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# **Women's Access and Rights to Land in Karnataka**

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## EXECUTIVE SUMMARY

Rural women throughout India contribute greatly to agricultural production and are highly dependant on agricultural sources of income. Yet these women, who both contribute to and depend on agriculture, do not have secure rights to the most important agricultural asset: land. The purpose of this report, and the research upon which it is based, is to evaluate women's access and right to land in Karnataka State and to provide policy recommendations aimed at enhancing the position of rural women.

Few women in rural Karnataka own land. This is due to numerous reasons. First, many women in Karnataka live in households that own no or very little land. Approximately 7.2% of women live in households that are absolutely landless and another 24.8% in households that own less than 0.2 hectares. Second, previous government programs that granted land to tenants or regularized encroachments almost without exception allocated land solely in the name of the male head of household. Third, although intestate succession laws in Karnataka grant Hindu and Christian (but not all Muslim) widows and daughters the right to inherit land, these laws are mostly ignored or unknown, and in any case can be circumvented by drafting a will. Fourth, in cases where women have some legal right to inherit land, they are often reluctant to exercise this right because of the hardship their families suffered in raising funds for their dowries and wedding expenses. While women are reluctant to assert their rights because of these expenses, they themselves have no control over dowry paid on their behalf. Finally, divorced or separated women do not have the right to any portion of their husband's separate or ancestral land. This lack of secure rights to agricultural land is especially damaging to women outside of traditional households, such as women who are deserted, widowed, or whose husbands have multiple wives.

Local institutions (both formal and informal) are an integral part of rural societies in India. These institutions must be considered when evaluating women's rights to land as they play an important role in resolving disputes related to land and land rights in villages. Two local institutions play particularly important roles concerning land rights at the village level: customary institutions that deal largely with dispute resolution (informal *panchayats*) and formal, elected village councils (*gram panchayats*). This study considers both, along with non-governmental organizations (NGOs) working at the village level.

The study included two methods for gathering village-level information: (1) a 400-household survey covering numerous rural-land issues including women's access to land; and (2) subsequent rapid rural appraisal research consisting mainly of in-depth interviews with rural women, local leaders, and representatives from several NGOs.

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This report evaluates the applicable written law related to women's land rights and details the authors' research findings. It also provides preliminary recommendations for policy changes to address women's general lack of secure rights to land. The recommendations that emerge from this research are as follows:

- *Adopt legislation requiring that all government-allocated land and housing be granted in the joint names of married couples or to women individually.*
- *Add safeguards to the registration system to ensure that women understand their rights and obligations as owners.*
- *Consider adopting the concept of co-ownership of marital property, which would grant both spouses equal right to property acquired during marriage.*
- *All gifts and cash received in conjunction with marriage should be deemed to be jointly owned by the married couple, regardless of who the cash or gift was specifically given to.*
- *Provide government loans and/or grants to women to purchase small pieces of land that are being sold to raise dowry.*
- *Adopt legislation to apply the Muslim Personal Law of succession to agricultural land throughout the state.*
- *Provide greater government assistance to widowed women who have no means of support.*
- *Consider amending the Hindu Succession Law to prohibit husbands from completely disinheriting wives.*
- *Place safeguards in the probate process to ensure the involvement of women.*
- *Grant bigamous wives in "marriage-like" relationships the right to a portion of any property acquired during the time they were in the relationship.*
- *Better educate gram panchayats about their responsibilities over land allocation.*
- *The Karnataka Legal Services Authority should work to more closely with gram panchayats to provide legal services to women.*
- *Amend the rules for receiving legal aid so there is no ceiling amount for cases involving divorce, dowry or inheritance and only a nominal charge for services.*

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## I. INTRODUCTION

Rural women throughout India contribute heavily to and are highly dependant on agricultural production. Yet women have been almost entirely overlooked in previous land reform efforts aimed at granting secure tenure to those who work and depend on agricultural land. Karnataka, despite its other successful land reform efforts, has only recently begun to address women's insecure right to land.

Rural women are key contributors to agricultural production. Sixty-six percent of women in Karnataka live in rural areas.<sup>1</sup> Of rural women in Karnataka, 55% are engaged in cultivation on their household's landholding and 41% work as agricultural laborers.<sup>2</sup> By comparison, 56% of rural men cultivate land that their household owns and 35% of rural men work as agricultural laborers.<sup>3</sup>

Women are involved in nearly all aspects of agricultural production, including: clearing, weeding, picking, transplanting, watering, and harvesting.<sup>4</sup> Women generally do not participate in plowing, which is considered a man's job. Women in families with larger landholdings sometimes also work with and supervise laborers, though they generally do not hire or pay them.

Both men and women care for livestock, though women and the elderly may contribute more labor because they are generally close to home and are therefore more available to care for the animals. Women and men often make decisions about purchasing or selling animals together, though men will conduct the actual transaction.

In addition to working on their family's own land and tending their own animals, many women work as agricultural laborers. On average, women in Karnataka earn 37 rupees per day as agricultural laborers and men earn 51 rupees per day.<sup>5</sup> The reason villagers often give for this wage disparity is the difference in types of agricultural labor that

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<sup>1</sup> Office of the Registrar, Census of India 2001, Table I: Population. Available on-line at <<http://www.censusindia.net/results>>.

<sup>2</sup> SRILATHA BATLIWALA, B.K. ANITHA, ANITA GURUMURTHY, AND CHANDANA S. WALI, STATUS OF RURAL WOMEN IN KARNATAKA (National Institute of Advanced Studies 1998) at 152. This study took pains to count women who cultivate land that their family owns, but that they do not necessarily hold in their own name. This is a different measure than that of similar statistical surveys such as the Indian Census, which only counts a person as a cultivator if he or she cultivates land that they hold in their own name.

<sup>3</sup> *Id.*

<sup>4</sup> This and the following findings on women's involvement in agriculture were obtained through the authors' own rapid rural appraisal research which is further described below in section III.

<sup>5</sup> In Bijapur female agricultural laborers earn 24 Rs./day and male agricultural laborers earn 42 Rs./day. In Kolar women earn 30 Rs./day and men earn 46 Rs./day. In Dakshina Kannada women earn 55 Rs./day and men earn 68 Rs./day. In Shimoga women earn 35 Rs./day and men earn 45 Rs./day. These figures were obtained from the 400 household survey that the Rural Development Institute conducted in 2001. This survey is discussed in greater detail, below in section III. One U.S. dollar is currently equivalent to approximately 47 Indian rupees.

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women and men perform. Men usually plow and clear, while women usually weed and transplant. The varying difficulty of these jobs has been much debated, with many claiming that women's traditional tasks are actually more demanding.<sup>6</sup> Putting that debate aside, it is clear that there is a large disparity between the earnings of male and female agricultural laborers.

Despite this high level of involvement in agricultural production, rural women in Karnataka own only about 10% of rural household landholdings, either individually or jointly with their husbands.<sup>7</sup> Also, a large group of women live in households that own no or little land. Approximately 7.2% of rural women in Karnataka live in households that own absolutely no land. Another 24.8% of rural women live in households that own less than 0.2 hectares of land.<sup>8</sup> Women who are part of a household that does own land often have access to land, but very few have actual ownership rights. This leaves them with no legal right to participate in the decision to sell or mortgage such land. Women outside a traditional household, such as women who are separated, divorced or widowed (especially those without sons), often completely lose access to land. In Karnataka, 9.5% of the total population of women is widowed and 18.3% of women who have been married are now widowed.<sup>9</sup>

Karnataka has implemented some land reform measures to benefit insecure tenants and other landless or near-landless households.<sup>10</sup> However, these programs have not targeted women. The government has only recently adopted a little known and little implemented policy of providing all government-allocated land in the joint names of husband and wife or individually to women. It is hoped that this report will encourage policy makers to continue their efforts in this area and to provide additional guidance.

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<sup>6</sup> A male anthropologist once asked a man why men do not participate in the weeding and transplanting of rice. He responded: "No man can keep standing bent over all day long in the mud and rain. It is much too difficult, and our backs would hurt too much." Joan P. Mencher and K. Saradomoni, *Muddy Feet, Dirty Hands: Rice Production and Female Agricultural Labor*, ECONOMIC AND POLITICAL WEEKLY, (Dec. 1982) at A-152, citing a personal conversation with C. Von Furer-Haimendorf, 1980.

<sup>7</sup> BATLIWALA, *supra* note 2, at 140-141. When women were asked about land ownership they reported owning 8% of land, either individually or jointly. When men were asked about land ownership they reported that women own 12% of land, either individually or jointly. *Id.*

<sup>8</sup> 1991-92 National Sample Survey data presented in NATIONAL INSTITUTE OF RURAL DEVELOPMENT (NIRD), INDIA RURAL DEVELOPMENT REPORT 1999 (2000), table 3.2.

<sup>9</sup> P.N. Mari Bhat, *Widowhood and Mortality in India*, in WIDOWS IN INDIA: SOCIAL NEGLECT AND PUBLIC ACTION (Martha Alter Chen ed., 1998) at 174, citing the Census of India, 1981.

<sup>10</sup> See LAND REFORMS IN INDIA: KARNATAKA—PROMISES KEPT AND MISSED VOL. 4 (Abdul Aziz and Sudhir Krishna eds., 1997).

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## II. RESEARCH BACKGROUND AND METHODOLOGY

The purpose of this research was to study women's rights to and control over land and related resources in rural Karnataka with the intention of identifying policy and legislative alternatives for improving women's access and rights. An important aspect of this research included studying the contrasts between written and customary law and the relevance of these differences for women's access and rights to land. The research also sought to explore the functioning and impact on women of certain land-related, village-level judicial institutions (official and customary).

The study included two methods for gathering village-level information: (1) a 400-household questionnaire survey; and (2) in-depth rapid rural appraisal field interviews with women. The 400-household survey was conducted in Karnataka State in early 2001. The Rural Development Institute (RDI), Seattle, USA conducted this survey, in collaboration with Dr. Tajamul Haque<sup>11</sup>; the University of Agricultural Sciences, Bangalore, India; and, the National Institute of Rural Development, Hyderabad, India. The survey included questions on a wide variety of land, land reform, and land market topics.<sup>12</sup> A portion of the survey was dedicated to questions related to women's access to land and related resources, including questions on land inheritance patterns, wedding and dowry expenses, and the titling of land.

The 400-household questionnaire survey was conducted in the districts of Bijapur, Kolar, Dakshina Kannada, and Shimoga. These districts were chosen as being broadly representative of the diverse agro-climatic variations of the state.<sup>13</sup> Ninety-two percent of the questionnaire survey respondents were men.<sup>14</sup> Throughout the report, findings from this survey will be referred to as "questionnaire survey findings."

The questionnaire survey was followed by two weeks of rapid rural appraisal (RRA)<sup>15</sup> fieldwork in October 2001, which primarily focused on interviewing rural women.

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<sup>11</sup>Dr. T. Haque is a National Fellow, Indian land reform expert, and current Chair of the Government of India's Commission for Agricultural Costs and Prices.

<sup>12</sup> A copy of the questionnaire is available upon request from the Rural Development Institute ([jenniferb@rdiland.org](mailto:jenniferb@rdiland.org)).

<sup>13</sup> Karnataka has a range of climates varying from the very moist monsoon climate on the coastal and hilly areas to the semi-arid climate of the northern districts. The most significant physiographic feature in the State is the Western Ghats, which act as a "climatic divide" between a western tract of heavy rainfall and a dry eastern tract of low rainfall. The state is comprised of four regions and each region is represented by one district in the questionnaire survey: the coastal (Dakshina Kannada), the Malnad (Shimoga), the northern Maidan (Bijapur), and the southern Maidan (Kolar).

<sup>14</sup> This should be borne in mind when analyzing the survey results as men may give different answers to these questions than would women. Also, of the respondents who were women, approximately half of them were the head of their household. These women, similarly, may give different answers than women who are part of a male-headed household.

<sup>15</sup> In these rapid rural appraisal interviews, rural interviewees are not respondents to a questionnaire, but active participants in a semi-structured interview. The researchers use a checklist of issues as a basis for questions, not necessarily addressing all questions in each interview and sometimes departing from the basic questions to pursue interesting, unexpected, or new information.

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Throughout the report, findings from this rapid rural appraisal research will be referred to as “RRA findings.” A team of two RDI land lawyers with international comparative experience and one assistant professor at the Madras Institute of Development Studies, with extensive experience researching gender and local governance issues in Karnataka State, conducted the RRA research. The team interviewed groups of rural women and men, *gram panchayat*<sup>16</sup> members, traditional leaders and NGO activists. The central focus was, however, to interview rural women. The authors interviewed approximately 100 rural women, usually in small groups.<sup>17</sup> The women were from a cross-section of religions, castes and socio-economic groups, including Hindu, Muslim, Christian, tribal, landed, landless, educated, uneducated, single, married, separated, and widowed women. The great majority of the women were Hindus and within this larger group, the authors spoke with members of multiple castes including Scheduled Caste members.

The authors conducted the RRA research in two of the four questionnaire survey districts: Dakshina Kannada and Kolar. In each district the team interviewed women in four *taluks* (blocks). In each *taluk* the team visited two villages. In Kolar the *taluks* included: Bangarpet, Bagepalli, Malur, and Mulbagal. The Dakshina Kannada *taluks* included: Mangalore, Bantval, Beltangadi, and Puttur.

These two districts were selected for their contrast, both agro-climatically and socially. Kolar is relatively dry, receiving approximately 500-900 mm of rain per year. Employment is focused on agriculture, dairying, sericulture, and quarrying. In Kolar, of all main workers<sup>18</sup> 70% of men and 88% of women were engaged in agricultural and related activities in 1991.<sup>19</sup> Dakshina Kannada is more wet and lush, receiving 3,000 mm of rain per year. Dakshina Kannada has more diverse employment opportunities than Kolar, including, fisheries, port work, quarrying, and beedi rolling, in addition to agriculture. As a result, the percentage of main workers engaged in agriculture and related activities was lower in Dakshina Kannada at 45% of men and 38% of women.<sup>20</sup>

Social indicators for women are generally better in Dakshina Kannada than in Kolar. In Dakshina Kannada, the literacy rate for rural women is 65% while in Kolar it is 40%.<sup>21</sup>

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<sup>16</sup> *Gram panchayats* are democratically elected bodies of local governance. They are described and discussed in greater detail in section IV.

<sup>17</sup> Women in groups were more talkative and willing to share information than individual women. Also, individual women could generally only be interviewed in their homes in the presence of male relatives. The presence of male relatives can be a problem as men often answer questions for women and women tend to be more reluctant to answer questions in the presence of men.

<sup>18</sup> A “main worker” is someone who has worked in an economically productive activity for at least six months of the previous year. REGISTRAR GENERAL & CENSUS COMMISSIONER, INDIA, CENSUS OF INDIA, 1991: KARNATAKA STATE DISTRICT PROFILE 1991 at vii.

<sup>19</sup> *Id.* at Table 24.

