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Amending the West Bengal Land Reforms Act: Benefiting the Poor and Marginalized

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INTRODUCTION

Over the past few decades, while land reform has made little headway in most of India, West Bengal has achieved notable land reform progress. This progress has occurred in three areas: the redistribution of agricultural land, the regulation of sharecropping relationships, and the distribution of homestead plots.¹

One of the major factors contributing to West Bengal's land reform success in the post-Independence period has been its favourable legislative provisions spelled out in the Land Reforms Act (LRA).² While the Act contains many noteworthy provisions and established a suitable framework for West Bengal's successful land reform program,³ some modifications of the law would enhance the Act's positive impact on equitable distribution of land and agricultural production.

In particular, we strongly recommend two key changes to the Land Reform Act: (1) a provision that grants *bargadars* the unilateral right to assume ownership over a portion of the *barga* land they cultivate in exchange for giving up their *barga* rights on the remaining *barga* land; and (2) a requirement that all land distributed by the government be distributed in the joint names of husband and wife, or independently in the name of a woman. These two important suggested changes are described below in sections A and B. The remainder of this paper (sections C, D, and E) provides other recommended alterations to the LRA.

¹ West Bengal has declared 1.372 million acres of land for redistribution, and reallocated 1.04 million acres of this to 2.54 million relatively land-poor households, representing about eight percent of arable land and 34 percent of agricultural households. Twenty-four percent of the total amount of land declared surplus remains to be distributed. GOVERNMENT OF INDIA MINISTRY OF RURAL DEVELOPMENT, ANNUAL REPORT, 2000-2001, at annexure XXXII.

West Bengal has also taken determined steps to bolster the position of *bargadars* (sharecroppers) by regulating the *bargadar*-landlord 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 paid to landlords by *bargadars*. 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 percent of agricultural households and eight percent of net area cultivated. GOVERNMENT OF WEST BENGAL, ECONOMIC REVIEW 1999-2000, table 5.22, at 108.

In addition to redistributing some agricultural land in ownership and protecting *bargadars*, West Bengal has also transferred ownership of homestead land to landless agricultural labourers, *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. 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, to the benefit of beneficiaries who can use the additional land to further increase their home agricultural production. See e.g., Tim Hanstad and Lokesh, S.B., Allocating Homestead Plots as Land Reform: Analysis from West Bengal (RDI Reports on Foreign Aid and Development No. 115, July 2002).

² The nature and extent of the Act's implementation, especially Operation *Barga*, were also key to West Bengal's success.

³ 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 much of the land obtained through redistribution and also land held by Scheduled Tribe members.

A. Alterations in *Bargadar*-Landowner Relationships

Perhaps West Bengal's most successful land reform achievement has been its protection of *bargadars*, especially the extremely successful implementation of Operation *Barga*. One drawback, however, to the on-going regulation of sharecropping is the creation of a perpetual *bargadar*-landlord relationship that under the current law as implemented by local authorities, the two parties cannot easily end, even voluntarily.

An ongoing but little-publicized phenomenon in West Bengal's countryside presents an opportunity to further strengthen the position the position of *bargadars* and give them what they truly desire—land ownership. Numerous rural field researchers, including the authors, have reported that many *bargadars* and landlords are making or have made deals which resulted in the *bargadar* receiving ownership of a portion of the *barga* land (ranging from 25 percent to 60 percent of the land) in return for giving up protected *bargadar* rights on the remaining land.⁴ 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.” Importantly, we received no reports that such deals were coercive. On the contrary, everyone describing the deals emphasized that they were mutual and voluntary. In fact, an informal survey of *bargadars* who had not entered into such deals revealed that a majority of them were willing to accept such deals if the landlord were to offer.

Because of the 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 return for an oral promise that the *bargadar* will gift or sell a pre-determined portion of the land back to the landlord (or sometimes to a third person to whom the landlord wants to sell). In the second step, the *bargadar* formally gifts or sells the pre-determined portion of the land back to the landlord (or the third-party purchaser).

This two-step process has two effects, both of which can work against the interests of those *bargadars* who want to engage in such deals. First, these deals only occur where a substantial degree of trust exists between the landowner and the *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. Second, such deals involve double the transaction costs of normal land sales. Stamp duty, registration fees, and other unofficial costs related to the land transaction must be paid twice. These

⁴ For more details see Tim Hanstad and Jennifer Brown, *Land Reform Law and Implementation in West Bengal: Lessons and Recommendations* (RDI Reports on Foreign Aid and Development No. 112, December 2001) at 44. In a minority of the cases, the *bargadars* choose to receive a cash equivalent of a portion of the land's value rather than receive the land in ownership.

transaction costs are ultimately borne by the *bargadar*. If the transaction costs were lower, landlords could give the *bargadars* a relatively larger portion of the land and still retain the same benefits.

We also found in our field research that at least some local land officials viewed these deals as illegal and were actively trying to prevent these deals or invalidate them when discovered. This is a disturbing finding, as blocking these transactions harms the interests of *bargadars*, a group that these officials purport to protect. Apart from rare exceptions, these deals are mutual and voluntary and thus should be encouraged and facilitated. Operation *Barga* has been largely successful in altering the power dynamic between *bargadars* and landlords, such that landlords are rarely in a position to exploit or coerce registered *bargadars*. As a result, now would be an excellent time to allow these parties to voluntarily and mutually end this perpetually regulated relationship with both *bargadar* and landowner coming away from the transaction with something.

Furthermore, there is always the possibility that future West Bengal governments will not look as favourably on the protected status of *bargadars* and may decide to erode the rights of *bargadars* or even give complete control over *barga* land to landlords. This is what occurred in Egypt, where, after decades of tenant protections, a changed political climate allowed landlords to regain full control over their land, after which they evicted many previously protected tenants. Thus, both because of the currently relatively equitable bargaining position of owner and *bargadar* and in order to avoid any future change in law that might deprive *bargadars* of all of their rights, we strongly recommend that the government take the steps discussed below. In each case, we have recommended that the *bargadar's* portion of the land be 50 percent. However, we believe that even if the current political economy only allows for their portion to be set at 40 percent, such provisions will be a significant benefit to *bargadars*.

