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Women's Land Rights in West Bengal: A Field Study

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The authors express their gratitude to the many women of West Bengal who shared their time, thoughts, and homes with them.

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EXECUTIVE SUMMARY

Women in India, and worldwide for that matter, are rarely landowners. This is despite their high level of involvement in agricultural production and dependence on agriculture for their livelihoods. Rural women, NGOs, policy-makers and researchers have all become increasingly aware of the multiple benefits possible from granting women secure rights to land. These benefits include drastically enhanced security, increased and dependable income, ability to access credit and government programs, and more leverage and respect within the household. Notwithstanding these benefits, rural women in West Bengal generally do not have secure land rights.

The Rural Development Institute (RDI) has conducted research on the topic of women's access and rights to land in the Indian state of West Bengal to shed further light on why women are not landowners and what might be done to foster their ownership of land. RDI teams conducted three separate rounds of field research in rural West Bengal on women's land rights from October 2000 through March 2002. In summary, this research found the following:

- Very few rural women own either agricultural land or the houses they live in.
- Despite government policies promoting joint titling, little joint titling of government-granted land is occurring.
- One of the most common reasons for selling land or other assets is to raise money for a daughter's dowry/wedding. Dowry is prevalent and has been rising in all of the villages visited, with the exception of some tribal areas where bride price is still practiced. Many families interviewed have sold or mortgaged land or animals to raise dowry.
- There is a general awareness of the rights granted to widows, daughters and sisters under the written inheritance laws, but these rights are not frequently exercised.
- Separated women almost always lose access to land they worked during marriage. They can generally return to their birth family's home for shelter, but often must earn their own money for food. Separated women do not receive land from their former husbands and very rarely receive monetary maintenance.
- Women who hold title to land in their own name prize the security that the land endows them with. Even if they are not able to work the land themselves, due to age or social restrictions, women say that having a piece of land in their own name gives them something to contribute to the family and ensures that their sons will care for them in their old age.

With these research findings in mind, we offer the following recommendations to enhance women's access and right to land in West Bengal:

- Facilitate the inclusion of women as joint owners of purchased land by requiring that the option of joint ownership be made clearly available on all sample deeds and registration documents and by requiring deed writers to inform purchasers of this option.
- Adopt as law the current policy of granting government-allocated land in the joint names of husband and wife or in the independent name of a woman.
- Undertake a campaign to ensure that all outstanding *pattas* are issued jointly to husband and wife.
- Seriously evaluate retroactively adding wives' names to land documents for all vested land that was previously allocated solely in the name of the male head of household.
- Capitalize on the fact that small pieces of land are sold in villages to help landless women become landowners by making grants and/or subsidized loans available to women to purchase such land.
- Consider granting widows the sole right to inherit the family house and house plot.
- Consider amending the Hindu Succession Law to prohibit husbands from completely disinheriting wives.
- Provide greater government assistance to widowed women who have no means of support.
- Loosen restrictions on alienating government-allocated land to permit separated and divorced women to sell their share of government-allocated land.
- Consider adopting a change in marital property law to provide for co-ownership of property acquired during marriage by both spouses.

I. INTRODUCTION

Women in India, and worldwide for that matter, are rarely landowners. This is despite their high level of involvement in agricultural production and dependence on agriculture for their livelihoods. The Rural Development Institute (RDI) has conducted research on the topic of women's access and rights to land in the Indian state of West Bengal to shed further light on why women are not landowners and what might be done to foster their ownership of land.¹

The first question that might occur to some readers at this point is "Why do women need to own land?" Most landless rural women can answer this question very simply: "Owning land would give me security in case my husband leaves me or in case I am widowed." Rural women and other researchers also cite additional benefits of land ownership including increased respect within their families and communities, a means of earning their own income, better allocation of household income to family welfare, and access to credit and government programs.² Moreover, as more men migrate for work and more women head households, agricultural production becomes increasingly reliant on the work of women.

Despite these multiple benefits, few women ever become landowners. Many women live in landless or near-landless households and even when a woman's family owns land, she rarely personally owns any fraction of the land. Land her household purchases and land that the government grants to her household is almost always titled in her husband or father's name. She probably has access to this land and its produce through her husband or father and she probably contributes to its output by working in the field, processing the harvest, feeding the laborers, etc. She does not, however, have secure, long-term legal rights to the land.

West Bengal is recognized as a leader among Indian states in implementing land reform measures to benefit sharecroppers and to redistribute ceiling surplus land to the landless.³ These successful reforms, however, largely failed to target women. Notably, West Bengal has taken the positive step of adopting a policy requiring government-allocated land to be granted independently to women or jointly to husband and wife. Unfortunately, this policy has been largely unpublicized and unimplemented.⁴

¹ RDI has conducted similar research in the Indian state of Karnataka. See JENNIFER BROWN, KRIPA ANANTHPUR, AND RENÉE GIOVARELLI, WOMEN'S ACCESS AND RIGHTS TO LAND IN KARNATAKA (RDI Reports on Foreign Aid and Development # 114) (May 2002).

² For further reading on the benefits of secure land rights for women in the Indian context see BINA AGARWAL, A FIELD OF ONE'S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA (1994) and A JUST RIGHT: WOMEN'S OWNERSHIP OF NATURAL RESOURCES AND LIVELIHOOD SECURITY (Nitya Rao and Luise Rürup eds., 1997).

³ TIMOTHY M. HANSTAD AND JENNIFER BROWN, LAND REFORM LAW AND IMPLEMENTATION IN WEST BENGAL: LESSONS AND RECOMMENDATIONS (RDI Reports on Foreign Aid and Development #112) (December 2001).

⁴ See Jayoti Gupta, *Women Second in the Land Agenda*, ECONOMIC AND POLITICAL WEEKLY, May 4 2002.

II. METHODOLOGY

RDI teams conducted three separate rounds of field research in rural West Bengal on women's land rights from October 2000 through March 2002. First, RDI conducted a 500-household questionnaire survey on a wide variety of land, land market and land reform topics.⁵ A portion of this survey focused on women's access to land, including questions on inheritance patterns, wedding and dowry expenses, and the titling of land. We conducted this questionnaire survey in the districts of Purulia, Midnapore, Birbhum, Dakshin Dinajpur, and Bardhaman from October 2000 to February 2001.⁶ Nine percent of the respondents were women and six percent of respondents were female heads of household. Throughout the report, findings from this survey are referred to as "questionnaire survey" findings.

Second, in November 2001, RDI researchers interviewed rural women in Birbhum district on their right and access to land.⁷ Researchers interviewed 17 women including women from the following groups: scheduled caste Hindus (3); general caste and "other backward" caste Hindus (9); Muslims (2); and scheduled tribe members (3). About half of the respondents lived in households that presently own land.

Third, the authors interviewed rural women in March 2002 using rapid rural appraisal techniques⁸ in Birbhum and Bardhaman districts. We explored women's customary and legal access to land in greater depth than earlier rounds of research through 44 detailed interviews with individual women or small groups of women of the same background. Interviewees included: scheduled caste Hindus (17); general caste and "other backward" caste Hindus⁹ (14); Muslims (8); and scheduled tribe members (5). About two-thirds of the women interviewed during this round of research lived in landowning households. Throughout the report, findings from the latter two rounds of qualitative research interviews with women are referred to as "RRA interview" findings.