<sup>20</sup> *Id.*

<sup>21</sup> Office of the Registrar, Census of India 2001, Table 2: Population, population in the age group 0-6 and literates by residence and sex. Available on-line at <<http://www.censusindia.net/results>>.

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The sex ratios are also more favorable in Dakshina Kannada at 1023 women per 1000 men, compared to 970 women per 1000 men in Kolar.<sup>22</sup> Furthermore, women tend to get married at a later age in Dakshina Kannada than in Kolar. In Kolar, 25% of women between 15 and 19 are married, while only 6% of women between these ages in Dakshina Kannada are married.<sup>23</sup> These relatively positive indicators for women in Dakshina Kannada have been attributed to the district's geographic and cultural proximity to Kerala State, which also has positive indicators for women due perhaps to its historically matrilineal culture and/or its long-standing communist government's commitment to education and healthcare.<sup>24</sup>

Some findings from the RRA fieldwork contradict findings from the questionnaire survey. In general, the authors feel that the RRA fieldwork results are the more trustworthy of the two research methods when dealing with the sometimes sensitive topics related to women's land rights. The 400 household survey was a useful starting point to get a general picture of women's land rights, however, most of the respondents to this more general survey were men and most of the enumerators were men. RRA allows researchers to engage in a more informal conversational dialogue with rural women, which the authors feel results in more accurate and useful information.

The findings and recommendations presented in this paper were presented and discussed at two workshops held in Karnataka State with policy-makers, NGO representatives, academics and activists. The first was held in October 2001 directly after the fieldwork and the other was held in May 2002 after a draft of this paper was completed. Select comments and suggestions from these workshops have been incorporated into this paper.

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<sup>22</sup> *Id.*

<sup>23</sup> CENSUS OF INDIA, 1991: KARNATAKA STATE DISTRICT PROFILE, *supra* note 18, at Table 10.

<sup>24</sup> *See e.g.*, RICHARD W. FRANKE AND BARBARA H. CHASIN, KERALA: RADICAL REFORM AS DEVELOPMENT IN AN INDIAN STATE (1994).

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### III. RESEARCH FINDINGS ON WOMEN'S ACCESS AND RIGHTS TO LAND

This section of the report presents and analyzes the research findings on women's access and rights to land in Karnataka and includes a description of relevant laws. While some aspects of the written law are quite progressive, the field research found that such provisions had little impact on women at the village level, and few women currently have secure rights to land.

This section begins with a general description of women's current ownership of land, including a description of government programs that allocate land as well as the titling of such land. Following this, laws and customary practices that limit women's access to land are discussed, including inheritance, dowry/wedding expenses, and separation/divorce. In each sub-section an overview of the written law is provided and contrasted against the actual situation on the ground as gathered from the household questionnaire survey and RRA fieldwork.

#### A. Ownership and Titling of Land

##### 1. *Policy and Legal Framework*

Women, like all other Indian citizens, have the legal right to own land. However, due to their lack of independent financial resources and traditional gender role, women rarely purchase land, either independently or jointly with their husbands, and household land is most commonly titled only in the name of the male head of household. Women are not legal owners of property purchased and registered in their husband's name. Karnataka (like the rest of India) does not recognize joint ownership by husband and wife of land purchased during marriage as some other countries do. Karnataka State policy does, however, provide a safeguard to ensure that household land is not sold without a woman's knowledge. According to a Karnataka State policy circular, all female members of a household (i.e., wives, daughters, daughters-in-law) must be informed when another member of their household (i.e., husband, father, father-in-law) transfers land. Women household members then have the right to object to the transfer.<sup>25</sup> However, because most women household members do not have an ownership interest in household land, it is unclear how useful this policy is in protecting women's access to land because they would have no legal claim to the land and thus would not be able to legally object to a transfer.

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<sup>25</sup> Karnataka Government Policy Circular, NO RD IWR 93.

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In addition to purchasing land, many rural households have gained ownership of land through various government land allocation schemes. India's Constitution gives individual states jurisdiction over most land matters. Since Independence in 1947, many Indian states have sought to improve both productivity and the equity of land distribution through various land reform measures. In Karnataka State, these measures have included: granting permanent occupancy and ownership rights to tenants;<sup>26</sup> redistributing land from owners whose holdings exceed the ceiling limit to the poor and/or landless;<sup>27</sup> and, regularizing encroachments of landless or small farmers onto government land.<sup>28</sup> Karnataka has been praised among states for the success of its land reform efforts,<sup>29</sup> however, women were not targeted beneficiaries under these reforms and titles to land were almost exclusively granted in the name of the male head of household.

Both the state and central government have also taken up various housing schemes in Karnataka. These schemes generally grant small houses and sometimes house plots to those without homes or with sub-standard housing. The central government housing schemes, and to a lesser extent the Karnataka housing schemes, have made an effort to target women by granting houses in the names of women individually or jointly with their husbands. Houses under the central government scheme (Indira Awaas Yojana) must be granted separately to a female member of the beneficiary family or jointly in the name of husband and wife.<sup>30</sup> Under the Karnataka State programs (Ashraya Yojana and Dr. Ambedkar), houses provided are to be granted in the joint names of husband and wife, though this policy is not always followed in practice. Additionally, in Karnataka, 33% of the state budget must be spent on programs benefiting women, though many departments and programs have not met this goal.

## **2. Research Results**

Women living in households that own land often have access to land but rarely have legal ownership rights to that land. Many RRA respondents stated that they had never heard of a woman holding land in her own name. Land is almost exclusively titled solely in the name of the male head of household if there is one, though a few RRA women interviewees did state that they held family land in their own name or jointly with their husbands.

Questionnaire survey respondents were also asked if any women in their household held joint title to land or owned any land separately in their own name. Of all

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<sup>26</sup> See KARNATAKA LAND REFORMS ACT, 1961 (as amended) § 45.

<sup>27</sup> See *id.* § 63.

<sup>28</sup> See KARNATAKA LAND REVENUE ACT, 1964 (as amended) § 94A.

<sup>29</sup> See *e.g.* LAND REFORMS IN INDIA: KARNATAKA PROMISES KEPT AND MISSED (Abdul Aziz and Sudhir Krishna eds., 1997).

<sup>30</sup> *Government of India Ministry of Rural Development Annual Report 2000-2001, Status Paper on Rural Housing.*

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respondents who answered the question, 14% stated that a woman in their household held some land jointly. Dakshina Kannada had the highest percentage (43%) reporting that the household held some land that was jointly titled and Shimoga had the lowest (1%). Kolar and Bijapur fell in-between at 4% and 7%, respectively.

In the questionnaire, only 5% of respondents stated that their household held any land that was titled separately to a female member of the household. Kolar (9% of respondents) and Bijapur (7% of respondents) had the highest percentage of respondents reporting that a female member of the household held some land individually.

The high number of questionnaire survey respondents in Dakshina Kannada who stated that husband and wife held some family land jointly was surprising. During RRA research, women rarely stated that they held land jointly. This high figure can be explained, perhaps, by the fact that 92% of household survey respondents were men and either that they thought this was the “correct” answer to give or alternatively that women do not know that they hold joint title to land with their husbands in these cases. The other figures were essentially confirmed by the RRA findings.

While the great majority of rural women do not own land, RRA respondents pointed to several sets of circumstances where women were more likely to be landowners. First, many respondents said widowed women with small children often hold land in their own name. As is discussed in the section below on inheritance, women with adult children, especially sons, or those with no children, rarely become owners of household land.

Second, women whose husbands migrate for work sometimes hold family land in their own name. One woman held her family’s large homestead plot in her own name because her husband migrates to Mumbai most of the year to do tailoring work, and therefore she bears greater responsibility for the land. An older Muslim woman, also in Dakshina Kannada, stated that she held land in her own name for the same reason that many of the men in her family migrated seasonally for work and they wanted to enable her to take care of land-related business in their absence. This woman, despite holding title, did not know much about the land and was unable to answer many questions related to the land.

Third, women occasionally own government-granted houses separately or jointly with their husbands. Some women stated that they sought joint rights to speed up the government granting process: “The grant is sanctioned faster if [the house] will be in the name of the woman.” Another woman said that her family’s government-granted house was in her husband’s name, but that her name and her children’s names were also on the document, which she thought meant that their permission would be necessary to sell the house. Despite these positive examples, the housing scheme rule,

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which states that houses are to be granted either jointly in the name of husband and wife or individually in a woman's name, remained largely unenforced. One woman stated that many houses are still given in the names of men only because husbands refuse to allow the houses to be titled in the woman's name. She said the government still built and granted the houses despite this refusal.

Questionnaire survey respondents were asked for their opinion on how government granted land *should* be titled. Their answers are summarized in Chart I, below. A great majority of respondents in Bijapur (79%), Kolar (94%) and Dakshina Kannada (85%) stated that they believed government-allocated land should be granted in the joint names of husband and wife. In stark contrast only 9% of respondents in Shimoga thought that government-allocated land should be given in the joint names of husband and wife. It is unclear (and surprising to one of the authors who has conducted previous research in the district) why the responses from Shimoga were so different from the other districts, but some researchers suggested it might be due to the high incomes earned from cash cropping in this district.<sup>31</sup> The high income possible from these cash crops might have the effect of making men more protective of their exclusive land rights. Overall, 64% of respondents thought that government-allocated land should be titled jointly in the names of husband and wife. Of those who provided further comment on the question, many cited increased security for the wife in the event of divorce or her husband's death as being the main reason.

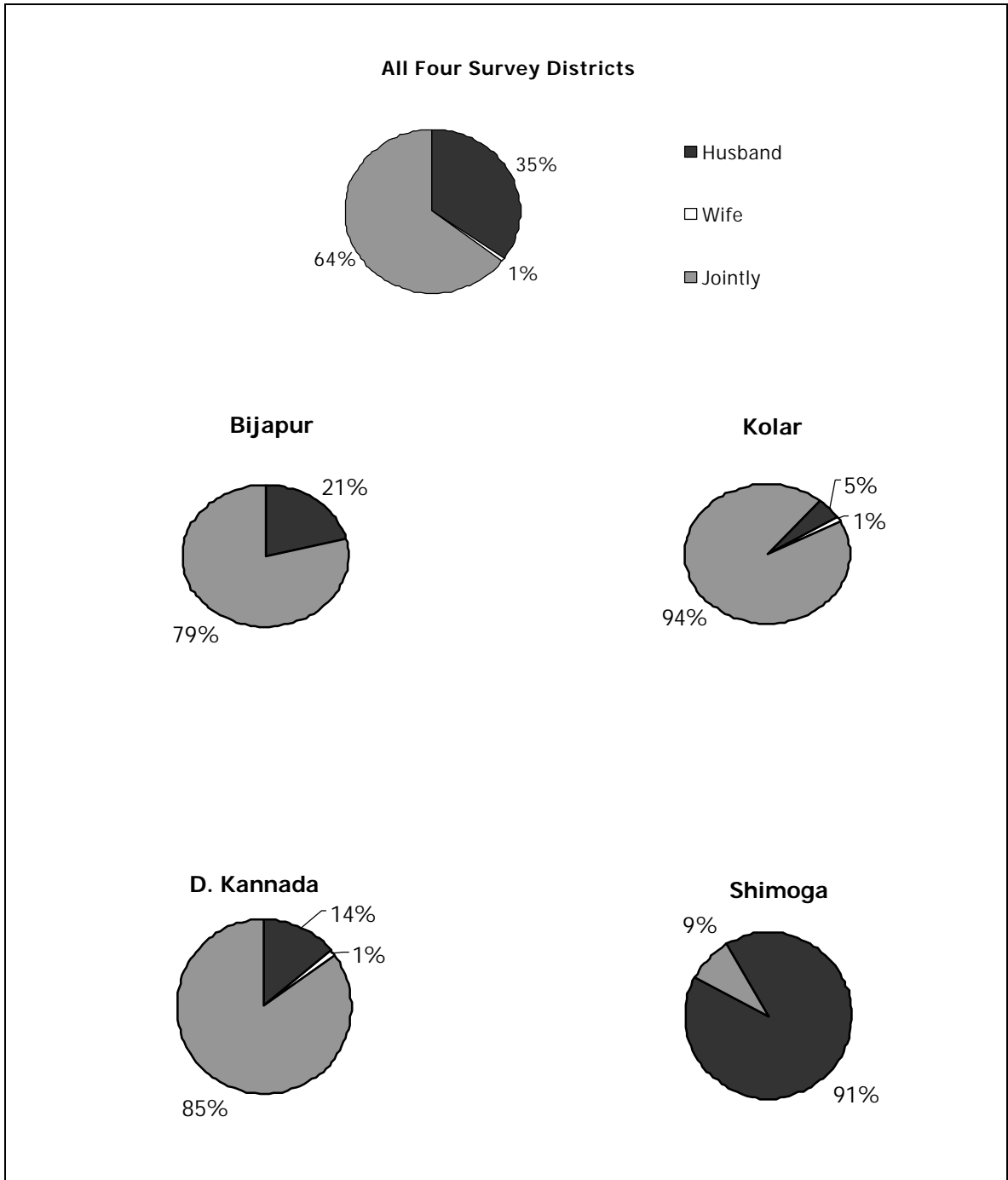
Nearly all of the remaining respondents (those who did not answer that land should be given in joint names) stated that government-allocated land should be given in the name of the husband only. Very few respondents stated that land should be titled only in the women's name.

It is notable that such a high percentage of respondents stated that government granted land *should* be granted jointly, while only a fraction of land is *actually* granted jointly. This could be an indication of a growing awareness of the benefits and equity of joint ownership that the actual titling of land does not yet reflect, or an indication that respondents thought this was the answer that researchers wanted to hear.

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<sup>31</sup> Comment by Dr. B.K. Anitha and Dr. Shantha Mohan of the National Institute of Advanced Studies at the October 2001 workshop in Bangalore, *Access and Rights to Land in Karnataka State*, at which the initial research findings were presented.

**Chart I**  
**Opinions on How Government-Granted Land Should be Granted: Questionnaire Survey**



RRA respondents were asked if they thought owning land benefited women. The great majority of women stated that it did. The most commonly cited benefits were: security in case of separation, desertion, or widowhood; an independent source of income; and

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greater power within the household. Here are some specific responses that women gave:

- *“If land is in the woman’s name, it is good because she can make her own money.”*
- *“It is better if women have land in their own name in case they get abandoned.”*
- *“Joint titling would help women not lose their land without knowing it.”*
- *“[Joint titling is preferable because] first, if the husband leaves, we have security and second, we could take benefits from the government if land was in our name.”*
- *“[Having land in our own name] would give us some power. All of the decision-making is done by men, but all of the work is done by women and all of the trouble is borne by women.”*
- *“Joint ownership is better for women because men have to be more respectful of women if land is in their name too.”*

Women also cautioned, however, that legal ownership alone is not enough--women must understand their rights as owners as well. RRA respondents mentioned that illiterate women, in particular, might not understand that they own land in the first place and may unknowingly divest themselves of their rights to land. Women gave as an example, a husband asking for his wife’s thumbprint on a land transfer document and her giving it without knowing what she is signing for.