1. Grant *bargadars* and landowners the right to divide or transfer between themselves, *barga* land, so long as such an agreement is not coerced and is voluntary.

The law would be improved if *bargadars* were given the mandatory and unilateral 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 of perhaps 50 percent (or 60 percent) of the land's market value. The second option would be an exchange option under which the *bargadar* could unilaterally choose to assume ownership over 50 percent (or 40 percent) of the *barga* holding by giving up his *bargadar* rights over the remaining portion 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). A new LRA section outlining this option, might read as follows:

Section XX. Partition of a *barga* holding between *bargadar* and landowner.

- (1) A *bargadar* may, at any time, assume ownership of all or part of the *barga* land he cultivates through one of the two following options:
 - (a) The *bargadar* may assume unencumbered ownership as a *raiyat* over the entire *barga* holding by paying the landowner 50 [or 60] percent of the market value of the land; or
 - (b) The *bargadar* may assume unencumbered ownership as a *raiyat* over 50 [or 40] percent of the *barga* holding by giving up his rights to the remaining one-half of the land. The remaining portion of the *barga* land, on which the *bargadar* gives up his rights to, reverts in unencumbered ownership to the landowner. If the *bargadar* and the landowner are not able to reach a mutual decision as to the specific parcels each should receive, an officer or authority as appointed by the State Government shall have exclusive jurisdiction to make such decision.
- (2) Such transactions must be voluntarily initiated by a *bargadar* and shall be made by a single registered instrument. Such transactions shall not be subject to stamp tax.

Additional recommended changes to the LRA to improve the position of *bargadars* follow:

2. Assign a market value to *bargadars*' interest in *barga* land so that when such land is acquired under the Land Acquisition Act, compensation can properly be paid to the *bargadar*.

The LRA 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*.⁵ This is despite the fact that *bargadars* have a perpetual heritable interest in the *barga* land and have likely made long-term investments in the land. The law could provide that the *bargadar* is entitled to some percentage of the payment granted as compensation when land is taken (say 50 or 40 percent), with the remainder payable to the landowner. The new section might read as follows:

Section XX. Value of a *bargadar*'s interest in *barga* land for purposes of compensation when *barga* land is acquired under the Land Acquisition Act.

⁵ See N.C. BEHURIA, *Land Reforms Legislation in India: A Comparative Study* (1997) at 128.

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- (1) When the *barga* land a *bargadar* cultivates is acquired under the Land Acquisition Act the *bargadar* is entitled to 50 [or 40] percent of the compensation paid to the landowner for such *barga* land. The *bargadar*'s share of the compensation shall be directly paid to him by the prescribed authority.

3. Rather than require landowners to turn over land to a new *bargadar* when the current *bargadar* either voluntarily surrenders his rights or the *bargadar*'s holding exceeds the maximum holding, the law should require the landowner to sell the land to a smallholder, landless household or *bargadar*.

Currently, landowners cannot sell the land if a *bargadar*'s holding exceeds the prescribed ceiling or if a *bargadar* voluntarily surrenders his rights (§§ 20B(4), 17(6)). Rather, the law 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 qualified smallholder, landless household or *bargadar* (subject of course to the relevant ceilings). This would encourage owner-operatorship by smallholders instead of creating another perpetual *bargadar*-landlord relationship. Amended sections 17(6) and 20B(4) might read as follows (additions to the present law are underscored):

Section 17. Termination of cultivation by *bargadar*.

- (6) Where any land cultivated by a *bargadar* is in excess of the limit specified in subsection (4), the person whose land is cultivated by such *bargadar* shall, if the excess land is within the provisions of Chapter II-B, sell the land to any person who would qualify for settlement of vested land under section 49 of the Act.

Section 20(B). Surrender or abandonment by *bargadar*.

- (4) If such officer or authority determines that the *bargadar* had voluntarily surrendered or abandoned the cultivation of the land which was cultivated by him as such, the person whose land was being so cultivated shall not resume personal cultivation of such land but he may, with the permission of such officer or authority, sell the land to any person who would qualify for settlement of vested land under section 49 of the Act.

B. Clarification and Strengthening of Women's Land Rights Under the Act

Very few women have been granted ownership to land under the West Bengal land reforms. While women have benefited indirectly through land granted to their husbands and fathers, there are particular benefits that accrue only when women themselves are landowners. The advantages for women of land ownership include drastically enhanced security, increased and dependable income, ability to access credit and government programs, and more leverage and respect within their households and communities.⁶ Such improvements are especially beneficial when land is granted to women because increases in a woman's income and assets have been shown to directly benefit her entire household (especially the health, education, and well-being of her children) to a greater extent than if the benefits were granted to men alone.⁷ Our key recommendation to improve women's land rights is to:

- 1. Add a provision to the LRA and any other relevant legislation requiring that government-allocated land be either granted individually to women or jointly to husband and wife.**

The Act does not direct that land be distributed in the joint names of husband and wife. Field research conducted by the Rural Development Institute in 2000-2002 found that the formal legal rights to most distributed land were given in the name of the male head of household only.⁸ The result of this is that very few women have been direct beneficiaries under the Act and the potential benefits from women's land ownership have not been realized.

Recognizing the important benefits of women's land ownership, not only for the women themselves, but also for their families and communities, the West Bengal government in 1992 adopted a policy requiring that "to the extent possible" government-allocated land be granted either to a woman individually or jointly to husband and wife. The policy directive, however, remained largely unimplemented. The government issued an additional memorandum in 1994 emphasizing the importance of the original policy.⁹ This memorandum stated that despite the earlier directive, joint titling was not occurring. It confirmed and

⁶ See e.g., BINA AGARWAL, *A FIELD OF ONE'S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA* (1994) at 27-44.

⁷ See *id.* at 30 and AGNES R. QUISUMBING ET. AL., *WOMEN THE KEY TO FOOD SECURITY* (Food Policy Report; The International Food Policy Research Institute, 1995) which synthesizes the current research on the strong association between increases in women's income, as contrasted with men's income, and improvements in family health and nutrition.

⁸ See Jennifer Brown and Sujata Das Chowdhury, *Women's Land Rights in West Bengal: A Field Study* (RDI Reports on Foreign Aid and Development No. 116, November 2002).

