

Emerging Issues in Land Policy

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Foreword

The India Resident Mission (INRM) Policy Brief Series is sponsored by the Asian Development Bank (ADB) and is designed as a forum to disseminate findings from policy research work undertaken on the Indian economy. The series is primarily based on papers prepared under the Technical Assistance (TA) 'Policy Research Networking to Strengthen Policy Reforms in India'. The main purpose of the TA was to provide assistance for developing policy research networking capacity, in order to build support for, and consolidate the reform process. The INRM Policy Briefs provide a nontechnical account of important policy issues confronting India.

A handwritten signature in black ink, appearing to read 'Tadashi Kondo', with a large, sweeping flourish at the end.

Tadashi Kondo
Country Director

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R. S. Deshpande

Land policy was a major developmental issue during India's freedom movement, especially following the infamous Deccan Riots. It became a prominent concern for the peasants to back the independence movement. The Congress party promised 'land to the tiller'. Immediately after independence a committee headed by J. C. Kumarappa was appointed to look into issues pertaining to land policy. Around that time discussions on land reform began the world over (UN 1954). Land policy was also being discussed in the context of agricultural development (Raup 1963; Warriner 1969). Social justice, political health, expansion of agricultural output and overall development remain the concerns in the analysis of land policy (Krishna 1961).

At independence land was concentrated in the hands of a few, with an extremely skewed distribution, and intermediaries proliferated who had the least interest in self-cultivation of land. The tenancy contracts were highly exploitative. Land records were in a dismal shape, causing a plethora of litigation.

Land policy formulation in independent India has gone through five phases. Abolition of intermediaries and tenancy reforms formed the first phase. The second phase, running almost concurrently but making a major impact, was land ceiling. The third phase involved bringing uncultivated lands under cultivation. The fourth phase was increased attention to soil and water conservation. Conservation was achieved through the Drought Prone Areas Program (DPAP), Desert Development Program (DDP), and wastelands development initiatives through establishing a Wasteland Development Authority. A massive program was

also undertaken for watershed development. The current fifth phase of the policy debate concerns the relevance of some of the land legislation and transparency in land records through computerization. There is also thinking on revisiting land policy on the counts of land ceiling, marginalization of the landholding size, and opening up the tenancy market.¹

Land reform has been seen as a major tool of asset redistribution policy for poverty alleviation (Chenery et al. 1970), enhancing production efficiency through tenant efficiency and small-farm efficiency (Rudra 1982), agricultural growth (Alesina and Rodrik 1994), and agricultural capital formation (Raup 1963). Besley and Burgess (1998) claim to have produced 'robust evidence of link between poverty reduction and two kinds of land reform legislation—tenancy reform and abolition of intermediaries' (p. 424) but their empirical scoring of the cumulative land reform scores may be open to question. For example, they assign 5.056 to Orissa, 6.139 to West Bengal, 5.444 to Kerala, 4.305 to Bihar, 1.861 to Maharashtra, and 2.833 to Karnataka, which appear to be arbitrary weights. Nevertheless, their hypothesis appears sound. A clear property rights structure can ensure growth and better distribution of these gains, and provide an impetus to sustainability (Deninger 2003). Of late, policy analysts are insisting on socially desirable land use needing a proper institutional back-up; that underscores the role of government (Deninger 2003: 188).

The focus in this paper is on land policy in India in the changing agrarian economy. It also touches upon some related policy goals, such as poverty alleviation, conflict management, sustainable economic growth, and good environmental management.

Reflections of Land Policy through Five-Year Plans

Article 39 of the Constitution of India deals with the redistribution of land and land reform. Land administration and land policy is within

¹ Among the consultations on these issues in the last decade were: A National Level Discussion on Comparative Land Reforms Legislation in Different States, Lal Bahadur Shastri National Academy of Administration (LBSNAA), Mussoorie; 'Whither Tenancy', held at LBSNAA, 1999; 'Land Policy and Administration', The World Bank, New Delhi, May 2004. Doubts are also raised about the process of theorization of land reforms as an institutional tool (Atkins 1988).

the purview of state governments. At the national level the Department of Land Resources in the Union Ministry of Rural Development has the mandate to address land policy issues.

Policy on land reform was for the first time spelt out in the First Five-Year Plan (1951–56). Its explicitly stated objectives were to reduce disparities in income and wealth, eliminate exploitation, provide security to tenants, achieve social transformation through equality of status, and enable different sections of the population to participate in development. Land reform was seen in terms of community development: reform interventions were meant to provide the means of production to the poor who lacked either resources or the know-how.