A few women also mentioned the limitations of land ownership. Specifically, some women in Kolar district said that there would be little to no benefit in receiving land without access to irrigation. Others stated that because women are barred by custom from plowing, land is only useful to them if they have a son, brother or some other male relative that can help them plow the land. Two widowed respondents, however, who owned land, were able to keep and maintain it through the use of hired laborers.

### **3. Analysis and Recommendations**

Few women in Karnataka hold any land in their own name or even jointly with their husbands. Women may have had the right to apply for benefits under current and former land allocation schemes, but often rural women, especially those who are uneducated, are unaware of the resources and schemes that might help them.

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Researchers and women respondents alike have recognized multiple benefits to be gained from women's ownership of land.<sup>32</sup> First, holding land in her own name or jointly with her husband, gives a woman a secure right to land if she separates from her husband, is deserted, or widowed. Second, ownership of land gives a woman control over, and a continuing right to, a major source of income. Connected to this benefit is a benefit to her children, as numerous studies have found that children directly benefit from improvements to their mother's income to a much greater extent than improvements to their father's income.<sup>33</sup> Third, land ownership enhances a woman's ability to access credit as it gives her an asset that can be used as collateral. Fourth, land ownership increases a woman's respect and leverage within her family. Fifth, land ownership can qualify women for benefits under programs that require beneficiaries to own land.

For these benefits to accrue to a woman, however, it is important that she knows she is an owner of land and understands the rights and obligations that accompany land ownership. A recent study of women in Karnataka by the National Institute of Advanced Studies (NIAS), found that when men were asked who owned land, men reported that women owned 12% of all land, including both separately and jointly owned land. In contrast, when women were asked the same question they stated that women held 8% of all land, including separately and jointly held land.<sup>34</sup> The NIAS researchers who conducted the survey surmised that one of the reasons for this disparity was that women were not aware that they owned land—in particular women were unlikely to be aware that they were joint owners of land with their husbands.<sup>35</sup> Similarly, questionnaire survey respondents (nearly all men) reported a higher level of joint ownership than RRA respondents (all women). This difference can perhaps also be accounted for by women's lack of awareness of their status as joint holders. This highlights the fact that education and safeguards will be needed if any joint ownership program is to successfully confer benefits on women.

The quality of land that women own and their access to other resources are also important factors that determine the positive impact that land ownership can have for women. Neither the questionnaire survey nor the RRA research inquired into the quality of the land owned by women. However, the NIAS study did ask about the quality of land owned by women and found that women disproportionately owned

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<sup>32</sup> For an extensive discussion of the benefits of land ownership to women in South Asia see BINA AGARWAL, *A FIELD OF ONE'S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA* (1994) at 27-44.

<sup>33</sup> See e.g., AGNES R. QUISUMBING ET. AL., *WOMEN THE KEY TO FOOD SECURITY* (Food Policy Report; The International Food Policy Research Institute; 1995) which synthesizes the current research on the strong association between increases in women's income, as contrasted with men's income, and improvements in family health and nutrition. See also AGARWAL, *supra* note 32, at 28-29.

<sup>34</sup> BATLIWALA, *supra* note 2, at 140 141.

<sup>35</sup> *Id.*

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barren land.<sup>36</sup> Obviously, poor quality land does not have the same potential to enhance women's lives as fertile land. This can be remedied to some degree by providing women with better access to government schemes for irrigation and land reclamation. Indeed, several of the NGO representatives who were interviewed, stated that the government was having a difficult time meeting its target of providing 33% of the benefits of some programs to women, specifically because women are not owners of land and thus do not qualify for the programs. Increasing government efforts to target women landowners through government schemes aimed at landowners is an integral part of enhancing women's ownership of land.

Based on women's current lack of land ownership and the multiple benefits that women gain from land ownership, we offer the following recommendations:

- *Adopt legislation requiring that all government-allocated land and housing be granted in the joint names of married couples or to women individually.* Nearly every policy-maker, NGO representative and most of the RRA and questionnaire survey respondents stated that all government-allocated land should be jointly granted in the name of husband and wife. Also, consider restricting eligibility for some government programs to those who hold joint land rights to encourage married couples to hold land jointly.
- *Add safeguards to ensure that women understand their rights and obligations as owners.* Granting women formal rights to land does not improve their position if they are not aware of or do not understand their rights. The government should adopt rules requiring that both joint owners of land be present to sign registration documents for selling or mortgaging land. The government might also adopt rules requiring the registration officer, or perhaps a third party NGO, to explain what the wife and husband are signing and what each of their rights and obligations are as joint landowners.
- *Policy-makers should consider adopting the concept of co-ownership of marital property, which would grant both spouses equal right to property acquired during marriage.* This step would grant a much larger scope of women (wives in households that purchase land during their marriage, not just women in families that receive government-allocated land) an ownership right in the land their household owns.

Co-ownership of marital property, often called "community property," is a legal concept first devised in European civil law, which, in large part, is an effort to give stronger property rights to women in marital relationships.<sup>37</sup> France,

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<sup>36</sup> *Id.* at 143.

<sup>37</sup> For a detailed discussion of marital co-ownership in the United States, see GRANT S. NELSON, WILLIAM B. STOEUBUCK, AND DALE A. WHITMAN, CONTEMPORARY PROPERTY 381-389 (1996).

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Germany,<sup>38</sup> Italy,<sup>39</sup> the Netherlands, most of Central and South America, Indonesia, and the Philippine Republic have marital co-ownership systems.<sup>40</sup> The system has also been adopted in nine US states and several Eastern European countries.<sup>41</sup> This concept was initially a civil law institution and some might wonder how such a system would work in a common law system like India, however marital co-ownership systems have been successfully applied in other common law settings, such as the United States.

Underlying the concept of co-ownership of marital property is the philosophical premise that husband and wife are equal. Together in marriage they form a kind of marital partnership analogous to a legal business partnership. Thus, both husband and wife work together to acquire and improve property and both have an equal ownership claim to all marital assets.

The fundamental legal characteristic of this system is the categorization of all property, including land, as either "separate" property or "co-owned" property. Each spouse may own property in his or her individual right, called separate property. In most countries with such a system, all property acquired by either spouse before marriage, along with property acquired by one spouse after marriage by either gift or inheritance is that spouse's separate property. Each spouse has the full power to manage and dispose of his or her separate property.

All property acquired by either spouse during marriage, which is not by gift or inheritance, is co-owned property. Thus, all earnings by either spouse during marriage, and all assets acquired with such earnings, form part of the co-owned marital property. Some countries convert all property, even property owned before marriage into co-owned property.<sup>42</sup> Furthermore, most marital co-ownership systems convert separate property into co-owned property if one spouse makes a contribution to the other spouse's separate property (i.e. by working on the land, processing the harvest of the land, etc.). In the Indian context this could be applied to grant a married woman an ownership right in joint-family property (ancestral property) that she contributes to with her labor. Similarly, all land that a woman works or indirectly contributes to could also be

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<sup>38</sup> NIGEL FOSTER, *GERMAN LEGAL SYSTEM & LAWS 308* (2nd ed. 1996).

<sup>39</sup> CIVIL CODE OF ITALY app. B(8).

<sup>40</sup> ROBERT L. MENNELL AND THOMAS M. BOYKOFF, *COMMUNITY PROPERTY IN A NUTSHELL* (2<sup>nd</sup> ed. 1988) at 10.

<sup>41</sup> The nine states are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Ralph C. Brashier, *Disinheritance and the Modern Family*, 45 *CASE WESTERN RESERVE LAW REVIEW* 83, 183 (1994). The Eastern European countries that have marital co-ownership systems are: Romania, the Czech Republic, and Bulgaria. Emilia Emily Stoper and Ianeva, *Symposium: The Status of Women in New Market Economies: Democratization and Women's Employment Policy in Post-Communist Bulgaria*, 12 *CONNECTICUT JOURNAL OF INTERNATIONAL LAW* 9 (Fall, 1996).

<sup>42</sup> In the Netherlands all pre-marital property is co-owned by the married couple. This is known as the "universal" form of marital co-ownership. MENNELL, *supra* note 40, at 10.

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considered co-owned property, even if it was acquired by her spouse before marriage or her spouse inherited it.

Adopting such a system in India could grant married women an ownership right to land that their household acquired during the marriage and any land that she works on. Through this change in law a woman would have a vested, present interest in land and other property on which she currently depends. This would provide women security in the case of separation or widowhood.

Safeguards in the registration system must accompany such a change in the law. For instance, if a person who is married wishes to transfer land, he or she would have to either get the permission of his or her spouse or prove that the land was his or her separate property (i.e. that the land was acquired before the marriage and that the spouse had not contributed his or her labor to the land). This would be required regardless of whose name the land was titled on the deed or record of rights, as property can become co-owned property without a registration change. Severe penalties would follow if a person did not disclose that he was married or otherwise circumvented the law, including voiding the transaction (with compensation paid to the buyer) and forfeiting the property to the non-transacting spouse.

- If a marital co-ownership property system were adopted, the government would need to promote widespread education about the change and provide enhanced access to legal aid to enforce the law. For a co-ownership system to work effectively, women must be made aware of its existence and be given access to legal aid to help them assert their rights under the law. Suggested improvements to the current legal aid system and effective ways of disseminating information about legal rights are discussed below in section VI.

## B. Dowry and Wedding Costs

High dowry expenses, especially when combined with wedding celebration costs and jewelry requirements, are often crippling for rural families. Despite the hardship high dowries can impose, the practice has spread into areas where it was not historically practiced and dowry amounts have significantly increased during the past decade.<sup>43</sup> The substantial expenses related to daughters' weddings discourage daughters from asking for their share of land under succession laws.

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<sup>43</sup> See e.g., BATLIWALA, *supra* note 2, at 190.

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## 1. The Law

Dowry has been illegal throughout India since the 1961 passage of the Dowry Prohibition Act. The Act does not apply to wedding celebration expenses, which are often higher than the dowry.

Under the law dowry is defined as: (1) any property or valuable security; (2) given either directly or indirectly; (3) by one party to the marriage (or that party's parents) to the other party to the marriage (or that party's parents); (4) at, before, or at any time after the marriage; (5) in connection with the marriage.<sup>44</sup> The Act prohibits both the taking and giving of dowry regardless of whether it is given on behalf of the bride or groom. Under the law, taking or giving dowry is punishable by five-year imprisonment and a fine of at least 15,000 rupees or the value of the dowry, whichever is more.<sup>45</sup> Demanding dowry alone, without necessarily receiving it, is also illegal and punishable.<sup>46</sup>

Legitimate gifts to the bride or groom are permissible, so long as they are: (1) given without being demanded; (2) recorded in a list maintained and signed by the person the gift was given to (bride or groom); (3) "customary in nature;" and (3) "not excessive," taking into account the financial status of the giver.<sup>47</sup> There is no requirement to register the list.

If dowry is given, the recipient is considered by law to have received the dowry in trust for the bride and is required to transfer it to her.<sup>48</sup> Additionally, if a woman dies from other than natural causes within seven years of marriage, the dowry must be transferred to her children, if she has any, or to her parents. Similarly, if a married woman commits suicide within seven years of marriage, a court can presume that the suicide was abetted or encouraged by her husband or his relatives.<sup>49</sup>

*Mehr*, an amount Muslim brides are promised by the groom and his family in the case of divorce or widowhood (though technically it can be demanded at any time), is not considered to be dowry and is legal under the Act.

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<sup>44</sup> DOWRY PROHIBITION ACT, 1961 (as amended) § 2. *Mehr*, as provided for in Muslim Personal Law, is specifically permitted. *Id.*

<sup>45</sup> *Id.* § 3(1). Though the court is permitted to impose a shorter term for "adequate and special reasons." *Id.*

<sup>46</sup> *Id.* § 4.

<sup>47</sup> *Id.* § 3(2) and The Dowry Prohibition (Maintenance for List of Presents to the Bride and Bridegroom) Rules, 1985 (as amended) § 2.

<sup>48</sup> DOWRY PROHIBITION ACT § 6.

<sup>49</sup> INDIAN EVIDENCE ACT, 1872 (as amended) § 113-A.

## 2. Field Research Results

All RRA respondents stated that dowry was given in their village, though not all interviewees said that they personally gave or received dowry. Many interviewees mentioned that dowry had not historically been demanded in their community, but that the practice had developed or spread within the last few decades. Everyone viewed raising dowry as burdensome. One interviewee stated, “As soon as a daughter is born we have to start saving.” Despite the burden, dowry was practiced by most and was viewed as a way of improving their daughters’ socio-economic status (by marrying her into a relatively wealthier family).

Interviewees stated that land or livestock would often be sold to pay dowry, jewelry and wedding expenses. Families might also lease out land or mortgage land in order to raise the sum required. For example, one woman, whose daughter had recently married, stated that to raise 100,000 rupees (25,000 for dowry, 50,000 for jewelry, and 25,000 for the wedding celebration) they: (1) sold two out of their four acres of land; (2) took a loan for 25,000 using the other two acres of land as collateral; and (3) sold two bullocks. Only one person we spoke to stated that land would be directly transferred as dowry. Interviewees often relayed stories of families using their land as collateral and then forfeiting the land because they could not afford to repay the loan. Landless people also borrow money to meet dowry expenses and say that if they cannot afford to pay back the loans, they become bonded laborers. One woman stated, “The government says [bonded labor] is illegal but we can’t do what the government says, we must pay back the money.”

As can be seen from Table I below, the reason cited most often by questionnaire survey respondents for selling land was to pay for dowry and wedding costs. Forty percent of respondents overall cited this as the primary reason for selling land, 31% in Bijapur, 56% in Kolar, 35% in Dakshina Kannada, and 39% in Shimoga.

**Table I**  
**Why is Land Sold in this Village?: Questionnaire Survey**

	Bijapur	Kolar	D. Kannada	Shimoga	All
Wedding or Dowry Costs	45 (31%)	62 (56%)	38 (35%)	7 (39%)	152 (40%)
Health Reasons	47 (32%)	26 (23%)	28 (25%)	2 (11%)	103 (27%)
Other Distress Reason	7 (5%)	2 (2%)	19 (17%)	5 (28%)	33 (9%)
Employment Opportunities	2 (1%)	0	3 (3%)	4 (22%)	9 (2%)
Moving Place of Residence	23 (16%)	8 (7%)	12 (11%)	0	43 (11%)
Other	21 (14%)	13 (12%)	10 (9%)	0	44 (11%)

The exact amount paid for dowry and wedding expenses varied with the socio-economic status, religion, caste and education of a family. Both questionnaire survey respondents and RRA respondents were asked about the average amount paid for dowry and wedding expenses in their community or village. In Kolar, RRA respondents indicated that dowry ranged from 5,000 rupees for the poorest households to 20,000 rupees for a relatively well-off family. In Dakshina Kannada dowry tended to be higher and ranged from 10,000 to 200,000 rupees.