⁹ For a more comprehensive description of the 1992 policy directive and the women's movement's petitions to have it strengthened and implemented, see Jayoti Gupta, *Women Second in the Land Agenda*, *ECONOMIC AND POLITICAL WEEKLY*, May 4, 2002. This article also contains much of the text of the 1992 policy directive and the 1994 government memorandum.

re-emphasized that all vested agricultural land should be distributed jointly to husband and wife or individually to a woman. It is important to note that this policy circular applies to government-allocated agricultural land, but not to house plot land.

Despite the policy directive and follow up memorandum, there is evidence that the joint rights policy has still not been broadly implemented in all parts of West Bengal. In our field research, we found that the policy was being implemented in only some areas. We encountered few cases of government-granted land allocated in the joint names of husband and wife or the independent name of a woman. In fact, we encountered several examples of families that had received government-allocated land after the adoption of this policy who stated that the land was granted solely to the male head of household. It is possible that the land in these cases had been granted jointly, as we did not have the opportunity to examine the land documents. If this is the case, however, female grantees are not aware that they are joint owners and thus are less likely to realize the benefits of joint ownership. Other researchers have also confirmed that land is not being granted jointly and that the new policy is not being followed.¹⁰

In order to ensure that all distributed land is granted jointly to husband and wife or independently to women, we strongly recommend amending the West Bengal Land Reforms Act and other relevant legislation to include a legal requirement that all government-allocated land be granted in the joint names of husband and wife or in the independent name of a woman. Such a law would grant wives a legally enforceable right to be registered as joint owners of property their household obtains from the government. This law should encompass house plots distributed by the government as well as agricultural land. Safeguards in the land allocation procedure must accompany this law to ensure that women understand that they are landowners and that both husband and wife understand their rights and responsibilities as joint owners. These safeguards should include clear rules requiring both spouses who are receiving government-allocated land to be present when the land is given to them and the *patta* is distributed. Moreover, clear regulations should be implemented to require both spouses to be present and sign the relevant documents when jointly owned land is sold or mortgaged. The new provision could be added to current section 49 as follows (the addition is underscored):

¹⁰ *Id.*

Section 49. Principles of distribution of lands.

- (1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, settlement of any land which is at the disposal of the State Government shall be made without any premium being charged for it, in such manner as may be prescribed, with persons who are residents of the locality where the land is situated, and who together with other members of their family, own no land or less than 0.4047 hectares of land used for the purpose of agriculture one half of the lands cultivated by them as *bargadars* being taken into account for the purpose of calculating the aggregate of such land, subject to the following conditions, namely:
- (a) that, in case of agricultural land, such person intends to bring the land under personal cultivation,
 - (b) that, in the case of homestead land, such person having no homestead of his own, intends to construct a dwelling house thereon, and
 - (c) such other terms and conditions as may be prescribed

Provided that such land in all cases shall be granted jointly to a married husband and wife or independently to a woman.

In addition to this central recommendation, we also suggest the following additional changes to strengthen women's land rights under the Act:

2. In cases of inheritance and divorce, resulting partitioned plots should be exempted from the minimum size requirement.

Section 14 of the LRA states that land that is partitioned cannot be smaller than the "standard area." The "standard area" varies by locality and land quality. If plots resulting from partition are smaller than the "standard area" then the plots must be re-cast so that each of them is the size of the "standard area" or if this is not possible, the land is to be given over in its entirety to the highest bidder among co-sharers. Women would rarely have the resources (or social position in the family) to out-bid their husband, brothers or other male relatives. Even a very small plot of land, however, can be quite beneficial to a woman in terms of security and income-producing opportunities. We recommend that the law be amended 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. Amended section 14 might read as follows (additions are underscored):

Section 14. Partition of holding among co-sharer *raiyats*.

- (3) If as a result of partition one or more shares comprise an area less than the standard area—

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- (a) the prescribed authority in a case where partition is effected by a registered instrument, or
- (b) the Court passing the decree or order for partition,

shall recast the shares, excluding the homestead of the co-sharers, so that no share is less than the standard area, or when the holding comprises an area which cannot be partitioned into two or more shares, each comprising not less than the standard area, sell the entire holding to the highest bidder or bidders among the co-sharers, or failing that to other persons, and the sale proceeds shall, after deducting the expenses for conducting the sale, be paid to the co-sharers in accordance with their shares in the holding partitioned, excluding the homestead. Provided that even in cases where the land cannot be partitioned into two or more shares, each comprising not less than the standard area, the land will not be sold but the partitions will be distributed to the beneficiaries as cast, if selling the land would deprive a woman from receiving her physical share of the land in case of partition due to inheritance or divorce.

3. The law should be amended to require that both husband and wife be recorded as bargadars, rather than the husband alone.

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 often 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 a woman, especially upon separation or the death of her husband. Currently, when a recorded *bargadar* dies, the cultivation right devolves to his “legal heir” rather than to his spouse (§ 15A). Under the Act only one “legal heir” can continue cultivation, thus a *bargadar's* wife would not necessarily be the “legal heir” who actually continued cultivation. Other research has found that in practice, such rights usually devolve to the male next-of-kin and not to the recorded *bargadar's* wife.¹¹

We recommend that section 21D be amended to require that both spouses' names be recorded as *bargadars* and both be entered into the record of rights. Recording women as *bargadars* would ensure that a woman has a secure right to continue cultivation of the *barga* land in the event that her husband dies, separates from her or abandons her. Suggested changes to sections 15A and 21D are as follows (additions are underscored):

Section 15A. Continuation of right of cultivation on *bargadar's* death.

¹¹ *Id.*

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- (1) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, where a *bargadar*, cultivating any land, dies at a time when cultivation of such land by the *bargadar* was continuing, the cultivation of such land may be continued by the spouse of the *bargadar* if living, otherwise the cultivation of such land may be continued by the lawful heir of the *bargadar* or where there are more than one lawful heir, by such lawful heir of the *bargadar* as all the lawful heirs of the *bargadar* may determine within the prescribed period.

Section 21D. Names of *bargadars* and their spouses to be entered in the record-of-rights.

- (1) The names of *bargadar* and the *bargadar*'s spouse in respect of every *raiyyat* shall be entered in the record-of-rights in such manner as may be prescribed.

