

# IMPROVING LAND ACCESS FOR INDIA'S RURAL POOR

A REVIEW OF PAST EFFORTS AND RECOMMENDATIONS FOR THE ROAD AHEAD

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## I. INTRODUCTION

India contains the largest numbers of both rural poor and landless households on the planet. And, the two are related. Landlessness is the best indicator of rural poverty in India, better than either caste or illiteracy.<sup>1</sup> Indian leaders have been well aware of the connection and the country has taken substantial policy and legislative steps to address the problem since Independence. Perhaps no country has matched the volume of land reform legislation produced by India since its independence in 1947. India's experience is yet another reminder, however, that adopting well-intended laws, by itself, does not guarantee good results. From the perspective of most rural poor, India's land reform laws have not had the desired effect; and some legislative provisions have resulted in perverse and unintended consequences. Today, India's poorest households still struggle for access to rural land and land tenure security.

The story of land reform in India need not end here, however. With relatively modest revisions, some of India's existing policies and laws can further their original intent of increasing the poor's access to rural land and providing for secure land tenure. Other areas require more drastic measures. Old land reform approaches, such as blind adherence to land ceiling legislation and tenancy reform, need reconsideration. Narrowly conceived and ineffective programs that ignore local realities must be terminated. The time has arrived for policymakers to take inventory of its land reform experience, distill lessons learned, and more innovatively use land laws, policies, and programs to broaden land access and strengthen land rights for the poorest and least empowered of India's poor. The "land route" is not the only route out of poverty, but in a country where landlessness is the best predictor of poverty, it is a route that cannot be ignored.

Land reform in India over the past 50 years was founded on legislatively driven efforts to provide the rural poor with access to agricultural land. Since Independence, most of the legislative energy to increase land access was funneled into three areas: the abolition of intermediaries, tenancy reform, and enactment of ceilings on land holdings. This paper is a summary review of those efforts and it attempts to distill some broad lessons that might inform possible policy paths ahead. The perspective is that of an outsider – a non-Indian land lawyer with comparative experience on land policy and law reform in many other countries who has also spent considerable time conducting field research on the topic in India.

The paper reviews India's efforts to provide the poor with access to rural land through the enactment of laws and policies to extinguish intermediary interests (section II), regulate tenancy relationships (section III), set ceilings on land holdings (section IV), allocate government wasteland (section V), and allocate house sites to the poor (section VI). For each, the paper examines the extent to which those laws have been successful in increasing land access, and makes an initial effort to distill lessons learned for moving ahead.

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<sup>1</sup>World Bank, INDIA: ACHIEVEMENTS AND CHALLENGES IN REDUCING POVERTY (A World Bank Country Study, 1997) at xiii-xiv.

## II. ABOLITION OF INTERMEDIARIES

The first wave of land reform legislation after India's independence concentrated on the abolition of intermediary land right holders between the tillers and the government. While these efforts are largely of historical significance, a summary review is warranted because the efforts provided a foundation for subsequent land reform initiatives and because they provide some broad lessons still applicable today.

At the time of Independence in 1947, Indian agricultural land was administered under three broad types of land tenure systems: the *zamindari* system, *ryotwari* system, and *mahalwari* system. The *zamindari* system was the most widespread, covering 57 percent of cultivated land in British India. Under this system, the British regime had declared feudal lords (*zamindars*, *jagirdars*, *talukdars*, etc.) and other persons previously designated as land tax collectors to be proprietors of the land. Although such persons (all of whom became generally referred to as *zamindars*) had not previously owned much or any of the land given to them, the British administrators dubbed them owners with permanent rights and contracted with them for the payment of land revenue (tax).<sup>2</sup> The empowerment of *zamindars* transformed the tillers of the land into tenants whose fortunes were dependent upon the wishes and whims of the *zamindars*.

The *zamindar's* estates ranged in size from a few acres to tens of thousands of acres.<sup>3</sup> Over time, the larger *zamindars* freed themselves from the burden of managing their estates and collecting rents from cultivators by leasing out the rent-collecting rights. In some areas, several layers - in some areas as many as 50 -- of intermediary rights separated the *zamindar* from the actual cultivator, with the *zamindars* seated at the top level, at the feet of the state.<sup>4</sup> At all levels, intermediaries gleaned their principal income from the monetary difference between the amount of rent they collected from the layer below and the rent they were obligated to provide to the layer above. The *zamindari* system of receiving rent through levels of legally recognized tenure holders was generally more developed in northern India than in south or central India. This system prevailed in Bengal, Uttar Pradesh, Bihar, Rajasthan, Bengal, and Orissa, and parts of Assam, Andhra Pradesh, and Madhya Pradesh.

The second broad type of land tenure system was the *ryotwari* system, which covered about 38 percent of cultivated land in British India. The *ryotwari* system prevailed in

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<sup>2</sup> In some areas, the amount of land revenue payable to the colonial administration was fixed in perpetuity. These areas were called Permanently Settled areas. In other areas, referred to as Temporarily Settled, the amount of land revenue payable was revised from time to time.

<sup>3</sup> P.S. Appu, 1966. LAND REFORMS IN INDIA (New Delhi: Vikas Publishing), p. 48.

<sup>4</sup> In Bengal, where subinfeudation was particularly rampant, as many as 50 levels of intermediary interests were found to have existed between the *zamindar* and the actual tiller. G. Kotosky, 1964. AGRARIAN REFORMS IN INDIA (New Delhi: People's Publishing House), at 19.

much of southern India including present-day Maharashtra, Karnataka, Tamil Nadu, as well as most of Andhra Pradesh and Madhya Pradesh and parts of Assam, Bihar, and Rajasthan. The *ryotwari* system recognized individual cultivators (*ryots* or *raiya*s) as proprietors of their land with generally recognized rights to sell, lease, mortgage, and otherwise transfer their land. The system did not legally recognize any kind of intermediary interest between the cultivator and the state; the proprietors paid land revenue directly to the colonial administration. Nonetheless, informal intermediaries of the *zamindari* type emerged even in areas where the *ryotwari* (and *mahalwari*) systems had strongholds. While some *raiya*s were owner-cultivators, many rented out part or all of their land to tenants, mostly sharecroppers.

Only approximately five percent of British India's cultivated land was administered under the third type of land tenure scheme, the *mahalwari* system. Under this system, land revenue was assigned to and paid by entire village units (*mahals*). Peasant farmers contributed shares of the total amount of land revenue owned by the village in proportion to their holdings. The *mahalwari* system existed in most of present-day Punjab and Haryana, as well as parts of Madhya Pradesh, Orissa, and Uttar Pradesh.

The existence of intermediary interests, particularly within the *zamindari* system, led to highly inefficient and inequitable results. British authorities had assumed that by giving the *zamindars* and other tax-collecting authorities proprietary rights and fixed tax amounts, efficient collaboration between landlords and tenants would surely follow. The authorities assumed that the *zamindars* would provide managerial expertise, technical knowledge, and capital, and the tenants would supply their labor -- a complementary relationship that would increase agricultural production and productivity. Such symmetry of contribution was never achieved on a large scale. Instead, "the sole concern of the parasitic groups of intermediaries was to extort the largest possible share of the produce of the land without making any contribution whatsoever to agricultural production."<sup>5</sup>

Initially, the colonial administration gave the *zamindars* free rein to manage their tenants as they pleased. As the British authorities began to recognize that many *zamindars* were mistreating tenants through practices such as rack-renting and summary evictions, they introduced various limited pieces of legislation, starting with the *Bengal Tenancy Act of 1885*, that gave some protection to certain categories of tenants. These efforts were inadequate to curtail the abuses. In particular, the laws offered little or no protection to tenants under *zamindar*'s self-managed or home farms<sup>6</sup> and those under the *ryotwari* system.

The abuses of the *zamindari* system attracted attention during the struggle for independence, and in the period immediately following Independence, as the country's

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<sup>5</sup> Appu, 1996, at 52.

<sup>6</sup> These home-farm lands of *zamindars* were known as *Sir*, *Khudkast*, *Nij-Jot*, *Nij-Chas* or other local names. While the *zamindars* provided some management oversight over these farms, they were typically cultivated by tenants or servants.

new leaders turned their attention toward land reform, they gave particular attention to the abolition of intermediary interests in land. The effectiveness of their efforts reflected the extent of discontent with the intermediary system. The injustices practiced by *zamindars*, coupled with their support of the British colonial administration, fueled the political will to undermine or eliminate intermediary rights to land.

The Indian Constitution, which grants states exclusive authority to enact land tenure legislation, provided a starting point.<sup>7</sup> Soon after assuming power, several state governments initiated action to extinguish intermediary interests. By the end of the 1950s, almost all states had enacted legislation aimed at abolishing intermediary interests upon the payment of compensation.

Results were mixed. On one hand, the legislation transformed some 20 to 25 million “superior” tenants into landowners or “government tenants” holding land directly under the government, placed large areas of privately owned forests and wasteland under state ownership, and altered the rural power structures. On the other hand, the laws to abolish intermediary interests fell well short of their potential because of the protracted nature of the legislative process, the shortcomings in the legislative content, the complex and time consuming procedures for implementation, and the role of the judiciary in frustrating the intent and implementation of the laws. The positive results and the shortcomings of the laws as a whole are discussed below.

### *Positive Results*

The laws to abolish intermediary interests brought an estimated 20 to 25 million erstwhile tenants into a direct relationship with the State, with many if not most of the beneficiaries in Uttar Pradesh and West Bengal.<sup>8</sup> The economic benefits realized by beneficiaries were somewhat limited for at least three reasons. First, many of the tenants who were brought into direct relationship with the state had already received some tenure security and rent regulation from tenancy laws enacted prior to Independence. Second, most of the state laws required the former tenants to make payments to the government for acquiring ownership rights (to offset the compensation paid by the government to the intermediaries). Third, most of the state laws obliged the beneficiaries to pay annual land revenue (tax) at an amount equal to what they had been paying the intermediary.

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<sup>7</sup> See *Constitution of India*, art. 246(3) and Seventh Schedule, List II(18). Despite the states’ exclusive jurisdiction to enact land reform legislation, the central government does play and has played an important guiding and consultative role in land policy and legislation, enabled in large part by the money it directs to the state for various rural development and poverty alleviation schemes.

<sup>8</sup> The National Planning Commission estimated that “more than 20 million tenants” were brought into direct relationship with the State. GOI Planning Commission, Third Five-Year Plan, chapter XIV (on land reform). Haque and Sirohi state that “nearly 20 million” cultivators were brought into direct contact with the government between 1950 and 1960. T. Haque and A. S. Sirohi, 1986. *AGRARIAN REFORM AND INSTITUTIONAL CHANGES IN INDIA*, at 30. P.S. Appu estimates that “about 25 million” former tenants were brought into direct relationship with the State. Appu, 1996, at 73.

The social and political gains to the beneficiaries were undoubtedly significant. The social and political powers of the intermediaries were greatly reduced, particularly in West Bengal, Jammu and Kashmir, Kerala, and the Telengana region of Andhra Pradesh.<sup>9</sup> The legislation significantly reduced forced labor, agrestic serfdom, and other forms of oppression prevalent in many parts of the country, and forced the *zamindars* to share power with the beneficiaries, their erstwhile “superior” tenants, most of whom belonged to the upper and middle castes. These beneficiaries gained increased social status and, more gradually, increased political power.

In addition to the social and political gains of beneficiaries, the abolition of intermediaries brought large areas of cultivable wasteland, forests, and *abadi* land (house plots and other land in villages) under state ownership. States subsequently distributed a considerable amount of this land to poor beneficiaries (see Section IV).