Dowry amounts reported by questionnaire survey respondents were similar to RRA responses and are summarized below in Table II. Respondents were asked what the average dowry in the village was for families with five acres of land, families with one acre of land, and landless families. The highest dowry amounts given were in Dakshina Kannada where dowries were 75,500 rupees for households with five acres; 40,000 rupees for households with one acre; and 15,500 rupees for landless households. The lowest dowries were in Bijapur, with respondents citing 26,500, 14,000 and 5,000 rupees respectively. The overall average for all districts was 46,500, 24,500 and 9,500 rupees respectively.

**Table II**  
**Dowry Costs for Different Socioeconomic Groups: Questionnaire Survey**

	<b>Bijapur</b>	<b>Kolar</b>	<b>D. Kannada</b>	<b>Shimoga</b>	<b>All</b>
Family w/ 5 acres	26,500	38,500	75,500	36,500	46,500
Family w/ 1 acre	14,000	20,500	40,000	20,500	24,500
Family w/ no land	5,000	8,000	15,500	8,000	9,500

In most cases wedding costs were higher than dowry expenses. RRA respondents in Kolar gave amounts ranging from 12,500 rupees for a poor family to 20,000 rupees for a fairly modest celebration to 50,000 rupees for a fairly grand celebration. In Dakshina Kannada, wedding costs were once again a bit higher, ranging from 25,000 to 100,000 rupees, although more people in this district mentioned that the groom's family might help with some expenses.

Questionnaire survey respondents gave responses that were similar to amounts reported by RRA respondents for wedding costs, although the high amount given for families with five acres exceeded the highest range given by RRA respondents (see Table III, below).

**Table III**  
**Wedding Costs for Different Socioeconomic Groups: Questionnaire Survey**

	Bijapur	Kolar	D. Kannada	Shimoga	All
Family w/ 5 acres	74,000	122,000	183,000	117,000	127,000
Family w/ 1 acre	39,000	54,500	85,500	60,500	61,000
Family w/ no land	13,500	19,000	25,500	27,000	21,000

On top of wedding celebration and dowry expenses, jewelry and/or gold requirements are quite high as well, especially among Muslims. The RRA research found that a Muslim bride's family is required to give from 50 to 200 grams of gold. Unlike dowry, many women retain control over their jewelry and can keep it in the event of separation or divorce. However, many women also said that if their husband demands their jewelry, they are obliged to give it to him.

Very few respondents reported bride price being given (a sum given to the bride's family from the groom's family). A few Scheduled Tribe members and one Muslim woman mentioned that a token bride price of 100-150 rupees might be given. Another group of Muslim women, however, had never heard of the practice of bride price.

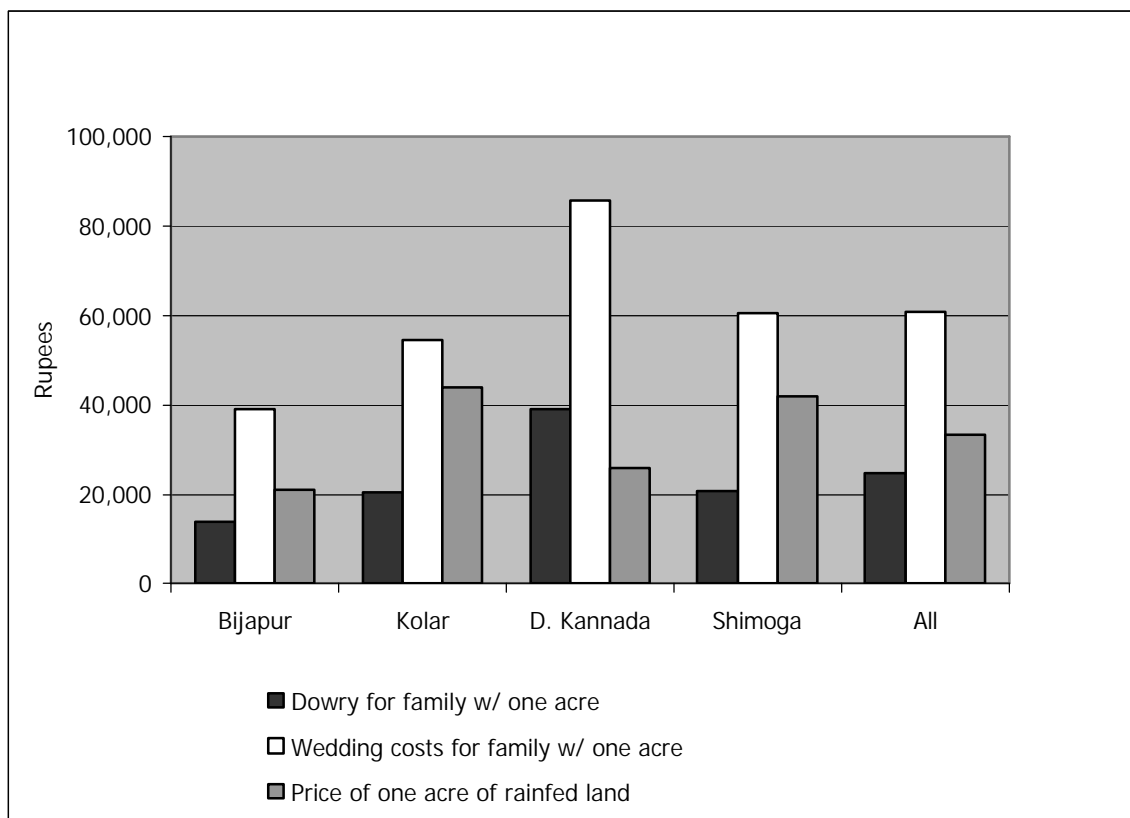
In most cases, the bride's family pays nearly all wedding expenses, though occasionally, the groom's family pays for some wedding-related expenses. Some Muslim parents provide a house for their son and new wife. Several interviewees said the groom's side would sometimes pay for the *mangalasutra*, the black bead necklace that, like a wedding ring, signals that a woman is married. Additionally, Christian women stated that if the bride's side pays dowry, then the wedding costs are borne by the groom's side.

Most Muslims stated that the practice of promising *mehr* to the bride was common. This is a sum that is not generally given at the marriage, but that a bride can claim from her groom and his family at any time. In practice, *mehr* is generally only claimed in case of divorce or widowhood. Most Muslim respondents stated that in the event of a divorce or death, the wife does actually receive her *mehr*.

These high dowry and wedding expenses are not only the primary reason that families sell land, they are also one of the major reasons that daughters do not inherit land (the specifics of inheritance are discussed in the next sub-section). Despite the fact that a wife has no control over dowry and generally cannot reclaim it if divorced or widowed, the fact that a high dowry was paid on her behalf keeps her from inheriting any of her birth family's land.

One woman, during previous fieldwork in Shimoga district, stated that her daughter would not inherit any of the family land (despite the fact that the respondent herself owned the family's land) because, "her wedding costs were more than the price of an acre of land." Indeed, when compared against the price of rainfed land, the relative magnitude of wedding and dowry expenses becomes readily apparent. Chart II, below, compares average dowry and wedding costs for a family holding one acre to the price of one acre of rainfed land in the same district.<sup>50</sup> For a family owning one-acre of land, that acre is very likely to be its most valuable asset. In every district, average wedding costs alone exceed the average price of one acre of land. Dowry costs, while lower than an acre of land, are still quite high in comparison.

**Chart II: Dowry and Wedding Costs Compared to Land Prices**



There are, however, several ways that families avoid paying dowry, including marrying a relative (such as a cousin or uncle) or by "exchanging" brides between families. These practices were fairly common in many of the villages visited. One woman stated that she and her husband eloped, but that nevertheless her family later paid a dowry of 5,000 rupees to appease her husband's upset mother. The very poor who have nothing, do not pay dowry, but their daughters are then virtually condemned to poverty as it is therefore difficult to secure a marriage into a relatively better off family.

<sup>50</sup> The figures for land prices, dowry and wedding costs were all obtained from RDI's 400 household survey.

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### 3. *Analysis and Recommendations*

Dowry is one of the major reasons that daughters do not receive or ask for their share of their birth family's land—dowry is considered their share of the family property. Despite this line of thinking, dowry is not actually an asset for most women as it goes directly to and is controlled by their husbands or in-laws. No one reported that any woman had tried to recover dowry paid on her behalf. Furthermore, dowry does not even secure a woman's position in her in-law's home. As is detailed in the next subsection on inheritance, widowed women are very rarely taken care of by their in-laws. Moreover, after dowry is given, a woman is less likely to turn to her birth family for assistance if she is deserted or widowed, because the cost of marrying her may have already put her birth family in economic difficulty.

The Dowry Prohibition Act is not effective in stopping dowry, and the practice seems to have grown in scope and amount over the course of the past few decades. As the ban on dowry is ineffective, it will significantly improve the position of rural women to give them a clear, easily asserted right to all marital property, including anything given for dowry.

The following recommendations are based on the above observations:

- *All gifts and cash received in conjunction with marriage should be deemed to be jointly owned by the married couple, regardless of who the cash or gift was specifically given to.* As the Dowry Prohibition Act is not working as a deterrent, policy-makers should consider other ways of altering the current dowry system to benefit women. Currently, it is assumed that if any dowry is given it is held in trust for the bride, but brides are not benefiting from this provision in practice and usually have no control over dowry. Recognizing the on-going existence of dowry and granting married women a joint ownership right to such dowry could benefit women.
- *Provide government loans to women to purchase small pieces of land.* Our research indicated that dowry is the main impetus behind many land sales. Such sales are generally for small pieces of land, as families prefer to keep as much land as possible. The government could use this activity in the land market to help landless or near-landless women purchase land in their own names.

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## C. Inheritance

Hindus, Muslims and Christians in India are each governed by different testamentary and intestate succession laws.<sup>51</sup> In this section the applicable law for each religious group is described directly before discussing the specific RRA findings for that religious group. Afterward, the related findings from the questionnaire survey are presented together, as the questions did not take into account religious affiliation.

### 1. *Hindu Succession Law*

When a Hindu dies intestate (without a will), his or her land devolves according to the Hindu Succession Act.<sup>52</sup> If a valid will has been written the Succession Act does not apply and the property devolves according to the owner's wishes. Because few people in rural areas have a written will, the Succession Act will govern the devolution of property in most cases.

As a simplistic description, Hindu personal law divides property into two classes: separate (usually self-acquired) property and joint family (ancestral) property.<sup>53</sup> Separate property, which includes land the deceased purchased or received from the government, devolves in the first instance in equal shares to the deceased's sons, daughters, widow, and if the deceased is a man, to his mother.<sup>54</sup>

The devolution of joint family property is more complicated than that of separate property. Joint family property, simply speaking, is property owned by an extended family as a whole. Joint family property devolves by survivorship (rather than by succession). This means that the size of each heir's share of the joint family property increases as the deceased's share is split amongst them. Traditionally, only males gained a share of the joint family property at birth, and are known as "co-parenters." In Karnataka, however, (through an amendment to the Hindu Succession Act) daughters, like sons, are co-parenters and receive a share of the undivided joint family property (including land) at birth.<sup>55</sup> Daughters under the Karnataka Amendment are thus treated exactly the same as sons with regard to joint family property.

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<sup>51</sup> In Karnataka State 85% of the population is Hindu, 12% is Muslim and 2% is Christian. CENSUS OF INDIA, 1991: KARNATAKA STATE DISTRICT PROFILE, *supra* note 18, at Table 28.

<sup>52</sup> State laws governing the devolution of tenanted land, ceiling or fragmentation, however, trump the dictates of the Hindu Succession Act. HINDU SUCCESSION ACT, 1956 (as amended) § 4. This does not have much practical affect in Karnataka, as tenancy is illegal, and thus Karnataka, unlike other states has not legislated how tenanted land should devolve.

<sup>53</sup> In most of Karnataka the *Mitakshara* School of Hindu law is followed, and this report will limit its description of the Hindu Succession Act to it.

<sup>54</sup> HINDU SUCCESSION ACT, 1956 (as amended) §§ 8, 15.

<sup>55</sup> HINDU SUCCESSION ACT (KARNATAKA AMENDMENT), 1994 § 6A.

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Two categories of women, however, do not have the right to a share of joint family land as co-parenters: (1) women who marry into a family (i.e. women do not have the right to their in-law's joint family property as coparenters); and (2) daughters who married before July 30, 1994.<sup>56</sup> These women's legal right to joint family land is governed by the Hindu Succession Act as it stood before the Karnataka Amendment. Thus if a male co-parenter dies and he has a living wife or sister who married before 1994, his share of the joint family property does not devolve to the other co-parenters by survivorship but instead is divided among all his intestate heirs including his wife and sister.<sup>57</sup> However, he is free to bequeath his property (of any kind) to anyone he wishes if he drafts a will and therefore is free to disinherit anyone, including his wife or sisters.

In sum, Hindu daughters married after 1994 are automatic co-owners of their family's joint-family (ancestral) property and have the right to inherit a portion of their parents' separate property. If they married before 1994, they are not co-owners of their family's joint-family property, but they still have the right to inherit a portion of it upon the death of their father or brothers. However, except in the case where daughters are already co-owners of joint-family land, they can be disinherited if their father or brothers draft a will excluding them.

As explained above, Hindu widows have the right to a portion of their husband's joint-family land and separate property under the Succession Act. They too can be completely disinherited if their husband drafts a will to that effect. To protect widows, the law grants them the right to maintenance from their in-laws if they are unable to maintain themselves from their own earnings, their property, or the estate of their husband or parents.<sup>58</sup>

Furthermore, widows as well as daughters who are unmarried, deserted, divorced or widowed, are granted the right under the succession law to live in the family dwelling house and the right to a share of the dwelling if it is partitioned.<sup>59</sup> This section of the law, however, only applies if the owner died intestate.

## 2. RRA Research Findings on Hindu Succession

None of the RRA respondents stated that they or the male head of household had a written will. In rural areas, therefore, the rules for intestate succession in the Hindu Succession Act should regularly apply. Field research, however, indicates that the Succession Act is not followed and property, especially land, usually devolves to sons, sometimes to widows, and rarely to daughters.

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<sup>56</sup> *Id.*

<sup>57</sup> HINDU SUCCESSION ACT § 6.

<sup>58</sup> HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 (as amended) § 19.

<sup>59</sup> HINDU SUCCESSION ACT § 23.

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Women's awareness of the written succession law was mixed. Most women in Dakshina Kannada were aware of the written law and the fact that daughters have the right to inherit land on par with sons. Fewer women in Kolar were aware of the law, though some had become aware of it through a government education campaign.

Despite this somewhat limited awareness, the written law was rarely followed and women rarely asserted their rights under the law. This was especially true in Kolar, where every interviewee said that land almost always passed only to sons, occasionally to widows, but never to daughters. There were only two circumstances in Kolar where a woman was likely to inherit land: (1) if a woman who had young children was widowed; or (2) if a family only had daughters. In the latter case, the family would usually find a husband for one of their daughters who was willing to move to the daughter's village and work the land with her.

