

Land to the Tiller

Revisiting the Unfinished
Land Reforms Agenda



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Edited by
Prashant K Trivedi



Land and Livelihood Knowledge Activist Hub

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Foreword

A just resolution to the land question has been eluding India for long. Many states passed legislation but apart from a very few exceptions, which too were not in full spirit, the independence promise of land reforms were never implemented properly. This is born out by latest statistics. The 2011 Socio Economic and Caste Census shows that 56% of households in rural India do not own any agricultural land. The NSS nation-wide survey on Land and Livestock Holdings as a part of its 70th round (January-December 2013) revealed that top 7.18% of households own more than 46.71% of the land.

Over the last six decades, the land ownership question has energized several popular movements – struggles built on the idea of land to the tiller, those focussed on excluded social groups, those contesting land grabs just to typify a few. As an unfinished and unresolved agenda the question of land continues to move people.

In October 2012 the Ekta Parishad organised Jansatyagraha, a padyatra of tens of thousands of peasants from Gwalior to Delhi. As a consequence to the padyatra, the Agra Agreement was reached in which the Union Government agreed to constitute a task force to formulate a draft of the National Land Reforms Policy. Additionally, the Ministry of Rural Development (MoRD), Government of India was to initiate a dialogue with the states to give statutory backing to provisions relating to agriculture and homestead land. Apart from the effective implementation of Panchayats (Extension to Scheduled Areas) (PESA) Act (1996) and the Forest Rights Act (FRA) (2006), assurances were also given about enhancing the unit cost for homestead land purchase under the Indira Awas Yojana (IAY). It was also agreed that a fast track land tribunal would be set up and resolution of boundary disputes between revenue and forestland would increase access of the poor to land.

Following the agreement, MoRD wanted to issue state-specific advisories to all the major states, stating the steps that had to be taken to make land accessible to the landless. Land reforms being a state subject, MoRD promised to exhort state governments to take necessary steps in this direction in the agreement. To identify state-specific issues, the ministry commissioned state-specific researches to be used as the basis for advisories.

Having long stood for restoring a progressive land reforms agenda to the centre stage of policy making ActionAid India took up the opportunity of supporting and coordinating the research projects in a few states.

Land to the Tiller: Revisiting the Unfinished Land Reforms Agenda presents the research reports prepared for the MoRD. Several suggestions given by these reports were accepted by the government and formed a part of the advisories issued to state governments.¹ In a way, it was a unique research initiative, which had a quick and timely impact on the process of forming the ideas and its inputs into policy making.

The advisories may not have strong legal backing at this stage, but in a way, they legitimize demands raised by land rights movements across the country.

The research reports also give an opportunity to movements to negotiate with state governments on points suggested by MoRD. This is what makes this publication relevant today. The chapters in this volume offer a critique of existing land reforms in each state and draw attention to the loopholes in land laws. While doing so, they provide justifications for the advisories that were issued. Several other issues raised by these reports, which were not included in the advisories, are also equally relevant.

Land to the Tiller: Revisiting the Unfinished Land Reforms Agenda has been published to enrich the debate on these issues.

Sandeep Chachra
Executive Director
ActionAid India

1. A comprehensive list of the state specific advisories issued by the Ministry of Rural Development can be seen in Jansatyagrah: Sahmati Se Karyawahi Ki Aur (April 2013). Available at < http://rural.nic.in/sites/downloads/lab-to-land-initiative/JAN_SATYAGRAHA_BOOK.pdf > accessed on 23 December, 2015

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This publication would not have been possible without the help of a number of people whose support is being gratefully acknowledged here. K B Saxena has provided inspiration and guidance to the whole project and helped set the perspective of the report in an extended Preface. Prashant K Trivedi has not only edited the publication but also contributed three chapters. All the contributors to this publication took up the assignment as a labour of love. Nilachal Acharya, a policy researcher, has in his individual capacity provided state specific data as inputs to the present version of the report.

In Action Aid India the research project was anchored by Amar Jyoti Nayak, then working in the Land and Livelihoods Knowledge Activist Hub, ably supported by Byomkesh K Lall. Byomkesh, who also helped with the research efforts in Jharkhand, has been with this project from inception to publication. The research for the report would not have been possible without the support of ActionAid colleagues in various offices. The research in Bihar was supported by Vinoy Odhar, for Punjab and Haryana Tanveer Kazi provided valuable assistance, for Maharashtra the study was aided by Nirja Bhatnagar, for Rajasthan Prem Ranjan and for Andhra Pradesh Raghu P played vital roles. Books for Change has enhanced the value of this publication by giving it a logical structure, meticulously editing the text and laying out the pages to make reading an aesthetically pleasing experience.

Note on Contributors

Gandhimathi is a versatile activist, researcher and campaigner. She has more than 35 years of experience in development sector and activism. She studied labour laws, Gandhian thought, and population dynamics. Gandhimathi has been the founding member for many organisations and platforms. She has been quite active on the issues of women, fisherfolk, children and has travelled extensively across the state of Tamil Nadu and the country. She is founder member and core member of Campaign Against Sex Selective Abortion, State committee member for Coastal Action Network, Convener for Tamil Nadu Women's Network and State Advisor for Tamil Nadu Federation of Women Presidents of Panchayat Government and Tamil Nadu Women Fish workers Federation. She is also a trainer and OD facilitator. Her research contributions are quite known on the subjects of globalisation and tourism and impact on fishers and women, gender, governance, female infanticide, Tsunami and child labour. She is now Managing Trustee and Director of Legal Aid to Women Trust (LAW Trust) at Nagapattinam. In this publication Gandhimathi has written Chapter 11: Tamil Nadu

Gladson Dungdung is a human rights activist, author, researcher, public speaker and motivator. He comes from the Kharia Adivasi community of Jharkhand. He has authored and edited articles on human rights issues, Adivasi rights, displacement, politics and social change. He served as an honorary member in the Assessment and Monitoring Authority under the Planning Commission of India. Gladson was awarded the Samata Ratan Award, 2014, for his extraordinary work for Adivasi communities of India. Gladson has co-written Chapter 6: Jharkhand

Gopal Das retired from the services of Government of Rajasthan as a Senior Land and Revenue Officer (Rajasthan Administrative Service). In his career of more than three decades he worked in various capacities related to the land and revenue matters. He has an extensive and in-depth understanding of laws, legislations and programmes related to land and revenue for the state of Rajasthan. He presently works as an ardent supporter of the movements for ensuring land to the most marginalised

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K Gopal Iyer is a Doctorate in Sociology from Patna University and served in various reputed universities and research institutes for the past 50 years. He worked in various academic positions with Patna University, National Labour Institute, Allahabad University and Punjab University. He also served at Lal Bahadur Shastri National Academy of Administration at Mussoorie for 3 years. After serving at Haryana Institute of Rural Development, Nilokheri (Haryana), and as consultant at Indian Institute of Advanced Study, Shimla, Prof Gopal Iyer, is now working as senior fellow at Indian Institute of Social Sciences, New Delhi. He has written extensively on subjects related to agriculture, labour, rural development, governance, tribal rights and watersheds and published many books and articles to his credit. He published more than 70 papers in journals of repute in the various areas of specialization. He has been quite actively engaged with various farmers and labour movements and committed to the rights of the tribals, farmers and labour. In this publication he has written Chapter 5: Haryana and Chapter 9: Punjab.

K.B. Saxena has been a student of Political Science in the University of Delhi. He joined the Indian Administrative Service in 1964 and held important government positions such as Joint Secretary, Land Reforms; Addl. Chief Secretary, Govt. of Bihar; Secretary in the Ministries of Welfare, Rural Development and Health, Government of India. He was Principal Adviser to the Planning Commission as well. He prepared the report on Atrocities against SCs for the National Human Rights Commission. He has contributed numerous of articles/papers and edited many books. In this publication he has contributed immensely by giving inspiration and direction and has also written the Preface: Re-Setting the Agenda of Land Reforms

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Prashant K Trivedi is a researcher with deep commitment to the cause of land reforms and social justice. He did his doctoral research from the Department of Sociology, University of Lucknow. He is working as Assistant Professor at Giri Institute of Development Studies, Lucknow. He also served as faculty at Council for Social Development, New Delhi and also for the P G Diploma in Development Studies at the Ambedkar University Delhi in collaboration with the Council for Social Development. Prashant is closely associated with various social movements and civil society organisations as part of this work. He is an editorial committee member of *Social Change* the journal of the Council for Social Development. He has published books, articles in various journals, on subjects including land reforms, caste and vi-

olence and disparities in development. Dr Prashant is the editor of this publication besides contributing Chapter 1: Introduction – Ensuring Land to the Tiller, Chapter 12: Uttar Pradesh and Chapter 13: In Lieu of a Conclusion.

Ravi Kumar holds a post-graduate degree in Rural Development from Xavier Institute of Social Service, Ranchi. Ravi has worked with civil society organisations for around 15 years. His long association was with Watershed Support Services and Activities Network (WASSAN) based in Hyderabad. Ravi has collaborated with various people's organisations as well as with the government on the agenda of pro-poor land reforms. Currently he is an advocate and activist independently working and writing on the changing politics and practices centered around land rights in the states of A.P and Telangana. In this publication, Ravi has written Chapter 2: Andhra Pradesh.

Sundara Babu Nagappan is a public policy analyst, a peace researcher and a grass-roots civil society worker. He has been involved in several ongoing studies and action researches with particular focus on land relations, water politics, agricultural wages, caste violence, and conflict transformation. He has also been associated with various community-based groups, geo-cultural movements and public welfare organisations across India for last 15 years. He has been involved in various initiatives associated with research, documentation and publication leading to effective campaigning, lobbying and advocacy. Since 2009, he has been actively involved with land and water issues in the states of Tamil Nadu, Pudhucherry and Maharashtra. He has written Chapter 8: Maharashtra

Sunil Minj is a commerce graduate from St Xavier's College, Ranchi, and has been active in progressive platforms and movements in Jharkhand. He was part of Christian Student's Union activities and was part of struggles against displacement in Jharkhand. He has extensively written on issues tribal identity, youth, resettlement and rehabilitation issues. He was a Fellow under the Media Fellowship Programme for Journalists of the National Foundation of India. He is a writer, freelance journalist, and activist. Sunil has co-written Chapter 6: Jharkhand.

Preface

Re-Setting the Agenda of Land Reforms

K. B. Saxena

The subject of 'land reforms' has come a long way in public policy discourse. In the initial decades of development planning, it was conceived as a major instrument for increasing agriculture production and productivity, restructuring agrarian power relations and for alleviation of rural poverty, particularly of informal tenants and agricultural labourers and was pursued with full vigour by the central government.

Now the central government's status has been reduced to providing advisory communication to the states suggesting measures for 'improving and expediting existing land reform measures' which is lacking in both an authoritative policy pronouncement and also in vigorous follow-ups.

This little concession was necessitated by compulsion to peacefully disperse a massive group of rural landless poor from different parts of the country away from the capital in October 2012. Ekta Parishad, a Gandhian non-governmental organization, had mobilized these people, whom would have been difficult to handle had they reached their destination. Otherwise, the centre has little interest in vigorously pursuing this advisory agenda with state governments. The states are even less likely to take the centre's advisory seriously. In fact, there is virtual consensus among policymakers, neoliberal economists, agricultural scientists and experts from international financial organizations that the existing land reform policy on tenancy, ceiling, restrictions on transfer of land and change of land use poses serious constraints in achieving fast economic growth and realizing optimal value. Land, they argue, should be freed from any restrictions that block its efficient use and limit its access. The market should determine who should make use of land effectively. Tenancy laws stand in the way of making productive use of cultivable land as the landowners keep it fallow and do not lease it out lest they lose control over it. Ceiling restrictions disincentivize investments thereby preventing its business-like use for increasing agriculture production and productivity and thus

realizing economies of scale and obtaining optimum returns. Restrictions on transfer of land depress its value and limit its potential for growth. They also prevent its efficient use; land is not considered 'attractive' enough for investment. Rigidity on land use prevents its optimal and most advantageous use, circumscribes market transactions and therefore fails to garner benefits of economic growth.

A quiet reversal of the old architecture of land reforms is therefore, taking place without a formal declaration. This is evident in the relaxation in ceiling provisions on agricultural landholdings for corporate agencies and aggressive official advocacy of liberalizing tenancy. Restrictions on transfer of tribal land have been ignored in acquisition of this land and in its subsequent transfer to private agencies. Land use restrictions are not strictly enforced anymore and permission for change of land use is granted with ease to investors. Market forces in any case have neutralized land regulations and the will to enforce regulations is lacking in the functionaries of land revenue departments in state governments. The Special Economic Zone (SEZ) Act is a classic example of reversal of land reforms. Only the disempowered and impoverished landless poor including those who have been cheated of their officially allotted pieces of land by forcible dispossession or failure to get its possession are clinging to the vain hope that the unfinished agenda of land reforms will get enforced and they will be able to get some land of their own and that with it they will also get dignity, identity and an address or the status of being citizens.

Ironically, while pursuing change in agrarian and social relations from owners to landless cultivators through redistributive land reforms has receded to the background in discussions on public policy and in academic discourse, issues in another arena of land relations hitherto neglected have emerged centre-stage. This arena is the relation between the state as the supreme owner of all land in its jurisdiction and being the regulator of its use and the holder and user of a large area of land for its exclusive use. This arena of land relations is throwing up a parallel agenda of land reforms, which challenges the absoluteness and concentration of this power in the state.

Unlike redistributive land reforms, the agenda for which was scripted by the state as the final arbiter between the interests of recorded owners of land and its tenants and other users, the parallel agenda of land reforms has emanated from the people themselves over a long process of mobilization through diverse processes and at different times and in different contexts. This agenda has focused on four dimensions of state power in relation to land:

- a) As an agency with the largest ownership of land resources for its exclusive use;
- b) As an agency which enjoys absolute powers to regulate the use of land, public or private;
- c) As an agency which exercises total control over the management of natural resources - water, forest, minerals and sea shore including the power to allocate them; and
- d) As an agency which displays a patriarchal bias in dealing with rights and interests in land.

The reform agenda with respect to the first has been seeking redistribution of land, which is meant for the exclusive use of the state (except that which is classified for common use) among landless persons. This includes redistribution of plantation land, the lease of which has expired. This agenda also demands conferment of ownership with respect to land owned by the state, which landless rural poor have been cultivating for a long time but they have not been able to get legal recognition of their claims over it. This agenda also seeks allotment of house sites for shelter less rural poor, which the state is duty bound to provide under its own policies. Above all, the agenda challenges the unencumbered nature of state ownership of land, disregarding its traditional collective use by the local communities in the vicinity, and its power to transfer such land to an external agency without taking into account such use and putting in place a compensating mechanism for the loss.

But the most important item of this agenda is reclaiming the rights of the people with respect to forestland and other forest resources that the state usurped from communities during the colonial period. In response to this pressure, the state has partially conceded to the need for distributing some land owned by it and has accordingly been doing so from time to time. This concession has come not out of generosity but as a soft option and a substitute for covering up its dismal performance in implementing ceiling laws which were intended to achieve redistribution of privately owned land. As for regularization of cultivation of state owned land by the rural poor over a long period of time, such claims are eligible for recognition through issue of formal *pattas* within the ambit of state policies, though the implementation of this is very poor. Recognition of customary rights of use of government owned land by local communities is a part of the continuing struggle which has not yet been conceded upfront as a policy (in some states, existing land records do incorporate these rights) though the practice

of this use is not interfered with as long as the land remains vacant and is not formally allotted to some agency. Conflict arises when the government decides to transfer ownership of this land to some other agency and change its use. The persons using this land get displaced and lose benefits without any mechanism for compensating this loss. Since land records in many places do not incorporate these customary rights, the state is able to disregard them in the process of transfer of such land when it comes to paying compensation or providing replacements in the design of resettlement which follows such acquisition for persons displaced from their privately owned land. But the most important item of this agenda is securing rights to forestland, both for cultivation as well as access to other resources along with its management by the local community. This has since been largely conceded in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act (2006). Here again tribal populations face formidable resistance from the forest department's bureaucracy in implementing this law and getting the benefits.

The second dimension of the challenge to state power is regarding unfettered authority to determine land use, which is exercised in various ways. One instrument through which this power is exercised is through compulsory acquisition of privately owned land for public purposes. Till recently, the Land Acquisition Act (1894) was the most widely used instrument for such acquisition. This act was the subject of most widespread and intense struggles during the past two decades though protest movements date back to the early years of independence and even to the colonial period when the law was enacted. People affected by such acquisition across the country question five facets of this power:

- a) Absolute power to take over privately owned land against the consent of the owner and user/users, the legal rationale of this power embedded in the notion of 'eminent domain' and its moral justification conveyed by 'public interest'.
- b) Unrestricted power to transfer acquired land to any agency and determining land use.
- c) Injustice involved in taking away a productive resource and a source of livelihood from the poor without giving them an alternative asset for livelihood, dispossessing them from their habitat, displacing them from their social environment and networks and from access to essential civic services and traumatizing them by destabilizing their lives without even the obligation of rehabilitating them.

- d) Disregarding rights and interests in land, private and public, not incorporated in land records such as right to cultivation as a tenant over privately owned land, reclamation of vacant government land for cultivation and right of use with respect to common property resources for payment of compensation.
- e) Insensitivity and irrationality in acquiring land much in excess of needs which then remains unutilized.

The agenda of land reforms in this context demanded that

- a) no privately owned land should be taken away from the owner / user without his/her consent.
- b) The use of 'eminent domain' for this purpose should have no place in a democratic policy and should be discarded. The label of 'public purpose' should not be applied in acquisition of land where it is to be put to private use. 'Public purpose' should therefore be strictly defined and its use for acquisition of land should be confined to only those activities that directly benefit land losers among others. It is unjust to deprive the poor of their land and transferring it to corporate or other private agencies for their profit earning activities. This cannot be justified as 'public purpose'. It unequivocally argued for a complete ban on the acquisition of land by the government for private companies.

Reform proposals in relation to unrestricted power to transfer acquired land to any agency and determining land use opposed diversion of agricultural land for non-agricultural purposes as it would compromise food security besides depriving a large number of people dependent on it for survival of their livelihoods. The agenda instead advocated acquisition of uncultivable land for such purposes. It also demanded social and environmental impact assessments of proposals for land acquisition with a view to evaluating their costs and benefits before taking a decision whether to go ahead with the acquisition or abandoning the project for which the land was required if the adverse impacts outweighed the anticipated benefits.

To address the issue of the injustice involved in taking away a productive resource and a source of livelihood from the poor without giving them an alternative asset for livelihood, dispossessing them from their habitat, displacing them from their social environment and networks and from access to essential civic services and

traumatizing them by destabilizing their lives without even the obligation of rehabilitating them the agenda included the demand that there should be no acquisition of private land whether by the government or private agencies (through market transactions) without proper rehabilitation (implying long term resettlement) of persons losing their land, livelihood habitats and being uprooted from their stable social living. This rehabilitation should include adequate compensation, alternative land for cultivation for those losing land, provision of employment for those losing livelihoods, replacement of their houses and provision of social and physical infrastructure in the new resettlement colony besides a comprehensive long term programme of rebuilding their social lives and economic activities.

When it comes to disregarding rights and interests in land, private and public, not incorporated in land records such as right to cultivation as a tenant over privately owned land, reclamation of vacant government land for cultivation and right of use with respect to common property resources for payment of compensation, the agenda advocated updating land records before the acquisition process was initiated.

The issue of insensitivity and irrationality in acquiring land much in excess of needs, which then remains unutilized, is sought to be addressed by the demand that if acquisition of land is unavoidable, the most minimum land should be acquired and that too after exhausting non-displacing alternatives. Also, the unutilized part of the acquired land lying with project authorities should be returned to the erstwhile owners. The people's mobilization around these issues culminated in the replacement of the old Land Acquisition Act (1894) with a new one – the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (2013) which incorporated some of these demands.

The third dimension of an alternative agenda of land reforms is the unfettered control that the state has over common natural resources and the discretion it exercises with respect to their management. Management decisions usually do not take into account hugely adverse externalities affecting livelihoods and dignified survival of not only the people living in the vicinity but also of future generations. When the likelihood of such negative impacts is brought to the government's notice, they are disregarded in the larger interest of 'development'. The people dependent on these resources assert that the state is not the owner but only their trustee / custodian on behalf of the communities living close to them. It, therefore, cannot privatize these natural resources or put them to uses that irreparably damage their health,

quality and intrinsic value, and contribute to the deterioration of the local ecology and destruction of its biodiversity besides impoverishing the people. Natural commons were earlier governed by diverse and decentralized community control systems. The colonial government usurped this control from them and converted these natural concerns to government property. The people however maintain that only local communities that are dependent on these resources can be trusted to safeguard them. Hence, appropriately redesigned community control systems of a participatory nature, which are suitable for the existing situations, should be established to manage them in an integrated, equitable and sustainable manner. The contours of reforms on this issue are in the process of being crystallized as the ambit of common natural resources is expanding and it now also extends to cyber space.

The struggle on this agenda is the hardest and success the most difficult to achieve. But it has acquired a space in the emerging issues of land reforms that needs to be pursued.

The fourth agenda of alternative land reforms critiques patrilineal and patriarchal hold over land, which discriminates against women. This is reflected in biases when it comes to giving rights in land to women. This critique highlights the absence of entitlements to women - daughters, sisters, widows and mothers – as equal and absolute owners of property with full rights of their own disposal. The 1956 amendment to the Hindu Succession Act made some progress in this respect but fell far short of giving women equal rights with male members. Land reform laws also reflect this bias against women. In tenancy laws, tenancy devolves on the male line of descent with widows inheriting only in the absence of male heirs. Daughters and sisters are either excluded or come low in the order of heirs. Besides, a woman, in any capacity, is conferred only a limited interest in land. She also loses her land if she remarries or fails to cultivate it. In ceiling laws, a family gets an additional unit for adult sons but for not adult daughters. Also, while the husband is counted as an independent unit his wife is not even if she owns land independent of the husband. As a result, the wife loses her land if it exceeds the ceiling limit. Married minor daughters are also not counted as separate units (Chowdhry, 2009). In the distribution of surplus ceiling, *Bhoodan* or assignment of government land too, *pattas* were issued to male heads of households. This bias is also evident elsewhere like in disregarding major daughters being entitled to separate units for rehabilitation of the family displaced on account of land acquisition. Worse, female members of the family are not even considered worthy of trust for receiving a notice for the acquisition of land and other

communication in this regard from the government under the Land Acquisition Act (1894). The women's movement has been struggling for removing discrimination against women in various land reform laws and is seeking equal rights for them in inheritance of family property. Some advances have been made in the pursuit of this agenda. In 1980, the government agreed to issue land *pattas* in the joint names of husband and wife and also issue *pattas* in the name of female spouses in future assignment of land and directions were issued on these lines. The Hindu Succession Act (2005) incorporated a substantial part of the rights demanded with respect to succession to family property. These changes do not apply to women of other religious communities as they are governed by their own personal laws. The new law that replaced the Land Acquisition Act (1894) also removes male bias in the issue of notice and in rehabilitation of displaced families.

It would thus be evident that a whole new agenda has been added to the old agenda of land reforms which covered only five items: Abolition of intermediary tenures, tenancy reforms, ceiling on agricultural holdings, land consolidation and updating of land records. Of these only the first three were redistributive measures. Subsequently, distribution of land donated in the *Bhoodan* movement was also included. Restoration of alienated tribal land pre-dated the land reforms policy. This programme was initiated in the colonial period in the aftermath of widespread revolts by tribals across tribal areas against colonial agrarian and forest policies and introduction of an alien justice administration system which had the effect of dispossessing tribals of their land and curtailing their access to forest resources including forest land for cultivation.

Some states have carried out amendments in these laws to strengthen them. There are some instances of diluting them as well. Some of the states that did not have such a law have enacted it. But the alienation of tribal land continues unabated due to indifferent implementation of these laws. In fact, all the measures included in the new agenda of land reforms emanating from people's movements have been poorly implemented, with the exception of distribution of land owned by the government. But even when it comes to distribution of government land, accrual of benefits to the assignees eludes them in a large number of cases as they have either not been delivered possession of the land or have been dispossessed of the land by powerful local landowners. The same situation prevails in the case of those who were assigned surplus ceiling land or *Bhoodan* land. Here the former owners of land have successfully derailed the redistribution programme.

The failure of the older agenda of land reforms has been attributed to the landed background of political leaders and the bureaucracy and their class and caste biases. The result of these was the enactment of weak and diluted land reform laws with a number of loopholes built into them, which subverted their implementation. These loopholes provided the implementing bureaucracy sufficient discretion to interpret the law in favour of landowners rather than in favour of prospective beneficiaries. The judicial process was even more heavily loaded in favour of landowners. Prospective beneficiaries lacked organization and an agency to mobilize them so that they could exert pressure on implementing officials. Over time, landowners consolidated their powers and the government instead of addressing these weaknesses for a renewed thrust on the implementation of land reforms sought alternative routes to tackle problems of poverty, asset-less-ness and powerlessness of the rural landless poor. There was thus no political will to take up the unfinished agenda of land reforms such as removing exemptions in tenancy laws and loopholes in ceiling laws, fast track disposal of pending ceiling cases locking up a huge area of land from distribution, expeditious clearance of claims for regularization of land under cultivation, etc.

The advisories issued by the Ministry of Rural Development to specific states include the dimensions of the older architecture of land reforms. They do not include any item with respect to consolidation of landholdings or updating land records because consolidation is not a redistributive measure and the poor in any case are hostile to this programme as it was used by powerful landowners to grab good plots of their land while transferring them inferior parcels. Due to continuing fragmentation of land within a family, the programme, in any case, has become irrelevant unless a voluntary effort emerges for consolidation among similarly placed landowners sharing a commonality of interests. The neglect of updating land records by the central and state governments have not only contributed to the poor implementation of land reforms but has also hurt delivery of development programmes, particularly to the poor. This neglect is an outcome of the devaluation of revenue administrations in the state governments after independence since it ceased to be a source of resource mobilization for them. The deterioration in the revenue administration at the state level has led to the inclusion of tasks considered routine for functionaries of state revenue departments in the agenda of land reforms such as non-disposal of mutation cases, lack of interest in clearing encroachment on government land, demarcation of land and delivery of possession to the assignees of land where land was assigned under land distribution programmes. Meanwhile, additional issues related to land reforms have cropped up particularly after the introduction of neoliberal economic reforms.

The fast pace of urbanization and privatization of infrastructure development and housing construction in urban areas has underlined the urgent need for urban land reforms. The focus of these reforms is on equitable use of urban land to address the burgeoning problem of house-less-ness of the urban poor and the increasing nature of insecure slum settlements with ever-present threats of eviction and no access to basic amenities.

The need for creating a land records system for facilitating smooth land transactions and tackling the problem of land grab by builders and other powerful interest has also surfaced in this agenda. The transfer of common property resources to corporate agencies for various development activities without taking into account the traditional rights of users subsisting on them and compensating the losers of these rights has underscored the need for recognizing these rights and incorporating them in land records with special safeguards for dalits and adivasis to ensure that they have equitable access to the land. While this right has been conceded with respect to forestland for tribals and other traditional forest dwellers in the recently enacted law, no comparable intervention has been made with respect to the traditional rights of coastal communities in coastal land and of pastoral communities with respect to grazing land. As the development process adds to the list of disempowered and marginalized groups on account of privatization of productive resources on the one hand and their diversion for industrialization and infrastructure development on the other which deprives them of livelihoods and other benefits of day to day life, many more social groups are emerging as claimants to land for cultivation and for house sites. With common land / government land in the villages disappearing fast as a result of privatization, encroachments and diversion, the demand for land to meet even such elementary needs as cremation / burial of the dead, construction of toilets for landless poor, house sites for providing shelter to the houseless and separate accommodation for expanding nuclear family units of the rural poor due to demographic growth squeezed in a single hutment and construction of infrastructure for utilities of a collective nature have also sprung up. The background papers and the Advisory issued by the central government reflect the shades of this agenda.

What chance does the agenda of land reforms contained in the advisories have of being enforced? Frankly, very little. It is unlikely that political rulers or the bureaucracy will be enthused to pursue it. They feel that land reforms are a closed chapter and reopening the programme will destabilize rural society and disturb peace and harmony. Their antipathy to land reforms and assertions by the rural poor can

be judged from a reported remark by the head of Ekta Parishad that in the areas affected by Naxalism, rural poor seeking access to land, forest and water (*jal, jungle and zameen*) under existing legal and policy instruments are dubbed as Naxalites and threatened that they will be prosecuted if they raise such issues. The rural power structure has not weakened so much that it will permit any redistribution of land without determined resistance.

The agrarian structure with middle castes in ascendancy has consolidated itself politically, economically and socially. The new economic dispensation has particularly strengthened the hold of upper castes in the economy due to their privileged access to financial and intellectual capital that reinforces their dominance in politics and society. They are in no mood to abandon or even loosen their hold over land and the rural economy even as they add to their strength in other sectors of economic activities.

However, when it comes to the softer items on the new agenda, some incremental gains may be achieved in areas such as allotment of house sites, considerably diluted recognition of forest rights, women's right to land and disposal of mutation cases where the prospective beneficiaries have been mobilized.

Are the advisories then irrelevant? Will they generate greater frustration and therefore despair if after such a massive and unprecedented mobilization of the poor over such a long time, little that is substantial is achieved? No, the small battle won in the issuing of the advisories, is not an entirely illusionary gain. Mobilization by Ekta Parishad, at least, achieved one thing – forcing the central government to reopen the chapter on land reforms, take some decisions, however, minimal, on the reports that its own committees and commissions have made and issue directions to state governments for their implementation.

The agenda in the advisories legitimizes demands raised by land rights movements and provides solid ground to them to enlarge their base, build stronger organizations of the rural poor locally around the agenda, exert pressure wherever they have the strength to do so and negotiate for extracting some benefits for their constituents. As the polity moves on to a new phase of democratic churning, people's movements alone will be able to extract concessions from a reluctant government, particularly when these movements are most vulnerable politically and also get an indifferent bureaucracy to implement them. The movements should proceed to work out localized district wise agendas and their priorities to start with should be taking up items that

have the potential of relatively easier implementation. Building on the strength of this achievement, they should then move to enlarge their participation base and seek support of other social and political movements in the area engaged in mobilizing the rural poor on other issues of their concern for a longer and determined struggle to pursue relatively more difficult items.

I commend the decision of Action Aid to publish this document.

Chapter 1
Introduction
Ensuring Land to the Tiller

Prashant K Trivedi

The ‘forgotten agenda’ of the 1960s has resurfaced again, albeit in a new form. This new form might be dominant, but it is not uncontested by the proponents of ‘traditional’ land reforms. For the sake of convenience, the new form is often referred to as ‘market led reforms’, whereas the ‘traditional’ form is still called ‘redistributive land reforms’. Both are not considered mutually exclusive in the sense that concrete steps taken under each may coincide, but the focus of the two is definitely different. If market led reforms take into account market compatibility of the land tenure system, redistributive reforms were oriented towards increasing productivity and bringing down inequalities. Another distinguishing aspect between the two is the way in which both these approaches have negotiated with local power structures. If land reforms through market admittedly follow a non-confrontationist approach, redistributive land reforms were intended to alter power relations at the local level.

Coming to concrete suggestions offered by both the approaches, the first opinion – perhaps one finds more favour in the government machinery – focuses on promoting contract farming (Jain, 2003) legalization of tenancy (Haque, 2003) and distribution of homestead-cum-garden plots (Shankar, 2003). It also warns against blind adherence to land ceiling and tenancy reforms (The World Bank, 2007; Hanstad et al., 2008). Another set of land experts opine that ‘land reforms through the market’ will further impoverish landless and land-poor peasantry and land ceiling laws must be implemented as land reforms are not just about the empowerment of poor but also about the disempowerment of rural elite. They consider this a necessary precondition for the deepening of democracy in rural India (Bandyopadhyay, 2002).

In this contested scenario, an attempt is made in *Land to the Tiller: Revisiting the Unfinished Land Reforms Agenda* to provide an overview of land reforms’ experience in 11 states – Andhra Pradesh, Bihar, Gujarat, Haryana, Jharkhand, Karnataka,

Maharashtra, Punjab, Rajasthan, Tamil Nadu and Uttar Pradesh. Instead of talking about the state-specific dynamics of land reforms, which is dealt with in the respective chapters that follow, the endeavour in this chapter is to compare and contrast situations in various states to reach certain generalizations at the national level. It is also the hope that while doing so, some inputs for policy might emerge.

Abolition of Intermediaries and Tenancy Reforms

The first phase of land reforms in all the states was mainly intended to abolish intermediaries and provide protection to tenants. Intermediaries were understood to be those interests who were acting between the actual tiller and the state. After independence, these rent-seeking classes were looked at as impediments for the capitalist transformation of Indian agriculture. Aiming to ensure transformations, Indian land reform laws had to deal with a variety of land tenure systems prevailing in different parts of the country at that time. In fact, different regions in every state were dominated by different varieties of intermediaries, ranging from *jagirdars* in Rajasthan to highly institutionalized *zamindars* of permanent settlement areas to revenue officials-turned-informal intermediaries in *rayyatwari* areas in Maharashtra.

But, surprisingly, the dynamics of this phase of land reforms present some striking similarities. In almost all the states, the period of legal enactment aimed at abolishing intermediaries staggered for quite long, giving them enough time to secure their land. In several cases this was as long as a decade. These legal enactments stripped landlords of their revenue collection powers, but provisions to retain land for self-cultivation was fully utilized by landlords in these states to continue their possession of large tracts of best quality land.

