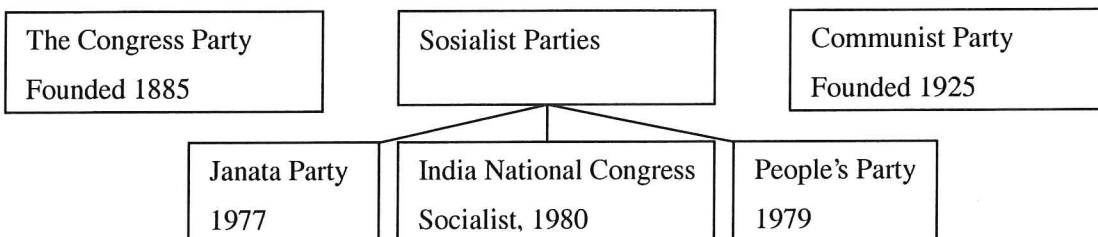


Figure 2: The political parties in India (made upon information in Young 1990)

2.1.4 The importance of agriculture

In India about 75% of the population lives in rural areas (<http://www.censusindia.net>). Therefore it is necessary to state the importance of agriculture. The major cultivation is rice, wheat, oilseed, cotton, jute, tea, sugarcane and potatoes. Animal production cattle, water buffalo, sheep, goats, and poultry and fishery are also of importance (<http://www.lonelyplanet.com/destinations/>).

Srinivas (1996) divides Indian farmers and agriculturalists in four different groups as follows:

- 1) Big landowners who supervise the work of cultivation carried out by servants and labourers but who themselves do not engage in manual work
- 2) Small landowners who personally cultivate their land, but who need the service of labourers during transplantation, weeding and harvesting. These landowners may also be working as tenants on small patches of land leased out from big landowners
- 3) Tenants who also hire themselves out to landowners for wages during the busy season
- 4) Landless labourers who subsist entirely on hiring themselves out as labourers on a daily or seasonal basis

There is a clear and self-understood division of labour between genders among agriculturists and this includes both activities inside and outside the household. Each set of activities is seen as supportive of the other, and more significantly, agriculture is a familial activity. In other words, the cultivator must either be married himself, or work as a part of his natal family. And where a family owns land, a son is needed to keep the farm cultivated and in the family's possession. The relation between a family and land is a vital one, for economic, political and status considerations (Srinivas 1996). Since agriculture is a family activity, it underscores the interdependence of the genders and the means to such interdependence is marriage. Agriculture implies marriage.

2.1.5 Literacy

As measured by the Government of India, literacy is the ability to read 40 words per minute, write 20 words per minute, and do 2-digit arithmetic. It is also the first step towards change, development and self-reliance. Importance of literacy can be stated at two levels, national and individual. A participative democracy requires a literate population; if people are not literate they are easily manipulated and left out of the mainstream. To build a strong nation there is a need of a strong social, economic and political foundation. In order to achieve this, people need to be educated, or at the very least, literate (<http://www.ilpnet.org/faq.html>). The literacy rates in India are low. On world basis more than 880 million adults are illiterate and two third of these are women (<http://www.worldbank.org/html/extdr/ild/>).

Among India's 1 billion inhabitants, only 65,4% is literate. This varies from state to state. The states that include larger cities and urban areas, like Maharashtra with Mumbai, have a higher percentage of literate inhabitants. In Orissa the situation is different and shows a more balanced picture of literacy in India. There are several tribal groups in Orissa. Among them the rate of illiteracy is high because they do not have the same possibilities for education as in urban areas.

	Total	Among females	Among males
Maharashtra	77,3%.	67,5%	86,3%
Orissa	63,6%	51,0%	75,9%

Figure 3: The literacy rate in Maharashtra and Orissa (<http://www.censusindia.net/results/>)

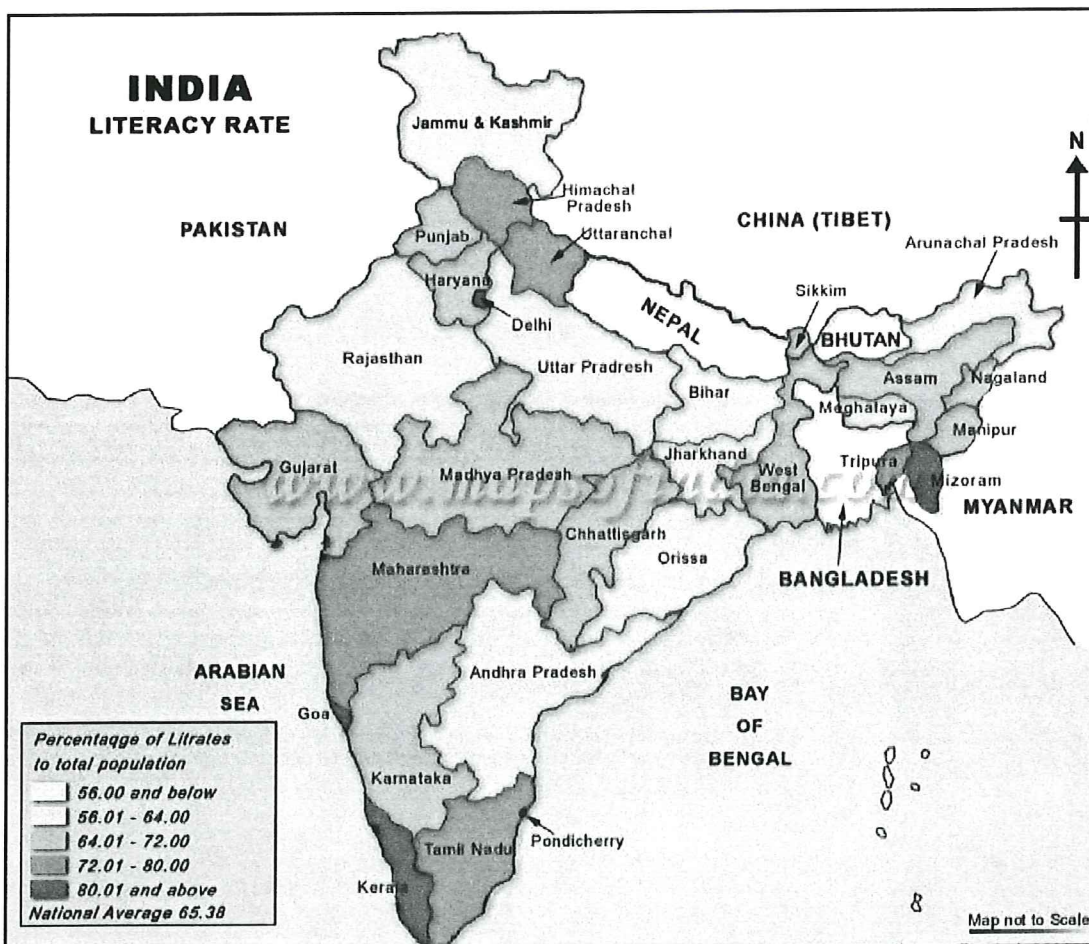


Figure 4: Map showing the literacy rate in India (<http://www.mapsofindia.com>)

2.2 PRESENTATION OF MAHARASHTRA

The state of Maharashtra is situated in the west part of the country, and it is one of the larger states in India. The number of inhabitants is about 97 million. The capital of this state is the coastal city of Mumbai (Bombay). This is a large, dirty and populous city, which gains more inhabitants every day. The language spoken in Maharashtra is, together with Hindi, Marathi. The field work we did in Maharashtra we did in the district of Raigad, which is a village area about 7 miles south of Mumbai. The district has a long shoreline, but also consists of hill areas where most of the rural villages are situated. During the monsoon it is normal that villages do not have contact with each other or the city because the water takes the roads.

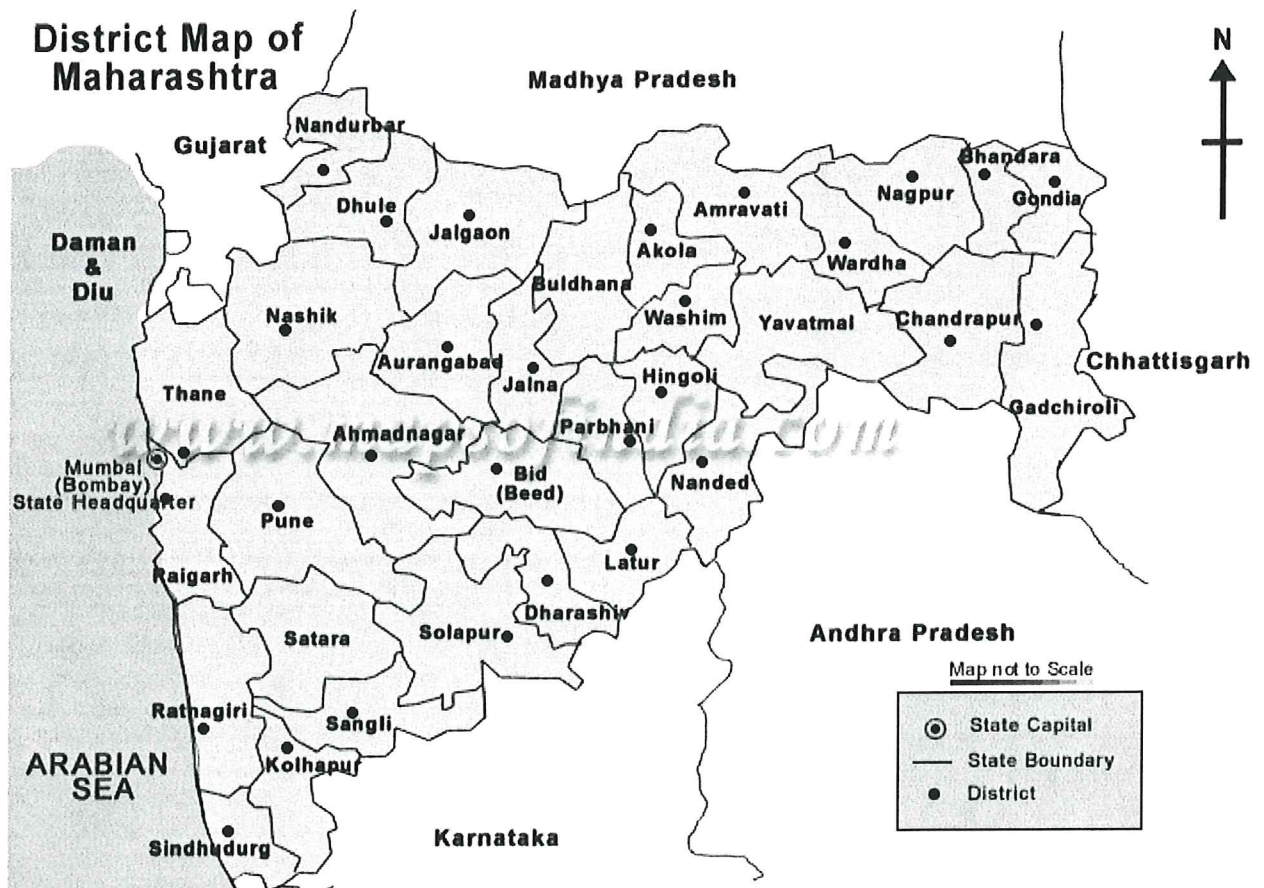


Figure 5: District map of Maharashtra (<http://www.mapsofindia.com>). Raigad district is on this map called Raigarh.

2.3 PRESENTATION OF ORISSA

Orissa is situated in the east part of the country. The capital of this state is now Bhubaneswar. The former capital was Cuttack, a larger and more populous city, where among other important buildings High Court is located. The major industry in Orissa is fishing. This is very important since Orissa have long shoreline, especially to the Bay of Bengal. Orissa is the second poorest state in India. One of the reasons is the frequent, natural disaster like flood, hurricane and other catastrophes, especially during the monsoon. The society has to rebuild and reshape the infrastructure many places in the state every year.