In Dakshina Kannada, women also generally receive land under the above two circumstances, but were also more likely to assert their right to land under the law and inherit land in other cases as well. For instance, in Dakshina Kannada there were several cases where widows with adult children held title to land. One mother and daughter interviewed retained control of a portion of the family land and worked it together, despite the fact that the widow had adult sons. They stated that this occurred because the sons lived in another village and did not want such a small plot of land. In another case, a widow from a weaver caste whose family held 12 acres of land, held the land in her name even though she had an adult son. She said that after her husband died, her son had the land transferred into her name. She knew little about the land and took no part in managing its cultivation, though she did know her son would have to ask her permission to sell or mortgage the land.

If a widowed woman does not have children (either adult or young children) she does not generally inherit land and she often completely loses access to her husband and in-laws' land. Moreover, most Hindu women in this position did not regain access to their birth family's land either. No widows stated that they received maintenance from their in-laws as provided for by law. These widows supported themselves by agricultural labor work when they could get it and sometimes supplemented this income with government pensions of approximately 100 rupees per month. Widows with children who did not inherit any of their husband's land were forced to be similarly self-reliant. These widows also worked as agricultural laborers, and sometimes had to leave their children with relatives, or even at orphanages to find work in the city. Their position was similar to that of separated women, discussed in the next sub-section. Most RRA respondents stated that the community was fairly sympathetic to widows asserting land rights, even though widows rarely asserted these rights.

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Respondents reported that the community was generally less sympathetic to daughters asserting land rights. When asked, daughters gave two common reasons for not asserting their rights under the Succession Act. Most stated that they were not willing to ask for land from their family because: (1) their family had paid or would pay very high dowries and other expenses to get them married; and/or (2) their families had limited land and they felt uncomfortable asking to take a share of that small parcel of land away from their brothers. From these women's perspective, they received their share of the family property through their dowry and wedding expenses. Parents responded similarly that their responsibilities to their daughters were met by marrying them. After marriage daughters may receive gifts from their birth family from time to time for festivals, such as saris, but never land. Moreover, daughters also pointed out the impracticality of inheriting land from their birth families as they customarily move to their husband's village at the time of the marriage and therefore would not be in a position to use the inherited land. The following quotes are representative of many daughters' views on the inheritance of land:

- *"If our parents have something and they don't give us any it makes us feel bad. We would like security. If our parents don't have much then we don't mind."*
- *"We would never go and ask for land. There is not enough land anyway and we live in different villages. If there are only two acres of land and five sons already, how could we ask for any land?"*

Nearly all RRA respondents stated that women do not assert their rights under the law because of dowry and marriage-related expenses and the lack of land. In Dakshina Kannada, however, some interviewees reported that even women whose families had paid large sums to get them married, sometimes come back and assert their rights under the law. One woman in Dakshina Kannada, who was *gram panchayat* president, said a growing practice was for daughters not to receive an actual share of land, but for them to receive the cash equivalent of what would have been their share of the land. In Kolar, only one group of interviewees reported that they knew of women who sought land from their birth families. They said that two sisters had demanded and received their shares of land from their birth family, but that after receiving it, they sold it and turned over the proceeds to their in-laws.

As a final wrinkle in the pattern of Hindu inheritance, in Dakshina Kannada there is a traditionally matrilineal caste, called Bunts. Land in this community traditionally passed through the daughter's line, but not directly to her, rather the land passed to her son through her. Many pointed this out as a positive instance of women inheriting land in Karnataka. However, this customary pattern is fading and Bunts are beginning to follow inheritance patterns more similar to other Hindus.

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### **3. Muslim Succession Law**

Muslim intestate succession is governed by uncodified Muslim Personal Law, which grants widows and daughters the right to a share of some family property, though smaller than that of men.<sup>60</sup> Muslim inheritance rules are quite complex, but essentially if there is both a woman and a man at the same degree of relation from a person who dies intestate (i.e. a brother and a sister) the woman will receive a share half the size of the man's share.<sup>61</sup> Muslims, like Hindus, can bequeath their property by will. Unlike under Hindu law, however, the amount of property that a Muslim can bequeath is limited to one-third of his property, so wives and daughters cannot be completely disinherited, as they potentially can be under Hindu law.

A critical exception to this rule granting women some right to a portion of family property is its exemption of agricultural land, which for many rural households is the only and most important form of property.<sup>62</sup> Agricultural land, rather than being governed by Muslim Personal Law, devolves according to custom. Practically speaking, this means that Muslim women in most areas of Karnataka do not have the legal right to inherit agricultural land. However, several states have passed legislation to apply Muslim Personal Law to agricultural land, including Tamil Nadu, Andhra Pradesh and Kerala.<sup>63</sup> Additionally, in the portion of Karnataka that was once part of former Madras State, agricultural land devolves according to Muslim Personal Law rather than by custom.<sup>64</sup>

### **4. RRA Research Findings on Muslim Succession**

Muslim women's ability to inherit agricultural land in Karnataka is governed by custom in a large portion of the state, which means that many Muslim women do not have the legal right to inherit agricultural land. One of our RRA interview districts was formerly part of Madras State and thus Muslim women in this district do have the legal right to inherit agricultural land.

During our RRA research we encountered no Muslim women who had inherited agricultural land. Some Muslims in Dakshina Kannada did state that daughters could inherit agricultural land, but would usually opt not to claim the land because they felt if they did they could not later turn to their brothers for assistance. Also, several Muslim

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<sup>60</sup> THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT (1937).

<sup>61</sup> This is the general rule under the Hanafi School of Sunni Law, which most Indian Muslims follow.

<sup>62</sup> THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT § 2. Some states have specifically applied Muslim Personal Law to agricultural land.

<sup>63</sup> AGARWAL, *supra* note 32, at 232.

<sup>64</sup> Muslim Personal Law (Shariat) Application (Madras Amendment) Act 1949 (Madras Act no. 18 of 1949).

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women said inheriting field land would not be very useful to them, since they do not often leave their house or garden plot. Like Hindus, they also customarily moved to their husband's village, so it was not viewed as practical to inherit a portion of their birth family's land.

While Muslim widows generally do not become owners of agricultural land, they are almost always taken care of by their adult children or birth family, which is not necessarily true among Hindus or Christians. Respondents reported that the Muslim son who cares for his mother is often given a larger share of the family property.

## **5. Christian Succession Law**

The Indian Succession Act of 1925 generally governs the succession of property if a Christian dies intestate.<sup>65</sup> If a Christian man dies without a will and he has children, his widow receives one-third of the estate and sons and daughters get equal shares in the rest.<sup>66</sup> If there are no children, but are other more distant heirs, the widow receives half the estate, otherwise she takes the whole estate.

## **6. Research Findings on Christian Succession**

We spoke to only a few Christians and these interviews indicated that Christian widows and daughters might be more likely to inherit land than Hindu or Muslim women. In some areas, however, it appears that Christians tend to follow the same inheritance patterns as Hindus.

## **7. Questionnaire Survey Results**

Several questions on inheritance were asked as part of the questionnaire survey. Respondents were asked who would inherit the family's land if a husband died before his wife. As Table IV indicates the largest number of respondents stated that the wife alone would inherit all of the family's land (38%). Nearly as many, however, stated that both the wife and male children would inherit the land (36%). Three percent stated that only male children would inherit the land and only 17% stated that the wife together with both male and female children would inherit land. Thus, according to the survey, widows are fairly likely to inherit land, but daughters are very unlikely to inherit land, especially in districts other than Dakshina Kannada.

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<sup>65</sup> Though some Christians, depending on their geographic location (mainly Christians in Kerala, Goa, Punjab and tribals in the Northeast) in the country, are governed by other laws. AGARWAL, *supra* note 32, at 223-224.

<sup>66</sup> INDIAN SUCCESSION ACT, 1925 (as amended) § 33.

**Table IV:  
Who Will Inherit Land upon the Death of the Husband, if the Husband Dies Before his Wife?**

	<b>Bijapur</b>	<b>Kolar</b>	<b>D. Kannada</b>	<b>Shimoga</b>	<b>All</b>
Wife only	46 (51%)	58 (65%)	20 (20%)	12 (15%)	136 (38%)
Wife and male kids	35 (39%)	23 (26%)	6 (6%)	67 (81%)	131 (36%)
Wife and all kids	4 (4%)	1 (1%)	57 (58%)	0	62 (17%)
Male kids only	5 (6%)	5 (6%)	0	0	10 (3%%)
Other	0	2 (2%)	0	0	2 (1%)
Not Applicable	0	2 (2%)	16 (16%)	4 (5%)	20 (6%)

The high number of survey respondents who stated that widows would inherit land was surprising. During the RRA fieldwork, however, it became clear that the answer to this question varies greatly depending on whether the widow has young or adult children. Widows are much more likely to inherit land if they have young children and less likely if they have adult children. The survey did not take this important detail into account.

Notably, there were great variations between districts in answering this question. In Bijapur and Kolar, a majority stated that only the wife would inherit the land (51% and 65% respectively). In Dakshina Kannada, the majority (58%) stated that the wife together with both male and female children would inherit, while in Shimoga the great majority (81%) stated that only the wife and male children would inherit the land.

Respondents were also asked how the land would devolve if a husband died after his wife (Table V). When posed with this question the majority of respondents (67%) stated that only male children would inherit the land. This trend was true for all districts (86% in Bijapur, 99% in Kolar, and 94% in Shimoga) except Dakshina Kannada, where the great majority (83%) stated that all children would inherit land. The RRA fieldwork confirmed that all children were more likely to inherit land in Dakshina Kannada than in the other districts. However, it appears that daughters often do not necessarily inherit the actual land itself, but rather receive the monetary equivalent of their land share's value.

**Table V  
Who Will Inherit Land upon the Death of the Husband if the Wife Dies Before her Husband?:  
Questionnaire Survey**

	<b>Bijapur</b>	<b>Kolar</b>	<b>D. Kannada</b>	<b>Shimoga</b>	<b>All</b>
Male children only	77 (86%)	88 (99%)	0	78 (94%)	243 (67%)
All children	12 (13%)	1 (1%)	82 (83%)	1 (1%)	96 (27%)
All children, but get larger share	1 (1%)	0	1 (1%)	0	2 (1%)
Not Applicable	0	0	(16%)	4 (5%)	20 (6%)

Lastly, respondents were asked if daughters in their village ever inherit land (Table VI). In Bijapur, Kolar and Shimoga, the great majority of respondents stated either that daughters never inherit land (40%, 47%, and 60% respectively) or rarely inherit land (38%, 47%, and 37% respectively). Conversely, in Dakshina Kannada, the majority of respondents (55%) stated that daughters always inherit land.

**Table VI**  
**Do Daughters In Your Village Ever Inherit Land?: Questionnaire Survey**

	Bijapur	Kolar	D. Kannada	Shimoga	All
Never	36 (40%)	43 (47%)	0	50 (60%)	129 (37%)
Rarely	34 (38%)	43 (47%)	4 (5%)	31 (37%)	112 (32%)
Sometimes	17 (19%)	5 (5%)	24 (28%)	2 (2%)	48 (14%)
Almost always	0	0	11 (13%)	0	11 (3%)
Always	2 (2%)	0	48 (55%)	0	50 (14%)

## **8. Note on Inheritance and Registration of Land**

Neither the RRA research nor the questionnaire survey focused on the actual probate process, but during the course of fieldwork it was discovered that women were generally not involved in and generally did not understand the process. Furthermore, the formal probate process does not appear to be methodically followed throughout rural Karnataka. Often when the head of household dies the family continues to hold the land in his name without changing the registration.<sup>67</sup> Later if there is a dispute and the family decides to break up they will often turn to customary village leaders to determine how the land should be partitioned. This partition may or may not be registered, but recipients of the land can later demonstrate their ownership by proving they cultivate the land.

This practice of not updating registration records is most likely the result of the joint-family system, whereby all males (and now daughters) are considered co-owners of ancestral land which is held jointly by the family. Thus they do not see a need to change the registration records unless there is a dispute and they decide to partition the joint-family property into individual parcels. The problem is that under the Hindu Succession Act they are supposed to partition out the deceased's share at the time of his death so that it can be divided among female heirs, most importantly his widow. However, this step is not being taken and by leaving the land in the deceased's name and only partitioning it if there is a dispute, widows do not have the opportunity to assert their rights to their portion of the joint family land.

Sometimes when the head of household dies, the family does update the registration records. When the registration records are updated, intestate heirs (wives, sisters,

<sup>67</sup> Author Renée Giovarelli's phone conversation with Gita Devi, attorney in Bangalore, Karnataka (October 20, 2001).

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daughters, etc.) are required to sign away their right to land if their legally granted share will not be registered in their name. Women in Karnataka were not, however, aware of how this process worked and did not seem to be very involved in the registration of land that they might have an inheritance claim to. Further investigation is needed to determine if this process is actually being followed throughout Karnataka, and if so why women are signing away their rights to inherit land.

## **9. Analysis and Recommendations**

While the Hindu Succession Act, as modified by the Karnataka Amendment, grants women progressive rights to inherit separate and joint family property, the law is not widely followed, especially as it relates to daughters. As long as dowry is widely practiced, the Hindu Succession Act probably will remain underutilized because women believe their share of their family's wealth is their dowry. This means that not only will daughters not inherit any of their birth family's land (or other property), they also do not control dowry paid on their behalf. There was some evidence in Dakshina Kannada that literate, educated women were taking advantage of the law, indicating that further education could increase the impact of the law. Even if the Hindu Succession Act were well utilized, however, male heads of household are currently free to disinherit wives and daughters if they create a written will.

The Karnataka Amendment to the Hindu Succession Act, which was passed only eight years ago, grants daughters an automatic property interest in joint-family (ancestral) land and therefore should protect them from disinheritance. Daughters, however, do not generally appear to be aware of this right (they may just think they have the right to inherit at the time of their father's death and not an ongoing ownership right) and appear not to be actively asserting their ownership rights.

Hindu widows are more likely than daughters to inherit agricultural land, but even so they generally only inherit land if they have young children. Widows without children are often the worst off, as they are usually not supported by their in-laws or birth family and often must fend for themselves without access to any productive assets.<sup>68</sup>

Muslim Personal Law appears to be followed much more closely than formal, written Hindu law, as daughters generally do receive their share of family property as granted under Muslim inheritance law. This is of limited value in terms of land because in much of Karnataka, Muslim women do not have a legal claim to agricultural land if the male head of household dies intestate. Muslim women also said field land was less useful to them because of social restrictions on leaving the house and house plot and going to the field to work or supervise laborers.

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<sup>68</sup> For a good overview on widows in India, including a discussion of widow's land rights, see *WIDOWS IN INDIA: SOCIAL NEGLECT AND PUBLIC ACTION* (Martha Alter Chen ed., 1998).

