



Responsible Land Governance: Towards an Evidence Based Approach

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LAND RIGHTS UNDER CHANGING TENANCY REGULATIONS: GOVERNANCE CHALLENGES AND PROSPECTS IN ODISHA (INDIA)

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Abstract

Odisha, India is an amalgamation of diverse range of land governance systems that it had inherited from the British rulers. Soon after independence in 1947, Government of Odisha brought about several measures to usher in equitable land governance. These were aimed to provide land to the tiller, distribution of surplus land to the landless and protection of rights over land for the indigenous communities. An estimated 10-20 percent household participates in land lease market, with over a fifth of agriculture land under tenancy arrangements.

While agricultural tenancy is banned in Odisha, concealed tenancy is rampant. In 1960, the Odisha Land Reforms (OLR) Act banned tenancy, which was considered as a vestige of British rule. Because of tenancy restrictions, the law did not address the problem of share-cropping and further no provisions was made to record concealed tenancies.

In September 2015, Govt. of India constituted an expert committee on land leasing to review the existing agricultural tenancy laws and suggest appropriate amendments to legalize land leasing. Government of Odisha is in the process of bringing in a new law on agricultural land leasing. With the forthcoming liberalization in leasing regulations in the state, it is likely to bring along with it governance and administrative challenges. Landowners having operated under decades of restrictive provisions, there is a sense of insecurity among the land owners.

The paper will examine the changing context of tenancy restrictions in Odisha through literature review and historical analysis in selected villages. The broad framework in which land governance will be examined is: (a) institutional mechanisms to identify and record sharecroppers, (b) ensure specific provisions related to women farmers, (c) tenancy arrangements in tribal areas confirming to secure tribal rights, (d) participation mechanism in input subsidy, financial credit and procurement programmes, (e) provisions under land modernization and computerization programme ongoing in the state. There is a need to assess the current institutional setup to operationalize the liberalized land leasing regulation which will be covered in the paper.

Key Words:

“Tenancy liberalization”, “land governance”, “farmland leasing”



1. INTRODUCTION

In India where 70 per cent of the population is dependent on agriculture, relations between those who own land and those who work on their land is of paramount importance, as is the nature of their respective control over land. Any strategy for increasing agricultural production and alleviating rural poverty cannot overlook structural questions about the legal nature and aspects of the relationship between the two parties, their relative rights to the land, and an agricultural tenant's ability to access credit, inputs, and government services.

The policy and legislation in India governing the relative rights held by landowning farmers and the tenants who work their land can be framed from two different policy perspectives. The first perspective is that tenancy is an inherently exploitative relationship and a zero-sum game in which landowners exploit land tenants. According to this perspective, landowners almost always win in such relationships, and tenants mostly lose. The role of law and policy framed from this perspective is to either ban such relationships or legally tilt them strongly in favor of the tenant.

The second perspective is that tenancy is not inherently exploitative, and in fact offers flexibility and advantages to both parties. According to this perspective, landowners who are unable to farm or who choose to engage in other more productive work land should have the opportunity to earn income from their land by arranging for someone else to farm it. And meanwhile, farmers who are willing and able to farm, but lack ownership of sufficient land should be able to gain access to land through tenancy. Under this second perspective, while renting is not as ideal as owning land, it can provide some relief to the rural landless as well as marginal and small farmers. The objectives of policy and legislation under this perspective is to create clarity, stability, and thus trust in the relationship such that each party's interests can be optimally achieved without unduly harming the interests of the other party.

The choice between these two policy perspectives is often informed by the relative (on average) power balance between landlords and tenants in a particular agricultural setting. For example, when rural labor is abundant, inexpensive and generally lacking other economic opportunities and when landownership is relatively concentrated, then landowners hold substantial power. In such cases, tenancy arrangements are likely to be skewed more heavily to favor landowners, which can often lead to the perception that tenancy is inherently exploitative and needs to be banned or heavily regulated. This was generally the case in post-Independence India when – particularly in the 1960s and 70s, -- most Indian states passed legislation either banning tenancy or strongly regulating tenancy relationships in an effort to tip the scales to more favor the tenants.



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In settings where landownership is less concentrated, smaller farm sizes dominate, and rural unskilled and semi-skilled labor can find remunerative opportunities outside of agriculture, then the power balance between landowners and tenants is not as skewed and the second policy perspective (that tenancy is not inherently exploitative) is more likely to be fit for purpose. This generally describes the situation present in most of India today. Despite this fact, the legacy of the “tenancy is inherently exploitative” perspective – which dominated for decades – still remains strong. The result is that laws that were framed from this “tenancy is inherently exploitative” perspective still exist in most states. However, a new agricultural tenancy policy perspective is emerging that is causing many Indian states to revise their farmland tenancy legislation.