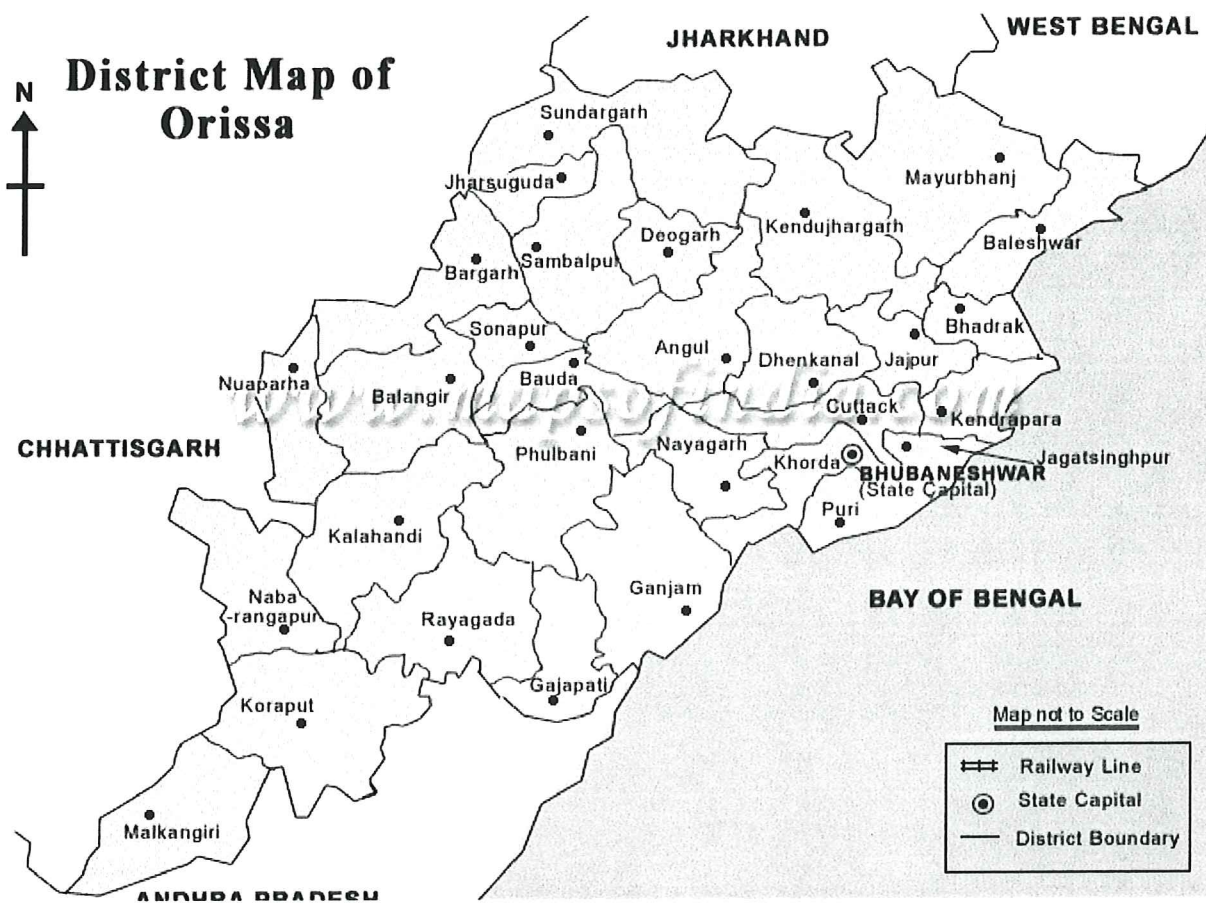


Figure 6: District map of Orissa (<http://www.mapsofindia.com>)

When we came to Bhubaneswar in the beginning of February it was in the end of the winter so the nights were still "cold". Then, all of a sudden, it became spring and higher temperature. It was 35 degrees Celsius and more, during the middle of the day. So then most people took a rest after lunch, like in other warmer parts of the world.

2.4 CASTE SYSTEM AND MARRIAGE

2.4.1 Caste System

For nearly the last three millennia the caste system has dominated the lives of the inhabitants of the Indian sub-continent. Influencing, if not determining, their choice of occupation, diet and spouse their collective rank in relation to other caste groups, and numerous other matters (Srinivas 1996).

One of the essential characteristics of a caste society is the coexistence of groups with different life-styles and the groups formed a hierarchy (Srinivas 1996). The society became divided into four varnas (see Figure 7) based on functionality (Nanda 1995):

- Brahmanas: the class of persons in teaching and other learned professions
- Kshatriyas: those who were warriors and the ruling class
- Vaisyas: the class of persons undertaking trade, commerce and agriculture
- Sudras: the class of persons rendering all other essential services to the society

Each caste is traditionally associated with the practice of a particular occupation. This does not mean, however, that all the members of a caste or even a majority of them do in fact always follow their traditional calling, which means profession or work. Even when they follow a traditional calling, they do not need to exclude another calling. In fact, some non-traditional calling may be economically more remunerative than the traditional one (Srinivas 1996). Older and more conservative persons in each caste tend to regard the traditional calling as the proper one. Each takes pride in the skills, which are required for this traditional calling, and regards these skills as natural monopolies for this caste. For instance Brahmins are assumed not to possess agricultural skill. If, in fact, a Brahmin villager does show some skill in agriculture, then other villagers may express their surprise. Contrary to popular impression, the traditional calling is not unchangeable. Changes are especially common at the present day when members of all except the lowest caste are seen opening shops and starting rice mills and bus lines (Srinivas 1996).

The essence of the hierarchy is the absence of equality among the units that form the whole society. The caste units are separated by endogamy and commensality, and they are associated with ranked differences of diet and occupation. Yet it is difficult, if not impossible, to determine the exact, or even the approximate, place of each caste in the hierarchical system. There are several aspects, and following are just some examples:

- Vegetarian food is superior to meat
- Alcoholic beverages are a mark of the lower castes
- The lowest employment is butchery, fishing and working with leather

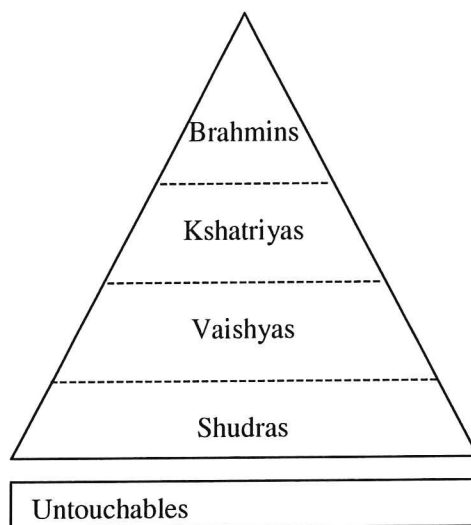
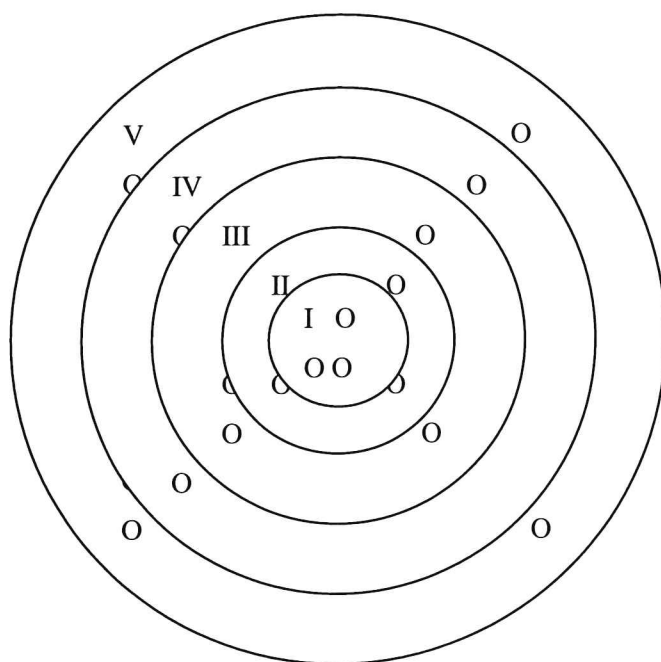


Figure 7: The varna system (Kinsley 1982).



Varnas: I: Brahmins, II: Kshatriyas, III: Vaishyas, IV: Shudras and V: Untouchables

Figure 8: The jati system (Kinsley 1982). The “O”s symbolize jatis in each varna. Jati is a caste or closed social group into which one is born and within which one must marry. It can be located in one varna or be on its way from one into another.

2.4.2 Marriage

Marriage is very important in the Indian society. The Hindu Marriage Act 1955 starts with an introduction that emphasizes the importance of this institution. Marriage is the very foundation of the society. Once the relation is formed the law steps in and holds the parties various obligations and liabilities. It is an institution in the maintenance of which the public is deeply interested, for it is the foundation of the family and of society without which there would be neither civilization nor progress.

Marriage is a voluntary union of one man and one woman to the exclusion of all others. Hindu law does not permit polygamy and polyandry, which means that having more than one wife or more than one husband are against the law. The man must have completed the age of 21 years and the woman the age of 18 years at the time of marriage (Section 5(iii)). Other conditions that need to be fulfilled at the time of marriage:

- Both individuals must be Hindus
- There must be free consent from both parties
- One cannot marry a person if one is too closely related

We now know what the law says about age and other conditions for marriage, but we wondered when people do get married and their thoughts about marriage. We asked some of the female social workers at CASP in Pen and the female students living at the Golden Jubilee Girl's Hostel in Bhubaneswar. In accordance to some of the social workers at CASP it was normal for tribal girls to get married at the age of 16 – 18 years old. Educated and urban women get married at the age 22 – 26 years. This is nearly the same as Namita and some of the other girls at the hostel said; *Women that are studying normally get married when 22 – 23 and tribal women earlier. We want to finish our education before marriage.* This is for arranged marriages. Some of the girls told us that they were very lucky because they were free to choose a partner, but he had to be from the same caste. Other had to wait until their parents had chosen a husband for them. If they had not been married before 28 – 30 years old they probably never would be. They thought we were lucky because we were free to choose husband and could have a, what they called and dreamed of, *love marriage*.

About marriage from a judge's speech: Every marriage ordinarily involves a transplant. A girl born and brought up in her natural family when given in marriage has to leave the natural setting and come into a new family. When a tender plant is shifted from the place of origin to a new setting, great care is taken to ensure that the new soil is sustainable and not far different from the soil where the plant had so far been growing; care is taken to ensure that there is not much of variation of the temperature, watering facility is assured and congeniality is attempted to be provided. When a girl is transplanted from her natural setting into an alien family, the care expected is bound to be more than in the case of a plant. Plant has life but the girl has a more developed one (Diwan 1990).

2.5 DOWRY

2.5.1 Introduction

Dowry is a well-known phenomenon in India and it often leads to deep problems. We wonder what dowry is, why it is prohibited, what effect dowry has on access and rights to land for women, what about inheritance vs. dowry and dowry vs. gift. In this chapter we will try to answer these questions. Some of our contacts emphasised dowry as a bad thing, like Dr. S.K. Dash.

2.5.2 Definition of dowry

Dowry is all properties and valuables given or agreed to be given before or after a marriage, either directly or indirectly, by one part to the other part, in connection with the marriage (Khaitan 2001). The Dowry Prohibition Act, 1961, uses the word dowry not solely in the meaning of what bride's parents give to the bridegroom but also the other way round. If property or valuable securities given by bridegroom to the bride or bride's father in connection with the marriage of the parties, it would also be covered in the definition of dowry (Diwan 1988).

2.5.3 Dowry vs. Gift

To give a present to the bride or groom without any pressure is not dowry, and is permitted. Presents given at the time of marriage to the bride or groom by any person shall not be deemed as dowry. Whatever does not constitute wedding presents constitutes dowry (Diwan 1988).

2.5.4 Giving or accepting dowry

The taking and giving of dowry were declared illegal in India under the Dowry Prohibition Act of 1961. The act has been amended twice, 1985 and 86, to give the act "teeth". It was not distinct enough (Diwan 1990). Demanding for any dowry, directly from the parents or the guardian of the bride, is punishable. The act states that dowry and presents given to a woman at the time of marriage are her absolute property and should be transferred to her within 3 months after marriage (Khaitan 2001).

2.5.5 Stridhan

Literally stridhan means woman's property. In Hindu law it has been given a technical meaning. It is said that in the entire history of Hindu law, woman's right to possess property has been recognized and at no time has the woman been denied the use of property as an absolute owner. But at no time the quantum of her property has been anything but meagre (Diwan 1988). When the bride leaves her parents' house she is given jewellery called stridhan over which she has absolute authority. According to the Vedas, the daughter has no right over the father's property, so the stridhan was one way of giving her a share. A share, which over the years has degenerated to the evil connotations, the word 'dowry' holds (<http://www.indiaprofile.com>).

Historically, under Dayabhaga and Mitakshara system, there was some recognition of female property rights in the concept of stridhan. What stridhan could include, how much control a woman had over it and how it would devolve on the woman's death, have change through time. In the early text, stridhan could exist only of movables such as clothes, ornaments and household utensils. Stridhan was given to the bride at the time of her marriage or in forehand, from her parents, brothers or relatives, and by her husband after marriage. Over this property she was allowed absolute control and it devolved on her female heirs in the first instance. In later text there was a tendency to enlarge the aim of stridhan in terms of the contents and source of the gifts. This led to discussions whether immovable property should be included in stridhan and what control women should be allowed over it (Agarwal 1994).