Intervention to Deal with Property Rights and Poverty

Immediately after independence four major policy interventions were thought of as components of land reform. These were (1) abolition of intermediaries; (2) tenancy reforms; (3) fixing of ceiling on landholding; and (4) consolidation of holding. These components were taken up in different phases as the ground preparation and the political will were to be built for their wider acceptance (Appu 1997). By 1960, the process of legal enactment of the abolition of intermediaries was completed. This has been the most successful component of the reform process.

The major aspects of tenancy reform, enacted between 1960 and 1972, differed across states. Owing to the diverse and complex nature of the production relations, no uniform guidelines could be followed for the entire country. However, some broad guidelines were given to the state governments for incorporating in the state legislation. These included:

- Security of tenancy to be conferred on the actual cultivator.
- Fair rent to be fixed between one-fourth and one-fifth of the gross produce.
- Landowners might be permitted to cultivate land for personal use.
- Surrender of tenancy rights with mutual consent.
- For some of the area, the landlord-tenant nexus to be ended and the tenant cultivator to be brought directly in contact with the state.

- Disabled persons, defense personnel, and such exemptions to be provided.
- The term personal cultivation to be clearly defined if land were to be resumed for cultivation.
- Correctly record tenancy and abolish oral tenancy altogether.

In many states the dominant landlords took advantage of the exemption granted to personal cultivation. The national policy recommended that actual residence of the owner/member of his family must be an essential condition for personal cultivation. Maharashtra and Karnataka additionally required that the principal source of income should be from the produce of the land. In some other states the right to resumption also inversely related to the landlord's economic status. Definitions of family holding, economic holding, and basic holding, the time limit for resuming cultivation, and the consequences of not cultivating also differed across states.

Tenancy is prohibited in a few states and free in some others. Gujarat has made leasing out land an offense punishable with a fine of Rs 1000; but covert tenancy prevails. Prohibition of tenancy gave rise to reverse tenancy and concealed tenancy. It is recorded that 15–25% tenancies in the country are illegal and covert. NSS data show that small and marginal farmers hold more than 80% of the leased land. Since the tenancy is oral they only have a tenuous hold on the land.

In the present context, tenancy could be viewed as a mechanism of resource adjustment, access to credit institutions and credit system, sharing of risk and entrepreneurship, and avoiding transaction costs. For these reasons, a poor cultivator may lease out. It is seen from the 1990-91 agricultural census that most of the tenancy contracts are on the basis of fixed money rent and share of produce.

Six significant changes have been witnessed in the land lease market in the last thirty years. First, where leasing is legal the lease period has been shortened. Second, landlord's supervision of the leased land has increased for fear of tenant occupancy. Landlord-tenant relations have become stronger in terms of resource sharing and cost sharing. Third, the landowner's investment has increased substantially due to technological inputs. Fourth, rent has been regulated in a few states. Where tenancy is covert the landlord fixes the rent anywhere between 50 and 85% of the produce. Fifth, the tenant identifies himself with the land,

unlike earlier. Thus, the tenant cultivator's production efficiency might be higher than that of the owner cultivator. Sixth, in a concealed tenancy the tenant faces a major hardship in accessing credit, technology, and product market.

The National Commission on Agriculture stated that under the present man-land ratio tenancy could not be banned (GOI 1976: 160). Experience has also shown that this ban is hardly effective. Can we, therefore, consider opening the tenancy market? Can, for example, a large landholder lease in land from small and marginal farmers? Can a noncultivator rent land for cultivation or other purposes? What should be the tenancy policy for lands owned/operated by weaker sections?

Land Ceiling

The landholding pattern during the 1940s and '50s was extremely skewed. About 53% of the land was held by about 8% large farmers; 28% of submarginal and marginal holdings owned about 6% area. Land ceiling was considered essential for three economic compulsions. First, the existence of an inverse size-productivity relationship suggested economic gains in small holdings. Second, large holders of land left large fallows. Third, a large proportion of the population was land-based poor who, if provided with land as an economic resource, could earn their livelihood.