4. Consider amending the law to grant female-headed households priority as land reform beneficiaries.

Female-headed households are typically among the most destitute households in a village. These households earn their income through agricultural labour, working in the houses of the better-off or through cottage industry such as beedi-rolling or saal leaf plate-making. Granting such households even a small plot of land would be very beneficial as it would give the household an area to kitchen garden, keep animals and take on larger cottage industry endeavours. We strongly recommend considering an amendment to section 49 (laying out the principles of distribution) stating that female-headed households be given the first preference in distribution of vested land, especially the first preference in distribution of home plot land. A provision could be added to section 49 as follows (the addition is underscored):

Section 49. Principles of distribution of lands.

- (1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, settlement of any land which is at the disposal of the State Government shall be made without any premium being charged for it, in such manner as may be prescribed, with person who are residents of the locality where the land is situated, and who together with other members of their family, own no land or less than 0.4047 hectares of land used for the purpose of agriculture one half of the lands cultivated by them as *bargadars* being taken into account for the purpose of calculating the aggregate of such land, subject to the following conditions, namely:
- (a) that, in case of agricultural land, such person intends to bring the land under personal cultivation,
 - (b) that, in the case of homestead land, such person having no homestead of his own, intends to construct a dwelling house thereon, and

(c) such other terms and conditions as may be prescribed

Provided that among persons eligible for such settlement, preference shall be given to women heads of household and persons belonging to Scheduled Caste or Scheduled Tribe.

5. As a more comprehensive step, the West Bengal government should seriously evaluate retroactively adding wives' names to land documents for all vested land that was previously allocated solely in the name of the male head of household and also to all bargadar registration documents.

Land reforms were intended to benefit rural households, not solely rural men. This intention might be better met by granting land in the name of the wife and husband together—a step that could still be undertaken. While taking such a step retroactively would be controversial, it is worthwhile to note that the ceiling legislation was also originally passed to apply retroactively. Furthermore, there are other countries that, recognizing the benefits of women's land ownership, are retroactively adding wives' names to land rights documents. Viet Nam is currently re-issuing land rights certificates on de-collectivized land to both husband and wife. These certificates had previously only been issued to the head of household. Likewise, Malaysia is seriously considering retroactively granting wives a documented ownership interest in land distributed through its agrarian reform program. We recommend that the West Bengal government strongly evaluate the option of retroactively adding wives' names to *pattas* for distributed vested land and also to *bargadar* recordation documents. New provisions requiring the retroactive addition of spouse's names might read as follows:

Section XX. Adding spouses' names to record of rights for previously settled land.

On all previously settled land, the name of the spouse of the original beneficiary, if any, shall be recorded in the record of rights as co-owner of such land.

Section XX. Adding spouses' names to record of rights for previously recorded bargadar rights.

The name of the spouse, if any, of all recorded *bargadars* shall be added to the record of rights.

6. Exclude adult daughters who own their own land from the definition of "family" for purposes of determining whether or not a family's land holding exceeds the ceiling.

Currently, an unmarried adult daughter, whether she owns her own land or not, is included as part of her birth family for purposes of determining whether the family exceeds the land ceiling (§14K(c)). This is true whether or not she lives with her birth family. This is different than the treatment of an adult son, who is not counted as part of the family if he has his own landholding. The law should be amended so that, at a minimum, her land is not included in the calculation of her birth family's land if she does not reside with her birth family. A better solution would be to treat an adult unmarried daughter the same as an adult unmarried son is treated under the law. This would ensure equal treatment and also ensure that an adult unmarried daughter's land is not taken as above ceiling land, merely because it was included in the tally of her birth family's land even though she may work the land individually. As amended section 14K(c) would read as follows (alterations to the present law are underscored):

Section 14K. Definitions.

- (c) "family," in relation to a *raiyat* shall be deemed to consist of—
- (i) himself and his wife, minor sons, minor daughters, if any,
 - (ii) his unmarried adult son or unmarried adult daughter, if any, who does not hold any land as a *raiyat*,
 - (iii) his married adult son, if any, where neither such adult son nor the wife nor any minor son or minor daughter of such adult son holds any land as a *raiyat*,
 - (iv) widow of his predeceased son, if any, where neither such widow nor any minor son or minor daughter of such widow holds any land as a *raiyat*,
 - (v) minor son or minor daughter, if any, of his predeceased son, where the widow of such predeceased son is dead and any minor son or minor daughter of such predeceased son does not hold any land as *raiyat*,
- but shall not include any other person.

C. Easing Restrictions on Fixed-Rent Tenancy

The LRA currently prohibits any fixed-rent tenancy, even if seasonal (§4(4)(d)). Field research indicates that this prohibition has prevented virtually all long-term fixed-rent leases. Field research also indicates, however, that seasonal, fixed-rent tenancy arrangements during the *boro* season are fairly common in irrigated areas.

The typical seasonal tenancy situation we encountered during field research involved owners who did not have direct access to a water source and who could not afford the high input costs (including purchasing water from neighbouring

farmers) necessary to grow a *boro* season crop.¹² During *boro* season, 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 1/4 the value of the crop depending on the locality (but on a fixed-rent, not share basis). Such lessees were sometimes neighbouring landowners who had access to irrigation water through bore wells. The tenancy arrangements were typically verbal (not written or formalized) 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 several successive *boro* seasons.

Exceptions to this typical pattern did exist. In one area 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.

Overall, however, our field research revealed that: (1) landowners often do not lease out their land because they are afraid that the 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.

Several interviewees opined that restrictions on prospective tenancies (as distinguished from tenancies that began in the past) on agricultural land work against the interests of all agricultural households (including the poorest) and should be removed. These interviewees stated that the legal prohibitions on tenancy cause some landowners to leave land fallow or farm it inefficiently, and also prevent land-poor, labour-rich households from renting in land. In order to encourage land to be used efficiently and to make additional land available to landless or marginal farmers, we recommend that the government:

1. Ease the broad prohibition on fixed-rent tenancy to allow small landowners, landless families and bargadars the right to rent-in land.