The legislation to abolish intermediaries also reduced the multiplicity of legal land tenures that previously existed and thus simplified and clarified land tenure law in most Indian states. Uttar Pradesh, for example, had some 40 types of legally recognized tenure types before the adoption of legislation to abolish intermediaries reduced the number of tenure types to three. Especially in a country with substantial illiteracy in rural areas, complexity of land tenure law tends to disfavor the poor; the more educated and well-off are more capable of understanding, using, and taking advantage of the law – to the disadvantage of those less capable, usually the poorest.

### *Shortcomings*

The legislative shortcomings resulted in harmful consequences and missed opportunities. Most significantly, the laws created the impetus for *zamindars* to evict substantial numbers of tenants forcibly. Employing legal and illegal methods, the *zamindars* were particularly successful at evicting “non-superior” tenants (including tenants-at-will, under-tenants, and sharecroppers), many of whom had farmed the land from which they were evicted for generations.

Substantial loopholes and flaws in the law allowed *zamindars* to accomplish much of these evictions through largely legal means. In every state, legislation permitted ex-intermediaries to retain their home-farms or “personally cultivated” land; only a handful of states placed a limit on the size of such home-farm land retained. The legislation loosely defined “personal cultivation” to include cultivation through sharecroppers, servants, and wage laborers. Most state laws even allowed the intermediary to evict tenants from land he had not been “personally cultivating” but now wished to “personally cultivate,” and the legislation allowed the ex-intermediaries to select the land they wanted to retain. Only West Bengal and Jammu & Kashmir simultaneously adopted land ceiling limits to restrict the total amount of land ex-intermediaries could own.

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<sup>9</sup> Haque & Sirohi, 1986, at 38.

The legislation protected the interests of ex-intermediaries and did little for their former tenants. Most significant, the laws purposefully did not confer rights upon tenants-at-will and sharecroppers. The combination of these and other shortcomings in the substance of the laws opened the door for ex-intermediaries to gain ownership over much or even all of the land for which they had an intermediary interest.<sup>10</sup> M.L. Dantwala, one of the foremost authorities on India's land reforms, estimates that more evictions occurred in the first ten years after Independence as a result of the laws to abolish intermediaries than occurred in the previous one hundred years.<sup>11</sup>

The lengthy processes of adopting and implementing the laws, coupled with administrative indifference and judicial delays, frequently allowed *zamindars* to use other illegal and extra-legal methods to evade the law including: (1) fictitious partition of properties; (2) influence of the village officials for manipulative changes in land records; and (3) registration of tenants as farm servants or wage laborers.<sup>12</sup>

The states generally compensated the ex-intermediaries more than adequately for the rights they did lose, at a substantial burden to the state exchequer. According to the National Planning Commission Report, the compensation paid to the lowest slab of ex-intermediaries reached as high as 15 to 30 times of their annual net income.<sup>13</sup> Frustratingly, most did not repay the favor: the ex-intermediaries were generally disinclined to invest their compensation in industry or other worthwhile economic activities.<sup>14</sup>

Finally, while state laws often granted tenants the right to purchase lands from willing landlords at set rates, these provisions had serious shortcomings that precluded any significant change in landownership patterns. Prices fixed for land were high, particularly given the limited nature of the landlord's rights, and installment payments spaced within too limited a period of time.<sup>15</sup> The end result: an opportunity for tenants to become owners slipped by.

In sum, the legislation abolishing intermediary rights gets mixed reviews. Most informed observers praise the beneficial impacts; the legislation reduced (and in cases entirely extinguished) the feudal nature of agrarian relationships in many parts of India. Observers also note that despite the deficiencies of the legislation, the states implemented this phase of India's land reforms more successfully than the land ceiling and tenancy reforms that were to follow. However, flawed legal provisions and less-than-effective

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<sup>10</sup> D. Thakur, 1989. *POLITICS OF LAND REFORM IN INDIA* (New Delhi: Commonwealth Publishers), at 58-59.

<sup>11</sup> *The Eastern Economist*, 3 January 1958, p. 59 cited in Thakur, 1989, *supra* note 10, at 58.

<sup>12</sup> Haque & Sirohi, 1986, at 39.

<sup>13</sup> GOI Planning Commission, *Report of the Panel on Land Reforms*, 1959, pp. 71-76 cited in B.K. Sinha & Pushpendra (eds.), *LAND REFORMS IN INDIA: AN UNFINISHED AGENDA*, 2000, at 32.

<sup>14</sup> Appu, 1996, at 79.

<sup>15</sup> Haque & Sirohi, 1986, at 40.

implementation resulted in obvious weaknesses that led to large-scale evictions and missed opportunities to protect and empower other tenants. This phase of India's land reforms would likely have better realized its objectives if the state governments had taken simultaneous steps to limit the size of home-farms and extend protection to the non-superior tenants, especially those on the home-farms.

The assessments of three international land reform experts who studied the impact of the intermediary abolition laws illustrate the mixed nature of the results. Daniel Thorner stresses the deprivation of land rights suffered by inferior tenants.<sup>16</sup> Gunnar Myrdal's assessment, in contrast, emphasizes the end of the reign of powerful intermediaries as semi-feudal chiefs, while acknowledging that inferior tenants drew essentially no benefits from the reform.<sup>17</sup> Finally, Wolf Ladejinsky observes:

Despite opposition and administrative and technical problems, the *zamindari* tenures were virtually abolished. Not all have been benefited equally and not all 20 million cultivators affected have received permanent, heritable, and transferable rights. Nevertheless the effort was a great step forward for reconstruction of Indian agriculture.<sup>18</sup>

#### *Lessons from Abolition of Intermediaries*

The legislation abolishing intermediaries is largely of historical significance and has limited relevance for current land policy reform dialogue. These reforms were introduced decades ago and whatever implementation that is to happen has largely happened. Devoting policy attention to these laws would be wasted effort; such policy attention is much more warranted on other topics such as tenancy reform. However, the design and implementation experience of these laws does provide a few general lessons that may be applicable in revising other types of land legislation:

- ***Provide adequate compensation to existing holders of land rights when extinguishing their rights.*** One important reason why abolition of intermediary laws were more fully implemented than land ceiling laws (See Section III, below) is that the former provided more compensation than the latter, which decreased resistance from those whose land rights were to be taken.
- ***Simplify land tenure types and land legislation generally.*** When land legislation is exceedingly complex and when land tenures recognized by laws are numerous, poor (and especially illiterate) people suffer. Such complexity can and often is

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<sup>16</sup> D. Thorner, 1956. *THE AGRARIAN PROSPECT IN INDIA* (New Delhi: Allied Publishers).

<sup>17</sup> G. Myrdal, 1968. *THE ASIAN DRAMA: AN INQUIRY INTO THE POVERTY OF NATIONS*, vol. II (Harmondsworth: Penguin).

<sup>18</sup> W. Ladejinsky, 1977. *AGRARIAN REFORM AS UNFINISHED BUSINESS: THE SELECTED PAPERS OF WOLF LADEJINSKY*, at 362.

exploited by those who can afford lawyers and by government officials charged with implementing laws that ordinary citizens cannot possibly understand. Intermediary abolition laws took simplification steps in the right direction, but some states continue to retain too many legally recognized tenure types. Most states could benefit from efforts to simplify and clarify land legislation.<sup>19</sup>

- ***Land law and policy reform can lead to beneficial social change that is at least as important as the direct economic benefits.*** Intermediary abolition legislation is a case in point. In considering land policy reform alternatives and their likely impacts, policy makers should consider the social and political impacts as well as the potential economic impacts.

### III. TENANCY REFORM

The abolition of most intermediary tenures brought the whole of India under a uniform tenurial system (albeit with some local variation) within the first decade after Independence.<sup>20</sup> The efforts to abolish intermediary interests did not, however, extinguish tenancy. Provisions in the abolition of intermediary laws intending to secure the right of tenants of ex-intermediaries were largely ineffective and, in some cases, counter-effective. Renting out of land was widespread in *ryotwari* and *mahalwari* areas even where no intermediaries existed. In *zamindari* areas, even the lowest level of legally recognized land right holders relied on sub-leasing land.

By the end of the 1950s, tenancy was ubiquitous and circumstances had converged to create a perfect storm that favored already powerful landlords at the expense of their tenants. Most tenancies were oral and terminable at will. Laws provided no (or virtually no) protection or even legal recognition of the most vulnerable tenants, including sharecroppers and tenants-at-will on ex-intermediaries' home farms. The relationships were ripe for legislative intervention.

#### *National Policy Framework on Agricultural Tenancy*

In the 1960s and 1970s, every Indian state passed tenancy reform legislation. As with their earlier efforts to abolish intermediaries, equity and efficiency concerns supplied the fuel for the tenancy reform. However, unlike the legislation to abolish intermediaries, policy guidelines from the central government strongly directed state tenancy legislation. As discussed below, the additional direction brought little additional success. Assessed against objectives, the results of tenancy reform laws were, with some exceptions, weak or even counterproductive. While the laws allowed tenants to acquire ownership or

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<sup>19</sup> Andhra Pradesh recently undertook such an exercise to create a relatively simple and well organized Land Revenue Code, which is in draft form.

<sup>20</sup> Appu, 1996, at 82.

owner-like rights to about five percent of India's land, the same laws led to the ejection of a much larger numbers of tenants.<sup>21</sup>

The national policy on tenancy reform evolved gradually over decades and is embodied in various policy documents issued by the National Planning Commission. The First Five-Year Plan (1951-1956), contained the first authoritative exposition of national tenancy reform policy and included four important guidelines. First, rent should not exceed one-fifth to one-fourth of the gross produce. Second, landowners should be allowed to evict tenants-at-will and bring under "personal cultivation" land up to a ceiling amount determined by each state. Third, tenants on the non-resumed land of "large landowners" should be given permanent and heritable rights to such land. Finally, tenants on the non-resumed land of "small and medium landowners" should be given 5-10 year rights.

The Second and Third Five-Year Plans essentially reiterated and tried to fine-tune the policy guidelines established in the First Plan. By the end of the Third Plan, virtually all states had adopted tenancy reform legislation that broadly followed the policy guidelines. In all the laws, "personal cultivation" was loosely defined to include cultivation of land without using the landowner's own labor or, in most cases, even their personal supervision. Landlords took full advantage of resuming previously tenanted land for "personal cultivation" up to the generous ceiling amounts. Many also engaged in actual or fictitious transfer in order to evade the resumption ceilings. The laws also permitted the voluntary surrender of tenancies, leading to numerous cases of tenancy surrenders under duress, but on paper shown as voluntary. Many laws left sharecroppers out of their purview altogether. Even in states that recognized sharecroppers as tenants, such sharecroppers faced an extremely difficult task of proving the existence of their tenancy. Most tenancies were oral and not entered into the land records maintained by the village-level functionaries of the state revenue departments.

The Fourth Five-Year Plan (1969-1974) noted that even after years of tenancy reforms, the objectives of the tenancy reform policies and laws had not been achieved. Since these efforts to mend tenancy had failed, the Fourth Plan called for ending tenancy. The Plan recommended that the states amend tenancy reform legislation to make all existing tenants owners of the land they had been cultivating upon payment of compensation and future tenancies should be prohibited (except for special cases such as widows, disabled persons, and active members of the armed forces).<sup>22</sup> Numerous states did amend their legislation. The problem of proving existing tenancies, however, continued. The primary consequence of the new policy and corresponding legislation was to push tenancies further underground.<sup>23</sup> The Fifth through Ninth Five-Year Plans largely reiterated the earlier policies, while noting the shortcomings in the laws and their inadequate implementation.

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<sup>21</sup> *Id.*

<sup>22</sup> N.C. Behuria, 1997. *LAND REFORMS LEGISLATION IN INDIA* (New Delhi: Vikas Publishing), at 7.

<sup>23</sup> Appu, 1996, at xxi.