We presented our research findings to policy makers and activists at a workshop in Kolkata on "Access and Rights to Land for the Rural Poor" held in May 2002. RDI

⁵ RDI created this questionnaire based on several rounds of field interviews with rural men and women in West Bengal. The survey's purpose was to serve as the basis for future detailed examinations of the topics touched on in the questionnaire. For a copy of this questionnaire please email Jennifer Brown (jenniferb@rdiland.org).

⁶ This survey was conducted by the Rural Development Institute (RDI), together with Visva-Bharati, Santiniketan (field supervisors were Professor S. Pal and Dr. K. A. Rahim), National Institute of Rural Development, and Dr. T. Haque (currently Chair, Commission on Agricultural Costs and Prices, Government of India).

⁷ This research was conducted by Partha Majumdar, RDI's West Bengal representative and Shubhaasree Ganguly.

⁸ 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.

⁹ A few women in this group were "Vaishnavas" who are technically caste-less followers of Vishnu. Here we have included them in the "general caste and other backward caste" group.

organized this workshop in association with the Government of West Bengal and the Union Ministry of Rural Development. We have incorporated feedback and comments from the workshop into this paper.

III. RESEARCH LOCATIONS

While our questionnaire survey research findings were obtained from five districts in West Bengal, our detailed qualitative findings obtained from personal interviews with women were gathered in Birbhum and Bardhaman districts. We rely heavily on information provided in these detailed interviews in this report and present background information on these two districts in this section.

Bardhaman and Birbhum are both heavily dependent on agriculture.¹⁰ Bardhaman is the most agriculturally developed district in West Bengal. It has the advantage of rich alluvial soil that is enriched by rivers like the Ganges, Ajoy, and Damodar. The district has an extensive irrigation network made up of canals, tanks and tubewells. These factors make Bardhaman the highest rice-producing district in West Bengal. The main crops in the district are rice, oil seed, potato, and jute. Eighty percent of the district's agricultural land is double-cropped.

Birbhum is a predominantly agricultural district, with 75% of the population earning their living from agriculture and allied activities. Birbhum district has a drought-prone region in the west but the eastern part of the district is well irrigated through the Mayurakshi River Project. The main crops in Birbhum are rice, oil seed, wheat, and potato. Fifty percent of the agricultural land in Birbhum is double-cropped.

The religious and ethnic composition of Bardhaman and Birbhum is more or less the same. The majority of the population in both districts is Hindu, but a large minority is Muslim. The Muslim population in Birbhum (33%) is little higher than in Bardhaman (20%). Overall, West Bengal has a Hindu population of 75% and a Muslim population of 24%.¹¹ Roughly 6% of the population of the state is tribal.¹²

The literary rate in Bardhaman is 52% (62% of the male population and 43% of female population). The literacy rate in Birbhum is lower at 40% (50% of the male population and 30% of the female population).

The following box details the blocks and villages visited during the November 2001 and March 2002 RRA interviews with rural women.

¹⁰ In West Bengal, other districts in the Gangetic plain are also reliant on agriculture. Districts near Kolkata are very industrially developed, coastal districts rely on fisheries, and the hilly districts in the north specialize in tea plantations.

¹¹ CENSUS OF INDIA 1991: WEST BENGAL STATE DISTRICT PROFILE 1991 (1998) at 89.

¹² MINORITY RIGHTS GROUP INTERNATIONAL, THE ADIVASIS OF INDIA (1998) at 5, citing Census of India, Union Primary Census Abstract for Scheduled Castes and Scheduled Tribes, India, Registrar Census Commission, at 11. In West Bengal, large populations of tribals are concentrated in Purulia, Bankura and Midnapore districts. *Id.* at 16. Tribals are sometimes Hindu and are sometimes counted in census work as Hindu. For this reason the percentage of Hindus, Muslims and tribals add up to more than 100%.

BOX I: Research locations for interview findings

| Birbhum | | Bardhaman | |
|------------------------|--|--------------|---------------------|
| Blocks | Villages | Blocks | Villages |
| 1) Nanoor | Chitoo Udaypur | 1) Galsi II | Anuragpur Sasara |
| 2) Labpur | Lahadda | 2) Katwa I | Charpataibut Colony |
| 3) Sainthia | West Sahapur Colony Pariharpur | 3) Katwa II | Pataihat Colony |
| 4) Rajnagar | Bhawanipur | 4) Mangalkot | Sumulcha |
| 5) Suri II | Hatikra | 5) Raina | Painta Gopalpur |
| 6) Mayureswar I | Kumudda | | |
| 7) Rampurhat II | Pratappur | | |
| 8) Illamabazar | Nelegar Ramnagar Colony Daronda Kamarpara | | |
| 9) Bolpur-Santinikatan | Rajatpur Ballaupurdanga Gwalpara | | |

IV. RURAL WOMEN IN WEST BENGAL

Women's involvement in cultivation on their family's own land and in the agricultural labor market varies both by religion and caste. This distinction holds true for women's household tasks as well.

Social customs dictate that Muslim and upper caste Hindu women, almost never work in the fields even though their households typically have land. It might even be impossible for such women to recognize their household's land.¹³ Even if women in these households have land titled in their own name they usually do not visit their land nor do they supervise cultivation. These women greatly depend on male members of their family for cultivation of their land. Inside the home, however, these women are in charge of the family's grain processing and storage. They may also keep track of hired laborers' wages and sometimes personally pay the wages, especially if the payment is made in terms of paddy or rice.

These generalizations do not hold true for women from scheduled castes and scheduled tribes. Both male and female members of these groups work in the fields. Many scheduled tribe and scheduled caste families do not own land, but if they do, they usually cultivate the land themselves without the assistance of hired labor. If they need assistance, they often exchange labor with other families. Women of scheduled tribe families continue to work on their family's land even if their family is financially secure. Scheduled tribe women in these relatively well-off families will, however, stop working as paid agricultural laborers. This is not the case among scheduled caste families, where as the financial situation of the family improves, the women cease to work both as laborers and on their family's own land.

Male members of landholding families, regardless of class or caste, are typically involved in the cultivation of their land. They decide what to produce, when to produce and which seeds and fertilizers to use. They also generally physically participate in the agricultural work or will supervise laborers. Only Brahmin men have a caste restriction against participating in cultivation.

Traditionally, scheduled tribe and scheduled caste members make up the agricultural laboring class. Both men and women of these groups work as wage laborers in the fields of others. General caste members usually do not work as wage laborers, but we did find some exceptions. Poor Muslim men often work as agricultural wage laborers, but Muslim women, rarely, if ever, do so.

¹³ Among Hindus there is a traditional farming caste, but even women of this caste rarely participate in cultivation due to social customs.

By custom, some types of agriculture work are only performed by men. Men plow and carry loads of manure and other inputs to the field. Women predominantly transplant, weed, harvest, and thresh, although men also participate.

Men get paid slightly more for plowing and hauling, but also work longer hours. They have the ability to work longer hours because they have fewer household responsibilities than women. Men also participate in a greater variety of work and therefore have more employment options available to them throughout the year.

