



RDI Reports on Foreign Aid and Development #112

Land Reform Law and Implementation in West Bengal: Lessons and Recommendations

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December 2001

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EXECUTIVE SUMMARY

Broadening the rural poor's access to land remains an important and largely unrealized goal in India. Land reforms are a major policy focus of India's under the Ninth Plan (1997-2002) and are expected to remain so under the Tenth Plan. Yet, few Indian states are making significant land reform achievements. Because West Bengal is widely recognized as having relatively exceptional land reform success among Indian states, it warrants attention.

This report is an attempt to distill lessons from West Bengal's land reform experience, particularly the land reform legislation and the means and methods by which the law was (and is) implemented. The report is based upon a review and analysis of the legislation, a review of the secondary literature including other field studies, and rapid appraisal field research in three districts of West Bengal (Medinipur, Maldah, and Birbhum).

Over the past few decades, while land reform has made little headway in most of India, West Bengal has achieved notable land reform progress. The progress has occurred in three areas: redistributing agricultural land ownership, regulating sharecropping relationships, and distributing homestead plots.

It is widely acknowledged that West Bengal's land reforms have had a positive impact on agricultural production, poverty alleviation, and economic growth, although the extent of the impact and the causation is a matter of some controversy. What is clear is that West Bengal, after seriously implementing land reforms, has made remarkable progress in agricultural growth and in some aspects of poverty alleviation.

In the decades since Independence, West Bengal's land reform progress can be described as occurring in three phases. The first phase (1953-1966) saw the adoption of the basic legislation, little progress in above-ceiling redistribution, and virtually no progress (in fact a deterioration) in protecting *bargadars* (sharecroppers). In the second phase (1967-1976) West Bengal made most of the overall achievements in above-ceiling redistribution, and made little progress in protecting the rights of *bargadars*. In the third phase (1977-present) tremendous progress was made in recording and protecting the rights of *bargadars*, and the redistribution of above-ceiling land continued, but at a slower pace.

The West Bengal Land Reforms Act is the key piece of legislation addressing land reform and land rights in West Bengal. The Act covers a range of land-related topics, but most significantly it: (1) defines the rights and obligations of landowners and *bargadars*; (2) prohibits fixed rate leasing of land; (3) places a ceiling on the size of landholdings; (4) defines how land taken by the government should be distributed; and (5) limits the transferability of land held by Scheduled Tribe members as well as much of the land obtained through redistribution.

In an effort to distill lessons from the legislation itself, the report contains a discussion and analysis of the law's major provisions. It identifies numerous positive provisions that might serve as models for other states. The report also identifies and discusses potential problems that, if corrected, could further improve West Bengal's land reform legislation.

Land reform success cannot be achieved by favorable and carefully crafted legislative provisions alone. Such provisions must be effectively implemented and administered. Administration and implementation have played a substantial role in West Bengal's land reform success. The report discusses the key implementation steps that contributed to land reform success in West Bengal. West Bengal has improved the administrative structure's integration into rural areas by invigorating local government, peasant organizations and beneficiaries to assist with the implementation of land reform policies. The government has also crafted procedural rules that favored would-be beneficiaries of the land reform. Perhaps most importantly, the implementation of the land reform program relied heavily upon strong and effective leadership from key senior officials.

Teams from the Rural Development Institute in Seattle, USA conducted field research in three districts of West Bengal during April and October of 2000 in order to: (1) observe and better understand the nature, extent, and impacts of the land reform legislation's implementation; and (2) identify ways in which West Bengal's land reform policy, law, and implementation might be further improved. The field research, using rapid appraisal methods, resulted in numerous findings and related recommendations concerning: ceiling-surplus land redistribution; the extent and nature of tenancy reform; sharecropping relationships; seasonal tenancy arrangements; the extent and nature of land sale markets; gender issues concerning rural land; and rural water markets.

The report ends with a list and brief discussion of lessons from and recommendations concerning West Bengal's land reform policy, law, and implementation.

I. INTRODUCTION

For most of India's 133 million rural households land constitutes the most important source of income, wealth, collateral for accessing credit, insurance against risk, and social status. Not surprisingly, in a country with the largest concentration of poor people on the planet, most poverty exists in rural areas and is highly correlated with lack of access to land.¹ In fact, rural landlessness is more closely associated with poverty than either illiteracy or membership in a Scheduled Caste.² In rural India, at least 16 million households (representing more than 85 million persons) that depend on agriculture for their livelihood, do not own any land.³ Another 40 million agricultural households, comprising about 200 million persons, own less than half an acre of land.⁴ Given that landlessness is so closely related to poverty and given the importance of land as a source of income, wealth, credit, security, and status, broadening the rural poor's access to land must remain a vital goal.

Providing the poor with access to land is not anti-growth. International evidence overwhelmingly endorses a rural growth strategy based on the dynamism of small, family farms. Contrary to much conventional wisdom, this means increasing the share of farmland operated in small units, which are demonstrably more poverty-reducing than large holdings and are typically more productive per unit area.⁵

The framers of India's Constitution recognized the importance of land access and an equitable distribution of assets. Article 39 of the Constitution provides that: (1) "the ownership and control of the material resources of the community are so distributed as best to subserve the common good;" and (2) "the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."⁶ The

¹ Seventy-five percent of all Indians and almost 80% of the poor live in rural India. As of 1993-94, 35% of the total Indian population was below the poverty line. WORLD BANK, INDIA: ACHIEVEMENTS AND CHALLENGES IN REDUCING POVERTY (World Bank Country Study 1997) at xiii-xiv.

² Specifically, 68% of landless wage-earners, 51% of Schedule Caste and Scheduled Tribe members and 45% of completely illiterate households fall below the poverty line. *Id.* at xiv.

³ See 1991-92 National Sample Survey data presented in National Institute of Rural Development (NIRD), *India Rural Development Report 1999* (2000), table 3.2, at 34. Others have estimated the numbers of landless agricultural households in India to be substantially higher. See ROY L. PROSTERMAN & JEFFREY M. RIEDINGER, LAND REFORM AND DEMOCRATIC DEVELOPMENT (1987), table 2, at 26-27. Nearly all of these landless and near-landless households make their living as casual laborers. Rural "landlessness" is sometimes defined as those households that make their primary income from casual labor. In India, that includes approximately 40% of the rural work force (36% of the male work force and 46% of females in 1993-94). *Id.* NIRD table 4.3, at 58.

⁴ *Id.* table 3.2, at 34.

⁵ Because small farms are more labor intensive, they provide more employment, which is a particularly important benefit in areas with large rural populations. ROBIN MEARNES, ACCESS TO LAND IN RURAL INDIA: POLICY ISSUES AND OPTIONS (World Bank Policy Research Working Paper No. 2123, May 1999) at 1. For a discussion of the farm size-efficiency relationship, see Johan van Zyl, *The Farm Size-Efficiency Relationship*, in AGRICULTURAL LAND REFORM IN SOUTH AFRICA: POLICIES, MARKETS AND MECHANISMS (Johan van Zyl, Johann Kirsten & Hans Binswanger, eds., 1996) and Hans Binswanger, Klaus Deininger & Gershon Feder, *Power, Distortions, Revolt and Reform in Agricultural Land Relations*, in HANDBOOK OF DEVELOPMENT ECONOMICS (Srinivasan & Behrman eds., 1995) vol. III, ch. 42, at 2659-2772.

⁶ CONSTITUTION OF INDIA, art. 39(b), (c). India's Supreme Court has declared that the fundamental right to cultivation is a bastion of economic and social justice envisioned in India's Constitution. *Dalmia Cement (Bharat) Limited v. Union of India* (1966) 10 SCC 104.

constitutional framers also gave each state, rather than the Central Government, the exclusive power to make laws with respect to land.⁷

Based upon these constitutional principles, in the three decades following Independence, most states enacted land reform laws: (1) placing a ceiling on land holdings and redistributing the surplus; and/or (2) regulating tenancy arrangements.⁸ Most of these laws were considered to be largely ineffective in achieving their stated intentions of transferring land “to the tiller” and elevating the economic position of tenants.⁹

The land reform laws adopted and implemented in West Bengal are an exception to the general lack of land reform progress in India. Although West Bengal comprises only 3.3% of India’s arable land, it accounts for 20% of all ceiling-surplus land redistributed in India and 46% of all recipients of above-ceiling land in India.¹⁰ West Bengal’s tenancy reform, commonly known as Operation *Barga*, is often cited as the most extensive and effective tenancy reform in India.

Land reforms are a major policy focus of the Government of India’s Ministry of Rural Development under the Ninth Plan (1997-2002) and are expected to remain so under the Tenth Plan. Because West Bengal is widely recognized as having relatively exceptional land reform success among Indian states, it warrants attention. What lessons does West Bengal offer to other Indian states? Too often the potential lessons are not sought or are summarily dismissed because the reforms were implemented by a state government that has been Communist-led since 1978. Such dismissal is unwarranted. Although effective land reform policy, law, and implementation must be situation-specific, useful comparative lessons (both positive and negative) can often be extracted from successful land reform experiences, even where exceptional factors may have existed.

This report is an attempt to distill lessons from West Bengal’s land reform experience, particularly the land reform legislation and the methods by which the law was (and is) implemented. This report is based upon a review and analysis of the legislation, a review of the

⁷ See CONSTITUTION OF INDIA, art. 246(3) and Seventh Schedule, List II(18). The Central Government does play an important guiding and consultative role in land policy and legislation, enabled in large part by the money it directs to each state for various rural development and poverty alleviation schemes.

⁸ For a more comprehensive discussion of post-independence land reform programs in various Indian states, see P.S. APPU, *LAND REFORMS IN INDIA: A SURVEY OF POLICY LEGISLATION AND IMPLEMENTATION* (1996). Two other types of “land reform” legislation enacted by numerous Indian states are laws: (1) abolishing intermediary tenures; and (2) promoting consolidation of fragmented holdings. Most states passed laws abolishing intermediary tenures in the 1950s, although implementation in some states took many years. These intermediary tenures resulted primarily from the *zamindari* system of land tenure introduced by the British regime in which various levels of rent-collecting intermediaries were established between the state and the landowner. Now, intermediaries between the state and the owner of the land have been abolished more or less in the entire country. However, the abolition brought a breakdown of earlier tenancy arrangements to the disadvantage of weaker tenants of such intermediaries. On abolition, most intermediaries were permitted to become owners of their home-farm lands whether personally cultivated or not. As a result, large-scale ejections of tenants took place on these lands. N.C. BEHURIA, *LAND REFORMS LEGISLATION IN INDIA: A COMPARATIVE STUDY* (1997), at 2-3. Abolition of the feudal lords did not, however, in most cases confer ownership on cultivators who were often tenants and wage laborers subject to a right-holding intermediary.

⁹ As of September 2000, ceilings-surplus legislation in India’s various states had only redistributed about 1.3% of India’s cultivated land (5.3 million acres) to about 4.3% of the current number of rural households (5.5 million households). Tenancy legislation in various states had protected tenancy rights or in some cases conferred ownership rights on another 3.8% of India’s cultivated land (15.6 million acres) for 12.4 million households (some of these households overlap with those receiving ceiling surplus land). GOVT OF INDIA (GOI), MINISTRY OF RURAL DEVELOPMENT, ANNUAL REPORT, 2000-2001, at annexures XXXII and XXXV.

¹⁰ *Id.* annexure XXXII.

secondary literature including other field studies, and our own field research in three districts of West Bengal (Medinipur, Maldah, and Birbhum).

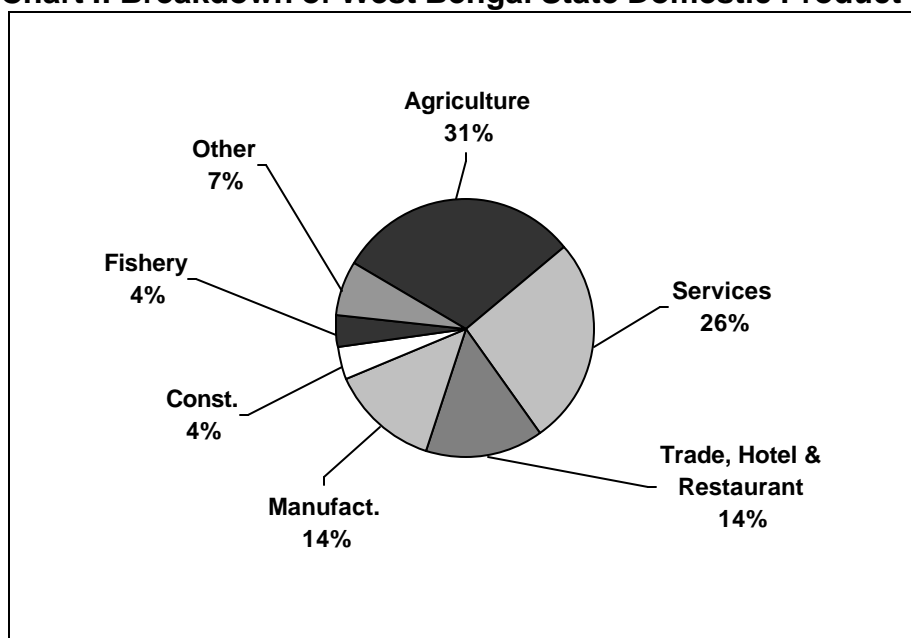


II. WEST BENGAL'S LAND REFORM ACHIEVEMENTS

West Bengal, with a population of 80.2 million and a population density of 904 persons per square kilometer is the fourth most populated state in India and the most densely populated.¹¹

Agriculture is the mainstay for the majority of the population, comprises the largest sector of the economy, and utilizes the great majority of the state's land.¹² Seventy-two percent of the states' population lives in rural areas and 53% of the labor force³ is engaged in agricultural production.¹⁴ Agriculture generates 31% of the state domestic product.¹⁵

Chart I: Breakdown of West Bengal State Domestic Product ¹⁶



Over the past few decades, while land reform has made little headway in most of India, West Bengal has achieved notable land reform progress. The progress has occurred in three areas:

¹¹ OFFICE OF THE REGISTRAR GENERAL, INDIA, CENSUS OF INDIA 2001 PROVISIONAL POPULATION TOTALS: WEST BENGAL (last visited Oct. 16, 2001) <<http://www.censusindia/net/profiles/wbe.html>>.

¹² Sixty-three percent of West Bengal's territory (13,590,500 acres) is devoted to cultivation. Additionally, 2.7% of land (566,000 acres) is currently fallow, 13.7% of land (2,944,000 acres) is forest land, and 19.2% of land (4,122,000 acres) is unavailable for cultivation. GOVT. OF WEST BENGAL, ECONOMIC REVIEW 1999-2000, Statistical Appendix, table 5.3.

¹³ This 53% is comprised of two categories in the government statistics: cultivators (28.4% of the total labor force) and agricultural laborers (24.6% of the labor force). *Id.* table 2.4(a), at 22.

¹⁴ *Id.* table 2.4, at 10-12.

¹⁵ Within the agricultural sector, rice cultivation accounts for 64% of the gross cropped area. (Because of the multiple cropping in many areas of West Bengal, the net cropped area is 13.6 million acres and the gross cropped area is 22.7 million acres.) Other major crops include jute (7% of gross cropped area), oilseeds (6%), wheat (4%), potatoes (3%), pulses (2%), and tea (1%). *Id.* tables 5.3(b), at 74 and 5.5, at 79 (based on 1997-98 data).

¹⁶ *Id.* table 3.0. The total State Domestic Product in 1996-97 was 73,976 crore rupees.

redistributing agricultural land ownership, regulating sharecropping relationships, and distributing homestead plots.

In terms of redistributing land, West Bengal has declared 1.372 million acres of land for redistribution, and reallocated 1.04 million acres of this¹⁷ to 2.54 million relatively land-poor households, representing about 8% of arable land and 34% of agricultural households (see Box I, below).¹⁸

West Bengal has also taken determined steps to bolster the position of sharecroppers (*bargadars*) by regulating the landlord-sharecropper relationship through a program called Operation *Barga*. The main components of this regulation consist of tenure security protection for *bargadars* and control over the share amount afforded to *bargadars*.¹⁹ Implementation of these protections has been made possible largely through the determined recording of existing *bargadars* throughout the state. As of September 1999, 1.49 million *bargadars* had been recorded on a total of 1.1 million acres, representing about 20% of agricultural households and 8% of net area cultivated.²⁰

In addition to redistributing some agricultural land in ownership and protecting *bargadars*, West Bengal has also transferred ownership of homestead land to landless agricultural laborers, *bargadars*, and artisans. The legislation provided that such homestead plots could be up to eight one-hundredths of an acre, about 325 square meters. As of September 1999, nearly 296,000 households had benefited by receiving homestead plots.²¹

¹⁷Twenty-four percent of the total amount of land declared surplus remains to be distributed.

¹⁸ GOI MINISTRY OF RURAL DEVELOPMENT, *supra* note 9, at annexure XXXII.

¹⁹ The government also placed a near absolute prohibition on fixed-rent tenancies. This prohibition and Operation *Barga* are discussed in more detail in sections IV and V, below.

²⁰ GOVT. OF WEST BENGAL, *supra* note 12, table 5.22, at 108.

²¹ DR. ASIM DASGUPTA (FINANCE MINISTER), GOVT. OF WEST BENGAL BUDGET STATEMENT (2000) at 11. Although the legislation established a 325 square meter (about 1070 square feet) limit for the amount of homestead land to be allocated to one household, recent survey results indicate that many households received significantly larger plots.

Box I: West Bengal Land Reform Statistics²²

<u>People</u>	
Population	80.2 million
Rural population	57.7 million
Agricultural population	41.2 million
Avg. rural household size	5.6 persons/household
Agricultural households	7.36 million
<u>Land</u>	
Net arable land	13.34 million acres
<u>Ceiling-Surplus Reform</u>	
Declared surplus land	1.37 million acres
Vested surplus land	1.28 million acres
Redistributed ceiling-surplus land	1.04 million acres (7.8% of arable land)
Households that received ceiling surplus land	2.54 million (34% of agric. households)
<u>Tenancy Reform</u>	
Land covered by tenancy reform (Operation <i>Barga</i>)	1.1 million acres (8.2% of arable land)
Tenancy (<i>bargadar</i>) beneficiaries	1.49 million (20.2% of agric. households)
<u>Combined Ceiling Surplus and Tenancy</u>	
Total land covered by ceiling-surplus distribution and tenancy reforms	2.14 million acres (16% of arable land)
<u>Homestead Plot</u>	
Households receiving homestead plots	296,000 (4% of agric. households)
<u>Total Beneficiaries Under All Reforms</u>	
Total beneficiary households under ceiling- surplus, tenancy, and homestead plots	Up to 4,316,000 (58.6% of agric. households) ²³

²² GOVT. OF INDIA MINISTRY OF RJRAL DEVELOPMENT, *supra* note 9, annexures XXXII and XXXV; GOVT OF WEST BENGAL, *supra* note 12, tables 5.21, 5.22; and CENSUS OF INDIA 2001 *supra* note 11.

²³ Because of overlap (some households received land under more than one reform component), the total number of beneficiary households is likely to be somewhat lower than this figure.

It is widely acknowledged that West Bengal's land reforms have had a positive impact on agricultural production, poverty alleviation, and economic growth, although the extent of the impact and the causation is a matter of some controversy.²⁴ What is clear is that West Bengal, after seriously implementing land reforms, has made remarkable progress in agricultural growth and in (some aspects of) poverty alleviation.²⁵

In the decades following India's Independence in 1947 and until the 1980s, West Bengal experienced very slow agricultural growth.²⁶ James Boyce wrote an influential book in 1987 that became a classic explanation of the obstacles to agrarian change in West Bengal (and Bangladesh).²⁷ Boyce identified the lack of effective harnessing of the region's groundwater potential as the main obstacle to agrarian change. The inequitable distribution of owned land and other assets was central to Boyce's explanation for this phenomenon. Others also identified differential access to resources, ill-defined property rights, and the state's failure to promote private investment in land as central in explaining Bengal's agricultural stagnation.²⁸

Ironically, shortly before Boyce's book was published, agricultural growth took off in West Bengal. According to data available for the entire period from 1980/1981 to 1998/1999, while the average annual rate of growth of foodgrain production for all the major states was 2.5%, the corresponding rate of growth for West Bengal was highest at 4.2%.²⁹

Increases in yields per acre have been equally impressive. The average annual growth rate for foodgrain yields per acre in West Bengal over the same period (1980/1981 to 1998/1999) was significantly higher (3.6%) than the corresponding average for other major states (2.8%). Among all these states, West Bengal ranked second only to Haryana over this time period.³⁰ Total factor productivity growth for the period 1970-1994 was more rapid in West Bengal (3.93% annually) than in any other major state.³¹

The main proximate causes of growth in foodgrains have been the adoption of higher-yielding varieties of *aman* (summer season) paddy and the cultivation of *boro* (winter season) paddy in

²⁴ See generally Ben Rogaly et al., *Introduction: Agricultural Growth and Agrarian Change in West Bengal and Bangladesh, in SONAR BANGLA?: AGRICULTURAL GROWTH AND AGRARIAN CHANGE IN WEST BENGAL AND BANGLADESH* (Rogaly et al. eds., 1999) at 11-38.

²⁵ For a discussion on the relationship between land reform and both agricultural productivity and poverty alleviation in other country settings, see PROSTERMAN and RIEDINGER, *supra* note 3.