In this process, superior tenants, for example, occupancy tenants, hereditary tenants and ex-proprietary tenants, got free-hold occupation on admissible land, but inferior tenants, for example, sharecroppers, tenants at will, contract farmers and those engaged in cultivating *khudkasht* (personal cultivation) land lost access to it.

Since they feared losing their land, landlords also resorted to large-scale eviction of tenants who were otherwise quite different in their social backgrounds. It took years to restore this ruptured relationship between the landowners and tenants. This restoration was necessitated by the fact that the landlords continued to control large tracts of land that they were unable to cultivate on their own and tenants who did not

have enough land to survive on. The first wave of land reforms left behind an agrarian organizations in states which were quite similar to each other with a tiny, old intermediary-turned-rich farmer on the top, a sizeable section of erstwhile recorded tenants in the middle who were successful in acquiring ownership rights to their cultivated land and a large chunk of landless at the bottom of the ownership structure.

Many states have abandoned the practice of maintaining updated databases on the number of tenants who were conferred ownership rights or about the rights protected and area accrued to them. Some others, like Madhya Pradesh and Haryana, claim that tenancy is not prevalent in these states. However, in spite of these limitations, data provided by MoRD's annual report places Assam and Kerala as leading states in tenancy reforms. The operated area in Assam was almost double the operated area in Kerala in 2006. Considering the size differences, Kerala stands out as a leader in tenancy reforms in India, with 28.42 lakh tenants conferred rights over 14.5 lakh acres of land.

Among the states included in this volume, western states of Maharashtra and Gujarat have done comparatively better than the other states. Maharashtra, which delivered benefits to 14.92 lakh tenants over 42.90 lakh acres of land, is followed by Gujarat, which delivered 12.76 lakh tenants over 25.92 lakh acres of land. Among the southern states, Karnataka (6.05 lakh tenants over 26.32 lakh acres) did better than Tamil Nadu (4.98 lakh tenants over 6.95 lakh acres) and Andhra Pradesh (1.07 lakh tenants over 5.95 lakh acres). The states in north India either do not provide data, or they lag far behind these states.

This phase of land reforms could not deliver expected outcomes. Many social scientists call it 'elite sponsored reforms' designed to break agricultural stagnation and end rural unrest. 'The "reordering" of agrarian society, which promoted peasants proprietors, was intended to diffuse class polarization through moderate land reforms,' (Hasan, 1989: 159). 'The reforms were not aimed at radical transformations or to give land to tillers. So, to reconcile the interests of the landed class and poor peasants, the ruling elite in the country chose to go ahead with limited land reforms that mainly benefited the intermediate class of superior tenants who were opposed to the continuation of the feudal landed system and aspired to join the privileged class of independent proprietors. Simultaneously, this class opposed further restructuring of ownership and distribution of land in favour of the rural poor. Consequently, landless and poor peasants remained outside the benefits of these reforms because they

could not mobilize themselves as a class. Thus, agrarian reform has only contributed towards the restructuring of the landed class, more specifically the ousting of a paternalistic and feudal landed class by a more production-oriented, but aggressively acquisitive, landed class.’ (Pai, 1986)

Distribution of Ceiling Surplus Land

At the all-India level, 68,72,824 acres of land was declared ceiling surplus. Out of that, 60,27,180 acres was taken possession of by the government and 48,99,893 acres had been distributed till 2006. This means that only 71 per cent of the identified ceiling surplus land was distributed among the landless. Most of the rest of the land remained stuck either in bureaucratic procedures, or in litigations. Let us put these figures in perspective. The total operated area of India in 2006 stood at 15,83,22,983 hectares (ha) (that is, 39,10,57,768 acres). This means that only 1.25 per cent operated area was distributed through ceiling surplus measures.

With distribution of more than one million hectares of land, West Bengal topped the list among the states. In terms of proportion of total operated area also, it was way ahead of other states with a distribution of 7.5 per cent of the total operated area. Among the states included in this publication, Maharashtra, with a distribution of 6,14,913 acres, led the list, but a slightly different picture emerges as soon as these figures are compared with the total operated area in these states in 2006. While none of these states have distributed even 2 per cent of their operated areas, Bihar led the list with 1.98 per cent. (See Table 2.1) These figures speak about the failure of ceiling surplus measures, which are considered cardinal elements of land reforms in India.

Again, like intermediary abolition measures, ceiling surplus laws were also evaded by exploiting the loopholes. All ceiling laws had given some exemptions to certain categories of landowners, most notably religious and charitable trusts, *muths* and educational institutions. Bogus family-controlled trusts were formed and land was transferred to temples, but remained under actual possession of the owners. The largest area of temple land exists in Tamil Nadu. Several *muths* in Bihar were also found to have massive quantum of land. In the recent past, several new religious organizations/*ashrams* have emerged and they are busy buying agricultural land in prime locations. Similarly, the laws also exempted certain types of usages such as plantations/orchards, stud farms.

Table 1.1: Distribution of Land Declared Surplus Across 10 States as on 2006

State	Distribution of Ceiling Surplus Land (in acres)	Percentage of Total Operated Area in State
Andhra Pradesh	5,88,925	1.64
Bihar*	3,06,964	1.98
Gujarat	1,56,353	0.61
Haryana	1,01,166	1.14
Karnataka	1,23,775	0.40
Maharashtra	6,14,913	1.24
Punjab	1,12,580	1.15
Rajasthan	4,64,799	0.89
Tamil Nadu	1,88,110	1.11
Uttar Pradesh	2,63,225	0.59

*includes Jharkhand

In some states, identified backward/hilly areas were subjected to higher ceilings. Additional members beyond the prescribed five members per family were also exempted a certain amount of land. Wherever families were allowed to retain extra land for adult male members, minors were shown as adults by fabricating age proofs. In states like Maharashtra, where minors were given this exemption, the opposite was done.

Land was generally classified depending upon irrigation status and land with assured irrigation for two crops was subjected to a lower ceiling than inferior quality land. In all the states, especially in Punjab and Haryana, irrigation status on record was downgraded to avail of higher ceiling exemptions.

Distribution of Government Wastelands

After the failure of the programme on distributing ceiling surplus land, governments attempted to contain demand for land by distributing government land. However, in no way could this have compensated for the loss caused by failure of ceiling surplus land. By way of definition, wasteland was not considered fit for agriculture and had been kept aside by village communities for purposes other than agriculture, such as grazing land. Apart from bringing down inequalities, imposition of ceilings would have made better quality of land available for distribution among the landless.

Andhra Pradesh was the leading state on this account with a distribution of 42.02 lakh acres of wasteland followed by Uttar Pradesh (28.86 lakh acres), Gujarat (13.81 lakh acres), Karnataka (13.72 lakh acres), Bihar (including Jharkhand) (13.21 lakh acres) and Maharashtra (10.23 lakh acres). The rest of the states distributed almost negligible wastelands. A large state like Rajasthan distributed only 1.12 lakh acres of wasteland. No wasteland was distributed in Haryana. Throughout the country, 148.55 lakh acres of government land was distributed, which is only 3.8 per cent of the total operated area.

Women's Land Rights

According to the Agricultural Census (2010-11), females operated only 12.78 per cent of the total operational holdings in India, covering an area of 10.34 per cent of the total operated area. Reported tenancy being almost negligible, data on operational holdings reflect ownership holdings also. According to the Agriculture Census (2010-11) the average size of a female holding was found to be only 0.93 hectare, as compared to 1.17 hectare for male holdings. However, there has been a slight decline in the average size of operational holding to 1.15 ha in 2010-11 as compared to 1.23 ha in 2005-06.

This is one area in which all states fail, but the situation varies from one state to another. In fact, a closer examination to get the regional picture shows that the southern states did comparatively better as compared to the other regions. The states in the west followed the southern states.

Again as per Agriculture Census (2010-11) around 25 per cent holdings in Andhra Pradesh (AP) were operated by women, covering 22 per cent of the total operated area in the state. If this data is to be believed, then comparable figures for Punjab are only 0.95 per cent and 0.66 per cent respectively. In a way these figures also reflect the gender-biased nature of the green revolution, which has led to even more concentration of land. The southern states of Tamil Nadu (19.11 per cent holdings operating 16.28 per cent area) and Karnataka (18.97 per cent holdings operating 15.53 per cent area) closely followed AP. Western states of Maharashtra (14.99 per cent holdings operating 13.08 per cent area) and Gujarat (14.12 per cent holdings operating 13.18 per cent area) come next. In Bihar, 14.06 per cent landholdings covering an area of 13.29 per cent were operated by women. Comparable figures were 10.98 per cent and

8.17 per cent in Jharkhand respectively. Surprisingly, the situation in Punjab was even worse than that in Haryana (12.06 per cent holdings operating 11.11 per cent area), a state with similar land laws. Uttar Pradesh (6.95 per cent holdings operating 5.38 per cent area) and Rajasthan (7.93 per cent holdings operating 6.29 per cent area) were among the bottom states as far as giving land rights to women is concerned.

Amendments to the Hindu Succession Act were intended to address these inequalities. However, issues remain with its implementation and the fate of women, who remain outside this law, is still uncertain. However, this is an important law because in India inheritance still remains the largest channel of landed property transfers. Several state governments offer concessions on stamp duty if a property is registered in the name of a woman only. While this attempt is laudable it is likely to have an impact only on a miniscule proportion of land transactions, given the fact that market transactions of landed property in rural India are only a fraction of transaction done through inheritance.

Common Property Resources

The importance of common property resources (CPRs) for rural households is well emphasized in social sciences. This is more so in the case of landless and small peasant households, especially in dry areas. Village pastures, community forests, wastelands, common threshing grounds, waste dumping places, watershed drainages, village ponds, tanks, rivers/rivulets and riverbeds, etc., contribute significantly to the rural economy. As per NSSO 54th Round data (1998), CPR land constituted 15 per cent of the total geographical area in the country. It, however, decreased by 1.9 per cent every five year during the late 1990s. This lowered per household average availability of CPR land to 0.31 hectare. The largest chunk of this area (23 per cent) was grazing land, followed by village forest (16 per cent). According to this survey, 48 per cent rural households had reported collection of any material from CPR, which was on an average 3 per cent of the total consumption expenditure. Studies have also shown that a major share of small farmers' incomes came from non-farm activities such as animal husbandry.

In pre-British India, a large part of natural resources were mainly under the control of local communities that ensured their free availability to rural populations. Over the years, with the extension of state control over these resources, the community management system stopped being as effective as it was earlier and CPRs available

to villagers declined substantially. After independence, in a policy framework centred around private property, these resources often did not get adequate attention. This policy negligence reflects in continuing encroachment of CPRs by resource-rich farmers, resulting in their ever-decreasing availability for the rural poor. The lack of clarity on what constitutes CPRs, out of the various categories used by the government for its land use statistics (9-fold classification), is often cited as one of the reasons for the state of affairs.

Homestead Land

The question of homestead land figures frequently in land reform discourses these days. Some international organizations have suggested that a homestead plot of about 10 cents will serve the purposes of both dwelling and livelihood. Under pressure from land rights movements, the Government of India is also considering enacting a centrally funded law to recognize right to homestead land. The Bihar government has already taken an initiative to provide homestead plots to landless *mahadalit* households. This initiative is commendable, but some international organizations have shown that there is a tendency to silently replace distribution of agricultural land with allotment of tiny homestead plots and that this is done through market channels thus disregarding the redistribution agenda. Taking a cue from the changing discourse, some state governments have also started making changes in their laws. For instance, the new Revenue Code of Uttar Pradesh, 2006 has done away with provisions regarding regularization of possession by SCs/STs and village artisans on government and private land held for house/site-less household. While raising the issue of homestead land rights, one has to be vigilant against such deviations.

Implementation of the Forest Rights Act (2006)

People in most states witness a very high rate of rejection of their claims, generally in the range of 50 to 90 per cent. Community claims meet an even worse fate. Except Maharashtra and Andhra Pradesh, very few community claims have been recognized. Jurisdiction is a major issue here. The role of forest rights committees (FRCs) get continuously undermined by forest departments. Activists from states are demanding that FRCs should be constituted at the village level instead of at the panchayat level. They argue that FRA provides for FRCs at the village level, so when these constitutional bodies are set up at the panchayat level, they act as a great obstacle for the effective implementation of act. In some cases, the implementation of the act

is yet to begin. For instance, in Gujarat, its implementation has not started in non-scheduled areas. Hence, even the initial steps of forming FRCs, sub-divisional level committees (SDLCs) and division level committees (DLCs) have not been taken.

Making ‘Land to the Tiller’ Work

There are no escape routes possible for bypassing ceiling measures that are considered cardinal elements of land reforms. Most governments have been arguing that with the decreasing size of landholdings, it is neither desirable nor possible to press for ceilings. In the next section, a rough calculation is given to counter this excuse. To make ceiling laws work, state governments will have to plug the loopholes in the laws, such as exemptions granted to different categories of owners, including religious trusts. Updating the irrigation status of land is a must for this. While defining ‘self-cultivation’, family labour, residential status and dependency on agriculture for livelihood should also be preconditions.

Implementation of tenancy laws is the most difficult task at hand. West Bengal presented a very successful model of tenancy arrangements. But that happened during the Left rule and the initiative was supported by a powerful mobilization of peasants under the leadership of the *krishak sabha*. In the absence of a radical peasant movement, it is very difficult to implement land reforms in general and tenancy reforms in particular. This task cannot be left to the bureaucracy, which is neither committed nor equipped to carry it out. The Bihar experience shows how landed classes oppose any discussion on providing even minimal rights to tenants. In most states where tenancy is regulated, the basic requirement is registering tenants to make the law operational. In many tenancy laws, the onus of proving possession lies with the tenant. This has to be reversed. Any person lawfully cultivating land belonging to another person should be deemed to be a tenant. Such tenants should be registered and banks must release advances on the basis of these registration certificates.

The Committee on Agrarian Reforms has strongly recommended legalizing tenancy where it is still illegal. The argument for legalizing tenancy mainly rests on the premise that by taking cognizance of *de facto* practices, the state will be in a position to intervene to protect the interests of the poor. Secondly, tenancy facilitates poor people in getting access to otherwise inaccessible land. While doing so, a very simple reality is ignored – that persistence of tenancy is only a reflection of unequal land distribution and most land legislations were intended to correct this imbalance.

So, instead of treating a deep ‘malaise’, the state ends up institutionalizing it if tenancy is legalized. As far as the intervention of the state is concerned, voices in the media and political circles are already getting louder to eliminate restrictions on terms of tenancy where it is legal. Moreover, with a large body of evidence revealing increasing practices of reverse tenancy, it is hard to claim that legalization will facilitate flow of land from the rich to the poor.

Clarity about the definition of CPR will enable proper public interventions. To sustain non-farm livelihood activities and to realize their full potential, reclamation and rejuvenation of CPRs is a must. While reinstating community control through elected panchayats, one will have to distinguish between encroachments by the landed and the landless. Based on local conditions, a certain percentage of total land in a village should be earmarked as a common property land resource (CPLR), and diversion of CPLR must be completely banned. Encroachments by rich famers should invite more stringent penalties.

There is a greater need for emphasis on homestead land rights. First, the scope of redistributive measures should be exhausted. Legal provisions regarding regularization of possession by landless households and distribution of government land must be taken up on a priority basis. Only after the scope of all other options has been saturated should the market option be explored. This is also important because the Bihar experience of ‘Mahadalit Awas Bhoomi Yojana’ shows that generally land bought from the market is inferior in quality in terms of proper access and distance, besides it may also be waterlogged, potholed and without basic amenities. This new scheme was launched by Bihar Government for the purchase of land for those families who were not covered by BPPHT Act and government land distribution programme.

In the era of ‘feminization of agriculture’, women’s land rights assume greater significance. Women have always been active contributors to the agrarian economy, but their ownership of landed property has always been limited. Most governments have adopted the policy of allotting homestead land only in the name of women. This policy must be strictly adhered to in the allotment and regularization of house sites. Similarly, in the case of agriculture land, joint ownership must be awarded. The amended Hindu Succession Act must be implemented strictly. Besides, women’s participation in community rights over CPRs should be ensured.

In the vastly changed scenario, nomadic tribes are finding it difficult to sustain their roving lifestyles. They should also have an option of a settled life. For this, they should be settled in areas of their choice and given sustenance on government land in a time-bound manner. This might be framed within a 'Minimum Land Holding Act' for them. All cases of encroachments and other minor offences against the rural poor should be withdrawn.

Widespread awareness campaigns among beneficiaries and training of forest officials are required for effective implementation of FRA (2006). It is necessary to mobilize the *gram sabhas* to recognize and protect the rights of forest dwellers and tribal communities. Those adivasi groups, who were earlier displaced because of national parks and wildlife sanctuaries, must be rehabilitated under the purview of FRA, and minor cases filed against adivasis under encroachment and other forest offences should be withdrawn. All land regularized under FRA must not be alienated/acquired and in case of any emergency acquisition, the same category of land must be provided as compensation.

Potential for Land Distribution

This section tries to find out the quantum of land that could be acquired for distribution through the ceiling surplus mechanism. The Committee on Agrarian Reforms¹ recommended revising ceilings in all the states and fixing them between 5 to 15 acres (2 to 6 hectares). For the sake of rough calculations, let us assume that the operational holding pattern reflects ownership structure as Agricultural Census (2005-06) data show almost negligible incidence of tenancy in most states. For the purpose of comprehension, let us assume that a uniform ceiling has been implemented all over India at 5 hectares, which is an average of the proposed ceiling for irrigated land and non-irrigated land. In India, there are 48,94,300 holdings above 5 ha in size, covering an area of 4,40,16,371 ha with an average size of 8.99 ha. Applying a ceiling of 5 ha on these holdings would obtain 1,95,44,871 ha of land. This is seven times higher than the 27,82,520 ha declared ceiling surplus so far.

On the same lines, Rajasthan had the highest potential ceiling surplus land at 69,75,432 ha. Though these figures are pointers only, but looking at the failure of

1. Committee on State Agrarian Relations and Unfinished Task in Land Reforms, GoI suggested a new set of limits of 5-10 acres (2-4 hectares) in the case of irrigated land and 10-15 (4-6 hectares) acres for non-irrigated land.

all initiatives of land reforms in the state, they are not very surprising. States like Gujarat (13,89,920 ha.), Karnataka (13,54,426 ha.), Maharashtra (11,96,216 ha.), Punjab (10,21,201 ha.) and Andhra Pradesh (10,41,893 ha.) have potential of more than one million hectares of ceiling surplus land. These figures also reveal that even in smaller states like Punjab, land concentration is high. On the other hand, in spite of fragmentation of holdings, due to failure of ceiling surplus initiatives in Bihar (including), the potential ceiling surplus in the state is 1,10,922 hectares. Other states like Uttar Pradesh (6,32,814 ha.), Haryana (5,02,338 ha.) and Tamil Nadu (4,45,065 ha.) also have huge potential of ceiling surplus land. These figures are sufficient to demonstrate that the potential for the land distribution programme for ceiling surplus land still exists.

Chapter 2

Andhra Pradesh

How to Create Access and Control Over Land for the Poor

Ravi Kumar

This short status paper argues that land reform measures have had a limited impact in Andhra Pradesh and that there is still wide scope and an acute need for further implementation of land reform laws for enhancing access and control over land for poor, particularly Scheduled Castes (SCs), Scheduled Tribes (STs), other marginalized communities and the landless.

Distribution/Assignment/Allotment of Land to the Landless Poor

Table 2.1 presents data on the implementation of various land reform legislations and measures like providing ownership rights to tenants under the AP Land Reforms Act (1973), distribution of ceiling surplus land, the Inam Abolition Act, distribution of *Bhoodan* land and assigning government land that provided land and land rights to the landless poor and/or cultivators.

Table 2.1: Category-wise Number of Beneficiaries and Quantum of Land

Sl. No	Category/Act	Number of beneficiaries (lakhs)	Amount of land (in acres)
1	Ownership rights to tenants	1.07	6.00
2	<i>Pattas</i> to the cultivators of Inam land (by various Inam abolition Acts) *	4.98	10.56
3	Distribution of ceiling surplus	5.30	5.93
4	Distribution of <i>Bhoodan</i> land	0.42	1.12
5	Assignment of Government land (from 1969)	30.25	51.42
	TOTAL	42.02	75.03

Source: Chief Commissioner of Land Administration (December 2012).

Through these measures/enactments, about 75 lakh acres were made available to about 42 lakh landless poor. SCs and STs together constituted 50 per cent of the numbers and of the total area in the assignment of government land, 60 per cent in the distribution of ceiling surplus and almost 90 per cent in numbers in the distribution of *Bhoodan* land. Andhra Pradesh stands first in the country in distribution of government land to landless poor. But its performance in the implementation of the Ceiling Act and distribution of ceiling surplus land is very dismal. Over the last few years, the Government of Andhra Pradesh has adopted a policy of distributing cultivable government land to landless poor in phases. Till now, about 7.7 lakh acres have been distributed over six phases to 5.5 lakh beneficiaries, out of which SCs and STs constituted around 50 per cent.

Various data sources reveal that landlessness is still there in significant proportions among SCs, STs and other poor, despite such large-scale distribution of government land. This is because of the historical alienation of SCs from land and other property through an oppressive caste system. New challenges of liberalization and unsupportive agriculture policies too have played a role in this. This is evident from the fact that most of the SC landholdings are through assignment of government land, or ceiling surplus land. The proportion of privately owned land among these two communities is very low, or almost negligible. Some of the estimates of landlessness in the state are:

- As per NSSO Landholding Surveys given in Thorat (2000), around 85 per cent SCs were landless (including absolute landless as well as near landless, that is, those with less than one acre of land).
- As per NSSO survey (2003), there were around 20 lakh rural landless households in AP (17.5 lakh absolutely landless and 3 lakh households with negligible landholdings).
- As per a land inventory carried out by the Society for Elimination of Rural Poverty (SERP) there were around 20 lakh total landless families among SCs and STs in around 25,000 villages in 2010.
- One can take the number of households reporting agriculture labour as their major occupation as a proxy indicator for landlessness, or inadequate landholdings. As per the 2001 Census there were around 1.4 crore agriculture labourers in the state. Even if three workers are taken on average in a family, there will be around 40-50 lakh households that depend on agriculture labour, that is, who are in need of additional land, support systems for agriculture or other employment opportunities.

Another possibility of providing landless poor access to cultivable and fertile land is through tenancy. However, the tenancy legislation has not been implemented seriously. Most of the tenancy in the state is concealed and not in written form. In an attempt to explore a middle way in breaking the deadlock the government has introduced the concept of loan eligibility cards (LECs) to tenants, offering protection to landowners with regard to rights over the land. It is, in a way, contrary to the existing tenancy legislation.

Issues/Gaps/Challenges

1. Revenue officials at the village and *mandal* levels do not readily recognize and register any encroachment or cultivation of government land. In case a piece of land which is already in possession of someone else is allotted, getting possession becomes difficult for the allottee.
2. Applications of eligible poor for assigning land, whether they are in cultivation or not, are not disposed of for years. There is no time-bound process followed in dealing with these applications.
3. As the cultivation status of the poor on non-assigned government land is not recorded despite their cultivating the land for years, cultivators suffer losses in two ways. One, they are not given preference as *sivai jamadars* (cultivators) during assignment (in specific cases) and two, when land is taken away for public purposes they are either denied any form of compensation, or given very less compensation. This is not because of their fault but because respective revenue officials do not perform their stipulated duties.
4. In many instances of assigned or ceiling surplus land, there are issues of lack of demarcation, not showing the position of the land, no support for developing the land, non-issue of *pattadar* passbooks, etc. In these instances, the assignment remains on paper and the assignees cannot draw much benefit from the land.
5. As per government reports, there is a still significant amount (around 1.5 lakh acres) of cultivable government land under encroachment by ineligible persons. A considerable extent of land still remains undistributed under ceiling surplus, *Bhoodan* land, etc.
6. Uncultivable or grazing land is also being distributed, causing depletion of commons for community use.
7. Given the limited availability of cultivable government land (around 2 lakh acres under various categories – cultivable land under the enjoyment of eligible,

non-eligible, vacant cultivable land, etc.), undistributed ceiling surplus and *Bhoodan* land (hardly 50,000 acres), it is impossible to address the issue of landlessness among SCs/STs and other landless poor only through these categories of land. Other avenues for bringing out surplus land have to be explored, like revising ceiling limits, endowment land, addressing the issue of non-cultivating or absentee owners and improving tenancy conditions.

Recommendations

1. The state government should take up special drives with additional human and financial resources to distribute, restore, demarcate and hand over land of various categories already identified by it within a stipulated time (one year). Possible steps for this include:
 - Distribution of *pattas* to eligible cultivators of unassigned cultivable government land;
 - Distribution of unobjectionable vacant government land to eligible landless poor;
 - Removing ineligible encroachers of the cultivable undistributed government land and assigning it to eligible families;
 - Completing the distribution of the remaining undistributed ceiling surplus and *Bhoodan* land;
 - Completing the issuing of occupancy certificates to eligible cultivators under the Telangana Protected Tenancy Act;
 - Completing the issuing of *pattas* to eligible cultivators under the Inam Abolition Act;
 - Clearing encroachments by ineligible people on Lanka land and distributing it to the landless poor; and
 - Ensuring physical possession of assigned and ceiling surplus land by the beneficiaries.
2. The database of SC/ST landless, identified through the SERP survey, needs to be refined, updated and used for future distribution of land.
3. Inventory of all government land currently underway needs to be validated by a third party, updated and put in the public domain (on website as well as

village-wise registers in). Active feedback/complaints from the public needs to be sought to revise and finalize the inventory.

4. Action on the findings of the land inventory needs to be initiated and completed as per existing legislations.
5. Restricting the lease of endowment land to SCs, STs and landless poor should be made a policy.
6. The state government needs to take up a rapid survey to identify and re-classify the land which is newly brought under irrigation, and accordingly implement the Ceiling Act to derive surplus land.
7. Implementation of the Koneru Ranga Rao (KRR) Committee's recommendations, pertaining to pooling of land under various categories and its distribution to the landless poor, needs to be taken up, monitored regularly and completed within a period of one year.
8. Conversion of agriculture land should be strictly regulated, particularly to protect the interests of small and marginal farmers.
9. Constitution of a committee/commission to examine and suggest amendments to the Land Ceiling Act for lowering and making differential ceiling limits for various categories of families/persons, and removal of exemptions to make more land available for the poor.

Tenancy Reforms

Since the very beginning, tenancies have been regulated under separate laws in the Telangana area and the Andhra area in the state. In 1960, the Government of Andhra Pradesh introduced a new bill providing for a unified tenancy law for the whole state. The bill lapsed in 1961 due to dissolution of the assembly on the eve of general elections and a fresh bill was introduced in 1962. The Joint Select Committee of the state legislature reported on this new bill in 1964 and said that its provisions were deficient in several respects. The Regional Committee for Telangana area disagreed with the bill and suggested that the Hyderabad Act should be extended to the Andhra area also; and, if this was not possible, there should be separate laws for the two regions.

Tenancy Reforms in Andhra Area

The Andhra Pradesh Tenancy Act (1956), sought to give protection to certain categories of tenants in the Andhra region from unjust evictions. However, it was preceded by large scale eviction of tenants by landlords. Later, in the absence of an organized peasant movement, the tenancy legislation in Andhra area had negative impacts on tenants as the landowners resorted to large-scale evictions and leasing out of land only on an oral basis. The area under tenancy in coastal Andhra is increasing with the latest research studies indicating that the informal/concealed tenancy in the area ranges from 15 to 30 per cent of the total owned area.

The Andhra Pradesh (Andhra Area) Tenancy Act (1956) provides for:

- a) Fixing maximum rent;
- b) Minimum period of lease;
- c) Procedure for determining a fair rent in case of disputes and for remission of rent;
- d) Circumstances under which landlords can terminate tenancies; and
- e) Machinery for settlement.

The Andhra Pradesh (Andhra Area) Tenancy Act (1956) was mainly criticized on three grounds:

- a) Under the act, the minimum period of lease was six years and landlords were given a free hand to evict tenants after the expiry of this period.
- b) In the act, for the purpose of fixing 'fair rent', crops were divided into two major categories – commercial and non-commercial. For the first category, rent was fixed at 45 per cent of gross produce, and for the second the rent varied according to sources of irrigation. It was found that for some commercial crops, including sugarcane, the prescribed rent was higher than the market rent.
- c) Absence of pre-emptive rights to cultivating tenants.

As a response, the Andhra Pradesh (Andhra Area) Tenancy (Amendment) Act (1970), was enacted. It had following additional provisions:

- a) Lowering of maximum rent payable. For this purpose, land was classified into different categories – irrigable, un-irrigable and land irrigable by bailing of water. In this way, the level of rents in the 1956 Act was nearly halved.

- b) Provision for automatic renewal of lease on the same conditions and terms, except in the case of resumption for personal cultivation. Personal cultivation was defined as ‘cultivation (1) by his own labour, or by the labour of any member of his family; or, (2) by servants on wage payable in cash, or in kind, or both, but not in crop share or by hired labour, under his personal supervision, or the personal supervision of any of his relatives’.
- c) The amendment act provides for pre-emptive rights to tenants.

The 1970 Act too had some lacunae relating to the definition of ‘personal cultivation’ and price of land in cases of pre-emptive rights.

Tenancy Reforms in the Telangana Area

The Hyderabad Tenancy and Agricultural Land Act (1950), with its subsequent amendments, resulted in the conferment of protection to nearly 6 lakh tenants with over 75 lakh acres in their possession. This constituted 33 per cent of the total cultivated area.

The Hyderabad Tenancy and Agricultural Land Act (1950), was enacted to protect the rights of tenants. The act conferred the following rights on tenants:

- a) Right against eviction by way of restricting the right of the owner to evict the tenant;
- b) Right to compensation in case of eviction;
- c) Fixed reasonable rent; and
- d) Regulated period of tenure.

The act provided for the creation of protected tenants. In notified areas, tenants were declared owners if they had owned less than a family holding, and if the landowner had more than two family holdings. The Hyderabad Tenancy and Agricultural Lands (Amendment) Act (1954), defined a family holding as an area yielding Rs 800 of net income from cultivation. However, protected tenants to be conferred ownership rights had to pay a reasonable price for that land, either in lump sum or in 16 instalments, the purchase price being fixed at 12 times the land revenue. In non-notified areas, the purpose was to provide tenants with heritable rights, depending on tenants’ and landowner’s owned land.

Initially, rent was based on the share of produce system, generally one-fourth to one-third of the produce. Later, rent was linked with land revenue, in the range of three to five times the land revenue in 1954. Protected tenants were given heritable rights till the time they did not default in rent payment. Originally, ordinary tenants were not extended rights of secure tenure, though they got certain rights after the amendment in 1953. The original act prescribed the minimum period of lease as 10 years. This was later cut to five years, with a condition that the tenure would be renewed if the land was resumed by the owner.

Protection, Restoration and Development of Land Belonging to SCs and STs

It is observed that the land either assigned or owned by SCs and STs is prone to alienation or sale, given their vulnerable socioeconomic and political positions in society. Providing protection against such vulnerabilities of losing an important asset like land has been taken up as a public policy by governments. In AP in particular there are two strong legislations that provide for protection and restoration of land belonging to SCs and STs. In case of SCs, the protection is limited to assigned land whereas in the case of STs, in the 5th Scheduled areas, the protection extends to their privately owned land also.

The first legislation is the AP Assigned Lands (Prevention of Transfer) Act (1977) (amended in 2007) in abbreviation called Act No. 9 of 77, which contains provisions for restoration of assigned land to the poor in case of alienation and punishment to the transferee. This act applies to all assigned land, irrespective of caste, with certain exemptions to land assigned to ex-servicemen, freedom fighters, etc. The second legislation is the Land Transfer Regulation Act 1 (1970), in abbreviation called Act No.1 of 70, which prohibits transfer of land from STs to non-STs and from non-STs to non-STs in the 5th Scheduled areas and provides certain regulations on various kinds of transfers.

Table 2.2 presents the numbers and extent of alienated land formally identified and recorded by the government. The extent would be much larger than what is there in the records. Though these two legislations are strongly pro-poor and effective, serious lags in their enforcement have made them ineffective in protecting SC and ST land. In case of AP Assigned Lands cases, less than 50 per cent land could be restored, whereas in the case of the Land Transfer Regulation Act, only 38 per cent alienated

Table 2.2: Number of Cases Identified and Restored

Act	No. of cases identified as violation		No. of cases restored or appropriate action taken		Number of cases restored or appropriate actions taken against identified cases of violation (per cent)	
	Numbers	Land (in acres)	Numbers	Land (in acres)		
AP Assigned Lands (Prevention of Transfer) Act (1977) (amended in 2007)	3,22,886	4,35,442	1,59,084	2,05,742	49	47
Land Transfer Regulation Act 1 (1970)	77,659	3,43,293	32,550	1,29,262	42	38
Total	4,00,545	7,78,735	1,91,634	3,35,004	48	43

land could be restored. Retaining the existing land has become a big challenge for SCs and STs in the state in place of getting new land. Over the last eight years, the government has resumed a lot of assigned land in the garb of public purposes. The government refuses to give equal status to assigned land which is on par with private land during the land acquisition process (SLP against High Court Bench judgment pending in Supreme Court for the last 8-9 years).

Gaps/Bottlenecks/Impediments

1. As per government reports, about 4.35 lakh acres (10 per cent) of the verified assigned land is alienated. The unofficial figures range between 30-40 per cent. No action has been taken till date in the identified cases that cover around 2 lakh acres.
2. Demarcation, clearances and development have still not been done in a significant extent of the assigned land, leading to alienation or leaving the land fallow.
3. The total number of cases detected of violation of Tribal Land Transfer Regulation Act is 77,659 with an extent of 3,43,293 acres. However, the actual violations will be much more. Around 50 per cent of the cases have been decided in favour of non-STs. Even in cases decided in favour of STs, land is not being handed over to them in a significant number of cases.