If such tenancy arrangements are legally recognized, the legislation should also 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 that gives the tenant rights of exclusive possession but does not set maximum rent payments or a minimum length of terms. Second, the law must make clear that such tenants will not be given any long-term or

¹² For more details see Hanstad *supra* note 4, at 46.

hereditary rights to the land beyond that contained in the written agreement. Such a change in law would require the repeal of §4(4)(d) and the addition of a new section on seasonal fixed-rent tenancies, such as the following:

Section XX. Fixed-rent tenancy.

- (1) *Raiyats* may rent out all or part of their land on a fixed-rent basis if such tenancies are documented in writing using the standardized fixed-rent lease agreement.
- (2) Lessees cultivating land under a fixed-rent agreement as documented in the standardized fixed-rent lease agreement shall not acquire *bargadar* status and do not have any long-term or hereditary right to such land.

D. Distribution of Vested Agricultural Land to Beneficiaries

The redistribution of land under the West Bengal land reforms has had a significant impact. During our field research we learned that above-ceiling land had been redistributed to poor farmers in 26 of the 32 villages visited.¹³ Most of this land had been allocated as agricultural land parcels, although some had been allocated as homestead plots. Furthermore, most interviewees reported that all or the great majority of those who received vested agricultural land in their village had been completely landless and in some villages all landless households had received vested agricultural 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.

In order to further enhance the benefits of the distribution of vested land we recommend a change in policy to allow beneficiaries to eventually be permitted to sell their land (like any other landowner) and also recommend two changes in the process of distributing of land:

1. Ease the permanent restriction on land reform beneficiaries selling their land to a 10-year restriction.

The LRA currently prohibits those who receive above-ceiling land from ever selling such land (§49(1A)). 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 favour of banks or co-operative societies specified in the LRA. Moreover, such mortgages can only be for the purpose of developing of land, improving agricultural production, or constructing a dwelling house.

¹³ *Id.* at 41.

This restrictive limitation on a grantee's ability to transfer land is unnecessarily restrictive. Consistent with the practice of other countries and other Indian states, West Bengal should consider converting this perpetual prohibition to a moratorium of perhaps ten years. If the fear is that land reform recipients will imprudently sell their land due to distress factors, then a time limited prohibition, rather than a perpetual prohibition, should serve this purpose in the great majority of cases. After the initial ten-year period, grantees should have the freedom to transfer the land and reap the benefits of the investments they made in the land without restriction, as any other landowner can. Providing grantees the right to sell their land after ten years will increase the value of their assets and increase their livelihood options. Policy-makers should recognize that grantees and their heirs are not likely to continue as farmers forever. In fact, many grantees and their heirs will eventually improve their economic position by pursuing non-agricultural opportunities. To facilitate such improvement, these farmers should have the right to sell their land. Below is our suggested amendment to section 49(1A) (the addition is underscored):

Section 49. Principles of distribution of lands.

- (1A) No person with whom any land is or has been settled under sub-section (1) shall be entitled to transfer such land for a period of ten years following the date the land was settled, except by way of a simple mortgage or a mortgage by deposit of title deed in favour of a Scheduled Bank, or a Co-operative Society or a Corporation owned or controlled by the Central or State Government or both, and for the purpose of obtaining loan for the development of land or for the improvement of agricultural projection or for the construction of a dwelling house. Once the 10 year period has passed, the grantee will assume all rights of transfer that are legal for a raiyat.

2. The law should require the timely issuance of pattas once land is distributed to a beneficiary.

The Land Reforms Manual, rather than the law itself, contains the discussion on the issuance of *pattas* (West Bengal Land Reforms Manual § 194). A provision in the law itself giving a time frame for issuing *pattas* for distributed land may be warranted. During fieldwork in West Bengal the majority of the respondents interviewed who received land through land reform programs had not yet received their *pattas*, despite the fact that these respondents possessed their plots for an average of 15 years.¹⁴ Some respondents volunteered that the credit-

¹⁴ See Tim Hanstad and Lokesh, S.B., Allocating Homestead Plots as Land Reform: Analysis from West Bengal (RDI Reports on Foreign Aid and Development No. 115, July 2002). Twelve out of the 16 respondents interviewed had not yet received their *pattas*.

enhancing impacts of the land distribution would be realized only after they received their *patta*. This apparent failure—or at least tardiness—in the government’s implementation process has limited the full potential of benefits for land reform beneficiaries. The LRA should be altered to clarify that *pattas* must be distributed to beneficiaries in a timely manner, perhaps within a three-month period from the time the land is granted. A provision requiring the timely issuance of *pattas* to recipients of land reform land could be added to section 49:

Section 49. Principles of distribution of lands.

- (X) The prescribed authority shall issue a *patta* to the recipient of land under sub-section (1) within three months of the date the land is settled.

3. *The law should require the distribution of vested land to potential beneficiaries in a timely fashion.*

West Bengal has declared 1.372 million acres of land for redistribution, and reallocated 1.04 million acres of this to 2.54 million relatively land-poor households. While this is a significant achievement, 24 percent of the total amount of land declared surplus remains to be distributed.¹⁵ Distributing this land sooner rather than later would serve to benefit more rural households. A provision requiring timely settlement of land could be inserted after or within section 49:

Section 49. Principles of distribution of lands.

- (X) Land that vested with the State Government due to the operation of the land ceiling provisions of this Act shall be transferred or settled in accordance with sub-sections (1), (4A), or (5) of this section within one year of the date that such land was acquired, unless such transfer or settlement is made impossible because of a court case.

E. Other Recommended Changes to the LRA

We further recommend the following alterations to the LRA:

1. *Amend the “principle source of income requirement” so that it does not discriminate against small farmers and small landholdings.*

¹⁵ GOVERNMENT OF INDIA MINISTRY OF RURAL DEVELOPMENT, ANNUAL REPORT, 2000-2001, at annexure XXXII.

The LRA requires that landowners obtain their principal source of income from the produce of their land (§2(8)). This is because in order 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. This means that owners of very small plots who earn a majority of their income from agricultural labour 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 labour. The amended definition of “personal cultivation” might read (the additions are underscored):

Section 2. Definitions

- (8) “Personal cultivation” means cultivation by a person of his own land on his own account—
- (a) by his own labour, or
 - (b) by the labour or any member of his family, or
 - (c) by servants or labourers on wages payable in cash or in kind not being a share of the produce or both

Provided that such person or member of his family resides for the greater part of the year in the locality where the land is situated and the principal source of his income is either the produce of such land or wages earned through agricultural labour.

