Committee
On
State Agrarian Relations
and
Unfinished Task of Land Reforms

VOL. I

DRAFT REPORT

Ministry of Rural Development

Government of India

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Committee on State Agrarian Relations and Unfinished Task of Land Reforms

List of Members

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Terms of Reference

(i) To conduct in-depth review of the land ceiling programme in the country including status of distribution of land declared surplus, continued possession by the rural poor of the allotted land and expeditious disposal of land declared surplus but held up due to litigation and to suggest appropriate and effective strategies in this regard.

(ii) To ensure access of the poor to common property resources, suggest ways for identification, management, development and distribution of Government/wasteland to the landless.

(iii) To review the progress of distribution of Bhoodan land in the States and suggest measures for distribution of the remaining Bhoodan land to the landless.

(iv) To examine the issue of tenancy and sub-tenancies and suggest measures for recording of all agricultural tenants and a framework to enable cultivators of land to lease in and lease out with suitable assurances for fair rent, security of tenure and right to resumption.

(v) To examine the issues relating to alienation of tribal lands including traditional rights of the forest-dependant tribals and to suggest realistic measures including changes required in the relevant laws for restoration of such lands to them.

(vi) To examine the issue of setting up of fast track courts/mechanism for speedy disposal of land related litigation cases.

(vii) To look into the land use aspects, particularly the agricultural land, and recommend measures to prevent/minimize conversion of agricultural land for non-agricultural purposes consistent with development needs of the country.

(viii) To examine the issues related to homestead rights and recommend measures for providing land for housing to the families without homestead land.

(ix) To suggest measures for modernization of land management with special reference to updating of land records, proper recording of land rights and speedy resolution of conflicts and disputes relating to land.

(x) Suggest institutional mechanisms for effective implementation of land reform programmes.

(xi) To examine measures to provide women greater access to land and other productive assets.

(xii) Any other issue of relevance.

(xiii) Any other Term of Reference that may be decided by the Committee in its first meeting.

An Agenda to Reform Agrarian relations for Equity and Efficiency in Contemporary India

NATIONAL LAND REFORMS POLICY

I. THE CONTEXT

1.1 It is common knowledge that access to land is of critical significance in large parts of India and the entire economic, social and political networks revolve around it. Agriculture and primary sector activities based on land and other natural resources are the prime source of livelihood for the vast majority of the economically vulnerable rural population, including the poor in the country. Further, land provides not only economic sustenance but often plays a key role in enhancing the prospects of substantive citizenship in much of rural India. Thus the issue of land rights and access to natural resources is therefore one which must be envisioned not in narrow economic terms (e.g., a unit of production) but as basis for larger well-being.

1.2 **The capacity of land to provide food, livelihood sustenance and surpluses for capital investment to our population remains despite the growing pressures. The National Centre for Agriculture Economics and Policy Research [NCAP] forecasts that a growth rate of 2.21 percent is required to meet the estimated demand for the years 2003-12 and 1.85 percent for the 20011-21. As against this the XIth Plan document targets a growth of 4 percent. This growth, however, cannot be achieved with a narrow institutional base and thorough land reforms are condition precedent to the realization of these production goals. Far from the Malthusian limits being exhausted we are yet to utilise our potentials even in major parts.**

1.3 Even if we choose to confine the perspective on land to the limited economistic understanding it is well-known that land reforms play an extremely important role in accelerating growth and in poverty reduction. The historical experience bears ample testimony to it. In India, lack of access to land has condemned millions into endemic and chronic poverty, seriously limiting possibilities of upward mobility for future generations belonging to such poor households. Furthermore, it may not be off the mark to suggest that the recent acceleration in the country's growth rates has largely eluded the economic and social well-being and empowerment of its most vulnerable citizens.

1.4 In what continues to be primarily an agriculture based economy, rural poverty and well-being remain closely tied to questions of land ownership and control. The country will never be able to achieve a structural end to rural poverty without land reforms, including redistributive measures and security of tenure and ownership, prevention of usurious alienation from vulnerable segments of people and ownership of house sites.

1.5 The imperative for land reforms derives firstly from the Constitutional mandate for equality before law and the primary duty of the state to ensure redistributive justice. It is reiterated nearly sixty years after Independence in the Common Minimum Programme of the UPA government, declared on 24 May 2004, that 'landless families will be endowed with land through implementation of land ceiling and land redistribution legislation. No reversal of ceiling will be permitted'.

1.6 It may also be emphasized that the changes in overall macroeconomic policy regime since the early 1990s may have significantly contributed to acceleration in loss of land and other critical natural resources from the vulnerable segments of the country's population. This may be at the root of the significant spurt in increasing rural unrest and 'extremist' violence in 220 districts of the country, as

has been recognized by the Expert Group of the Planning Commission[1]. In other words, not only the progress in land reforms may have been halted in the recent years, but there is real danger of the reversal of the land reform agenda.

1.7 After independence, as is well-known, the State recognized the vital link between land and livelihood of the masses in rural areas and launched land reform measures, but such measures in most parts of the country have fallen dramatically short of their objectives, including that of required minimum in terms of homestead land for every family. Grossly inadequate achievements are clearly evident from the distorted land holding pattern. According to the NSSO Report on landholding (2003), 95.65 per cent of the farmers are within the small and the marginal categories owning approximately 62 per cent of the operated land areas while the medium and the large farmers who constitute 3.5 per cent own 37.72 per cent of the total area. A clear increase is perceptible in the number of landless labour in rural areas accompanied by a decline in the wage rate in the agricultural sector. There is also an accompanying decline in the profitability of agriculture. An average farmer spends about Rs.503 per month as his household expenditure (NSSO 59th Round). This has brought about a concentration of poverty amongst the rural landless labour, marginal and small farmers and the minorities.

1.8 The agricultural scenario is characterised by declining agricultural productivity due to decline in availability of the key inputs like fertilizers and lack of basic infrastructure and institutional support, which has triggered off the great distress in the rural areas. This has given rise to vast turbulence in the rural areas. A good 40 per cent of the farmers are feeling constrained to quit agriculture. This turbulence has also contributed to a pronounced trend in rural-urban migration, and a massive stress upon the urban civic infrastructure which has clearly not been designed to handle this kind of population pressure.

1.9 Along with the very limited success of the land reform policies undertaken in India in different plans, the overall trajectory development including the State owned mega projects relating to infrastructure and industrialization, and recent changes in legal statuettes regarding ownership and acquisition of land by private enterprises have further increased the share of landless and marginal farmers. The anxiety of rapid industrialization has acquired a new thrust in the period of economic reforms and has necessitated acquiring land on an even larger scale, by taking recourse to highly questionable policies such as SEZs. The resultant displacement of population has further accentuated the problem of already existing socio-economic disparity and social unrest with each passing year[2].

1.10 Nowhere is the distress more evident than in the tribal areas, particularly those falling within the Schedule V. The tribals have been the biggest victims of displacement due to development projects. Though constituting only 9% of the country's population the tribal communities have contributed more than 40% to the total land acquired till so far. The Parliament has legislated the most radical of its Acts in the form of Panchayats (Extension to the Scheduled Areas) Act, 1996, applicable to 9 of the States. All these States under Schedule V have stringent laws protecting the corpus of tribal lands which, however, continue to be subject to steady erosion due to connivance of the Government machinery, weak implementation, a political economy growing around the tribal lands and marginalisation of tribals in the national polity.

1.11 There have been disturbing trends notice in the recent times. PESA area constitute the main target of mining/industrial zone/protected forest reserve after denial of rights/access of local

[1] The Planning Commission set up an Expert Group on "Development Issues to deal with the causes of Discontent, Unrest and Extremism" in May, 2006.

[2] As has been mentioned in a report of An Expert Group to Planning Commission (2008), named "Development Challenges in Extremist Affected Area" that according to an unofficial study by Dr. Walter Fernandes, the figure of persons displaced/affected by projects were at around 60 million for the period from 1947 to 2004, involving 25 million ha.

community recently. Thousands of acres of protected & scheduled areas are forcefully transferred in the name of mining and industrialization. Masses in several North Eastern States have also suffered drastically on this count. In Assam alone, about 3, 91,772 acres of land has been transferred for development projects without considering either the ecological consequences or other adverse effects on life and livelihood of the marginalized communities.

1.12 Massive transfers of agricultural and forest land for industrial, mining and development project or infrastructural projects has created rural unrest and distress migration in those areas. Findings indicate that about 7,50,000 acres of land has been transferred for mining and another 250,000 acres for industrial purposes during last 2 decades[**Center for Science and Environment]**. SEZs have mostly focused on prime agriculture land resulting in untold misery for poor peasants. Large chunks of land have been rendered degraded because of industrial waste and effluents. These industrial units also have also affected the quality of river waters which have traditionally been the lifeline for the rural masses in a number of ways. Unplanned urbanization has frequently resulted in illegal grabbing of significant chunks of agricultural and commons land.

1.13 Widespread conversion of agriculture land for non-agricultural purposes is being observed throughout the country. The major drivers of such rampant conversion are decreasing incentives from agriculture, industrialization and urbanization, and changing aspirations of the people. The conversion of prime agriculture land is also a factor of decline of availability of foodgrains. This has become a huge challenge as India needs to secure food grain for its more than 1.1 billion people.

1.14 The corpus of tribal lands is subject to continued erosion not only through the process of Government led process of acquisition but also through the institution of moneylenders, collusive title suits, illegal permissive or forcible possession, unredeemed usufructuary mortgages, fraudulent and illegal transfers, abandonment and making incorrect entries in the records-of-rights. The Government stands committed to protection of the tribal corpus of land and in all the Schedule V States there is a protective legislative framework. These have failed to arrest the erosion mainly on account of faulty understanding of laws, bureaucratic apathy and insensitiveness, multiple channels of appeal, misplaced emphasis on evidence, lack of familiarity of the tribals with the court procedures, poor staying capacity on part of the tribal, lengthy procedures, rent seeking behaviour, rising demand for tribal land on account of the operation of the market forces and creation of a high value illegal tribal land market. These implementational lapses arise because the management of tribal lands is externally-bureaucratically controlled and the command over the land resources does not rest with the community. Under the traditional systems the it is the community which has always had the command over the natural resources including the land resources. This shortcoming was cured by enactment of the Panchayat(Extensions to the Scheduled Areas) Act, 1996 better known by its acronym PESA.

1.15 PESA inter alia restores the community's command over the natural resources and empowers the Gram Sabha to identify and restore the alienated tribal lands and to protect the tribal way of life. PESA calls for four pronged strategy for successful implementation – a) amendment of laws in contradiction to it; b) putting in place a set of procedural laws in conformity with the true intent of PESA; c) creating effective support institutions; and d) capacity building. In none of the States it has been implemented. It is a confirmed belief that a faithful implementation of PESA will go a long way in quietening the turbulence in the tribal areas.

1.16 It hardly needs emphasis that all these key concerns need to be acted upon on an urgent basis for reasons of efficiency as well as equity. Ignoring just aspirations of the masses in rural India for inclusive development will only entail huge economic and political costs. To move towards the objective of inclusive development, which is the motto of the Eleventh Five Year Plan, one of the urgent inputs ought to be carefully designed land use policies. Land has multiple purposes to serve. Along with primary activities like agriculture, mining, forestry etc. it is also the basic requirement for

industrialization. As mentioned in the foregoing the process of rapid industrialization has resulted in acquisition of land on a large scale and displacement of population. Industrialization is important for the development of the country but it can not be supported at the expense of agriculture and the basic rights for land and livelihood of the population. Thus it is very important that every state clearly demarcates land to be used for different purposes. So revitalization of Land Reforms Council at the Centre and Land Reform Boards for every State is an urgent need to clearly specify the land use policy. In fact it would be really worth while to have a Standing Land Commission for every State in the country.

Land Reforms in North East

2.1 Geographically, sociologically, anthropologically, culturally, historically and nstitutionally the North Eastern Region (NER) represents a world in itself. The life in this region is rooted to its Land Tenures which exhibit strong inter-State and intra-regional variations. The tribal communities inhabiting this region each have their own distinctive systems of Land Management with dominant community life. Regardless of the inter-State and intra- regional variations the base of the system is founded on common platform – a vigorous community life, management of land by a council of elders elected or nominated, apportionment of land as per use and requirement, lack of concept of individual property rights and the families serving as the unit for allotment and use. The systems generally work on the basis of community ownership and management, are generally democratically driven and prevent accumulation of land resources while providing egalitarian sustenance to the society. There are also instances of Chieftainship, though limited where the ownership of the land resources reside in the person of the Chief.

2.2 The land tenures system in the NER can be classified into community forest land, State Forest, protected forests, unclassified forests or zoom lands, land under habitation, family land and individual lands which are mostly close to urban agglomerations. The community forests are protected and managed by the community and sustain the community needs in terms of their basic requirements. Different communities have evolved their own methodologies for protection and management of the community forests. The villages in Nagaland, except in the areas inhabited by the Sema Nagas, are like little republics governed by their democratically elected Village Councils. The community forests in such areas are under the management of the Village Council which also determines the need for housing and sustenance, allots the land accordingly and lays down rules for the management of the community forests. The rights of the Village Council are absolute and their decisions are seldom questioned by the members of the community. Even in Nagaland the mode of management of the community forests may vary from village to village with each Village Council evolving its own pattern of management. In village Toirupha inhabited by the Jamatia tribes in the district of South Tripura the community forests are protected and managed by the women folks. Harvesting can only take place between November and January and each family is not allowed to take more than 200 poles. There is an enormous range of models of management in the North East, each having its own core competence.

2.3 There are models where the State forests in some instances while the Protected Forests invariably are managed by the village community and their proceeds are shared. Reports are available to indicate that the preservation of such forests is acknowledgedly superior. Private property rights are a relatively scarce phenomenon in such tribal areas and extend mainly to housing and movable properties. The concepts of private properties are also closer to the urban agglomeration and are of recent origins. The family constitutes the basic unit of land use. Within the family structure the authority of the Head of the family prevails. It is the family which makes arrangement for contribution of labour for community and other works. It is a tribute to the institutional robustness of the land management system of the community that it has registered the incursions by alien institutions like private ownership and commodification - marketisation of land resources.

2.4 It is not that the village institutions are static and immune to change. Introduction of certain new factors and dimensions have made the situation more complex. Social system evolves under certain conditions of living. Changes caused by new forces do affect the social system and lead to changes in the land ownership structure. The new forces include spread of education, urbanisation, industrialisation, outmigration, occupational shift, growth of competing institutions, imposition of State authority, introduction of market forces, globalisation, automisation of individual and disintegration, insurgency, illegal immigration from Bangladesh and other factors. A larger participation in the union labour market by the youth of the North East is also in evidence. These serve to create increasing pressure on the village institutions for atomisation of the village society and for commercialisation of the land relations.

2.5 Jhoom cultivation is still the mainstay of agriculture. The cycles, though, are getting reduced and under such a situation capital investment is non-existent or very low. Sometimes these lands are being converted into individual land. Given this context, introduction of modern management practices have become very difficult. There are also the problems of encroachment of village land by the outsiders. Rapid urban growth and influence of globalisation and marketisation of land are responsible for the growing trend of conversion of village community lands into individual ownership. As a result of this, indigenous village institutions are gradually getting weakened.

2.6 The community land management systems have their respective inbuilt mechanism of dispute resolution based upon democratic form of governance, general will of the village community, transparency and dialogue. Despite the growing complexities and external pressures there is no significant rise in disputes in evidence. On the other hand the introduction of formal Courts has led to an encroachment upon the turf of the traditional dispute resolving institutions. There is evidence to be had that these are imposing litigation burden upon the village society and the judgements often undermine the land management system. This portends ill for the community institutions including that of land management.

2.7 Admittedly, there are critical gaps in the body of knowledge and understanding the complexities of the social institutions in the NER. The different areas have their own system of governance including the District Councils, the Hill District Councils, the Autonomous District Councils and Autonomous Regional Councils which are endowed with rule making powers and implementation of the same. These systems have however strengthened the District level institutions at the expense of the Village Councils which may be dissolved by the former. The people inhabiting the tribal areas are characterised by fierce pride in their community and jealous possessiveness of their traditional institutions. Interventions from the Central or the State Governments without understanding the local institutions, social fabric and the will of the people create disenchantment, anger and rebellion. This accounts for the need to seal such critical gaps through sustained research and interventions reflecting the felt need and differentiated solutions emerging from the village society itself.

2.8 In the plain areas of Assam the Revenue Department is severely constrained by the fact that the subject has been traditionally included in the Non-Plan Head. There is dearth of resources for both modernisation and adequate skilled manpower. The record systems have fallen into arrears and do not reflect the ground realities. This dichotomy has facilitated large scale incursion of illegal immigrants, encroachment upon the community as well as the State lands and the acquisition of title by such illegal migrants. This problem is now being felt even in the interior tribal areas and has created ferment therein.

2.9 In the context of villages in India CPRs perform several functions in terms of their contribution to people's livelihood as in household income, livestock sustenance. CPRs are important sources from which domestic energy needs of the landless households are met. Similarly, dependence on CPRs by both landowners and landless possessing livestock is considerable, too. Livestock dependant households derive large amount of animal fodder and water requirements from CPRs. Furthermore, CPRs are important from ecological perspective, too. Thus, the criticality of CPRs is to support rural livelihoods (livestock and land-based) and ecology.

2.10 It has been realized since that there is not much clarity on what constitutes CPRs out of the various categories used by the government for their land use statistics (i.e., 9-fold classification). The lack of clarity towards clear definition of CPR is the root cause of the improper public interventions. This has also meant that the size of CPR land has been declining over the years. There has been a steady decrease in all kinds of common lands – pastures, village forests, ponds, or even burial grounds. This is due to diversion of CPRs for urbanisation, industrial needs, mining practices, pressure of developmental projects like dam, roads, school, homestead needs – distribution to landless families, cremation grounds, playground, etc. Moreover, the area under CPR is threatened due to encroachments by resource-rich farmers. Over-exploitation of CPR definitely points to poor-upkeep of these resources. This also points to the fact that traditional institutions have either weakened or disappeared and have failed to enforce norms. Also, Revenue Dept control has never been interested in productivity, being too remote to manage and with lack of funds to develop it as their major role has been more of a record keeper rather than that of developer. The complex nature of land administration has only worked to the disadvantage of the rural poor. To further aggravate the situation is the inconsistencies in land records. Thus we see that there is visible lack of a long-term perspective towards land and this seems to be missing both at the government and community levels. This shows a clear absence of a political will to have this perspective. At the same time, such perspective is not propagated by bureaucrats, too.

BROAD FRAMEWORK

3.1 Though land is a State subject, a **National Land Reforms Policy** is considered instrumental in providing a policy framework for action by the Centre, States and PRIs in the present context and for bringing in accountability at each level. The Constitutional arrangements have devolved a responsibility upon the Union to oversee the fostering of economic and social justice in the States. Land Reforms remain a means of distributive justice to the marginalised and, therefore, a part of the Preamble to the Constitution.

3.2 It stands conclusively proved that the smaller farms utilise more labour and are inherently more efficient as employment creators (Indian population being so huge employment creation at the rural levels is a must) as compared to their medium and large counterparts. Only small holdings can ensure food security and rural employment. The skewed land relations and distorted production relations are responsible for an inefficient utilisation of land and labour resources, low level of infrastructure, mounting social tensions and the growing violence. Land Reforms measures, in the past, have proved inadequate — they were designed and instituted in small measures by a weak implementation machinery beset with internal contradictions and without mobilising the rural poor. Introduction of wage employment programmes like NREGA have led to an enhancement in the bargaining strength of the rural labour. Farms contributing more internally generated labour stand at an advantage vis-à-vis farms hiring in more labour. This is likely to lead to disintegration of the large and the medium farms into smaller units or to their mechanisation-capitalisation. Both these processes are already in motion. A set of comprehensive measures, eliciting strong institutional support and integrating the people into the process for accelerated outcomes is likely to provide the impetus needed for revitalising the reformist measures.

3.3 The land based conflicts in the rural areas add to the other forms of conflicts prevalent and generally place an efficiency burden upon the rural economy and society. The hunger for land amongst the landless poor remains undiminished and has given rise to several movements. Irrespective of their ideological considerations the strength of different movements revolving around land could be internalised for State sponsored lands reforms. The role of civil society organisations is recognised in promotion of more equititious land relations particularly in such areas where land movements are relatively weak. There is an imperative to recognise the State sponsored land based and legal access programmes and community based initiatives like the land based collectives.

3.4. Effective implementation of reformist measures is rooted to the management of land records and the correctness and accuracy of the record-of-rights. The land management continues largely in the pre-independence mode while it is the common experience that the record-of-rights do not reflect the ground situation. The purpose of the revisional survey and settlement operations was to update the record-of-rights and revise the rent rolls to extract the maximum for the State. Even where the survey operations have been conducted instead of being completed in the stipulated 4 years they have dragged on for more than 40 years in some cases thereby rendering the new records already obsolete. The need for mapping of land parcels and for accurate and updated land records to support the rights of the weak and for a host of other arguments is even stronger today.

3.5 The newer development in technology and expansion of technological base has added a new dimension which has good potential to be used in favour of the rural poor. It ranges from facilitating survey operations to digitisation of maps, creation of records, affording easy accessibility and bringing the land management into public domain right till the grassroots. This is, however, to be taken with a pinch of caution as no technology acts by itself and has to be backed by pro-poor ground truthing.

3.6 There is an urgent need to revisit the debate on tenancy. The States are classified into two major groups- those which recognise tenancy and regulate its conditions including rent, period of lease, etc. and those who prohibit it outright. There is evidence aplenty that despite prohibitions tenancy exists significantly. The 60th Round of National Sample survey for the year 2004 establishes that the leased in area forms nearly 7 percents of the operated area while 11.5 percents of the rural household leased in land. However, there are other micro studies that point out that the NSS data does not fully capture the incidence of tenancy which varies between 15 to 35 percents. About 90 percent of the leased area in area is informal and unrecorded. The landless and the marginal farmers constitute the bulk (91%) of those leasing in land. Under conditions of capitalisation and commercialisation of agriculture, tenancy has taken newer forms. Studies indicate large variations of tenancy, including the conventional share cropping, reverse tenancy, contract farming, reverse sub-tenancy, short term lease, seasonal lease, long term lease, lease in perpetuity, group leasing, pool leasing, etc. While some of these are favourable to the tenant, some others vary from downright unfavourable to less than favourable. There are yet some other forms which remain to be assessed. This will also equip the small lessors with the legal rights structure. Hence there is a need to re-open the scope of tenancy registration in a regular manner, because only that will guarantee due rights of tenant.

3.7 Land Reforms cannot be carried out appropriately unless there are land use plans of village, states and the nation. Such land use plan should capture the overarching concerns: ecological, food production, livelihood and allocating land for industry and development purposes. The land use plan can be developed and executed involving people, States and Central governments, and dedicated non-governmental organizations. However, such plans are missing because of lack of political and bureaucratic wills. Thus, absence of a long term perspective is the cause of land related contentions observed throughout the country. Furthermore, absence of long term land perspective on land and land use plan have led to improper recognition of common property resources in the country. This has also contributed to rampant conversion of agriculture land for non-agricultural purposes having detrimental effects.

3.8 Thus we see that there are several perspectives that could be drawn to land issues – equity, ecological, growth-efficiency, communitarian and gender perspectives which often place conflicting claims on the land resources both in terms of understanding and strategies. It is indeed a difficult task to reconcile these perspectives into a cogent and acceptable policy propositions. Nonetheless, this policy document retains a firm focus on the rural poor.

POLICY IMPERATIVES

LAND CEILING

4.1 The land ceiling programme continues to retain its relevance; there is an urgent need to revisit and revive the same. The States may have the option to revise the ceiling even on regional considerations without exceeding the upper limit.

4.2 There should be discontinuation of the existing pattern of exemptions to religious, educational, charitable and industrial organisations, plantations, fisheries and other special categories. The religious institutions should not be allowed more than one unit of 15 acres while Research Organisations, Agricultural Universities Educational & Other Institutions and others may be allowed more than one unit on customised case-to-case bases.

4.3 Where more than one unit is allowed in addition to general exemption it shall be incumbent upon such beneficiary organisations to purchase from the open market and distribute an equivalent area amongst the landless poor.

4.4 Not more than one appeal and one revision should be allowed to be decided by Composite Tribunals including representatives of the landless poor and reputed community based organisations. Boards/ Fast Track Courts and Land Tribunals under Article 323-B, should be setup in all States.

4.5 There needs to be an urgent physical survey of all ceiling land including those not distributed and those in unauthorised possession and must be restored in the same transaction.

4.6 Not more than one acre of wet land and two acres of dry land should be allotted as ceiling surplus land.

BHOODAN LANDS

5.1 The status of the Bhoodan lands remains indeterminate. There should be an authoritative survey of all Bhoodan lands in a campaign mode involving the civil society and organisations of the rural poor and the Gram Sabha within a specified time frame.

5.2 Recognising the fact that multiple transfers might have taken place in the intervening period it is necessary that appropriate changes be brought to annul the effect of these transfers.

5.3 Restoration of possession and distribution of the Bhoodan lands to the rural poor including their village collectives should be completed along with the survey in the same or continued transactions.

TENANCY REFORMS

6.1 Tenancy should be legalised in order to provide the rural poor with access to land, discourage the land being left fallow and for enhanced occupational mobility of the rural poor. Subsequently, depending upon the experience leasing could be legalised for all areas up to the ceiling limits.

6.2 In order to facilitate land leasing standard contracts in simple language protecting the rights of both the parties should be devised enforceable at the Panchayat level rather than getting mired in judicial proceedings thereby reducing the transactions cost to a bare minimum.

6.3 Women farmers' co-operative and other women land based groups should be encouraged on a preferential basis to lease in land as experiences show that such organisations of women farmers have emerged as the most viable farming units.

6.4 All States should impose ceiling on operational holdings and not just ownership holdings. Under no circumstances should the landowners having land above the ceiling limit be allowed to lease in land for agricultural purposes.

6.5 The fixation of fair rent may be reconsidered in areas with high institutional strength and the market determined rent should be allowed to prevail.

6.6 All tenants and sub-tenants including share-croppers/under-raiyats may be recognised by law regulating incidents and conditions of tenancy. There should be adequate safeguards including adequate institutional support and rural development schemes to overcome poverty and indebtedness. The financial institutions will be required to come up with suitable schemes of credit support directed either through the collateral institutions or Self-Help Groups.

HOMESTEAD RIGHTS

7.1 Homestead land and a house need to be recognised within the minimum rights structure of every homeless/landless. A priority list of landless/homeless should be prepared with the approval of the Gram Sabha.

7.2 A minimum of 10-15 cents of land should be provided for such landless-homeless in a time bound manner and land entitlement should be in the name of the women.

7.3 The SC/ST and OBC beneficiaries, as decided at the State level, may be given land in contiguous blocks with infrastructural facilities like road, electricity, school, drinking water, health centre and technological and extension support for supplementing the livelihood, etc.

7.4 A National Policy on Homelessness should be prepared and put in place in consultation of the States.

FOREST LANDS

8.1 Considering the half-hearted implementation of the Forest Rights Act, 2006 being undertaken by the States it becomes necessary to create awareness and mobilise the Gram Sabha to recognise and protect the rights of the forest dwellers and the tribal communities in a definite time frame.

8.2 Forests have traditionally served as commons both ecologically and economically for the tribals dependent upon them. Biodiversity of the ecologically fragile regions like the north-east and western-ghats also need to be safeguarded to ensure their role as ecological buffers for the burgeoning human population. In most of the hilly regions – south Rajasthan, Western Ghats, Central India, Himalayas and Eastern India large tracts of forests lands are part of many local watersheds. Proper development and management of these common lands is critical to the success of a watershed as they act as reservoirs of water and are also often located along the watershed ridges.

8.3 Common property rights of the community over forest lands including the village forests need to be recognised, recorded in the record-of-rights and protected.

8.4 The role of Tribal Advisory Council (TAC) should be strengthened. Under article 238/2, the Governor can make regulations for the Scheduled Areas by prohibiting and restricting transfer of land by or among the members of Scheduled Tribes and regulate money lending. There is provision for TAC in Schedule V areas and the Governor is bound to consult them.

8.5 Withdrawal of minor cases filed against tribal communities under encroachment/ violations of Wildlife Act/ other forest offences etc.

8.6 Tribal communities who were earlier displaced because of national parks and wild life sanctuaries must be rehabilitated under the purview of FRA.

8.7 All land acquisition process in tribal areas must be stopped before settlement of tribal community under FRA.

8.8 All primitive tribal groups must be exempted under FRA without their date of occupancy on a particular piece of land. Any land that has been claimed under FRA must not be identified/ utilized for Jatropha plantation.

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8.10 All claims of non-tribal communities on the same piece of land must be taken to a fast-track court for timely settlement.All claims for common property resources should be brought under time bound action and resettlement should be provided on the basis of 'Record of Rights.' Forests should be recognised as Common Property Resources (especially protected forests and unclassified forests and rights and concessions must incorporate the needs of the community for non-timber forest produce)

8.11 All land regularized under FRA must not be alienated/ acquired in the next 100 years and in case of any emergency acquisition, the same category of land must be provided.

8.12 The tribal communities who lived in Salwa Judum camps must be resettled in their occupied land irrespective of the cutoff date under FRA (2006).

8.13 No Special Economic Zone and/or Special Tourism Zone will allow on forest land and V-Scheduled Areas.

TRIBAL LAND ALIENATION

9.1 Consent of all the stakeholders should be considered before land is acquired. This is imperative for smooth implementation and also for getting the right kind of benefits to the people. Thus, Gram Panchayat should be consulted at the time of acquiring land.

9.2 In many instances unutilized land acquired for a public purpose is difficult to reclaim. There should be a speedy process to reclaim and take possession of the unutilized land. Moreover, used land, especially in case of coal and other mines should be reclaimed and acquired instead of acquiring agriculture land for public purpose.

9.3 These assessments should be thoroughly carried out involving the stakeholders before projects are executed. And based on these assessments future course of action should be decided. Social impact assessment is highly advisable to deal with compensation, rehabilitation and resettlement issues.

9.4 To the maximum extent barren and uncultivable land should be acquired for industry and public purpose.

9.5 At this juncture of the growing economy better design of infrastructures should be promoted. There should be emphasis on approving and promoting multi-storey buildings that occupy less land space, especially for urban development.

9.6 Developers who acquire land under Land Acquisition Act or SEZ should be prevented from acquiring more land than required.

LAND ACQUISITION

10.1 The Central Land Acquisition Act of 1894 and other central and state acts dealing with land acquisition should be amended in the line with true intent of the provisions of PESA. A clearer definition and guidelines for 'public purpose' should be formulated to help remove some of the arbitrariness present in the existing system of land acquisition. Besides, the lack of transparency in the process of land acquisition needs to be addressed. **Definition of Public Purpose: The definition of public purpose should take into account ecological considerations.**

10.2 The common property resources (CPRs) including grazing land, village forest and water resources should not be acquired without providing alternative sources of equal or higher value.

10.3 The Land Acquisition Act should be amended to incorporate Rehabilitation &Resettlement Act for all projects. Rehabilitation should be undertaken in such a manner that the displaced tribals have a clearly improved standard of living after resettlement. Their ecology, culture and ethos will have to be given due consideration in the resettlement plan.

10.4 Survey and settlement operations should be taken up in those areas where it has not been done so far to remove any confusion or uncertainty. Following the recommendation made by the Expert Group on Tribal Land Alienation, survey of the hill slopes up to 30 degrees should be mandatory in the states with Schedule areas and such lands should be settled in favour of tribals who do shifting cultivation and subsistence agriculture. This will not only confer land rights on the tribals occupying such lands, but also help improve the forest cover. The areas under shifting cultivation should be brought under tribal community management.The Government land encroached by poor tribal families should be settled in their favour. **(**This has already been covered under the Forest Rights Act, 2005)

10.5 Tribals who have been living within a reserve forest, sanctuaries, wild life sanctuaries, national parks, biosphere reserves for generation and cultivating agricultural land should be given permanent patta rights and should not be displaced. **(**May be better packages can be designed for rehabilitation)

9.6 The legal provisions prohibiting the alienation of tribal land in Schedule V areas and its restoration should be extended to the non-scheduled areas also. A cut off date should be prescribed while extending these provisions to the non-scheduled areas.

10.7 A senior competent authority should exercise judgement in sale of tribal lands and protect the interests of tribals. The State should promote the concept of a Land Bank wherein tribal land is purchased by the State and allotted to other deserving tribal families in the same area. (Ceiling Surpluses should be distributed on a priority basis. CPRs should not be distributed).

10.8 At present PESA is applicable only to the scheduled areas but a large part of the tribal population lives outside scheduled areas. Therefore, the provisions of PESA should be applicable mutatis mutandis to village/areas where there is a sizable tribal population or where majority of the population consists of scheduled tribes.

LANDS RIGHTS TO THE NOMADIC TRIBES

11.1 It is clearly recognised that the roving life style of the nomadic tribes is no longer sustainable. They should be settled in areas of their choice and given sustenance on Government land in a time bound manner. This might be framed with a 'Minimum Land Holding Act' for them.

11.2 All cases of encroachment and other minor offences against the rural poor should be withdrawn.

COMMON PROPERTY RESOURCES

12.1 A long-term perspective on CPRs should be evolved through developing land use plans of each village, State and the country. Common Property Resources should include cultivable wastes and fallows other than current, common pastures and grazing land, protected and unclassified forests, barren, uncultivable and other government wastelands that are being used for the common purposes. It should be left upon the States to decide the lands to be included under CPRs.

12.2 For proper management of CPR the role of user groups, the central and state governments. and community based organisations, especially those working on it are critical. The roles of each of the institutions should be laid out properly outlining ownership, access and rights and benefits aspects.

12.3 There should be a provision for having at least some percentage of a total land in a village under CPLR. The rationality for capping should be decided by State governments.

12.4 Based on the criticality of CPRs, a complete ban on diversion should be approved unless their conversion is in the larger interest of all the users and ecology. The ban should be imposed in the capped CPLR area.

12.5 To identify and estimate the magnitude of CPRs in the country the National Sample Survey Organization should enumerate this in every round.

12.6 The development model for CPR should be similar to the JFM model. The entire rights over the management and use of CPR should be assigned to its users.

12.7 There should be disincentives against encroachments done by resource-rich farmers. At present the penalty paid by encroachers is paltry which hardly discourages them from encroaching.

12.8 It is high time to safeguard existing *de jure* CPRs. Funds should be made available and investment should be carried out for their development. To add, diversion of existing *de jure* CPRs should be banned.

12.9 The existing defunct state land use boards should be advised and provided guidance to make those effective. They should be provided necessary resources and directions to develop land use plans of each village and thus state.

12.10 To resolve disputes over CPRs should be resolved on priority and the central government should initiate fast track and time bound processes for resolving disputes over CPRs.

12.11 Building greater public awareness is the need of the hour. More importantly, people's perspective on CPRs should be thoroughly understood and taken into consideration while designing public interventions.

12.12 The common property land should noy be redistributed as there are a lot of other categories (like barren and uncultivable lands) under which land is locked. Therefore a clear distinction needs to be made between CPRs and wastelands which might be as well be utilized for non-livelihood purposes like mining, quarrying and industry. The surplus land after being capped for the common purpose could be allotted to landless families or other marginalized groups.

WASTELAND AND GOVERNEMENT LANDS

13.1 The term Wasteland, which has a colonial inheritance needs to be re-defined and categorised in terms of the sustenance it provides to population in cultivable and non-cultivable manner. (and also for other purposes like livestock grazing and biomass collection which a lot of cultivable wastelands are being used for)

13.2 It should be unequivocally recognised that it is the landless poor who have the first charge on the cultivable Wasteland and other Government lands whose changed land use permit leasing out of the community and that it cannot be ceded outside the community. (Ownership of the poor and the marginalised over lands should be recognised as a community and collective right)

13.3 There should be a survey of all Government lands including Wasteland along with their incidence of use either as a part of the general survey or separately. The enumeration of Wastelands should be done as an exercise for measuring De Facto common property resources (in actual use) as well.

13.4 The Wasteland should be under the management of the Gram Sabha as is the practice in several States including the assignment of land to the landless poor. No Wasteland is to be assigned on a permanent basis. (Should they be distributed is also questionable as it might not lead to any long term changes in landholding profile in the village).

13.5 All encroachments over the Wastelands by landed interests need to be removed while those under control of the rural poor and/or used for community purposes including sustenance for the rural poor should be formalised. And for this the Gram Sabha may be empowered. (formalisation of encroachments might lead to further encouragement of such practices).

13.6 Collective leasing for the women co-operatives should be permitted in respect of the cultivable Wastelands and other Government lands whose use have undergone a change to permit leasing out.

13.7 The Government lands should not be treated as a part of the Government assets to be treated to supplement the State budget or to provide for industrialisation. The rights in respect to the Government land rests in the village community and any change can take place only with informed consent with the Gram Sabha.

13.8 Strict legal action should be taken in respect of the persons found in illegal possession over the assigned land and locally constituted Composite Tribunals should be empowered with penal powers in a summary manner.

13.9 Any land in possession of the government or acquired by the government for is own purposes, will not be transferred in any form like sale, lease etc. to any private individual or enterprise.

WOMEN'S LAND RIGHTS

14.1 All new homestead land distributed to landless families should be only in women's name. Where more than one adult woman (widows, elderly women, etc.) is a part of the household, the names of all female adults should be registered.

14.2 When regularising the homesteads of families occupying irregular and insecure homesteads, the homesteads so regularised should be in the names of both spouses and single women.

14.3 Government should make provision for equal availability of agriculture inputs to women farmers.

14.4 Government should promulgate laws that protect women's rights to adequate housing and land, for instance, introduce government orders mandating joint registration and joint title for marital property in the names of men and women, and registration of women's property in the names of single women.

14.5 There should be representation for women, especially for SC/ST women, in agencies set up to monitor land reforms.

GOVERNANCE AND LAND REFORMS

15.1 Schedule-I of the EIA notification, 2006 issued by the MoEF under item 7-C covers industrial estate/parks/complexes/areas/Export Promotion Zones/ Special Tourism Zones/ Biotech Parks/ Leather Complexes. The above categories continue to be exempted from the requirement of a public consultation even in the new notification. That needs to be brought under urgent amendment in concerned laws and policies.

15.2 Scrap Special Economic Zone Act (2005) under purviews of environmental and ecological concern where SEZ is completely silent. Single window clearance feature makes the Approval Committee at the State level under the District Collector responsible for approval of all SEZ units and even compliance to conditions of approval if any are to be mentioned by the Assistant Collector. There is no mention of the role of the Pollution Control Board. There is no mention of Coastal Regulation related provisions in the SEZ Act and rules. However, the amendment to the CRZ Notification 1991, have allowed for SEZs to be located in ecologically sensitive coastal areas and 'no development zones' that need to be brought under strict regulatory authority adequately represented by project affected community and local representatives.

15.3 Ban on diversion of forest and common property land with a strict regulatory authority needed for looking closely to the policies and institutional mechanism like, Rehabilitation and Resettlement Policy, the system of Compensatory Afforestation, the concept of Net Present Value and likewise to monitor that the impact of the externalities are reduced.

15.4 Environmental Impact Assessment provisions as of now are typically very lax and do not serve the desired purpose of accountability. Therefore, assessment independent of the influence of the concerned enterprises should be conducted on a regular basis.

15.5 It is strongly recommended that GSI, which is the concerned department is immediately sanctioned an assignment of carrying out an EIA of all the projects approved so far by the Ministry of Environment & Forests so that an objective assessment of the prospective environmental hazards are understood.

15.6 All medium to large-scale transfer of land from agricultural to non-agricultural use should be subject to an environmental protection clause, and its strict implementation. There should be ban on conversion of agricultural land for non agricultural purposes.

15.7 There should be a regulatory authority at district level for monitoring the land, forest and water issues emerged after set up of mining, industry and/or any development projects.

15.8 There should be fast track courts for settling of the grievances registered during EIA public hearing.

LAND MANAGEMENT

16.1 Land revenue administration should be placed under the plan head and should be subject to guidance and flow of resources of the Planning Commission.

16.2 The National Land council should be reorganized on the lines of the National Development Council so as to be make it a fully federal structure.

16.3 Taking cognizance of the fact that the programmes are being managed in a Departmental mode there should be a National Authority for Computerisation of Land Records (NACLR) at the Government of India level for this purpose to fulfil the target.

16.4 There is need for building a network of institutions for appraisal of the programme. The network should be headed by some lead training-cum-research institution so that there are alternate streams for information flow.

16.5 All revenue work should necessarily be carried out in the language of the State.

16.6 The Collector should be divested of his direct court and revenue functions as he is too busy with other works and should just exercise supervisory functions.

16.7 The State governments should undertake survey and settlement operations as a drive. This should be done at the time throughout the country. Survey and settlement operations should be completed within 3 years of time by reducing survey operations to two stages and using latest technologies.

16.8 Gram Sabhas should be involved in the survey operations and should act as main instrument of ground truthing. The Khatian should be approved by the village community through the Gram Sabha before its final publication.

16.9 The survey operations should be subject to Social Audit for reducing rent-seeking behaviour.

16.10 Computerisation of land records should be completed in a specified timeframe. Land data should include comprehensive information about the parcel of land such as Khata and Khesra numbers, registration details, possession, land type, land use, productivity, tenancy, etc.

16.11 Creation of records should be followed by digitisation of maps and easy accessibility to records.

LAND REFORMS FOR NORTH EAST

17.1 The Land Management Systems in the North East are both diverse and complex. There is a multiplicity of tribes, communities and practices with both inter-State and intra-State variations. Under the prevailing circumstances, it would be inadvisable to generalise and formulate policy for the region as a whole.

17.2 Practices with regards to land use are rooted to the community and its traditions. Any tinkering with this system would destabilise the context. Situations prevailing are custom, convention and tradition specific. All stakeholders have to be necessarily consulted and a consensus evolved before taking any decision.

17.3 The Village Level Council or its counterparts in other areas are the appropriate institutions and should be clearly recognised as a basic unit of Land Management at the village level.

17.4 The VLCs or their counterpart institutions need to be re-strengthened on similar lines as the Nagaland Communitisation of Public Institutions and services Act 2002 which has contributed substantially to the improvement in delivery and operation of the services communitised and have added to the prestige, strength and authority of the Village Councils and other Village Institutions. Adoption of the same underlined principles in respect of land and forest management system in rest of the hill areas and such other areas that may choose to adopt this system is likely to have positive effects. These adoptions only supplement and not supplant the local institutions

17.5 In view of the prevailing differences between the traditional tenures in the NER and the mainstream India the concept of '**eminent domain**' is not applicable in the former and this should be incorporated in all policy prescriptions including that involving the acquisition of land rights.

17.6 The Village Community should have the same command over all land resources, water resources, forest resources and mining rights that constitutes the natural resources within the village territory as has been bestowed under Panchayats (Extension to the Scheduled Areas) Act 1996 in the Schedule V Areas.

17.7 The VLC should have the powers to place reasonable restriction on the transfer of ownership lands and leasing to persons residing outside or their alienation to other communities. In such cases where alienation of land has taken place in express violation of any existing provisions of law, customary rights, edict of the Village Council or not in consonance with the land use policy of the Village Council may order restoration of such land in such manner as it may deem fit and may direct his eviction by appropriate authority.

17.8 The village community will be responsible for deciding the land use pattern for the village with the approval of the village authority. The VLC or its counterpart institution will also define the area under the Jhoom cultivation and the conditions pertinent thereto including the allocation of Jhoom lands to different clans/family, frequency of the Jhooming cycle and measures of regeneration, utilisation of timber standing thereon, preparation of bunds and water harvesting structure on such Jhoom lands etc.

17.9 The village community shall be responsible for protection and management of all forests in the village including reserve forests, proposed reserve forests, regenerated forests between the two Jhoom cycles, sacred groups, unclassified forests, degraded forest lands, etc including laying down rules, for harvesting and sharing of usual practice.

17.10 The VLC or its counterparts shall be the first body for dispute resolution including counselling, mediation, arbitration and adjudication and the Courts should be debarred from interfering in the process.

17.11 The plain areas of Assam should be surveyed using the technologically upgraded methods and computer support system within a period of 3 years with the funds to be provided by the Government of India.

17.12 The Revenue Department should be placed under the Plan Head and there should be adequate funds should be made available in project form considering the sensitivity of this area.

17.13 While recognising the need of survey in the Hill/Tribal areas the survey operations should be conducted with the consent of the village community and only to the extent that the community desires.

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EXECUTIVE SUMMARY

Background

Land Reforms, for fulfilling the basic human needs has been in and out of the centre stage of the National agenda. The Congress Party had recognized the rights of the tillers as a part of its policy structure. In the immediate post-independence era urgency was exhibited in setting up a Committee headed by J C Kumarappa and the abolition of the intermediary interests. This brought 54 million raiyats directly holding under the State and freed an estimated 37 million hectares for distribution to the rural landless. However, there was a contradiction within the Government as a section of the ruling party and of the bureaucracy was sympathetic to the cause of the intermediary interests. It was the State of Jammu and Kashmir that rigidly enforced a ceiling limit of 22.75 acres and distributed the surplus land so acquired to the landless. Land ceiling as a policy along with tenancy reforms were advocated in the Second Plan Document. The ceiling laws enacted in the 50s remained weak on account of numerous loopholes and concessions made to the landed interests. It was only in the early 70s that the government included distribution of ceiling surplus land as a part of the 20-Point programme and proceeded to evolve a national consensus on revisiting the ceiling laws and ceiling limits. The first half of the 70s saw some progress in the implementation of the ceiling laws. Thereafter the matter has languished mostly in the bureaucratic Courts.

The agenda of Tenancy Reforms was also included in Land Reforms; some considered it more important as a drive towards the cherished goal of 'land to the tillers'. In the mid 50s all States enacted tenancy laws. Some States like Maharashtra conferred ownership rights to the tenants in a vigorous drive. With the deepening of the Green Revolution and commercialization of agriculture it has taken new forms — reverse tenancy, short-term tenancy, cash tenancy as opposed to share cropping, contract farming, agro-forestry enterprises to mention a few. The States have divided into two groups, those prohibiting tenancy and those permitting tenancy with safeguards. The State of West Bengal launched the Operation Berga in the late 70s and recorded almost 14 Lakh tenants making their rights inheritable and inalienable. This has grown into a model for the rest of the country. The post-liberalization era has been marked by a debate. There is the view that the possibilities of Land Reforms have exhausted and future growth is only to come from private investment in the rural areas. The protective legislation act as an inhibiting factor to this investment. Accordingly many States are proceeded to revise their legislation. Even within the Government there was the view that distributive justice programmes have been overtaken by development paradigm.

The late 90s and the early parts of the 21st Century have witnessed an unprecedented slow down in agricultural growth coupled with decline in agricultural profitability leading to the great distress within the agricultural sector. There is also the pressure on land created by demands of urbanization in industrialization and infrastructure. The large scale acquisitions have met with organized resistance of the deprived within the economic system. The rights of the forest dwellers living on the forest lands were not recognized by the Government leading to their deprivation of the rights over the land and the benefits of the Government development programme structure. Those affected were mainly tribals.

It was in this context that land became a serious issue of contention leading to firings and bloodshed in several parts of the country. The demand was articulated amongst others by the Community Based Organisation. The Ekta Parishad led a foot march (Janadesh 2007) of 25000 people over 365 kilometers and submitted a memorandum to the Hon'ble Prime Minister demanding amongst others to revisit the land issues and strict implementation of land reforms.

The Government Response

The Government responded by constituting a National Land Reforms Council comprising eminent people drawn from different walks of life. It also appointed a Committee on State Agrarian Relations an Unfinished Task of Land Reforms. The Committee was divided into 7 Sub-Groups.

The Sub Groups made individual visits to the States. The National Institute of Rural Development conducted a quick survey in respect of 17 States of the country and one separately for all the States of the North East. The instant report has been written on the basis of the State Reports, personal observations made during visits of the Committee published material and the reports of Committees appointed earlier in some of the States. The report is organized in 7 parts following the division of Sub Groups.

Sub Group - I: Land Ceiling, Distribution of Ceiling Surplus, Government and Bhoodan Land

1.1 Land Ceiling

1.1.1 The Sub Group finds clearly that land ceiling as a redistributive programme is of greater relevance today. The Sub Group has considered the various estimates made of the potential of availability of ceiling land made by various organisations. The NSS Report on Household Ownership Holding (2003) finds that 95.65 per cent of the farmer community comprises the small and marginal category. They own 96.5 per cent of the operated land area while the medium and large farmers who constitute 3.5 per cent own 37.72 per cent of the total land. The State till so far has declared 2.7 million hectare surplus out of which 2.3 million (87 per cent) hectares were taken possession of. Out of which 1.9 million hectares were distributed to 5.5 million households (37 per cent to the SCs and 16 per cent STs). Further there is no progress for the implementation of land ceiling. The LBSNAA find the potential of land ceiling at approximately 21 million hectares.

1.1.2 Of the remaining land a majority was pending in Revenue and High Courts controlled by the bureaucrats. The Sub Group found clear evidence of deep collusion between the large landholders, the political and the bureaucratic structure. In UP the *Lekhpal* and the *Pradhan* has colluded to get land allotted in false names. It also found a number of ceiling land beneficiaries not in possession and that significant portion of the area declared surplus is either not fit for cultivation or not available for distribution due to miscellaneous reasons.

1.1.3 A very significant finding of the Sub Group is in-efficiency and lack of interest on part of the officialdom. The Sub Group found that the worst qualities of land were surrendered or taken over and even where the beneficiaries were in possession they were

given land on bunds and in such areas that they became more of a liability. There is evidence to be had in the report towards falsification of returns, improper verification, large scale benami transfers, large variations in ceiling limits amongst the States, not taking into account the subsequent up gradation in the quality of land in newly irrigated area, retention of large chunk by religious trusts and educational institutions etc. A point that emerges very clearly in the report of the Sub Group is that there is an urgent need to lower the ceiling limit as considerable areas were not captured in the implementation. There is also the need to treat land ceiling on a continuing basis. The Sub Group has also noted that Bureaucratic behaviour excludes the Panchayat functionaries with the land reforms process.

1.1.4 The major recommendations of the Sub Group on Land Ceiling include:

(i) Ceiling limits must be re-fixed and implemented with retrospective effect. The new limit should be 5-10 acres in the case of irrigated land and 10-15 acres for non-irrigated land, to be decided by the concerned State Governments.
(ii) Absentee landlords or non-resident landowners should have lower level of ceiling.
(iii) Introduction of Card Indexing System for preventing fictitious transfers in benami names. This card should be related to allottee's Voted I/D Card or PAN.
(iv) Discontinuation of exemptions to religious, educational, charitable and industrial organisations. The religious institutions should be allowed one unit of 15 acres.
(v) Research organisations and Agricultural Universities should be allowed more than one unit on customized case to case basis.
(vi) Withdrawal of the general exemptions to plantations, fisheries and other special categories.
(vii) Imposition of criminal sanction on failure to furnish declaration on ceiling surplus land.
(viii) Filing of Review petitions against cases decided by fraud or misrepresentation.
(ix) Disposal of cases by Divisional Officers-cum-Tribunals and ensuring immediate surrender of excess land after judgment.
(x) Bar of jurisdiction of the Civil Court
(xi) The Benami Transactions (Prohibition of the Right to Recover Property Act) of 1989 should be amended so that evasion of ceiling laws through fraudulent land transactions can be monitored.
(xii) Revision in definition of landless poor person to include one who owns no land
(xiii) Not more than two acre of wet land and five acre of dry land should be allotted
(xiv) Computer based tracking and monitoring of ceiling surplus land.
(xv) A group should be set up composed of Gram Sabha members and revenue functionaries to identify benami and farzi transactions.
(xvi) Redistribution of the land acquired but not being used for the purpose.
(xvii) Adoption of single window approach for redistribution of ceiling surplus.

1.2 Government Land

1.2.1 The Sub Group relied upon the calculation of wasteland at 63.85 million hectares (20.17 per cent of the geographical area). The definition of the land includes — Land with or without scrub, Waterlogged and Marshy land, Land affected by salinity/alkalinity-coastal/inland, shifting cultivation area, Degraded pastures/grazing land, degraded land under plantation crop, Sands/Inland Coastal, Mining/Industrial Wastelands. The programme for distribution of Government wastelands were followed vigorously in the post-Independence

era particularly Andhra Pradesh which distributed 1.7 MH. The Sub Group has found a trend to auction these lands to highest bidders. Tamil Nadu has reached 2 MH to private companies on a 30 years lease with a ceiling limit of 1000 ha. It has not even specified as to what kind of land will be leased out. In Andhra Pradesh the Sub Group has noted that Lanka lands emerging out of alluvial action of rivers are mostly leased out for one year to Cooperative Societies which are mostly faking character.

1.2.2 The Sub Group has also made note of the massive encroachment on the Government lands in Sundarban area of West Bengal ever green forests of the Western Ghats in Karnataka and Aravali & Satpura regions of Madhya Pradesh. Besides the Government has regularized encroachments in respect of 1.26 lakh ha. in Andaman, Arunachal Pradesh, Karnataka, Kerala and Madhya Pradesh. The Sub Group finds that in Bihar the Government lands under the Khas Mahal Estate grossly mismanaged and highly encroached with no proper record system. Even the Bihar Public Land Encroachment Act 1956 was not sufficient to the task. This has led to considerable loss to the Government as most of these lands were located in the urban areas.

1.2.3 A significant finding of the Sub Group is that the lands assigned to the poor were mostly uncultivable and where cultivable lands have been assigned they were not under their possession. These assigned lands were mostly alienated. This situation prevails right across the country except in the case of States like West Bengal, Kerala, Tripura etc. Another pertinent finding is in respect of the rights being vested under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. However, the State Governments are yet to take effective measures particularly in creating awareness about the programme. **The worst culprit is the State of Chattishgarh.** The Sub Group finds Jatropha plantations right across the country on waste land and common land and even in respect of such lands which have been claimed under the Forest Rights Act. In Rajasthan, Jatropha plantation have begun to badly hurt the pastoral communities by impinging upon the grazing lands.

Recommendations

(i) The list of beneficiaries in fresh assignment should be selected by the Gram Sabha with mutations to be carried out before the grant of the patta.

(ii) The definition of landless for the Government lands should be the same as that in the ceiling law i.e. person owning no land and maximum 1 acre wet and 2 acre of dry land should be assigned.

(iii) The term Wastelands and its definition, which is a colonial inheritance, should be redefined. Along with it, all the kinds of land which are categorized under it should also be identified and quantified in terms of the sustenance they provide to populations in non-cultivable manner. This task should be undertaken under the Wastelands Division of the Ministry of Rural Development.

(iv) Sub Group has suggested that the Panchayat should be made in-charge of the wasteland.

(v) It is also interesting to note that the Sub Group suggests grading of population tied to the wasteland in terms of their literacy, exposure non-tribal and other professions.

1.3 Bhoodan Lands

1.3.1 Acharya Vinoba Bhave acted as a one man land army for a voluntary transfer of land based on the Gandhian principle of trusteeship and need. The Bhoodan Movement was launched from 1957 from Pochampalli in Telangana wherein Acharya Vinoba Bhave vowed to collect about 5.0 MH of land and to distribute it to the landless poor.

1.3.2 Acharya Vinoba Bhave visited Bihar between 14th September 1952 and December 31,1954. During this period he received 6,48,376 acres of land as gift out of which 2,55,347 acres have been distributed to 3,15,454 families as per the figures provided by the Bhoodan Yagna Samiti 78,320 acres were found not suitable for distribution. The remaining area of 1,14,708 acres were suitable for distribution but have not been distributed.

1.3.3 The land not distributed has not been verified institutionally. They could be divided into the following categories:

(a) where the donor had no title; there are instances to indicate that often land belonging to others, adversaries or litigated lands were donated. The Maharaja of Hathua donated 1 lakh acres of land whereas not more than 27,000 bighas could be confirmed while the ex-landlord retained huge unused areas which he settled for profit. This donation allowed the ex-landlord to get rid of some of his contentious possessions and helped to divert attention from his ceiling surplus lands. It also helped him to escape the dragnet of Section 4 (h) of the Bihar Land Reforms Act wherein such transactions were liable to cancellation.
(b) Where the donor had mortgaged out the land;
(c) where the land was encumbered without hopes of redemption;
(d) where the donor had no possession;
(e) where the land was Government or common land;
(f) where the land was not suitable on account of either being in the bed of a river or was unsuitable for cultivation or was the Government land under infrastructure or otherwise.

1.3.4 Even of the land which have been allotted there is nothing on record to indicate that the assignees are in possession over the same. In the Mandal or the VO's office there is nothing on record to indicate that whether the Bhoodan assignees are in possession.

1.3.5 In the State of Andhra Pradesh the Bhoodan Movement was started by Acharaya Vinoba Bhave in the district of Nalgonda and resulted in donation of 1,95,509 acres of land for donation to the poor. Out of this 72,827 acres were unfit for cultivation, 1,22,628 acres were either uncultivable waste forest land unfit for cultivation or under submergence or under litigation. Of the remaining 42,109 beneficiaries were distributed 1,12,600 acres of land and 10,081 acres of land remain to be distributed. The problem in Andhra Pradesh is similar to that in Bihar- there is no evidence to indicate that the assignees of the Bhoodan lands are in possession, or whether title has passed on to them or whether they derive sustenance from the land.

Recommendations

(i) The Governments of such States having undistributed Bhoodan lands should get a survey conducted within one year ascertaining the status of the land which have been declared unfit for settlement including the 6 categories mentioned. The present physical status, history of the conveyance of titles, the incidence of irrigation, the present possession, the title of the donor etc must be recorded in detail.

(ii) The State Governments should apply all their resources including *Amins* and *Surveyors* from other Departments, Gazetted Officers and others to complete the survey work within one year.

(iii) This Survey should also include the land distributed for ascertaining their factum of possession and the extent of sustenance.

(iv) The Panchayats and the Civil Society Organisations should also be associated with the Survey.

(v) A social audit should also be conducted in respect of Bhoodan lands along with this Survey.

(vi) The matter of handing over/restoration of possession should also be conducted in the same drive after summary proceedings.

(vii) It may be possible that the land in question might have undergone several transactions during the intervening period whereby several right holders have been created into the land. Any attempt to implement the original decision may lead to a title suit in the Civil Court. In order to overcome this situation the following provision should replace the existing Section 15(3) of the Bihar Bhoodan Yagna Act :

" 15(3): If at any time subsequent to the confirmation of the Danapatra in course of any enquiry or otherwise it transpires that the land is not being used for the purpose for which it was donated the occupant thereof may be ejected by means of summary proceedings and the competent authority may proceed to settle that land with suitable persons of eligible categories notwithstanding the subsequent transactions in the land or the interest acquired by the land subsequent to the donation.

15(3)(1) : No summary ejection made under the provisions of Sections 15(3) above shall be called into question before any Court of law or shall be subject to any judicial proceeding."

1.4 Forest Land

(i) The Sub Group argues strongly for effective implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 through a composite series of measures. Further all 'encroachment cases' and 'minor forest offences' should be withdrawn in purview of regularization of claims for the same piece of land.

(ii) There should be a comprehensive survey within a certain time frame and should recognize customary rights over the forests and land resources.

(iii) The Primitive Tribe Groups should also be recognized in the land they occupy and not treating December 13, 2005 as the cut off period.

1.5 Land Rights for the Nomads

(i) The nomadic tribes do not possess any landed assets. The Sub Group would like them to be settled on Government land and to ensure their land rights through 'Minimum Land Holding Act'.
(ii) All minor offences regarding land & livelihood should be withdrawn within a time frame.

1.6 Homestead Rights

(i) The Sub Group has recommended grant of 10-15 cents of land to each family by reallocation of resources from the existing schemes like IAY, SGSY and NREGS etc. in continuous blocks.
(ii) The beneficiaries are to be assisted by Panchayats and Line Departments for livelihood activities.
(iii) The Sub Group also argues for creation of sufficient and adequate shelters for homeless in all cities and develops of a National Housing Policy.
(iv) All slum dwellers should be registered and housing provided within a time frame.
(v) An important recommendation relates to Real Estate speculation in the urban areas and creation of a comprehensive data base for the homeless people.
(vi) The Group would further argue for implementation of the International Laws and accords an upholding of the same Rehabilitation and Settlement Bill.

1.7 Women Land Rights

(i) The Sub Group takes note of the gross gender inequities in land relations and finds that States like Karnataka, Tamil Nadu and Andhra Pradesh have amended the Hindu Succession Act 1956 to facilitate succession by women. The Hindu Succession Act (Amendment Bill 2004) gives equal right to daughters to succession.
(ii) The findings from the field include gross discrimination against women in practice and bias in R&R Bill.

Recommendations

(i) The Sub Group argues for mandatory joint entitlement & ownership rights through central incentives.
(ii) It also argues for deleting clause 45 (3) of the Land Acquisition Act and all females above the age of 18 should be recipient of the notice and unmarried daughters/sisters, physically challenged women, female orphans, widows and women divorcees should be treated as separate families in the R&R policy.
(iii) The Sub Group also strongly argues for homestead lands to the females.
(iv) The Sub Group recommended for women's community rights & ownership over common property land in villages.

2. Sub Group - II : Tenancy, Sub-Tenancy and Homestead Right

The terms of the Sub Group included:

1. To examine the issues of tenancy, sub-tenancy and suggest measures for recording of all agricultural tenants and a framework to enable cultivators of land to lease in and

lease out with suitable assurances for fair rent, security of tenure and right to resumption.

2. To examine the issues related to homestead rights and recommend measures for providing land for housing to the families without homestead land.