Later, under the British, the Privy Council rulings took the view that a woman could hold only a limited interest in property inherited from a male. After her death it would pass not to her stridhan heirs, but to the heirs of the male from whom she inherited it. Under Dayabhaga the issue was resolved differently. In this system stridhan was by definition that over which a women had full rights of disposal. It included gifts given from parents, relatives and even non-relatives before or at the time of marriage. She could manage this independently of her husband. According to this definition, stridhan did not include any property that a woman had inherited or obtained by partition of her dead husband's joint property (Agarwal 1994). Nor it did include gifts made by non-relatives after her marriage or the earnings of her own work. Therefore, under Dayabhaga, stridhan was limited essentially to movables. Gifts and bequests from relations has from the early time been a recognized head of the stridhan (Diwan 1988).

2.5.6 Dowry, Stridhan and Property

The issue of dowry vs. inheritance is important and has also been the subject of recent debate among Indian women scholars. Dowry is *a type of pre-mortem inheritance, a process whereby parental property is distributed to a daughter at her marriage (...) rather than at the holders' death* (Goody 1973 and 1976, in Agarwal 1994). Goody sees the difference between female inheritance and dowry as essentially *one of timing and flexibility*. He does not distinguish between dowry in movable and dowry in immovable property. The alternative view is that dowry typically cannot be equated with inheritance this way (Agarwal 1994).

A popular argument against giving daughters inheritance shares have been that they get dowries instead, which represent their "fair share" in parental property. Dowry and inheritance cannot be seen as equivalent, except for some communities where dowry has been a form of pre-mortem inheritance. The last two decades there has been a general condemnation of dowry across the country. Today dowry is frequently extorted by the groom and his family from the bride's family. In many cases the extortions continue after the marriage, and may end in a woman's murder or suicide (Agarwal 1994). Dowry deaths are also a problem in India. For instance burns, suicide under unnatural circumstances, bodily injury, subject to cruelty (mental and physical torture), or harassment (Khaitan 2001). Until women are able to realize their claims in a share of inheritance,

it is better that they at least receive dowries than that they receive neither a dowry nor an inheritance share (Kishwar 1988 in Agarwal 1994). A Hindu female may inherit property from a male or a female, from her parents' side, or from the husband's side. The Mitakshara considered all inherited property as stridhan, but the Privy Council held such property as women's estate (Diwan 1988).

Dowry has not had negative implications for women everywhere and in all contexts. In some matrilineal and bilateral communities dowry was a specific form of pre-mortem inheritance transfer, which endowed women with important amounts of property including land. This was strengthening their fallback position and bargaining power and the property were being received before the parents' death (Agarwal 1994).

Broadly speaking the stridhan has all the characteristic of the absolute ownership of property. The stridhan is the woman's absolute property. She has full rights of its disposal or alienation. This applies when she is a maiden or widow. Some restrictions were recognized on her power of disposal if she were married, and these we can divide in two groups. The first is the gifts received from relations on both sides. The second is all other types of stridhan such as gifts from strangers, property acquired by self-exertion or mechanical art. On a woman's death all types of stridhan passed to her own heirs.

2.5.7 Dowry has become a social problem

2.5.7.1 Two stories from a newspaper

Nirmala was studying at a law-school in Bangalore. Daughter of a wealthy businessman, her marriage was arranged to a doctor long before she had completed her training. The wedding was an opulent affair and Nirmala took a huge dowry including plenty of jewellery and a car. But the marriage was short-lived. Not satisfied, her in-laws demanded more. Within a month Nirmala had hanged herself in her husband's house.

Sheila was a 20-year-old girl working in a garment factory. Her parents decided to marry her to Rajanna, an auto rickshaw driver, and gave him a gold chain, a ring, and Rs. 10 000 (£150), apart from ornaments and saris for their daughter. But after the marriage, her in-laws demanded that she hand over all her monthly earnings and that her parents buy them a colour TV. When Sheila refused, she was doused with kerosene and set on fire. With 90 per cent burns, Sheila died before her neighbours could take her to the hospital.

Nirmala and Sheila came from very different economic backgrounds, but met the same fate. Dowry has become a social problem spanning class, religious groups and castes in present day India. An estimated 15,000 women are killed over dowry in India every year, most commonly by being doused with kerosene and set alight. In-laws then make the standard claim that their stove exploded. In Bangalore the burns ward in one public hospital alone reports around 90 admissions every month. Ninety per cent of these are women who have been set on fire. Most of them die.

2.5.7.2 Why it has become a problem

Dowry exchange arose from the fact that Indian women cannot inherit property. Traditionally, a bride's parents gave her gifts of gold ornaments and silver utensils which she took from her parents' home to her husband's house after marriage. Yet it was an innocuous tradition. Known as Stridhan - woman's riches - it rarely ended in tragic deaths that are almost frequent today. *Dowry deaths are a post independence phenomenon* says C.B. Muthamma, a former Indian Ambassador. *They are an extreme form of wide-spread social demoralisation which has come after independence.*

Contributing to dowry deaths is the commercialisation of the tradition. Extracted brutally from the girl's family, dowry has become a convenient way of satisfying greed in an increasingly consumerist society. On top of gold jewellery and clothes, today's bargain often includes cars, scooters or TVs. Families can be asked to set up business establishments for the groom or even procure visas to go abroad. Doctors, engineers and officers in the civil service command the biggest dowries of up to one crore (£140,000). And, while some middle class families compete with lavish weddings and ever-increasing dowries, the effects are felt most by the poor who succumb to societal pressure at the time of the wedding, then live in fear of being asked for more dowry. *Those at the bottom of the pile get the worst end of the stick, as they have to take on large debts to marry off their daughters* says Donna Fernandes, an activist with Vimochana, a Bangalore-based woman's organisation (<http://www.vso.org.uk/publications>).

2.5.7.3 Turning a blind eye

The exchanges take place right under the nose of the police, despite the fact that dowry is against the law. The husband's family exploits legal loopholes and the punishment is barely a deterrent - a fine of Rs 10,000 (£150) or up to six months imprisonment. *The Dowry Prohibition Act has become totally meaningless*, says Subhashini Ali, Secretary of the All India Democratic Women's Association (AIDWA). *The Act only comes into operation when dowry results in the death of a woman. It has done nothing to stem the problem.*

Although the Act was amended in 1986 to include suicides under dowry deaths, the number of convictions is still below five per cent of all dowry cases. Thanks to the apathy of police in registering complaints and the lengthy litigation process in the lower courts, a dowry death case takes over ten years to be heard. *Meanwhile, post mortem reports of the victim are tampered with and even the initial records changed*, says Fernandes.

When young women are harassed by their in-laws they find they are not allowed to return home for safety. They are told to put up with the torture, as opting out of the marriage would expose them to social ridicule. Families have married their second daughter to the same man who killed their first daughter for dowry.

Dowry deaths join female infanticide as a major reason why there are 926 women for every 1,000 men in the country. The problems have arisen from a patriarchal system, which devalues women and treats them like

inferior beings. Feminist Madhu Kishwar says that nothing will subdue the dowry problem until women are given a right to inheritance, until attitudes towards women are fundamentally changed. “Unless the mindsets of people change towards women we will continue to suffer this social evil,” says N.P. Samy, Secretary to the National Centre for Labour (<http://www.vso.org.uk/publications>).

2.6 THE STATUS OF WOMEN



On the left picture we see women carrying water or food on their heads. To the right is an old statue where the woman also carries pots.

This is a traditional way of carrying all kinds of items. Once we saw a woman with 7 bricks and men with up to three suitcases. The people working at railway stations carrying items for the passengers develop an extra ordinary capacity of carrying on their heads.

2.6.1 Maintenance

Maintenance is a means of providing what is needed to support life. A Hindu woman can claim maintenance under three enactments:

- The Hindu Marriage Act 1955
- The Hindu Adoption and Maintenance Act 1973
- The Code of Criminal Procedure 1973

The Hindu Adoption and Maintenance Act entitle a wife to be maintained by her husband during her entire lifetime, whether she resides with him or not, and whether they are divorced or not.

A recent judgment passed by the Supreme Court of India gives a widowed daughter solely dependant on her father a right to claim maintenance from him (http://www.lawsinindia.com/members/hindu_widow.cfm). The landmark judgment, declared on April 18, fortifies the earlier rulings passed by the judiciary in favour of women on this issue. According to the latest verdict, a widowed daughter who has no one but her father to fall back upon for maintaining her can claim maintenance from him. Before her marriage, a Hindu woman is entitled to claim maintenance from her parents if the unmarried woman is unable to maintain herself out of her own earning or other property. After her marriage, a Hindu woman is entitled to get maintenance from her husband, if he is alive and the marriage is subsisting. After his death, the law has given the following conditions for a Hindu widow to be declared dependant on her father: After the death of her husband, if she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if she has any issue, or from the estate of her son or daughter, or from her father-in-law or his father, or from the estate of either of them, then such widowed daughter is treated as a dependant of her father. (Section 21 Clause (vi) of the Hindu Adoptions and Maintenance Act, 1956)

A Hindu wife who is living separately from her husband, whether divorced or not, can claim maintenance under any of the following conditions (Kahitan 2001):

- He has treated her with cruelty
- He has deserted her
- He has any other wife living or keeps a concubine
- He is suffering from leprosy
- He has converted to another religion

The Hindu wife is not entitled to maintenance under Hindu law if:

- She is herself living in adultery or is unchaste
- Refuses to live with her husband without any sufficient reason
- Converts to another religion
- Remarries, so a divorced or separated woman is entitled to maintenance if she do not remarried

Section 125 of Criminal Procedure Code: It is a legal obligation on the part of every man whit sufficient means to maintain:

- His wife
- Minor child – legitimate or illegitimate, whether married or not
- A child who is physically or mentally incapable
- His parents if they are unable to maintain themselves

2.6.2 Line of succession

We divide inheritance in three different groups;

- 1) Bilateral inheritance: ancestral property passes to and through both sons and daughters
- 2) Patrilineal inheritance: ancestral property passes through the male line
- 3) Matrilineal inheritance: ancestral property passes through the female line

In most South Asian communities inheritance practices were essentially patrilineal and women had few and highly restricted rights in land. Matrilineal and bilateral systems of land inheritance advantage women in many respects, especially in granting them economic and social security, and considerable autonomy and equality in marital relations.

Where women traditionally have had rights in land, or have acquired it more recently; this is seen to impinge positively on several aspects of their position. Agarwal (1994) gives an example from South Asian communities that customarily practiced matrilineal or bilateral inheritance: Women either continued to live in their parental homes after marriage or could return homewards in case of marital break up. These women enjoyed a great deal of economic and social security, freedom of movement and interaction outside the home and relative equality in marital relations. They could also eat before their husbands had arrived, which are not acceptable in other areas in India where women are expected to eat after their husbands.

In at least two regions in India there were tribal groups customarily practicing matrilineal or bilateral inheritances. Three of these matrilineal groups, the Garos, Khasis and Lalungs, are situated in Northeast India (Agarwal 1994).

Three different types of matrilineal and bilateral communities (Agarwal 1994):

- 1) Communities among which land was a clan's communal property and could not be inherited neither by individuals nor joint family units. Both women and unmarried men had usufruct rights in this land, as individuals or as members of nuclear families. Responsibility for managing the land vested with the husband, but a woman's labour was critical and she could control the produce. The Garos fall in this category.
- 2) In another group land inherited in the female line was held as joint family property and women had no individual rights of alienation. Responsibility for managing the land rested with the men, typically brothers or maternal uncles. In decisions relating to partition or transfers of landed property, women's concurrence was necessary.
- 3) Communities where both men and women had inheritance rights in land, which could be held individually. Women inherited via dowries or post-mortem. Women's control over the inheritance varied from considerable to restrict among the different communities.

During her case studies of matrilineal and bilateral communities Agarwal (1994) discovered some interesting facts. There was a significant link between women's property rights in land and certain marriage customs, which reduced the risk of the land passing to non-kin. Today, granting women possession of land is likely to be strongly resisted. Localized communities played a significant role in the evolution and enforcement of both inheritance and marriage traditions. It would have been possible to ensure congruence between the two sets of practices. However, contemporary laws recognize the inheritance rights of females as individuals among most communities, including traditionally patrilineal ones.

2.6.3 Women and the judiciary

It is important to know that all attempts to ensure women's inheritance rights have been opposed at the outset by members of their own family. Women's fear of the judiciary is well founded. It needs to be put within the specific Indian socio-economic context. Indians are rooted deeply in traditional beliefs, and their tradition firmly upholds family values. There is tremendous regard for kinship ties. To explain some of this fear we want to refer an article focusing on women and their conditions; <http://www.fokuskvinner.no/english>.

Kishwar, editor of the Indian magazine *Manushi*, wrote in 1989: Women's inheritance rights have been violently opposed by women's fathers, brothers, the supposed victims of the dowry system. For instance, a perusal of the parliamentary debates in the years preceding the passing of the Hindu Succession Act, 1956, is very instructive in this regard. Men were united across party lines in opposing equal inheritance rights for women on the ground that it would create discord between brothers and sisters. In other words they virtually admitted that the key element in the asserted harmony between brothers and sisters is the disinheritance of the women. While some brothers accept their obligation to give dowry few are willing to concede inheritance rights to women.