²⁶ In fact, Bengal's agricultural production had been stagnant since the mid-Nineteenth Century. Sugata Bose, *Peasant Labour and Colonial Capital: Rural Bengal Since 1770*, THE NEW CAMBRIDGE HISTORY OF INDIA, Volume 3(2).

²⁷ JAMES BOYCE, *AGRARIAN IMPASSE IN BENGAL: INSTITUTIONAL CONSTRAINTS TO TECHNOLOGICAL CHANGE* (1987).

²⁸ See Saugata Mukherji & Manoj Kumar Sanyal, *Growth and Institutional Change in West Bengal Agriculture 1901-1988* (paper presented at the Workshop on Agricultural Growth and Agrarian Structure in Contemporary West Bengal and Bangladesh, Centre for Studies in Social Sciences, Calcutta) at 9-12.

²⁹ A recent International Food Policy Research Institute study shows that for 1970-1994, West Bengal had the highest agricultural production growth rate of any Indian state. West Bengal's annual growth rate was calculated to be 4.67% over that period, compared to an all-India rate of 2.64%. SHENGGAN FAN ET AL., *LINKAGES BETWEEN GOVERNMENT SPENDING, GROWTH, AND POVERTY IN RURAL INDIA*, (International Food Policy Research Institute Research Report No. 11, 190) table 14.

³⁰ DASGUPTA, *supra* note 21, at 12. Questions have been raised about the quality of the official data, but nearly all experts appear to agree that West Bengal's agricultural growth represents a major turning point from historical trends. See Rogaly et al., *supra* note 24, at 19-20, 47-48.

³¹ FAN ET AL., *supra* note 29, at table 15.

rotation with *aman*. Both changes were made possible by new and substantial private, on-farm investments in groundwater irrigation.³² The agrarian reforms played a major role in creating the favorable conditions for private investment in agriculture.³³ One recent study concluded that the tenancy reform component (Operation *Barga*) alone explains about 28% of the subsequent growth of agricultural productivity in West Bengal.³⁴

Agricultural growth in West Bengal has expanded beyond the major foodgrain crops. West Bengal has also experienced remarkable growth in vegetable production in recent years. The total vegetable production more than doubled from 5.2 million tons in 1995/1996 to 11.0 million tons in 1999/2000.³⁵

More important than agricultural growth itself, land reforms and subsequent growth have also contributed to the well-being of West Bengal's rural population, including the poorest sections of the population. Rural poverty measured in terms of head-count ratios and consumption declined sharply in West Bengal following the implementation of the land reforms. According to data published by India's Planning Commission, the proportion of West Bengal's population below the poverty line declined from 60.5% in 1977 to 25.1% in 1997, a drop of more than 35 percentage points. In comparison, during the same 20-year period, the corresponding all-India figure dropped 22 percentage points (from 51.3% in 1977 to 29.1% in 1997).³⁶

Per capita calorie intake in rural areas has also risen much more rapidly in West Bengal than in India as a whole. While in rural India as a whole, per capita calorie intake (alarmingly) *decreased* 3.1% during in the ten years after 1983/1984, per capita calorie intake increased 9.6% in rural West Bengal.³⁷

Real wages for agricultural laborers, the poorest section of rural society, increased sharply in the 1980's. The sharp increases shadowed the growth of agricultural output.³⁸ Moreover,

³² Rogaly et al., *supra* note 24, at 20. One study decomposing West Bengal's growth in rice production between 1981 and 1993 attributed 40% of the growth to expansion of the *boro* crop (second season) area, and 35% to higher yields in the *aman* season (principle cropping season). Abhijit Banarjee & Maitreesh Ghatak, *Empowerment and Efficiency: The Economics of Tenancy Reform* (1995) (Mimeograph, Department of Economics, Harvard University). For an excellent summary of studies on the causes of growth (at least until the early 1990s), see Haris Gazdar & Sunil Sengupta, *Agricultural Growth and Recent Trends in Well-Being in Rural West Bengal*, in Rogaly et al., *supra* note 24, at 65-68.

³³ Gazdar and Sengupta hypothesize that the agrarian reforms had productivity-enhancing effects far beyond the amount of land redistributed and brought under tenancy reform. They point out that the agrarian reforms were a resolution and end to a long process of class conflict and social unrest. The conflict and unrest had created uncertainty surrounding claims to land – uncertainty that was clarified only after the agrarian reforms had been substantially implemented. In this way, the implementation of land reform may have been an effective way of restoring confidence in property rights. This is in sharp contrast from more typical claims that land reform, by upsetting existing property rights arrangements, can have a detrimental effect on investment. Gazdar & Sengupta, *supra* note 32, at 68-69.

³⁴ Abhijit V. Banerjee et al., *Empowerment and Efficiency: Tenancy Reform in West Bengal*, JOURNAL OF POLITICAL ECONOMY, vol. 110, no. 2 (Apr. 2002).

³⁵ DASGUPTA, *supra* note 21, at 13.

³⁶ *Id.* at 16. West Bengal's record on some other poverty indicators such as infant mortality rate, literacy, and primary school enrollment is not as distinguishable from many other states. In terms of rural infant mortality rates (IMR) for the period from 1982 to 1991, the proportional decline of the rural IMR in West Bengal was the same as that of India as a whole. Increases in West Bengal rural literacy during the 1980's also mirrored the national average. Gazdar & Sengupta, *supra* note 33, at 76-78.

³⁷ *Id.*

³⁸ Gazdar & Sengupta, *supra* 32, at 71-72. For the period 1970-1993, the annual growth rate of rural wages in West Bengal (3.56%) was second highest among major Indian states. FAN, ET AL., *supra* note 29, table 16.

agricultural laborers in West Bengal find more employment than agricultural laborers in most of the rest of India. A recent national survey showed that adult agricultural laborers in West Bengal work an average of 178 person-days per year, second highest among the major states, and 30% more than the national average.³⁹

Despite all the quantitative economic changes attributed (at least in part) to West Bengal's land reforms, the most important changes may be those of a social and political nature that are more difficult to measure. Gazdar and Sengupta note that numerous sociological and political studies of West Bengal's rural areas have reported changes such as greater social equality, greater self-confidence among the poor, the strengthening of their overall political position, and greater proximity, approachability, and responsiveness of local government.⁴⁰ Such changes are not irrelevant, especially since land reform beneficiaries often view their increase in social status to be more important than any economic improvements.

³⁹ NATIONAL COUNCIL OF APPLIED ECONOMIC RESEARCH, HUMAN DEVELOPMENT PROFILE OF INDIA: INTER-STATE AND INTER-GROUP DIFFERENTIALS (1996).

⁴⁰ Gazadar & Sengupta, *supra* note 33, at 69.

III. RECENT HISTORY OF LAND RELATIONS IN WEST BENGAL

A. Pre-Independence

During most of West Bengal's pre-colonial history, peasant farming was the norm and most production was directed towards subsistence. Although farmland indisputably belonged to the cultivators, the question of formal property rights generally did not arise.⁴¹ The Moghal period before the arrival of the British was marked by changes in the system of land taxation or revenue. Peasants continued to enjoy customary rights over land they occupied and generally could not be evicted unless they failed to pay the required land revenue (land tax) to the state. The task of collecting land revenue was assigned to a class of agents called *zamindars*.⁴²

With the arrival of the East India Company (EIC) in the Seventeenth Century, the agrarian structure underwent radical change. The EIC first purchased the right to receive the collected land revenue and later, under the Permanent Settlement introduced in 1793, declared the *zamindars* to be proprietors of land in exchange for the payment of land revenue fixed in perpetuity. *Zamindars*, or those to whom they sold their proprietary rights, typically delegated revenue collection to a series of middlemen. The increasing layers of intermediaries meant that there was an appreciable increase in rent (or tax) extracted from the tillers and failure to pay this increased amount resulted in large-scale evictions, widespread unrest, and declining agricultural production.⁴³

The British sought to stabilize the situation through legislated tenancy reform. The Bengal Rent Act of 1859 placed restrictions on the power of landlords' to increase rent or evict tenants. However, the Act only protected fixed-rent tenants and did not protect *bargadars* or agricultural laborers.⁴⁴ Moreover, it only protected those fixed-rent tenants who could prove they had cultivated the land for 12 consecutive years. Continuous cultivation was difficult to prove due to poor records and the Act resulted in an increase in evictions by *zamindars* to prevent tenants from possessing land for the required time period.⁴⁵ The 1885 Bengal Tenancy Act also sought to protect long-standing tenants, and was similarly unsuccessful.⁴⁶

During this period, another form of landholder emerged in Bengal. The *jotedars* were a rich class of peasants who reclaimed and gained control of large quantities of uncultivated forests and wetlands outside the territory governed by the Permanent Settlement.⁴⁷ The *jotedars*

⁴¹ Irfan Habib, *Agrarian Economy*, in THE CAMBRIDGE ECONOMIC HISTORY OF INDIA (Tapan Roychaudhuri & Dharma Kumar eds., 1982) vol. 1, at 54.

⁴² SANKAR KUMAR BHAUMIK, TENANCY RELATIONS AND AGRARIAN DEVELOPMENT: A STUDY OF WEST BENGAL (1993) at 24-25.

⁴³ *Id.* at 25-27.

⁴⁴ *Id.* at 29.

⁴⁵ *Id.* at 23, 28.

⁴⁶ The Act placed limits on rent increases and eviction, and gave formal occupancy rights to tenants who had possessed the land, either themselves or through inheritance, for 12 years.

⁴⁷ BHAUMIK, *supra* note 42, at 30. These lands were initially illegally encroached on, but were eventually granted by the British to those willing to reclaim them, with the requirement that the *jotedars* pay revenue to the British government.

cultivated some of this land through the direct supervision of hired labor or servants. However, the bulk of the *jotedars'* land, like much of the land in Bengal, was farmed by *bargadars*.⁴⁸

Rural agitation over the plight of *bargadars* was common in the decades prior to and after Independence. In the 1940s, the *Tebhaga* movement called for a smaller cropshare payment and also created the slogan, "He who tills the land, owns the land." The movement is given credit for shaping post-Independence land reform legislation in West Bengal.⁴⁹

B. Post-Independence Land Reform

In the decades since Independence, West Bengal's land reform progress can be divided into three phases. The first phase (1953-1966) saw the adoption of the basic legislation (although it was significantly amended in later years), little progress in redistribution of above-ceiling land, and deterioration in the protection of *bargadars*. In the second phase (1967-1976) West Bengal made most of the overall achievements in above-ceiling redistribution, but made little progress in protecting the rights of *bargadars*. In the third phase (1977-present) tremendous progress was made in recording and protecting the rights of *bargadars*, and the redistribution of above-ceiling land continued, but at a slower pace.

1. Phase I (1953-1966)

Two major land reform acts were passed in West Bengal in the 1950s. The first, the Estate Acquisition Act of 1953 (EAA) aimed to eliminate the interests of intermediaries (*zamindars* and *jotedars*) on all land except that which they "self-cultivated" (using hired agricultural laborers). Of this "self-cultivated" land, called *khas* land, the intermediaries were allowed to retain 25 acres of agricultural land and 20 acres of non-agricultural and homestead land. Also under the EAA, fixed-rent tenants who had been cultivating the remainder of the intermediaries' land were to be brought into a direct relationship with the state as the intermediaries lost their interest in this land. Abolition of intermediaries under the EAA was generally successful, however, numerous loopholes⁵⁰ and poor implementation meant that while intermediaries lost their prior right to collect revenue they were able to retain control over large tracks of land.⁵¹

Two years later the state parliament enacted the second land reform law, the Land Reforms Act of 1955. The parliament intended the LRA to cure the inadequacies of the EAA by limiting landholder's ability to transfer land (to avoid circumventing the landholding ceiling) and by providing greater protections for *bargadars*.⁵² The specifics of the LRA are discussed in greater detail below in section IV. While some LRA provisions broke new ground, little implementation was accomplished. In fact, the LRA led to some perverse consequences as, counter to the intentions of the LRA, many landlords evicted those cultivating their land,

⁴⁸ *Id.* at 30, 39.

⁴⁹ PRABHAT KUMAR DATTA, LAND REFORMS ADMINISTRATION IN WEST BENGAL (1988) at 25.

⁵⁰ These included generous ceiling exemptions for plantations, orchards, tank fisheries, and charitable trusts. ESTATE ACQUISITION ACT, § 6 (1953).

⁵¹ See, e.g., DATTA, *supra* note 49, at 26.

⁵² See, e.g. *id.* and section III, *infra*, describing the LRA in greater detail.

resulting in a large increase in the percentage of landless agricultural laborers throughout the state.⁵³ The aspect of the LRA most often blamed for its negative impact is the provision that allowed landowners to resume “personal cultivation” (including through the use of hired labor or servants) to reclaim land from *bargadars*.⁵⁴ Others were evicted because they did not possess documents necessary to prove that they were *bargadars*.

During this first-phase of land reform in West Bengal, 300,000 acres of above-ceiling land was redistributed,⁵⁵ a little less than 3% of the cropped land in the state. However, much above-ceiling land was retained by intermediaries through evasive transfers to relatives, friends or fictitious persons (*benami* transactions).⁵⁶

2. Phase II (1967-1977)

In 1967, left-wing and centrist parties formed a coalition government known as the United Front. The countryside was seething with social unrest and a militant peasant movement was growing. The United Front government sought to address the underlying concerns of the peasants by improving the position of the *bargadars* and distributing more surplus land.⁵⁷ However, because *bargadar* rights remained unrecorded, little could be done to grant *bargadars* greater security without causing widespread evictions. Significant success was achieved, however, in redistributing ceiling-surplus land. Between 1967-1970 an additional 600,000 acres of such land was redistributed.⁵⁸ Much of this redistributed land had been invaded by peasants during the 1960s.⁵⁹

When the United Front government collapsed in 1970, President’s rule was imposed. During this period, important amendments were made to the LRA that offered the potential to improve the position of *bargadars*.⁶⁰ However, these amendments, while groundbreaking, were not adequately implemented. Those who did try to exercise their rights under the law were often evicted and large amounts of the surplus land that had been acquired during 1967-1970 was taken back by former landowners during this period.⁶¹

⁵³ DATTA, *supra* note 49, at 27.

⁵⁴ *Id.*

⁵⁵ D. Bandyopadhyay, *Land Reform in West Bengal: Remembering Hare Krishna Konar and Benoy Chaudhury*, ECONOMIC AND POLITICAL WEEKLY (May 27, 2000) at 1795.

⁵⁶ BHAUMIK, *supra* note 42, at 44.

⁵⁷ Bandyopadhyay, *supra* note 55, at 1795.

⁵⁸ DATTA, *supra* note 49, at 28

⁵⁹ Bandyopadhyay, *supra* note 55, at 1795.

⁶⁰ These amendments: (1) allowed *bargadars* whose landowners’ land vested in the state to retain up to 2.47 standard acres of land as owners; (2) reduced the share payment; (3) made *bargadar* rights hereditary; (4) required landowners to provide a receipt upon payment of the share; (5) required a *bargadar*’s surrender of rights to be verified by a government official; (6) and further restricted eviction. *Bargadars* could still be forced off land if the owner wished to resume personal cultivation; however, the *bargadar* now had to be left with at least 2.47 acres. Further amendments to the LRA in 1972 provided that the ceiling would be determined on a family basis and that landowners with holdings over a certain amount had to provide a statement of their landholdings that was to be used to vest surplus land in the state. DATTA, *supra* note 49, at 29

⁶¹ BHAUMIK, *supra* note 42, at 46.

In 1975, West Bengal adopted the West Bengal Acquisition of Homestead Land for Agricultural Laborers, Artisans and Fishermen Act. The Act aimed to enhance the position of landless agricultural laborers by severing the power that landowners could exercise over laborers through control of their home plots. The Act called for the allocation of ownership over a home plot of up to 0.08 acre for poor and landless agricultural laborers, artisans, and fishermen.⁶²

3. Phase III (1977-Present)

The Left Front government, led by the Communist Party of India–Marxist (CPIM), came to power in 1977 on the promise of extensive agrarian and political reform. CPIM has remained in power ever since. The government has achieved some incremental progress in redistributing ceiling-surplus land during this period, but its most notable success has been in recording and protecting *bargadar* rights.

The Left Front acted more aggressively to take over land that exceeded ceiling limits and to close loopholes that previously allowed exemptions to the ceiling for religious and charitable trusts, plantations and fisheries.⁶³ Furthermore, in 1979 the state parliament amended the LRA to narrow the definition of “personal cultivation” to better ensure that those that owned the land were the actual cultivators.⁶⁴

The Left Front’s most notable land reform achievement was in launching Operation *Barga*, under which government functionaries recorded the names of *bargadars* in order to provide them with greater tenure security.⁶⁵ By recording their status, *bargadars* were finally able to avail themselves of the protections of the LRA without fear of eviction. No new legislation was passed. Rather this program sought to record names as originally provided for, but never actually done, under the LRA.⁶⁶

Two major factors contributing to West Bengal’s land reform success in the post-Independence period have been: (1) favorable legislative provisions; and (2) the nature and extent of the law’s implementation. Unique aspects of both components have combined to make West Bengal’s land reform more successful than reforms in other Indian states. The next two sections of the paper discuss and analyze these components in more detail. Section IV discusses and analyzes the core legislation—the West Bengal LRA—and section V discusses the administration implementation of the law.

⁶² *Id.* Eight one-hundredths of an acre, or 8 cents, equals 3458 square feet and roughly 325 square meters.

⁶³ BHAUMIK, *supra* note 42, at 49.

⁶⁴ Specifically, there were three changes: (1) land had to be cultivated by a family member whereas before hired labor could be used; (2) a distance criteria was added so that a landlord asserting personal cultivation had to live near the field; and (3) a family had to get the majority of its income from agriculture. WEST BENGAL LAND REFORMS ACT § 2(8) (1995) (hereinafter LRA).

⁶⁵ Amiya Kumar Bagchi, *Studies on the Economy of West Bengal since Independence*, ECONOMIC AND POLITICAL WEEKLY (Nov. 21-Dec. 4 1998) at 2975.

⁶⁶ BHAUMIK, *supra* note 42, at 48.

IV. WEST BENGAL LAND REFORMS ACT

The LRA is the key piece of legislation addressing land reform and land rights in West Bengal. The LRA covers a range of land-related topics, but most significantly it: (1) defines the rights and obligations of landowners and *bargadars*; (2) prohibits fixed-rent leasing of land; (3) places a ceiling on the size of landholdings; (4) defines how land taken by the government should be distributed; and (5) limits the transferability of land held by Scheduled Tribe members as well as much of the land obtained through redistribution.

For each topic, the following discussion identifies positive aspects of the legislative provisions as well as potential problems. This analysis is based upon the authors' experience in evaluating land and land reform legislation in a number of countries, as well as the authors' rural field research in West Bengal (the findings of which are discussed in section VI).

A. Rights and Obligations of Landowners

The LRA defines "landowner"⁶⁷ as a person or institution holding land for any purpose.⁶⁸ In general, landowners can transfer their land by sale, gift, bequest, exchange, and some forms of mortgage.⁶⁹ The LRA essentially creates the presumption that landowners can engage in any kind of transfer unless specifically restricted by the legislation. Such transfers must be in writing and must be recorded.⁷⁰

The law places some limits on landowners' ability to use their land, and deprives them of their land if these limits are violated. Specifically, landowners: (1) cannot lease out any part of their land;⁷¹ (2) cannot use their land for any purpose other than the purpose for which the land is held or was settled⁷² unless they receive written permission from the District Collector;⁷³ and (3) must "personally cultivate" their land.

⁶⁷ West Bengal Land Reforms Act uses the term "*raiyat*", but we have substituted the term "landowner" for this report.

⁶⁸ LRA § 2(10).

⁶⁹ *Id.* § 4(1).

⁷⁰ *Id.* § 5(1). Transfer documents must include: (1) the sale price or if there is no sale price, the value of the holding; (2) notice of the process of transfer as well as the process fee; (3) the purpose that the transferee will use the land for, which must be consistent with the purpose for which the land was settled or was being used. *Id.*

⁷¹ *Id.* § 4(4). For this provision, it is important to distinguish between a lease (defined broadly as to include all fixed-rent tenancies) and a sharecropping arrangement. Sharecropping is permitted, but is subject to the anti-eviction and rent-control provisions of the LRA, described below in section V. It is also important to distinguish between a lease and a license, as a landowner's land will not vest in the Government if he or she has only granted a license, but not a lease. A lease is a transfer of a right to possess and use land for a certain time. A license is a privilege to do a certain defined activity on land which would otherwise be unlawful. The nature of the right granted depends on the nature of the transaction, not on the label placed on it. Whether a transaction is a lease depends on consideration given and whether or not the right granted is personal (whether the recipient of the right can exclude all others from the land). See MALLICK'S COMMENTARIES ON WEST BENGAL LAND REFORMS ACT, 1955 (3rd ed., 1998) at 124, citing *Shell-Max & B.P. Ltd. V. Manchester Garages Ltd.*, (1971) 1 All ER 841.

⁷² LRA § 4(4). The purpose, which is stated in the transfer or settlement document, can include: "agriculture, horticulture, animal husbandry, trade, manufacture, entertainment, recreation, sport and such other purposes." *Id.* § 5(1). The legal validity of this provision (§ 4(4)), however, has been called into question by a court ruling. In 1992, the Calcutta High Court found this provision to be *ultra vires*. The court held that a landowner may reasonably decide not to put his or her holding to a particular use, and this cannot be a valid reason to forfeit the entire property. MALLICK'S, *supra* note 71, at 126 citing *Paschim Banga Bhumiijibi Sangha v. State of West Bengal*, (1992) 1 CHN 496.