Issues Relating to Tenancy and Sub-Tenancy

(i) The Sub Group starts by holding that in pre-Independence India tenancy was an integral part of the feudalistic unproductive and exploitative agrarian relationship. The Famine Enquiry Commission 1944 found that the tenants are remained outside the purview of the protective legislation. Independent India took measures for tenancy reforms mainly in the second half of 50s. These measures included conferment of ownership rights and banning tenancy outright. Some States like West Bengal opted to recognize tenancy and to protect the rights of the tenants. The legal measures provoked the landlords into mass eviction of tenants. The Sub-Group finds existence of tenancy and continuation of insecurity.

(ii) The Sub Group refers to the findings of the 60th Round of NSS (2003) which indicates 7 per cent of the total operated area is being leased in by 11.5 per cent of the rural households. Micro- studies indicate incidence of tenancy between 15 and 35 per cent most of it existing informally, and hence insecure. Koneru Ranga Rao Committee finds a much higher incidence of tenancy extending upto 50 per cent in certain areas. Share cropping continues to be dominant from about 90 per cent of the leased in area is unrecorded and informal. At All India level, 35.8 per cent of the total rural households leasing in land are landless labourers and 47.5 per cent have land below 0.5 hectare and 8.2 per cent have land between 0.5 to 1.0 hectare. Thus, above 91 per cent of the total number of tenants belong to the category of landless labourers and marginal farmers. Nearly 57 per cent of the leased in area in Kharif season and 54 per cent in Rabi season were on short term leases, i.e. for less than 2 years and did not have any tenurial security or stability.

(iii) The Sub Group also finds leasing out by marginal farmers who have access to outside employment and leasing in by those who do not in order to make their operational holdings sustainable. The landless agricultural labour also leasing land. In Uttar Pradesh 28 per cent of the cultivated area in Palanpur village (Moradabad) was found under tenancy. The Sub Group Report also refers to study by Nielsen which shows leasing in by women. Tenancy has taken different forms. Leasing on cash terms is beneficial to the farmers while the share cropper has less bargaining strength.

(iv) The Sub Group has relied upon a study by Haq (2001) and Deininger et.al (2005) that restrictions on the lease market drive the tenancy underground while some land owners keep their land fallow. Releasing the lease market would be productivity enhancing, equity promoting and encouraging others to seek non-farm employment. This will equip them better to withstand consumption shops. The rental market is more flexible than sale markets and involves lower transaction costs. This will also increase the bargaining strength of the conventional tenants and will afford to them the protection of law. The Sub Group also finds developing lease market a win-win situation in Punjab and capitalized agricultural markets confined by the interactions in the field.

(v) The Sub Group has also gone into the issue of whether tenancy should be recorded and feels that the Operation Berga and feels that it was made possible due to the strong political framework in the State, something not possible in other States not similarly endowed. Instead it should be simple lease document for 3-5 years duly verified by the head of the Gram Sabha.

Recommendations

(i) The Sub Group argues for leasing for agriculture in all areas within ceiling limits and encouragement to the women to lease in. The Sub Group also wants to remove the

clause of adverse possession in tenancy laws which act as an incentive to the landholder.

(ii) All States should impose ceiling on Operational Holding and not just ownership holding which will prevent concentration of land through lease in. Under no circumstances should a person be allowed to lease in more than the ceiling area.

(iii) The Sub Group has recommended suo-moto resumption of land on the expiry of the lease period and the fixation of fair rent by the State. The rent should operate as per the lease market.

(iv) The Sub Group would also like all tenants and sub-tenants including share croppers to be recognized by law and assisted by institution finance. Further, ownership rights should be conferred on the Bargadar in West Bengal who have been registered.

2.2 Homestead Rights

2.2.1 The Sub Group starts by recognizing that houseless ness is an incident of landlessness. The NSS data shows 10 per cent landlessness in the country and 5.5 per cent are houseless implying thereby 7.9 million persons without dwelling units. The Sub Group also refers to the 4 million households obtaining house sites across India. The area of the house sites varies. The landless in Orissa only gets 4 cents but even that leads to tangible benefits to the landless households. If the house sites were 10 cents it would permit supplementary household livelihood activities with poverty reducing. The Sub Group appreciates the recent initiatives in Karnataka, West Bengal and Andhra Pradesh. Karnataka proposes to give 12 cents under 'My Land' 'My Garden Scheme' acting on the basis of the list prepared by the Gram Panchayats. In West Bengal, it is implemented through the Department of Land Reforms. This scheme plants to spend Rs.20,000 crores in giving 0.16 to 0.5 acre per plot. In Andhra Pradesh under Indira Kranthi Patham (IKP) implemented through the SHG Movement of Women the government provides 1 acre of land at Rs.58,000 per acre with the Government contributing 60 per cent and the beneficiary 10 per cent the rest being met by the Institutional finance. A recent appraisal finds net cash income of Rs.15000 per beneficiary.

Recommendations

(i) The Sub Group recommends a centrally sponsored scheme to allocate 10 to 15 cents of land to the houseless rural poor through market purchase on 75:25 cash basis.

(ii) The allotment of land-cum-garden should be on the name of women.

(iii) Social homogeneity should be kept in account and the infrastructural facilities like roads, electricity, schools, safe drinking water, health centre, etc should be provided by the Government.

3. Sub Group – III : Governance Issues and Policy of Land

3.1 Government Issues and Policies Relating to Land

(i) The Sub Group begins by questioning the democratic credentials of the Indian Government and its commitment to socio-economic justice. It has referred massive land acquisition for various purposes and to the Supreme Court Orders in the case of Narmada Bachao Abhiyan. In Andhra Pradesh large areas of land acquired for irrigation projects, housing projects, infrastructure, etc. The Sub Group also takes note of the Land Acquisition (amendment bill 2007).

(ii) The bill has defined the public purpose but it does not include the tenant entered in the record-of-rights and the informal tenants. The Sub Group has also taken note of the Resettlement and Rehabilitation Bill of 2007 which prescribes conditions for the project affected families to qualify for the benefits. However, the Sub Group feels that many critical gaps have been left in the structure.

(iii) The Sub Group has also examined a Special Economic Zone Act 2005 and finds that there is no cost-benefit analysis for such projects and further there is no upper limit for acquisition of land. The tribals and farmers' concerns remained totally unattended.

(iii) The notified SEZs are limited to 53 of the 607 districts and will promote regional inequities.

(iv) The guidelines for the SEZs remain silent in ecological concerns.

Recommendations

(i) The sub group recommends for revisiting SEZ Act comprehensively and putting a ban on exemptions on diversion of land in scheduled areas and also transfers of common property and agricultural land for SEZ/STZ purposes.

(ii) Land should be restored to the owners if it is not used for the purpose acquired.

(iii) Fertile land should not be acquired and public purpose to be redefined to include public utilities.

(iv) There should be compensation for all the persons living within the zone of displacement and should cover the entire community at the market rate.

(v) There should be time bound rehabilitations and resettlement of communities earlier affected by development projects, mining projects, industrial projects and protected areas (National Parks and Wild Life Sanctuaries).

3.2 Environmental Impact Assessment

(i) The new EIA notification (2006) puts in place a State Environment Impact Assessment Authority (SEIAA), the Sub Group finds that this notification excludes all buildings and construction projects having less than 20,000 sq.mtrs. of built up area like shopping malls and commercial complexes. Such project will have a separate clearance procedure by Expert Appraisal Committee (ESE) in respect of the second category (these two projects) even 450 MW power projects have been kept out of the ambits of EIA.

(ii) The Sub Group is further alarmed that the process of public consultation gives only a notional view to public opinion. The monitoring of compliance of the EIA clearance is self regulatory with reports being submitted by every six months. What is worse is that the EIA is funded by the project proponents themselves. The rate of clearance is alarmingly high which gives the Sub Group the reasons to suspect the quality of assessment and concerned regulatory mechanism.

3.3 Diversion of Forest Lands

(i) What alarms the Sub Group most is that approximately 4.3 million forest lands has been diverted to non-forestry use (1952-1976). Till 1976 forests was in the State list and the State Governments were responsible for the management of forests. In 1976 the Government of India issued guidelines providing for mandatory consultation in respect of diversion of more than 10 hectares of land. It is indeed alarming to note that

during this period up to 2008, 7.76 MH of land have been diverted out of the forest corpus. Total 55 per cent of this diversion has taken place after 2001. In Chattishgarh the diversion is for many purposes, but mining being one of the important ones. In Chattishgarh, 1.71 Lakh hectares were diverted (1980-2003) of which 67.22 per cent was for mining.

(ii) The Sub Group has noted the tremendous pressure being noted for the forest land and that even a plethora of policies and institutional mechanism like Resettlement and Rehabilitation Policy, Compensatory Afforestation will not cure the environmental loss. There is weighed in the argument that the nation is heading for ecological disaster which the Sub Group supports with painstaking research into data into various fields.

Recommendations

(i) The Sub Group finds the EIA as lax and meaningless and calls for independent assessment on a regular basis.

(ii) The GIS should carry out EIA of all projects approved by the Ministry of Environment and Forests.

(iii) The Sub Group calls for an immediate halt to the indiscriminate, large scale transfer of agriculture land to non-agriculture usages. All medium and large transfer should be subject to environmental protection clause. The Sub Group also calls for a total ban on conversion of forest land for industrial purposes.

(iv) There should be a Regulatory Authority at the District level to monitor land, forest and water issues and fast track courts for settling all grievances.

4. Sub Group - IV : Tribal Land Alienation & PESA

4.1 Alienation of Tribal Lands including Land belonging to the Scheduled Tribes and Scheduled Castes And the Traditional Rights of the Forest Dependent Tribals.

4.1.1 This Group was required to focus on the 9 States in the Fifth Scheduled Areas. The Sub Group clearly finds that the land relations govern the production relations and at times also the vice versa. The external relations of the community particularly with the Government are dependent on the kind of land laws that they have and the quality of its implementation. **The Sub Group begins by taking cognizance of the declining operational holding size and also ownership size which leads it to conclude that the corpus of tribal land is in serious danger of erosion.** The Sub Group also relates the diminution of operational holdings to comparatively rising poverty amongst the tribal community and the fact that the process of growth in the State is not shared. The poverty amongst the tribal communities in Jharkhand for instance has declined marginally to 45 per cent while the poverty for the Scheduled Caste Groups at an All India average is 37 per cent and for the general groups is 17 per cent. The 61st Round also provides evidence to the deepening of poverty. This is because the while the number of land holders stands at a comparatively better position and the incidence of total landlessness is less. The largest segment of the landholders is within the small and the marginal groups. The Sub Group notes that this leads to phenomena like out migration with its associated process of exploitation for the want of bargaining strength. There is a compulsion on the tribals to out migrate the other choice being starvation.

4.1.2 The Sub Group also notes the erosion of the corpus of tribal lands due to the State led Acquisition Marketisation process. By a strange quirk of destiny the mineral wells are mostly located in the habitat of the tribals. Since doing away with the Freight Rationalization Policies of the Government of India there is a locational advantage to be hired by setting up pithead industries particularly in the field of power plants involving bulk transportation of coal. The Sub Group finds the macro-economic policies of the Government responsible for the erosion of corpus of tribal lands.

4.1.3 The Sub Group has noted that the existing framework of law looks formidable on paper but is operated to the disadvantage of the tribals. The sale of tribal lands is prohibited in all these States either in large parts or fully. However, transfers continue to take place and have become more perceptible in the post liberalization era for reasons that have been discussed by other earlier Sub Groups. The principal reasons identified by the Sub Group based upon the State Reports of the NIRD appended to this Report or through earlier findings and published writings include some major categories — transfer through fraudulent means, unrecorded transfers on the basis of oral transactions, transfers by misrepresentation of facts and mis-stating the purpose, forcible occupation of tribal lands, transfer through illegal marriages, collusive title suites, incorrect recording at the time of the survey, land acquisition process, eviction of encroachments and in the name of exploitation of timber and forest produce and even on the pretext of development of welfarism. The Sub Group has enough evidence to record that the State and the bureaucracy has been a willing party and active co-neighbour to this operation of the tribal communities. Even the Governor of the States and the Dy.Commissioners on whom constitutional and legal responsibility has been cast under the Fifth Schedule or otherwise have failed to discharge the responsibility without any action being taken . The BN Yugandhar Committee (2002-3) has referred to the process of enclavement whereby the tribal retreats into the interior areas on the incursion of the non – tribals leaving his home and hearth behind as a major factor of alienation.

4.1.4 The Sub Group notes with dismay that the process of restoration of alienated land is worse than alienation. The NIRD studies conclude on the basis of examination of records that the tribals would have been better of by purchasing the land by open market rather than obtaining to the State led process of market. All Courts, bureaucrats and mostly public men, the Sub Group finds are interlocked against the tribals presenting a formidable front. Even in Jharkhand, a State which has been carved out to protect the interests of the tribals the process of alienation has hastened under tribal Chief Ministers leading to impoverishment of the tribals. In Jharkhand the per capita income of tribals is less than half of the per capita income of the State and more than 45 per cent of the tribals live in poverty, 27 per cent under extreme poverty (IHD 2008). The State has developed into a rent extractor tribal impoverishing mechanism. Even the judgments of the Supreme Court like in the case of *Samata Judgment* are not implemented by the States claiming blatantly that it does not apply to them.

4.1.5 The Colonial Nature of the Land Management system : This issue has been examined at length in the Report of Sub Group V which goes into the fact that why constitutional machinery design to protect the interest of the tribals has become the greatest exploiter. Suffices to say here that the Land Management System is totally colonial and rent extractor; the failures noted above arise from the nature of the Land Management System.

Recommendations

(i) The letter and spirit of the 'Samata Judgment' be enforced in all acquisition of tribal land for private companies.

(ii) Consultation of the Gram Sabha should be held as 'Prior Informed Consent' as provided in the Scheduled Tribes and Other Forest Dwellers (Recognition of forest Rights) Act 2006 and strictly enforced.

(iii) The Gram Sabha should also be involved in the Joint Survey and its assent to the correctness of the Joint Survey should be made mandatory.

(iv) Land for Land is made a fundamental requirement for acquisition of tribal lands. The land rendered fit for cultivation be handed over to the proposed prior to acquisition notification together with costs of cultivation for 3 years. The compensation must include opportunity cost, loss of access to forest, minor forest produce and other well-being costs which the community will bear in the place of relocation.

(v) The Zone of Influence of the project should be considered the acquired area and all affected persons be considered 'displaced'. The acquiring agency must review the assessment of the 'Zone of Influence' every ten years during the lifetime of the projects.

4.2 Empowerment of the Gram Sabha

4.2.1 The Sub Group takes note of the fact that the Panchayat (Extension to the Scheduled Areas) Act 1996 better known by acronym PESA is one of the most revolutionary legislation to have been passed by the Parliament. It reverses the wrong of centuries by providing the community through the Gram Sabha a command over all the natural resources including land, water, forests, minor forest produce, minor minerals and is entrusted with the responsibility of protecting the tribal way of life. Unlike the non-Part IX areas it is the Gram Sabha and not the Panchayat which has been made the fountain source of power. Inter alia the Gram Sabha has the powers to identify the cases of alienation of tribal land and to order their restoration.

4.2.2 The Sub Group notes with dismay that the provisions of PESA have not been implemented in any of the 9 States. It is true that all the 9 States have made amendments in their Panchayati Raj Acts. On the flop side none of these States have made Rules for the implementation of PESA. The Sub Group strongly infers that a faithful implementation of PESA will reduce the extreme distress conditions prevailing in the tribal areas. The Sub Group also recognizes that the grossly adverse land relations vis-à-vis the State have a positive correlation not only to poverty but also to the rise of left radical movements.

Recommendations

(i) The Gram Sabha should be recognized as the 'Competent Authority' for all matters pertaining to transfer of tribal land whether by sale or by lease restoration of alienated tribal lands, maintaining the land records. The Land Revenue Codes and other relevant laws should be suitably amended.

(ii) The Gram Sabha should be empowered to function as a Competent Authority with the necessary capacities and skills and magisterial powers pertaining to land and land matters.

(iii) A Committee of educated youth elected by the Gram Sabha is trained in necessary functions of measurement, marking of boundaries by GPS technology, verification of entries and maintenance of records.

(iv) Entries to the 'Record of Rights' will be made by the Patwari or the Village Officer only on a specific resolution of the Gram Sabha. Records will be retained at the Office of the Gram Panchayat and made available on specified days.

(v) The informed consent of the Gram Sabha should be a prerequisite before permission to acquire, purchase, lease on transfer are granted.

4.3 Operationalisation of PESA

4.3.1 In view of the decisions the Sub Group has strongly argued for Operationalisation of PESA. It seriously questions the attitude of the State Government that a mere amendment to the Panchayati Raj Act of the State is tantamount to its operationalisation. It is not. There are four dimensions to the implementation of PESA, the first being amendment in the structure of the related loss to confirm with the provisions of the PESA. The Ministry of Panchayati Raj, Government of India, had commissioned a Study by the Institute of Law, New Delhi which finds in some States there are as many as 29 Acts to be brought in conformity with PESA.

4.3.2 The second step involves the formulation of the procedural laws governing the conduct of business and establishing the command over natural resources. The third relates to providing manpower support and resources to the Gram Sabha. The Sub Group is of the opinion that since the Gram Sabha in PESA areas deals with an enormous range of subjects there should be a Gazetted Officer to act as the Secretary with adequate supporting staff selected amongst others for his commitment to the cause of the Gram Sabha. The fourth step involves providing training support to the Gram Sabha building up a mass movement of the CBOs, legal literacy groups and others.

Recommendations

(i) A participatory survey and settlement process under the purview of the Gram Sabha to recognize and record tribal rights to land and land based resources.

(ii) Amendment of all laws at variance with the provisions of PESA undertaken in a fixed time frame with the necessary Rules, Regulations and procedures to make them implementable.

(iii) The State has to provide adequate infrastructural, manpower and other support for the Gram Sabha in order that it functions.

(iv) Building up of a mass movement for training and mobilization for faithful implementation of PESA.

4.4 Rights of the Scheduled Castes

4.4.1 The Sub Group agrees with the analysis of Ramachandra Guha (2008) that the Scheduled Castes have more social capital, less poverty and are politically better endowed as compared to the tribals. However, their corpus of land is very weak and much below their population based entitlement and whatever they have is in the process of getting eroded. The Sub Group is constrained to note that the entire framework of protective and distributive justice has failed to deal with the land status of the SCs. The State overlooks the SCs in

comparison to the STs. The Sub Group notes that the improvement in the status of the SCs is grossly marginal and like the STs is driving them to the folds of extremists.

Recommendations

(i) Sale of SCs lands should be completely prohibited.

(ii) The Institution of Land Bank as has been enumerated in the Report of Group V should become specifically operational in respect of the SCs. The Land Bank will operate the market route to acquisition of land as it has been in the case of the IPK in Andhra Pradesh, the lands being inalienable.

(iii) Since the SCs comprise the bulk of the landless labour population the IAY, the homestead sites and other programmes should operate on exclusive basis as a special component plan.

(iv) The Government may launch a special programme for job based skill formation amongst the SC youth to the extent of 1 million during the 11th Five Year Plan.

5. Sub Group - V : Modernization of Land Management

5.1 Importance of Land Management

The Sub Group starts by taking cognizance of the failure of the reformist land agenda as detailed by other Sub Groups to arrive at the conclusion that all distortions in land relations are the product of our antiquated Land Management System. The Land Records comprise the base of the Management System. A weak base would not permit any firm superstructure. The records-of-rights in India reflect — (i) ownership rights, (ii) homestead rights, (iii) right of vested land assignees (patta right), (iv) dakhalkar right, (v) share croppers' right, (vi) lease right, (vii) hold over right, (viii) right regarding forcible possession, (ix) permissive possession right. The first 6 rights are regulated by various State enactments, whereas the seventh is a phenomenon of the Transfer of Property Act and last two rights are regulated by the Indian Limitation Act. More importantly land records and cadastral maps show easement right for roads/paths, irrigation, bathing and other domestic work, sports and games, worshipping in the temples/mosques, burning ghat/grave yard, tending cattle, etc. In the Permanently Settled Areas the records were updated with every new settlement. **However, after Independence the records have fallen into arrears and do not reflect the ground realities with the consequence that they are no longer custodians of peoples' right but rather an instrument of their exploitation.** The Sub Group feels that there must grow a national consensus for maintenance of Land Records followed by application of resources.

5.2.1 Diversity in Record System

The Sub Group takes a note of diversities in the Land Record System. P S Appu Committee on Revitalization of Land Revenue Administration had suggested a standardized record format, which has not been adopted at the national level. The Committee also notes the increasing pressure on Land Management as the competing demands multiply.

Recommendations

(i) The States have to realize that the objectives of Land Management Systems have changed fundamentally and it has to be prepared for basic changes in the manner in which our lands and records are being managed.
(ii) The States also have to take into consideration the changes that have taken place in between and be prepared to revise the system to suit the requirements of the present day demands.
(iii) This Sub Group has not made State-wise policy prescriptions nor was it in a position to do so. Hence, building upon the recommendations of this Committee the individual States have to customize their instruments.

5.2.1 Response of the Central Government

The Sub Group takes note of the fact that though land is a State subject the major initiatives have come from the Government of India, the recent one being National Resource Management Programme. The Sub Group finds that the commitment of funds at the State level to this subject is negligible and therefore recommends:-

Recommendations

(i) Land revenue administration should be placed under the plan head and should be subject to planning under the guidance of the Planning Commission.
(ii) The Central Government should come out with a National Land Policy and the respective State Government should declare their own land policies.
(iii) A National Land Policy should be declared with consensus of the political parties.
(iv) The State Governments have to commit resources also as a matter of the State's commitment to the cause.

5.3 Current Status of Land Management

The Sub Group has gone into some basic questions like that what are the role of Institutions in Land Management, where do the people figure in and to what extent it is technology driven. The Sub Group also takes a note of the fact that the Survey and Settlement Operations in the Permanently Settled Areas have not been taken up and where they have been taken up, for instance in Bihar, they tend to never conclude. They use outdated methodologies, multiple stages or manpower oriented, expensive, there is a lack of trained manpower, have little understanding of the local traditions and customary rights of the tribals and are attended by gross rent seeking behavior. The Sub Group has strongly argued that the land is in the villages and the owners reside there. The Land Records System has therefore to be necessarily people-centric,

Recommendations

(i) There is an urgent need to evolve Survey Operations which can be done within a period of 2 years for a district.
(ii) The survey operation need to be compressed into 3 stages.
(iii) In a village the Survey Operations should be conculeded in one continumum.

(iv) The Survey should utilize the latest technologies for accurate results.
(v) The Settlement of Rent should be left to the village community to decide at the Panchayat level and to be appropriated for their own purpose.
(vi) The Khatian should be approved by the village community through the Gram Sabha before its final publication.
(vii) The Survey Operations should be subject to Social Audit for reducing rent seeking behavior.

5.4 Technological Innovations

The Sub Group has taken note of the recent technological innovations that have taken place notably the geographic information system and the level of sophistication achieved in the form of Satellite Imagery etc. However, the Sub Group is firmly of the opinion that every technology, no matter how sophisticated it is has to be backed up by a firm people's base. The Sub Group therefore has argued for an Integrated Land Management System:

(i) The States should review their position of survey and their Land Records.
(ii) The survey of entire country should be conducted within a period of 5 years.
(iii) Once the survey is over the State has to put a regular mechanism for updation.
(iv) The village community has to be involved in creation of the data base and conducting the survey.

5.4.1 Computerisation of Land Records

Computerisation of Land Records represents the future base of the Land Management System. The Sub Group has assessed the progress of computerization and has words of praise for States like Karnataka, Madhya Pradesh, Gujarat, Tamil Nadu and Goa, etc. However, the Sub Group would like to specially commend the Bhoomi Programme of Karnataka which has achieved the high degree of integration of the computerized Land Records System with the various application and process. It is also important that what the data base is. The Sub Group is firmly of the opinion that it is not cost effective enough to have the entries of Khatiyan alone. The ownership and rights data should also integrate with it other forms of data.

Recommendations

(i) The Land Data should include not only the Khata and the Khesra numbers but also other details including history of the land, the registration etc.
(ii) The community rights should be clearly specified including rights to common lands waste and barren lands, religious lands, forest lands and submergence area, etc.
(iii) Other information including incidence of cultivation, productivity, land use include horticulture etc. incidence of irrigation and sources, cost of irrigation, cropping intensity, availability of drinking water, types of soil etc.
(iv) Other details including buildings on land topographical indicators, infrastructure, land use assessment, mining rights etc should also be spelt out.

5.4.2 Digitisation of Maps

The Sub Group has also taken a note of the process of Digitisation of Maps and feels that it is in no way less important than creation of Land Records. The two have to go hands together. The Sub Group has also assessed the Bhu Bharati Programme of Andhra Pradesh for guaranteeing title to land. It finds that the process of aerial photogrametry has obvious problem of accuracy.

Recommendations

(i) Hundred per cent validation by age matching of the digitized print out with the original maps with the technique of superimposition.
(ii) Use of Cartosat I or II for greater accuracy as the former self generates is coordinates.
(iii) Use of Electronic Total Station is recommended in areas with large canopy.

5.5 Role of the Panchayats in Land Management

The Sub Group has taken note of the inaccuracies in the present mode of the Land Records, the rent seeking behavior and the inadequacies of the dispute resolution mechanism. The PS Appu Committee had recommended handing over the Record Management to the Gram Panchayat and the D Bandyopadhyaya Committee has also some recommendations to that effect. The Sub Group feels that land has to be freed from the semi-colonial Management structure and the overlordship of the Patwari. The present is in dispute enhancing. The Panchayati Raj Institution have gained in maturity and have some outstanding work for instance in Heure Bazaar in Ahmednagar and Gopalpura in Rajasthan mention a few. The Sub Group strongly feels that the bureaucratic colonial control of the Land Management is inadequate to protect the peoples rights structure and to push through a reformist land agenda. The Sub Group feels that Institution of Collector is not able to cope up with the demands placed on his office and would be better of with supervisory and managerial functions.

Recommendations

(i) Full rights of management to vest in the Gram Sabha of the Panchayat in respect of the village Wasteland, Common Lands, land under public utilities, Government Land, Community Lands, dedicated lands etc.
(ii) The Management rights will include settlement of lands, removal of encroachment and draw and utilize funds under different programmes of the Central Government.
(iii) Mutations in undisputed cases should be done by the Gram Sabha.
(iv) In disputed cases it should be referred for conciliation/arbitration
(v) There should be annual updation of records and 6 monthly preparation of Adangal/Khesragirdawari
(vi) It also recommends for setting up of Nyaya Panchayats with conciliation, arbitration and adjudication functions.
(vii) It also recommends that the Collector should be divested of his direct Court functions and should just retain the supervisory function.

5.6 Land Issues in the Tribal Area

The Sub Group finds that land is the critical issue in the tribal areas. The production relations are governed by the land relations. However, the Land Management structure in the tribal areas is outright colonial in character doubly reinforced. It has given rise to strong political economy around land and contributes to the pauperization and impoverishment of the tribals. The framework of PESA is sufficiently strong but it is not implemented, as Sub Group IV has noted. Under the new dispensation of PESA the Gram Sabha is the fountain head of all powers and has command over all natural resources in the village.

Recommendations

(i) The land issues in the V Schedule Areas can only be reconciled with a faithful implementation of PESA. The one-point programme of the Government should be the implementation of PESA.
(ii) The Government of India should form a multi-disciplinary team for implementation of this Act headed by the Hon'ble Prime Minister.
(iii) The role of the bureaucracy would be only supporting the Gram Sabha and facilitating the flow of technologies and training.
(iv) This calls for posting of officers with sensitivity to these areas after having given them a thorough training in the tribal life and customary laws.

5.7 Emerging Forces

5.7.1 The Sub Group has taken note of the emerging forces in the land market including the rise in landlessness following the liberalization process, urbanization, industrialization, rise in joblessness, deepening of poverty, great distress in rural sector, relaxation of protective legal framework and the great distress in the agricultural sector. The introduction of NREGA has provided succor to the people at the village level and has enhanced their bargaining strength.

5.7.2 The Sub Group has examined the Bhu Bharati Programme of Andhra Pradesh for providing Guaranteed Title to Land. ***Though there are some infirmities in the programme structure the Sub Group of the opinion that this represents the future and must be adopted at the national level.***

5.7.3 The Sub Group has also examined the concept of Land Bank floated by the NIRD based upon the VELUGU Programme of Andhra Pradesh for purchase of land. The NIRD model is an extension of the Land Based SHG Movement in Andhra Pradesh. The Sub Group feels that this is a strong model. The NREGA has created a push effect upon the Rural Wages and has enhanced the bargaining strength of the landless. There is also the decline in profitability in agriculture [Alagh, 2008]. It is of the opinion that agriculture holds promises for such households contributing the bulk of labour themselves and will contribute to migration of the middle class farmers to the urban Areas. The Land Bank appears an appropriate Institution for accessing of the rural poor to such lands that is released by the middle and large sized classes.

Recommendations

(i) The Bhu Bharati Programme needs a fresh look on particularly in terms of its technological application and its processes of ground truthing.
(ii) It may be taken up by other States on pilot project basis leaving the option at the scale of adoption of the programme.
(iii) The Land Bank may also be adopted by the States either on pilot project basis or on full scale.
(iv) This is also calls for change in the financing patterns of Banking Institutions and evolution of an appropriate scheme at regional basis.

5.8 Training and Structure

Ushering in changes as momentous as the above would require a competent training support structures and wide spread institutional support.

Recommendations

(i) The Sub Group recommends setting up of a National Agency for Computerisation of Land Records (NSELR) and at the State levels (SACLR).
(ii) Creation of a network of a training institution with some strong Institutions acting as the base and involving institutions like SIRDs, ETC, Survey Training Schools, Survey of India Schools, etc.

6. Sub Group – VI : Common Property Resources and Conversion of Agriculture Land for Non-Agricultural Purposes

6.1.1 The sub group opines that the Land Reforms can be carried out appropriately unless there are land use plans of village, states and the nation. Such land use plan should capture the overarching concerns: ecological, food production, livelihood and allocating land for industry and development purposes.

6.1.2 The land use plan can be developed and executed involving people, States and Central governments, and dedicated non-governmental organizations. However, such plans are missing because of lack of political and bureaucratic wills. Thus, absence of a long term perspective is the cause of land related contentions observed throughout the country. Furthermore, absence of long term land perspective on land and land use plan have led to improper recognition of common property resources in the country. This has also contributed to rampant conversion of agriculture land for non-agricultural purposes having detrimental effects.

6.2 Common Property Resources

6.2.1 In the context of villages in India CPRs perform several functions in terms of their contribution to people's livelihood as in household income, livestock sustenance. As per the National Survey Organization's report, the total contribution from CPRs to household income at a national level is INR 693. CPRs are important from ecological perspective. In most of the

hilly regions – south Rajasthan, Western Ghats, Central India, Himalayas and Eastern India large tracts of forests lands are part of many local watersheds. Proper development and management of these common lands is critical to the success of a watershed as they act as reservoirs of water and are also often located along the watershed ridges. Thus, the criticality of CPRs is to support rural livelihoods and ecology.

6.2.2 Lack of clarity on what constitutes CPR - It was realized that there is not much clarity on what constitutes CPRs out of the various categories used by the government for their land use statistics (i.e., 9-fold classification). The lack of clarity towards clear definition of CPR is the root cause of the improper public interventions.

6.2.3 Reduction of lands used for common purpose: In recent years there has been a steady decrease in all kinds of common lands – pastures, village forests, ponds, or even burial grounds. This is due to diversion of CPRs for urbanization, industrial needs, mining practices, pressure of developmental projects like dam, roads, school, homestead needs – distribution to landless families, cremation grounds, playground, etc. Moreover, the area under CPR is threatened due to encroachments by resource-rich farmers.

6.2.4 Tribals and Forest land - Forests have traditionally served as commons both ecologically and economically for the tribals dependent upon them. Biodiversity of the ecologically fragile regions like the north-east and western-ghats also need to be safeguarded to ensure their role as ecological buffers for the burgeoning human population.

6.2.5 Failure of institutional arrangements: Over-exploitation of CPR definitely points to poor-upkeep of these resources. This points to the fact that traditional institutions have either weakened or disappeared and have failed to enforce norms. Also, Revenue Dept control has never been interested in productivity, being too remote to manage and with lack of funds to develop it as their major role has been more of a record keeper rather than that of developer.

6.2.6 Poor land administration: The complex nature of land administration is to the disadvantage of the rural poor. To further aggravate the situation is the inconsistencies in land records.

6.2.7 Absence of a long-term land perspective: A long-term perspective towards land seems to be missing both at the government and community levels. This shows a clear absence of a political will to have this perspective. At the same time, such perspective is not propagated by bureaucrats, too.

Recommendations

(i) A long-term perspective on CPRs should be evolved through developing land use plans of each village, State and the country.

(ii) It is not appropriate to provide a uniform national definition of CPR; however, the perspective on which CPR should be defined in the national, state or local contexts is important. It is recommended that CPR should be defined according to its importance to support rural livelihoods and ecology. Thus, according to the 9-fold classification, the following categories of land should be considered as common property land resource:

- Cultivable wastes and Fallows other than Current
- Common Pastures and Grazing land
- Protected and Unclassified Forests
- Private land to which common access may exist

(iii) **Minimum percentage of CPLR in a village**: There should be a provision for having at least some percentage of a total land in a village under CPLR. The rationality for capping should be decided by State governments.

(iv) **Banning on diversion of CPR land for other purposes**: Based on the criticality of CPRs, a complete ban on diversion should be approved unless their conversion is in the larger interest of all the users and ecology. The ban should be imposed in the capped CPLR area.

(v) **Enumerating CPR in every National Sample Survey**: To identify and estimate the magnitude of CPRs in the country the National Sample Survey Organization should enumerate this in every round.

(vi) **Development model of CPR**: The development model for CPR should be similar to the JFM model. The entire rights over the management and use of CPR should be assigned to its users.

(vii) **Institutional arrangement to govern CPR**: For proper management of CPR the role of community-based institutions, the central and state governments, and civil society, especially those working on it are critical.

(viii) **Disincentives against encroachment**: There should be disincentives against encroachments done by resource-rich farmers. At present the penalty paid by encroachers is paltry which hardly discourages them from encroaching.

(ix) **Protecting existing *de jure* CPRs**: It is high time to safeguard existing *de jure* CPRs. Funds should be made available and investment should be carried out for their development. To add, diversion of existing *de jure* CPRs should be banned.

(x) **Providing directions to the existing land use boards in each state**: The existing defunct state land use boards should be advised and provided guidance to make those effective. They should be provided necessary resources and directions to develop land use plans of each village and thus state.

(xi) **Re-classification of land** based on governance parameters and land use requirements.

(xii) **Initiating fast track and time bound processes for resolving disputes on CPRs**: To resolve disputes over CPRs should be resolved on priority and the central government should initiate fast track and time bound processes for resolving disputes over CPRs.

(xiii) **Removing inconsistencies in land records on priority**: The discrepancies in land records in the country should be rectified immediately. This should be solved through carrying out fresh land survey and settlement.

(xiv) **Building public awareness:** Building greater public awareness is the need of the hour. More importantly, people's perspective on CPRs should be thoroughly understood and taken into consideration while designing public interventions.

(xv) **Better land administration**: For the entire recommendations to be executed the land administration has to do its due diligence. Unless there is an initiative and innovation to improve the existing structure, the reforms cannot be implemented properly.

6.3 Conversion of agriculture land for non-agricultural purposes

6.3.1 Widespread conversion of agriculture land for non-agricultural purposes is being observed throughout the country. The major drivers of such rampant conversion are decreasing incentives from agriculture, industrialization and urbanization, and changing aspirations of the people. The conversion of prime agriculture land has led to decrease in food production. This has become a huge challenge as India needs to secure food grain for its 1.1 billion people. This allocation of land has led to displacement of large tribal population threatening their livelihoods. More importantly, inequitable distribution of benefits from the new land use, insufficient quantity of compensation, and rehabilitation not operationalised properly is leading to enormous dissatisfaction among the project affected people. This ultimately is leading to gruesome social unrest as witnessed across the country. Such violence can escalate and spread in other parts of the country if the conversion of agriculture land is not addressed relevantly.

Recommendations

(i) **Stakeholders consent**: Consent of all the stakeholders should be considered before land is acquired. This is imperative for smooth implementation and also for getting the right kind of benefits to the people. Thus, Gram Panchayat should be consulted at the time of acquiring land.

(ii) **Reclamation and development of unutilized and used land**: It has emerged from the state visits that in many instances unutilized land acquired for a public purpose is difficult to reclaim. There should be a speedy process to reclaim and take possession of the unutilized land. Moreover, used land, especially in case of coal and other mines should be reclaimed and acquired instead of acquiring agriculture land for public purpose.

(iii) **Environmental impact and social impact assessments:** These assessments should be thoroughly carried out involving the stakeholders before projects are executed. And based on these assessments future course of action should be decided. Social impact assessment is highly advisable to deal with compensation, rehabilitation and resettlement issues.

(iv) **Barren and uncultivable land should be used for non-agricultural uses**: To the maximum extent barren and uncultivable land should be acquired for industry and public purpose.

(v) **Better infrastructure designs**: At this juncture of the growing economy better design of infrastructures should be promoted. There should be emphasis on approving and promoting multi-storey buildings that occupy less land space, especially for urban development.

(vi) **Definition of Public Purpose**: The definition of public purpose should take into account ecological considerations.

(vii) **Banning excess land being acquired for public purpose:** Developers who acquire land under Land Acquisition Act or SEZ should be prevented from acquiring more land than required.

7. Sub Group - VII : The Systems of Land Management in The North-East and Recommend Appropriate Measures in Relation to Them

7.1 Why a special sub-group for North-East?

7.1.1 Geographically, sociologically, anthropologically, culturally, and historically the North-Eastern constitutes an entity by itself. The unique physical context of the area also differentiates this region from the rest. Even within the North-Eastern states, i.e., the Seven Sisters there are strong dissimilarities on the intra-regional and intra-state basis. The problems of the hill states of North-East are vary from those prevailing in the districts of Assam which has close to half of its geographical area within the plains. There is varying range of problems related to forest lands as well as the tribal issues, while some of the areas of Assam is a flat land and therefore has problems related to immigration, flooding and grazing reserves etc. The notions of common property resources also differ from area to area. While the Hills have strong customary traditions in terms of management of various kinds of forests like a sacred groves, private forests , clan forests, the area of plains in Assam have developed their land management more akin to the rest of the country.

7.2 General Administrative Structure

7.2.1 The inclusion of the northeast in Indian union is a history of recent times. Each state of the Northeast has a different administrative structure under the Constitution of India. Some areas are under the Sixth Schedule and or under special constitutional safeguards. This constitutional provision recognises the existence of the community process and state process with a clearly delineated spheres and without impinging on one another. Accordingly, it invested the Autonomous District Council with legislative, executive, financial and judicial powers. These councils are expected to create harmony between the administration and the traditional tribal institution.

Role	*Functions*
Legislative	Allotment, occupation, use of land and water, management of unreserved forest, regulation of shifting cultivation, appointment and succession of chiefs, inheritance of property and money lending.
Executive	Establishment and management of services like primary schools, dispensaries, markets etc.
Financial	Assess and collect land revenue on the principles, generally followed in the states; and to levy and collect certain taxes for which it can frame regulations.
Judicial	To constitute courts for the trial of suits and cases between the parties, belonging to the schedule tribes.

7.2.2 The Sixth Schedule is applicable to the three Autonomous Councils in Assam, namely North Cachar Hills, Karbi Anglong and Boro Territorial Council, the whole of Meghalaya and the hill areas of Tripura. The Constitution of India was amended in 1963 to introduce Article 371A to bring civil affairs in Nagaland under the tribal customary laws. Article 371G introduced in 1986 conferred the same powers on Mizoram. The administrative structure has serious implications on the land relations. Each structure has its own land laws and land relationship. A state within the state in the form of Autonomous District Council / Autonomous Council is another variety which functions at the district or area level under the

provision of the Sixth Schedule of the constitution. Such institutions are five in Assam and three each in Meghalaya, Mizoram and Tripura. Below these, there are institutions at grass root level known by different names like Village Development Council, Village Headman, Village Council, etc. Another variety is the Panchayati Raj Institution (PRI) in two states- Arunachal Pradesh and Sikkim.

7.3 Some Issues with this structure

7.3.1 The Autonomous Districts Councils have failed to a great degree to perform their task, for which they were created. In the absence of a clear provision for co-ordination of their activities with that of the state government, the ADC tend to draw their legitimacy mainly from the state prows rather than the community process. The Councils have no legal experts or trained judicial officer to codify the customary laws. On many counts, judicial autonomy and customs are often abused and misinterpreted. Usurpation of power takes place in the councils and this has weakened their effective functioning. Further the invasion of party politics has eroded these institutions; thereby developmental initiatives have suffered.

7.3.2 The Sixth Schedule has no provision to bring the councils to participate in development schemes and social welfare to the largest extent possible. In the matter of exercise of developmental function, the Autonomous Councils are at the mercy of the state governments. Further, the sources of finance for the Autonomous District Councils are more diversified and due to the intervening role of state government, they are generally starved of fund. At present, village councils exist in all states. In Manipur, these are called 'republics' and in Mizoram village council. Village development boards (VDBs) are the Naga version of Panchayat Raj system. These bodies are true catalysts for development and therefore in 1980, were given administrative and local mandate.

7.4 Tribal Governance and emerging public administration

7.4.1 Traditionally there were two types of polity and administrative set up - Chieftain-ship and Republican democracies. The major tribes, which followed the chieftain-ship pattern, were Sema Konyak, Nocte, Woncho Nagas, Kukis, Khasis, Khamtis and Lushais. The chief is the head of the Village Council. The members of the council are drawn from various clans in the village and hold office at the pleasure of the chief. The council assists the chief in administration and dispensation of justice.

7.4.2 On the other hand, the tribes with republican democracies have high elaborate Village Council. The Council is composed of elders representing clan and kindred for fixed period. The councils were more of social fabric and not politically based. Hence, their members are respected and listened to for their knowledge, status and wealth and spirit of public service. The village council was the highest authority, which surpasses over the whole village community.

7.5 Livelihood Systems and Food Insecurity

7.5.1 Land, forest produce, traditional crafts and livestock form the major livelihood sources for communities in the region. The current land regulation act carried out by the states in the region recognises the customary practices and form of ownership, which had evolved through a long practice. The Act, however, is ambiguous as it also establishes the authority of the Government over land. These factors have generated conflicting perceptions on land (ownership and tenure) and have crippled its successful implementation.

7.6 Tenure system

7.6.1 In the entire region both the customary laws and government land regulation co-exist. But, in practice, largely the customary laws govern the tenure system. This is particularly the case in the hills. Accordingly, three forms of land ownership namely chief lands, community lands and individual lands are noticed.

(i) *Control and management of lands by village chiefs with right to cultivation for individual members* Tribes which have strong chieftain-ship systems, follow this kind of land ownership. The tribal chiefs allot lands to the individual families for jhuming. The chief has the right to determine which plot of land is to be allotted to a person for cultivation. The right of the chief is the right of management of the community resources.

(ii) *Lands owned by the villagers collectively* - Until recently, individual had access to land resources in the tribal areas only as members of their respective communities. Even today it holds good in most tribal areas, who predominantly practice jhuming. The land belongs to the corporate group and each family is provided with an adequate plot of land according to its needs and capacity for bringing the allotted land for cultivation.

(iii) *Land owned by the individual families* - This is applicable mostly in the plains. In Assam, there has been a written law since 1886 and Tripura and Manipur confirm the existence of private ownership of land since 1960. In the absence of an extensive land reform, customary laws govern the private ownership and wherever land reforms were initiated, private ownership has been recognized but without title deeds (patta).

7.6.2 Out of the three land tenural systems that are prevalent in the region the first two are centered on shifting cultivation. This has direct bearing on food security in the region as such a practice contributes to deforestation and soil erosion and in turn, accounts for low productivity.

7.7 Forest and Bio-diversity Conservation

7.7.1 The North East Region supports a vast extent of forests and constitutes one of the ten bio-geographic zones of India. It is spread in 75 million hectares and forms 25% of India's forest cover. The forest is mainly tropical rain forest and repository of diverse variety of flora and fauna, some of which are endemic and endangered. The importance of tropical rain forest as rich reservoirs of biological diversity is recognized. The forest cover between 1993 and 1995 reveals significant trends. In the North East region, it declined by 0.47%, whereas in the rest of the States, there is an improvement by 0.06%. Due to this, there is reduction of 0.08% of forest cover at national level. The major loss to forest is due to the Jhum or shifting cultivation and it accounts for more than 80% of the loss. Thus we see that the forest lands need to be considered as ecological commons.

7.8 Other Issues Related To Forest Lands

7.8.1 Most of the forest areas have problems related to :

i. Encroachments on Forest Lands by local people or immigrants from Bangladesh, etc.

ii. Improper and incorrect Surveys and Settlements. Many a times surveys and settlement processes ignored the people living in the reserved forest areas.

iii. Problems related to forest villages. (Those who do not have land titles despite living in the forest areas), This goes parallel with the problems of Orange Areas where people have lived in non-cadastrally surveyed areas and are still waiting for titles.
iv. Forests declared under the state forest act but in which the tenures are not clearly stated for usage during the declaration process etc.

7.8.2 Implementation of the forest rights act, 2006 has not been started in the state of Assam. Tribal department is the nodal department as it has been taking measured steps as there is a danger of gross misutilisation of the provisions of this act due to the problem if immigration of Bangladeshis. Most of the forest areas themselves are full of encroachments and most of the times it is the resource rich people who are encroaching. Further much of this land is also now changing hands and is being given to other people for money. The same need to be recognized. The dilemma is that while the non-tribals are more vocal and aware, they tend to be more demanding regarding their titles etc while the tribal people even when they are more in need of the titles.

7.8.3 The bigger threat of non-tribals staking claims rather than other forest dwellers is a major cause of concern as they might then start engaging into harmful commercial activities like logging etc. The act is also silent about the inclusion of immigrants and foreigners in the category of other forest dwelling communities as most of the Bangladeshis are left with no option but to encroach on forestlands and till them.

7.8.4 Another major problem is regarding uncertainty over the government categories for forests and people's use rights over them. In some states there are systems of Village forests, Individual forest and private forests. JFM has till now touched only the fringe areas as it has been introduced in Assam only in the year 2002 unlike in other states where it has been going on for last 18 years.

7.8.5 In some other hill states of the north-east, peculiar ways of management of the forests like sacred groves have been followed since old times.

7.9 Issues being faced in Land Administration

7.9.1 Land alienation and landless-ness with emerging land use pattern : To begin with, the opening up of tea plantation (in Assam by middle of nineteenth century) and exploitation of natural oil and coal, have brought in new economic activities. These activities have absorbed a large number of immigrant labours, since indigenous population remained with agriculture at a stagnant level. This has effected decline in control over local resources. Secondly, with such emerging commercial values, the land use patterns too experience trends.

i. The land after jhuming is never released and put to continued use either for plantation or for permanent cultivation with the right of transfer.
ii. Thus, large area of community land has degenerated into private land either by accident or design of vested interests.
iii. The sale and purchase of land under settled or permanent cultivation has led to emergence of absentee landlords (inherited, purchased or acquired) and with them, the tenancy and share cropping practices.

Thirdly, with increasing population and the pressure on land, the fallow periods of jhum cultivation are decreasing. And this has affected the agricultural yields. A major change in the land use of the area has been brought about through other land use practices like

i. Mono-cultivation
ii. Tea – Estates
iii. Privatization of common lands for other purposes

Most of the area is under monocropping practices of Rice cultivation in agriculture areas and monocrop plantations in the forest areas, which is a major threat to the biodiversity of the region.

7.9.2 Ineffective Land Regulation: The major limitation in customary laws is that in most cases, these laws have not been codified. Even where codified, it is often interpreted to suit to the interests of a few. On the other hand, no state has done extensive land reforms. In some cases, though land right was provided, ownership titles have not been issued. This deprives them from accessing resources from the formal institutions. Two issues emerge from this situation. On the one hand, the efficacy of customary laws to address the emerging trend in land use patterns. On the other hand, the existing land legislation remains ineffective, since government is not proactive in enforcing them due to two major factors. Firstly, the attitude of community towards the formal regulatory measures. Secondly, a dilemma whether to expedite privatization of landholding or to encourage community holding for a better management of the greatest resource base of the land and forest, given the manipulative forces operating within the community.

7.9.3 Land Categorization: The land classification situation is different for Assam than for other hill states, which are 100 % tribal districts. Cadastral surveys have not been done at all in these states and the community owns the lands there.

7.9.4 Shifting River Courses : Assam has been battling the problem of shrinking lands due to this. Such Juli lands are a big bone of contention.

7.9.5 There is enormous pressure on land : due to various development needs. Demand for the land for the industry has been on the rise continuously. Cases to be noted are the Noonmati refinery, SEZs etc. Displacement has also led to the vulnerable groups being targeted leading to alienation. There is an urgent need for states like Assam to have an urban development policy as the people's way of life is changing. Diversion should be avoided except for community purposes. Diversion of agriculture land for non-agriculture purposes has been done mainly for Residential Areas etc.

7.9.6 Major problems dealing with common lands are Encroachment on the common lands, Discrepancies in Land Records and Low productivity of common lands especially those being called wastelands. Pasturelands are in the form of village grazing reserves and professional grazing reserves (for elephants etc.). Even these have seen drastic reduction in numbers over a period of time.

7.9.7 Allotment of common land to landless people has also been a major issue as witnessed in the last few years. But at the same time sustainability of this exercise is a big question mark as there is a physical limit to this as earlier on the process of allotment used to be done at the local level.

7.9.8 Immigration have also arisen due to the incentives being given by the government and politicians to these people. There is an urgent need to make people aware about the same.

7.9.9 Encroachment on CPRs- Alternatives should be available for the government to prevent the privatization of such common lands Most of the government land is known as Khaas lands, which includes revenue wastelands and culturable wastelands etc., as well as the VGRs and PGRs. Also we need to differentiate between the encroachments that are done on need basis and greed basis. Many of the such illegal practices have been promoted in the garb of livelihoods such as wood smuggling, mafias etc.

7.9.10 Water Resources should also be considered as CPRs and include wetlands, channels and waterways. No person should be allowed to encroach or damage the water bodies. Wetlands have been considered to be the ecologically most productive areas but till now (even more productive than forest areas) there is no government wing that takes care of it. But overall there is a need for conservation of overall ecology of the area.

7.9.11 Thus ultimately we see that the need of the hour is to create a roadmap for the land prioritization which would try and address the following needs:

i. Prevention of marginalization of tribal people
ii. Ecological needs and preservation of biodiversity that render ecological services.
iii. Investments in improving the productivity of land
iv. Development and Industrial growth for the 4 million strong population
v. Improving the capability of people to take development in their own hands.

Recommendations

Recommendations relating to Land System:- The Sub-Group took into account the existing debate between privatisation of lands or reinforcing its community character. Retaining and strengthening the community based land management system that prevails in some of the Hills areas of the North-East is in the vital interest of the tribes living therein. Derogation of the traditional system of land management has led to growth often iniquitous land relationship and a differentiated land structure. It has also led to and is likely to lead to undermining the self-governance nature of the tribes and their social institutions.

1. Not all these States formally recognize the traditional rights of the community within a legal framework. On account of an express legal sanction the Courts often call into question the decision of the communities and decide against them. This lead to further erosion in the authority and prestige of the village council and the traditional system of governance in the region. Hence, there is an urgent need for codification of the traditional rights of the village council and other institutions of self-governance.
2. In the post-independence era the government action and lack of understanding of the tribal institutions have led to passing of laws and other actions contributing to erosion in prestige and authority of such self-governing institutions. The Sub-Group

appreciates the Nagaland Communitisation of Public Institutions and Services Act, 2002, which has contributed substantially to the improvement in delivery and operation of the services communitised and have added to the prestige, strength and authority of the Village Councils and other village institutions. It, hence, strongly recommends adoption of the same underlying principles and legal framed structure in respect of land and forest management system in the rest of the Hill areas and such other areas that may choose to prefer this system.

3. Taking into account the intra-and inter tribal differences in their self-governance and traditional institutions the Sub-Group recommends that even within the formal framework of the proposed Communization Act there should be enough space for the existing traditional institutions and innovations.
4. There must be a wide spread process of informed consultation the bills are presented before the state assemblies. A consensus must be evolved on these issues within all the District Hills Councils and Autonomous District Councils.
5. Such an enactment must respect the traditional rights of the communities and their village institutions in land.
6. The Sub-Group recommends that the States may considred setting up a Village Land Council to manage all common/ village common lands including the waste lands in the village.
7. The Sub-Group strongly recommends that the Village Community should have the same command over all land resources, water resources, forest resources and mining rights that constitutes the natural resources within the village territory as has been bestowed under Panchayat (Extension to the Scheduled Areas) Act, 1996 in the Schedule V Areas with powers to place reasonable restriction on transfer of ownership lands, leasing, their alienation to the other communities and their restoration.

Land Use Patterns - The VLC shall decide the land use pattern for the village with the approval of the Village Council and Village Assembly. It will also prepare a land use plan defining the agriculture, housing, forest, pasture, agro-industry zones, etc., and will have the same approved by the village assembly. This village land use plan will then become binding upon the village. The VLC will also define the area under the jhoom cultivation and the conditions pertinent there to including the allocation of jhoom lands to different clan/ family, frequency of the jhooming cycle and measures for regeneration of jhooming land, utilisation of timber standing thereon, etc., preparation of bunds and water harvesting structure on such jhoom land, etc.

Management of Village Forests - The VLC shall be responsible of all forests in the village including reserved forests, proposed reserved forests, regenerated forests between the two - jhoom cycles, Sacred groves, unclassified forests, degraded forest lands, etc. The VLC shall also lay down policies and rules for felling of tress and plantation of new trees in lieu there of and lay down the mode and extent of appropriation of forest produce from such village forest land including the sharing of usufruct between the state government and to itself. The VLC shall decide and enforce the community forest rights and may make rules for the same and would be the custodians of the forest rights dwellers and shall be responsible for their enforcement. Thus the group recommends that the VLC shall be the first body for the dispute resolution including counseling, mediation and arbitration before undertaking adjudication and the department officials of revenue and forest should cooperate with this

committee. The group recommends that the VLC may make plans for regeneration of forests, watershed management within the village area and may make agreements for this purpose with neighbouring villages or organizations for the same.

Legal Recommendations - The jurisdiction of the Civil Courts shall be barred in respect of the decisions taken by the VLC or in the functioning of the VLC. The state government may declare an authority at the block or at district level as the competent authority to hear and decide appeals against the decisions of the VLC. Such bodies will also comprise village elders, social workers and public representatives, in addition to government officials.

Illegal immigration – is a major problem in the area with siver encrotchments on the rights and land of the communities. Most of this illegal immigration has taken place with the connivance of the revenue officials. The Sub-group feels that there should be a strigent claus in the revenue laws that before opening of a new demand the permission of the Collecter should be taken. Besides the community may have the right to remove the encrotchment by such illegal immigrants and evict them.

Survey Operations should only take place on demand of the communities and to the extent demanded.

Record of Rights – The records of rights should only have such features as is permited by the Village Communities.

Land Management System - The powers of management of land at the ground level will be with the VLC subject to the control of the General Assembly of the village including creation and management of records. No acquisition and alienation of the land will take place without the informed consent of the village assembly. The role of the State will be to provide support including logistics, technical, process led and financial support to the village council in management of lands as defined in the sets of the recommendations. At the block level, the revenue functions will be exercised by a Block level.

Training - There shall be a State level Training Institute (STI) in all the North Eastern States with its Regional Centers in the remote areas and the State Institute will be linked to a National Training Institute to be created by the Government of India. The STI will impart training to all the revenue functionaries in data entry, data management, satellite imagery, photogrammetry, GPS and other modern techniques and will also impart training in computerisation of land records and digitisation of maps. The STI will be responsible for training all the officials in relevant land and administrative laws of the land. The Government of India will extend financial support both for development of structure and running of training courses.

Administrative Structure - All the above mentioned suggestions can be implemented by establishing a State Level Body including the Revenue and Land Reforms Secretary, Forest Secretary, Finance Secretary, Rural Development Secretary and the secretary of Tribal Affairs. There shall be a separate Directorate of Survey and Land records with separate field establishments of Settlement Officer for preparation of ROR and for reproduction of village maps. The maintenance and updation of land records shall be done by the Collector of the district assisted by the Sub Divisional Officer and his subordinates. There shall be a Land Dispute Readdressal Tribunal consisting of retired judges/officials for hearing and deciding the land dispute cases which cannot be solved by the VLC.

Introduction

1.1.1 Land Reforms have been in and out of the centre stage of the national agenda in the post Independence era. It was overtaken by Rural Development programmes in the 90s and the early 00. However, subsequent to the mobilization (Janadesh) for land rights in October 2007, when close to 30,000 people walked from Gwalior to Delhi for land and livelihood rights, the Prime Minister's office of the Government of India, initiated the formation of Committee on State Agrarian Relations and the Unfinished Task in Land Reforms under the chairmanship of the Minister for Rural Development, Dr. Raghuvansh Prasad Singh, with the goal of looking into the unfinished task of Land Reforms. To lay down broad guidelines and policy based on the recommendations of the above mentioned Committee, National Council for Land Reforms was also constituted under the chairmanship of the Hon. Prime Minister Dr. Manmohan Singh vide No. 21013/4/2007-LRD on 9th January, 2008.[3] **(Annex 1.1)**

1.1.2 In its very first meeting, the Committee emphasised the importance of good governance in land administration and effective management of land records for poverty reduction, economic development and social equity. Socially just access to land and land related services, and security of land rights are of utmost importance in achieving inclusive sustainable development. Equitable land relations give rise to a more homogenised production relations that shape a just agrarian order.

Methodology

1.2.1 The Committee's terms of reference constituted a very broad canvas including different aspects of land administration, management and its equitable distribution, among other issues. The Committee, with the consent of the members present in the meeting, was divided into seven sub groups, each of them headed by a Convener, and each sub group was allotted themes from the overall terms of reference, keeping in view the magnitude of the task, specialized research inputs and focused field studies required. The constitution of the Sub Groups is to be seen at **Annex-1.2.**

1.2.2 Sub-Groups 1 & 3 prepared a detailed questionnaire covering different aspects of land reforms since the early days of independence. It was sent to all state governments through the Department of Land Revenue, Ministry of Rural Development for status mapping of the current juncture and to identify the critical gaps in policy formulation and implementation. The questionnaire annexed at **Annex 1.3**. Unfortunately, the responses received till date have been extremely inadequate.

1.2.3 The National Institute of Rural Development conducted a rapid survey using a pre-designed schedule so as to provide a firm base for the report of the Committee. It designed a schedule for the survey which is given **Annex 1.4.** The NIRD mobilised a team of experienced researchers of the status of Associate Professors and above to go to the field and to guide the enumeration work. However, due to constraint of time the sample size had been kept deliberately small. The researchers also relied upon field observations, case studies and interviews. One of the major problems encountered by the researchers was the lack of availability of the current data. All efforts to procure the data from the State Governments either through the Ministry of Rural Development or through the individual researchers were

[3] The Gazzettee of India, *EXTRAORDINARY,* NO. 15, January 9, NEW DELHI, WEDNESDAY, 2008/PAUSA 19, 1929

frustrated except in the case of some honourable exceptions. A list of the States covered under the study are placed at **Annex 1.5**.

1.2.4 The Report of these rapid field studies are placed at **Annex 1.6**. These Reports, despite their stated constraints, provide the Report of the Committee the legs to stand upon. They are a rich store house of information and throw invaluable insights into the subject. These studies have a lot more material for future use.

Field Visits

1.3.1 The Sub-Groups relied upon field visits wherein they had extensive interview with the different stakeholders-officials of the State Governments, the civil society based organisations, individual tenants, landowners, members of the Bar, political parties and academia. All the different groups pursued their individual programmes of visits. These visits and interviews/discussions have provided a rich source of material for the report. Further, they have provided the vital insight not only for the Sub-groups that made the field visits but also for the other Sub-groups.

1.3.2 Field visits were made by some members of the subgroups 1 and 3 in collaboration with Ekta Parishad, National Institute of Rural Development (NIRD) and Ministry of Rural Development to Orissa, Karnataka, Andhra Pradesh, Rajasthan, Uttar Pradesh, Chattisgarh, Madhya Pradesh, Bihar and Maharashtra where several civil society organizations and mass movements working on issues of land were consulted and relevant materials on their findings were gathered. Close to thirty public hearings were conducted across these states. Apart from that, interviews were conducted of different activists and officials on the basis of a structured schedule in order to get an insight into the hurdles and crises which have arrested the process of proper functioning of land administration and distribution according to the existing law statuettes.

Secondary Sources

1.4.1 There are a large number of secondary sources for the Sub-groups to rely upon in the form of the previous reports, published literature, articles in journals and studies conducted by individual researchers. The studies conducted by the Indian Administrative Service Officers of Lal Bahadur Shastri National Academy of Administration(LBSNAA), Mussoorie also provide a rich source. In addition, two of the published reports, one by Koneru Ranga Rao Committee in the State of Andhra Pradesh and the other by Shri D. Bandyopadhyay in the State of Bihar provide valuable insights and the some of the current data.

1.4.2 Most of the published materials, however, is not current. In fact, it is only the survey done by the IAS Officers of LBSNAA is current in parts. The number of IAS officers of a batch is limited and therefore the latest data is limited in size. Hence, the NIRD survey assumes a good deal of value and has been relied upon to a large extent.

1.4.3 In particular I would like to make a reference to the State-wise Survey Report in the North East. In fact, the last major survey of land relations were done more than 20 years back. Since then the LBSNAA have published their series on Land Reforms based upon the Survey Reports of the IAS Officer Trainees and the individual writings of the contributors. The North East Survey is particularly of seminal value as such a survey has not been attempted in the past.