Against this background it comes as no surprise that women in India are doubtful about claiming their inheritance rights, though it is guaranteed under the Constitution and the Hindu Succession Act. A most powerful deterrent is the fact that women have no social and familiar support in a, therefore lonely, long and expensive legal struggle. As a result women continue to be displaced, suffer in silence rather than tilt the power balance. Having neither independent income nor resources, women engaged in family disputes are hardest hit by tedious court procedures, delays and enormous legal expenses. Even when women sustain their struggle long enough in family dispute, court orders may not necessarily benefit them. In positive decisions, husbands ordered to pay maintenance or brothers a partition in the estate, frustrate accomplishment. Contempt motions against husbands for maintenance default are a daily matter. For women, it is both justice delayed and justice denied.

The silence on matters concerning irresponsible husbands, fathers, brothers, sons or other close relatives is parts of a *general misplaced male reverence*. Some say that family disputes must be resolved within the four walls. Fears about the efficacy of law courts in family matters further discourage women. It can seem that today more wives muster courage to file for divorce. But the number of daughters asserting for their inheritance rights is rare. It is significant to note there have been only 51 inheritance suits filed in India since 1956 when the Hindu Succession Act was amended in favour of daughters. There is however a welcome shift in women's attitude. Some mature Indian women confessed they had given up claims in the father's estate in favour of their brothers. Many confided they regretted having withdrawn claims with the misplaced belief their sacrifice would be rewarded with kindness. That their brothers would extend support at times of financial crises or old age. Very soon they realized they had lost not only their inheritance but also forfeited visiting rights to their natal home. Four decades of women's rights movement has still not got rid of women's fears of setback. If women survive in their struggle they may return with progressive pieces of legislation. Women's struggle against injustice in fact, amounts to endurance feats. What makes it even worse is the absence of support structures for these women during the suit. Women are unprepared for the huge expenses and delays inevitable in litigations. The fact women encounter social censure for taking civil matters to court, makes their situation more vulnerable. These socio-economic dimensions of litigation act as chronic deterrents.

The very idea of a woman going to law court puts her conduct on trial. She is at once viewed with suspicion. In this system, women are more sinned than other sinners. Social setback combined with the isolation, often boycott, of women who "rock the boat" is enough to deter the bravest. Another equally powerful deterrent is the fear about the legal expense. In this sense, the judiciary is the alternative of the privileged few in India. Prohibitive legal expense, the very process itself and uncertainty about results discourage a majority of middle and working class women from asserting their rights. So it may not be wrong to assume that only the elite, the privileged can afford lawsuits. It is also said that women tend to have high emotional expectations from their legal advocates. When they file in family matters, litigants turn to advocates for emotional support. It may be imperative to consider creating support systems for women within the broader framework of the Judiciary. This is particularly necessary at the time of family breakdowns. Women and children urgently require specific counsel to cope with altered family situations.

Dr. Julia Leslie (SOAS University, U. K.) argues that the question of Dowry will fall away if daughters were given their inheritance. With inheritance acquired, daughters will not hanker after dowry for their protection: *I therefore urge that we focus the legal aspects of our campaign on demanding inheritance rights for women. We need to separate property rights from marriage both in our minds and in reality. This will cut at the pernicious root of the dowry system. Once that root is cut, dowry itself will wither away* (Dr. Leslie).

3 BASIC PRINCIPLES OF STATUARY LAW

3.1 GENERAL

In India there are more than one body of law dealing with the succession and inheritance of immovable property. This makes it rather complicated to grasp and understand but in this chapter we have made an attempt to show the principles. Earlier each religion had their one rules, as shown in Figure 9. It do not work quite like this today, but still the situation is that different rules are in force for different groups

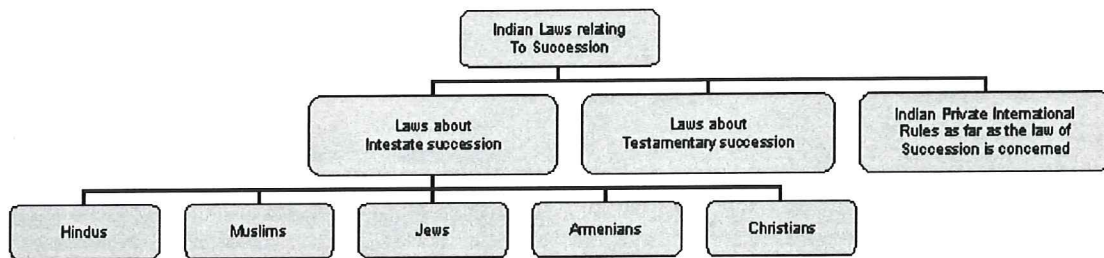


Figure 9: The organisation of Indian laws related to succession. Previously all religions had their own laws. Today only Hindus and Muslims have the right to use their old laws relating to personal matters.

Under the Indian Succession Act 1925, the property of a person upon his death, devolves on his legal representation. Section 5(1) states that the law shall regulate succession to immovable property in India of a person deceased, wherever such person may have had his domicile at the time of his death. This rule applies only to the Hindus and Muslims that have made a will about their property. The whole property of a deceased Hindu or Muslim, if he has died intestate or so much of it has been not disposed of by will, if he has left a will, devolves on the heirs at the moment of his death (Kainth 1992). Chapter II of Part V applies to the Indian and European Christians, Jews and Armenians in case of intestate succession, give privileges to the father at the sacrifice of the mother.

The Hindu law system is divided into different "schools". The most important ones are the schools of Mitakshara and Dayabhaga. There is also another school in the south that is not so well known. Each main school has more or less sub-schools; Figure 10 shows some of the most important of this.

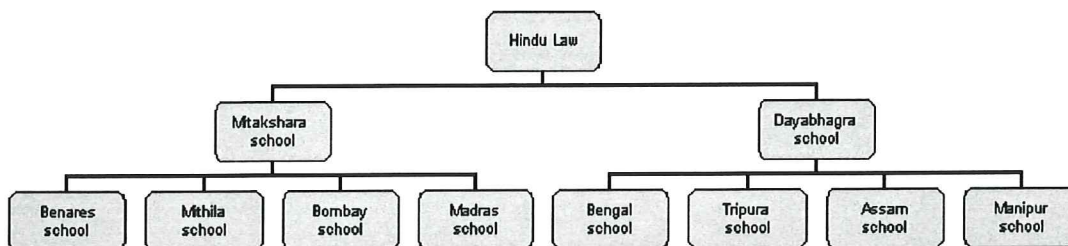


Figure 10: Two principal schools of Hindu law and sub schools.

The basic difference between the two main schools is the following: Under the Dayabhaga school succession is governed by the capacity for conferring spiritual benefit, while under the Mithakshara the right to inherit always arises from the proximity of relationship (Kainth 1992).

3.2 HINDU CONCEPTIONS OF LAW

3.2.1 The conception of law

The very conception of law itself is not easy to handle. Not until the arrival of the colonial powers was the concept of law used at the subcontinent, by Europeans and through the medium of European language. In 1972 it was decided that; *in all suits regarding inheritance, marriage, caste, and other religious usages and institutions, the Hindus should be governed by their own laws* (Rocher 1990). Then an effort was made to study and translate the Sanskrit books in which the Hindu laws were codified. These books happen to be the dharma sastras, which means thesis on dharma. Hence, the equation established by Western editors and translators of these books was that dharma sastra equals law book, code or institute. They also established the equation that dharma equals law. Dharma is neither religion nor law. It is the pivot of the entire system and the way in which one ought to hold, bear, carry or maintain.

Translation of the term *law* can be done in two ways:

Kanun - from the Arabic-Persian (Muslim) tradition

Vidhi - from the Sanskrit (Hindu) tradition

The Hindi version of the Constitution use vidhi as translation for law, therefore vidhi has become the official translation for law.

3.2.2 Modern sources

Among the modern sources of Hindu Law are included equity, justice and good conscience, precedent and legislation. These sources existed even in the Shastric Hindu Law, though in a different form. *Narada speaks of four feet of law that include Dharma (righteousness) and rajyasshasana. Brihaspati is also to the same effect: By dharma, by uyavahara, by charitra, by the royal order, the decision of a disputed matter is declare to be of four kinds* (Diwan 1988).

In ancient time the Hindus had a fairly perfected system of administration of justice and both the people's courts and the king's courts used to render decisions. In their modern version these sources are essentially the outcome of the administration of Hindu law in British India.

3.3 THE SITUATION BEFORE THE ACTS OF 1929 AND 1956

In this section we describe the situation before The Hindu Law of Inheritance Act 1929 and the Hindu Succession Act 1956 were created.

3.3.1 Mitakshara Law

Under the Mitakshara law, on birth, the son acquired a right and interest in the family property. According to this school, a son, grandson and a great grandson constitute a class of co partners, based on birth in the family. No female is a member of the co partners in Mitakshara law. Under the Mitakshara system, joint family property devolves by survivorship within the co partners. This means that with every birth or death of a male in the family, the share of every surviving male is either diminished or enlarged. If co partners consist of a father and his two sons, each would own one third of the property. If another son is born in the family, automatically the share of each male is reduced to one fourth (<http://www.nic.in/lawcom/>).

The Mitakshara law also recognizes inheritance by succession, but only to the property separately owned by an individual, male or female. Females are included as heirs to this kind of property. Before 1929 only five female relations was recognized by two of the sub schools, as being entitled to inherit:

- Widow
- Daughter
- Mother
- Paternal grandmother
- Paternal great-grandmother

Some of the other sub schools, such as Madras, recognized the heritable capacity of a larger number of female heirs, which is now expressly named as heirs in Hindu Law of Inheritance Act 1929.

3.3.2 Dayabhaga Law

The Dayabhaga School neither accords a right by birth or by survivorship; though a joint family or joint property is recognized. It lays down only one mode of succession and the same rules of inheritance apply whether the family is divided or undivided, and whether the property is ancestral or self-acquired. Neither sons nor daughters have rights in the family property during their father's lifetime. But on his death, they inherit as tenants-in-common. It is a notable feature of the Dayabhaga School that the daughters also get equal shares along with their brothers. Since this ownership arises only on the extinction of the father's ownership, none of them can compel the father to partition the property in his lifetime and the latter is free to give or sell the property without their consent. If one of the male heirs dies, his heirs, including females such as his wife and daughters, would become joint owner of the joint property, not in their own right, but representing him. Since females could be co partners, they could also act as *kartas*, and manage the property on behalf of the other members in the Dayabhaga School (<http://www.nic.in/lawcom/>).

3.3.3 Marumakkattayam Law - A speciality seen from a woman's point

Marumakkattayam law prevailed in Kerala wherein the families were jointly. In this law a household consisted of the mother and her children with joint rights in property. The lineage was traced through the female line. Daughters and their children were thus an integral part of the household and of the property ownership as the family were matrilineal (<http://www.nic.in/lawcom/>).

3.4 FUNDAMENTAL RIGHTS

3.4.1 From international to national level

According to the United Nations agreement on human rights we all have rights, which do not depend on gender or nationality. The rights are put down in two covenants, and each country has an obligation to provide for individuals the rights contained in these covenants. There are two kinds of such rights: Civil and Political Rights and Economic, Social and Cultural Rights. In the first group we find the rights that are essential for a person to live a dignified life (Khaitan 2001). Among these is the right to own property. India has guaranteed some of these rights in the Constitution. They have also a special act dealing with these matters, the Protection of Human Rights Act 1993.

The provisions of Part III of the Constitution, which enumerates the Fundamental Rights, are more elaborate than those of any other existing written Constitutions of the World, and cover a wide range of topics. The Purpose of the Fundamental Rights is to act as limitations not only upon the powers of the Executive, but also upon the power of the Legislature (http://www.legalserviceindia.com/constitution/const_india1.htm). The framers of the Indian Constitution took note of the adverse and discriminatory position of women in society, and took special care to ensure that the State took positive steps to give women equal status. Articles 14, 15(2) and (3) and 16 of the Constitution *not only inhibit discrimination of women but also in appropriate circumstances provide a free hand to the State to provide protective discrimination in favour of women* (<http://www.nic.in/lawcom/>). Article 15 provides that the State shall not discriminate against any citizen on *grounds of religion, race, caste, sex, place of birth, or any of them* (Young 1990).

The Constitutions had classified the Fundamental Rights under seven groups in Article 19 (1):

- 1) Right to Equality
- 2) Right to Particular freedoms
- 3) Right against Exploitation
- 4) Right to freedom of religion
- 5) Cultural and educational rights
- 6) Right to Constitutional remedies
- 7) Right to property

Number 7, which gives the Indian people the right to property, has been eliminated by the 44th amendment Act. Only six rights now remain, in Article 19 (1). It is very important to take notice of this. This means that Indian people no longer have statutory laws, which ensure rights to immovable property.