State legislation more or less conformed to the national guidelines in fixation of the ceiling limits and distribution of surplus land. A few significant issues featured after the 1970s phase of land reform. The very process of enacting the law in two phases allowed sufficient time to the large holders to adjust their size of holding. During this phase 'Benami holding' emerged and proliferated. This was also facilitated by the pathetic conditions of land records.

The National Commission on Agriculture held that any attempt to lower the ceiling might create further uncertainty among the middle and large farmers and undermine production (GOI 1976: 162). Demographic pressures were certain to reduce the size of holding in the top brackets; at the bottom this pressure would lead to marginalization of holdings.

Consolidation of Holding

During the early 1970s it was felt that one holder may have several fragments scattered across the revenue villages in the vicinity or at long distances in the same village. This was an easy escape from the Land Ceiling Act and therefore it was considered necessary that landholding of an individual holder should be consolidated in one parcel. The legislation was, however, difficult to formulate and did not consider the ground reality of caste within the farming communities and local process of politicization.

Except Punjab, Haryana, and Uttar Pradesh land consolidation has not made any impact in the rest of India. Legislative provisions for consolidation have been made in fifteen states but they provided sufficient room to escape. For example, Madhya Pradesh and West Bengal provide only for voluntary consolidation; similar is the case with Gujarat, Himachal Pradesh, and Maharashtra. Given the importance and the extremely unsatisfactory results of this program, it is essential to think of an institutional solution. Contract farming on a crop group basis is one of the most feasible, if safeguards are provided against the big contractors usurping the legitimate benefits due to the small and marginal farmers.

Emerging Issues

Land Administration

Land and agricultural administration are two independent departments in both the central and state governments. While this helps to monitor nonagricultural land use separately from agriculture lack of integration creates uneasy administrative regimes. There are a number of departments that look into various aspects of land policy and virtually independently. These include land revenue, survey settlement, land administration, land data, and land legislation.

The Department of Land Resources in the Union Ministry of Rural Development addresses the issues pertaining to land administration, particularly degraded lands, and has a range of programs that set the national framework. These programs are passed on to the state governments as guidelines but more frequently as the final design. At the state level there are the Land Development Boards.

Computerization of Land Records

Recording of land rights and their periodic updating is a prerequisite for an effective land policy. This not only eliminates harassment of the farmers but also indirectly contributes towards efficiency. During the Seventh Plan in 1987-88 a centrally sponsored scheme on Computerization of Land Records (CLR) was introduced as a pilot project in the districts of Gulbarga (Karnataka), Rangareddy (Andhra Pradesh), Sonitpur (Assam), Singhbhum (Bihar), Gandhinagar (Gujarat), Morena (Madhya Pradesh), Wardha (Maharashtra), Mayurbhanj (Orissa), and Dungarpur (Rajasthan). Its main objectives were: (1) computerization of ownership and plot-wise details for issue of timely and accurate copy of the Records of Rights (RoR) to the landowners; (2) to achieve low-cost, easily reproducible storage media for reliable durable preservation; (3) to provide fast and efficient retrieval of information, both graphical and textual; and (4) creation of a Land Information System (LIS) and database for agricultural census. In the Eighth Plan, 323 districts in the country were to be brought under the scheme. In 1997-98, 177 new project districts were to be covered.

The scheme, however, is making slow progress. Some of the operational problems are: delayed transfer of funds to the implementing authority; delay in development of need-based software; poor computer training facilities for the field revenue staff; nonavailability of private contractors for data entry; and lack of administrative focus. Computerization only involves entering the available land records (without any effort to correct them) and enabling their printout. More than computerization of land records guaranteeing the title to land should have received priority. It is a common observation in the villages that persons in whose name the land is recorded are either deceased or do not possess that land. The Planning Commission had appointed a one-man committee on Record of Rights in Land in the 1980s (Wadhwa 1989). One paper emerged out of this work and, expectedly, no policy initiatives followed.

Land Surveys

A cadastral survey was done well before independence. A fresh survey is called for, after five decades of significant changes in the landholding pattern. It is a tall order. One recent experience of conducting

a land survey in a Karnataka district is proving enormously time consuming and may not probably yield the desired results. Land records are likely to get further complicated when data about land that hitherto evaded the records become available. Land surveys based on Geographical Information System (GIS) could be the solution: they will also provide repeated assessment and track the land use pattern.