4. Poor maintenance and access to land records, poor information about land records among the poor, apathy of the revenue administration towards the poor, activation of land markets and poor economic situation are some of the major factors for the alienation.
5. No legal protection to land assigned prior to 1954 in Andhra and prior to 1958 in Telangana.

Recommendations

1. Complete the implementation of provisions of the Act No. 9 of 1977 within a specific time frame (six months) with respect to around 2 lakh acres identified as violation of provisions.
2. The provision of withholding the resumed alienated land for public purposes on the pretext of notified *mandals* should be withdrawn from the Amendment made in the year 2007 to Act No. 9 of 1977.
3. Assignment land should be exempted /prohibited from land acquisition for public purposes, for SEZs and for industrial purposes.
4. The Government of Andhra Pradesh (GoAP) should withdraw the SLP filed before the Supreme Court.
5. A special survey of land in the coastal area needs to be conducted to determine the dependence, usage and rights of various coastal communities (mainly fisher folk). They should be provided rights and protection over this land.

Women's Land Rights

The AP government has taken initiatives to promote ownership as well as holding rights over land among women. One such initiative is providing equal hereditary rights to female inheritors, on par with male inheritors over ancestral property, including land through an amendment to the Hindu Succession Act (The Hindu Succession (Andhra Pradesh Amendment) Act (1986) (in short, Act 13 of 1986). In another initiative government land as a policy is assigned in the name of women members in landless poor families. After the 1990s, a majority of the land assigned is in the names of women. Recent initiatives include promoting group leasing of land by women self-help groups and providing them support in taking up sustainable agricultural practices.

Various studies indicate that around 35 per cent of the landholdings are in the names of women legally and formally in the state, which though less in absolute terms, is relatively high as compared to many other states. The findings of the Agriculture Census (2010-11) show that only 25 per cent of the holdings were being operated by females, catering to an extent of 22 per cent of total area. As per the 2001 Census data, women constituted 56 per cent of agriculture labour, whereas only 34 per cent of them were cultivators. There were no official disaggregated figures of women assignees of government assignment land, or beneficiaries of other land reform measures, which amount to 45 lakh beneficiaries and around 70 lakh acres of land.

Gaps/Bottlenecks/Impediments

1. Women's ownership or control over land is still low, but there is no sustained focus on generating awareness on, or implementing the Amended Hindu Succession Act (1986) and the Central Amendment Act (2005), that provides for equal ownership rights to women over ancestral property.
2. Women are left with no land in their name in cases of their husbands committing suicide. This is because of various reasons – loopholes in the law, or imperfection of titles, or mutations not taking place for a long time.
3. Recent policies concentrate more on the access aspect of land for women (in the form of group leasing, etc.), but not on the ownership aspects.
4. In cases of compensation towards land acquisition and rehabilitation measures, women's rights and issues are ignored. Only land the title holder (mostly male) is considered for compensation or it is the family as a single homogeneous unit that is considered in terms of rehabilitation, ignoring women's special needs and challenges.

Recommendations

1. A comprehensive survey to determine the extent of landownership of women should be done. Gender disaggregation should be introduced in all land-related records.
2. A status review of the implementation of the Hindu Succession Act and making appropriate arrangements for effective implementation should be done.
3. Initiating pilots for exploring mechanisms for transforming individual *pattas* in the name of men into either joint *pattas* on his and spouse/female legal inheritor's name.

Land to the Nomads

Based on an assessment of the De-Notified Tribes (DNT) commission the DNT population in the country is 12 per cent of the total population. Their population in AP is about 10 million. Field visits reveal that Nizam had allotted Inam land to Hindu-like SC nomads and Fakir Manyam for Muslim nomads, which were being forcefully encroached by mainstream SCs (*Mala* and *Madiga*) and sedentary Muslims. Finding house sites is a major problem for nomads, where 40 per cent (MASSES survey) of them still live under trees and on unclaimed land by pitching tents and 20 per cent live on land without land rights or proper documents.

Gaps/Bottlenecks/Impediments

1. Request for issuing agriculture land to nomads is being denied by government functionaries for want of identity and residential address proof.
2. Nomads' livelihoods majorly depend on common property resources, like village commons, grazing land and forests. Depletion and encroachment of these resources threaten their livelihood and survival.

Recommendations

1. Customary rights and current usage over grazing land, legendary paths and water bodies of the nomads in the state should be documented. Access to the flora and fauna in forests, along with CPRs should be recognized as the customary right of the nomads.
2. Programmes to be implemented by allocating budgets for the conservation and protection of forests and CPRs, along with the provision of access to de-notified and nomadic tribes, and involving them in conservation programmes.
3. Allocation of house sites for DNTs on a preferential basis and implementing the recommendations of the DNT Commission by rehabilitating them in *becharak* (abandoned) villages among the panchayats.
4. Allocation of common land to DNTs in arid zone villages by giving them exclusive rights as a community, and not as individuals, so that they can grow the plants needed for their artefacts like baskets, brooms and mats and for establishing rearing centres for pigs, ducks and donkeys.
5. The Government of India should examine and implement the recommendations of the Balakrishna Renke Commission on DNTs at the earliest.

Forest and Revenue Boundary Disputes

Around 2 lakh acres was identified by the government as the extent involved in dispute between the forest and revenue departments, though the actual extent will be much more. These disputes have serious implications for the poor as often the forest department claims a piece of land which was assigned by the revenue department to the landless and which they have been cultivating for some years – in several cases, for more than 10 years. In some other cases, landless poor cultivate revenue wasteland without *pattas* for many years and without actual knowledge of its classification. The forest department issues preliminary notifications declaring revenue land as deemed or reserve forest land without informing the local communities, thus changing the classification without taking their views or involving them in the process. In such cases, though the landless poor make representations to the revenue department, in most cases the writ of the forest department prevails and they do not permit the poor to cultivate on this land. They also put up cases against the cultivators. As per government reports, till date disputes only to the extent of around 5,000 acres, which is 2.5 per cent of the total extent of around 2 lakh acres involved, have been settled.

Gaps/Bottlenecks/Impediments

1. Less than 20 per cent of the area was jointly inspected and hardly 3 per cent was settled.
2. Lack of coordination between the departments.
3. Faulty and non-transparent, non-participatory procedure of notification by the forest department regarding declaring revenue wasteland as forest area.
4. Dearth of surveyors and other staff in the revenue department.
5. Large numbers of SCs and STs have lost their cultivating land and livelihoods because of these disputes.

Recommendations

1. Resolve the identified disputes as quickly as possible through a special drive by allocating required human and financial resources for this exercise.
2. Cases where the disputed land is determined as forest land, the right of first refusal (RoFR) should be applied.

3. The cases and extent of deemed forest notifications or preliminary notifications that are awaiting final notifications by the forest department should be reopened and followed up through a transparent and participatory process.

Common Property Resources

In context of Andhra Pradesh, a significant extent of revenue wastelands are available – about 50 lakh hectares (that is, around 20 per cent of the total geographical area of the state).

Appropriation of this land through encroachments (for agriculture or for grasslands) has been a common feature. Since commons are the only spaces for the poor in the current socio-political and ecological setting, lack of governing mechanisms to manage them is having a negative impact on the livelihoods of the dependent population. There are no rules to govern the use of commons, thereby leading to overgrazing, deforestation and degradation of land. There is also no bundle of rights and responsibilities assigned to the communities, either in the form of tenure or ownership over the commons. The formal ownership of most of the CPRs, except forests, is vested with the revenue department and is, to an extent, governed by the Board Standing Orders.

However, the ownership of forests lies with the forest department and they are governed by forest laws and the Forest Conservation Act (1980). The rules and regulations are so rigid that not even an inch of land can be regularized, even if it was encroached for agricultural purposes before the Forest Rights Act came into force. Even with regard to access of minor forest produce for bonafide livelihoods, communities regularly face harassment and obstacles from the forest department.

Recommendations

1. Resurvey to determine the present classification of CPRs.
2. Necessary operational mechanisms should be in place to implement the Supreme Court and recent AP High Court judgments regarding protection and use of common land, as well as demarcation of 5-10 per cent of area of a revenue village for common use purposes of the community.
3. Legal and operational provisions to define and provide usufruct rights to SCs, STs and other landless poor over various categories of CPRs should be evolved.

PESA and FRA implementation

The implementation of FRA in the state seems impressive in terms of numbers, given the number of individual claims that have been settled – 4.73 lakh acres and around 1.65 lakh individuals – and recognition of community claims with respect to around 2,100 applications pertaining to around 10 lakh acres. However, a closer examination shows that the implementation lacks the spirit of the central legislation. Around 50 per cent of the individual and community claims have been rejected and collective title certificates were issued primarily to VSS (669 VSS over 383,836 ha – 65 per cent of all land approved), thus denying the communities' genuine rights as envisaged in the legislation. Like many other states, the role of *gram sabhas* has been undermined and the forest department has played a dominant role in this. Besides, very marginal extents are recognized as compared to the claims. There is also lack of transparency and more emphasis is placed on individual claims rather than on community claims. The implementation of the act is being done more as a short-term drive for achieving *pattas* rather than its being followed as a continuous process of enabling communities to assert and secure their rights over forest land and resources. Though support for developing land is being provided under the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) and other programmes, mono-plantations are being promoted, threatening the food security of tribal communities.

The implementation of PESA is also similar to FRA in terms of translating the actual spirit of the legislation into practice. PESA rules were notified in 2010, even though the state amendment act was enacted in 1998. The state enactment on PESA is ambiguous as it does not define a *gram sabha*. This ambiguity means that the *gram sabha* of a village can be replaced by the *gram sabha* of a *gram panchayat*, which negates the very spirit of PESA. Though the rules provide for a definition of a *gram sabha* in conformity with the central act, this is subject to a notification of villages by the district collector. Even after more than two years of notification of the rules, the process of notification of villages by the district collectors had not been completed, thereby watering down the importance of the *gram sabha* in the act. There is also the issue of the clause of 'in consultation' in place of 'prior and informed consent' regarding land acquisition in Scheduled areas. Most provisions regarding mining, displacement and land acquisition do not give a central role to the *gram sabha* in a tribal village.

Recommendations

1. The revised Ministry of Tribal Affairs (MoTA) guidelines should be strictly implemented regarding FRA.

2. Definitions of panchayat, *gram sabha*, ‘consultation versus consent’ should be addressed so as to reflect the true spirit of PESA.
3. Rejected claims under FRA should be reviewed with external teams, with effective participation of *gram sabhas* before they are decided upon.
4. Community claims granted en-masse to VSSs should be cancelled and a due participatory process should be followed in determining rights.
5. Community claims can be taken up first and exhausted before taking up individual claims.

General Recommendations

1. The revenue/land administration should be revived, reoriented and strengthened with additional human and financial resources, as suggested by the KRR Committee. All vacancies in the revenue administration should be filled.
2. Present initiatives of the state government in computerization and modernization of land records and provision of citizen services (*mees seva*) in linking up revenue and registration departments with a common database need to be further strengthened. Necessary additional financial support should be provided by the Government of India.
3. Grievance redressal systems regarding land matters should be built from the village to the state level and strengthened in line with MGNREGS. Periodical social audits of the assignment of land and implementation of protective legislations should be conducted.
4. Mechanisms for conducting regular studies, reviews and ensuring implementation of all land reform measures and evolving new policies should be put in place. To that extent, establishing a ‘land reforms research centre/academy’ with adequate human and financial resources should be considered.
5. *Jamabandi* should be contextualized and accordingly operationalized.
6. The pro-poor mechanism in resolving the land rights issues as suggested by the KRR Committee and as envisaged by the GoAP Government Order 1148 should be operationalized effectively.

Annexure:

State Specific Advisory

**Government of India
Ministry of Rural Development**

Dated 19th March 2013

Andhra Pradesh

The following measures are suggested for improving and expediting existing land reform measures within the state:

1. Complete the implementation of the recommendations of the Land Committee constituted by the Government of Andhra Pradesh within a year.
2. Take measures to review and strengthen the land access programme of the Society for Elimination of Rural Poverty, to ensure that marginalized women are the primary beneficiaries.
3. Refine and update the inventory of SC/ST land, disaggregated according to gender, and use this data to protect the land from alienation.
4. Update the inventory of government land and place it in the public domain.
5. Take action based on the findings from the inventory of SC/ST land and government land as per existing legislations.
6. Change the classification of the land newly brought under irrigation and accordingly implements the Ceiling Act.
7. Strictly implement the provisions of the AP Assigned Lands (Prohibition of Transfer) Act (1977). Restore the alienated land of around 2 lakh acres, which is identified by the government as land alienated land. This act should not be diluted, but strengthened to ensure retention of land with the poor.
8. Conduct a special survey of coastal area land to determine dependence, usage and customary rights of various coastal communities (mainly fisher folk), and ensure access and ownership rights, including legal security of tenure, over coastal land.

9. Strengthen the implementation of the Land Licensed Cultivators Act (2011) and ensure that all tenants, including women, receive loan eligibility cards and the benefits due to them.
10. Ensure registration of tenancy rights, including women tenants.

Chapter 3

Bihar

Providing Access to Land for the Poor and the Marginalized

M N Karna

Bihar was a permanently settled area where the *zamindars* paid fixed revenue to the government. They had the freedom to exact exorbitant rents from different tiers of tenure holders and tenants. This system produced a host of parasitic rent-seeking social classes, which did not make any contribution to the production system. Exploitation of the tillers by different layers of rent-seekers pauperized the peasantry, many of whom lost their landholdings, leading to widespread landlessness. After independence, Bihar was the first state to initiate land reforms to remove elements of exploitation and social injustice within the village/agrarian system and ensure equality of status and opportunity to all sections of the population.

Land Reform Legislation

Some of the acts that the state of Bihar enacted in the last 60 years are:

Abolition of Zamindari

The Bihar Abolition of Zamindari Bill was first enacted in September 1947. Later, a more comprehensive legislation was introduced as the Bihar Land Reforms Bill (1949), which was passed in May 1950 despite opposition from the landlords. This act was challenged by powerful landlords through the Patna High Court, which declared the act unconstitutional and void. Finally, it found respite in the Constitution's First Amendment in 1951, which, by inserting Article 31H and 31B, validated the Bihar Land Reforms Act (1950). Interestingly, even after this, it took nearly two years for the Supreme Court of India to finally validate this Act in 1952. Though this was a successful step it was not free of infirmities and land relations continued to remain exploitative and unjust even after this structural reform. In the first phase of its

implementation, only 155 *zamindars* were affected. Two major amendments were made in the Bihar Land Reforms Act (1950) to remove some of the procedural impediments to expedite its implementation.

Ceilings on Agricultural Holdings

The state introduced the Bihar Agricultural Lands (Ceiling and Management) Bill in 1955. However, the opposition was so strong that the bill had to be shelved for six years. Later it was passed as the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (1961), but only after making enough space for the landlords to maintain their status quo. However, this again could not be implemented because of loopholes that subverted its spirit and purpose. The act provided numerous supplementary provisions that granted landholdings in much excess of the ceiling provisions. For example, a landowner in addition to his/her ceiling area could retain:

- a) land forming part of his/her homestead not exceeding 10 acres in area;
- b) he/she could transfer within one year following the commencement of the act, any land held by him as a *raiyat* to any person or persons who might have inherited the land or have been entitled to a share of it at his death; and,
- c) he/she could also retain any land in consolidated blocks not exceeding 15 acres in area used for growing fodder.

Exemptions were also granted to landowners for several categories of land, including:

- a) land previously donated to the *Bhoodan* movement;
- b) land held by educational institutions and public religious institutions;
- c) plantations; and,
- d) lac-wood farms, sugarcane farms, etc.

This act too was amended twice, in 1973 and 1976. The power to take cognizance was transferred from the judiciary to executive from April 1, 1973. The amended act of 1973 also created a 6th category, providing 45 acres as ceiling and also that specified landlords could hold orchards and homestead in excess of the ceiling. The amendment in 1976 provided for 'voluntary surrender', which resulted in landlords surrendering the land not in their actual possession, thereby creating a big gap between 'acquired' and distributed land. Another amendment in the same year increased the executive's powers of intervention and created appellate jurisdiction of the Board of Revenue. Yet another amendment in 1976 took away the right of parties other than landowners

(that is, of landless and poor peasants) to file objections, thereby debarring their involvement in these disputes.

However, a discussion on the land problem in Bihar is incomplete without discussing land with religious institutions and charitable trusts. It is estimated that 40 per cent of the total land area is with religious institutions and trusts, mostly Hindu *mutts*. These bodies were largely able to defy all land reform measures due to exemptions granted by various laws. In a large number of cases, these were also the techniques adopted by the landlords to keep their land in their occupation with the help of these bodies.

Land reform measures have also suffered from the protection extended to landlords by the politico-administrative machinery and judiciary. It has been true of all the governments that have ruled Bihar till date.

Thus, land-ceiling acts resulted in a very limited impact on issues of empowering the poor. According to returns submitted to the Department of Revenue and Land Reforms, up to October 2007, out of 3,67,808.24 acres vested in the state, only 2,71,138.3 acres had been distributed among 3,54,752 beneficiaries. The number of landless in the state according to the 1981 Census was around 73.40 lakh.¹ An estimated 20,95,030 acres can be made available if the 15 acre ceiling is implemented.² Districts like Purnea (3,91,325 acres), Saharsa (1,76,192 acres), Bhagalpur (1,92,775 acres), Munger (1,99,699 acres), West Champaran (1,37,477 acres), Rohtas (1,44,501 acres) and Katihar (1,04,404 acres) are estimated to have large tracts of ceiling surplus land.

Tenancy Reforms

Along with ceiling measures, the state simultaneously passed the Tenancy Act, popularly known as the Bataidari Act in 1955. However, like the Zamindari Abolition Act, it received strong opposition. This act was aimed at empowering the actual tillers of the soil. The usual practice was that a landlord could at any time and due to any or no reason, evict an under-*raiyat* (*bataidar*) from his land. Though the evicted *bataidars*

1. Bihar Land Reforms Commission 2006-08, also known as the Bandyopadhaya Commission.

2. Though these figures are based on data of operational holdings, we must note that the official figures reflect a very low incidence of leasing (only around 7 per cent). Allowing for this margin, 93 per cent of the area denoted by operational holdings is either ownership holdings or benami holdings which have a wide prevalence in the state. Therefore, the figures for operational holdings can be fairly representative of ownership patterns. Data is of old districts in Bihar.

could take the course of filing a civil suit, they were economically not sound enough to meet the expenses of the litigation. Therefore, they had no option but to depend on the whims and fancies of the landowning groups. The Tenancy Act not only attempted to provide them legal support, but also fixed the maximum amount of rent (7/20s of the produce) to be drawn from the land. The act was amended in 1970 and brought under the purview of protecting sharecroppers from threatened evictions.

Despite the long list of safeguards to protect tenancy rights, a number of studies show that no benefits really occurred to the *bataidars* or under-*raiyats*. Eviction in large numbers continued for long, and probably, continues even today. The spread of the semi-feudal productive system has changed little even today in the state.

The Bihar *Bhoodan* Yagna Act (1984)

This act provided the statutory recognition to Bihar's *Bhoodan* movement. Its stated objective was to 'facilitate the donation of land.... and to provide for the settlement of such land with landless persons'. With this aim in view, the state legislature enacted the Bihar *Bhoodan* Yagna Act in 1954. The state's intervention in the management of *Bhoodan* affairs is substantial as the act's provisions are far reaching.

The basic problem has been the reconciliation land so far donated under *Bhoodan* and recorded in the books of the *Bhoodan* Yagna Committee. The Bihar Land Reforms Commission in its interim report of 2007 has found that the figure according to the *Bhoodan* Yagna Committee was about 6,48,476 acres, out of which 2,55,347 acres had been distributed to 3,15,454 families. Almost 2,78,320 acres of land had been found to be not suitable for distribution because of alleged improper physical characteristics of the land. But the *Bhoodan* Committee still had on its books an area of 1,14,708 acres suitable for distribution but not yet distributed.

Landholding Patterns Unchanged

Landholding patterns in Bihar reflect embarrassing failures on the land reforms front. Extreme inequality, land poverty and absolute landlessness are some fallouts of the non-implementation of land reform laws. As per the Agricultural Census (2005-06), almost 90 per cent holdings are in the less than one hectare category. These holdings cover 53 per cent of total cultivated area of the state. The remaining 47 per cent area is held by only 10 per cent holdings. The average size of these below 1 hectare holdings

is only 0.25 hectare. Comparing this with 7.66 hectare average size of the more than 5 hectare category, one witnesses wide inequality between the haves and the have-nots in the state.

In the case of large holdings, the land concentration in some districts, particularly in Purnea, Katihar and in East and West Champaran, remained very high. Official surveys in 1991-92 disclosed that in Purnea, 210 landlords had more than 200 acres each (nine of them had over 1,000 acres each) while in West Champaran, 11 landlords had over 500 acres each. The survey also found that of the 16,121 acres allotted, landlords did not allow occupation by the allottees. More importantly, the upper/dominant caste landowners continued to own a significant percentage of agricultural land.

In both the percentage of landless and marginal landholders, SCs continued to be the most, followed by the OBCs, and there was a sharp decline in the case of semi-medium holdings. Only 2.7 per cent of SC households possessed land somewhat larger than marginal holdings and only 2.2 per cent cultivated that land. Even among the OBCs, the percentage of households possessing and cultivating semi-medium or higher landholdings was 0.7 per cent only. However, the upper castes continued with the privilege of owning and cultivating semi-medium, medium and large holdings.

Salient Features of Recent Legislations and Policy Objectives

Like many other state governments, the Bihar government's initiatives emphasize on land management, liberalization of change in use from agriculture to non-agriculture purposes and replacing agriculture land with homestead land in the redistribution agenda. To pursue these goals, the state assembly has passed several acts for speedy disposal of land-related cases, dispute resolution, updation of land records and flexibility in land use conversion. Critiques say that in the neoliberal era, all these initiatives have been aimed at making land relations more market compatible.

The state government has constituted the 'The Bihar Land Tribunal' (Bihar Land Tribunal Act, 2009) tribunal for speedy disposal of land related cases. The tribunal has the power to entertain any application against the final orders by appropriate authorities under several land related acts/manuals, within 90 days. The tribunal decides any case transferred to it by the Government of Bihar or by the Patna High Court to any other revenue or land reforms law/manual. The tribunal has powers

vested in the Civil Court under the Code of Civil Procedure (1908). Bihar Agriculture Land (Conversion of Agriculture land into Non Agriculture purpose) Act (2010), was notified in April 2010 and the Bihar Land Dispute Resolution Act (2009), was amended in 2012.

To complete the land survey and make the land records coherent with modern technology, the government had to make special arrangements for the survey, including recruitment of licensed surveyors and engaging private firms. For this the Bihar Special Survey and Settlement Act (2011) was enacted in December 2011. Simultaneously, to regulate the process of mutation of land and making it coherent with the needs of the people, the Bihar Land Mutation Act (2011), was also enacted. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act (1962), was amended in 2012 to make a provision for allotting 50 per cent acquired land to women belonging to marginalized communities. The Land Acquisition and Rehabilitation Policy (2007), provides for fixing the value of land addition of 50 per cent on the cost of the land and 30 per cent solatium to be paid for the acquired land. If the land is given by the owner's will, then solatium is 60 per cent. Compensation for homestead land and labour is also included.

***Mahadalit* Homestead Land Initiative of the Bihar Government**

The Bihar government took a welcome initiative to eradicate 'shelter-less-ness' among *Mahadalits* by providing homestead land to house-site-less families. In terms of numbers, this was a unique initiative as no other state government in the recent past had provided land for house sites to the landless belonging to the most marginalized communities on such a massive scale. For this, the government not only re-emphasized implementation of the hitherto largely unimplemented Bihar Privileged Persons Homestead Tenancy Act (BPPHT) and the government land distribution programme, but also introduced a new scheme, Mahadalit Awas Bhoomi Yojana, for purchase of land for those families who were left out by the other two schemes. For the smooth take-off of the initiative, several policy changes were brought in, including authorizing divisional commissioners to settle *ghair mazarua aam* land with eligible persons, giving cent-per cent ownership rights to women and relying on purchase at market rates instead of acquisition of land.

Studies (Trivedi 2011) reveal a number of discrepancies in the implementation of the initiative including violation of the government's instructions to give ownership

rights to women. The problem of non-implementation of the government's guidelines regarding giving ownership rights to women starts at the time of the survey. When the beneficiary list is prepared on the basis of this survey, women's names may not necessarily be there. Given this situation, only in private land purchase cases are women's names found and they are registered as owners because scheme documents clearly state that this should be done. But in the absence of proper monitoring, in government land cases it is men's names that are registered. Although the survey to identify house-site-less *Mahadalit* families has been completed, in the future, all forms used to collect information about a family must have a column 'name of spouse of the head of the family'. Columns like 'members of the family' are ambiguous.

Although the government's decision to impose a ceiling of 3 decimals is understandable as its intention is to benefit a larger number of *Mahadalit* families with limited resources, but the government could have adopted a comprehensive approach to address both housing as well as livelihood problems by giving them around 10 decimals land each. Several studies – such as the one done by the Rural Development Institute – have shown usefulness of the garden-cum-homestead plot approach in addressing housing and poverty issues. The Rs 20,000 financial assistance for land purchase should be upwardly revised. It is desirable to adopt a flexible system of land purchase in which districts closer to the state capital and villages closer to towns get more amount than the other areas.

BPPHT allows possession of up to 12.5 cents of land to be regularized in the name of the beneficiary. But beneficiaries are not getting all the land under their possession regularized. At times, they are only getting a part of the total possessed land regularized. It seems that this is an obvious fallout of lack of clear instructions regarding this. For BPPHT cases, renewed instructions regarding regularization of total possessed land up to 12.5 decimals should be issued. Needless to say, regular monitoring should be done to ensure that the rights of privileged tenants are not compromised.

Recommendations

Homestead Land

1. In both the government land distribution and in BPPHT cases, renewed instructions are required to issue '*parchas*' in the name of women. The government should follow its own model of providing ownership rights to women in private land purchase cases.

2. The union government is contemplating possibilities of a law to ensure 10 decimal land to all landless households. Instead of waiting for the central law, the state should enact and enforce a law making provisions of 10 decimal land for homesteads to all landless families.
3. The state government should directly give land to the poor, either by purchase or by acquiring land for this purpose. The policy of giving cash to the families should be changed. This will ensure encumbrance-free land and the poor can be saved from land-related litigations.

Tenancy

Tenancy is the most complicated issue in Bihar. Almost 15 to 20 per cent of cultivating peasants are considered *bataidars* (tenants). The Bandyopadhyay Commission recommended replacement of the Bihar Tenancy Act with a stand-alone Bataidar Act, or an act with some other caption for the protection of *bataidars*. The commission opined that there should be only two categories of persons:

- a) the *raiyat*, the landholder having full right, title and interest on land; and,
- b) *bataidar*, who would have continuing right of cultivation on the land without any claim to title.

The law should clearly, in a simple language, define a *bataidar* (or its equivalent). One of the most important recommendations of the commission is that there should be a legal presumption in favour of the *bataidar* – if any person legally cultivates the land of another person, the former will be presumed to be a *bataidar* of the latter. The burden of rebuttal will be on the person who challenges the status of the *bataidar*. The *bataidari parcha* will be a valid legal document for accessing institutional loans from commercial banks, cooperative banks or any other financial institutions. The commission also said in its report that if the *bataidar* bears the cost of production, he should have 70 to 75 per cent of the produce. In case the landowner shares the cost of production, the produce could be shared on a 60:40 basis (60 per cent to the *bataidar* and 40 per cent to the landowner).

The commission further recommended that no *bataidar* can be evicted or ejected, except through the due process of law. The grounds of eviction could be wilful default in paying the share of the produce to the landowner on three consecutive crop seasons and/or changing or damaging the character of the land substantially,

impairing its normal productivity. The landowner would have the right of resumption only for his/her personal cultivation. The term 'personal cultivation' should be so defined as to mean that the landowner would be a resident of the same village where the land is situated, or of a neighbouring village, and more than 50 per cent of his income should come from the land he is seeking to resume.

Bhoodan

1. The Bihar Land Reforms Commission (Bandyopadhyay Commission) recommended physical verification of 2.78 lakh acres of land which was declared unfit for distribution. The commission also suggested initiating legal proceedings against those donors who had cheated on the people of the state by providing false information about their donated land.
2. As per the *Bhoodan* Yagna Committee, 20 per cent of the land donated by the landlords had been recaptured by their successors. At the same time, the committee gave pramanpatras to the beneficiaries. The government should take strong steps to get this land released and ensure possession to those who have been donated it by BYC.
3. Around 11,000 acres have been donated to various institutions. The utility of such donations should be reviewed and if such land is not being utilized for public purposes, it should be taken back.

Land Ceiling

1. The present ceiling limit should be brought down from the present 30 acres to 10 standard acres. The land ceiling has to be for a family of five or more.
4. The immediate task of the state should be to allot 2 acres of ceiling surplus land to each of the lowest quintile of landless agricultural workers, consisting of 16.68 lakh households, and assigning at least 10 decimals of land each to shelter-less households of 5.84 lakh non-farm rural workers who are in a state of semi-bondedness as they live on the land of other landowners. These two measures will help in ushering in a significant social and economic transformation in rural Bihar.
5. The definition of 'land' in all land and revenue laws, especially in the Ceiling Act should include all land of all characteristics. Land should be defined in a simple dictionary manner so that no one has either an opportunity or the option of wriggling out of the ceiling provisions by showing some land as agricultural land and some land as something else.

6. The general exemption that has been given for plantations, orchards, mango/li-tchi groves, fisheries and other special categories of land use should be done away with.
7. *Mutts*, religious establishments, including temples, church, etc. which have been existing since 1950, should be allowed one unit of 10 acres.
8. Sugar mills were given concessions of 100 acres of land at the time of their establishment. Therefore, land held by the sugar mills, other than directly required by them for the purpose of production of sugar like that required for factory labour and officers' quarters, hospitals, godowns, parking space for transport should be taken over by the government. They may have one unit of 10 acres, other than the land directly under use for production purposes. If the sugar mills are not producing sugarcane, the land given for its production should be immediately taken back by the government.
9. For research organizations, agricultural universities/central universities/colleges, or any proposed educational, non-educational establishments/institutions, including proposed industrial and commercial units, the government should review the actual requirement of land for fulfilling their objectives. The land allotted to an institution should be taken back if the institution fails to achieve the objectives for which the land was allotted.
10. Apart from generally empowering the authorities to look into any suspected land transactions, including creating trust with the intention of defeating the purpose of the ceiling law, Benami Transactions (Prohibition of the Right to Recover Property) Act (1989), should be suitably amended so that the evasion of provisions of the ceiling law through *benami* land transactions can be reopened and annulled. Any transaction or transfer of land beyond the ceiling limit of 10 acres, done with the intention of benefiting the transferor and/or members of his family with the intention of evading the ceiling law, should be subject to scrutiny and annulment after due process.
11. With the computerization of land records, separate files should be opened with respect to actual and suspected evaders of the ceiling law, so that their land held in different districts can be consolidated in one file for the purpose of imposition of one unit of ceiling.
12. There should be a special single line administrative arrangement to enforce the ceiling law. The ceiling law should provide for criminal action against landowners for failure to furnish correct declarations of their ceiling surplus land. Criminal

action should include adequate penal provisions. Similarly, a penal clause should be inserted in the Land Ceiling Law against officers who, willingly and intentionally, help landowners to evade the ceiling.

13. Absentee landlords and/or non-resident landowners should be asked to give the option of whether they would like to utilize their land through personal cultivation, or would like the government to vest in itself the same. They may be given three years to decide.
14. Distribution of all ceiling surplus land should invariably be made in the name of a woman, or on a joint basis, to ensure gender equity.

Annexure:

State Specific Advisory

**Government of India
Ministry of Rural Development**

Dated 19th March 2013

Bihar

The following measures are suggested for improving and expediting existing land reform measures within the state:

1. Take steps to allot at least 10 decimals of land, in the name of women, to each of 5.84 lakh non-farm rural homeless/landless households.
2. Amend the ceiling laws and lower the ceiling limits for various categories, including religious establishments and sugar mills.
3. Prepare a 'mutation manual' in line with Bihar Tenants' Holdings (Maintenance of Records) Act (1973), and carry out mutation of all land records in a time-bound manner.
4. Revisit the current status of Khasmahal land in terms of its utility and make it available for distribution among the homestead landless households under the *Maha Dalit* Vikas programme.
5. The state government should take action to vacate encroachments on *gair majarua khas* land and distribute cultivable land to the landless rural poor.
6. Take time-bound action to provide access to around 6.4 lakh acres of land yet to be distributed to eligible landless poor.
7. Ensure possession to those who have received *pramanpatras* by the *Bhoodan* Yagna Committee. Ensure that titles over this land are in the name of the adult woman member/s of the family.
8. Assess land use of 11,000 acres, which have been allotted to various institutions. If such land is not being utilized for 'public purposes', it should be taken back and redistributed to the landless poor with priority being given to marginalized women.