Part IV of the Constitution contains the Directive Principles that are no less fundamental in the governance of the State and inter alia also provide that the State shall endeavour to ensure equality between man and woman. Notwithstanding these constitutional directives given more than fifty years ago, a woman is still neglected of her own natal family as well as of her in-laws because of blatant disregard and unjustified violation of these provisions by some of the personal laws (<http://www.nic.in/lawcom/>).

Art. 19(1) All citizens shall have the right_
(f) to acquire, hold and dispose of property

Art. 19(5) Nothing in the above clauses shall prevent the state from making any laws in the interests of the general public (...)

Art. 19(1) (f) guaranteed to the Indian citizens a right to acquire, hold and dispose of property. However Art 19 (5) permitted the state to impose by law reasonable restrictions on this right in the interests of the general public or for the protection of any Scheduled Tribe. *Generally speaking, Art. 19(1) (f) did not prove to be much of a hindrance in the way of government implementing land reforms. Courts characterised as reasonable a very drastic reordering of the agrarian economy showing that the Courts had themselves assimilated and imbibed, to some extent contemporary economic philosophy. Many laws regulating relationship between landlord and tenants were declared to be constitutional* (<http://www.hrcr.org/safrica/property/>).

3.4.2 The Indian legislation on property rights

Although the right to property is no longer a fundamental right under the Indian Constitution, Article 300A of the Constitution provides that *no person shall be deprived of his property save by the authority of law*. Article 31, 31A and 31B also deal with the right to property. The right to property has been the subject matter of considerable controversy over the years and has given rise to a body of case law, which is very complex. *Suffice it to say that, despite repeated attempts to dilute this right through successive constitutional amendments, it still remains an important additional ground of challenge to measures that abridge freedom of expression* (<http://lawofindia.org/publications>).

During our work we have recognized that there are many acts relating to property. To make it clear, or at least understandable, we have made a list with the most important ones. Not all are of importance for this work, but it can be of interest to know about them. Among these are the Transfer of Property Act, the Sale of Goods Act and the Registration Act that lay down a liberal regime of property ownership and control in the classic common law tradition.

Year	Name of the Act
1882	The Transfer of Property Act
1908	The Registration Act
1925	The Indian Succession Act
1929	The Hindu Law of Inheritance Act
1930	The Sale of Goods Act
1950	The Constitution of India
1952	The Estate Abolition Act
1956	The Hindu Succession Act
1958	The Survey and Settlement Act
1960	The Land Reforms Act

Figure 11: Some of the Acts in the Indian legislation that can be of interest when it comes to rights and access to land.

The Transfer of Property Act, 1882 is an Act to define and amend certain parts of the law relating to the transfer of property by act of Parties. This Act applies to all communities, and it also deals with the transfer of corporeal property from one living person to another. Corporeal property may be of two kinds:

Immovable property that is anything attached to the earth or permanently fastened to anything attached to the earth, and benefits arising out of this.

Moveable property is all property that does not fall under the category of immovable property, i.e. standing timber, growing crops, goods and chattels.

3.5 INHERITANCE IN MODERN INDIA

3.5.1 The Indian Succession Act 1925

The Act contains the laws of succession for communities that do not have laws of their own in personal matters. Hindus, Muslims and Parsis are not included in this law. In the Indian Succession Act the rules for Jews, Christians and all those who marry under the Special Marriage Act, are laid down. If the deceased person has left a widow/widower and lineal descendants, 1/3 of the property shall belong to his widow and 2/3 shall be divided amongst his lineal descendants. If there are no lineal descendent but other kindred then 1/2 of the property shall go to the widow/widower and 1/2 to the kindred. If there is neither descendant nor kindred, the whole of the property goes to the widow/widower. If the deceased do not leave a widow/widower the property will go to the lineal descendents or to those who are kindred to the person. The act gives more specific rules.

3.5.2 The Hindu Succession Act 1956

3.5.2.1 A change in women's situation

At the time Pandit Jawaharlal Nehru was the Prime Minister of India, he expressed his unequivocal commitment to carry out reforms to remove the disparities and disabilities suffered by Hindu women. As a consequence, despite the resistance of the orthodox section of the Hindus, the Hindu Succession Act, 1956 was enacted and came into force on 17th June 1956. It applies to all the Hindus including Buddhists, Jains and Sikhs. It lays down a uniform and comprehensive system of inheritance and applies to those governed both by the Mitakshara and the Dayabhaga Schools and also to those in South India governed by the Murumakkattayam, Aliyasantana, Nambudri and other systems of Hindu Law. Many changes were brought about giving women improved rights (<http://www.nic.in/lawcom/>). Rocher (1990) says that *the most remarkable features of the Hindu Succession Act 1956, are the recognition of the right of women to inherit the property of an interstate equally with men and the abolition of the life estate of female heirs.*

3.5.2.2 The rules of distribution of property

These rules refer to interstate succession. Interstate means that a person dies without making a will. It is the opposite of testamentary succession. The distribution of the deceased property will be full filled in the order that is shown in Figure 12 and Figure 13. In this chapter we explain what the different heirs will get. In other words, how the property will be distributed among the heirs.

According to the provisions of the Hindu Succession Act 1956 the property of a male Hindu who dies interstate is distributed as follows:

- Firstly upon the heirs specified in Class I.
- If there is no heir of Class I, then upon the heirs in Class II.
- If no Class I or II heir is alive, then upon the agnates of the deceased.
- If there is no agnate, then upon the cognates of the deceased.
- If no one of the above exist, then upon the government.

Figure 12: Distribution of a Hindu male's property (based on the text in Khaitan 2001)

If a Hindu woman dies without making a will the inheritance takes place in the following order of preference:

1. Sons, daughters (in case of a predeceased child, his or her children get the parent's share) and the husband
2. Heirs of the husband
3. Mother and father
4. Heirs of the father
5. Heirs of the mother

How the property is to be distributed among the heirs are explained in the Hindu Succession Act section 16. The main rule is meanwhile that heirs at the first level are preferred to those in succeeding levels, and the heirs on the same level divide their shares equally.

Figure 13: Distribution of a Hindu female's property (based on the text in Khaitan 2001). A woman today is the full owner in her own right of any property she possesses.

The person (group) that are entitled to inherit	The share of the property that the heir gets
Mother	One share
Widow	One share, and if there are more than one widow they take one share and divide it equally among them
Daughter	One share
Son	One share
Widow of pre-deceased son Son of pre-deceased son Daughter of pre-deceased son Daughter of pre-deceased daughter Son of pre-deceased daughter	The heirs in the branch of each pre-deceased son / daughter shall take between them one share.
Widow of pre-deceased son of pre-deceased son Daughter of pre-deceased son of pre-deceased son Son of pre-deceased son of pre-deceased son	These heirs also take one share and divide it between them.
Example: If all this 6 "groups" exist after a man is dead then each "group" will have 1/6 of the property. This means that that the mother, widow, daughter and son take 1/6 each while the two next groups have to share 1/6 inside the group.	

Figure 14: Class I heirs and the distribution of property among them (based on the text in Khaitan 2001)

Class II heirs are divided into nine categories. An heir in an earlier category excludes all heirs in later categories. All heirs specified in one category share equally between them.

Category 1: Father

Category 2: Son's daughter's son / daughter, brother and sister

Category 3: Daughter's son's son / daughter, daughter's daughter's son / daughter

Category 4: Brother's son / daughter, sister's son / daughter

Category 5: Father's father / mother

Category 6: Father's widow, brother's widow

Category 7: Father's brother / sister

Category 8: Mother's father / mother

Category 9: Mother's brother / sister

Figure 15: Class II heirs (based on the text in Khaitan 2001)

4 FIELD WORK

4.1 INTRODUCTION

The purpose of going to India was two fold. Firstly to talk with people; explore and find out how they feel and think about women's rights and access to immovable property and women as proprietors. This chapter shows the interviewees' opinions or their recognition of reality. This is not necessarily how it should be in accordance with the Constitution and other acts. Secondly we wanted to get some sort of understanding of the society: Travel around in the country, hear the sounds of humans, animals and vehicles of all kinds, explore outdoor kitchens and taste their spicy food, in a small attempt to get an understanding of the situation, too.

We did our field work, as already said, in two parts of India; Raigad and Bhubaneswar. The organisations we had contact with in Raigad are presented in chapter 4.2.1. In Bhubaneswar we had contact with the agricultural university and were lodged at one of their student hostels. At the hostel we lived liked the other Indian female students. We were free to go to town and to the marked, but in order to go on weekend trips we needed permission from to the superintendent of the hostel.

The questionnaires used at the different places can be found in appendix 2, 3 and 4.

4.1.1 Some special events

During our stay in Raigad we had one weekend trip, arranged by Community Aid and Sponsorship Program (CASP) to Alibaug, a holiday resort for Indians. On our way back Reema, our guide and organizer, wanted to pick up her aunt. We stopped at a small farm that was in possession by the aunt. This was exceptional since she lived with her husband, but still she was the owner of the land. The land had been in her husband's family. When he inherited it he transferred it to her. On her fields she grew vegetables, some fruits, flowers, rice and onion, which are good for health. She showed us the fields and then she picked down a mango from a tree and offered us. We were sitting in the sunshine on her porch eating mango, as fresh as it could be, while some of the family members were watching us and observing almost every movement we made.



Reema's mother's sister in her field of her own.

During our stay in Bhubaneswar especially two girls became our good friends, Dipali and Nivedita, two architect students that graduated the week before we left. They invited us to their rooms some times for tea and snax (Indian way of writing snacks), which is very typical for India. This and the interaction with the other girls at Golden Jubilee Girls Hostel gave us a small taste of how it is to be an Indian female student, and how it is to be young in India today. The difference from being young in a western country is in some respects large. The students had to be inside the walls of the hostel at 7 pm. Besides the studies they were much occupied with thinking about boys, not so different from other young girls, and some other hobbies like going to the movies watching Bollywood love stories.

We also received an invitation for dinner at Dr. S.K. Dash's house, which we of course accepted. A friend came along with him and picked us up outside our hostel. Dr. Dash's wife made a lot of food. She wanted us to get a taste of many different Indian dishes. All of it was very tasty and the use of the Indian spices was perfect. She was also a university employee. Still she went home every day to make lunch, and then dinner in the afternoon. The family had a housemaid helping them with other daily housework like cleaning and bringing their daughter to school. When the dinner was over Dr. Dash and his brother drove us back to the hostel on their scooters.



Dr. S.K. Dash, his wife and daughter in their house.

4.1.2 Interpreter and translation

The people of Raigad speak Marathi, so some of the CASP workers helped us with translation of the questions and the answers when we went out in the field. In some of the villages CASP arranged meetings for us with all the citizens of the village. We did our interviews in plenary. During field visits in Bhubaneswar we once had Dr. Parasar as interpreter and once we had a lady from TEWA. The problem with the translation was to get the complete answers from the women via the interpreter. Often we asked a question, the informants were talking and the answer we got translated was simply: *Yes, we are happy*. We tried to explain that we needed the complete answers, but that was nearly hopeless to obtain. When we did interviews with people that spoke English the problems mentioned above was smaller. The only thing we found necessary was to give them our questionnaire because we found out from the very beginning that they had some problems understanding our way of oral expression.

4.2 FIELD WORK IN RAIGAD

4.2.1 Introduction

We had contact with two different organisations during our field work in Raigad; Community Aid and Sponsorship Program (CASP), an Indian organisation, and Fadderbarnas Fremtid/Children's Future, Norway (FaF/CFN), a Norwegian one. CASP collaborates with CFN in undertaking various community development programs such as health, education, development of community resources and skills. The self-help group helps families to develop the means and abilities to meet their own needs. CASP-CFN helps needy children and their families to live better and meaningful lives (<http://www.caspindia.org/>). CASP and CFN insist on high female participation in all developing of programs, including male respect for this female priority. Inter alias, the request of 50% female ownership to CFN-financed houses are fully accepted. This represents in itself a female revolution in this pronounced male culture. As an example, all NORAD-houses will be given an owner's nameplate exclusively with the name of the women. This gives a very good symbolic effect and emphasizes the female profile in their programs.

The projects of CFN take place in the district of Raigad. The head quarter is located in the town of Pen. The projects started in 1994. Through these years Norwegian Agency for Development Cooperation (NORAD) has brought CFN the basics and vital knowledge about efficient project management. Every year CFN visits several villages to find those which are suitable for development with help from NORAD. CFN and CASP always ask the inhabitants of the villages to participate in the building projects. They also ask them to eliminate dowry and child marriages. CFN totally rehabilitates the villages (<http://www.faf.no/>). CASP, which where founded in 1975, is a registered legal body under the Societies Registration Act, 1860, and Bombay Public Trust Act, 1950. Under CASP sponsorship program, children between 3 - 20 years from the slums of Mumbai and other parts of India are provided assistance for education, health and vocational rehabilitation. It promotes development through two prolonged strategies: To strengthen their environment and it undertakes community development programs through which it reaches out to the rural poor (<http://www.caspindia.org/>).