“Personal cultivation” is defined as cultivation by the landowner’s own labor, the labor of his or her family,⁷⁴ or the labor of any servants or laborers paid in cash or in kind. (The servants-or-laborer clause does not apply if the landowner is seeking to resume possession of *bargadar* land.) Furthermore, to satisfy the definition of personal cultivation, the landowner or a member of the landowner’s family must reside for the greater part of the year in the locality where the land is situated and produce from the land must be the principal source of the landowner’s income.⁷⁵ If these requirements are not satisfied for three consecutive years, the land vests in the state and the state becomes obligated to compensate the landowner.⁷⁶ Compensation is, however, well below the land’s market value.⁷⁷

Additionally, landowners must maintain and preserve their land to ensure that it is not degraded, its character is not changed, and it is not converted to any use other than the purpose for which it was settled or previously held, except by written permission of the Collector.⁷⁸ The penalties for violation of this requirement, while serious, do not include deprivation of the land. Violators of this provision can be imprisoned for up to three years and/or be ordered to pay a fine of up to 1,000 rupees.⁷⁹

The Act’s notable positive and potentially problematic provisions concerning the rights and obligations of landowners are highlighted below:

Positive Provisions

- *Legislation begins with the presumption that landowners have broad and general rights to transfer and bequest their land. §4(1).* The LRA presumes that landowners have broad rights to transfer unless the LRA specifically limits that right. Market transactions in

⁷³ A landowner can, however, apply to the District Collector for a change in use. When the Collector receives an application for permission to change the area, character, or use of the land the Collector makes an inquiry, giving the applicant a chance to be heard, and then either rejects the application or directs the change. LRA § 4C. The West Bengal Land Reforms Rules (1965) lay out the criteria for assessing these requests. The Collector considers if the change: (1) violates the ceilings limit; (2) conforms with the general pattern of use in the area; (3) is likely to cause inconvenience to other residents of the locality; (4) will convert any agricultural land to a non-agricultural uses and if such a change will interfere with the normal agricultural activities of the area; (5) requires a license or written permission from another authority and if it has been obtained; (6) if permission for the change will prejudice the application of the Urban Land (Ceilings and Regulation) Act, 1976 or the West Bengal Town and Country (Planning and Development) Act, 1979; (7) if the land is cultivated by a *bargadar*; and (8) any other inquiries the Collector finds necessary. West Bengal Land Reforms Rules (1965) Rule 5A.

⁷⁴ Importantly, the term “family” is limited by the LRA to only include the landowner’s immediate family with additional limitations on when adult children are considered “family” for purposes of the Act. LRA § 14K. Aged parents are not included in the definition of “family.”

⁷⁵ *Id.* §2(8).

⁷⁶ *Id.* § 4(4).

⁷⁷ Compensation is 15 times the land revenue assessed for the land or 135 rupees per acre where land revenue has not been assessed. LRA § 14V. The legal validity of the compensation provisions are in question, however, as the Calcutta High Court has held this method of determining compensation to be unconstitutional. Specifically, the Court was concerned that because the law applies to both agricultural and non-agricultural land, the uniform method of determining compensation for both types of land (explained in section 14V) was unreasonable. See, e.g., *Paschim Banga Bhumiijibi Krishak Samity v. State of West Bengal*, (1996) 2 Cal LJ 285 at 319.

⁷⁸ LRA § 4B. A landowner is, however, free to plant trees without permission of the Collector. *Id.* § 4B. In certain districts there are additional restrictions on the rights of landowners. In the Sadar, Kalimpong and Kurseong sub-divisions of Darjeeling district, the Deputy Commissioner may give directions regarding the form of cultivation or may restrict the cutting of trees. *Id.* § 4A(1).

⁷⁹ *Id.* § 4D.

land are usually best limited through carefully and narrowly defined restrictions rather than blanket prohibitions.⁸⁰

- *Landowners must reside in the locality where land is situated. §2(8).* Especially in agrarian societies where population pressure on land is great, such a requirement can help facilitate owner-operatorship.

Potential Problems

- *Broad prohibition on fixed-rent tenancy. §4(4d).* The LRA prohibits any fixed-rent tenancy, even if seasonal. In fact, seasonal fixed-rent leasing is a reality in West Bengal despite the current legislative prohibition (see discussion in section IV).⁸¹ The parliament should consider easing this broad prohibition to allow small landowners, *bargadars*, or landless households to lease-in land. If such tenancy arrangements are to be legally recognized, the legislation should include several provisions. First, the law should require that any such rental or lease agreement be in writing and should provide a mandatory, standardized form for such agreements. Second, the law must make clear that such lessees will not be given any long-term or hereditary rights to the land beyond that contained in the written agreement.
- *“Principal source of income” requirement discriminates against small farmers and small landholdings. §2(8).* The LRA requires that landowners obtain their principal source of income from the produce of their land. This means that very small landowners who earn a majority of their income from agricultural labor are technically in violation of the LRA and could lose the land to the state. We recommend that the definition of “personal cultivation” be changed such that a person’s principal source of income can be either the produce of their land or wages they earn through agricultural labor.
- *Draconian penalties for violating prohibitions on lease, use, and personal cultivation. §4(4).* The law provides that violations of these requirements will result in forfeiture of the landowner’s rights. The parliament might consider replacing this with a less draconian penalty such as forced sale of the land, allowing the landowner to retain the proceeds of the sale.
- *Monetary penalty for violating maintenance requirements should be increased. §4D.* Because of inflation this penalty of up to 1,000 rupees is no longer a credible or sufficient penalty.

⁸⁰ See, e.g., Leonard Rolfes, Jr., *Land Transactions*, in *LEGAL IMPEDIMENTS TO EFFECTIVE RURAL LAND RELATIONS IN EASTERN EUROPE AND CENTRAL ASIA: A COMPARATIVE PERSPECTIVE* (World Bank Technical Paper No. 436, Roy Prosterman & Tim Hanstad, eds., 1999).

⁸¹ The underlying assumption behind the prohibition on tenancies (other than sharecropping arrangements) in the LRA is that tenancies in land are inherently exploitative and semi-feudal institutions. While this is true in certain settings-- especially in agrarian societies where the land-lease market is interlocked with other markets such as credit, commodity and/or labor – tenancy relationships are not always exploitative. In fact, in many if not most countries, the land lease market has taken on different characteristics at different stages of history. Economic and political development often translates into increasingly empowered tenants and more balanced landlord-tenant relationships. A typical pattern is that tenancy relationships are characterized by exploitation in an agrarian society when there is an absence of non-agricultural opportunities, high population pressure on land, and tenants have limited political power. This weak-strong brand of agrarian relationship changes, however, as non-agricultural opportunities increase and as tenants acquire some degree of collective and organized strength.

The alternative penalty of imprisonment, meanwhile, is too draconian and thus probably not credible.

B. Rights and Obligations of *Bargadars* (Sharecroppers)

The LRA grants special protection to *bargadars*, including the right to continued cultivation. These rights, which are to be recorded in the record-of-rights⁸² (but exist and can be asserted even if not recorded), are heritable, but are not otherwise transferable.⁸³

A person lawfully cultivating any land belonging to another person is presumed to be a *bargadar* unless he or she is a member of the landowner's family.⁸⁴ This unique feature of the West Bengal LRA is not present in the legislation of any other state. It places on the landowner the onus of proving that a person cultivating his or her land is not a *bargadar*.

Where the landowner is a Scheduled Tribe member, the cultivator may claim *bargadar* status only if the cultivator is also a Scheduled Tribe member.⁸⁵

1. Limit and regularization of share payment

The LRA provides that *bargadars* must turn over half their produce if the landowner supplies the plough, cattle, manure and seeds necessary for cultivation, and must turn over 25% of the produce in all other cases.⁸⁶ Upon payment, the landowner must provide the *bargadar* with a written receipt.⁸⁷

2. Limit on landowners' ability to terminate *bargadars*' cultivation rights

A *bargadar's* right to cultivate land can only be terminated under the following circumstances: (1) the *bargadar* is not cultivating the land or is using the land for any purpose other than agriculture; (2) the *bargadar* is not personally cultivating the land; (3) the *bargadar* failed to tender the full extent of the share; or (4) the landowner requires the land for personal cultivation.⁸⁸ Importantly, for the purpose of this section, the definition of "personal cultivation" does not include cultivation by servants or laborers.⁸⁹ Furthermore, a *bargadar's* right can only be terminated by an order made by a state-appointed authority.⁹⁰

⁸² LRA § 21D.

⁸³ *Id.* § 15(2).

⁸⁴ *Id.* § 21B.

⁸⁵ *Id.* § 15(3).

⁸⁶ *Id.* § 16(1).

⁸⁷ *Id.* § 16(3).

⁸⁸ *Id.* § 17(1).

⁸⁹ *Id.* § 17 Explanation.

⁹⁰ *Id.*

A landowner cannot terminate the *bargadar's* cultivation right if the termination would leave the landowner with more than 7.41 acres or would leave the *bargadar* with less than 2.47 acres.⁹¹ If, after termination, the landowner fails to bring the land under personal cultivation within two years or allows the land to be cultivated by another person, the land vests in the state.⁹²

If a landowner illegally terminates a *bargadar's* cultivation right, the *bargadar* can apply to have his or her right restored.⁹³ The application must be made within two years from the time of termination, or two years from the date this provision went into force (1980).⁹⁴ If there is more than one applicant, the *bargadar* who cultivated the land the longest is permitted to resume cultivation.⁹⁵

3. Surrender by the *bargadar*

A *bargadar* is free to surrender his or her cultivation right; however, a state-appointed officer must determine if the surrender was actually voluntary.⁹⁶ Even if the surrender was voluntarily, the landowner cannot resume personal cultivation, but must turn over the land to someone else who is willing to cultivate the land as a *bargadar*.⁹⁷

4. Limit on the amount of land a *bargadar* can cultivate

A *bargadar* is not permitted to cultivate more than a total of 9.88 acres, including both owned and *barga* land.⁹⁸ If a *bargadar* cultivates more than this amount, his or her share of the produce on the excess land is forfeited to the state.⁹⁹ The landowner who owns the excess land that the *bargadar* cultivates must turn over the land to another person willing to cultivate the land as a *bargadar*.¹⁰⁰

The Act's notable positive as well as potentially problematic provisions concerning the rights and obligations of *bargadars* are highlighted below:

⁹¹ *Id.* § 17(1). The average holding of *barga* land for recorded *bargadars* is 0.74 acres. GOVT. OF WEST BENGAL, ECONOMIC REVIEW 1999-2000, Statistical Appendix (2000), table 5.22, at 108.

⁹² LRA § 17(2).

⁹³ *Id.* § 19B(1)(a). The timing and terms of a *bargadar's* resumption vary depending on who has been cultivating the land in the meantime. First, if the land has either not been cultivated or has been cultivated by the owner or by someone for the owner, the land is immediately returned to the *bargadar*. Under this circumstance 40% of the produce of the land forfeits to the state, and the remaining 60% can be retained by the *bargadar*. Second, if someone other than the owner or someone on behalf of the owner has been cultivating the land, the land is restored to the *bargadar* at the end of the agricultural season. The person who cultivated the land can keep 25% of the produce and the *bargadar* keeps the other 75%. LRA § 19B(1)(a).

⁹⁴ *Id.* § 19B.

⁹⁵ *Id.* § 19B.

⁹⁶ *Id.* § 20B(2).

⁹⁷ *Id.* § 20B(3) and (4).

⁹⁸ *Id.* § 17(4). A *bargadar* holding even approaching this size would be rare in most districts of West Bengal. Average *barga* holdings in West Bengal (not including any land that might be owned by the *bargadar*) are only 0.75 acres.

⁹⁹ *Id.* § 17(5).

¹⁰⁰ *Id.* § 17(6).

Positive Provisions

- *Person cultivating another person's land is presumed to be a bargadar if not a family member. §21B.* This unique provision makes it relatively easy for *bargadars* to prove their status. If, however, some types of leasing are to be legalized for smallholders, this provision will need to be amended so that the presumption is only met in the absence of a written and otherwise legally valid lease agreement.
- *Names of bargadars are recorded in the record-of-rights. §21D.* This provision and, especially, its implementation were crucial to West Bengal's tenancy reform success. *Bargadars* are given continuous, hereditary rights with anti-eviction protection. This is a core principle for West Bengal's successful reform. Existing *bargadars* should continue to receive such protection. However, we urge that the issue of prospective liberalization of tenancy in West Bengal be separated from the issue of whether existing *bargadars* continue to receive this protection. One can make a strong argument that existing *bargadars* should continue to receive protection (and, in fact, be given stronger rights enabling them to achieve ownership of the land) while at the same time allowing smallholders some ability to lease-in their land.
- *Regulation of rent or share amount is set at a reasonable level.* The Central Government's recommended policy to the states is that rent payable by a tenant be limited to 20-25% of the produce and "slightly more" if the inputs are provided by the owner.¹⁰¹ West Bengal's legislation is more generous to the landlord by providing 50% of the produce if the landlord provides the inputs. This probably made implementation of these provisions more feasible, while still improving the *bargadar's* position. Legislative provisions that unreasonably penalize or damage the position of landlords or large landowners (such as minimal compensation levels for ceiling surplus land and unreasonably low rent levels for landlords) make the implementation of land reform less politically and administratively feasible.
- *Landlord's right to evict a bargadar for the purpose of resuming personal cultivation on barga land is limited in three important ways. §17.* First, unlike the laws of many other Indian states, "personal cultivation" does not include cultivation by the landlord's servants or laborers. Second, a landlord cannot terminate the *bargadar's* cultivation right if it would leave the *bargadar* with less than 2.47 acres. Third, the *bargadar's* right can only be terminated by an order made by a state-appointed authority.
- *Limit on the amount of land a bargadar can cultivate. §17(4-6).* This ensures an element of fairness: *bargadar* holdings are subject to ceilings similar to those imposed upon landowners.
- *Prohibits non-tribals from gaining protected bargadar status on land owned by Scheduled Tribe members. § 15(3).* This places an important check on the historical practice of fraudulently or coercively taking the land rights of tribals.

¹⁰¹ BEHURIA, *supra* note 8, at 121.

Potential Problems

- *Law does not give bargadars the unilateral right to assume ownership over barga land.* The law would be improved if *bargadars* were given the mandatory right to choose one of two options for assuming ownership of *barga* land. The first option would be a purchase option under which the *bargadar* could assume ownership over the entire *barga* holding by paying the landowner a government-determined sum approximating 50% of the land's market value. The second option would be an exchange option under which the *bargadar* could assume ownership over one-half of the *barga* holding by giving up his *bargadar* rights over the remaining one-half of the land (which would then revert in unencumbered ownership to the landlord who could either sell or personally cultivate the land subject to other existing restrictions).
- *Landowners cannot sell if a bargadar's holding exceeds ceiling or if a bargadar voluntarily surrenders his rights.* §§ 20B, 17(6). The law currently requires the landowner to turn over the land to another *bargadar* in such cases. A better solution might be a forced sale in which the landowner must sell the land ownership rights to a smallholder, landless household, or *bargadar* (subject of course to the relevant ceilings). This would encourage owner-operatorship by smallholders instead of creating another perpetual landlord-*bargadar* relationship.
- *Law does not require that the name of the bargadar's spouse be entered into the record of rights.* In most cases, the male head of household is considered to be the *bargadar* and only his name is entered into the record-of-rights. This occurs despite the fact that women appear to undertake much or even most of the farming tasks on the *barga* land. Requiring that a *bargadar's* wife also be included in the record-of-rights would add an element of gender equity and help to protect the rights of such women, especially upon separation or the husband's death.
- *Law does not assign a market value to the bargadar's interest in the land.* As a result, when *barga* land is acquired under the Land Acquisition Act for any public purpose, no compensation is payable to the *bargadar*.¹⁰² Law could provide that the *bargadar* is entitled to some percentage of the payment (say 50%), with the remainder payable to the landowner.

C. Preemptive Purchase Rights of *Bargadars* and Adjoining Landowners

The LRA provides that *bargadars* have the first preemptive right to purchase land being sold.¹⁰³ If the *bargadar* does not purchase the land, adjoining landowners have a preemptive right of purchase, with priority given to the landowner with the longest common boundary. This provision does not apply to transfers by exchange or partition, bequest, gift, mortgage, transfers for charitable or religious purposes, or transfers in favor of a *bargadar* (if after the transfer the

¹⁰² See BEHURIA, *supra* note 8, at 128.

¹⁰³ LRA § 8(1).

bargadar does not hold as owner more than one acre of land in the aggregate).¹⁰⁴ The provision also does not apply to transfers involving consideration other than money.¹⁰⁵

The LRA authorizes the state government to establish a “state land corporation” and/or one or more “regional land corporations,”¹⁰⁶ which shall advance funds to *bargadars* to purchase land using this preemptive purchase right. The *bargadar* and landowner are free to agree on a price of their own choosing, but if they cannot come to an agreement, the land corporation sets the price based on the market value of the land. These provisions of the Act appear to remain unimplemented.

If a *bargadar* does not wish to purchase an owner’s land, the state land corporation, upon the owner’s request, can offer the land to a person eligible to buy land under section 49, which is generally a landless or near-landless person.¹⁰⁷

Although *bargadars* are granted priority rights to purchase *barga* land if the landowner decides to sell the land, the LRA, unlike legislation in some other states such as Karnataka, does not give *bargadars* the right to become owners of the *barga* land without the owner’s consent. The law appears to contemplate a perpetual relationship between the landowner and *bargadar* unless the owner volunteers to sell the land.

The Act’s notable positive and potentially problematic provisions concerning preemptive purchase rights of *bargadars* and adjoining landowners are highlighted below:

Positive Provisions

- *State is empowered to create land corporations to assist bargadars in purchasing land. § 21C.* This creates the legal authority for a funding mechanism that could facilitate turning *bargadars* into owner-operators. Unfortunately, it appears that the provisions have not been implemented.
- *Bargadars are given preemptory rights to purchase barga land in ownership if the landlord decides to sell.* This gives the *bargadar* the first opportunity to purchase the land in ownership if: (1) the landlord decides to sell; and (2) the *bargadar* can afford to purchase the land.

Potential Problem

- *Giving adjacent landowners preemptory purchase rights favors the landed over the landless. § 8.* A preemptive purchase right for adjacent landowners is an attempt to facilitate larger and consolidated holdings. Unfortunately, it discriminates against landless households or other smallholders who might otherwise be in a position (or be put in a position

¹⁰⁴ *Id.* § 8(2).

¹⁰⁵ See MALLICK *supra* note 71, at 242, citing *Rajan Safui v. Ashalata Halder*, (1978) 1 Cal LJ 442.

¹⁰⁶ LRA § 21C.

¹⁰⁷ *Id.* A person who purchases land under this provision must mortgage the land to the Corporation as security for the loan advanced. *Id.* § 21C(7).

through subsidized financing from a government land corporation) to purchase the land.

D. Ceiling on Holdings

No landowner can own land in excess of the ceiling, with some minor exceptions.¹⁰⁸ Significantly, the LRA defines “land” to include non-agricultural land.¹⁰⁹ West Bengal is the only state in India that provides such a broad definition of “land” in its land reform legislation. The purpose is to prevent landowners from evading the law by re-classifying agricultural land as non-agricultural land. Also, unlike the case in most other states, the ceiling limit applies only to owned land and not to tenanted (*barga*) land.

The ceiling area ranges from 6.2 “standard acres” for adult, unmarried owners to a maximum of 17.3 “standard acres” for an owner with a nine-member family.¹¹⁰ A “standard acre” is 1 acre for irrigated land and 1.4 acres for all other land.¹¹¹ In other Indian states, the unit of application is not an individual, but a “family” of up to five members. West Bengal is one of two Indian states (Tripura is the other) where the ceiling area is reduced if the number of family members is less than five.¹¹²

There are several limited exceptions to the overall ceiling limit. First, if land is held for charitable or religious purposes the state government can increase the ceiling area.¹¹³ Second, the state can allow landowners to hold more than the ceiling area if they intend to establish a tea-garden, mill, factory or workshop, livestock-breeding farm, poultry farm, dairy, or township.¹¹⁴ Lastly, the ceiling does not apply to land owned by a local authority or land in the hills near Darjeeling.¹¹⁵

To prevent landowners from making anticipatory transfers of land to avoid the ceiling, any land transferred after August 7, 1969 but before the publication of the 1971 amendment (lowering the ceiling) is included in the calculation of the size of the landowner’s holding as if the land had not been transferred or partitioned.¹¹⁶ This provision does not apply to *bona fide* transfers or partitions (the burden of demonstrating that a transfer is *bona fide* is on the transferor). Transfers to certain specified family members are presumed not to be *bona fide*.

¹⁰⁸ *Id.* § 14L.

¹⁰⁹ *Id.* § 2(7). The Act was amended in 1981 to broaden the definition of land from agricultural land to all land.

¹¹⁰ *Id.* § 14M(1). In the case of a co-operative society, Hindu undivided family (a family consisting of all lineal male descendants of a common ancestor and their wives and unmarried daughters), or a firm, the ceiling area is the sum total of the ceiling area for each member. Any land held separately by a member is deducted from the group’s ceiling area. *Id.* §14Q(1) and (3).