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Based on this research the following recommendations are made (See also the related recommendations under the subsection on dowry above):

- *Provide further education and improved legal aid to rural women to help them take advantage of the current written law on Hindu Succession.* All wives and daughters should be made aware of their rights under the law and the steps they can take to assert them. Especially important is educating daughters of the fact that they currently have co-ownership rights to any joint-family (ancestral) land. Rural men, NGOs, and *panchayats* must also be educated about women's land rights. Specific recommendations for improving the current legal aid system are given below in section IV.
- *Adopt legislation that applies Muslim Personal Law to the succession of agricultural land throughout the state.* A further option should be provided so that women can opt to receive the monetary equivalent of their share of the agricultural land, as many Muslim women spoke of the limitations of owning field land far from their homes.
- *Consider amending the Hindu Succession Law to prohibit husbands from completely disinheriting wives.* Provide widows a guaranteed interest in land and property owned by their deceased husband, especially the house plot. Many jurisdictions provide this protection to widows and widowers (a so-called "forced-share"). Such laws provide that even if the deceased has written a will that leaves nothing to his or her spouse, the widow or widower will still receive a share of the deceased spouse's property (often one-third). Thus, a widow could never be completely disinherited.
- *Provide greater government assistance to widowed women who have no means of support.* Current legislation provides that women can seek maintenance from their in-laws. This legislation, however, is not utilized. The government could provide assistance to a widow up to the value of the property that she has the right to receive under succession laws and maintenance laws. A government enforcement office could then be created to recover the money or property from the estate of her deceased husband or in-laws to repay the government.
- *Adopt the concept of co-ownership of marital property such that husband and wife jointly own marital property.* This change should help stop husband's from disinheriting their wives. Under most marital co-ownership property systems the wife is deemed the automatic owner of one-half of the co-owned property, and thus, automatically inherits this portion of the property. Because she is already the owner of the property during her husband's life, he has no right to dispose of her

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half of the co-owned property by gift to his sons or by drafting a will. The details of such a system are discussed in greater detail in section III, above.

- *Place safeguards in the probate process to ensure the involvement of women.* Findings on the probate and re-registration process were preliminary, but it seems clear that women are not often involved in the process and thus do not readily have the opportunity to assert their rights under the succession laws. The exact process should be further studied, and recommendations based on more detailed findings.

#### D. Separation/Divorce

Laws regarding separation and divorce, like inheritance laws, are specific to each religious community. Each law, along with research findings related to it, will be discussed separately. Laws governing Hindus, Muslims, and Christians all allow for monetary maintenance in some form, but none permit a woman the right to any of her husband's ancestral or separate property.

##### 1. **Hindu Law**

Hindu women, according to the Hindu Marriage Act, have the right to maintenance from their husbands. During divorce proceedings the court can order temporary maintenance for either husband or wife, if either has no independent income sufficient for his or her support.<sup>69</sup> The court can also grant permanent maintenance to husband or wife, either in lump sum or in periodic payments.<sup>70</sup> The court sets the amount after taking into consideration the circumstances of the two parties.

Under certain circumstances, a woman can claim maintenance from her husband even though she is still married to him. These circumstances include when: (1) her husband deserts her; (2) her husband has been cruel to her such that it is reasonable for her to believe that living with him would cause injury to her; (3) her husband has another living wife; or (4) her husband has a mistress in the house or resides habitually with a mistress elsewhere.<sup>71</sup>

##### 2. **Research Findings on Separated/Divorced Hindu Women**

Separated or divorced Hindu women are often socially stigmatized, making their lives very difficult. They rarely receive maintenance and usually must support themselves,

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<sup>69</sup> HINDU MARRIAGE ACT, 1955 (as amended) § 24.

<sup>70</sup> *Id.* § 25.

<sup>71</sup> HINDU ADOPTIONS AND MAINTENANCE ACT, 1956 (as amended) § 18 (2).

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unless they have adult sons who might assist them. Separated women, like widows, are not usually supported by their ex-husband, in-laws, birth parents, or community.

Such women nearly always lose access to land that they used to work. They can no longer work land held by their in-laws or husbands. No separated women we interviewed received land from their in-law's household. Separated and divorced women rarely go back to their birth family's home and thus do not regain access to their birth family's land either. This is especially true if their brothers are living in the family home. Many women said it would be socially awkward and there would not be enough land, money, or room to move back to their birth family's home. The only land we found separated women retaining was house plot land received from government schemes that had been jointly titled in their own names. This was one of the major reasons that women cited as a benefit of having land granted in their name. One woman, during previous fieldwork in Kolar, stated that she was very glad that the government allocated house and house plot was titled in her name because, "now if my husband leaves me, he can't kick me out."

Not only do separated women lose access to land, they typically do not receive any maintenance from their husbands, despite the legal provision that allows divorced or even informally separated women to receive maintenance from their husbands. Women also reported that they rarely receive their dowries, especially if they are the one who is leaving. Most separated women stated they could not even take their jewelry with them, because if the relationship is bad, "it would have been taken a long time ago by the husband."

Furthermore, separated Hindu women are generally socially barred from moving back to their birth family's household. They are considered a shame on their family, no matter why they are separated. The community views these women as having been raised incorrectly, which decreases the chances of their younger sisters marrying well. Among forward caste Hindus there were exceptions to this general trend of women not getting assistance from their family. Those who were members of the Bunt community or other forward castes stated that they could turn to their birth family for support and could move back to their birth family's home. Also, Brahmin women stated that they would actually demand and receive maintenance and may even claim land, especially if they had children.

Thus, except for some upper caste Hindus, separated women must depend on their own ingenuity and resources to support themselves and their children. Several separated respondents supported themselves by working as agricultural laborers or by migrating to cities to work. Women who migrate to distant cities for work often leave their children with relatives or in an orphanage, visiting them only a few times per year.

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### **3. Muslim Law**

A divorced Muslim woman is entitled to several forms of support under Muslim law. First, she is entitled to “reasonable and fair” maintenance during the period of *iddat* (three menstrual cycles, three lunar months, or the period until the birth of a child). Second, she has the right to any *mehr* agreed to at the time of marriage (which is presumed to exist even if not agreed to at the time of marriage). Third, she can claim any properties given specifically to her. And finally, she can receive additional support from her husband for two years after a child is born.<sup>72</sup>

Furthermore, if after the period of *iddat* she does not have the means to take care of herself, she can seek an order that requires any relatives who would be her heirs to support her in proportion to the amount they would inherit from her. If no such relative exists, the State Waqf Board<sup>73</sup> is to pay maintenance to support her.

### **4. Research Findings on Separated/Divorced Muslims Women**

Divorced or separated Muslim women were not as socially stigmatized as Hindu women were, and had more avenues of support. In Muslim communities, if a wife leaves her husband she is not entitled to maintenance, but if her husband leaves her, he will pay a lump sum of maintenance of 5,000-10,000 rupees depending on what he can afford. Moreover, separated women usually get their *mehr* at the time of divorce. Muslim women, unlike the Hindu women with whom we spoke, generally return to their birth family’s house if they are separated and are supported by them. Muslim women do not normally receive any of the land owned by their husband upon separation or divorce.

### **5. Christian Law**

Divorced Christian women, similar to their Hindu counterparts, have the right to seek maintenance during the pending of the divorce proceedings.<sup>74</sup> Permanent maintenance can be granted, and is determined based on the wife’s need and the husband’s ability to provide.<sup>75</sup> Divorced Christian women do not have a claim to any land owned by their husbands.

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<sup>72</sup> MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986 (as amended) § 3.

<sup>73</sup> Waqf Boards are charitable institutions that oversee and manage land donated by Muslims. Proceeds from the donated land are used for the upkeep of Islamic religious institutions and charitable programs. The State oversees the Waqf Boards and nominates their members. Vrinda Narain, *Women’s Rights and the Accommodation of “Difference:” Muslim Women in India*, 8 S.C.A. REV. L. & WOMEN’S STUD. 43 (1998) at 28.

<sup>74</sup> INDIAN DIVORCE ACT, 1869 (as amended) § 36.

<sup>75</sup> *Id.* § 37.

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## 6. *Analysis and Recommendations*

No separated or divorced women, regardless of religion, are entitled to leave their marriage with any land owned by their husband. It appears that Hindu women rarely receive any assistance from their in-laws, their birth family, or the community. Muslim women, in contrast, appear to receive at least token maintenance from their husbands. Moreover, they can turn to their birth family for support and as a last resort, can turn to the State Waqf Board for assistance. Furthermore, while Muslim women receive their *mehr* upon divorce, Hindu women never receive any dowry that was paid on their behalf. All women have the right to some form of monetary maintenance, but Hindu women rarely exercise this right because it requires going to court and is difficult to collect even after awarded.

This leaves women, especially Hindu women, in very vulnerable positions if they separate from their husbands, positions that are so vulnerable that it may increase their tolerance of abusive relationships.

The following recommendations are based on these observations:

- *Adopt the concept of co-ownership of marital property under which a woman is already a co-owner of marital property and thus has the right to an equal portion of it upon separation. Because separated women are owners of co-owned marital property along with their husbands, at the time of separation they have the right to a portion of such property. Separated women should be given the option of taking the land itself, or the cash equivalent to allow them to purchase land in another village.*
- *In cases of physical abuse, provide that a court can automatically attach (freeze access to) all property and if half the property is not provided to the wife, sell the property to provide the proceeds. Women who file for a protection order would be able to utilize this rule. This shift in power would give women the leverage to leave abusive relationships, assured that they will be able take care of themselves.*

### E. Multiple Marriages

#### 1. *The Law*

Polygamy (one person being married to more than one other person) is illegal for all groups in India, except for Muslim men (and some tribals, depending on their customs), who are legally permitted to have multiple wives.<sup>76</sup> Hindu and Christian bigamous

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<sup>76</sup> Under the laws governing Hindu and Christian marriage, marriage is not legally permissible if either party already has a living spouse. HINDU MARRIAGE ACT § 1 and INDIAN CHRISTIAN MARRIAGE ACT § 60. The Special Marriage Act, which anyone in India and Indian nationals in foreign countries can opt to be governed by, also prohibits multiple wives. SPECIAL MARRIAGE ACT,

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wives do not have the same rights that a legal wife would have to her husband's property.<sup>77</sup> Muslim women, regardless of which chronological wife they are, have the right to maintenance and their husband's property upon his death. All Muslim wives, regardless of the number, share 1/4 (if there are no children) or 1/8 (if there are children) of their husband's estate equally among themselves.

## **2. Research Findings and Recommendations**

In every village we visited, interviewees stated that polygamy existed, even among non-Muslims. Generally for non-Muslims who practice polygamy the first wife is abandoned but not officially divorced when the husband takes a second or third wife. While the man is married to the first wife, it is not legally possible for him to marry again (unless he is a Muslim). Thus these subsequent "wives" are not recognized under the law, even though they may have gone through a marriage ceremony and live together as husband and wife.<sup>78</sup> There are some cases of multiple wives under one roof, but generally a man only lives with one wife. One of the most common reasons cited for multiple marriages was that a man's first wife was unable to conceive (this may have been actual or perceived infertility). Under this circumstance, multiple wives were more likely to live in the same house.

Respondents often talked about disputes between multiple wives after their husband dies over his land and other property. It may be controversial to grant bigamous wives the clear right to their "husband's" property at his death or to maintenance when they divorce, as it may be viewed as condoning bigamy. However, during the time that these women are in "marriage-like"<sup>79</sup> relationship with a man, they are working in the household and contributing to the household's wealth and should have the chance to re-coup some their invested labor when their "husband" dies or leaves them. Granting these women clear property rights would help both them and their children. Clearly a more wide-scale public discussion on bigamy is needed to bring the issue to light, however, at this time we offer the following recommendations for possible future consideration:

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1954 (as amended) §4(a). Though interpretations of the Koran vary, polygamy is accepted and practiced in much of the Muslim world and a Muslim man in India can have up to four wives. MANJULU BATRA, *WOMEN AND LAW* (Allahabad Law Agency 2001) at 63.

<sup>77</sup> Despite that polygamy is illegal among non-Muslims the law may provide some limited protection to bigamous "wives." First, in terms of inheritance, the Hindu Succession Act recognizes the right of a man's "widows" to take one share (i.e. multiple wives share an amount equal to what one wife would have received had the husband only been married to one woman). HINDU SUCCESSION ACT § 10 Rule 1. However, it is unclear if a bigamous wife would meet the definition of a "widow." Furthermore, one court has recognized a second bigamous wife's right to maintenance upon separation. *Krishnakant Mulashankar Vyas v. Reena Vyas*, AIR 1999 Bom 127.

<sup>78</sup> HINDU MARRIAGE ACT §§ 5(i) and 15.

<sup>79</sup> A "marriage-like" relationship could be defined as a man and woman living together and representing themselves to the community as husband and wife.

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- *Consider granting each “wife” the right to any property that could be deemed co-owned marital property.” Shares could be allocated based on time spent living in a “marriage-like” relationship with the husband. Women who enter into “marriage-like” relationships with men who have previously married should not be punished by being denied the property rights that a legal wife would have. Current practice denies a bigamous wife the right to property that she had a hand in improving or purchasing through her efforts in the “marriage.” A more equitable solution would be to grant her the right to a portion of the property that was acquired during the time she was a “marriage-like” relationship with her “husband” at his death and by granting her the legal right to maintenance from her “husband” if their relationship ends.*
  - *Additionally, allow the first wife to legally partition her property from the marital community at the time her husband takes on a second wife in a “marriage-like relationship.” Under this arrangement subsequent “wives” would then be entitled to a share of his property, but not to a share of the first wife’s property.*

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## IV. RURAL INSTITUTIONS AND THEIR IMPACT ON WOMEN'S ACCESS TO LAND

Because local institutions are an integral part of rural societies in India, issues associated with land and land rights have to be studied within the larger framework of local governance. Specifically, three types of institutions were identified for this study, and each are described in greater detail in the following sub-sections: (1) informal/customary institutions dealing with dispute resolution; (2) formal democratically-elected local bodies such as *gram panchayats*; and (3) non-governmental organizations working with rural women. Additionally, three case studies are included in an Annex, detailing different land disputes related to women impacted by these three local institutions.

### A. Informal/Customary Institutions

#### 1. *The Structure*

In this report the customary institutions dealing with dispute resolution and other governance issues at the village level are identified as 'informal *panchayats*.' These are traditional, non-elected institutions without any legal powers for adjudication of disputes. Informal *panchayats* (IP) do not have a consistent structure, comprising either a single village leader or a group of leaders. Usually all IP leaders are men. An IP may be regarded as a council of elders consisting of all the senior caste leaders of the village. The head of an IP is usually a dominant caste leader. In some villages this is a traditionally inherited title. The following points give a brief overview of common characteristics of IPs:

- Not elected;
- Common in many places and play an important role, especially in relation to dispute resolution, religious ceremonies, and the management of temples;
- Sometimes manage corporate funds;<sup>80</sup>
- Provide an element of both social security and local law and order; and,
- Structure and activities vary widely from village to village, implying a high degree of adaptability.