2. Increase compensation for landowners losing land under ceiling surplus provisions.

Under the LRA, if a landowner holds land above the ceiling, such excess land vests in the state and the state is required to pay the landowner compensation (§14V). Such compensation is set at 15 times the land revenue if it has been assessed. If it has not been assessed the compensation is set at Rs. 135 per acre. In either case the compensation stipulated is substantially below market value.¹⁶ 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 at market value, but should be something

¹⁶ In the years following Independence, several state enactments related 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.

meaningful, not bordering on confiscation.¹⁷ We recommend that compensation be set at a substantially higher level for land that has not already vested – at least one-half of the government’s guideline value for the concerned land. Increasing the compensation level is not only fair to landowners, but also might benefit more land-poor by making more land available for distribution (because landowners will have less reason for evading the law). Thus, we suggestion that section 14V might be changed to read as follows (the addition is underscored):

Section 14V. Payment of amount.

The State Government shall pay, in the prescribed manner, for the vesting of any land in the State under the provisions of this Act, after possession of such land is taken under sub-section (3) of section 14T, to the person or persons having any interest therein an amount equal to 50 percent of the government’s guideline value for such land.

3. Loosen the draconian penalties for violating provisions on lease, use and personal cultivation.

The law provides that violations of the prohibition on lease, use and personal cultivation will result in forfeiture of the landowner’s rights (§4(4)). Government should 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. We suggest the following changes to section 4(4) (the alteration is underscored):

Section 4. Rights of *raiyat* in respect of land.

- (4) Notwithstanding anything in sub-section (1), the holding of a *raiyat* excluding his homestead shall be forcibly sold, with the owner retaining the proceeds of the sale minus the cost of administering the sale, under an order of the prescribed authority made in the prescribed manner after such enquiry as it thinks fit and after giving the *raiyat* an opportunity to show cause against the action proposed to be taken if—

4. Eliminate pre-emptory purchase rights of adjacent landowners.

The LRA provides that *bargadars* have the first pre-emptive right to purchase land being sold (§8). If the *bargadar* does not purchase the land, adjoining landowners have a pre-emptive right of purchase, with priority given to the landowner with the longest common boundary. Giving adjacent landowners

¹⁷ 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).

pre-emptory purchase rights favours the landed over the landless. A pre-emptive 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. We recommend the elimination of pre-emptory purchase right of adjacent landowners, which could be accomplished through the following alteration to section 8 (the omitted portion of the altered provision is noted with brackets):

Section 8. Right of purchase by co-sharer.

- (1) If a portion or share of a holding of a *raiyat* is transferred to any person other than a co-sharer in the holding, the *bargadar* in the holding may, within three months of the date of such transfer, or any co-sharer *raiyat* of the holding may, within three months of the service of the notice given under sub-section (5) of section 5, [...] may, within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction, for the transfer of the said portion or share of the holding to him, subject to the limit mentioned in section 14M, on deposit of the consideration money together with a further sum of ten percent of that amount:

Provided that if the *bargadar* in the holding and a co-sharer *raiyat*, [...] apply for such transfer, the *bargadar* shall have the prior right to have such portion or share of the holding transferred to him, and in such a case, the deposit made by other shall be refunded to them;

[...]

- (2) Nothing in this section shall apply to—
- (a) a transfer by exchange or by partition, or
 - (b) a transfer by bequest or gift, or *hiba-bil-ewaz*, or
 - (c) a mortgage mentioned in section 7,
 - (d) a transfer for charitable or religious purpose or both without reservation of any pecuniary benefit for any individual, or
 - (e) a transfer of land in favour of a *bargadar* in respect of such land if after such transfer, the transferee holds as a *raiyat* land not exceeding one acre (or 0.4047 hectare in area in the aggregate.

4. Increase the maximum fine to be paid by a landowner who owns land in excess of the ceiling but does not report it.

Currently, landowners who own land in excess of the ceiling and do not report their landholding may be subject to a maximum fine of only Rs. 5,000 (§14T(4)). The original fine maximum of Rs. 1,000 was changed to Rs. 5,000 in 1976. Inflation over the past 25 years warrants a further increase in the maximum

fine.¹⁸ This would only require a simple change in the figure presently stated in section 14T(4).

5. Eliminate provisions calling for the involuntary administrative consolidation of land.

The LRA currently contains a series of provisions related to land consolidation (§§39-42). The LRA empowers the government to acquire lands for the purpose of consolidating holdings into compact blocks. Fortunately, it appears that the West Bengal government has chosen not to exercise these powers. International experience, including experience in India, indicates that involuntary administrative consolidation of land: (1) is rarely if ever successful; (2) tends to favour the rich and powerful; and (3) can be prohibitively expensive.¹⁹ The parliament should consider amending the LRA to eliminate provisions allowing involuntary administrative consolidation of agricultural landholdings. Administrative consolidation, if it occurs at all, should require the explicit and voluntary authorization of all landowners affected.

We recommend that at a minimum, the provision allowing involuntary administrative consolidation be eliminated. If administrative consolidation is still deemed a useful tool, then a provision permitting, but not requiring, the voluntary administrative consolidation of land could read as follows:

Section XX. Voluntary administrative consolidation of land.

Upon the application of and consent from all *raiya*s in any area where the State Government is of the opinion that the land plots should be consolidated, the State Government may acquire the *raiya*s' lands for the purpose of consolidating the holdings and redistributing them to the original *raiya*s.

Provided that consolidation of lands may be undertaken by the State Government if any seven or more persons being *raiya*s each owning land not exceeding 0.4047 hectare of land in the aggregate or being recipients of lands settled under section 49 or from both such categories make representations therefore.

6. Eliminate the provisions granting subsidies and preference for land distribution to co-operative farming societies.

The LRA permits the creation and registration of co-operative farming societies and co-operative common service societies. It also allows government subsidies

¹⁸ 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.