One of those states is Odisha. Odisha is in eastern India and one of India’s poorer states. A majority of Odisha’s total work force (65%) remains dependent on agriculture, but the non-agricultural sectors of the economy are growing relatively faster than agriculture, which contributes about 16% towards the Gross State Domestic Product. (Department of Agriculture, Govt. of Odisha 2013). The average size of farmland holding in Odisha is 1.25 hectare, and small and marginal farmers constitute about 83% of the farming community.

Despite the dominance of small and marginal farmers among landowning farmers, landlessness remains high. Moreover, increasing number of medium and large farmers are exiting agriculture to pursue non-agricultural livelihoods. Many of the rural landless as well as small and marginal farmers are looking to access land (or more land) for farming. Because of the large capital cost of purchasing land, many of these families try to access that land through rental, which allows them to start or expand their farming operations with relatively low capital costs.

Ideally, those landowners in Odisha exiting agriculture would have the option to productively rent out their lands for long time periods to capable tenants who would have access to inputs, credit, and insurance mechanisms and the appropriately long time horizons that create incentives to farm productively and sustainably. Unfortunately, Odisha’s existing tenancy legislation does not create such an environment. And to understand why, one needs to understand the tenancy reforms that swept through India in the decades after its independence in 1947.



2. POST-INDEPENDENCE TENANCY REFORMS IN INDIA

Tenancy, often through share cropping, has been a long drawn practice existing in India since pre-independence times. Most consider it a remnant of feudal agrarian relations. After independence in 1947, the combination of peasant movements and a strong central government with socialist leanings brought about momentum for policy and laws aimed to empower tenants by heavily restricting and regulating tenancy relationships.

In India's federal system, land tenancy laws are within the jurisdiction of individual states. So, while the national government sets broad policy, each state has the ultimate power to adopt laws concerning tenancy. And in the decades immediately following Independence, every state passed such laws. The tenancy reform laws adopted by most Indian states after Independence aimed at both: (1) strengthening the rights of existing tenants – sometimes through conferring ownership or occupancy rights to tenants; and (2) either prohibiting or restricting future tenancy relationships in order to prevent exploitation of tenants. The main reasons given for imposing either legal ban or restrictions on land leasing were:

- Tenant farms were perceived as relatively less efficient than owner-operated farms;
- Tenancy was perceived as resulting in exploitation of the marginal and small farmers who rent in land from absentee land owners or large farmers; and
- A fear that unrestricted land tenancy may encourage reverse tenancy¹ and would result in concentration of operational holdings in a few hands.

Most of the laws passed during this period remain in force today. Tenancy legislation among India's states can be divided into following categories (Annexure D):

- Legally banned leasing out of agricultural land without any exceptions whatsoever (Kerala, Jammu & Kashmir)
- Leasing out of agricultural land is allowed only by certain categories of land owners such as disabled, minors, widows, defense personnel etc. (Telengana, Madhya Pradesh, Bihar, Odisha, Uttar Pradesh)
- Leasing out of agricultural land is not specifically banned, but the tenant acquires right to purchase the tenanted land after a specified period of creation of tenancy (Punjab, Haryana, Gujarat, Maharashtra, Assam)
- There is no ban on land leasing, but the law sets required minimum terms or maximum rents (Andhra areas of Andhra Pradesh, Rajasthan, Tamil Nadu, West Bengal)

¹ Reverse tenancy is when large farmers rent in land from small and marginal ones.



3. IMPACT OF POST-INDEPENDENCE TENANCY REFORMS

According to the Government of India statistics, by the end of 2002, these earlier adopted tenancy reform laws had benefited 12.4 million tenants on 15.6 million acres of land by either having ownership rights conferred upon them or otherwise having their rights protected. This comprises approximately 12 percent of all agricultural households and about 4.5 percent of India's cultivated land. Eighty-one percent of these reported tenancy reform beneficiaries are concentrated in five states: Assam, Gujarat, Kerala, Maharashtra and West Bengal. The largest number of beneficiaries are in West Bengal, where all are sharecroppers (*bargadars*) who have received permanent, heritable rights at a regulated share rent, but not ownership. Another 17 percent of the tenancy reform beneficiaries are in four additional states—Himachal Pradesh, Jammu and Kashmir, Karnataka, and Tamil Nadu. Significantly, the tenancy reforms did not confer ownership rights on—or protect the rights of—any tenants in Bihar, Madhya Pradesh, Rajasthan, or Uttar Pradesh.