¹¹¹ *Id.* § 14K(f).

¹¹² BEHURIA, *supra* note 8, at 135-136.

¹¹³ LRA § 14Q(3).

¹¹⁴ *Id.* § 14Y.

¹¹⁵ *Id.* § 14R. “Local authority” is not defined in the Act.

¹¹⁶ *Id.* § 14P. The Revenue Officer has the power to determine if any land was transferred with the purpose of circumventing the ceiling provisions. *Id.* § 14T(5).

Landowners with land in excess of the ceiling area must furnish the Revenue Officer with a form containing full descriptions of both the land that they propose to retain and the land that is in excess of the ceiling.¹¹⁷ Landowners holding land in excess of the ceiling area cannot transfer any of their land by sale, gift, or otherwise, or partition the land until the excess has been determined and the state has taken possession of it, except where permitted in writing by the Revenue Officer.¹¹⁸ If a landowner with land in excess of the ceiling fails to furnish the prescribed form without reasonable cause or willfully makes an omission or incorrect statement on the form he or she can be punished with up to two years of imprisonment and/or a fine of 5,000 rupees.¹¹⁹ After receiving the form, the Revenue Officer determines what land will vest in the state and takes possession.

All land owned in excess of the ceiling area vests in the state free of all encumbrances.¹²⁰ If at any time after the commencement of the LRA, a landowner's holding exceeds the ceiling, this excess land also vests in the state.¹²¹

If ceiling surplus land is being cultivated by a *bargadar*, the *bargadar's* right to cultivation is terminated on any land in excess of one acre.¹²² The *bargadar* becomes the owner of any land under one acre. The LRA does not state that the *bargadar* is required to pay the owner or the state any compensation for such land.

The government is required to compensate landowners whose excess land vests in the state. They are entitled to an amount equal to 15 times the land revenue if it has been assessed.¹²³ Where land revenue has not been assessed, they are entitled to 135 rupees per acre. In either case, the compensation stipulated is substantially below market value.¹²⁴

The Act's notable positive and potentially problematic provisions concerning identifying and vesting ceiling-surplus land are highlighted below:

Positive Provisions

- *Land ceilings can be an effective method for redistributing land resources. § 14J-Z.* Most Indian states have tried to use the mechanism of land ceilings to redistribute land (one can only

¹¹⁷ *Id.* §§ 14T(1), 14U(1).

¹¹⁸ *Id.* § 14U(1).

¹¹⁹ *Id.* § 14T.

¹²⁰ *Id.* § 14S(1).

¹²¹ *Id.* § 14Y.

¹²² *Id.* § 14S.

¹²³ *Id.* § 14V.

¹²⁴ In the years following Independence, several state enactments relating to land reforms in India were successfully challenged in the courts on the ground that they provided inadequate compensation and thus violated Article 31 of the Constitution. However, the Constitution was amended in 1971 with the insertion of Articles 31-B and 31-C. Article 31-C enabled the states to pass laws in the field of land reforms without payment of adequate compensation. Article 31-B validated all previous legislations on land reforms if they were specified in the 9th Schedule of the Constitution. BEHURIA, *supra* note 8, at 131. See also ARVIND P. DATAR, DATAR ON CONSTITUTION OF INDIA (2001), at 293-310. The High Court has held that the West Bengal Land Reforms Act is protected under Article 31-C. *Paschim Banga Bhumijibi Krishak Samity vs. State of West Bengal* 1996 (2) CLJ 285 (304) : 1996 (II) CHN 212 : 100 CWN 900 : 1996 CLT (HC) 183 : 1996 WBLR (Cal) 242.

own land up to a certain amount and land exceeding that amount is taken by the state for redistribution). So few have achieved success with the mechanism that the mechanism itself has been called into question. West Bengal's experience indicates that land ceilings can be an effective mechanism for redistributing land in an Indian setting.

- *Definition of "land" includes non-agricultural land. § 2(7).* This closes a loophole present in the legislation of most other states that prompted landowners to reclassify land in order to evade the ceiling-surplus and/or tenancy reform provisions.
- *Unit to which the land ceiling applies is the individual, rather than the family such that families with less than five members have lower ceilings. § 14M.* This is unique among state laws. It ensures greater equity and eliminates a loophole by which larger families split into additional families in order to retain more land.
- *Few, limited exemptions to the overall ceiling limit. §§ 14Q, 14R, and 14Y.* West Bengal did a better job than other states in limiting the exemptions and thus loopholes to the overall ceiling limit.
- *Land transferred in anticipation of the ceiling legislation is still included when applying the ceiling. § 14P.* In most other states, landowners, upon recognizing that ceilings legislation was to be adopted in the near future, were given ample opportunity to evade the ceiling by selling the land (often to relatives or other proxies) before the legislation came into force. The West Bengal approach undermines the effectiveness of this evasion strategy.
- *Landowners holding land in excess of the ceiling cannot transfer any land until the state has determined the excess and taken possession of it. § 14U(1).*

Potential Problems

- *Compensation to losing landowners is extremely low. § 14V.* If the state makes redistribution of land a priority, it should back this up by finding the resources to adequately compensate landowners whose land is taken. Compensation need not be market value, but should be something meaningful, not bordering on confiscation.¹²⁵
- *Landowners who own land in excess of the ceiling and do not report their land holding may be subject to a maximum fine of only 5,000 rupees. § 14 T (4).* The original fine maximum of 1,000 rupees was changed to 5,000 rupees in 1976. Inflation over the past 25 years warrants a further increase in the maximum fine.¹²⁶

¹²⁵ For a discussion of models for defining and providing adequate compensation, see ROY PROSTERMAN & JEFF REIDINGER . LAND REFORM AND DEMOCRATIC DEVELOPMENT (1987), at 194-202; and Tim Hanstad, *Land Reform in the Philippines: The Just Compensation Issue*, 63 WASHINGTON LAW REVIEW 417 (1988).

¹²⁶ Violators may also be subject to imprisonment of up to two years, but this penalty is not likely to be as credible as a substantial fine.

E. Distribution of Vested Land

Section 49 of the LRA sets forth the principles under which the state government is to distribute land that vested in the state government, either because it exceeded the ceiling or because it was improperly used. The state distributes such land free of charge to persons who are residents of the locality where the land is located and who, together with their family, own either no land or own less than one acre of agricultural land.¹²⁷ The LRA had previously allowed land to be distributed to those landowners with less than 2.47 acres. The LRA was amended in 1980 to better focus the benefits on the landless and smallest landowners by replacing the “one-hectare” (2.47 acres) limit with a “one-acre” limit. In addition to distributing land to the landless or near-landless, the state can allocate vested land for public purposes or for the establishment, maintenance or preservation of any educational or research institution or industry.

In determining the amount of land that a family owns, half of the land cultivated by them as *bargadars* is taken into account. Grantees of agricultural land must intend to use the land for agriculture. Grantees of homestead land must not have a homestead of their own and must intend to construct a dwelling on the homestead land. Among eligible persons, preference is given to landless households, to members of Scheduled Castes and Scheduled Tribes, and to persons who form themselves into a co-operative society.

No land can be distributed under section 49 to anyone who has a family member “engaged or employed in any business, trade, undertaking, manufacture, calling, service or industrial occupation.”¹²⁸ This proviso, however, specifically does not apply to agricultural laborers, artisans or fishermen.

The LRA places severe limitations on the ability of a grantee to transfer the land. A grantee cannot transfer such land by sale, gift, exchange, or lease. Apart from transfers by inheritance, a grantee can only transfer his or her land: (1) by simple mortgage, or (2) by mortgage by way of deposit of title deeds in favor of banks or co-operative societies specified in the LRA. Moreover, such mortgages can only be for the purpose of obtaining loans for development of land, for improvement of agricultural production, or for construction of a dwelling house.¹²⁹

The Act’s notable positive and potentially problematic provisions concerning the distribution of vested land are highlighted below:

Positive Provisions

- *In allocating redistributed land, strong priority is given to the completely landless and to Scheduled Tribes and Scheduled Castes.* The LRA together with the accompanying regulations (West Bengal Land and Land Reforms Manual) provide a very detailed list

¹²⁷ LRA § 49. West Bengal is one of only a few states that do not require payment from the grantees (the others include Orissa, Bihar, and Uttar Pradesh). The legislation of most states requires some payment from the land reform beneficiaries, usually to be paid in installments. BEHURIA, *supra* note 8, at 143 and annexure V.

¹²⁸ *Id.* § 49(1).

¹²⁹ *Id.* § 49(1A).

of priorities concerning the selection of those who are to receive vested land and thus narrows the scope for political favoritism in the allocation process. Moreover, smallholders with significant sources of non-agricultural income are not given priority.

- *Landowners with one acre or more are not entitled to receive redistributed land. § 49(1).* The one-acre limit is well below the limit in the land reform legislation of most other states.¹³⁰ This has accomplished two important objectives. First, it has resulted in redistributing the available vested land to a larger number of beneficiaries (by reducing the average amount of land given to each beneficiary).¹³¹ Second, it furthers the focus of land reform benefits on the poorest segment of rural society.

Potential Problems

- *Permanent prohibition on sale imposed on land reform beneficiaries is too restrictive. §49(1A).* The LRA prohibits those who receive above-ceiling land from ever selling such land. This is unnecessarily restrictive. Consistent with the practice of other countries and other Indian states, the parliament should consider converting this perpetual prohibition to a moratorium of perhaps ten years.
- *The Act does not direct that land be distributed in the joint names of husband and wife.* Our field research found that the formal legal rights to most distributed land was given in the name of the male head of household only (see section VI.F.1, below). We were told that more recently a government policy had been adopted to grant such land in the joint names of husband and wife. Even if true, such a policy should be incorporated into the legislation.

F. Restrictions on Alienation of Land by Members of Scheduled Tribes

One of the LRA's objectives is to protect the interests of Scheduled Tribe members by restricting their ability to transfer land they own. Any transfer by a landowner who belongs to a Scheduled Tribe is void, except for the following: (1) complete usufructuary mortgage entered into with a person who is a Scheduled Tribe member for a period of less than seven years; (2) sale or gift to the government for a public or charitable purpose; (3) simple mortgage to the government or a registered co-operative society; (4) simple mortgage or mortgage by deposit of title deeds in favor of a scheduled bank, a co-operative land mortgage bank or a corporation owned by the government for development of land or improvement of agricultural production; (5) gift or bequest to a Scheduled Tribe member; or (6) sale or exchange to any Scheduled

¹³⁰ For example: Andhra Pradesh legislation allows allotment of up to 5 acres of agricultural (non-irrigated) land; Haryana allows allotting land to persons owning up to 4.94 acres; Jammu and Kashmir allows for allotting land to persons owning up to 5 acres; Maharashtra allows allotment of up to 4.94 acres of dry land; Punjab allows for the allotment of up to 4.94 acres of firstclass land; Tamil Nadu prioritizes persons who have 3 acres or less of dryland above landless ST or SC agricultural laborers; and Uttar Pradesh allows allotment to persons holding up to 3.1 acres.

¹³¹ In the later years of West Bengal's land reform, beneficiaries have not received land beyond that required to bring the total amount owned to 1 acre. For a discussion of how even very small plots can provide substantial benefits to poor rural households, see TIM HANSTAD, JENNIFER BROWN, AND ROY PROSTERMAN, LARGER HOMESTEAD PLOTS AS LAND REFORM: A REVIEW OF INTERNATIONAL EXPERIENCE AND RESEARCH RESULTS FROM KARNATAKA (Rural Development Institute Report, No. 113, August 2001).

Tribe member.¹³² Under certain circumstances a members of Scheduled Tribes can sell their holdings to anyone if the member receives prior permission of the Revenue Officer.¹³³ The Revenue Officer is empowered to set aside transfers that violate the LRA or that were obtained by fraud or misrepresentation.¹³⁴ Transferees who obtained possession of tribal land unlawfully can be ejected from the land, unless the transferee has been in continuous possession of the land for 30 years. A transfer will not be set aside, however, if the transferee holds less than one acre and the transferor possesses or cultivates over 9.88 acres of land.

The Act's notable positive and potentially problematic provisions concerning the alienation of land owned by Scheduled Tribe (ST) members are highlighted below:

Positive Provision

- *Restrictions, but not blanket prohibition, on alienation of land-owned by ST members to non-ST members. § 14B and 14C.* Improvident or coerced sales by ST landowners to non-ST persons have been a problem in West Bengal as in many other parts of India. The general restriction on such sales is a response to this phenomenon and is intended to protect ST landowners. It does have the unfortunate consequence of lowering the value of ST-owned land (and thus the net wealth of the ST owners). Whether this is a good trade-off for ST landowners is a topic requiring further research. In any case, the West Bengal legislation is not unduly restrictive as it allows for exceptions to the general prohibition on sale upon approval by the Revenue Officer.

Potential Problem

- *ST members do not have preemptory purchase rights when local land owned by another ST member is being sold to a non-ST member.* The parliament should consider amending the law to give all ST members in the locality a preemptory right to purchase land being sold by an ST landowner before it can be purchased by a non-ST person. Currently, the law gives the Revenue Officer the discretion to determine whether any ST member is "willing to pay the market price" before approving a sale to a non-ST person. Giving all ST members in the locality a preemptory right to purchase such land would improve the law in two respects. First, the publication and notification rules accompanying such a preemptory right would help ensure that ST members learn of such sales to non-ST persons. Second, it would give ST members the right to purchase land at the price offered by a non-ST person even when that price is below the market price.

¹³² LRA §§ 14B and 14C(1).

¹³³ *Id.* § 14C(1). Such permission is only granted if the Revenue Officer is satisfied that: (1) no purchaser belonging to a Scheduled Tribe is willing to pay the fair market price; *and* (2) that the purpose of the proposed sale to a non-tribal is to improve any part of the holding, for investment, or "for such other purpose as may be prescribed."

¹³⁴ The Revenue Officer can also set aside transfers made by way of complete usufructuary mortgage if the transferee has been in possession for longer than seven years. *Id.* § 14E.

G. Land Consolidation

The LRA contains a series of provisions relating to land consolidation that for the most part, have not been implemented. The LRA empowers the government to acquire lands for the purpose of consolidating holdings into compact blocks.¹³⁵ Alternatively, consolidation can be undertaken if seven or more landowners, each owning land not exceeding one acre, ask for their holdings to be consolidated.¹³⁶ The LRA provides that compensation must be given for such acquisitions, but does not specify the level of compensation. These provisions remain virtually unimplemented.

Similarly, the LRA prevents fragmentation of land by partition. To prevent fragmentation the state government establishes a “standard area,” which varies by locality and land quality.¹³⁷ Landowners cannot legally partition land into plots that are smaller than the “standard area.”

The Act’s provisions concerning land consolidation contain some potential problems that are highlighted below:

Potential Problems

- *Involuntary administrative consolidation of land is rarely if ever successful.*¹³⁸ The parliament should consider amending the LRA to eliminate provisions allowing involuntary administrative consolidation of agricultural landholdings. Any consolidation should require the explicit authorization of all landowners affected.
- *Minimum plot sizes can be potentially harmful to women if applied to partition upon inheritance or divorce.* The government should consider amending the law to state that the “standard area” minimum should not be applied if it acts to deprive female children, divorced wives, or widows from receiving land to which they would otherwise be entitled.

¹³⁵ *Id.* § 39.

¹³⁶ *Id.* § 39. After acquisition, the government is empowered to re-arrange the holdings so that each plot is a compact block and re-allocate parcels within the block back to the owners. *Id.* § 40. In re-allocating the land, the government should ensure, if possible, that each landowner gets a plot of the same area, quality and value as before consolidation. *Id.* If an owner’s holding is encumbered before consolidation, the encumbrance is transferred to the land that the owner is subsequently allotted. *Id.* § 41. After the re-allotment the government is entitled to re-coup the compensation initially paid to the owner. *Id.* § 40. If a landowner received land of higher value, he or she must pay the difference in value and can do so by installments. *Id.* § 24.

¹³⁷ *Id.* § 14(5). If as a result of a partition of a plot, one or more of the resulting plots will be less than the standard area, the registering agent or court presiding over the partition must re-cast the plots so that none is less than the standard area. If this is not possible the entire holding is sold to the highest bidder (or bought by the government if it cannot be sold) and the proceeds are paid to the co-sharers in proportion to their shares. *Id.* § 14(3)(b).

¹³⁸ Alethea Williams, Land Consolidation and Fragmentation (July 2001)(unpublished memorandum on file with the Rural Development Institute).

H. Formation of Co-operative Farming Societies

The LRA permits the creation and registration of co-operative farming societies and co-operative common service societies and allows for government subsidies for the farming societies. These provisions also have not generally been implemented because of the lack of organized grassroots demand from farmers for such societies.

A co-operative farming society can be formed by seven or more landowners owning lands in a compact block or intending to acquire such lands.¹³⁹ After registration, all member holdings that form a compact block, except homesteads, vest in the society. When a member's land vests with the co-operative, the member receives shares of equal value in return.

The government may provide concessions to a co-operative, including reduction in revenue assessed, free supply of seeds and manure for the first three years and thereafter at concessional rates, free technical advice by experts of the state government, financial assistance, and arrangements for better marketing.¹⁴⁰

A co-operative common service society can be formed by seven or more people who each own, cultivate or possess land not exceeding one acre.¹⁴¹ Unlike the case of cooperative farming societies, the LRA does not provide for vesting of land in the cooperative common service society.¹⁴²

Potential Problem

- *Subsidies for co-operative farming societies favors what international experience has shown to be an inefficient mode of organization.* The LRA allows the government to provide various subsidies to co-operative farming societies. This, despite the fact that both theory and international experience indicate that agricultural production by collective bodies is likely to be a less than efficient mode of organization.¹⁴³ Farmers should have the choice to organize in such co-operative farming societies, but there is no practical reason to distort that choice by offering subsidies.

¹³⁹ *Id.* § 43.

¹⁴⁰ *Id.* § 48(2).

¹⁴¹ *Id.* § 48A(1).

¹⁴² The society can acquire ploughs, cattle, manure (including chemical fertilizers), seeds, modern scientific agricultural implements and any other inputs necessary for cultivation or poultry farming. These inputs can then be given to or utilized by the co-operative's members in proportion to the area of land held by them. The society can also advance loans to the members out of its own funds.

¹⁴³ See KLAUS DEININGER, COOPERATIVES AND THE BREAK-UP OF LARGE MECHANIZED FARMS: THEORETICAL PERSPECTIVES AND EMPIRICAL EVIDENCE (World Bank Discussion Paper 218, Nov. 1993).

I. Maintenance of Land Records

The LRA contains rules for the creation and management of a land rights record-keeping system. Specifically, the following information must be recorded and kept up-to-date: (1) change of ownership as the result of transfer or inheritance; (2) partition, exchange, or consolidation of land; (3) establishment of co-operative farming societies; (4) new settlement of lands or holdings; (5) variation of revenue; (6) alteration in the mode of cultivation, for example, if a *bargadar* begins or ceases to cultivate land; and (7) “such other causes as necessitate a change in the record of rights.”¹⁴⁴

¹⁴⁴ LRA § 50.

V. LAND REFORM ADMINISTRATION AND IMPLEMENTATION IN WEST BENGAL

Land reform success cannot be achieved by favorable and carefully crafted legislative provisions alone. Such provisions must be effectively implemented and administered. Administration and implementation have played a substantial role in West Bengal's land reform success. West Bengal, particularly in the late 1960s and since 1977, has achieved great success not only in amending the legislation to close loopholes and improve potential for success, but also in implementing the land reform legislation and policies. It accomplished this without making substantial changes to the administrative structure itself. Rather, West Bengal improved the administrative structure's integration into rural areas by invigorating local government, peasant organizations and beneficiaries to assist with implementation of land reform policies. The government also crafted procedural rules that favored would-be beneficiaries of the land reform. Perhaps most importantly, implementation of the land reform program relied heavily upon strong and effective leadership from key senior officials.¹⁴⁵

A. Land Reform Administrative Structure in West Bengal

In West Bengal, two interrelated divisions of government have historically been charged with carrying out land reform policies.¹⁴⁶ The first division, the land management branch, is responsible for assessing and collecting land revenue and cesses, for distributing vested land, and managing government lands. The second division, the land settlement branch, is charged with detecting and vesting ceiling-surplus land and the preparation of the village record-of-rights.

The Left Front government made only a few changes to land administration structure when it started the third phase of land reform implementation.¹⁴⁷ However, three relatively minor changes were important. First, land management and land settlement branches were partially integrated for the implementation of Operation *Barga*. Second, the position of Land Reforms Commissioner, which had existed in the mid-1950s, was re-implemented. Third, the post of Additional Advocate General was created to follow land reform cases in the High Court.

The partial integration of the two land administration branches for the purposes of Operation *Barga* is now being more fully and permanently implemented.¹⁴⁸ The government hopes to complete this integration within the coming decade in order to streamline land management and settlement. The new combined body is known as the Directorate of Land Records and Surveys.

¹⁴⁵ For a discussion on the key roles played by two strong and effective leaders, see Bandyopadhyay, *supra* note 55.

¹⁴⁶ DATTA, *supra* note 49, at 38.

¹⁴⁷ *Id.* at 42.