¹⁹ Alethea Williams, Land Consolidation and Fragmentation (July 2001) (unpublished memorandum on file with the Rural Development Institute).

for the farming societies and grants preferential status in the distribution of land to persons planning to join a co-operative society. These provisions have not generally been implemented because of the lack of organized grassroots demand from farmers for such bodies. Under the current law, 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 (§48).

However, both theory and international experience indicate that agricultural production by collective bodies is likely to be an inefficient mode of organization.²⁰ 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. We recommend that the section 48 of the LRA granting subsidies to co-operative farming societies be repealed and that the following phrase be eliminated from section 49(1): "... or who form themselves into a Co-operative Society for the purpose ..."

CONCLUSION

West Bengal is widely recognized as having relatively exceptional land reform success among Indian states—land reform success that has contributed to increased equity of ownership and productivity. The West Bengal Land Reform Act, which provided and still provides the legislative framework for the land reform is, on the whole, good and even exemplary legislation. The Act, however, could be improved to further benefit West Bengal's poor and marginalized in the context of a changing socio-economic environment. We have offered several possible changes to the Act in this report, which are listed together in the Annex. The two most important and far-reaching recommendations are to: (1) grant *bargadars* the unilateral right to assume ownership over a portion of the *barga* land in exchange for giving up their *barga* rights on the remaining *barga* land; and (2) require that all land distributed by the government be distributed in the joint names of husband and wife or independently in the name of a woman.

²⁰ See KLAUS DEININGER, COOPERATIVES AND THE BREAK-UP OF LARGE MECHANIZED FARMS: THEORETICAL PERSPECTIVES AND EMPIRICAL EVIDENCE (World Bank Discussion Paper 218, Nov. 1993).

ANNEX:

Suggested Amendments to the West Bengal Land Reforms Act

Additions and changes are listed below in the order they would appear in the act. Additions are underlined, while omissions are marked with brackets.

Chapter I: Preliminary

Section 2. Definitions

- (8) "Personal cultivation" means cultivation by a person of his own land on his own account—
- (a) by his own labour, or
 - (b) by the labour or any member of his family, or
 - (c) by servants or labourers on wages payable in cash or in kind not being a share of the produce or both

Provided that such person or member of his family resides for the greater part of the year in the locality where the land is situated and the principal source of his income is either the produce of such land or wages earned through agricultural labour.

Chapter II: Raiyats

Section 4. Rights of *raiyyat* in respect of land.

- (4) Notwithstanding anything in sub-section (1), the holding of a *raiyyat* excluding his homestead shall be forcibly sold, with the owner retaining the proceeds of the sale minus the cost of administering the sale, under an order of the prescribed authority made in the prescribed manner after such enquiry as it thinks fit and after giving the *raiyyat* an opportunity to show cause against the action proposed to be taken if—

Section 8. Right of purchase by co-sharer.

-
- (1) If a portion or share of a holding of a *raiyat* is transferred to any person other than a co-sharer in the holding, the *bargadar* in the holding may, within three months of the date of such transfer, or any co-sharer *raiyat* of the holding may, within three months of the service of the notice given under sub-section (5) of section 5, [...omit...] may, within four months of the date of such transfer, apply to the Munsif having territorial jurisdiction, for the transfer of the said portion or share of the holding to him, subject to the limit mentioned in section 14M, on deposit of the consideration money together with a further sum of ten percent of that amount:

Provided that if the *bargadar* in the holding and a co-sharer *raiyat*, [...omit...] apply for such transfer, the *bargadar* shall have the prior right to have such portion or share of the holding transferred to him, and in such a case, the deposit made by other shall be refunded to them;

[...omit...]

- (3) Nothing in this section shall apply to—
- (a) a transfer by exchange or by partition, or
 - (b) a transfer by bequest or gift, or *hiba-bil-ewaz*, or
 - (c) a mortgage mentioned in section 7,
 - (d) a transfer for charitable or religious purpose or both without reservation of any pecuniary benefit for any individual, or
 - (e) a transfer of land in favour of a *bargadar* in respect of such land if after such transfer, the transferee holds as a *raiyat* land not exceeding one acre (or 0.4047 hectare in area in the aggregate.

Section 14. Partition of holding among co-sharer *raiyats*.

- (3) If as a result of partition one or more shares comprise an area less than the standard area—
- (a) the prescribed authority in a case where partition is effected by a registered instrument, or
 - (c) the Court passing the decree or order for partition,

shall recast the shares, excluding the homestead of the co-sharers, so that no share is less than the standard area, or when the holding comprises an area which cannot be partitioned into two or more shares, each comprising not less than the standard area, sell the entire holding to the highest bidder or bidders among the co-sharers, or failing that to other persons, and the sale proceeds shall, after deducting the expenses for conducting the sale, be paid to the co-sharers in accordance with their shares in the holding partitioned, excluding the homestead. Provided that even in cases where the land cannot be partitioned into two or more shares, each comprising not less than the standard area, the

land will not be sold but the partitions will be distributed to the beneficiaries as cast, if selling the land would deprive a woman from receiving her physical share of the land in case of partition due to inheritance or divorce.

Section XX. Fixed-rent tenancy.

- (1) Raiyats may rent out all or part of their land on a fixed-rent basis if such tenancies are documented in writing using the standardized fixed-rent lease agreement.
- (2) Lessees cultivating land under a fixed-rent agreement as documented in the standardized fixed-rent lease agreement shall not acquire bargadar status and do not have any long-term or hereditary right to such land.

Chapter IIB: Ceiling on Holdings

Section 14K. Definitions.

- (c) “family,” in relation to a *raiyyat* shall be deemed to consist of—
 - (i) himself and his wife, minor sons, minor daughters, if any,
 - (ii) his unmarried adult son or unmarried adult daughter, if any, who does not hold any land as a *raiyyat*,
 - (iii) his married adult son, if any, where neither such adult son nor the wife nor any minor son or minor daughter of such adult son holds any land as a *raiyyat*,
 - (iv) widow of his predeceased son, if any, where neither such widow nor any minor son or minor daughter of such widow holds any land as a *raiyyat*,
 - (v) minor son or minor daughter, if any, of his predeceased son, where the widow of such predeceased son is dead and any minor son or minor daughter of such predeceased son does not hold any land as *raiyyat*,but shall not include any other person.

Section 14V. Payment of amount.