Writing of the Report

1.5.1 The Report has been written at the level of the Sub-Groups. Shri KB Saxena, the Convenor of Report of the Sub-Group No.III dealing with governance Issues and convergence of policies relating to land and suggestion for Institutional Mechanism has also been written by the Convenor of the Sub-Group Dr PK Jha, Convenor for Sub-Group I. Likewise Shri BK Sinha, the Convenor of Sub-Group V relating to Modernisation of Land Management and Sub-Group VII on System of Land Management in the North-East drafted the report of there Sub-Group. The Report for Sub-Group II on Tenancy, Sub-Tenancy and Homestead Rights was written by Dr.T. Haque and team, and that on Sub-Group IV on Tribal Land Alienation and PESA was written by Shri R.C.Verma, the Convenor of the Group, and its other members.

1.5.2 The Reports of the Groups were circulated after each revision to all other members and their opinions/comments obtained.

Workshop

1.6.1 The draft Report of the Committee was placed in a workshop at NIRD, Rajendranagar, (October 4-5,2008) attended by Administrators both serving and retired, activists, academia, social workers, civil society based organisations, members of different tribal groups, etc. amongst others. The proceedings of the Workshop are placed at **Annex 1.7.** The necessary modifications have been made in the Report on the basis of the discussions therein.

1.6.2 The workshop at Rajendranagar recommended organising a special workshop for the North East where the land relations of the plains did not apply. Accordingly, a wrkshop was conducted at Guwahati on 30th October, 2008. The Report of the wrkshop is placed at **Annex 1.8**.

The Context of Land Reforms

1.7.1 Land is of critical significance to the vast majority of the poor who derive their livelihood from agriculture. Physical subsistence, procuring a decent, dignified livelihood and the well-being of entire families depend on land. The issue of land rights and access to resources is, therefore, one where land must be envisioned as a productive unit which sustains interrelated livelihood resources. Inaccessibility to land also affects income opportunities and consumption. The lack and loss of assets such as land, which generates subsistence and alleviates hunger, spirals millions across the country into endemic poverty.

1.7.2 The Committee, in the course of its research and surveys found two points to be overwhelmingly important, which may be stated right at the outset. First, the well-known and oft-repeated conclusion, which is worth highlighting yet again: major lapses in land reform measures initiated by the Indian State soon after Independence continue to be significant in shaping, in large parts of the country, socio-economic disparity and unrest which have only increased with each passing year. Secondly, the Committee found a large number of studies that point towards an acceleration in the loss of land in recent years from the hands of tenants and farmers due to various factors. These ranged from development and state-owned mega projects of heavy industries to change in legal statuettes regarding ownership and acquisition of land by private enterprises to the increasing impact of environmental degradation on cultivable land.

1.7.3 The Committee is strongly of the view that existing provisions of land reforms must be revitalized from their dormant state. New mechanisms may need to be adopted in order to accomplish the tasks which have not been fulfilled. Further, it is extremely important to identify and investigate the processes through which agricultural land, sustaining substantial populations, are being lost. Thus, it is within such broad parameters that the present Committee outlined the major aspects of land reforms.

1.7.4 The need for implementation of dynamic land reform policies have also been highlighted in the Eleventh Five-Year Plan which states that *an efficient and corruption free land administration, coupled with a dynamically adaptive land policy, has a vital role in increasing agriculture growth and poverty reduction.* The key elements of an effective land policy are the following.

- Modernization of management of land records
- Reforms relating to land ceiling
- Security of homestead rights
- Reforms relating to tenancy laws
- Protection of the rights in land of tribals
- Access to agricultural services

1.7.5 After independence, the state recognized the vital link between land and livelihoods and launched land reform measures in three components, viz., abolition of intermediaries such as *zamindars*, security of tenancies and ceiling on agricultural holdings. Concomitantly, however, the state also set on path of rapid industrialization, which required building of massive infrastructure, mining and industries of capital goods such as ironed, steel, heavy engineering and big dams which meant acquiring land on a large scale. However, the displacement of populations for this process did not find official recognition at the level of policy-making till the first three Five Year Plans.

1.7.6 The Land Acquisition Act of 1894, was applied to large scale acquisitions resulting in displacement and deprivation of means of livelihoods for affected people, but did not give them the right to resettle or rehabilitate.[4]

Historical Background

1.8.1 The main plank of land reforms in India after independence was to abolish landlordism and to provide 'land to the tiller' by vesting former tenants with permanent and even heritable and transferable rights in the land which they cultivated.

1.8.2 Legislative provisions were made in extensive areas of the country providing for conferment of ownership rights on tenants or allowing cultivating tenants to acquire ownership rights on payment of reasonable compensation to the landlords. Some of the states acquired ownership of land from the landowners and transferred it to the tenants who paid certain amount of premium to the State. Sub-tenancies were generally prohibited except in certain cases, viz., widows, members of the armed forces, minors, unmarried women, persons suffering from disabilities etc.

[4] Kannun Kasturi '*Right to displace but no duty to rehabilitate'* India together, Saturday, 16 February, 2008http://sez.icrindia.org/2008/02/16/right-to-displace-but-no-duty-to-rehabilitate/

1.8.3 The Indian Constitution had put agriculture and land reforms in the purview of the provinces (a state subject). The landed gentry were even more powerful in the state legislatures and state governments, and exercised considerable influence over the organs of the state. The land reform legislations which were passed in the states in the 1950s (but in some case as late as the early 1970s), provided substantial scope for the land owners to dilute, if not defeat, the intent of the legislations. In particular, they were able to evict large numbers of unrecorded tenants from lands recorded as being under their 'personal cultivation'.

1.8.4 Nonetheless, the legislations abolishing landlordism achieved a significant transformation of the countryside by enlarging the base of land ownership and creating essentially three categories of land-holders those with heritable and transferable right over land, those with permanent occupancy rights (which were to gradually transform into the first category), and tenants who had the obligation to pay rents to one of the two earlier categories. As a result of the implementation of these laws, **the ownership of nearly 40 percent of cultivable land was transferred to the direct producers and under tenancy laws** nearly **12.4 million tenants obtained secure rights** or ownership rights over an area of **6.15 million ha (i.e about 4.4 percent of cultivable area)**[5]

1.8.5 The **land reforms under the Five Year Plans** have been sequentially presented in **Appendix B**. However, as these deliberations took their own time, the landlords were successfully able to evade the legislation and defeat the very purpose of land ceiling and redistribution of land. A spate of fictitious transfers, sales, *benami* transactions, partitioning of family property etc. by big landlords with the intention of circumventing the ceiling legislation took place throughout the country which went unchecked. Splitting up of agricultural estates had already taken place so that by the time the new legislations came, very little land in any case was available for distribution.[6]

1.8.6 The Planning Commission Report itself gives various reasons for the non-implementation of land reform measures. The major conclusions drawn by the Task Force for the poor performance of land reforms were lack of political will, inadequate land policy, legal hurdles and the absence of correct land records. Another crucial factor which was responsible for this debacle was the weak administrative machinery for land reforms as well as the lukewarm and apathetic attitude of the bureaucracy.

1.8.7 The responsibility for implementation of land reforms rested with the revenue administration of the States and as in the case of the men who wield political power, those in the higher echelons of administration were also big landowners themselves or had close links with big landowners, hence the failure to implement. Surprisingly enough, no State had taken necessary steps to forge a suitable administrative apparatus to cope up with the task of implementing land reform measures. And as a matter of fact there had been cases as the report stated where administrators who tried to implement land reform laws honestly and efficiently were hastily transferred elsewhere.

1.8.8 The law suits, existence of loop-holes in the laws and protracted litigation were cited as major obstacles in the way of implementing land reforms.The existing record of rights posed another constraint. In a judicial system which is highly biased against the poor, the

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[5] Ministry of Rural Development Annual Report 2002-03, in Ravi S. Srivastav, *Land Reforms, Employment and Poverty in India,* presented at National Seminar on *Land Reforms in Uttar Pradesh: Retrospects and Prospects*, August, 12-13, 2008

[6] *Op. cit.*, pg. 50.

absence of correct up-to-date record of rights was used by the landlords for large scale eviction of tenants from the land actually tilled by them. Despite this alarming situation and even when fully apprised of the seriousness of this problem no genuine efforts were made by the State governments to prepare the land records. There were provisions in all Five Year Plans to undertake village surveys and to prepare land records but no efforts were made by the state governments in this regard.

1.8.9 As there were no records of the land rights in this direction; the government could not make an estimate of the effect of the Land reform measures. Even after the implementation of the four Five-Year plans, the position of tenants and particularly share-croppers, continued to be insecure especially in Bihar, Tamil Nadu, Andhra Pradesh, Gujarat, Punjab and Haryana.

1.8.10 The Planning Commission, which set up a Task Force on Agrarian Relations, submitted its report in 1973. It admitted and elaborated on the huge gap between the claim of the achievements in land reforms through five year plans and the actual situation on the ground. It categorically stated that;

'In no sphere of public activity in our country since independence has the hiatus between the precept and practice, between policy-pronouncements and actual execution, been as great as in the domain of land reforms.'

Current Status of Land Holding and Role of the Government

1.9.1 In 1973, total amount of 2, 3,15,000 acres of land was declared surplus under ceiling laws, out of which 12,55,8 00 acres of land was distributed officially. This stood at 45.76 % of the area declared surplus to be already distributed to individual beneficiaries.[7]

1.9.2 Compared to that, in December, 2007, the total area of the land declared surplus was 65, 59,292 acres, out of which total area of land taken under possession is 59,98,390 acres. This implies that 87% of the land declared surplus has been taken under possession. Then, the total area of land distributed is 49, 67,940 acres to 55, 34,176 individual beneficiaries, which is 72% of the land declared surplus and 83% of the land taken under possession.

1.9.3 Breaking down the amount of land distributed and taken under possession into categories, the Committee found that an area of 18, 30,182 acres of distributed land went to SC population of 21,35,356 individual beneficiaries. This constituted 37% of the total area of land distributed and 39% of the total number of beneficiaries.

1.9.4 An area of 7, 77,311 acres of land was distributed to 8, 44,622 ST individuals which constituted 16% of the total area of land distributed and 15% of the total number of beneficiaries. An area of 22, 63,516 acres of land was distributed to 25, 04,270 individuals other than SC and ST individuals. This distribution constituted 46% of the total area of land distributed and 45% of the total number of beneficiaries.

1.9.5 The total area of land not available for distribution is 12, 18,373 acres which has increased from the last quarter of Sept. 2007 of reporting. This is 18.7 % of the total area of land declared surplus and 24. 52% of the total area of land distributed. The total area of land

[7] Task Force Report on Agrarian Relations, Planning Commission, Government of India, 1973.

involved under litigation as reported is 9, 24,015 acres. This is 15.4% of the total area of land distributed. [8]

1.9.6 At the same time, the Net sown area in 2003-2004 comes up to 140.88 million hectares; this is 46.1% of the total geographical area. Compared to this, the net area of land declared surplus is 1.86% of the total cultivated land. This reflects a glaring failure and backwardness of the agenda of land redistribution. Then, 13.18 million hectares of land falls under culturable wasteland; this is 4.3% of the total geographical area. Thus, the argument that there is not sufficient land for redistribution does not have any factual basis.[9]

1.9.7 The aggregate data obtained above are a mere sketch of the situation with some important gaps. There was no data as to what are the percentage of the SC and ST landless population in every state and the percentage of cases where land distributed to SC and ST individuals are locked in litigation. On top of that, the percentage of minorities is not known. In the case of which, a full-fledged quantitative scenario of the current situation is difficult to arrive at and this also speaks volumes of the lack-lustre performance of land records maintenance.

1.9.8 At the same time, the situation of tenancy has undergone significant changes and is very complicated today, with differences both within and between regions in the types of lessors/lessees and the terms of lease. The main source of data on leasing (a decennial survey on land holdings by the National Sample Survey Organisation) seriously underestimates tenancy. The variety in the types of tenancy, both within and across regions has intensified the debate in the consequences of current leasing patterns on agricultural growth and employment, but most analysts still concur that significant gains can occur through reforms which lead to security of tenure to small lessors.[10]

1.9.9 At this point, the **Agenda of the Revenue Ministers' Conference** that was held as recently as 1992 to look into the issue of land reforms in **Appendix C** needs to be referred to **.** The Sub-Committee of 1992 formed to deliberate and study the items listed in the agenda had come up with recommendations that are given in **Appendix D.**

1.9.10 Looking at the vital statistics of land use and the recommendations made in the Revenue Ministers Conference thereafter, it becomes clear that the task which was officially set by the Government of India in 1992 has made little progress. The progress in the last 60 years has been painfully slow. As a result the Agenda of the Revenue Minister's Conference in 1992 bears a striking similarity to the one tabled for the present Committee.

1.9.11 Furthermore, recent policy changes during the period of what is euphemistically known as the period of economic reforms have eroded and even reversed the land reforms agenda. This context therefore lends urgency to the current Committee's task.

1.9.12 Given that land is a state subject, as per our Constitution, and that there are immense diversities—legal, institutional, structural, etc. with reference to land and its administration-across states in India, the present Committee has not ventured to go too much beyond the pressing concerns at the India level, although attempts have been made to illustrate the

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[8] NO.15012/1/2007-LRD, *Ministry of Rural Development, Department of Land Resources (Land Reform Division),* Block No. 11, 6th Floor, CGO complex, Lodhi Road, New Delhi-110003

[9] http://dacnet.nic.in/eands/Imports-Exports-Inflation%20Rates13-14.htm

arguments through state-specific scenarios. Thus, much of what has been said here may seem like 'old wine in the old bottle', but that only underscores the huge tragedy of our failure with respect to the land question for more than six decades since Independence now. However, we also hope to have captured the pressing new challenges at the current juncture which ought to be addressed, and the relevant case studies should provide a sense of such challenges confronting us.

The Carrying Capacity of Land

1.10.1 A moot question that arises here is what extent land can provide food as a part of food security measures, and provide surpluses which could be used for capital investment in the agricultural and non-agricultural sectors. To begin with, these issues could be viewed in the framework of George Condorcet – Malthus debate that took place in 1795. While Malthus Condorcet agreed with that the planet earth had limited capacity to sustain resulting in oscillations in the sustenance cycle. There were sharp differences over issues like how close was the population to the limit, was food the main problem, and can there be a voluntary control to population. The Malthusian pessimism has since been proved wrong by the facts of history. When Malthus propounded this theory the population was about 1 billion which has since increased to more than 6 billion. The per capita availability of foodgrains have been on rise and famines have become by and large rare phenomenon. The trend of international food prices have shown a continued decline over the years while the productivity has kept ahead of the population except in pockets of Sub-Saharian Africa. [Sen, 1994].

1.10.2 India is no exception to this international trend though there are pockets of chronic hunger. The future capacity of land to sustain populations in all these three terms have been examined. Significantly, the per capita availability of foodgrains is higher in 2000-1 [189 kg/year] as compared to 1971-75 [183 kg/year] as indicated by **Table 1.1** below**:**

Table 1.1
Pre capita foodgrain production (kg/year)

Year	Cereals	Pulses	Foodgrains
1971-75	164	19	183
1976-80	172	18	190
1981-85	179	17	196
1986-90	182	16	198
1991-95	192	15	207
1996-00	191	14	205
2001-05	177	12	189

1.10.3 There have been studies into the future demand. The TIFAC study 1998 has listed the following demand at 7 per cent income growth as detailed in **Table 1.2** below . The strategy to be used to meet the demand comprises developing about 70 per cent of the net cultivated area have not benefited from modern development in agriculture and of which 30 per cent is in dry land agriculture.

Table 1.2
Projected Household Demand for Food in India at 7 percent Income Growth
Annual household demand (million metric tonnes)

Commodity	1991	1995	2000	2010	2020
Foodgrains	168.3	185.1	208.6	266.4	243.0
Milk	48.8	62.0	83.8	153.1	271.0

Edible Oil	4.3	5.1	6.3	9.4	13.0
Vegetables	56.0	65.7	80.0	117.2	168.0
Fruits	12.5	16.1	22.2	42.9	81.0
Meat, Fish & Eggs	3.4	4.4	6.2	12.7	27.0
Sugar	9.6	10.9	12.8	17.3	22.0

1.10.4 The National Centre for Agriculture Economics and Policy Research [NCAP] has also gone into this issue and has made optimistic projection and forecasts as detailed in Table 1.3 below. Significantly the growth rate required for meeting this demand is 2.21 per cent for the foodgrains for the years 2003-2012 and 1.85 per cent for the years 2011 to 2021. This project is significantly below the targeted annual growth of 4 per cent in the XIth Plan Document [2007 to 2012].

Table 1.3
Past and projected growth rates, %

Crop	1995-96 to 2003-04			Required output growth rate	
	Area	Yield	Output	2003-2012	2011-2021
Rice	-0.35	0.93	0.58	2.06	1.71
Wheat	0.10	0.82	0.91	0.95	0.73
Jowar	-2.50	-0.84	-3.32	5.85	5.05
Bajra	-0.38	3.52	3.13	3.81	3.26
Maize	2.19	1.96	4.20	5.92	5.12
Ragi	-1.69	-2.29	-3.87	0.43	0.26
Cereals	-0.48	1.25	0.77	2.21	1.84
Pulses	-0.36	0.24	-0.11	2.35	1.96
Foodgrain	-0.46	1.17	0.71	2.21	1.85

1.10.5 However, there is a catch in the whole argument. The strategy adopted in the XIth Plan is to bring about sectoral growth in areas like horticulture, dairy, etc which have already been recording significantly high growth. This would mean growth from a narrow platform. In order to be sustainable the growth has to be inclusive i.e. it has to come about through a broadened base. This would imply the following amongst others :-

i. Removing the distortions in the land relations through a rigid ceiling and land distribution programme, conferment of secure rights upon tenants, improving the access of the rural landless to land, transparent system of land management, and up-to-date record-keeping;

ii. Protection and enhancement of the Scheduled Tribe population;

iii. Special access to land programme for the dalits and other downtrodden sections;

iv. Public investment in rural infrastructure including development of minor irrigation, watersheds, land levelling and reclamation;

v. Availability of credit to the small and marginal farmers particularly in the North-Eastern Region where there is little incidence of private ownership of land, and in the high value crop areas;

vi. Rigid implementation of minimum wages and sustained flow of funds through NREGS, etc.

1.10.6 The above measures will usher in a healthy, broad based growth process which is likely to sustain the demand and supply chain. Evidently the frontiers of production possibility have not been realised. Nor have we been able to attain our production potential even in parts. Hence, the question of reaching the Malthusian limit does not arise provided the afore mentioned attaining condition of production are fulfilled. The report of the committee goes precisely into different aspects of land-related issues.

Chapter – One

Land Ceiling and Distribution of Ceiling Surplus, Government and Bhoodan Land

(Report of the Sub Group – I)

Introduction

Subsequent to the mobilization (Janadesh) for land rights in October 2007, when close to 30,000 people walked from Gwalior to Delhi for land and livelihood rights, the Prime Minister's office of the Government of India, initiated the formation of Committee on State Agrarian Relations and the Unfinished Task in Land Reforms under the chairmanship of the Minister for Rural Development, Dr. Raghuvansh Prasad Singh, with the goal of looking into the unfinished task of Land Reforms. To lay down broad guidelines and policy based on the recommendations of the above mentioned Committee, National Council for Land Reforms was also constituted under the chairmanship of the Hon. Prime Minister Dr. Man Mohan Singh vide No. 21013/4/2007-LRD on 9th January, 2008.[11] (Annexure 1.1)

It was reiterated in the first meeting of the Committee that good governance in land administration and effective management of agrarian relations are important catalysts for poverty reduction and economic development. Socially just access to land, land related services and security of land rights are of utmost importance in achieving inclusive sustainable development.

Committee's mode of operation

The Committee's terms of reference constituted a very broad canvas including different aspects of land administration, management and its equitable distribution, among other issues. The Committee, with the consent of the members present in the meeting, was divided into seven sub groups, each of them headed by a Convener, and each sub group was allotted themes from the overall terms of reference, keeping in view the magnitude of the task, specialized research inputs and focused field studies required.

For subgroups 1& 3, the Committee prepared a detailed questionnaire covering different aspects of land reforms since the early days of independence. It was sent to all state governments through the Department of Land Revenue, Ministry of Rural Development for status mapping of the current juncture and to identify the critical gaps in policy formulation and implementation.(Please see Appendix 2 for the questionnaire) Unfortunately, the responses received till date have been extremely inadequate.

The National Institute of Rural Development sent a group of trained researchers to several states to gather the relevant information and insights which have been very helpful in shaping our understanding. To chart out the relevant tasks and arguments from the secondary data and relevant statistics as well as other expert reports of several committees instituted to look into land related issues, the subgroups 1 and 3 were provided valuable research assistance by Subah Dayal and Subir Dey, both of them studying currently at JNU, New Delhi. One of the major concerns in the perusal of secondary literature was a critical

[11] The Gazzettee of India, *EXTRAORDINARY,* NO. 15, January 9, NEW DELHI, WEDNESDAY, 2008/PAUSA 19, 1929 have

examination of the different laws regarding the governance of land and its administration and the changes that have taken place in the recent period.

Field visits were made by some members of the subgroups 1 and 3 in collaboration with Ekta Parishad, National Institute of Rural Development (NIRD) and Ministry of Rural Development to Orissa, Karnataka, Andhra Pradesh, Rajasthan, Uttar Pradesh, Chattishgarh, Madhya Pradesh, Bihar and Maharashtra where several civil society organizations and mass movements working on issues of land were consulted and relevant materials on their findings were gathered. Close to thirty public hearings were conducted across these states. Apart from that, interviews were conducted of different activists and officials on the basis of a structured questionnaire in order to get an insight into the hurdles and crises which had arrested the process of proper functioning of land administration and distribution according to the existing law statuettes.

It is not possible to list all the individuals and organisations who have facilitated our assignments. We are grateful to all of them. Recommendations made by several committees during the recent years have been extremely relevant at the current juncture as well and we have drawn liberally from the wisdom and insights offered by these committees. In particular, inputs from three reports have provided very valuable guidance, and these are: Land Committee Report submitted to the Government of Andhra Pradesh (2006); Land Commission Report submitted to the Government of Bihar (2008); and the Report of an expert group to Planning Commission, Government of India on Development Challenges in Extremist Affected Areas (2008).

The Context of Land Reforms

Land is of critical significance to the vast majority of the poor who derive their livelihood from agriculture. Physical subsistence, procuring a decent, dignified livelihood and the well-being of entire families depends on land. The issue of land rights and access to resources is therefore, one where land must be envisioned as a productive unit which sustains interrelated livelihood resources. Inaccessibility to land also affects income opportunities and consumption. The lack and loss of assets such as land, which generates subsistence and alleviates hunger, spirals millions across the country into endemic poverty.

The Committee, in the course of its research and surveys found two points to be overwhelmingly important, which may be stated right at the outset. First, the well-known and oft-repeated conclusion, which is worth highlighting yet again: major lapses in land reform measures initiated by the Indian State soon after Independence continue to be significant in shaping, in large parts of the country, socio-economic disparity and unrest which have only increased with each passing year. Secondly, the Committee found a large number of studies that point towards an acceleration in the loss of land in recent years from the hands of tenants and farmers due to various factors. These ranged from development and state-owned mega projects of heavy industries to change in legal statuettes regarding ownership and acquisition of land by private enterprises to the increasing impact of environmental degradation on cultivable land.

The Committee is strongly of the view that existing provisions of land reform must be revitalized. New mechanisms may need to be adopted in order to accomplish the tasks which have not been fulfilled. Further, it is extremely important to identify and investigate the processes through which agricultural land is being lost. Thus, it is within such broad parameters that the present Committee outlined the major aspects of land reforms.

The need for implementation of dynamic land reform policies have also been highlighted in the Eleventh Five-Year Plan which states that an efficient and corruption free land administration, coupled with a dynamically adaptive land policy, has a vital role in increasing agriculture growth and poverty reduction. The key elements of an effective land policy are :

- *Modernization of management of land records*
- *Reforms relating to land ceiling*
- *Security of homestead rights*
- *Reforms relating to tenancy laws*
- *Protection of the land rights of tribals*
- *Access to agricultural services*

After independence, the state recognized the vital link between land and livelihood and launched land reform measures in three components viz, abolition of intermediaries such as *zamindars*, security of tenancies and ceiling on agricultural holdings. Concomitantly, however, the state was also plagued with the anxiety of rapid industrialization, which required building of massive infrastructure and industries of capital goods such as iron and steel plants, multipurpose dams, mining, canals, highways etc., which meant acquiring land on a large scale. However, the displacement of populations in this process did not find official recognition at the level of policy making till the first three Five Year Plans.

The Land Acquisition Act of 1894, was applied to large scale acquisitions resulting in displacement and deprivation of means of livelihood for affected people on the one hand and denying them of the right to resettle or rehabilitate.[12]

Political Discontent, Violence and Occupation of Government Land

Both civil rights groups and Central government committees have attempted to analyze the causes of movements such as Naxalism and their ability to tap into disaffection and discontentment among the rural poor. At the heart of this spreading movement are the issues of land and decades of structural exploitation. We need to look no further than the demands around which their campaign revolves:

- *Implement land reforms.*
- *Handover to the occupants the endowment, government, and forest land and lands belonging to landlords already occupied by people*
- *Implement the Land Ceiling Act.*
- *Complete all pending irrigation projects. Farmers should be given irrigation facilities and supplied adequate power.*
- *Waive all private loans taken by the farming community to stop suicides by farmers.*
- *Prepare a permanent and integrated plan for tackling the drought situation.*
- *Scrap corporate agriculture."*[13]

The object of the Naxalite movement therefore is to provide land, whether the landlord's or the government's. The law is not the reference point of the Naxalites. For

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[12] Kannun Kasturi '*Right to displace but no duty to rehabilitate'* India together, Saturday, 16 February, 2008http://sez.icrindia.org/2008/02/16/right-to-displace-but-no-duty-to-rehabilitate/

[13] http://www.flonnet.com/fl2221/stories/20051021006700400.htm

instance, ceiling surplus land is not the one which they seek to put in the hands of the landless but instead they seize holdings of those of whom they see as absentee landlords. This symbolic occupation, wherein Naxalites put landless poor on lands which remain fallow, fails to meet the objective of redistribution and yet the implicit message is that land cannot lie unused when thousands of people are barely subsisting and do not have access to cultivation. Arguably, the movement possesses no supporting mechanism which would facilitate the poor in making productive use of land.

Though, there are no precise estimates, there is enough evidence to show that the Naxalite movement assisted landless poor in occupying government lands both for homestead and cultivation. But government officials do not sanction or ratify this occupation, thinking that this would increase the illegal trend of occupying land outside the procedures of government.

In the case of forest land, in the states of Andhra Pradesh, Chattishgarh, the Vidarbha region of Maharashtra, Orissa and Jharkhand, the situation is somewhat different and similar as well. The Naxalite movement following the same agenda has assisted Adivasis and other tribal population in occupation of government forest land. Going by this schematic forest settlement, Government statistics show that 39% 'forest encroachment' has taken place in this region.

Clearly, the demands of the Naxalite movement seek to address these agrarian and land related issues. However, their means of using violence as a method only disempowers the landless poor further. In this context, where there is a rise of agrarian unrest due to the lack of redressal of issues of land rights and livelihood, the Commission deemed it extremely necessary to revive the agenda of land reforms.

Historical Background

The main plank of land reforms in India after independence was to abolish landlordism and to provide 'land to the tiller' by vesting former tenants with permanent and even heritable and transferable rights in the land which they cultivated.

Legislative provisions were made in extensive areas of the country providing for conferment of ownership rights on tenants or allowing cultivating tenants to acquire ownership rights on payment of reasonable compensation to the landlords. Some of the states acquired ownership of land from the landowners and transferred it to the tenants who paid certain amount of premium to the State. Sub-tenancies were generally prohibited except in certain cases, viz, widows, members of the armed forces, minors, unmarried women, persons suffering from disabilities etc.

The Indian Constitution had put agriculture and land reforms in the purview of the provinces (a state subject). The landed gentry were even more powerful in the state legislatures and state governments, and exercised considerable influence over the organs of the state. The land reform legislations which were passed in the states in the 1950s (but in some cases as late as the early 1970s), provided substantial scope for the land owners to dilute, if not defeat, the intent of the legislations. In particular, they were able to evict large numbers of unrecorded tenants from lands recorded as being under their 'personal cultivation'.

Nonetheless, the legislations abolishing landlordism achieved a significant transformation of the countryside by enlarging the base of land ownership and creating essentially three categories of land-holders- those with heritable and transferable right over land, those with permanent occupancy rights (which were to gradually transform into the first category), and tenants who had the obligation to pay rents to one of the two earlier categories. As a result of the implementation of these laws, the ownership of about 40 percent of cultivable land was transferred to the tillers and under tenancy laws, nearly 12.4 million tenants were conferred the right of ownership covering an area of 6.15 million ha (about 4.4 percent of cultivable area)[14]

The land reforms under the Five Year Plans have been sequentially presented in Annexure 1.2. However, as these deliberations took their own time, the landlords successfully evaded the legislation and were able to defeat the very purpose of land ceiling and redistribution of land. A spate of fictitious transfers, sales, *benami* transactions, partitioning of family property, etc., by big landlords with the intention of circumventing the ceiling legislation took place throughout the country which went unchecked. Splitting up of agricultural estates had already taken place so that by the time the new legislations came to force, very little land was available for distribution.[15]

The Planning Commission's Report provides various reasons for the non-implementation of land reform measures. The major conclusions drawn by the Task Force for the poor performance of land reforms were lack of political will, inadequate land policy, legal hurdles and the absence of correct and updated land records. Another crucial factor which was responsible for this debacle was the weak administrative machinery for land reforms as well as the lukewarm and apathetic attitude of the bureaucracy.

The responsibility for implementation of land reforms rested with the revenue administration of the States and as in the case of the men who wield political power, those in the higher echelons of administration were also big landowners themselves or had close links with big landowners, hence the failure in the process. Surprisingly, none of the State had taken necessary steps to forge a suitable administrative apparatus to cope up with the task of implementing land reform measures. On the contrary, there were cases, as the report stated, the officers trying to implement land reform laws honestly and efficiently were harassed and hastily transferred elsewhere.

The law courts, existence of loop-holes in the laws and protracted litigation were cited as major obstacles in the way of implementing land reforms. The old and manipulated record of rights posed another constraint. In a judicial system which is highly biased against the poor, the absences of correct up-to-date record of rights were used by the landlords for large scale eviction of tenants from the land actually tilled by them. Despite this alarming situation and even when fully apprised of the seriousness of this problem no genuine effort were made by the State governments to prepare the land records. There were provisions in all Five Year Plans to undertake village surveys and to prepare land records but no effort were made by the states in this regard.

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[14] Ministry of Rural Development Annual Report 2002-03, in Ravi S. Srivastav, *Land Reforms, Employment and Poverty in India,* presented at National Seminar on *Land Reforms in Uttar Pradesh: Retrospects and Prospects*, August, 12-13, 2008

[15] *Op. cit.*, pg. 50.

Even after the implementation of the four Five-Year plans, in the absence of updated and corrected land records, the position of tenants and particularly share-croppers, continued to be insecure especially in Bihar, Tamil Nadu, Andhra Pradesh, Gujarat, Punjab and Haryana.

The Planning Commission which set up a Task Force on Agrarian Relations, submitted its report in 1973, admitted and elaborated on the huge gap between the claim of the achievements in land reform through five year plans and the actual situation on the ground. It categorically stated that, "*In no sphere of public activity in our country since independence has the hiatus between the precept and practice, between policy-pronouncements and actual execution, been as great as in the domain of land reform".*

Current Status of Land holding and Role of the Government

In 1973, as much as 23,15,000 acres of land was declared surplus under ceiling laws, out of which 12,55,8 00 acres of land was distributed officially. This stood at 54.24 % of the area declared surplus to be already distributed to individual beneficiaries.[16]

Compared to that, in December, 2007, the total area of the land declared surplus was 65, 59,292 acres, out of which total area of land taken under possession was 59,98,390 acres. This implies that 87% of the land declared surplus has been taken under possession. Then, the total area distributed was 49, 67,940 acres to 55, 34,176 individual beneficiaries, which is 72% of the land declared surplus and 83% of the land taken under possession.

Breaking down the amount of land distributed and taken under possession into categories, the Committee found that an area of 18, 30,182 acres of distributed land went to SC population of 21,35,356 individual beneficiaries. This constituted 37% of the total area of land distributed and 39% of the total number of beneficiaries.

An area of 7, 77,311 acres of land was distributed to 8, 44,622 ST individuals which constituted 16% of the total area of land distributed and 15% of the total number of beneficiaries. An area of 22, 63,516 acres of land was distributed to 25, 04,270 individuals other than SC and ST individuals. This distribution constituted of 46% of the total area of land distributed and 45% of the total number of beneficiaries.

The total area of land not available for distribution was 12, 18,373 acres which has increased from the last quarter of September 2007 of reporting. This is 18.7 % of the total area of land declared surplus and 24. 52% of the total area of land distributed. The total area of land involved under litigation as reported is 9, 24,015 acres. This is 15.4% of the total area of land distributed. [17]

At the same time, the net sown area during 2003-2004, was nearly 140.88 million hectare accounting for 46.1% of the total geographical area. The net area of land declared surplus is only 1.86% of the total cultivated land. This reflects a glaring failure and backwardness of the agenda of land redistribution. Then, 13.18 million hectares of land falls

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[16]Task Force Report on Agrarian Relations, Planning Commission, Government of India, 1973.

[17]NO.15012/1/2007-LRD, *Ministry of Rural Development, Department of Land Resources (Land Reform Division),* Block No. 11, 6th Floor, CGO complex, Lodhi Road, New Delhi-110003

under culturable wastelands accounting for 4.3% of the total geographical area. Thus, the argument that there is not sufficient land for redistribution does not have any factual basis.[18]

The above statements are a mere sketch of the situation with some important gaps. There was no state wise data pertaining to the percentage of the landless SCs and STs population, percentage of cases where land distributed to SCs and STs are locked in litigation. On top of that, the percentage of minorities is not known. In the case of which, a full-fledged quantitative scenario of the current situation is difficult to arrive at and this also speaks volumes of the lack-lustre performance of land records maintenance.

At the same time, the situation of tenancy has undergone significant changes and is very complicated today, with differences both within and between regions in the types of lessors/lessees and the terms of lease. The main source of data on leasing (a decennial survey on land holdings by the National Sample Survey Organisation) seriously underestimates tenancy. The variety in the types of tenancy, both within and across regions has intensified the debate in the consequences of current leasing patterns on agricultural growth and employment, but most analysts still concur that significant gains can occur through reforms which lead to security of tenure to small lessors.[19]

At this point, we may recall the Agenda of the Revenue Ministers' Conference that was held as recently as 1992 to look into the issue of land reforms in Annexure 1.3 . The Sub-Committee of 1992 formed to deliberate and study the items listed in the agenda had come up with recommendations that are given in Annexure 1.4.

Looking at the vital statistics of land use and the recommendations made in the Revenue Ministers Conference thereafter, it becomes clear that the task which was officially set by the Government of India in 1992 has made little progress. The progress in the last 60 years has been painfully slow. As a result the Agenda of the Revenue Minister's Conference in 1992 bears a striking similarity to the one tabled for the present Committee.

Furthermore, recent policy changes during the period of what is euphemistically known as the period of economic reforms have eroded and even reversed the land reforms agenda. This context therefore lends urgency to the current Committee's task.

Given that land is a state subject, and that there are immense diversities - legal, institutional, structural, etc., with reference to land and its administration across the states in India, the present Committee has not ventured to go too much beyond the pressing concerns at the general (i.e. all-India) level, although attempts have been made to illustrate the arguments through state-specific scenarios. Thus, much of what has been said here may seem like 'old wine in the old bottle', but that only underscores the huge tragedy of our failure with respect to the land question for more than six decades since Independence. However, we also hope to have captured the pressing new challenges at the current juncture which ought to be addressed, and the relevant case studies should provide a sense of such challenges confronting us.

[18] http://dacnet.nic.in/eands/Imports-Exports-Inflation%20Rates13-14.htm

Land Ceiling

Status Mapping

Land ceiling continues to be one of the primary mechanisms to implement land redistribution. Since Independence and throughout the 1950s, both the central and state governments attempted to formulate and enforce Agricultural Holdings Acts to reduce glaring inequalities in land ownership. These ceiling acts placed a limit on the amount of land an individual could own and determined the extent of surplus or excess land. These lands then fell under the ambit of the state which was responsible for its distribution to the landless poor.

The imposition of a uniform ceiling inevitably unveils a variety of problems, given the vast differences between state demographics, be it size, population or access to natural resources. Comparisons at the all-India level remain, at best, indicative, revealing little about overarching trends. Taking a look at the legislative evolution of ceiling and a cross section of examples from states reveals the equivocal and inadequate commitment of both central and state administrations. The government's dissimulation combined with obstacles in implementation indicates that provisions of ceiling laws could not reach agricultural workers; at most, the existence of these limits might have prevented further concentration of land but the objective of fostering land ownership remained thoroughly unfulfilled.

Evolution of Ceiling Policy from 1947 till Present

The evolution of ceiling legislation could be roughly divided into two phases: the first began soon after Independence when the central government through the Economic Program Committee prescribed cursory strategies to divide and redistribute large holdings. Redistributive land reforms through imposition of land ceiling on family holdings received endorsement from academic research on size-productivity relationship in India during the sixties. It was in principle supported that in agriculture, given the same resource facilities, soil content and climate, a small farmer produced more per acre than a large farmer.

Ceiling was the second prong of land reforms. In these years, ceiling legislation treated the landholder as the unit of application. The ceiling size was related to the size of an 'economic' holding which a family could cultivate with its own resources, including traditional animal-power based ploughing technology. It also varied between irrigated and un-irrigated conditions, and exemptions were included for other categories of non-cultivated land such as orchards. Here also land owners tried to sidestep reforms by de-jure partition and distribution of owned land among real or fictitious relatives.

The failure of these legislations to percolate down to the large sections of the landless poor peasantry whose land hunger remained acute, led to militant movements from 1967 onwards centering on land issue. The Central government recognized the urgency and sharpness of the issue and brought about a second round of legislation in 1972 and some of the loopholes of the ceiling laws were removed.[20]

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[20] Section 3.4, Ravi S. Srivastav, *Land Reforms, Employment and Poverty in India,* presented at National Seminar on *Land Reforms in Uttar Pradesh: Retrospects and Prospects*, August, 12-13, 2008

The second phase after 1972 began with all states adopting the National Guidelines. The state governments enacted land legislation and hereafter, family was the basis of the holding. However, except in some states, land ceiling legislation met with very limited success. Apart from the reluctance of states to enforce land ceiling vigorously, other important reasons for low achievement were the exemptions to tea, coffee, rubber, cardamom and cocoa plantations and land held by religious institutions and charitable institutions; fake transfers; misclassification of lands; and non-application of appropriate ceiling for lands newly irrigated by public investment. These problems are rampant in almost all major states of India, although they have their state-specific hues. To illustrate the problems, we make take the case of Andhra Pradesh and Bihar.

In the state of Andhra Pradesh, Land reforms have been an unfinished agenda. The policy of imposition of ceiling on landholding was made with the objectives of reducing glaring inequalities in ownership and use of land and meeting the widespread desire to possess land. Every person whose holding as on 1-1-1975, together with any land transferred by him on or after 24-1-1971, exceeds 10 acres of wet or 25 acres of dry land had to file a declaration under Section 6. The Land Reforms Tribunal after enquiry passed orders under Section 9 and the declarant was liable to surrender the land held in excess under Section 10 (1). The land surrendered or deemed to have been surrendered vested with the government which took possession of it under Section 11 and distributed to the poor under Section 14.

Under the provision outlined above, 8, 37,840 acres of land was declared surplus till December 2007of which 6, 52,282 acres were taken possession of and 2, 43,933 acres of land is yet to be taken over. The land unfit for cultivation was estimated at 10291.18 acres. The land reserved or transferred for public purpose was 16690.85 acres and area covered under miscellaneous reasons and administrative delay was 31324.40 acres.

In the state of Bihar, the current Land Ceiling Act established a variable ceiling on landholdings, on the basis of quality of land. In brief, a person would be permitted to own not more than 15 acres of class-1 land or 18 acres of class-2 land or 25 acres of class-3 land or 30 acres of class-4 land or 37.5 acres of class-5 land or 45 acres of class-6 land. Then the law provides, for a conversion table, of different categories of land. But such a finely tuned law becomes impossible to implement and ends up being a big blow to the high expectation of the people.

A series of statistical exercises have been conducted which substantively point out the potential ceiling surplus which could be unearth if the farzi and benami documents are properly unearth and investigated and of the dismal condition of operational land holdings in Bihar after four decades of land ceiling legislation operating in the state. NSSO report no. 491 on Household Ownership Holdings in India, 2003 reveals that 96.5% of the total land-owning community are small and marginal farmers. They possess 67.36% of total arable land. Medium and Large land owning farmers who are 3.5% of the community own 37.72% of total land. According to Census 2001 extrapolated up to 2007, agricultural labour in Bihar constitutes 39.27% of population of Bihar, which is 56.55 Lakh. If one acre of land is to be provided to these labourers then the amount of land required would be 16.68 Lakh acres and under a study conducted in 1990 by the LBS National Academy of Administration, there is a potential surplus land of 20,95,030.03 acres of land.

Again, at a national level, a comparison of ceiling status of two recent years provides a statistical account of the dying agenda of land redistribution. In March 2002, the area

declared surplus was 2.7 million hectares (read m ha from now), out of which 2.63 m ha was taken possession of, and an area of 2.18 m ha was distributed to 5.65 m rural poor. Of the total area of distributed, about 36% went to SC households and 15% to ST households. The area declared surplus was less than 2% of the cultivated area which stands at 540 m ha.

Compared to this, data obtained by the Commission of December 2007 states, that area declared surplus was 2.7 m ha, out of which 2.3 m ha was taken possession of (87% of the area of land declared surplus). An area of 1.9 m ha was distributed to 5.5 million rural poor households, out of which 7.3 Lakh ha went to SC households which is 37% and 3.1 Lakh hectares went to ST households which is 16% of the total population of allottees. Within a period of five years, which is the maximum term of a government and also for the five year plans, the net increase in the declaration of surplus is almost nil, and the increase in distribution of surplus land to SC and ST categories is of mere 1 % in the era of communication and technology.

Brief Analysis of the Major Issues

Land locked in litigation

What may be termed as collusive litigation, a large chunk of land (0.46 million ha) out of the declared surplus is held up due to litigation at various levels and is not available for distribution. This has led to a quick petering out of the agenda of land redistribution. For instance in Uttar Pradesh, which shows a consistent record of distribution of land from 1976 onwards, 83,853 cases of land dispute were registered of which 50, 334 cases were resolved till date. There are 421 cases yet to have a hearing and 13, 243 ha of land is locked in litigation.

In Bihar, presently, 43,009.2 ha of land are involved under litigation under 1467 cases. In October 2007, the number of cases was 1175. Thus with a quarterly reporting pattern, the rate of increase in litigious dispute of ceiling surplus land stands at 19 percent.

In the case of Andhra Pradesh, where several progressive legislations have been passed, till December, 2007, total land area involved in litigation was 131570 acres. Litigation withholds a major part of the land in almost all the districts. Sizeable area of Andhra Pradesh has gone out of the total quantum of surplus land as a result of court decisions.

A number of cases were filed on wrong determination of surplus by the land reforms authorities by not verifying the status of legal heirs, gift deeds, already transferred by Sada bainama to another party by declarant, non-deletion of such lands covered by tenancy, Inam, etc. A huge number of cases were ordered by the Courts in favour of the declarants due to delay in filing the counter by authorities, not furnishing the required documentary evidences to the Courts.

From field experiences, it was noticed that there were many more lacunae in the way land ceiling cases were handled. There were cases wherein land could not be taken into possession due to non-receipt of the judgment copies of the Hon'ble High Court/Supreme Court where cases were disposed in favour of the government. This was entirely because of absence of proper communication between the Government pleaders and the Land Reform Tribunals/Authorized Officer and as surplus lands continued to be under the possession of

declarants. The Ceiling cases were shown as pending in various Courts at Post Determination stage for many years without persuasion even though certain cases were disposed by the Courts as there was no systematic review done periodically with Gram Panchayats and Land Reform Tribunals at district/state level.

Circumvention of Ceiling Laws

All the states legislatures during the institution of Ceiling legislation were under considerable influence of the landlords. Hence, legislations had provisions which were vulnerable to circumvention and bypassing of laws began right before these legislations were tabled and continues to this day.

For instance, in UP, it was found that, there was provision of allocation of land for agriculture, homestead, and fishery under Ceiling Act. But the respondents stated that allocation was only provided for cultivation. Then, Under the Zamindari Abolition and Land Reforms Act, 1950, there is provision for providing 1.26 ha of cultivable land to the rural poor. Apart from that those villagers who do not have land for home, has to be provided with 100-150 yards of land for homestead purpose. There is provision of allotting atleast 1.5 acre of land.

Against this 22 % of the beneficiaries were allocated 0.5 acre of land, 26% were allotted 0.5-1 acre of land. In other words 48% were allotted less than 1 acre of land. The beneficiaries received upto 2 acres of land accounted for 33% and only 6% of the beneficiaries got more than 3 acres. There is no provision in the Ceiling Act, which penalizes this irregularity and discrepancy.

Analyzing the data obtained through *lekhpal* in UP, it was found that with the connivance of *Pradhan*, false names were registered for allocation of land and then transactions of land happened. Though, in appearance, one can see distribution of ceiling land happening consistently, but the rate of redistribution falls far behind the provisions. It also came to light, that there are anomalies in the process of redistribution and *benami* transactions are considerable.

In the case of procedure of handing over the *patta* for possession of ceiling surplus land, the provision under the Act is that the *lekhpal* is supposed to deliver the patta to the household in person. In the sample study, it was found that the information of distribution of patta was spread through drumming in villages and pattas were distributed in gram Sabhas. In a sample study, it was found that 64% patta was distributed in the gram Sabha, 25% of the pattas were obtained from the lekhpal after the gram Sabha and 11% of the pattas were obtained from Tehsil office. This delayed the subsequent process of taking over the physical possession of the land distributed by the assignee.

In the state of Bihar, the ceiling provisions have been circumvented by forged or 'benami' transactions, by enhancing ceiling units to accommodate even minor members of the family or buying back at throw-away prices or through persuasion or forcible occupation of land under the pretext of 'voluntary surrender' by the allottees or bribing the revenue 'Karamchari' or by changing the land classification so as to increase the ceiling limit, etc.

The Bihar Land Ceiling Law is a flawed legislation. It had been implemented in the most indifferent manner. The law and manual of the Bihar Ceiling Law did not provide for

any special mechanism for investigating into such a complicated matter of clandestine and *benami* land transfer. This was treated by the revenue officials as just another item of revenue. Section 5 of the law, empowered the Collector, to annul any transaction made after 22nd of October, 1959, if he was satisfied that such transfer was made with the object of defeating the provisions of this act or for retaining *benami*/*farzi* land in excess of the ceiling area. But in the absence of any investigating machinery with the collector, it was difficult if not impossible to find out such transactions. There is hardly any activity under this section. Landowning classes in the state with the help of inaction of government officials at the lowest level have flouted this section with astounding audacity. One is also astonished, by the time taken to dispose of a ceiling case. Many of the cases of early 70's did not reach finality even in 2007.

In Andhra Pradesh, under the AP (Ceilings on Agricultural Landholdings) Act, 1961, the amount of land government could secure was meager as the Act gave more concessions and exemptions to the landlords. Replacing this, the AP Land Reforms (Ceiling on Agricultural Landholdings) Act, 1973 was instituted, this came to effect on 1.1.1975. In order to avoid benami transactions, all transactions within 1971 to 1975 were declared null and void.

Even after that, the large landholders in the state have avoided the ceiling laws by partitioning their families in the land record while cultivating the land jointly. Higher limits of ceiling are kept in view of 'local' considerations. A significant portion of the area declared as ceiling surplus is either unfit for cultivation or not available for distribution due to 'miscellaneous reasons'.

Corrupt practices arresting Land Reforms

Bribery and extra-judicial practices at a very critical point of the administration has held land reforms under ransom for all these years. For instance, in a study conducted of ten villages of 5 districts of UP, 8% of the respondents complained about *benami* transactions. 16% of the respondents complained about discrimination at the level of Land Providing Committee at the village, 22% of the respondents confessed as to selling of the allotted land because of pressure which on face maligns and defeats the purpose of ceiling legislation. There were 41% of the respondents reported that for each allocation, Rs. 2500-5000 was taken as bribe by the Pradhan or lekhpal, the amount varying on the quality of land allocated. The respondents generally borrowed to pay this money and in the event of not being able to make the land productive would move into indebtness.

At the lowest level, the Circle Inspector and the revenue 'Karamchari' are the cutting edges but due to corruption, vested interest and fear of retaliation from powerful landholders, the cutting edge has been really blunted. Also there is the problem of sustenance on meagre sources of legitimate income which the government provides for these low level officials. The 'Karamchari' in Bihar does not have an office to himself, he does not have a fixed hour of meeting people, and he does not have any storage facility of maintaining documents of correspondences and records. Thus, in such a situation, if he resorts to bribery and easy way out of the cumbersome job for which he receives no assistance, then there is little blame which can be placed on him.

Problems in the Post-Allocation of Land

Ideally, given the chaotic situation of tenancy and ceiling situation, the task of land allocation is only the beginning and not the end of responsibility of the state. However, even here similar negligence and indifference at the administrative level prevails. In the state of UP, the provision according to the Act is to deliver the patta within 2 months of the allocation. In the study, it was found that 90% of the pattas were obtained in single attempt, 7% were obtained in two attempts and 3% of the pattas were obtained after 3-5 attempts. Then, 80% of the pattas were obtained within 3 months, 13% were obtained within 3-5 months and 7% obtained within 6-12 months. This clearly showed lackadaisical attitude in following the guidelines.

It is baffling to see the category of land allotted in land reform programme to a substantial section of the rural poor. As obtained from the sample study of UP, 12% of the beneficiaries were allotted saline lands, 19% of the beneficiaries were allotted land in embankments, barren and uneven rocky plots of land. In Sultanpur district, 33% of the beneficiaries were allotted submerged and flooded lands. In Jhansi district, 51% of the beneficiaries were allotted land in submerged areas

In the select 10 villages, 36% of the land demarcated was from land in possession of others, 10% of the pattadars did not get physical possession because of land being under possession of others, 6% of the total allotted land is yet to be physically possessed by the rightful beneficiary. The sample study also recorded that 63% of the respondents complained of experiencing difficulties in sustaining cultivation because of high costs of irrigation, no aid in financing power for irrigation tube wells. There were 58% of the respondents complained of not having access to seeds, manure.

In aggregate it is quite clear, that there is a wide gulf between the provisions and implementation at the level of tehsil and village level. The corruption basically comprised of delaying delivering of patta, demarcating land not viable for cultivation, etc. And the rate of compliance of the rules of distribution is in decreasing order as the process of distribution moves ahead. However at the same time, it is clear, that in spite of all these anomalies and glaring shortfalls, the little amount of land which has been distributed and has been properly cultivated has made significant changes in the lives of the beneficiaries in all manifestations of progress.

Findings from the Field

Despite lack of reliable data due to poor maintenance of records, the field findings from the states indicate the following underlying weaknesses and problems inherent in ceiling legislation:

- There continued to be significant variations in ceiling limits and holding size. States such as Bihar, Andhra Pradesh, Gujarat, Karnataka and Kerala varied ceiling limits according to agricultural and climatic conditions. For instance dry states such as Rajasthan justified higher ceiling limits on the basis of their climatic conditions and the lack of agriculturally productive lands.
- Falsification of documentation by landlords, who often apportioned large holdings into smaller parts to their legal heirs, so as to hold onto family lands well beyond the ceiling limit. Ceiling Acts did not provide for the prohibition of transfers. In

anticipation of ceiling laws, big landowners forged fictitious transfers in *benami* transfers on a large scale. Gujarat and West Bengal are the only states which gave these acts retrospective effects. Other states banned transfer only after enforcement of the ceiling laws or much later from the date of notification as in the case of the Mysore Act.

- Any un-irrigated land becoming irrigated through private irrigation after ceiling laws came into effect was not treated as irrigated to determine the ceiling area. Only land irrigated by State irrigation work was treated as irrigated. This classification was inadequate and still allowed large landowners to hold onto privately irrigated land beyond the ceiling limit.
- Religious trusts hold a large chunk of used and unused land which has been allotted to them under exemptions from the State. Under Land Ceiling Acts exemptions have been given to lands held by these trusts and institutions. By changing their classification, a huge number of exemptions were granted, making ceiling legislation ineffective. In a recent decision by the Chattishgarh government, thousands of acres of land, exempted from the ceiling limit, were allotted to religious trusts.
- Land claims are stuck in litigation. These cases pending with revenue and other courts remain with the original owners and prevent allottees from cultivating the land.
- It is observed from a study of NIRD (Agrarian Relations and Rural Poverty in Post Reforms Period – A Study of Bihar and Orissa) that cropping pattern has an impact on extent of land holding. In irrigated areas where paddy is grown (Bargarh and Kalahandi districts of Orissa) the farmers (particularly small and marginal) are incurring losses due to increase in cost of production. Whereas the big farmers are gaining mostly due to economy of scale. In rainfed areas the farmers are adopting diversified cropping pattern with vegetables which demands more labour. So small and marginal farmers are gaining much here because of advantage of family labour input. Labour availability was a problem in these areas due to migration. Therefore big farmers were leasing out the lands, or selling the lands to small farmers and marginal farmers. Therefore small farmers are either leasing out the lands or selling the lands to big farmers (reverse tenancy). Agrarian relations thus are changing over a period of time due to cropping pattern itself. Encouragement must be given to promote such type of labour intensive crops.
- In the study villages, of the Commission, of both tribal and non-tribal districts of Jharkhand it was observed that the LR beneficiaries in general as well as small and marginal farmers in particulars expressed the need for lowering the present land ceiling norms. They further mentioned that the lands available under ceiling are of lower category thus the tenets allotments should also be raised to five acres. Some of the households mention that along with the new allottee old one also be given additional land to make them viable.
- In Jharkhand, it was also noticed that as regards to the affected households, one group is not in favour of the ceiling as well lowering of the land ceiling norms. While welcoming the ceiling other one has expressed that it should not be lower down further.
- In Jharkhand, the respondents further mentioned that where is surplus land as the large and medium farmers have become small and marginal farmers by third generation become either small or marginal farmer.
- The household in general got poor quality land therefore are mostly growing rice during Kharif only.

- Land ceiling should not be a one time activity. This should be revised periodically by taking into account of productivity, area under irrigated, quality of the soil, intensity of cropping.
- It was very disturbing to observe in the case of Punjab that during the last one and half decade about 2 Lakh small farmers quit agriculture due to high input costs and low profitability. Some of them taken up dairy activities, agribusiness and others migrated to urban areas.
- In the case of West Bengal, it was observed that the land owners are facing problems when Bargadars are reluctant to pay the rent fixed by law, and as the contract can be terminated only by the state-appointed authority. It is also to observe that some of the Bargadars are not happy with this system when the cost of cultivation is high and continued monsoon/crop failure occurs.
- Then again, when the barga land is acquired for any national interest, the bargadar is not considered for compensation for losing the livelihoods. The government should consider the bargadar also for compensation as he loses his livelihood opportunity.
- In the case of Himachal Pradesh, it was observed that the gram panchayat and panchayat was not involved in the case of land revenue maintenance. The commission observed that the involvement of gram panchayat was necessary so that land ceilings are effectively enforced and monitored.
- Further, to aid the situation after redistribution in the state of Himachal Pradesh, the entire development programme should be merged especially the NREGA/Drinking Water/Watershed and Sanitation for land development and for regular source of irrigation in the villages.
- In the case of Karnataka, it was observed that in select districts of the state, viz Chitradurga, Chamarajanagar and Uttara Kannada districts surplus land could not be distributed. The record was abysmally low. The revenue department staff was of the opinion that it is important to restore Land tribunals and settle the cases. At all the levels a general comment was made by the officials that the Revenue department is utilized by all the departments to post compassionate ground candidates. In the process no candidate is able to handle and with no serious capacity building efforts, work gets staggered.
- In the case of Orissa, it was found that in some of the study villages, several families have got ceiling surplus land, but the land is allocated at a distance of 5 kms. As a result, the previous owners from whom land was acquired are taking advantage of situation and cultivating the land. The tribal families are also afraid of the previous owners as the land is located in proximity to their villages. These procedural trappings are to be tightened with adequate overhauling of the state ceiling laws.
- Further, it was also found in Orissa, that the big land holders are not paying adequate attention towards the maximum productivity of the land. Therefore, the landless families and sharecroppers families are of the view that there is a need for reducing the ceiling limit to 5 standard acres from the present 10 standard acres so that more number of landless families/sharecroppers will be benefited.
- Tenant's rights in ceiling surplus land have not been secured adequately. The National Commission on Agriculture has suggested applying ceiling limits to owned and leased land. Orissa, West Bengal and Uttar Pradesh are the only states where this is not accepted.
- The state governments kept surplus lands, keeping it fallow and unused long after ceiling acts had been enacted.

- The amount of land procured by state governments was inadequate because of the concessions and exceptions in favor of large landlords.
- The lands allotted were uncultivable or non-operational. The financial assistance required for transforming the land into cultivable was never made available.
- Problems in survey and recording of land holdings and unclear definitions of the size of holdings. West Bengal is the only state which has attempted to record tenanted lands.
- With regard to Bihar, a vulnerable group is those who live in semi-bondedness. They are technically free agents engaged basically in non-farming activities in rural areas. They do not possess land to build their own shelter and therefore are dependent on landlords for it, for which the landowners exploit them to the hilt. The total number involved is 5.84 Lakh. A land assignment of 10 decimals of land per household would require only 58430 acres.
- In the state of UP, however with all its lapses, the distributed land studied in 10 select villages, showed qualitative and quantitative change in production due to land allocation, the study found that every allottee was earning Rs 12000 per year purely from land. Out of which 57% of the income was from allotted land and 43% was from previously owned land. Before allocation an average of 84 days of employment was available for the rural poor and after allocation the average employment was of 181 days.
- Qualitatively, there was enhancement in social prestige, self-confidence, access to health care, education. This varied across the sample districts. 44% of the respondents confessed of having greater access to fodder, 40% of them now have *pucca* homestead. 32% of them have now access to health care facilities. 40% of the beneficiaries have been able to send their children to school.

Recommendations

- Ceiling limits must be re-fixed and implemented with retrospective effect. The new limit should be 5-10 acres in the case of irrigated land and 10-15 acres for non-irrigated land, to be decided by the concerned state governments. [21]
- Absentee landlords or non-resident landowners should have lower level of ceiling.
- Introduction of Card Indexing System for preventing fictitious transfers in *benami* names. This card should be related to allottee's Voted I/D Card or PAN.
- Discontinue exemptions granted to religious, educational, charitable and industrial organizations under ceiling laws of various states. Each entity should have the same ceiling as a family, even though state may exempt any particular category on valid grounds.
- Mutts, religious establishments including temples, Church, etc which have been existing since 1950 would be allowed one unit of 15 acres. A temple having numerous deities will also have only one ceiling as one religious entity. A temple will be considered as a single unit and if there was a cluster of temples with the same campus they would also come under the same unit.

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[21] Report of the Sub Committee on Land, Planning Commission (2006),Report of the Expert Group on Prevention of Alienation of Tribal Land and its Restoration , Ministry of Rural Development (2006),Report of the PESA Enquiry Committee, Ministry of Panchayati Raj(2006),Report of the Governor's Committee, GOI (2005)

- For Research Organisations, Agricultural Universities/Colleges and similar types of institutions including proposed industrial and commercial units, in the future the government would have the power to allow more than one unit of ceiling to fulfill strictly the objectives for which these institutions/ organisations would be set up. It has to be done on a customized case-to-case basis. The organisation/entity will enter into an actionable agreement with the government that in case, they fail to fulfill the utilization of land as agreed upon such lands will be resumed by the government.
- The general exemption that has been given for plantation, orchard, mango/litchi groves, fisheries and other special categories of land use should be done away with.
- Set up Land Tribunals or Fast Track Courts under Article 323-B of the Constitution for expeditious disposal of appeal cases.
- Impose criminal sanction on the failure to furnish declaration of ceiling surplus land by land holders.
- Specifically in the case of Land Ceilings where the cases have been decided basing on fraud and misrepresentation of facts, which are at Primary Tribunal stage. In cases where the Courts have already passed orders in Appeal or Revision, action may be taken to file Review Petition.
- Penal provision for non-submission of returns for ceiling surplus holdings should be strict and rigorous. A penal clause inserted within existing ceiling laws should make officers accountable and responsible for intentional lapses.
- The Divisional officers cum Tribunal Officers should dispose off the cases within the stipulated period. As and when the cases are disposed by the superior courts, the tribunal officer should take immediate action to ensure surrender of excess land by the declarants.
- The District Magistrate or Deputy Commissioner should be empowered to speed up allotment of surplus land. Civil Court jurisdiction must be barred in respect of agricultural land. Any decree or order passed by any court should be treated as null.
- No decree or order to evict an allottee to be executed unless it is approved by the Board of Revenue or the by the High Court.
- The Benami Transactions (Prohibition of the Right to Recover Property Act) of 1989 should be amended so that evasion of ceiling laws through fraudulent land transactions can be monitored.
- Cases of illegal or improper allotments of ceiling surplus land to be investigated and allotments to be canceled. All transactions after commencement of Ceiling Law to be declared null and void.
- Identify cases of non-physical possession of allotted lands and cases where pattas have not been issued to owners or those cases which are still under litigation.
- Distribution of all ceiling surplus land should be in the name of both husband and wife, on a joint basis, as that would help control *benami* land. Land ceiling laws should ensure gender equity.
- While making allotment of ceiling surplus land to the landless poor persons, the definition of landless poor person shall be taken as one who owns no land. In case such person is not available in the village, a person who owns a land of not more than 1 acre of wet land or 2 acres of dry land be treated as a Landless Poor person.
- In order to bring newly irrigated lands under the purview of Ceiling laws, these lands should be reclassified in consultation with the Revenue Department and Gram Sabhas.
- A group should be set up, composed of Gram Sabha members and revenue functionaries who identify *benami* and *farzi* transactions.