The average agricultural wages for men and women, as reported by 500-household questionnaire respondents, are detailed in Table I. Notably, in several districts wages for men and women are the same or nearly the same. Overall, women earn 35 rupees/day and men earn 37 rupees/day on average.

TABLE: I Average agricultural wage for women and men
500-household questionnaire respondents

| | Birbhum | Bard. | D.D. | Midnapore | Purulia | All |
|--------|----------------|--------------|-------------|------------------|----------------|------------|
| Female | 43 | 36 | 30 | 37 | 26 | 35 |
| Male | 44 | 38 | 38 | 37 | 28 | 37 |

In rupees per day.

In rural Bengal women also earn income from preparing puffed rice, rolling beedi cigarettes, baby-sitting, working as housemaids, and handcraft work (such as making baskets, brooms, and mats, and embroidering). Some social restrictions exist concerning the type of work that women of different castes and religions will perform. Typically only scheduled caste women work as housemaids, although poorer general caste widows sometimes baby-sit. General caste women make puffed rice for sale, because scheduled caste and scheduled tribe members are not socially permitted to cook food for higher castes. Poor Muslim, general caste, and scheduled caste women support themselves through beedi cigarette rolling, stitching, embroidery, and mat making. Scheduled tribe women also engage in non-agricultural manual labor and are known for making Sal leaf plates.¹⁴ Delivery of invitations for weddings or other social events is another traditional occupation of poor Hindu widows; Muslim widows are socially restricted from doing this work.

Of these occupations, only housemaids earn a set salary, which varies from Rs. 60 to Rs. 100 per month with tea and a meal daily and a new set of clothes twice per year. Other work is paid on a piece-meal basis, and daily income from these jobs is generally around Rs. 20 per day. Women who live close to a forest can earn an income of Rs. 50 to 60 per day by making Sal leaf plates, mats and brooms.

¹⁴ In the mono-cropped areas of Bardhaman and Birbhum, a substantial portion of scheduled tribe and scheduled caste income in the lean season comes from these forest-based occupations and occasionally from fishing.

Women also typically care for some of the animals owned by the household, such as poultry, goats, sheep, pigs, cows, bullocks and buffaloes. We observed that women generally care for smaller animals, while men typically care for the larger animals. Ducks and hens are almost always under women's care and women earn income from selling their eggs. Women generally look after goats and sheep and sometimes tie them in the field for grazing, but men will cut and collect their fodder if it has to be gathered from distant places.

There is a very common practice in rural Bengal called '*palunineoa*,' which is the term for rearing the livestock of others in exchange for a share of the livestock's offspring (usually half). It is through this process that many scheduled tribe and scheduled caste women are able to possess their own livestock.

Cooking, washing and cleaning are always women's work in rural Bengal. Women also do activities related to cooking, such as fetching water, collecting fuel, and sometimes collecting mushrooms, leafy vegetables, fish, etc. Similarly, creching or nursing is always women's responsibility. If the family can afford a housemaid then she cleans the house, clothes, and utensils.

Women of different castes and religions have varying control over family income and decision-making. Scheduled tribe and scheduled caste women are income earners and thus they often have control over at least the income that they earn. They sometimes also have control over income earned by male family members. Most men use a part of their income for alcohol and tobacco, while most women have no such personal expenses.¹⁵ Upper caste Hindu or Muslim women generally do not have any income and generally have no control over their family's income. Though women of this class are typically more educated, they often have less decision-making power within the household. For most women, having children does increase their relative decision-making power within the household as they are often more willing to express their opinions and make decisions based on the welfare of the children.

¹⁵ From the family's joint income and from their personal income, women generally try to save for their children's education and to purchase land or livestock.

V. RESEARCH FINDINGS AND RECOMMENDATIONS ON WOMEN'S ACCESS AND RIGHTS TO LAND

Women landowners that we interviewed prize the security that landownership gives them. Even if they do not work the land themselves, due to age or social restriction, these women reported that landownership endows them with an asset that they can contribute to the family, ensures that their sons will care for them in their old age, and that they will have dependable access to land and its produce if they separate from their husbands or are widowed.

Despite these benefits few women ever become landowners. This is the result of multiple factors, including the fact that a large number of women are members of landless households. In West Bengal, 9% of households are completely landless and 44.5% of households own less than 0.2 hectares of land.¹⁶ Even if a woman belongs to a landowning household she rarely personally owns any part of the land. In our research we encountered a few landowning women. To provide an idea of the circumstances under which a woman might become a landowner, we provide a short profile of each landowning woman that we encountered in November 2001 and March 2002. Box II lists women who owned land independently from their husbands and Box III lists women who owned land jointly with their husbands.

BOX II: Women who own land in their own name

From interviews with women in Nov. 2001 and Mar. 2002

- The husbands of two general caste Hindu women purchased part of the family's land in their wife's name.
- One general caste Hindu woman with no brothers inherited all of her family's land.
- One Muslim widow inherited a portion of her deceased husband's land.
- Three Muslim women inherited some of their birth families' land.
- One Muslim woman received land as a gift from her grandfather before his death.
- One tribal woman asked her husband to purchase land in her name from her savings.

¹⁶ 1991-1992 National Sample Survey data presented in NATIONAL INSTITUTE OF RURAL DEVELOPMENT (NIRD), INDIA RURAL DEVELOPMENT REPORT 1999 (2000), table 3.2.

BOX III: Women who own land jointly with their husbands

From interviews with women in Nov. 2001 and Mar. 2002

- Two tribal women jointly owned purchased land with their husbands. One of these women did not know that she was the joint owner of part of the household's land. Her husband mentioned it to us while she was not present.
- One Hindu woman owned land jointly with her husband. She said that the reason they jointly owned the land was to prevent her husband's children from his first marriage (and his first wife) the right to the land. Later she also added that they purchased this piece of land using money that she brought with her to the marriage.

A. Women's Ownership of Land That is Purchased by a Household

1. The Law

Women, like all other Indian citizens, have the legal right to purchase and own land. If a family purchases land, a woman has no legal ownership right to the land unless her name appears on the deed or other land documents.

2. Findings and Recommendations

Interviewees in every village informed us that very few women own land. In fact several female villagers laughed when we asked them whether they were owners of land their household purchased and responded that there is, "No question of putting land in the mother's name." Many said that it had never crossed their mind that both spouses could both be owners of land. Land that a family owns is most commonly titled in the name of the male head of household, and women rarely purchase land on their own because of cultural gender role constraints and their lack of independent financial resources.

We did encounter some women who held ownership rights to purchased land. As can be seen from Boxes II and III, above, nine of the women interviewed held independent rights to a portion of their household's purchased land and three women held joint rights to purchased land. Many of these landowning women reported that their family decided to register some household land in her name for her old-age security.

Other women owned land because they supplied the funds to purchase the land through their labor, by bringing money to the marriage, or by selling jewelry. For example, the husband of one tribal woman told us that he had registered the household's land in the joint names of he and his wife because they both had worked

very hard together to earn the money.¹⁷ Another tribal women learned that a piece of nearby land would be sold and asked her husband to purchase the land for her using savings from her agricultural wages.