The Tenth Five-Year Plan, formally adopted in December 2003, hints of a changing policy direction at the national level and does not reiterate the basic tenancy reform policies that had appeared in the previous nine Plans. In fact, the most recent Five-Year Plan not only explicitly acknowledges some of the problems with the earlier policies and related legislation, but suggests that a much different policy direction is needed. The Plan states that the ban on tenancy “has only ended up hurting the economic interests of the tenants as they are not even recognized as tenants” and thus “denied the benefits of laws that provide security of tenure and regulate rent.”<sup>24</sup> Further, the Plan states that the prohibition on tenancy “has not really ended the practice” but instead “has resulted in agricultural practices that are not conducive to increased production,” which “in turn, depresses employment opportunities for the landless agricultural laborers.”<sup>25</sup> This most recent authoritative national policy statement on tenancy reform concludes that a fresh look at tenancy laws is warranted<sup>26</sup> and that “one option could be to completely free tenancy laws of restrictive conditions.”<sup>27</sup>

#### *Key Legislative Provisions in State Tenancy Reform Laws*

As previously mentioned, all Indian states adopted legislation concerning agricultural tenancies in the 1960s or 1970s. Most of those laws were amended from time to time, partially in response to policy guidance from the national government articulated in the Five Year Plans. The key aspects of these laws relate to:

- Defining tenant
- Landlord’s right to resume tenanted land for personal cultivation
- Conferment of ownership rights on tenants
- Voluntary surrender of tenant’s rights by the tenant
- Prohibition of future tenancies
- Rent levels for those tenancies that are allowed
- Length of term for those tenancies that are allowed
- Tenants’ rights of pre-emptive purchase
- Public recording of tenancies

The aims and provisions of the tenancy laws are most properly analyzed by making a distinction between their affect on existing tenancies (at the time the law was adopted) and their affect on tenancies that might be created in the future. The initial inquiry is: what provisions addressed tenancy relationships that were existing at the time the laws were adopted and what was the impact of those provisions on those relationships? A separate inquiry should follow: what provisions are aimed at tenancy relationships that might be created in the future, after the law’s adoption? In general, when considering the ten key aspects listed above, the second through fourth aspects related most to tenancies

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<sup>24</sup> Government of India National Planning Commission, Tenth Five Year Plan, 2003., section 3.2.35

<sup>25</sup> *Id.*, § 3.2.73

<sup>26</sup> *Id.*, § 3.2.74

<sup>27</sup> *Id.*, § 3.2.75

that existed at the time of (or before) the law's adoption, and the fifth through ninth aspects relate mostly to tenancies that are to be created in the future.

### *Defining Tenant*

All state laws treated persons who cultivated the land of others upon the payment of a fixed rent (whether in cash or in kind) as tenants. At least initially, some states excluded sharecroppers from the definition of tenant and thus denied them legislative protections. In West Bengal, for example, the 1955 Land Reforms Act did not extend protection to sharecroppers until it was amended in 1970.

### *Landlord's Right to Resume Personal Cultivation of Tenanted Land*

The single largest legal loophole in the tenancy reform laws was probably the generous rights of resumption for "personal cultivation" granted landowners. Landowners took full advantage of the unfettered rights of resumption in most state laws, resulting in tenant evictions.

Two states distinguished themselves by limiting resumption rights. Upon the abolition of intermediaries in Uttar Pradesh and West Bengal, tenancy laws in those states prohibited landowners from resuming any tenanted land outside of their home-farms; the laws granted existing tenants on the non-home-farm lands permanent and heritable rights on that tenanted land.<sup>28</sup>

In all other states, tenancy reform laws permitted landowners to resume tenanted land for personal cultivation. As earlier mentioned, these states loosely defined "personal cultivation" to include cultivation through servants or laborers. No tenancy law mandated direct landowner supervision of the labor or residence in or near the village in which the land was located (although some laws adopted a residential requirement for at least one family member). Only the state laws of Manipur and Tripura (later) required the input of at least some personal labor in cultivating resumed land. In short, the "personal cultivation" provision presented no barrier to resumption; even absentee landowners easily satisfied the requirement.

In some states (Gujarat, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Karnataka, Orissa, and Rajasthan), the laws permitted landowners to exercise their right of resumption only within a specified time period after the legislation had been adopted. In these states, this time period has now passed. Other states allow a continuing right of resumption on at least some land (Assam, Bihar, Haryana, Punjab, Tamil Nadu, and West Bengal).

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<sup>28</sup> As discussed above, however, sharecroppers in West Bengal were not treated as tenants, so the landlords were legally permitted to resume all land cultivated by sharecroppers. In West Bengal in 1977, the landlords' rights to resume sharecropped land for personal cultivation were limited to a maximum of three hectares with a further restriction that no sharecropper could be left with less than one hectare after such resumption.

The amount of land that can be resumed for personal cultivation varied from state to state. All states placed some ceiling on the amount of land that could be resumed. In some states, this ceiling for resuming personal cultivation of tenanted land was the same as the ceiling for the total amount of land that could be owned (see discussion on landownership ceilings in Section I (C)). In other states, it was lower. Because the landowner could select the tenanted land to be resumed for personal cultivation, he could (and often did) at least threaten — if not evict — his tenants, fostering insecurity among all tenants.

The law in several states provides that a minimum area of land must be left with the tenant after the landlord exercised his right of resumption for personal cultivation. In Kerala, Orissa, Gujarat, Himachel Pradesh, Maharashtra, Karnataka and Tamil Nadu, the law states that half of the tenanted land must be left with the tenant. In Bihar, half the area tenanted or five acres, whichever is less, must remain with the tenant if the landlord owns land in excess of the ceiling area. Landowners in West Bengal must leave one hectare or all the tenanted area, whichever is less, with the tenant. In Assam, Punjab and Haryana, landowners must leave a specified minimum area of land with the tenants until the government allots other land to them.

#### *Conferment of Ownership Rights on Tenants*

Most state laws confer ownership on existing tenants who remained on non-resumable tenanted land. Exceptions include:

- Tenancy laws of Tamil Nadu and the Andhra area of Andhra Pradesh include no provisions for conferring rights of ownership on tenants;
- In Bihar, Punjab, and Haryana, tenants of landlords who own land below the ceiling limit (virtually all) are not entitled to ownership rights on the tenanted lands;
- In Rajasthan, tenants whose tenancy contracts started after 1961 are not entitled to ownership; and
- In Uttar Pradesh and West Bengal, sharecroppers are not entitled to receive ownership rights.

All other state laws include provisions to confer ownership rights to tenants on non-resumable land. The approaches vary. Some states deem eligible tenants to be owners, their ownership becoming final on payment of the price established by the government (which is typically paid to the government rather than directly to the landlord). Other states assumed ownership of eligible tenanted land by paying compensation to the landlord, and subsequently transferring rights to tenants based on their application and payment, which may or may not equal the amount paid to the landlord.

### *Voluntary Surrender by Tenants*

“Voluntary” surrenders of tenancy rights by tenants have frustrated the objectives of tenancy reform. Many landlords have repossessed even their non-resumable land by “persuading” their tenant(s) to give up their tenancy rights “voluntarily.” Once such coercive tactics became widely recognized (and probably after most forced surrenders), the National Planning Commission recommended that states amend their legislation to protect against coercion by requiring that revenue department officials verify tenant surrenders, prohibiting landowners from taking possession of land in excess of the resumption limits even if voluntarily surrendered, and (later) assuming state ownership of voluntarily surrendered land.

Most states responded to the central policy recommendations by amending their laws. All state laws now provide for revenue department authorities to verify that surrenders are bona fide, except for Haryana, Punjab, Rajasthan, Tamil Nadu, and Uttar Pradesh. Some state laws (including Gujarat, Himachal Pradesh, Karnataka, Kerala, and Tripura) call for the government — rather than the landlord — to take ownership of land voluntarily surrendered by the tenant.

### *Prohibition of Agricultural Tenancies*

Whether states would permit the creation of future tenancies was perhaps the most controversial aspect of tenancy laws. Heated debates resulted in provisions that fall into four broad categories.<sup>29</sup>

- **Complete prohibition.** The laws in two states (Kerala and Jammu & Kashmir) place a virtual or absolute prohibition on the creation of agricultural tenancies.
- **General prohibition/limited leasing.** The laws in eight states -- Andhra Pradesh (Telengana area), Karnataka, Madhya Pradesh, West Bengal, Bihar, Himachal Pradesh, Uttar Pradesh, and Orissa -- are characterized by a general prohibition on future tenancies combined with an allowance of leasing by certain defined categories of landowners and/or under certain other conditions. In some cases, the legal effect of such general prohibitions is fairly limited because the exceptions are very broad. For example, in the Telangana area of Andhra Pradesh, landowners who own less than three times a “family holding” may lease out land.<sup>30</sup> This includes at least 95 percent of all landowners in Andhra Pradesh.<sup>31</sup> In other states, the exceptions are much more narrowly defined. For

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<sup>29</sup> This categorization is a variation of one developed by Dr. T. Haque. See T. Haque, 2001. *Impact of Tenancy Reforms on Productivity Improvement and Socio-economic Status of Poor Tenants*, NCAP Policy Paper 13.

<sup>30</sup> The Andhra Pradesh law covering the Telangana Area also allows leasing out by minors, females, persons with physical and mental infirmity, and members of the armed forces.

<sup>31</sup> Three times a family holding is approximately six acres of the best quality irrigated land or up to 24 acres of non-irrigated land. Ninety-five percent of all rural landowners in Andhra Pradesh own less than five

example, Karnataka's legislation only allows soldiers and sailors to lease out their land. Most other states that have a general prohibition combined with defined exceptions fall between these two extremes; although they tend to be more similar to Karnataka, only allowing additional exceptions for minors, widows, unmarried women, female divorcees, physically disabled, imprisoned, and/or students. Madhya Pradesh and West Bengal are unique. Madhya Pradesh's exceptions to its general prohibition on leasing include a provision allowing any landowner to lease out their land for at least one year during a consecutive three-year period. West Bengal does not allow fixed-rent tenancies, but does allow sharecropping (although, because the law gives permanent rights to such sharecroppers, it creates a powerful chilling effect on the creation of future sharecropping relationships).

- **Permissible leasing with ownership potential.** Five states permit leasing, but with a stipulation that the tenant acquires a right of ownership or a right to purchase ownership after some specified period. These states include Assam, Gujarat, Haryana, Maharashtra, and Punjab. The time period ranges from one year in Gujarat and Maharashtra to six years in Haryana and Punjab.
- **No prohibitions on leasing.** Three states place virtually no prohibitions on leasing. These include the Andhra area of Andhra Pradesh, Rajasthan, and Tamil Nadu. Even in these states, however, provisions on maximum rent, minimum length of term, and tenants' rights to purchase land can have the effect of preventing landowners from renting out their land or pushing tenancies "underground."

### *Regulation of Rent*

Nearly all state laws include provisions designed to limit the amount of rent payable by those tenants who are legally permitted. These maximum rent levels are stated in terms of a multiple of land revenue (tax) or an amount equivalent to a portion of the gross produce. The maximum rent levels are typically well below prevailing market rents and have proven difficult if not impossible to enforce in nearly all states where they exist. Perhaps most importantly, since most agricultural tenants in India remain concealed and thus with little or no tenure security, any effort by them to enforce legal "maximum rent" provisions is likely to result in eviction.

### *Length of Term*

Certain states have prescribed minimum periods for allowable tenancies. Andhra Pradesh's prescribes a five-year minimum for the Telengana area and a six-year minimum (renewable) for the Andhra area. Punjab establishes a three-year minimum.

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acres of land (73 percent own less than 2.5 acres). NATIONAL INSTITUTE OF RURAL DEVELOPMENT, INDIA RURAL DEVELOPMENT REPORT 1999, table 3.3, p. 34.