Women are socially excluded from IPs. Villagers claim that 'everybody' in the village is allowed to participate in the proceedings of the IP. But on further probing it is clarified that the term 'everybody' is indicative of men's participation and not that of women.

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<sup>80</sup> Field data indicates that IPs do not have access to any permanent funds or grants. The main source of funds is through donations collected from the villagers for festivals, marriages and fines levied on the offenders found guilty during dispute resolution within the village. Fines may vary from 5 rupees (symbolic fine) up to 1,000 rupees (for serious or repeat offense).

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Women are excluded from most IP activities both in terms of participation as well as the decision making process. While women's participation is not openly forbidden, both men and women accept it as the unwritten rule of the community. The notion of 'maryade'<sup>81</sup> is used to control women's participation in the IP. A woman will lose her 'maryade' in the eyes of the community if she goes before the IP. Women are made to feel socially uncomfortable and labeled as 'bajari' (brazen or shameless) by the villagers, including the other women, if they participate in the IP meetings.

Women may take cases to the IP, but men normally represent them. In rare cases women whose family dispute is being resolved may be mute observers to the process of dispute resolution, but they are not allowed to contribute to the process or present their points of view even if the dispute relates to them.

## **2. RRA Results**

The high degree of adaptability of IPs indicates wide inter- and intra-regional variations in the composition of this forum. This was particularly visible during the field visits. In Kolar district, IPs are prevalent and widely used, whereas in Dakshina Kannada they are rare. We encountered an IP in only one of the villages visited in Dakshina Kannada. One possible explanation for this near absence of IPs in the district is the radical implementation of land reforms, especially the 'tenancy reforms' in this district and the consequent change in agrarian relations. Since IPs derive their validation to a certain extent from existing land relations in the village, changes in the agrarian structure are likely to have an impact on this institution.

Interestingly in Dakshina Kannada, the IP has almost given way to the formal local governance structure, the *gram panchayat*. The one IP we encountered in Dakshina Kannada was not as powerful as those witnessed in Kolar. But even here women were excluded from its proceedings. The villagers and the leaders admitted that comparatively the *gram panchayat* was more influential than the village IP.

Wherever IPs exist, land disputes are generally brought to them, at least in the first instance. If the IP is unable to achieve resolution, disputes are taken to higher levels – *gram panchayats*, police stations, land revenue functionaries, or civil courts. Most disputes are between brothers quarrelling over inheritance. Others include disputes over encroachments and land boundaries. Villagers estimated that women were involved in about 20% of the land related cases brought to the IP.

We encountered four categories of property disputes involving women: (1) widows claiming rights to husbands' property; (2) disputes arising from polygamous marriages;

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<sup>81</sup> 'Maryade' in the local language, Kannada, is a value-laden term. The closest equivalent in English is 'honor.' *Maryade* is actually a combination of honor, self-respect and reputation. It is used very contextually.

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(3) daughters claiming rights to fathers' land; and (4) sisters claiming rights from brothers to ancestral property. Categories (1) and (2) were found in both districts, but only in Dakshina Kannada did we find cases of (3) and (4). They were relatively common.

Members of IPs in Kolar said that they were more sympathetic to claims in categories (1) and (2) above – relating to widows and polygamy – than to category (3) and (4) claims from daughters and sisters. This is due to a large extent to the impact of *maryade*. There is a strong code of conduct for women in rural areas, which deems certain actions as shameful. For example, it is generally not accepted for a daughter or sister to claim a share of parental property. Going against one's birth family (in this instance making claims on parental property) is seen as being ungrateful and shameful. This was openly revealed by the male interviewees in Kolar who admitted that if they received two cases related to women claiming property rights – one of a widow and another of a sister/daughter claiming rights over father's property – they would give greater preference and importance to the widow's claim than that of the daughter or sister's claim. The latter was considered to be morally wrong. This suggests that the influence of IPs in Kolar is an important independent factor explaining why women there make fewer claims to land rights. However, IPs did sometimes act as a support structure for deserted women or widows by helping them claim a share of their husband's property.

Women interviewees expressed mixed feelings about the reliability of the IP as an institution of justice especially where women's land rights were concerned. This was particularly related to the fact that there was total exclusion of women from the process of dispute resolution. Comparatively, male interviewees had more trust and faith in this institution. The opinion regarding IPs also varied from village to village suggesting that the credibility of the institution is tied to the quality of leadership.

### **3. Analysis**

The IP is an important rural institution. The total absence of women in this institution both as decision-makers and as participants is indicative of a deep-rooted gender bias within this institution. The notion of *maryade* that keeps women from being a part of this institution has implications for the assertion of their rights. This is particularly true as the value judgment attached to cases relating to sisters' and daughters' claiming family property automatically eliminates this institution as an effective arbitrator of such disputes. Women, as community members, find it difficult to make these claims under such circumstances. As one woman interviewee said, "We have to live with this community and tomorrow, if we face any difficulties, we need their support, so we can not antagonize the community or the leaders."

Women in Dakshina Kannada make a wider range of property claims, and appear to make claims more frequently than women in Kolar, despite the fairly wide knowledge

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of land law among women in both districts. The difference appears to be at least in part associated with the relative influence of IPs in Kolar, and their near-absence from Dakshina Kannada. The causal connections are not entirely clear, as there are other significant differences between the two districts. In Dakshina Kannada, female literacy levels are higher; there is less poverty; there are more non-agricultural livelihoods for women (including in fishing and the beedi industry); and even small plots of land are relatively valuable because they support tree cash crops (whereas Kolar is mainly rainfed field agriculture). However, the substantially greater influence of IPs in Kolar, the notion of *maryade* that prevents women's full participation in this institution, and the statements of IP members in Kolar about their bias against certain types of land claims made by women, all suggest that the influence of IPs in Kolar is an important independent factor that may explain why women there make fewer claims to land rights. This merits further inquiry.

## B. Gram Panchayats

### 1. Structure

Formal governance institutions, including democratic institutions, have long played a major role in the Indian polity. For a number of reasons, including the character of colonial rule, formal and democratic governance is less entrenched at the village than at higher political levels. Since Independence, a long series of legislative initiatives have effectively extended democratic rule to the local level.

Of these initiatives, the 73rd Constitutional Amendment of 1992 was especially significant because it: (1) introduced a uniform three-tier democratically-elected local government structure; (2) made regular five-year local elections mandatory; (3) gave women and members of Scheduled Castes and Scheduled Tribes reserved seats on elected councils; and (4) included an enabling provision for reservation in favor of Other Backward Classes.<sup>82</sup>

The state of Karnataka itself has a fairly impressive record in terms of democratic decentralization. The first major landmark in recent times was a 1983 Act which introduced a three-tier system of local governance in Karnataka.<sup>83</sup> A notable feature of this Act was the reservation of 25% seats for women even before this was mandated by the Constitution. Elections under this Act were first held in 1987.

This Act was substituted by new legislation in 1993, the Karnataka *Panchayat Raj* (KPR) Act. This was due partly to the need to accommodate the mandatory provisions

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<sup>82</sup> "Other Backward Classes" (OBC) includes groups, which while not classified as "Scheduled Castes" or "Scheduled Tribes" are poor and considered developmentally "backward."

<sup>83</sup> KARNATAKA ZILLA PARISHADS, TALUK PANCHAYAT SAMITHIS, MANDAL PANCHAYATS AND NYAYA PANCHAYATS ACT, 1983. Later replaced by the KARNATAKA PANCHAYAT RAJ ACT, 1993.

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brought about by the 73rd and 74th amendments to the Constitution. By virtue of these amendments, *panchayat raj* institutions (PRIs) obtained constitutional status. Further, a three-tier elected structure was also made mandatory (with a few exceptions). As a result the 1993 Act provides for the following three-tier structure: *zilla panchayat* (district level), *taluk panchayat* (block level) and *gram panchayat* (village level).

The KPR includes reservations for several sections of the society in the *gram panchayat* (GP). Women must hold 33% of GP seats; Scheduled Castes and Scheduled Tribes must be represented in proportion to their population; and 33% of seats are reserved for Other Backward Classes.<sup>84</sup> A special feature of this Act is that it provides for reservations for the post of President and Vice President in all three tiers on a rotation basis. Another important feature of the KPR is the establishment of the *gram sabha* (village assembly), which consists of all the registered voters of the village.<sup>85</sup> Additionally, every GP is supposed to have a Social Justice Committee responsible for performing functions related to the welfare of women.<sup>86</sup>

The following points give a brief overview of common characteristics of GPs:

- Lowest tier of democratically elected local governance structure governing at the village level.
- Jurisdiction over a minimum of 5000 and a maximum of 7000 people. This could be one large village or a cluster of villages. This differs for hilly regions where the villages are scattered.
- One member is elected for every 400 people.
- Reservations:
  - One-third of the seats are reserved for women.
  - Reservation of seats for Scheduled Castes and Scheduled Tribes in direct proportion to their population.
  - One-third of the seats are reserved for Other Backward Classes<sup>87</sup>
  - Posts of president and vice president are also reserved in the same proportion, but on a rotating basis.
- Assigned multiple duties. Duties that relate to land include: developing and maintaining wastelands and grazing lands; removing encroachments from public lands; distributing house sites; and maintaining community assets.<sup>88</sup>
- Access to both tied and untied funds from state and central governments.
- Power of taxation on buildings, markets, entertainment etc.

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<sup>84</sup> KARNATAKA PANCHAYAT RAJ ACT § 5.

<sup>85</sup> *See id.* § 3.

<sup>86</sup> *See id.* § 61.

<sup>87</sup> While reservation of seats for women, Scheduled Castes and Scheduled Tribes are mandated by the Constitutional amendment, the enabling provision of reservation of for Other Backward Castes is left to the discretion of the respective States.

<sup>88</sup> KARNATAKA PANCHAYAT RAJ ACT § 58 and Schedule I.

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## 2. *RRA Results*

GPs as constitutionally mandated bodies are present in all the districts of Karnataka. GPs operate both in Kolar and Dakshina Kannada districts, but their efficacy and influence showed significant variations between the two districts.

In Kolar there appears to be a kind of distance between the villagers and the GP. Most of the interviewees, both men and women, felt that the GP was far removed from their villages and found their GP representatives inefficient and apathetic. Despite this, disputes related to land were taken to the GP if an acceptable decision was not reached in the IP. If the GP was unable to resolve these issues then the villagers might go to the police station, revenue courts, or civil courts. In a couple of villages we did come across an overlap of leadership between the IP and GP. In such situations, the roles of IP and GP become somewhat blurred.

In contrast, GPs are functioning much more effectively in Dakshina Kannada. Interviewees by and large approached the GP for benefits, and there was much more awareness regarding the functioning of GPs when compared to Kolar. In Dakshina Kannada, GPs seem to have taken over the role of IP as villagers are bringing their disputes before the GP in the first instance, including land disputes.

In Dakshina Kannada we came across a GP woman president who had resolved a number of land disputes related to women. Women interviewees admitted that the presence of a woman president or member in the GP enabled women to approach the GP more freely. Often village women met these GP representatives at their homes and confided their problems. Interestingly, in Dakshina Kannada, we came across a number of claims on parental property by sisters and daughters. Unlike Kolar, here there was no visible value judgment or social censure attached to such cases. In Dakshina Kannada wherever GPs had tried to resolve land disputes, they did so on the basis of land records provided by Village Accountants. Thus, their decisions were potentially more authoritative than the IPs'. Women attended the *gram sabha* quite widely in Dakshina Kannada and made better use of the special programs and provisions earmarked for women than in Kolar.

## 3. *Analysis*

GPs are emerging as an important local governance structure. While the reservation of seats for women has not made as visible an impact as the supporters of women's reservation claim, neither has it shown a negligible impact as its detractors allege. The field findings clearly indicate that the presence of women in local governance enables rural women to interact with the institution more freely. Successful women GP representatives have taken up the cause of women effectively, including rights and

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access to land.

GPs are better positioned to make informed decisions regarding land disputes as they have access to relevant documents which the IPs do not have. However, wherever there is an overlap of leadership between IP and GP, the effectiveness of GP as a democratic institution has been debatable.

### C. Non-Governmental Organizations and Self-Help Groups

The field research included looking at interventions by non-government institutions (NGOs) and their impact on rural women's access and rights to land. Most NGO interventions have concentrated on empowering women in areas such as literacy, micro-credit, skill training, and health. While the NGO intervention has empowered women in various ways and in some cases, raised women's awareness of their land rights, NGOs do not seem to have had a significant impact on the number of claims to land lodged by women.

Most of the NGOs we visited have initiated self-help groups (SHGs) in the villages. These SHGs are forums for creating awareness among women regarding health, education, legal rights etc. These SHGs are also involved in savings schemes and micro-credit enterprises and thus provide some form of economic support for women. One of the NGOs in Dakshina Kannada district has initiated a *Mahila Jagruthi Vedike* (women's forum) which deals with issues related to atrocities on women including women's claims to property rights especially in case of polygamy.

Another interesting finding was that many of the SHG members were now contesting local elections, although the number of those elected to the GP compared to the number of women contested was low. Nonetheless, it was promising that these women, with some degree of awareness and involvement in the decision making process in their SHGs, had been elected to the higher tier of governance. These women also had the support of the SHGs in discharging their duties as representatives of the local governance.

### D. Analysis and Recommendations

As evident from the field findings, rural institutions play an important role in determining women's access and rights to land. Since villages are distant from the formal legal institutions, these local bodies assume a special significance in resolving land disputes. This is particularly true of widows and destitute women who have limited options. Neither IPs nor GPs have any legal authority to resolve land disputes. But GPs are better placed to ensure that their decisions are based on land information and land records provided by Village Accountants. Their decisions are potentially more authoritative.

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At present there are no organic linkages between these different local institutions. Each operates in a different sphere, independent of one another. For women's claims on land to be successful, it is essential that these institutions be better linked. If an empowered women's SHG, with the support of an NGO, takes up the claim of a separated/divorced woman for a share of property with the IP or with the GP, it is likely to have more impact than a single woman fighting alone for her rights with very little support from the community.

An example of the increased power SHG have when working collectively with NGO's was noted in Nanjangud *taluk* in Mysore. Here *Mahila Samakhya*<sup>89</sup> created Collectives (its name for the SHGs it creates) that had developed such linkages. All the Collectives of the block had come together to form a federation at the block level. Complaints brought in by women at the Collective level are first taken up with the IP. If a satisfactory resolution is not arrived at this level, the claim is taken up with the GP. If the issue is not resolved there, then the Collective representative takes the matter to the federation where with the help of the local NGO activists the problem is addressed.