¹⁴⁸ DIRECTORATE OF LAND RECORDS & SURVEYS, WEST BENGAL, A SUSTAINED EFFORT TO STRENGTHEN THE REVENUE ADMINISTRATION AND TO IMPLEMENT LAND REFORMS IN WEST BENGAL (1998).

B. Land Reform Implementation Innovations

As discussed above in section III, land reform legislation was first effectively implemented in the late 1960s under the United Front (UF) government, a coalition of leftist and centrist parties. Up to that time, landlords and large landowners had been very successful in using their powers, their sophistication, and their lawyers to evade the legislation's reach. The UF government, however, found innovative means to effectively implement land reform within the rigid parameters of the Indian Constitution and the basic legislation, provide judicial review of executive action, and set legal and administrative procedures and practices.

The accelerated implementation of land reform under the UF was due in large part to what has been called the “Konar recipe” of legal land reform with popular participation (named for the Land and Land Revenue Minister Hare Krishna Konar).¹⁴⁹ It used a unique combination of established legal principles in the Indian Constitution, the Indian Evidence Act, and the Criminal Procedure Code in a manner that made it much more possible to identify above-ceiling land and *bargadars*. The Constitution of India guarantees the right to form associations and unions and to assemble peaceably.¹⁵⁰ The Indian Evidence Act permits the defeat of documentary evidence on the strength of reliable oral evidence and the Criminal Procedure Code allows public participation for gathering evidence.¹⁵¹

These established principles were combined and used to assemble agricultural workers and *bargadars* in the villages and to gather and use their oral evidence to overcome the documentary evidence used by large landowners and landlords to evade the land reform legislation.¹⁵²

Konar also asked his officers to prepare carefully researched case studies on how landowners were clandestinely transferring ceiling surplus land in order to create methods for legally recovering such lands. The case studies resulted in a ministerial directive and a related brochure that provided details of the methods used throughout West Bengal to evade the ceiling law. The government then developed a multi-stage strategy for an all-out effort to identify land in excess of the ceiling, quickly take such land into state ownership, allocate the land to the appropriate persons, and prevent illegal physical eviction from the allocated land.¹⁵³ The result was that within a period of less than three years, nearly 1 million acres of land vested with the state through strictly legal processes that ultimately stood the scrutiny of the appellate courts.

The ingredients for successful implementation of the ceiling laws included a speedy quasi-judicial process for identifying and vesting ceiling surplus land, effective mass organization of agricultural workers and *bargadars*, and the legal maneuverings to use their oral testimony to demolish well-crafted fictitious documents. What started off as a few reluctant witnesses

¹⁴⁹ Bandyopadhyay, *supra* note 55, at 1795.

¹⁵⁰ CONSTITUTION OF INDIA, art. 19.

¹⁵¹ Bandyopadhyay, *supra* note 55, at 1795.

¹⁵² *Id.*, at 1797.

¹⁵³ *Id.* at 1795.

induced from the government to help identify above-ceiling land soon turned into a voluntary deluge of evidence coming from organized (and often not-so-organized) peasants and peasant groups.¹⁵⁴

Although from 1955 the LRA provided for the recording of the names of *bargadars* in the village record of rights, the *bargadar* provisions of the LRA were not effectively implemented until the late 1970s. Up until that time, the methods used to record *bargadars* involved the traditional revenue court approach in which the poor were at a disadvantage because they, unlike the rich, were in no position to engage lawyers and produce documentary evidence (nearly all sharecropping leases were oral). The Congress Party started to implement this provision of the law in 1970 by using the machinery of the revenue courts, but its attempts were not very successful and only 0.2 million *bargadars* were recorded between 1970 and 1977.¹⁵⁵

The Left Front government, after assuming office in 1977, aggressively pursued the recording of *bargadars* (in addition to re-igniting the process of vesting and distribution of ceiling surplus land). The government began by assessing the ground realities to determine what had prevented the effective recording of *bargadars* in order to develop an effective methodology for such recording. The assessment included rural camps attended by senior government officials, *bargadars* and landless laborers. At such camps, the government officials learned that:

1. The poor peasantry had an overwhelming sense of fear that the landowners still had the power to exact reprisals against them;¹⁵⁶
2. The method of recording in the revenue courts was biased against *bargadars*;
3. The *bargadars* would prefer that the land reform administrators initiate the recording process by coming to the field to determine the existence of sharecropping instead of waiting for the *bargadars* to initiate the process which required them to visit the revenue courts; and
4. The *bargadars* would prefer a public, open process of verification in the field that provided for collective action in order to reduce their fear and enable them to participate boldly.¹⁵⁷

The methodology of Operation *Barga* to record *bargadars* was launched in 1978. A fundamental feature of the strategy was the inclusion of local peasant organizations, *panchayats* (democratically elected local bodies), and beneficiaries themselves in the implementation of the Operation *Barga*. These groups were also involved in the implementation of the ceiling laws. The involvement of the *panchayats* in West Bengal's land reform is of particular interest because West Bengal instituted and empowered *panchayats* earlier than other Indian states. Because the

¹⁵⁴ *Id.* Bandyopadhyay emphasizes that the UF government was careful to use the rule of law and legal methods of obtaining land to wean the poor peasantry away from the violent and extra-legal methods of the naxalite movement.

¹⁵⁵ DATTA, *supra* note 49, at 44.

¹⁵⁶ Many poor farmers who had stood up against the landowners during the UF government phase of land reform experienced reprisals during 1971-77 after the UF government lost power.

¹⁵⁷ Interview with D. Bandyopadhyay, former West Bengal Land Reforms Commissioner, April 3, 2000.

majority of *panchayat* representatives were from the poorer sections of the rural society, their direct involvement in implementing the land reforms helped to ensure that benefits reached the poor.

Operation *Barga* involved six stages. First, land reform administration officials identified areas with large concentrations of *bargadars* by examining settlement records and gathering information from local peasant organizations. Second, squads composed of *Kanugos* (land settlement branch) and Junior Land Reforms Officers (land management branch) of the targeted area were organized.¹⁵⁸

Third, the squad determined the dates and locations of the evening camps held in the targeted areas to inform beneficiaries of the benefits of recording as well as to record *bargadar* names.¹⁵⁹ Within the targeted area the squad conducted camps with a group of villages at a time. The initial evening meeting of the camp was held on a date that was convenient for the largest number of *bargadars* and agricultural laborers at a public place of congregation near their homes. Peasant leaders and village *panchayats* often helped set the dates of the camp. Once the date and venue were finalized, peasant leaders and *panchayats* were informed and notices were placed in conspicuous places.

Fourth, an evening meeting was held with the potential beneficiaries. At the meeting the government officials stressed: (1) the legal and economic benefits that *bargadars* would gain by recording; (2) that tenure security would be ensured; (3) the availability of funding for different anti-poverty programs; and (4) the need for the *bargadars* to create their own supportive organization to guard against reprisals or erosion of benefits.¹⁶⁰ Members of the squad as well as peasant leaders spoke at these meetings. *Bargadars* were asked to make their claims in writing at the end of the meeting.

Fifth, the day after the evening meeting, field officials conducted investigations to determine if information they received at the evening meeting was accurate; that is, whether those putting their names forward were actually *bargadars* and not wage laborers.

Finally, on the third day of the camp the government officers recorded *bargadars'* names, heard any objections and disposed of them.¹⁶¹ Recorded *bargadars* were also given a certificate at this time. Previously they had to wait for a *parcha* to be issued, which could take some time. Under Operation *Barga*, the certificate was issued immediately upon the recording of the *bargadar's* name and was later exchanged for a *parcha* when available. This certificate could be used by *bargadars* to access credit programs and assert other rights.

Operation *Barga* proved to be extremely successful in recording *bargadars*. Between 1978 and 1981 the government recorded over 1.2 million *bargadars*.¹⁶²

¹⁵⁸ DATTA, *supra* note 49, at 45.

¹⁵⁹ *Id.* at 45.

¹⁶⁰ *Id.* at 46.

¹⁶¹ *Id.* at 47.

¹⁶² Bandyopadhyay, *supra* note 55, at 1797.

At the same time that the government implemented Operation *Barga*, they also undertook other measures, such as Re-orientation Camps, to help land reform administrators better understand the life and problems of the rural population they served. At these camps, 20 to 40 land-poor people were selected to attend and the government paid for all of their food and accommodations. As with the evening meetings that were the cornerstone of Operation *Barga*, the location, time, and structure for these camps were carefully selected and designed so that the rural poor would feel comfortable attending. Participants were given the chance to interact with program administrators and to air any grievances.

Similarly, the government continues to hold workshops to facilitate the interaction between upper level administrators and field officers.¹⁶³ These workshops have proven to be a good morale booster for the field officers.

C. Key Features of West Bengal's Effective Land Reform Implementation

It is often said that the most substantial problem with land reform in India is the lack of implementation. This cannot be said of West Bengal. The discussion above highlights several key features of land reform administration in West Bengal that were essential for effective implementation. Many of these features have also been key elements in other successful land reforms around the world.

The key implementation features include the following:

- *Preparatory studies of ground-level realities, particularly the reasons for lack of land reform implementation and how landowners were evading land reform legislation.* These assessments were then used to improve the land reform implementation methods.
- *Conducting public camps or meetings in the villages to explain the land reform objectives, process and benefits.* The meetings were conducted at a time and in a manner to facilitate maximum participation by *bargadars*, landless and near-landless farmers.
- *Government initiation of ground-level, quasi-judicial exercises of identifying above-ceiling land and the existence of tenancy relationships.* Government initiation of the process increased the confidence of tenants and other poor households and lessened the likelihood of landowner reprisals.
- *Quasi-judicial, fact-finding exercise is conducted in the village and in a public setting.* Instead of conducting process in a place that was distant, intimidating, and less transparent, the necessary and crucial fact-finding took place in a friendly and transparent setting. Conducting the fact-finding in the village also allowed for physical inspection of possession by the fact-finders and access to a multitude of knowledgeable witnesses.

¹⁶³ *Id.* at 53.

- *Emphasis on use of oral evidence to overcome the legal sophistication and documentary evidence of large landowners.* Using established legal principles in the Indian Evidence Act to take advantage of oral evidence was crucial because nearly all sharecropping leases were oral and landowners (and their lawyers) became skilled at using fictitious documents to evade the ceiling law.
- *Village-level quasi-judicial process is speedy and subject to limited appeals.* A speedy process by which *bargadars* received their legal rights almost immediately encouraged broader participation and weakened the ability of landowners and landlords to discourage potential beneficiaries from seeking their rights.
- *Meaningful and extensive inclusion of peasant organizations, panchayats, and land reform beneficiaries in the implementation process.* Nearly all successful land reform examples, including those in Japan, Taiwan, South Korea, Vietnam, China, and Kerala, have involved beneficiaries and local, grass-roots bodies in program administration.¹⁶⁴
- *On-going workshops to facilitate interaction between upper-level administrators and field-level officers.* Monitoring the progress of land reform implementation and making necessary adjustments based on field reports has been identified as one of the important guiding principles for successful land reforms from international experience,¹⁶⁵ as has training for the administrators.¹⁶⁶
- *Emphasis on allocating vested land in smaller plots in order to increase beneficiary pool, especially in more recent years.* In the later phases of the land reform, the administrators began allocating the vested land in smaller parcels. Given the fact that large numbers of landless households still remain in the countryside and the evidence indicating the benefits of owning even a very small parcel of land, this implementation policy made good sense.

¹⁶⁴ See AGRARIAN REFORM AND GRASSROOTS DEVELOPMENT: TEN CASE STUDIES (Roy Prosterman et al., eds., 1990), at 322.

¹⁶⁵ PROSTERMAN & RIEDINGER, *supra* note 125, at 192-194.

¹⁶⁶ *Id.* 188.

VI. FIELDWORK OBSERVATIONS

Teams from the Rural Development Institute¹⁶⁷ traveled to West Bengal in April and October 2000 to conduct field research in the three districts of Medinipur, Maldah, and Birbhum. The primary purposes of this preliminary field research were:

1. To observe and better understand the nature, extent, and impacts of the land reform legislation's implementation;
2. To identify ways in which West Bengal's land reform policy, law, and implementation might be further improved; and
3. To design and field-test a questionnaire for a more extensive, 500-household survey on a broad range of rural land issues.¹⁶⁸

In each district, the teams spent the majority of their time talking directly with farmers in either individual or group settings, using Rapid Rural Appraisal methods.¹⁶⁹ The teams also met with local officials in each district, with researchers and other experts, and with state-level officials in the Department of Land and Land Reforms in Kolkata.

A. Profile of Interviewees

The teams interviewed a total of 72 farmers during the two rounds of fieldwork in West Bengal: 27 farmers in Medinipur, 32 in Maldah, and 13 in Birbhum. Of these farmers, 54 owned all of the land they cultivated and had acquired this land through purchase, inheritance or land reform. Ten farmers owned a portion of the land they farmed and were *bargadars*, tenants or contractors¹⁷⁰ on another portion of their holding. Four farmers were *bargadars*¹⁷¹ on all of the land they cultivated. Finally, four interviewees neither owned nor sharecropped land, but worked as agricultural laborers. The largest landowning farmer cultivated 18 acres. However, the average holding size (including owned and *bargadar* land) among all interviewees was 3.4 acres. The interviewees were spread over 32 villages of the three districts.

¹⁶⁷ In April, 2000, the RDI team consisted of Tim Hanstad and Roy Prosterman from RDI, along with Ramesh Deshpande (retired World Bank official acting as an advisor to RDI's India program) and local interpreter and consultant Partha Majumdar. In October, 2000, the team consisted of Hanstad, Dr. T. Haque (Indian National Fellow and a Member of India's Commission on Agricultural Costs and Prices), and Majumdar.

¹⁶⁸ The 500-household sample survey was conducted in December 2000-January 2001 and will be the subject of a subsequent RDI report.

¹⁶⁹ In Rapid Rural Appraisal interviews, farmer 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. The RDI field researchers randomly select interviewees, typically visiting one household at each stop. Researchers take extra measures to avoid the company of local officials in order to maximize the candidness of interviewees. Typical interviews last from one to two hours.

¹⁷⁰ Three of these farmers were contracting in trees in a mango orchard in addition to owning portions of a mango orchard. One of these farmers was a fixed-rent tenant on a five-year term (see the discussion in section VI, below).

¹⁷¹ Not all of these *bargadars* were recorded *bargadars*. See discussion in section VI, below.

Table I: Farmer-Interviewees by District and Agricultural Landholding

	Owners only	Owners/ Bargadars	Bargadars only	Landless	Total
Medinipur	25	1	1	0	27
Maldah	23	5	1	3	32
Birbhum	6	4	2	1	13
TOTAL	54	10	4	4	72

Rice was the most commonly cultivated crop of the farmers interviewed. Some were able to plant two crops of paddy per year, but many stated that lack of access to water kept them from cultivating a second crop. A few farmers grew corn or potatoes as their second crop and a handful of farmers owned or leased mango orchards or grew mulberry trees for silk production.

B. Landlessness

The agrarian structure of West Bengal before the reforms was characterized by both a relatively high incidence of landlessness and a relatively equal distribution of landholdings among those with land.¹⁷² It is estimated that the incidence of landlessness in pre-reform, rural West Bengal was at least one-third.¹⁷³ Despite land reform successes in West Bengal, rural landlessness remains a significant problem in many localities. National Sample Survey data from 1991/1992 indicates that 9% of all agricultural rural households in West Bengal still owned absolutely no land at that time, slightly higher than the all-India figure of 8.1%.¹⁷⁴ Another 44.5% is near-landless in West Bengal, owning less than 0.49 acre. The corresponding all-India figure is 34.3%.

Our fieldwork results are consistent with district-level data indicating that much of the landlessness in West Bengal is concentrated in “pockets.” In eight of the 32 villages we visited, farmers reported that at least half of village households were landless. In three of the villages, farmer interviewees estimated that three-quarters of the households in the village were landless. In contrast, farmer interviewees in six of the 32 villages reported that either no or “very few” village households were landless.

While some landless households in villages we visited were earning income from the service sector, the great majority relied on agricultural labor as the primary source of household income. Agricultural labor wages ranged from 25-60 rupees per day for males and 20-55 rupees per day for females.¹⁷⁵

¹⁷² Sunil Sengupta & Haris Gazdar, *Agrarian Politics and Rural Development in West Bengal*, in INDIAN DEVELOPMENT: SELECTED REGIONAL PERSPECTIVES (Jean Dreze & Amartya Sen eds., 1997) at 141.

¹⁷³ *Id.* 138.

¹⁷⁴ NIRD, *supra* note 3, table 3.2.

¹⁷⁵ Hours per workday ranged from six to eight. In a few of the villages visited, the landowner provided a meal for daily laborers in addition to wages.

Interviewees from all three districts reported that agricultural wages had increased over the past five years. The reported increases ranged from 60% to 300% over the five-year period. Earlier official data shows that real wages of agricultural laborers had already risen sharply in the 1980s, shadowing the trend in agricultural output during this period.¹⁷⁶

C. Land Redistribution

Land reform has had a significant impact in each of the three districts where we conducted fieldwork. Farmers reported that above-ceiling land had been redistributed to poor farmers in 26 of the 32 villages we visited. Most of this land had been allocated as agricultural land parcels, although some had been allocated as homestead plots. Eight households interviewed had received vested agricultural land and one family had lost above-ceiling land. Those who received vested agricultural land received very small amounts, ranging from 0.1 to 1.25 acres. The one farmer whose family had lost land lost a total of 13 acres and received no compensation.

Most interviewees reported that all or the great majority of those who received vested agricultural land in their village had been completely landless.¹⁷⁷ Some farmers noted that not all landless households in their village had received vested agricultural land.¹⁷⁸ At least one farmer stated that households that were close to the party in power were more likely to receive benefits. One farmer stated that most of the vested agricultural land in his village was given to *bargadars* rather than those who had no access to land.

Most interviewees who commented on the relative effectiveness of the land redistribution stated that those who had received agricultural land had realized significant livelihood improvements as a result.¹⁷⁹ There were, however, some exceptions. One farmer (who had not himself received land) reported that households in his village who had received land had not realized significant benefits because they lacked implements and thus were not able to put the land to good use. The same farmer claimed that some of those beneficiaries had mortgaged their land away to larger farmers.¹⁸⁰ A farmer in another village who had received vested land reported that while the former owner had produced three crops per year, he was only able to produce one crop per year.

¹⁷⁶ Gazdar & Sengupta, *supra* 32, at 71-72. Agricultural wage rates grew 4.2% per year in West Bengal from 1970 to 1995, the most rapid growth of all major Indian states during that period. NIRD, *supra* note 3, table 4.5.

¹⁷⁷ Even the farmer whose family lost 13 acres reported that all households that received portions of their former land had been completely landless. The observation that most of those who received vested land were completely or nearly landless is consistent with village-level data from other studies. For example, the WIDER survey found that nearly three-quarters of the beneficiaries in the survey villages had been landless and the remaining had owned only marginal holdings. Sengupta and Gazadar, *supra* 172, 145-146.

¹⁷⁸ Variations in both the amount of vested land and the number of pre-reform landless household villages among villages almost certainly led to two results. First, despite the small sizes of parcels distributed, not every village contained a sufficient amount of vested land to benefit every landless household. Second, while the allocation of land appears to have been relatively equitable within villages, its impact on the landless varied greatly among villages.

¹⁷⁹ Other village-level studies have found that while vested land beneficiaries remain primarily dependent on wage labor for their livelihoods, income from land received has made a substantial contribution to household income. Sengupta & Gazadar, *supra* note 172, at 148.

¹⁸⁰ The LRA prohibits above-ceiling land reform grantees from selling their land, but does allow them to enter into certain types of mortgage arrangements. See discussion *supra* note 129 and accompanying text.

At least some households in 13 of the 26 villages where above-ceiling land had been redistributed had received homestead plots in the land reform or other government schemes. Two farmers interviewed had received such plots. The homestead plots allocated were extremely small, typically 0.04 acres (about 1700 square feet) or less. Even on such tiny plots, we observed that these interviewees and other who had received tiny household plots were growing vegetables or had planted fruit trees for household consumption.

Agricultural laborers who lacked home plots told of the difficulties they faced. They often leased small shelters from larger farmers for whom they worked as laborers or *bargadars*. Those who sharecropped said they could not risk recording as a *bargadar* because they would be evicted from their home. Others also discussed the perils and powerlessness of being an at-will residential tenant in a shelter owned by their employer, suggesting that receiving even a small homestead plot could provide substantial social and economic benefits.

D. Agricultural Land Tenancy

1. Sharecropping Relationships

It appears evident that Operation *Barga* has been widely, although not universally implemented. It would also appear, consistent with numerous village-level studies, that a minority of *bargadars* have chosen not to record their rights, usually because they wanted to maintain, or feared not maintaining, a good relationship with the landowner. Recorded *bargadars* (and at least some unrecorded *bargadars*) have received significant benefits from the anti-eviction and rent control provisions in the law and, as a result, have been empowered in their relationships with landlords. In what may be our most significant finding concerning *bargadar* relationships, many recorded *bargadars* have made or are now making voluntary arrangements with their landlords in which they receive full ownership of a portion of the *barga* land in exchange for releasing their *barga* rights to the remaining land.