### *Right of Pre-emptive Purchase*

A right of pre-emptive purchase means that before a landlord chooses to sell the tenanted land to a third party, he must give the tenant the opportunity to purchase the land. The laws in at least five states (Andhra area of Andhra Pradesh, Haryana, Maharashtra, Punjab, and West Bengal) give tenants a continuing right of pre-emptive purchase.

### *Land Records*

Accurate and current records of existing tenancies is a pre-requisite for the effective implementation of tenancy reform policies. Numerous state laws (including Gujarat, Haryana, Himachel Pradesh, Jammu & Kashmir, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Uttar Pradesh, and West Bengal) call for including the names of tenants in land revenue records. Except West Bengal, no state has effectively implemented such a provision. In other states, the names of tenants are seldom recorded, and in many cases the omission is a result of tenant insistence in the face of possible eviction. Even where tenants attempt to record their names, the revenue department functionaries often act in collusion with the landowners and refuse to make such entries.<sup>32</sup>

### *Extent and Impact of Tenancy Reform Law Implementation*

The state tenancy reform laws contain prominent defects and sizeable loopholes that have limited their potential reach. Half-conceived, often lackluster implementation methods led to even wider gaps between the declared objectives of the tenancy reform policy and law and their actual achievements in the field.

According to Government of India statistics, by the end of 2002, 12.4 million tenants on 15.6 million acres of land had benefited by either having ownership rights conferred upon them or otherwise having their rights protected.<sup>33</sup> (See Table 1 below.) This comprises approximately 12 percent of all agricultural households and about 4.5 percent of India's cultivated land.<sup>34</sup> Eighty-one percent of these reported tenancy reform beneficiaries are concentrated in five states -- Assam,<sup>35</sup> Gujarat, Kerala, Maharashtra, and West Bengal.<sup>36</sup>

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<sup>32</sup> Appu, 1996, at 102-103.

<sup>33</sup> Government of India Ministry of Rural Development, ANNUAL REPORT 2002-2003, Annexure XXXVI.

<sup>34</sup> The Government of India reports that India's net sown area, in 2000, was 348.9 million acres. Government of India, Ministry of Agriculture. This information was derived from India Census 2001 and the FAOSTAT website ([www.apps.fao.org](http://www.apps.fao.org)). The India Census 2001 provided the information used to determine the average number of household members per rural household ((rural population: 741,660,293) ÷ (rural households: 138,271,59) = 5.36). FAOSTAT provided information used to determine the number of agricultural households ((total agricultural population in 2000: 545,722,000) ÷ (5.36 members per rural household) = 101,813,806 agricultural households.

<sup>35</sup> P.S. Appu raises serious questions about the validity of Assam's reported number of tenancy reform beneficiaries. Assam claims 2.9 million tenancy reform beneficiaries, more than any other state. Appu, 1996, at 109-110.

<sup>36</sup> In West Bengal, all tenancy reform beneficiaries are sharecroppers (*bargadars*) who have received permanent, heritable rights at a regulated share rent, but not ownership.

Another 17 percent of the reported tenancy reform beneficiaries are in four additional states -- Himachel Pradesh, Jammu & Kashmir, Karnataka, and Tamil Nadu. Significantly, government statistics indicate that tenancy reforms did not confer ownership rights on -- or protect the rights of -- any tenants in Bihar, Madhya Pradesh, Rajasthan, or Uttar Pradesh.

**TABLE 1: NUMBER OF TENANTS CONFERRED OWNERSHIP RIGHTS (OR RIGHTS PROTECTED) AND AREA ACCRUED TO THEM (AS OF 31 DEC 2002)**

SL. NO	STATE	NO. TENANTS (IN THOUSANDS)	AREA ACCRUED (THOUSANDS OF ACRES)
1.	Andhra Pradesh	107	595
2.	Arunachal Pradesh	Tenancy not reported	
3.	Assam	2,908	3,175
4.	Bihar <sup>1</sup>	NR	NR
5.	Gujarat	1,276	2,592
6.	Goa	NR	NR
7.	Haryana	Tenancy not reported	
8.	Himachal Pradesh	401	NR
9.	Jammu and Kashmir	610	NR
10.	Karnataka	605	2,632
11.	Kerala	2,842	1,450
12.	Madhya Pradesh <sup>2</sup>	Tenancy not reported	
13.	Maharashtra	1,492	4,290
14.	Manipur	NR	NR
15.	Meghalaya	Nil	Nil
16.	Mizoram	Nil	Nil
17.	Nagaland	NR	NR
18.	Orissa	165	98
19.	Punjab	NR	NR
20.	Rajasthan	18	NR
21.	Sikkim	NR	NR
22.	Tamil Nadu	498	695
23.	Tripura	14	39
24.	Uttar Pradesh <sup>3</sup>	NR	NR
25.	West Bengal	1,460	1,100
<u>Union Territories</u>			
26.	A.N. Islands	Nil	Nil
27.	Chandigarh	NR	NR
28.	D&N Haveli	26	64
29.	Delhi	NR	NR
30.	Daman and Diu	NR	NR
31.	Lakshadweep	Neg	Neg
32.	Pondicherry	Neg	Neg
	<b>All India:</b>	<b>12,422</b>	<b>15,630</b>

NR Not reported.

<sup>1</sup> Including Jharkhand

<sup>2</sup> Including Chhattisgarh

<sup>3</sup> Including Uttaranchal

Source: Government of India, Ministry of Rural Development Annual Report 2002-2003.

The numbers of households benefiting from tenancy reform legislation is significant. Despite the numerous defects and loopholes in the law and the less-than-serious manner in which the laws were implemented in many settings, they did provide real benefits to a substantial number of households.

A complete picture, however, must also include those negatively impacted. Those negatively impacted by tenancy can be divided into two broad categories: (1) tenants who were evicted as a result of the laws; and (2) potential tenants who desire to but cannot access land through tenancy because of ongoing legal restrictions. Throughout India, tenancy reform was the impetus for the large-scale ejection of tenants. No accurate data is available on the number of evicted tenants, but reasonable estimates are possible. After extensive study of historical data and reports, P.S. Appu estimates that at the time of Independence, at least one-half of India's cultivated land was tenanted. At present, government data from the National Sample Survey shows that 8.3 percent of India's total operated area is tenanted.<sup>37</sup> Making allowances for the fact that NSS data do not reflect fully the extent of concealed tenancies, the total estimated amount of tenanted area does not exceed 17 percent.<sup>38</sup> Thus, tenants operated at least 50 percent of the operated area at the time of Independence and not more than 17 percent now, meaning that tenant families have been deprived of approximately 33 percent of the operated area. Not all of those tenants who lost access to land did so as a direct result of the tenancy reform legislation. Arguably, however, such legislation, coupled with the laws to abolish intermediaries, was the major cause.

In addition to causing active dispossession of tenants through evictions, tenancy laws have, in some cases, led to passive dispossession because they prevent poor farmers from accessing land through tenancy. How many rural households are denied access to land through tenancy because of the ongoing legal restrictions should be carefully explored through rigorous field research. Less systematic field research has certainly found a multitude of inhibiting impacts.

- The legislative restrictions and provisions that aim to provide ownership or other premium rights to tenants in reality cause some land holders to lease out less land than they otherwise would, resulting in decreased land access for poor (and other) households who desire to rent-in.

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<sup>37</sup> This is a 1992 figure. The corresponding NSS percentages for 1972 and 1982 are 10.6 percent and 7.2 percent.

<sup>38</sup> Two major sources of data exist in India on agricultural tenancy: the Agricultural Census and the National Sample Survey Organization (NSSO). The tenancy estimates of the Agricultural Census are based on land records. It is widely known and understood, however, that most tenancies in India are informal and not reflected in the land records, so the Agricultural Census data on tenancy is unreliable. The National Sample Survey includes questions about tenancy for its sample and thus collects the information directly from households rather than from official records. The NSSO data on tenancy is considered much more reliable than the Agricultural Census data, but it is still acknowledged to under-report tenancy because both landlords and tenants have incentives to conceal tenancy where it is illegal, restricted, and/or confers rights upon tenants.

- When landowners do decide to lease out land, despite restrictive legal provisions, they establish informal and concealed tenancies, thereby leaving tenants with no legal protection.
- Broad restrictions on tenancy may also deny women and other marginalized groups a reasonable means of safeguarding land access. In many cases, male relatives may usurp land owned by women. Where such practices exist, women's land tenure security may be best served through long-term lease arrangements to her male relatives. In addition, groups of women have often found leasing to be a useful tool for accessing land.<sup>39</sup>
- In some cases, the restrictions have encouraged the under-utilization of land by landowners who are unwilling or unable to cultivate their land but fear losing their land if they rent it out.

#### *TENANCY REFORM RECOMMENDATIONS*

Tenancy reform is a topic that deserves high priority in India's land policy reform agenda. Throughout much of the 20<sup>th</sup> Century, tenancy in India (as in many parts of the developing world) was cast in the role of an exploitative institution and charged with negatively impacting socially optimal equity and productivity outcomes. Ascribing tenancy as exploitative in pre- and immediately post-Independence was understandable. In an agrarian setting characterized by strict social and economic hierarchy and where overwhelming numbers of rural poor lacked access to land and any other economic opportunity, tenants had little bargaining power and many landlords exploited their positions of social and economic privilege.

Since the enactment of the legislation, a broader consensus in the economic literature has emerged that concludes land rental markets in general – and sharecropping relationships in particular – can play a substantial role in increasing land access for the poor. Rental markets can supply a critical rung on the “agricultural ladder” toward land ownership, particularly as growing economic opportunity (especially non-agricultural) and sociopolitical advancements begin to remove feudal-like vestiges and improve the bargaining position of poor tenants.<sup>40</sup> Both land sales and land rental markets are capable of enhancing transfers of land from land-rich to land-poor households. Of the two, theory and empirical evidence indicate that the rental market supplies the more

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<sup>39</sup> The Deccan Development Society in Andhra Pradesh, which has supported groups of poor women in their efforts to access land through tenancy, relies on mutually beneficial tenancy terms that do not comply with legislative restrictions.

<sup>40</sup> See generally, World Bank (Deininger), 2003, at 84-93; Susanna Lastarria-Cornhiel and Jolyne Melmed-Sanjak, 1998. *Land Tenancy in Asia, Africa and Latin America: A Look at the Past and a View to the Future* (Draft Report for the Food and Agriculture Organization of the United Nations, May 1998).

effective conduit.<sup>41</sup> Land ownership remains desirable and conveys greater benefits (particularly concerning credit access, tenure security, and wealth), but access to land via land rental is often a local, first-best alternative to land ownership when the pre-conditions for the efficient and equitable functioning of land sale markets are absent.

Land tenancy markets can also reduce the vulnerability of poor households by offering a more stable livelihood source than frequently volatile and imperfect labor markets.<sup>42</sup> As opportunities in the non-farm economy increase, tenancy markets can facilitate a broader choice of livelihood opportunities such as migration, specialization, and investment. Households better suited to pursue non-farm livelihoods will be benefited if they are able to rent out their land for others to cultivate. Looking to other countries, China's experience indicates that in a growing economy, the role of land tenancy will expand and increase incomes for all.<sup>43</sup> Other research teaches that rental markets have more potential for providing access to the poor in settings where agriculture is not capital-intensive.<sup>44</sup>

In India today, land rental markets play an important but probably under-utilized role in providing land access for the poor. As a consequence of tenancy restrictions and protections, landowners who rent-out must select tenants they trust not to reveal the relationship or assert their rights. Thus, it is generally considered that, all things being equal, larger farmers (who qualify for tenancy protections or because they belong to the same socio-economic class as the landowner) present lesser risks as tenants. If true, then liberalizing the tenancy markets could provide proportionally greater access to the poor.