Chapter 4

Gujarat

Land Rights of Marginalized Communities

Pankti Jog

Over the last 10 years Gujarat is known as an economically developed state, where land has been used as one of the major resources. The state government has employed central laws like those on special economic zones and land acquisition for large-scale land acquisitions. Wherever the land was not available in one geographic area in a large chunk, the government acquired it by enacting executive orders during the decades since 2000 and a policy by the Gujarat Industrial Development Corporation (GIDC) in 2010. All these initiatives and moves have established two points which have been reinforced over and over again – one, land is a resource that is owned by the government exclusively, and second, the government can change the use of land for economic advancement, even undermining the poor and marginalized peoples' need for land for survival. In doing so, these processes have undermined food security, users' rights and land dependency in various ways such as, growing vegetables and fruits in river beds, to collect vegetation-based produce, for grazing animals that have a symbiotic relationship with agricultural practices, to cultivate salt and using land for traditional occupations like leather processing, lime making and pottery and as habitation for nomadic, semi-nomadic and de-notified tribes. All these uses of land by poor and marginalized communities have been sidelined deliberately; the bio diversities have been neglected and have become extinct; livelihoods of all such families have been badly affected; and their problems of habitation have worsened. The discourse on landownership, use of land as a resource, land economics and politics of land need to be articulated, debated and should be examined from the social justice and distributive perspectives.

Several research studies and legal cases have shown that land acquired for industries is much more than their actual requirements, but has not been returned to the original owners. In such a situation, the sufferers belong to the socially and economically marginalized communities and a majority of the land allotted was

wasteland, pastureland and some portions of forestland. The government thus typified ‘wasteland’ as ‘not usable for agriculture production’, but it actually covered three different types of land – *padtar* (fallow), *karabo* (shallow and marshalled, including river beds and *kotar*) and some unused land like hills and lakes. The government needs to be categorical about protecting lives and livelihoods of the people who have been dependent on land for traditional occupations and for habitation.

Out-dated land records and limited functioning of e-records have been major concerns and, therefore, many development activists have been demanding updating of land records. However, we need to look into the process of existing land records from the perspective of marginalization. The existing land records focus mainly on private landownership and other land like wasteland, pasture land and forest land under revenue generation categories, but do not consider customary rights and traditional uses of land for habitation and livelihood in totality. This is one of the causes of inequalities and injustices leading to social conflicts and hegemony over land as an important resource.

Though the government has taken some initiatives for promoting and ensuring private landownership among women, there are several administrative and procedural lapses which need to be resolved. Moreover, the land allotment processes of the government promote privatization of common property resources (CPRs) and undermine adverse impacts on the lives of women, depriving them of day-to-day household needs, nutrition, medicinal use and healthcare.

Land market is at its peak in Gujarat. As agriculture seems to be less profitable for farmers, and under various circumstances it also becomes non-viable, agricultural land has been sold. These are private landholdings and owners have got prices that were earlier un-imaginable. However, the agriculture labour force, depending on the land for employment, does not get recognized as ‘affected’ and, obviously, does not get any returns or rehabilitation. This is leading to distress migration. This can be clearly observed in south Gujarat.

Industries are invited to Gujarat for investments. Various procedures, like converting agricultural land for non-agricultural purposes, have been liberalized to attract these industries. Salt, chemical, mining and energy industries are consuming huge tracts of land and are also demanding more. The government does not have a ‘Land Use and Land Management’ policy.

Biodiversity Act (2002) has not been implemented. Hence, privatization of CPRs is done without recognizing communities' dependency on biodiversity for food security and livelihood.

Distribution/Assignment/Allotment of Land by the Government: Existing Policies

Government wasteland, uncultivated fallow land, ceiling surplus land, land acquired under the Gujarat Land Ceiling Act (1961) and land received as part of the *Bhoodan* movement is allotted to landless communities for agriculture/horticulture purposes. Such land is also allotted to individuals or collectives of individuals, on lease for cultivation. Data from the Revenue Department of the Gujarat government shows that the state has 32.37 lakh ha of barren/wasteland and till 2011 it had distributed 10.81 per cent of the TGA of wasteland. It had also distributed 1.46 lakh acres of ceiling surplus land to about 33,312 persons and 50,984 acres of *Bhoodan* land had been distributed to 10,270 families.

Land allotted/distributed with titles has to be physically identified and mapped and possession has to be given to the beneficiary. This process, called *khunta mapni* has not been observed. Thus, significant numbers of beneficiaries have not got possession of land. The allotted land is encroached upon and the beneficiaries have no capabilities to clear it and take possession. The quality of the allotted land is very poor (non-cultivable, saline), which requires a lot of inputs to make it cultivable.

Recommendations

1. 1,03,530 acres of land was gifted by the people to the *Bhoodan* movement in Gujarat. Out of this over 50 per cent – 52,586 acres – was left with the Bhoodan Samiti and the government. Physical verification of the leftover land should be done. Available land should be distributed to landless communities, in which NT-DNT and women should be given priority.
2. The Gujarat government's policy of identifying and regularizing encroachment of government land for habitation/homesteads, or as a primary livelihood source of most marginalized communities, needs to be implemented.
3. Gujarat's land use board needs to be more active in identifying usage of wasteland/government land, its mapping and distribution.

4. Identified 16 most backward communities¹ (*ati pachhat jati*), women and women's groups/SHGs, should be added to the priority list for allotment of land.

Protection/Restoration/Development of Land of Dalits, STs and Marginalized Communities

Under land allotment procedures, there is a provision in the policy to extend support for cultivation on given land. In addition, there are separate welfare schemes that support marginalized farmers with subsidized seeds, fertilizer kits, etc. But, once the land is allotted, there is no mechanism by which a beneficiary is linked to the existing assistance programme in agriculture. Thus, most of the time without extension of other facilities, like access to water resources, formal credit, crop insurance and capacity building it becomes difficult for the beneficiary to sustain himself, defeating the objective of providing sustaining livelihood and food security to landless communities. Land received under ceiling surplus/*Bhoodan*/wasteland cannot be sold or transferred as per conditions in the allotment letter.

The priority list for land allotment excludes two most marginalized categories: NT-DNTs and women. Also, there is no specific provision for allotment of land in 'joint names' of husband and wife, depriving the wife of property ownership. In the case of leased land, the renewal procedure is tedious. There are cases where the community has worked hard to make barren land cultivable and the government is refusing to renew the lease.

Recommendations

Give possession of allotted land by providing support

1. 85,176 acres of ceiling surplus land has been distributed to Dalit communities in Gujarat.² However, due to various social and political reasons, not all allottees have got possession of the assigned land. Communities individually are struggling to get possession. In 2012, 200 families got possession of 6,574 acres of land in Banaskantha district and 2,398 families got possession of 12,438 acres in Surendranagar district. The district administrations of both the districts made

1. The government has already categorized 16 most backward communities as *Ati Pachhat Jati*.

2. Behavioural Science Centre, '*Development' versus People – Gujarat model of Land Acquisition and People's Voices*, 2012 Ahmedabad, p. 52.

proactive efforts in giving possession of this land.³ This initiative was facilitated and supported by civil society organizations.⁴ The initiative in Banaskantha district needs to be documented and replicated in other districts by the government.

2. The *khunta mapni* process for allotted land (identifying allotted land and mapping the boundaries) is not complete in many places and has become a major bottleneck in getting possession. This process can be taken over in a campaign mode in each district.
3. Community farming⁵ by women SHGs should be recognized, documented and replicated in other districts. This has secured access over land to women and has ensured food security and livelihoods and has prevented distress migration.
4. Land allotted by the government to Dalit communities under various land reforms should not be acquired for any other purpose. For example, during the survey and settlement process of Wild Ass Sanctuary in Little Rann of Kutch (LRK), 1,986 families, who had received land in land reforms, put their claims for recognizing their rights. Of these, 902⁶ claims were rejected. Thus, land allotted to these families will be re-acquired for WAS.
5. Land allotment should be linked to other livelihood programmes, like Mission Mangalam and MGNREGA, by forming SHGs of land receivers to secure rights and ensure its development.
6. Physical verification should be done to check the use of land while renewing the lease, if the land has been allotted for community farming. Livelihood dependency on leased land should be given importance while renewing the lease.
7. Put data related to land allotment and leasing in the public domain. An effective, time-bound grievance redressal mechanism should be set up in offices at the block and district levels.

3. GR No. JMN/3986-A, dated 1986 – GR compilation 01, p. 199 which gives authority to the collector for identifying such problems and giving actual possession.

4. Centre for Social Justice and Shri Valijbhai Patel facilitated the process.

5. There are two remarkable initiatives by women: Vadia settlement (Banaskantha district) and in Vautha (Ahmedabad district).

6. As per RTI data received by Harinash Pandya.

Women and Land Ownership

The Gujarat government accepted the Gender Equity Policy (GRP) in 2005. A provision has also been made for 2 per cent concession in stamp duty for women buying property. After amendments to the Hindu Succession Act, a daughter and son are given equal share in ancestral property. Also, there is a separate GR which mentions that a house allotted under the Indira Awas Yojana will be in a woman's name.

Several land issues need to be looked into from the gender perspective especially where women's land rights are violated or not exercised, and women's status is deteriorated due to various social, cultural and political reasons which are deterring this process. For instance, privatization of CPRs deprives women of livelihoods, day-to-day household needs, nutrition, medicinal use and healthcare.

Women are seen as a monolithic group by the state government and, therefore, issues of single women, or female-headed households, and women belonging to socially and economically marginalized communities are neglected, or not given due importance, or priority for land allocation, or land use for livelihood purposes. No sex-aggregated data on landownership is available. As a result, women are not able to prove their ownership or right over land or over shelter. Not having assets in a woman's name tends to contribute to increasing violence and crime against women and deterioration in their socioeconomic status. Not updating latest landholder titles leads to social conflict and corruption, with women suffering the most. Overall, women's landownership is very low, and single women face a typical set of issues for not possessing land allotted to them in the past under land reforms.⁷

Though the government has taken some initiatives for promoting and ensuring private landownership among women, there are several administrative and procedural lapses and hassles, for example, a nominal number of *varsai* is done where women's names are registered; very few cases of joint ownership of land in the husband and wife's name are registered; and review and monitoring of land given to female-headed households under land reforms has not been done.

Recommendations

1. A monthly/quarterly calendar for women *varsai*⁸ camps must be adopted as it

7. A report by the Working Group on Women and Land Ownership (WGWLO).

8. *Varsai process* – recording names of legal heir in land ownership documents.

is done for immunization and information disseminated to the villagers in advance. Mass publicity should be given before holding camps in villages. A database should be created, which is updated every quarter; this should be monitored by elected women representatives in each block in the state. The varsai procedure for all single women should be completed in a year, that is, latest by January 2014.

2. In the case of death of husband, there can be ‘freezing period’ of up to six months until the wife’s name is entered as ‘legal heir’, and no change in the ‘ownership status’ of the said land should be permitted.
3. The wife’s name should be recorded as a co-owner in each property owned by the husband. In Maharashtra, there is a provision which enables a woman to get an equal share of the assets and property owned by her husband after marriage.
4. One of the most remarkable steps taken by the government is accepting GEP⁹ (2005). Sections 7.1 and 7.5 of GEP, referring to ‘economic empowerment of women’ and ‘natural resource management’ respectively should be implemented on priority basis, as mentioned in the concerned mechanism in the policy.
5. In order to promote and ensure women’s landownership, an autonomous body, like a Gender Resource Centre, could be assigned the role of creating sex aggregated datasets; facilitating the training of local revenue officials (*talatis*, *mamlatdars*) and other local officials in collaboration with women’s organizations working on land rights for women; developing indicators for a women’s resource base, including land, for incorporating in the state Human Development Report and in economic reviews, etc.

Nomadic and De-notified Tribes

NT-DNTs constitute over 8 per cent of the total population of Gujarat, that is about 70 lakhs (7 million). Out of 40 NT-DNT communities, about 25 are still to be considered as most marginalized. Their traditional occupations, like providing original cattle breeds, snake charming, rope dancing, sharpening of knives and swords, taking out hair from cattle, providing mud for building mud houses, making bamboo baskets, playing musical instruments, rope making and making mud idols are becoming irrelevant with changes in the rural economy. There is no proactive approach in providing them alternative livelihoods; thus these communities are caught in the vicious

9. Gender Equity Policy (GEP) of the Gujarat government.

circle of poverty and migration. Not more than 30 per cent of the communities have received benefits of development and welfare programmes of the state. There is a situation of acute food insecurity in NT-DNTs. Women from NT-DNTs are forced to work as sex workers.

A separate department – *Vikasati Jati Kalyan Khatu* – looks into the welfare of backward classes. There are various schemes being implemented by the department for the welfare of ‘backward classes’. In 2003, the government passed resolution No. JMN/392003/454/A, dated 6/6/2003, that gives authority to a district collector to allot a housing plot, free of any cost, to NT-DNT communities, irrespective of their BPL status. There is a separate resolution for regularizing settlements on government wasteland by charging a token amount, as decided by the government.

Because of their nomadic lifestyle, none of the NT-DNT communities possess any land; they also no civil identification. They are settled on wastelands and/or pasture land in the village. The GR of 2003 does not talk of allotting housing plots from village-side land to these communities. Thus, villagers oppose their settling down near villages, thereby depriving them of basic facilities like education and health services. The Gujarat government passed a resolution allotting land to NT-DNTs for a housing scheme. There is also a provision for regularizing encroachments for settlement by most backward communities. But the community is not aware of this and nor are there any proactive efforts to reach to them by the panchayats, or the concerned department like *Vikasati Jati Kalyan Khatu*. Thus, when the government decides to deviate ‘wasteland’ for industrial or bio-fuel purposes, there is no process or procedure by which such settlements can be regularized.

NT-DNT communities depend on CPRs like wastelands, pastures and fallow land in various ways. Some striking facts about *gauchar* (pasture) land are:

- a) out of 18,000 villages, not a single pasture land is without encroachments;
- b) of these villages, 400 have no pasture land left;
- c) GRs¹⁰ of 2004 allow allotment of pasture land for industrial purposes by charging 30 per cent extra cost (premium); and

10. GR Nos. JMN/3999/29/A, modified on 22/11/2004.

- d) there is no data available in the public domain that provides information about the extent of pasture land and the extent that has been converted to wasteland and allotted for industrial purpose.

The *Indian Express* reported that ‘1.16 lakh sq. mt. of land is given away for other purposes’ (April 22, 2012). There are violations of the GR that provides for the survival of domesticated animals on grazing land, which snatch away traditional livelihoods of about 7 per cent of the population (about 40 lakh) that is engaged in pastoral activities.

No official data is available on the ‘use of common land (wasteland, grazing land) by pastoralist communities’ in Gujarat. In the absence of mapping of land use, especially for pastoral activities, the use of land for various purposes like migration, temporary settlements and use of CPRs for fuel and other purposes are overlooked. The overlooking of such basic necessary pastoral activities is then portrayed as ‘violation’ and ‘illegal activity’ by the state machinery and the people are penalized for these activities.

Recommendations

1. The most backward communities (*ati pachhat jati*) should be included as a priority group in allotment of land for agricultural purposes.
2. One remarkable example of allotment of land for community farming to women from NT-DNTs, is in Vadia¹¹ settlement in Tharad block in Banaskantha district. This needs to be up-scaled and replicated.
3. Similarly, a proactive approach adopted in Banaskantha district to allot housing plots to 616 families in 2012 should be replicated in all districts. Also, there should be a provision for allotment of village-side land for housing plots for NT-DNTs.
4. A GR for regularizing settlements on government land should be implemented in its true spirit. In several places, NT-DNTs have been living in temporary settlements for years. Their migration patterns have now changed and these settlements can be called semi-permanent settlements. Vicharta Samuday Samarthan Manch (VSSM) has identified 133 such settlements in seven districts, can be regularized and developed following a cluster development approach.

11. Due to absence of any other livelihood, women from entire settlements were forced into the flesh trade as a means of livelihood. These women received 208 acres of land, allotted for community farming for 150 families. With efforts from Vicharta Samuday Samarthan Manch (VSSM) and the irrigation department supporting the irrigation facility, these families are now tilling land and getting supplementary livelihood..

5. The GR of 2003, of mapping cattle sheds and regularizing them (*wada maapani*) should be restored.
6. Mapping of migrating routes (seasons/time/occasions, types and number of cattle, number of pastoralist and NT-DNT communities) for intra-state migration need to be undertaken in order to uphold the rights of these communities.

Common Property Resources – Existing Policies

Privatization of CPRs is an issue of great concern. A huge amount of land is being allotted to industries under the fast track-single window clearance system. To avoid administrative hurdles, the fast track system bypasses the cross-checking mechanism that may have recognized ‘user rights’ or livelihood dependency of the marginalized communities. The district administration admits huge political pressures for speeding up procedures during allotment of land to industries. The second biggest challenge is huge encroachments for mining, salt making and other activities by socially, economically and politically powerful elements. No data on illegal mining or encroachments of barren land for industrial purposes is provided in the public domain. Such illegal use is done without following any norms for conserving the environment. Eventually this not only contaminates the land used, but also nearby resources like water and agricultural, cultivable land. Lack of transparent, consultative procedures for deviating CPRs for industrial purposes deprives communities of their right of being heard.

Lease tenures on CPRs to industries is very long (as long as 99 years). Most of the time the communities are not aware of the fact that the land has been given on lease and has not been allotted permanently. There is no effective monitoring by the government for violations. The biggest issue is the lack of transparency in procedures. The conditions of the lease are not known to the panchayat, nor are they disclosed on the website (though giving details under RTI is mandatory).

Recommendations

1. The government should prepare an inventory of CPRs, update their status in the records and make these available in the public domain, like it is being done in Andhra Pradesh. Minimum disclosures should be ensured at the village panchayat level; these should be read out in the *gram sabha* (as per Section 4 (1) b of RTI Act).
2. Allotment of CPRs for industrial purposes should be more transparent, consultative and public friendly. The procedures for public consultation, depending on amount/area of land allotted should be put in place.

3. The government should review the use of allotted land to industries. After every three years, un-used land with the industries needs to be reviewed and taken back for public purposes.
4. As per the number of livestock, there should be 39.56 lakh hectares¹² of grazing land. Over 16,000 villages (out of the 18,500 villages), have encroachments on grazing land.¹³ The government should identify, map and categorize the encroachments and should initiate a process of clearing encroachments on grazing land. Categorization of encroachments will ensure restoring the rights/interests of the most marginalized, land-less communities like NT-DNTs and Dalits, who may be using this land as a primary livelihood resource.
5. As there is so much of deficit in grazing land, acquiring grazing land for other purposes, or converting grazing land into wasteland should be immediately stopped. In exceptional cases, when the status of grazing land needs to be diverted, an alternative site should be developed prior to its acquisition and allotment for other purposes.
6. The state government should initiate a process to recognize the user rights of over 12,000 marginal salt worker families in the Little Rann of Kutch, which has been declared a Wild Ass Sanctuary. Their rights should be recognized under FRA and mentioned in BCLRIP, supported by the World Bank.¹⁴
7. The government should use the premium fund (gained after diverting grazing land for industrial purposes) for developing new grazing land and restoring biodiversity in the existing grazing land. This can again be linked with biodiversity regeneration and livelihood promotion programmes like Mission Mangalam and MGNRGA.
8. Several marginal communities like SCs, STs and NT-DNTs face threats of eviction/displacement due to allotment of CPRs for other purposes such as corporate farming and industrial purposes. Their dependency (food security, livelihood and habitation) on CPRs¹⁵ should be identified.

12. Behavioural Science Centre, (2012) '*Development' versus People – Gujarat model of Land Acquisition and People's Voices*, Ahmedabad.

13. As per data submitted in the High Court by the Gujarat government.

14. Biodiversity conservation and Livelihood Regeneration Improvement Programme of the World Bank implemented in Little Rann of Kutch (Wild Ass Sanctuary) Gujarat.

15. A survey conducted by Vicharata Samuday Samartan Manch (VSSM) identified 133 such needy settlements in Ahmedabad, Banaskantha, Patan, Mehsana, Rajkot, Surendranagar and Sabarkantha districts which can be taken up during the first phase.

Forest Rights Act, PESA and its Implementation

The Forest Rights Act and the Gujarat Panchayati Amendment Act are two historic legislations that recognize land rights of tribal and forest-dwelling communities. There is a high rate of rejections of IFR claims across the state. In their initial presentations to the State Level Forest Rights Committee, government officials had explained that in the initial phase of implementation, mass publicity and political activism resulted in a large number of false or duplicate claims as also fresh encroachments, and that subsequent verifications through satellite imagery resulted in their rejection – out of 1.82 lakh claims, 1.15 lakhs were rejected.

The state has not started implementing the Forest Rights Act in non-scheduled areas. Hence, even the first step of forming FRCs, sub-divisional level committees (SDLCs) and district level committees (DLCs) has not been taken. Problems will start appearing only after the process of implementation begins. An issue on which a clarification needs to be issued, is the status of salt-pan workers. Many agariyas have been making ('cultivating') salt in the Little Rann of Kutch (part of the Wild Ass Sanctuary) for the last many years and hence, their right to do so needs to be recognized under this act. But, it is not clear as to which provision of the act would apply to this right.

In Gujarat, 13 districts have *talukas*, which fall under Schedule 5 of the Constitution. The PESA (Panchayats Extension for Scheduled Areas) Act (1996), gives powers to tribal panchayats and *gram sabhas* in Schedule 5 areas to take decisions on matters relating to the development of local areas and the community. In accordance with the PESA Act, the Government of Gujarat came up with the Gujarat Panchayat Amendment Act (GPAA) (1998), which integrated the Gujarat Panchayat Act (1993), and the provisions under PESA Act (1996). However, the state act of 1998, unlike the central act, included sentences and words that undermine the independent functioning of tribal panchayats.

PESA Act makes it mandatory to consult the *gram sabha* or panchayat at the appropriate level for granting concessions for the exploitation of minor minerals by auction. The Gujarat Panchayat Amendment Act (GPAA) does not incorporate any provisions regarding grant of licenses, mining leases for minor minerals or grant of concessions for the exploitation of minor minerals by auction. Provisions under PESA, like land-based or CPR-based incomes should be deposited with the concerned village panchayat, are not observed. In districts like Daang and Surat, such income

has been asked to be deposited with the district panchayat, which is in contradiction with the act.

Recommendations

1. The implementation of FRA outside tribal areas, where other forest dwellers reside and have a stake, should be commenced immediately because non-implementation of FRA for non-tribal protected areas and sanctuaries is posing eviction/displacement threats to marginalized communities in places like Aliya Bet, Little Rann of Kutch and Banni grasslands. The recommendations given by the MoEF/MoTA Committee on Forest Rights Act need to be accepted and actions initiated as soon as possible.
2. Satellite imagery is not an approved technology as per FRA. Therefore, we recommend accepting other forms of evidence and giving greater importance to village-level FRCs.
3. The discrepancy between PESA and the Gujarat Panchayat Amendment Act [(Section (73 (aa), 17 (4), Schedule 1-11, and Schedule 1- 5(e)] must be removed. The *gram sabha* should be given powers to manage natural resources and the social economic development of tribal villages, instead of various levels of a panchayat.

Annexure:

State Specific Advisory

**Government of India
Ministry of Rural Development**

Dated 19th March 2013

Gujarat

The following measures are suggested for improving and expediting existing land reform measures within the state:

1. Identify and regularize occupation of low income communities on government land in accordance with GR (DBN-1072-2876-PL dated 1980), and distribute available government land to the most marginalized communities. Give priority to marginalized women and women-led formal collectives/SHGs, Dalits, Adivasis and other homeless and landless communities.
2. Take up a time-bound action plan as per GR BDN-142003-420-K, dated 2004, to physically verify the *Bhoodan* land and distribute the available land to the landless poor with a priority to marginalized women. Ensure that all new titles to land are given in the names of women.
3. Strictly implement the Gujarat Land Ceiling Act (1960, Clause 29 Rule 14) and ensure possession of SCs/STs and marginalized communities on allotted land in accordance with GR No. JMN/3986-A, dated 1986, where all district collectors have been given the power to identify such issues of possession, and ensure regularization in favour of the landless.
4. Take up a campaign for ensuring allocation and possession of land to eligible landless families, with priority to marginalized women, in a time-bound manner and develop this land and provide housing support, basic services and livelihood support through livelihood programmes/schemes like Mission Mangalam and MGNREGA.
5. Adopt a monthly/quarterly calendar for organizing women *varsai* (recording names of legal heirs in landownership documents) camps and place the calendar in the

public domain before such camps are held. Complete the *varsai* procedure for all single women in a time-frame of two years. Ensure that the name of the wife is entered in land records as joint owner at the time of marriage and as sole owner within six months of the death of her husband.

6. Enforce GR No. JMN/392003/454/A, dated 6/6/2003, for allotment of designated 'wastelands' for rural housing purposes. This GR gives authority to the district collector to allot housing plots, free of cost to DNT communities. Also, prioritize allotment of homestead for other nomadic communities willing to settle and provide housing and livelihood support to them.
7. Redefine the priority list for redistribution of surplus ceiling land to ensure that marginalized women are prioritized for allotments.
8. Identify, map and categorize the encroachment of grazing land and initiate a process for evicting non-poor encroachers on such land. The rights/interests of marginalized communities must be protected and upheld and land should be re-distributed to the most marginalized landless communities, including DNTs, Dalits, Adivasis and others, who are using the land primarily as a livelihood resource.
9. Utilize the premium fund gained from diverting grazing land for industrial purposes for developing new grazing land and for restoring biodiversity resources on existing grazing land.
10. Recognize user rights of over 12,000 marginal salt workers families in the Little Rann of Kutch Wild Ass Sanctuary under the Forest Rights Act (2006).

Chapter 5

Haryana

Land Reforms: The Way Forward

K Gopal Iyer

Till 1966, Punjab and Haryana were part of the same state. Several land reforms laws enacted by Punjab and PEPSU governments before their separation are still applicable to both the states. The ceiling laws were enacted in two phases in Punjab and Haryana. In the first phase, the Punjab Security of Land Tenures (Amendment) Act, 1955 and Punjab Security of Land Tenures (Amendment) Act (1957), were enacted. These legislations were intended to abolish intermediaries, provide security to tenants and to confer proprietary rights to occupancy tenants.

Failures of the Ceiling Surplus Programme

Post the division of the state, the Haryana Ceiling on Landholding Act (1972) was passed. Under this act, permissible area has been fixed so that no person can own or hold land as a landowner, or mortgage it with possession or a tenant or partly in one capacity and partly in another, in excess of the permissible area. The permissible area in Haryana has been fixed as 7.25 hectares of first quality land. 'First quality' land was defined as capable of yielding at least two crops in a year with assured irrigation. Family in relation to a person means the spouse of such person and his/her minor children, other than married daughters.

In spite of the persistence of land concentration especially in the districts of Sirsa, Bhiwani, Hissar, Jind, Kurukshetra and Rohtak, the land ceiling programme in the state has not been able to capture some big landowners. Most of the ceiling surplus cases were identified between 1951 and 1960 and during 1976 and 1980. Macro data at the state level reveals that until March 1989, the area declared surplus under the old act was 350,991 hectares, and under the new act of 1972, it was only 31,048 hectares. The non-identification and lack of institution of fresh cases after the 1980s indicate absence of political and administrative will during that period. There is still a

considerable extent of surplus land not identified, which needs to be unearthed through rigorous implementation of land ceiling laws. This is an administrative task that needs to be undertaken on an urgent basis.

The most common method used by landowners for circumventing the ceiling provisions of the 1972 act was through devaluation of land. Landowners managed certificates from revenue authorities and the canal department that the land in question was dry, whereas the land was double cropped. By this technique, landlords could extend the ceiling limit by three times the usual. Obviously, such manipulations were undertaken by landlords in connivance with the officials of the revenue and canal departments.

The second technique was even more interesting. It was popularly known as *durusti* (correction of past records). For this, the landlord had to file a suit by fake tenants in the court, claiming that they had been tenants on their land for more than six years before January 24, 1971. Such cases were not contested as they were filed under mutual understanding and decisions went in favour of the tenants. By this method, land went in favour of the tenants, but in practice the landlord retained all the land.

Sometimes the surplus ceiling owners even showed 5-year-old children as adults by producing fake certificates from some private school or oath commissioner and claimed additional units for every adult member. Often landlords took recourse to prolonged litigations and cases lingered on for decades and then they managed to get the surplus land exempted from the ceiling limit. There were also cases where even after the issue of allotment certificates by revenue authorities, the allottees were implicated in litigation and the land continued to be in the possession of landlords. The landowners, at times, claimed exemption on the grounds of fake trusts and temples also. The new ceiling act of 1972 also contains various loopholes to save landlords from the ceiling law. For instance, exemption from ceiling was given to that land which had been transferred in various names up to July 20, 1958, or in case the person in question had died before December 23, 1972. With this new provision, a large number of landlords managed to retain their land.

Tenancy Laws

Haryana's agrarian scene is marked by non-implementation of tenancy laws. Studies have shown very high incidence of concealed tenancy. In many instances, *patwaris*

do not enter the names of the tenants as cultivators. Haryana does not have powerful mobilization of tenants to assert their rights.

All categories of tenants lease land. If the marginal and small farmers lease it for supplementing their subsistence, medium and big farmers lease it to augment utilization of agricultural implements to increase surplus for the market for profit. Tenants consisting of upper middle peasants, rich peasants and capitalist farmers dominate the lease market in the semi-arid and arid sub-zones in the state. The higher economic status of unrecorded tenants, as compared to recorded tenants in the state, is an interesting phenomenon. It may be pointed out that recording of tenants took place between 1950 and 1970. Since then, recording of tenants has almost stopped for all categories of farmers. This phenomenon may be taken as the emergence of reverse tenancy on a large scale in a later period. It is possible that in the initial phase, mostly landless and marginal peasants were leasing land and they got recorded. In the later period, medium and big farmers started dominating the lease market, but by then recording had almost stopped.

Recommendations

Access to ownership of land through the distribution of surplus ceiling and *shamlat* land.

Village common land in Punjab and Haryana is known as *shamlat deh* and *abadi deh*. Using common land in the state is regulated by the Punjab Village Common Lands (Regulations) Act (1961). This act was passed to consolidate and amend the law regulating rights in *shamlat deh* and *abadi deh*. It gives a very comprehensive definition of *shamlat deh* which includes land described in revenue records as *shamlat deh*, excluding *abadi deh*, *tarافت*, *patti*, *panna* and *tolas*. This Act vests the *shamlat deh* land in the panchayat of the concerned village. Section 5 of the Act provides that where the cultivable area of land in *shamlat deh* of any village is in excess of two-third of the total area of that village (excluding *abadi deh*), then the cultivable area up to the extent of two-third of such area shall be left to the panchayat and one half of the remaining cultivable area of *shamlat deh* will be used for settlement of landless tenants and other tenants ejected from that village. Rule VI specifies that all leases of land in *shamlat deh* shall be auctioned and one-third of cultivable land shall be reserved for giving on auction to members of Scheduled Castes only.

Panchayat land, including *shamlat* land is encroached upon by powerful land-owners. There is a provision in the Shamlat Act to evict illegal encroachers. There are still a large number of cases under litigation relating to encroachment of *shamlat* land. These encroachments adversely affect the weaker sections from accessing cultivable land and house plots.

1. A special drive should be launched to evict illegal encroachments on shamlat land and cultivable land must be leased out to landless belonging to SCs on a priority basis.
2. A special land tribunal should be constituted for speedy disposal of litigations on *shamlat* land.

Impact of acquisition of land for SEZ on farmers and agriculture labourers

The assessment of an empirical study in Jhajjar and Gurgaon districts in Haryana points out that there are inherent flaws in the SEZ policies of the Government of Haryana. Wherever the land acquisition law has been implemented without the consent of the people, it has been met with resistance from farmers. The worst victims are agricultural labourers who are not considered stakeholders. SEZs have acquired considerable prime agriculture land, including double-crop land, which is not only harmful for agriculture but also for overall food security. After land acquisition, industries start cultivation of bio-fuel crops, which have environmental and health impacts. Promises of employment opportunities and houses made during land acquisition stand unfulfilled. The case of the Reliance SEZ in Jhajjar district is one such example.

1. This provides a lesson that land acquisition laws should not be used by the state in favour of the corporate sector against the interests of farmers and marginalized sections.
2. The acquisition/purchase of prime agriculture land for SEZs should be altogether prevented.

Tenancy Laws

1. Tenancy laws should be amended to provide security only to small tenants.
2. Recording of tenants should resume immediately.

Ceiling Surplus Programme

1. Till December 1994, 1,32,600 acres of land in the state had been declared surplus, out of which 1,02,500 acres were distributed among 26,700 beneficiaries. The remaining area (30,100 acres) was under litigation. It is recommended that the government take steps to clear these hurdles in a time bound manner and distribute this land to landless and homeless families.
2. A new survey should be done to ascertain the quality of land and ceilings should be applied accordingly.
3. The government must reconsider ceiling limits that were fixed more than four decades ago. With increasing productivity, a downward revision of ceilings must be undertaken.

Protection against Alienation

A number of districts in Haryana, including Gurgaon, Faridabad, Rohtak, Sonapat, Rewari, Mahendragarh, Karnal and Bhiwani form part of the National Capital Region. Construction and speculative activities in land are prevalent in these areas. This dynamics is alienating large tracts of agricultural land and also village common land. Many colonizers, like DLF, Ansals, Aggarwals and Unitech have acquired vast quantum of land in these areas. These trends are alarming for food security and livelihood of peasants as fertile land of the green revolution area is being diverted away from agriculture. The government will have to take immediate steps to check this growing trend.