The vision of CASP is a world in which children realize their full potential in societies that respects people's right and dignity. The aims and objectives of CASP are:

- To provide development aid and support
- To a deserving needy child to complete his/her education, training or medical treatment or for related expenditure
- To help provide emotional support, a sense of belonging and social relationship necessary for the normal development of the child.

CASP strives to achieve lasting improvements in the quality of life of deprived children in India uniting people across cultures and adding meaning and value to their lives, by:

Enabling children, their families and their communities to meet their basic needs and to increase their ability to participate in and benefit from their societies.

Fostering relationship to increase understanding and unity among people of different cultures and countries

Promoting the rights and interests of the children

CASP Raigad Unit works in rural areas of Raigad. It caters responsibility of 2068 school children as well as responsibility of integrated village development. CASP Raigad Unit has provided sanitation facilities, house repairing and construction, irrigation dams, community halls and water supply schemes in 21 villages (<http://www.caspindia.org/>).



Santosh More and Leikny outside CASP headquarters in Pen, looking at the map showing villages CASP work in.

CASP found out that most families was male dominated. *To help changing this tradition, we started to set as a demand that when we support the villages with rehabilitation, women have to be the owners of the new-built house. The effects have been good (Reema).* The male part of the households is happier to get a house registered in the name of their wives than not have the possibility to obtain a new-built house. Reema also tell us that in Raigad district traditionally it is more normal to have female ownership of house than in the rest of India.



The social workers at CASP headquarter in Pen. They write all the information about the children by hand or on typewriters. The information is used in the developing of programs for the children and some is sent to the sponsors as feedback.

4.2.2 The Interviews

During our stay in the district of Raigad we visited several villages, some close to Pen and others at a distance from the town. The villages were in many ways similar, but still they were in different conditions when it comes to standard.

We found that the problem for women to be owners were not to be found in the formal process, as CASP arrange this. If there was any problem it was to get understanding and approval from the men. To get this approval and make them understand the necessity of female ownership and to give information about the project, CASP arranged many meetings with the inhabitants of each village. Most of the men then accept this on an early stage, which makes the whole process a lot easier.



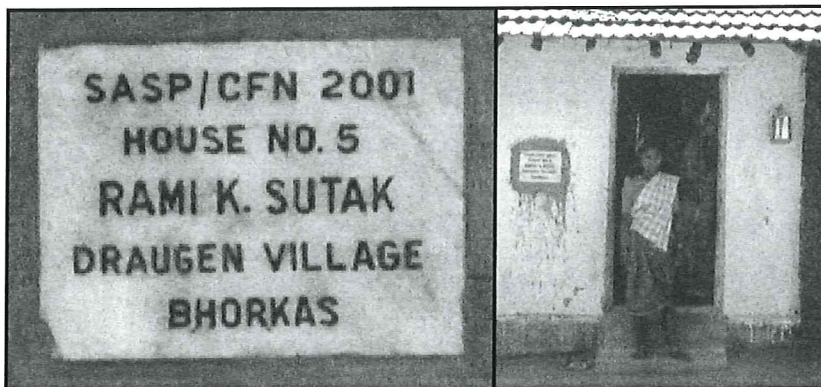
Meeting with the inhabitants in Bhorkas village. On meetings like this men are sitting in the back and women in the front. Still men speak most of the time.

Women in the villages normally do not have ownership to cultivated land. It is the ownership of the houses that is important. The village people often own the land that makes up the village in common, so it is only the houses that are individual property. In addition they often have to lease, rent or borrow the land they cultivate from the government or other landowners in the district. Only a few families possess land of their own. In Draugen village the inhabitants cultivate private fields of a landowner. They have to share the crops 50–50 with him. This principle is called share-cropping, and it is a world wide type of tenure. After being in India we have found out that share cropping on a 50–50 basis is a common way of sharing and have even been in use in Norway some centuries and some places even decades back (Prof. Sevatal). The sharing is always related to the total crop, the harvest, but sometimes inputs like fertilisers and seeds might also be shared in various proportions between landowner and farmer. The system is said to have a bad reputation because it gives small incentives for improvements of the land and it often gives rise to abuse of the tenants.

In general there were 30 to 50 houses in each village and normally one family with 4 to 7 members, in each house. Some of the families were joint families counting about 12 persons; mother, father, sons, daughters in-law and grandchildren.



An old house in Bhorkas village. The animals are living inside the house together with the family. They looked forward to build a new house.



The plate (to the left) outside the house tells that this house is the property of Rami K. Sutak, Bhorkas village. This village is also called Draugen village because the workers at the Norwegian oil platform named Draugen has sponsored the construction of the new houses. To the right is Raghi S. Sutak in front of her house in Bhorkas village. It is her daughter in-law that will inherit the house, not her son or own daughter. Her daughter will move to her in-laws house in the future.



New houses under construction in Shene village. owners.

4.3 INTERVIEWS IN BHUBANESWAR

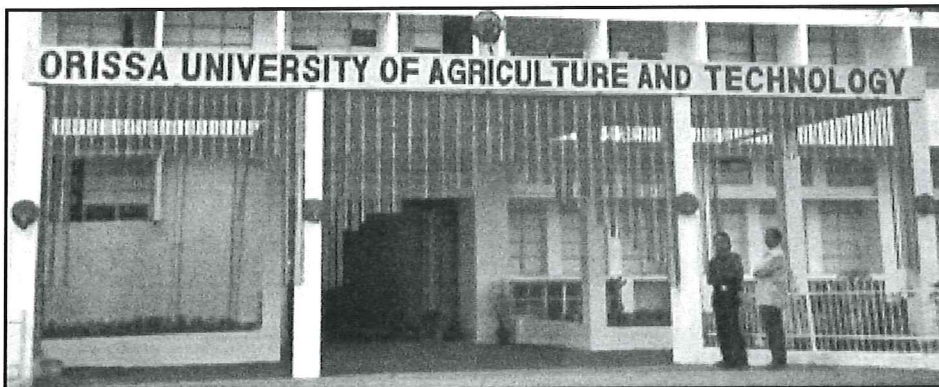
4.3.1 Introduction and our meeting with Bhubaneswar

We arrived at Bhubaneswar Railway Station early in the morning 2. February. There were a lot of people at the station, but a sign with *Wel-come Norway Students* showed us that we were expected. Five men from Orissa University of Agriculture and Technology (OUAT) Student's Welfare waited for us. An old bus took us to the Golden Jubilee Girl's Hostel, one of OUAT's student hostels. The Student's Welfare workers were friendly and informative, telling us about all the important buildings we passed on the way to the hostel.



We have arrived Golden Jubilee Girls Hostel where we spent 4 weeks during our field work in Bhubaneswar. The hostel was a part of OUAT and we lived there together with 300 Indian female students. There were three women and some men working there as servants.

The first encounter with an expert in Bhubaneswar was 2. February when we met Dr. Parasar. He worked as professor at the Department for Extension Education at OUAT. He was very interested in our work and very soon became our key person and organizer. In this chapter we will first refer individually to parts of some of the interviews. Second we will make a résumé of all the interviews we had with people working at OUAT, Training and Extension for Women in Agriculture (TEWA) and National Research Center for Women in Agriculture (NRCWA). For a detailed list over the persons we have interviewed and their place of work, please see appendix 5. In chapter 4.3.6 we refer to the interviews we did in the field. We visited two villages; Matiapara village and Bacantapedi village.



Orissa University of Agriculture and Technology. The main building was painted and decorated to welcome participants to an international conference, which we also joined. It is typical Indian that they decorate with fresh flowers for special occasions.

4.3.2 Dr. Parasar

In India the right of ownership to land for women is required. Women's rights are very important, though it has not been done much in this task. *The law is the same for all women, tribal or "rich", but in practice it is not quite like this.* The common opinion is that the head of the family should own the land, and in most cases that is the male. This makes it difficult for women to obtain ownership. *In most cases, he asserts, the husband will take the decisions and the wife will only be in charge when he is not present.*

In general women are not aware of their rights regarding immovable property. Those who are aware are not able to claim their rights for several reasons. Dr. Parasar mentioned three different reasons why women do not claim their rights: illiteracy, poverty and no access to information. These three arguments make up a cluster, and they form this difficult situation.

A widespread problem is illiteracy. Most of the tribal women are illiterate. This makes it hard for them to gain knowledge about their rights. It will be harder, even impossible, to claim their rights if they do not know about them.

Women do need improved access to land and to get information about their rights. Access to land is meanwhile not the most important thing, he says, money is. For money women can buy what they need. Immovable property can, among other problems, be difficult to mortgage for a woman because she often needs approval from her husband or parents.

He points out two ways that a woman can obtain immovable property:

- 1) She can claim her rights to property that has been her father's, but not property owned by her husband or family in-law. A married woman does not have any rights in her in-laws family. The only way of which she may gain rights is if she becomes the head of the family.
- 2) If a woman has money she can start or join activities i.e. enterprises, factory building, and buy land for this purpose. If she has money, she can involve herself in different projects. *Land does not speak much about access; only money matters.*

In accordance with general ownership to immovable property Dr. Parasar says: *The State is the organic owner of all land and the face outwards. The people lease, tenure and go into partnership with the government.* Women are more reserved than men when it comes to mortgage or sell their immovable property. In some cases men sell their property to get money to buy alcohol or local-made drugs. Women can sell their property for emotional reasons. Dr. Parasar gives us an example of a nephew begging his aunt to give him money. He is in trouble and he knows his aunt has the possibility and willingness to help him. In this case it means to give him her land. *Women are willing to give their land to family.*

4.3.3 Dr. M. Mohanty and research on decision making

Dr. M. Mohanty is a secondary schoolteacher at the College of Home Science at OUAT. She has worked several years with women-related questions and done research on *The relationship of literacy and participation in household decision making*. The purpose of the study was to bring increased emphasis to the importance of Indian women in the present economic system at the national and household levels, and hence, create awareness of their claim for equal rights (Mohanty 1996). Women joining the study were divided in literate and illiterate groups. The research showed that in India quite a number of decisions are made at the household level. All women in the study depended on a male family member's income for survival, and they generally only made decisions related to food and household. The financial decisions regarding the amount to be saved and how the money was invested were made jointly by husband and wife, 60% of the time in literate group and 29% of the time in the illiterate group. In the conclusion of her article she says *that the study indicate that literate women have a more active role in decision-making. (...) Indian women in poverty must be independent on men for their daily sustenance and have only a small role to play in the household economy* (Mohanty 1996).

4.3.4 Mrs. Jewel Raul

A beautiful and very friendly woman showed us her office at the College of Home Science where she works as secondary schoolteacher in domestic science. The office was a small, dusty room with a desk and two chairs. After the three of us had been seated, we gave her our card, told her who we were and explained briefly about our quest. She was very interested in our subject and the interview went more like a conversation, talking about women's right and access to land, both in India and Norway. The following is some of her thoughts and answers to our questionnaire (see questionnaire appendix 3).

At present there are no formal difference between men and women regarding law rights. They have equal rights. In the past, only sons could inherit immovable property. Both daughter and son have the same rights, but immovable property automatically goes to the sons, only to daughters if they are not married. The son will be the future patriarch. Married daughters have to claim their rights if they want to get a share of the immovable property. Mrs. Raul has three daughters. She would not have discriminated her daughters in favour of a son, but if she had had a son that was not financially settled and her daughters were married, she would have given the immovable property to him. As a main rule she thinks it should be divided equally. Differences should be made only because of financial reasons, so all the children would be secured.

Decision making should be based on a discussion where the best solution or suggestion will be used, but often it is dominated by the male. *The ideal situation is that both wife and husband could bring their arguments and try to convince the other part and weigh the arguments.*

In India immovable property is an important investment. The value of property is increasing and in five years the prices have been doubled or tripled, she thinks. Therefore it is worth owning land. In Bhubaneswar everyone wants to own some plot of land, even a very small one. Just to rent property is not considered as a good and lasting solution. The poor people take governmental land and build houses there. When they have occupied it for a certain period they have the right to be the owner of it if they pay, one can call it usucaption. (This might be the same arrangement of occupation of land called kabsa/cabsa which is found in other parts of India. We have not got this confirmed.)

To day it is a rapid movement for women liberation; they have nearly all kinds of work, even astronaut. The conclusion is that land really matters and women need improved access to land. For women it is important because of fairness, principal reasons, welfare, economic development and survival. Women are more sensible handling the property. Men are dominating and discriminating.

4.3.5 Résumé from Bhubaneswar; OUAT, NRCWA and TEWA

In the Statuary law there are no difference between men and women, the Constitution gives women and men equal rights, but there are differences when it comes to customary law. Only one interviewee meant that there were no differences in the customary law.