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 in a limited number of states.

A complete picture, however, must also include those negatively impacted tenants who can be divided into three broad categories:

- a. Tenants who were evicted as a result of the law as those laws were being discussed or adopted;
- b. Potential tenants who desire to but cannot access land through tenancy because of the ongoing legal restrictions; and
- c. Existing “informal” tenants who are concealed and without legal status, and thus unable to access credit or government services.

Experts estimate that at the time of Independence, approximately half of India's cultivated land was tenanted. What is clear is that the incidence of tenancy has substantially decreased after the adoption of the post-Independence tenancy reform laws. What is not clear is exactly how much land is under tenancy presently. After the introduction of tenancy laws that banned or highly restricted tenancy, the official data on tenancy became more suspect as survey respondents often had high motivation to conceal tenancy when it did exist. However, the general pattern has been one of tenancy in decline. The official data, despite its likely under-reporting, shows a general pattern of tenancy in decline, from 23.52% in 1960-61 to 9.9% during 2002-03. Other micro-studies suggest the actual tenancy rate is between 15 and 35 percent, and that most of this tenanted area is informal and unrecorded.



The data also reflects the fact that most of the tenants are landless or small and marginal farmers. Of the total rural households leasing-in land, according to Government of India data, 35.8% of the tenants are landless; 47.5% own less than 0.5 ha, while 8.2% own between 0.5-1 ha of land. Field studies reveal that the poor landless and marginal farmers who rent-in land do so to improve their income and livelihoods as they lack other employment opportunities. Another study in Andhra Pradesh (Nielsen et al 2007) shows that rural poor prefer to lease in land in order to increase and diversify their food crops and income, for their family's well-being and to reduce their reliance on wage labour.² Other studies show that those medium and large farmers who rent-in land do so in order to better utilize their other resources such as tractors and irrigation wells and pumps. (Haque, 2012) It is observed that absentee owners, lack of family labor, or management problems related to hired labor are the main reasons for leasing-out land.

Thus, while the legal bans and restrictions on tenancy have almost certainly reduced the frequency of tenancy, some tenancy continues, but most of it is concealed and informal to skirt the legal requirements. Concealed or oral tenancies exist in almost all parts of the country. Renting-in and renting-out is common among all categories of households with no records or safeguards. This takes place mainly due to some of the following reasons:

- a) Due to population pressure on land and inadequate non-farm employment opportunities, farmers of all size groups tend to rent in land to make their operational holdings adequate for family subsistence;
- b) Farmers of all categories who have better outside employment opportunities prefer to rent out as this helps them to increase their income through rent and hiring out labour. Renting out of land is also done in case of shortage in the availability of family labour, drought, shortage of power, shortage of cash, debt etc.

Thus, economic forces drive agricultural land tenancy, while legal bans and provisions to empower tenants have only reduced the extent of land available in the rental market and have reduced the welfare of poor tenants by forcing them to enter into informal arrangements in contravention of the rules and also by restricting the poor people's access to land through leasing. (Haque, Agricultural Tenancy Reforms in India - policy practice and impact, 2012)

Unfortunately, as numerous studies have shown, over time the legislative restrictions on tenancy has proven to be both counterproductive and anti-poor, failing to achieve the policy goals of protecting tenants and providing land ownership rights to the landless rural poor. Many of the existing tenancy

² Draft Report of the Committee on State Agrarian Relations and Unfinished Task of Land Reforms, Vol.1, Ministry of Rural Development, Government of India.



laws and regulations have negative consequences both for landowners who want to rent-out and the land-poor who want to access land through rental, especially long term leases.

Some of the negative impacts experienced were:

Large scale eviction of tenants: Legislation where tenancy was banned or restricted did not help the poor and in fact, harmed them to a large extent, because when these legislations were passed in the 1960s and 70s, as much as one-third of the rural households who were operating as tenants were evicted. One study estimates that the legislation caused landlords to evict tenant families from as much as 33% of India's agricultural land.

Prevention of poor farmers from accessing land through tenancy: Most rural households believe that land owners risk some rights to their land when they rent it out. Many landowners are reluctant to rent out their land especially for multi-year terms- because they are afraid that the tenants will assert their rights and try to usurp their land. As a result some landlords choose not to farm their land rather than lease it out for fear of losing rights and controls to tenants. Many of them are keeping their land fallow because of their fears, or they use the land for low-intensive purposes – a common example is planting eucalyptus trees. Other landowners are renting out land informally to people, especially those they can trust or can control to work on the land; and such tenants are operating informally and have absolutely no rights. It thus, reduces the occupational mobility of the rural people for fear of losing land.