Tenancy

If agricultural tenancy and renting in land is made legal the majority of the beneficiaries will be small and marginal farmers. At present the tenant or the landlord (in a revenue tenancy) has no protection (Anonymous 1999). Also, the tenant cannot raise capital from financial institutions. Many farmers who have committed suicide recently had rented in land, but not being legal tenants, had to borrow from money-lenders and could not repay the usurious interest rates (Deshpande 2003). If tenancy is made legal only an agriculturist should be allowed to lease in land and agricultural land for that purpose alone. To guard against the weaker sections losing in this process leasing in their land should be regulated with adequate intervention.

It is expected that opening of the lease market will bring in private investment in agriculture, lack of which has been a major problem. It is possible to keep out imperfections by restricting the upper limit and limiting the lease period to a few years. Sections of the population losing in this process may have to be seriously considered.

Marginalization of Size of Holding

Land fragmentation is taking place faster among the weaker sections. Also, better quality lands are more subjected to fragmentation. Some states have legal provision of not allowing fragmentation of land below 0.5 hectares but it is not implemented strictly. All these point towards consolidation of small and marginal farmers, not as was done under consolidation of landholdings, but to bring them together as one production unit (through formal or informal cooperation) (Deninger 1995). Group contract farming is an alternative successfully tried in some parts of the country, though there have been failures as well. Gherkin, cotton, rose, and onion are a few successful examples of contract farming.

Land Use Pattern

Land use pattern is an outcome as well as determinant of land policy. Broadly, four important interventions were made to address land use in addition to the various components of land reform. First, the Soil Conservation Program was taken all over the country and a separate department was created to implement it. This was coupled with the Community Development Program, in order to improve the quality of land and stop land degradation. Second, Area Development Programs were taken up for the lagging regions in the country under DPAP and DDP. Third, these programs were dovetailed with the Intensive Agricultural District Program (IADP), Tribal Development Program (TDP), and special schemes for backward districts. During this phase, wasteland development activities also picked up as an outcome of the Area Development Programs. A Wasteland Development Authority was created at the Center. In the fourth phase, watershed development activities were initiated through the National Watershed Development Program (at times merging with the Soil Conservation Program) under the Ministry of Rural Development as well as through various funding agencies, including the World Bank, Danish International Development Agency (DANIDA), Department For International Development (DFID, UK), etc. All these land development programs had their own impact on land policy.

In the recent past, the Watershed Development Program essentially includes formation of watershed development committees and self-help groups which are different from the Panchayat Raj Institutions (PRI) structure. The funding agencies insist on these institutions. A conflict could arise between these institutions and the PRI structure that may emerge soon. Therefore, it would be essential to attach the Watershed Development Program to PRIs in order to bring sustainability to the program as well as the created institutions.

One important change taking place in the rural areas is the acquisition of land by noncultivating urbanites. Corporate bodies across the country have been purchasing and holding fertile land for nonagricultural purposes, including speculative purpose. If unchecked, this trend can have severe repercussions on agricultural growth. A related phenomenon is agricultural land being put to nonagricultural uses. These two problems could be tackled by providing an institutional alternative under the control of the state land use boards. Such arrangement can also monitor

the policy for use of common property resources. The present body on wasteland development can be merged with such a board, with the state land use board having monitoring and recommendatory powers.

In the debate on land ceiling on one side it is argued that ceiling limits do not provide for a viable land size for a family. This is buttressed by the argument that as there are no limits on investment in other sectors, why should an agriculturist face a restriction on increasing the size of holding. Economically viable size of holding is the crux of the present crisis. But given the present political and administrative climate in the country rolling back the Land Ceiling Act is not a viable policy option. It will certainly be detrimental to the growth of equity in the agricultural sector and may intensify distress. Where the efficiency of small and large farms is more or less equal, it is necessary to allow size of holding which can generate the investible capital in agriculture. This can be achieved through pooling the smaller holdings to form formal/informal groups of producers (cooperative or informal) and market their produce jointly, as argued above.