- The allotment of ceiling surplus land to the landless poor shall be done free of cost as in the case of assignment of Government lands.
- With computerization of land records, separate files should be opened in respect of actual and suspected evaders of ceiling law, so that their lands held in different districts could be consolidated in one file, for the purpose of imposition of one ceiling unit.
- Land ceiling should take in to account the local environment such as reserved areas where indigenous people are residing.
- Huge amount of government lands have been encroached by politically and economically powerful players for which there is no reasonable estimate. State governments must be advised to undertake an assessment of this on a fast track basis.
- Substantial amounts of lands were acquired for industrial and non-agricultural purposes however, field visits indicate that substantial amounts have not been utilised till date. Such lands must be reclaimed without delay and distributed back to the marginalized and the needy according to a priority basis.
- For addressing problems relating to land, single windows approach to be provided by the administration.
- Restrictions on land leasing within ceiling limits should be removed to help improving poor people's access to land through lease market and also for improved utilization of available land, labour and capital. However, there should be legal safeguards in the lease contracts that would protect the small and marginal farmers, and a clear recording of all leases, including share cropping.

Government Land and Wasteland Management

Current Status Mapping

Wasteland: A broad category and a skewed definition

On the eve of independence, state owned vast tracts of land, to which were added large areas of uncultivated wastelands taken over during abolition of intermediaries from thousands of villages which were controlled by them. By definition, they are termed as 'lands which are degraded and cannot fulfill their life-sustaining potential. And wastelands can result from inherent/imposed disabilities such as location, environment, chemical and physical properties of the soil or financial or management constraints'.[22]

The definition of wasteland has been a tricky one. It is also termed in the same government website that given certain of investment, it is possible that degraded lands can be brought under vegetation cover. In actuality, this definition only implies those lands which are not cultivated or are difficult to cultivate. Wastelands, therefore does not mean that they are unproductive. It is only a technical concept that they do not have life-sustaining potential. However under this precise category, the following kinds of lands are classified.

Gullied and/or Ravenous Lands
Land with or without scrub

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[22] http://dolr.nic.in/iwdp1.htm

Waterlogged and Marshy land
Land affected by salinity/alkalinity-coastal/inland
Shifting cultivation area
Degraded pastures/grazing land
Degraded land under plantation crop
Sands/Inland Coastal
Mining/Industrial Wastelands
Barren Rocky/ Stony waste/Sheet rock area
Steep sloping area
Snow covered and/or glacial area

Currently, the total area of wastelands is calculated to be 63.85 million hectares which is 20.17% of the total geographical area. Out of this 30% of the total wastelands fall under the category of *Land with or without scrub*, this is 194014.29 hectares. Then, 22% of the total wastelands fall under the category of *Under utilised/degraded notified forest land*, this is 140652.31 hectares. *Sands/Inland and Coastal area* constitute 7.8% of the total wasteland area, this is 50021.65 hectares. *Waterlogged and Marshy lands* constitute 2.5% of the total wasteland, this is 16568.45 hectares. Degraded pastures and Grazing land constitute 4.08% of the total wastelands, this is 25978.91 hectares. These kinds of wastelands are not for cultivation but they do support a substantial rural and forest population serving them in number of other ways. As no recognition of these wastelands are to be seen in the definition of the government, there have been hardly any surveys which can assess the economic significance of these wastelands in sustaining rural and forest population.

As the government had the proprietary rights over these 'wastelands', after independence under the agenda of land reforms, government began to concentrate on trying to bring these lands under vegetation cover by changing the physical and inherent characteristics of these wastelands. Till March 2002, 5.97 million hectares of wastelands have been distributed to the landless poor households. The distribution of government wastelands was most vigorously implemented in the state of Andhra Pradesh which has a very high percentage of landless labourers. The state has distributed 1.7 million hectares of government wasteland, while UP has distributed 1 million hectare of wasteland and the states of Gujarat, Karnataka and Bihar each account for 9 percent or more of the land distributed nationally.[23]

Brief Analysis of the Major Issues

One cannot rejoice at the above statistics. Besides, there has not been much opposition to the redistributive programmes of wastelands from the landed elite because it has been found that, in practice, these wastelands are also under encroachment which need to be cleared before the intended beneficiaries can take possession of the distributed holding.

Encroachment: Connivance Of State Governments with Private Players

The process of encroachment of wastelands is as old as land grabbing before enactment of ceiling legislations. Whenever the government found that there were takers, it attempted to auction the lands to the highest bidder instead of distributing it to agriculture workers in several states. One of the recent examples is of Tamil Nadu.

[23] Ministry of Rural Development, Annual Report, 2002-03

In 2003, the TN government had started a Comprehensive Wasteland Development Programme. A major component of the programme was the development of about 2 million hectares of government wasteland by involving the corporate sector, small companies and co-operatives. The programme involved 30 year leases to the corporate houses for which a "normative" ceiling of 1000 acres has been fixed. The wasteland would be developed for orchards, medicinal and aromatic plants, horticulture and other types of commercial agriculture for commercial purposes by the companies who have forward linkages with market and storage facilities, etc. However, there has been no clear definition as to the kind of wastelands to be developed. In one government order, it was supposed to cover only cultivable wastes and fallows leaving out pasture lands but on ground, grazing lands have also been included. It has been found that the government order is violative of the Tamil Nadu Land Reforms Act, the Land Ceiling Act as well as the Panchayati Raj Act. It is also prejudicial to the employment and livelihood interests of the poor.[24]

In Andhra Pradesh, there are huge extents of Lanka lands situated in the upper and down stream of Godavari and Krishna River Basins. The existence of these Lanka lands change from time to time. These are formed due to erosion of the rivers. The permanent and semi-permanent lands are classified as A & B Class Lankas and are situated mostly in East and West Godavari districts. The lands in Krishna district are classified as C class Lankas, temporary in nature. The beneficiaries of these lands are not granted D form pattas but are granted Eksal lease. The experience from Krishna district is that the structures of these lands frequently change due to floods, accretion happens sometimes and some Lanka lands disappear. Eksal lease of these lands are usually given to the Societies of weaker sections instead of individual leases. No water tax is levied on these lands, but Lanka Land Rentals (LLR) is fixed and collected from Societies. The SC corporation is granting loans to the Societies for development of Lanka Lands and also for sanction of bore wells.

Previously, when there was the VAO system, checking and registering of encroachments on these lands was regularly done which has now faltered. Most of the Societies are either defunct now or are being managed by big landlords. They are not paying LRR regularly. Disparities have also been noticed between the extent and actual occupation. Prior to abolition of Estates, certain Lanka lands under the possession and Zamindars were granted pattas. Quoting these instances, some of the encroachers are asking for grant of pattas. It is also noticed that some Societies are alienating these Lanka lands to third parties who are obviously private procurers. [25]

During the 1970s and 80s, under the insistence from government of India, millions of acres of government wastelands were transferred to forest department for social forestry schemes. Since most officials of the forest departments would find it more beneficial to plant saplings on the land developed and cultivated by agricultural labourers rather than undeveloped, undulating lands far off, poor peasants and agricultural labourers came to be seen as encroachers. This was because not an inch of land that is designated as forest could be taken away without the approval of central government. Hence, it posed a hurdle to the cultivators.

In 1980, the National Forest Policy, 1988 observed the increasing trend in encroachments on forest lands and stated that these should not be regularized. The issue also

[24] Frontline, March, 1-14, 2003.
[25] Land Committee Report, The Government of Andhra Pradesh, 2006

figured prominently in the Conference of Forest Ministers in 1989, where statistics from the Ministry of Agriculture stated that close to 7.3 hectares of forest land was under encroachment. After this, the Government of India adopted a few guidelines in order to deal with the state governments who were putting up with these practices. All the cases of regularization of encroachments before 1980 were monitored by the Ministry of Environment and Forests (MoEF) of the Central Government. The 25th of October,1980 was set as the cut off date and all the proposals for regularization of encroachments were to be submitted before that. Land falling under regularizing of encroachment had to be resurveyed by a joint team of Revenue, Forest and Public Works Department.

After this, a Supreme Court judgment of April 11, 2001, (S.P.No. 202/95) further elaborated the management of government forest lands where the onus of regularizing the forest villages and other encroachments into revenue villages was placed entirely on the state government. The Central government maintained its status as the nodal agency for giving clearance to the proposal of regularizing any encroachment.

Thus, officially the government of India has not allowed any encroachment after 23.11.2001 as the SC imposed a ban on that date. Till that date, however, state governments have put up with encroachment in West Bengal (Sundarban area), Karnataka (in evergreen forests of the Western Ghats), Madhya Pradesh and Chattisgarh (in Aravalli & Satpura region) and Tamil Nadu (in Nilgiris). Similar encroachments are also made across the state of Assam. A total area of 126584.45 hectares of encroachment of government forest land has been approved by the Ministry of Forests and Environment in the states of Andaman, Arunachal Pradesh (Dibang), Gujarat (Dang, Panchmahal, Sabarkantha), Karnataka (19 different districts), Kerala (Idduki, Ernakulam, Kollam, Thrissur & Prithanamuthhitta), Madhya Pradesh (all districts).

Thus, given such a blanket ban, encroachment under its broad net dismissed all traditional land and forest rights which were enjoyed mostly by the tribal population of some of the above states. This structural procedure against encroachment has hit mostly the tribal population of these districts hard, as in most cases the eligibility criteria laid down by the Forest Conservation Act of 1980 have not been adhered to.[26]

Common Property Resources: No Value Recognition of Rural Economy

Common Property Resources (CPR) constitutes an important component of natural resource endowments which contribute significantly to the rural economy and provides sustenance to local communities. However, this category and the kind of critical sustenance it provides us, is unrecognized at the level of policy making and land use.

CPRs cover a wide basket of land, water and vegetation resources consisting of community pastures, common dumping and threshing grounds, watershed drainages, village tanks, rivers and rivulets, and wastelands. The poor depend upon CPRs far more than the rich due to their lack of or low-productive assets, not enough work or purchasing power, particularly in the lean seasons. Therefore, the health of CPRs and ease of access are critical for these vulnerable groups.

[26] Dr. C. Ashokvardhan, Readings in Land Reform pp.33-60.

Since colonial times, however, the area of CPRs has been shrinking considerably on account of a number of factors, such as State appropriation for revenue generation, industrialization, privatization and development projects. Privatisation is carried out through extension of field boundaries of private farms, forcible grabbing, and distributive policies of the government. State policies focusing on increasing productivity of CPR lands exposed them to the influence of the market, which resulted in raising products from it which catered to commercial demand rather than the needs of the local community.

State intervention in respect of management of CPRs emerged from the introduction of Panchayati Raj institutions and led to the disappearance of the traditional management systems. The latter had involved use regulation, adherence to user obligations, and investments of efforts and resources for conservation and development, which the institution of elected Panchayat, even though legally empowered, were unable to enforce.

This led to loss of local initiatives and dependence on funds from the government for upkeep, and on officials for enforcement of regulations. Besides the above interventions, the overall strategy of land management pursued by the government never took into account the relevance and importance of CPRs in the rural economy. The factors which reduced the availability and access of the CPRs for the rural poor apply even more to SCs/STs.[27]

Findings from the Field

In response to the query sheet sent by the Committee, nothing turned out in any substantial manner, thus what follows are the impressions collected from those specific states where the issues were most evident.

Bihar

In Bihar, lands owned in absolute terms are known as Khas Mahal Lands. They were managed by executive instructions of the Government, which were compiled in a compendium known as Khas Mahal Manual. This manual contained government orders, instructions and guidelines. But it did not have a legal sanction to it. There was no specific or statuette covering the State owned properties excepting the general laws regarding transfer of properties and contract. It was noted in the report by Bihar Land Reforms Commission that an enactment to that effect would be shortly placed.

Khas Mahal has been managed so far in Bihar by leasing it out to the landed gentry in perpetuity. This began when there were not many takers of this land. Then there was another kind of lease which had a fixed tenure. None of the lessees could legally alienate the land by sale/commercial transfer without the permission of the competent authority. Currently, the government has decided to convert all these Khas Mahal leases into freeholds by charging appropriate monetary value.

The real problem of Khas Mahal management is to ascertain the exact area of which the government has title. The best way to do so would be to go by the area indicated in the Old Cadastral Survey maps and records. Whatever was shown as Khas Mahal lands in those records should be taken as valid and attempt should be made to reconcile the current area of

[27] Development Challenges in Extremist Affected Areas, Expert Group Report to Planning Commission. GOI, 2008

Khas Mahal land to the original area unless there had been large scale encroachment followed by improper manipulation of records through collusion of revenue staff.

One of the problems of effective implementation of the Bihar Public Land Encroachment Act 1956, is that though jurisdiction of civil courts have been barred, persons who have intentions to scheme and plot, go to the civil courts by filing title suits. To file a title suit against the government one has to give 60 days notice under Section 80 of CPC and authorities would have time to prepare the case and present it to the appropriate court for dismissal of the petition at the initial stage because it has been filed on the basis of false or inaccurate documentation. Unfortunately as officers down the line, do not pay much attention to the notices under Section 80 CPC, suits get admitted almost without any opposition. Once admitted one gets involved in interminable court proceedings. Thus, the provisions regarding bar of the civil court in respect of encroachment matters get bypassed making the Act as ineffective as any other similar act. Looking into title matters is an inherent jurisdiction of the civil court. Therefore, there could not be any law preventing the filing of such cases. Government pleaders also do not take such matters seriously because there is no pressure from revenue authorities to act properly and promptly.

Some experienced revenue officials expressed that the Bihar Land Encroachment Act, 1956 did not give sufficient power to evict and penalize the encroachers. It was suggested that revenue officers of appropriate rank should have powers to try the encroachers and award punishment after due process. If this provision did not offend the basic principles of separation of powers between judiciary and executive, it could be tried to recover valuable land from the hands of illegal land grabbers.

It is also to be noted as well that the Khas Mahal Lands are very loosely managed and administered. General principle of assessing lease rent is that annual rent should be two percent of the market value of the property. Patna district has 137.76 acres as Khas Mahal of which 136.18 acres have been leased out. Most of it is in the town. In the year, 2006-2007, the total lease rent realized for in Patna district from Khas Mahal was Rs 3,80,331. By any estimate this is a gross undervalued realization. Assuming, that the value of a kattha of land in Patna is 10 Lakh, the value of 136.18 acres stands at Rs 548 Crores. Two percent of this valuation would be 10.96 Crores assuming that all these lands are meant for residential purpose only. The difference between 3.80 Lakh and 10.96 Crores indicates the inadequacy of management efforts.

Maintenance of up-to-date records is an assumption in this case as well. Present Khas Mahal Manual provides for maintenance of various registers. It is presumed that they are regularly updated, at least in respect of possession and lease holding. To illustrate the case , examples of a few states such as, Andhra Pradesh, Madhya Pradesh and Rajasthan have been taken.

Andhra Pradesh

Across the state there are large extents of lands which are assignable but not assigned to the landless poor. The most common problem in the case of assigned lands is that its physical demarcation is either delayed beyond measure or never done. This allows for reassignment of the same land several times resulting in a compounding problem with multiple ownership with claims and counter claims. For instance, in Chandranavelli village,

Shabad mandal, Ranga Reddy district, 1500 acres of land available were assigned and reassigned in the above manner.

Because the assigned lands are most often inherently uncultivable, the assignees often do not cultivate lands even when lands are in their possession. Even the cases where lands are cultivable, they are not cultivated because the assignees are poor and do not have adequate capital to invest on the land. At other times, family exigencies force the families to sell the land at throw away prices. This leads, frequently to alienation of the lands.

Government lands are assigned to the poor under the Andhra Pradesh Assigned Lands Act 1977 (Act No. 9, 1977). According to this provision, the rights conferred to assignees are heritable but not alienable. In case of breach, the District Collector, or any other officer authorized by him, may take possession of the assigned land, after evicting the person in possession by giving him reasonable opportunity and restore the land to the original assignee or his legal heir. If restoration is not possible, then the land can be resumed to Government for fresh assignment. The Act is retrospective in operation and applies also to transactions of sale prior to the commencement of the Act. The revenue officials rarely resort to this option.

Substantial extent of lands which had been assigned to the landless poor persons, have actually been alienated and ended up in the hand of the non-poor. A case study of this specific issue can be seen in the Annexure. Existing legislations do not put enough pressure or incentive for the officials to undertake this task with sincerity. Specific amendments dealing with alienation appears in the next section.

Madhya Pradesh

The state has a cultivating population of 8911841; this is 46.65% of total population of the state. This state exhibits the maximum usage of CPR on which a substantial population is dependent, particularly tribals who constitute 20.3% of the total population. CPRs in the state constitute 32% of its geographical area, this is 13890 hectares. Further, out of this 22% of the CPR land comes under landholding. The average area owned per household is 0.74 hectare. The average value of collection from CPRs is Rs 984 vis a vis MPCE (monthly per capita consumption expenditure) of 326. [28]

As a miniscule part of land is under irrigation and depend on CPRs for subsistence needs, hence they are critical to major livelihood patterns in the state. 68% of the households are reported to be possessing livestock, 42% of them are grazing livestock, 62% possess livestock and grazing and 9% collect fodder. Fuel wood dependency in 1998 was 96% and at the time of data collection it was 56%.

However, in the last 5 years, there has been a drastic change in the scenario, CPRs from the Eastern Plateau hills have been reduced by 50 hectares and in both central Plateau and Western Plateau Hills it has gone down by 13 hectares.

Historically, before the state came to be formed in 1956, Zamindari, Jagirdari and Mahalwari system were abolished and all lands belonged to the government including forest and water resources. In 1961, the forests were transferred to the jurisdiction of forest department of the state whereby a large number of forest commons was engulfed under it. In

[28] 54th round, NSSO Sample Survey Estimate

this provision, any access to those forests required the permission of the government. On the other hand, the *nistar* rights which were to be handed over to the people by the state through ordering arrangement of Common Property Resources were lackadaisical in execution. Over the hand over period, the nistar rights have degenerated.

Recent legal developments have attempted at decentralizing the governance of the CPRs; MP Panchayati Raj Adhyiniyam 1993, PESA 1996, Dwitiya Sanshodhan Vidheyak 1997, MP Van Upaj Adhyiniyam, 1969-2003. These acts have primarily tried to introduce new groups in the village and forest communities. These groups known as Gram Sabhas are supposed to regulate and maintain the forests as well as monitor the use of forests and commons in consultation with the sub-district officials. The Committee found that this attempt has failed to yield any desired effect as depletion of grazing and commons has persistently continued over these years.

Though some progressive legislation has come in terms of the Forest Rights Act, which seeks to restore the traditional rights of forest dwellers and stop the alienation of tribals as per previous arrangements, there is lack of serious efforts in terms of awareness and publicity. In Madhya Pradesh, 900 cultural groups have disseminated awareness messages along with local social organizations all across the districts. The state did not have any provision for it. In Chattishgarh, even after 900000 forms printed, only about 200000 claims have been received which shows a big failure of the awareness campaign.

In Madhya Pradesh, the cut off date is not yet announced that gives a significant space for the claimants. The nominated members of 'Forest Rights Committee' are not real representatives of the village community. Mainly elected representatives and village representatives are appointed as members. There is a lack of sensible effort & understanding in the area which on the other hand is being identified for mining or non-forestry operations at an unprecedented manner. None of the districts have passed any circulars on this matter.

The state government has taken some measures for disposal/withdrawal of cases against 'encroachment' and other forest offences and further giving back seized plough/axe etc. However, the population of non-tribals in the tribal areas has increased over the years and they are appointed as members of forest rights committee in the state. There is lack of inter-departmental coordination for implementation. In most other states the whole process of restoring forest rights and commons is being carried out without the prescribed inter-departmental co-ordination of forest and revenue departments. Such as in the case of Orissa, where it was found that government wasteland had been distributed through other departments such as soil conservation. But there was no convergence between different departments. Thus the productivity of land and trees were not taken care of.

Rajasthan

In the village common grazing lands (Wastelands) of Rajasthan, the plantation of Jatropha plantations is under process. In the month of May 2007, the Government of Rajasthan had passed rules under its powers conferred by Section 261 of the Land Revenue Act of 1956 to create a new law called "The Rajasthan Land Revenue (Allotment of wasteland for biofuel plantation and biofuel based industrial and processing unit) Rules, 2007″. The Rules allow 1000 ha - 5000 ha of village common lands (wastelands) to be transferred for 20-30 years from the village community to bio-fuel industry. The land allocation is for biofuel plantations, especially Jatropha, and biofuel based industry and

processing units. Government has taken decision to allot 15 Lakh hectare land for Jatropha cultivation in Rajasthan and 58 thousand hectare land would go to biofuel companies. This land would be allotted for Rs. 400/- per hectare for 20 - 30 years on lease to companies.

Village community pastures are the common resources in Rajasthan, having potential for equitable accessibility to all classes for the rural population. Rajasthan has 1.94 million hectares of common pasture lands and more than 70% of the total geographical area is under the common lands. The Jatropha cultivation is severely limiting the ability of the commons to support rural livelihoods comprehensively and thereby harming the ecological services they render. Livestock is the major source of livelihood for the poor and they are heavily dependent on common pastures for grazing their cattle. By planting Jatropha, the fodder availability of the cattle will be directly affected. The transfer of commons and grazing lands from providing fodder to livestock in the local economy to providing fuel for automobiles of the rich will further erode rural livelihoods and increase social tensions.

The poor live in a biomass / biodiversity based economy. Diversion of land to industrial bio-fuels will also divert biodiversity / organic matter from basic needs of the poor and maintenance of ecological cycles. It will create total destitution and collapse of rural agro-ecosystems as biodiversity and water are diverted by industry for bio-fuel.

Over the decades, these lands have lost their ability to facilitate regeneration of native grass and woody species. Encroachment of lands by the individual families has further restricted access to some of these lands. Presently, these community pastures are not only devoid of vegetation but also pose a threat to the livelihood of the local people by way of shortage of fodder, fuel, potable water, depletion of ground water, loss of agricultural production due to soil erosion and change in the micro-climate caused by rising temperature and increasing wind velocity. With further reduction in precipitation and changing pattern in rainfall distribution, the poor and small farmers in Rajasthan have gradually shifted their focus from agriculture to livestock husbandry for their livelihood and community pastures have turned out to be the major hope for survival. However, the vested interests and powerful section of the community, who have least concern for the poor, did not have any special interest in developing those common properties. They have been changing the issue of land and in this the Government is also involved.

Recommendations

1. In case of fresh assignment, beneficiaries should be selected by conducting a Gram Sabha in the village. Approved list of beneficiaries should be published in the conspicuous places in the village. Survey and sub-division of lands should compulsorily be conducted before issuance of pattas. Physical possession should be handed over immediately. Necessary mutations should be carried out in the revenue records and Pattadar Pass Books/ Title Deeds should be issued to the assignees as per rules. [29]
2. Landless Poor Person shall be redefined as or one who owns no land or a person who owns a land of not more than 1 acre of wet or 2 acres of dry land. There are a vast majority of families in the state of Andhra Pradesh who really owns no land at all

[29] Report of the Sub Committee on Land, Planning Commission (2006),Report of the Expert Group on Prevention of Alienation of Tribal Land and its Restoration , Ministry of Rural Development (2006),Report of the PESA Enquiry Committee, Ministry of Panchayati Raj(2006),Report of the Governor's Committee, GOI (2005)

either agricultural or residential. According to Statistical Abstract of A.P 2005, published by the Director of Economics and Statistics, there are 43,35, 285 operational holdings of below 0.5 hectares. This is 38% of the holdings of the state. According to the booklet published by Society for Elimination of Rural Poverty on "LAND", approximately 10% of the households are landless and 36% own less than ½ acres of land each in rural areas of the state.

3. The maximum extent of land which may be assigned to a single individual shall be limited to 1 acre of wet or 2 acres of dry land, subject to the provision that in computing area, lands owned by the assignee shall be taken into account so that lands assigned to him together with what is already owned by him does not exceed the total extent of 1 acre of wet or 2 dry acres of land.
4. The assignment of govt. land wherever available to the landless poor for agriculture purpose shall be granted within 3 months from the date of receipt of application for assignment as per the rules in force.
5. Wherever assigned lands come up for auction for non-payment of dues to the Credit agencies, the Government Agencies shall participate in the auction and purchase of such lands for assignment to landless poor again.
6. The term Wastelands and its definition, which is a colonial inheritance, should be redefined. Along with it, all the kinds of land which are categorized under it should also be identified and quantified in terms of the sustenance they provide to populations in non-cultivable manner. This task should be undertaken under the Wastelands Division of the Ministry of Rural Development.
7. Any legislation coming up or under review or already passed related to land has to be reviewed in the light of the redefinition of wastelands and any project proposed on these lands should begin its proposal estimating the amount and degree of loss of livelihood, the project is going to cost.
8. It was observed in the state of Himachal Pradesh that the exact area of wasteland available village wise is very difficult to ascertain and therefore gram panchayat should be entrusted with custody of such lands which can be let for grazing of the cattle communities and the remaining could be allotted to the needy. Under the gram panchayat, Gram Sabha should be empowered to take decision in committee with members, officials for development purpose for the source of income to the gram panchayat.
9. It is also suggested that wherever states are doing surveys for ascertaining the wastelands and government lands, the elected representatives of Gram Panchayats should be involved so that there is awareness. All surveys and conclusions reached thereby should be approved by the village councils and the same should be put in public display on notice boards.
10. The population who are tied to the wastelands and common property resources are to be graded thoroughly in terms of their literacy rate, exposure to non-tribal and other professions and accordingly these individual should be compensated.
11. The above recommendation should be accompanied by changing the procedure of different procedures of projected proposal either by private companies or by government. The human development index should be worked as part of the description of the proposal. The index could be meticulously worked out by an Expert Committee which would be affiliated to the Ministry of Rural Development but working in collaboration with all the other concerned ministries who are related to the issue.

Bhoodan Lands

Background

The Bhoodan movement launched on April 18 1951, from Poochampalli, a village in Telangana began with a lot of enthusiasm about solving the land problem of India with a peaceful revolution within a time-bound period. The movement emerged in areas and in a period where peasant struggles led by communists were at a peak. An announcement of a local landlord in the village of Pochampalli in Nalgonda district which was host to Vinoba Bhave, was the beginning of this movement. Ram Chandra Reddy declared in the meeting of 18th April, 1951 that he was going to donate 100 acres of land to 80 families in the village who were landless. This was a voluntary donation happening in a situation where in Telangana; the people feared the Communists and the Police equally. Till then, the government had done nothing to redistribute land to the landless or pick up any programme to solve the land problem in India.

Vinoba Bhave in 1951 vowed to collect 50 million acres and distribute it to the landless to solve the problem of land forever. He sought to achieve this by the end of 1957. He concentrated on Bihar to show that the land problem could be solved by the Bhoodan way through a 'peaceful revolution'. He aimed at collecting 3.2 million acres of land in the state and also pledged not to leave the province until the quota set for the programme had been reached. However, even after two years of intense activity, the quota could not be met. In June 1956, when he left Bihar he could claim a pledge of only 2.1 million acres. For whole of India, they could claim only 4.59 million acres.[30]

The control and ownership of land determines the institution of class. Hence, the intervention of Bhoodan did not initiate anything new, but rather maintained and sustained the existing social fabric. Empirical research conducted independently showed during the movement, that in Vidarbha region, 14 percent of the land records had errors to the benefit of the donors. 24 percent of the land pledged had never been effectively turned into *Bhoodan*. The number of *Gramdan* argued to be 160,000 in the region was actually pledges of village gifts and had not been implemented or registered under the state of law. When Jay Prakash Narayan took up intensive development work in the Musahar district of Bihar, he found that none of the requirements of *Gramdan* pledges were fulfilled.[31]

Apart from these lapses, the sense of altruism with which the movement was visualized, was not received by others in that same manner. In a study by K.R. Nanekar and S.K. Khandewale, in the region of Vidarbha, although 40 percent of *Bhoodan* donors stated that they were morally convicted to donate, 30 percent of the donors who were interviewed stated that they responded to a moral and social pressure. At the same time, evidences were found that almost all of land donated was of poor quality. Donors admitted to this fact and also stated that they were handing down unprofitable land and expected future gains from this 'venture' and others stated they did so to evade from land being acquired under ceiling legislation. The study also stated that the evidence to *Gramdan* was similar. [32]

In Orissa, there were other motives which were found to be operating within the movement. The villagers often had very little understanding of the *Gramdan* program. Many

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30 Harkishan Singh Surjeet *Land reforms in India, Promise and Performance*, p.133

31 Jaya Prakash Narayan, *Face to Face* (Varanasi: Navachetna Prakashan, 1970)

32 *Bhoodan and Landless,* by K.R. Nanekar and S.V. Khandewale. Bombay: Popular Prakashan, 1973. 125 pp. (Columbia, Mo: South Asia Books)

of them signed the *Gramdan* pledge because they expected it would bring them outside assistance.[33] It was discovered that the objective of eliminating the sense of private ownership of land through this movement had fallen short visibly. In spite of all the lapses and inefficiency in the mechanism, land redistribution had taken place but not much had changed regarding the attitude towards land. While in Vidharba, 80 percent of the land redistributed was under regular cultivation and all the donees enjoyed permanent land title, it was far from solving the economic inequality due to various other reasons.[34]

In Rajasthan, it was assessed that it had not had even the most minimum effect. Villages pledged were either reverted back to the land owner because of no claimant or the plot of land entered into litigation and dispute at different levels.[35]

Coming back to Orissa again, it was noted by a study that in some of the plain villages, the redistribution program had failed to see any effect but relatively somewhat had been achieved in the tribal district of Koraput. The small amount of land which had been donated was actually more than 5 percent as required under the scheme of *Gramdan.* The land had been received by the landless and as well as those with very small landholdings. But there had been no attempt in organizing collective cultivation. The gifted land was hardly registered in the name of the recipient's name and if unused would get reverted back to the donor. There was no arrangement of the village paying the land revenue. The donees used to pay their land revenue through the donor, thus keeping enough scope to keep the donated land under the control of the donor.[36]

In Bihar, 500,000 acres donated by Raja of Ramgarh alone were either forest land. While they claimed to have collected 2.13 million acres of land they could not distribute even less than 3.11 Lakh acres in Bihar until recently. Sarva Seva Sangh, the organisation which spearheaded the movement stated that from the 41.94 Lakh acres collected only 12.86 Lakh acres have been distributed all over India. From the remaining land, it was admitted that 11,01,401 acres were fit for distribution. This implied that 18.07 Lakh acres obtained as gifts was unfit for cultivation. Of these fraudulent donations, 13.15 Lakh acres had come from Bihar alone. Report of land reforms unit of LBS National Academy of Administration (1989-90) confirms that 12.24 Lakh acres were unfit for cultivation. Overall 58% of the land donated under the movement was unfit for cultivation.[37]

Current Status of Bhoodan Lands

In response to the query sheet sent by the Commission to all the state departments, information regarding Bhoodan lands did not arrive. This, itself speaks volumes about the attention it commands at the level of bureaucracy. As the movement was confined largely to the state of Bihar, except the Secretariat Report of Bihar, an overall picture which was gathered was from the Revenue Minister's Conference in 1992 which was presided over by

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[33] *Fragments of a Vision: A Journey through India's Gramdan villages.* Erica Linton. Varanasi: Sarva Seva Sangh Prakashan, 1971.

[34] *Bhoodan and Landless,* by K.R. Nanekar and S.V. Khandewale. Bombay: Popular Prakashan, 1973. 125 pp. (Columbia, Mo: South Asia Books)

[35] *Charisma, Stability and Change: An analysis of Bhoodan-Gramdan Movement in India* .T.K. Oommen. New Delhi: Thomson Press, 1972 pp 186

[36] *Bhoodan and Gramdan in Orissa: A Social Scientist's Analysis.* T.P Singh. Varanasi: Sarva Seva Sangh Prakashan, 1973. 146 pp.

[37] Harkishan Singh Surjeet *Land reforms in India, Promise and Performance*, p.133

the then P M, Shri P Narasimha Rao. The data which was presented at this meeting was obtained by the Ministry of Rural Development from the Sarva Seva Sangh. According to this source, currently, 45.90 Lakh acres was donated till date all over India and 23.23 Lakh acres was distributed. Area fit for cultivation out of the distributed area was 11.01 Lakh acres and area unfit for distribution was 18.07 Lakh acres.(t)

Brief Analysis of the Major Issues

Bihar was to serve as the noble state of the movement. In spite of the fraudulent donations mentioned above, Bihar happened to be the state where the movement was institutionalized and government bodies were created to administer it. The government of Bihar in 1954 had instituted the Bihar Bhoodan Act, 1954, and the Bihar Land Reforms Commission which was formed under the aegis of the Act presented its interim report on June 04, 2007, which took stock of the anomalies in the Bhoodan form of land redistribution in consultation with the Bihar Bhoodan Yagna Committee. The basic problems which were identified were the following:

Reconciliation of area of land so far donated and recorded in the books of the Committee. The figure according to the Committee was 6, 48,476 acres, out of which 2,55,347 acres had been distributed to 3,15,454 families. According to the Committee about 2,78,320 acres of land were found to be not suitable for distribution because of alleged improper physical characteristics of the land. That apart, the Committee still had in its books an area of 1,14,708 acres suitable for distribution but not yet distributed.

Authenticity of Classifications

The first point that rose before the Commission was that, who had verified the physical characteristics of little over 2.78 Lakh acres of land which had been declared unfit for distribution. Excepting hills, forests, rivers, and structures in public domain like roads, hospitals, waterways, schools, etc., the rest of the land should be available for utilization for farming/ horticulture/grassland farming/tree farming or as wastelands to be developed under the various schemes of the government. To declare such a huge area of land as unfit for distribution and then carry the whole area in the books was a potent source of local disputes and social tension. It is also a source of corruption and misuse of public property. Therefore, a two pronged joint action was called for on the part of the Committee and the Revenue Department to verify the actual physical characteristics of this large area for further action.

Scant Resources and Funds Compared to the Magnitude of Survey

The Committee obviously does not have adequate resources financially, materially and/or manpower-wise to undertake this huge task on its own. Hence, the Revenue Department has to provide appropriate financial resources and technical man power for supervision of the survey of these lands to be done throughout sourced surveyors, under the direction of Revenue Officers. A detailed financial, material and manpower budgeting has to be done by the Committee in consultation with the Revenue department so that action can be taken and completed by 31.03.2009 as agreed upon.

Need of a New Administrative Arrangement

The administrative structure of this new arrangement would be that the Commissioners of Divisions should be made directly responsible for completion of the remaining tasks of the Committee to whom adequate number of Revenue Officers/Deputy Collectors are placed in each district for control, guidance and supervision of field survey. These are to be completed by the Amins/Surveyors/Karamcharies of the Committee to be recruited by the Committee from outside. The Land Reforms Commissioner should be in over all charge of this task and in constant consultation with the Committee to ensure proper implementation of these tasks.

Efficient and honest administrative structure is the need of the hour for land to reach the landed poor and landless rural folk. It has been correctly held that merely enacting progressive land reform will not be enough and that there should be proper and efficient administration for implementing the land laws so that difficulties and harassment to the beneficiaries are reduced to minimum. There has to be a clean and honest administration at the village level. The basic idea is that the Bhoodan Movement as well as general legislation should be able to solve the complicated land problems of the country.

The Committee already has some staff in different districts. These office staff should be redeployed to complete the task in a campaign mode. The Chairman of the Committee may kindly, in consultation with the Land Reforms Commissioner, decide on the redeployment of his staff for this purpose. The Commissioners of the Division will have authority to engage or deputize any Revenue officer/ functionary working within his Division to assist this program to ensure its correctness, fairness and timely completion. Necessary orders may be issued to authorize the Commissioners of the Divisions accordingly.

The figures of land given in donation, area confirmed, area distributed, area unfit for distribution, and number of beneficiaries in different categories maintained by the Committee and that maintained by the Revenue Department do not tally in respect to various categories. Such discrepancies have to be reconciled in the books maintained by both the offices failing which they have to be reconciled by actual field verification. Without such verification the possibility of lands being utilized by unauthorized persons including land mafia cannot be ruled out. The primary objective of this campaign would be to reconcile the figures maintained by both the offices.

Anomaly and Incongruities in Maintenance of Records

This is essential because when the Commission visited Rohtas district on 02.06.2007. A proforma was submitted to it by Additional Collector, which showed huge incongruities. An analysis of the figures would show that the individual beneficiaries were given 7.7542 acres per household. Tribal households were given a little over 6 acres per household; OBC households were given roughly 2 acres per family. The most astounding feature of this report was that 11,130.9375 acres were distributed among 59 institutions. The categorization of "Public purpose and others" is totally vague and confusing. From the analysis it is apparent that someone is utilizing the Bhoodan land as his or her private zamindari. The report also shows that about 15000 acres have not yet been distributed formally. No one knows whether some person or a body of persons is/are utilizing such huge area for their private gain. This one illustration shows the immediate need for physical verification of land donated to the Committee.

There is another problem regarding the figures maintained by the Committee and that maintained by the Revenue Department. According to Revenue Department figures, land not yet confirmed is around 1,11,000 acres. According to the figures maintained by the Committee there is no reliable figure of land confirmed yet. This anomaly is a major source of local disputes and trouble. The point to be noted here is that the Committee's books do not show the land yet to be confirmed. Therefore, it raises serious doubts about the veracity of statistics and data that are being supplied by it. It does reflect on the integrity of the present Chairman of Bhoodan Yagna Committee. He has received all these figures maintained by his office for the last 50 years, however, he is unable to make any sense out of it. The possibility and the nature of fraud that could be involved could be illustrated by the notorious case of donation of one Lakh acres of land by the Hathua Raj to Acharya Binoba Bhave by a simple letter.

That it was not folklore was confirmed by District Gazetteer of Saran published in 1959-60 which reported this incident. In stated, inter alia," Reports available from the said office (Bhoodan Yagna Committee) indicate that till the end of April 1959-1,03,902 acres of land have been donated in the district." The land data given by the Collector of Gopalganj to the Commission on 23.03.2007 indicate that an area of 21,237.48 acres were given in donation to the Committee of which only 10,263.26 acres could be confirmed by the Revenue Officers. Thus, a trick of colossal proportion was committed by the Hathua Raj to Acharya Binoba Bhave, the State of Bihar and the people of Saran district. A question arises as to what is to be done about such unconfirmed lands.

First point would be to mount a survey operation to locate such lands on the ground. In case the lands could not be located it would indicate that the donor deliberately played mischief on the people of the State. Therefore, there could be two options to deal with these issues. One, after due diligence, if the land could not be found, then appropriate action has to be initiated against the donor under the appropriate sections of Indian Penal Code.

Secondly, since the donor himself declared on his own volition an area of 1 Lakh acres for donation to the Committee, action under the Ceiling Law should be initiated to vest the surplus area to the State for redistribution for landless and land poor persons of the area. Such trick on the public should not go unnoticed and unattended to.

In a couple of *Jan Sunwais* (public hearing) a point was raised regarding the repeal of Subsection (3) of Section 15 of the Bihar Bhoodan Yagna Act 1954. It was contended that this Subsection empowered the Committee to allot Bhoodan land to any person and not necessarily to the landless and poor house holds. It went against the basic objective of Act which was “to provide for the settlement of such lands (Bhoodan Lands) with landless person or with a village community, Gram Panchayat or with a cooperative society organized by the Bhoodan Yagna Committee." (Preamble of the Act).

Sub-Section (3) of Section15 seems to go against the main objective. It was however felt that instead of going straight ahead with the amendment of the Act as suggested, the special Deputy Collectors may exercise powers under Section 21 of the Act to eject such ineligible persons. In case they come up against any insuperable legal hurdle, the issue of repeal of Subsection (3) of Sec15 may be examined in the light of the experience for taking appropriate action.

Findings from the Field

Fortunately, the query sheet with regard to Bhoodan lands, sent to the state department of Bihar was responded to. From the responses obtained, the following points could be taken as a major task demanding attention:

- The Bhoodan Yagna Committee has been constituted by the Government by a notification and the Act does not spell out as to who will be the members of the Committee. Thus, the Government has its own discretion in the selection of the members. This loose end has to be tied up and a clear composition of the Committee should be notified which would involve experts, locals, members of civil societies who are engaged in the movement and government officials with experience.
- The jurisdiction and activity of the Committee begins when someone voluntarily donates land which is then vested with the Committee. However, the verification and confirmation of the donated land comes from the Revenue authorities. This again allows enough space for manipulation. Therefore, receiving inputs from the revenue authorities, the Committee should itself physically survey the land donated, confirm it, oversee the whole process of making the new patta and hand it over to the selected assignee. This requires that the member of the Committee are comprised of people who are skilled in the above function. And the work staff of the Committee which is currently a meager 112 should be increased likewise. This, to a lot extent would remove the burden of the revenue authorities and subsequently would receive more attention.
- As the Committee has remained understaffed and relied on the revenue authorities for verification, the problems in implementation has been that, most of the land donated has been found to be of every other category other than that which is cultivable. Or else, the donated land does not have any particulars of the land.
- Further, why would the members of the Committee take up such an arduous task with honesty and concern when they are allowed to take other offices and also paid an honorarium for the assignment? Further, there is no provision of maintaining records relating to the Bhoodan lands by the Committee.

Recommendations

- The time frame for the completion of the remaining task should be:

(a) Within the first 180 days:

(i) to complete all initial formalities including logistical support system
(ii) to verify the Bhoodan land through survey, based upon outsourcing of Survey personnel and appointment of Deputy Collectors on Contract basis on yearly term, extendable till the operation is over.

(b) Up until the next 365 days:

(iii) to complete all the subsequent items of work, i.e., distribution, mutation, creation of titles and all other related matters and activities incidental there to.

(c) Within the final 270 days:

(iv) to wrap up all activities of Bhoodan Yagna Committee and other coordinating

agencies and to declare completion of all pending items of work.

- A one time operational and administrative structure to complete the work in the campaign mode should be created on the following lines:

Bhoodan Yagna Committee---------Land Reforms Commissioner
(Over all command)
↓
Commissioner of the Division
(Operational Head in his /her area)
↓
District Collector------
Addl. Collector ---------- Deputy Collector (Bhoodan) in the District
SDM----------
↓
Amin/ Revenue Functionary

(Firm lines indicate direct command and control and broken lines show coordination among and between the agencies)

- Adequate resources to be given to the Committee as Grantin-Aid for recruiting Amins/Surveyors from the open market on the contract for 2 years. The number of Amin/Surveyor to be recruited will be worked out jointly by the Chairman of the Committee and the Land Reforms Commissioner. The figures should not ordinarily exceed equivalent to the number of Subdivisions*i.e.,*101 (+ 10 per cent).
- For the payment of remuneration to be paid to the Deputy Collectors to be appointed on contract, the money to be placed on the disposal of Divisional Commissioners. The number of Deputy Collectors to be recruited would be around 38 (number of districts + 10 percent).
- The Land Reforms Commissioner should be directly responsible for completing this campaign within the time frame indicated above. He should be in constant consultation with the Chairman of the Committee to ensure smooth and proper implementation of the scheme.
- The Divisional Commissioner should be operational head of this campaign within their Division. They should be directly responsible for their accurate and prompt execution of the scheme.
- The Commission noted with concern the wide gap between the unconfirmed Bhoodan land maintained by the Revenue Department and that by the Committee. During this campaign attempt should be made to reconcile this discrepancy and to arrive at a confirmed figure. If after due diligence some areas remain unconfirmed the department of Revenue and Land Reforms should take appropriate action.
- During the *Jan Sunwai* (public hearing) organized by the Commission in different parts of the State a constant complaint was that a number of grantees of Bhoodan Land who had *parchas* did not have possession. It came out in almost all the 13 *Jan Sunwais* held in different parts of the State. It is one of the major causes of social tension, which might aggravate itself into social unrest. The Chairman of the Committee was fully aware of this problem but he felt helpless to resolve it because of shortage of manpower. Now, that the program of total verification of all the problematic issues related to Bhoodan would be undertaken, this point of ensuring possession to the grantees should be given appropriate priority, thereby, eliminating one of the causes of rural friction and possible unrest.

- Section 21 gives the Revenue officers enough authority to eject any unauthorized person from the donated land, after such enquiry as he deems fit and restore the possession of the land to the Committee after ejecting such person or any person in possession there from.
- Section 22 A gives the detailed procedure for ejection. During this campaign specially designated Revenue Officers should be authorized to ensure possession of donated land to the rightful grantee through the process of law. It is recommended that during their conciliation campaign the specially designated Revenue Officers should take appropriate steps under the law to give possession of land to the grantees that have the lawful *parchas* and do not have possession.
- The Chairman of the Committee was of the opinion that the rightful grantees did not get their mutation done in time. It is a fact that there is a very large amount of pendency regarding mutation in almost all the districts. While the Revenue Department is devising some special procedure for quick disposal of mutation cases in general, the Commission felt that this aspect of pendency of mutation in respect of Bhoodan land should also be tackled during the campaign for straightening out various infirmities and deficiencies relating to mutation of Bhoodan land.
- A consolidated list of grantees should be handed over to the Circle Officers by the officials of the Committee periodically preferably on a fortnightly basis so that the regular Revenue Officials could ensure quick mutation of Bhoodan grantees.
- Specially appointed Deputy Collectors should initiate ejectment proceedings against ineligible persons under Section 21of the B.B.Y. Act 1954. In case, they come up against any insuperable legal hurdle, the matter of repeal of Subsection (3) of Sec 15 may jointly be examined by the Committee and the Revenue Department for appropriate remedial action.

Other Policy Recommendations

As should be evident from the foregoing discussion in the section on problematic dimensions, almost all the major policy initiatives in the recent times (different Bills, Acts and other legislations) have significant gaps in terms of addressing the issue of progressive and just land reforms. These need to be addressed. Secondly, the lack of coherence in between different policies and legislations is another area of huge concern which requires urgent attention. The following recommendations listed below have been grouped according to issues surrounding land reform and rights of the landless.[38]

Land Acquisition

- Abolish Land Acquisition Act under the preview of article 14, 15/4 and 19, where State may legislate restricting the acquisition by landed property in the tribal areas.
- The displaced tribal communities from about 250 National Parks & Wildlife Sanctuaries and Biosphere Reserve etc. must be rehabilitated before any other Protected Areas are created.

[38] Report of the Sub Committee on Land, Planning Commission (2006),Report of the Expert Group on Prevention of Alienation of Tribal Land and its Restoration , Ministry of Rural Development (2006),Report of the PESA Enquiry Committee, Ministry of Panchayati Raj(2006),Report of the Governor's Committee, GOI (2005)

- The tribal communities who have been displaced due to development projects, mining projects or industrial projects etc. must be adequately rehabilitated before any further land acquisition.
- In case the company is unable to use all the land it has acquired, the unutilized part should be returned to the government for distribution to the landless.
- Government land acquisition in the name of "public purpose" should be properly defined to include most public utilities.
- As far as possible, any company should not acquire fertile agricultural land. The industrial units should be located in areas where wasteland is available.
- The Land Acquisition Act should be amended to incorporate compensation not only for the landed individuals but also for those who are landless and dependent on the land for livelihoods, for homes and items obtained from local common property resources. In other words, landless laborers, artisans, tenants, etc. should also be compensated with housing and livelihood security.
- Where possible resettlement should be such that an entire community or family network is not split up but settled in the same site so that support networks continue to exist.
- While determining compensation, the basic principle must be replacement value at market rates of the land cost. This must be at the market rates that actually operate at the time of purchase and not those that are officially recorded. A suitable and credible mechanism must be evolved to arrive at operative market rates.
- Compensation should also be provided for loss of materials, housing, livestock, agricultural crops, trees, other goods, as well as for relocation.
- A detailed Eviction Impact Assessment should be undertaken before any displacement/forced eviction takes place. This must include social, economic and environmental assessments.
- A detailed rehabilitation/resettlement plan must be formulated with sufficient financial earmarking.
- Participatory processes and mechanisms for civil society and people's movements to comment on the Draft Resettlement and Rehabilitation Policy 2006 must be created. Measures must be undertaken to ensure that human rights standards are upheld and protected in the Policy. (as per *UN Basic Principles and Guidelines on Development-based Displacement and Evictions)*
- In medium and major irrigation projects the farmers gaining from the project could be taxed and the proceeds transferred to those displaced so that the gains of the project can also be shared with the losers.
- The displaced must be guaranteed a minimum living standard (above poverty line) after rehabilitation. Displacement must not render anyone worse off than before. Rehabilitation should include access to adequate infrastructure in terms of housing, health, education, livelihood, water and sanitation provision and community interaction.
- Where possible resettlement should be such that an entire community or family network is not split up but settled in the same site so that support networks continue to exist.
- While determining compensation, the basic principle must be replacement value at market rates of the land lost. This must be at the market rates that actually operate at the time of purchase and not those that are officially recorded. A suitable and credible mechanism must be evolved to arrive at operative market rates.

- Land of commensurate or better quality must be provided for all land confiscated/ lost.
- All assets or cash compensation provided in the rehabilitation/resettlement package should follow the principle of full gender equity. All adult women and men should be equally compensated.
- In land reform and tenancy laws, the definition of "a family" varies across states. Most states include only the husband, wife and minor children. Some add an adult son who gets additional land in land distribution and resettlement programmes. Few states recognize an adult daughter as part of the family unit. This creates an anomaly. The definitions of a family should be made uniform across states and all resettlement packages made gender equal in the recognition of sons and daughters. The amended Hindu Succession Act should be applied in all states.

Tribal Land Alienation

- At present PESA is applicable only to the scheduled areas but a large part of the tribal population lives outside scheduled areas. Therefore, the provisions of PESA should be applicable *mutatis mutandis* to villages/areas where there is a sizable tribal population/where majority of the population consists of scheduled tribes.
- It is necessary that, whenever land is acquired for industrial or mining projects, the exact extent of land required for the projects should be assessed by the concerned project authorities and by a neutral agency/expert body consisting of experts and representatives of tribal community.
- The Central Land Acquisition Act of 1894, the Mines & Minerals Act and the Central Coal Bearing Areas (Acquisition & Development) Act 1957 should be amended in the line of the provisions of PESA.
- The Land Acquisition Act should be amended to incorporate R&R policy for all projects. Rehabilitation should be undertaken in such a manner that the displaced tribals have a clearly improved standard of living after resettlement. Their ecology, culture and ethos will have to be given due consideration in the Resettlement Plan.
- The tribals, who are displaced, should preferably be resettled in a zone adjacent to the affected area in consonance with their social, ecological, cultural, linguistic and economic affinity.
- Resettlement and rehabilitation should be completed prior to the commencement of the project. The package should be approved by Gram Sabha in the PESA Area and by such other representative institutions in non-PESA tribal areas.
- Unmarried daughters/sisters, physically challenged persons, orphans, widows and women divorcees should be treated as separate families in the R&R policy.
- All tribal communities must be rehabilitated strictly in compliance with ILO convention No. 107.
- Efforts should be made to ensure that all tribal families are resettled together to the greatest extent possible. The minimum unit for relocation must be a hamlet or clan.
- Compensation should be calculated and given on the basis of calculation of a 20-year prospective income stream to the tribal families for loss of customary rights over forests and other natural resources essential to sustaining their lives and livelihoods.
- The Mines and Minerals (Development & Regulation) Act 1957 should be suitably modified to reflect the provisions of PESA. In the PESA Act, the consent of the Gram Sabha should be made mandatory not only for minor minerals but also for

major minerals. In Orissa and Rajasthan, mining concession rules should be modified to reflect the provision requiring consent of the Gram Sabha/Palli Sabha.

- Pending amendments to the Central Act on land acquisition and incorporating the provisions of PESA, the State Governments with scheduled areas should utilize the flexibility provided for in the Fifth Schedule of the Constitution and modify the Land Acquisition Act to provide for consent of the Gram Sabha prior to the acquisition of land.
- Survey and settlement operations should be taken up in those areas where it has not been done so far to remove any confusion or uncertainty. Following the recommendation made by the Expert Group on Tribal Land Alienation, survey of the hill slopes up to 30 degrees should be mandatory in the States with Schedule areas and such lands should be settled in favor of tribals who do shifting cultivation and subsistence agriculture. This will not only confer land rights on the tribals occupying such lands, but also help improve the forest cover. The areas under shifting cultivation should be brought under tribal community management.
- All tribal states should provide a share of the royalty to the Gram Sabha.
- While it cannot be argued that the 'eminent domain' of the state should be done away with, a clearer definition and guidelines for 'public purpose' would help remove some of the arbitrariness present in the existing system of land acquisition. The lack of transparency in the process of land acquisition needs to be addressed.
- A competent authority senior should exercise judgment in sale of tribal lands and protect the interest of tribals. The State should promote the concept of a Land Bank wherein tribal land is purchased by the State and allotted to other deserving tribal families in the same area. Lease of government land in the tribal areas by tribals for agriculture and homestead purposes should be more than proportionate to the percentage share of tribals in the population of the village.
- The Government lands encroached by poor tribal families should be settled in their favour.
- The Common Property Resources (CPRs) including grazing land, village forest and water resources should not be acquired without providing alternative sources of equal or higher value.
- The role of Tribal Advisory Council (TAC) should be strengthened. Under article-238/2, the Governor can make regulations for the Scheduled Areas for prohibiting and restricting transfer of land by or among the members of Scheduled Tribes and regulate money lending. There is provision for TAC in Schedule Five areas and the Governor is bound to consult them.
- Tribals who have been living within a reserve forest, sanctuaries, and national parks and in other protected areas for generations and cultivating agricultural land should be given permanent patta rights and should not be displaced.
- The legal provisions prohibiting the alienation of tribal land in Schedule V areas and its restoration should be extended to the non-scheduled areas also. A cut-off date should be prescribed while extending these provisions to the non-scheduled areas.

Forest Land

- A comprehensive set of measures should be undertaken involving legislative, administrative and public education measures to ensure the rights of the tribals over land, forest, water and minor mineral resources.
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1) wall mapping of land possession in village
2) legal aid cell to provide consultative guidance
3) legal literacy programmes under framework of customary laws

Thus it is imperative that the statuses of these rights are recognized under the proposed Scheduled Tribe and other Forest Dwellers (Recognition of Rights) Act, 2006.

- A comprehensive Survey & Settlement of the tribal sub-plan areas in a time- bound manner. The pre-settlement leases should be regularized by authorizing the Tehsildar to make corrections in the record of rights as per the Orissa Mutation Manual.

  1) re-alignment of Forest & Revenue land records especially under common property land & resources
  2) recognition of "Record of Rights"/ "Adhikar Abhilekh"/ "Nistar Patrak"/ "Vazibul Arz"/ "Dafayati Rights," which were established after the abolition of malgujari-jamindari (1952) for securing & institutionalizing their entitled traditional recorded & non-recorded customary rights on common property resources.

- A framework guiding the survey should be based upon the specific forms of Property rights operative in the tribal areas namely, customary rights over forest and land resources belonging to local community as well as individual.
- The cut-off period (December 31st 2005) for recognition of rights of Primitive Tribe Groups (PTGs) on occupied land is not justified. It may be recalled that the Task Force set up by Government of Madhya Pradesh in 2003 had decided to give exemptions to PTGs in the State irrespective of their date of occupancy on the land.
- The government of India had declared "Van Gram" unconstitutional in 1974. However even today, about 4000 such "Van Gram" (Forest Villages) are still to be converted into Revenue Villages. The current Act does not touch on this aspect as well.
- Identify the extent of brackish water land available on the eastern and western Coastlines of India and distribute the land among landless laborers and fisherman.

Tenant Rights

- While discouraging the pernicious system of rent seeking sub-infatuation, leasing in and leasing out of agricultural land particularly for the purpose of tilling should be permitted within ceiling limits. The state laws should recognize systems of share cropping and protect the share croppers by giving security of tenure and fixation of equitable share of the crop without conferring the title to land.
- Gram Panchayats/Gram Sabha should be empowered to update land records and enter the name of share croppers and other similar categories of tenants as tillers of land in the record of right after due enquiry.
- Leased out land should be acquired and distributed to the landless poor for cultivation.
- The marginal and small land owners should be assisted with adequate institutional support and rural development schemes so that they are not compelled to lease out land to big farmers or corporate houses, thereby creating conditions for reverse tenancy.

- Under-raiyats/sharecroppers should be recognized by law with sufficiently over riding evidentiary value as under section 57 of the Indian Evidence Act.
- There is a need for streamlining the tenancy laws in various states, so that the small landowners who have to migrate temporarily for higher wages do not lose their right. Interest of temporary migrant workers has to be protected.
- Fair share of the crop on agricultural land should be fixed in all the states. In case of crop land, the landowner's share should not exceed one fourth of the principal crop, if the costs are borne by the tenant and half if the costs are borne by the landowner.
- Personal cultivation should be strictly defined for the purpose of resumption of land tilled by the tiller. It should be done through due process of law.
- Instead of prescribed rentals, which are violated in informal tenancies, an upper and lower bound of rents may be prescribed at the State level, ensuring that the rents are determined by market forces, within the prescribed band, thus increasing efficiency and cooperation of both the willing parties. This will also do away with the need for illegal arrangements.

Land Rights for Nomads

- Nomadic tribes are communities living unsettled over generations. However, times have changed and the communities have reached a dead end, where they cannot continue with their wandering life style any more. They are denied common property rights and improvements in infrastructure have thrown these communities out of gear since they are not able to continue with their traditional sources of livelihood.
- In order to provide sustainable livelihood to asset less groups, highest priority should be given to create new settlements where activities like housing, education and creation of sources of income will be started simultaneously. For this purpose, they should be settled on Government lands lying idle or on lands to be acquired by the Government. The Government should immediately bring in to effect a "Right to Minimum Land Holding Act" according to which each Nomadic family (of not more than five persons, larger families getting more allocation in that proportion) may be allotted at least one acre of cultivable land on nominal lease basis with assured irrigation. It is also imperative to withdraw the offences filed on them for so-called encroachment or violations of revenue/forest/ wild life laws.

Homestead Rights

- All landless families with no homestead land as well as those without regularized homestead should be ensured 10-15 cents of land each. This can be done through either allotment of government land, ceiling surplus land etc. or purchase of land from the market and their allocation to the homeless poor. Some of the required sum could be arranged through reallocation of resources from existing schemes, such as the Indira Awas Yojana, SGSY, NREG etc. The Kerala model could be useful in this regard.
- As far as possible, the beneficiaries should be given homestead land in a contiguous block, within 1 km or less of their existing village habitation, with proper road and infrastructural connectivity. In such a consolidated block, essential facilities should also be provided such as primary school, primary health centre, drinking water, and a women's resource center.

- The beneficiaries of homestead-cum-garden plot should be assisted by panchayats and line departments of government to develop plans and receive financial assistance for undertaking suitable economic activities such as livestock rearing, fodder development, planting of high value trees, and if water is available also flowers, fruits, vegetables, etc. Housing Development Corporation (HUDCO) may open special windows to help homeless families to secure dwellings on the plots to be allotted to them.
- Create sufficient and adequate shelters for the homeless in all cities.
- Develop a new comprehensive and equitable National Housing Policy that addresses the issues of slums, low cost housing, and homelessness, adequately. Ensure participation and civil society input in the policy-making process.
- Revise and eliminate the inequitable concept of "cut-off" dates for registering slum dwellers. Ensure that basic services are provided to all slum dwellers. In the case of forced eviction, all inhabitants of a particular settlement must be provided adequate rehabilitation, not only those meeting the "cut-off date" criteria.
- Develop guidelines on in-situ slum up gradation that incorporate international standards of adequacy of housing (as enumerated in Article 11.1 and General Comment 4 to Article 11.1 of the International Covenant on Economic, Social and Cultural Rights)
- Develop special schemes for reallocation of land to dalits.
- Initiate measures to check against excessive land and real estate speculation and to control the growth of the land mafia.
- Collect and make available disaggregated data on:

    i) Homeless people in India, including number of homeless women and children.
    ii) Number of street children in India
    iii) Number of houses actually being registered in women's names under all government housing schemes.
    iv) Number of cases filed and number of cases cleared in favour of women regarding the implementation of the Hindu Succession Act 1956 (amended 2005).
    v) Number of states with legislation (or Government Orders/ Regulations) on registering land/ housing/ property in the name of women or jointly.

- Ensure that international law is implemented and that national laws and policies adhere to international human rights standards. Comply with India's international legal reporting obligations to UN treaty bodies such as the Committee on Economic, Social, Cultural Rights (CESCR), Committee on the Rights of the Child (CRC), Committee on the Elimination of Racial Discrimination (CERD), and Committee on the Elimination of All Forms of Discrimination against Women (CEDAW). Make available information on how the Concluding Observations of the various Committees are being implemented by India.
- Ensure participatory processes and mechanisms for civil society and people's movements to comment on the Draft Resettlement and Rehabilitation Policy 2006. Ensure that human rights standards are upheld and protected in the Policy. (as per *UN Basic Principles and Guidelines on Development-based Displacement and Evictions*)

Land Records

- Updating land records with active participation of tribal community through trained tribal youth on customary laws of various communities and statutory measures for their protection, on private & community land.
- Computerization of textual land records with a time bound programme.
- The computerization of spatial records should be taken up in the States which complete the computerization of land records. There are various technologies like Electronic Tool Systems, Global Positioning System, Satellite Imagery and Aerial Photography etc. all new survey operations should use digital technology and wherever possible existing maps should be digitized. The Cadastral maps should be integrated with the textual data so as to ensure that complete information relating to the land parcel is available and updated at the time of registration/mutation. This is necessary to remove ambiguity in the system and will result in reducing boundary disputes and increasing tenure security.