Annexure:

Recommendations and Suggestions of Task Force on Land Reforms Advisory

Government of India
Ministry of Rural Development

Dated 19th March 2013

Haryana

1. Start proceedings to evict encroachers on *shamlat* land and distribute it to homeless and landless rural poor.
2. Initiate a time-bound scheme to allot 100 square yard residential plot free to BPL families under the Mahatma Gandhi Gramin Basti Yojna. Ensure that the right to land is issued in the name of an adult female in the family.
3. Repeal the 2010 amendment to the Land Ceiling Act that allowed diversion of agricultural land for non-agricultural purposes without applying land ceiling.¹

1. Translated from Hindi by BfC editorial team.

Chapter 6

Jharkhand

Status of Land Rights of the Socially and Economically Marginalized

Gladson Dungdung and Sunil Minj

Though undivided Bihar was the first state to introduce land reform legislation in India, it failed in the implementation of land reforms. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1961 fixes the ceiling of 15 acres of class I land and 45 acres of class VI land, but there are number of landlords owning more than 150-200 acres of land even today, and there are large number of landless masses. Most of the big landlords are from the upper caste. After the bifurcation of the state, land has remained an unresolved issue for the newly formed Jharkhand state. Many Adivasi households have some patches of land and in comparison the Dalit households are almost completely landless.

The state government does not seem to be active on land issues. It has not introduced or changed any policy or brought up any programme to address the land related problems. It has focused more or less in some sort of the policy implementation. The Government has distributed a mere 7942.32 acres of wasteland among 5171 people, out of which 660 are Scheduled Caste and 4511 are Scheduled Tribe. In another step, a total of 106 people have been made available house sites to enable their own shelter.

Issues

1. The government does not have the actual data of the landless households.
2. Despite the Land Ceiling Act 1961, land concentration remains in Palamau, Garhwa, Gumla, Hazaribagh and Chatra districts.
3. Land has not been distributed among the landless people as per the government circulars. (4 decimals for housing purpose).
4. The Gair Mazura (common) land and surplus land remains undistributed because the government is not willing to distribute. It seems that the government keeps the

land in the land bank, where it can be handed over for 'development' projects of the government and even for private parties.

5. Land distributed among the landless are also acquired for 'development' projects.
6. The required work force is not available at the Circle Office level, which is also hampering the work. For example, there are merely 108 Circle Officers against the requirement of 210, and 102 posts are still vacant. Similarly, 169 Circle Inspectors are engaged instead of 248, and 76 are still vacant. There is requirement of 2014 revenue staff but 1444 are engaged and 570 posts are still vacant. Similarly, 122 Amins are engaged in the place of 222 and 100 posts are still vacant.

Recommendations

1. The government should collect data on landless houses on an urgent basis.
2. The state may take immediate pro-active steps to distribute homestead land to the identified beneficiaries. Land should be distributed among the landless people as per the law and security of possession of distributed land should be ensured.
3. Gair Mazurua land, especially those under the Government, and surplus land should be distributed immediately.
4. The Deputy Commissioners should be instructed to prevent the acquisition of Gair Mazura land and surplus land. There should be inquiry into the cases of such acquisition of such land, and the land should be restored for distribution to the landless.
5. The vacant posts in Land Offices should be immediately fulfilled with the new recruitment.

Bhoodan Land

14.69 lakh acres of land of the state had been donated to the Bhoodan Yagya Committee, but due to lack of physical verification and availability of land documents most of the land has been recaptured by the land donors themselves. From 2001 to 2005 the government has distributed only 1,200 acres of land among 1,100 beneficiaries in the state from 2001 to 2005. In 2005 the state government established the "Jharkhand Bhoodan Yagya Committee" to sort out Bhoodan land related problems and distribute the remaining land. According to reports dating to 2013, of the 14,69,280 acres of land donated to the Bhoodan Yagya Committee, 4,88,735 acres of land was distributed

among the landless and 9,80,545 acres remained with the Jharkhand Bhoodan Yagya Committee.

Issues

1. Though 9,80,545 acres Bhoodan land remains on the paper for distribution but the government does not know the physical status of the land.
2. The Bhoodan Yagya Committee is defunct in the state.
3. Bhoodan land was acquired for 'development' projects.
4. Bhoodan land has been given to the Institutions instead of landless households.

Recommendations

1. The state government should disclose the actual status of Bhoodan land. A physical verification of the land should be done urgently and available land distributed among the landless.
2. The Deputy Commissioners should ensure that Bhoodan lands are not acquired for 'development' project and other purposes. In cases where acquisition has taken place, the Bhoodan land should be restored and distributed among the landless people
3. The Bhoodan Yagya Committee should be activated immediately both at state and district level.

Forest Rights

From the implementation of the Forest Rights Act 2006 on 1st January, 2008 till 31st December, 2012, 20,484 Forest Rights Committees were constituted for recognizing the forest rights of people at the Gram Sabha level. 42,003 claims were filed in the Gram Sabhas, and only 15,296 titles distributed involving 37,678.93 acres of land. 16,958 claims were rejected and 9,749 claims are still pending.¹ 36.4 per cent of the claims were given entitlement under the Forest Rights Act.

1. Status Report of the implementation of FRA 2006.

Table 6.1: Status of Forest Rights Act in Jharkhand 31st December, 2012

Sl. No	Activities	Total	Status in %
1.	Constitution of Forest Rights Committees by the Gram Sabhas	20,484	
2.	No. of claims filed at Gram Sabha level	42,003	100
3.	No. of claims recommended by Gram Sabha to SDLC	23,617	56.2
4.	No. of claims recommended by SDLC to DLC	17,046	40.5
5.	No. of claims approved by DLC	16,351	38.8
5.	No. of titles distributed	15, 296	36.4
6.	Extent of forest land for which title deed issued	37,678.93 acres	2.4 acre per claim
7.	No. of claims rejected	16,958	40.4
8.	No. of claims pending	9749	23.2

Source: Status Report, Government of Jharkhand.

Issues

1. There is no record available about the actual numbers of Adivasi and other forest dwellers, who have been cultivating on the forestland. The forest department had filed cases against 15,000 people for encroaching the forestland, which is the only data available in the state.
2. According to the status report, 43.8 per cent claims were rejected at the Gram Sabha level. However, the ground reality is completely different. Actually, the claims were rejected at the Circle Office with the involvement of the range office of the forest department, which should have no role in enforcement of the FRA at all.
3. The community claim is not being accepted in the state though 500 community claims were filed in different Circle Offices. The Circle Offices did not put these claims on record. The main reason is the forest department does not want to hand over the forest to the community.
4. Though there is provision for joint ownership on the forestland but in practical, the entitlements are given in the name of men and the list of family members are also included. These are not joint entitlement as envisaged in the Forest Rights Act.
5. The claims forms are not easily available. In the absence of information and support from bureaucracy there are many corrupt practices at various levels of

implementation of FRA. Adivasis are spending money for getting claim forms, processing of the claims and for plot mapping.

6. Most of the forest dwellers are not aware about the provisions of the Forest Rights Act 2006 and Rule 2007.
7. There is no timeline for disposal of the claims thus 9,749 are still pending in the state and 16,958 claims were rejected but the applicants were not informed. Applicants are not aware about the status of their claims. A Grievance Redressal Mechanism should be set up to facilitate faster, transparent and efficient processing of the claims put forth. A task force can be constituted at block/circle level for speedy disposal of claims
8. The segregated data is not available regarding the claims and entitlements given on forestland to the Schedule Tribes and other forest dweller communities.
9. As mentioned in the previous pages, the required work force is not available at the Circle Office level, which is also hampering with work.

Recommendations

1. A village-wise survey should be done with the support of the Gram Sabha to verify the numbers of potential beneficiaries of forestland distribution.
2. The Circle Officer should not be engaged in the process. Instead, the Block Welfare Officer should be assigned to collect the claim forms and channelize it to the Sub-division level committee.
3. All claims (individual and community) should be registered in the office of Block Welfare Officer and the Forest Department should not be involved at this stage.
4. The State should proactively provide joint patta (joint entitlement) to forest dwelling households instead of giving pattas in the name of male head of the household.
5. The claims forms should be provided directly to the Panchayat Office with the clear direction of providing them to prospective claimants free of cost.
6. There should be a complaint redressal committee in the block, district and state level comprising experts of different fields.
7. A series of awareness programmes should be organized at Gram Sabha level.
8. The claims should be dealt in a time-bound manner and the villagers should also be informed about the status of their claims.

9. The segregated data should be prepared and put in public domain regarding the claims and entitlements given on forestland to Schedule Tribes and other forest dweller communities.
10. The vacant posts especially at the Circle Office level should be immediately fulfilled with the new recruitment.

Illegal Land Alienation of Adivasis

Land alienation of adivasis is not a new phenomenon in Jharkhand. It had begun during the medieval period but it arose rapidly during the British regime. The British Indian government introduced “Jamindari system” by enforcing the Permanent Settlement Act in 1793, which created upheaval in the Adivasi communities. Consequently, series of Adivasi upsurges took place in the state. Prominent amongst these were the Santhals upsurge in Santhal Pargana, Kolh revolution in Kolhan and Birsa Ulgulan in Chotanagpur. These upsurges resulted in enforcement of three legislations – Chotanagpur Tenancy Act 1908, Wilkinson’s Rules 1837 and Santhal Pargana Tenancy Act 1949. The prime objectives of these legislations were the protection of Adivasis land, traditional self governance and culture. But these laws were seriously violated. The Chotanagpur Tenancy Act was amended in 1947 for the purpose of urbanization, industrialization and for development projects and caused huge deprivation of Adivasis from the land.

Protective legislation was also passed in Independent India. In 1969, the Bihar Scheduled Areas Regulation Act was enforced for the prevention of illegal land transfer of Adivasis and also to return the illegal grab land. A special Area Regulation Court was established and the Deputy Commissioner was given special right regarding the sell and transfer of the Adivasis land. According to the provision, an Adivasi cannot sell or transfer land to another Adivasi without permission of the Deputy Commissioner. When the special court started function, a huge number of cases were registered. According to the government’s report, 60,464 cases regarding 85,777.22 acres of illegal transfer of land were registered till 2001-2002. Out of these 34,608 cases of 46,797.36 acres of land were considered for hearing and rest 25,856 cases related to 38,979.86 acres of land were dismissed. After the hearing in 21,445 cases (regarding 29,829.7 acres) possession of lands were returned to the original holders. In more than 60 per cent of the cases (and land) the transfer to non-Adivasi land was allowed.

Furthermore, 2,608 cases of illegal land transfer were registered in 2003-2004, 2,657 cases in 2004-2005, 3,230 cases in 2005-2006, 3,789 cases in 2006-2007 and 5,382 cases in 2007-2008, indicating that the cases of illegal land alienation are still occurring and in fact at an increasing rate. According to the Annual Report 2004-2005 of the Ministry of Rural Development of the Government of India, Jharkhand topped the list of Adivasi land alienation in India with 86,291 cases involving 10,48,93 acres of land. Presently 12,739 cases are pending in the Scheduled Area Regulation Court.

Issues

1. The illegal land transfer is rampant in the state despite enforcement of the strong protective laws – The Chhota Nagpur Tenancy Act 1908 and the Santal Pargana Tenancy Act 1949. It is done with the involvement of the Deputy Commissioner, the Circle Officers and Karamchari (Revenue Field Officer).
2. The illegal transfer of Adivasi land is legalized through the compensation provided under the section 71(A) of the Chhota Nagpur Tenancy Act 1908 and section 20 (5) of the Santal Pargana Tenancy Act 1949.
3. There is a budget provision of legal support of Rs. 5,000 per case and economic support of Rs. 5,000 per acre to the land owners who fight for the restoration of their illegally transferred land. However landowners are not able to take benefit of this provision due to lack of awareness and access to fund.
4. According to the PESA Act 1996 the Gram Sabha has been empowered to restore the illegal transferred land but this provision has been put aside in the Jharkhand Panchayat Raj Act 2001.
5. There is always delay in regaining possession of illegally transferred land because of either unwillingness of the Circle Officers and the police, lack of man power or due to the nexus among the administration, police, the land mafia, middle men and political leaders. The Deputy Commissioners are also not being seen proactive in safeguarding and the restoration of the Adivasi land though the DC is the main custodian.

Recommendations

1. The provision of the section 71(A) of the Chhota Nagpur Tenancy Act 1908 and section 20 (5) of the Santal Pargana Tenancy Act 1949, which facilitate illegal land alienation through the compensation to the landowner, should be amended.

2. The information should be disseminated at the Gram Sabha and Ward (in urban areas) levels about the legal and economic support available to claimants. The fund should also be made available at office of Block Welfare Officer.
3. The Jharkhand Panchayat Raj Act 2001 should be made in sync with the PESA Act 1996, empowering the Gram Sabhas with the ability to restore illegally transferred land.
4. Possession should be given immediately within an established time frame. Legal action should be taken against the Circle Officer and the Office-in-charge of the concerned police station that fails to uphold the law.
5. A commission should be established to investigate illegal land transfer and consequent to the findings legal action should be taken against guilty DC, CO and Karamchari (Revenue Field Officer). There should be also a permanent committee to check the transfer or sale of Adivasi land.

Land Acquisition for Development Projects

The data of Jharkhand shows that 24,15,698 acres of land were acquired in the name of development, where 17,10,787 people were displaced. In every project approximately 80 to 90 per cent Adivasis and local people were displaced. Only 25 per cent people were partially rehabilitated and that to in miserable conditions and there is no information about the rest of 75 per cent displaced people.

Issues

1. In the context of changes in the industrial policy and the rehabilitation and resettlement policies of the state, there is more likelihood of land grab that would result in displacement of the poor and the Adivasis.
2. The land is acquired more than the actual requirement for the project and misused against the law of the land. For example, 7,187.53 acres of land was acquired for the Heavy Engineering Corporation (Ranchi) but 53.6 per cent land was actually used for the project and rest of the land either remain unutilized or sub-leased to private institutions against the law. Similarly, 33,640.70 acres of land were acquired for the Bokaro Steel Limited (Bokaro) but 57 per cent land was used and rest remained unused. Similarly 12,708.59 acres of land were acquired for the TATA Company but the company could able to used merely 34.6 per cent of land for the plant, housing and public facilities and rest of the land remained unutilized or sub-leased to others.

Table 6.2: Status of Land Acquired For Mega Projects

Sl. No.	Name of the Company	Total acquired land	Actual land used for Plant/ Project	Surplus land	Sub-leased to others
1.	Heavy Engineering Corporation, Ranchi	7,187.53	3,858.00	2,733.26	458.00
2.	Bokaro Steel Limited, Bokaro	33,640.70	19,187.94	9,435.63	417.66
3.	Tata Steel, Jamshedpur	12,708.59	4,398.49	4,008.35	4,301.75

3. The state government has signed 107 MoUs with the private companies, which requires approximately 2,00,000 acres of land. These MoUs were signed without assessment of requirement of the land for the projects. For example, the Arcelor Mittal Company has stated a need for 25,000 acres of land, TATA Company has asked for 24,500 acres of land and list goes on.
4. Prime agricultural lands have been acquired for the development projects across the state. For example, land acquired for education Institution at Nagri village, land acquired for power project at Chandawa (Latehar) by Abhijeet Group and Essar Compay, the land acquired for steel project at Potka by Bhushan Steel, etc.
5. The mega development projects are resulting in a huge amount of land alienation of the weaker sections, whose food security is ensured through small patches of land.

Recommendations

1. The Government should acquire the land for 'development' projects with consent of the Gram Sabhas as per provisions made in the PESA Act 1996.
2. The unutilized land should be immediately returned to the original land owner and legal action should be taken against the management for misusing the law of the land.
3. An independent committee should be formed and assigned job of assessing the actual need of land for the new project before MoU is signed.
4. The agricultural land should not be acquired for the development projects. The barren land should be used for it.
5. The minor development projects should be implemented to meet the needs of the community instead of the mega project, which is implemented to meet the greed of the industrialists.

Chapter 7

Karnataka

Measures to Enhance Access and Control Over Land for the Poor

Neetu Sharma

Our approach through this study was to first analyse the existing legal situation on the issues of landlessness and land reforms; second, to look at socioeconomic data (if available) to capture the effectiveness of the existing legal provisions; and third, to try and make recommendations which, in our view, would help reconcile the internal flaws within the statutory framework as well as the problems with the external aspects of implementation of the law.

We relied on publicly available secondary literature on the subject and did an illustrative case-law analysis of a small sample of cases on relevant issues in order to glean the judiciary's view on matters of concern here. We also looked at NSSO data, since only sample data were available for many of the metrics that we were interested in. We sought help from activists in the field, relevant academicians and government officials, who helped us get a firmer grasp on the issues involved.

As far as interactions with activists at the local level are concerned, we were able to interact with the community, village leaders and local officials in 12 villages across five districts in Karnataka, which were selected based on the prominence of the issue. These districts were Koppal, Chikmangalur, Chitradurga, Gadag and Ramnagar. Focused group discussions were organized with communities in 12 villages in these districts.

As a limitation, we must state that lack of a lot of crucial statistical data hampered our study of the subject, but it is our hope that a useful core of the analysis survives such limitations.

Legal Framework Relating to Land Reforms in Karnataka

The Karnataka Land Reforms Act (1961), which came into force in 1965 along with the Karnataka Land Revenue Act (1964) and the Karnataka Land Grant Rules (1969), laid the foundation of land reforms in the state. The Karnataka Land Reforms Act vested all tenanted land with the state government. Owners were paid compensation and occupancy rights were conferred to the actual tillers. Additionally, this act had provisions for acquisition of ceiling surplus land. On the lines of agricultural land, homestead land possessed by agricultural labour was also taken over by the government and handed over to the occupants. According to this act, if a landowner keeps his/her land fallow for two consecutive years, the said land was liable to be taken possession of by the government and handed over to a suitable person for productive cultivation. The act also prevents non-agriculturists from buying agricultural land, except for those families which have annual incomes below a threshold.

The implementation of these land reform measures was not very different from what it is in many other Indian states. It took almost three decades to settle claims from tenants for occupancy rights. Landowners were able to get more than half of the total claimed land restored to them. Finally, 4.84 lakh claims, covering an area of 20 lakh acres, were settled with the tenants. Only 2.75 lakh acres were declared ceiling surplus, which is only 1.1 per cent of the state's net sown area.

The Mysore Bhoodan Yagna Act (1963) (giving legislative backing to the *Bhoodan* scheme), the Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act (1978) (prohibiting transfer of land from SC/ST to non-SC/ST), the Mysore Land Revenue (Amendment Rules) (1960), the Mysore Land Grant Rules (1969) and the Hyderabad Tenancy and Agricultural Land Act (1950), provide sufficient protection to the land rights of these communities. However, in spite of these legal provisions, the rich and powerful are able to arm-twist marginalized communities to part with their land. Various historical and socioeconomic reasons exist for such events.

With respect to the forests, Karnataka has a strong legislative footing. With the Karnataka Forest Rights Act (1963), the Karnataka Forest Rules (1969) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006), the rights of communities have full statutory backing. However, successive governments have failed to create basic conditions which can ensure that these communities get full access to these rights. Issues like a proper survey of the land to

determine rights and provide legal consul and advice to tribals will go a long way in ensuring that these rights are not exploited. These acts and the Panchayat (Extension to the Scheduled Areas) (PESA) Act (1996) both, empower the *gram sabha* to protect the interests of the community and reflect a process of decentralization. PESA has also been applied in Karnataka due to the presence of Schedule areas under Schedule 5 of the Constitution.

Karnataka was also one of the few states in the country to amend the Hindu Succession Act (1956), to facilitate succession to women on its own before the 2005 amendment to the act. This has gone a long way in ensuring equal rights for women since 1994.

For CPRs, there is no legal framework in Karnataka. It is time that the state enacted something similar to the Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act (1948). This land is critical for the livelihoods of millions of forest dwellers and forest communities as their income and day-to-day living depends on it. As of now, they fear evictions mostly on an arbitrary basis or being disallowed from exploiting this land at the discretion of a bureaucrat.

Landholding Pattern in Karnataka and Ceiling

Based on available reports, about 6.2 million people in the state own no land and there are approximately 1.43 million house sites-less families in Karnataka. The Government of Karnataka redistributed about 1.2 million acres of land (as reported in November 2012). This land includes surplus land under ceiling laws, *Bhoodan* and government land.

Recently, Karnataka launched a scheme called *Namma Bhoomi Namma Thota* (My Land, My Garden), which allots 5-10 cents of house sites to targeted audiences. In the computerization of land records, the state has done sterling work under the aegis of its much-praised *Bhoomi* initiative. However, what is required is a periodic release of data on land available for redistribution and there is statutory backing for such an endeavour in the form of Section 3 of the Karnataka Land Grant Rules (1969).

However, after all these land reform initiatives, the state is witnessing their reversal. Overall, the trend has been one of slowing redistribution. In fact, in terms of the concentration of size distribution of *operational* holdings, there has been an

increase in concentration of ownership. Calculations using the Gini coefficient by NSSO show that this has increased from 0.509 in 1970-71 to 0.543 in 2002-03. This is surely a sign of the state failing to exercise a truly progressive redistributionist policy and checking alienation. It seems that the Karnataka Land Reforms Act (1961) has not lived up to its reformatory promise. In 2002-03, around 4.6 per cent of landholdings were tenant holdings whereas around 3.6 per cent were leased-in area. Overall, there were around 47,57,892 operational holdings in the state, with a combined area of 65,59,700 hectares. This data shows the continued importance (at least in absolute numbers) of tenancy and leasing for millions of marginalized farmers in the state. This requires tenancy reforms right from the grassroots level.¹

Bhoodan Land

The history of *Bhoodan* is replete with broken promises. Even at the peak and centre of the movement in the Vidarbha region, only 14 per cent of the land records were found to be erroneous to the benefit of the donors and almost 24 per cent of the pledged land never effectively transitioned to *Bhoodan* land. The supposed 1,60,000 *gramdans* were, in reality, pledges of village gifts and were never registered under law or implemented in any way. Also, the donated land was mostly poor in terms of quality. However, we can only extrapolate the situation in Karnataka as we were unable to find reliable data on the status of *Bhoodan* land in the state. But there does not appear any cogent reason to think the reality would be vastly better in those regions, and that fact gives cold comfort to those who believed *Bhoodan* to be a viable means of lasting land reforms.

Again, because of the absence of state data, we relied on national data which show that 4.59 million acres of land had been donated under *Bhoodan* all over India of which approximately 2.32 million acres has been distributed. However, the arable area fit for being cultivated out of this distributed area was only 1.1 million acres, and the land area unfit for distribution was 1.8 million acres.

Nomads

In Karnataka, passing of the Karnataka Habitual Offenders Act (1961), though eschewed the blanket criminalization of entire tribes, in practice it rendered the

1. Some Aspects of Operational Landholdings in India (2002-03), NSS Report No. 492(59/18.1/3).

nomadic people vulnerable to police harassment. This harassment is a huge barrier for the nomads and for their claims to certain land as some self-interested persons, who do not approve of nomads enjoying certain public land use the penal machinery to deny them this privilege.

The Wildlife Protection Act (1972) prohibits collection of plants from forest land without prior official approval and this hits nomadic tribes, who get a lot of their income from such forest produce. Under the Wildlife Protection Act, the state government can declare certain forest area as reserved, which effectively bars all legal access to such area for nomads. Under the Indian Forest Act, shifting cultivation is deemed to be a privilege, and not a right which puts nomadic tribes at a further disadvantage. Even within the land acquisition framework, nomads suffer as they do not satisfy the criterion of 'having an interest' in the land under the Land Acquisition Act since they lack any ownership rights.

Recommendations

1. Amend the Karnataka Habitual Offenders Act to provide adequate safeguards as well as remedies for the protection of nomadic tribes from harassment. This must be coupled with strict executive supervision of police actions against such tribes.
2. Amend the aforementioned aspects of the Wildlife Protection Act and the Indian Forest Act to empower nomadic tribes.
3. Launch a nomad-specific housing and resettlement scheme to make true the constitutional guarantee of the right to shelter under Article 21 of the Constitution.

Encroachments on Public Land

As the report by the task force on Recovery of Public Land headed by V Balasubramanian (2011) makes clear, private encroachments on public land are endemic and virulent and are costing the state exchequer a lot, especially in the rapidly urbanizing rural belts around urban agglomerations in Karnataka. The task force estimated the total encroached land in Karnataka to be around 12-15 lakh acres, totalling around 13 per cent of the total government land in the state. This shows the mammoth nature of the problem. However, there is a need to distinguish between encroachments by the vulnerable marginalized and by the big-time developer mafia as well as large rural landholders.

Protection, Restoration and Development of Lands Belonging to the Scheduled Castes and Scheduled Tribes

Various protective measures have also been incorporated to ensure that the benefits of land distribution accrued to these groups only and they continued to remain in possession of the land. The following analysis discusses protections provided to these groups in Karnataka and the challenges that have arisen during their implementation.

Legislations

The following legislations are applicable to Karnataka in relation to prohibiting alienation/transfer of land allotted to or belonging to SCs and STs:

Mysore Land Revenue (Amendment Rules) (1960)

Under these rules, certain land was granted to members of Scheduled Castes and Scheduled Tribes. Initially, this land was given to them on temporary lease and later, by virtue of Rule 43-J of the Rules of 1960, this land was given to them permanently with a restriction that the grantees shall not alienate this land to third parties for a period of 15 years. This land was granted to them during 1959-65. Any contravention of these rules attracts Section 4 of the Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act (1978).

The Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act (1978)

The act prohibits alienation of land granted under Land Grant Rules to persons belonging to SCs and STs and provides for resumption of such alienated land and imposes penalties on purchasers (up to six months or fine of Rs 200 or both).

This act is applicable to all transfers made before the commencement of the act. If it is granted land and this is alienated, it will be considered null and void. However, Section 4(2) of the act states that granted land can be transferred or acquired subsequent to permission of the state government. This act governs most cases of alienation in the state.

Reasons for Alienation

Broadly there are three main reasons as to why these acts have not been able to achieve their desired objectives:

1. Upper castes and rich individuals are able to arm-twist officials for obtaining permission on behalf of the tribals to alienate the land.
2. There is no proper survey of land to determine the land allotted to the marginalized sections and its present status. This has prevented the government from taking any concrete action as the extent of the problem is unknown.
3. Alienation of land has also occurred due to directions of civil courts, which adjudicate revenue matters pertaining to tribal land based on manipulated records issued by revenue functionaries.

Recommendations to Prevent Alienation

Recommendatory measures to protect SC and ST land (incorporated from the Karnataka State Advisory draft):

1. Section 9 of the Karnataka Land Grant Rules (1969) prohibits the alienation of granted land for a period of 25 years from the date of giving possession. But land can be alienated after a period of five years, with the previous permission of the government for the purpose of acquiring other land or for improving the remaining land. This provision should be amended to completely prohibit the transfer of granted land, or for at least 25 years with no exceptions.
2. Section 4 (2) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act (1978) should be amended to prohibit the transfer of granted land completely, or at least for a period of 25 years. Even after this period, permission should be given only when a minimum land-holding remains with the transferor after the transfer, or he has another substantial and permanent livelihood source.
3. Physically verify all the land granted to SCs and STs with the involvement of the community, the *gram sabha*, women SHGs, civil society organizations and other stakeholders and file cases on all alienations in violation of the act.
4. Special officers should be appointed at the *taluka* and district levels for speedy disposal of cases under the Karnataka Scheduled Castes and Scheduled Tribes

(Prohibition of Transfer of Certain Lands) Act (1978). Review and monitoring committees should be constituted at the district and state levels for effective implementation of the act.

5. All the SCs and STs whose land was alienated should be provided with free legal services to fight cases and get back the alienated land. Community-based paralegal programmes should be launched to provide free legal support to the poor. Further, SCs and STs are entitled to get free legal services under the National Legal Services Authorities Act (1987).

Recommendations for Restoration of Alienated Land

The *gram sabha* can play a crucial role in preventing illegal alienation or in seeking to restore the land back to marginalized sections, because it is the only avenue which has representation from people. Hence, the following recommendations on restoration of alienated tribal land as provided in the Recommendations on Panchayat (Extension to the Scheduled Areas) Act (1996) are critical:

1. A clear and explicit provision be made in the revenue law and other relevant laws to include such provisions in the Land Revenue Code of the state and laws related to alienation of tribal land that:
 - (a) confer power on the *gram sabha* to act *suo moto*, or on a complaint from a member of the *gram sabha*, to restore alienated tribal land;
 - (b) authorize the *gram sabha* to call for all relevant revenue records concerning the alienation of such land to be provided within 30 days of such request;
 - (c) empower the *gram sabha* to conduct a hearing and order restoration of the land back to the concerned member of the Scheduled Tribe; and,
 - (d) the *gram sabha* may direct or seek the assistance of the police in restoration of the land, if it so desires.
2. The *gram sabha* should inform the sub-divisional officer of the orders of restoration who shall ensure restoration within a period of three months, intimate this to the *gram sabha* and direct appropriate entries in the record of rights.
3. The *gram sabha* to constitute a standing committee from among its members and call upon revenue authorities to train such members in all matters related to maintaining records and the exercise of the powers mentioned earlier.

Implementation Status of FRA²

In the state, 2,521 FRCs have been constituted; 1,62,874, including 1,60,101 individual (20,328 STs and 1,39,723 OTFDs) and 2,773 community claims, have been filed at the *gram sabha level*). Out of these, 46,212 claims were recommended by *gram sabhas* to SDLC, which, in turn, recommended 10,964 claims to DLC. It is astonishing that almost 87 per cent of these claims were rejected. Only 6,393 individual titles were distributed. The situation for community claims is even worse as only one of them got converted into a title.

Recommendations³

1. A comprehensive set of measures should be undertaken involving legislative, administrative and public education measures to ensure that the rights of tribals over land, forest, water and minor mineral resources are not tampered with. This can be done in the following ways:
 - wall mapping of land possession in a village;
 - setting up of a legal aid cell to provide consultative guidance; and
 - implementing legal literacy programmes under the framework of customary laws.
2. A comprehensive survey and settlement of the tribal sub-plan areas should be done in a time-bound manner. Pre-settlement leases should be regularized by authorizing the *tehsildar* to make corrections in the record of rights.
3. There should be re-alignment of forest and revenue land records, especially under the purview of rights and ownership of common property land and resources.
4. A framework guiding the survey should be based on the specific forms of property rights operative in tribal areas, namely customary rights over forest and land resources belonging to the local community as well as to individuals.
5. The role of the Tribal Advisory Council (TAC) should be strengthened. There is a provision for TAC in Schedule 5 areas and the governor is bound to consult them.
6. Minor cases filed against tribal communities under encroachments/violations of the Wildlife Act/other forest offences, etc., should be withdrawn.

2. Available at: <http://tribal.gov.in/writereaddata/mainlinkfile/File1266.pdf>.

3. Report of the committee on State Agrarian and the Unfinished Task in Land Reforms.

7. The Land Acquisition Act should be amended under the purview of Articles 14, 15(4) and 19, where the state may legislate restricting the acquisition of landed property in tribal areas.
8. Land records should be updated with the active participation of the tribal community through trained tribal youth on customary laws of various communities and statutory measures for their protection on private and community land.
9. Establishing a land bank, which will facilitate lease from tribal to non-tribal land and will settle this with tribal communities, or will meet the requirements of land for public purposes at prevalent market prices.
10. Tribal communities, which were earlier displaced because of national parks and wild life sanctuaries, must be rehabilitated under the purview of FRA.
11. All land acquisition processes in tribal areas must be stopped before the settlement of the tribal community under FRA.
12. Area which is occupied by tribal communities, must not be demarcated for rehabilitation of any other project-affected community.
13. All primitive tribal groups must be exempted under FRA without considering their date of occupancy on a particular piece of land.
14. All claims of non-tribal communities on the same piece of land must be taken to a fast-track court for timely settlements.
15. All claims for CPRs should be brought under time-bound action and resettlement should be provided on the basis of the record of rights.
16. All land regularized under FRA must not be alienated/acquired in the next 100 years and, in case of any emergency acquisition, the same category of land must be provided.
17. Grant individual and community titles to all eligible Scheduled Tribes and other traditional forest dwellers in the light of amended Forest Rights Rules. Special attention should be paid for recognizing community rights.
18. Review all the rejected applications and grant titles in all eligible cases.⁴

4. Karnataka state Advisory, 1st November, 2012.

Women and Land in Karnataka: An Overview

Karnataka has only recently started facing the issue of the insecurity of women's right to land. Rural women are key contributors to agricultural production. Approximately 66 per cent of the women in Karnataka reside in rural areas. About 55 per cent of all the rural women in the state are engaged in cultivation on their household landholdings and about 41 per cent work as agricultural labourers. As a comparative metric, 56 per cent of rural men in Karnataka cultivate land owned by their households while around 35 per cent of them work as agricultural labourers.

Rural women in Karnataka own only about 10 per cent of rural household landholdings, either individually or jointly with their husbands. Moreover, a significant number of women live in households that own no or almost no land. Roughly 7.2 per cent of rural women in Karnataka live in households that own no land. A further 24.8 per cent rural women live in households that own less than 0.2 hectares of land. Even amongst those women who are a part of households that do own land, often have mere access to land but rarely do they have actual ownership rights. This leaves them with no legal rights to participate in any decision to sell or mortgage that land. Those women, who are not part of a traditional household, that is, they are separated, divorced or widowed (especially son-less), often get blocked from any access to land. In Karnataka, like in the rest of India, women are not legal owners of property purchased and registered in their husband's name. Karnataka does not recognize joint ownership of land purchased during marriage. This is especially critical as dowry is a widespread and incessant cancer in Karnataka society.

State policy does try to provide safeguards to ensure that household land is not sold without the woman's knowledge. According to a Karnataka state policy circular, all female members of a household must be informed when another member of their household transfers land. Women household members then are granted the right to object to such a transfer. But, as most women members do not have any ownership interests in household land and cannot successfully make any claims against the transfer, the ultimate utility of this policy's usefulness is elusive.