The author of this report, although quite sympathetic with the pro-poor agenda objectives of those who promote continued or even stronger tenancy regulation/restriction, has seen more and more evidence and become increasingly convinced that much of the current tenancy legislation in India operates to restrict livelihood opportunities for the poor.

For example, in a recent survey of 400 rural households in Karnataka, the authors found:

- 91 percent of respondents answering definitively state that the existing tenancy restrictions harm landowners.
- 94 percent of respondents answering definitively state that existing tenancy restrictions harm the landless.

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<sup>41</sup> Elisabeth Sadoulet, et al., 2001. *Access to Land via Rental Markets*, in de Janvry et al (eds), *ACCESS TO LAND, RURAL POVERTY, AND PUBLIC ACTION* (Oxford: Oxford University Press).

<sup>42</sup> World Bank (Deininger), 2003, at 85-86. Land tenancy markets serve an important function in equalizing returns to non-tradable factors of production, such as family labour and bullocks in India. If the distribution of the surplus is not too skewed between landlord and tenant, rental will have an important positive impact on equity. E. Skoufias, 1991. *Land Tenancy and Rural Factor Market Imperfections Revisited*, *JOURNAL OF ECONOMIC DEVELOPMENT* 16(1): 37-55.

<sup>43</sup> M. R. Carter, Y. Yao, and K. Deininger, 2002. *Land Rental Markets Under Risk: A Conceptual Model for China*, (University of Wisconsin, Madison).

<sup>44</sup> Sadoulet, 2001, at 217-218.

- 38 percent of respondents answering definitively report that at least one farmer in their village keeps land fallow rather than renting it out because renting may lead to the loss of such land.
- 45 percent of respondents answering definitively state that tenancy prohibitions should be lifted.<sup>45</sup>

In the course of ongoing rapid rural appraisal research in various states, the author generally finds that:

- Knowledge of the specific tenancy reform provisions in law is low, but most rural households recognize that landowners risk losing some (often substantial) rights to their land when they rent it out. Thus, when land is rented, it is given to people who can be trusted not to assert rights and, for an extra measure of protection, those tenants are typically rotated, often every year.
- Although tenancy reform laws are rarely implemented, they often play a major role in landowner decisions about renting out land and lead to less active rental markets than would otherwise be expected and to some sub-optimal utilization of land.
- Land-poor households almost always wish that more land was available for rental.<sup>46</sup> They do not fear exploitive landlord practices near as much as they fear not being able to access land to improve their livelihoods.

A recent, more systematic economic study provides strong empirical support that tenancy restrictions in India result in decreased land access by both the landless and more efficient producers.<sup>47</sup> The study's findings suggest that lifting such tenancy restrictions would lead to increased land access and income for many poor and landless families and increase agricultural productivity.

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<sup>45</sup> This is surprisingly low given that a great majority of respondents report that the restrictions harm both landowners and the landless, and given that 38% of respondents report that such restrictions cause landowners in their village to keep land fallow. The apparent discrepancy can perhaps be explained because some (or most?) respondents assume that lifting the restrictions on tenancy also means that those registered occupants who directly benefited at the time of land reforms implementation will lose their benefits.

<sup>46</sup> An anecdote: In Uttar Pradesh, where share-cropping is a common livelihood strategy of poor households, we have conducted interviews on land reform and land market issues in four districts. Our questions included inquiries about the respondents' knowledge of existing legislative restrictions on tenancy. On several occasions in one district, we were implored by poor sharecroppers not to ask such questions to landlords in their village. They explained that several years earlier after another research team visited their region, a rumor started that the state government was going to provide much greater protections to sharecroppers. As a result, many of the landlords in the village stopped giving out their land for sharecrop and the sharecroppers suffered. These very poor sharecroppers recognized that even rumors about policy measures to protect sharecroppers can have unintended, negative consequences.

<sup>47</sup> K. Deininger, S. Jin & H.K. Nagarajan, 2005, *Equity and efficiency impacts of rural land rental markets: Evidence from India* (paper prepared for January 2006 India land policy conference).

Liberalizing or removing tenancy reform legislation is a controversial issue in India. Many policymakers lack a balanced understanding of the tradeoffs and make ill-informed assumptions that the existing legislation protects the poor. They are unfamiliar with the potential that liberalization of tenancy restrictions has to benefit the poor, and they lack a pressing reason to alter their settled thinking on the subject.

In the present policy dialogue on this topic, there is an overpowering tendency to view the tenancy debate within the twin context of the need to attract investment into agriculture and to facilitate a smooth process of land transaction during economic transformation without relying upon land sale markets. Particularly in government circles,<sup>48</sup> a view that enhanced investment will cure agricultural backwardness dominates. Those promoting liberalization of tenancy restrictions often connect the desired liberalization to increased investment by (and benefits accruing to) large farmers or agri-business concerns, a connection that generates understandable resistance from those representing the interests of marginal/small farmers and agricultural laborers.

### *Recommendations on Legislative Change*

In general, Indian states should consider amending tenancy legislation to better meet (and, in some cases balance) equity and efficiency objectives. The basic aim should be two-fold. First, consolidate the benefits of past tenancy reform by converting “protected,” “registered,” or “occupancy” tenants into owners. Second, liberalize ongoing tenancy prohibitions and excessive tenant “protections.”

The specific content of these amendments will differ from state to state and should be informed by the results of rigorous field research. In general, however, we recommend the following guidelines for policy and legislative changes:

- ***In settings where past tenancy reform beneficiaries are not full owners, states should consider converting them into owners.***<sup>49</sup> This will require legislative changes that will differ from state to state. In West Bengal for example -- the state with the largest number of tenancy reform beneficiaries (*bargadars*) -- the law could be improved by giving *bargadars* a unilateral right to become owners by “buying out” the landlord for a government-determined sum, by providing for a streamlined voluntary transaction process, and/or by activating the financing mechanism for *bargadar* purchases of *barga* land that is already contemplated by the Land Reform Act.<sup>50</sup>

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<sup>48</sup> GOI, *Policy Relating to Sharecropping and Leasing*, Department of Rural Development, December 1997; and GOI, *Concept Note on Legalising Leasing of Agricultural Land*, Prime Minister’s Office, July 1999.

<sup>49</sup> In cases where the landlords still retain some rights to this land, providing ownership rights to the tenant should involve compensation to the landlord.

<sup>50</sup> See T. Hanstad & R. Nielsen, 2004. *From Sharecroppers to Landowners: Paving the Way for West Bengal’s Bargadars*, RDI REPORT NO. 121 ([www.rdiland.org/PDF/PDF\\_Reports/RDI\\_121.pdf](http://www.rdiland.org/PDF/PDF_Reports/RDI_121.pdf)).

- ***In settings where tenancy is now prohibited, states should consider amending the legislation to legally recognize tenancy while incorporating enforceable provisions that balance the interests of the tenants and landlords.*** The drafting of these provisions balancing the interests of tenants and landlords should, as always, be informed by rigorous field research. They might include stipulations that:

Tenancy agreements be in writing, using a mandatory, standardized form that forces the parties to clearly state the rent amount, the length, and other important terms of the lease;

Guarantee the tenant exclusive possession of the tenanted land for the duration of their agreement, but without maximum rent payments or minimum length of terms that deviate significantly from those prevailing in practice (otherwise they become unenforceable);

Clearly state that new tenants will not be given any long-term or hereditary rights to land beyond that contained in the written agreement between tenant and landlord; and

In settings where there are fears that liberalizing leasing will result in excessive land concentration and further limit opportunities for the land-poor, states might consider: (1) revising land ceilings to include owned and rented-in land; or (at least initially) (2) limiting lessees to those owning less than a prescribed amount of land.<sup>51</sup>

- ***In settings where tenancy is allowed, but subject to maximum rent levels and/or a minimum lease term, states should consider amending the legislation to remove the maximum rents and minimum length terms. If that is not politically feasible, the states should revise the maximum rent levels and/or minimum lease terms to reflect more accurately what is reasonable and enforceable.*** The Central Government's recommended policy for limiting rents to 20-25 percent of the produce (and "slightly more" if the inputs are provided by the owner) is well below prevailing market rents throughout India and therefore difficult or impossible to enforce. One reason that West Bengal succeeded in implementing tenancy reform is because its legislation provided that the landlord shall receive 50 percent of the produce (when the landlord provided inputs). The reasonableness of the percentage assigned landlords made implementation feasible, while still improving the position of the tenants (*bargadars*).

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<sup>51</sup> Policy makers, however, should recognize that such provisions will be difficult to implement and the costs and/or likelihood of implementation should be seriously balanced against the likely benefits to be accrued.

#### IV. AGRICULTURAL LANDOWNERSHIP CEILINGS

All Indian states have adopted legislation that places ceilings on the amount of agricultural land a person or family can own, with the objective of redistributing land in excess of the ceiling to poor, landless, or marginal farmers. The ceiling laws were enacted and enforced in two phases: (1) the period from 1960 to 1972, when no specific policy guidelines were present; and (2) the period since 1972, after the adoption of national policy guidelines. The end result is that approximately 5.4 million of acres of land have been redistributed to 5.6 million beneficiary households (see Table 2, below). West Bengal accounts for 20 percent of that redistributed land and 47 percent of the ceiling-surplus beneficiaries.

**TABLE 2: STATE-WISE DISTRIBUTION OF CEILING SURPLUS LAND  
(AS OF 31<sup>ST</sup> MARCH, 2002)**

(Area in thousands of acres)

S. No.	States/Uts	Area Declared surplus	Area Taken possession benef.	Area Distributed to indiv.	Total No. of benef. (,000s)
1	2	3	4	5	6
1	Andhra Pradesh	799.66	641.66	582.32	540.34
2	Assam	613.40	575.38	545.87	445.85
3	Bihar	415.45	390.75	306.96	379.53
4	Gujarat	227.40	160.80	139.85	32.31
5	Haryana	107.49	103.02	102.12	29.23
6	Himachal Pradesh	316.56	304.90	6.17	6.26
7	Jammu & Kashmir	455.58	450.00	450.00	450.00
8	Karnataka	268.48	161.83	123.20	33.61
9	Kerala	141.43	96.85	68.75	166.81
10	Madhya Pradesh	298.76	260.32	186.94	74.71
11	Maharashtra	740.00	670.45	642.84	140.85
12	Manipur	1.83	1.69	1.68	1.26
13	Orissa	179.18	167.25	156.95	139.60
14	Punjab	223.12	105.83	104.23	28.57
15	Rajasthan	611.10	569.21	461.85	81.81
16	Tamil Nadu	200.92	191.63	181.30	143.68
17	Tripura	2.00	1.94	1.60	1.42
18	Uttar Pradesh	374.13	341.46	258.70	294.06
19	West Bengal	1,383.85	1,294.74	1,064.04	2,651.62
20	D&N Haveli	9.41	9.31	6.85	3.35
21	Delhi	1.13	0.39	0.39	0.65
22	Pondicherry	2.33	1.21	1.07	1.46
	<b>TOTAL</b>	<b>7,376.18</b>	<b>6,504.62</b>	<b>5,398.68</b>	<b>5,652.99</b>

*Source: Government of India, Ministry of Rural Development*

The policy of imposing landownership ceilings evolved slowly after Independence, and, in general, enjoyed less consensus than land tenancy reforms. In a draft outline of the First Five-Year Plan in 1951, the National Planning Commission identified the preponderance of small, “uneconomic” holdings as the greatest handicap to increasing agricultural production and rejected the idea of imposing ceilings on large holdings outright.<sup>52</sup> Starting in 1957, the Second Five-Year Plan recommended the imposition of

<sup>52</sup> Appu notes that the Planning Commission ignored the ground realities that the so-called large farms were not compact areas of contiguous land owned by individual farmers, but more often an assortment of parcels

a ceiling on agricultural holdings. In 1959, the Indian National Congress passed a resolution urging states to enact ceiling laws by the end of 1959. Following these policy enactments, all states enacted an initial round of ceiling laws by 1961.<sup>53</sup>

The legislative measures adopted in this first round were full of loopholes that large landowners used to circumvent the laws' objectives.<sup>54</sup> Several of these state laws were also successfully challenged in the courts.<sup>55</sup>

By the end of 1970, these ceiling laws had resulted in the vesting of approximately 2.4 million acres of land. Of this land, about 50 percent had been distributed to the rural poor, although not necessarily to the landless as no clear eligibility requirements had been prescribed in many of the laws.<sup>56</sup>

The perceived ineffectiveness of the ceiling laws during the first phase led to an establishment of a Central Land Reforms Committee and several high-level policy meetings on land reforms. The Central Land Reforms Committee convened a Chief Minister's Conference in July 1972 at the height of Indira Gandhi's political power. At this conference, the Prime Minister was able to push through a set of National Guidelines for future state laws on land ceilings.<sup>57</sup>

Following the formulation of these National Guidelines, all states introduced legislative changes in response. While the new or newly amended laws on land ceiling followed a common pattern, variations existed on several key aspects. Some of those aspects are summarized below including: (1) the unit to which the ceiling applies; (2) the ceiling area; (3) exemptions from ceiling; (4) retrospective application; (5) compensation; and (6) defining and prioritizing beneficiaries.