No ability or incentive to increase agricultural productivity: Tenancy restrictions have forced tenancy to be informal, making tenants more insecure and lacking optimal ability and incentive to cultivate land efficiently. Tenant farmers not legally defined as farmers are, as a result, unable to avail of benefits provided by government to farmers including credit and other farm inputs and subsidies. Because landlords have strong incentives not to keep the same farmer on the land for an extended period of years (because this can give them ownership or owner-like rights), most tenancies are short-term. Lacking the ability to access formal credit and government services, as well as a long-term planning horizon, these informal tenants are not farming under optimal conditions.

Reduction in size of land rental market: Banning tenancy has reduced the size of land rental market, which both depresses the rural poor's access to land and livelihood, as well as limits the mobility of traditional land-owning classes to move out of agriculture into more remunerative and productive non-agricultural livelihoods.



4. TENANCY REGULATIONS IN ODISHA

The province of Odisha was formed on 1 April, 1936. It included territories formerly under the provinces of Bihar and Orissa, Madras and Central Provinces. Soon after independence in 1947, Government of Odisha brought about several measures to usher in equitable land governance. These were aimed to provide land to the tiller, distribution of surplus land to the landless and protection of rights over land for the indigenous communities. The first piece of legislation that was enacted in Odisha soon after independence in the field of tenancy reforms was the Orissa Tenants Protection Act, 1948. Following the country's independence and apprehending the abolition of intermediaries, the landed proprietors and persons holding varying subordinate proprietary rights in land resorted to large scale eviction of tenants mostly the share croppers. To provide protection to these *bhaga-chasis* (*sharecroppers*), the Orissa Tenants Protection Act was enacted. Under the Act, landholders owning 33 or more acres of land were debarred from evicting tenants from the land they cultivated.

The Act prescribed the quantum of rent payable by different types of tenants for different areas of the State but the law was not full-proof against eviction. In the wake of the operation of the Act largescale eviction of tenants from their lands was reported in various parts of the state. The Act was applicable to the coastal districts only and it provided for the protection of a special class of tenants i.e., the share-croppers. But the legislation was the first attempt in post-independence period to regulate the relations between the share-croppers and the landlords, which prior to the enactment of the law was governed by customary practices or by contract between a share-cropper and landlord. However the Act which had exhibited certain defects in its working was replaced later by the Orissa Tenants Relief Act in 1955. The Act conferred additional rights on the tenants with regard to the quantum of rent and in the matter of eviction. It provided that no tenant in lawful cultivation of any land on the 1st day of July 1954 or at any time thereafter could be evicted from such land by the landlord. It reduced the prevailing rate of produce rent on the gross produce from 1/3rd to 1/6th for occupancy tenants and from 2/5th to 1/4th for non-occupancy tenants with the object of providing substantial relief to the tenants from the excessive levy of rent. But again the small cultivators, particularly in the coastal districts, could not take full advantage of the provisions of the Act as they had to prove their rights in the courts. Nevertheless, the Act had made the tenants conscious to a great extent about their rights especially in the district of Cuttack and Puri, as indicated by the number of cases instituted under the Act in these districts.

During the last 50 years a number of laws have been enacted in Odisha in order to establish the legal framework for land reforms (e.g., Orissa Estate Abolition Act 1952, Orissa Survey and Settlement

Act 1958), Orissa Land Reforms Act 1960 Subsequently, the Orissa Consolidation of Holdings and



Prevention of Fragmentation of Land (OCH&PFL) Act 1972, and the Orissa Prevention of Land Encroachment (OPLE) Act 1972 (to prevent unauthorized occupation of government land). Odisha, like many other states has enacted legislations to abolish tenancy (Land leasing), except in the case of the persons of disability (the definition of which includes widows, divorcee, unmarried women, etc.)

With regard to tenancy the Orissa Land Reforms Act, 1960 as amended in 1970 and 1976, sub-letting of agricultural land except by a privileged *raiyat* or a person under disability is not legal. A person under disability includes (i) widow or unmarried/divorced or separated women, (ii) minor, (iii) person incapable of cultivating land due to physical or mental disability, (iv) serving member of armed forces, (v) a *raiyat* holding three standard acres or less. A privileged *raiyat* means a cooperative society, Lord Jagannath, any trust or institution or any religious or charitable trust of a public nature or any public financial institution.