The union government's housing programmes as well as Karnataka housing schemes have made some attempt to help women by granting houses in their names individually or jointly with their husbands. Houses under the central government scheme (Indira Awas Yojana) must be granted either separately to a female member of the beneficiary family, or jointly in the name of the husband and the wife. Even

under Karnataka state schemes (such as Ashraya Yojana), houses are to be granted in the names of husband and wife jointly.

Concerns and Recommendations

The Hindu Succession (Amendment) Act (2005) was a response to demands for gender equality in succession laws. But rights of women not governed by the Hindu Succession Act, such as Muslim women, are still unamended. Under Section 2 of the Muslim Personal Law (Shariat) Application Act (1937), agricultural land is exempted from the purview of Muslim Personal Law, which is more generous to women than most of the customary or state laws which apply to them now. This must change. Also, unchanged is the plight of a large number of women from Scheduled Tribes who are not governed by the Hindu Succession Act and continue to suffer under unjust laws.

1. Legally, making the daughters coparceners in the *mitakshara* joint family will decrease the share of other Class-I female heirs, such as the deceased's mother, since the coparcenary share of the male, from whom they will inherit, will decrease due to the larger number of coparceners.
2. Women should be legislatively protected from complete disinheritance by husbands. Special widow protection and welfare legislations (in the form of targeted land grants) are also required.
3. In the case of married daughters in distant marital villages, the distance is a huge barrier to effective management of the land that they own in their natal villages. In the absence of a chance to effectuate direct control, they may be forced to rent the land at sub-market prices because of their weak bargaining position. Land consolidation giving them plots close by will help.
4. Gender-biased legislations, like the Resettlement & Rehabilitation Bill (2007) which does not recognize unmarried adult sisters and daughters as separate families unlike their male counterparts, is a concern. They have been considered as a part of the household headed by the brother and father. They fail to get a share in the family property. They stand deprived of employment and other benefits to which a separate family is otherwise entitled. This should change.
5. Enforce legislation requiring all government-distributed land and housing to be granted in the joint names of married couples, or to women individually.⁵

5. Brown, Jennifer, Kripa Ananthpur and Renée Giovarelli (2002), 'Women's Access and Rights to Land in Karnataka', *RDI Reports on Foreign Aid and Development* 114.

6. Deleting Clause 45 (3) of the Land Acquisition Act. All females above the age of 18 should be allowed to be recipients of the statutory notice.

Common Property Resources

There is evidence in Karnataka indicating a rapid decline in CPRs, both in size (from 0.25 ha to 0.33 ha) and productivity. Almost 3 per cent of an average household's consumption expenditure is sustained by CPRs in the state. This percentage is much higher for poorer households and this shows the crucial impact that CPRs have for the marginalized and vulnerable.⁶

In recent years there has been a steady decrease in all kinds of common land – pastures, village forests, ponds, or even burial grounds. This is due to diversion of CPRs for urbanization, industrial needs, mining practices, pressure of developmental projects like dams, roads, schools, and homesteads – distribution to landless families, cremation grounds, playground, etc. Moreover, the area under CPRs is threatened due to encroachments by resource-rich farmers.

It was realized that there is not much clarity on what constitutes CPRs out of the various categories used by the government for its land use statistics (the 9-fold classification). Lack of clarity on a clear definition of CPRs is the root cause of improper public interventions. Over-exploitation of CPRs points to the poor upkeep of these resources which further points to the fact that traditional institutions have either weakened or disappeared and have failed to enforce norms. Also, revenue departments have never been interested in productivity; their major role has been more of being record keepers rather than developers. The complex nature of land administration is to the disadvantage of the rural poor. Inconsistencies in land records further aggravate the situation.

Recommendations

1. There should be a mandated minimum percentage of total land in a village under CPRs. The rationality for capping should be decided by the state government.
2. CPR should be defined in the national, state or local contexts, with sensitivity to the context, the following could be classifications:

6. *Common Property Resources in India*, NSS Report No. 452(54/31/4).

- a. Private land to which common access may exist
 - b. Cultivable wastes and fallows
 - c. Protected and unclassified forests
 - d. Common pastures and grazing land
3. To identify and estimate the magnitude of CPRs in the country, the National Sample Survey Organization (NSSO) should enumerate this in every round.
 4. A complete ban on diversion should be approved unless the conversion is in the larger interests of all the users and for ecology at large. There should be heavy penalty on resource-rich farmers who encroach upon such land.
 5. Community-based institutions, the central and state governments and civil society must coordinate actions on CPRs, especially community-based institutions since they are at the grassroots.
 6. Diversion of existing *de jure* CPRs should be banned.
 7. Fast-track dispute redressal mechanisms specifically designed for CPR conflict resolutions should be put in place.
 8. Expand *Bhoomi*, the much-praised land record digitization programme initiated by the Government of Karnataka, to include a detailed survey and record of CPRs in the state. Assign land officials incentives that pull them towards CPR preservation through some kind of performance related bonus, based on the health of CPRs in their jurisdictions.
 9. Non-need based encroachments on CPRs (such as those by well-to-do persons for greed) should be heavily penalized. There should be adequate incentives for people to whistle-blow in face of such encroachments.

Annexure:

State Specific Advisory

**Government of India
Ministry of Rural Development**

Dated 19th March 2013

Karnataka

1. Examine and settle all the pending applications for regularization of unauthorized (*bagair hukum*) occupations of government land by conducting a special drive within a year.
2. Take steps for effective implementation of the *Namma Bhoomi Namma Thoota* (NBNT) scheme and provide up to 10 cents of house sites to all house sites-less families.
3. Amend Section 4 (2) of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act (1978) to prohibit the transfer of granted land completely, or at least for a period of 25 years. Even after this period, permission should be given only when a minimum landholding remains with the transferor after the transfer, or the transferor has another substantial and permanent livelihood source.
4. Appoint special officers at the *taluka* and district levels for speedy disposal of cases under the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act (1978). Review and monitoring committees, consisting of at least 50 per cent women, should be constituted at the district and state levels for effective implementation of the act.

Chapter 8

Maharashtra

Access and Control of Marginalized Communities Over Land

*Sundara Babu Nagappan*¹

Maharashtra is marked by diversity in land tenure in pre-independence systems. Though the *rayyatwari* system was practiced in large parts of the state, *zamindari*, *malguzari* and *khoti* systems were also followed in different regions of the state. For instance, *zamindari* system functioned in Marathwada and some districts in Nagpur division, *malguzari* in Vidarbha and the *khoti* in south Konkan and some parts of north Konkan.

The character of the intermediaries under the *rayyatwari* system being different, the course of land reforms in Maharashtra was not exactly same as it was in other states. Formally, direct contact between the state and the tiller did exist but revenue officials emerged as intermediaries appropriating large-scale land resources. This also meant that wide inequalities were prevalent in terms of landownership.

In this context, the main focus of land reforms was providing safeguards against alienation due to indebtedness, abolition of intermediaries, protecting tenants and checking further fragmentation of landholdings. For this, a series of legislations were enacted, including the Bombay Tenancy and Agricultural Lands Act (1948), which intended to protect tenants from illegal evictions and to regulate rent payments. After the 1956 amendment, the tenants are presumed to have become owners of the land on payment. Besides, the Bombay Prevention of Fragmentation and Consolidation of Holdings Act (1947) was enacted to consolidate small parcels of land into viable landholdings. Before both these acts – the Bombay Money lending License Act (1946) and the Bombay Agricultural Debtors' Relief Act (1947) – came into operation to check rampant exploitation by moneylenders.

1. Sandeep Pendse, Yogini Kanolkar and Gana Methal made valuable contributions to this chapter.

But the Maharashtra government did not take ceiling measures seriously. Ceiling laws were enacted in two phases. However, even in the second phase, after the enactment of the Maharashtra Agricultural Land (Ceiling on Holdings Act) (1981) ceilings were kept considerably high, ranging from 18 acres to 54 acres for different types of land. Land was classified in five categories that added to further confusion and gave more leeway to landowners to evade ceiling provisions by getting their land classified under inferior categories. Additionally, partition of land and *benami* transactions was used to evade ceiling laws. One interesting thing about the Maharashtra law was that it provided an additional share for minor children. In many north Indian states, additional shares were allowed to major sons. Falsification of birth certificates of children to show them as minors was a common practice in Maharashtra. Besides, permanent servants and other people were shown as tenants to take advantage of the provision that tenanted land would be deducted from the total landholding while assessing ceiling surplus land (Deshpande, 2002).

Besides these laws, provisions were also made in the Maharashtra Land Revenue Code (1966) to protect Adivasi land from alienation. Section 36 of the Code clearly provided that Adivasi land could not be transferred without the permission of the collector. However, obtaining permission from collectors did not prove to be a difficult job for wealthier sections who wanted to buy Adivasi land.

Implementation of Land Reform Laws

Due to large-scale prevalence of unrecorded intermediaries in different types of tenure systems, abolishing intermediaries from the state's agrarian scene proved to be very difficult. *Deshmukhs*, *Deshpandes*, *Kulkarnis*, *Patils*, etc., were a part of a large group that did not directly fall under the Elimination of Intermediary Act because their status was neither formal nor recorded. Intermediaries were also able to exploit exemption given to *khudkasht* (self-cultivation) land.

One of the most important pieces of legislation, the Tenancy Act conferred ownership rights on 14.64 lakhs tenants, covering an area of 16.07 lakh hectares. It appears to be a huge number, until compared with the total cropped area in the state – it was only 8 per cent of the gross cropped area at that time. In spite of arrangements for loans for purchasing land known as *togai* loans, a section of poor peasants found it difficult to mobilize the required funds. Large-scale eviction and (in) voluntary surrender left about one million tenants denied of their rights. It was reported

that 1,21,711 tenants surrendered 543,700 hectares of land. All these ‘surrenders’ were found doubtful (Bhuskute, 2002). Besides, large chunks of tenants were unrecorded and they could not claim ownership rights over their cultivated land.

The fate of ceiling measures was also not different in Maharashtra as compared to other states. Till 1987, only 607,484 hectares was taken possession of and a little over 5 lakh hectares was distributed among the landless. In this way, ceiling surplus measures could move only 3 per cent of the total cultivable area. Due to lack of coordination between the different organs of the revenue administration, the consolidation scheme did not yield desired results.

On Distribution/Assignment/Allotment of Land to the Landless Poor

Contrary to popular belief, access to ‘land records’ and other related information is in utter dismay throughout Maharashtra. An urgent need for modernizing, rectifying and updating land records throughout the state was observed during this survey period in 2013. Further, mechanisms for basic access to land records by marginalized should be enhanced. Insensitive words like ‘wasteland’ should be replaced with ‘uncultivated land’. Wasteland, as a notion, does not exist with a vast majority of subaltern communities.

No current data is available with the administration on the status of land distribution/ allotment and assignment of land to the landless poor in the state. Details on this issue at the state level need to be collected, verified and updated by the administration and analysed for indications of land available for distribution to the poor. A survey should be done during the peak time of cultivation and not during the post-harvest time. Land distribution should be done in clusters of communities to avoid local hostilities and non-cooperation.

Based on the field observations on occupied land (‘encroached’) in six districts (Aurangabad, Beed, Dhule, Nandurbar, Nashik and Osmanabad), it is recommended that immediate steps be taken to regularize land occupation. Several civil society groups, like Manav Hakka Abhiyan and Lokpariyay, have already submitted indicative data and detailed illustrations on occupied land (‘encroached’) to various governments. Bio-metric data on land records can also be considered.

On Protection, Restoration and Development of Land Belonging to SCs and STs

Existing laws pertaining to alienation/transfer of land belonging to Scheduled Castes and Scheduled Tribes have proved to be ineffective due to multiple reasons. Land alienation due to debts among Adivasis, Dalits and the marginalized continues unabated, which is in conflict with existing laws. This trend was observed in particular in resettlement areas the people displaced because of the Narmada project (SSP). Steps are needed for prevention of land alienation and restoration of illegally alienated land (based on the 1950 land records) from non-tribes and private industries. No part of government-provided land to a beneficiary should be alienated in lieu of recovery of a loan or interest.

On Women's Land Rights

It was observed during field visits that the amendment to the Hindu Succession Act (2005) was only being partially implemented by revenue authorities due to local socio-cultural pressures, political interventions and patriarchal mind-sets of the officials. Exclusion of women from property rights continues unabated and legal provisions regarding granting land title deeds in their names are not followed.

Forest and Revenue Boundary Disputes

In Maharashtra (like in other states) there are large extents of land under dispute between the revenue and forest departments. No effective government mechanism was observed for settling boundary disputes between revenue and forest authorities. *Status quo* on the dispute over the land is maintained by officials to avoid earmarking it for possible redistribution to the socially weaker sections. A joint survey by revenue and forest department officials on all boundaries between the forest and revenue areas, irrespective of disputes, should be carried out. A fast-track tribunal for dispute settlement needs to be set up at the state level.

On PESA and FRA Implementation

Many panchayat areas are being converted to municipal areas in the Scheduled area and it is being argued that PESA is no longer applicable in these areas. This has resulted in cases being filed in courts. Steps are needed to introduce a suitable law for the administration of Municipal areas in Scheduled areas; this can perhaps be the

extension of the provisions of the 74th Amendment to urban local bodies in Scheduled areas in a manner that the interests of the Adivasis are not adversely affected.

Reforms in Land Ceiling

Though the average landholding size has come down from 1 acre to 0.68 acre in recent times, the volume of land held by big farmers is still quite high. Land ceilings should be clearly implemented with 15 acres as the maximum limit and the title being held in the name of the family (as unit). A survey to ascertain the irrigation status of the land should be carried out and landholdings should be subjected to ceilings applicable to their newly assessed status.

Homestead Land Rights

This is highly undesirable in the context of states with vast dry areas and in large states like Maharashtra. If found necessary, the homestead land law should be in alignment with the larger cultivable land law. In case of homestead land regularizations, area for cattle/goat rearing should also be considered.

Present Status of *Gairan* and Forest Land

Maharashtra State Farming Corporation (Ceiling Land)

Nearly 84,000 acres of land is in the hands of the state government. The landless, who are now agriculture labourers, should have been the real owners of this land.

Khoti Land

The tenants from Kunbi-Kulwadi-Gavli-Buddhist communities are fighting for legal rights over *khoti* land in Ratnagiri and Sindhudurga districts. Due to the SEZ policy, all this land is likely to be sold to either SEZ-MNCs-mines owners or to the market. Crores of rupees will be earned by the *khots*, who were absent till recently. But these days, they are coming out and suppressing the tenants.

Gairan Land

Though the 1991 GR and a recent order by the Mumbai High Court are strongly with the cultivators, the Punjab High Court order and orders by the state government are used against *gairan* cultivators. The local administration is not enthusiastic to

implement the 1991 GR and the High Court order. As per the 1991 GR of the Government of Maharashtra, 84,230 families were identified for legal rights over 1,08,915.54 ha of *gairan* land. But, according to social movements and organizations, more than 2 lakh families are cultivating more than 10 lakh acres of *gairan* land in Maharashtra.

One of the sections in the *sanad* (entitlement certificate given by the district collector) says that whenever the government needs land for any public project, this *gairan* land will be taken away without any remuneration. This means there is no guarantee of livelihood. Even after 21 years of the 1991 GR, no single *gairan patta* is measured – no demarcation, no borders, no map. This has created chaos everywhere.

Forest Land

The Preamble of the Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Right) Act (2005) and Rules (2008), had accepted the ‘Historical injustice done by the state on the Adivasi and the traditional forest dwellers’. The union government as also the state governments are showing interest in speedy implementation of FRA. But the monthly reports published online by the Tribal Research and Training Institute, Pune (TRTI-Pune), shows that most forest claims were rejected and only few were recommended by the District Forest Right Committees. Still, many more Adivasi and other (Dalit, VJNYs, OBCs, etc.) groups are far away from the process of claiming their rights.²

Community Forest Right

Progress report shows that only 851 community forest claims, out of 2,515 claims, were recommended. This performance cannot be considered satisfactory.

Mahar Vatan Land

The fertile *mahar vatan* land issue is untouched by the government. Maximum cooperative industries are being set up on *Mahar Vatan Inam* Varg-6B Land. Advocate J. G. Patil Committee report is kept in the cupboard. The politically strong western Maharashtra is witness to this fact.

2. For the latest data please visit the following link
< http://trti.maharashtra.gov.in/forest/static_pages/frm_formain.php >

Shamshan Land

Every village is concerned over the issue of burial land (*shamshan bhumī*) for Adivasi-Dalit and nomadic tribes. All the upper caste farming communities have encroached either *gaonthan* or *gairan* land in the name of *khalvadi* (land used for cattle sheds, *gothas*, storage of fodder). This shows that Dalit-Adivasi-nomadic tribes are not considered a part of the village community. It has been assumed that it is their birth right to acquire government or community land or resources, and Dalit-Adivasi-nomadic tribes and women have no right to cultivate community land.

Homestead Land

Most of the Dalit-Adivasi-nomadic tribes and single women have no homeland in their traditional villages. It is shocking to see that after 64 years of independence, Indian citizens have no right over homestead land. The size of the Indira Awas Yojana or Kasturba Awas Yojana is too small to be able to address this issue.

Role of Gram Panchayat

The role of the *gram panchayat*, or *panchayat samiti* or *zilla parishad*, is biased against these marginalized communities. Their funds are not utilized properly. Corruption is a major hurdle. Due to lack of political awareness, all the funds under the Special Component Plan, TSP-OTSP-MADA-MINI-MADA schemes are either insufficient or are not used properly. Also, there is no transparency in using these funds. There is no role in planning, monitoring, implementation and evaluation (PMIE) process that is followed. There is marked absence of 'socio-political-gender committed environment model' which could deal with all these issues. It gives free hand/space to established sections of society.

Critical Issues of Gairan-Forest Land in Maharashtra

1. To develop a sustainable agro-forestry-development model called 'So-Co-Eco-Zone' (Socially Committed Economic Zone) under the leadership of women.
2. To develop a 'So-Co-M' (Socially Committed Market) for agro-forestry-production by the community.
3. To develop community forests with people's participation.

Other Prevailing Issues at the Grassroots Level

1. When a GR is to be implemented, another GR is passed which contradicts the earlier one thus delaying settlement of issues. Such carelessness poses a threat to its original ideology and spirit.
2. At times, the revenue department is ready to allocate land to Dalits and tribals, but is restricted by the *gram sabha*.
3. According to the Maharashtra Agricultural Land (Ceiling on holding) Act (1961) dry crop area of 54 acres can be owned by a person. An area is usually declared as dry crop area by *talati* officers.
4. There is improper land distribution to landless tribals. They should be provided cultivable and not wasteland.
5. Land that should have been allocated to the landless is allotted to industrialists for 'public purposes'.

Some Recommendations

1. At least 10 cents homestead land should be given to all the landless.
2. The government should consider leasing land from existing legal landowners for leasing it to the marginalized.
3. Agricultural land that is un-cultivated for over three years should be considered for reclamation by the government, or should be referred to tribunals.
4. Setting up of fast-track tribunals to settle land issues should be taken up.
5. The government has implemented various programmes and policies like providing funds and loans through banks. However, to enjoy their benefits, one needs to have identity proof. As such, the landless do not benefit from such a policy since they face an identity crisis. They should be provided identities.
6. Vagueness of information and language should be dealt with and clear data base on land should be created and this should be easily available.
7. Ceiling limit of 54 acres is not an appropriate one. The maximum ceiling should be 15 acres. This could lead to availability of more cultivable land to the landless poor.

Annexure:

State Specific Advisory

**Government of India
Ministry of Rural Development**

Dated 19th March 2013

Maharashtra

1. Regularize the possession of Dalits and other weaker landless sections on *gairan* land, especially in districts like Aurangabad, Jalna, Latur, Beed, Hingoli, Parbhani, Nanded, Dhule, Nandurbar, Nashik and Osmanabad by implementing the Government Resolutions of 1991 and 1992. It is reported that 2,31,300 hectares of *gairan* land has been identified in Marathwada region alone, covering approximately 230 hectares in each village.
2. Return the unused and excess land acquired under the Maharashtra SEZ Policy (2001) and the Industrial Development Act (1961).
3. Declaration of urban poor settlements as slums under Section 4 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act (1971) and undertake improvements as per Section 5. *Basti sabhas* should be called upon for any re-development of slum areas.
4. Activate the existing High Powered Committee, chaired by the Chief Secretary, appointed by the Honourable High Court of Bombay in 2005 to review the policies and recommend, or suggest, new policies related to slum housing to the Government of Maharashtra.
5. The first right to water, forests, land, minerals, etc., should be of the *gram sabha* or *basti sabha*. The issues of development and the progress of a village or *basti* should be first decided by the residents, and the decisions made by the *gram sabha* and the *basti sabha* should be on the basis of progress and employment.
6. The excess land left after land ceiling should be distributed to the landless, over which ownership should be given to both men and women. Land collected

under *Bhoodan* and *Gramdan* movements is administered under the Maharashtra Gramdan Act (1964) for re-distribution among the landless poor. There should be strict controls on the transfer and use of such land for non-agricultural purposes.

7. Continue the proper and effective implementation of the Forest Rights Act (2006). In Maharashtra, there is a substantial population of *Gond* Adivasis, nomadic tribals and OBCs, who are struggling for their rights'. The lack of documentation of their rights over their land has made it difficult for them to benefit from their rights. More emphasis is given to individual rights.
8. Review the Maharashtra Hill Station Policy. A review of the displacement of marginalized communities like Koli, Katkar, Adivasis and nomadic tribes should be done.

Chapter 9

Punjab

The Unfinished Agenda of Land Reforms

K Gopal Iyer

After independence, like other Indian states, land relations in Punjab were marked by two inter-related tendencies – one, stark inequalities in landownership, and two, the consequent prevalence of tenancy. Landlessness was as high as 35.51 per cent in Punjab and 41.52 per cent in PEPSU.¹ On the other end of the landownership structure, 2.74 per cent farmers in Punjab and 3.91 per cent in PEPSU, in the more than 30 acres category, owned 30.60 per cent and 28.03 per cent land respectively. Farmers owning 5 acres or less constituted 35.04 per cent in Punjab and 20.82 per cent in PEPSU of the total rural households. Their share of land was 10.80 per cent and 5.46 per cent in Punjab and PEPSU respectively.

Different sources estimate that more than 40 per cent area was under tenancy during the first decade after independence. Due to land concentration, a large part of it was leased out by non-cultivating owners. Though both types of tenants – tenants at will and tenants with inheritable rights – were present at that time, the former cultivated a much larger area than the latter. But the proportion of pure tenants was below the proportion of owners-cum-tenants, those who leased-in land to increase their area. Sharecropping was the most prevalent form of tenancy. Most of the land under tenancy was without any formal contract. Informal contracts accounted for more than 70 per cent of the land.

Land Reforms

The Punjab Abolition of Ala Malikiyata and Talukdar Act (1951) was enacted to abolish intermediaries. Later, in 1952 and 1953, institutions of *zaildari* and *jagirdari* were abolished in the state. In PEPSU areas, PEPSU Abolition of Biswedari Ordinance was

1. PEPSU: Patiala and East Punjab States Union.

issued in 1950. Punjab Security of Land Tenures Act (1953) and PEPSU Tenancy and Agricultural Lands Act (1955) were passed, vesting proprietary rights in occupancy tenants. With these acts, occupancy tenants got ownership rights. But landowners had the right to eject tenants at will and take over land up to 30 standard acres. In both the areas, smaller tenants and longstanding tenants were given additional security. Tenants with a 6-years standing in Punjab and 12 years standing in PEPSU area were also given the option to voluntarily acquire ownership in non-resumable areas. The compensation payable was quite high as compared to many other states.

Except displaced persons who were allowed to own additional land, a ceiling was fixed at 30 standard acres. Like most other states, exemptions were also given to land in cooperative garden colonies, land granted for gallantry to army personnel, orchards, well-run farms and tea estates. These ceilings were downwardly revised in the early 1970s. For a family of five members, it was fixed at 7 hectares for double cropping land under assured irrigation, 11 hectares for one crop land under assured irrigation, 20.5 hectares of *barani* land, and for other types of land at 21.8 hectares. For each additional member of the family (up to three) 20 per cent extra land was allowed. Exemption was given to land belonging to religious or charitable institutions.

The land reform legislations in Punjab had many flaws. The passing of land reforms legislation took a relatively long time. A large number of landowners ejected tenants on paper as well as in practice, immediately after independence when land reforms became a burning question. Further, provisions like self-cultivation, 'voluntary surrenders', exemption from the provisions of ceiling of land under 'cooperative garden colonies', 'well-run farms', etc., were serious legal flaws favouring landowners which did a lot of harm to the tenants.

Changing Land Relations

The 1970s brought remarkable changes in land relations in Punjab. Pure tenant holdings were almost completely eliminated. There was a rise in owner-cultivator holdings from 80.81 per cent in 1970-71 to 82.03 per cent in 1980-81, but the area operated by them declined from 82.41 per cent to 78.77 per cent. This trend was reversed in the 1980s with the emergence of reverse tenancy. The proportion of the number and area of wholly-owned holdings started declining and the proportion of wholly or partially-rented holdings started increasing with an increase in the size group. Not only through tenancy, but also in terms of ownership, land started flowing from

smaller holdings to larger holdings. Increasing concentration of land made old land laws obsolete as tenancy laws gave protection to larger holdings, as they are the ones who leased in large scale land.

The Status of Distribution of Ceiling Surplus Land to the Weaker Sections

A considerable area is lying under litigation in the districts of Ferozepur, Amritsar, Hoshiarpur and Faridkot. This land may be cleared from litigation and distributed among the landless. Further, the areas shown as: 'area not available for distribution' may be made available to the landless either for cultivation or as homestead / house plots depending upon the nature of the land.

Fast-track courts need to be established for speedy disposal of cases pending in revenue and juridical courts within a period of two years. Fifty per cent of the surplus ceiling land can be exclusively distributed among Scheduled Castes, nomads, women-headed households, widows, bonded labour families and suicide victim women families.

Benami land, still under possession of big landowners under fictitious names in districts like Ferozepur and others in the Malwa region, with land concentration may be unearthed through a special task force and distributed among the landless. Suitable amendments are required in tenancy laws for this. Under these laws, protection should be given to only small and marginal farmers. In land ceiling legislations, the definition of 'personal cultivation' should also include family labour, residential status and dependence on agriculture for livelihood as preconditions.

Custodian Evacuee Land

The following recommendations of the Harchand Singh Committee (1971) should be implemented forthwith:

- Illegal occupation of surpluses: Rural evacuee agricultural land may be examined by the Punjab government and the illegal occupant evicted from this land; such land may be distributed to SCs, BCs and other disadvantaged communities like nomads and deprived women. It may be kept in mind that 50 per cent of such land may be exclusively distributed to women from weaker sections.

- The Punjab government should clearly specify the available custodian and evacuee land at the state and district level for distribution among SCs, BCs, nomads and other disadvantaged sections within a period of one year; 50 per cent of such land should be exclusively distributed to women from weaker sections.

Nazool Land

The Punjab government has been forming cooperative land societies of landless families for cultivating land on a cooperative basis. Field studies have also revealed that the *nazool* land, which was distributed during 1955-60, has been siphoned off by non-Scheduled Castes, which is illegal. However, *nazool* land is still available in each district in Punjab and the government should have a policy for distributing such land to the landless and other disadvantaged groups, like nomads, deprived women and SCs.

- *Nazool* land, which was distributed during 1955-60, should be restored to Scheduled Castes.
- A survey on the status of land cooperative societies should be carried out and names of each cooperative society should be placed in the public domain.

Shamlat Land

The Punjab government data showed that 36,758 acres of *shamlat* land is under encroachment by big landowners.

Issues arising out of Special Leave Petition (Civil) CC No. 19869 of 2010 – Civil Appeal No. 1132/2011@SLP(C) No.3109/2011: In this appeal, the Supreme Court of India gave directions to all the state governments that they should prepare schemes for eviction of illegal/unauthorized occupants of *gram sabha/gram panchayat/shamlat* land to restore it to the *gram sabha /gram panchayat* for the common use of villagers. The Punjab government should adopt an open-door policy in this regard and publicly notify the list of encroachers. Facilities provided to Scheduled Castes and other weaker sections for availing the benefits under the Shamlat Land Act of 1961 for cultivation purposes, are getting futile due to the constraints faced by them. The Government of Punjab should address such constraints and provide easy access of cultivable *shamlat* land to weaker sections.

- As per the survey conducted by the Punjab government, over 50,000 households were enumerated as houseless. Such families should be provided house plots not only from panchayat land, but also the government should also acquire fresh land through the Land Acquisition Act (1894) and allot house plots to weaker sections.
- Ten cents of homestead land should be provided free of charge to homeless families in disadvantaged groups, like SCs, BCs and nomads from shamlat land and through the land acquisition process. Even in this case, 50 per cent of such land should be exclusively distributed to women from deprived groups.
- Cultivable *shamlat* land should be auctioned only among landless SCs and other disadvantaged sections, keeping in mind a 50 per cent share for women.
- Illegal encroachers on *shamlat* land should be evicted and the land restored to the *gram panchayat* for the common use of villagers, as per Supreme Court directives.
- The constraints faced by weaker sections in availing housing rights under the Shamlat Land Act, should be investigated by the Punjab government and eligible houseless persons should be provided house plots.
- The Punjab government should provide IAY houses to all houseless families which are eligible for house plots.
- The status of Waqf Board Land for distribution to weaker sections should be made transparent. Such land should be distributed to eligible weaker sections.

Women's Land and Housing Rights

Punjab is no different from the other Indian states when it comes to giving land rights to women. As per Agricultural Census (2005-06), only 0.69 per cent holdings, operating 0.55 per cent area, in the state were held by women. To change this picture the following should be addressed:

- Women's collective space zones should be set up in the jurisdiction of each village panchayat. Women's collective zones will act as links to services for providing livelihood projects and help in increasing women's resources by providing training information and market linkages.
- Women-headed households, widow victims of rural suicides by agricultural labourers and bonded labour families should be provided land for house plots and cultivation purposes on a priority basis in the Malwa region.

- Women's empowerment training awareness camps should be conducted at the panchayat level to sensitize women about their land rights as per the Hindu Women Succession Act (2005) so that they come forward to demand their land rights.

Annexure:

State Specific Advisory

**Government of India
Ministry of Rural Development**

Dated 19th March 2013

Punjab

The following measures are suggested for improving and expediting existing land reform measures within the state:

1. Ensure that cultivable *shamlat* land is auctioned only among landless SCs and other marginalized sections, ensuring 50 per cent share for women. Titles over land should be allotted in the name of the adult woman member of the family.
2. Evict all illegal/unauthorized occupants of industries/ private enterprises and higher income groups on *gram sabha/gram panchayat /shamlat* land and restore it to the *gram sabha /gram panchayat* for the common use of villagers, as per the directives of the Supreme Court of India (Special Leave Petition (Civil) CC No. 19869 of 2010 – Civil Appeal No. 1132/2011@SLP(C) No.3109/2011). As per the Government of Punjab, 36,758 acres of *gram sabha/gram panchayat /shamlat* land had been alienated.
3. Revisit the policy with reference to the area shown as ‘area not available for distribution’. All such land should be made available to the landless, with priority to marginalized groups, either for cultivation or as homestead/house plots, depending upon the nature of the land. Titles over such land should be allotted in the name of the adult woman member of the family.
4. Take time-bound action for restoration of *benami* land in districts like Ferozepur and other districts in the Malwa region and distribute such land among the landless with a priority to marginalized groups, including women, Dalits and minorities. Titles over such land should be allotted in the name of the adult woman member of the family.

5. Evict all illegal occupants of rural evacuee agricultural land, ceiling surplus land, *benami* land and excess land with religious trusts and distribute it to SCs, OBCs and other marginalized communities like nomads and religious minorities. Fifty per cent of such land must be exclusively distributed among marginalized women. Marginalized women are defined as women belonging to SCs, STs and single women (widows, divorced, separated, unmarried and abandoned).
6. Revisit the physical status of land/land use allotted to cooperative land societies (1955-60) and ensure that the landless poor, especially marginalized women are given rights to this land.
7. Consider setting up women's collectives within the jurisdiction of each village panchayat. Women's collective zones should act as links to services for livelihood projects and help in increasing women's resources by providing training, information and market linkages, including access to banks and loans/credit. Special arrangements should be made for women-headed households for their independent control and management of land.
8. Take action to provide land to widows. Widow victims of rural suicides by agricultural labourers and bonded labour families should be provided land for homestead and agriculture purposes on a priority basis.
9. Take action for enlisting all eligible claimants (under Forest Rights Act, 2006) of over 65,000 hectares of land from Ropar, Nawashar, Hoshiarpur and Gurdaspur and proposed Nayagon Notified Area Committee (NAC) referred to in the Punjab Land Preservation Act (PLPA), and ensure their due rights over occupied land.
10. Resolve all disputes related to border land, women with disabilities and HIV/AIDS, women of religious and sexual minorities (including transgenders) and other women facing social, political, economic, religious and cultural discrimination.