For the most part, however, women are not owners of household land and many families have never considered purchasing land in the names of both spouses'.¹⁸ In order to ensure that couples are aware of the option of joint ownership and given the opportunity to consider it as an alternative, we offer the following recommendation:

Facilitate the inclusion of women as joint owners of purchased land by requiring that the option of joint ownership be made clearly available on all sample deeds and registration documents and by requiring deed writers to inform purchasers of this option. By law, in West Bengal licensed deed writers or legal advocates must prepare deeds.¹⁹ Deed writers are required to study and pass a licensing test and must follow subsequent instructions issued by the licensing authority. Deed writers should be educated about the option of joint ownership in their initial education and through updated deed-writing instructions from the licensing authority. Deed writers should be required to inform married clients who are purchasing land that both spouses can be joint owners of the land. Sample deeds should also be altered to clearly offer the option of joint ownership by spouses.

B. Women's Ownership of Government-Allocated Land

1. The Law

In 1992, the West Bengal government adopted a policy requiring that "to the extent possible" government-allocated land be granted either to a woman individually or jointly to husband and wife. After 1992 the policy directive remained largely unimplemented, so the government issued an additional memorandum emphasizing the importance of the original policy.²⁰ This memorandum stated that despite the earlier directive, joint titling was not occurring. It confirmed and re-emphasized that all vested agricultural land should be distributed jointly to husband and wife or individually to a woman. It is important to note that this policy circular applies to government-allocated agricultural land, but not to house plot land.

¹⁷ The wife, who was absent from the interview when the husband provided this information, was not aware that she held joint rights.

¹⁸ Interestingly, researchers working in November 2001 discovered through their interviews that a growing number of couples in pockets of Birbhum held joint ownership rights to land. It is unclear how widespread this growing phenomenon is or why more couples are choosing to hold joint rights.

¹⁹ West Bengal Registration (Deed Writers) Rules, § 8 (1999).

²⁰ For a more comprehensive description of the 1992 policy directive and the women's movement's petitions to have it strengthened and implemented, see Gupta, *supra* note 4. This article also contains much of the text of the 1992 policy directive and the 1994 government memorandum.

2. Findings and Recommendations

Despite the policy directive and follow up memorandum, there is evidence that the joint rights policy is not being broadly implemented. We interviewed several *panchayat* members who said that they were aware of this policy and assured us that since its enactment land was being jointly granted. In our three rounds of field research, however, we encountered few cases of government-granted land allocated in the joint names of husband and wife or the independent name of a woman. In fact, we encountered several examples of families that had received government-allocated land after the adoption of this policy who stated that the land was granted solely to the male head of household. It is possible that the land, in such examples, had been granted jointly because we did not have the opportunity to examine the land documents. If this is the case, however, female grantees are not aware that they are joint owners and thus are less likely to realize the benefits of joint ownership.

Questionnaire survey respondents (91% of whom were men) were asked how they thought government-allocated land *should* be titled. Over half responded that government granted land should be jointly titled in the names of both husband and wife, as detailed in Table II.

TABLE II: Respondent's opinion on how government-allocated land should be titled

From 500 household survey

| | Birbhum | Bard. | D.D. | Midnapore | Purulia | All |
|----------------|----------------|--------------|-------------|------------------|----------------|------------|
| Husband only | 37.4% | 37.6% | 47.9% | 24.7% | 35.9% | 36.9% |
| Wife only | 5% | 5.4% | 7.5% | 5.6% | 2.6% | 5.3% |
| Jointly titled | 57.6% | 57% | 44.7% | 69.7% | 61.5 | 57.8% |

We also asked RRA interviewees (all women) their opinion on joint titling. Many women said that granting land jointly to both spouses is important because it increases a woman's security. Some, however, were ambivalent about such a policy and thought it did not matter which person in the family owned the land. Government officials at a workshop in Kolkata recognized that government-allocated land should be jointly granted and even stated that they should have been granting joint rights since the beginning of the allocation programs.²¹

Because the state government's policy on joint titling of government-allocated land has not been widely implemented and because of the likely benefits to be derived from joint titling, we recommend:

²¹ Former West Bengal Land Reforms Commissioner and Union Secretary of Rural Development, Sri D. Bandopadhyay, stated that there is no question that the state should have been granting joint rights from the beginning of the land reforms, but frankly admitted that he and others creating and implementing the reforms had not considered it at the time.

Adopting as law the current policy of granting government-allocated land in the joint names of husband and wife or in the independent name of a woman. Such a law would grant wives a legally enforceable right to be registered as joint owners of property their household obtains from the government. This law should encompass house plots distributed by the government as well as agricultural land. Safeguards in the land allocation procedure must accompany this law to ensure that women understand that they are landowners and that both husband and wife understand their rights and responsibilities as joint owners. These safeguards should include clear rules requiring both spouses who are receiving government-allocated land to be present when the land is given to them and the *patta* is distributed. Moreover, clear regulations should be implemented to require both spouses to be present and sign the relevant documents when jointly owned land is sold or mortgaged.

Moreover, there is still an opportunity to ensure that previously distributed government-allocated land is owned jointly by married couples. We encountered significant numbers of land reform beneficiaries who had already received possession of vested land (sometimes several decades ago) but had not yet received their *pattas*. Because there appear to be many outstanding *pattas*, we recommend that the government:

Undertake a campaign to ensure that all outstanding *pattas* are issued jointly to husband and wife. Safeguards to ensure that women are aware that they are joint landowners should accompany such a campaign.

Furthermore, as a more comprehensive step, the government should seriously evaluate retroactively adding the wife's name to land documents for all vested land that was previously allocated solely in the name of the male head of household. The government should also consider adding the wife's name to all *bargadar* registration documents. Recognizing the benefits of joint titling, Vietnam is currently re-issuing land rights certificates on de-collectivized land to both husband and wife. These certificates had previously only been issued to the head of household. Likewise, Malaysia is seriously considering retroactively granting wives a documented ownership interest in land distributed through its agrarian reform program.

C. Marriage and Dowry

1. The Law

Dowry has been illegal throughout India since the Dowry Prohibition Act was adopted in 1961.²² The Act defines “dowry” 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.²³ The Act prohibits both taking and giving dowry regardless of whether it is given on behalf of the bride or groom. Taking or giving dowry is punishable by five-year imprisonment and a fine of at least Rs. 15,000 or the value of the dowry, whichever is more.²⁴ Demanding dowry alone, without necessarily receiving it, is also illegal and punishable.²⁵

If a family pays dowry, the law considers the recipient of the dowry as having received the dowry on behalf of the bride and he or she is legally required to transfer it to the bride.²⁶ If a woman dies from other than natural causes during first seven years of marriage, the dowry must be transferred to her children if she has any, or to her parents.²⁷

2. Findings and Recommendations

Despite this formal prohibition, the practice of paying dowry is widespread in the areas we visited, with the exception of tribal areas, where grooms still customarily pay a small bride price—generally a symbolic amount of Rs. 12 or 13, 160 to 200 kilograms of rice, and a cow. Another circumstance when dowry may not be paid is when a couple has a “love marriage,” or unarranged marriage. Aside from these limited exceptions we found that all Hindu and Muslim communities we encountered practice dowry.