Land –Agriculture support

- In order to enable the small and marginal farmers to participate and benefit from the land market, there should be a group approach to farm investment and cultivation wherever possible. Groups of poor farmers, especially women and dalits, who are willing to work in groups, should be provided liberal assistance for acquiring land for joint activities, in terms of collectively leasing in land.
- Institutional credit should also be made available by way of medium or long-term loans for group investment and farming activities. Poor dalit farmers should be especially assisted to purchase or lease in land in groups through targeted schemes.
- The group approach need not be limited only to raising crops, but could also be extended to other activities such as fish production. Long-term leases (99 year) should be given to ensure sustainability and continuity of livelihood related activities.
- In farmer's cooperatives and other related institutions, there should be special provisions and rates for poor farmers, who purchase production inputs and undertake marketing as a group rather than as individuals. There is need to encourage them to reorganize investment in lumpy inputs such as irrigation on a group basis, by providing special credit incentives for joint purchases.
- Speculative land markets in the immediate periphery of urban areas should be checked. The new areas which come under the urban development plans should be notified.
- To prevent long term speculative transactions on agricultural land the government should enact suitable laws.
- Farmers should be entitled to their share in rising land prices in the wake of urbanization and any form of major investment.

Women and Land Rights

Status Mapping

In spite of formal equality with men under the law, Indian women continue to face wide-ranging disadvantages, whether it is in terms of property rights, workforce participation, educational opportunities, access to health care or political representation. India has some of the worst indicators of gender inequality in the world, including a very low female-male ratio, a major gender bias in literacy rates, and a low share of women in the labour force. Gender

related development indicators such as maternal mortality rates and sex-selective abortion have thrown a poor light on the predicament of Indian women.

The situation is much more severe when the situation of women is assessed in terms of land rights. In the past, the focus of creating new land institutions has been to promote equity and growth between households, with land ownership and management continuing to vest in the males, reflecting gendered control of land and assets in most parts of India. Hardly any attention had been paid to legal and other institutional impediments in the acquisition of land through inheritance allotment, tenancy or other means by women who continue to be asset less, although a very large proportion of rural female workers are cultivators, and a significant proportion of farming households are headed by women, due to male migration, death, desertion or other reasons. In such cases, absence of secure titles could impede incentive, investment or access to inputs and credit.[39]

Recent Developments

This gender gap has important implications for equity, participatory development and even growth and efficiency. The obstacles to women's access to land through succession in ownership and tenancy or acquisition through land ceiling and redistribution have been extensively highlighted by Agarwal (1994), and also in official documents (Working Group 1996; Tenth Five Year Plan, para.3.2).

Many of the States have responded by taking measures to improve women's access to land and landed property. States like Karnataka, Tamil Nadu and Andhra Pradesh have amended the Hindu Succession Act, 1956 to formalize questions related to women's right to property including land. A number of others have made specific gender-sensitive provisions in their land laws. Some, like Rajasthan and Madhya Pradesh have, in accordance with long-standing policy of non-interference with personal laws, provided that issues related to property, including landed property, would be dealt with in accordance with appropriate personal laws. Recently, the Hindu Succession (Amendment) Bill, 2004, which seeks to remove the discrimination contained in Section 6 of the Hindu Succession Act 1956 by giving equal rights to daughters in the 'Hindu Mitakshara Coparcenary property' as sons, has been passed in the parliament.

Persistent Problems

However, serious anomalies continue to persist. A number of States like U.P, Haryana, J&K, Delhi and Punjab are apparently yet to take adequate steps to provide Constitutional/legal safeguards to women, with request to their access to land. In these states, the succession rules relating to agricultural land are different from personal laws affecting the devolution of all other property. Land devolves on male lineal descendants and the widow and daughters inherit only in the absence of these male heirs. In some other states, such as Bihar and Orissa the tenancy laws prescribe that occupancy rights will devolve in the same manner as other immovable property, subject to any custom to the contrary.

In the matter of giving women a permanent stake in land distributed through government programmes, the Sixth Plan (1980-85) recommended that States give joint titles

[39] Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia*, Cambridge: Cambridge University Press, 1994

to husband and wife transfer of assets like land and house sites through government programmes. This was formalized as a policy directive in 1985 in the Conference of Revenue Ministers. The National Perspective Plan for Women (1998-2000) has further recommended that the allotment of Government Wastelands, government land and ceiling surplus lands, village common land, developed house sites, and allotment of tenements should invariably be done in the name of women or joint names of the husband and wife. It has further recommended that the rights of women, as co-owners of property, should not merely be confined to land but also to other associated with any group set up to advice the implementation of machinery. Recommendations for the issue of joint pattas are being implemented by several states including Andhra Pradesh, Assam, Bihar, Gujarat, Maharashtra, Goa, Daman & Diu, Tripura, Tamil Nadu and Madhya Pradesh. As Agarwal (2003) has pointed out, the impact of single titles to women is likely to be larger but pragmatic considerations have prevented this from happening. The effectiveness and impact of the existing transfers (joint or single) are still to be analyzed.[40]

Findings from the Field

The Committee during the public hearings as well as interviews with different officials found that the this issue did not attract enough attention on its own but appeared as a subsection along with other issues such as ceiling, tenancies, rehabilitation. Thus, awareness regarding existing measures is seriously lacking, and only on rare occasions translates into implementation.

Government initiatives, to address these wide-ranging disadvantages women face, have not gone very far. Even the National Rural Employment Guarantee Act (NREGA), which is a potential source of empowerment for women (in so far as it gives them independent income earning opportunities and equal entitlements vis-a-vis men), is yet to overcome traditional patterns of gender inequality and female subordination. The economic and social disadvantages of women in Indian society reflect a whole gamut of patriarchal norms and practices such as patrilineal inheritance, patrilocal residence, the gender division of labour, the gender segregation of public spaces, and the discouragement of widow remarriage.

There is a common perception that the position of women in India has improved significantly in last few years due to affirmative action taken on behalf of the state. However, 136 countries for which data exist, India's Gender Development Index rank is 96 (UNDP Human Development Report 2006). The Human Development Report 2006 in a statistical appendix entitled Gender Empowerment Measures shows that women workers in India on average get only 31 % of the wages of the men. This figure might not convey any meaning unless it is pointed out that there are only 5 countries behind India out of 171, that is to say, Pakistan (29 %), Sudan (25%), Swaziland (29 %), Tunisia (28 %) and Saudi Arabia (15 %).[41]

Even simple demographic indicators bring out the exceptionally low status of women in Indian society. For instance, the female-male ratio in the population (0.93 at the time of the 2001 Census) is among the lowest in the world. This reflects persistent discrimination against girls starting from early childhood, even in matters of basic nutrition and health care. For instance, they have lower rates of economic participation, lower literacy rates, low shares of

[40] Ravi S Srivastav, 2008

[41] Planning Commission Report, 2008, Development Challenges in Extremist Affected Areas

earned income and abysmally low share in positions of power and influence in public life. In matters of basic education, health and nutrition, Indian girls and women fare very poorly again.

In most of the states, including those showing advanced rates of growth have not implemented the recommendation of issuing joint pattas. Pattas are generally on the name of the adult male. The Commission also found the same in its field findings. In the state of Himachal Pradesh, the H.P Tenancy and land reforms act 1972 was enacted w.e.f 21 February, 1974. In this Act, protection has been provided to certain categories i.e minors or unmarried women or divorced or separated from husband or widow or serving members of the Armed forces. The act also prohibits transfer of land in favour of non-agriculturist. However, it does not provide for joint pattas. Married women would still have their pattas in the names of their spouse.

Even states like West Bengal, where considerable land reforms have taken place, they are yet to address this issue. In most cases, the male head of household is considered to be the *bargadar* and only his name is entered into the record-of-rights, though women undertake more agricultural activities than the male head.

Analysis of the Major Issues

Bias under the Land Acquisition Act (Amendment) Bill, 2007

The Principal Act of the Bill in its clause of 45 (3) is well pronounced in its gender bias. Under this clause, if there is no one found to serve notice of the acquisition, then it would be made only in the name of an adult male. If no male member is found then, the copy of the notice might be pinned on the outer door of the house and would be deemed as served. Though, this is patently unconstitutional, it has not been deleted so far. However, the non-recognition only begins in this Act, but it is fortified in the Resettlement and Rehabilitation Policy and Bill 2007

Bias under Resettlement & Rehabilitation Bill, 2007

The gender bias in the earlier resettlement/rehabilitation policies/efforts emerged primarily from the conception of "family" used as the unit for providing benefits. The definition did not recognize every unmarried adult daughter as an independent unit deserving separate rehabilitation. It also created other difficulties. If there was no distribution of land from the father to the adult sons or even the land was so divided but not mutated in their individual names and incorporated as a separate *khata* in the land records, the adult sons were also clubbed in the family of the father as a unit of rehabilitation and resettlement. This ended up doing great injustice, particularly to the tribes where no formal distribution of land within the family usually takes place as long as the father is alive even though separate parcels are cultivated by the adult sons as per their customary share. In respect to other communities, land, even when formally distributed remains pending for mutation due to inaction of the local revenue authorities. In both cases, the definition of "family" that was adopted for rehabilitation and resettlement created enormous frictions within the family since only one adult son was entitled to benefits.

While the NRR Policy (2003) itself recognized adult members as a separate family, it was nonetheless gender insensitive limiting the conception of "family" to those headed by an

adult male member. The Resettlement & Rehabilitation Bill (2007) persist with this gender inequality as unmarried adult sisters and daughters have not been recognized as a separate family unlike their male counterparts. They have been considered as a part of the household headed by the brother and father. They fail to get a share in the family property and are ignored at the level of the policy as well as when the same was tabled as a Bill on rehabilitation and resettlement in the allotment of land. Consideration for employment and other benefits, which a separate family is entitled to, was not given to them.

The women headed households do not figure in the consideration of policy makers. This is particularly harsh as the number of widows, deserted women and unmarried women is sizeable. They suffer multiple indignities due to their social and economic dependence on the larger family headed by a male member. Their difficulties would aggravate in the resettlement arrangement.

Thus, the Policy has largely ignored the concerns of women among the displaced persons because no specific affirmative action has been incorporated in either of the documents except a symbolic representation in the Rehabilitation and Resettlement Committee.

The major concerns of women include access to productive assets, income generating opportunities, common property resources for fuel wood and fodder, drinking water and sanitation facilities. They also need physical protection in the new location where social networks and community support would be lacking. Women also require effective measures to counteract discrimination in the labour market both in terms of work and wages and in the credit market for accessing credit. Their distinct needs are not reflected in the provisions because neither the baseline survey and census collect such information nor the draft rehabilitation nor resettlement scheme or plan incorporates specific measures for them. The provision concerning survey and draft plan has failed to recognize them as a distinct social category whose concerns and interests deserve to be looked into independent of the overall considerations of the family {Para 6.4 and 6.1.4.2 of the Policy Clause 21 (2) and 23 (3) of the Bill}.With no gender specific information collected, it is no surprise that the plan for rehabilitation and resettlement makes them virtually invisible. [42]

Recommendations

- The provision of joint ownership must be legally mandated in every state of India. [43]
- Policies of affirmative action in favour of women through appropriate incentives from the Central government must be expedited.
- Clause 45 (3) of the Land Acquisition Act must be scrapped immediately. Any member above the age of 18 should be held as able recipient of the service of notice.
- All compensation should follow the principle of gender equity.
- Family headed by women, or single women must be recognized within the expression of 'affected persons' in the Land Acquisition Act (Amendment) 2007. In accordance, with the assessment of their livelihood, a package of rehabilitation should be installed until joint pattas or women pattas procedures are officially accomplished.

[42] K B Saxena. Resettlement & Rehabilitation, Policy and Bill, 2007

[43] Report of the Sub Committee on Land, Planning Commission (2006),Report of the Expert Group on Prevention of Alienation of Tribal Land and its Restoration , Ministry of Rural Development (2006),Report of the PESA Enquiry Committee, Ministry of Panchayati Raj(2006),Report of the Governor's Committee, GOI (2005)

- In the event of resettlement in a new location, appropriate protection and aid must be provided to women so that they can safely relocate their lives and occupation.
- Unmarried daughters/sisters, physically challenged women, female orphans, widows and women divorcees should be treated as separate families in the R&R policy.
- Institutional credit should also be made available by way of medium or long-term loans for group investment and farming activities. Poor dalit women should be especially assisted to purchase or lease in land in groups through targeted schemes.
- The group approach need not be limited only to raising crops, but could also be extended to other activities such as fish production. There are success stories where NGOs have helped tribal women lease land from the government on 10-year leases for fish ponds. Long-term leases (99 year) should be given to ensure sustainability and continuity of livelihood related activities.
- In farmer's cooperatives and other related institutions, there should be special provisions and rates for poor women farmers, who purchase production inputs and undertake marketing as a group rather than as individuals. There is need to encourage them to reorganize investment in lumpy inputs such as irrigation on a group basis, by providing special credit incentives for joint purchases.
- When regularizing the homesteads of families occupying irregular and insecure homesteads, they should be in the names of both spouses and single women.
- All new homestead land distributed to landless families should be only in women's name. Where more than one adult woman (say widows, elderly women etc) is a part of the household, the names of all female adults should be registered.
- Create separate shelters for homeless women and children.
- Promulgate laws that protect women's rights to adequate housing and land, for instance, introduce Government Orders mandating joint registration and joint titles for marital property in the names of men and women, and registration of women's property in the names of single women.

The Scheduled Tribes and Others Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Forest Rights Act (FRA), 2006

To get a clear understanding on the rights of the Scheduled Tribes and other traditional forest dwellers, it is imperative to trace the background situation under which the FRA came into being. Also, some significant issues of the FRA will be critically analysed in the forthcoming section.

National Forest Policy, 1952

On 3rd August 1865, the British rulers, on the basis of the report of the then Superintendents of Forests in Burma, issued a memorandum providing guidelines restricting the rights of forest dwellers to conserve the forests. This was further modified in 1894, stating that "…..the sole object with which State forests are administered is the public benefit……". Even the National Forest Policy (1952) prescribed that the claims of communities near forests should not override the national interests, that in no event can the forest dwellers use forest resources at the cost of wider national interests, and that relinquishment of forest land for agriculture should be permitted only in very exceptional and

essential cases. To ensure the balanced use of land, a detailed land capability survey was suggested. The tribal communities were to be weaned away from shifting cultivation.

Indian Forest Act, 1927

The IFA was enacted to assert state proprietorship and ownership over forest resources. The Forest Act 'reserved', 'protected', and 'declared' forests, it then shrank the rights of the forest communities, as the state deemed apt. In this process, notions of common property, and use, were forced aside, and replaced by state control to serve the interests, usually commercial and expansionist, of the state. A clear legislative basis for the 'Village Forest' should be provided under Section-28 of the Indian Forest Act (IFA) 1927. But this provision of the IFA (1927) has never been implemented and has by and large remained dormant.

Constitutional Safeguards on Environment

The 42nd Constitutional Amendment Act, 1976 inserted Article 48-A into the Directive Principles of State Policy mentioning environment safeguards. Further Article 51-A, also introduced by the 42nd Amendment, which lists out the fundamental duties said: 'It shall be the duty of every citizen to protect & improve environment, forest, lakes, rivers, wildlife…'. In directing that all forest communities be evicted, there has been no attempt to ascertain what is the relationship between the forest communities and the forest.

In February 2000, Indian's Supreme Court passed an order restraining state governments and their agencies from removing dead, dying or wind-fallen trees and grass from any National Parks or Wildlife Sanctuaries in the country. {Interlocutory Application-548 under Godavarman (Forest) Case WP/202/1995}.According to the handbook of the MoEF – "In view of Supreme Courts order (IA-548), rights and concessions cannot be enjoyed in the protected areas".

Central Empowered Committee, 2004

The Supreme Court appointed a Central Empowered Committee in a letter dated July2, 2004 that says "even the removal of grass etc from national parks and wildlife sanctuaries has been prohibited……You are requested to ensure strict compliance of the Hon'ble Supreme Court's order so that none of the prohibited activities are allowed to be undertaken in protected areas." The Central Empowered Committee (CEC) thoroughly condemned the encroachments and recommended for their immediate evictions. The CEC treats encroachment as a law & order problem. It recommends a strong contingent of police force and presence of a Magistrate (in case of firing). It asks for immunity to the staff under section 197 of Criminal Procedure Code. With these dictatorial powers bestowed on the state governments, the CEC expects immediate compliance. If the State still fails, it further demands liability from the State government to pay Rs 1000 per hectares per month as compensation for environmental losses caused by continuing encroachment and a possible fine of Rs 100 per month on the defaulting officials.

Status of Forest Lands and Forest Communities

The recorded forest area of the country is 76.52 million hectares, whereas the forest cover is 63.72 million hectares, out of which 38.79 million hectares is degraded and 24.93 million hectares is dense. Thus the degraded forest area in the country is as high as 60% of

the total forest cover. As against this, the total encroachment in forest areas in the country is 1.25 million hectares, which is merely 1.9% of the total forest area. According to the Forest Survey of India about 0.26 million hectares of forest land was diverted between 1950 and 1980 to settle people. Another 0.27 million hectares, so called encroached before 1980 has been sent to the Central government to be regularized.

Centre for Equity Studies (2007) conservatively estimates that nearly 4 million people live 'inside' the country's protected areas and are dependent on its resources for their survival. This is another type of forced displacement. According to the 2002 amendment to the Wildlife Protection Act (1972), the 'Settlement of Rights' (Section 18 to 26-A), described in the initial notification (the intent to declare a protected area) is tantamount to allowing the State to severely restrict the existing rights of people living in the area.

The Forest Rights Act: A Critical Mapping

- The State Committee monitors the implementation of the FRA Act. The Divisional Committee hears the appeals against the Gram Sabhas decisions. The District Committees are to act as Appellate Authority, and give their final approval to the record of forest rights. The Gram Sabhas perform the function of recognizing forest rights, regulating access to forest resources, and punishing those who violate provisions of the Act, but their decisions are subject to higher authorities. However, it is not clear if the Sub Divisional Committee and District Committee are to consider ecological implications, while approving or rejecting the rights proposed by Gram Sabhas.
- The Act states that responsibilities and duties regarding conservation are applicable to all activities except those that are permitted as rights. Does this then exclude rights that could be ecologically destructive? The gram Sabhas are given the duty to stop any activity adversely affecting wildlife, forest, and biodiversity, but can it over-ride granted rights? These are some questions which do not have any clear answers.
- The Act provides penalties for unsustainable use of forest resources. However, the term 'sustainable' is not defined, nor is it clears, as to who determines the levels of sustainability.
- There is lack of clarity on how the Act relates to other relevant laws, especially the Wild Life (Protection) Amendment Act (WLPA) 2002, the Indian Forest Act 1927, and the Forest Conservation Act (FCA) 1980. It states that rights vested under the Act are notwithstanding anything contained in any other law, but it also states that the operation of other laws would continue if they do not contradict the provisions of the Act. Some questions come up such as whether the provisions of the WLPA, IFA and FCA are in contradiction with the FRA? What precisely is the jurisdiction of authorities vested under these laws? In the case of wildlife offence, is the Gram Sabha's decision on punishment final, or do the wildlife officials of that area have overriding powers?
- The Act needs to include a 'Prior Informed Consent' clause, requiring that any major development project (dam, mines, industries, expressway, power stations, etc.) on relevant forest land can be cleared in the area only if the affected communities are fully informed of the implications of the project, and provide their full formal consent. This could be a powerful tool to stop destructive projects on forest land, which are today the biggest cause of deforestation in India. But what if communities misuse such provisions? The Act does not state that regularized lands cannot be alienated, but in addition, it could explicitly mention that the Forest Conservation Act

(1980) will continue to apply on large development projects, so that there remains a further check on clearance.

- The Act stated about providing the right to protect traditional knowledge. However, the Act needs to elaborate as to how such protection will take place, and how it relates to the Biological Diversity Act which also proposes such provision.

- The Act proposes to recognize and vest forest land rights to Forest Development Society Trusts (FDST) there are no reliable estimates of the number of families who will benefit from the proposed legislation.
- The total forestland under encroachment is estimated by the government at 13.43 Lakh hectares, which amounts to about 2% of the recorded forest area in the country. (2006)
- The Act specifies that FDSTs would be granted forest rights only in places where they are scheduled. However, such a clause could lead to denial of rights to tribal communities on the ground that they do not reside in the area where they are scheduled, even though many tribal people have been displaced due to development projects and creation of protected areas.
- The Act does not place any explicit restriction on the methods that can be used to remove forest dwellers. The Act mentions that FDSTs would be relocated from core areas of National Parks and Wildlife Sanctuary with due compensation. However, the Act does not clarify exactly what kind of compensation would be offered to the tribal people, what recourse would they have if such compensation is not satisfactory or is altogether denied.
- The term 'Community Forest Resource' is not defined, and hence, it is not clear whether these also include resources within government owned forests including National Parks and Sanctuaries.
- According to the Forest Survey of India (2006), about 60% of the forest area under official control is classified as 'degraded'. Between 1951 and 1979, 3.33 million hectares of natural forest was cleared for 'industrial purpose/plantations'. Commercialization destroyed 90% of the indigenous grassland ecosystem. In Orissa alone, in the last five years the Union Ministry of Environment and Forest has retrospectively approved the illegal clearing of 1224 hectares of forest by mining companies, even in ecologically fragile areas.
- Between 1961 and 1988, the area of reserved forests in India increased by 26 million hectares which is more than 60%. A recent study found that 40% of Orissa's forests were 'deemed' reserved, while up till now, rights have not been surveyed.
- In May 2002, when the MoEF directed the states to evict all 'encroachers' in the wake of the Supreme Court ban on regularizations; since that year, one has witnessed unprecedented eviction drives, which have primarily targeted forest communities. About 40,000 families were evicted in Assam alone.

Recommendations

- A comprehensive set of measures should be undertaken involving legislative, administrative and public education measures to ensure the rights of the tribals over land, forest, water and minor mineral resources. This can be done in the following ways:

  - wall mapping of land possession in village.

- setting up of a legal aid cell to provide consultative guidance.
- legal literacy programmes under framework of customary laws to be implemented.

- A comprehensive Survey & Settlement of the tribal sub-plan areas should be done in a time bound manner. The pre-settlement leases should be regularized by authorizing the Tehsildar to make corrections in the record of rights as per the Orissa Mutation Manual.
- There should be re-alignment of Forest & Revenue land records especially under purview of rights and ownership of common property land & resources.
- Recognition of "Record of Rights"/ "Adhikar Abhilekh"/ "Nistar Patrak"/ "Vazibul Arz"/ "Dafayati Rights"; that was established after abolition of malgujari-jamindari (1952) for securing & institutionalizing their due traditional recorded & non-recorded rights on common property resources.
- A framework guiding the survey should be based upon the specific forms of property rights operative in the tribal areas namely, customary rights over forest and land resources belonging to local community as well as individual.
- The role of Tribal Advisory Council (TAC) should be strengthened. Under article 238/2, the Governor can make regulations for the Scheduled Areas by prohibiting and restricting transfer of land by or among the members of Scheduled Tribes and regulate money lending. There is provision for TAC in Schedule V areas and the Governor is bound to consult them.
- Withdrawal of minor cases filed against tribal communities under encroachment/ violations of Wildlife Act/ other forest offences etc.
- Amendment in Land Acquisition Act under the purview of article 14, 15/4 and 19, where State may legislate restricting the acquisition by landed property in the tribal areas.
- Updating land records with active participation of tribal community through trained tribal youth on customary laws of various communities and statutory measures for their protection, on private & community land.
- Establishment of Land Bank, which facilitates lease from tribal to non-tribal land and will settle the same with the tribal communities or will meet the requirements of land for public purpose at prevalent market prices.
- All encroachment cases and other minor forest offences registered on tribal communities must be withdrawn during land settlement.
- Tribal communities who were earlier displaced because of national parks and wild life sanctuaries must be rehabilitated under the purview of FRA.
- All land acquisition process in tribal areas must be stopped before settlement of tribal community under FRA.
- The area which is occupied by the tribal communities must not be demarcated for rehabilitation of any other project affected community.
- All primitive tribal groups must be exempted under FRA without their date of occupancy on a particular piece of land.
- Any land that has been claimed under FRA must not be identified/ utilized for Jatropha plantation.
- All claims of non-tribal communities on the same piece of land must be taken to a fast-track court for timely settlement.
- All claims for common property resources should be brought under time bound action and resettlement should be provided on the basis of 'Record of Rights.'

- All land regularized under FRA must not be alienated/ acquired in the next 100 years and in case of any emergency acquisition, the same category of land must be provided.
- The tribal communities who lived in Salwa Judum camps must be resettled in their occupied land irrespective of the cut off date under FRA (2006).

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Chapter – Two

Tenancy, Sub-Tenancy and Homestead Rights

(Report of the Sub Group – II)

Terms of Reference

1. To examine the issues of tenancy, sub-tenancy and suggest measures for recording of all agricultural tenants and a framework to enable cultivators of land to lease in and lease out with suitable assurances for fair rent, security of tenure and right to resumption.

2. To examine the issues related to homestead rights and recommend measures for providing land for housing to the families without homestead land.

Issues relating to Tenancy and Sub-tenancy

Prior to independence, agricultural tenancy was considered to be an integral part of the feudalistic, albeit unproductive and exploitative agrarian relations. Tenancy arrangements in general were a matter of mutual agreement between the land owners and the tenants which were governed mainly by the ordinary law of contract which had no provision for either security of tenure or regulation of rent. According to the Famine Enquiry Commission (Government of India, 1944), even in the ryotwari areas where peasant proprietorship should have prevailed, unprotected tenancy developed on a large scale. The share-croppers who constituted the great bulk of the actual cultivators remained outside the purview of any legal protection and were subject to arbitrary eviction and rack renting (Haque and Sirohi, 1986).

In the wake of independence, though the major emphasis was on the abolition of intermediaries, certain amendments to the existing tenancy laws were made with a view to providing security to the tenants of ex-intermediaries. Some state governments not only conferred ownership/occupancy right on the existing tenants, but also put legal restrictions on future leasing. Several states which permitted leasing out by certain categories of land-owners also prescribed the levels of fair rent. Tables - 2.1 & 2.2 show the nature of legal restrictions and levels of fair rent fixed by various states. These legal measures provoked the landlords to secure mass eviction of tenants, sub-tenants and extra legal devices. While the laws allowed tenants to acquire ownership of occupancy right in about 4 percent of the country's agricultural land, the same laws led to the ejectment of tenant families from as much as 33 per cent of total agricultural land (Appu, 1996). Besides, informal and short-term, albeit insecure tenancies continue to exit in most places (Tables – 2. 3 & 2. 4). Also the fair rent is implemented nowhere excepting in West Bengal where share-croppers enjoy a strong backing from the left front government.

Incidence of Tenancy

Despite legal restriction on land leasing, people lease out and lease in agricultural land on informal basis in almost all regions of the country. According to 60th Round of National Sample Survey for the year 2003, leased in area formed nearly 7 per cent of the total operated area, while 11.5 per cent of the rural households leased in land (Table-2.3). But some micro studies point out that NSS data are quite under reported, as area under informal tenancies

vary between 15 per cent and 35 per cent. In this connection, it should be remembered that informal tenants do not have any security of tenure and fail to cultivate land efficiently. The NSSO data further bear out that share-cropping continues to be the dominant form of leasing in most places, while in the relatively developed states of Haryana, Punjab, Uttarakhand, Tamil Nadu and Andhra Pradesh and in most irrigated areas, fixed cash tenancy is more common (Table-2.4). About 90 percent of the leased in area is unrecorded and informal. At All India level, 35.8 per cent of the total rural households leasing in land are landless laborers and 47.5 per cent have land below 0.5 hectare and 8.2 per cent have land between 0.5 to 1.0 hectare. Thus, above 91 per cent of the total number of tenants belong to the category of landless laborers and marginal farmers. (Table- 2.5) Nearly 57 per cent of the leased in area in Kharif season and 54 per cent in rabi season were on short term leases, i.e. for less than 2 years (Table- 2.6) and did not have any tenural security or stability.

A recent study of land lease market in Uttar Pradesh (Mani and Pandey, 2004) shows that leasing in of agricultural land is largely concentrated among the marginal farmers. Those marginal farmers who have better outside employment opportunities prefer to lease out their tiny holdings and those not having outside employment opportunities resort to leasing in more land to make their operational holdings adequate for family sustenance. The landless agricultural workers also lease in land for family sustenance. This study further reveals that disability served as the reason for leasing out only in 15 per cent cases, while the absentee owners and management problems on lands accounted for 70 per cent cases. But subsistence and family labour were the major reasons for leasing in land. The lease market absorbed some of the landless and provided employment to poorest of the poor class. Similarly, a study by Sharma (2004) in Palanpur village of Moradabad district, Uttar Pradesh bears out that despite ban on land leasing, leased area consisted of 28 per cent of all cultivated land and out of 143 households, 106 were either leasing in or leasing out or both. But there was frequent change in tenure status and leasing of land was used as an adjustment device by many in response to change in family labour availability, draught power, cash resources, debt situation, etc. A study by Fahimuddin (GIDS, 2008) shows that the main reasons for leasing in of land are improved access to land and getting additional income for livelihood. Jaber Alis' field study in Uttar Pradesh (2005) brings out that marginal and small farmers constitute nearly 95 to 100 percent of the total lessee in the districts of Ghazipur, Aligrah, Sitapur, and Jalaun. A more or less similar situation is found in other regions.

A field study by Vijay (2004) in Andhra Pradesh shows that poor peasants are the main demand points of land in the lease market. Akter et at (2006) in a study of 12 villages in Andhra Pradesh and Madhya Pradesh observed that the rental market transferred land to those having less land available for use, more ability to use land, more assets to invest, a higher adult workforce and fewer off-farm opportunities.

A study of land leasing by women in Andhra Pradesh by Nielsen et at (2007) shows that the rural poor voluntarily choose to lease in land as a way to increase and diversify their resources of food crops and income, to improve the well being of their households and to reduce their reliance on wage labour. Although cash based land leases were beneficial to land owners and leases, share- cropping arrangements dominated in some regions and also appeared to be exploitative of the lessees. The sharecroppers had limited power to negotiate better terms, especially because the leasing agreements are informal and outside the law. Nevertheless, women self-help groups and land owners are freely negotiating the leases and the agreed terms and conditions of lease, are at least in part, economically driven.

Case for Legalization and Liberalization of Land Leasing

The question whether agricultural tenancy influences productivity or resource use efficiency in agriculture has been a subject of discussion for a very long time. Unfortunately the prolonged debate has created a lot of confusion in the minds of policy makers regarding the usefulness of tenancy reform measures undertaken thus far. It has also made them directionless so far as the future policy on land leasing in concerned.

Several research studies (Haque, 2001, Deininger et al, 2005) have pointed out that restrictions on land leasing 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 peoples' access to land through leasing. Besides, restrictive land leasing laws have discouraged the land-owners to lease out land and take up non-farm enterprises which is vital for rural transformation. Moreover, due to legal restrictions on land leasing, some land-owners prefer to keep their land fallow than to lease out for fear of losing the land in case they lease out. The lifting of ban on leasing in such cases will result in better utilization of the available land and labour and also promote both farm and non-farm development by improving the large land owners' incentive and ability to invest. Also legalization of tenancy would create additional incentive to produce more and enable them to access institutional credit and other services (Haque, 2001).

The neo-classical economists have always argued that land rental markets would increase productivity and equity because of low cost land transfers to more productive producers, by enabling some to lease land, some others to move on to non-farm economic activities and also by improving the ability of the poor to face consumption shocks through employment and income from the leased in land. Besides, land rental markets are seen as a means of reaching optimum size of operational holdings, where family labour could be fully employed. It is expected to equalize returns to non-tradable factors of production, such as family labour and bullocks in the traditional farms. Also rental markets are more flexible than land sales markets and involve low transaction costs. (Reddy, 2004). However, the benefits to participating households will depend on the size of the surplus achieved from engaging in rental and on its distribution between land-owners and tenants. Besides, the number and types of outside options available to tenants, such as wage labour and non-farm opportunity, will affect the outcome of bargaining between landlords and tenants as well as the efficiency of the production outcome. (Conning and Robinson, 2002).

It is sometimes apprehended that unrestricted land leasing may encourage reverse tenancy and would result in concentration of operational holdings in few hands. These fears can be addressed if the law specifically provides that land leasing is allowed within ceiling limit as fixed in different states and ceilings are fixed on operational holdings and not just ownership holdings (Haque 2001). Moreover, reverse tenancy is not always bad. In the context of Punjab, this seems to be a win-win situation for both the lessor and the lessee, as both maximize their income through leasing out and leasing in of agricultural land and occupational mobility (Haque, 2001). This was further confirmed by the sub-group members' interaction with farmers in Punjab.

Moreover, as the latest round of NSSO (Government of India, 2003) data show, presently about 35.8 per cent of the lessees are landless labourers and 47.5 per cent of the lessees own less than 0.5 hectare of land, while 8.2 per cent own between 0.5 to 1.0 hectare (Table 5). In other words, majority of the sub-tenants in the country are either landless or

semi-landless persons. Legalization of land leasing may improve their tenural security and incentive to cultivate land efficiently apart from reducing poverty.

Should Tenancies be Recorded?

Both NSSO data as well as independent field studies show that tenancies are mostly unrecorded and based on oral agreements. This is because of two reasons. First, the land-owners do not like the names of tenants to be recorded due to the fear that they may lose their land rights. Second, the states which have legally banned leasing out of land, do not make any efforts to record tenancies, assuming that there is no tenancy in existence.

The law in most cases provides for recording of tenants and subsequent conferment of occupancy right on them, by virtue of the clauses of adverse possession of land for certain specified years. But the states have generally ignored this aspect of the law. In some cases, even the tenants do not insist on recording of tenancy because of their unequal, albeit weak power and for the fear that they may be evicted from tenanted land by the land-owners.

In West Bengal, there was a special drive to record the names of share-croppers (Bargadars) in 1978 through 1980's which led to ensuring permanent heritable, but non-transferable right to share croppers. But this was possible because of strong will power of the state government supported by political mobilization of the share-croppers and Panchayati Raj institution. In the absence of such a frame work in most other states, mere talk of recording of tenants would not help. In most situation, this may even result in eviction of tenants from tenanted land. The group therefore, is of the view that there showed be a simple lease agreement by lessor and the lessee for a minimum specified period of 3 to 5 years, duly verified by head of Gram Sabha / Gram Panchayat and without any clause of adverse possession of land. The land should automatically return to the land-owner on the expiry of the agreed lease period. In case of West Bengal, however, the share-croppers are as good as occupancy tenants and produce is shared in the ratio of 3:1 or 1:1, between share cropper and landlord, depending upon cost of inputs being borne by sharecropper or the landlord. Factoring this, therefore, ownership right should be conferred on all share-croppers at least on half of the land under share cropping.

Major Recommendations on Appropriate Legal and Institutional Framework for Land Leasing

After careful considerations of various aspects of land leasing, the sub group recommends the following:

(i) Legalize land leasing for agriculture in all areas within ceiling limits. This would improve rural poor's accessibility to land through leasing, discourage land being kept fallow and increase much needed occupational mobility of the rural people;
(ii) Encourage and support group leasing by women, as far as possible;
(iii) All States should impose ceilings on operational holdings and not just ownership holdings. This would help prevent concentration of land through leasing, Under no circumstances, land owners having land above ceiling should be allowed to lease in land even for agriculture;
(iv) Remove the clause of adverse possession of land in the tenancy laws of various states as it de-motivates the land owners to lease out land;
(v) Allow automatic resumption of land after the agreed lease period;

(vi) Abolish the system of regulation of fixation of fair rent by the state. The market rent as agreed upon by the lesser and the lessee should prevail;

(vii) All tenants and sub-tenants including share croppers / under raiyats should be recognized by law and assisted with adequate institutional support and rural development schemes to overcome poverty and indebtedness;

(viii) Share croppers in West Bengal who have permanent and heritable rights on share cropped land are as good as occupancy tenants. Therefore, they should be conferred ownership right with the consent of owners, at least on half of the land under sharecropping.

Issues Relating to Homestead Rights

It is now a well researched and well recognized fact that extreme rural poverty in India is rooted in landlessness. The poorest of the poor are those without land who depend on agricultural wage employment for their subsistence. Also the poorest among landless are houseless, not even having their own small plot of land on which to build a residential shelter. The latest NSS data (Table – 2.7) show that about 10 per cent of rural households in the country are landless and 5.5 per cent of the rural households do not own any dwelling unit. It has been estimated that about 14.8 million rural households are landless and 7.9 million do not have any dwelling units of their own.

The sub-group is in agreement with the view expressed in the Eleventh Five Year Plan of India that the right to a roof over one's head needs to be seen as a basic human right, along with the right to freedom from hunger and right to education. In the first phase of post independence land reform, some state governments had no doubt provided house sites and homestead plots to landless labourers or other land poor households. While states like West Bengal and Bihar enacted separate laws for this purpose, most other states incorporated provision in their land reform laws. Pursuant to these laws and provisions, an estimated four million households obtained house sites across India. However, the size of plot allotted was just enough to build a room, without any additional space for allowing any backyard farming or economic activities to be taken up.

The average size of homestead plot given to about 1.71 Lakh landless families under Vasundhara Scheme in Orissa was only about 4 cents. These were mostly government land. But even with 4 cents of land, the beneficiaries could derive benefits in terms of improved food and nutritional security through cultivation of fruits and vegetables in the kitchen garden. If the plot size can be increased to 10 cents or so, the landless poor families will have not only home of their own, but also an opportunity to take up some economic activities such as planting of fruits and other commercial trees, cultivation of vegetables and rearing animals such as cows, buffalo, goats, sheep, poultry birds, etc., and earn some supplementary income. This will help reduce poverty in rural areas.

Till recently, the focus of Indira Awas Yojana was on grant for house construction and not on providing house sites. It is indeed a matter of gratification that Ministry of Rural Development has provided for an additional amount Rs. 100 Crore this year under Indira Awas Yojana for allocation of homestead plot to houseless poor by purchasing land from the market. It should however be ensured that the size of homestead plot is not less than 10 cents, which can yield substantial economic benefits.

Some Recent Initiatives

Some States such as Karnataka, West Bengal and Andhra Pradesh have recently initiated innovative land reform schemes that aim at providing homestead plot to houseless rural families by purchasing land from the market. In Karnataka, a scheme called "My land-My Garden' is implemented through the panchayat structure. The scheme aims at providing 0.12 acre plots to 0.5 million rural landless households in the state, free of cost. The gram panchayat prepares a list of eligible household, identifies suitable land for purchase near the village, purchases and registers the land, portions the land into micro plots and allocates them to the landless poor families. The state expects to spend Rs. 6000 as land cost per beneficiary. The West Bengal Scheme, "Allocation of cultivation and Dwelling Plot Scheme" is implemented by the Department of Land Reforms and Revenue, in collaboration with Panchayats. The department publicly announces in each district that it would like to purchase land for the scheme and invites land-owners to submit sale offers. A District level committee headed by Sabhapati of panchayat samiti reviews the offers, short lists them and negotiates the purchase of the most suitable offers. The land is then partitioned and distributed to the list of eligible landless beneficiaries that have been prepared by the Panchayats. The plots are provided free of cost to the beneficiaries. The scheme plans to spend Rs. 20,000 in land costs per beneficiary family and expects to allocate land plots of 0.16 to 0.50 acre per family, depending on the price per acre.

The Andhra Pradesh Scheme is part of the larger Indira Kranthi Patham (IKP) Project and is implemented through women's self help groups. The project has been in operation since 2004. Land costs per acre average about Rs. 58,000 per acre. The Government provides up to 60 per cent of the land cost, as a grant, the beneficiary contributes up to 10 per cent of the land costs and the remaining amount is financed as a loan which the beneficiary will repay in 15 years. A recent impact study found that the beneficiaries are receiving an average of more than Rs. 15,000 net cash income per acre per year in addition to food they produce for self consumption from a micro plot (A Panth and M-Mahamallik, Impact Assessment of IKP Land Purchase Scheme in Andhra Pradesh, 2005).

While the above mentioned initiatives of the Governments of Karnataka, West Bengal and Andhra Pradesh show some rays of hope for the landless poor in these states, the Government of Karnataka and West Bengal have sought central assistance to take up the programme successfully on wider scale. Given the tight resource position, it is also true that most state governments, would not be able to undertake any such scheme on a large scale on their own, unless supported by central government or some financial institutions.

The Sub-group feels that allocation of homestead cum garden plots of 10 cents in size would not only provide shelter to the houseless rural poor, but also help improve their food and nutritional security.

Major Recommendations on Homestead Rights

(i) Government of India should launch a centrally sponsored scheme to allocate 10 to 15 cents of land to each houseless rural poor on priority basis. Although there should be search for available government land and ceiling surplus land for this purchase, it is most feasible to purchase land from the market and allocate them to the homeless poor. The scheme can be administered on75:25 cash sharing basis with state

government for land purchase and allocation of micro plots to all rural houseless families;

(ii) As far as possible, allotment of homestead cum garden plot should be in the name of women. Where more than one adult women is a part of household, all adult female members should be recorded;

(iii) The beneficiaries of a particular social group should be given such land in a contiguous block, along with facilities of road, electricity, school, safe drinking water, health centre etc. Besides, line departments of government should provide the necessary technology, extension and marketing support for enabling the beneficiaries to benefit substantially from allotment of such homestead cum garden plots.

Table : 2. 1: Restrictive Nature of Tenancy Laws in various States

Category of States	Nature of Restrictions in Tenancy Laws
12. Kerala and Jammu & Kashmir	Leasing out of agricultural land is legally prohibited without any exception
13. Telengana Area of Andhra Pradesh, Bihar, Jharkhand, Karnataka, Madhya Pradesh, Chattishgarh, Uttar Pradesh, Uttarakhand and Orissa	Leasing out of agricultural land is allowed only by certain categories of land owners such as disabled, minors, widows, defense personnel etc.
14. Punjab, Haryana, Gujarat, Maharashtra and Assam	Leasing out of agricultural land is not specifically banned, but the tenant acquires right to purchase the tenanted land after a specific period of creation of tenancy.
15. Andhra area of Andhra Pradesh, Rajasthan, Tamil Nadu, and West Bengal	There are no restrictions on land leasing, although in West Bengal only share cropping leases are legally permitted.
16. In Scheduled tribe areas of Andhra Pradesh, Bihar, Orissa, Madhya Pradesh and Maharashtra	Transfer of land from tribal to non-tribal even on lease basis can be permitted only by a competent authority. The idea is to prevent alienation of land from tribal to non-tribal.

Table -2.2: Fixation of Fair Rent by States

State	The rate of rent by states
Andhra Pradesh	
(i) Andhra region	25 to 30 per cent of produce
(ii) Telengana region	1/4 to 1/5 of produce or 3 to 5 times the land revenue
Assam	1/4 to 1/5 of produce or less than 3 times the land revenue
Bihar	18 seers (16.80 kg) per maund
Gujarat	2 to 5 times the land revenue, subject to a limit of Rs. 20 per acre
Haryana	1/3 of produce or value thereof
Himachal Pradesh	1/4 of crop of land or value thereof
Jammu and Kashmir	Tenancy has been banned and therefore, no provision of fair rent has been made.
Karnataka	1/4 to 1/5 of produce or the value thereof, but not exceeding 10 times the land revenue plus irrigation charges
Madhya Pradesh	2 to 4 times the land revenue
Maharashtra	2 to 5 times the land revenue, subject to a limit of Rs. 20 per acre
Orissa	1/4 of produce or value thereof
Punjab	1/3 of produce or value thereof
Rajasthan	1/4 to 1/6 of produce or 1 ½ to 3 times the amount assessed as land revenue
Tamil Nadu	1/2 to 1/3 of produce or value thereof
Uttar Pradesh	Rent as agreed upon between the tenant and his landlord or the gaon sabha
West Bengal	1/2 to 1/4 of produce (1/2 of produce if the landowner supplies plough, cattle, manures and seeds)

Table-2 .3: Incidence of Land Leasing in various States(Rural)

States	% area leased in		% households leasing in	
	2003	1992	2003	1992
Andhra Pradesh	9.7	9.6	15.9	15.9
Arunachal Pradesh	12.4	-	9.1	-
Assam	5.8	8.0	7.5	16.7
Bihar	12.8	4.3	12.3	7.0
Chattishgarh	6.4	-	11.0	-
Gujarat	5.4	4.2	10.1	10.6
Haryana	17.3	41.1	17.0	18.3
Himachal Pradesh	3.0	4.4	21.6	14.4
Jammu & Kashmir	0.3	3.4	3.1	6.4
Jharkhand	2.4	-	6.7	-
Karnataka	3.5	9.3	7.5	13.1
Kerala	4.7	3.2	7.1	9.6
Madhya Pradesh	3.0	7.4	5.8	12.3
Maharashtra	4.9	5.2	10.7	15.8
Manipur	12.2	-	15.4	-
Meghalaya	6.9	-	18.1	-
Mizoram	3.0	-	5.8	-
Nagaland	0.1	-	7.9	-
Orissa	14.6	11.4	15.7	22.3
Punjab	19.5	18.2	12.1	15.2
Rajasthan	3.4	5.8	4.3	10.9
Sikkim	14.6	-	34.5	-
Tamil Nadu	7.0	12.4	16.3	19.5
Tripura	6.5	-	6.7	-
Uttar Pradesh	10.5	11.8	12.8	16.5
Uttarakhand	4.8	-	11.8	-
West Bengal	10.4	12.0	11.3	-
UTS	10.5	-	30.6	17.8
All India	7.1	9.0	11.5	14.7

Source : NSSO, Government of India

Table-2.4: Percentage distribution of area leased out by terms of lease for each state (Rural)

State	for fixed money	for fixed produce	for share of produce	Other terms	All
Andhra Pradesh	41.74	22.65	21.72	13.89	100
Arunachal Pradesh	0.00	0.00	14.68	85.32	100
Assam	20.47	0.00	38.71	40.82	100
Bihar	8.89	20.99	59.95	10.17	100
Chattishgarh	7.29	44.36	45.95	2.40	100
Gujarat	14.78	22.55	10.89	51.78	100
Haryana	84.95	2.10	12.75	0.20	100
Himachal Pradesh	31.82	5.77	28.73	33.68	100
Jammu & Kashmir	6.46	0.00	0.00	93.54	100
Jharkhand	0.53	0.00	99.47	0.00	100
Karnataka	34.73	1.77	34.90	28.60	100
Kerala	33.52	0.00	28.64	37.84	100

Madhya Pradesh	10.85	25.15	53.51	10.49	100
Maharashtra	34.44	3.32	53.97	8.27	100
Manipur	5.52	24.61	65.66	4.21	100
Meghalaya	44.07	7.42	43.69	4.82	100
Mizoram	0.00	0.00	100.00	0.00	100
Nagaland	0.00	21.32	37.74	40.94	100
Orissa	11.52	10.65	71.13	6.70	100
Punjab	91.69	1.73	1.98	4.60	100
Rajasthan	17.62	14.79	44.21	23.38	100
Sikkim	31.20	24.47	44.33	0.00	100
Tamil Nadu	47.19	14.70	26.33	11.78	100
Tripura	6.25	7.05	71.71	14.99	100
Uttar Pradesh	14.84	21.18	51.98	12.00	100
Uttarakhand	77.39	5.96	10.29	6.36	100
West Bengal	29.38	48.79	10.55	11.28	100
Group of UTs	33.73	58.12	8.13	0.02	100
All India	31.04	15.30	39.55	14.11	100

Source: NSSO, Government of India

Table- 2.5: Share of landless and Semi-landless Households to total household leasing in land

States	Landless	Less than 0.5 ha	0.5 to 1.0 ha.
Andhra Pradesh	53.1	30.4	8.5
Arunachal Pradesh	71.3	20.1	4.1
Assam	34.7	43.6	11.3
Bihar	5.8	87.0	6.0
Chattishgarh	26.9	43.5	18.6
Gujarat	63.7	18.8	5.5
Haryana	24.0	45.4	8.9
Himachal Pradesh	62.6	32.2	3.7
Jammu & Kashmir	52.0	43.6	0.7
Jharkhand	45.0	42.9	8.1
Karnataka	55.2	28.3	5.3
Kerala	50.0	46.2	3.4
Madhya Pradesh	28.5	39.7	10.9
Maharashtra	60.1	19.8	7.0
Manipur	16.5	67.5	11.8
Meghalaya	35.0	51.5	5.8
Mizoram	29.3	39.7	9.1
Nagaland	97.3	1.5	1.0
Orissa	17.3	71.8	7.9
Punjab	23.8	31.9	13.0
Rajasthan	25.0	22.2	13.3
Sikkim	83.2	16.1	0.3
Tamil Nadu	72.7	21.3	2.3
Tripura	30.0	67.5	1.6
Uttar Pradesh	7.8	69.5	13.2
Uttaranchal	57.8	41.9	0.3
West Bengal	14.1	75.1	8.4
UTS	89.8	10.6	0.1
All India	35.8	47.5	8.2

Source: NSSO, 2003

Table- 2.6: Percent Distribution of Leased Area in India according to duration of lease

Land Size Class	Kharif	Rabi
Less than one agril. season	4.72	4.51
Less than 1 year	19.36	16.56
1-2 years	32.86	32.97
2-5 years	20.27	21.07
5-12 years	11.75	13.90
12 years or more	9.91	9.13
NR	1.14	1.86

Source: NSSO, 2003

Table – 2.7: Proportion of Landless and Homeless Families in Rural Areas

States	Percentage of landless households	Percentage of Households not owning any dwelling units***	Total Number of Households not having any dwelling unit of their own (number in 1000)
Andhra Pradesh	14.3	10.8	1373
Arunachal Pradesh	21.6	21.5	35
Assam	8.0	5.3	214
Bihar	7.6	0.6	66
Chattisgrah	12.1	4.3	150
Gujarat	13.6	8.5	522
Haryana	9.2	3.1	81
Himachal Pradesh	15.0	8.9	101
Jammu & Kashmir	3.3	3.1	34
Jharkhand	4.8	1.7	62
Karnataka	14.1	10.6	738
Kerala	4.8	6.7	351
Madhya Pradesh	12.0	2.2	186
Maharashtra	17.7	7.9	930
Manipur	2.7	2.1	6
Meghalaya	6.7	NA	100 (NE)
Mizoram	2.3	NA	
Nagaland	8.0	NA	
Sikkim	30.7	NA	
Orissa	9.6	3.7	238
Punjab	4.6	3.1	91
Rajasthan	5.6	2.1	156
Tamil Nadu	16.6	13.1	1345
Tripura	8.7	3.8	23
Uttar Pradesh	3.8	1.7	371
Uttaranchal	10.6	-	NA
West Bengal	6.2	3.5	427
UTS	40.2	40.0	97
All India	10.0	5.5	7876

Source: * = Based on NSSO, 59th Round, 2003.
** = Based on NSSO, 60th Round, 2004.
Note: NE indicates total of North eastern states other than Manipur, Tripura and Arunachal Pradesh

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Chapter- Three

Governance Issues and Policies Relating to Land
(Report of the Sub Group – III)

Introduction

Issues of governance continue to emerge not just in new concerns such as land acquisition but also previously addressed policies such as land ceiling and tenancy. This chapter assesses these issues of concern with field examples from each of these elements.

1. Land Ceiling

Holding land in excess of the ceiling area is prohibited in all State laws. But holding in what capacity? As an owner or as a tenant or as both? The National Commission on Agriculture had suggested applying the ceiling limit to both owned land and land taken on lease. All states have accepted this except Orissa, Utter Pradesh and West Bengal where ceiling limits applies only to owned land and not to tenanted land.

Maharashtra and Gujarat ceiling laws provide that lands held by a person including his family members in any other State of India (whether this is constitutionally valid or not appears to be in doubt) shall be taken into account for determining ceiling area within the State but vesting will apply only to lands situated inside the State. Utter Pradesh law provides that when land held by different members of the families are aggregated for determination of ceiling area, the land left after vesting of the surplus area shall be deemed to be held jointly by them in proportion to the market value of the land respectively held by them before the declaration of surplus land. Similarly J & K law provides that the selection made by the head of the family for retention of the lands shall be proportionate to the area held by each member of the family, unless the wife and husband agree otherwise. No other State laws have similar provision.

All State laws provide that the surplus lands shall vest in the State government/ shall be deemed to be acquired by the State Governments from the date of declaration of the surplus area by the competent authority (Revenue Officer or the Tribunal, as the case may be), except Punjab, Andhra Pradesh and Himachal Pradesh, where the surplus land vests from the date of taking over possession. But Utter Pradesh laws further provides that the tenure-holder shall pay damage (as may be prescribed), to the State Government for use and occupation of surplus land for the period from the date of coming in to force of the revised ceiling laws under the Amendment Act of 1972 (from 1.7.1973) to the date of taking over possession by the Collector, whereas Maharashtra and Karnataka laws provide that such damage shall be paid for the period from the date of declaration of surplus land to the date of taking over possession. No other State laws has similar provision for damage to be paid to Government for use and occupation of the surplus land during the intervening period.

All State laws provide that the choice of land within the ceiling area to be retained by the family lies with the 'Karta' of the family. But Utter Pradesh law provides further that where the land of the wife of the tenure-holder is aggregated with the land of the husband for purpose of determination of ceiling area, consent of the wife has to be filed agreeing to such choice. This provision does not appear in any other State laws.

All States laws provide for penal provisions for failure to furnish return for ceiling surplus lands in time and/ or furnish incorrect information therein or for violation of lawful order, or for obstruction of taking over possession of surplus lands, etc., and such penal provisions differ from State to State. Karnataka and Maharashtra law provide for extreme penalty of forfeitures of the surplus land to the State Government if the person fails to comply with the order of the Tehsildar/ Collector when he issues a notice to him to submit the declaration within a specified time.

For quick disposal of Land Reforms and ceiling cases, Kerala, Andhra Pradesh, Tamil Nadu, Karnataka, Gujarat and Maharashtra have constituted Land Tribunals whereas other State Government laws left them to be dealt with by normal revenue hierarchy. The provisions provided for in State laws regarding Appeal/ Revisions/ Reviews, jurisdiction of civil court is barred in all such cases. Only Bihar law has provision for constitution of Land Reforms Tribunal under Article 323-B of the Constitution barring the writ jurisdiction of the High Court on Land Reforms matters. Maharashtra, Gujarat and J & K have barred appearance of legal practitioners before any court or tribunal dealing with disposal of cases under the ceiling laws.

Land Tenancy

The magnitude of tenancy in terms of the proportion of leased-in area does not capture the total nuance of tenancy. Even in a narrow economic sense, the same proportion leased-in area under different terms of tenancy has substantially different applications, both towards agricultural development and the well being of the tenants. Fixed money, fixed produce and share of produce are the most important tenancy contracts.

Various studies point out the existence of concealed tenancies despite a ban on leasing in some states. It has been found that:

- The average area leased in and operated by the un-recorded tenants is higher than those of the recorded tenants
- The distribution of tenants by size class of area leased in and operated also points to clear-cut edge of the unrecorded over the recorded tenants. Among the unrecorded those operating above five acres are higher than that of the recorded tenants. The average area operated by unrecorded tenants is higher than of the recorded tenants. Sizable area operated by tenants is irrigated but even here the percentage of irrigated area operated by unrecorded tenants is higher than those of the recorded tenants
- Conferment of ownership rights on tenants remains the optimal goal, which does not seem to be achievable in the foreseeable future. What seems feasible, according to Utsa Patnaik even while existing ownership of land is retained (except for tribal and illegally alienated which must be restored) is to focus first on conferring owner-like security of tenure on the lessees by registering them through a drive to record de facto tenancy in the presence of the village population. This will only succeed if the onus of providing that a piece of land is being cultivated by a tenant does not lie with the tenant, whose declaration that he does so supported by the general body of the cultivators should be deemed sufficient. The onus of providing that a piece of land is not being cultivated by an unrecorded tenant should rather be on the less or if the latter wishes to contest that tenant's claim to be registered. Second, the implementation of reasonable maximum rent is required to avoid the over exploitation to which the tenants are currently subject, the extension of government procurement

directly from the producer at fair minimum support prices will help to loosen the stranglehold of private traders as will the extension of institutional credit. At the same time it is necessary to extend the public distribution system in these areas to enable those who remain food-deficit, to access food grains at the affordable price.

- The incidence of tenancy is still substantial in some regions. The banning of tenancies and imposing restrictions on leasing out has only led to tenancies being pushed underground. As long as a class of landowners who shun physical labour and vast army of landless agricultural labourers and marginal peasants coexist, any legal ban on tenancy will remain a dead letter. As tenancy is contracted secretly in violation of the law, the tenant's position always remains precarious and consequently, the tenant has no incentive to cultivate the land efficiently. And in several regions, landowners keep the land fallow or raise only one crop where two could be raised. They do not lease out the land for fear of losing their rights if they let it out illegally. Apart from the fact that a total ban on the creation of tenancies is unworkable, there are also serious doubts about the advisability of prohibiting leasing out of land.

Status Mapping

Land use: recent land legislation of a different kind

Brief Analysis of the Major Issues

Incongruities with the Land Acquisition (Amendment) Bill, 2007

However, despite the inconsistencies in its implementation, the PESA stands as constitutional safeguard to the Scheduled Areas. But the Land Acquisition Act neither in its principal version, nor in its amended version integrates this protective legislation regarding land. It has failed to take note of the requirements laid down in the PESA Act, 1996 and the State laws to operate in consultation with the Gram Sabha of the concerned village. There is also a SC judgment (Civil Appeals Nos 4601-02 of 1997) which directed as to how land in SA has to be maintaining its 'inalienable character'. On the other hand, it has been observed that the acquisition authorities purposely resort to acquisition of land for certain development projects in order to bypass these restrictions and take advantage of the fact that being a Central law. The acquisition proceedings do not even recognize the existence of these protective legislations in their statuettes.

Land Acquisition Act (Amendment) Bill, 2007

The Bill removes the words 'and for companies' from the title and the Preamble of the Principal Act [clause 2 and 3 of the Bill]. Accordingly, the expression 'company' [S.3 I] has also been omitted from the chapter of definitions in the Principal Act [clause 5 (iii) of the Bill]. This amendment was carried out in 1984 through which the requirement of land was justified as serving a public purpose. This addition had widened the demand for land and enlarged the scale of displacement caused on this account. The present Act seems to seek to respond to this concern. However, the land is acquired from citizens under various laws, Central and State. The Principal Act is one among them. Other laws, by and large, deal with acquisition of land required for a particular sectoral activity. These multiple laws do not have uniform provisions relating to the process of acquisition and determination of compensation and its entitlement. Nor they are integrated in any manner. The Land Acquisition

(Amendment) Bill, 2007 does not put an end to this diversity of laws. The R&R Bill, 2007 does mention that its provisions would apply to persons displaced by any other Union or State law in force. But the Land Acquisition (Amendment) Bill, 2007 has failed to incorporate a provision that the land acquired under other land acquisition laws, Central or State, would adhere to its provisions wherever relevant and beneficial to the affected persons.

Section (1) of the Principal Act which deals with its title has been enlarged by insertion of a sub-section 1A which lays down that the provisions of the Rehabilitation and Resettlement Act, 2007 shall apply in respect of acquisition of land under this Act (clause 4 of the Bill). The Government has already notified the National Rehabilitation and Resettlement Policy, 2007. This policy is being converted into a law and legislation to this effect called the Rehabilitation and Resettlement Bill, 2007 has been introduced in the Lok Sabha. With this Bill, the displaced persons would get empowered to demand their resettlement and rehabilitation as per its provisions and seek its enforcement in the court if the Government fails to meet this commitment.

However, the context in which the Bill was pushed was the growing opposition to land acquisition from the localities such acquisition was to be carried out. The State-centric framework of the Principal Act, however tilts the balance entirely in favour of the state between the powers of the State and the rights of the individuals. This is reflected clearly in the legal rationality for compulsory acquisition of privately owned land embedded in the theory of Eminent Domain. This notion enabled the State to justify acquisition of land without the consent of the affected individual if it was required for a 'public purpose' as a necessary corollary of State sovereignty. The other feature which exhibits this is the total ignorance at the policy level to the consequences of acquisition of land on the person affected. This occurs due to the omission in law of any responsibility of the State to rehabilitate the persons displaced by the action beyond the payment of compensation. The notification of the National Rehabilitation& Resettlement Bill, 2007 was a response to the violation of human rights which occurred as the law was being used for acquisition. Neither of the two documents, however, recognizes the right of the displaced persons to demand their rehabilitation and resettlement in principle.

The expression 'person interested' in the Principal Act has been corrected to some extent in the proposed amendments [clause 5 (1) of the Bill]. They include in the expression 'person interested' tribals and other traditional forest dwellers who have lost any traditional rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and persons having tenancy rights under the relevant State Laws. This definition suffers from two inadequacies. The definition does not differentiate between people whose land is lost due to acquisition and those whose sole sustenance and livelihood in the form of land is lost. Thus, the definition comfortably leaves out agricultural labourers, fishermen, artisans, etc and thus out of its purview of accountability. Then, the inclusions of 'persons having tenancy rights under the relevant State laws' is also problematic. This definition does not clearly the category of tenants-those who are legally entered in the records or even the informal tenants. One can imagine the situation better, if reminded of the dismal record of rights and their painfully slow mutation in the new records.