Chapter 10

Rajasthan

The Unfinished Task of Land Reform

Motilal Mahamallik and Gopal Das

Land relations in Rajasthan have historically been different as this part of the country was not under the direct control of the colonial administration. Feudal domination was much stronger and inequalities in landownership much higher in this state as compared to the others. Soon after independence, a series of land legislations were enacted to abolish intermediaries, provide protection to tenants and bring down inequalities by imposing ceilings on landholdings. The Rajasthan Land Reforms and Resumption of Jagir Act (1952) became operational in 1957 and by the mid-1960s, most of the *jagirs* had been resumed. Consequent to the abolition of intermediaries, 42 lakh tenants, who had heritable and transferable rights, were declared *khatedars*, bringing them in direct contact with the state. One of the major lacunae in the act was exclusion of *khudkasht* land from its purview. Nearly 88 per cent *zamindari* and 54 per cent *biswedari* area was held as *khudkasht* land. This reduced the scope of land reforms to a large extent. It was only in *zagirdari* areas that most of the land was held by tenants. The Rajasthan Tenancy Act (1955) conferred transferable and heritable rights on tenants, other than sub-tenants and tenants on *khudkasht* land and converted them into *khatedar* tenants. Later, *khatedari* rights were granted to sub-tenants on *khudkasht* land also.

All these legislations did not yield the desired results. During the first two decades after the land reforms programme started, the area under very large holdings had declined significantly, but huge inequalities continued. The number of very large holdings came down from 3.6 per cent in 1961-62 to 1.4 per cent in 1982. Even after this reduction, large landowners continued to control 14 per cent of the area, which was lower than 36 per cent in the early 1960s. Surprisingly, during the same period, average size of very large holdings went up to 38.5 hectares from 36.2 hectares. On the other end of the landownership structure, 31.5 per cent marginal holdings (0-1 hectare) owned only 3.63 per cent area in 1982.

Another failure of the land legislations was evident in the increasing practice of concealed tenancy. Agricultural Census data clearly shows that during the 1960s and 1970s, the number and area under wholly leased-in and partly owned and partly leased-in land came down substantially. But this data does not include data on informal tenancy, giving a sense that after the enactment of the Tenancy Act, most of the leased-out land was either withdrawn or the tenancy went underground. This was a typical response of the landed classes in India that as soon as efforts to give legal protection gained momentum, initially leased-out land was completely withdrawn, leaving tenants landless and joining the ranks of agricultural labour. After some time, this ruptured relationship with the landowner resumes, but in a more exploitative and insecure form of informal contracts. Sheela Bhalla's study has found a considerable increase in the number of agricultural labour households during the same period. According to this study, the proportion of agricultural labour households went up to 11.3 per cent in 1983 from 4 per cent of all rural households in 1974-75 (Vyas and Sagar, 1995).

Agrarian Legislation for Protection and Promotion of Land Rights of SCs and STs

1. The Rajasthan Tenancy Act (1955): Apart from the provisions mentioned earlier, this act prohibits transfer of land from SCs and STs to non SCs and STs, without permission from a competent authority. Land, if transferred to others, can be restored provided it is brought to the notice of the government within three years.

The Rajasthan Tenancy Act (1955) clauses:

- As per Section 42(B) a person from the SC/ST community can transfer, sell, donate, or will his/her land to a person belonging to the same caste. If any transaction happens between two dis-similar caste groups, that transfer or transaction will be termed as illegal.
- As per Section 43(A) a person belonging to the SC/ST community can lease or mortgage his/her land to a person from the same community only. Any transaction between SC/ST and other caste group is to be treated as invalid and illegal.
- As per Section 49 (A) a person belonging to the SC/ST community can exchange his/her land with a person from the same community only. Any transaction between SC/ST and other caste groups is to be treated invalid and illegal.

2. Rajasthan Registration (Adoption Amendment Rajasthan Registration (Adoption Amendment) Ordinance (1975): A notification was issued under the ordinance that transfer of agricultural holdings from STs to non-STs, or from a SC to a non-SC person, was against public policy.
3. Rajasthan Land Revenue (Allotment of Land for Agricultural Purpose) Rules (1957): Reserves 25 per cent of the available land for allotment to SCs, STs and OBCs.
4. Rajasthan Bhoodan Yagna Act (1954): Makes available one-third of the land for distribution to SCs/STs.
5. Provision under SC/ST Atrocity Act (1989)
 - Section 3 (1) (IV): A person who has encroached or is in possession of land (agriculture or residential), which is allotted or owned by SCs/STs, will be accused and punished.
 - Section 3(1) (v): A person/persons attempting to occupy or prevent the use of natural resources to SCs/STs forcibly will be punished.
6. Right to Common Passage

According to the Rajasthan Tenancy Act (1955), Section 251, villages, panchayats and *tehsildars* are authorized to open passages to agriculture as well as residential land in case of disputes and requirements.

Problems Relating to Allocated Agricultural and Residential Land

A study was conducted to identify the lacunae in the implementation of land reform laws in the state. The study attempted to address issues related to ownership as well as accessibility to assigned, common and private land in rural Rajasthan, with special reference to marginalized communities.

This study was based on both secondary as well as primary data. Primary data was collected from six districts – Jaipur, Alwar, Bharatpur, Dausa, Tonk and Ajmer. Two sample villages from each district were taken up for the study. The analysis is based on the outcome of group discussions in the villages, separately in dominant caste and Dalit caste localities and few case studies.

In Rajasthan, land has been distributed in three phases: (1) *Jagir* land distribution/tenant confer ownership rights/ *Bhoodan* land distribution; (2) ceiling surplus land distribution; and, (3) government wasteland distribution. It has been reported that people do not have an idea about land distribution programmes. In 90 per cent sample villages, people were not aware of the schemes under which land had been allotted in their villages. The government distributed residential as well as agricultural land at different points of time under different schemes. They are happy about the programmes, but dissatisfied about their implementation. Even though voices were very low when the issue of alienation from allotted land was raised, a number of cases were reported when the research team met people from marginalized communities.

- The quality of allotted agricultural land was found to be very poor and in most cases it was far away from the residential place of the allottee.
- Allotted residential plots also suffered from similar de-merits.
- In a few cases, land was distributed on paper but it remained under the possession of someone else. In a majority of the cases, beneficiaries had not dared to enter the allotted land situated far away from their villages which had been under the possession of some upper caste people for a long time. In such cases, when the beneficiaries sold out the land and the new owners started settling there, they were reportedly subjected to severe atrocities.
- In a majority of the cases, the distributed land was under litigation (under the occupancy of the previous landlord or affluent people in the area).
- In a few cases, the beneficiaries were cultivating a different piece (barren land) from the allotted one, or they were cultivating less than the allotted area.
- A majority of the SC households were not able to retain the piece of distributed land because of their abject poverty, and were forced to leave the land.

Problems Relating to Residential Land

As a part of residential segregation, Dalits were not allowed to purchase residential land in the so-called high-caste localities in rural areas. Very often, Dalits were reported to be prey of the local high-caste politicians and upper caste dominant people in allotted residential land.

Problems Relating to Common Land

Cremation ground

It has been observed that cremation grounds in villages are either fully or partly occupied by upper/dominant caste people. As such, there are separate cremation grounds for Dalits and the upper caste people, and it is cremation grounds demarcated for Dalits that remain under the possession of upper caste people. There are cases at different levels and people are fighting to get justice.

Grazing land

It was reported that grazing land was under the possession of affluent people in the village, partly or wholly. When the encroacher belonged to the upper caste, no upper caste people raised voice against the issue; rather they silently supported the perpetrator. But no Dalit was allowed to access grazing land if it was available in the village.

Traditional water harvest line

It was reported in two sample villages that all the traditional water harvesting lines were being encroached by people, mostly upper caste, who have land adjacent to the water harvest lines. Therefore, Dalits were not able to get water when they required it. Sometimes, a few dominant caste people dug lines in private land of Dalits to take water to their land forcefully. They argued that there was a water harvesting line in the place and that the Dalits had encroached it.

Recommendations

1. The state should initiate a permanent 'land commission' to review problems relating to different aspects of land. This commission should be an independent body, having state level offices and a permanent staff, but headed by professionals from different backgrounds who can understand and analyse problems relating to land issues.
2. Priority should be given to people, rather than industry, for land distribution.
3. There should be a separate rehabilitation and resettlement policy for marginalized communities. This does not mean that we are in favour of displacement. Measures should be taken to ensure less disposition of agricultural land in any developmental project. Social audits should be made compulsory during any disposition.

4. The state should initiate the process of urban land reforms immediately. All the absentee landlords have more than one building in urban centres and metros. Institutional landholding should be encouraged only if the institutions are running under certain rules. The state should not encourage more than one house in the name of the same person in one or more than one cities.
5. There should be a committee to review land laws relating to titling of land. Initiative should be taken for the conversion of the present system of presumptive titles of land into conclusive titles to land.
6. It should be made mandatory to update the land records in each village, taking the help of birth/death records. Plot-wise landownership – available common, institutional and government – should be made transparent. The state should ensure transparency of government allotted land, common land, forest land, government land and institutional land available in the village through wall hangings.
7. The state should initiate a 'National Land Resource Centre' to facilitate researchers, policymakers and activists in information, documentation, research and alliance building.

Chapter 11

Tamil Nadu

Improving Access to Land by the Poor

Gandhimathi

The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act (1961) fixed the ceiling area for a family consisting of five members at 30 standard acres. For every additional member of the family, an additional extent of five standard acres was allowed in addition to the ceiling area of 30 standard acres, subject to the overall ceiling of 60 standard acres. Any female member of the family with land in her own name as on the date of the commencement of the Act (April 6, 1960), was also entitled to hold *stridhana* property up to a ceiling of 10 standard acres. Besides, exemptions were granted under the act for land grown with sugarcane and land used exclusively for grazing purposes. The act was amended in 1970 to bring down the ceiling from 30 acres to 15 acres. Exemptions for sugarcane and grazing land were also withdrawn in 1972. The overall ceiling area of 60 standard acres was also revised to 40 standard acres through an amended act in 1972. Subsequently, the overall ceiling limit was further brought down from 40 standard acres to 30 standard acres. Trusts were also brought under the purview of the ceiling in the same year.

As of now, the Tamil Nadu government imposes a ceiling of 15 standard acres for a family of five members. For each additional family member, five standard acres are exempted beyond 15 acres. The overall ceiling is fixed at 30 acres. Female members holding land on the date of commencement of the act can own an additional 10 standard acres. The act also gives exemptions to certain categories of land, such as all plantations in existence on the date of the commencement of the act, land converted on or before the 1st day of July, 1959, into orchards or topes or arecanut gardens, whether or not such land is contiguous or scattered and any land used exclusively for growing fuel trees on the date of commencement of the act. Besides, land held by religious trusts is completely exempt from the ceiling.

Table 11.1: Category-wise Number of Beneficiaries and Quantum of Land

		Land (in acres)
Surplus (from inception to till date)		2,08,442
Lands assigned		1,90,723
	from 1964-65 to 2000-01	1,79,678
	from 2001-02 to 2005-06	8,351
	from 2006-07 to 2010-11	2,059
	from 2011-12 onwards	635
Number of beneficiaries		1,50,935 households
Allotted for public purpose		9,609
Lands to be allotted (covered by Court proceedings)		8,130

Source: Commissionerate of Land Reforms, Government of Tamil Nadu.

(<http://www.landreforms.tn.gov.in/LandReforms.html> - Performance_Land_Reforms).

The definition of land given in the act is also considered rather weak. Here 'land' means 'agricultural land', that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes forest land, pasture land, plantation and tope, but does not include house site or land used exclusively for non-agricultural purposes.

As per the Agricultural Census (2005-06), the total operated area in Tamil Nadu was around 68,24,000 hectares. Total ceiling surplus declared land was only 2,08,442 acres (84,389 hectares). This means that only 0.40 per cent of the total operated area was distributed. Most of it was distributed before 2000-01 and after that, land distribution through this most important channel almost came to a halt.

Impediments in Enforcing Land Ceilings

Nearly 8,000 acres of surplus land is under litigation. The legal process in acquiring surplus land is tedious and time consuming and the Land Reforms Act become redundant.

Exemption of ceiling limits under Sections 37 (A) and (B) has allowed institutions to accumulate land for commercial interests. Religious institutions are totally exempt under the Tamil Nadu Hindu Religious and Charitable Endowments Act (1959).

The provisions under the Indian Trust Act and the Companies Act, to hold land more than the stipulated norms needs to be revisited as it contradicts the provisions of the LR act.

Diversification of usage of land for purposes other than what has been specified.

Recommendations

1. The definition of land under the Land Ceiling Act (1961) needs to be amended to include all other categories to acquire surplus land from institutional holdings, apart from cultivable land.
2. Keeping in mind the increased productivity of land and the population pressure on it, the ceiling should be reduced to 10 acre to generate surplus land.
3. Sections 37 (A) and (B) need to be revisited and a ceiling can be fixed and enforced to avail surplus land for the poor.
4. Diversification of usage of land for purposes other than what has been specified should be prohibited.
5. The draft statement issued under Sections 9 (A) and (B) under the Land Ceiling Act should be declared as the final statement.
6. In order to reduce the number of appeals and to expedite court proceedings, Sections 10 (1) and 10(5) need to be repealed.
7. In addition, the maintainability of the petitions filed under writ jurisdiction need to be filed based on the advice of statutory officers.
8. Urban land ceiling to be introduced to regularize the accumulation of land and to avail surplus land. This will help reduce concentration of land in newly included villages in urban areas.
9. There should be a Land Dispute Redressal Tribunal, consisting of retired judges/elected PRI representatives for hearing and deciding on land dispute cases. Coordination between legal authority services and revenue administration services needs to be strengthened.

Land to Scheduled Castes

The status of landownership and possession of panchami land (also known as Depressed Classes Conditional land) that have been assigned to SCs is an important

aspect regarding access to land by the poor. Many Dalits in the rural areas of Tamil Nadu still remain landless and are trapped in persistent poverty.

Alienation of *Panchami* land

Most of the *panchami* land that was originally distributed by the government to Depressed Classes (DC) is now in the hands of other communities. Under the Depressed Classes Land Act passed by the British Parliament in 1892, 12,00,000 acres of land was distributed to Depressed Classes (Margu, 1995). Official data as of 2012 (obtained from the Commissioner of Land Administration) showed only 1,15,841.24 acres of DC land in the state, out of which 19,743.67 acres was occupied by other communities.

It is important to note that *panchami* land has been alienated to other communities, violating the conditions that were initially stipulated. There are clear government instructions to local level officials to resume *panchami* land that is in occupation of any other person and to restore this land to the original assignee, or his legal heir, as per provisions of RSO 15(41). Officers who affect the transfer of *patta* registry of DC land to non-scheduled caste people, are liable for disciplinary action.¹ This resumption and redistribution of *panchami* land has been upheld by several court judgments.² However, in a majority of the places, *panchami* land continues to be in the hands of non-scheduled castes.

Lack of Reliable Data Regarding *Panchami* Land

Available official data obtained using RTI shows widespread discrepancy between land records and the reality on the ground. Official data does not reflect the true status of ownership and possession of land.

The Tamil Nadu government has commenced the Computerisation of Land Records Programme (with 100 per cent funding from the Government of India) and the Strengthening of Revenue Administration and Updating of Land Records Programme (funding at 50:50 by the central and state governments).³ However, this is yet to reach

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1. See Letter No. F1/69400/94, dated 19.08.1996 written to all collectors by the Special Commissioner and Commissioner of Land Administration.
 2. Judgment by a Division Bench (Justice Prabha Sridevan and Justice P.P.S. Janarthana Raja) of the High Court of Madras in its W.A. No. 624/88 dated 22.1.91, dismissing the writ appeals filed by a private builder and a residents' association, affirmed an order passed by a single judge (Justice K Chandru) W. P. Nos. 17467, 15121 and 15171 of 1996, 14926 of 1997 and 4459 of 1998 that the alienation of *panchami* land was in violation of the conditions stipulated in RSO 15.
 3. G. O. (D) No. 45, Revenue(SS-II (2)) Department, dated 24.02.2012.

many rural areas and access to information seems to be difficult for many Dalits living in poverty.

With the help of the Anytime /Anywhere e-Services, it has become possible for citizens to view the *patta* copy (*chitta* extract) and the A-Register extract for agricultural land in Tamil Nadu.⁴ However, relevant information relating to the extent of land under different classifications (especially DC land) in each village / *taluka* level, the original A-Register for these land, and the current occupier of DC land is not available online and is difficult to access even from village offices by the Dalits.

Developing *Panchami* Land and Land Owned by Dalits

There is a need for developing reclaimed *panchami* land and land owned by Dalits as most of this comes under the category of dry land. The guidelines on MGNREGS by the central government clearly give priority to Dalit land for works under the scheme. However, Dalit groups assert that this has not been followed in Tamil Nadu.

Recommendations

1. Survey and updating of land records needs to be done on a priority basis. The survey and updation should include physical verification of land, survey numbers, ownership *pattas* and the current status of possession. The survey and updation process must be submitted to social audit to ensure transparency and efficiency.
2. In order to improve access to information on land matters, the state government should issue an immediate order to all *taluka* offices to display to the public information regarding *panchami* land. Information regarding DC land at *firka*, *taluka* and district levels should also be made available online for public use.
3. Urgent inquiry into the status of DC land that was initially distributed is required. An inquiry commission should be formed to look into the current status of *panchami* land that was initially distributed to Dalits with retrospective effect. In cases where the land (originally assigned as DC land) is now under occupation by non-scheduled castes, it must be restored to the original assignees, or to other landless Dalit women.
4. Speedy distribution of DC land to Dalit women must be ensured. GOs 209 and 210 of the revenue department, dated July 8, 2011, for streamlining *patta*

4. <http://edistrict.tn.gov.in/eservicesnew/home.html>.

transfers of assigned land, should be immediately implemented to distribute pattas for *panchami* land to Dalit women.

5. Fast and effective settlement of land disputes needs to be ensured. At the taluka level, *jama panthis* must discuss *panchami* land issues and resolve undisputed cases in an efficient manner. Fast-track courts should be set up to settle long-pending cases relating to *panchami* land.

Common Property Resources

Managing of CPRs is an important aspect that needs attention. It is worth mentioning that Dalits in many remote villages in Tamil Nadu still find it difficult to access CPRs. In cases of alienation of CPRs for industrial purposes, the government is seen as not considering the customary rights of local citizens. In its policy note 2012-13, the state government indicated that government land could be alienated to state agencies like SIPCOT, subject to certain conditions, but it stopped short of mentioning what these conditions are.⁵ Lack of transparency regarding re-classification of CPRs for other purposes and the ultimate and superseding authority given to the executive is a major point of contention among many stakeholders.

Recommendations

1. Ensure free, prior and informed consent from villagers and the gram sabhas before land acquisition.
2. Better systems/procedures should be considered while changing the classification of land, especially CPRs, so that the rights of local communities are respected.
3. Customary rights of local communities over common resources must be respected in all conditions.

Women's Access to Land

It is generally understood that women can get access to land through inheritance, purchase from the market, or through assignment of land from the government. However, in the case of Dalit women and women from other marginalized communities, assignment from the government is their only means of getting

5. Revenue Department Policy Note 2012-2013, Government of Tamil Nadu, 2012, p. 48.

access and ownership over land. Though the state has taken initiatives to build and manage women's SHGs, land assignments for these groups have not been taken up. Women in a family have no right to access and control DC land assigned in the name of men.

Government Order (No. 432, Revenue Department, dated March 17, 1987) which discusses assignment of agricultural land (including surplus land required under the Land Reforms Act/house sites *patta*) in the name of women / wives, has not been implemented in Tamil Nadu. Assigned land, which has been given for a few women, is in nature of dry land/rainfed land; there is no entitlement on land reclamation/irrigation support for such land. Land for house sites has been reduced to 3 cents; issues of right to homestead land have not been considered. Women farmers, who cultivate agricultural land on lease, are under constant threat from landowners on cancellation of lease at any time. There is no legal protection available to them.

Recommendations for Improving Women's Access to Land

1. Right to housing should include homestead land – 10 cents of land should be guaranteed for every woman who has a family of five members.
2. Assigned land, including surplus land acquired through land reform legislations, should be registered in the name of women. The concerned GO has to be made a legal provision.
3. Provision for land reclamation/irrigation/crop failure/traditional seed preservation should be provided to women who depend on land for their survival.
4. Assigned land and *panchami* land being distributed to the Dalit women by the state government, is dry land and wasteland. Hence, the government should effectively implement the Land Ceiling Act and distribute fertile land possessed by dominant castes to Dalit women.
5. All the land owned by the Dalit women is rainfed land. Hence, the state government should bring policy level changes to promote irrigation facilities for the land owned by the Dalit community. The special provision under MGNREGA to improve the land owned by SC/STs, which is largely neglected in Tamil Nadu, could be used for this purpose.
6. Encroachment of assigned land by the dominant caste should be punished by law in its true sense.

De-notified Communities (DNCs)

There is no authentic updated data availability on nation-wide and state-wide surveys of DNC settlements, whether temporary or permanent. But studies have revealed high incidence of homelessness among DNCs. Pastoral DNCs, including hunter-gatherers and shifting cultivator communities, who are evicted on account of preservation of forest or establishing of protected areas and sanctuaries, face severe devastation of livelihoods.

Recommendations

1. Forest rights of pastoralists, like grazing rights and rights concerning water for animals, should be recognized.
2. Free or subsidized housing should be provided to eligible DNC households in a phased manner. A proportion of the current outlay for Indira Awas Yojana could be earmarked for DNCs. Homeless nomadic fishing communities should be resettled, as far as possible, close to dams and reservoirs so that they can continue their traditional occupations.
3. Nomadic communities, who have been relocated from forests, should be given land titles while implementing the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006).

Rights of Scheduled Tribes of Tamil Nadu

There are 36 listed Adivasi communities and six primitive tribal groups – Irular, Kattunaikan, Kotar, Kurumbar, Paniyan and Todas – in Tamil Nadu. The share of Adivasi population in the state is 1.03 per cent. According to 2001 Census reports, the total ST population in Tamil Nadu is 6,51,321 (1.04 per cent), with 3,28,917 men and 3,22,404 women.

Non-implementation of FRA in Tamil Nadu

Out of 21,781 claims (18,420 individual and 3,361 communities) received, only 3,723 claims have approved for distribution of titles as on 31.05.2014.⁶ Enforcing

6. See Tamil Nadu data in the Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 31st May, 2014]
<<http://tribal.nic.in/WriteReadData/archiveDoc/201409251038526671415201407231232131699882MPRforth-monthofMay2014.pdf>>

community rights is another big challenge in the implementation of FRA. Community forest rights are an area where women can exercise more control over forest resources. Forest rights committees (FRCs) formed at the hamlet level on the initiative of the people, have not been officially recognized. Such FRCs have been particularly prominent in the Nilgiris. In Kanyakumari district, FRCs were being constituted directly by the collector. The district collector initiated the process of getting the land surveyed in collaboration with the FRC, even before the claims reached the SDLC. In Thiruvanamali district, 5,165 land claims have been filed. But the district authorities have asked panchayat presidents to make sure that no claims are entertained from those claimants who have other land in their names, have other source of income, or a government job; this is in violation of FRA.

Recommendations

1. The *gram sabha* under FRA is the foremost statutory authority responsible for conservation, use, management and regeneration of resource. The role of the *gram sabha* as the basic unit with the participation of vulnerable groups, including old, single women, destitute homeless, children, sexual minorities, physically challenged and particularly vulnerable tribal groups and the need to be integrated with the mandate of other statutory institutions, should be weaved into the rules of engagement under FRA.
2. Extension and implementation of PESA Act (1996), in its true spirit should be done. The social audit provision available at the level of panchayats should be made appropriate and include the development of Adivasis/indigenous people in the panchayats.
3. Government Order 1168/89 applies to all hilly areas in Tamil Nadu. In the background of landslides in Nilgiris in 1989, the government prohibited assignment of assessed wastelands to the poor in all hill areas. This has to be repealed.
4. No registration of condition *patta* land and tribal land to non-Dalits and non-tribals.
5. There should be an ordinance urgently to cancel all sales and to ban future sale/transfer of titles to anybody other than SCs/STs to protect SC/ST land with retrospective effect (1950). Such land has to be acquired by the government and distributed to landless Dalits/tribals.

Need for Aligning Various Laws in Conformity with PESA to Ensure Autonomy of *Gram Sabhas* and Panchayats in Scheduled Areas

1. Notification of list of hamlet s/ habitations to conduct *gram sabhas* under the law.
2. Elaborating on the powers of the *gram sabha* to identify beneficiaries, approve plans, conduct social audits and enhance accountability of government functionaries.
3. Prevention of land alienation and restoration of illegally alienated land.
4. Regulation of intoxicants for storage, manufacture and consumption.
5. Control over usurious money lending in Scheduled areas.
6. The policy on displacement of tribals / Adivasis / indigenous people in the name of modernity and development should be stopped.

Suggested Amendments to PESA (1996)

1. Providing a list of definitions of key terms used in the act for greater clarity;
2. Constitution of the *gram sabha* at the hamlet level and power to constitute committees;
3. Mandating 'prior informed consent' as a pre-requisite for land acquisition and licensing for minor minerals;
4. Reinforcing the need to align central and state laws in conformity with PESA;
5. Enabling the state government to make rules;
6. Enabling the centre to issue directions; and
7. Provision for grievance redress under the act.

Action Plan

1. Inclusion of tribal habitations hitherto not included under the 5th Schedule.
2. The central government to expedite the law on provisions of the Municipalities (Extension to Scheduled Areas) Bill.
3. Constitution of a special task force to review functioning of 6th Schedule areas and to suggest appropriate administrative arrangements for 5th Schedule areas.

Bhoodan Land

Nearly 61 years ago Acharya Vinobha Bhave started the 'Bhoodan (Gift of Land) Movement' as a voluntary, non-violent means of transferring surplus land to the landless poor across India. A little over 28,060 acres of land was gifted to the Tamil Nadu Bhoodan Board. Over the years, 20,485.35 acres has been allotted to landless poor persons in the state. As on December 2011, another 7,575.06 acres of land with the Board were to be distributed to the landless in the state.⁷ But this has not been done so far by the Commissioner of Land Reforms for Tamil Nadu. Dalit beneficiaries in many villages have obtained only the title, but not the possession, of this land. As per the latest report of the Comptroller and Auditor General (CAG), nearly 89 acres of *Bhoodan* land allotted to the landless poor between 1956 and 1984, 'had been occupied by other persons for more than ten years'. The value of such encroached *Bhoodan* land was placed at Rs 7.56 crore as on June 30, 2010.⁸ Data regarding the current status of *Bhoodan* land, such as ownership and possession is not maintained properly. This lack of information further worsens the situation. The case of Chennakuppam, Oragadam (Kancheepuram district) is noteworthy where 13 beneficiaries who were assigned Bhoodan land in June 1959, have lost their titles and the land was sold to Renault-Nissan by SIPCOT, through the Bhoodan Board.⁹

Recommendations

A survey to update records regarding *Bhoodan* land: The state government should undertake an immediate survey of *Bhoodan* land in the state, ascertaining the status of the land which has been declared unfit for settlement.

Restoring *Bhoodan* land to original assignees: The matter of handing over/restoration of possession should also be conducted in the same drive.

Conversion of *Bhoodan* land for other purposes should be prevented: Conversion of *Bhoodan* land for purposes other than the livelihood rights of the beneficiaries is against the objectives of the law and, therefore, should be prevented. If the encroachers are landless people, they have to be given *pattas* for this land. If an encroacher is neither a small farmer nor a landless person (that is, if he owns more than

7. CAG Report (2012) cited in 'Even "bhoodan" lands encroached in Tamil Nadu', Deccan Herald, May 20, 2012.

8. CAG Report (2012) cited in 'Even "bhoodan" lands encroached in Tamil Nadu', Deccan Herald, May 20, 2012.

9. Case Study 8: Forced Acquisition of Bhoodan land.

2.5 acres of wetland or 5 acres of dry land) then the wasteland has to be reclaimed by the government and distributed to the landless.

Land Rights of Coastal Communities

Coastal land rights refer to rights (including user rights and access rights) of fishing communities to coastal land for their livelihoods and settlements. This land includes beach and shoreline space and takes into account current and future social and livelihood needs of the community. The fisher people have been traditional inhabitants of the coast. Their occupation of the land adjoining the sea was entrenched in their association with the sea. They never felt it necessary to prove their occupation of coastal land through land *pattas*. In many areas, they did not feel the need for this also because all their shore areas were in the trusteeship of temples or community institutions (Menon and Sridhar, 2007). The coastline has a mix of land uses. It has urban areas, ports, industries and several rural settlements involved in agriculture and fisheries. The coast is targeted for the establishment of industrial infrastructure, which interferes with the livelihood rights as coastal spaces are encroached or acquired by commercial interests, making coastal communities refugees in their own home land.

Housing *pattas* assigned to the people in the post-tsunami period are assignee *pattas*, which has a serious implication on the livelihood rights of the communities. Without the right to coastal land, they cannot continue their occupations.

The Coastal Regulation Zone (CRZ) notification is an important legislation which recognizes the rights to coastal land for housing livelihood activities of fishing communities. Though the state constituted coastal zone management authorities as per the directions of the Supreme Court verdict in 1996, it has miserably failed to monitor the violations of the CRZ Notification, which has ended in evictions of coastal communities in Chennai, Thiruvallore, Kancheepuram and Nagapattinam.

The powers for reclassification of coastal land rest with the Ministry of Environment and Forests (MoEF) on the seaward side and with the land revenue and administration of the state government on the other side. Panchayats and communities are not involved in these processes. The Land Acquisition Act for Industrial Purposes Act, CRZ Notification (2011) and EIA Notification (2006) (amended) and the SEZ Act (2005) are tools employed by the state giving it arbitrary powers to decide on the conversion of coastal land and there are conflicting interests of the state

as the custodian of the welfare state and as the agency of commercial interests. The CRZ Notification (2011) will result in the complete opening up of coastal land to market forces for industrial and commercial purpose, thereby dislocating fishing settlements and pushing them more than 1,000 metres from the coast by demarcating a new hazard line and denying them their right to carry on their traditional occupations on the shore front using traditional craft and gear. CZMAs have been reduced under the CRZ Notification (2011) to mere recommendatory bodies and the powers of the NCZMA have been almost totally diluted. This is a violation of the Supreme Court 1996 order and the union government must face contempt of court for this policy decision.

Right to participation of fishing communities in a fair and free manner in public hearings for mega projects to restore their right to coastal land, is denied and the intervention of the court through civil society groups is not always possible. CPRs of the communities and of coastal land are converted for industrial purposes. The Government of Tamil Nadu has given swampy land (Tridem power plant at Pudupalli, Nagapattinam, coastal Poromboke and salt land to Chettinadu power plant in Kuttiandiyur) on a 99-year lease.

Recommendations

1. Fishing communities in Tamil Nadu have demanded the conversion of revenue *poromboke* land (a land category also known as Revenue Wasteland) into *grama natham* or village common land. By doing this, the rights over this land vest with the village, thereby enabling the panchayats to authorize or restrict the authorization of buildings under their jurisdiction.
2. The definition of land should be amended to include coastal land in the Land Reforms Act (1961) (and amended up to 1972).
3. Immediate amendments to CRZ (1991) and withdrawal of new notification of CRZ (2011) are required. To effectively implement CRZ Notification (1991), it is important to strengthen the authorities for monitoring and taking action against violations.
4. Withdrawal of SEZ Act (2005) and the Land Acquisition for Industrial Purposes Act (1972) of Tamil Nadu government.
5. Revisiting the amendments of EIA Notification (2006), as these support industrial concerns and not the customary rights of the communities on coastal land.

6. Control over CPRs rest with the panchayats. The arbitrary powers of the collector, being the inspector of panchayats to nullify the resolutions passed by the gram sabha and the panchayat council must be removed.
7. The draft bill of the central government needs to be reviewed and strengthened. Control over this land, access and rights cases should be vested through mechanisms where the community performs the central role.

Annexure:

State Specific Advisory

**Government of India
Ministry of Rural Development**

Dated 19th March 2013

Tamil Nadu

The following measures are suggested for improving and expediting existing land reform measures within the state:

1. Amend the existing ceiling laws to eliminate loopholes and minimize exemptions, and secure more land for distribution among the landless poor.
2. Take appropriate action to prevent the conversion of *Bhoodan* land for industrial purposes.
3. Take time-bound action to survey panchami land and distribute it to the landless poor in the names of women, within three years. Resolve all disputes regarding alienation of panchami land on a priority basis.
4. Implement Government Order No. 432, Revenue Department, dated March 1, 1987, which provides for assignment of land in the name of women.
5. Take action for removal of the conditional clause with regard to and entitlements given to the fishing community in the post-tsunami period, and hand over the title deeds to individuals.
6. Implement all tenancy acts and ensure protection of rights of tenants, including of women tenants.
7. Ensure that access to CPRs is vested in the hands of women in the village.

Chapter 12

Uttar Pradesh

Land Reforms: A View from the Field¹

Prashant K Trivedi

This paper makes a few suggestions on the basis of a review of the land reforms experience in Uttar Pradesh. It looks at the way in which the five most important components of land reforms – abolishing *zamindari*, consolidation of landholdings, government land distribution, tenancy reforms and ceiling surplus land distribution – have been rolled out on the ground. It also tries to find gaps in existing laws and policy regimes and suggests ways to fill these gaps. Of the land reforms components, Uttar Pradesh's performance has been comparatively better in implementing the first three. Keeping this in mind, the recommendations focus more on the last two, which are in a way related to each other.

Abolition of Zamindari

Uttar Pradesh was among the first states that initiated the land reforms programme soon after independence. Enactment of the Uttar Pradesh Zamindari Abolition Act (1950) was a major step towards this end. Though the statutory status and role of *zamindars* in revenue collection was abolished, the very lengthy and time-consuming process and loopholes in the legislation gave them enough opportunities to save their land. During this period, *zamindars*, *talukdars* and other intermediaries got enough time to either transfer their land to relatives, or family controlled trusts, temples, etc., or to sell it off.