The questionnaire survey included questions on dowry. Respondents were asked the average dowry amounts for families that were landless, those owning one acre of land and those owning five acres (see Table III). The average dowry is Rs. 30,000 for a family with one acre of land and Rs. 11,000 for a landless family. These figures roughly

²² DOWRY PROHIBITION ACT (1961, as amended).

²³ *Id.* § 2. *Denmeh*, as provided for in Muslim Personal Law, is specifically permitted. 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. There is no requirement to register the list of gifts received. *Id.* § 3(2) and THE DOWRY PROHIBITION (MAINTENANCE FOR LIST OF PRESENTS TO THE BRIDE AND BRIDEGROOM) RULES, 1985 (as amended) § 2.

²⁴ *Id.* § 3(1). Though the court is permitted to impose a shorter term for “adequate and special reasons.” *Id.*

²⁵ *Id.* § 4.

²⁶ DOWRY PROHIBITION ACT § 6.

²⁷ *Id.* § 6(3A). 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. INDIAN EVIDENCE ACT, § 113-A (1872, as amended).

correspond with amounts stated by scheduled caste interviewees during the November 2001 and March 2002 RRA interviews with women. Interviewees informed us that the dowry for general caste Hindus is one lakh (Rs. 100,000) or more.

TABLE III: Dowry costs by household's landholding
500-Household Questionnaire

| | Birbhum | Bard. | D.D. | Midnapore | Purulia | All |
|-------------------|----------------|--------------|-------------|------------------|----------------|------------|
| Family w/ 5 acres | 77,000 | 62,000 | 57,000 | 50,000 | 53,000 | 60,000 |
| Family w/ 1 acre | 39,000 | 20,000 | 31,000 | 28,000 | 33,000 | 30,000 |
| Landless family | 15,000 | 11,000 | 10,000 | 10,000 | 9,000 | 11,000 |

In rupees

Muslims pay dowry as well, in amounts roughly equivalent to the amounts stated above. However, one Muslim woman we interviewed said that her family did not practice dowry because her grandfather, a religious leader, maintains that it is not part of their culture and refuses to participate.

One tradition that Muslims do follow is the custom of agreeing, at the time of marriage, on a sum that the groom is to pay the bride, termed "*denmehr*" in West Bengal. In practice this sum is only transferred to the bride if the couple divorces and then, we were told, the amount given is usually less than the original agreed-upon amount. *Denmehr* is set in relation to the amount of dowry or jewelry the bride's family gives the groom's family at the time of marriage (generally exceeding that amount).

In addition to dowry, the cost of a wedding celebration itself is also high and rising. As one interviewee stated, "Once you only needed a tree, now you need a tent and decorations." During our interviews women told us that the cost of a wedding celebration is a minimum of Rs. 10,000 to 20,000 per celebration and that a celebration is held in both the bride and groom's villages. The bride's family pays for the celebration in the bride's village and the groom's family pays for the celebration in the groom's village out of the sum paid to them for dowry. Table IV details wedding celebration expenses as reported by questionnaire survey respondents.

TABLE IV: Wedding costs by household's landholding
500-Household Questionnaire

| | Birbhum | Bard. | D.D. | Midnapore | Purulia | All |
|-------------------|----------------|--------------|-------------|------------------|----------------|------------|
| Family w/ 5 acres | 97,000 | 38,000 | 89,000 | 74,000 | 26,000 | 64,000 |
| Family w/ 1 acre | 52,000 | 15,000 | 48,000 | 41,000 | 11,000 | 33,000 |
| Landless family | 25,000 | 9,000 | 21,000 | 16,000 | 6,000 | 16,000 |

In rupees

The sums required for dowry and wedding expenses are extremely high relative to both agricultural wages and the price of agricultural land. The average cost of an acre of non-irrigated land is around Rs. 50,000 in the areas of West Bengal visited. The combined dowry and wedding celebration expenses typically spent by a family that owns one acre of land is about Rs. 45,000. The expense of marrying one daughter is then almost equivalent to the price of one acre of agricultural land – often a rural household's major asset. Daily laborers can expect to spend roughly Rs. 21,000 to marry a daughter. The average daily wage for agricultural laborers is around Rs. 36 per day. Therefore, the expense of marrying one daughter is equivalent to roughly 580 days of labor.

The questionnaire survey included questions on what prompted landowners to sell land (see Table V). Considering the relatively high cost of dowry, it is not surprising that one of the most common reasons given by questionnaire survey respondents for selling land or other assets is to raise money for a daughter's dowry and wedding expenses.²⁸ During the RRA fieldwork we interviewed many families that had sold or mortgaged land or animals to raise dowry. Others took high interest loans from employers. Most respondents feel they have no choice but to pay these expenses. As one man put it, "Two *bighas*²⁹ equals lifelong happiness for a daughter." We interviewed one family that had raised their daughter's dowry by taking a possessory mortgage on their entire 13 *bighas* of government-allocated land. As of the date we interviewed them, they had not been able to repay any of the principal, but hoped that when their son married they would receive a large enough dowry from his bride's family to pay off the loan and regain possession of their land.

²⁸ Those without land take high interest loans (for example 10% interest per month) from their employers to raise dowry, which they pay back over time through deductions from their wages.

²⁹ One *bigha* is equal to roughly 1/3 acre. Its size varies regionally within West Bengal.

TABLE V: What is the most common reason for selling land in this village?*500-Household Questionnaire Survey*

| | Birbhum | Bard. | D.D. | Midnapore | Purulia | All |
|-----------------------------------|----------------|--------------|-------------|------------------|----------------|------------|
| Wedding or Dowry Costs | 62.2% | 46% | 33% | 49% | 61.3% | 49.7% |
| Health Reasons | 13.3% | 14.8% | 8.3% | 15.7% | 9.7% | 13.4% |
| Other Distress Related Reason | 21.4% | 2.1% | 48.6% | 0% | 22.6% | 13% |
| Non-farm employment opportunities | 2% | 8.5% | 5.6% | 5.9% | 0 | 5.4% |
| Moving place of residence | 1% | 6.4% | 0 | 8.5% | 3.2% | 4.9% |
| Other reasons | 0 | 22% | 4.6% | 19% | 3.2% | 13.2% |

Excluding answers from those who did not know.

The practice of dowry (despite its illegality) fuels the land market in West Bengal as families of brides often sell pieces of their land in order to meet the social obligations. Most villagers do not like the practice of dowry, but do not have a solution to the problem. The view of those with daughters is that they must marry their daughters and that dowry is the price a family has to pay for their daughter's future. One woman who only has one son said, "If I had a daughter I might not support dowry, but I have a son."

We do not offer a solution to the problem of dowry, but offer the following recommendation as a way to at least use the outcome of dowry to benefit some women:

The government should consider capitalizing on the fact that small pieces of land are sold in villages to assist landless women to become landowners by making grants and/or subsidized loans available to women to purchase such land. When this recommendation was offered at the workshop in Kolkata, many were concerned that it would be viewed as condoning dowry. However, land for such a program need not only be land that is sold for dowry purposes (this would be almost impossible to determine anyhow) and could include land sold for many reasons. What is important is that the dowry itself is driving the rural land market. Why not help some women become landowners by helping them to purchase such land?