As per the Orissa Land Reforms Act, Section (31) ‘tenant’ means a person who has no rights in the land of another but under the system generally known as *Bhag, Sanja or Kata* or such similar expression as under any other system, law, contract, custom or usage personally cultivates such land on payment of rent in cash or in kind or in both or on condition of delivery to that person –

- a) either a share of the produce of such land ; or
- b) the estimated value of a portion of the crop raised on the land, or
- c) a fixed quantity of produce irrespective of the yield from the land ; or
- d) produce or its estimated value partly in any of the ways described above and partly in another;

While agricultural tenancy is banned in Odisha, concealed tenancy is rampant. Over the last 3-4 decades, it has been largely observed that the ban on tenancy has produced several exploitative farming practices leading to negative consequences;

- a) mostly annual leasing by landowners leading to reduced investment by sharecroppers, thus decreased production and increased vulnerability,
- b) sharecroppers are exposed to high risk farming due to unprotected farming terms including arbitrary eviction,
- c) unrecorded tenancy makes sharecroppers “invisible” reducing the possibility of Government compensating them for losses caused by natural disasters,
- d) high input costs leading sharecroppers trying to avail informal loans from markets, and
- e) Increased fallow.

The under-estimation of tenancy stems from reporting bias as lessors tend to understate the leased-out area owing to (i) the fear that tenants will stake claims in favour of continued right of cultivation; (ii) desire to escape the ceiling on land holdings; or (iii) a combination of (i) and (ii). The share of



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operated area leased-in is therefore considered to be a more reliable measure of the magnitude of agricultural tenancy than the share of owned area leased-out as lessees have fewer incentives to under-report the extent of area leased-in. Nonetheless, land reform legislation designed to prohibit sub-letting, regulate rents, and confer security of tenure has given many landlords and tenants a common interest in concealing agreements which may be deemed illegal.

In leasing out land, landowners employ various devices to get around the law banning tenancy. Most contracts are oral and of short duration. Oral contracts help to ensure that tenants are not recognized in the updated land records during survey and settlement operations (section 3.1). At the same time, short-term contracts (typically 2-5 years), prevent tenants from establishing claims to land through ‘adverse possession’. Under the adverse possession rule, a tenant who has been in practical possession of a plot of land for a period of 12 consecutive years may thereby acquire legal occupancy rights to that land.

Rule 21 of the Orissa Survey and Settlement Rules, 1962, clearly specifies the particulars that need to be recorded in the preparation of the RORs. These include the name of each tenant or occupant; the class to which each tenant belongs; the situation and extent of the land held by each tenant or occupant; the name of the landlord of each tenant; and the name of each proprietor and landlord. There is a close relationship between the two, since hired labour normally requires supervision by family members. An estimated 10-20 percent household participates in land lease market, with over a fifth of agriculture land under tenancy arrangements.



5. RECENT RETHINKING ON FARM TENANCY POLICY IN INDIA

a. Govt. of India Five Year Plans

Since Independence, India's national government has developed 5-year national policy plans. These policy documents are not legally mandated upon states, particularly given that under India's federal system, states have jurisdictional power over land. The 5-year plans, however, have helped shape state-level policies through the power of the purse, through policy persuasion, or when the same political party governs both the central and state government. The Five-Year Plans in the early decades after Independence reflect the perspective that farmland tenancy relationships are inherently exploitative. In recent years there has been a paradigm shift with regard to perspective on land leasing and tenancy reform. This happened first in the Tenth Five Year Plan (2002-2007) which recognized the problems with state tenancy restrictions. It said that "the prohibition of tenancy has not really ended the practice. On the other hand, it has resulted in agricultural practices that are not conducive to increased production. This, in turn, also depresses employment opportunities for the landless agricultural labourers." (Section 3.2.73). It also mentioned that "the ban on tenancy, which was meant to protect tenants, has only ended up hurting the economic interests of the tenants as they are not even recognized as tenants. As a result, they are denied the benefits of laws that provide security of tenure and regulate rent." (Section 3.2.35).

This changing perspective was moved further in The Eleventh Five-Year Plan (2007-12), which recommended legalizing tenancy to allow tenants to apply for credit from formal sources and to provide them with enough incentives to develop their land. The Eleventh Plan pointed out that security of tenure should not be confused with ownership rights. It recommended that tenancy should be legalized in a limited manner by providing security to the tenant for the contractual period, which could be long enough to encourage long-term investment by the tenant. It should also protect the rights of landowners so that he has an incentive to lease out his land instead of keeping it fallow or underutilizing it. Landowners who would otherwise have to operate small uneconomic holdings should have the opportunity to legally lease out land to other farmers with the assurance of being able to resume possession at the end of the stated period of tenancy.