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spread over one or more villages that were cultivated by under-tenants and sharecroppers. Thus, these holdings were not benefiting from any economies of scale. Appu, at 131, note 3. Indeed, empirical evidence generally reveals no economies of scale in non-mechanized agricultural production and, more often, an inverse relationship between farm size and productivity.

<sup>53</sup> The states of Jammu & Kashmir and West Bengal had already introduced land ceiling provisions in the 1950s as part of their legislation to abolish intermediaries.

<sup>54</sup> The major loopholes that existed in this initial round of ceiling laws were: (1) the ceiling limits were set very high; (2) the laws did not prohibit retrospective transfers (so large landowners, in anticipation of the law, conducted partitions and fictitious transfers); (3) many types of land or land uses were declared exempt from ceilings; and (4) ceiling limits were set on the basis of individual holders as the unit and not on a family basis (allowing partitions among family members to evade the ceiling legally).

<sup>55</sup> The laws were challenged on at least two grounds. First, landowners claimed the laws violated the right to property granted in Article 19(1)(7) of the Indian Constitution. Second, the landowners claimed that the inadequate compensation provided in the law violated Article 31 of the Constitution. In response, the Constitution was amended in 1971 to allow the states to pass land reform laws that provided less than fair market value compensation and to validate all previous legislations on land reforms. See A.P. Datar, 2001. DATAR ON THE CONSTITUTION OF INDIA, (Nagpur: Wadheva & Co.) at 293-310.

<sup>56</sup> Sukmar Das, 2000. *A Critical Evaluation of Land Reforms in India (1950-1995)* in Sinha & Pushpendra (eds.), LAND REFORM IN INDIA: AN UNFINISHED AGENDA, 2000, at 34.

<sup>57</sup> See Appu, 1996, at 155-169.

### *Unit for Application of Ceiling*

The unit of application in every state is a family of up to five members. "Family" is generally defined in relationship to the head of household and includes the head of household, his spouse, and their minor sons and unmarried daughters. Variations occur concerning adult sons (married or unmarried) and married daughters.

Most laws allow an increased ceiling area for each additional family member (beyond five) up to a certain maximum number. Only in two states (West Bengal and Tripura) does the ceiling area decrease for a family of less than five members.

### *Ceiling Area*

There is little commonality concerning the definition of the ceiling area limit. Most state laws express the ceiling limit in terms of a standard acre (or hectare) and a standard holding. The definition of a standard acre (or hectare) and standard holding differs from state to state and even within a state depending on the classification (whether irrigated or not and type of soil). In some states, the ceiling area applies only to owned land. In other states, it applies to the sum of owned and rented-in land.

All states reduced their ceiling laws after the 1972 policy. The ceilings now range from nine standard acres in parts of Jammu & Kashmir to 54 standard acres for certain circumstances in Gujarat, Haryana, Karnataka, Madhya Pradesh, Punjab, Rajasthan, and Tamil Nadu.

### *Exemptions from Ceiling*

Most state laws reduced the number of exemptions in the early 1970s. The common exempted categories now include: (1) land held by any level of government; (2) land held by educational institutions; (3) land held by industrial or commercial undertakings; and (4) plantations of coffee, cocoa, or tea. Most state laws also include some additional minor exceptions.

### *Retroactive Application*

Many large landowners conducted malafide or *benami* transactions or land use changes in anticipation of the ceiling laws in order to evade the ceilings. The methods included: converting agricultural land into non-agricultural land; partitioning land among friends, relatives, or even servants; initiating fictitious divorces in order to divide land among spouses; and adopting in order to increase the ceiling limit. The National Guidelines urged states to ban malafide transactions or partitions retrospectively. Some of the state laws impose a blanket ban on such transactions, rendering them null and void. In other states, transferors have to prove before a competent authority that the transfers were not malafide.

### *Effect of Irrigation Projects: Re-determination of Ceiling Area*

One of the controversial subjects discussed at the Chief Ministers' Conference in July 1992 was the impact of irrigation schemes on the ceiling imposed. Many supported higher ceilings for land irrigated by private schemes in order to encourage private investment and initiative. The final recommendations gave a slight advantage to owners of privately irrigated land.<sup>58</sup> The Chief Ministers also recommended that land should not be reclassified for purposes of imposing a new ceiling as a result of any private irrigation project completed after August 15, 1972. The guidelines did not address how future government irrigation projects should impact ceilings.<sup>59</sup>

The state ceiling laws address subsequent irrigation projects in a variety of ways. Some states require reassessment of the ceiling if the nature of the land changes because of any irrigation project, whether state or private. In Andhra Pradesh, any future alteration in the classification of land requires reapplication of the ceiling law.<sup>60</sup> More specifically, under the *Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960*, the nature of a landholding changes in the future as a result of irrigation, the land holder must notify the Tahsildar within 90 days of the change in the nature of the land, and the provisions of the Ceiling Act shall be applied again at that time. The Act only notes examples of dry land becoming irrigated, but the language of the provision is broad enough to allow for reapplication of the ceiling in the event previously irrigated land becomes dry. The Act does allow for additional compensation to landowners for improvements to surplus land; the Act does not make a deduction (or exempt land) where the land is improved due to state-sponsored projects.<sup>61</sup> Similarly, in Maharashtra, the state retains the power to vary the ceiling area for a number of reasons, including a change in "the situation of the land" and its productive capacity.<sup>62</sup>

In other states, the requirement for reevaluation of the ceiling only applies when state projects provide irrigation. The *Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960*, provides that if any unirrigated land becomes irrigated as a result of any state project, then the ceiling area shall be redetermined.<sup>63</sup> In West Bengal, the standard for measurement of land for purposes of application of the ceiling is one hectare in an irrigated area. "Irrigated area" is defined to include land that is irrigated after the date for ceiling determinations as a result of a state irrigation project.<sup>64</sup> Under both laws, the landowner is eligible for compensation for any surplus land created as a result of the state irrigation project.

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<sup>58</sup> Appu, 1996, at 163-64.

<sup>59</sup> P.T. George, 1979. CEILINGS ON LAND HOLDINGS IN INDIA: A REVIEW OF NATIONAL GUIDELINES (Hyderabad: National Institute of Rural Development), at 34.

<sup>60</sup> *Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973*, Section 18(c).

<sup>61</sup> Section 15.

<sup>62</sup> *Bombay Tenancy and Agricultural Lands Act, 1948*, at Section 7.

<sup>63</sup> § 29.

<sup>64</sup> § 14K(d).

### *Compensation*

The state laws vary in the amount of compensation paid to landowners whose ceiling-surplus land is taken by the state. Some states use the assessed land revenue while others use the land classification to determine the compensation amount. In all state laws, however, the compensation amount is negligible when compared with the market value of the land.<sup>65</sup> As discussed above, the constitutionality of the compensation amount cannot be questioned in a court of law after the 1971 amendments to the Indian Constitution.

### *Distributing Ceiling-Surplus Land to Beneficiaries*

In all states, the landowner with land in excess of the ceiling is allowed to choose what land is to be taken. In terms of distributing that land, the National Guidelines stipulate that priority should be given to landless agricultural workers, particularly those belonging to Scheduled Castes and Scheduled Tribes. Most states have generally followed this advice. Some states include the priority of distribution within the law itself, while other states include this stipulation in the statutory rules or regulations.

In some states, first priority is given in distribution of ceiling land to the tenants dispossessed in that area (due either to the vesting of ceiling-surplus land or to resumption by landowners for personal cultivation subject to certain limits). In other states, no such priority is given for dispossessed tenants.

Some states provided for distributing the ceiling-surplus land free-of-charge to beneficiaries (including West Bengal, Bihar, Orissa, and Uttar Pradesh). Other states require the beneficiaries to pay an “amount” in suitable installments, which in some cases is equal to the amount paid by the state government to the losing landowner.

State laws also vary in the type of rights received by the beneficiaries. Many states (including West Bengal) permanently prohibit transfers by beneficiaries. Other states, such as Karnataka, prohibit the beneficiaries from transferring their land for a period of years (ranging from 10 to 20 years). Still other states allow such transfers only with the permission of the local revenue authority.

Some states have provisions for setting some ceiling-surplus land apart for public purposes (including Andhra Pradesh, Bihar, Jammu & Kashmir, Karnataka, Kerala, Maharashtra, Madhya Pradesh, and Uttar Pradesh). Other states do not provide for reservation for public purposes unless the land is unfit for cultivation or was used for grazing before vesting.

### *Extent and Impact of Land Ceiling Laws*

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<sup>65</sup> Behuria, 1997, at 140.

As can be seen in Table 3 above, by the end of 2002, state governments had declared 7.37 million acres of land as exceeding the ceiling. Of that land, the state governments had taken possession of 6.50 million acres and had distributed 5.39 million to a total of 5.64 million households. The total amount of ceiling-surplus land distributed to individual beneficiaries amounts to approximately three percent of India's agricultural land.

The only states where more than five percent of the operated area has been redistributed are West Bengal, Jammu & Kashmir, and Assam. There is some evidence that the impact has been significant. For example, in West Bengal, 34 percent of all agricultural households have received ceiling-surplus land and numerous studies have documented the importance of the ceiling-surplus distribution in both bettering the livelihoods of beneficiaries and promoting agricultural growth and stability in the countryside.<sup>66</sup>

Excluding these three states, Appu concludes that "the imposition of ceilings has not led to any worthwhile redistribution of agricultural land in the rest of the country."<sup>67</sup> Defects in the law are a partial cause for the failure of most such laws to achieve their objectives,<sup>68</sup> but the more relevant factor is the absence of political will at both the central and, apart from a few exceptions during limited time periods, state levels. That lack of political will continues today, despite occasional political rhetoric to the contrary.

#### *LAND CEILING RECOMMENDATIONS*

Given (1) the lack of political will, (2) the limited success of past efforts (even when the political climate for redistribution was friendlier), and, particularly, (3) the existence of more practical tools for providing meaningful land rights to the poorest,<sup>69</sup> India should *not* view ceiling laws as a fundamental component of future land reform efforts.