A new clause (ccc) has been added to the Section 3 of the Principal Act which adds the expression "cost of acquisition" to the list of terms under "Definitions" not existing

earlier [clause 5 (ii) of the Bill]. This expression has been elaborated to include, besides compensation, solatium and interest payable to land losers, damages caused to the land and standing crop during the process of acquisition, acquisition of out-project land for settlement of the displaced or adversely affected families, development of infrastructure and amenities at the resettlement site/sites, additional cost of acquisition as may be required, administrative cost of acquisition of land., planning and implementation of resettlement and rehabilitation scheme. This implies that the above stated expenditure would constitute the cost of acquisition and would be payable by the agency requiring land. However, there have been situations when damages have occurred and spilled out to land out of the projects. The law does not have any provision for checking, monitoring or accounting those damages, if they are not occurring at the time of acquisition. Further, there is no provision which compels the damage land to be taken over and the owner/occupant/user of the land compensated duly for its loss.

The expression "public purpose" under 'Definitions' [Section 3 (f) of the Principal Act] is being compressed to change its open-ended character. It now includes provision of land for strategic purpose related to the work of armed forces or any other work where the benefits accrue to the general public for which the land has been provisions of land for any other purpose useful to the general public for which land has been obtained to the extent 70% but the remaining 30% is yet to be acquired [5 (f) of the Bill]. However, the revised definition in the Bill again omits to define 'public purpose' but just reduces the list of activities to be included in its ambit. Subsequently, the expression "infrastructure project" in the proposed amendment would now include generation, transmission or supply of electricity, construction or roads, railways, bridges, airports, ports, railway system, mining activity, water supply and irrigation projects, sanitation and sewage system. In addition, it would encompass any other public facility as notified by the Central Government. None of the welfare activities which directly benefit the poorer sections are included. Activities such as housing, slum clearance, and improvement of village sites would not fall even in Vital, Strategic or Security purpose of the state.

The Bill has introduced the obligation to carry out the social impact assessment n respect to the land intended to be acquired for a public purpose [clause 8 of the Bill]. This however would be done only where physical displacement involves 400 or more families *en masse* in plain area; or 200 or more families *en masse* in tribal, hilly areas or desert development programme blocks or areas specified in Schedule V and VI to the Constitution. The social impact assessment will incorporate, besides social impact appraisal, incorporation of tribal development plan, plan for giving emphasis to scheduled castes, scheduled tribes and other vulnerable sections, provision for infrastructural amenities and facilities for rehabilitation and resettlement in terms of Rehabilitation and Resettlement Bill, 2007 within the time limit to be prescribed in rules made by the Central Government. However, this measure has not been linked or integrated with the process of acquisition. It has not been specified at what stage the SIA will would be carried out. If it is not carried out before acquisition of the project, then it loses all its meaning as the Assessment irrespective of its conclusions would have no bearing on the decision of acquisition. There is no specification as to who would preside over this assessment.

Two provisions are being inserted in sub-section (i) of section 4 of the Principal Act with a view to ensuring that land acquisition is carried out within the time limit specific in the law [clause 9 (a) of the Bill].

Transactions in respect to the land under the process of acquisition are being disallowed [sub section 1 A of Section 1 of Section 4 of the Principal Act]. After the issue of notification under section 4 (1) expressing the intention of the Government to acquire specified land, no land transactions in respect of that land or creation of any encumbrance on such land shall be made until the final declaration under Section 6 has been made or award has been announced and paid under Section 16 whichever is applied earlier.

Through insertion of 1 B to section 4(1) of the Principal Act, the Collector has been mandated to undertake and complete the exercise of updating of land records, classification of land and its tenure, survey and standardization of land and property values in respect of the land under acquisition. It has been found in many cases that after getting land transactions in the favour of the land requiring agency, these persons get transfer of land mutated in their name in collusion with the lower level bureaucracy.

With respect to compensation, the law has failed to make any departure from its existing provision. This excludes numerous sections of persons who are affected by acquisition from a particular category of land. Though, the government claims to be committed to rehabilitate and resettle all who are affected by acquisition, the compensation package fails to cover even the bare minimum needed to re-establish affected communities.

The compensation to be awarded, by the virtue of the law, is to be determined on the basis of 'market value'. This basis of determination is obsolete as land markets vary in prices from region to region and therefore the compensation paid to the land losers defeats the purpose of resettlement. It would be too inadequate for the person to buy land elsewhere. The suggested alternative of 'replacement value' which meant providing land near the settlement site with the same productive potential as the previous plot was only accepted in the case of acquisition of hydel and irrigation project. This incoherence is not only discriminatory but also very divisive. The concept of 'market value' has not been defined either, assuming that the records of sale and purchase records of land is fair, transparent and just. Therefore, the amount of compensation so assessed, would never equate the real value of land.

The Proposed Resettlement & Rehabilitation Bill, 2007

Following are some of the issues which question the morale of the government as the Rehabilitation and Resettlement bill 2007 is being introduced. The Bill seeks to establish an R&R administration at the central and state levels. This administration will be responsible for planning for and implementing R&R. The bill describes the process to be followed while planning and implementing R&R and prescribes how 'affected areas' and 'affected families' are to be identified and the quantum of benefits for different categories of the latter.

Civil courts are barred by the bill from entertaining suits on matters that are the responsibility of the R&R administration. Identification of 'affected families', the resettlement plan including land and amenities to be provided, and the implementation of the plan are under the R&R administration. What happens if benefits described in the bill are not forthcoming? Grievances may not be taken to courts but only to an ombudsman appointed by the government. In this respect, the situation will be no different from what prevails today – beneficiaries and benefits of R&R will be determined solely by the Government. Perhaps the only recourse to courts allowed by the bill is in case of violation of the R&R process that it specifies.

Conditional Benefits Prescribed

The bill prescribes conditions for project affected families to qualify as beneficiaries and makes the benefits themselves conditional on external circumstances. An area will be notified as an 'affected area' "where the appropriate Government is of the opinion that there is likely to be involuntary displacement of four hundred or more families en masse in plain areas" (the number is less for hilly and tribal areas). R&R planning is mandated by the bill only for families living in such 'affected areas'. A family that neither owns nor occupies (tenants) land such as that of an agricultural labourer, artisan, small shop keeper, etc will be considered to be an 'affected family' and entitled to any R&R benefits only if it is displaced from a notified 'affected area'.

Thus the opinion of the Government on the scale of the displacement will decide if there will be planned R&R of the displaced. The scale of displacement will determine if families who neither own nor occupy land (who are the poorest) will be entitled to any benefits at all – unconscionable from the standpoint of justice. Other conditions also apply to these families in particular, such as the need to prove residence for 5 years in the affected area in order to claim benefits, revealing the distrust of the Government towards this section of society.

There are many other conditions attached to the benefits. Land will be allotted to 'affected families' whose agricultural land has been acquired "if Government land is available in the resettlement area". Preference will be given in jobs to 'affected families', "subject to the availability of vacancies and suitability of the affected person for the employment".

The bill also talks about a 'social impact assessment' that will be required when there is large scale displacement, an idea similar to the 'environment impact assessment' that is now mandatory for projects. The details of how this will work are not clear from the bill and it is early to comment if and how this will benefit people affected by a project.[44]

The Special Economic Zone, Act, 2005: Contradiction in Abundance

The preamble of the SEZ Act, 2005 states that SEZs have been established 'for the promotion of exports', section 5 of the Act says that the central government will be guided by the following principles while notifying any area as a SEZ, viz.: '(*a*) generation of additional economic activity, (*b*) promotion of exports of goods and services, (*c*) promotion of investment from domestic and foreign sources, (*d*) creation of employment opportunities, [and] (*e*) development of infrastructure facilities.'

To begin with, an Expert Group's Report recently posted on the website of the Planning Commission, the section on *Special Economic Zones* states the following,

"Land acquisition for Special Economic Zones (SEZ) has given rise to widespread protest in various parts of the country. Large tracts of land are being acquired across the country for this purpose. Already, questions have been raised on two counts. One is the loss of revenue in the form of taxes and the other is the effect on agricultural production''.

[44] Kannun Kasturi, *Right to replace but no duty to rehabilitate*, February 16, 2008, India Together

The SEZ Act permits the government to exempt the units set up therein from various laws and there is a promise that such exemption will be given in the matter of labour laws.[45] At the same time, the Minister of Commerce in an interview on SEZ has categorically stated that, "What the state governments do is a different matter. Land acquisition has nothing to do with SEZs."[46] These contradictions between various officials and official reports, clearly shows that the debates around SEZ are highly ambiguous and misleading.

There has been no Cost-Benefit analysis conducted for SEZ projects or assessment of economic losses as a result of diversion of agricultural land to non-agricultural purposes and resultant impacts on local livelihood.

According to the SEZ Act (2005) there is no Upper Limit for land acquisition (Article-2/Section-4) further it gives power to the State for any further land acquisition as per the demand of the Industry. In the case of land acquisition in private land from land owner (farmers) the State is always in favor of Industry (Private Party), there is no safeguard to the land owners. SEZ Act allowed to acquired "Wasteland and Single Crop Land" putting negative impacts on Common Property Resources (Land, forest and water bodies) of the villages e.g. In Raigardh district (Maharashtra) Relience is planning to build a massive SEZ, almost 12,000 hectares of Dali Land (CPL) have been under cultivation by the tribal for decades.

Information about proposed investment by units is available for a much smaller number of SEZs, only for 63 SEZs, with a projected total of Rs 166,785 Crore. For purposes of comparison, the investment in manufacturing in India in 2005-06 alone was Rs 360,000 Crore. Of this, 9% is in IT/ITES, another 4% is in existing strengths and 78% in multi-product SEZ, amounting to 91%. Locationally, 92.4% of this proposed investment is in AP and Gujarat (46% each), followed by Karnataka, Punjab and Haryana, who add another 4.4%. The proposed investment in units is therefore extremely skewed, even more so than investments by developers. To illustrate, 40% of this, Rs 67,500 Crore, is accounted for just by one 10 sq km multi-product SEZ in Kakinada.

In comparison to the claim of a 'new avenue of employment generation' of the minister of Commerce,[47] the information available about proposed direct employment is available for 110 SEZs, projecting a total of 2.14 million employees. Of this, 61% is in IT/ITES and another 15% is in existing strengths with a further 21% in multi-product SEZ, amounting to 97%. It is interesting to note that the 1.25 million direct employment proposed to be created by the IT/ITES SEZs alone exceeds the current employment in that sector. Further, 85% of this proposed employment is in the five states, with 40% in Andhra Pradesh alone, of which two-thirds is from IT/ITES SEZs.

Diversion and conversion of Agricultural lands into SEZs: Costs and consequences

Total area under SEZ across India is expected to be over 200,000 hectares, an area the size of the National Capital Region. This land – predominantly agricultural and typically

[45] Development Challenges in Extremist Affected Areas, Report of an Expert Group to Planning Commission, Government of India, New Delhi, 2008

[46] Reply to the statement, ' State governments are acquiring land for the zones', published in Issue# 582, *Special Economic Zones*, A symposium on recent economic policy initiatives, February, 2008, @ http://www.india-seminar.com/2008/582.htm

[47] Concluding note of speech of the Minister of Commerce in Lok Sabha, before the SEZ bill was put to vote.

multi-cropped – is capable of producing close to one million tons of food grains. Estimates show that close to 114,000 farming households (each household on an average comprising five members) and an additional 82,000 farm worker families who are dependent upon these farms for their livelihoods, will be displaced. In other words, at least 10 Lakh (1,000,000) people who primarily depend upon agriculture for their survival will face eviction. Experts calculate that the total loss of income to the farming and the farm worker families is at least Rs 212 Crore a year. This does not include other income lost (for instance of artisans) due to the demise of local rural economies.

Almost 80% of the agricultural population owns only about 17% of the total agriculture land, making them near landless farmers. Far more families and communities depend on a piece of land (for work, grazing) than those who simply own it. A new relief and rehabilitation policy has been tabled in Parliament recently. It promises a 'Social Impact Assessment' of development projects which displace human populations involuntarily. It also promises 'compensation, rehabilitation and resettlement ahead of displacement.' These assurances also extend to landless families who have been promised jobs in construction projects and various kinds of training for self-employment. Landed families losing land to development projects have been Promised Land elsewhere in exchange. There are special R&R provisions for displaced SC/ST groups.

SEZ Act (2005) states that the compensation to the farmer losing his land will be at the "last transacted price" in the area. The formula to arrive at the value of the land was the "Net Present Value" (NPV) and future potential of the land in terms of produce to be borne by the land in the next five years and its earning capacity.

Environmental Issues

Schedule-I of the EIA notification, 2006 issued by the MoEF under item 7-C covers industrial estate/parks/complexes/areas/Export Promotion Zones/ Special Tourism Zones/ Biotech Parks/ Leather Complexes. The above categories continue to be exempted from the requirement of a public consultation even in the new notification.

The EIA Notification, 2006 divides industries, projects and activities into category-A and category-B where Category-A have to be cleared by the Central government, and projects under Category-B are to be cleared by the State government. Under SEZ Act (2005), the environmental clearances outlined "Special Conditions" which undermine even basic requirement of Environmental Clearance. The condition states- if any zone with homogenous type of industries (under sections of chemical and petrochemicals/bulk drug industries), or those industrial estate with pre-defined set of activities (not necessarily homogeneous) obtains prior environmental clearance, individual industries including proposed industrial housing within such estate/ complex will not be required to take prior environmental clearance. No mention is made of regulatory mechanisms for multi-product, single product zones, tourism zone as well as clearance for entire SEZ clearance Vs clearance for units.

Guidelines for notification of SEZs are silent on environmental and ecological concerns. Single window clearance feature makes the Approval Committee at the State level under the District Collector responsible for approval of all SEZ units and even compliance to conditions of approval if any are to be mentioned by the Assistant Collector. There is no mention of the role of the Pollution Control Board. There is mention of Coastal Regulation related provisions in the SEZ Act and rules. However, the amendment to the CRZ

Notification 1991, have allowed for SEZs to be located in ecologically sensitive coastal areas and 'no development zones'. The interesting point to note is that unlike other schemes which the government usually takes time to pass and implement, land acquisition for SEZ projects have not suffered any delay or legal hassles, rather implementation of projects have been quick paced and smooth sailing.

PESA Act : Intentions and Outcomes[48]

The new Acts and policies outlined above are in fundamental contravention with the existing provisions which were instituted with the intention of providing constitutional safeguards to the areas inhabited by Scheduled Castes and Tribes. These communities have an altogether different relationship with the environment in which they inhabit and also therefore have a different understanding and practices of property and rights. However, one can observe that these constitutional and legal safeguards have been rendered toothless by the upcoming policies relating to land and their impact, one of the major victims being the PESA Act.

Part IX concerning Panchayats was added to the Constitution in 1993 by the 73rd Amendment Act. The 73rd amendment was the first legislation after independence which was not extended to the SA in a routine manner as was the general practice. Accordingly, a high powered Committee comprising select Members of Parliament and Experts was appointed in 1994 to recommend exceptions and modifications that may be made in Part IX while extending its provisions to the SA. The Committee submitted its Report in 1995 and its recommendations were subsequently accepted by the Government of India. The Provisions of Panchayats (Extension to the Scheduled Areas) Act (PESA) was enacted in 1996. The provisions of Part IX of the Constitution were extended to Scheduled Area (SA) subject to the special features mentioned in Section 4. PESA came into force on December 24, 1996.

Background

The Fifth Schedule (FS) of the Constitution provides the basic frame for administration of the SA. The canvas of administration in this case is inclusive and comprehensive. The Governor is the supreme legislator for the SA. He enjoys limitless powers under Para 5 of the FS for (i) adapting any law of the State or the Union in its application to the SA in the State or any part thereof, and (ii) framing Regulations 'for the peace and the good government of...a Scheduled Area', cutting across the formal boundaries set out in the Seventh Schedule. Thus, the FS has the great potential for creating a flexible and comprehensive frame of administration dedicated to the protection and advancement of the tribal people. It is a pity that this potential has remained largely unexplored. Instances where Governors have used the powers under Para 5 (1) of the FS for adaptation of any law are few and far between, notwithstanding the accentuating dissonance between the ground reality and the legal frame in the tribal areas.

It is important to note that tribal affairs and SAs are not specifically mentioned in any of the three lists in the Seventh Schedule. Accordingly any law concerning these items can be enacted either in term of specific provisions in the Constitution including 'regulations' under the FS, or under Item 97, 'any other matter…' of the Union List. On the other hand, various laws enacted by the State Legislatures (SL) are automatically extended to the SA. Some such

[48] Expert Group Report of Planning Commission, 2008, Development Challenges in the Extremist Areas

laws even have special provisions for the SA. This legal frame has given rise to a milieu of ambivalence about tribal affairs, compounded by indecision and inaction on the part of the executive.

PESA and the State Legislature

PESA for the first time calls upon the State Legislature (SL) to legislate in matters concerning Panchayats located in SA. Space has been created in the frame of PESA for this purpose. Section 4(m) specifically mentions 'endowing Panchayats in SA with such powers and authority as may be necessary to enable them to function as institutions of self government'.

This provision is on the same lines as in the general areas. However, the jurisdiction of the State Legislative (SL) envisaged here is subject to the specific provisions of PESA that have been set out in unequivocal terms in Section 4 as the basic 'features' of governance in the Scheduled Areas (SA), in keeping with the spirit of the Fifth Schedule (FS). It begins with a mandate, making the features listed therein binding on the State Legislatures.

'Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features'.

Section 5, in the same vein, mandates the fall out of non-action by the concerned authorities. It envisages that any provision of any law relating to Panchayats which is inconsistent with the provisions of PESA 'shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until the expiry of one year from the date on which this Act receives the assent of the President'. Accordingly, all inconsistent provisions in relevant laws are deemed to have lapsed on 23.12.1997, a fact that is lost on all state legislatures.

The most distinguishing 'feature' of governance at the village level in PESA is the 'creation of space' in the legal frame for the functioning system of self-governance of the tribal people. Moreover, detailed provisions have been made in PESA itself in that regard, leaving no choice with the SL, which is mandated to ensure that the frame of governance is in consonance with the local situation.

PESA and the Community

The community at the village level was excluded from the general legal frame adopted by the British in India beginning with 1860s. The objective was clear, viz., 'Break the community so that the authority of the Imperial Regime remains unchallenged.' The tribal tradition of self-governance during this period, however, remained largely undisturbed in the face of their dogged resistance against the colonizers. This continued till the adoption of the Indian Constitution. The colonial legal frame got inadvertently superimposed, as it was, on the tribal people living in hitherto excluded areas. This inadvertent action of the State has rendered the tribal people totally helpless in dealing with the outside world. This paradigm of governance would have been totally transformed into a non-centralized frame if PESA had been honestly implemented. The Act begins with redefining the village in terms of habitations that comprise a 'community' and accepting 'the competence of the community' to manage its affairs as is clear in Sec 4(d).

PESA and the Traditional System

While PESA does acknowledge the centrality of the traditional system, albeit with reference to the community at the village level in the form of GS, it makes no provision for or even reference to the place and role of any of the existing traditional institutions at the village and higher levels. For example, command over, and management of community resources and dispute resolution, are two crucial features that have been specifically covered in the frame of competence of the GS. But the community at the village level is not the last arbiter in these matters. The livelihood resources in the village may be shared by the people with other people in the neighbouring villages. Similarly, the traditional frame for dispute resolution comprises not only the concerned village assembly but also institutions at level of a group of villages, and higher levels, for dealing with inter village disputes and appeals against decisions at lower levels.

While the outline of the frame of traditional institutions described above is universal, there are significant variations of detail in this regard amongst different communities in the same area, or even the same village, and also within the same community in different areas. The great diversity of the traditional systems of the extensive tribal areas cannot be captured within the ambit of a single central legislation like PESA that aims to cover only the special 'features' of the governance in the SA. In fact any such attempt would have been dysfunctional. Accordingly, the responsibility for covering these aspects can be deemed to rest with the concerned Legislative Assembly (LAs), in terms of the special jurisdiction that has been endowed on them in PESA with regard to the 'administration' of the SAs. Moreover, wherever necessary, the powers vested in the Governor under Para 5 of the FS can also be suitably invoked, to ensure that the new frame is comprehensive and fully in tune with the spirit of PESA.

PESA and Its Implementation

The responsibility for preparing the legal frame for governance of the SA imbibing the spirit of PESA rests unequivocally with the concerned State Governments. Nevertheless, the overall responsibility for ensuring that the concerned States act accordingly is with Union Government, in terms of the provisions in Para 3 of the FS.

PESA and States

The adaptation of the Panchayat Acts has been pursued by the States in a routine way. The current review shows that hardly any relevant Acts of the Centre, or even the concerned States, have been amended to make them consonant with the relevant 'features' of governance in SA. Madhya Pradesh, including Chattishgarh, is the only exception, which made a commendable beginning in this regard but left the same halfway through. Jharkhand holds the record of sorts with its claim that PESA has not come into effect in the State because of no elections to Panchayats. Accordingly the 'Gram Sabhas' have not been formed. The State Government is oblivious about the nature of governance at the village level in SA as envisaged in PESA. No one in the Union Government has considered this issue worthy of intervention in terms of Para 3 of the FS.

Andhra Pradesh has adopted the safe strategy of writing down everything mandated by PESA in its amendment to the State's Panchayat Raj Act, with the riders 'to such extent

and in such manner as may be prescribed', and has left what is to be prescribed/ unprescribed, so that the whip is finally in its rule-making pocket.

The rudderless implementation of PESA, albeit partial and perfunctory, faces the first hurdle at the level of defining the 'village' that comprises the community, and 'competence' of GS to manage the affairs of the community in terms of its customs and traditions. Once these 'features' are incorporated in the legal frame, the paradigm of administration at the village level would undergo a total transformation, with community at its centre and in a commanding position.

Incongruities with the Land Acquisition (Amendment) Bill, 2007

However, despite the inconsistencies in its implementation, the PESA stands as constitutional safeguard to the Scheduled Areas. But the Land Acquisition Act neither in its principal version, nor in its amended version integrates this protective legislation regarding land. It has failed to take note of the requirements laid down in the PESA Act, 1996 and the State laws to operate in consultation with the Gram Sabha of the concerned village. There is also a SC judgment (Civil Appeals Nos 4601-02 of 1997) which directed as to how land in SA has to be maintaining its 'inalienable character'. On the other hand, it has been observed that the acquisition authorities purposely resort to acquisition of land for certain development projects in order to bypass these restrictions and take advantage of the fact that being a Central law. The acquisition proceedings do not even recognize the existence of these protective legislations in their statutes.

Ignorance of Government in the Rehabilitation and Resettlement Bill, 2007

The Rehabilitation and Resettlement Policy and the Bill contain special provisions for the project affected families belonging to the Scheduled Tribes and Scheduled Castes. In respect of the Scheduled Tribes, a provision has been made for preparation of a Tribal Development Plan. This plan would lay down procedure for settling land rights not settled and restoring titles of Tribals on alienated land. It shall also contain a programme for development of fuel, fodder and non-Timber forest produced resources on non-forest lands where access to forests is denied in the resettlement arrangements. The provisions also mandate consultation of the Gram Sabha or the Panchayat as per the PESA, 1996 and a mode of settlement which helps them retain their ethnic, linguistic and cultural identity.

While referring to the settling of land rights, no indication has been given of what all it would involve, tribals have extensive rights in forests enjoyed traditionally which have lacked legal backing. Lately, some of these rights have been recognized in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Tribals also use non-forest vacant land which is classified in land records as government/public/panchayat land. In many tribal areas, there are lands under the control and management of the community without individual ownership.

Besides, there are extensive shifting cultivation areas where tribals use a large swathe of hilly land by rotation which has the sanction of the community. The tribes, generally referred to as 'Primitive' (usually identified by their mode of cultivation, predating settled agriculture) belong to this category. The area of land under their use for rotation is large which usually remains unsurveyed beyond 10◦ and arbitrarily categorized as the government land. In the VIth Schedule Areas, the pattern of land holding is communal with customary

use and land records do not exist. Thus, there is an extensive variety of rights and interests in land relating to access, use, practices and management systems governed by customary laws. In addition, there are some hunter and food gatherer tribes, nomadic tribes and pastoralists who are entirely dependent upon forests with no fixed habitat as they move from area to area in search of food. Identification of rights and interests of the affected displaced STs has to be, therefore a highly localized operation which cannot be slotted into the Anglo-Saxon individualized landownership and the standardized ethnic pattern. The nature of rights, interests and needs of groups cannot be neatly categorized or standardized even within a specified unit of tribal area.

Therefore, the preparation of a Tribal Development Plan cannot be based on a uniform, homogenized model which is also applicable to the non-Tribal communities. The conceptual and structural frame of rehabilitation and resettlement for them would have to be designed taking into account their specific situations. This is particularly, necessary for tribes in the remote areas who are least exposed to the larger society and its pattern of living. There is no indication in either the Policy or the Bill that this complexity has even been visualized, let alone recognized and accommodated in their contents. The approach inherent in the two documents is antithetical to the need for situation/tribe specific effort. The numerical benchmark laid down for application of the Policy is a classic illustration of this lack of understanding and appreciation. The Plan of rehabilitation and resettlement for Scheduled Tribes in an affected area, therefore has to take into account a wide variety of factors which may not be the same even for all affected persons of a single project. Considerable freedom would have to be given to local officials both in terms of framework as well as contents and resources in designing such plans suited to specific groups entirely in consultation with the concerned communities, experts and anthropologists well versed with their situation. As the current phase of occupation/procurement of land penetrates the interior most areas, the resultant displacement could lead to extinction of some tribes causing unbearable strain on adjustment if they are exposed to a rehabilitation and resettlement pattern radically different from their traditional existence. This may ultimately weaken their will to live.

With regard to the Scheduled Castes, who are also a differentiated group, the Resettlement and Rehabilitation Bill has virtually made no preferential provisions except suggesting preference in allotment of land if government land is available in the resettlement area. The Scheduled Castes suffer from extensive exclusion in the pattern of settlement, denial of access to resources, labour and credit markets, employment opportunities and social facilities, along with burden of economic dependency and wide variety of socially humiliating practices. This situation is not even in conception in the formulation of the policy, let alone appropriately dealt with by provision of empowering measures.

The economy of the Scheduled Caste communities has a substantial component of livestock rearing, processing and artisan activities based on common property resources. Some of these activities also create conflicts with other caste groups and they also face a problem of insecurity and physical violence. None of these issues have been taken into account so as to provide for a SC specific development plan which can assure them a more dignified life. In failing to do justice to their needs and interests, the government has also missed an opportunity for social engineering and change provided by the situation.

Environmental and Ecological Issues in Management of Land

Status Mapping

"Environmental degradation and social injustice" are two sides of the same coin. Environmental degradation can be caused both by nature and by human action. In the case of the tribal heartland, the centre of the Naxalite movement, it is overwhelmingly the latter which contributes to it.

One of the significant causes of environmental pollution and degradation in the recent times that has agitated substantial sections of populations in different parts of the country has to do with careless mining. Geographical distribution of fossil fuels, and metallic and non-metallic mineral reserves, shows a high degree of concentration in central and eastern India. This implies drastic changes in the existing land use from agriculture and forestry. Mining is an unavoidable component of industrial development, but its full effect on the environment must be taken note of. Mining is carried out in two ways: open cast and underground. Either way, the extraction of ore releases extensive dust which spreads all around and spoils all elements of the environment – it makes the agricultural lands barren, pollutes water sources, denudes forests, defiles the air and degrades the quality of life for people who live and work in the area.

Environmental degradation resulting from industrial mining and other development activities has created serious health problems for the local population. A large number of occupational diseases are caused by dust from mines and polluted air from industrial units.

Uranium mining and processing near the Subarnarekha River has even caused radioactive pollution. In addition to the damage caused to the environment and its consequential effects, illegal mining and illegal practices in legal mining compound people's misery. The activities for exploitation of water resources directly create conflict with the local population. Large dams by changing the course of nature cause severe damage to the natural environment and rich biodiversity as they are located in ecologically sensitive regions.

Not merely land, water and forests, even bio-diversity is being exploited for economic growth. This is done through massive expansion of tourism which is seemingly projected as a people-friendly development activity with considerable distributive benefits. This too has adverse implications both for ecology and local communities, which are not even recognized. The other issue relates to the perceived adverse effects of the tourism industry on tribal communities and the conflicts it would generate.

Tourism disturbs the existing cultural-economy governance matrix of tribal life which is inseparably interwoven with ecology. Rampant commercialization and foreign influences would cause the worst impact on the lives of the tribal communities. It would trigger the process of disintegration of tribal society and its cultural ethos leading to social degradation.[49]

Brief Analysis of the Major Issues

Special Economic Zone or Special Exemption Zone

[49] Expert Group Report of the Planning Commission, 2008, Development Challenges in the Extremist Affected Areas.

SEZ have been given the status of industrial townships as per provisions of clause (1) of Article 234 (Q) of the Indian Constitution and defined in Section 3.2 of SEZ Act (2005). The State Government will declare the SEZs as Industrial Township Areas to function as self-governing, autonomous municipal bodies. Once an SEZ is declared as an Industrial Township Area, it will cease to be under the jurisdiction of any other local body like- Municipal Corporation and Gram Panchayat. Moreover, the SEZ Developer and Units would also be exempted from taxes levied by the local bodies because of its self-contained local body. The status of "Deemed Foreign Territory" to SEZs will snatch the sovereignty of locals from their lands, and natural resources which is the backbone of local economy and sustenance and also their fundamental right to movement as India citizens will be violated.

The status of "Deemed Foreign Territory" to SEZs will snatch the sovereignty of locals from their lands and natural resources which sustains the local economy. The concentration of powers in the hands of Development Commissioner at the state level and board of approvals in the Centre is greatly going to challenge the local governance. The SEZ Act provides that grievances related to the SEZ can only be filed with courts designated by the State governments which will only be for trials related to civil and other matters of SEZ. No other courts can try a case unless it goes through the designated court first. Building of a physical boundary around the SEZ and restricting entry to authorized person's only means that it would be difficult for any individual or civil society groups and independent agencies to enter the area without prior approval of the Development Commissioner.

SEZ Act (2005) has no mention of the sources of water for the proposed zones; leave aside the question of restrictions or impact assessment. The SEZ Act of various states gives a blank cheque to the water requirement for the zones. For example, the Gujarat Act says, "The SEZ developers will be granted approval for development of water supply and distribution system to ensure the provision o adequate water supply for SEZ units".

As per the official website of the Mundra SEZ (Gujarat), it expects to get at least 6 million liters per day from the Sardar Sarovar Project, as promised by Gujarat Water Infrastructure Ltd. Critical water requirement would be 400 million liters per day. The Comptroller and Auditor General of India for Gujarat for the year ending on March 31, 2006 has already criticized Gujarat government for extra allocation of 41.1 million liters per day water from the Sardar Sarovar Project for industries. The CAG report said that this will affect share of water for drought prone areas.

The water requirement, as given on the POSCO website, is 286 million liters per day, will be procured from Jobra barrage on the Mahanadi River in Cuttack, district in Orissa. The water for this is forced to come from the upstream Hirakud dam. There is already an agitation against reservation of water from the Hirakud dam for industrial purposes.

Environmental Impact Assessment (EIA)[50]

The new EIA notification, 2006 puts in place a system that not just includes clearances at the central level (as earlier) but also in states, by setting up of the State Environment Impact Assessment Authority (SEIAA). All projects being covered under this notification have been divided into Category A and B, supposedly based on their potential environmental impacts.

[50] The Hindu*, Survey of the Environment,*2008

Category A projects are to be developed for an EIA based on a Terms of Reference and presented to the MoEF. Category B projects are to be screened and further sub-divided into B1 and B2, and the requirement of an EIA and public consultation being dispensed for B2 projects. The MoEF termed the categorization as being more scientific and systematic. However there are significant loopholes.

Major Exclusions

The notification excludes all building and construction projects having less than 20,000 square meters built-up area like several shopping malls and commercial complexes coming up in the cities and towns. Such projects now have a separate clearance procedure under the Expert Appraisal Committee (EAC) at the state level. These all have been kept under the classification of B2 projects. Further, what has been extremely alarming is that there is a possibility of a 450MW thermal power plant, with no EIA study done at all.

Public Consultation

Earlier EIA standards maintained the provision of having a public consultation. Though, it is not much in practice, the 1994 notification did carry a notional view that public had a role to play in decision making. Now, the new notification has brought a clause which states that for the finalization of the EIA report 'locally affected people' would be summoned. There has been a seven member committee that recommends on the issue of environment clearance which has always been contentious. The EACs do not include social scientists, ecosystem experts or NGOs. The same is the case with committees that have been formed at the state level.

Monitoring

Monitoring of compliance of Environmental clearance is a critical aspect of any regulatory regime especially after EIA has been cleared. The new notification does not have more than a statement that the project proponent has to submit a report after every six months. A self-regulatory project in today's era of neo-liberal competition is bound to fail.

Rejection of Clearances

Clause 4 of 1994 notification maintained that in case the project proponent is providing false or misleading data, the project is liable to be cancelled. Though in practice, it has hardly been brought to effect, it kept a scope for accountability. The new notification has amended this to state that rejection will not be given without giving a personal hearing to the project proponent. The new notification does not have any mechanism by which the public or citizens would be explained the consequences of the hearing.

Even in the existence of the EIA notification of 1994, project proponents always had an upper hand. The EIA were funded by the project proponents themselves. In addition, the list did not include many developmental/industrial projects which were reputed for their environmental and social impacts.

There is no stated requirement of an assessment of the combined or cumulative impacts of projects related to each other (mining and port) or one coming up in an ecological unit (such as series of dams on a single river basin).

As if the lapses within the 1994 notification were not enough, the 2006 notification has not only failed to address the environmental issues regarding industrial growth but has actually enhanced the reckless and unchecked growth of industrial enterprises as we shall see in the next section. Within 2 years of the amended notification, the MoEF has cleared 1,736 projects. Whereas, from 1986-2006, EIA clearance in all is 4,016 projects. Moreover, the matter gets all the more highlighted and updated by the fact that within two years, 9 states have already formed SEIAAs. This might be a kind of relief after the constant mention of lack of implementation of legislations; nevertheless, it appears to be a dangerous motive. Therefore, taking a stock of the environmental degradation of land so far would reveal a more realistic picture.

Diversion of Forest Land for Development Projects

The quantum and nature of demand on forestland and the consequent diversion of forestland for non-forest use pose issues that are larger than the regular debates of growth, sustainability, rights etc. the increasing demand under development projects are indicative of the inherent biases/weaknesses of the policy making process. The sequence of actions/decisions in this process involves actors that are unequal in terms of interests, endowment and perspective.

The National Commission on Agriculture reported that from 1950 to 1976, approximately 4.3 million hectares forestland was diverted for non-forestry use. Most of this diversion was for the purpose of agriculture that followed by the Government's 'grow more food policy' (GoI, 2006).[51]

Approximately 0.5 million hectares of forestland was diverted for river valley projects consequent to the modernization principle. Large areas were also diverted for industries and townships (0.134 million hectares), infrastructure development (0.061 hectares) and miscellaneous uses (1.008 million hectares).[52]

Till 1976, forests were in the State list and State governments were responsible for management of forest, including decisions related to diversion for development projects and other uses. In 1976, the Central Government issued guidelines to States to consult the government of India prior to diversion of land more than 10 hectares for non-forest use. However, this was not complied with by the states and diversion continued at the same rate.

The maximum diversion of forestland, according to Table- 3.1, has been for the reason of regularization of encroachment in different states. However, considering the fact that the new legislation in the country (STOFDRORA)[53]recognize that the people staying on these lands had rights that were curtailed and hence needed to be bestowed on them.

For regularization purposes total diversion of forestland till June 2008, was 776882.52 hectares. The next highest diversion is under the category of 'Others' (16.18 percent of total diversion). Excluding the extent of forest diverted for defense use, the diversion for mining, hydel and irrigation projects constitute almost equal magnitude and the percentage is quite

[51] Government of India, 2006, National Mineral Policy-Report of High Level Committee, Planning Commission, New Delhi
[52] Forest and wildlife Statistics (India 2004)
[53] The Scheduled Tribes and other Forest Dwellers (Recognition of rights) Act, 2006.

significant (approximately 29% for mining and hydel projects and 14.27% for irrigation projects).

The maximum diversion took place in the last decade, that is, from 2001 to 2008 (June) approximately 55% of the total diversion of forestland occurred from 2001 to 2008. The maximum diversion in 2006 was under category "Other", where the purpose of diversion is unclear. In 1989, maximum forestland was diverted for the purpose of hydel power project. The Narmada Sagar project itself involved diversion of over 90000 hectares, out of which 40332 hectares was forestland. This environmental cost of loss of forest was assessed at Rupees 30923 Crores (NBA vs. Union of India).

The diversion details as shown in the Forest and Wildlife Statistics, 2004, reports the cumulative encroachment till 2004 as 954839.026 hectares (Table-3. 2). On the other hand information from MoEF shows the area diverted as 926997.77 hectares, which accounts for a difference of 27841.256 hectares (Table 2). The state-wise diversion of forest area for developmental projects in the country from 1980-2003 is shown in Table -3.3.

In Chattishgarh, the total forestland diverted from 1980 to 2003 was 17166.501 hectares, of which 67.22 percent was diverted for mining.[54] While the diversion of forest in the abovementioned period may appear as a very small percent of the total forest area, the importance of such diversion lies in (a) the status of forestland diverted and thereby ecological impacts, (b) the nature of livelihood dependence and impact thereby and (c) other impacts/externalities.

In Madhya Pradesh, the total diversion of forestland under the Forest Conservation Act from 1980 to 1996 was 3790.35 sq kms or 379035 hectares, including land diverted for regularization of encroachment (Forest Statistics, 1996).

In Orissa, 295 projects were approved, diverting 331.36 sq kms of forestland[55]. Some sources stated that 27479.65 hectares of forestland was diverted from January 1989 to December 2006, out of which 11242.08 hectares were cleared for 115 mining projects in the State. About 7375 hectares of forestland was diverted for irrigation projects while 2551 hectares of forestland was diverted for industrial projects[56].

According to recent 'forest clearances' offered by MoEF that clearly indicated towards 'neo-liberal agenda' created critical pressure on forestland. In the month of July-August 2008 itself, final forest clearance has been granted to 35 projects including an area of 4544.396 hectares. The corresponding figures are lower for hydel projects in the same period (at 148595 hectares and 10415 hectares respectively), but the earlier approvals and the approvals for the large projects that are indicated, especially in the Northern region and the North-Eastern region (under the Prime Minister's 50000 MW scheme) already indicate high pressure on these geologically fragile and ecologically rich but sensitive areas.

A plethora of policies and institutional mechanisms like, Rehabilitation and Resettlement Policy, the system of Compensatory Afforestation, the concept of Net Present Value and likewise monitors that the impact of the externalities is reduced. Although, there have been improvements and changes, the overall impact of these mechanisms and policies

[54] Web Reference: Source http://cgforest.nic.in
[55] Web Reference : http://orissaforest.org
[56] Forestland falling prey to mining operations, News article published in The Hindi, 22nd April 2007

are less than satisfactory. The status of compensatory afforestation in various States depicts the situation in the forestry sector. From 1980 to 2004, a total of 10807 cases were approved . for diversion of an area of 954839.026 hectares. The stipulated area for compensatory afforestation was 964542.48 hectares. The achievement against this target was only 71224.85 hectares, a dismal 7.38 percent. (Forest and Wildlife Statistics, India, 2004).

Table -3.1: Diversion of forestland (category wise)

Category	Area (in Ha)	% of Total Diversion	% of total diversion (excluding encroachment)
Defense	124966.60	10.91	16.09
Dispensary/Hospital	105.80	0.01	0.01
Disputed Settlement Claims	0.00	0.00	0.00
Drinking Water	1800.82	0.16	0.23
Encroachment	368414.98	32.17	-
Forest Village Conversion	40986.81	3.58	5.28
Hydel	111257.45	9.71	14.32
Irrigation	110835.40	9.68	14.27
Mining	112918.73	9.86	14.53
Others	185331.01	16.18	23.86
Railway	7042.42	0.61	0.91
Rehabilitation	17058.41	1.49	2.20
Road	28038.34	2.45	3.61
School	2539.91	0.22	0.33
Thermal	4491.74	0.39	0.58
Transmission Line	27734.98	2.42	3.57
Village Electrification	172.59	0.02	0.02
Wind Power	1601.51	0.14	0.21
Total	**1145297. 50**	**100**	
Total (excluding encroachment)	**776882.52**	-	

Source: Ministry of Environment and Forest, 2008

Table-3. 2: Diversion of forestland for non-forest use (year-wise data)

Year	Diversion (in Ha) (MoEF,2008)	Diversion (in Ha) (Forest and Wildlife Statistics,2004)
1981	1328.97	1331.7
1982	3499.22	3674.32
1983	5053.19	5100.51
1984	9341.75	9348.9
1985	7358.19	7676.83
1986	9185.1	9310.45
1987	26178.53	25925.97
1988	17539.2	4868.71
1989	66660.28	66768.09
1990	23141.33	127361.79
1991	5002.94	5065.35
1992	8259.6	21756.77
1993	15998.7	16182.51
1994	14916.83	59962.02
1995	22871.08	51428.98

1996	16934.51	32862.55
1997	23038.24	24738.43
1998	15072.37	18425.21
1999	44294.31	45784.41
2000	18923.51	22386.43
2001	62150.06	267897.61
2002	48724.52	51172.31
2003	34675.24	42729.68
2004	61,205.31	33,079.49
2005	36168.39	-
2006	107677.64	-
2007	62149.58	-
2008	9533.93	-
Total	**776882.52**	

Source: Data from MoEF and from Forest & Wildlife Statistics, 2004

Table-3. 3: State-wise Diversion of Forest Area for Developmental Projects in India (1980-2003)

States/UTs	**Approved Cases During 1980-2003**	
	Number of Cases	**Area Diverted (In Hectare)**
Assam	134	6300.871
Arunachal Pradesh	103	44291.167
Andhra Pradesh	301	17062.802
Andaman & Nicobar Islands	65	2432.039
Bihar	143	7135.941
Chandigarh	14	34.479
Chhatisgarh	63	1972.850
Dadra & Nagar Haveli	143	264.583
Danman & Diu	0	0.00
Delhi	3	3.965
Goa	68	1309.534
Gujarat	830	55977.361
Haryana	359	7980.507
Himachal Pradesh	576	9860.271
Jammu & Kashmir	8	1500.085
Jharkhand	31	1444.892
Karnataka	446	36519.132
Kerala	182	40729.082
Manipur	18	986.849
Meghalaya	79	495.179
Madhya Pradesh	886	372658.178
Mizoram	25	28276.933
Maharashtra	1274	79932.454
Nagaland	0	0.00
Punjab	570	10059.523
Orissa	326	29377.785
Sikkim	159	1488.740
Rajasthan	447	16735.836
Tamil Nadu	344	4504.810
Tripura	179	5711.788
West Bengal	69	3377.042
Uttar Pradesh	858	75907.598
Uttaranchal	1655	8459.716
India	**10358**	**872791.991**

Source: Rajya Sabha Unstarred Question No.395, dated 05.12.2003

Findings from the Field

Data for such a study is available only till 1994. In 1994, according to government sources, the total area of land degraded due to industrial and mining waste stood at 2.53 lakh hectares. The highest amount of land degradation was from water erosion which stood at 571.55 lakh hectares. In total, this stands at 574.08 hectares. Both these kind of degradation happens only from two reasons, felling of trees and industrial establishment which does not have any waste management.[57]

Case Studies

Lead and Zinc Ore

EIA of Lead-Zinc mining of Dariba-Bethumni mineralized belt in district Rajasamund was carried out by Geological Survey of India (GSI). It was observed that impact of activities of mining-milling, solid/liquid disposal, transportation, construction of civil amenities and plantation have been assessed using Leopold-matrix analysis (See Box below).

Leopold Matrix Procedure of Evaluating Environmental Impact

It is semi-quantitative graded matrix to assess overall impact of mining and related activities on environment. Matrix method basically incorporates a list of project activities in row and environment parameters in column. Impact assessment is weighted from total score on a scale as below:

TIS	Impact Assessment
Upto (-) 1000	No appreciable impact
(-) 1000 to (-) 2000	Appreciable but not injurious, general mitigation measures are important
(-) 2000 to (-) 3000	Significant impact on environment, Environmental control measures to be taken
(-) 3000 to (-) 4000	Injurious impacts to environment
(-) 4000 to and above	Alternate site for the proposed project to be selected outside the buffer zone

Adverse impact of mining in the form of depletion of ground water table, deterioration in quality, land subsistence, air and noise pollution, accidents, hazards, soil toxicity were noted. Discharge from tailing ponds and waste disposal site contaminate surface and ground water. Soil contamination by fine dust from crusher and mill caused 50-500% increase in “Cu” 70-1100% in “Pb”, 70-1100% in Zn and 55-160% in “Ni” in the soil as to black ground values. Alarming increase in pH, TDS, EC, SO4, CI, F, Na, K, Ca, BOD, COD values were noted. Total environment impact score of 2750 suggested significant impact, requiring environmental management.

[57] Draft report on Status of Land Degradation in India: Dept.of Agriculture &Co-operation,Govt.of India

GSI in year 2002 made EIA studies in Agucha-Zinc and lead mine. It was observed that blasting activity and leakage of pollutant from tailing pond caused damage to soil and ground water near the mine. High contents of Pb in the soil of adjacent agriculture fields were recorded. While in case sand stone quarries at Bijolian (Distt. Bhilwara), change in land use pattern, blocking of channels, depletion of ground water are some of the negative impacts reported.

Copper Ore

EIA study of Khetri copper mine was conducted by GSI in 2002-04. Impact of mining in polluting ground water was noted in the form of high alkalinity (pH 8-12), TDS 3900 ppm, Chlorides 560 ppm and Sulphate contents were found to be 2075 ppm (due to oxidation of sulphide released from mine effluent all along the Sukhnandi passing through Khetri mine are to Gothra and Muradpur). Well water samples were found to have high concentration of TDS chloride, Nitrate, Sulphate; Ground Water in these areas is not suitable for drinking purposes.

Kota Stone

Kota stone, a minor mineral, is a dimensional stone used for flooring. Most of the reserves are found around Ramganj mandi. A study has revealed that waste dump accumulated over 50 years are estimated to be over 100 million ton and stretched over a length of 35 km all around Modak-Ramganj mandi. These wastes are stacked in the fertile land or dumped along the road side or into the river courses, causing extensive land degradation. Aesthetically too these dumps are damaging the otherwise beautiful landscape.

Lignite

Central Arid Zone Research Institute, Jodhpur has carried out a study on open cast mining of lignite in Barmer. It was found that refilled mining pits (spoils) remained barren and the material near the surface spreads to adjoining fields through wind and water erosion thereby deteriorating soil productivity. Spoils had pH above 8.7 and high Na+ contents (1.59 mg/g soil) but low in available nitrogen and phosphorus and showed low dehydrogenate and phosphatasis activity but no nitrification. The technique of surface modification was attempted to restore the productivity of land and after three years of stabilization, modified spoil site had shown improvement in quality of soil.

Flooring-Wall Cladding Tile

Large scale land degradation can be observed in sand quarry areas producing slabs and flooring tiles in Karoli, Dholpur, Bijolian, Fedusar (Jodhpur) and Bansi Paharpur (Bharatpur). The formation is in alternate beds of splitable and non-splitable beds. Non-splitable beds are 1-3 meters thickness which are blasted and removed as waste. This results in huge quantity of waste scattered around working pits. This is impairing the utility of land and obstructing the drainage system. Cases of silicosis and bronchitis are often reported from sites of slate, sand stone and asbestos mines.

This could be called the tip of an iceberg. As there has been scant regard for these issues at the policy level, an integrated study of environmental degradation land and health hazards of the working population has not been done to get aggregates in a census manner. {For detail case studies refer to case studies in Appendix 3- (3.}

Recommendations

- Environmental Impact Assessment provisions as of now are typically very lax and do not serve the desired purpose of accountability. Therefore, assessment independent of the influence of the concerned enterprises should be conducted on a regular basis. [58] It is strongly recommended that GSI, which is the concerned department is immediately sanctioned an assignment of carrying out an EIA of all the projects approved so far by the Ministry of Environment & Forests so that an objective assessment of the prospective environmental hazards are understood.
- Indiscriminate, large-scale, ecologically damaging, socially harmful transfers of Agricultural land to non-agricultural use should be checked.
- All medium to large-scale transfer of land from agricultural to non-agricultural use should be subject to an environmental protection clause, and its strict implementation. There should be ban on conversion of agricultural land for non agricultural purposes.
- There should be a regulatory authority at district level for monitoring the land, forest and water issues emerged after set up of mining, industry and/or any development projects.
- There should be fast track courts for settling of the grievances registered during EIA public hearing.

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[58] Report of the Sub Committee on Land, Planning Commission (2006),Report of the Expert Group on Prevention of Alienation of Tribal Land and its Restoration , Ministry of Rural Development (2006),Report of the PESA Enquiry Committee, Ministry of Panchayati Raj(2006),Report of the Governor's Committee, GOI (2005)

Chapter – Four

Alienation of Tribal and Dalits Lands
(Report of the Sub Group - IV)

Methodology

The members of Sub Group - IV visited the states of Andhra Pradesh, Chattishgarh, Jharkhand, Maharashtra and Rajasthan, held discussions with senior administrative officers, revenue officials, public representatives, conducted group discussions of tribal leaders, social workers and representatives of NGOs. Studies were conducted by NIRD and others to collect primary data from the tribal areas, secondary data was obtained from the Ministries and other agencies and this report is formulated on the analysis of the data available.

Land and Social Hierarchy - Dalits and Adivasis in India

Land is not merely an important economic asset, its ownership is also socially valued, sought and denied. In rural societies, ownership of land was and to a large extent is still co-terminus with social status. Hence, its unequal distribution reflects both prevailing social stratification and also helps maintain the hierarchical structure of the society. In contrast, fair distribution of land strikes directly at the roots of an unequal social order and skewed power relations, and frees the marginalized from the clutches of perpetual bondage, for want of a sustainable livelihood. The landless, whose only remaining asset is their labour, are effectively separated from the other means of production, namely land and remain dependent on large land holders for their survival. Powerful landlords have always opposed land reforms, fearing not only loss of control of assets, but also their dominant position in society, which straddles the economic and the political realms. The denial of access to land, thereby, functions both as a means of exclusion as also a mechanism of bondage. Table - 4.1 shows the operational holdings of SCs and STs in some states.

Table- 4.1 :Operational Holdings Among SCs & STs

Operational Holdings of SCs & STs								
	Dalits				Adivasis			
	Number %		Area %		Number %		Area %	
	1981	1991	1981	1991	1981	1991	1981	1991
Andhra Pradesh	12.26	12.7	6.87	7.5	6.42	6.9	6.29	7.2
Bihar	8.16	11.6	4.51	5.2	7.54	7.8	16.25	16.1
Gujarat	4.06	4.1	3.08	3.2	10.92	11	8.05	9.1
Karnataka	8.49	11	5.99	8.1	3.71	4.9	3.47	5
Kerala	8.54	9.6	2.44	2.8	0.98	1.2	1.5	1.9
Madhya Pradesh	12.85	12.6	7.93	8.1	25.11	24.7	24.84	25.2
Maharashtra	6.81	8	4.48	6	6.02	6.7	6.08	7.3
Orissa	12.17	13.7	7.86	8.6	27.58	26.6	29.9	28.7
Punjab	5	4.8	2.54	2.4	0	0	0	0
Rajasthan	14.26	14.7	11.31	11.7	15.36	15.4	8.35	8.4
Tamil Nadu	7.84	11.3	4.92	7.1	0.67	0.8	1.01	1.2
Uttar Pradesh	14.77	16.4	9.24	10.5	0.16	0.2	0.28	0.3
West Bengal	23.58	23.2	19.37	19.7	7.08	7.3	6.59	7
All India	11.31	12.5	7.03	7.1	7.71	8.1	10.2	10.8

Based on NSS 1992

The pattern of land distribution in India, therefore, reflects the existing socio-economic hierarchy. While large landowners invariably belong to the upper castes, the cultivators belong to the middle castes, and the agricultural workers are largely dalits and tribals. According to the 1991 census, 64 percent of dalits and 36 percent of tribal people were agricultural labourers who own no land and work as unregistered sharecroppers, un-recognized temporary or informal tenants or agricultural labourers for subsistence without any security. The National Sample Survey of 1992 reported that 13.34 percent of the dalits and 11.50 percent of the tribals were absolutely landless. While, in 1997, the Ninth Draft Plan Paper, placed 77 percent of the dalits and 90 percent of the tribals as either de jure landless or de facto landless in India. No uniform data on these categories is available in the country and the discrepancies in the data on landlessness from different government sources raise obvious questions of reliability. But at the same time, the data of absolute landless families proves that the feudal society is firmly anchored in large parts of India, notwithstanding claims to the contrary.

Tribal India – Land and People

The tribal people, referred to in the law and constitution, considered the descendents of the original inhabitants, are largely located in the hilly tracts of Central and North Eastern India, Andaman and Nicobar Islands. Small populations are scattered in the hilly tracts of the southern states and Himachal Pradesh. While curbs on in-migration have ensured higher community concentrations in the north-eastern state, large scale in-migration have reduced the tribal people to a minority in most of the states in the central Indian tribal tract. As will be observed later, tribal land alienation is integrally related to in-migration of non tribal people, with Dadra & Nagar Haveli as a very notable example. The table- 4.2 below gives an idea of the distribution of tribal communities across the nation.

Table – 4.2 : Distribution of Tribal Population

1	60-95 %	Arunachal Pradesh, Dadra & Nagar Haveli, Lakshadweep, Meghalaya, Mizoram, Nagaland.
2	20-35 %	Chhattisgarh, Jharkhand, Madhya Paradesh, Manipur, Orissa, Sikkim, Tripura.
3	10-15 %	Andaman and Nicobar, Assam, Daman & Diu, Gujarat, Jammu & Kashmir, Rajasthan.
4	5-10 %	Andhra Pradesh, Karnataka, Maharastra, West Bengal,.
5	Less than 5 %	Bihar, Goa, Himachal Pradesh, Kerala, Tamil Nadu, Uttarakhand, Uttar Pradesh.

Source- Based on Data from 2001 Census

As mentioned above, the concentration of tribal communities is in the hilly tracts of the central Indian states. Chattishgarh, which was carved out of the state of Madhya Pradesh about a decade ago, has the highest proportion of tribal people, followed by Jharkhand. Both these states were seen as tribal majority states at the formation, a fact that is far from the reality. In none of the states are the tribal people a significant proportion of the population, spread over the fertile plains and the hilly tracts, a situation that prevailed at the time of independence. However today, a significant proportion of the tribal people have been pushed out of the lower plains and are concentrated in pockets, generally in the hilly tracts with poor soils and low productivity. Table -4.3 below provides tribal population in central Indian states.

Table – 4.3 : STs Population in Central Indian States

No	State	Total Population	ST Population	%
1	Lakshadweep	61	57	94.5
2	Dadra & Nagar Haveli	220	137	62.2
3	Chattishgarh	20,834	6,617	31.8
4	Jharkhand	26,949	7,087	26.3
5	Orissa	36,805	8,145	22.1
6	Madhya Pradesh	60,348	12,233	20.3
7	Gujarat	50,671	7,481	14.8
8	Rajasthan	56,507	7,098	12.6
9	Maharashtra	96,879	8,577	8.9
10	Andaman and Nicobar	356	29	8.27
11	Daman and Diu	158	14	8.8
12	Andhra Pradesh	76,210	5,024	6.6
13	Karnataka	52,851	3,464	6.6
14	West Bengal	80,176	4,407	5.5
15	Uttarakhand	8489	256	3.0
16	Himachal Pradesh	6,078	244	4.02
17	Tamil Nadu	62,406	651	1.04
18	Bihar	82,999	758	0.9
19	Goa	1348	566	0.03
20	Uttar Pradesh	1,66,198	108	0.01

Source- Based on Data from 2001 Census (Figures in Thousands)

Three hidden features of the table are worth looking at this stage. The first is the Fifth Schedule dispensation in the 9 states, which have a significant presence of tribal people. This dispensation placed a special responsibility on the executive to protect the tribal realm, but to little avail. This dispensation conferred enormous powers on the head of the executive, but these have not been used efficaciously even once in the past six decades. The second is the presence of minerals in the all the states under the fifth schedule dispensation. Earlier the temples of modern India reduced millions of tribal people to ecological refugees, now the minerals seen as the building blocks of modern India put the tribal people at risk of losing their land through acquisition and further disruption of their societies and economies. A third feature is the presence of left wing extremist organizations and parties in the tribal pockets. Left without an alternative, either in the government or non government organizations, and left to a harsh fate of unmitigated exploitation, the tribal people initially gave the Naxalites succor and now have become their base. Most tribal areas in Central India are the abode to the naxalites, whose presence is a response both to past and future land alienation, the failure of the government to live up to its constitutional mandate and the withdrawal of the state from its responsibility to protect the tribal realm.

Laws Concerning Tribal Lands

Laws concerning alienation of tribal lands began as a response of the colonial administration as a response to tribal uprisings. The first law its kind began with the Santhal Parghanas Tenancy Act in 1854, followed by the Agency Tracts Interest and Land Transfer Act in 1917, followed by the Chhota Nagpur Tenancy Act in 1924. All these acts were the precursors of modern day tenancy legislations. Land emerged as a vital issue of the peasants in the freedom movement and the Congress Party recognizing the significance of emancipation of the peasant from the clutches of the intermediaries, resolved to pass laws to that effect. Several land laws were passed during Home Rule by the local governments. Post independence the promulgations of the Abolition of Zamindari Act in 1950 followed by the

passage of Tenancy legislation in 1957. Ironically the passage of Tenancy legislation resulted in a large number of tribal cultivators losing their lands to land lords using loopholes in the law and a pliant revenue administration. Ironically, the emergence of the Naxalite movement in West Bengal in late 1960s, forced state governments to re-examine the issue of tribal land alienation and realized that land loss was widespread in tribal areas. The response was a number of protective legislations across the country. The table - 4.4 lists out protective and restorative legislations of the numerous states. The large numbers of legislations however is no guarantee or indication of efficaciousness of the legislation.

Table – 4.4 : Legislations for Protection of Tribal Land

S No	State	Legislation in force	Main features
1	Andhra Pradesh	(a) The Andhra Pradesh (Scheduled Areas) Land Transfer Regulation, 1959, amended by The Andhra Pradesh (Scheduled Areas) Land Transfer (Amendment) regulation, 1970, 1971, and 1978.	Prohibits all transfer of land to non-tribals in Scheduled Areas. Authorizes government to acquire land in case a tribal purchaser is not available. There is, however, no legal protection to ST land outside the scheduled areas.
	Assam	The Assam Land and Revenue Regulations 1886, amended in 1981.	Chapter X of regulation prohibits alienation of land in tribal belts and blocks.
2	Arunachal Pradesh	Bengal Eastern Frontier Regulation, 1873, as amended.	Prohibit transfer of tribal land
3	Andaman & Nicobar Islands	Andaman and Nicobar islands (protection of aboriginals' tribes) regulation, 1956.	Protects tribal interest in lands.
4	Bihar Jharkhand	(a) Chhota Nagpur Tenancy act, 1908. (b) Santhal Pargana Tenancy Act, (supplementary provision) 1940. (c) Bihar Scheduled Areas Regulation, 1969.	Prohibits alienation of tribal land and provide for restoration of alienated land.
5	Chattishgarh	(a) Sec 165 & 170 of Madhya Pradesh Land Revenue Code, 1959. (b) Madhya Pradesh Land Distribution Regulation Act, 1964.	Sections 165 and 170B of the code protect STs against land alienation. The 1964 Act is in force in the scheduled areas.
6	Dadra & Nagar Haveli	Dadra & Nagar Haveli Land Reform Regulation, 1971.	Protects tribal interest in lands
7	Gujarat	Bombay Land revenue (Gujarat Second Amendment) Act, 1980.	Prohibits transfer of tribal land and provides for restoration of alienated land.
8	Himachal Pradesh	The Himachal Pradesh Transfer of Land (Regulation) Act, 1968.	Act prohibits transfer of land from tribals to non-tribals.
9	Karnataka	The Karnataka Scheduled Caste and Scheduled Tribes(Prohibition of Transfer of Certain Lands)Act, 1975.	Act prohibits transfer of land assigned to SCs and STs by government. No provision to safeguard SC/ST interest in other lands.
10	Kerala	The Kerala Scheduled Tribes (Regulation of Transfer of Land and Restoration of Alienated land) Act, 1975.	Ac of 1975 made applicable with effect from 1st June, 1982 by notification of January, 1986 prohibits transfer of land of tribals and provides for its restoration.
11	Lakshadweep	Lakshadweep(Protection of Scheduled Tribes) Regulation, 1964	Prohibits transfer of tribal land.
12	Madhya Pradesh	(a) Sec 165 & 170 of Madhya Pradesh Land Revenue Code, 1959. (b) Madhya Pradesh Land Distribution Regulation Act, 1964.	Sections 165 and 170B of the code protect STs against land alienation. In the scheduled area of Madhya Pradesh and Chattishgarh, the 1964 act is in force.
13	Maharashtra	(a) The Maharashtra Land Revenue Code, 1966, as amended in 1974. (b) The Maharashtra (Restoration of Lands to Scheduled Tribes) Act, 1974.	Prohibits alienation of tribal land and provides for restoration of both illegally and legally transferred lands of a ST.