The Approach Paper of the Twelfth Five Year Plan points out that small and marginal farmer may be better off leasing their land to more viable farmers while seeking paid employment themselves. Major proponents of leasing reform recommend towards a liberalizing land leasing law to promote both agricultural efficiency and equity. They argued for laws that allowed leasing within existing ceiling limits while assuring protection of ownership rights for the landowner. Legalizing tenancy and bringing it out of informality, they argued, could entitle the tenants including sharecroppers to access bank credit and institutional support for agriculture inputs and protection against natural



calamity and crop loss. There is general agreement that available data on both the number of tenants and the area of land under tenancy are underestimates. Both the Census of Land Holdings carried out by the National Sample Survey Organisation, and the Agricultural Census, tend to underestimate the proportion of land under tenancy. However, the former is considered more reliable as it is based on independent household surveys while the agricultural census is based on a re-tabulation of the land records of owner-cultivators.

b. NITI Aayog Expert Committee

In 2015, the Government of India's premier policy think tank, National Institute for Transforming India (NITI Aayog), which is chaired by the Prime Minister and includes the Chief Ministers of every Indian state, constituted an Expert Group with a view to prepare a model agricultural land leasing act in consultation with the states. The panel of experts reviewed tenancy laws and practices in majority of the states to design a model tenancy guideline for the country. The drafting of the law took few months and was supported by state government consultations on best practices, legal framework and identifying legal changes. The goal was to create a model law that could be broadly endorsed and could be used by interested states as a starting point for introducing their own legislation.

The Expert Group, headed by renowned agricultural economist and land policy expert, Dr. T. Haque, completed the preparation of the Model Agricultural Land Leasing Act in early 2016. The Model Act sought to remove the absolute bans and the onerous restrictions and replace them with more practical regulations that would better balance the interests of tenants and landlords. The **NITI Aayog Model Act**³ talks about mutual and voluntary agreements between the sharecroppers and the land owners. These agreements will help the sharecroppers to access credit from co-operative banks, government subsidies and compensations. The sharecroppers will not have any owners rights over the land they will take on rental, thus giving landowners confidence that they won't lose their ownership rights if they give it on rental or lease. The Model Act also recommends the possibility of incentivising the land owners and the sharecropper to encourage them to entering into a written agreement; and further, the Model Act includes a standard written lease agreement.

3

http://niti.gov.in/writereaddata/files/writereaddata/files/document_publication/Final_Report_Expert_Group_on_Land_Leasing.pdf accessed 15 Dec 2016



c. Main features of the proposed model Agricultural Land Leasing Act, 2016⁴

- Legalise land leasing, which will promote agricultural efficiency, equity, poverty reduction, agriculture productivity and rapid rural change.
- This is to ensure complete security of land ownership right for land owners and security of tenure for tenants for the agreed lease period.
- It will remove the clause of adverse possession of land in the land laws of various states as it interferes with free functioning of the land lease market.
- Allow automatic resumption of land after the agreed lease period without requiring any minimum area of land to be left with the tenant even after termination of tenancy.
- Allow the terms and conditions of lease to be determined mutually by the land owner and the tenant, without any fear on the part of the landowner of losing land rights.
- Facilitate all tenants including share croppers to access insurance bank credit and bank credit against pledging of expected output.
- Incentivise tenants to make investment in land improvement and also entitle them to get back the unused value of investment at the time of termination of tenancy.

d. Odisha prompted to action

Taking a cue from the NITI Aayog Model Act, the state government of Odisha became one of the first state governments to take up this new round of agricultural tenancy reform (along with Madhya Pradesh and Uttar Pradesh). In 2016, Odisha's government started coming up with a new law to remove restrictions on agricultural tenancy. Following the basic policy thrust of the Model Act, the Odisha government aimed to create safeguards for both the land owners and the share croppers, superseding the existing tenancy legislation that restricts agricultural land leasing in the state. The means to accomplish this became consideration of amendments to the Orissa Land Reforms Act, 1965. "The Orissa Land Reforms Act, 1965 will be amended to recognize the rights of the sharecroppers.

⁴ <http://www.downtoearth.org.in/news/centre-rolls-out-agriculture-land-leasing-act-2016-53579> accessed 15 Dec 2016



6. ODISHA TENANCY STUDY

In 2015 year an unnaturally low rainfall is recorded is 116 blocks in the state with many receiving 65 percent rainfall below normal and will affect more than 75 % of the farmers in the area. In order to inform the development of new tenancy legislation in Odisha, the land rights NGO Landesa conducted multi-stakeholder consultations about the policy change and conducted field research to gather to both better understand current tenancy practices in Odisha and gather viewpoints of both tenants and landowners.