On the other hand, without solid empirical evidence to the contrary, neither should Indian states race to increase or remove existing land ceilings. While in most states the ceilings have not led to a significant government redistribution of land, those ceilings may be serving a useful role in preventing a further excessive concentration of land and in

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<sup>66</sup> See T. Hanstad & J. Brown, 2001. *Land Reform Law and Implementation in West Bengal: Lessons and Recommendations*, RDI REPORT NO. 112, and A. Chakraborti, 2002. *BENEFICIARIES OF LAND REFORMS: THE WEST BENGAL SCENARIO*, State Institute of Panchayats and Rural Development (Nadia: Government of West Bengal).

<sup>67</sup> Appu, 1996, at 174.

<sup>68</sup> Experienced observers have pointed to: ceiling limits that are too high; delay in the adoption and implementation of the laws; judicial delays; undue influence of landlords on local land tribunals; lack of organization of potential beneficiaries; and lack of accurate and current land records. See Haque & Sirohi, *supra* note 8; Appu, 1996; Das, *supra* note 56; and Thakur, *supra* note 10.

<sup>69</sup> Other more practicable tools for broadening land access are discussed in this paper, including land purchase options, allocating house-and-garden plots to the landless using purchase and existing government land, completing "unfinished business" in the allocation of government land, and improving access through tenancy arrangements.

providing appropriate incentives for some large landowners to sell land to smaller farmers and/or diversify into the non-agricultural sector.

States might consider focusing their efforts in this area on the following:

- ***Remove the obstacles preventing the distribution of the nearly 20 lakh acres (India-wide) that have been declared surplus but not yet distributed to individual beneficiaries.*** Because lengthy litigation is a principal obstacle, Indian states could focus more legal aid resources or establish special tribunals to resolve long-standing cases.
- ***Allocate the remaining land for distribution in smaller plots in order to benefit greater numbers of landless.*** States should consider allocating the remaining unallocated land as either house-and-garden plots or small field plots (one acre or less) so that the benefits can be enjoyed by a larger number of families. The role that small plots can play in enhancing the rural livelihoods is visible in the fields of West Bengal. As part of its land reform efforts, West Bengal redistributed 1.04 million acres of ceiling-surplus land to 2.54 million land-poor households. In recent years, the state has been allocating ceiling-surplus lands in very small plots, averaging less than one-third of an acre. In a small field study covering two districts, RDI interviewed 34 erstwhile landless land reform beneficiaries who had received plots averaging 0.16 acres (ranging from 0.07 to 0.38 acres). The majority of the households farmed their plots intensively and reported significant increases in food intake, income, and social status -- a mix of human, financial, and social assets that they attributed to the small field plots.<sup>70</sup> Other more comprehensive studies are consistent with RDI's findings: West Bengal's land reform beneficiaries have realized important benefits from plots of land much smaller than an acre.<sup>71</sup> Some question the potential impact of distributing small plots, noting that the income earned from the plot is not itself sufficient to raise the beneficiary households above the poverty line. From a livelihoods perspective, however, this is not a relevant standard. A sustainable livelihoods approach recognizes that people draw on a range of capital assets to further their livelihood objectives and acknowledges that in many cases, a diversity of assets provides the best buffer against the vulnerability factors that threaten the rural poor. Even after receiving small plots, the beneficiary households typically pursue other income-generating strategies such as working as agricultural laborers. Receiving land through the land reform has not, in most cases, changed the primary "occupation" of most beneficiaries. The land has, however, provided those households with a significant opportunity to supplement their nutrition and income, in addition to increasing their status and credit worthiness.

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<sup>70</sup> T. Hanstad and S.B. Lokesh, 2003. *Findings from Micro-Plot Research in West Bengal* (RDI memorandum on file with RDI).

<sup>71</sup> See Anil Chakraborti, 2003. *BENEFICIARIES OF LAND REFORMS: THE WEST BENGAL SCENARIO* (Govt of West Bengal: State Institute of Panchayats and Rural Development).

- ***Amend legislation so that land ceiling beneficiaries are not permanently prohibited from selling their land.*** International experience indicates that permanent prohibitions on sale are unnecessarily restrictive and not a good practice.<sup>72</sup> States with permanent prohibitions should consider revising the law to provide for time-bound restrictions of perhaps 10-15 years.

If any Indian states do plan to continue using land ceilings as tool to redistribute land, the following legislative changes should be considered:

- ***Increase the amount of compensation provided to landowners who lose ceiling-surplus land.*** While constitutional case law makes clear that higher compensation is not legally required, it is recommended. Compensation need not be market value, but should be something meaningful, not bordering on confiscation as is the case in many state laws.<sup>73</sup>
- ***Use individuals rather than families as the unit to which the ceiling applies.*** West Bengal's experience indicates that this ensures greater equity and eliminates an easy loophole by which larger families split into additional families in order to retain more land.<sup>74</sup>
- ***Limit the amount of ceiling-surplus land that a beneficiary family can receive to one acre.*** Given the large numbers of rural, landless households, it is more important to increase the number of beneficiary families than to provide each beneficiary family an "ideal" amount of land.

If any states are seriously considering increasing or removing land ceilings, they should first undertake rigorous empirical research to determine the equity and efficiency effects of revising existing land ceilings.

Finally, all states consider other more practicable non-ceiling approaches to broaden access to land ownership. One approach that deserves consideration is a *land purchase approach*, especially if implemented through women's self-help group activities. The government of Andhra Pradesh has recently initiated such land purchases in partnership with civil society organizations as part of its IKP project (formerly called Velegu project), and the early experience is promising. Mindful of issues and challenges faced

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<sup>72</sup> L. Rolfes, Jr., 1999. *Land Transactions* in R. Prosterman & T. Hanstad (eds.), LEGAL IMPEDIMENTS TO EFFECTIVE RURAL LAND RELATIONS IN EASTERN EUROPE AND CENTRAL ASIA (World Bank Technical Paper No. 436).

<sup>73</sup> In addition, states should not deduct from the compensation paid (or reduce the ceiling) because the landowner has invested in a private irrigation scheme. Such a deduction would be near impossible to enforce, have an enormous administrative cost, and, if effective, result in penalizing private initiative and investment. Arguably, a state might treat land benefiting from a state irrigation scheme differently and require landowners benefiting from the state-funded scheme to assume some of the costs through lower ceilings and reduced compensation. However, such an effort would be unlikely to generate sufficient revenue to justify the administrative costs, ill will, and additional opportunities for corruption created.

<sup>74</sup> T. Hanstad & J. Brown, 2001, at 55.

by other land purchase schemes and as the description of the steps above reflect, Andhra Pradesh designed the land purchase activity with the following features:

- Beneficiary-driven process. In contrast to schemes in which bureaucrats initiate the process of identifying land and negotiate for the purchase before identifying beneficiaries, Andhra Pradesh's land purchase activity is initiated by the beneficiaries. Self-selected beneficiaries that have demonstrated capacity for a land purchase identify the land, negotiate a price, and develop a business plan for farming the land.
- Purchase plus improvements. Andhra Pradesh requires beneficiaries to consider what improvements (such as irrigation) are necessary and to include the costs of and plan for such improvements in their business plan. This consideration and budgeting for necessary improvements avoids the problems inherent in schemes that allow land purchases without factoring in the costs of necessary improvements essential to successful farming of the land.
- Business plan requirement. Andhra Pradesh's requirement of a business plan prior to purchase focuses the beneficiaries on the economic feasibility of their land purchase and requires consideration of options. Schemes that do not identify beneficiaries until after land purchase cannot benefit from this kind of essential business planning.
- Integrated technical assistance. Andhra Pradesh's land purchase scheme includes technical assistance as an aspect of the purchase plan. Because technical assistance is integrated into the purchase option, beneficiaries do not need to look to other government schemes and resources for the necessary technical assistance.
- Cost recovery plan. Andhra Pradesh's land purchase scheme includes a substantial grant component and reasonable repayment terms so beneficiaries are not saddled with an unmanageable debt and unrealistic repayment plan. The repayment plan is included in the pre-purchase business plan so beneficiaries can evaluate the extent of their obligation and understand how the repayment obligation factors into the overall economics of the land purchase option.

Including those features in a project aimed at broadening land ownership through purchase will help avoid problems that have plagued land purchase projects implemented by Scheduled Caste Development Corporations. Such schemes have achieved some access, but have also faced significant problems, including allowing the landowners seeking to sell land to initiate and control the process, failing to anticipate the need for improvements and technical assistance and to include those costs in budgeting, identifying beneficiaries after the land is purchased, permitting beneficiaries to take on unmanageable debts and establishing often unreasonable repayment schemes.

## V. ALLOCATION OF GOVERNMENT WASTELAND

India's land reform efforts are typically described as comprising only the three categories of reforms discussed above — abolition of intermediaries, tenancy reform, and ceiling-surplus redistribution. The reforms, however, also included other significant and sometimes overlapping measures. These include the allocation of government wasteland (discussed in this section) and the allocation or regularization of land for house sites (covered in the following section VI).

The poverty alleviation potential inherent in allocating government wasteland and house sites are often not recognized, but significant opportunities exist for Indian states. These opportunities generally do not require legislative change and are summarized below. The opportunities relating to allocation of government wasteland involve fully implementing already reported allocations. The opportunities relating to house sites arise due to the increasing recognition that if those house sites are 0.05 acre (five cents) or larger, they can provide important supplementary nutrition and income to the household.

“Wastelands” are lands that are either entirely barren or are producing significantly below their economic potential.<sup>75</sup> An estimated 150 million acres of India's total land mass of 810 million acres are wastelands. These include wastelands under the Forest Department, wastelands under the control of the Revenue Departments, common grazing lands managed by villages or local governments, and private wastelands.<sup>76</sup>

Various state governments report allocating 14.7 million acres of government “wasteland” to poor rural households (see Table 3, below).<sup>77</sup> The national government does not maintain statistics on how many households have received such land. Six states report allocating 80 percent of this land, led by Andhra Pradesh (28 percent of the national total) and Uttar Pradesh (17 percent of the national total).

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<sup>75</sup> Chambers, et al., offer the following, more comprehensive definition of wastelands: “Wastelands mean degraded land which can be brought under vegetative cover, with reasonable effort, and which is currently lying underutilized and land which is deteriorating for lack of appropriate water and soil management or on account of natural causes. Wasteland can result from inherent/imposed disabilities such as by location, environment, chemical and physical properties of the soil or financial or management constraints.” Robert Chambers, N.C. Saxena, and T. Shah, 1989. *To the Hands of the Poor: Water and Trees*, at 42.

<sup>76</sup> Gopal K. Kadekodi, 2004. *COMMON PROPERTY RESOURCE MANAGEMENT* (New Delhi: Oxford University Press), at 44-45.

<sup>77</sup> The state-level Revenue Departments still control about 50 million acres of wasteland. *Id.*, 44.

**TABLE 3: DISTRIBUTION OF GOVERNMENT WASTELANDS AS OF MARCH, 2002**

<b>Name of State/UT</b>	<b>Area Distributed (in thousands acres)</b>
Andhra Pradesh	4,202
Assam	589
Bihar <sup>1</sup>	1,321
Gujarat	1,381
Haryana	0
Himachal Pradesh	17
Karnataka	1,372
Kerala	457
Madhya Pradesh <sup>2</sup>	79
Maharashtra	1,023
Manipur	32
Punjab	110
Orissa	726
Tamil Nadu	207
Tripura	132
Uttar Pradesh <sup>3</sup>	2,489
West Bengal	432
Goa	5
Mizoram	74
Rajasthan	93
Delhi	6
<b>Total</b>	<b>14,747</b>

- 1 including Jharkhand  
2 including Chhattisgarh  
3 including Uttaranchal

In terms of total acreage, the reported amount of allocated government wastelands is nearly three times the amount of ceiling-surplus land redistributed. However, in contrast to the studies and literature devoted to ceiling-surplus redistribution, the topic of government wasteland allocation is rarely mentioned in the literature, perhaps because the quality of such allocated wastelands is often very poor. In isolated studies, researchers have typically found that a majority of the government wastelands allocated are not utilized.