2. Sharecropping Arrangements

Bargadars existed in most villages visited in all three districts, but in each district we did visit several villages where farmers reported no *bargadars* present. Of the ten *bargadars* interviewed, five of these had recorded their rights on all their *barga* land under Operation *Barga*, three had chosen not to record their rights, one had unsuccessfully attempted to record his rights, and one had recorded his rights on part but not all of his *barga* land.¹⁸¹

Importantly, we found no reports of *bargadar* evictions in the past ten years. Operation *Barga* appears to have provided long-term, secure, inheritable rights to those who recorded, and probably granted security even to many unrecorded *bargadars*. This is consistent with findings

¹⁸¹ Village studies provide varying reports of the proportion of *bargadars* that have recorded. Many of the more recent studies report the percentage of *bargadars* that have recorded in their sample area to be 65-90%%. (Saha *infra* note 182; Sengupta & Gazadar *supra* note 172), although some disagreements exist about the proportion of *bargadars* who are not recorded. See e.g., G.K. LEITEN, CONTINUITY AND CHANGE IN RURAL WEST BENGAL (1992). Bhaumik's thorough study of tenancy relations in six villages of Medinipur during 1986-1987 found that only 47 of 104 *bargadars* had recorded in these villages. BHAUMIK, *supra* note 42, at 75. Estimates of the total number of *bargadars* that had recorded as of 1997 ranged from 74% to 98%. Saha, *infra* note 182, at 8.

in several village studies.¹⁸² Other studies that have reported recent “evictions” may have mistaken voluntary sale arrangements between the *bargadar* and landlord to be evictions. These are discussed in more detail below.

The LRA provides that the *bargadar* must turn over 50% of the crop if the landowner supplies the non-labor inputs, and 25% of the crop if the *bargadar* provides such inputs. Recorded *bargadars*, in nearly all cases, appeared to be paying something at least approximating the legally controlled share amount (see Table II below).¹⁸³ In several cases non-*bargadar* farmers reported that some *bargadars* in their village paid their landlords nothing, typically because the landowners were absent and had not been demanding rent. The one recorded *bargadar* we interviewed who was paying more than the legal limit (interviewee 8.2) realized that he was legally entitled to keep a larger share. He gave three reasons for his decision to give the landowner more than the legally required share: (1) the landowner was very poor; (2) the *bargadar* had a close, trustful relationship with the landowner; and (3) the landowner used the proceeds for village betterment.

Table II: Sharecropping Arrangements for Recorded *Bargadar* Interviewees

Interviewee	Sharecropping Arrangement
6.2 (Medinipur)	<i>Bargadar</i> provides all inputs and receives 75% of crop
8.2 (Medinipur)	<i>Bargadar</i> provides all inputs and receives 67% of crop
10.1 (Maldah)	Owner provides cash inputs and crop split 50/50
17.3 (Birbhum)	<i>Bargadar</i> provides all inputs and receives 75% of crop
17.4 (Birbhum)	<i>Bargadar</i> receives 50% of crop if owner provides cash inputs and 75% of crop if <i>bargadar</i> provides all inputs.

Four additional *bargadars* interviewed had not recorded their rights. In three of the four cases, the share arrangements were less favorable to the *bargadar* than those provided by law (see Table III below).

¹⁸² Uday Shankar Saha, *Operation Barga for Sharecropping System Reform – Impact of Two Decades Experience in West Bengal, India* (1988) (unpublished paper), at 8; S.S. PAL, IMPACT OF TENANCY REFORMS ON PRODUCTION AND INCOME DISTRIBUTION: A CASE STUDY OF OPERATION BARGA IN WEST BENGAL (Policy Paper No.1, National Center for Agricultural Economics and Policy Research, 1995); J.K. Ghosh, *The Changing Agrarian Scene Under the Impact of Land Reforms Program: A Case Study of Operation Barga Program in West Bengal*, in, ECONOMY OF WEST BENGAL: PROBLEMS AND PROSPECTS (R. Chaudhury & D. Sarkar eds.,1990); and Banerjee et al., *supra* note 34.

¹⁸³ Numerous village studies have compared the pre-reform and post-reform produce share for both recorded and unrecorded *bargadars*. These studies have generally found that: (1) produce shares retained have increased for both recorded and unrecorded *bargadars*, often substantially; (2) the increase is typically greater for recorded *bargadars*; and (3) while the produce share has increased, it is still often less than the legally stipulated share. See e.g., Saha, *supra* note 182; S.K. BHAUMIK, *supra* note 42; PAL, *supra* note 182; Sengupta & Gazadar, *supra* note 172, at 150-151; Glyn Williams, *Panchayati Raj and the Changing Micro-Politics of West Bengal*, in Rogaly et al., *supra* note 24, at 241; and LEITEN, *supra* note 181. The legally stipulated share, while not always strictly followed, has provided bargaining power and leverage for *bargadars* to increase their produce share. Exercising that right almost certainly involves transaction costs, at least in terms of goodwill, which probably helps explain why many *bargadars* are willing to accept less than the amount to which they are legally entitled. The possible impact of dependence on the landlord for a shelter, where that is the case (see discussion in text above), is a factor worthy of further study.

One of the unrecorded *bargadars* (interviewee 17.1) had attempted to record his rights, but had been thwarted because of ongoing litigation concerning the land parcel.¹⁸⁴ The other three chose not to record their rights, primarily because they have had good relationships with the landowner and want to maintain those relationships.¹⁸⁵

One of the three unrecorded *bargadars* (interviewee 8.5) has a share arrangement even more favorable than that prescribed by law. Several non-*bargadar* interviewees volunteered that Operation *Barga* has benefited *bargadars* even when they do not record because the general policy climate favoring *bargadars* has improved their bargaining power.¹⁸⁶

Table III: Sharecropping Arrangements for Unrecorded *Bargadar* Interviewees

Interviewee	Sharecropping Arrangements
8.5 (Medinipur)	<i>Bargadar</i> provides all inputs and receives 80% of crop
17.1 (Birbhum)	<i>Bargadar</i> provides all inputs and receives 45% of crop
17.2 (Birbhum)	Cash expenses and crop are shared 50/50
17.5 (Birbhum)	Cash expenses and crop are shared 50/50

3. Turning *Bargadars* Into Landowners

Perhaps the most interesting finding from our rapid appraisal fieldwork was that numerous *bargadars* and landlords were making or had made deals which resulted in the *bargadar* receiving either ownership of a portion of the *barga* land (ranging from 25% to 60% of the land) or a cash equivalent, in return for giving up protected *bargadar* rights on the remaining land. Such deals had occurred in at least half of the villages in which we inquired, and in most of these villages, the deals were described as “common.” We received no reports that such deals were coercive. On the contrary, all those describing the deals emphasized that they were voluntary.

Although some past village studies have mentioned such deals, two aspects from our village findings differed from those reports. First, earlier reports have typically described such deals as being (or suspected them as being) coercive, whereas our respondents reported the deals to be non-coercive. Second, an earlier village study found such deals to be rare, whereas we found

¹⁸⁴ This farmer has been a sharecropper for decades on seven acres of land owned by a single family. Most of these seven acres were declared above-ceiling land. The landowner contested this declaration and the matter has been in litigation ever since. Meanwhile, the *bargadar* applied for recorded *bargadar* rights, but his application has been tied up in the litigation.

¹⁸⁵ Leiten found in his village study that most of the *bargadars* who had not recorded their rights had chosen not to do so because they wished to maintain a cooperative relationship with their landlord. LEITEN, *supra* note 181. Other studies found greater evidence of economic interaction, including provision of credit, between landlords and unrecorded *bargadars* than between landlords and recorded *bargadars*. Bhaumik found that unrecorded *bargadars* were more likely than recorded *bargadars* to be of the same caste background as their landlords, from which he inferred that decisions to not record are unlikely to be overtly coerced. BHAUMIK, *supra* note 42, at 80 and 88.

¹⁸⁶ The positive externalities provided by Operation *Barga* to unrecorded *bargadars* have been corroborated by many village studies. According to the law, the legal protections for *bargadars* apply whether or not a *bargadar's* rights are recorded, although recording does help to establish the factual basis of a *bargadar's* assertion of those legal rights.

them to be quite common.¹⁸⁷ The latter finding may suggest a recent increase in such transactions.¹⁸⁸

We found two basic types of deals occurring. In the first type, which appeared to be more common, the *bargadar* acquires ownership rights on a portion of the erstwhile *barga* land and the landlord (or a third party) acquires unencumbered ownership rights on the remaining land. In the second type, the *bargadar* receives cash equal to a portion of the market value of the (unencumbered) *barga* land and the landlord (or a third party) acquires unencumbered ownership rights on all of the *barga* land.

In both cases, because of legislative provisions protecting the *bargadar*, the deals were typically two-step transactions. In the first step, the landowner gives the *bargadar* full ownership rights to all the *barga* land. In the second step, the *bargadar* either gifts or sells a pre-determined portion of the land back to the landlord.

Because two steps are necessary, two consequences result. First, such deals only occur where a substantial element of trust exists between the landowner and *bargadar*. Landowners who have strained relationships or who otherwise do not trust their *bargadars* are not likely to take the first step of giving the *bargadar* full ownership of all *barga* land. Farmer interviewees acknowledged that a trusting relationship is a prerequisite for such deals. Second, such deals involve double the transaction costs of normal land sales.

These arrangements appeared to be more common in Maldah District than in Medinipur or Birbhum. In one village visited in Maldah, there had been 50 recorded *bargadars* in the village, and all were reported to have had concluded such voluntary deals with their landlords. In other villages in Maldah, farmer interviewees told us that such deals were “very common” or “fairly regular.” In Medinipur and Birbhum, farmer interviewees were more likely to describe the frequency of such deals as “occasional,” although we were told in one Medinipur village that such deals had occurred on 40% of the village’s *barga* land.

Bargadars involved in such deals also appeared to be acquiring a larger share of the land in ownership in Maldah than in the other two districts. In Maldah, the *bargadar*’s share of the *barga* land received in ownership ranged from 25% to 60%, and the most common share was 50%. In the villages visited in Medinipur and Birbhum, *bargadars* were more commonly receiving 25% of the *barga* land in ownership.

One disturbing finding was that at least some local land officials viewed such deals as illegal and were actively trying to prevent such deals or invalidate them when discovered. We interviewed a local official in Maldah who, when asked, claimed that such deals were not occurring (even though we had learned otherwise from farmers) and that such deals are illegal.

¹⁸⁷ One study found two such cases in a 344-household sample. Banerjee et al., *supra* note 34.

¹⁸⁸ Although, at least one study found instances of similar deals occurring at the beginning of Operation *Barga* before the particular *bargadar* had recorded his rights. This study of two West Bengal villages found eight cases where, at the beginning of Operation *Barga*, landlords offered to transfer ownership rights on half of the *barga* land to the *bargadars* for no charge on the condition that the *bargadars* would not claim tenancy rights on the remaining half of the land. Vikas Rawal, *Agrarian Reform and Land Markets: A Study of Land Transactions in Two Villages of West Bengal, 1977-1995*, 49 ECONOMIC DEVELOPMENT AND CULTURAL CHANGE (2001), at 623.

Land officials in Birbhum told us that they had received instructions from above to invalidate such deals when discovered.

On the contrary, we believe that such deals, when voluntary and not involving coercion, should be encouraged and facilitated. This could be accomplished by adopting regulations that allow such deals to be achieved in one step in order to reduce the transaction costs and thus make them available to parties who lack a trusting relationship. After further study to better understand the nature and terms of the existing spontaneous deals, the regulations might also set a minimum share for the *bargadar*. The government might also encourage such deals through a public information campaign aimed at *bargadars* and landowners. In any case, government officials should stop trying to prevent or invalidate such voluntary and non-coercive deals.

4. (Illegal) Fixed-Rent Tenancies

The LRA prohibits fixed-rent agricultural leasing relationships. Our fieldwork indicated that this prohibition on fixed-rent leasing has prevented virtually all long-term fixed-rent leases and has prevented widespread fixed-rent leasing in non-irrigated areas. We found, however, that seasonal, fixed-rent lease arrangements during the *boro* season are fairly common in irrigated areas. Such seasonal, fixed-rent lease arrangements have been reported in numerous village studies.

In Medinipur District, we found seasonal fixed-rent tenancies in several villages where irrigation existed. The typical situation involved owners whose farm operations were so small or marginal that they could not afford the high input costs (especially water) necessary to grow a winter crop. During the winter such landowners rented out some or all of their land to lessees who would pay all input costs and pay the owner a fixed-rent in cash or kind, typically equivalent to between 1/6 and 1/3 the value of the gross crop (but on a fixed-rent, not share basis). The arrangements were verbal and the landowners typically rotated lessees from one year to the next because they feared that the lessees might assert “*bargadar*” rights if they remained on the land for an extended period.

Exceptions existed. In one village, a farmer reported that many of the seasonal, fixed-rent lessees were landless. In another village that lacked irrigation, a farmer reported that some landowners rent out their land on a seasonal, fixed-rent basis in the summer.

In Maldah District, the situation was similar to that in Medinipur. In most villages where winter crops were grown, some significant amount of the winter cropped land was leased on a seasonal basis. In most cases, the landowners who leased such land were those who could not afford the high input (particularly water) costs in the winter and the lessees either were those who had access to financial resources sufficient to afford the high input costs or were neighboring farmers who had access to water.¹⁸⁹ In such cases, the lessees paid for all input costs and paid the landowner a fixed-rent typically equivalent to between 1/6 and 1/4 of value of the gross crop.

¹⁸⁹ In many cases, the landowners would self-cultivate a portion of their land during the winter season and lease out the remainder.

In other (but fewer) cases, the lessees were landless or marginal farmers who supplied the labor but paid none or only a portion of other input costs. These lessees typically paid the landowner a fixed-rent equivalent to about half the value of the gross crop.

As in Medinipur, the arrangements were verbal and landowners typically rotated lessees because of their apprehension that lessees may try to assert *bargadar* rights.

In Birbhum, we again found a significant prevalence of seasonal, fixed rent leasing, most of it during the winter, but some also in the summer. In the winter, the lessees were typically better-off farmers, often those who had sunk shallow tubewells and thus had access to the needed water in winter. These lessees paid for all inputs and paid a fixed rent that typically equaled 1/5 to 1/4 of the value of the gross crop.

Farmer-interviewees in Birbhum acknowledged that: (1) landowners often do not lease out their land because they are afraid that tenants will record as *bargadars*; (2) even with seasonal leasing arrangements, landowners run the risk that seasonal tenants will try to record as *bargadars*; and, thus (3) such arrangements are not entered into without a substantial degree of mutual understanding and trust between the parties.¹⁹⁰

At least two interviewees in Birbhum opined that restrictions on prospective leasing (as distinguished from leasing that began in the past) of agricultural land work against the interests of all farming households and should be removed. These interviewees stated that the leasing restrictions cause some landowners to leave land fallow or farm it inefficiently, and also prevent land-poor, labor-rich households from leasing in additional land.

E. Land Sale Markets

Empirical evidence on rural land sale transactions in India is limited. Most of that evidence from states other than West Bengal, however, appears to show that: (1) rural land sale markets are relatively inactive; and (2) the relatively large landholders are net buyers of land and relatively small landholders are net sellers of land.¹⁹¹ Two studies from West Bengal, however, present a contrasting picture indicating that land reform and agrarian change can cause land sale markets to behave quite differently. These studies reveal rural land markets that are not only active, but markets that tend to deconcentrate ownership of rural land.¹⁹² That is, the net

¹⁹⁰ Bhaumik, in his comprehensive study in twelve West Bengal villages, found that unrecorded *bargadars* had an easier time renting in land during the boro season than recorded *bargadars*, presumably because unrecorded *bargadars* were perceived by landowners as less likely to try to assert anti-eviction and rent control rights. BHAUMIK, *supra* note 42, at 140-141.

¹⁹¹ See e.g., KRIPA SHANKAR, LAND TRANSFERS: A CASE STUDY (1993) (in Uttar Pradesh); S.S. Grewal and P.S. Rangi, *An Analysis of Agrarian Structure in Punjab*, INDIAN JOURNAL OF AGRICULTURAL ECONOMICS 24 (1981); Kailash Sarap, *Land Sale Transactions in an Indian Village: Theories and Evidence*, INDIAN ECONOMIC REVIEW 30, no. 2 (1995) (in Madhya Pradesh); BALDEV SINGH, LAND MARKET: THEORY AND PRACTICE IN RURAL INDIA (1982) (in Punjab); and Tim Hanstad, *How are Rural Land Sale Markets in Karnataka Impacting the Poor's Access to Land?* (paper presented at National Workshop on Access and Rights to Rural Land, Bangalore, 23-24 Oct. 2001) (in Karnataka). A smaller number of non-West Bengal studies reviewed show land sale markets resulting in little net change in the landholding structure, with both upward and downward mobility. See G. Mani and Vasant P. Gandhi, *Are Land Markets Worsening the Land Distribution in Progressive Areas?: A Study of Meerut District in Western Uttar Pradesh*, INDIAN JOURNAL OF AGRICULTURAL ECONOMICS 49, no. 3 (1994); and D.W. Attwood, *Why Some of the Poor Get Richer: Economic Change and Mobility in Rural Western India*, CURRENT ANTHROPOLOGY 20, no. 3 (1979) (in Maharashtra).

¹⁹² See Vikas Rawal, *supra* note 188 and BHAUMIK, *supra* note 42.

transfer of land through the market was from relatively large landowners to relatively small landowners.¹⁹³

Land sale markets were reported to be “somewhat” or “fairly” active in many, but not all of the villages we visited. Overall, agricultural land prices ranged from 30,000 to 160,000 rupees per acre, although prices were sometimes significantly higher in peri-urban areas or along highways where demand for non-agricultural use was high. Nearly every interviewee appeared to be generally aware of the current market prices for agricultural land within their village. Important factors affecting price included access to irrigation,¹⁹⁴ location, land fertility, and whether the owner was a Scheduled Tribe member.¹⁹⁵

Most land sale transactions involved very small amounts of land, typically a small fraction of an acre. The most common reason for selling land was to raise money for dowry and costs for a daughter’s wedding.¹⁹⁶ Poor health or other distress-related reasons were also relatively common. Other, but less common reasons cited for selling included relocating from the area and consolidation of land parcels.

In numerous villages, we asked about who was buying and who was selling land. The picture varied. In general, both “small” and “big” farmers participated in the sales market as both buyers and sellers. In one village in the northeastern portion of Medinipur District, farmers reported that most sellers were small and marginal farmers who needed money for their daughter’s marriage, and that nearly all buyers were large farmers or outsiders (because few or no small or marginal farmers had sufficient liquidity to purchase land). In contrast, in a Birbhum District village, farmers reported that most land sales market activity involved big farmer sellers and small farmer purchasers. In a neighboring village, small farmers comprised the majority of both sellers and purchasers.

We were surprised that most farmers reported land sale transactions in West Bengal to be relatively expedient, simple, and inexpensive.¹⁹⁷ Stamp duties and registration fees typically totaled 7.5% of the government-assessed price for land. Most farmers reported that government

¹⁹³ Rawal points to three factors that have caused rural land sales markets in West Bengal to equalize the landownership structure rather than polarize the structure as such markets have done in many other regions of India. First, the land reform improved the purchasing power of the poor. Second, the political momentum for land reform and the land reform process itself convinced a number of large landowners that it would be advantageous to sell some ceiling-surplus land. Third, the provisions in the West Bengal LRA that aim to restrict absentee ownership (§ 2-8) impelled numerous absentee owners to sell land. Rawal, *supra* note 188.

¹⁹⁴ In many cases, the price of irrigation water available significantly affected the price of the land. For example, we found that irrigation water in the command area of a publicly constructed deep tubewell was typically a fraction of the market price for irrigation water in the same locality. Correspondingly, land prices in the deep tubewell command area were typically 33-100% higher than other land which was irrigated by private sources.

¹⁹⁵ Scheduled Tribe members are restricted by the West Bengal LRA from freely selling their land to non-tribals (they can sell only with the prior permission of the Revenue Officer). This restriction is designed to protect unsophisticated and illiterate ST landowners from being exploited through unscrupulous dealings, a phenomenon that has occurred in most ST areas of India. The restriction on sale, however, also results in lower prices for ST-owned land.

¹⁹⁶ See note 207 and accompanying text.

¹⁹⁷ This appears to contrast with the situation in the neighboring state of Orissa, where a recent study found that formal transaction costs (registration fees and stamp duties) totaled about 17 percent of the value of the land transacted. Moreover, the study indicated that informal transaction costs upon sale (e.g., making repeated visits to *tehsildar*'s and registrar's office, “unofficial” payments to expedite issuance of relevant documents, but *not* accounting time and other opportunity costs) total at least another 17% of the land's value. R. MEARN'S & S. SINHA, SOCIAL EXCLUSION AND LAND ADMINISTRATION IN ORISSA, INDIA, (World Bank Policy Research Working Paper No. 2124, May 1999) at 28-32.

officials involved in the transaction did not insist on significant, additional “unofficial” payments. Farmers reported that the parties to a sale typically made only one or two visits to government offices to complete and register the sale. Mutations, which used to take up to three years, were reported now to take one month or less.¹⁹⁸ Farmer interviewees in a few villages volunteered that copy machines had substantially shortened the time necessary to get a mutation.

F. Land and Gender

Studies in West Bengal and other parts of India have drawn out critical relationships between women’s inferior rights to and control over land on the one hand and unequal gender relations within households and the society at large on the other.¹⁹⁹ Land reform programs offer the potential for using such relationships to address gender inequalities by providing land in the joint ownership of husband and wife or independent ownership for women. Unfortunately, it appears that such potential has not yet been adequately captured in West Bengal.