As part of these efforts, Landesa teams spoke to about 152 randomly selected respondents who were identified in snowball sampling. The exercise was qualitative in nature and respondents were interviewed in small groups for sharecroppers and individually as well as in small groups for owners. About 102 sharecroppers (including 28 women) and 52 landowners were interviewed.

The study found two primary types of tenancy being practiced – Kata⁵ (lease) and Sanja⁶ (sharecropping). Neither involved a written agreement. In both, the period of tenancy was frequently annual, but was dependent on the relationship and level of trust between the tenant and the land owner.

In many areas the dynamics of the tenant and the owners depends on the land production capacity (fertility and how much land one tenant can take on lease), availability of land for lease, irrigation and rainfall etc. Where there's more land available the condition of the tenants is poor. The bargaining capacity is limited; they have to maintain a good relationship with the owner who appears very powerful. So with more demand the owners bargain well and get better deal.

In other places, it is difficult for the owners to find tenants and the land remains fallow. This results in social stigma and hence the owners give their land to tenants at any at any price they get and Kata is mostly practiced in these areas. Many landowners feel that Kata is reverse exploitation of owners and the land also loses its productivity.

⁵ Tenant and the land owner enter into a verbal agreement and agree that the tenant has to give a fixed amount of the produce to the land owner annually. In this practice the land owner doesn't give any inputs, in cash or kind, and the agreed produce is given to the owner even in case of crop loss due to natural calamity/low rainfall etc.

⁶ In the *Sanja* system, which is the practice of sharecropping the produce is shared by the tenants and the owners at a verbally agreed ratio. The verbal agreement generally constitutes of a 50:50 sharing ratio of the produce between the owners and the tenants. However, the land owners give inputs including 50 percent of the total cost of the fertilizers, seeds etc. Tenants bear labour cost. In case of natural calamity and crop loss the compensation from the government comes to the owner who doesn't share with the tenant. Financial institutions do not support the tenants and the produce can't be sold by the tenants in the government *Mandis*.



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As per experts the produce annually from land per hector is as low as Rs 5000 for growing rice, therefore owners (with small and marginal holdings) are giving land either individually or jointly to large farmers, including individuals and companies for cash crops and plantation. These farmers then migrate to other states as labour in various other industries.

Most interestingly about 50% of people who are owner are either absentees or are in jobs so do not cultivate. They give it to tenants and get easy produce. But the fact remains is most of the people who are termed as farmers are either landless labours or are own small and marginal parcel of farm land. Many second generation owners find it as a burden to carry on farming, but are looking for one time gain from selling off the land. Tenants farmers are also of the opinion that their second generation that is educated will never come back to become tenant farmers.

It is estimated that on average, 10-20 percent of households in each village participate in the land lease market in Orissa, although this is subject to wide inter- and intra-regional variation.

Terms of tenancy contracts

Tenants are under no obligation to lease-in land from a particular lessor. They are quite free to take their own decisions on how much land area to lease-in and from whom, and are not expected to provide unpaid labour to the lessor. However, it was commonly reported that tenants may borrow money from their landlords and repay the loan with labour contributions. While there is little evidence of extra-economic coercion in leasing contracts, it does appear that some factor markets may be interlinked. Unlike the situation that prevailed prior to Independence, tenants no longer appear to be locked into exploitative relationships with landlords. At the same time, they have no legal status tenancy is banned.

In leasing out land, landowners employ various devices to get around the law banning tenancy. Most contracts are oral and of short duration. Oral contracts help to ensure that tenants are not recognized in the updated land records during survey and settlement operations (section 3.1). At the same time, short-term contracts (typically 2-5 years), prevent tenants from establishing claims to land through 'adverse possession'. Under the adverse possession rule, a tenant who has been in practical possession of a plot of land for a period of 12 consecutive years may thereby acquire legal occupancy rights to that land.

The broad issues that have emerged from the process are:

Sharecroppers' Issues: All sharecroppers lack access to formal institutional credit and borrow money from informal lenders for cultivation. Due to lack of valid documents, sharecroppers lack access to government minimum support price. As they lack recognition by the government, sharecroppers lack



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access to any government benefits. Sharecroppers lack the sense of security due to short-term arrangements and lack of written agreement.

Sharecroppers' Views: All the sharecroppers interviewed (100%) supported a formal written agreement with copies kept by sharecropper, landowner & a third person. They preferred a written agreement to be on stamp paper and a copy to be kept with the RI. Sharecroppers shared that the agreement should be preferably for duration of at least 5 years. Most of the sharecroppers support concept of landlord resuming or sell land in extraordinary circumstances such daughters' marriage, higher education costs, or death of family member. They preferred that Revenue Department provide identity cards to sharecroppers to facilitate access to loans and other benefits. In case of crop loss, 60% believed government compensation should be shared as per sharing agreement and 40% believed it should be shared equally. They also believe that government should extend input subsidies directly to sharecroppers. Keeping in mind the input cost most (98%) believe that sharecroppers should be able to rent in up to 4 acres.