The State Government shall pay, in the prescribed manner, for the vesting of any land in the State under the provisions of this Act, after possession of such land is taken under sub-section (3) of section 14T, to the person or persons having any interest therein an amount equal to 50 percent of the government's guideline value for such land.

Chapter III: Bargadars

Section 15A. Continuation of right of cultivation on *bargadar's* death.

- (1) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, where a *bargadar*, cultivating any land, dies at a time when cultivation of such land by the *bargadar* was continuing, the cultivation of such land may be continued by the spouse of the *bargadar* if living, otherwise the cultivation of such land may be continued by the lawful heir of the *bargadar* or where there are more than one lawful heir, by such lawful heir of the *bargadar* as all the lawful heirs of the *bargadar* may determine within the prescribed period

Section XX. Partition of a *barga* holding between *bargadar* and landowner.

- (1) A *bargadar* may, at any time, assume ownership of all or part of the *barga* land he cultivates through one of the two following options:
 - (a) The *bargadar* may assume unencumbered ownership as a *raiyat* over the entire *barga* holding by paying the landowner 50 [or 60] percent of the market value of the land; or
 - (b) The *bargadar* may assume unencumbered ownership as a *raiyat* over 50 [or 40] percent of the *barga* holding by giving up his rights to the remaining one-half of the land. The remaining portion of the *barga* land, on which the *bargadar* gives up his rights to, reverts in unencumbered ownership to the landowner. If the *bargadar* and the landowner are not able to reach a mutual decision as to the specific parcels each should receive, an officer or authority as appointed by the State Government shall have exclusive jurisdiction to make such decision.
- (2) Such transactions must be voluntarily initiated by a *bargadar* and shall be made by a single registered instrument. Such transactions shall not be subject to stamp tax.

Section XX. Value of a bargadar's interest in barga land for purposes of compensation when barga land is acquired under the Land Acquisition Act.

- (1) When the barga land a bargadar cultivates is acquired under the Land Acquisition Act the bargadar is entitled to 50 [or 40] percent of the compensation paid to the landowner for such barga land. The bargadar's share of the compensation shall be directly paid to him by the prescribed authority.

Section 17. Termination of cultivation by bargadar.

- (6) Where any land cultivated by a bargadar is in excess of the limit specified in sub-section (4), the person whose land is cultivated by such bargadar shall, if the excess land is within the provisions of Chapter II-B, sell the land to any person who would qualify for settlement of vested land under section 49 of the Act.

Section 20(B). Surrender or abandonment by bargadar.

- (4) If such officer or authority determines that the bargadar had voluntarily surrendered or abandoned the cultivation of the land which was cultivated by him as such, the person whose land was being so cultivated shall not resume personal cultivation of such land but he may, with the permission of such officer or authority, sell the land to any person who would qualify for settlement of vested land under section 49 of the Act.

Section 21D. Names of bargadars and their spouses to be entered in the record-of-rights.

- (1) The names of bargadar and the bargadar's spouse in respect of every raiyat shall be entered in the record-of-rights in such manner as may be prescribed.

Section XX. Adding spouses' names to record of rights for previously recorded bargadar rights.

The name of the spouse, if any, of all recorded bargadars shall be added to the record of rights.

Chapter V: Consolidation of Lands Comprised in Holdings, and Co-operative Farming Societies

Section XX. Voluntary administrative consolidation of land.

Upon the application of and consent from all *raiya*s in any area where the State Government is of the opinion that the land plots should be consolidated, the State Government may acquire the *raiya*s' lands for the purpose of consolidating the holdings and redistributing them to the original *raiya*s.

Provided that consolidation of lands may be undertaken by the State Government if any seven or more persons being *raiya*s each owning land not exceeding 0.4047 hectare of land in the aggregate or being recipients of lands settled under section 49 or from both such categories make representations therefore.

Section 48 Concession and facilities for a Co-operative Farming Society

[...repeal entire section...]

Chapter VI: Principles of Distribution of Lands

Section 49. Principles of distribution of lands.

- (1) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, settlement of any land which is at the disposal of the State Government shall be made without any premium being charged for it, in such manner as may be prescribed, with persons who are residents of the locality where the land is situated, and who together with other members of their family, own no land or less than 0.4047 hectares of land used for the purpose of agriculture one half of the lands cultivated by them as *bargadars* being taken into account for the purpose of calculating the aggregate of such land, subject to the following conditions, namely:
 - (a) that, in case of agricultural land, such person intends to bring the land under personal cultivation,

-
- (b) that, in the case of homestead land, such person having no homestead of his own, intends to construct a dwelling house thereon, and
- (c) such other terms and conditions as may be prescribed

Provided that such land in all cases shall be granted jointly to a married husband and wife or independently to a woman.

Provided that among persons eligible for such settlement, preference shall be given to women heads of household and persons belonging to Scheduled Caste or Scheduled Tribe.

Provided further that no settlement of land shall be made with any person or with a member of the family of such person, who is engaged or employed in any business, trade, undertaking, manufacture, calling, service, or industrial occupation.

Explanation—The third proviso to sub-section (1) shall not apply to an agricultural labourer, artisan, or fisherman.

- (1A) No person with whom any land is or has been settled under sub-section (1) shall be entitled to transfer such land for a period of ten years following the date the land was settled, except by way of a simple mortgage or a mortgage by deposit of title deed in favour of a Scheduled Bank, or a Co-operative Society or a Corporation owned or controlled by the Central or State Government or both, and for the purpose of obtaining loan for the development of land or for the improvement of agricultural projection or for the construction of a dwelling house. Once the 10 year period has passed, the grantee will assume all rights of transfer that are legal for a raiyat.

- (X) The prescribed authority shall issue a patta to the recipient of land under sub-section (1) within three months of the date the land is settled.
- (X) Land that vested with the State Government due to the operation of the land ceiling provisions of this Act shall be transferred or settled in accordance with sub-sections (1), (4A), or (5) of this section within one year of the date that such land was acquired, unless such transfer or settlement is made impossible because of a court case.

Section XX. Adding spouses' names to record of rights for previously settled land.

On all previously settled land, the name of the spouse of the original beneficiary, if any, shall be recorded in the record of rights as co-owner of such land.