14	Manipur	The Manipur Land Revenue and Land Reforms Act, 1960.	Section 153 forbids transfer of land of STs to non-STs without permission of DC. Act not been extended to hill areas and hill area tribals not covered.
15	Meghalaya	Meghalaya Transfer of Land (Regulation) Act, 1971.	Prohibits alienation of tribal land
16	Nagaland	Bengal Eastern Frontier Regulation, 1873 and Assam Land and Revenue Regulation, 1866, as amended vide Nagaland Land and Revenue Regulation (Amendment) Act 1978.	Prohibition of land transfer of tribal's.
17	Orissa	The Orissa Scheduled Areas Transfer of Immovable Property(STs) Regulation, 1956. The Orissa Land Reforms Act, 1960,	Prohibits transfer of ST land and provides for its restoration.
18	Rajasthan	The Rajasthan Tenancy Act, 1955, The Rajasthan Land Revenue Act, 1956.	Section 175 and 183B specifically protects tribal interest in land and provides for restoration of alienated land to them.
19	Sikkim	Revenue Order no. 1 of 1917 The Sikkim Agricultural Land Ceiling and Reform Act, 1977	Order of 1917 still in force. Chapter 7 of 1977 restricts on alienation of lands by STs but is not in force.
20	Tamil Nadu	Standing Orders of the Revenue Board BSO 15-40. Law against land alienation not enacted.	BSO 15-40 applies only to Malayali and Soliga tribes. Prohibits transfer of assigned land without approval of DC.
21	Tripura	Tripura Land Revenue and Land Reform Act, 1960, as amended in 1974.	Act prohibits transfer of ST land to others without permission of DC. the collector. Only lands transfer after 1.1.1969 are covered under restoration provision.
22	Uttar Pradesh/ Uttarakhand	U.P. Land Laws (Amendment) Act, 1981, amending Uttar Pradesh Zamindari Abolition and Land Reforms act, 1950.	Provide protection of tribal land. But amending act is not applied and stayed by Allahabad High Court in Swaran Singh Vs State Govt 1981.
23	West Bengal	West Bengal Land Reforms Act, 1955, as amended	Chapter II-A prohibits alienation of tribal land and provides for restoration.

The list of legislations is long and impressive, however, not only have the prohibitory legislations failed to stem the tide of tribal land alienation, these laws have also failed to restore the lands of over half of tribal claimants for restoration. Take the case of Kerala, a recognized progressive state. The law of restoration was passed in 1975, made applicable in 1986, but ironically less than two decades after the law was passed, the legislature passed a law rescinding or withdrawing the law passed in 1975 on the grounds that the law cannot be implemented as eviction of the illegal encroachers on tribal land would result in law and order problems. The state of Kerala has ironically been open in its recognition of failure and acceptance of abrogation of duty. The President of India, however, rejected the law pertaining to withdrawal of the application of the Tribal Land Restoration Act of 1975. So the state of Kerala continued in the situation of a legal impasse till the High Court of the state directed it to implement the Act, which continues to drag its feet. For the Kerala government, as is the case with all the states where the Act has been passed, the dilemma is the same – either risk political loyalties or do justice to marginalized communities. A state seeking to implement restoration laws will have to risk losing vital grassroots leadership and cadre of the party, the only link who can mobilize the 'masses' to vote for the party, a Hobson's choice which no state government is ready to admit. Table – 4.5 below provides data on the tribal land alienation in states with V schedule areas.

Table – 4.5 : Adivasi Land Alienation and Restoration in India

States	*Claims Filed*		*% Rejected*		*% Pro Tribal*		*% Pending*	
	Claims	Area	Claims	Area	Claims	Area	Claims	Area
Andhra Pradesh	65,875	287,776	48.18	52.20	40.19	36.91	11.63	10.88
Assam	2065	4338	61.76	24.15	00.6	00.4	14.54	74.47
Chattishgarh	47993	NA	50.94	NA	48.17	15583.88	00.90	NA
Gujarat	47,926	140,324	00.25	00.35	84.05	85.65	15.70	13.99
H.P.	3	5	0	0	0	0	0	0
Madhya Pradesh	53,806	158,398	55.05	61.32	10.00	10.00	44.95	38.68
Maharashtra	45,634	NA	54.08	NA	43.70	NA	2.21	NA
Orissa	1,431	1,732	10.62	11.92	30.89	35.75	58.49	52.34
Rajasthan	651	2,300	8.14	8.13	28.73	25.72	63.13	66.35

Source: MoRD – GoI & States

Looking closely at restoration claims, the table above is revealing. Looking at the information for the states with Fifth Schedule districts, with the exception of the state of Gujarat where one observes a very high percentage decisions in favour of the tribal claimants, the picture in the other states of the number of rejected claims is disturbing. The percentage of rejected claims is very high in the states of Assam, Andhra Pradesh, Chattishgarh, Madhya Pradesh and Maharashtra, crossing the half way mark in four of the five states, notwithstanding the 'legal presumption' being in favour of the tribal person. It appears that the burden of proof was placed on the tribal claimant to his/her disadvantage, when the spirit of the law was the opposite. Even in these states, handing over of actual possession remains a question mark. The case of Madhya Pradesh is alarming. The number of rejected and pending claims accounts for 90 percent of the total claims, while it is 76 percent in the state of Assam, 69 percent in Orissa, 56 percent in Maharashtra, and 52 percent in Chattishgarh. The single conclusion that can be reached is that restoration of tribal land is a failed project, the failure can be squarely reduced to the lack of political will of the legislature and the political executive, coupled with an equally pliant revenue bureaucracy. It appears that the dice is cast by the state governments and at present it is cast in favour of the non tribal.

A second important issue that needs to be understood at this point is operation of the principle of estoppels, which could apply to a large number of the rejected claims. Studies of restoration in Thane district of Maharashtra indicate that a large number of claims for restoration were cases filed on behalf of tenants who were eligible for the right of ownership under the tenancy act, but whose names were deleted illegally. As a large number of proceedings were filed suo moto by the revenue officials after examination of the records and no notice was served on the claimant, these cases were disposed off. The present legal system will exclude all such claims in the future on grounds of estoppels. Similar legal reasoning can be extended to other states as well. A third issue is that of un-recorded tenants or those whose tenancies were illegally terminated or surrendered. The absence of records and shifting the burden to the tribal claimant have also excluded large numbers of tribal claimants from their right to the land.

Forms of Tribal Land Alienation

The data gathered from the village studies and from the records of the various governments all point out to the inescapable conclusion that alienation of tribal land continues unabated and alienation of land has actually accelerated in areas where irrigation and modernization of agriculture are making rapid strides and roadways, industrialization and

urbanization is enveloping larger areas in the towns and cities. Four apparent forms of tribal land alienation are listed below

State *sponsored* tribal land alienation through :

a. *Acquisition* for highways, mining, industries, cities, special economic zones in the absence of a strong 'land for land' rehabilitation provision and stringent implementation will only add to the numbers of tribals alienated from their lands.

b. *Co-lateral land alienation* due to pollution, erosion and land damage in the zone of influence. Studies on the impact of mining projects have shown that collateral loss of land due to effluents has rendered communities landless in the downstream areas. An extreme case is Jadugoda in Jharkhand where the radio-active tailings from the uranium mine flow down the streams from the tailing ponds rendering not only land dangerously uncultivable but also expose the tribal people to hazards. (CSE Citizens Report 2008 – Rich Lands Poor People)

Recommendations

a. The letter and spirit of the 'Samata Judgement' be enforced in all acquisition of tribal land for private companies.

b. Consultation of the Gram Sabha should be held as 'Prior Informed Consent' as provided in the ST&OTFD (Recognition of Forest Rights) Act 2006 and strictly enforced.

c. The Gram Sabha should also be involved in the Joint Survey and its assent to the correctness of the Joint Survey should be made mandatory.

d. Land for Land be made a fundamental requirement for acquisition of tribal lands. The land rendered fit for cultivation be handed over to the proposed oustee prior to acquisition together with costs of cultivation for 3 years. In addition to Solatium, compensation must include opportunity cost, loss of access to forest, minor forest produce and other well-being costs which the oustee will bear in the place of relocation.

e. ***The zone of influence of the project should be considered the acquired area and all affected persons be considered 'displaced'. The acquiring agency must review the assessment of the 'zone of influence' every ten years during the lifetime of the project.***

2. State *connived* land alienation

This takes place with the knowledge and direct or indirect participation of revenue functionaries and officials at various levels. Revenue courts have passed orders based on unverified evidence and doubtful interpretations of law. Instances of such connivance of the revenue officials with the landlords resulted in widespread land alienation, particularly during implementation of tenancy laws. In Maharashtra, for example, the number of tribal landless increased with the implementation of the tenancy act following evictions based on wrong facts and doubtful interpretations. In some of the cases, alienation of land is pursuant to orders of civil courts which adjudicate revenue matters pertaining to tribal land based on the manipulated records issued by revenue functionaries.

a. *Defective surveys and settlements and no- recording of possession* have been serious issues right from the time of the British in the 1850s. The last extensive survey and settlement in India was conducted two to three decades prior to independence. Post-

independence, some states have not undertaken revisional survey and settlement so far. Even in states where revisional survey and settlement process has taken place, the colonial principle of *res nullius* was adopted by the authorities. As a result, large tracts of community held land were recorded as 'government land' in the Survey and Settlement Process in Orissa in the 1970s, resulting in a situation of alienation of tribal land on a massive scale.

b. *Irregular or inaccurate enjoyment surveys*. Post independence 'enjoyment' surveys have been few and far between. In the absence of enjoyment surveys, unrecorded tenants have lost the lands which they have tilled, sometimes over two generations, for want of documentary record. The non-involvement of the gram sabha in verification of actual possession and enjoyment of the land has resulted in the lack of transparency and manipulation of records. 4(d) of PESA recognizes the competence of Gram Sabha to safeguard and preserve its community resources while 4(m) ensures that the Gram Sabha is endowed with the powers to prevent alienation of land and restore alienated land.

c. *Permissions granted for purchase of tribal land* by competent authorities and conversion of agricultural land into non-agricultural land to evade the restrictions of the prohibitory laws and impropriate or illegal orders in land transfer matters. This is a rampant practice as new roads and highways open up the tribal hinterland. Most state laws require prior permission of the DC for transfer, which is generally obtained by obliging DCs without consideration of the impact of such sale or consultation and consent of the local villagers. Another way is to bypass the DCs, who refuse to oblige, by converting the agricultural land into non-agricultural land with the help of local revenue functionaries, which makes the sale less cumbersome. A third way is the use of 99 year leases, which effectively are leases in perpetuity. Hereto the officials turn a blind eye. The fourth way is to retain the tribal as a sleeping partner with no rights to profit sharing. This appears to be the method being followed alongside roadways. In the absence of control of the Gram Sabha, these practices continue, as there is no restraint on the revenue officials.

d. *Inefficacious implementation of restoration legislation* by the revenue authorities has been the bane of implementation of protective and welfare laws relating to land and land based resources. No efficacious mechanism has been evolved by the state governments to handle the failure of the revenue bureaucracy to uphold the constitution and the rule of law. The only credible legal avenue available to the tribal people is their community. PESA therefore provided a specific provision calling upon the state legislatures to empower the Gram Sabha. The introduction of Sec 170(b) in the Madhya Pradesh Land Revenue Code as mandated by PESA was an important departure from bureaucratic thinking. But the amendment was a non-starter in the absence of rules, regulations and notification. None of the other states have even contemplated an amendment to that effect.

Recommendations

a. ***The Gram Sabha should be recognized as the Competent Authority' for all matters pertaining to transfer of tribal land whether by sale or by lease, restoration of alienated tribal lands, maintaining the land records. The Land Revenue Codes and other relevant laws should be suitably amended.***

b. The Gram Sabha should be empowered to function as a Competent Authority with the necessary capacities and skills and magisterial powers pertaining to land and land matters.

c. A committee of educated youth elected by the Gram Sabha be trained in necessary functions of measurement, marking of boundaries by GPS technology, verification of entries and maintenance of records.

d. Entries to the RoR will be made by the Patwari or the Village Officer only on a specific resolution of the Gram Sabha. Records will be retained at the Office of the Gram Panchayat and made available on specified days.

e. The informed consent of the Gram Sabha should be a prerequisite before permission to acquire, purchase, lease or transfer are granted.

3. State acquiesced land alienation

Land alienated by non tribals through numerous routes with the active connivance of the local revenue functionaries and the passive connivance of the higher revenue authorities. Some of these are:

a. *Informal, Unrecorded or Disguised Tenancies* are widespread in all the areas given the rights and entitlements that can accrue to a recorded tenant. The erstwhile land owners, who have moved higher up in the economic ladder, still cling to the land as 'social prestige' and resist any form of recording of tenancies while revenue functionaries look the other way. Wasting away of the land is the unfortunate result in the absence of real ownership, whether farmer or the tenant.

b. *Benami purchases* in the name of tribal spouses of non-tribals, 'adopted' tribals, 'adopted' non tribals have increased with unabated speed, generally with the connivance of the local revenue functionaries and mid level officials. Given land illiteracy in the tribal areas, non tribals take this creeping acquisition path and large tracts of land are amassed by non tribals.

c. *Gift by tribals* to non-tribal individuals and institutions is a new practice once again with the tacit agreement of the revenue functionaries.

d. Long Term Leases, Power of Attorneys, Usufructory Agreements

e. *Manipulation of records and boundaries and loopholes in land laws,* a significant example of which is the abuse of the exemption clauses in the provision on land alienation at 170(a) of the Madhya Pradesh Land Revenue Code which was also adopted by Chattishgarh. As a result alienated tribal lands got regularized by the notional 'efflux of time' and 'uncontested possession'. In the case of the 170(a) of the MP LRC failure to declare lands owned and the manner in which ownership was obtained within the stipulated period was visited with a reward rather than punishment. Land owners who had come into possession of tribal land failed to declare and were rewarded for their non-compliance.

Recommendations

a. The principle of 'adverse possession' and 'estoppel' should be waived from all land transfers from tribal to non-tribal in the past two decades.

b. The Gram Sabha be legally, technically and magisterially empowered to restore tribal lands and direct the revenue authorities to enforce the decision.

c. Any officer failing to implement the order of the Gram Sabha within reasonable time shall be guilty of a non-bailable offence in the nature of an atrocity.

4. State Negation of Tribal Rights to Land and Land based Resources

a. Unlawful declaration of 'deemed reserved forests' without fulfilling the requirements of forest survey and settlement is a reality in a very large proportion of the forests in the country. In Madhya Pradesh and Chattishgarh, 82 percent of the total forest area falls in the category of deemed forests where neither rights have not been recorded nor entitlements recognized. The ancestral homelands of an overwhelming majority of the tribal people in the states of AP, MP, Chattishgarh, Gujarat, Orissa and Rajasthan have been transferred to these 'deemed reserve forests'. Over 20 thousand kilometers of the forest tracts in Andhra Pradesh are disputed. The livelihoods of hundreds of thousands of tribal people are caught in the dispute. Similar is the case of over a million land holders in MP and Maharashtra who are trapped in the Orange Areas dispute. The orders of the Supreme Court in the Godhavarman case only make the lives and livelihoods of tribal communities in all these states tenuous. To add to the complexity, national parks and sanctuaries have been declared in deemed Reserve Forests. The implied directions of the Supreme Court to Ministry of Environment and Forest and the efforts of the environmentalists to ensure that all the national parks and sanctuaries are 'inviolate' which means bereft of any human presence will make a mockery of the rule of law when it comes to the rights of the tribal people.

b. *Improper or Incomplete Survey and Settlement* procedures has been examined earlier, but it will suffice to say that these two processes have been used to allow either the state or non-tribals to become legitimate holders of tribal lands. The settlement proceedings in Santhal Parganas and in Orissa prove this point.

c. *Continuation of 'loopholes' in legislations* by revenue and civil courts to negate claims of tribal people, drag them into litigation which they can neither afford or understand and effectively deny them their land entitlements. The use of 'collusive suits' in Jharkhand, particularly in the industrial areas, as a cover-up for illegal transfers of tribal lands is a tip of the iceberg and can be observed in virtually every part of the country.

d. *Non rectification of colonial legacies* particularly the use of the colonial rule of 'res nullius' is rampant in the settlement process in Orissa and the acquisition of common property resources of tribal communities across the nation particularly in the mining tracts of Jharkhand, Orissa and Chattishgarh. It is being surreptitiously used to appropriate the communal lands in Nagaland, where jhum fallows are being illegally converted into 'state unclassified forests'.

Recommendations

a. A participatory survey and settlement process under the purview of the Gram Sabha to recognize and record tribal rights to land and land based resources.

b. Amendment of all laws at variance with the provisions of PESA undertaken in a fixed time frame with the necessary rules, regulations and procedures to make them implementable.

c. Empowerment of the community to exercise the rights and responsibilities conferred on them by PESA

Conclusion - The Biggest Grab of Tribal Lands after Columbus

A civil war like situation has gripped the southern districts of Bastar, Dantewara and Bijapur in Chattishgarh. The contestants are the armed squads of tribal men and women of the erstwhile Peoples War Group now known as the Communist Party of India (Maoist) on the one side and the armed tribal fighters of the Salva Judum created and encouraged by the

government and supported with the firepower and organization of the central police forces. This open declared war will go down as the biggest land grab ever, if it plays out as per the script. The drama being scripted by Tata Steel and Essar Steel who wanted 7 villages or thereabouts, each to mine the richest lode of iron ore available in India.

There was initial resistance to land acquisition and displacement from the tribals. The state withdrew its plans under fierce resistance. An argument put forward was 'you don't play foul with the Murias', it's a matter of life and death and Murias don't fear death. A new approach was necessary if the rich lodes of iron ore are to be mined.

The new approach came about with the Salva Judum, euphemistically meaning peace hunt. Ironically the Salva Judum was led by Mahendra Karma, elected on a Congress ticket and the Leader of the Opposition and supported whole heartedly by the BJP led government. The Salva Judum was headed and peopled by the Murias, some of them erstwhile cadre and local leaders of the Communist Party of India (Maoist). Behind them are the traders, contractors and miners waiting for a successful result of their strategy. The first financiers of the Salva Judum were Tata and the Essar in the quest for 'peace". The first onslaught of the Salva Judum was on Muria villagers who still owed allegiance to the Communist Party of India (Maoist). It turned out to be an open war between brothers. 640 villages as per official statistics were laid bare, burnt to the ground and emptied with the force of the gun and the blessings of the state. 350,000 tribals, half the total population of Dantewada district are displaced, their womenfolk raped, their daughters killed, and their youth maimed. Those who could not escape into the jungle were herded together into refugee camps run and managed by the Salva Judum. Others continue to hide in the forest or have migrated to the nearby tribal tracts in Maharashtra, Andhra Pradesh and Orissa.

640 villages are empty. Villages sitting on tons of iron ore are effectively de-peopled and available for the highest bidder. The latest information that is being circulated is that both Essar Steel and Tata Steel are willing to take over the empty landscape and manage the mines.

Chapter – Five

Modernisation of Land Management

(Report of the Sub Group – V)

5.1 Introduction

5.1.1 The 'Committee on State Agrarian Relations and the Unifinished Task in Land Reforms' organized its tasks into the form of 7 different sub-groups of which Sub-Group No.V was devoted to the Task of Modernisation of Land Management. This Group included Shri SM Jamdar, Ms Vilasini Ramchandran and Shri PK Agrawal, Principal Secretaries of the Governments of Karanataka, Gujarat and West Bengal respectively. All these officers were transferred out it was decided in the meeting of the Committee on 14th May, 2008 to further induct the Principal Secretaries, Revenue Departments of the Governments of Gujarat, Karnataka, UP and West Bengal as members of the Sub-Group.

5.1.2 Shri BK Sinha was nominated the Convener of the Sub-Group vide the decision of the Committee in its meeting dated 14th May, 2008. The National Institute of Rural Development had formulated a Schedule for study which included questions relating to the subject of Modernization of Land Management and the status of land records.

5.1.3 The Sub-Group has also gone through some of the existing secondary literature and the published reports to assess the Land Management practices in different States as well as the initiatives taken in respect to modernization efforts particularly the computerization of land records, digitization of maps and the structure of land administration including the literature of the Department of Land Resources, Ministry of Rural Development including the Annual Reports of the Ministry, the EFC Memo for National Land Records Modernisation Programme (NLRMP) and the guidelines of the same. A list of the secondary literature used for making this assessment is placed at **Annex- 5.1.**

5.1.4 The Sub-Group has further used this opportunity to make an assessment of some of the thrust areas in the modernization of Land Management i.e. the Bhu Bharati Programme of the Government of Andhra Pradesh and the Bhumi Programme of the Government of Karnataka. The Bhu Bharati Programme has been assessed by an internal team of the National Institute of Rural Development (NIRD) and is to be seen at **Annex-5.2.** The Bhumi Programme had been assessed by NIRD as a part of the Project on computerization of land records in India a gist of the same has been placed at **Annex -5.3.**

5.1.5 The Sub-Group has further used the Report of the Bihar Land Reforms Commission (2006-2008) headed by Shri D. Bandyopadhyay and The Land Committee Report constituted by the Government of Andhra Pradesh headed by Shri Koneru Ranga Rao, the Hon'ble Minister for Municipal Administration and Urban Development, Andhra Pradesh. These reports are of recent origin and they have a used rigorous methodologies in arriving at their conclusion thereby enhancing their value.

5.1.6 **The overall framework of the report is that of agrarian relations. Land Reforms would not be of much meaning unless the land relations are viewed in the larger context of production relations.** The Sub-Group has also drawn from findings and observations of

the field visits made by other Sub-Groups. The instant Report examines issues like the current status of Land Records, the drawbacks in land administration, the emerging forces in the land market, the structural weaknesses in land administration, the emergence of competing institutions and the recommendations. These recommendations are, it is cautioned, to be viewed in consonance with and not in contradiction of the findings and recommendations of the other Sub-Groups.

Section – I

5.2 Importance of Land Management

5.2.1 The Sub-Group recognizes that land has made its reappearance as a matter of national discourse after a significant gap. The first part of the 50s witnessed ideological continuation of the momentum of the independence movement and the State undertook major changes in Land Management. It was again in the early 70s that land shot into prominences with some significant support to the rights structure of the poor by evolution of national consensus on the rights of the marginalized. In a way this proved a highly productive period for Land Management. Subsequent to this the land issue of the marginalized was overtaken by the development paradigm.

5.2.2 Land continues over this period as the most valuable of the natural resources which is neither inexhaustible nor indestructible. Accurate knowledge of such natural resources and precise mapping of such knowledge are the first essentials to their rational utilization and conservation. Land Records are, thus, data information or maps regarding physical, legal, economic or environmental characteristics concerning land, water, groundwater, sub-surface, resources or air within a particular area. Likewise, land records would include Geographic References, Administrative Records, 'Built Environment' and Natural Environment. Geographic References include land survey records, land ownership boundaries and maps. Administrative Records incorporate jurisdictional and administrative boundaries, land use, land use controls and restrictions, land value, physical address, amount of land revenue, title interests, easements and encumbrances and other land related information. Built Environment includes prehistoric and historic sites and other types of constructed areas. Natural Environment comprises geology, hydrology, land cover, minerals, soils, topography, wildlife, etc.

5.2.3 The land relations depend upon how we manage our lands. The observations, measurements and computations of the surveyor and the maps drawn from these are the record of knowledge acquired through survey. The plural nature of the country's habitation, the growth process of the revenue laws which have followed the social and political development in the country have given rise to a multi-layered system of rights and privileges. The post-Independent India has added to some of these complexities. In the tribal areas of Jharkhand the rights structures varies not only from tribe to tribe but even within the tribes after every distance of 10 to 15 kilometers. No system of registration of rights can be effective and no system of taxation can ever be efficient and just without a description which enables the land to be identified with certainty on the ground. The rights of the individuals and the communities in respect of the land, water resources, trees and forests, use of land, cultivation, incidence of payment of rent, change in the physical features, the authority which the Government exercises in respect of this land, method of change in the rights, etc are all included in a body of documents called the records- of–rights. Record of rights in India reflect the following rights – (i) ownership rights, (ii) homestead rights, (iii) right of vested

land assignees (patta right), (iv) dakhalkar right, (v) share croppers' right, (vi) lease right, (vii) hold over right, (viii) right regarding forcible possession, (ix) permissive possession right. The first 6 rights are regulated by various State enactments, whereas the seventh is a phenomenon of the Transfer of Property Act and last two rights are regulated by the Indian Limitation Act. More importantly land records and cadastral maps show easement right for roads/paths, irrigation, bathing and other domestic work, sports and games, worshipping in the temples/mosques, burning ghat/grave yard, tending cattle, etc.

5.2.4 Prior to independence all provinces other than the Permanently Settled ones had a reasonably adequate system of preparation and maintenance of land records which served the main objectives of the revenue administration in that period. The records showed who owned the different plots of land in the village, the area and boundaries of each plot who cultivated it, what crops were grown and how much was payable to the government as land revenue. It was the duty of the village accountant to update the entries every year. The superiors in the hierarchy supervised the work of the village accountant. Since the mid 50s when the measures of land reforms were initiated this work has been allowed to fall into arrears. Appu [1999] holds that this neglect has been deliberately sanctified by the State Administration. The British system of preparing cropwise records in form of Adangal/Khesra Girdawari/Goswara have been either discontinued or the effective parts of the record related to tenants have been ordered to be omitted. This is chiefly on account of the class character of our ruling elite which while paying oral tributes to land reforms sabotages the process internally. The records of rights offer a protection to the weak of the village because it provides an instrument to protect their rights. In many States the mutations have not been made promptly in respect of the inheritance, partitions or transfers that have taken place and thereby the land records have been rendered outdated. These work to the disadvantage of the weaker sections.

5.2.5 The Sub Group during the course of its visits found a features common to nearly all States — the land revenue administration is included within non-plan; it is generally starved of resources; it is placed a way low down in the order of priorities; it is clueless about its future and has no plans. On the other hand, it needs no elucidation that the activities within the plan sector do not suffer the limitations of either vision or resources. This vital mistake appears to have taken place on account of the fact that the land revenue administration has been historically identified with the general administration which again was not within the plan head. The agrarian relations did not present such insurmountable challenges as some of the agrarian movements like the Naxal Movements have done. Hence, the nature of the agrarian challenge largely went unappreciated and were greeted with sporadic responses. **The other items under the plan head received a much better priority because they are apt to receive resources from the Planning Commission while the revenue administration only consumes resources and is not prone to giving visible results. It is felt strongly that in order to extricate land revenue administration from its present morass it must be placed under the plan head.**

Recommendations:

(i) Land revenue administrations should be placed under the plan head and should be subject to planning under the guidance of the Planning Commission.

(ii) The Central Government should come out with a National Land Policy and the respective State Government should declare their own land policies.

(iii) A National Land Policy should be declared with consensus of the parties.

(iv) This Policy Structure should have a long term perspective and should continue irrespective of the colour of the Party in power.

(v) A National Consensus will need to be evolved over the Land Issues.

5.3 Diversity of Records

5.3.1 There is substantial diversity amongst States in respect of the land records that they maintain. These records were formulated at a time when the British ruled India and the principal objective of the land management system was to extract as much as possible from every interest holder of the soil. In the Permanently Settled areas there were as many as 40 different classes of intermediaries between the tiller of the soil and the State while the former was left with merely the economic returns on his labour. This made the system highly rural-extractory by nature. Nevertheless, the Survey and Settlement Operations were regarded as not only modes of updating the records of rights but also a system for protecting the rights of the weaker sections. The Bengal Tenancy Act, 1885 also did not categorise Bargadars (bataidars) as a separate class of tenants or cultivators. Making a very beneficial interpretation of definition of tenants given in the Bengal Tenancy Act, some liberal minded ICS officers who did the Survey & Settlement Operations in Bengal went on conferring status of Raiyats to Bataidars who held land under the tenure holders and that of Under-Raiyats who held land under the Raiyats in the districts of Bankura, Jalpaiguri, Dacca, Bakarganj, parts of Midnapur, and Birbhum in the 1920s. The Government of Bengal appointed Sir John Kerr, a Senior Settlement Officer to enquire into the matter. Sir John Kerr not only supported the findings of the Settlement Officers but also suggested that the Bargadars should be treated as tenants or under-tenants, as the case may be, by amending the Bengal Tenancy Act.

5.3.2 These recommendations were resistered by the Congress and the Swarajya Party of India who took the side of the Zamindars and organized a series of meetings against the proposal. The Bengal Government succumbed to the pressure and brought an amendment inserting a proviso to the definition of the tenants to the effect that the category of cultivators known as Bargadars, Bataidars, Adiyars, Bhagchasi or by any other name in the local part would not be treated as tenants in the year 1928. Thus, the Bengal Tenancy Act created a separate category of cultivators having interest only in cultivation and not in land by amending the definition of tenant. The Bandyopadhyay Committee Report (2008) has considered this change as the most retrograde step taken by Government in the entire history of the Bengal Tenancy Act. It appears from the afore narrative that the British used the Survey and Settlement Operations not only as the instrumentality for deciding who was to pay rent and at what enhanced rates but also for correcting the structural anomalies in the system.

5.3.3 In the Permanently Settled areas, there was no need for the British administration to have records other than those prepared at the time of survey/resurvey. There was no practice of annual updating of records. The position of land records in the Native States was also unsatisfactory. After Independence, no serious effort was made to bring about an improvement in the situation. Even today the position is that leaving out West Bengal and Tamil Nadu; in other states land records do not reflect the actual incidence of tenancy. In West Bengal, the names of some fourteen lakh Bargadars were recorded by undertaking an operation named “Operation Barga”. In Tamil Nadu, the law permits tenancy but no ownership accrues to tenants. So the landowners do not object to recording of the names of the tenants where the State takes it upon itself to enforce the laws it has enacted.

5.3.4 In order to overcome this problem of multiplicity the Appu Committee on Revitalisation of Land Revenue Administration suggested the maintenance of (a) an updated village map, (b) a field book giving up-to-date information regarding every plot of land included in the map, (c) a registers of landholders showing the type of rights, plot numbers, area of each plot, its boundaries, crop grown etc. (d) a tenants ledger showing the survey plot numbers, area of the land, the name of the owner and the terms of the lease, (e) a register of government properties showing the plot numbers, area, boundaries, classification of land, etc. (f) a register containing all the details mentioned in (e) above regarding common property resources. The States were, however, reluctant to bring about changes in their time honoured land records system and the Appu Committee Report was left with its historical importance.

5.3.5 This Sub-Group has desisted from making State-wise policy prescriptions nor was it in a position to do so. It is clearly recognised that the land management in each State has evolved through a history city of thousands of years and is rooted to the soil, climatic conditions, agronomical, social relations, ownership relations, the nature of administration and that of the economy. It is not possible to make prescriptions without taking all these factors into account. Besides, it would also require a firm political consensus. Hence, building upon the recommendations of this Committee the individual States have to customise their instruments.

Recommendations

(i) The States have to realise that the objectives of Land Management systems has changed fundamentally and it has to be prepared for basic changes in the manner in which our lands and records are being managed.

(ii) The States also have to take into consideration the changes that have taken place in between and be prepared to revise the system to suit the requirements of the present day demands.

(iii) Each State has to put in place a half yearly or annual system of updating the records-of-rights.

(iv) A basic change in the system of updation of the records-of- rights is called for even where annual systems are prevalent.

(v) The Central Government may like to undertake a programme for helping their States to assess their basic requirements within a definite time frame.

5.4 Response of the Central Government

5.4.1 The Sub-Group takes note of the fact that while land figures as Entry 18 of the State list including rights in and over land, land tenures, the relation of landlord and tenant, the collection of rent, transfer and alienation of agricultural land, land improvement and agricultural loans and colonization and land revenue at Entry 45 the land reforms legislation have been included in the IX Schedule of the Constitution thereby enjoying the protection of Article 31B of the Constitution. However, the major initiatives in land reforms, land record management, land management, surveying etc have come from the Central Government. The priority assigned to the subject can be just from the fact that there is a separate Department under the Ministry of Rural Development dealing exclusively with the subject of 'Land Resources'. On the other hand, the State Governments barring a few exceptions have not updated either their revenue administration dealing with land resources nor have brought in new schemes for updating the land management and record management independent of the

Central Government. It is ironical that the Central Government which has small Constitutional mandate has taken the major initiatives in land management while the State Governments have not followed suit. This shows the scant priority that the subject has received in the State's scheme of things.

5.4.2 The Government of India, particularly the Ministry of Rural Areas and Employment has taken the initiative in strengthening of revenue administration (SRA) and updating of land records (ULR) by providing fund to different States on equal share of 50:50. Similarly the Ministry has also started the computerization of land records in 1988-89 and the digitisation of maps with 100% financial assistance.

5.4.3 The Ministry of Rural Development has formulated a new programme, National Resource Management Programme (NLRMP) as a major e-governance initiative which is concerned not only with computerization, updation and maintenance of land records but also with a comprehensive data base for planning and decision making and for regulatory activities. The NLRMP is also designed to focus on citizen centric services including computerized RORs with maps, certificates (domicile caste and income etc) web based any time any where access to land data, services to facilitation centres in tehsils and other places, speedy and efficient registration etc.

5.4.4 It has been the experience that even in the Centre Sector schemes on sharing basis the States have failed to commit resources to take advantage of the inflow of resources. Instances are also there where remittances from the Central Government have been used to strengthen the ways and means position of the State Governments. The initiatives of the Central Government have to be matched by commitment from the State Government. This appears to be a major problem. The National Land Council needs to be reorganised in order to evolve a concerted Action Plan.

Recommendations

(i) The National Land Council should be reorganised on the lines of the National Development Council so as to be make it a fully federal structure.

(ii) Land Relations and Agrarian Movements may be included as an item of review in the National Development Council and the Prime Minister's Annual Meeting with the Chief Ministers in land relations and not law and order prospective.

(iii) If the measures for revitalised Land Management are to make any headway the State Governments have to decide on the allocation of resources as a matter of State's commitment to this sector and not treat the Central Government allocations as supplements to the ways-and-means position of the State Governments;

Section – II

5.5 Current Status of Land Management

Issues of Land Management

5.5.1 **Land Management may be defined as the aggregate of the approach to land including recognition and vesting of land rights of individuals, community and institutions; creation and maintenance of Land Records; enforcement of the rights structure incorporating ceiling and other laws curtailing the individual rights and**

distribution of ceiling surplus land; the enforcement of tenancy laws and the protection to the tenants; enforcement of the homestead rights; protection of the rights of the Scheduled Castes, the Scheduled Tribes and other marginalized sections of society; the ethos and the management practices and technology used for these practices and assessment of the institutional support and the legal framework. Land Management has evolved in this country in different phases and areas.—the Permanently Settlement , the Mahalwari and the Raiyatvari areas . At the time of the Permanent Settlement the Company was still in need of consolidation and therefore it inducted allies in the form of the Zamindars. The Mahalwari system was evolved with the conquest of Punjab where the community life was still strong and while the evolution of the Raiyatvari System indicates the stage when the Company Rule had consolidated and could broadbase their tenurial system. The post-Independence India did not make many changes in the system of Land Administration which was allowed to continue. A major issue for debate is that whether that system is good still enough to deliver under the changed socio-economic and political environment or whether we require to go in for alternatives.

5.5.2 There is another issue that relates to the role of different institutions. Admittedly, the post-Independence India has witnessed several institutional changes. While in the colonial India all political, most judicial and all administrative powers were being enjoyed by the permanent bureaucracy. Such power have been dispersed over several institutions. No doubt that the bureaucratic structure has been retained but several competing institutions have come up. The issue is that whether these competing institutions can be accommodated within the structure that governs the most basic of the resources i.e. land resources.

5.5.3 Another fundamental issue related to Management of Land is that where do the people figure in the management of land. The Land Management system contains to be bureaucratically controlled. However, there have been changes in the character of the bureaucracy, and the demands placed upon the bureaucracy are infinitely more in terms of pressures as well as conflict situations. There is an increasing trend towards self-management and self-regulation. The issue is that to what extent we can accommodate the people within the management of their own resources.

5.5.4 There has been a continuing conflict in respect of the people who have settled from the time immemorial on the forest lands and the forest authorities. In many instances some of these communities were settled on the forest lands by the British Forest Department itself like the Bantangias who planted the Sal Forests right through the Terrain Belt of the United Province. These villages were not recognized in the revenue records in absence of which they enjoyed no rights. Now that the Government has come out with the Land Rights of the Scheduled Tribes and other Forest Dwellers Act, a critical issue is that how does the Land Management extend to the recognition, recording and protection of the rights? Is the existing system capable of discharging these duties?

5.5.5 Technology and the balance between technological and the human factors another critical issue. State-of-the art technologies are available in the country which has honed its skills with organisations like ISRO, Survey of India, National Remote Sensing Agency (now National Remote Sensing Centre, a purely Government Department), specialised institutes of the State and the Central Government Surveys like the Border Roads Organisation which do survey for road alignments, Forest Survey Institute, Dehradoon etc, The State Governments have their own Space Application Centres and there are 4 Regional Application Centres and the All India Soil Survey Institutes, the list of which is given at **Annex – 5.4.** The issue that

arises here is that to what extent should Land Management be technology driven, institution driven and market driven**.**

5.6 Updating of Land Records

5.6.1 The Sub-Group has conducted a State-wise appraisal of the Land Management system and the status of updation of Land Records including computerization of Land Records Programme. A summary of the survey has being given at **Annex- 5.5**. Some of the salient features arising from this survey are as below.

5.6.2 In the Permanently Settled Areas there are no Land Records other than those created at the time of the settlement. Statutory requirements stipulate that the Survey and Settlement Operations should be conducted periodically after a gap of almost 15 years as both land ownership and the praedial conditions undergo a change but practically they are taken up only after 30 years. The Survey and Settlement Operations have twin objectives – updating condition of Land Records including the changes that have taken place in the character and feature of the land and updating the revenue to be paid by the tenant on the basis of these changes. Unless the records-of-rights were updated there would be no increase in the rent to be paid by the tenant. Hence, a correct and updated record-of-rights was a sine qua non. The other part included the Settlement Operations. The Settlement Authorities prepared a table of productivity for each category of land as well as a table of prices prevailing in the local 'Mandies' and the rent was revised on the basis of change in the praedial conditions, enhancement in the productivity of the land and the rise of prices of grain in the local Mandies. The purpose of the Operations were to extract as much of rent as was possible from the tenant. The share of land revenue was significant in the budget of the State Government. In the post Independence era the significance of land revenue has declined in the State budget. **Annex- 5.6** gives a picture of the decline in the share of Land Revenue in the State budget. Most States have either abolished land revenue or have waived the same in respect of the smaller tenants. Hence, the compulsion to hold Survey and Settlement Operations on account of budgetary considerations have become extinct.

5.6.3 Another major consideration was the cost of the Survey and Settlement Operations. In the pre Independence era the Survey and Settlement Operations were conducted in a time bound frame and the cost was levied from the landlords who realised it from the tenants. There is an increase in the number of plots and the number of disputes have also risen on account of the poor record maintenance in the intervening period. **Annex – 5.7** gives the land details of the land area in the States. Hence, the Survey Operations once begun continue for a long time and give rise to a large number of land disputes. It is to be noted that in the districts of Darbhanga and Bhagalpur the Survey Operations that had commenced in the year 1964 have continued to the State without any hope of conclusion. More importantly the records that were created during the course of the Survey Operations have already become hopelessly out of date and their final publication would serve no purpose.

5.6.4 The Survey Operations are generally divided into 6 stages, 2 of which involve the correction of the maps and preparation of the records of rights and the remaining 4 the correction of the record- of-rights. In the Kishtwar stage the maps of the previous Survey are updated. In the Khanapuri stage the record- of-rights are revised on the basis of the plot-wise field survey wherein the revenue agency travels from field to field and ascertains the ownership of the plot. The third stage is that of Bujharat wherein the tenants are called, provided with a draft map and the entries are explained to them. The fourth stage is that of

Tasdik wherein correction in the draft record- of-rights is made on the basis of the objections filed during the stage of Bujharat. The fifth stage is that of hearing of objections which have not been reconciled during the earlier stages. The sixth stage is that of publication of the final records -of-rights.

The present survey system suffers from several drawbacks such as the following:

i. **Outdated Methodology:** As already mentioned the survey operations continue to use plane table with triangulation. The new survey methodologies and technologies like Total Work Station and even intermediate technologies like EDM are not used.

ii. **Multiple Stages;** involving even more than 6 stages. With the advancement of technologies there and changes in the social and economic conditions many stages have become infructuous and need to be revised urgently.

iii. **Extremely Time Consuming:** Most of the present survey operations are taking not less than thirty years because of multiplicity of stages and non-adherence to the time schedule by the revenue officers.

iv. **Not cost effective;-** The conventional survey and settlement have become very costly because they involve emplacements Amins, surveyors, inspectors, Kanungos, Draftsmen, Revenue Officers and higher revenue functionaries over a very long period of time. The costs can be reduced substantially by modern technologies.

v. **Manpower Oriented:** Kishtwar and Khanapuri need the involvement of maximum manpower. One amin accompanied by two chainmen are sent to one village each and he is supervised by Inspector, Kanungo and the Revenue Officer.

vi. **Lack of Trained Manpower:** Many states have established Survey Training Institutes for training the survey functionaries but States like Jharkhand and Bihar, are tacking in such facilities.

vii. **Old Map Based:** Revisional Survey operations are based on Blue Print maps which are brought from Map Reproduction Centres. The printing of the Blue prints maps are sometimes delayed which cause overall hindrance.

viii. **Rent Seeking Behaviour:** The Survey and Settlement Operations are marked by wide rent seeking. Most Surveyors (Amins) are employed on work charge basis and hence they have a high propensity to indulge in this kind of behaviour. Thus, the Survey Operations are dispute enhancing and litigation promoting. It is believed that once the Survey Operations have been conducted the area takes years to regain its prosperity.

ix. **Lack of understanding for the Local Traditions and Customary Tribes:** There are many communities particularly the tribal communities who are governed by the customary laws. In other areas also the customary rights are to be protected and recorded in the Khatian Part II. However, they normally they lack in susceptibilities and deliberately create incorrect records which makes the people, particularly the tribals look upon them with suspicion.

Recommendations

*(i) **There is an urgent need to evolve Survey Operations which can be done within a period of 2 years by compressing the stages into 3.***

(ii) The Survey of the entire country should be conducted within a period of 5 years.
(iii) The Survey should utilise the latest technologies for accurate results.
(iv) The Settlement of Rent should be left to the village community to decided at the Panchayat level and to be appropriated for their own purpose
(v) The Khatian should be approved by the village community through the Gram Sabha before its final publication.
(vi) The Survey Operations should be subject to Social Audit for reducing rent seeking behaviour.

5.7 Recent Technical Innovations

5.7.1 Most State continue to use plane table triangulation method using chains or theodolites or EDMs. These technologies have been overtaken by many modern technologies like the use of GPS or the Satellite Imaginary System. A detailed note on GIS and GPS has been given at **Annex- 5.8.** In short a Geographic Information System (GIS) is a computer-based tool for the input, storage, management, retrieval and output of information, which relates to the characteristics of geographic locations or areas. GIS can answer questions about where things are or about what is located at a given location. In a GIS, the Earth's features are not only represented in pictorial form, as in conventional paper maps, but also as information or data. This data contains all the spatial information of conventional maps, but when stored in a computer, is much more flexible in the way in can be represented. Spatial data in a GIS can be displayed just like a paper map with roads, rivers, vegetation and other features represented as lines on a map complete with legend, border and titles, or it can be represented as a set of statistical tables, which can be converted to charts and graphs. The most important feature of GIS is that spatial data are stored in a structured format referred to as a spatial data base. The way spatial data are structured will determine the how easy it is for the user to store, retrieve and analyse the information. GIS has been developed over time as computer science; earth science; geography; CAD; remote sensing; military study; spatial distribution; mathematics; cartography; urban planning; surveying and photogramme and civil engineering.

5.7.2 There are two major methods of storing mapped information : 1) Vector GIS and 2) Raster GIS. Geographic Information Systems which store map features in vector format store points, lines and polygons with high accuracy. They are preferred in urban applications where legal boundaries and the analysis of networks are important.

5.7.3 Maps in Geographic Information Systems are represented thematically. A standard topographic map will show roads, rivers, contour elevations, vegetation, human settlement patterns and other features on a single map sheet. In a GIS these features are categorized separately and stored in different map themes or overlays. For example, roads will be stored in a separate overlay. Likewise, rivers and streams will each be stored as a separate theme. This way of organizing data in the GIS makes maps much more flexible to use since these themes can be combined in any manner that is useful. The following illustration shows conceptually how maps are stored as themes in a GIS.

5.7.4 The Sub-Group also notes that not only are the maps not getting updated and do not represent the situation on ground in many instances they are also not available. There is no regular method for updation of the maps except in the States like Tamil Nadu where the FMB (Field Management Book) is retained by the Revenue Department and has been used for digitization of maps. In Tamil Nadu field measurement books and village maps have been

digitized under two pilot projects in the four talukas namely; Chengalpattu, Kodai, Kodavasal, Erode and Gobichetipayalam. In most other States of the country the system of updation of maps is rather tedious and constitutes the weak points of the system.

Recommendations

(i) The States are advised to review the position of the Survey Operations within their States and where it is found that the records so created have outlived their utility the Operations may be concluded as they would serve little purpose. Shorter version of survey as suggested by the Appu Committeee may be introduced by integrating Tehsildar's and survey offices.

(ii) Advanced technological methods like satellite imagery coupled with ground truthing may also be tried because it is less expensive and less time consuming.

(iii) The States have to devise a regular method whereby the updation of record-of-rights may take place without there being requirement of Survey Operations in the present mode. One of the methods can be combining Sub-registrar's Office with that of the Tehsildar so that all the transfers of land through registered deeds are immediately mutated and maps are corrected accordingly.

(iv) The village community should be involved in creation and validation of the data base.

(v) Before conducting any survey the objectives of survey and the expected outcomes should be explained to the villagers.

(vi) The people should be involved in collection of the data including the different Committees of the Panchayats, SHGs and others functioning at the village level.

(vii) The final data should be approved by the Gram Sabha having a minimum attendance of 80 per cent.

5.8 Computerisation of Land Records

5.8.1 The computerization of Land Records was taken up in the country on a pilot project basis in the year 1988-89. The scheme was taken up as a full-fledged programme in the year 1992-93. Since then States have taken up the computerization of Land Records in their own way. **Annex-5.9.** shows the progress of computerisation of land records in the states**.** It is to be noted that while some of the States have pushed ahead with the computerization programme and have achieved notable success the progress while other States are yet to catch up. Particular mention may be made of the States like Karnataka, Tamil Nadu, Gujarat, Goa and Andhra Pradesh amongst others, where the progress has been noteworthy.

5.8.2 In the State of Karnataka the computerization programme was taken up in the districts of Gulbarga during the pilot project phase and later in the Mysore and Dakshin Kannada. The Karnataka Government planned to implement the project in 3 stages, the first being the computerization of Akarband, RTC, Mutation Register and Register of Disputed cases. In the second stage, the project envisaged computerization of village accounts which include the Khata register and Khirdi. The third stage involved digitizing of village maps and maps of individual plots and survey numbers. Subsequently, advanced software in the form of Bhoomi was developed by NIC, Bangalore for computerization of Land Records. A detailed note on the operation of Bhoomi is placed at **Annex-5.10.** The Bhoomi is an online

programme to carry out the mutation on live data; it has built in workflow automation, which moves transactions from one officer to another on the system; the process of mutation on the Bhoomi gets fully synchronized with the field work done by the revenue officials; it facilitates scanning the field mutation order passed by revenue authorities and notice served on the public and facilitates storing into database so that it can be referred easily in future for various purposes. The Bhoomi has also been integrated with Fingerprint (Bio-metrics) Technology to ensure foolproof authentication system instead of traditional password system, which enforces the concept of non-repudiation. The software is in local Kannada language suitable for use by the officials and is intelligible to the people at large.

5.8.3 The Bhoomi online mutation system has three components namely i) Computer Centre, ii) Land Records Centre and iii) Touch Screen Kiosk. The Computer Centre is the back end where the revenue officials will carry out the updation activities on the Bhoomi. To support these activities, back up is given are given in the form of Server, Client, Printer and Scanner with UPS. The second component is a Village Accountant who operates the Land Records Centre set up at the entrance of taluk/block office with a client, a printer and UPS. This provides the public interface from where one can collect the signed land records document on demand or submit a request to carry out the mutation on his/her land. The third component is the Touch Screen Kiosk established at the entrance of taluk/block office. The farmer can use this to see his document and status of the mutation in process without intervention of revenue officials. As Bhoomi works on Client/Server architecture, all the clients and kiosk interact with the server through an Ethernet based local area network (LAN) implementing TCP/IP.

5.8.4 All the 175 taluks of the State had been computerized. There are more than 20 million land records and more than 67 lakh land owners in the State. Special kiosks modelled on the lines of STD/ISD booths have been installed in front of Taluka offices, which provides information on land records to land holders. The State Government has introduced biometrics authentication, a fingerprint-scanning device to check manipulation of land records. This replaces the traditional method of using passwords. With the fingerprint authentication device, only an authorized person is able to edit records. In a major initiative, the Government has provided that no handwritten information form will be accepted except with the except with the signature of the official concerned. Any person who needs information on land records can go to the kiosk, pay a nominal fee of Rs.15 **(Rs 5 now)** and get a printout with the signature of the authorized official.

5.8.5 The Government also has plans to slowly let information kiosk (which are proposed to be set up by private parties in Karnataka in rural areas in PPP mode) make use of these data bases to provide land records to the doorsteps of the farmers, although they may not be signed in the beginning by anybody and would be used more for the information and verification purposes.

5.8.6 The State of Gujarat has also pushed ahead with the computerization of Land Records. It has completed the computerization of Land Records in almost 18,000 villages. The manual records have been discontinued. The State has also launched the e-Gram Vishwagram Programme under which 6,000 Common Service Centres have been established at the village Panchayats with broadband connectivity. These Centres are issuing RoR from e-Dhara Centres using dialup connectivity. In addition the e-Gram Vishwagram is also being used for capacity building, collection of electricity bill and a number of other collateral purposes.

5.8.7 Tamil Nadu is another State where the computerization of Land Records has been taken up on a large scale. The software and hardware have been provided by NIC while the infrastructure including UPS and the furnitures has been provided by the State Government. Data entry has been completed in all the 206 talukas of the State. Entries in respect of Register A have been completed in all 17,200 villages. The Government has also sanctioned installation of touch screen Kiosks in the State.

5.8.8 The Andhra Pradesh State has started it's first pilot project of computerisation of land records in Kuppam and three other Assembly Constituencies of Chittoor district, with conversion of 92,944 F.M.B's covering 3,65,770 sub-divisions in 369 villages into digital format at a cost of Rs.55 Lakhs with hundred percent grant of the Government of India.

5.8.9 Initially errors in Field measurement Sketches with regard to conversion of F.P.S. measurement into metric measurements, were noticed, which were latter rectified. Even maps had not adhered to mosaicing revenue fields and by correcting mosaiced village maps using traverse data. The Scanning and vectorizing village maps were supplied by the revenue department. Computerisation of one Mandal in each each Assembly Constituency i.e., 278 Mandals in 22 districts in the state except Hyderabad was taken up with an estimated cost of Rs. 4.33 Crores.

5.8.10 In the field of computerisation of Cadastral Maps, the Department undertook the work in technical collaboration with a private professional agency involved in the work of GIS i.e.,Visionlabs Institute, Hyderabad. The work involved scanning and digitisation of each P.T.Sheet followed by a software aided mosaicing process to generate Village Maps and Taluka Map. It also involved development of software modules to take care of the requirements of the Department like generation of accurate and reliable print outs of survey nos and subdivision nos, or any parcel of land. Goa has already been declared the first state in the country to have completed the computerization of land records of all villages of all eleven Talukas of Goa. The State of Goa has computerized the land records in all the Talukas. Copies of land records are valuable across the center in the Electronic Information Center. Experience there should after computerization, the preparation, maintenance and updating of land records have become quick, easy, accurate and cost effective. The safety and storage of records has been solved as all the data can safely be stored in the computers in computers and also a backup created by means of CDs. Besides the data is more secure and is not prone to unauthorized changes. It provides adequate security to data entered. The computerization has proved to be useful for administrators, planners and policy makers as any kind of data regarding land records for better land management is available at the click of a button.

Recommendations

(i) Taking cognisance of the fact that the programmes are being managed in a Departmental mode the Sub-Groups strongly suggests that there should be a National Authority for Computerisation of Land Records (NACLR) at the Government of India level for this purpose to fulfil the target.

(ii) The NACLR should comprise different subject matter specialists including experts from NIC, Survey of India, Land Survey Specialists who have been Survey and Settlement Officers, Agricultural Experts, Sociologists etc.

(iii) (Placement in the NACLR should follow a definite selection process and should include selection from the market.

(iv) ***At the State level it is felt that there should a dedicated institution in the form of the State Authority for Computerisation of Land Records (SACLR) in similar mode as the NACLR to deal with the computerisation of land records. In most States the work is being handled by the Directorate of Land Records and Surveys who are not able to cope up with the task on account of their multiple engagements. Representatives of different Departments/agencies whose data is being included into the data base should also be permanently represented.***

(v) ***There should be a basic common data being computerized in each State.***

(vi) ***The Land Data should include not only the Khata and the Khesra numbers but also other details including history of the land, the registration etc***

(vii) ***The community rights should be clearly specified including rights to common lands waste and barren lands, religious lands, forest lands and submergence area, etc.***

(viii) ***Other information including incidence of cultivation, productivity, land use include horticulture etc. incidence of irrigation and sources, cost of irrigation, cropping intensity, availability of drinking water, types of soil etc.***

(ix) ***Other details including buildings on land topographical indicators, infrastructure, land use assessment*, mining rights etc should also be spelt out.**

5.9 Impact Assessment of Computerisation

5.9.1 Impact assessment of computerization has been done by several agencies — of 4 States by the National Institute of Rural Development (NIRD) the report of which is placed at **Annex – 5.11** and, of 6 States by Lal Bahadur Shastri National Academy of Administration placed at **Annex – 5.12** amongst others. By and large the impact of the Computerization programme has been found positive.

5.9.2 The NIRD report has positive impression in the users' perception in the sense that it leads to :

(i) Quick availability of records (RoR)
(ii) Details of crops, land type, irrigation, trees etc, in one RoR
(iii) Easy accessibility, saves time
(iv) Transparency
(v) Accuracy and authenticity
(vi) Safety of records, no chance of manipulation
(vii) Land related disputes are reduced
(viii) Reduction in expenditure/time in obtaining RoR – no hidden costs, no harassment

5.9.3 The RoR is being used by the owners as shown in the **Table -5.1** below for a variety of purposes including proof of ownership, crop loan, and scholarship for children, etc.

TABLE- 5.1 : Usages of the ROR

Sl. No	Items	States				
		Goa	Gujarat	Karnataka	Tamil Nadu	%of Total Respondents (N=200)
1	Ownership Proof	32	50	47	11	70.0
2	For Crop Loan	-	50	43	14	53.5

3	Bail in criminal Cases	11	26	13	1	25.5
4	Purchase of subsidized agricultural inputs	4	-	16	8	14.0
5	Scholarship for Children	-	3	14	7	12.0
6	Income certificate for selection as beneficiary for various RD programmes	5	7	-	6	9.0
7	For Mutation	9	-	-	-	4..5
8	To obtain Passport	-	-	2	-	1.0
9	Others	13	7	2	3	12.5

5.9.4 In addition, in Karnataka RoR was being used for sale of agriculture produce in market yards, registration with sugar factories, registration of agriculture land in Sub Registrar's office, crop insurance in dry areas. In Goa the RoR is being used for conversion of land use, tenancy declaration, cutting trees, licence for bars/restaurants; in Gujarat it was being used for solvency certificates and in Tamil Nadu for admission of children into schools/scholarships for children etc.

5.9.5 The Revenue officials being the manager of the land records had considerable hold on the farmers/land owners. Now with computerization of the land their hold on the land owners has practically diminished. The Sub-Group notes that despite these diminished holds the revenue officials had positive perception towards the computerization programme. Some of their pertinent perceptions are as follows:-

(i) Tamper proof land record database
(ii) Reduction in litigation
(iii) Support for development programmes for departments like agriculture, industry and planning and GIS application for planning.
(iv) Facilitation of easy preparation of annual records like land revenue, etc
(v) Identification and protection of government lands
(vi) Improvement of the image of the Revenue Department/change in attitude.

Recommendations

(i) ***There is need for building a network of institutions for appraisal of the programme. The network should be headed by some lead training- cum-research institution so that there are alternate streams of information flow.***

(ii) The lead institution will involve the training institutions in the State like the SIRDs, the ATIs, the Agricultural Universities, reputed institutions of the State Government, reputed Civil Society Based Organisations for evolution of a core national format and a State-wise formats capturing the environment of the State.

(iii) Appraisal/evaluation of the programme should not be a one time affair but should be carried on with regularity for which an appraisal matrix could be evolved.

(iv) The NACLR may organise Workshops/Symposia periodically as well as training sessions in collaboration with the SACLR and other institutions.

(v) The appraisal/evaluation format should travel beyond the questionnaire- interview method and should also use other methodologies like RRA, PRA, RA, Focus Group Discussion, etc.

(vi) The findings of these appraisal/evaluation studies should be placed on the National Portal that has been suggested for the NACLR.

(vii) The NACLR once constituted could also go in for e-evaluations, e-newsletters, etc.

(viii) The Ministry of Panchayati Raj at the Central level and the Departments at the State level should also be involved with the subject as also the NICs.

5.10 Drawbacks in Computerisation of Land Records

5.10.1 The Sub-Group finds the following shortcomings in the Computerisation of Land Records Programme :

(i) The programme has been slow to take off and barring few States others have lagged behind in the implementation of the programme. At this pace the Sub-Group estimates that it will take the country another 15 to 20 years to complete the computerization of land records.

(ii) In most States the programme is being taken as a stand alone programme and has no linkages with the other supporting programmes.

(iii) There are a number of Departments/Ministries both in Government of India and in the State Government who have created their own rural data base eg. Agriculture, drinking water, animal husbandry, education etc. However, there is no linkage amongst these different data base and they do not talk to one another whereas there is need for integrated data base.

(iv) While in some of the States the computerization is being widely used in rest of the States it is still does not have the wide applicability that one would expect for a computerized system.

(v) It was expected that the computerization programme would also push through a change in the management system of land. However, that has not materialized and the management of the computerization programme has been accommodated into the existing system.

(vi) The Sub-Group also notes that by and large a change in the attitude of the managers of the land programme has not been impelled. The moment this change comes about there will be a major revolution in the land management system.

Recommendation

(i) There should be a revisit of the programme of Computerisation of Land Records at the National Level.

(ii) A firm programme for computerisation needs to be drawn up in consultation with the States and a Work Plan evolved providing inter alia for the outer date of completion, systems used etc.

5.11 Digitisation of Maps

5.11.1 The Sub-Group has observed that the average age of village/cadastral maps available in most of the States is more than 50 years mostly prepared during the British regime as a part of the Settlement Operations. Over the years, they have been subjected to the vagaries of the weather, continuous and improper handling, and unscientific methods of storage, rendering them fragile and tattered. The maps have also undergone shrinkage affecting their accuracy and their credibility. Besides, the process of upgradation of land records would also include the redrawing and upgradation of maps. The new record management system being sought to be put in place would remain incomplete in the absence of a matching system of updation of maps simultaneous to that of the updation of land records.

5.11.2 The Ministry of Rural development has started a process of digitisation of maps with hundred percent funding. Some of the states like Andhra Pradesh, Karnataka, West Bengal, and Goa have done very well in this area but in other states the progress has been tardy and needs to be expedited.

5.11.3 The Bhu Bharthi Project of Andhra Pradesh has the updating of the land records and the maps as the first stage of the programme to created guaranteed title to land. It uses aerial photogrammetry with rectification. During the course of the visit to village Lingupally in Nizamabad district the farmers complained that due to the process of survey the area of their land holding was getting reduced on ground. A farmer who had purchased 4 acres of land finds that on the ground records are being prepared in respect of only 2.5 acers. This could have been considered a case of individual aberration but there were complaints to this nature from other farmers as well. In traditional survey methodologies errors are permitted to the extent of 0.5%. The Survey and Settlement Manual of Bihar, for instance, provides for comparison of the area of individual farmers with the last survey immediately following the Khanapuri. Mujhmilli maps i.e cut outs are prepared for making this comparison. Where the difference is greater than 0.5% a resurvey is to be done. In the case of Lingupally there is no such system in place. The maps are prepared not in respect of individual holdings but land parcels containing lands of persons included in that parcel. Hence, it may be a case of uneven distribution within the parcel.

5.11.4 Besides, there were also technologies flaws as the rectification was not being done by establishing the fixed point of the last survey and then taking tie lines from the same to establish the field boundaries. Instead an eye estimation process was being used. The ultimate objective of the programme is to guarantee title to land. If there such major inaccuracies title guaranteed will be imperfect and therefore defeasible. This mistake could have been avoided by adopting a measure based process of ground truthing or by adopting a superior technology as for instance that provided by the Cartosat II which provides a resolution of 1 metre. In Cartosat I the co-ordinates are self-generted and limited and only a limited verification will have to be done; but it provides a resolution of 2.5 metres. The point is not at all lost- even in the case of the use of the state-of-the art technologies the human processes can not be ignored and that even amongst the technologies only such appropriate technologies should be used which fulfil the objectives. For this, before undertaking the exercise the objectives will have to be clearly stated that whether by the application of the technology one is seeking reduction in the requirements of ground truthing or greater accuracy or cost reduction. ***The Sub-Group is firmly of the opinion that accuracy is the first requirement of any survey process. It can never be compromised.***

5.11.5 The Sub-Group is also compelled to revisit some of the premises of the use of technology. Phptogrammetry has been used within 3 States namely in Madhya Pradesh, Andhra Pradesh, Goa and Jharkhand. The experience of Andhra Pradesh is as noted in the previous paragraph. In Jharkhand the Blocks of Jaldega and Bano were surveyed aerially. After ground truthing an inaccuracy of 30 % was found and the project had to be closed on this account Cartosat I is being used on 1:2000 scale in the urban areas and in some rural areas. Cartosat II has a resolution of 1:1000 and it is capable for better identification of the ground level features for micro level planning and other applications. Wherever there is requirement of topographical information we can go to Cartosat I which capable of giving stereo imagery (3 Dimensional Data). Where the requirement is widely for infrastructure,

small land parcels and where topographical information is not important the Cartosat II could be used.