Well-functioning, local dispute resolution bodies, such as the federation established in Mysore, paired with legal assistance, are key if women are going to be able to take advantage of protections provided to them in written law. Central and Karnataka State legislation already provides that free legal aid be provided to women through the Karnataka Legal Services Authority.<sup>90</sup> However, in many localities we have been told that the cells meant to provide this legal aid are not functioning. Furthermore, where these cells are functioning, ceilings placed on the amounts women can claim limit women's ability to use this service in case of dowry or inheritance claims, where sums often exceed the ceiling.<sup>91</sup>

The following recommendations are made based on these observations:

- *The state government should better educate GPs about their responsibilities over land allocation.* GPs are currently given the authority to distribute house sites, dispose of vested land and implement government programs aimed at asset creation for the poor. GPs should be made fully aware of the government policy that joint rights should be given on any land or other assets distributed by the government. Awareness of the important benefits of joint titling should be raised among GP representatives, particularly women.

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<sup>89</sup> *Mahila Samakhya* is a pilot program of the Department of Education, Ministry of Human Resource Development of the Government of India. Its mission is to create education programs that bring about women's equality. The program was launched in 1989 in 10 districts of Karnataka, Gujarat, and Uttar Pradesh.

<sup>90</sup> LEGAL SERVICES AUTHORITIES ACT, 1987.

<sup>91</sup> Phone conversation between co-author Renée Giovarelli and Gita Devi, a lawyer practicing in Bangalore, Karnataka.

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- *The Karnataka Legal Services Authority should work more closely with GPs.* GPs should be linked to the legal services authority so as to ensure that people, especially women, who bring their disputes to the GP have access to objective, professional legal advice. For example, the legal services authority could be more closely linked with the GP's Standing Committee on Social Justice.
  - *Improve implementation of legal aid by running legal aid in conjunction with NGOs.* Currently limited legal assistance is provided to women in India, however implementation of these programs is inadequate in many areas. The legal services authority worked to the benefit of rural women in places where local NGOs and/or SHGs were involved in implementation.
  - *Amend the rules for receiving legal aid so there is no ceiling amount for cases involving divorce, dowry or inheritance and a nominal charge for services.* The ceiling placed on amounts that women can claim is lower than the amounts that women often seek when they make dowry or inheritance claims. The ceiling should be lifted in these cases, or based on the woman's income rather than the amount she is claiming.

Also, if a woman uses this free legal aid she often must turn over a portion of the proceeds, if she prevails, for the legal aid. These charges should be changed to a nominal fee and/or the losing party (i.e., in-laws, former husband) should be made to pay the expense of bringing the claim.

- *SHGs and NGOs should continue their already positive efforts to educate women about their legal rights, and encourage them to exercise these rights.* During the field research one of the most positive forces for change for women in rural villages were SHGs. Women who were part of these groups understood their rights and were more willing to assert their rights because they had a strong support network.

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## V. CONCLUSION AND POSSIBLE POLICY ALTERNATIVES

Rural women, NGOs, policy-makers and researchers have all become aware of the multiple benefits to be had by granting women secure rights to land, including drastically enhanced security, increased and secure income, ability to access credit and government programs, and increased leverage and respect within the household.

Notwithstanding these benefits, rural women generally do not have secure land rights, despite their contributions to and reliance on agriculture. First, approximately 7.2% of women live in households that are absolutely landless and another 24.8% in households that own less than 0.2 hectares. Second, the government has not historically titled government-granted land in the names of women separately or even jointly with their husbands. Third, daughters do not inherit land from their families, despite provisions in the law granting them inheritance rights, because both daughters and their families consider their share of the family wealth to be given to them through dowry paid on their behalf, even though daughters do not control such dowry. Fourth, unless widows have small children they generally do not inherit land. Fifth, separated or divorced women do not have the right to any portion of their husband's land. Finally, women do not have the resources to purchase land in their own name.

Rural institutions play an important role in determining women's access and rights to land. Since villages are distant from formal legal institutions, these local institutions assume a special significance in resolving land disputes. This is particularly true for widows and destitute women who have limited options. Neither informal *panchayats* nor *gram panchayats* have any legal authority to resolve land disputes yet both institutions are playing that role. *Gram panchayats* are better situated to ensure that their decisions are based on information on and records provided by Village Accountants. Their decisions are potentially more authoritative. It is also essential to establish linkages between the different local institutions that operate at the village level. This would help in countering the patriarchal nature of customary institutions.

Karnataka State has begun to address women's insecure right to land by passing some progressive legislation, such as the Karnataka State Amendment to the Hindu Succession Act. Unfortunately, the intended benefits of these laws are not reaching the most needy women. Some women (especially poor and uneducated women) are still unaware of the laws and schemes that might help them. Additionally, even when women are aware of these laws, they do not exercise their rights because of social pressures against asserting them or because they lack knowledge about how to assert them. For these reasons, the legislative and policy recommendations outlined throughout the report and recapped below, must be paired with education and improved legal aid.

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The recommendations given throughout the paper should be seriously considered and discussed by policy-makers. Not all would result in immediate improvements to women's land rights on the ground, but they would start by granting women the knowledge and legal space to begin to assert and use their rights. Other recommendations, such as requiring government allocated land to be jointly allocated, could have the immediate affect of granting women ownership rights to land. The following is a re-cap of these recommendations:

- *Adopt legislation requiring that all government-allocated land and housing be granted in the joint names of married couples or to women individually.* Nearly every policy-maker, NGO representative and most of the RRA and questionnaire survey respondents stated that all government-allocated land should be jointly titled in the name of husband and wife. Also, consider restricting eligibility for some government programs to those who hold joint rights to land to encourage married couples to hold land jointly.
- *Add safeguards to ensure that women understand their rights and obligations as owners.* Granting women formal rights to land does not improve their position if they are not aware of or do not understand their rights. The government should adopt rules requiring that both joint owners of land be present to sign registration documents for selling or mortgaging land. The government might also adopt rules requiring the registration officer, or perhaps a third party NGO, to explain what the wife and husband are signing and what each of their rights and obligations are as joint landowners.
- *Policy-makers should consider adopting the concept of co-ownership of marital property, which would grant both spouses equal right to property acquired during marriage.* This step would grant a much larger scope of women (all women in families that purchased land during their marriage, not just women in families that receive government granted land) an ownership right in the land their household owns.
- *If a marital co-ownership system were adopted, the government would need to promote widespread education about the change and provide enhanced access to legal aid to enforce the law.* For a co-ownership system to work effectively, women must be made aware of its existence and have to be given access to legal aid to help them assert their rights under the law.
- *All gifts and cash received in conjunction with marriage should be deemed to be jointly owned by the married couple, regardless of who the cash or gift was specifically given to.* As the Dowry Prohibition Act is not working as a deterrent, policy-makers should consider other ways of altering the current dowry system to benefit women. Currently, it is assumed that if any dowry is given it is held in trust for the bride, but brides are not benefiting from this provision in practice and

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usually have no control over dowry. Recognizing the on-going existence of dowry and granting married women a joint ownership right to such dowry could benefit women.

- *Provide government loans and/or grants to women to purchase small pieces of land.* Our research indicated that dowry is the main impetus behind many land sales. Such sales are generally for small pieces of land, as families prefer to keep as much land as possible. The government could use this activity in the land market to help landless or near-landless women purchase land in their own names.
- *Provide further education and improved legal aid to rural women to help them take advantage of the current written law on Hindu Succession.* All wives and daughters should be made aware of their rights under the law and the steps they can take to assert them. Especially important is educating daughters of the fact that they currently have co-ownership rights to any joint-family (ancestral) land. Rural men, NGOs, and *panchayats* must also be educated about women's land rights.
- *Adopt legislation that applies Muslim Personal Law to agricultural land throughout the state.* Several other states have passed similar legislation. In fact a portion of Karnataka that was once part of Madras State applies Muslim Personal Law to the succession of agricultural land. A further option should be provided so that women can opt to receive the monetary equivalent of their share of the agricultural land, as many Muslim women spoke of the limitations of owning field land far from their homes.
- *Consider amending the Hindu Succession Law to prohibit husbands from completely disinheriting wives.* Provide widows a guaranteed interest in land and property owned by their deceased husband, especially the house plot. Many jurisdictions provide this protection to widows and widowers (a so-called "forced-share"). Such laws provide that even if the deceased has written a will that leaves nothing to his or her spouse, the widow or widower will still receive a share of the deceased spouse's property (often one-third). Thus, a widow could never be completely disinherited.
- *Provide greater government assistance to widowed women who have no means of support.* Current legislation provides that women can seek maintenance from their in-laws. This legislation, however, is not utilized. The government could provide assistance to a widow up to the value of the property that she has the right to receive under succession laws and maintenance laws. A government enforcement office could then be created to recover the money or property from the estate of her deceased husband or in-laws to repay the government.

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- *Place safeguards in the probate process to ensure the involvement of women.* Findings on the probate and re-registration process were preliminary, but it seems clear that women are not often involved in the process and thus do not readily have the opportunity to assert their rights under the succession laws. The exact process should be further studied, and exact recommendations made on more detailed findings.
  - *In cases of physical abuse, provide that a court would automatically attach (freeze access to) all property and if half the property is not provided to the wife, sell the property to provide the proceeds.* Women who file for a protection order would be able to utilize this rule. This shift in power gives women the leverage to leave an abusive relationship, assured that they will be able take care of themselves.
  - *Consider granting bigamous wives the right to any property that could be deemed co-owned marital property. Shares could be allocated based on time spent living in a “marriage-like”<sup>92</sup> relationship with the husband.* Current law grants multiple wives of both Hindu and Muslim men the right to share the portion of property that a single wife would have had the right to under the law. Give each wife a share of any household land or assets that they use based on the amount of time they were in a “marriage-like” relationship.
  - *Additionally, allow the first wife to legally partition her property from the marital community at the time her husband takes on a second wife in a “marriage-like relationship.”* The subsequent wives would then be entitled to a share of his property, but not to a share of the first wife’s property. Such a system would work best if a co-ownership property system were in place.
  - *The state government should better educate GPs about their responsibilities over land allocation.* GPs are currently given the authority to distribute house sites, dispose of vested land and implement government programs aimed at asset creation for the poor. GPs should be made fully aware of the government policy that joint rights should be given on any land or other assets distributed by the government. Awareness of the important benefits of joint titling should be raised among GP representatives, particularly women.
  - *The Karnataka Legal Services Authority should work more closely with GPs.* GPs should be linked to the legal services authority so as to ensure that people, especially women, who bring their disputes to the GP have access to objective, professional legal advice. For example, the legal services authority could be more closely linked with the GP’s Standing Committee on Social Justice.

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<sup>92</sup> A “marriage-like” relationship could be defined as a man and woman living together and representing themselves to the community as husband and wife.

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- *Improve implementation of legal aid by running legal aid in conjunction with NGOs.* Currently limited legal assistance is provided to women in India, however implementation of these programs is inadequate in many areas. The legal services authority worked to the benefit of rural women in places where local NGOs and/or SHGs were involved in implementation.
  - *Amend the rules for receiving legal aid so there is no ceiling amount for cases involving divorce, dowry or inheritance and a nominal charge for services.* The ceiling placed on amounts that women can claim is lower than the amounts that women often seek when they make dowry or inheritance claims. The ceiling should be lifted in these cases, or based on the woman's income rather than the amount she is claiming.

Also, if a woman uses this free legal aid she often must turn over a portion of the proceeds, if she prevails, for the legal aid. These charges should be changed to a nominal fee and/or the losing party (i.e., in-laws, former husband) should be made to pay the expense of bringing the claim.

- *SHGs and NGOs should continue their already positive efforts to educate women about their legal rights, and encourage them to exercise these rights.* During the field research one of the most positive forces for change for women in rural villages were self-help groups. Women who were part of these groups understood their rights and were more willing to assert their rights because they had a strong support network.

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## ANNEX

Three case studies of disputes related to women and land at different institutional levels

### **1. Informal Panchayats**

The underlying philosophical premise of dispute resolution at the village level is arriving at a compromise between the two groups of contenders. The following relates to a case of a separated woman seeking justice from the IP.

A woman from a village in Kolar was married to a man in a neighboring village. After she had a child (son), her husband abandoned her and married another woman. The first wife came back to the village and lived with her mother. After a while she approached the IP to help her get a share of the property from her husband. The IP leaders told her that because she had a son (who was the first born) her chances of claiming a share of the property would be higher if she argued for her son's claim on the father's property rather than her own. She followed their advice and sought a share of her husband's property for her son. The IP leaders convened a meeting at the village. Her husband was asked to be present at the meeting. The matter was also reported to the IP leaders of the other village. At the meeting the husband was asked to divide the land and give a share to his first-born son because he had a legal claim on the father's property. After much discussion and debate it was agreed that a share of the property would be given to the son. The IP leaders were told to ensure that he did not renege on the agreement after the meeting.

### **2. Gram Panchayat**

GPs do not actually take an active role in dispute resolution. But if the GP is approached by villagers to intervene in a dispute, then GP members may make a decision based on the actual facts provided by the Village Accountant. The following relates to a case where a woman GP president helped a young widow get a share of her husband's property including land.

In one of the villages visited in Dakshina Kannada, the GP president was a woman. In her village there was young Christian family, in which the husband tried to kill the wife and children before committing suicide. The husband and one child (daughter) died. But the wife and the son survived. Within a few days of this tragedy, the mother-in-law and the sister-in-laws together threw the young widow out of the house with her son blaming her for the tragedy. She approached the GP president for help. The GP president took her to the police station and lodged a complaint with the police. She

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then took the police to the mother-in-law's house along with the widow and made them turn over all the property that belonged to her including her jewelry, her husband's scooter, his gold, etc. The president then approached the village accountant who had all the land records. She then found out how much land that family had and convinced the in-laws to sign over a portion of the land to the daughter-in-law and her son. She also made sure that a share of the areca nut already harvested was given to them. The GP president admitted that she did not get much support from the villagers, but the police inspector was very helpful. She also experienced a lot of pressure from the husband's family not to take this course of action. In the end she felt she had to provide support to the young widow who did not have any other recourse.

### **3. Non-Governmental Organizations and Self-Help Groups**

Generally NGOs and SHGs do not intervene in matters related to land disputes. But in Mysore district, Collectives formed as a part of the government program – *Mahila Samakhya* – have extended their activities to providing support for women in distress. All the Collectives within a block have come together to form a federation at the block level. Nine office bearers have been elected to the federation, which has been registered for one year. Generally the cases are first brought to the Collective members at the village level. The Collective members will approach the IP and try to resolve it within the village itself. But if they do not get justice in this forum, they approach the GP as a next step. If the GP is unable to intervene successfully in this matter then it is brought to the notice of the federation by one of the Collective members. At the federation level the matter is then taken up with the police where a complaint is lodged. The legal aid cell/committee is then consulted on legal matters. The support of the *Mahila Samakhya* functionaries is sought wherever needed. One of the authors visited this institution and in the three months preceding her visit there had been 15 cases before the federation, out of which four were related to land. It was also interesting to note that a male farmer approached the federation to seek assistance in resolving his land dispute. The women federation members advised him on the procedures to get a title deed from the appropriate government offices.



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