Not only this, but the *zamindars* were also offered compensation for the loss of their intermediary rights and tenants were asked to pay 10 times the annual rent

1. The author is thankful to Professor K. B. Saxena, Council for Social Development, New Delhi, Professor A. K. Singh, Director, Giri Institute of Development Studies, Lucknow, Comrade Deena Nath Singh, UP Kisan Sabha, Shri Ashok Chaudhari, National Forum for Forest People and Forest Workers and Shri P. C. Tiwari, PCS (Retd) for their valuable time to discuss these issues.

for their land with the Zamindari Abolition Fund, to convert their sirdari status into bhumidari status. This scheme again worked against the interests of poor peasants because only rich tenants, mainly among Jats, Ahirs, Gurjars, Kurmis and Lodhas, could raise the required funds to purchase ownership rights. Later, in the 1970s, *bhumidhari* rights were given to all owners.

In this process, 13.5 million superior tenants (occupancy tenants, hereditary tenants and ex-proprietary tenants) got freehold occupation on admissible land. But inferior tenants (sharecroppers, tenants at will, contract farmers engaged in cultivating *khudkasht* or personal cultivation land), lost access to it. Spurt in the number of agricultural workers in the wake of the first phase of land reforms was a manifestation of this reality.

Another glimpse of this changed scenario can be seen in a comparison of the share of *zamindari* land with that of control over total land in post-independence India. According to Saxena, Thakurs lost a substantial part of their land in the post-independence period, but even then they remained big landowners.² Before independence, they controlled 34 per cent of *zamindari* rights, but their share in the total land came down to 19 per cent in the post-independence period. Brahmins increased their share slightly from 17 to 18 per cent. These figures clearly indicate that both these communities still had larger landholdings as compared to their proportion in the population that stood at 7.2 per cent and 9.2 per cent respectively. The maximum part of land lost by Thakur *zamindars* went to four major backward castes – Yadavs, Kurmis, Lodhas and Gurjars. The share in the land of these castes increased by 6 per cent, to 20 per cent. As per the 1931 Census, these castes constituted 15.1 per cent of the state's population. Total share of OBCs in post-independence Uttar Pradesh reached 38 per cent from 8 per cent of *zamindari rights* controlled by them before independence. A part of the land controlled by Muslims came down to 8 per cent from 20 per cent. The share of Dalits in land reached 9 per cent from 1 per cent. These figures might give the impression that Dalits gained a lot from the abolition of *zamindari*, but keeping in view the proportion of their population that stands at 21 per cent, they emerge as the most disadvantaged section of the society.

2. N.C. Saxena (1985), 'Caste and Zamindari Abolition in UP', *Mainstream*.

Redistribution of Ceiling Surplus Land

In Uttar Pradesh, the Land Ceiling Act (1960) was enacted set a high ceiling of 16 to 32 ha (40 to 80 acres). The experience of enforcement of this act was similar to *zamindari* abolition in more than one way. R. S. Newell³ points out that land transfers that took place just before the enactment of the ceiling act reduced the potential surplus land from 688,000 acres to 437,000 acres, and even then only 20,000 acres was actually distributed.

During the late 1960s there was widespread rural unrest and the food crisis which led to the lowering of the land ceiling in 1972. Perhaps, by now, ex-landlords and big farmers had mastered the skill of avoiding confiscation of their land by applying time-tested methods of *benami* transactions, dividing the land between family members, bogus sales and forming cooperatives and family controlled trusts and temples. As per Newell's estimates, another 4 lakh acres should have become available under the modified ceiling if these transactions had not taken place. But, altogether only 200,000 acres could be redistributed.⁴

As of date the Uttar Pradesh government applies a ceiling of 7.3 ha, 10.95 ha and 18.25 ha on irrigated land with two crops, irrigated with one crop and dry land respectively. Implementation of ceiling laws and distribution of surplus land has not yielded desired results in the state. In the state, only 3,69,362 acres of land was declared surplus, and around 70 per cent of this was distributed among the landless. In fact, only 1,05,290 hectares ceiling surplus land was distributed and, as per Agricultural Census

Table 12.1: Distribution of Ceiling Surplus Land in Uttar Pradesh up to Sept. 2006

	Land (In Acres)
Area Declared Surplus	3,69,362
Area Taken Possession	3,39,385
Area Distributed	2,63,225
Total no of Beneficiaries	3,03,867 households
SC Beneficiaries	2,07,450 households
Area Distributed among SCs	1,84,808

Source: Annual Report, Ministry of Rural Development, 2006-07

3. R.S. Newell (1972), 'Ideology and Realities: Land Distribution in UP', *Pacific Affairs*.
4. Sukumar Das (2000), 'A Critical Evaluation of Land Reforms in India', in B. K. Sinha and Pushpendra (eds), *Land Reforms in India*, Vol 5., *An Unfinished Agenda*. New Delhi: Sage Publications, pp. 29-44; Zoya Hasan (1989), 'Power and Mobilization: Patterns of Resilience and Change in Uttar Pradesh Politics', in Francine Frankel and M.S.A Rao (eds), *Dominance and state Power in Modern India*, Vol. 1. New Delhi: Oxford University Press.

(2001), the total operated area in Uttar Pradesh stood at around 180 million hectares. This data reveals the total failure of the ceiling surplus programme as merely 0.58 per cent of the total operated area was distributed.

Distribution of Government Land

The programme of distributing *gram samaj* land was started in Uttar Pradesh in 1975-76 and its performance up to March 2008, is given in Table 13.1. As part of these reforms, *gram sabha* land was distributed among landless households. Compared to the distribution of ceiling surplus land, the programme of distributing land vested with the *gram sabhas* was fairly extensive. Land allotment of over 11,68,496 hectares was made to 36,82,795 households. Of the total number of beneficiaries, 56.4 per cent were SCs, 25.7 per cent were OBCs and 17.8 per cent belonged to other castes. Significantly, the allotted land amounted to 6.5 per cent of the area in operated holdings in 2000-01 and beneficiary holdings were 17 per cent of the total holdings in the state.

Homestead Land

Section 123 (1) and Section 123 (2) of Zamindari Abolition and Land Reforms (ZA & LR) Act (1950), provided for regularization of possession by SCs/STs and village artisans on government and private land respectively, held for house-site-less households. Besides, there were also provisions to give house sites in *gram samaj* land. Sections 63 and 64 of the UP Revenue Code (2006) provide for allotment of *abadi* sites. But the new code has done away with provisions regarding regularization of possession. The code keeps agriculture labour and artisans on par in the priority list. Similarly, SCs, STs, OBCs and BPL persons belonging to any category are also given the same priority.

Table 12.2: Distribution of Arable *Gram Samaj* land in UP (up to March, 2008)

Category of beneficiary	No. of beneficiaries	Area of land distributed (in ha)
SCs	20,76,874	6,43,513
STs	3,059	1,886
OBCs	9,46,216	3,35,488
Others	6,56,559	1,87,452
Ex.Ser. Men	87	155
Total	36,82,795	11,68,494

Source: Board of Revenue, Uttar Pradesh, Lucknow.

Tenancy Reforms

In many parts of the state, the tiller-owner model became operational and leasing land was declared illegal except in rare cases. Even after these regulations, as per the 59th NSS Round, the proportion of tenant holdings in total holdings in Uttar Pradesh was 11.7 per cent in 2002-03 and these tenant holdings operated 9.5 per cent of the total operated area. Since then, this proportion is continuously declining. Tenancy being declared illegal in many states, including in Uttar Pradesh, this is possibly under-reported in NSSO data as indicated by some studies. Instances of reverse tenancy are also coming to light, where many marginal and small farmers are leasing out their land to rich farmers. Field experiences indicate that reverse tenancy is more common in cash crop areas and in cases of well irrigated land capable of growing cash crops. In these cases, rent is more likely to be paid in cash, as against the dominant form of sharecropping where a fixed share of the produce is paid.

Land laws in the state are based on the proposition that tenancy is a reflection of unequal land distribution and that land reform measures, especially ceiling imposition, should be oriented towards 'land to the tiller'. Section 94 of Uttar Pradesh Revenue Code (2006) continues restrictions on leasing. Section 95 gives a list of those categories of people who are exempt from this restriction. It also includes 'a deity, or a waqf' in the exempted category.

Bataidari (sharecropping) was not recognized as leased-in before 1975. The UP Land Laws Amendment (1975) lays down very strict conditions for recognition of *bataidars* and requires the sharecropper to produce documentary evidence of his possession.⁵

Consolidation of Land

UP could achieve a comparatively better performance in terms of land consolidation. This achievement laid the foundation for the success of green revolution in western Uttar Pradesh, where a large part of the land is owned by cultivating castes like Jats and Gurjars. Up to November 2005, 587.66 lakh acres of land had been consolidated in the state. In most parts of the state the second round of the land consolidation process has also been completed.

5. P. K. Agarwal, *Land Reforms in India- Constitutional and Legal Approach*.

Changes in Land Ownership Patterns

Table 12.3: Share of Dalits in number of operational holdings and total operated area

	1980-81	1990-91	2000-01	2005-06
Percentage share in operational holdings	14.77	16.40	17.01	17.12
Percentage share in total operated area	9.24	10.50	10.86	10.85

Source: Agricultural Census, percentage share of total holding.

Information given in Table 12.3 demonstrates that after the 1980s, distribution of land among Dalits virtually stopped. During the 1980s, the share of Dalits in the number of operational holdings went up from 14.77 per cent to 16.40 per cent, and their share in the total operated area increased from 9.24 per cent to 10.50 per cent. This was not a satisfactory situation as the proportion of Dalits in the population was 21 per cent. After the 1980s, both the indicators remained stagnant. Data from the agricultural census also reveals stark inequalities between Dalits and non-Dalits. In Uttar Pradesh, the average size of landholdings for all social groups is 0.83 ha – for Dalits it is only 0.53 ha while for non-Dalits it is 0.89 ha.

Absolute landless among the Dalits in Uttar Pradesh are not so high, but functional landless are still very high. Two-third landholdings belonging to Dalits are less than 0.5 ha. The average size of landholdings in this category is only 0.23 ha. In less than 1 hectare category, we find that 87 per cent of the total Dalit holdings fall in this category.

Changing Land Relations

Micro studies find that incidence of absolute landlessness is the highest among Muslims, followed by Dalits and OBCs. Here absolute landlessness refers to a condition of 'nil' ownership of agricultural land. Even after half a century of land reforms, a major chunk of the Dalit population remains functionally landless, that is, having very small pieces of land which are insufficient for their livelihood. Upper caste members still maintain their status as major landowners, but are losing their land through the market. Peasant communities are emerging as rising landowners. In the land market, Jats, Gujjars, Kurmis and Yadavs are net buyers whereas upper caste Hindus and Muslims are net sellers.

Findings of these studies suggest that inheritance continues to be the most important mode of owning land, but state mediated transactions provide more land to

Dalits than market-mediated transactions. Caste provides the most reliable channel for economic transactions such as land sale and purchase. As far as the terms of the land lease are concerned, when land is leased-out from the higher strata in terms of landownership to the lower strata, sharecropping is preferred. In cases of lower to higher, fixed rent is preferred. Among social groups, upper caste and OBCs prefer leasing-in land on fixed rent, while Dalits and MBCs prefer sharecropping. The number of Dalits, Muslims and MBCs leasing-out land on a fixed rent basis is higher than those leasing-out on a sharecropping basis. The upper castes prefer sharecropping. Resident owners too prefer sharecropping, while absentees prefer fixed rents.

A significant finding that emerges from these studies is persistence of interlocking arrangements. Landed communities have greater access to formal sources of credit while the marginalized depend on informal sources. Interlocking of tenancy, wages and indebtedness mean that land-poor households have to render labour to households from whom they have leased-in land or taken advances. Labour wages in these cases are lower than market wages. Tenancy provides access to otherwise inaccessible land, but it comes with socio-political 'un-freedom'.

Recommendations

On the basis of field observations and several published documents on the subject, the following suggestions are put forward for discussion:

Issues Relating to the UP Revenue Code (2006)

The Government of Uttar Pradesh notified the Uttar Pradesh Revenue Code (2006) (hereafter referred to as Code), which was passed by the UP legislature and got presidential assent in November 2012. This Code consolidates and amends the law relating to land tenures (UP Zamindari Abolition and Land Reforms Act, 1950) and land revenue (UP Land Revenue Act, 1901). This Code simplifies legal procedures but, at the same time, several time tested pro-poor provisions of previous laws have been left out.

Under public pressure, the UP government has decided to forego implementation of the Revenue Code, 2006 and bringing in UP Revenue Code-2015. But given the earlier experience apprehensions prevail. Academics and activists have given representations to the drafting committee demanding restoration of pro-landless, pro-dalit provisions of Zamindari Abolition Act in the new code.

Definition of Land

The ZA & LR Act defines land as 'land held or occupied for purpose of agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming'. Whereas the new Code defines land as 'land held or occupied for purpose connected with agriculture'. This change in definition excludes large tracts of land from the purview of land reforms.

The definition of land given in ZA & LR Act should be brought back.

Protection against Alienation

The Uttar Pradesh Revenue Code (2006) Section 98, restricts a Scheduled Caste land-owner to sell his land located outside the area of urban development authorities, to a non-SC person. The district collector's approval is required if a person belonging to Scheduled Castes wants to sell his land to a person not belonging to Scheduled Castes. Additionally, the seller must have more than 1.265 ha of land. Section 99 of the Code completely prohibits tribal land to be sold to a non-tribal.

But Sections 80 and 81 provide for lifting of these restrictions if 'land use' is changed by filing a declaration. Similar provision was already there in Section 143 of ZA & LR, but the new Code appears to be even more forthcoming in lifting restrictions imposed on transfer of such land. This is likely to alienate large scale land from SCs and STs. Several other sections (such as 211) were of immense importance in providing protection to weaker sections. The new Code has not included any of these provisions.

1. Provisions under Section 81 of the Code need reconsideration.
2. All protective provisions should be brought back in the Code.

Regularization of Possession on Agricultural Land

Section 122 B (4F) of ZA & LR provided for regularization of possession of SCs, STs and landless agricultural workers on *gram samaj* agricultural land. The new Code has not included this provision.

Provision similar to 122 B (4 F) should be included in the new Code.

Homestead Land Rights

1. Section 64 of the Code needs to be amended. This section of the Code keeps agriculture labour and artisans on par in the priority list for land allotment for house sites. Similarly SCs, STs, OBCs and BPL persons belonging to any category are also given the same priority. This should be changed and agricultural labour and SCs and STs must be given top priority.
2. Provisions similar to that of 123 (1) and 123 (2) of ZA & LR Act (1950), should be inserted in the Code, providing regularization of possession on government and private land for homestead purposes.

Land Management

1. Massive diversion of agricultural land is taking place due to construction activities around big cities and more than that, for speculation purposes. The UP Revenue Code (2006) has liberalized the procedure for land use change which will further divert agricultural land. It is recommended that for buying agricultural land, the definition of 'personal cultivation' should be made the basis.
2. Land tribunals should be constituted at the tehsil level for speedy and specialized disposal of land-related cases.
3. Large scale agricultural land acquired for private or public projects remains unutilized for years. If a piece of land remains unutilized for a defined period of time, it should be reclaimed for agriculture.
4. Several industrial units are closed down but they continue to possess large tracts of land. Such land should be reclaimed for agricultural purposes.
5. Due to two rounds of consolidation drives, land records in the state are not too dated.
6. The new revenue Code of Uttar Pradesh has been released for the public. A careful and considered review of this is required.

Women's Land Rights

As per the government's directive, joint *pattas* should be given in cases of agriculture and homestead land allotments. But because of negligence and lack of monitoring, this provision is not being implemented in many cases.

1. Joint pattas should be given for agricultural land.
2. For house site, pattas should be given to women only. Only in cases where no woman is a member of any household, pattas can be given to a male member of the household.

Ceiling Surplus Land Distribution

As of now, Uttar Pradesh Imposition of Ceiling on Land Holdings Act (1972) (hereafter the Ceiling Act), applies a ceiling of 7.3 ha on irrigated land capable of growing two crops in an agricultural year in consequence of assured irrigation from any state irrigation work or private irrigation work. According to this scheme, 1.5 hectares of unirrigated land, or 2.5 hectares of grove land, or 2.5 hectares of *usar* land, shall count as one hectare of irrigated land. August 6, 1973, was marked as the cut-off date for determining the irrigation status of a plot of land. Besides, 2.5 hectares of unirrigated land in identified backward areas was considered equivalent to one hectare of irrigated land. Certain categories of tenure holders, such as land used for industrial purposes, religious and charitable trusts and *waqfs*, *goshalas*, stud farms and tea, coffee and rubber plantations were exempted from the imposition of the ceiling. Tenure holders were also allowed to retain two additional ha of irrigated land for every major son (who was not himself a tenure holder or held less than 2 ha of irrigated land), subject to a maximum of 6 ha of additional land.

1. Irrigation status of land should be assessed afresh and irrigated land, which acquired irrigation facilities after the cut-off date to support two crops in a year, must be subjected to the ceiling for irrigated land.⁶ Khasra provides all these details which should be used for the purpose. Determination of irrigation status of any land should be linked with *khasra*.
2. A special drive to uncover ceiling surplus cases should be undertaken, especially focusing on Tarai and Bundelkhand regions and Gonda, Bahraich, Mirzapur, Sonbhadra, Maharajganj, Kushinagar and Pratapgarh districts.
3. These ceilings have been there for the last four decades without any revisions. With increasing agricultural productivity and increasing demand for land from landless households, the ceiling should be lowered. Ceiling for irrigated land

6. The state government claims that more than 80 per cent agricultural land in the state is irrigated.

7. Committee on State Agrarian Relations and the Unfinished Task in Land Reforms, Government of India recommends 5-10 acres (approx 2-4 ha.) ceiling for irrigated land.

should be fixed at 5 ha,⁷ subsequently redefined for other categories, following the scheme provided by the Ceiling Act.⁸

4. Exemptions granted to *goshalas*, charitable and religious trusts, plantations and stud farms should be withdrawn. Instead of blanket exemption to industries, they should be considered on a case-to-case basis.
5. Higher ceiling limits granted to certain areas in Section 4 of the Ceiling Act should be reviewed. With the expansion of infrastructure and irrigation facilities, many of these areas could be taken out of this exemption list.
6. Exemption granted under Section 5 (3) (a) and Section 5 (3) (b) of the Ceiling Act to hold additional 2 hectares for every adult son should be withdrawn.
7. Several sugar mills have shut down their operations, but continue to hold large tracts of land in the name of sugarcane farming. Land owned by these mills should be subjected to applicable land ceilings.
8. Uttar Pradesh land reforms laws, including the Uttar Pradesh Revenue Code (2006) assume all the agricultural land to be under 'personal cultivation'. A definition⁹ of 'personal cultivation' should be inserted in the Code, including family labour, residential status and dependence on agriculture for livelihood as preconditions.
9. Very high ceiling for degree colleges imparting education in agriculture (20 ha.) and inter-colleges imparting education in agriculture (12 ha.) should be reviewed and brought down considerably. Some educational institutions, which are not imparting education in agriculture, have also taken advantage of this provision. They should be subjected to applicable ceilings. In many other cases, large tracts of possessed land remain unused. The land that remains unused for more than a defined period of time should be declared ceiling surplus.
10. Blanket exemption given to post-graduate colleges, banking companies, cooperative banks and cooperative land development banks should be withdrawn. Their cases should be considered on a case-to-case basis, subject to a limit of twice the ceiling limit for irrigated land.

8. According to Agricultural Census (2005-06), in the more than 5 ha category, there were 2, 47, 741 holdings in the state covering an area of 18,71,519 ha with an average size of 7.55 ha. If we apply a ceiling of 5 hectares, the amount of ceiling surplus land will be between 6 to 7 lakh hectares. This is six times higher than the total ceiling surplus land distributed so far. This calculation is only for illustration purposes and is based on the assumption that operational holding distribution reflects the ownership holding pattern as tenancy remains unreported.

9. P. K. Agarwal, (1993) *Land Reforms in India- Constitutional and Legal Approach*. M D Publications Pvt Ltd. New Delhi.

11. Exemptions given to universities should only apply to central and state universities.

The Committee on State Agrarian Relations and the Unfinished Task in Land Reforms, Government of India, has given several valuable recommendations to unearth *benami* and *farzi* transactions and distribution of ceiling surplus land.

1. Imposition of criminal sanctions on failure to furnish declaration on ceiling surplus land.
2. Suitable amendments to *benami* transactions (Prohibition of the Right to Recovery Act) of (1989).
3. Setting up of a group, composed of revenue officials and members of the *gram sabha*, to identify *benami* and *farzi* transactions.
4. Computer-based tracking and monitoring of ceiling surplus land and single window approach for its redistribution.
5. Introducing the card indexing system for preventing factious transfers. Voter ID/ PAN/ *Aadhar* card could be related to this card.

Forest Land

1. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006) provides for forest rights committees at the village level. Since these constitutional bodies are set up at the panchayat level, this is a great obstacle for the effective implementation of law. The legal provision of setting up these committees at the village level must be implemented.
2. Proportion of rejections is around 80 per cent. Out of 92,433 claims, 73,416 have been rejected by sub-divisional level officers on flimsy grounds. Investigations to look into reasons for rejection should be conducted by a high level committee, consisting of government officials, civil society representatives and representatives from forest rights committees.
3. Adequate representation of Adivasis, women and Dalits in forest rights committees should be ensured.
4. Government officials and members of forest rights committees should be given proper training about the law.

Annexure:

State Specific Advisory

**Government of India
Ministry of Rural Development**

Dated 19th March 2013

Uttar Pradesh

The following measures are suggested for improving and expediting existing land reform measures within the state:

1. Revisit the irrigation status (by using *khasra*) of land and that irrigated land which has acquired irrigation facilities after the cut-off date to support two crops in a year. These must be subjected to a re-fixation of ceiling (5 acres) for irrigated land.
2. Take up a special drive to resolve ceiling surplus land cases, especially focusing on Tarai and Bundelkhand regions and on Gonda, Bahraich, Mirzapur, Sonbhadra, Maharajganj, Kushinagar and Pratapgarh districts.
3. Re-visit the exemptions granted under the Ceiling Act for *goshalas*, charitable and religious trusts, plantations and stud farms. Instead of blanket exemption, they should be considered on a case-to-case basis.
4. Re-visit the higher ceiling limits granted to certain areas in Section 4 of the Ceiling Act. With the expansion of infrastructure and irrigation facilities, many of these areas should be taken out from this exemption list.
5. Revoke the exemption granted under Section 5 (3) (a) and Section 5 (3) (b) of the Ceiling Act to hold an additional 2 hectares for every adult son.
6. Acquire land from sugar mills which have shut down their operations but continue to hold large tracts of land in the name of sugarcane farming. The land owned by these mills should be subject to applicable land ceilings and surplus land should be re-distributed among the eligible landless poor, with priority given to marginalized women.

7. Revisit the Uttar Pradesh Revenue Code (2006). 'Personal cultivation' should be inserted in the Code, including family labour, residential status and dependence on agriculture for livelihood as preconditions.
8. Re-visit the ceiling limit for educational institutions since large tracts of possessed land remain unused. The land that remains unused for more than three years should be declared 'ceiling surplus' and redistributed to the landless poor, with priority given to marginalized women.
9. Amend the Benami Transactions (Prohibition of the Right to Recovery Act) (1989) and set up a special task force of revenue officials and *gram sabhas* for identifying *benami* transactions and take appropriate action to distribute this land to eligible landless poor, with priority given to marginalized women.
10. Amend Section 64 of the Uttar Pradesh Land Revenue Code (2006), which places agricultural labour and artisans at par in the priority list for land allotments for homesteads. Similarly SCs, STs, OBCs and BPL persons belonging to any category are also given equal priority. Agricultural women labourers and women SCs, STs and other marginalized women must be given top priority.
11. Take action for a time-bound (within five years) regularization process for homestead allotted to landless/homeless rural families as per the provisions of Sections 123 (1) and 123 (2) of ZA & LR Act (1950).
12. Amend Sections 80 and 81 of the Uttar Pradesh Land Revenue Code (2006) to prohibit the transfer of land from STs/SCs to non-STs/SCs. Further, Section 90 of the Code should be strictly enforced in these cases.

Chapter 13

In Lieu of a Conclusion

Prashant K Trivedi

The dynamics of the land reforms discourse in India makes it difficult to come to any meaningful conclusions. Contestations from different forces at work only add to the volatility of the situation. These apparently contradictory claims shape and reshape this discourse in a way that one is left clueless about its future direction. Besides the state's own priorities, several non-state actors assert themselves to define the land reforms discourse from their perspectives. These seemingly irreconcilable positions often interact with each other and this interaction reflects in their common view on certain issues.

Going by several government reports, Maoist activities in the central forest region in the country are one of the contributing factors to the revival of the land reforms agenda. Planning Commission reports, such as 'Developmental Challenges in Extremist Affected Areas'¹ forcefully argue that failure of land reforms and consequent landlessness and acute poverty are one of the main reasons for the rise of left wing extremism. The report recommends taking immediate steps to implement land reforms in order to contain further expansion of armed insurgency. The expert group also urges the government to look into issues relating to *jal, jangal aur zameen* (water, forest and land). Maoists accept local communities' ownership over natural resources and take a position against forcible acquisition of land. But even after the very longstanding presence of Maoist organizations in central Bihar and the Telangana region of Andhra Pradesh, not many instances have come to light in which their armed struggle would have actually resulted in ownership of landless on agricultural and homestead land.

1. Report of an Expert Group to the Planning Commission, GoI (2008).

A comparatively newer force on the land reforms scene is the emergence of grassroots NGOs working for land rights in different parts of the country. Their position on land issues differs as do their funding sources. Many of these organizations work at the local level, but also form country-wide coalitions to pressurize the union and state governments. One of the most widely known networks of these organizations, Ekta Parishad, achieved a major victory when it forced the union government to sign an agreement on land reforms. But land being a state subject, assurances of the union government will remain only on paper until the state governments are equally pressurized to concede these demands.

Kisan sabhas and Agricultural Workers' Unions have long been struggling to get land reforms implemented. These organizations were instrumental in the successful execution of ceiling surplus and tenancy reforms in West Bengal, Kerala and some pockets of other states. Experiences show that land reforms cannot be carried out from the above, even with well-intentioned officers and governments. Their role is, no doubt, important in facilitating this process. But a militant mobilization of peasantry is crucial in confronting landowning classes, who try to maintain their hegemony over large tracts of land. Working closely with the peasantry, *kisan sabhas* were able to keep precise information about landownership and tenancy relations in villages which, despite several laws, bureaucracy could not do. These peasant organizations support ceiling surplus measures, oppose forcible land acquisition and take nuanced positions on tenancy reforms, considering local conditions in each state. But their reach and influence is rather uneven in different parts of the country.

Decisive pressure for land reforms also comes from international agencies such as the World Bank. Their conceptualization of land reforms is radically different from the view taken by peasant organizations. These international organizations are calling for rolling out of existing land legislations and proposing a few measures to replace 'traditional' measures of land distribution. As part of non-traditional measures, the World Bank dismisses acquisition of ceiling surplus land, and proposes providing loans to the poor for buying land from the market. It also calls for legitimizing leasing of land where it remains illegal till now and eliminating restrictions on land rental and lease terms where leasing is legal but these restrictions are in place. The World Bank also advocates liberalization of the land sale market by doing away with all the restrictions put on changes in land use – from agriculture to non-agriculture – and by allowing industrialists or other non-agricultural land users to directly negotiate with landowners for purchase of land.

In today's context, marked by a dominance of the neoliberal development paradigm, the state is also showing more inclination towards capital. This means making land tenure systems market compatible. The World Bank's suggestions are in this direction and, for that reason, are likely to get a hearing in the government. But at the same time, the government also knows that it is sitting on a volcano of landlessness. According to one estimate landless and virtually landless formed 40.3 per cent of all rural households, owning less than 0.5 per cent of total land in 2003.² At the other end, only 9.5 per cent households owned 56.6 per cent area, revealing increasing polarized landownership patterns. This situation presents some possibilities alongside a few dangers. In an attempt to strike a balance between mounting pressure from landless classes and capital's push towards policies that actually alienate land, the state may opt for cosmetic land reforms at the expense of real ones. What it needs to do is initiate measures to ameliorate the conditions of impoverished masses, while ensuring that existing resource structures and dynamics that help corporations appropriate land and other natural resources do not get disturbed.

In today's context, this will mean replacing agricultural land by homestead land being a part of the land reforms agenda. However, this does not mean that the government's initiative to provide homestead land is not welcome. In fact, land rights movements should press for early passage of a bill enabling millions of landless to acquire a piece of land for the first time. But while doing so, movements will have to remain vigilant that this does not happen at the cost of the people's long-cherished demand for agricultural land. Besides, what also needs to be kept in mind is homestead land issues have already been covered by land legislations in most of the states. One reason for continued homestead-less-ness is non-implementation of these provisions. Instead of going all out for market-based initiatives, the existing provisions must be exhausted first.

Similarly, 'ownership' through distribution of ceiling surplus land faces threats of replacement by 'access' through tenancy. Several states have tenancy laws to regulate lease terms and sharing of produce, etc. They must be implemented strictly for which registration of tenants is a pre-requisite. But one must not forget that tenancy is not just an economic activity; it involves reproduction of unequal power relationship between individuals and communities. These are evident from the fact that either in

1. Utsa Patnaik (2007), 'New Data on the Arrested Development of Capitalism in Indian Agriculture', *Social Scientist*, 35 (7/8): 4-23.

case of regular tenancy or reverse tenancy terms are dictated by the more powerful party. In the case of regular tenancy, the lessee has to heed to conditions laid down by the lessor. These conditions are not just economically unfavourable to the lessees who mostly come from lower caste/class backgrounds, but also appear to assign higher status to lessors vis-à-vis lessees in many other socio-political matters, reproducing already existing inequalities between them.

As shown by datasets, generally in a village there are plenty of landless or functional landless households willing to lease-in land while land available to be leased out by lessors is limited. In this situation, having the upper hand the lessors will perhaps choose lessees not just on the basis of leasing contracts, generally based on the prevailing terms in an area, but also on the basis of what he/she gets extra out of it. In many cases, this extra includes an obligation on the part of the lessee to work on the fields of the lessor during peak season on settling for depressed wage rates. The lessor not only lays down the conditions but also monitors if the lessee is putting in proper investment and labour. Probably, to escape this monitoring in cases of reverse tenancy, lessees seem to prefer fixed cash or fixed quantity of grain instead of share-cropping. Besides, the lessee is supposed to keep the lessor in good humour, initially to get land on lease and later to continue this arrangement. This whole gamut of compulsions mellows down the potentiality of the lessee to challenge the caste dominance of his lessor, contributing to the *status quo* at the village level. Not only this, the lessee is supposed to side with the lessor in several other village-related matters. In fact, on occasions, the lessee is seen as part of the lessor's political influence.

These field observations give at least three impressions regarding the rampant practice of leasing land. First, it ensures cheap labour supply to the lessor even during peak harvest seasons when getting labour becomes difficult, consequently contributing to keeping wages for labour low. Second, although many peasants who have very small pieces of land and who have lost hope of getting landownership through land reforms, are willing to lease-in land, but there is a perception among lessees that the whole package of expectations that comes with leased-in land pushes them into a vicious cycle of poverty. During the peak harvest season, they are supposed to give preference to leased-in land, followed by other land owned by the lessor and, as a result, their own land gets neglected, keeping them economically weak and dependent on leased-in land. Last but not the least this weakens the socio-political freedom of the lessees. It is not being argued here that leasing of land has only demerits from the perspective of land poor peasants. Rough calculations done with lessees give an idea

that in the leasing business, the lessees generally get returns equivalent to wages for the days they work on leased-in land. Even then if they prefer to work on leased-in, it is perhaps because they get employment opportunities in their own villages.

In the light of this discussion, one is inclined to suggest that landownership given to Dalits and the landless cannot be equated with leasing of land on the grounds that both provide access to land. No doubt, leasing of land provides access to the poor to otherwise inaccessible land, but it seems to be coming with a package of economic exploitation and socio-political unfreedoms. Besides, once legalization of tenancy is accepted as the most important mode of providing access to land, that will perhaps be the last nail in the coffin of land reforms as they were conceptualized by radical peasant movements during the freedom struggle. 'Ownership' has to be differentiated from 'access'. In today's context, marked by an increasing practice of reverse tenancy and corporations willing to lease-in large tracts of land, in some places legalisation of tenancy may prove to be counter-productive.

Whatever has been happening in the name of land reforms is more of land management. Computerization of land records, integration of several land laws in one revenue code, etc., are a few such examples. These initiatives are taken primarily to facilitate land markets becoming more vibrant, but at the same time they are also helpful to landowners. Movements have been reminding governments that distribution of ceiling surplus land must be the cardinal element of land reforms. Shifting focus elsewhere will only create false impressions. Ceiling provisions must be accorded their due central place in the scheme of land reforms and all other initiatives must be geared to realize their full potential.

The future of land reforms in India depends on the pressure that land rights movements can create on governments. First, movements will have to resist re-conceptualization of land reforms and assert to retain its progressive content. Second, they will have to agitate to make land reforms work.

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Cover Photograph: A plot of land in rural Jalna, Maharashtra gets its first dose of tilling before the rains. © Manoj Patil/ActionAid

In a context where more than 75% of the agricultural workforce are women and traditionally tilling is barred for them, the slogan “land to the tiller” has to cover all work on a farm to better serve the cause of justice and equity.