Landowners' Issues: The land owners cited that the major concerns they face currently for farming is lack of irrigation facilities is a major issue. They cited that one reason for short-term arrangements is to avoid conflicts. Sharecroppers sometimes do not abide by verbal agreement and increasing labor costs contribute to leaving up to 20% of land fallow

Landowners' Views: Out of the land owners interviewed, 80% prefer not to have registered written agreement as they fear this will lead sharecroppers to claim ownership of land as per existing law in the state. This 80% is ok with short-term, annual agreements on plain paper, with R.I. and PRI members as witnesses. About 20% of the land owners interviewed are ok with registered, written agreements on stamp paper. Most believe copy of agreement should be kept by landowner only and they should be able to sell land in any emergency. Sharecropper should be able to use land only for cultivation and not demand ownership of the land. Landowners said that they should have unilateral right to terminate agreement at any time and 80% believe government compensation for crop loss should go to landowners.



7. Recommendations

Landesa organized consultations with experts and various stakeholders. The consultation framework was around the broad premises of increased productivity, inclusive approach to address the owners and tenants insecurities, also work on liberalizing tenancy by land tenure reforms. Purpose is to simplify land leasing laws to promote inclusive growth and improve agricultural productivity.

Legal reforms and implementation of guidelines

- a. Review of Odisha Land Reforms Act - OLR amendment proposed include tenant taking land on lease cannot claim any right of adverse possession over the tenanted land and no civil court shall entertain such kind of dispute.
- b. Ceiling on operational holding – limit on ceiling on leased in area to check on reverse tenancy.
- c. The category of land while lease-in or lease –out not to be changed from agriculture to any other type for leasing out.
- d. Review of existing Guidelines by Nationalized Banks, Private sector Banks, PACS, Cooperatives and make appropriate modification with specific mention provisions for sharecroppers
- e. Develop a definition for ‘sharecroppers’ to facilitate their systematic recording

Enumeration of sharecroppers and updating land records

- f. RIs to certify sharecroppers and record list of tenants without recording in RoR
- g. Separate register for tenant / sharecropper prepared on annual basis
- h. Agreement between the tenant and the owner (to encourage long term lease) - to facilitate identification, duration to be mutually agreed upon to protect the social fabric of the practice
- i. Role of Gram Sabha, SHGs, Village Elders, farmers groups, village youth, etc. in the process to support RI

Provision of credit facilities from institutional sources

- j. Simplify procedure for credit facilities for sharecroppers
- k. Formation of Joint Liability Groups (positive examples from Chhattisgarh, Kerala)
- l. Linking paddy procurement to bank loan repayment

Input subsidy

- m. Identified/ enlisted sharecroppers to get access to all subsidies from horticulture and agriculture departments



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- n. All on-going of the horticulture and agriculture programmes to reach share croppers

Safeguard against natural calamity and crop loss

- o. Sharecroppers rights over compensation in case of crop loss and natural calamity
- p. Provisions for insurance of crops

Procurement of food grain from Sharecroppers with price protection

- q. Procurement of paddy and other products and provision of Minimum Support Price to sharecroppers

Communication and advocacy with various stakeholders

- r. Bankers and Insurance Company – need for special provisions for sharecroppers, implementation framework for authorities
- s. Land owners – safe guards against apprehensions, protecting ownership rights etc
- t. SHGs and Federations –regarding interest rate for farming purpose



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8. CONCLUSIONS

Land leasing is accepted norm practiced throughout the country in various forms. With the introduction of a law on allowing leasing, farming opportunity for the small and marginal farmers is likely to improve. With formalised leasing it would bring in fallow land under cultivation and provide land access to the landless and the land poor. Leasing in and leasing out of agricultural land should therefore be legalized and permitted within ceiling limits of various states. This would improve the rural poor's access to land and discourage landowners to keep their land fallow, aside from motivating them to take up non-farm employment without any fear of losing their land rights. The clause of adverse possession of land existing in the tenancy laws of most states should be deleted as it discourages the land owners to lease out any piece of land on continuous basis, thereby causing insecurity of tenure and lower productivity of rotational tenancy. All tenants, based on their simple lease agreements should be entitled to access institutional credit, insurance and marketing facilities.



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