On the question about a common opinion related to male vs. female ownership to land, it was difficult to get definite answers. You can say that the common opinion, in accordance with the interviewees, is that the owner of the land should be the male and that the property should go to the sons. Security will come from the male. *In general women are not landowners in India. This is pointed out in every seminar and symposium concerning this subject, Dr. Satapathy said.*

The dominant decision maker is the male. Nearly all of them told us that the whole society is male dominated, but some had the opinion that in educated families both wife and husband take part in the decision-making. In lower classes it is the male part that makes the decisions. The following is statements from some of our interviewees:

- *In educated families both wife and husband take part in decision-making. In lower classes it is the male part that makes the decisions (Dr. S.K. Dash).*
- *Male dominate the decisions when it comes to economic questions and when money is involved. Women: what to make to dinner to day? (Dr. M. Mohanty).*
- *In major male is dominating, of course, obvious. In some cases he has to discuss with his wife (Dr. S. Nauda).*
- *In joint families, where the structure can be: mother, father, their sons and daughters' in-law, the mother will have more to say. Especially when the father is not there (Dr. Satapathy).*

Women can obtain ownership to land through transactions, buying and inheritance. The mechanisms by which women obtain access to land are irrelevant because *women do not have much access at all* (Dr. S.K. Dash).

In India land is an important investment. The value of property is increasing every year. Therefore it is worth owning land and people do not want to sell their property. You can find agencies and firms, housing board development firms, working with property transactions. Some also make an advertisement in the newspaper or in TV-commercials. They do not see this as an organised market, because the demand is much greater than the offer. It is important to know a person who wants to sell or to know someone who knows a person who wants to sell if you want to buy immovable property. The personal networks between people are of real importance.

There are different opinions on the question whether there are differences between women belonging to different strata of the society, some say there are and some say there are not. One woman told us that among poor people women often get immovable property when they get married, while the upper class women get money and jewellery. It can be a problem separating between gifts and dowry. To this question Dr. S Nauda said: *I have four brothers and the immovable property will go to them, but I got some of it when I got married. This was not actually a dowry; dowry is more like money and other things. When brothers are there we usually not claim.*

Women do have equal access to registration, but the process can be more difficult, especially when they do not have a man to help them. *It may be difficult for single women, but if you have family it is easy* Dr. M. Mohanty said. She got her house from the Bhubaneswar Development Division and it is registered in her name. Access to land does matter for the sake of fairness, principles, welfare, economic development of community, and survival among others. The women really think it is important and that it matter. *If the wife is alone, man is dead or they are divorced, she needs land for security. Especially in a joint family, because if she does not have a son she will not get anything from the joint family when her husband dies* (Mrs. S. Mohanty and Ms. G. Mahata).

There are not astonishingly different opinions concerning women's knowledge about their land rights. The people should be given more awareness, not only women, also men. In accordance with the interviewees most people do not know about their rights especially the poor women, which most often are illiterate. *Law is there but the men must be motivated to share with the women. Very few women know about their rights. They don't bother because the husband takes care of that and they are not interested in rules and so on* (Mrs. P. Agarwal).

They do pay property tax, a small amount per year, even if our informants could not give us the exact rules or numbers. In accordance to Dr. M. Mohanty the amount depends upon the size of the land. *We pay property tax but I don't know how much, my husband is paying that*, Mrs. P. Agarwal said. We got information from one of them that *for registration they have to pay a lot of money*.

4.3.6 Field visit in Bhubaneswar

4.3.6.1 Introduction

The plan was to go on six field trips, but due to problems with unavailable vehicles, we only went twice. (Once the vehicle was occupied with carrying a dead body and once it drove important officers to the election.) To go without someone from OUAT guiding us was out of the question. There were two reasons for this; they did not want us to go because of our own safety and we were dependent upon having an interpreter with us. The first trip was to Matiapara village together with the Home science students and Dr. Parasara, 7 February. In the village they arranged a meeting for us in the local schoolhouse with all the women. Dalabehera (superior at TEWA) arranged the second trip to Bacantapedi village, 22 February. We went out with one of TEWA's female workers and she did the interpretation. There we visited one woman and her husband and the other women came to this house, gathering around us and answering our questions.

4.3.6.2 Matiapara Village

In this village there were 95 families, and 3 of them were, as they call it, *nuclear joint*. It was not clear what they meant with this term, but it is probably a nuclear/nucleus family in a wide sense. In 3 families, the male member works in the state capital. The others work as local farmers; general agriculture, poultry, cows, domestic.

Villagers possess their own property; they own the land themselves and grow what they need there. The pastureland is governmentally owned. All of the property in the village is male owned except for one case (see later in text). Men purchase the land in their own name, and new land will also be in their name. If they only have daughters they will give the immovable property in the name of the daughter's husband. Some women have received land from their fathers; they then want to have it in their husband's name.

Spouses take decisions jointly. Normally the wife and husband want to be agreed. But when there is a family problem the husband some times blame it on the wife. They do not feel much dominated by the men.

The knowledge village women have about their possibilities to have access to land; is that it only occurs if their husband dies. They do have thoughts about female ownership of immovable property:

- Very good
- When they got old it will be secure for them

- Self care, more independent
- Men will sell very easily and women do not want to sell. They rather want to increase their property than decrease it.

They do pay revenue tax and water tax, approximately 400 Rs/acre.

A special case: On our way back to the bus, two of the Home Science students asked us if we would come with them because a woman in the village wanted to show us something. In the meeting with this woman the two Home Science girls translated for us. This woman owned her own house and field. She wanted to show us the new house her family was building. Then she took us to the old house and we sat down in her "bed-and living-room". The television was showing a local program in black and white, and there were a religious picture with flowers and incense on the wall. Normally the woman goes to the in-law's house, but when she got married her husband came to her from another village. The immovable property from her parents stayed in her name and it still does. She lives in a, what they called, joint family together with her three sons and one daughter-in-law. One son is working in the town, one is a student and one is working as a farmer on the field.

4.3.6.3 Bacantapedi village

We talked to four women of different ages in this TEWA village. It consists of 30 households. We had heard that the families should get some benefits from the government if the husbands transferred some of the immovable property to their wives. We did not get this confirmed during the interviews.

In one house belonging to Mrs. Bimala Tripathy and her husband we sat down on a double bed together with women and children from the village. They served us lassi, a sweet or salty drink made of curd and water. It is to be found everywhere in India. Mr. Tripathy spoke English so he was answering most of the questions. We had to ask very specific for his wife's opinion to get the answers from her. The other village women came without their husbands, but some men were gathered outside the house. For the three other women we interviewed, our interpreter translated for us.

Transferring of land and examples female title:

- Husband purchased land and registered it in his wife's name because he was staying out of the village working somewhere else (Mrs. and Mr. Tripathy)
- Her husband purchased the land and the house where they live, in her name. This was to ensure that his brothers would not take it. The brothers have no rights in the land when it belongs to their sister-in-law (Mrs. Acharya)
- Father-in-law purchased cultivated land in her name (Mrs. Das)
- Her husband purchased land for household in her name (Mrs. T.M. Tripathy)

All the four of them said that the process getting the land in their name was a clear-cut process. It was *no problem*.

The benefits they got by transferring property into the wife's name:

- *No difference because he is the wife and I am the husband* (Mr. Tripathy). After repeating the question he told us that his wife now can get a bank loan and he cannot sell the land without her permission
- Bank benefits for them on behalf of government also (Mrs. Das)

Feelings that the other family member have about this new situation:

- They pay regards and respect more than before. She can help the other family members, after her own wish.
- *Financially reasons according to her choice* (Mrs. and Mr. Tripathy)
- *The rest of the family did not complain to the transferring, they accepted very calmly* (Mrs. Das)

To the question about who makes the decisions; two informants answer: *It is the husband*. Two other informants say they make decisions together.

Three informants say that there are differences between them and women belonging to other castes or strata of the society. Only one informant said there are no differences.

They are all agreeing that access to land do matters. Ownership gives them stronger rights.

They got their knowledge about rights through traditional cultural practice. In rural areas in Orissa this means that both sons and daughters can get land. Some times the daughter transfers her land to her brother, so the son gets all the land.

They do pay property taxes.



When we asked the women if we could take a photo, Mr. Tripathy started to organize them. The woman to the right was our interpreter and the one next to her is Mrs. Tripathy.

5 FINAL DISCUSSION AND CONCLUSION

We started out with the purpose to find out the possibilities for Indian Hindu women to possess, use, own, lease/lend and dispose etc. land and resources related to immovable property, according to the “rules”. In the conception of “rules”, and in fact for structuring the work in general, we took an institutional approach, which have several implications. First of all, it means that the rules are identified as institutions, secondly that we put major emphasis on rules in the study of women’s access to land, more or less excluding other factors that might also play a role. An institutional approach also means that all forms of rules that might influence human behaviour are included, statutory law as well as customary law, but also rules that do not fit quite nicely into either of those two categories. It might be described as of a bundle of norms for behaviour, based upon religion and culture. Customary law do so quite often, but these norms do not necessary have such a clear cut legal status that they may be classified as proper customary law. Such rules may include or derive from:

- Adoption to gender segregated economy, in society and family
- Adoption to gender segregated family structures of power and formal status
- Other cultural structures of society, such as marriage and inheritance

Finally it should be mentioned that mechanisms for enforcement of rules are included in the concept of institutions.

To find answers to our questions we obviously had to divide the work in two parts, literature study and field work. The literature study has mainly included studies of law books and acts, and literature that discuss problems related to our subject. The field work included interviews with village people, people in academia and experts, and might perhaps be classified as some sort of explorative case studies.

When we started the field work in which we had a fairly good picture of the basic principles of statutory law. Its basic principles are discussed in chapter 2, and the conclusion is quite clear; according to statutory Indian law men and women have equal access to ownership to land. An equal clear conclusion, well known of course, but experienced also by us, is that this is by far not the case in reality. Women are widely discriminated; men dominate extensively as formal group of proprietors. Women do have rights to possess, own, inherit and buy immovable property, according to statutory law, but the practices induced by customary law, religion and culture etc, have not yet followed. The main opinion is that every woman is subdued the man. The husband is the main decision maker. It is a male dominated society, not only the places we have been visiting but in most of the country, we have been told. Of course you will find places that practises are very different, but you always have to have the exception that confirms the rule.

A solid conclusion we can make after doing our field work is to say that access to land matters. Nearly all the people we have been talking with answered yes on this question (see appendix 3, question 10). To have land means to have security and status. The women obtain more respect and regards from other family members if they own some immovable property. This can be for the sake of fairness, principles, welfare, economic development of the community, survival, etc.

It seems to us that both educated men and educated women (interviewees in Bhubaneswar) do know about the equal right to own and to have access to land in accordance with statutory law. But this right is contradicting customary law. The immovable property goes directly to the sons in most cases. If the daughter wants her part, she has to claim it. It depends upon her father and her brother(s) if this will be an easy affair or not. Some times she would not get anything and in most of those cases she does not dare to go to the courts. We have seen, in the case from chapter 2.5.7.1 "Two stories from a newspaper" page 26, that this is a long, expensive and painful way to go. In the rural areas people do not have much knowledge about the rights the statutory law gives them. Knowledge conveyed orally from one generation to another, they are not much educated and illiteracy is widespread.

Dr. Sandangi from NRCWA told us more than once that the upper class women do not go outside the house more than necessary and several of the other interviewees confirmed this. The rural and poor women have to work the fields to get food for the family, because the men in the villages often have jobs in the city that make it impossible for them to go to the fields also. It is a traditional and very old way of thinking that lies deep down in the Indian people. An explanation on this phenomenon is to be found in a book written by Wilkins (1902) where he says: *The poorer people would, if it were possible, seclude their wives, but the style of house, or rather hut, in which they live, and the fact that it is necessary for them to go to the markets, draw water, and attend to the duties of the house, make seclusion impossible. Some household servants are as scrupulous in keeping their wives hidden from the public gaze as men of large incomes. It is not because the poorer classes are more trustful, but simply that circumstances are against their carrying out their wishes.* Still some upper class men can afford to have their wife at home. This shows how much the people still pay attention to the religious and cultural rules. In the villages we visited in Raigad the women did most of the work on the field. The men worked most often in a larger town near by, and some times so far away that they only came home some twice a month or so. The village women had to make the rice from one season last the whole year. This shows that the village people really depended upon the crop. A bad season makes a bad year.

Statutory law equalise men and women, but the right to property was taken out of the constitution in the 44th Amendment Act from 1978. They did not find it necessary to have section 19(1)(f), which secured the general right to immovable property. In accordance with Hindu law women and men have nearly the same

rights, for instance in the inheritance rights. The order of succession is more discussed in chapter 3. An interesting phenomenon here is that the mother has a better priority of inheritance than the father, because she is a class I heir while he is class II heir. The father will only inherit, and then he will take the entire property, in the absence of class I heirs. We did find a suggestion for changes in the Hindu law to the betterment for the women. It was a report from the Law Commission of India 174th Report on “Property Rights of Women: Proposed Reforms under the Hindu Law”, May 2000. This report has not, as far as we have found, led to changes in the Hindu law. Hopefully it will come in the future.