1. Names on Land Documents

Most interviewees were asked who in the household holds legal rights to the agricultural and homestead land. Nearly all stated that only the husband held legal rights to the land. A few knew of at least one married couple in their village that held joint rights to land, but even these interviewees acknowledged that the practice is very rare. This appears true not only for purchased and ancestral land, but also for land granted to families by the government. However, one interviewee did state that in the area where he lives, the government was titling wasteland and distributing it in the names of both spouses.

Of the few interviewees who were women, one stated that she was unhappy that her family’s *barga* right was only recorded in her husband’s name because after her husband dies she fears that her family will not have an incentive to care for her.

2. Inheritance

When a Hindu dies intestate (without a will) his or her land is supposed to devolve according to the Hindu Succession Act.²⁰⁰ If a valid will has been written, the Succession Act does not apply, and the property devolves according to the decedent’s wishes. In the school of Hindu law followed in West Bengal, all property (whether self-acquired or ancestral) is treated similarly for purposes of intestate succession.²⁰¹ Under the law, all property is to devolve in the

¹⁹⁸ The recent World Bank study in neighboring Orissa indicated that effecting the necessary changes in land records following a sale transaction in that state can take a minimum of 3 months, but more typically took 3-5 years, and could take as long as 12 years. *Id.*

¹⁹⁹ See Jayoti Gupta, *Voices Break the Silence*, in A JUST RIGHT: WOMEN’S OWNERSHIP OF NATURAL RESOURCES AND LIVELIHOOD SECURITY (Nitya Rao & Luise Rurup eds., 1997); and BINA AGARWAL, A FIELD OF ONE’S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA (1994).

²⁰¹ In most of Bengal the *Dayabhaga* system is followed, and this report will limit its description of the Hindu Succession Act to it. Most of the rest of India is governed by the *Mitakshara* system, which unlike the *Dayabhaga* system, treats separate property and joint family (ancestral) property differently.

first instance in equal shares to the decedent's sons, daughters, widow, and if the decedent is a man, to his mother.²⁰² Furthermore, if a decedent was a lawfully cultivating *bargadar*, his or her right to cultivation passes to his or her legal heir, if there is one, or to the person of the decedent's choosing if no legal heir exists.²⁰³

Our field research suggests that the Hindu Succession Act is not widely followed in rural West Bengal. Most Hindu interviewees reported inheritance practices that differ from the intestate succession prescribed by the Hindu Succession Act. Such practices appear to be governed more by local custom than by formal statutes.

Nearly all Hindu male interviewees stated that when they die their land would pass to their sons in equal shares. Some stated that if their wife survives them, the land will first pass to their wife or will be divided between wife and sons, but that on the wife's death the land will pass entirely to the sons. A few realized that daughters had a right to demand a share of the family's land under the formal law, but reported that daughters very rarely, if ever, demanded their share of the family's land.

Muslim intestate succession is governed by uncodified Muslim Personal law, which grants widows and daughters the right to a share of family property, though the share is smaller than that of sons.²⁰⁴ Unlike under Hindu law, the amount of property that a Muslim can bequeath is limited to one-third, so wives and daughters cannot be completely disinherited, as they potentially can be under Hindu law. In West Bengal, unlike many other India states, Muslim Personal Law governs the succession of agricultural land as well as all other property.²⁰⁵

We asked two Muslim interviewees about land inheritance patterns in their community. Both indicated that the Muslim Personal Law is generally followed in their village. If a husband dies first his wife would receive one-eighth of the husband's property. Sons and daughters will inherit the rest, but daughters will receive shares that are half the size of the sons' shares.

3. Dowry/Wedding Costs and Relationship to Land Sales

Both the giving and taking of dowry have been illegal in India since 1961.²⁰⁶ Despite this formal prohibition, the practice of paying a dowry was widespread in the areas studied, with the exception of areas where Scheduled Tribe members are prevalent. In the Scheduled Tribe areas visited, grooms customarily paid bride prices.

²⁰² HINDU SUCCESSION ACT §§ 8 and 15 (1956).

²⁰³ LRA § 15A. State laws governing the devolution of tenanted land, ceiling or fragmentation trump the dictates of the Hindu Succession Act. HINDU SUCCESSION ACT § 4 (1956).

²⁰⁴ MUSLIM PERSONAL LAW (*SHARIAH*) APPLICATION ACT (1937). The rules of succession under Muslim Personal Law are quite complex, but in a nutshell, according to the Hanafi School of Sunni Law, which most Indian Muslims follow, if there is both a woman and man at the same degree of relation from the deceased (i.e. a brother and sister) the women will receive a share half the size of the man's.

²⁰⁵ The Muslim Personal Law (*Shariat*) Application Act specifically excludes agricultural land from its coverage. So agricultural land rather than being governed by Muslim Personal law devolves according to custom. However, in West Bengal, unlike some Indian states, no strong custom regarding the inheritance of agricultural land existed, so Muslim Personal Law is deemed to apply to agricultural land as well other property and thus daughters and wives have the right to inherit a share of agricultural land. AGARWAL, *supra* note 199, at 232.

²⁰⁶ DOWRY PROHIBITION ACT § 3 (1961).

Of the farmers interviewed many stated that land is rarely given for dowry, but is often sold to meet dowry and wedding expenses. Among those interviewed, we found that the need to meet dowry and wedding costs upon the marriage of a daughter was the leading cause for selling land. This observation is consistent with several village studies conducted in West Bengal, as well as studies in other parts of India.²⁰⁷ At least one study found that dowry is a major factor in both land accumulation by those buying land and land fragmentation by those forced to sell land.²⁰⁸

Dowry prices are extremely high relative to income, agricultural wages, and the prices of agricultural land. Of those we asked about dowry costs, the average cost reported was 36,000 rupees. The highest reported dowry was 100,000 rupees. Wedding costs are an additional cost for the bride's family and those, we found, were roughly equivalent to the dowry. Thus, in our small sample, on average, a bride's family would pay about 72,000 rupees and as much as 200,000 rupees (two lakhs) to secure a husband for their daughter.

In comparison, annual per capita income in West Bengal (rural and urban combined) is less than 13,000 rupees, and is much less in rural areas. Typical land costs in West Bengal range from 50,000 to 120,000 rupees per acre and the average arable landholding for a rural household is about 1.3 acres. Therefore, the average combined cost that a bride's family must bear for a wedding and dowry is very roughly comparable to the value of land for the average rural landowner.²⁰⁹ Viewed another way, the average combined cost for a wedding and dowry in our sample is roughly equivalent to what an agricultural laborer would earn from 1,500 days (perhaps six years) of work. By almost any standard, the costs to a bride's family for a dowry and wedding are extremely high.

The extremely high dowry and wedding costs have at least three important and related consequences. First, these high costs are a driving force behind much land sale market activity in the villages. The need to raise money for dowry and wedding costs appears to be the most common reason for selling land. Second, land being transferred through the land sale market is almost certainly moving generally away from households with a relatively greater number of daughters and probably generally to households with a relatively greater number of sons. Third, the crippling dowry and wedding expenses almost certainly have a strong downward impact on the desirability of having daughters and, therefore, their status.

4. Disparity in Agricultural Labor Wages

In two districts where field interviews were conducted, agricultural wages paid to women were significantly lower than wages paid to men. In Medinipur, while men were paid an average of 46 rupees per day, women were paid an average of 36 rupees per day. In Maldah men were paid 41 rupees per day and women 31 rupees per day. However, in Birbhum half of the

²⁰⁷ See, e.g., Jayoti Gupta, *Land, Dowry, Labour: Women in the Changing Economy of Midnapur*, SOCIAL SCIENTIST, vol. 21, nos. 9-11 (Sep.-Nov. 1993) at 77; Rawal, *supra* note 188; and BHAUMIK, *supra* note 42.

²⁰⁸ Gupta (1993), *supra* note 207, at 77.

²⁰⁹ One farmer interviewed said that he would have to sell his entire land holding of 2 *bighas* (about 0.67 acre) to meet his daughter's dowry and wedding costs, which he estimates will amount to a total of 45,000 rupees.

respondents stated that women and men were paid the same amount. The average wages described in this district were 49 rupees per day for men and 46 rupees per day for women.

In general, men and women worked the same number of hours, and several interviewees attributed the wage disparity to the different type of agricultural work that men and women performed. Several respondents said that men's tasks included plowing and applying fertilizer to the fields while women's work including weeding and transplanting. Additionally, three respondents stated that no women in their localities undertook agricultural labor for wages.

G. Water Markets

An increase in irrigation has been a key proximate cause, if not *the* key engine of agricultural growth in West Bengal over the last two decades.²¹⁰ Most investment in irrigation has been undertaken by entrepreneurial farmers who drilled shallow tubewells and mini-submersible tubewells. Public intervention and cooperative collective action has played a relatively minor role. Enterprising farmer-investors have overcome the problems of scale (landholdings that are almost always significantly smaller than the tubewell command area), in part, by selling water from their wells to neighboring farmers.²¹¹ The new water markets are an important institutional innovation that has been hailed by many observers and viewed with alarm by others. Those who hail the development of water markets point to its important contribution to agricultural growth in West Bengal. Others warn of the new distributional issues accompanying the development of water markets. Many observers have noted that access to water is increasingly becoming the factor that separates the "haves" from the "have-nots" in rural West Bengal. If so, increasing the access of poor household's access to water assets may be as important as increasing their access to land.

Our observations were consistent with those of many other researchers that access to water is becoming increasingly important as a factor in both growth and distributional equity. Access to irrigation water is a crucial determinant to agricultural success in all three districts. Farmers often told us that lack of irrigation water was one of the most important problems, if not the most important problem in their village. In most villages, access to irrigation water (typically via a shallow tubewell, a publicly-owned deep tubewell, or lifted from a tank, pond, or canal) means not only the difference between getting one and two-grain crops, but such access provides insurance against drought during the *aman* (main cropping) season.

Accessing groundwater for irrigation by sinking a "shallow" tubewell and lifting the water with a diesel or electric pump was the most common and significant farm-level irrigation improvement in all three districts we visited. These shallow tubewells have command areas ranging from 3 to 15 acres.²¹² The initial costs for drilling the tubewell and purchasing the pump, pipes, and other equipment ranged from 20,000 to 85,000 rupees, depending upon depth

²¹⁰ See discussion, *infra* notes 24-40 and accompanying text.

²¹¹ Some farmers also combat the scale problem by leasing in land during the *boro* (winter) season (when supplemental irrigation is typically necessary).

²¹² These command areas can be roughly doubled in some areas with the use of a more expensive submersible pump. Such pumps (and other more powerful surface pumps) typically require electricity (rather than diesel) which is rarely available in the fields.

of groundwater, nature of soil, and type of pump. This initial investment is beyond the ability of most farmers, given lack of savings and underdeveloped credit markets.

A small number of villages we visited had publicly-owned “deep” tubewells. These deeper and much more expensive wells typically had command areas of about 50 acres.

Irrigation water markets existed in most villages where shallow tubewells were present. Such water markets likely developed because: (1) typically only a minority of farmers could afford to sink tubewells; and (2) the command areas of such wells almost always exceeded the landholding of the tubewell owner.²¹³

We found four different types of payment arrangements for privately supplied irrigation water from shallow tubewells. The first and most common (especially in Medinipur District) was for a fixed cash price per acre per season. The price was fairly consistent in the three districts, typically about 3,000 rupees per acre per season. The second arrangement, which was most common in Maldah, was for a fixed portion in cash and a fixed portion in grain (such as 2,400 rupees and 300 kilograms of rice per acre per season). The third arrangement was to pay an hourly price for water, which ranged from 30 to 50 rupees per hour. Finally, we found that some shallow tubewell owners were supplying water to other farmers in exchange for a share of the crop. When the water tenant paid the fuel costs for the pump, they would also provide 1/8 of the total crop to the waterlord.

Three deep tubewells were present in three villages we visited. All three wells were publicly owned. In each case, the public tubewell owner/operator priced the irrigation water at a small fraction of the market price, from 240 to 300 rupees per acre per season. One farmer we interviewed had part of his land in the command area of a shallow tubewell owned by a neighboring farmer and another part of his land in the command area of a publicly-owned deep tubewell. He was paying 3,000 rupees per acre per season for irrigation water from the shallow tubewell and only 240 rupees per acre per season for water from the deep tubewell. He also noted that the existence of inexpensive irrigation water resulted in land costing 33% more in the deep tubewell command area.²¹⁴

²¹³ The small and fragmented nature of most landholdings means that the command area of a given tubewell usually includes land owned by several different households.

²¹⁴ Double-cropped, irrigated land outside the deep tubewell command area was worth 120,000 rupees per acre and equivalent land inside the command area was 160,000 rupees per acre.

VII. CONCLUSION, LESSONS, AND RECOMMENDATIONS

West Bengal is widely recognized as having relatively exceptional land reform success among Indian states—land reform success that has contributed to increased equity and productivity. As such, it warrants attention from jurisdictions that wish to promote distributional equity while increasing agricultural productivity. Despite political and socio-economic differences, other Indian states and even other countries can draw useful lessons from West Bengal's experience and apply them appropriately to their own unique settings. In this final section, we compile and briefly describe some of the best aspects of West Bengal's land reform legislation and implementation.

Of course, not everything about West Bengal's land reform experience is exemplary. Throughout earlier report sections we identified aspects of West Bengal's legislation and experience we believe to be potentially problematic and have identified ways in which West Bengal might further improve ongoing reform efforts. We have done this as lawyers and land reform experts who have studied land and land reform law and experience in many other developing countries. This final section includes a list of those potentially problematic aspects as well as several recommendations for further benefiting landless and land-poor households in West Bengal.

A. Legislation (West Bengal Land Reforms Act): Positive Aspects

General

- *Legislation begins with the presumption that landowners have broad and general rights to transfer and bequest their land. § 4(1).* The LRA presumes that landowners have broad rights to transfer unless the LRA specifically limits that right. This differs from the situation in many jurisdictions, especially countries transitioning from communist economies, where land legislation includes broad prohibitions on certain types of transfers such as land sale or mortgage.
- *Landowners must reside in the locality where land is situated. § 2(8).* Especially in those agrarian societies where population pressure on land is great, such a requirement can help facilitate owner-operatorship.
- *Definition of “land” includes non-agricultural land. § 2(7).* This closes a loophole present in the legislation of most other states that prompted landowners to reclassify land in order to evade the ceiling-surplus and/or tenancy reform provisions.
- *Restrictions, but not blanket prohibition, on alienation of land owned by Scheduled Tribe (ST) members to non-ST members. § 14B-C.* It is necessary to place restrictions on such sales to protect ST members from the exploitative dispossession practices that have been committed by unscrupulous non-ST persons. However, blanket prohibitions, such as those that exist in some other states, are too limiting.

Ceiling-Surplus Redistribution

- *Land ceilings can be an effective method for redistributing land resources. § 14J-Z.* Most Indian states have tried to use the mechanism of land ceilings to redistribute land (one can only own land up to a certain amount and land exceeding that amount is taken by the state for redistribution). So few have achieved success with this mechanism that the mechanism itself has been called into question. West Bengal's experience indicates that land ceilings can be an effective mechanism for redistributing land in an Indian setting.
- *Few, limited exemptions to the overall ceiling limit. §§ 14Q, 14R, and 14Y.* West Bengal did a better job than other states in limiting the exemptions, and thus the loopholes, to the overall ceiling limit.
- *Unit to which the land ceiling applies is the individual, rather than the family such that families with less than five members have lower ceilings. § 14M.* This is unique among state laws. It ensures greater equity and eliminates a loophole by which larger families split into additional families in order to retain more land.
- *Land transferred in anticipation of the ceiling legislation is still included when applying the ceiling. § 14P.* In most other states, landowners, upon recognizing that ceilings legislation was to be adopted in the near future, were given ample opportunity to evade the ceilings by selling the land (often to relatives or other proxies) before the legislation came into force. The West Bengal approach undermines the effectiveness of this evasion strategy.
- *In allocating redistributed land, strong priority is given to the completely landless and to Scheduled Tribes and Scheduled Castes.* The LRA together with the accompanying regulations (West Bengal Land and Land Reforms Manual) provide a very detailed list of priorities governing those who are to receive vested land and thus narrows the scope for political favoritism in the allocation process. Moreover, smallholders with significant sources of non-agricultural income are not given priority.
- *Landowners with one acre or more are not entitled to receive redistributed land. § 49(1).* The one-acre limit is well below that in the land reform legislation of most other states.²¹⁵ This has accomplished two important objectives. First, it has resulted in redistributing the available vested land to a larger number of beneficiaries (by reducing the average amount of land each beneficiary can receive).²¹⁶ Second, it furthers the focus of land reform benefits on the poorest segment of rural society.

²¹⁵ For example: Andhra Pradesh legislation allows allotment of up to 5 acres of agricultural (non-irrigated) land; Haryana allows allotting land to persons owning up to 4.94 acres; Jammu and Kashmir allows for allotting land to persons owning up to 5 acres; Maharashtra allows allotment of up to 4.94 acres of dry land; Punjab allows for the allotment of up to 4.94 acres of firstclass land; Tamil Nadu prioritizes persons who have 3 acres or less of dryland above landless ST or SC agricultural laborers; and Uttar Pradesh allows allotment to persons holding up to 3.1 acres.

²¹⁶ In the later years of West Bengal's land reform, beneficiaries have not received land beyond that required to bring the total amount owned to 1 acre. For a discussion of how even very small plots can provide substantial benefits to poor rural households, see TIM HANSTAD, JENNIFER BROWN, & ROY PROSTERMAN, LARGER HOMESTEAD PLOTS AS LAND REFORM: A REVIEW OF INTERNATIONAL EXPERIENCE AND RESEARCH RESULTS FROM KARNATAKA, (Rural Development Institute Report No. 113, Aug. 2001).

Tenancy Reform

- *Person cultivating another person's land is presumed to be a bargadar if not a family member. §21B.* This unique provision makes it relatively easy for *bargadars* to prove their status. If, however, some types of leasing are to be legalized for smallholders, this provision would need to be amended so that the presumption is only met in the absence of a written lease agreement as allowed by law.
- *Names of bargadars are recorded in the record-of-rights. §21D.* This provision and, especially, its implementation were crucial to West Bengal's tenancy reform success.
- *Bargadars are given continuous, hereditary rights with protection against eviction. §17.* This is a core principle for West Bengal's successful reform. Existing *bargadars* should continue to receive such protection. However, we urge that the issue of prospective liberalization of tenancy in West Bengal be separated from the issue of whether existing *bargadars* continue to receive this protection. One can make a strong argument that existing *bargadars* should continue to receive protection (and, in fact, be given stronger rights enabling them to achieve ownership of the land) while at the same time allowing smallholders and landless families some ability to lease-in land.
- *Regulation of rent or share amount is set at a more reasonable level.* The Central Government's recommended policy to the states is that rent payable by a tenant be limited to 20-25% of the produce and "slightly more" if the inputs are provided by the owner. West Bengal's legislation is more generous to the landlord by providing that the landlord shall receive 50% of the produce if the landlord provides the inputs. This probably made implementation of these provisions more feasible, while still improving the *bargadar's* position. Legislative provisions that unreasonably penalize or damage the position of landlords or large landowners (such as minimal compensation levels for ceiling surplus land and unreasonably low rent levels for landlords) make the implementation of land reform less politically and administratively feasible.
- *Landlord's right to evict the bargadar for the purpose of resuming personal cultivation on barga land is limited in three important ways. §17.* First, unlike the laws of many other Indian states, "personal cultivation" does not include cultivation by the landlord's servants or laborers. Second, a landlord cannot terminate the *bargadar's* cultivation right if it would leave the *bargadar* with less than 2.47 acres. Third, the *bargadar's* right can only be terminated by an order made by a state-appointed authority.
- *Limit on the amount of land a bargadar can cultivate. §17 (4-6).* This ensures an element of fairness: *bargadar* holdings are subject to ceilings similar to those imposed upon landowners.
- *Bargadars are given preemptory rights to purchase barga land in ownership if the landlord decides to sell.* This gives the *bargadar* the first opportunity to purchase the land in

ownership if: (1) the landlord decides to sell; and (2) the *bargadar* can afford to purchase the land.

- *State is empowered to create land corporations to assist bargadars in purchasing land. § 21C.* This creates the legal authority for a funding mechanism that could facilitate turning *bargadars* into owner-operators. Unfortunately, it appears that the provisions have not been implemented.
- *Prohibits non-tribals from gaining protected bargadar status on land owned by a Scheduled Tribe member. § 15(3).* This places an important check on the historical practice of fraudulently or coercively taking the land rights of tribals.