D. Inheritance of Land by Widows and Daughters

1. Hindu, Muslim and Tribal Law

Hindus, Muslims, and tribals are each governed by different testamentary and intestate succession laws. These laws govern the succession of all rights to agricultural land except the heritable rights of registered sharecroppers (*bargadars*). Under the West Bengal Land Reforms Act, a *bargadar's* right to cultivate devolves to his or her "legal heir."³⁰ Only one legal heir has the right to continue cultivation. If there is more than one legal heir they must designate one among themselves to continue cultivation.³¹

For purchased, ancestral, or government-allocated land, the succession rules, as described below, apply.

When a Hindu dies intestate (without a will) his or her land devolves according to the Hindu Succession Act. 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 governs the devolution of property in most cases. If a Hindu dies intestate, his or her property (including land) should pass equally to the deceased's sons, daughters, widow, and--if the deceased is a man--to his mother.³²

Additionally, under the Hindu Succession Act, widows and unmarried daughters have the right to live in the family home.³³ They have a right to a share of the dwelling if it is partitioned, but do not have the legal right to force a partition of the house on their own. This law only applies if the owner died without a will. As an additional protection, the law grants widows 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.³⁴

Muslim intestate succession is governed by uncodified Muslim Personal Law, which grants widows and daughters the right to a share of family property, though their legal share is smaller than that of sons or brothers.³⁵ Muslim inheritance rules are quite

³⁰ WEST BENGAL LAND REFORMS ACT, § 15A (1955, as amended).

³¹ *Id.*

³² HINDU SUCCESSION ACT, §§ 8, 15. The *Dayabhaga* school of inheritance prevails in Bengal (while the *Mitakshara* school prevails in much of the rest of India). Unlike the *Mitakshara* school, the *Dayabhaga* school does not recognize joint family property. M.R. MALLICK, RAY'S COMMENTARIES ON THE HINDU SUCCESSION ACT, 1956 (2000) at 1.

³³ HINDU SUCCESSION ACT § 23.

³⁴ HINDU ADOPTIONS AND MAINTENANCE ACT, § 19 (1956, as amended).

³⁵ THE MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT (1937, as amended). This law applies Muslim Personal Law to the succession of all property except agricultural land, which devolves according to custom. In West Bengal, however, there was no strong custom for Muslim daughters and wives not to inherit agricultural land, so in West Bengal Muslim Personal Law does apply to agricultural land. See AGARWAL, *supra* note 2, at 232.

complex, but if there is both a female and a male at the same degree of relation from a person who dies intestate (i.e. a brother and a sister) the woman will generally receive a share that is half the size of the man's share.³⁶ Muslims, like Hindus, are free to bequeath their property by will. Unlike under Hindu law, however, a Muslim can only bequeath one-third of his or her property. The rest must devolve according to the intestate succession rules. As a result, wives and daughters cannot be completely disinherited, as they potentially can be under Hindu law.

The succession of tribal property is governed by custom, which has the force of law.³⁷ The tribals we interviewed stated that they follow their traditional customary practice of passing land entirely to their sons. Tribals are permitted to follow their customary practices so long as the custom has been continuously and uniformly observed and is not unreasonable or against public policy.³⁸ It is unclear if this custom of excluding women from inheritance would be considered against public policy. We did not encounter any cases of tribal women inheriting land.

2. Findings and Recommendations

During our interviews we found that Hindus and Muslims are generally aware of the inheritance law that applies to them. The tribals we interviewed were unsure what law is supposed to apply to them, but uniformly follow the customary practice of passing all land to their sons, and never to their daughters.

Most Hindu and Muslim women also realized that they have to "sign away" their inheritance rights in order to give them up. Daughters and sisters sometimes use this required step to leverage other assistance from their family or to receive a cash payment if the land is sold. Daughters also occasionally claim their share with the intention of selling it, often giving their brothers the first right of refusal to purchase the land.

It was positive to discover that the written law is known and that daughters and wives are using the law to their benefit in some cases. This was in contrast to RDI's findings in Karnataka State where daughters and wives rarely assert their rights under inheritance law.³⁹

With women's growing awareness and use of the written inheritance law, however, there also seems to be a growing use of mechanisms by men to gift away land during their lifetime to circumvent women's claims. We encountered several cases where land

³⁶ This is the general rule under the Hanafi School of Sunni Law, which most Indian Muslims follow.

³⁷ Hindu Succession Act specifies that it does specifically not govern tribals. HINDU SUCCESSION ACT § 2(2).

³⁸ PRADIP KUMAR BANDYOPADHYAY, *TRIBAL SITUATION IN EASTERN INDIA: CUSTOMARY LAWS AMONG BORDER BENGAL TRIBES* (1999) at 156.

³⁹ JENNIFER BROWN, KRIPA ANANTHPUR, AND RENÉE GIOVARELLI, *WOMEN'S ACCESS AND RIGHTS TO LAND IN KARNATAKA* (RDI Report on Foreign Aid and Development # 114) (May 2002).

was titled in sons' names before their father's death, specifically to prevent daughters, sisters and widows from claiming land rights. We interviewed one family that intended to register all of the family assets (fish pond, shop in town, house and garden plot) in the son's name, to prevent the daughter from claiming any land. In another case a husband transferred all of his land into the names of his sons during his life so that his wife could not claim a share of the land. Additionally, some sons left the land titled in their deceased father's name and merely partitioned the land informally among themselves, avoiding the requirement that daughters and wives sign away their rights.

a. Widows

Muslim widows regularly inherit land in accordance with law. Hindu widows sometimes inherit land, but not as frequently as Muslims. Generally, when either a Muslim or Hindu widow inherits land she does not cultivate the land herself, but depends on male relatives, usually a son, to oversee the land for her. A son who cares for his mother will often inherit his mother's share of the family land when she dies.

We encountered, however, many cases of widows not receiving their lawful share of land. Sometimes this occurs because their sons refuse to change the registration records (keeping the land in the name of the deceased father) effectively denying a widow the opportunity to assert her rights, because she does not know how to, or feels she does not have the clout to, demand that a portion of the land be transferred into her name. A common problem we encountered was that women did not know how to assert their rights or felt that they did not have the political influence within the village to do so. We encountered one widow, who feared being pushed off her birth family's home plot by her brother. We asked why she did not assert her legal rights to live in the house and she replied, "We are foolish women and we don't know where to go for our rights." We did hear, however, that village communities and leaders treated widows who sought to assert their inheritance rights more favorably than daughters or sisters.

Widows often live in the same compound as their brothers or sons, depending on whether they moved back to their birth village or stayed in their husband's village after their husband's death. However, Hindu widows often live in a separate house and might be required to cook their own food and earn their own income through housecleaning or baby sitting. We met several widows who had "misunderstandings" with their sons or brothers and were not permitted to live in the family compound, despite the fact that they have the legal right to. We asked one group why widows are not always cared for by their families and they replied, "We are so poor it is not possible to feed widows. Our first preference for food goes to children."

Because widows were often the most utterly poor and destitute in any rural village visited, we make the following recommendations:

Consider granting widows the sole right to inherit the family house and house plot. A participant at the May 2002 workshop raised this as a possible way of granting widows security in their old age. The woman offering this solution surmised that because women are considered “homemakers” that it makes sense to allow them to solely inherit the family house.