Another problem is that the government figures on wasteland allocation are likely overstated. Field investigations in Andhra Pradesh, for example, indicate that perhaps as much as 30 percent of the reported beneficiaries do not have both legal and physical possession of the allocated land. The gaps between the reported numbers and secure land rights occur for a variety of reasons, including: (1) assignment of land is on paper only and the physical possession has not been given; (2) the beneficiaries have been evicted from their lands; and (3) in numerous cases, especially in Telangana where large compact blocks have been assigned to the poor, the survey subdivision work has not been done so the beneficiaries have not received their individual parcels of land. Similar circumstances concerning past government land “allocations” have been reported in other states.

These “gaps” represent both a problem and an opportunity. The well-recognized problem is that past allocations of government allocation did not always result in secure land rights for the intended beneficiaries. The opportunity for state governments is to now address those “gaps” and thus broaden access to secure land rights.

Andhra Pradesh’s recent efforts to address the shortcomings in earlier “allocations” of government provide a model for other states to consider. These efforts, through the IKP project (formerly called Velegu) are the subject of a recent paper by K. Raju and Karuna Akella. The experience is notable and deserves a short summery here.

Andhra Pradesh’s IKP project identifies – often with the help of community-based organizations -- specific, local opportunities for enhancing the poor’s rights to government land (as well as other land). Once those opportunities are identified, the Project (under the Rural Development Department) works with the Revenue Department and local communities to facilitate the actions necessary to enhance those land rights. To date, the combined efforts of the Revenue Department, IKP, and numerous state officials and local communities have put secure rights to at least tens of thousands of government land into the hands of the rural poor.

The model starts with multi-faceted and decentralized efforts to identify “gaps” of the type listed above<sup>78</sup> or other opportunities to allocate unallocated government land. These

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<sup>78</sup> The first step involves identification of opportunities through one or more of following means:

*Working in conjunction with community-based organizations active in the area.* The project’s district-level Assistant Project Directors (APDs) keep in touch with organizations familiar with and trusted by local people and provide a conduit through which land information can be passed and acted upon by appropriate officials.

gaps or opportunities are then classified by project officials, after which they determine the most appropriate approach, select a course of action, and see that action to completion.

This Andhra Pradesh project (under the Rural Development Department) takes a multi-faceted, flexible, decentralized approach -- coupled with the support of the Revenue Department and community-based organizations. It has brought new life to government efforts to broaden land access by taking advantage of the land-related circumstances unique to each setting and tailoring programs to take advantage of specific opportunities.

Adopting an approach modeled upon Andhra Pradesh's recent experience will not likely require changes in legislation. However, states who currently permanently prohibit the sale of wasteland (other land) allocated by the government should change this to a time-limited restriction of perhaps 10 to 15 years.

## VI. ALLOCATION OR REGULARIZATION OF HOUSE SITES

Another special feature of the land reform measures in some states is the provision of house sites or homestead plots to landless laborers or other land-poor households. Such land has been provided in various ways, including: (1) allocating state government land; (2) allocating vested ceiling-surplus land; (3) allocating land under the control of the *panchayats*; (4) allocating ownership of land held by residential tenants; and (5) regularizing the possession of illegally occupied land. Some states, such as West Bengal and Bihar, have enacted separate laws for one or more of these purposes, but most states have incorporated provisions in their land reform laws, land revenue laws, or both.

Neither the state nor national governments maintain systematic data on the numbers of households that have received ownership of house sites by all the various means. It is

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*Janma bhoomi petitions.* *Janma Bhoomi* is a people-centered development process launched in Andhra Pradesh in 1997 that involves taking the state and district government administration "to the door of the people." Each year, more than 1,000 teams of state and district officials hold local public meetings in approximately 26,000 villages throughout the state to listen to the people's grievances and accept their written petitions. The Project works with local groups to facilitate applications pertaining to land issues in the Government's *Janma bhoomi* programme. The information in such petitions provided on land issues is computerized and may be acted upon by various groups (such as the federated organizations of self-help groups).

*Survey/inventory of government land.* In an effort to identify problems relating to the assignment of government wasteland, in January 2003 the state government initiated a massive, statewide physical inventory of existing and assigned government land. The survey has not been completed in most mandals. However, the survey results have been helpful in Project staff's efforts to identify opportunities for improving access or tenure security for poor households.

*Official records.* Official land records, particularly those maintained by the Revenue Department, also can provide a source of information.

estimated that at least 4 million households have received such land.<sup>79</sup> The plots typically have ranged in size from 0.02 acre (about 900 square feet) to 0.10 acre (about 4,300 square feet).

The primary purpose of such allocations has been to provide land for a residence and (sometimes) to free agricultural laborers from the power of their employers who are also their residential landlords. Recent studies have also shown that the allocation of such small plots also provides important non-residential benefits (income, nutrition, status, credit access, etc), particularly when the plots are large enough to include a garden and space for a few animals.<sup>80</sup>

Past land reform programs in India have been based on the assumption that the government should give poor rural households at least two to three acres of land. However, experience in numerous countries as well as recent research findings in India suggest that poor, rural households can significantly improve their well being on house plot land if the plots are larger than 0.03 acre. The research, conducted by the Rural Development Institute (USA) and the University of Agricultural Sciences, Bangalore, includes several findings worth consideration:<sup>81</sup>

- ✓ Functionally landless, agricultural laborer families that own a house plot typically derive substantial non-housing benefits from the plot including increased nutrition, income, status, wealth generation, and access to credit.
- ✓ Those benefits increase very substantially with relatively small increases in house plot size, especially as the house plot increases above 3 cents (about 1300 square feet) to about seven cents (about 3,000 square feet).
- ✓ Families with house plots larger than 3 cents were more than twice as likely as those with smaller plots to report that their house plot had resulted in increased family income; three times as likely to report that the plot had resulted in improved nutrition; and almost twice as likely to report that receiving the plot had increased their access to credit.
- ✓ Rural families with well-developed house-and-garden plots of about seven cents were producing enough vegetables, fruit, and milk on their homestead plots to meet or significantly exceed their household nutritional needs of these products. Apart from direct household consumption, these households received about Rs 11,000 of annualized income from the sale of products from their house-and-garden plots.

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<sup>79</sup> Das, *supra* note 158, at 38. West Bengal alone claims to have allocated approximately 500,000 such house sites.

<sup>80</sup> See Hanstad, Brown & Prosterman, 2002. *Allocating Homestead Plots as Land Reform: International Experience and Analysis from Karnataka*, ECONOMIC AND POLITICAL WEEKLY (20 July 2002).

<sup>81</sup> Hanstad, Brown, and Prosterman, 2002. *Allocating Homestead Plots as Land Reform*, ECONOMIC AND POLITICAL WEEKLY (20 July 2002).

These findings from India are consistent with evidence from a variety of developing country settings showing that small homestead or garden plots have conferred multiple important benefits in terms of food, income, status, fuel wood, and economic security to poor households.<sup>82</sup> Moreover, many of these important benefits accrue specifically to women. We recommend that state governments further explore the allocation of relatively “large” house sites as a means for creating a buffer against poverty.

Several localized initiatives to provide “large” house sites offer lessons on how larger-scale efforts might be operationalized. RDI, with FAO support, has recently conducted a field review of six projects that involved providing relatively large house sites to poor beneficiaries in six different states (Gujarat, West Bengal, Karnataka, Orissa, Andhra Pradesh, and Kerala) in order to distill success factors and other lessons to inform the design of future government and NGO schemes to allocate house sites. The land was obtained through a variety of mechanisms including purchase, acquisition, and expropriation. The review distilled the following as important success factors:

- Relatively large, compact blocks of land that accommodate house sites for at least 20 households.
- Land that is either adjacent to or within close proximity to an existing habitation area.
- Assistance with housing construction and garden development integrated as part of the project or links to other projects that offer such assistance.
- Access to water for domestic and garden use.
- Beneficiary participation in the design, implementation, and cost-sharing, either through NGOs or panchayats.
- Land titled either in the joint names of husband and wife or independently in name of women.
- Suitability of land in terms of quality and location was better when land was purchased.

### *Homestead Plot Recommendations*

Allocating one-fifteenth to one-tenth acre house-and-garden plots may be the most practicable method of providing meaningful land rights to India’s seventeen million rural families that are completely landless. Because land in most village habitation areas is scarce and expensive, the government should consider purchasing land parcels of one or more acres within one kilometer of a village, dividing the parcel into one-tenth acre house-and-garden plots, providing some basic infrastructure to this new colony (a road, drinking water, and an electricity line), and distributing the plots to landless laborers.

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<sup>82</sup> R. Mitchell & T. Hanstad, 2004. *Small homegarden plots and sustainable livelihoods for the poor*. UNFAO Livelihood Support Programme Working Paper No. 11.

The land costs per family are affordable. If non-irrigated agricultural land is targeted, typical costs of such land range from Rs 20,000 to Rs 50,000 per acre or Rs 2,000 to Rs 5,000 to benefit each family with a one-tenth acre plot. With land purchase as a feasible option, the government need not be limited by insufficient existing government land or face the political and administrative difficulties of expropriating land.

The amount of land needed is not substantial. Allocating such plots to each of the 17 million landless families in India would require less than 0.5 percent of India's agricultural land.

Such efforts can take the form of new government schemes or can be incorporated into existing rural housing or rural poverty alleviation schemes. The existing government rural housing schemes currently face two limitations in this regard. First, they typically limit the size of qualifying house sites to 1200 square feet or less, which is not large enough to provide sufficient space for a garden and livestock. Government planners should aim to provide at least 3,000 square feet to each family. Second, housing schemes rarely include resources for land purchase. Thus, those receiving benefits must already have their own land: the poorest often do not qualify because they do not own a house site. Rural housing programs could address this by devoting some significant portion of existing resources for obtaining land.

## VII. CONCLUSION

India should both rethink and go beyond the twin pillars of past land reform efforts: tenancy reform and land ceilings. Other new and feasible methods exist for improving the poor's secure access to land. Much of the legal framework already exists. What is most needed is the political will of Indian leaders at the Union and state level to reform land policy and laws in a manner that advances the interests of the poor and marginalized. The reforms can be both pro-poor and market friendly, and the required costs are not unthinkable.

At bottom, the legislative foundations of land law and policy reform in India (abolition of intermediaries, tenancy reform, and land ceilings) were designed to increase the poor's access to rural land. To date, the effectiveness of the legislation has been mixed and progress over the last few years has slowed. The following approach, which involves selected revision to existing legislation and adoption of new methods of increasing land access, will help achieve the original equitable objectives of the legislation:

- Revitalize tenancy reform by: (1) solidifying the gains of past tenancy reform by converting protected tenants into owners; and (2) selectively liberalizing excessive tenancy regulation and restrictions;
- Assist beneficiaries of ceiling legislation in realizing the benefits by removing obstacles to land distribution and relaxing moratoriums on the transfer of ceiling surplus land;

- Consider adopting the decentralized IKP project approach in AP as a model for solidifying the gains of past wasteland allocation and otherwise providing secure land rights to the poor; and
- Explore using land purchase and existing government land to create new colonies of one-tenth acre house-and-garden plots for distribution to landless laborers.

The work required on India's land laws and policies in order to broaden access is significant, but should not be paralyzing. The existing legal framework provides a solid starting point. With an open mind, a commitment to benefit the poorest, exploration and piloting of new approaches and an emphasis on implementation the objectives of land reform are achievable. India's poor deserve nothing less.

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