B. Legislation (West Bengal LRA): Potential Problems

General

- *No requirement or even direction regarding joint titling on distributed land or for bargadar recordation.* West Bengal should adopt requirements in law that all land allocated by the government be given in the joint names of husband and wife. Two related steps could also be taken. First, prospectively, jointly record *bargadar* status in the names of both husband and wife. Second, retroactively, add the wife's name to the land documents for all vested land that has in the past been allocated to a man and for all recorded male *bargadars*. Third, if the law does not already so provide, amend it to provide that the recorded owners of such land cannot alienate it (sale, mortgage, etc.) unless the recorded owner obtains consent of the spouse (or ex-spouse) or proves that the land was not inherited and was not purchased during marriage.
- *Permanent prohibition on sale imposed on land reform beneficiaries is too restrictive. § 49(1A).* The LRA prohibits those who receive above-ceiling land from ever selling such land. This is unnecessarily restrictive. Consistent with the practice of other countries and other Indian states, the parliament should consider converting this perpetual prohibition to a moratorium of perhaps ten years.
- *Minimum plot sizes can be potentially harmful to women if applied to partition upon inheritance or divorce.* The state parliament should consider amending the law to state that the "standard area" minimum should not apply if it acts to deprive female children or divorced wives from receiving land to which they would otherwise be entitled.
- *"Principal source of income" requirement discriminates against small farmers and small landholdings. § 2(8).* The LRA requires that landowners obtain their principal source of income from the produce of their land. This means that very small landowners who earn the majority of their income from agricultural labor are technically in violation of the LRA and could lose their land to the state. We recommend that the definition of "personal cultivation" be changed such that a person's principal source of income can be either the produce of their land or wages they earn through agricultural labor.

- *Draconian penalties for violating prohibitions on lease, use, and personal cultivation. § 4(4).* The law provides that violations of these requirements will result in forfeiture of the landowner's rights. The parliament might consider replacing this with a less draconian penalty such as forced sale of the land, allowing the landowner to retain the proceeds of the sale.
- *Monetary penalty for violating maintenance requirements should be increased. § 4C.* Because of inflation, this penalty of up to 1,000 rupees is no longer a credible or sufficient penalty. The alternative penalty of imprisonment, meanwhile, is too draconian and thus probably not credible.
- *Scheduled Tribe (ST) members do not have preemptory purchase rights when local land owned by another ST member is being sold to a non-ST member.* The parliament should consider amending the law to give all ST members in the locality a preemptory right to purchase land being sold by an ST landowner before it can be purchased by a non-ST person. Currently, the law gives the Revenue Officer the discretion to determine whether any ST member is "willing to pay the market price" before approving a sale to a non-ST person. Giving all ST members in the locality a preemptory right to purchase such land would improve the law in two respects. First, the publication and notification rules accompanying such a preemptory right would help ensure that ST members learn of such sales to non-ST persons. Second, it would give ST members the right to purchase land at the price offered by a non-ST person even when that price is below the market price.
- *Involuntary administrative consolidation of land is rarely if ever successful.* The parliament should consider amending the LRA to eliminate provisions allowing involuntary administrative consolidation of agricultural landholdings. Any consolidation should require the explicit authorization of all landowners affected.
- *Subsidies for co-operative farming societies favor what international experience has shown to be an inefficient mode of organization.* The LRA allows the government to provide various subsidies to co-operative farming societies. This, despite the fact that both theory and international experience indicate that agricultural production by collective bodies is likely to be a less than efficient mode of organization. Farmers should have the choice to organize in such co-operative farming societies, but there is no practical reason to distort that choice by offering subsidies.
- *Giving adjacent landowners preemptory purchase rights favors the landed over the landless. § 8.* A preemptive purchase right for adjacent landowners is an attempt to facilitate larger and consolidated holdings. Unfortunately, it discriminates against landless households or other smallholders who might otherwise be in a position (or be put in a position through subsidized financing from a government land corporation) to purchase the land.

Ceiling-Surplus

- *Compensation to losing landowners is extremely low. § 14V.* If the state makes redistribution of land a priority, it should back this up by finding the resources to adequately compensate landowners whose land is taken. Compensation need not be market value, but should be something meaningful, not bordering on confiscation.
- *Landowners who own land in excess of the ceiling and do not report their landholding may be subject to a maximum fine of only 5,000 rupees. § 14T(4).* The original fine maximum of 1,000 rupees was changed to 5,000 rupees in 1976. Inflation over the past 25 years warrants a further increase in the maximum fine.²¹⁷

Tenancy Reform

- *Broad prohibition on fixed-rent tenancy. § 4(4d).* The LRA prohibits any fixed-rent tenancy, even if seasonal. In fact, seasonal leasing is a reality in West Bengal despite the current legislative prohibition. The parliament should consider easing this broad prohibition to allow small landowners, *bargadars*, or landless households to lease-in land. If such tenancy arrangements are to be legally recognized, the legislation should include several provisions. First, the law should require that any such rental or lease agreement be in writing and should provide a mandatory, standardized form for such agreements. Second, the law must make clear that such lessees will not be given any long-term or hereditary rights to the land beyond that contained in the written agreement.
- *Law does not give bargadars the unilateral right to assume ownership over barga land.* The law would be improved if *bargadars* were given the mandatory right to choose one of two options for assuming ownership of *barga* land. The first option would be a purchase option under which the *bargadar* could assume ownership over the entire *barga* holding by paying the landowner a government-determined sum approximating 50% of the land's market value. The second option would be an exchange option under which the *bargadar* could assume ownership over one-half of the *barga* holding by giving up his *bargadar* rights over the remaining one-half of the land (which would then revert in unencumbered ownership to the landlord who could either sell or personally cultivate the land subject to other existing restrictions).
- *Landowners cannot sell if bargadar's holding exceeds ceiling or if bargadar voluntarily surrenders his rights. §§ 20B, 17(6).* The law currently requires the landowner to turn over the land to another *bargadar* in such cases. A better solution might be a forced sale in which the landowner must sell the land ownership rights to a smallholder, landless household, or *bargadar* (subject of course to the relevant ceilings). This would encourage owner-operatorship by smallholders instead of creating another perpetual landlord-*bargadar* relationship.

²¹⁷ Violators may also be subject to imprisonment of up to two years, but this penalty is not likely to be as credible as a substantial fine.

- *Law does not assign a market value to the bargadar's interest in the land.* As a result, when *barga* land is acquired under the Land Acquisition Act for any public purpose, no compensation is payable to the *bargadar*. Law could provide that the *bargadar* is entitled to some percentage of the payment (say 50%), with the remainder payable to the landowner.

C. Land Reform Implementation: Positive Aspects

- *Preparatory studies of ground-level realities, particularly the reasons for lack of land reform implementation and methods by which landowners evade land reform legislation.* The government then used these assessments to improve the land reform implementation methods.
- *Conducting public camps or meetings in the villages to explain the land reform objectives, process, and benefits.* The meetings were conducted at a time and in a manner to facilitate maximum participation by *bargadars*, landless and near-landless farmers.
- *Government initiation of ground-level, quasi-judicial exercise of identifying above-ceiling land and existence of tenancy relationships.* Government initiation of the process increased confidence of *bargadars* and other poor households and lessened the likelihood of landowner reprisals.
- *Quasi-judicial, fact-finding exercise is conducted in the village and in a public setting.* Instead of conducting the process in a place that was distant, intimidating, and less-transparent, the necessary and crucial fact-finding took place locally in a friendly and transparent setting. Conducting the fact-finding in the village also allowed for physical inspection of possession by the fact-finders and access to a multitude of knowledgeable witnesses.
- *Emphasis on use of oral evidence to overcome the legal sophistication and documentary evidence of large landowners.* Using established legal principles in the Indian Evidence Act to take advantage of oral evidence was crucial because nearly all sharecropping leases were oral and landowners (and their lawyers) became skilled at using fictitious documents to evade the ceiling law.
- *Village-level quasi-judicial process is speedy and subject to limited appeals.* A speedy process by which *bargadars* received their legal rights almost immediately encouraged broader participation and weakened the ability of landowners and landlords to discourage potential beneficiaries from asserting their rights.
- *Meaningful and extensive inclusion of peasant organizations, village panchayats, and land reform beneficiaries in the implementation process.* Nearly all successful land reform examples, including those in Japan, Taiwan, South Korea, Vietnam, China, and Kerala, have involved beneficiaries and local, grass-roots bodies in program administration.
- *On-going workshops to facilitate interaction between upper-level administrators and field-level officers.* Monitoring the progress of land reform implementation and making necessary

adjustments based on field reports has been identified as one of the important guiding principles for successful land reforms from international experience, as has training for the administrators.

- *Emphasis on allocating vested land in smaller plots in order to increase beneficiary pool, especially in more recent years.* In the later phases of the land reform, the administrators began allocating the vested land in smaller parcels. Given the fact that large numbers of landless households still remain in the countryside and the evidence indicating the benefits of owning even a very small parcel of land, this implementation policy made good sense.

D. Land Reform Implementation: Potential Problems

- *Government administrators (at least in some areas) are actively trying to prevent the voluntary and mutually beneficial deals between landowners and bargadars.* Such administrators appear to be operating on instructions from above and on the assumption that such transactions are not voluntary but being forced upon the *bargadar* by the landowner. We found no such evidence of coercion and view such mutually beneficial deals as a positive phenomenon that should be facilitated by appropriate regulation.

E. Other Recommendations for West Bengal

- *Consider expanding the homestead allocation program, both in terms of number of recipients and size of homestead plots.* Research in other countries and in India itself indicates the substantial economic and social benefits that accrue to landless laborer households when they receive homestead-cum-garden plots.²¹⁸ The West Bengal government might consider allocating much or all of the remaining undistributed vested land to landless households for homestead-cum-garden plots of approximately 0.1 acre.
- *Facilitate the voluntary, mutually beneficial sale arrangements between owners and bargadars.* Several related recommendations are offered above. At the very least, the government can facilitate such transactions by: (1) allowing such transactions to occur in one step in order to reduce the transaction costs involved in a two-step transaction; and (2) publicizing the legality of such sales and how they might be accomplished.
- *Consider initiating some type of market-assisted land reform pilot in which the state helps the land-poor purchase small plots of land offered on the private market.* The land sale market appears fairly active in many parts of rural West Bengal and land is usually sold in small parcels, frequently to meet dowry and wedding costs. The nature of the land market supply and the apparent land hunger among the land-poor (and labor-abundant) households who lack sufficient purchasing power might make a market-assisted land reform pilot quite feasible in West Bengal.

²¹⁸ See HANSTAD ET AL., *supra* note 131.

- *Consider endowing the land-poor with marketable water assets.* Given the importance of water assets in West Bengal, strategies aiming to endow the poor with capital assets should look beyond land. Assisting the landless or land-poor households (or groups of them) to acquire very small plots of land and sink tubewells might prove to be a successful poverty alleviation strategy. Such households or groups of households could then sell the water to neighboring farmers.

Bibliography

Laws and Cases:

CONSTITUTION OF INDIA.

Dalmia Cement (Bharat) Limited v. Union of India (1966) 10 SCC 104.

DOWRY PROHIBITION ACT (1961).

ESTATE ACQUISITION ACT (1953).

HINDU SUCCESSION ACT (1956).

MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT (1937).

Paschim Banga Bhumiijibi Krishak Samity v. State of West Bengal, (1996) 2 Cal LJ 285 at 319.

WEST BENGAL LAND REFORMS ACT (1955).

West Bengal Land and Land Reforms Manual (1991)

West Bengal Land Reforms Rules (1965).

Other sources:

BINA AGARWAL, *A FIELD OF ONE'S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA* (1994).

P.S. APPU, *LAND REFORMS IN INDIA: A SURVEY OF POLICY LEGISLATION AND IMPLEMENTATION* (1996).

D.W. Attwood, *Why Some of the Poor Get Richer: Economic Change and Mobility in Rural Western India*, CURRENT ANTHROPOLOGY 20, no. 3 (1979).

Amiya Kumar Bagchi, *Studies on the Economy of West Bengal since Independence*, ECONOMIC AND POLITICAL WEEKLY (Nov. 21-Dec. 4 1998).

Abhijit Banarjee & Maitreesh Ghatak, *Empowerment and Efficiency: The Economics of Tenancy Reform* (1995) (Mimeograph, Department of Economics, Harvard University).

D. Bandyopadhyay, *Land Reform in West Bengal: Remembering Hare Krishna Konar and Benoy Chaudhury*, ECONOMIC AND POLITICAL WEEKLY (May 27, 2000).

Interview with D. Bandyopadhyay, former West Bengal Land Reforms Commissioner, April 3, 2000.

N.C. BEHURIA. *LAND REFORMS LEGISLATION IN INDIA: A COMPARATIVE STUDY* (1997).

SANKAR KUMAR BHAUMIK, *TENANCY RELATIONS AND AGRARIAN DEVELOPMENT: A STUDY OF WEST BENGAL* (1993).

Hans Binswanger, Klaus Deininger & Gershon Feder, *Power, Distortions, Revolt and Reform in Agricultural Land Relations*, in HANDBOOK OF DEVELOPMENT ECONOMICS, (SRINIVASAN & BEHRMAN eds., 1995) vol. III, ch. 42.

Sugata Bose, *Peasant Labour and Colonial Capital: Rural Bengal Since 1770*, THE NEW CAMBRIDGE HISTORY OF INDIA, vol. 3(2).

JAMES BOYCE, *AGRARIAN IMPASSE IN BENGAL: INSTITUTIONAL CONSTRAINTS TO TECHNOLOGICAL CHANGE* (1987).

DR. ASIM DASGUPTA (FINANCE MINISTER), GOVERNMENT OF WEST BENGAL BUDGET STATEMENT (2000).

ARVIND P. DATAR, *DATAR ON CONSTITUTION OF INDIA* (2001).

- PRABHAT KUMAR DATTA, LAND REFORMS ADMINISTRATION IN WEST BENGAL (1988).
- KLAUS DEININGER, COOPERATIVES AND THE BREAK-UP OF LARGE MECHANIZED FARMS: THEORETICAL PERSPECTIVES AND EMPIRICAL EVIDENCE (World Bank Discussion Paper No. 218, Nov. 1993).
- DIRECTORATE OF LAND RECORDS & SURVEYS, WEST BENGAL, A SUSTAINED EFFORT TO STRENGTHEN THE REVENUE ADMINISTRATION AND TO IMPLEMENT LAND REFORMS IN WEST BENGAL (1998).
- SHENGGAN FAN ET AL., LINKAGES BETWEEN GOVERNMENT SPENDING, GROWTH, AND POVERTY IN RURAL INDIA (International Food Policy Research Institute Research Report No. 11, 1990).
- Haris Gazdar & Sunil Sengupta, *Agricultural Growth and Recent Trends in Well-Being in Rural West Bengal*, in SONAR BANGLA?: AGRICULTURAL GROWTH AND AGRARIAN CHANGE IN WEST BENGAL AND BANGLADESH (Rogaly et al. eds., 1999).
- J.K. Ghosh, *The Changing Agrarian Scene Under the Impact of Land Reforms Program: A Case Study of Operation Barga Program in West Bengal*, in, ECONOMY OF WEST BENGAL: PROBLEMS AND PROSPECTS (R. Chaudhury & D. Sarkar eds., 1990).
- GOVERNMENT OF INDIA, MINISTRY OF RURAL DEVELOPMENT, ANNUAL REPORT, 2000-2001.
- GOVERNMENT OF WEST BENGAL, ECONOMIC REVIEW 1999-2000.
- S.S. Grewal and P.S. Rangi, *An Analysis of Agrarian Structure in Punjab*, INDIAN JOURNAL OF AGRICULTURAL ECONOMICS 24 (1981).
- Jayoti Gupta, *Land, Dowry, Labour: Women in the Changing Economy of Midnapur*, SOCIAL SCIENTIST, vol. 21, nos. 9-11 (Sept.-Nov. 1993).
- Jayoti Gupta, *Voices Break the Silence*, in A JUST RIGHT: WOMEN'S OWNERSHIP OF NATURAL RESOURCES AND LIVELIHOOD SECURITY (Nitya Rao & Luise Rurup eds., 1997).
- Irfan Habib, *Agrarian Economy*, in THE CAMBRIDGE ECONOMIC HISTORY OF INDIA (Tapan Roychaudhuri and Dharma Kumar eds., 1982), vol. 1.
- TIM HANSTAD, JENNIFER BROWN, AND ROY PROSTERMAN, LARGER HOMESTEAD PLOTS AS LAND REFORM: A REVIEW OF INTERNATIONAL EXPERIENCE AND RESEARCH RESULTS FROM KARNATAKA (Rural Development Institute Report No. 113, Aug. 2001).
- Tim Hanstad, How are Rural Land Sale Markets in Karnataka Impacting the Poor's Access to Land? (paper presented at National Workshop on Access and Rights to Rural Land, Bangalore, 23-24 Oct. 2001) (on file with the Rural Development Institute).
- Tim Hanstad, *Land Reform in the Philippines: The Just Compensation Issue*, 63 WASHINGTON LAW REVIEW 417 (1988).
- G.K. LEITEN, CONTINUITY AND CHANGE IN RURAL WEST BENGAL (1992).
- MALLICK'S COMMENTARIES ON WEST BENGAL LAND REFORMS ACT, 1955 (3rd ed., 1998).
- G. Mani and Vasant P. Gandhi, *Are Land Markets Worsening the Land Distribution in Progressive Areas?: A Study of Meerut District in Western Uttar Pradesh*, INDIAN JOURNAL OF AGRICULTURAL ECONOMICS 49, no. 3 (1994).
- ROBIN MEARNS, ACCESS TO LAND IN RURAL INDIA: POLICY ISSUES AND OPTIONS (World Bank Policy Research Working Paper No. 2123, May 1999).
- ROBIN MEARNS & SAURABH SINHA, SOCIAL EXCLUSION AND LAND ADMINISTRATION IN ORISSA, INDIA, (World Bank Policy Research Working Paper No. 2124, May 1999).
- Saugata Mukherji & Manoj Kumar Sanyal, *Growth and Institutional Change in West Bengal Agriculture 1901-1988* (paper presented at the Workshop on Agricultural Growth and Agrarian Structure in Contemporary West Bengal and Bangladesh, Centre for Studies in Social Sciences, Calcutta).
- NATIONAL COUNCIL OF APPLIED ECONOMIC RESEARCH, HUMAN DEVELOPMENT PROFILE OF INDIA: INTER-STATE AND INTER-GROUP DIFFERENTIALS (1996).

National Institute of Rural Development (NIRD), *India Rural Development Report 1999* (2000).

Office of the Registrar General, India, Census of India 2001 Provisional Population Totals: West Bengal (last visited Oct. 16, 2001) <<http://www.censusindia.net/profiles/wbe.html>>.

S.S. PAL, IMPACT OF TENANCY REFORMS ON PRODUCTION AND INCOME DISTRIBUTION: A CASE STUDY OF OPERATION *BARGA* IN WEST BENGAL (Policy Paper No. 1, National Center for Agricultural Economics and Policy Research, 1995).

ROY L. PROSTERMAN & JEFFREY M. RIEDINGER, LAND REFORM AND DEMOCRATIC DEVELOPMENT (1987).

AGRARIAN REFORM AND GRASSROOTS DEVELOPMENT: TEN CASE STUDIES (Roy Prosterman et al. eds., 1990).

Vikas Rawal, *Agrarian Reform and Land Markets: A Study of Land Transactions in Two Villages of West Bengal, 1977-1995*, 49 ECONOMIC DEVELOPMENT AND CULTURAL CHANGE (2001).

Ben Rogaly et al., *Introduction: Agricultural Growth and Agrarian Change in West Bengal and Bangladesh*, in SONAR BANGLA?: AGRICULTURAL GROWTH AND AGRARIAN CHANGE IN WEST BENGAL AND BANGLADESH (Rogaly et al. eds., 1999).

BEN ROGALY, BARBARA HARRIS-WHILE & SUGATA BOSE, EDs., SONAR BANGLA?: AGRICULTURAL GROWTH AND AGRARIAN CHANGE IN WEST BENGAL AND BANGLADESH (1999).

Leonard Rolfes, Jr., *Land Transactions*, in LEGAL IMPEDIMENTS TO EFFECTIVE RURAL LAND RELATIONS IN EASTERN EUROPE AND CENTRAL ASIA: A COMPARATIVE PERSPECTIVE (World Bank Technical Paper No. 436, Roy Prosterman and Tim Hanstad, eds., 1999).

Uday Shankar Saha, Operation *Barga* for Sharecropping System Reform – Impact of Two Decades Experience in West Bengal, India (1998) (unpublished paper).

Kailash Sarap, *Land Sale Transactions in an Indian Village: Theories and Evidence*, INDIAN ECONOMIC REVIEW 30, no. 2 (1995).

Sunil Sengupta & Haris Gazdar, *Agrarian Politics and Rural Development in West Bengal*, in INDIAN DEVELOPMENT: SELECTED REGIONAL PERSPECTIVES (Jean Dreze & Amartya Sen eds., 1997).

KRIPA SHANKAR, LAND TRANSFERS: A CASE STUDY (1993).

BALDEV SINGH, LAND MARKET: THEORY AND PRACTICE IN RURAL INDIA (1982).

Johan van Zyl, *The Farm Size-Efficiency Relationship*, in, AGRICULTURAL LAND REFORM IN SOUTH AFRICA: POLICIES, MARKETS AND MECHANISMS (Johan van Zyl, Johann Kirsten & Hans Binswanger, eds., 1996).

Alethea Williams, Land Consolidation and Fragmentation (July 2001)(unpublished memorandum on file with the Rural Development Institute).

Glyn Williams, Panchayati Raj and the Changing Micro-Politics of West Bengal, in SONAR BANGLA?: AGRICULTURAL GROWTH AND AGRARIAN CHANGE IN WEST BENGAL AND BANGLADESH (Rogaly et al. eds., 1999).

WORLD BANK, INDIA: ACHIEVEMENTS AND CHALLENGES IN REDUCING POVERTY, (World Bank Country Study 1997).