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.

b. Daughters

We encountered fewer daughters who inherited agricultural land than widows. Married Hindu daughters rarely claimed their right to inherit land. Married Muslim daughters were more likely to inherit land than Hindus, but did not always inherit land. Often daughters stated that they did not demand the right to their share of land because: (1) they wanted to maintain good relationships with their brothers; and/or (2) they felt their family had already given them their fair share of family property by paying a dowry when they married. The general opinion was that sisters who demand a share of land were “bad” or “naughty” and that they claimed their share of land at the expense of their brothers. Indeed, several mothers stated that they would not want their daughters to pressure their sons for a portion of the land. They considered the idea to be distasteful and disrespectful.

It is more socially acceptable for daughters that have been left by their husbands to demand their share of land. It is also more practical for a separated woman to inherit land from her birth family. Daughters almost always move to their husband’s village

when they marry. Therefore, it can be difficult for married daughters to take advantage of inherited land because the land is often situated some distance away. Unmarried or separated daughters usually move back to their birth village and, as a result, can more easily use inherited land.

The questionnaire survey included a question about inheritance of land by daughters (Table VI). Overall 64.8% stated that daughters “never” or “rarely” inherit land. 21.6% said daughters “sometimes” inherit land.

TABLE VI: Do daughters ever inherit land?
500-Household Questionnaire Survey

| | Birbhum | Bard. | D.D. | Midnapore | Purulia | All |
|---------------|----------------|--------------|-------------|------------------|----------------|------------|
| Never | 24.2% | 8.5% | 41.8% | 29.8% | 11% | 22.7% |
| Rarely | 39.6% | 39.4% | 36.7% | 35.1% | 61% | 42.1% |
| Sometimes | 28.6% | 22.34% | 15.2% | 17% | 24.4% | 21.6% |
| Almost always | 3.3% | 10.6% | 0 | 1% | 0 | 3.2% |
| Always | 3.3% | 17% | 0 | 2.1% | 0 | 4.8% |

Excluding those who said they did not know.

E. Separation/Divorce

If a woman marries into a household that owns land, her marriage generally ensures her access to the land and/or the produce of the land. When a woman is abandoned or separated, however, she often completely loses access to land and its produce. Laws regarding separation and divorce, like inheritance laws, are different for Hindus, Muslims and tribals.

1. The Law

Both Hindu and Muslim women have the right to maintenance if there is a formal divorce, but neither have the legal right to claim any of their husband’s land.⁴⁰ Tribals are governed by customary practices rather than codified law.

Hindu women have the right to permanent maintenance from their husbands. Under the Hindu Marriage Act either spouse can request maintenance based on each spouse’s income and property.⁴¹ Additionally, during the 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.⁴² Under certain circumstances, a Hindu

⁴⁰ HINDU MARRIAGE ACT, (1955 as amended) § 24 and MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, (1986 as amended) § 3. Customary tribal law also generally awards divorced women some form of maintenance.

⁴¹ HINDU MARRIAGE ACT, § 25.

⁴² *Id.* § 24.

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.⁴³

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 *denmehr* 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 property given specifically to her. After the period of *iddat* a Muslim woman’s ex-husband has no legal obligation to support her, unless she has a child under two years of age.⁴⁴ If a single woman does not have means to support herself she can seek an order requiring any relatives who are her heirs to support her in proportion to the amount they will inherit from her.⁴⁵ If no such relative exists, the State *Waqf* Board⁴⁶ is to pay maintenance to support her.

2. Findings and Recommendations

Generally speaking, during our RRA interviews we found separation and divorce to be more common among Muslims, scheduled caste and scheduled tribe members than among general caste Hindus. Hindu women do not seek any maintenance from the husbands, but are usually able to take their jewelry and household utensils with them. Separated Muslim women also receive utensils or jewelry they brought to a marriage and often recover their *denmehr*, but usually less than was originally promised. We only encountered two cases of women receiving maintenance. Both were educated women that went to court to seek maintenance. When asked, most other separated women said they did not know how to seek maintenance or did not have the resources to pursue a case in court. Women rarely receive their dowry back at the time of divorce. The rare cases usually involve very short marriages. Some of these cases required the intervention of a socially active *panchayat* to ensure that any dowry given was returned.

⁴³ HINDU ADOPTIONS AND MAINTENANCE ACT, § 18(2).

⁴⁴ The Supreme Court of India held that if a divorced Muslim woman is unable to maintain herself that she is entitled to receive maintenance from her ex-husband in accordance with section 125 of the Criminal Procedure Code. *Mohd. Ahmad Khan v. Shah Bano Begam and Others*, AIR 1985 SC 945. However this decision created substantial controversy and a new law was enacted overturning this ruling and confirming that divorced Muslim women have no right to maintenance after the period of *iddat*. THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, Statement of Objects and Reasons (1986).

⁴⁵ THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, §4.

⁴⁶ *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.

In West Bengal, both Hindu and Muslim women who are separated or divorced generally return to their birth family's home for shelter, but often must earn their own money for food. Some, especially scheduled caste women, work as agricultural laborers to raise their own income. Muslim women and general caste Hindus will not do agricultural labor, but may earn an income by doing housework for others, stitching or making puffed rice. Some of these women, however, have poor relationships with their brothers and are not even allowed to return home for shelter. These women become landless and destitute despite the fact that their birth family or in-laws own agricultural land.

Tribals follow their own customary practices and generally turn to their traditional tribal leaders for resolution at the time of a separation. Generally, the bride's family is required to return any bride price given to them at the time of marriage, but the wife can keep any utensils and clothes. However, if a husband rejects his wife, his family is required to compensate the bride's family. For example, in one village such a husband was required to give the bride's father one cow, a metal bowl and Rs. 2002. A separated tribal woman only receives maintenance if she is pregnant or breast-feeding, as she cannot work to support herself during this time. It is common for tribal women to remarry, even if they have children.

Married women have no legal right to household land unless they are the registered owners. When they are divorced or separated they typically lose access to household land, despite the contributions that they made to the household through their labor. In section VI, below, we detail a recommendation, adopting the concept of co-ownership of all marital property by husband and wife, that would grant these women ownership rights over family land and assets that they could take or sell at the time of divorce or separation.

Joint ownership of government-allocated land would help these women, by granting them a legal claim to at least a portion of their household's land. However, there are strict restrictions on the sale of government-allocated land. To help separated women liquidate their interest in their household's land we recommend the following:

Loosen restrictions on alienating government-allocated land to permit separated and divorced women to sell their share of government-allocated land. This would allow women to leave a relationship, secure in the knowledge that they could leave with some money in hand. This would give them the option of purchasing land in another village, if they chose to. The husband could be given the first right to purchase such land from his ex-spouse.

VI. OVERALL POLICY RECOMMENDATION: CO-OWNERSHIP OF MARITAL PROPERTY

India currently lacks the concept of co-ownership of marital property.⁴⁷ As a result of this lack of co-ownership by both spouses of property acquired during marriage, women have no ownership claim to household land, unless the family decides to purchase or transfer land in her name or she inherits a portion of the family land. Despite her hard work and contributions to the household, a wife does not automatically gain an ownership interest in land purchased by the family during marriage. Thus, in addition to the recommendations made earlier, policy makers should:

Consider adopting a change in marital property law to provide for co-ownership of property acquired during marriage by both spouses.