Problems, Policy Pointers, and Implementation

<i>Problem</i>	<i>Policy Pointers</i>	<i>Challenges in Implementation</i>
Land titles are presumptive and the record keeping is anachronistic. This gives rise to litigation, a great portion of it pending in various courts and tribunals.	<ul style="list-style-type: none"> • The State should guarantee a clear land title. Torrens System may be a helpful device. • Improve keeping of land records. The Planning Commission had appointed a committee for this a decade ago but nothing seems to have emerged. 	<ul style="list-style-type: none"> • Land records are maintained on old and fragile papers. • Implementation of a major long-term project to systematically clarify rights in land.
Land records are ill maintained, causing severe hardship to the farmers.	<ul style="list-style-type: none"> • Computerize land records. (The scheme has been taken up in selected districts.) 	<ul style="list-style-type: none"> • The operation is of a massive scale. • The present state of land records poses a further challenge. • Nonspecific nature of the entry of records creates a major hurdle. • The scheme will also be difficult to operate in some districts due to the condition of the land records.
Land records have become undependable, as the surveys were conducted long ago. The survey work is huge and needs enormous resources.	<ul style="list-style-type: none"> • Involve private institutions for land survey. GIS, supported by sample ground checking, provides the best option. 	<ul style="list-style-type: none"> • The funding.

<i>Problem</i>	<i>Policy Pointers</i>	<i>Challenges in Implementation</i>
<p>In many states tenancy is oral. The weaker partner (tenant/landowner) in the contract seldom gets the intended results. Concealed tenancy and reverse tenancy have become normal. These are more exploitative than earlier.</p>	<ul style="list-style-type: none"> • Legalize tenancy. • Compulsorily record tenancy. 	<ul style="list-style-type: none"> • The rural elite and dominant social groups can exploit legalization of tenancy market. • As the better-off farmers are moving out of rural areas, land control changes are taking place and that may cause difficulty in enforcing tenancy contracts.
<p>Landholdings are rapidly getting marginalized both in size and quality of land, adding to the existing stock of unviable and poor cultivators. The increasing cost of cultivation and predominance of cash component worsens their plight.</p>	<ul style="list-style-type: none"> • Revisit the Land Ceiling Act and locate economic holdings in different regions. • Take up land consolidation to combine fragmented holdings as formal or informal cooperative units. • Changes in the law of inheritance could also be considered. • Contract group farming with adequate credit is a better alternative if stimulated through homogeneous and contiguous groups. • Agricultural export zones will provide some impetus in this policy. 	<ul style="list-style-type: none"> • The hazard that rolling back the land ceiling may strengthen the land grabbers in the rural areas must be taken care of through legal means. • The contracts should help build a sustainable partnership.

<i>Problem</i>	<i>Policy Pointers</i>	<i>Challenges in Implementation</i>
Female cultivators have been neglected both due to legal impediments and social norms.	<ul style="list-style-type: none"> • Daughters should have right on the inherited property. • Surrender of such right to be registered in the presence of revenue officials. 	<ul style="list-style-type: none"> • Difficulties in passing a gender-sensitive legislation, as emerged in the Women's Representation bill, may feature here also.
Neglect and misuse of cultivable waste, other fallows, and public wastelands have been causing serious environmental problems.	<ul style="list-style-type: none"> • Give use rights (tenant rights/<i>pattas</i>) of such lands to the landless agricultural laborers, equipping them with know-how and a plan to use such lands economically. 	<ul style="list-style-type: none"> • The use of such lands must be environmentally sustainable and should not increase negative externalities.
Forest lands under legal ownership of the Forest Department are degrading alarmingly.	<ul style="list-style-type: none"> • Lease out these lands to landless agricultural workers interested in bringing them under use. • As suggested by various committees, tree <i>Pattas</i> (right to harvest the produce of the trees) could be granted to the forest dwellers. 	<ul style="list-style-type: none"> • Legal implications and environmental sustainability must be fully ascertained. The gains of this policy being usurped by the influential elite should be prevented.
Land-related laws are numerous and incohesive.	<ul style="list-style-type: none"> • Review the entire legal framework governing land. Five decades of legal expertise and case histories should help in designing the system. 	<ul style="list-style-type: none"> • Land relations differ widely across regions. That will need careful documentation before getting on to the policy.

<i>Problem</i>	<i>Policy Pointers</i>	<i>Challenges in Implementation</i>
Shrinking of agricultural land base and land being used for nonagricultural uses. Productive land is going out of agriculture. Noncultivators have acquired land in peri-urban and rural areas for speculative purposes.	<ul style="list-style-type: none"> • A difficult terrain, since any administrative fiat to prevent the farmer from changing the land use or transfer the land will impinge on his fundamental rights. 	
Land use boards at the state level have become toothless institutions.	<ul style="list-style-type: none"> • Strengthen them. Policy should be directed towards locating proper institutional framework to get these issues incorporated in a broader policy frame. 	

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