There are also some aspects that we have not investigated, or have not been able to find an answer to. We wanted to find out if and which strata, classes or groups that dominate landownership, and also look into the problem of different types of tenure systems, like lease/tenant relationship. When we asked questions in this direction we did not get any good answers. A normal answer, when we asked about who owned the immovable property, was in fact that they said the government. It is also interesting to see for what purpose they use the land. Different categories of land can be agricultural land, forests, and a plot for building a house. This turned out to be difficult.

When analysing the relationship between statutory and customary law, freedom of contract can be important. It follows from the principle of freedom of contract that private parties might agree on contracts quite different from statutory law. How this works in India we have not been able to find out, but we do know that they can make contracts if both parties agree. If, and in what circumstances, they can make agreements contrary to statutory law we do not know. When it comes to tax and registration they did not want to talk about it. They were always vague in speaking of money. So we can ask if this is a part of the gender discrimination. Maybe the registration is so expensive that women cannot afford it, and consequently not get the property registered in their name?

Initially we had some ideas studying how and when changes might come about, reflections on the future are unavoidable for us. In a theoretical sense this means institutional change, and should be analysed as such. We know fairly well that old established institutions are in fact very difficult to change. They are deeply entrenched in the social, economical and legal systems. Generally speaking one might refer to North 1990, which states that these types of institutional change of this sort typically have to take place incrementally; i.e. as small steps at the margin, initiated by actors that benefit from the change. But “path dependence” is a phenomenon hard to overcome.

Maybe we can say that education and money can be keywords for how women can be proprietors. With education they can get better paid jobs and probably gain more knowledge about their rights. Then they have money for buying and registration of property and they can more easily claim their rights. The ownership in

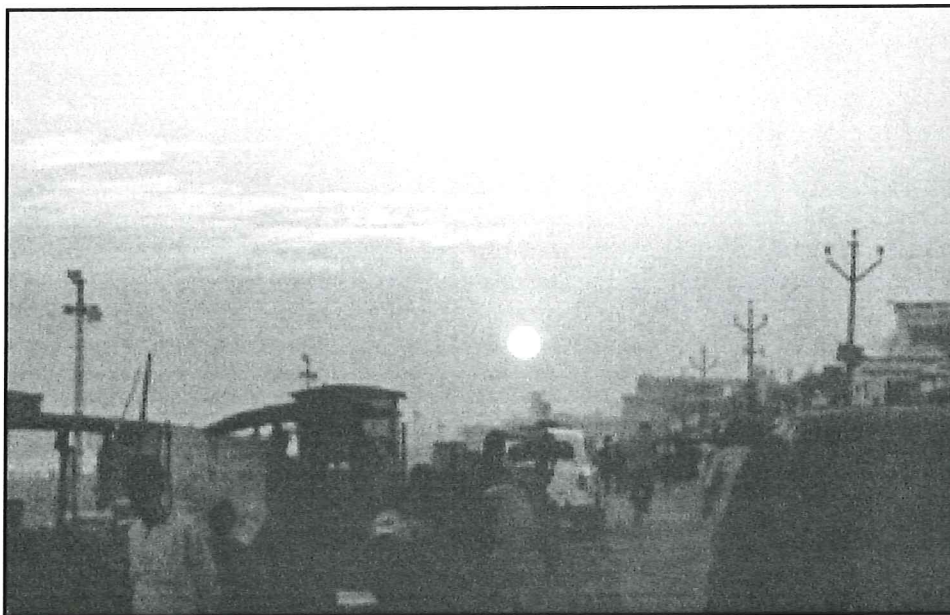
property will then give women more security, and if she needs money she can sell the property. In India, where immovable property definitely is a scarce resource, this could be a good investment.

When it comes to the rights to inherit immovable property, an argument against equal rights for all the children, both daughters and sons, will be the danger of successive fragmentation of the holdings. This is of course a very serious problem, but there might be found measures to counter such a development, at least to some extent. If one do not want fragmentation, two well known mechanisms are that the one who is going to take over the holding (the immovable property) for usage can 1) have the right to buy the property from the others for a price equal to their part or 2) have the right to rent it from them. This of course would require institutional arrangements and also a certain level of market economy.

During our work, especially our field work in India, we have found other interesting subjects that might be interesting for other students to investigate, for example as a diploma work like ours. Some of the subjects are directly related to our work and some are not.

- The matrilineal inheritance system in the north-east part of India
- The property-tax system in India
- A study of who possesses the land; the system of lease and leasers, "big" landowners and "small" farmers
- The registration system for immovable property
- The Indian system of land consolidation

India is a land filled with interesting subjects to investigate, exiting places to go and new things to explore.



Sunset over Puri, a pilgrimage town on the east cost of India.

DICTIONARY

Communities: societies of Hindus, Muslims, Christians, Jews, Parsis, etc

Customary law: unwritten law established by long usage (Bathurst Declaration 1999).

Dowry: is defined as any property valuable security given or agreed to be given, directly or indirectly (a) by one party to the marriage to the other party to marriage, or (b) by parents of either party to the marriage, or by any person to either party to the marriage or to any other person at or before or at any time after the marriage (Diwan 1988).

Information: any data processed, organized or classified into categories to serve a useful purpose (Bathurst Declaration 1999).

Intestate succession: when the deceased leaves no will

Joint family: in this family we often find a larger number of family members than in a "normal" family and it include parents, their children and daughters' in-law, and their grandchildren. The oldest man is normally the head of the family and they often own the immovable property in a co partnership (Khaitan 2001).

Land reform: the various processes involved in altering the pattern of land tenure and land use of a specific area (Bathurst Declaration 1999).

Land tenure: the manner of holding rights in and occupying land (Bathurst Declaration 1999).

Land: the surface of the Earth, the materials beneath, the air above and all things fixed to the soil (Bathurst Declaration 1999).

Leasehold: land held under lease, which is a contract by which the right of exclusive possession of land is granted by a landlord (the lessor) to a tenant (the lessee) for an agreed amount of consideration (usually money) for an agreed period of time (Bathurst Declaration 1999).

Personal Law: this is the law in family matters. The laws relating to marriage, divorce and succession are different for each of the communities. The personal laws do not differ from state to state (Khaitan 2001).

Property: everything that is or may be subject to ownership. A distinction is made between personal property (such as physical objects), intellectual property, and real property (by which is meant the ownership of rights in land and things attached permanently to the land) (Bathurst Declaration 1999).

Registration of a will: a will can be written and executed on any piece of paper. It may be handwritten or typed. It does not require a stamp duty and it is not required to be registered even if it relates to immovable property (Divekar 2001). Registration of a will is optional, see the Registration Act, section 18 (e).

State: refers to the Government and the Parliament of India, and the government and legislature of each of the states comprising India. When it is used on a state like Orissa it is written "state", and often specified.

Tenure: the way in which the rights, restrictions and responsibilities that people have with respect to the land are held. The cadastre may record different forms of land tenure such as ownership, leasehold, and different types of common, communal or customary land tenure (Bathurst Declaration 1999).

English – Norwegian Dictionary

agnate	beslektet på farssiden	joint ownership	sameie
alienate	avhende, overdra	kinship	slektskap
amendment	rettelse, forbedring	labour	arbeid
avail	nytte, fordel, gavne	lawful successor	rettmessig arving
cognate	beslektet på morssiden	legislation	lovgivning
coparcener	medarving	male reverence	manns ærefrykt
customary law	sedvane	owner	eier, innehaver
denote	betegne, angi, bety	power	makt, myndighet
devise	borttestamentering	property tax	eiendomsskatt
framework law	rammeregulering	proprietor	eier, eiendomsbesitter
gender	kjønn	statutory law	formell lov
heir	arving, arve	substantive law	grunnleggende lov
heirship	arverett	succeed	følge, avløse
immovable property	fast eiendom	succession	arvefølge
inter alia	blant annet (lat.)	tenure	eiendomsforhold
interference	innblanding, inngrep	transfer of property	eiendomsskifte
intestacy	mangel på testament	usucaption	hevd
intestate succession	arve etter loven	usufruct	bruksrett
intestate	død uten testament		

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APPENDIX 1: PROGRAM RAIGAD

TENTATIVE PROGRAMME FOR MS. ELISE THUE OYEN & MS. LEIKNY GAMMELMO

From 23rd of January to 1st of Feb. 2002

Date	Time	Village	Programme
24/1/2002	10 a.m.	Nandadi	To meet sponsored children Raghi-31761, Kamali-31777 Community Kitchen Center, Medical Check Up etc.
25/1/2002	10 a.m.	Bhorkas	Draugen village
	1 p.m.		Lunch at Pen
	2 p.m.	Ranshetwadi	Sagi-Knut Village
26 /1/2002 & 27/1/2002		H o l i d a y	
28/1/2002	10 a.m.	Kasmal	NORAD 2001 Village
		Virani	NORAD 1999 Village
		Dharmachiwadi	NORAD 2000 Village
29/1/2002	10 a.m.	Shene	NORAD 2001 Village
	2 p.m.	Dhavral	NORAD 2001 Village
30/1/2002	10 a.m.	Gorthan	Income Generation Activity Handicap Center Day Care Center
		Gagode	IGP
		Ashte	Book binding unit
		Pen	Office building – exhibition Cultural Programs

Worked out by CASP- Raigad in collaboration with FaF/CFN.

APPENDIX 2: QUESTIONNAIRE, RAIGAD

The questions for use in Raigad, Maharashtra. The interviewees were rural women in sponsored villages. Sponsored by Children Aid and Sponsorship Program (CASP) and Children's Future, Norway (CFN)

- 1) How does it feel to own your own house? – What does your husband feel?
- 2) How is the family situation?
- 3) What do you work with?
- 4) Was it a difficult process to get the status as an owner?
- 5) Do you pay property taxes?

These interviews were held as plenary meetings. Therefore we had to change the way the questions were asked. Most of the answers we received were a generalization of the answers from the village women, not personal replies.

APPENDIX 3: QUESTIONNAIRE 1, BHUBANESWAR

Questions for use in Bhubaneswar, Orissa. Academic people at Orissa University of Agriculture and Technology (OUAT), Training and Extension for Women in Agriculture (TEWA) and National Research Center for Women in Agriculture (NRCWA).

- 1) Are there any differences between men and women when it comes to: Statutory law of inheritance and customary law of inheritance?
- 2) Is there something like a common opinion related to male vs. female ownership to land?
- 3) Who is the dominant decision-maker, male/female, concerning use/transactions etc. of a property unit?
- 4) What are the mechanisms by which women get/obtain access to land?
- 5) Is there a market for selling and buying land / immovable property?
- 6) Are there differences between women belonging to different religions or different strata of the community?
- 7) What does the constitution say about gender aspects concerning land?
- 8) What about land registration and registration of rights; do women have equal access to registration, formalization, legalization of land?
- 9) What about the enforcement mechanisms of legislation, policies etc. intending to equalize men and women in this respect?
- 10) Do access to land really matters? Or: Do women need improved access to land? In what respect? For the sake of: fairness, principles, welfare, economic development of the community, survival, etc.
- 11) Do women know what kind of rights and possibilities they have according to statutory law, customary law and constitutions?
- 12) Do they pay property tax?

APPENDIX 4: QUESTIONNAIRE 2, BHUBANESWAR

When we went out in the fields we had another questionnaire than we had when we spoke to academic people. This because we wanted other information from the tribal people, and from the experience in Raigad we found out that we had to try to speak their language, that means to take away all the professional terms and generally let them speak more freely.

- 1) How did the land get transferred?
- 2) Was it a difficult process?
- 3) Which benefits do the family get because of the female ownership?
- 4) What do the other family members feel about the new situation?
- 5) Who make the decisions (wife / husband / both together)?
- 6) Are there any differences between you and other female owners, in your own caste and in other castes?
- 7) What do access to land mean for you? – Does it matters if you have it or not?
- 8) Do you pay property tax?

APPENDIX 5: INTERVIEWEES IN BHUBANESWAR

Name	Working place
Dr Parasar	OUAT, Extension education
Dr Sataphaty	OUAT, Extension education
Dr Sadangi	NRCWA
Mr H.K. Dash	NRCWA
Mr Dalabehera	TEWA
Dr Naik	OUAT, Agricultural Economics
Dr S.K. Dash	OUAT, Mech. Engineering
Mrs Raul	OUAT, College of Home Science
Dr M. Mohanty	OUAT, College of Home Science
Mrs S. Mohanty	OUAT, College of Home Science
Mrs G. Mahata	OUAT, College of Home Science
Mrs Agarwal	OUAT, College of Home Science
Dr Nauda	OUAT, College of Home Science
Mrs B. Tripathy	Bacantapedi village
Mrs Acharya	Bacantapedi village
Mrs Das	Bacantapedi village
Mrs J.M. Tripathy	Bacantapedi village