Marital co-ownership laws make a distinction between property that is jointly owned by the spouses and property that is owned separately by one, but not both of the spouses. Importantly, these laws provide property (including land) purchased by one or both of the spouses during their marriage is their joint property, whether or not it is registered as such. Thus, all earnings by either spouse during marriage, and all assets acquired with earnings are jointly owned. Property that a spouse received before marriage or that is inherited is typically treated as the separate property of the receiving spouse. Each spouse has full power to manage and dispose of his or her separate property. Otherwise all property acquired by either spouse during marriage is co-owned by both spouses.

This concept of co-ownership of marital property was first devised as a formal legal concept in European civil law. It was created, in large part, to give stronger property rights to women in marital relationships.⁴⁸ France, Germany,⁴⁹ Italy,⁵⁰ the Netherlands, most of Central and South America, Indonesia, and the Philippine Republic have property systems that recognize the co-ownership of marital property.⁵¹ The system has been adopted in nine states of the United States as well as several countries in Eastern Europe.⁵² While originally a civil law concept, co-ownership by spouses, or

⁴⁷ The idea of co-ownership of marital property by husband and wife must be distinguished from the Hindu legal concept of co-parency. The co-parency system is based on the idea of the family as the unit of ownership, however, under customary co-parency rules only male members of a family hold ownership rights.

⁴⁸ For a detailed discussion of community property in the United States, see GRANT S. NELSON, WILLIAM B. STOEBOCK, AND DALE A. WHITMAN, *CONTEMPORARY PROPERTY* 381-389 (1996).

⁴⁹ NIGEL FOSTER, *GERMAN LEGAL SYSTEM & LAWS* 308 (2nd ed. 1996).

⁵⁰ CIVIL CODE OF ITALY app. B(8).

⁵¹ ROBERT L. MENNELL AND THOMAS M. BOYKOFF, *COMMUNITY PROPERTY IN A NUTSHELL* (2nd ed. 1988) at 10.

⁵² 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 W. RES. L. REV. 83, 183 (1994). Romania, the Czech Republic, and Bulgaria have community property provisions. Emily Stoper and Emelia Ianeva, *Symposium: The Status of Women in New Market Economies: Democratization and Women's Employment Policy in Post-Communist Bulgaria*, 12 CONN. J. INT'L L. 9 (Fall, 1996).

“community property” as it is often termed, has been successfully adopted in common law jurisdictions like the United States.⁵³

Most marital co-ownership systems provide that if co-owned property is co-mingled with separate property (for example, a husband makes improvements to a house his wife inherited from her family), then the separate property is converted into co-owned property. This concept could be used to help a woman claim ownership over household property if any dowry paid on her behalf is co-mingled with her in-laws’ or husband’s separate property.⁵⁴

Adopting the principle of co-ownership of marital property would grant women significantly enhanced legal rights to land and other property held by the household. It would help protect widows from disinheritance by granting them a present ownership interest in any property that the household purchased during marriage. It would also help separated women because they would already be co-owners of marital property purchased during marriage, whether or not it was registered in their name and could partition their ownership interest at the time of divorce.

Safeguards in the registration system would have to accompany such a change in law. For instance, if a person who is married wished to transfer land, he or she should be required to either get the permission of his or her spouse or prove that the land was his or her separate property. Ideally, this would require the non-transacting spouse to appear in person at the time of the land transaction. This should be required regardless of whose name was on the land documents or records, as property can be co-owned regardless of who is the recorded owner. Furthermore, new provisions could be added to the Registration Act and the West Bengal Registration Rules to require registration officers to determine if a person is married and if they are, to require that person to either demonstrate that the property in question is his or her separate property or to get the permission of their spouse for the transaction. 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.

⁵³ India has a common law, as distinct from a civil law tradition.

⁵⁴ All gifts and cash received in conjunction with marriage should be considered to be either owned entirely by the bride or at least co-owned by husband and wife. Thus, any co-mingling of these gifts or cash could be considered to have converted separate property into co-owned marital property.

VII. CONCLUSION

Rural women, NGOs, policy-makers and researchers have all become increasingly aware of the multiple benefits possible from granting women secure right to land. These benefits include drastically enhanced security, increased and dependable income, ability to access credit and government programs, and more leverage and respect within the household.

Notwithstanding these benefits, rural women generally do not have secure land rights. First, approximately 9% of women in West Bengal live in households that are absolutely landless and another 44.5% live in households that own less than 0.2 hectares. Second, women do not generally have the resources or access to credit necessary to purchase land in their own name. Third, the government has not historically titled government-allocated land in the names of women separately or even jointly with their husbands. Fourth, daughters and widows often do not inherit land despite legal provisions granting them some inheritance rights to land. Fifth, separated and divorced women have no right to claim any portion of their husband's land. Finally, because West Bengal does not have the legal concept of co-ownership of marital property, unless a woman's name is actually on the land document, she has no ownership interest in that family land, even if she contributes to the land by working on it or processing the crops from it.

West Bengal has begun to address women's insecure rights to land by circulating a policy stating that government-granted land should be allocated in the name of women alone or jointly with their husbands. Also, some progressive legislation has been passed at the central level granting daughters and widows the right to inherit land. Unfortunately, the intended benefits of these laws are not reaching the most needy women. Many women are aware of these rights, but either do not know how to exercise them or feel socially barred from exercising them. For these reasons, the legislative and policy recommendations outlined throughout the report and recapped below, must be paired with education for men and women about the benefits to women of land ownership as well as access to improved legal aid to assist women in asserting these rights.

The recommendations provided throughout the paper are addressed to both state and central policy makers. Not all would result in immediate improvements to women's land rights on the ground, but they would grant women the knowledge and the legal space necessary to begin to assert and use their rights. Some recommendations, however, such as amending legislation to require government-allocated land to be jointly granted, would have the immediate affect of granting women ownership rights to land. The following is a re-cap of these recommendations:

- Facilitate the inclusion of women as joint owners of purchased land by requiring that the option of joint ownership be made clearly available on all sample deeds and registration documents and by requiring deed writers to inform purchasers of this option.
- Adopt as law the current policy of granting government-allocated land in the joint names of husband and wife or in the independent name of a woman.
- Undertake a campaign to ensure that all outstanding *pattas* are issued jointly to husband and wife.
- Seriously evaluate retroactively adding the wife's name to land documents for all vested land that was previously allocated solely in the name of the male head of household.
- Capitalize on the fact that small pieces of land are sold in villages to assist landless women to become landowners by making grants and/or subsidized loans available to women to purchase such land.
- Consider granting widows the sole right to inherit the family house and house plot.
- Consider amending the Hindu Succession Law to prohibit husbands from completely disinheriting wives.
- Provide greater government assistance to widowed women who have no means of support.
- Loosen restrictions on alienating government-allocated land to permit separated and divorced women to sell their share of government-allocated land.
- Consider adopting a change in marital property law to provide for co-ownership of property acquired during marriage by both spouses.