5.11.6 The Computerisation of Land Records has been primarily funded from the Central Government resources. The State which have committed their own funds have also made better success of the programme. Notwithstanding the role of the Central Government as the provider of resources and the moving sprit it is necessary that the critical choice in respect to the hardware, software, the data to be included and the mode of data entry must be left to the States. These practices have to be necessarily rooted to the soil so that the divergent practices in the States are not accommodated and not stifled.

Recommendations

(i) Digitisation of maps should be seen as an unavoidable exigency and should be taken up throughout the country under the existing Scheme of NLRMP.

(ii) Priority for digitisation should be given to those districts, which have successfully completed the computerization of textual land records.

(iii) Composite extracts of land records, consisting of both textual and graphic data should be provided to land holders; this should be seen as a major step in empowering the landholders.

(iv) Revenue officials should carry out a 100 % validation by edge matching of the digitised printouts with the original maps through the technique of superimposition. Both the village boundaries and the Khasra boundaries should be edge matched.

(v) The objectives should be clearly defined before making a selection of the technology.

(vi) The ground truthing process cannot be ignored and the technological process will always require to be adequately backed up.

(vii) Accuracy of the maps is as vital as the accuracy of the records and it can never be compromised.

(viii) The fields are bound by bunds which may be wide according to the local practice. Now the Cartosat I is capable of giving orthoimaginery which can be analysed by means of photogrammetry. The use of Cartosat I is recommended in such areas where the bunds are broad b convention. Cartosat II is recommended for such areas where the bunds are less wide.

(ix) In such areas where the canopy is abundant plots will not be visible and the use of Electronic Total Stations (ETS) is recommended.

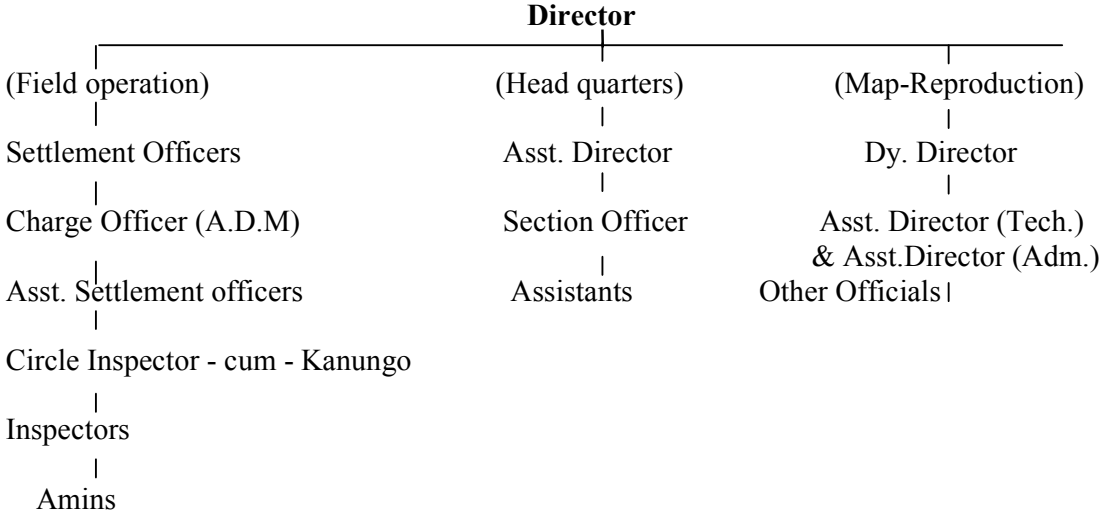
5.12 Drawbacks in the Land Administration

5.12.1 The existing system of land administration in respect of some of the major States has been given at **Annex -5.13.** The Sub-Group notes that this administrative system was evolved during the British days and catered to the needs of the British rule and since then there have been no notable changes in the structure of the revenue administration. The British Rule was not a Welfare State; it was designed to maintain the law and order and was rural extractory. It was the production relations which sustained the British rule. In wake of Independence the Government have brought in a series of reformist legislation in respect to land relations meaning thereby to alter the production relations. This naturally calls for a restructured Land Management System for the existing system can only support a colonial like structure and retrograde production relations.

5.12.2 The Bandyopadhyay Committee (2008) has noted that the Revenue Department generally discharges 4 major functions:— normal general revenue administration including collection of rent, settlement of land disputes, distribution of surplus land, settlement of bataidari disputes, settlement of government lands etc. These are done in a routine manner through the Divisional Commission, the Collector, the Block Level Revenue Officer called Circle Officer, Revenue, a Circle Inspector whose jurisdiction is coterminous with that of the Circle Officer and a Karmachari for each of the Revenue Halkas which are a group of villages clubbed together for revenue purposes. The second function is that of acquisition of land for public purpose or for companies under Land Acquisition Act 1894 or for similar other Central and State Acts. The third is Survey and Settlement Operations and the fourth is Consolidation of Holdings.

5.12.3 The Survey and Settlement Operations are controlled by a Director of Land Records and Surveys who functions under the Land Reforms Commissioner in the State. Below him, there is a hierarchy which has been depicted in **Table -5. 2** below:

Table- 5.2 :Structure Of The Land Record Administration



5.12.4 **No Interface with the Users:** As of now the basic supervisory function are being discharged by the members of the Indian Administrative Service and state administrative officials. The basic field functions are being exercised by Junior Level Officers not belonging to any recognized service eg. Circle Inspector under Anchal Adhikari. There are similar categories of functionaries at the same level and under the Directorate of Land Records and Surveys, Land Acquisition and Consolidation who are not having any interface with one another at the ground level. Their only conversion is at the level of the Land Reforms Commissioner or under the Divisional Commissioner. If they were interchanged they could easily transfer rich experience from one field to another.

Recommendations

(i) There should be an inter mobility amongst the different wings at the village, Mandal, district and at the Divisional level so that the experience of one field is brought to the other.

(ii) Even at the State level there is need to examine the programme structure of Revenue Department and remove the duplicity in a time bound manner.

5.13 Withdrawal from the Rural Areas

5.13.1 Likewise the Sub Committee finds that in few States and areas are the Revenue Officials staying at the village level. At few of the places did this Sub-Group find the Village Officers or the Module Revenue Offices residing at their respective headquarters. Instead these officers was found to reside at the district headquarters. The Sub Group has found that the regular interface with the tenants or the Raiyats at the village level which is so essential for the system to function in a routine course or with the Panchayats missing. There is no accessibility of the revenue officials with the tenants.

5.13.2 While the dispute is related to the field situation it is normally decided at the Mandal level or above travelling right up to the Board of Revenue where they exist. In State after State the raiayats complained that the greatest problem is to find the Patwari this lack of accessibility breeds gives rise to the myriad problems associated with the revenue administration. In most disputes there is no spot inspection and the entire evidence is taken either under the provisions of the Civil Procedure Code or under some other similar law.

5.13.3 The Sub Group is also constrained to observe while some of the Revenue Courts have changed over to the local language the higher Revenue Courts and the Judicial Courts by and large continued to use English, a language still not understood by the masses. This leads one to the conclusion that the Land Revenue Administration and our management of land is fully urban based and colonial in character. ***Such a Land Management System is not up to the task of implementing the reformist legislations and discharges the Management of Land with sensitivity towards the landless poor and the small and marginal farmers*.**

5.13.4 The Sub-Group further notes that the bureaucracy that has been retained an extensive domain over Land Management over the last 200 years. The normal argument that the Sub Group came across is that the sanctity of the land records are inviolate and they are only safe in the hands of revenue officials/bureaucrats. This argument does not buy good for the simple reason that the land records as it has been pointed out in the study and in all Committees are in shambles and do not reflect the ground realities. This failure has to be accepted by the present set of land managers.

5.13.5 Linked to this is the exclusiveness of the Land Management System. It has developed some kind of closed club with which neither the people's institution nor the public representatives are associated at the grass roots level. Some of the stray evidence of association that the Sub Group found is in the State of Andhra Pradesh where in the Bhu Bharati Programme the Sarpanch has been made the Chairperson of the Dispute Resolution Committee. In fact the Bhu Bharati has emerged as a parallel movement to the Panchayat which have diluted the Panchayats. In the State of Rajasthan the Sarpanch has been given the power to approve mutations after registration by the Sub Registrar who is the Tehsildar in this case. This virtually results in dilatory process and politicization of the simplified law. The power stands vested in the person of the Sarpanch whereas it should have been vested either in the Gram Sabha or in the Standing Committee dealing with land.

Recommendations

(i) All revenue work should necessarily be carried out in the language of the State.
(ii) All Court should also be in the language of the State;

(iii) All records should be on the Panchayat Portal in open source.
(iv) A copy of the RoR should be available with the Panchayat for inspection.

5.14 Marginalisation of the People's Institutions

5.14.1 The Report of the Committee on Revitalization of Land Revenue Administration had also noted this major flaw and had recommended: "We believe that keeping in mind the Directive Principles of State Policy enshrined in the Constitution, the unique characteristics of the Indian Polity and the national consensus that has been reached in the matter of democratic decentralization, the right step will be to transfer Land Administration in due course to Panchayati Raj Institutions. But considering that the 73rd Amendment to the Constitution does not include land revenue in the list of subjects to be transferred to Panchayats, that there is still considerable resistance at the political and bureaucratic levels to the transfer of even the listed subjects to Panchayats and that Panchayats are in their infancy…….we suggest that after watching the working of Panchayati Raj Institutions for a period of five years or so, Land Administration should be transferred to Panchayats." The Bandyopadhyay Committee has also recommended a major role for the Gram Panchayats in Land Reforms. He has recommended that a Block Level Committee for resolution of disputes should be headed by the President of the Panchayati Samithi while the Sarpanch of the Gram Panchayat concerned to be the Member Secretary.

Role of the Panchayats

5.15.1 Article 243 G depicts Panchayats as institutions of self-government and provides that the State Legislature may empower them with devolution of powers and responsibilities that may enable them to undertake:- (a) the preparation of plans for economic development and social justice; (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. The different States have empowered their Panchayats differently. The State of Panchayat Report 2008 gives an assessment of the capabilities of the Panchayats in all the States/Union Territories. While in some of the States the Panchayats have been adequately empowered with functions, functionalities and finances as detailed in Schedule XI of the Constitution and have taken the form of full-fledged government. However, as noted earlier the Panchayats have been kept carefully away from the land matters and their association with land management is incidental. On the other hand as the State of the Panchayat Report notes there is a strong agencification of Panchayats which undermines their governance role.

5.15.2 In case study conducted by the Sub Group in respect of 2 of the Panchayats namely Heure Bazaar in Ahmednagar district of Maharashtra and in Gopalpura in Churu district of Rajasthan it has been noted that the Panchayats have gained in prestige and status. The President of Heure Bazaar Panchayat Shri Popatbhai Pawar is a Post-graduate who has opted to stay back in the village. He has been elected uncontested since 1989 as the Sarpanch of the Panchayat. His Panchayat has become fully literate; thus 3 BPL families in the village; out migration has stopped totally and there is reverse migration of 40 families who had left the village decades ago; the employment opportunity have increased enhanced educational facilities and there are 3 doctors and 73 teachers and a large number of people employed in army. The Panchayat has full control over the wasteland and forest land and they have taken of the entire area for watershed management and for afforestation programme. It has initiated incentives for protection of trees and enhancing water bearing capacities of the soil. The

Panchayat has also imposed the condition that no land will be sold except to the landless and the Panchayat will also have a role in deciding the prices to be paid. This has completely eliminated landlessness in the village and ensured fair exit for the landholders. A brief account on Heware Bazaar is placed at **Annex- 5.14.**

5.15.3 In Gopalpura the Sarpanch Ms.Savita Rathi, a first time Sarpanch has completely resolved all conflicts in the village. She has involved the villager in protection of the common lands and the forest lands. She resisted the efforts of the State Governments to grant mining lease to private parties on Panchayat and forest land and went to the High Court. The villagers of almost 20 Panchayats have united to protect their common lands. The Sarpanch of Gopalpura has prepared a development plan for the village and has also developed a land use pattern for the village. She is constrained by the lack of untied grants. Her greatest concern is that the villagers must have freedom from the 'oppressive reign of the Patwari' who is the root cause of many disputes arising in the rural society. She would also like to have custody of all waste and common lands and would like to have the authority to decide the land revenue in the village, realize and appropriate the same for the Panchayat work. A Report on the work done by the Gopalpura Panchayat is placed at **Annex-5.15.**

5.15.4 The Sub Group is strongly of the opinion that land has to be freed from its semi-colonial management structure, and the villagers from the over lordship of the Patwari. It was rightly remarked that while the land is in village, the parties to a dispute are in a village, the dispute exists on ground why should Court at the District or State Headquarters take years to decide an issue which is a matter of common knowledge in the village and which could have been resolved in one sitting of the Gram Sabha. It has been rightly remarked by the Sarpanch Gopalpura that the disputes are mostly creation of the Patwari. Our Court system is continues to be colonial in its language, dress, bearing, procedures and orientation. There is an urgent need to involve the people and their institutions in form of Panchayats both for the purposes of maintenance of records and ensuring proper management.

5.15.5 In some States like Uttar Pradesh, Punjab, Haryana, Rajsthan etc. the management of wasteland is vested into the Panchayats. There are instances of encroachments over the Gram Sabha Land which the Panchayats are not able to get vacated. Yet, the Sub-Group is convinced that the wastelands in such areas are better managed. The Panchayats need to be vested with authority and administrative support in order to make a success of their tasks.

Recommendations

(i) Full rights of management to vest in the Gram Sabha of the Panchayat which will include the village Wasteland, Common Lands, land under public utilities, Government Land, community lands, dedicated lands etc.

(ii) The management rights will include settlement of land on annual basis or for such terms as be deemed desirable by the State Government, development of such lands or such other measures that the State Government may deem it fit.

(iii) There should be a Standing Committee dealing with land issues including management of waste land, common lands, etc.

(iv) The right of Settlement of Land should rest with the Gram Sabha of the Panchayat

(v) No settlement of Gram Sabha land should be made on a permanent basis. The settlee and his descendants should have the right to use and inheritance.

(vi) Land Settlement may be conducted on periodic basis.

(vii) The Gram Sabha should have the power to evict all encroachers from public land.

(viii) The State/Central Government should provide the Panchayats assistance to enhance their capacities.

(ix) The Panchayats should be entitled to draw upon and utilise the funds of the NLRMP.

5.16 Inaccurate and Obsolete Land Records

5.16.1 It has also been observed by the Sub Committee that on account of a structural deficiencies the Land Management System is highly error prone and inaccurate. This has been well established by means of the State surveys conducted by the NIRD. Koneru Ranga Rao Committee reports that land being a dynamic entity changes keep taking place in ownership extent and boundaries and classification unless these changes were promptly captured the land records become absolute within no time. Such deficient or absolute records do not resolve conflict but add to them. The Committee also found by means of surveys conducted that in certain areas the transactions which have taken place say after 1948 have not been recorded for more than 60 years now. In the State Bihar the D. Bandyopadhyay Committee found that the mutations are simply not matching the changes taking place on account of sale transfer lease and inheritance. The cases are not being filed as the process involved is so irksome, time consuming and expensive that it frightens away the Raiyats. Even the cases that are filed, their disposal rate is very slow. In the year 1945 the then Government has instructed that a drive be undertaken to get the mutation cases disposed of as a consequence of which 11,73,143 cases were filed in the year 2005-6 and 19,25,021 cases in the year 2006-7. The figures have been given in Table-5. 3 below.

TABLE- 5. 3 : Status of Mutation Cases in the State of Bihar (2002-2007)

Financial year	Total No. of cases filed	Total No. of cases disposed	No. of pending cases
2002-03	315718	300034	15684
2003-2004	463930	453928	10002
2004-2005	496420	484710	11710
2005-2006	1172143	1123751	48392
2006-2007	1925021	1867070	57551

5.16.2 It is to be noted that there are provision for linking the registration process to mutations. A Landlords Certificate Fee is charged at the time of registration for undertaking change in record. The instructions are that a copy of the registration order will be sent to the concerned Revenue Official who will start proceedings for mutation *suo motto*. Despite these instructions the number of mutation cases filed with revenue authorities do not match the number of transactions that have been registered. It is noteworthy that the number of inheritance cases and the unregistered transactions in land would outweigh the registered transactions. Assuming that 10 per cent of such registered documents would not relate to land transactions requiring mutation of names, roughly 9 lakh potential mutation cases had been generated annually by such registrations. Now if one compared the cases of mutation filed in the years 2002-03 to 2004-05 one would find that yearly there were annual backlog of mutation cases of average 5 lakhs. Obviously, officers and staffs responsible for disposal of mutation either willingly or because of some other reasons, failed to take cognizance of these mutation cases and did not act properly. Either the Sub-registrars did not notify the Revenue officers of the transactions that had taken place or the concerned revenue officers did not pay

any heed to the information they received from the Sub-Registrar offices. It only indicated that there was serious lapse on the part of the controlling officers to ensure that documents registered did get reflected in appropriate revenue records through mutation. **Table-5.4** below indicates the registered transactions for the same period.

TABLE- 5. 4 : The Number of Registered Transactions

2001-02	2002-03	2003-04	2004-05	2005-06
1010074	1038325	1020132	989859	1004263

Recommendations

(i) The Gram Sabha should be allowed to sanction mutations in undisputed cases.
(ii) In disputed cases the matter should be referred either to the Nyaya Panchayat or where the Nyaya Panchayat does not exist to the Dispute Resolution Committee of the Panchayat for arbitration and adjudication.
(iii) At the higher level there should be a Board of Appeal comprising elected Panchayat members and revenue officials.
(iv) There should be correction of the record-of-rights every 6 months where in the corrections should be read out in the Gram Sabha.
(v) The Khesra Girdawari/Adangal should be prepared and approved by the Gram Sabha.

5.17 Lack of Transparency

5.17.1 The creation and correction of records are made under one law or the other of the State Legislature. This also involves a quasi-judicial process wherein the orders are appealable. However, perusal of court records indicates that the process is being undertaken more in judicial manner than one involving correction of the rights of the people. In a number of cases the court records were found to be pending for an inordinate time on account of lack of availability of the revenue officer to hold the court for reasons of law and order and engagement with other tasks. It has already been mentioned that the revenue officials are also responsible for discharge of a number of other functions including census, law and order, holding loan melas and other miscellaneous activities. In a number of cases the court orders were also found to be written in English. The parties involved were not found to fully comprehend the orders. The orders were so cryptically written that at many times it was not possible to understand as to why the rights of some had been overlooked in favour of others. This betrays a total lack of transparency on part of the Land Management System. Such an opaque system can only cause distortions in the rights of the people particularly the poor and cannot advance them.

5.17.2 The Sub Group also noted that even after 60 years of Independence most of the revenue laws and instructions continued in English. Even where translations were made into Hindi and other regional languages they are found to be more complex and incomprehensible as compared to the original work in English. There were no efforts feasible to create legal literacy in respect of the revenue laws and instructions through self-taught mode in simple local language. Such a step was never under the contemplation of the Revenue Officials. To the contrary there was a persistent complaint that the revenue administration went out of its way to keep its records and its legal system out of reach of the common masses.

Recommendations

(i) All orders in respect of land affecting the rights of the people should be posted on the net.
(ii) In a village based judicial system all orders should be open for display.
(iii) Even the vernacular used should be simple.
(iv) The emphasis should be more on dispute resolution than adjudication.

5.18 Political Economy around Land

5.18.1 The Sub Group has taken note of the complaint of the people voiced during the course of field enumeration regarding the rent seeking behavior of the revenue staff. Even D. Bandyopadhyay Committee came across strong evidence to this effect during the course of the Public Hearings (Jan Sunwais) 15 of which were conducted. ***The Sub Group deems it natural that such antiquated, inaccurate and delay taking land records of an urban based system locked in colonial relations with the rural peasantry is bound to give right to a strongly rent seeking behavior on part of the managers of the land system. This would include the higher bureaucracy, the lower bureaucracy and the grass roots revenue staff. In fact, the inadequacies of the Land Management System are further locked in a cause-effect relationship with these deficiencies giving rise to a vicious circle of lack of maintenance- lack of accessibility – inaccurate records – rent seeking.***

5.18.2 The Sub Group is also constrained to observe that on account of visible rent seeking behavior particularly at the cutting edge of the revenue administration there is a strong political economy that has grown around the land issue. Land is increasingly becoming commercial commodity and hence is in increasing short supply for agricultural purposes. There is a tremendous pressure on land impelled by the urbanization process, growing industrialization, expansion in service and leisure industries, a gross imbalance in money supply in the urban and rural areas, the growing demand for colonization. This stand is perceptibly visible since the introduction of the liberalization process in the year 1991.

5.18.3 It is also equally strongly felt that there is no reconciliation in theoretical terms between the non-agriculture demands on land and the pro-poor policy of the State Government. This matter has been dealt in greater length elsewhere. Still one is constrained to note that at the State and the National level there is no clarity regarding the land use — how much land should be retained by the poor people, how much by the middle class and large class farmers, how much by the industrialists and how much by the urban agglomerations. The understanding that one derives from reading the planning documents that urbanization and industrialization of India is the ultimate goal and starting right from the Mahalanobis model of the Second Plan this plan appears to be consistently pursued. At the field level there is as soon as an urban demand for land acquisition is placed it acquires a momentum of its own and overlooking rights of the poor and the marginalized. There is no National Land Use Policy at present and the States are pursuing their own policy as per their convenience. It is of course well realized that given the regional and State diversities it may not be feasible to prescribe a uniform policy for the country as a whole. However, still it will be possible to indicate the broad parameters under which the land use could be categorized and the State could come out with their own policy. The Sub Group feels that unless this ambivalence at the National and State level are reconciled the Land Management System will

continue to be pro-rich and anti-poor. In addition, it will also be governed by strong conditions of political economy that are easily noticeable.

5.18.4 ***Failure of Control Mechanism*****:** Under the circumstances aforementioned the existing Land Management System has very little internal control mechanism. The Koneru Ranga Rao Committee Report was constrained to observe: ***"In most States, as in A.P., incorporation of changes in the records has not been done on a regular basis. As a result most of the records are obsolete. To add to the problem, land records have become quite old, some of them more than a century old. Due to continued handling for day-to-day administration, a good part of the records has crumbled and eventually became unavailable. No efforts have been made to conduct resurveys to create up to date land records for villages for which they are not available, owing to the expensive and time consuming nature of the resurvey operations. Further, survey framework on ground only partially exists due to large-scale missing of survey boundary marks. No efforts have also been made to renew missing survey stones on ground. These factors have contributed to escalation in civil litigation, arising out of boundary and title disputes."***

5.18.5 The State Reports of the NIRD, D. Bandyopadhyay Committee Report and the Koneru Ranga Rao Committee Report point to the lack of adequate supervision from superior officers in revenue administration as well as the failure of the internal control mechanism. This makes the task for a poor man to secure justice at the hands of the revenue administration a farfetched task. That is one of the reasons why a common man has no faith in the capability of the State to deliver not only distributive justice but the normal justice that is due to every person.

Recommendations

(i) The Collector should be divested of his direct court and revenue functions as he is too busy with other works and should just exercise supervisory functions.

(ii) The powers of appeal and major decisions should vest in tribunals rather than in individual officers.

(iii) A cadre of revenue officers should e created at the district level.

(iv) ***A cadre of junior officers will work under the Panchayats subject to their full administrative*** **control.**

(v) ***All States should consider to introduce a system of annual revision of records.***

5.19 Poor Dispute Resolution

5.19.1 It is the considered opinion of all the Sub Committees that a poorly organized Land Management System as we have in most States is dispute promoting and not dispute resolved. The observation of the Koneru Ranga Rao Committee is most pertinent : **"*Presently the Revenue Courts are choked. Thousands of cases pertaining to land issues are pending in revenue courts. In the Hon'ble High Court there are more than 3,000 cases on assignment alone. In Hyderabad 8,000-10,000 cases are pending in CCLA and the revenue courts. With passing time the number of cases is only increasing."*** This state of affairs is on account of the following:-

(i) Inadequate time is given to Dispute Resolution by the Revenue Officials particularly the top revenue officials. This is on account of two factors — their excessive engagement otherwise and the lack of priority accorded to this subject. Perusal of the

court records indicates that petty cases have lingered on for decades together. Each date given in the case means an additional expenditure on part of the poor litigant stretching his resources and leaves him worse off even if he were to win the case.

(ii) The training given to the revenue officials is inadequate. They are trained better in court procedures than in resolution of disputes with the result that there is greater emphasis on form rather than content.. There is an excessive preoccupation with the court ceremonies, dress, decorum and other external forms of behavior while there is none on meeting justice to the poor person or to resolving the dispute expeditiously.

(iii) There is an excessive reliance on documents and oral evidence administered under oath while there is little credence given to knowing the facts by making a field visit. In parlance of the revenue administration a visit to the disputed land is worth more than hundreds of pages of written documents. Since the Courts are overburdened field visit takes a back seat.

(iv) Even where the visits takes place perusal of the records indicate that the visit note is not properly recorded and at times there is deliberate effort to obfuscate the real issues whereby the poor person normally stands to be harmed.

(v) There is also a lack of clarity regarding the role in case of most revenue officers. There is a difference between judicial and quasi-judicial proceedings. The revenue courts are not judicial courts. The presiding officers of such courts cannot afford to forget that their primary job is to deliver justice to the poor and to protect the interests of the landless and the small farmers. Unless this attitude has to be inculcated the system will never work in favour of the poor.

(vi) The legal help in the resolution of the cases is extremely weak. The poor litigant cannot argue his own case for the lack of articulation and excessive formalism relied upon by the Courts. Also the Courts have no patience or time to listen to him. On the other hand, the assistance rendered to the court from the Government side is often found weak and not free from biases of several kinds. Hence, an alternative form of justice has to be reconsidered.

(vii) The Dispute Resolution mechanism which traditionally existed in our society stands demolished. In some States there is a forum for resolution of disputes under the Panchayat system. However, it is not functional in most cases. Instead the Government of India proposes to come out with a Gram Nyayalay Bill whereby the formal judicial system being extended downwards to the Taluka or Mandal level. This he ould be disastrous as it would add to litigation. The Ministry of Panchayati Raj had come out with proposals of a Nyaya Panchayat which would be an alternative forum for dispute resolution at the village level. The Sub Group notes with constraint that the Ministry of Panchayati Raj has not been able to push through this legislation which is likely to provide an adequate forum of dispute resolution at the village level alternative to our existing formal system.

(vii) The Sub Group, however, notes with a good deal of appreciation the Access to Land Movement being undertaken in the State of Andhra Pradesh under the aegis of the Velugu programme. Under this Movement dedicated teams of lawyers, concerned citizens, retired bureaucrats, students, social activists and government servants visit the rural areas, adopt villages and get these disputes resolved either through negotiation, arbitration or through the formal Court process. Where this drive to emerge as a regular system it would render a good deal of benefit to the rural poor and provide them with linkages to the urban areas thereby adding to their social capital and also resolving their pending land issues. Still it is felt that the system needs to be institutionalized within a formal structure.

Recommendations

(i) It has to be clearly realised that the disputes arise from the way that we manage our lands. The present management system is incapable of delivering particularly on the fronts of distributive justice.

(ii) Maximum reliance should be placed on field visits and the evidence of the boundary raiyats.

(iii) In case of field visit the local inspection note should be properly recorded.

(iv) The Nyaya Panchayat Bill should be enacted by the Government of India for better adjudication.

(v) The Sub-Group appreciates the Access to the Land Movement of Andhra Pradesh and recommends its adoption by other States with such modifications as may be deemed proper to suit the local environment.

Section – III

5.20 Emerging Forces in the Land Market

Liberalisation Process

5.20.1 The Sub Group takes cognizance of the process of liberalization that was set into motion by the new economy policy of 1991. While certainly the rigours of structural readjustment have been cushioned by a strong safety network of poverty alleviation, employment generation and welfare schemes, the process is not without its impact upon the land related issues and the marginal and the small farmers. Some of the most pronounced factors are listed below:-

5.20.2 Rise in Landlessness: The Sub Group takes a note of the increase in landlessness in the rural areas. Landlessness has had a phenomenal increase from about 40 per cent (1991) to about 52 per cent (2004-5). **Table -5.5** below indicates the growth in landlessness. While all the enhanced landlessness cannot be attributed to the liberalization process alone the non-agricultural demands placed on land on account of industrialization, infrastructural development, urbanization and migration of the urban rich in the rural areas have certainly contributed to the process.

Table- 5. 5 : Incidence of Landlessness in Rural Areas (%)

State	1971-72			1981-82			1991-92		
	A	B	C	A	B	C	A	B	C
AP	7.0	47.6	65.3	11.9	22.2	48.6	11.9	29.9	59.3
Assam	25.0	46.1	69.6	7.5	35.0	61.5	13.4	35.9	70.8
Bihar	4.3	53.0	71.7	4.1	42.5	68.7	8.6	52.0	76.8
Gujarat	13.4	39.2	52.2	1.8	15.5	38.6	16.3	26.8	47.9
Haryana	11.9	54.5	63.9	6.1	30.3	42.2	3.7	35.1	50.7
HP	4.4	28.1	61.2	7.7	13.7	54.2	10.4	45.4	80.2
J & K	1.0	22.0	59.2	6.8	26.6	60.9	2.8	24.1	58.9

Karnataka	12.5	36.1	50.9	13.7	19.3	38.4	10.0	25.9	49.7
Kerala	15.7	72.2	88.7	12.8	72.1	88.9	8.4	75.2	9.6
MP	9.6	28.8	40.3	14.4	15.7	32.9	15.2	18.9	38.7
Maharastra	15.8	36	48.4	21.2	20.9	35.3	19.6	23.9	43.6
Orissa	10.6	44.8	68.9	7.7	21.7	54.5	13.8	27.9	60.0
Punjab	7.1	59.9	67.5	6.4	51.9	59.0	5.9	52.2	63.2
Rajasthan	2.9	15.3	27.0	8.1	14.4	30.5	6.4	18.4	39.3
Tamil Nadu	17.0	60.5	78.4	19.1	48.5	71.4	17.9	53.6	77.2
UP	4.5	43.4	65.6	4.90	32.6	59.6	4.9	38.0	68.0
W. Bengal	9.8	56.5	77.6	16.2	49.8	74.3	11.0	54.6	80.7
India	9.6	21.2	45.8	11.3	33.1	56.0	11.3	37.7	62.8

A: Percentage of landless households
B: Percentage of near landlessness (households with operational holdings ≤ 0.4 ha)
C: Percentage of near landlessness (households with operational holdings ≤ 1 ha)

5.20.3 Pure landlessness had gone up from 9.6 per cent (1971-72) to 11.3 per cent (1992). Given the growth of rural households, this rise can be construed as moderate. However, near landlessness i.e. households operating less than 0.4 hectares rose by 16.5 percentage points during this interregnum.

5.20.4 Rise in Joblessness: One feature of the liberalization rate growth is the decline in the rate of increase of employment in the formal sector. The organised sector has taken advantage of the process to reduce its work force. Of particular importance is the decline in the employment in the public sector undertakings. The figure given in **Table-5. 6** below would indicate the position.

5.20.5 **Deepening of Poverty:** The liberalized era has witnessed the concentration of wealth with wealth and poverty with poverty. While India runs 6th in the number of billionaires in the world it is 126 in terms of the Human Development Index. There has been a deepening and concentration of poverty amongst the landless labour, marginal farmers, women workers, the Scheduled Castes and Scheduled Tribes and the minorities. The poverty amongst the Scheduled Castes and Scheduled Tribes has declined more slowly as compared to the general sections of the population. The 61st round and the Report of the NCUS indicate that almost 860 million Indians live on an income below Rs.25 per day. The figures in **Table-5. 7** below would indicate the position.

Table – 5. 6 : Person Day unemployment rates for rural areas

Year	All India	
	Rural Male	Rural Female
72-73	6.8	11.2
77-8	7.1	9.2
83-84	7.5	9.0
87-88	4.6	6.7
93-94	5.6	5.6
99-00	7.2	7.5
04-05	8.0	8.7

Source: Inclusive Growth in India, S Mahendra Dev, Oxford,2008

5.20.6 The Great Distress in the Agricultural Sector: The agriculture sector has witnessed a decline in agricultural growth down to 1.8 per cent in 2004-5. There has been a corresponding decline in the profitability of agriculture due to rise in factor costs with a result that many people want to exit the agricultural sector. The figure given below in **Table-5. 8** indicates the decline in profitability.

5.20.7 The Rapid Growth in Rural e-Connectivity: There has been a rapid growth witnessed in rural e-connectivity thanks to programmes like NeGP, eGram Vishwagram, Bhoomi, Bhu Bharati and e-PRI etc. These programmes have led to rapid spread of IT knowledge in the rural areas and the computer population in the rural areas has undergone a rapid change. This has tremendous implication in terms of the capacity of the rural areas to manage their own affairs particularly those related to land. The figures given in **Table – 5.9** would indicate the growth in rural connectivity.

Table- 5. 7 : Concentration of Poverty in India

State-Wise Population Below Poverty Line (Based n MRP-Consumption) in Rural and Urban Areas of India (2004-2005)

States / UTs	Rural		Urban		Combined	
	No. of Persons (Lakhs)	% share	No. of Persons (Lakhs)	% share	No. of Persons (Lakhs)	% share
Andhra Pradesh	43.21	7.5	45.5	20.7	88.71	11.1
Arunachal Pradesh	1.47	27	0.07	2.4	1.54	13.4
Assam	41.46	17	0.93	2.4	42.39	15
Bihar	262.92	32.9	27.09	28.9	290.11	32.5
Chhatisgarh	54.72	31.2	16.39	34.7	71.11	32
Delhi	0.01	0.1	15.83	10.8	15.83	10.2
Goa	013	1.9	1.62	20.9	1.74	12
Gujarat	46.25	13.9	21.18	10.1	67.43	12.5
Haryana	14.57	9.2	7.99	11.3	22.56	9.9
H P	4.1	7.2	0.17	2.6	4.27	6.7
J & K	2.2	2.7	2.34	8.5	4.54	4.2
Jharkhand	89.76	40.2	10.63	16.3	100.39	34.8
Karnataka	43.33	12	53.28	27.2	96.6	17.4
Kerala	23.59	9.6	13.92	16.4	37.51	11.4
Madhya Pradesh	141.99	29.8	65.97	39.3	210.97	32.4
Maharashtra	128.43	22.2	131.4	29	259.83	25.2
Manipur	2.86	17	0.14	2.4	3	13.2
Meghalaya	3.32	17	0.12	2.4	3.43	14.1
Mizoram	0.78	17	0.11	2.4	0.89	9.5
Nagaland	2.94	17	0.09	2.4	3.03	44.5
Orissa	129.29	39.8	24.3	40.3	153.59	39.9
Punjab	9.78	5.9	3.52	3.8	13.3	5.2
Rajasthan	66.69	14.3	40.5	28.1	108.18	17.5
Sikkim	0,85	17	0.03	2.4	0.87	15.2
Tamil Nadu	56.51	16.9	58.59	18.8	115.1	17.8
Tripura	4.7	17	0.14	2.4	4.85	14.4
Uttar Pradesh	357.68	25.3	100.47	26.3	458.15	25.5
Uttarakhand	21.11	31.7	7.75	32	28.86	31.8
West Bengal	146.59	24.2	26.64	11.2	173.23	20.6
Islands	0.44	16.9	0.27	18.8	71	17.6

Chandigarh	0.94	3.8	0.36	3.8	0.4	3.8
Dadra & Nagar Haveli	0.62	36	0.16	19.2	0.77	30.6
Daman & Diu	0.03	1.9	0.14	20.8	0.16	8
Lakshadweep	0.04	9.5	0.05	16.4	0.09	12.3
Pondicherry	0.58	16.59	1.34	18.8	1.92	18.2
India	1702.99	21.8	682	21.7	2384.99	21.8

Note: MRP Consumption: Mixed recall period consumption in which consumer expenditure data for five Non-food items, namely, clothing, footwear, durable goods, education and institutional medical expenses are collected from 365-day recall period and the consumption data for the remaining item are collected.
Share of Bihar, Chattisgarh, Jharkhand, Madhya Pradesh, Maharashtra and West Bengal – 77% of rural poor 72% of poor (Source: S. Mahendra Dev, 2008)

Table- 5. 8 : Decline in Profitability of the Agricultural Sector (Y.K. Alagh 2004-5))

Table-5. 9 : Growth in Rural Connectivity

Urban and Rural Teledensity in India (As on 29.02.2008) (In %age)			
Circle/States	**Teledensity**		
	Rural	**Urban**	**Overall**
Andaman & Nicobar Islands	13.89	24.77	17.94
Andhra Pradesh	10.15	72.44	27.34
Assam	3.85	72.46	13.67
Bihar	3.10	89.13	12.13
Chhattisgarh	1.31	14.27	4.18
Gujarat	15.57	58.15	32.34
Haryana	16.06	57.67	29.45
Himachal Pradesh	30.50	118.64	39.90
Jammu & Kashmir	7.35	59.40	20.99
Jharkhand	1.14	11.38	3.49
Karnataka	11.14	73.38	33.68
Kerala	25.50	97.46	43.98
Madhya Pradesh	4.96	58.34	19.54
Maharashtra (-) Mumbai	11.66	55.16	26.18
North East –I	6.65	89.45	26.32
North East - II	3.06	27.47	8.71
Orissa	6.66	53.64	14.28
Punjab	24.83	80.63	46.85
Rajasthan	12.07	57.98	22.98
Tamilnadu (-) Chennai	15.37	56.80	34.01
Uttaranchal	5.03	24.43	10.37
Uttar Pradesh	6.00	50.36	15.58
West Bengal (-) Kolkata	7.02	55.43	13.78
Kolkatta	#	57.43	62.30
Chennai	#	100.13	101.62

Delhi	#	107.96	107.96
Mumbai	#	81.41	81.41
India	**9.03**	**64.48**	**25.34**

Source: Indiastat.com

5.21 Liberalisation and Other Programmes

5.21.1 **Relaxation in Legal Framework:** Many of the States have begun to view the protective land legislation as hindrance to the process of liberalization and have taken to relaxation in the legal framework.

5.21.2 **Introduction of NREGA:** The introduction of NREGA has provided a major source of employment in the rural area. The preliminary study by NIRD indicates the increase in bargaining strength of the landless labour, decline in starvation, decline in outmigration, better nutritional status, better educational status and raise in agricultural wages. The **Table - 5.10** below will indicate the employment provided under NREGA. However, the full impact of the programme on agriculture is yet to be studied in all its implications. The Sub Group estimates that it will create a pressure on the large and medium form hiring in labour and will lead to creation of smaller farm size being run on family labour.

Table- 5. 10 : Funds released under NREGA during 2005-06 & 2006-07

(Rs. In Lakhs)

Sl. No.	State	No. of Districts Identified	Release for NREGA		
			2005-06	2006-07	Total
1	Andhra Pradesh	13	16474.81	91461.43	107936.24
2	Arunachal Pradesh	1	446.31	1210.85	1657.16
3	Assam	7	33650.13	13970.85	47620.98
4	Bihar	23	30806.30	41581.38	72387.68
5	Chhattisgarh	11	785	55716.74	56501.74
6	Gujarat	6	4241.12	6165.94	10407.06
7	Haryana	2	873.82	3129.39	4003.21
8	Himachal Pradesh	2	898.37	2207.64	3106.01
9	Jammu & Kashmir	3	1135.29	2776.37	3911.66
10	Jharkhand	20	23429.66	43618.59	72048.25
11	Karnataka	5	4402.1	17595.69	21997.79
12	Kerala	2	1169.18	2179.51	3348.69
13	Madhya Pradesh	18	13713.82	178129.20	191843.02
14	Maharashtra	12	19743.56	19235.64	38979.20
15	Manipur	1	461.63	1252.89	1714.52
16	Meghalaya	2	1457.87	2064.68	3522.55
17	Mizoram	2	770.91	783.90	1554.81

18	Nagaland	1	1031.28	430.11	1461.39
19	Orissa	19	7384.75	75456.49	82841.24
20	Punjab	1	822.54	2755.75	3578.29
21	Rajasthan	6	4142.11	72961.00	77103.11
22	Sikkim	1	722.16	451.50	1173.66
23	Tamil Nadu	6	6571.72	14389.21	20960.93
24	Tripura	1	2572.97	1456.66	4029.63
25	Uttaranchal	3	1269.11	2710.60	3979.71
26	Uttar Pradesh	22	33242.07	48655.69	81897.76
27	West Bengal	10	17038.15	30858.84	47896.99
Total		**200**	**229256.74**	**738206.53**	**967463.27**

Recommendation

(i) The experiment guaranteeing title to land has been undertaken by the Government of Andhra Pradesh. However, the project is yet to be fully implemented or assessed. A rigorous assessment of the project should be made by some some independent agency

(ii) The project is using stereo-photogrametry with rectification. This technology is old and expensive and does not permit taking of maps in time series.

(iii) The Guaranteeing Title to Land should be a Panchayat based operation and the final Khatiyan should be approved by the Panchayats

(iv) The village level data should be put on the National Portal to be created for Land Information System.

5.22. Land Bank

5.22.1 The Concept of Land Bank has been floated by the NIRD for management of Land. This experiment has been tried in Andhra Pradesh under the Velegue programme which consists of purchase of land by the SHGs. It has been appraised and is highly commended. A concept has been floated that the SHG movement for purchase of land should spread to other parts of the country. The landless should organise themselves as SHGs and form a federation at the village level which will transform themselves into a Land Bank. Such Land Banks will also have command over the use of waste and commons for management purposed under the Gram Sabha. This has enormous potential for the future.

Recommendations

(i) ***A Land Bank comprising the SHGs of landless workers may be constituted on pilot project basis and if found appropriate can be extended to the rest of the country.***

(ii) The right to use in respect of the waste land and other cultivable village lands will vest in the Land Bank

(iii) All unclaimed lands/abundant holdings should also vest in the Land Bank

(iv) The Land Bank should be authorized to lease in land and get it cultivated by their members

(v) The Land Bank will have first right of the purchase in respect of the land being sold in the village.

(vi) The Land Bank can use SGSY resources to purchase land or can get the same purchased in name of its members

(vii) All transactions will be made in the name of women members

(viii) The Land Bank can lease in land from the absentee landlords or those not desirous of cultivating land

(ix) The States may bring in legislation for operation of the Land Bank

(x) A Concept Paper on Land Bank is enclosed at Annexure 5-16.

Section - IV

5.23 Technological Innovations

Introduction

5.23.1 Recent Developments in the technological field have not only facilitated the transactions in land management but have made a New Paradigm possible. The British Land Management had grown out of the existing social, environmental and technological environment and had used the state-of-the art technologies available. With the growth in dimensions of problematique - number of parcels of land, raiyats, introduction of new forms of tenurial relations, compulsions introduced by technological developments in agricultural and the allied fields, fading out of some of the existing institutions and birth and empowerment of some others, birth of a vigorous and aggressive urban economy and culture and creation of a firm technical manpower base, alterations in land and production relations to mention a few there has been a paradigm shift in Land Management. Technology is well recognised as a factor of production even in the general economic parlance. The Sub-Group takes note of the technological innovations and their potential to usher in the new Land Management.

5.23.2 The Sub-Group also notes that either these technologies have been used in some of the States or have been captured in the formulations of the Central Government or are available with the technological institutions as externalities but are yet to be internalised. The mere existence of such technology is a factor to be reckoned. It, however, involves a whole lot of issues- the state of manpower base of the Revenue Department, their recognition of the issues that confront the State, their perception of the solutions and above all their commitment to induct these technologies. More important is the commitment of the State Government to the people. Changes have taken place where the State Government is committed to its tenants and farmers to provide an upgraded Land Management. It is not a matter of debate here that a superior Land Management makes significant contributions to agriculture in terms of efficiency, access to credit, capital accumulation, seeking market information and investments.

5.24 Photogrammetry

5.24.1 Photogrammetry is the technique of measuring objects (2D or 3D) from photographs. It may be also satellite imagery. The **results** can be:

i. Coordinates of the required object-points
ii. Topographical and thematic maps and
iii. Rectified photographs (orthophoto).

5.24.2 A distinguishing feature of photogrammetry is the fact, that the objects are measured **without being touched**. Therefore, the term 'remote sensing' is used instead of 'photogrammetry'. Remote sensing" is a rather young term, which was originally confined to working with aerial photographs and satellite images. Today, it also includes photogrammetry, though it is still associated rather with 'image interpretation'.

5.24.3 Principally, photogrammetry can be divided into two major classifications:

5.24.4 The First Classification depends upon lens setting to capture the detail features for generation of 2D and 3 D mapping from Ariel photographs with photogrammetry techniques, with proven application in land parcel management and the Second Classification uses satellite stereo imageries for 3D generation of maps.

5.24.5 The **applications** of photogrammetry are widely spread. Principally, it is utilized for object interpretation, quality and quantity and object measurement. Aerial photogrammetry is mainly used to produce topographical or thematical maps and digital terrain models. Among the users of photogrammetry are architects and civil engineers, Revenue, Survey and Settlement Departments (to map land parcels, supervise buildings, document their current state, deformations or damages).

5.25 Photogrammetric Techniques

5.25.1 Depending on the available material and the required results (2D or 3D, accuracy etc), different photogrammetric techniques can be applied. Depending on the number of photographs, three main-categories can be distinguished namely:

5.26 Mapping from a single photograph

5.26.1 Single photograph is only useful for plane (2D) objects, and the photograph will have a unique scale factor, which can be determined, if the length of at least one distance at the object is known.

5.27 Paper Strip Method

5.27.1 The Paper Strip Method is the cheapest method, since only a ruler, a piece of paper with a straight edge and a pencil are required. Four points are identified in the picture and in a map. From one point, lines are drawn to the others and to the required object point on the image. Then the paper strip is placed on the image and the intersections with the lines are marked. The strip is then placed on the map and adjusted such that the marks coincide again with the lines. After that, a line can be drawn on the map to the mark of the required object point. The whole process is repeated from another point, giving the object-point on the map as intersection of the two object-lines.

5.28 Optical rectification

5.28.1 The Optical rectification is done using photographic magnification. The control points are plotted at a certain scale. The control point plot is rotated and displaced until two points match the corresponding object points from the projected image. After that, the table

has to be tilted by two rotations, until the projected negative fits to all control points. Then an exposure is made and developed.

5.29 Numerical Rectification

5.29.1 In the Numerical rectification, the object is on a plane and four control points are marked. At the numerical rectification, the image coordinates of the desired object-points are transformed into the desired coordinate system. The result is the coordinates of the projected points. Differential rectification If the object is uneven, it has to be divided into smaller parts. The objects are rectified piecewise, with a prerequisite for differential rectification is the availability of a digital object model, i.e. a dense raster of points on the object with known distances from a reference plane; in aerial photogrammetry it is called a DTM (Digital Terrain Model).

5.30 Monoplotting

5.30.1 This technique is similar to the numerical rectification, except that the coordinates are here transformed into a 3D coordinate system. By the calibration data of the camera, through the lens onto the photograph can be reconstructed and intersected with the digital terrain model could be prepared.

5.31 Digital rectification

5.31.1 The digital rectification is a rather new technique. It is somehow similar to monoplotting. But here, the scanned image is transformed pixel by pixel into the 3D real-world coordinate system. The result is an orthophoto, a rectified photograph, that has a unique scale.

5.32 Stereophotogrammetry

5.32.1 As the term already implies, stereopairs are the basic requirement. These can be produced using stereometric cameras. If only a single camera is available, two photographs can be made from different positions, trying to match the conditions of the normal case . Vertical aerial photographs come mostly close to the normal case. They are made using special metric cameras, that are built into an aeroplane looking straight downwards. While taking the photographs, the whole area is covered by overlapping photographs. The overlapping part of each stereopair can be viewed in 3D and consequently mapped in 3D.

Applications

i. Photogrammetery is used for wide range of applications, for perspective viewing through 3 D and is a precise information base. Photogrammetery is used in rural and urban mapping, topography analysis, disaster management, watershed management, land resources mapping etc.
ii. The aerial photography is not accurate on account because it is not a dynamic image and it has to be verified by the means of ground operations. The satellite imagery, on the other hand, is capable of various analysis and modelling. The high resolution permits identification of objects which is not possible in aerial photography.
iii. The aerial photography is mostly non-lidar. The Lidar Technology is very expensive

and has a limited range while if the satellites are equipped with leader then it will be able to take photographs photo

Recommendations

(i) Aerial photography should be avoided on account of its high cost and the non-repetitive use. When required for second time data capturing to map the changes it is not cost effective.

(ii) Presently high resolution satellites gives imageries comparable to Ariel Photographs. As Cartosat-I has stereo capabilities, it is recommended that Cartosat-1Imageries should be widely used for land management and mapping purposes.

5.33 GIS (Geographic Information System)

5.33.1 A GIS is basically a computerized information system with powerful set of tools for collecting, storing, retrieving at will, transforming and displaying spatial data from the real world and a decision support system involving the integration of spatially referenced data in a problem solving environment.

5.33.2 The information in a GIS relates to the characteristics of geographic locations or areas. In a GIS, the Earth's features are not only represented in pictorial form, as in conventional paper maps, but as information or data. This data contains all the spatial information of conventional maps, but when stored in a computer, is much more flexible in the way in can be represented. Spatial data in a GIS can be displayed just like a paper map with roads, rivers, vegetation and other features represented as lines on a map complete with legend, border and titles, or it can be represented as a set of statistical tables, which can be converted to charts and graphs. The most important feature of GIS is that spatial data are stored in a structured format referred to as a spatial data base.

5.33.3Geographic Information System(GIS) encompasses many fields including Computer Science, Cartography, Information Management, Telecommunications, Geodesy, Photogrammetry and Remote Sensing and is flavoured with it's applications of engineering, environmental analysis, land use planning, natural resource development, infrastructure management, and many others. The GIS often used with the following key terms namely;

i. Automated Mapping (A.M.)
ii. Computer Assisted or Computer Aided Mapping (CAM)
iii. Computer Aided Drafting (CAD)
iv. Computer Aided Drafting and Design (CADD)
v. Geographic Information System
vi. Automated Mapping/ Facility Management (AM/FM)
vii. Geoprocessing and Network Analysis
viii. Land information System
ix. Multipurpose Cadastre

5.33.4 The GIS aims at maximizing the efficiency of planning and decision making, proves an efficient means for data distribution and handling, elimination of redundant data base and minimizes duplication, integrates information from many sources, and help complex analysis/query involving geographical referenced data to generate new information. In land records, the GIS can be used for integrating and mapping of geological information like

shape, size, land forms, minerals and soil, economic information like land use, irrigation, crops etc and the legal rights, registration, and taxation etc, in a precise manner and in digital format.

Recommendations

(i) Survey Database is proposed to store information related to the geodetic network, current survey data, and historical revenue cadastral records of all surveys and the repository for detail from the original revenue source records of the land surveys that underpin the land parcel data or the cadastral framework, and acts as a reference system for accurate coordinates, and forms the base for the Digital Cadastral Database;

(ii) Cadastral Database is proposed to provide an up-to-date continuous cadastral map base to support cadastral mapping and the LIS functions, and stores the current cadastral framework, thematic overlays and topographical data in a seamless form;

(iii) Legal/Fiscal Database is proposed to facilitate transactions for updation, mutation, sales etc and provision of revenue approved maps and title possessions

(iv) The Related Data Base refers to the data in the related fields like health, water, agriculture, ground water, soil data, irrigation etc. Such data should be integrated to the other data on the GIS.

(v) A National Portal with a Web GIS is recommended where each State, District, Block and Village should have own respective portal for storage of land records data. The accessibility of data will be based on public domain and authentication;

(vi) A dedicated communication network preferably a two-way audio-video should be operationalised for data sharing, data accessing and will be interactive in nature. The farmers will be using the networks of various Departments for raising their queries like agriculture e-learning process.

(vii) The GIS portal should integrate all information of land management from Gram Panchayats in one common data server and should be compatible with other networks.

5.34 Types of GIS

5.34.1 There are two major methods of storing mapped information : 1) Vector GIS and 2) Raster GIS. Geographic Information Systems which store map features in **vector** format store points, lines and polygons with high accuracy. They are preferred in urban applications where legal boundaries and the analysis of networks are important.

5.34.1 Raster GIS which stores map features in raster or grid format, generalize the location of features to a regular matrix of cells. Raster GIS data structures are preferred for digital elevation modeling, statistical analysis, remotely sensed data, simulation modeling and natural resource applications.

5.35 Thematic Mapping

5.35.1 Maps in Geographic Information Systems are represented thematically. A standard topographic map will show roads, rivers, contour elevations, vegetation, human settlement patterns and other features on a single map sheet. In a GIS these features are categorized separately and stored in different map themes or overlays. For example, roads will be stored in a separate overlay. Likewise, rivers and streams will each be stored as a separate theme.

This way of organizing data in the GIS makes maps much more flexible to use since these themes can be combined in any manner that is useful. The following illustration shows conceptually how maps are stored as themes in a GIS. Each different theme is stored on a separate overlay. The vector based GIS, where the information is stored as a series of points, lines and polygons. The raster based GIS, where the information is stored as a series of discrete units called cells.

5.35.1 In addition to organising spatial data by themes mapped information is also structured as points, lines and ploygons. Besides the spatial information in a map, the GIS can usually store non-spatial information, which is related to the spatial entities. For instance an urban GIS database may have a map theme of property boundaries. Attached to each parcel will be a textual database, which might store the name of the owner, the address, the assessed value of the property, or the type of services and utilities on the site.

5.35.2 The GIS stores both spatial and non-spatial data in a database system which links the two types of data to provide flexible and powerful ways of querying or asking questions about the data.

5.35.3 Many Geographic Information Systems handle both vector and raster data from a wide variety of sources including satellite imagery, cadastral information, hand digitised maps and scanned images.

5.35.4 In order to ensure that all maps in a GIS database overlay accurately, the data set is 'geo-referenced' to a common coordinate system. In many countries the Universal Transverse Mercator (UTM) projection is commonly used to define coordinates in the GIS.

5.36 GIS Application

5.36.1 GIS application is dominant in land-use planning and management, mineral exploration, environmental impact studies, management of natural resources, natural hazard mapping, forestry and wildlife management, soil degradation studies, and enumeration area mapping. The applications of GIS is enormous of which the following fields derive great applications of a GIS system:

i. Agricultural development
ii. Land evaluation analysis
iii. Change detection of vegetated areas
iv. Analysis of deforestation and associated environmental hazards
v. Monitoring vegetation health
vi. Mapping percentage vegetation cover for the management of land Degradation
vii. Crop acreage and production estimation
viii. Wasteland mapping
ix. Soil resources mapping
x. Groundwater potential mapping
xi. Geological and mineral exploration
xii. Snow-melt run-off forecasting
xiii. Monitoring forest fire
xiv. Monitoring ocean productivity etc.

5.37 Satellite Remote Sensing

5.37.1 Remote sensing connotes acquiring information about a phenomenon, object or surface while at a distance from it and without any physical contact with the objects, thus capture earth feature information from time to time, which is accurate, reliable and could be used for land related applications.

5.37.2 With respect to land resources, the satellite remote sensing has the applications namely: updating topo maps, Augmenting Databases, Image maps as base maps, Watershed management, Terrain evaluation, Road and infrastructure maps, Site suitability assessment, soil and crop suitability etc.

5.37.3 Further satellite imageries help monitoring the land use and land cover on a regular basis and help derive information on change detection and information on inaccessible areas. Different types of land classifications also be made by satellite imageries, for the productive and judicious use of land resources.

5.37.4 The present generation of satellites which capture high resolution images and has coordinate information, like Cartosat-I of India and Quickbird of the US. Other satellite data like Cartosat-II and Ikonos are also useful for land records. The cost of satellite data is much lower than the Ariel photographs, hence use of satellite data for land information system is a useful proposition.

Recommendations

(i) High Resolution Satellite Data preferably with one meter resolution and better should be used on continuous basis for building up time series data for Land Management.

(ii) Archive Data on Land Use Land Cover and Geomorphology should be integrated with the High Resolution Satellite Data for identification of changes and classification purposes.

(iii) Land suitability, irrigability, soil suitability, production estimates, crop/agriculture condition assessment etc could give value addition to the land parcel information for productive use by the farmers.

(iv) For common property and other non-agriculture use, wasteland and land not suitable for agriculture could be identified by Satellite Imagery for judicious land use planning and economic gains for the Gram Panchayats.

5.38 Geographic Positioning System (GPS)

5.38.1 The Global Positioning System (GPS) is a worldwide radio-navigation system formed from a constellation of 24 satellites and their ground stations. It provides continuous three-dimensional positioning 24 hours a day throughout the world .The GPS technology has a tremendous amount of applications in GIS data collection, surveying, and mapping.

Components of GPS

5.38.2 The GPS technology is useful to the map makers and surveyors mainly for three purposes:

i. To obtain accurate data up to about one hundred meters for navigation
ii. Meter level for mapping
iii. Millimetre level for geodetic positioning

The GPS is divided into three segments:

i. Control Segment
ii. Space Segment
iii. User Segment

5.39 Control Segment

5.39.1 The control segment performs three tasks:

i. Monitor the health of satellites
ii. Determine their orbits and the behaviour of their atomic clocks
iii. Inject the broadcast messages into the satellites

5.40 Space Segment

5.40.1 The space segment consists of the GPS satellites. It transmits time and position from at least four satellites visible simultaneously at any time from any point on the earth's surface. The GPS satellite constellation is known as NAVSTAR. It consists of 21 operational satellites and 3 in-orbit spares, which arranged three in each of six orbital planes, inclined 55 to the equator. The satellites orbit the globe in every 12 hours from an altitude of 20,000 km.

5.41 User Segment

5.41.1 The user segment consists of the users and all earth-based GPS receivers. A GPS receiver is a specialized radio receiver. Receivers vary greatly in size and complexity, though the basic design is rather simple. The typical receiver consists of :

i. Antenna
ii. Preamplifier
iii. Radio signal microprocessor
iv. Control and display device
v. Data recording unit
vi. Power supply

5.41.2 The GPS receivers collect the signals transmitted from the system of 24 satellites, NAVASTAR. Five to eight GPS satellites always remains within the " field of view" of a user on the earth surface. The position on the earth surface is determined by measuring the distance from several satellites. The GPS satellite and the receiver each produce a precisely synchronized signal (a so-called pseudo-random code). Synchronization is made possible by atomic clocks set in the satellite and also in the receiver. The receiver can measure the lag between the internal signal and the signal received from the satellite. That lag is the time it takes for the signal to travel from the satellite to the receiver. Since the signal travels at the speed of light, the lag time simply needs to be multiplied by the speed of light to obtain the distance. Once the distance from several satellite is known ,position is determined in terms of latitude, longitude and altitude by triangulation method.

5.42 Triangulation Method

5.42.1 By triangulation method position is calculated from the distance measurements of receiver from the satellites. Mathematically, observations from four satellites are to measure exact position.

5.43 Applications of GPS

5.43.1 GPS is used to perform the following activities fastly and efficiently:

i. Surveying and mapping
ii. Navigation
iii. Remote sensing and GIS
iv. Geodesy
v. Military operation

Recommendations

(i) Differential GPS (DGPS) and Electronic Total Station (ETS) are recommended for rectification, geo-referencing and accurate positioning of land parcels.

(ii) In case of bunds covered with canopy, ETS is recommended for precise coordinates and positioning of land parcels.

(iii) New cadastral surveys and surveys of other kinds like roads, forests, etc should be carried on by DGPS, complemented by for ETS for accurate referencing.

(iv) In case of fallow land and Government land surveys by DGPS and ETS is recommended for avoiding encroachment and accurate validation of land. This should be complemented with Satellite Imagery for exact identification of land parcel.

5.44 Ground Penetrating Radar (GPR)

5.44.1 A Ground Penetrating Radar(GPR) is a conventional Radar System, which captures information beneath the ground on various aspects like water, soil, minerals, etc, which is proving as a very potential tool for detecting underground features. A GPR system is made up of three main components namely 1) Control unit, 2) Antenna and 3) Power supply.

5.44.2 **Control Unit:** The control unit contains the electronics that produce and regulate the pulse of radar energy that the antenna sends into the ground. It also has a built in computer and hard disk to record and store data for examination after fieldwork. Some systems, are controlled by an attached Windows laptop computer with pre-loaded control software. This system allows data processing and interpretation without having to download radar files into another computer.

5.44.3 **Antenna:** The antenna receives the electrical pulse produced by the control unit, amplifies it and transmits it into the ground or other medium at a particular frequency. Antenna frequency is a major factor in depth penetration. The higher the frequency of the antenna, the shallower into the ground it will penetrate. A higher frequency antenna will also 'see' smaller targets. Antenna choice is one of the most important factors in survey design.

5.44.4 **Power Supply:** The GPR equipment can be run with a variety of power supplies

ranging from small rechargeable batteries to vehicle batteries and normal 110-volt current. Connectors and adapters are available for each power source type. The GPR can run from a small internal rechargeable battery or external power.

5.44.5 GPR works by sending a tiny pulse of energy into a material and recording the strength and the time required for the return of any reflected signal. A series of pulses over a single area make up is called a scan. Reflections are produced whenever the energy pulse enters into a material with different electrical conduction properties (dielectric permittivity) from the material it left. The strength, or amplitude, of the reflection is determined by the contrast in the dielectric constants of the two materials. This means that a pulse which moves from dry sand to wet sand will produce a very strong, brilliantly visible reflection, while one moving from dry sand to limestone will produce a very weak reflections. Materials with a high dielectric are very conductive.

5.44.6 While some of the GPR energy pulse is reflected back to the antenna, energy also keeps travelling through the material until it either dissipates (attenuates) or the GPR control unit has closed its time window. The rate of signal attenuation varies widely and is dependant on the dielectric properties of the material through which the pulse is passing.

5.44.7 Materials with a high dielectric are very conductive and thus attenuate the signal rapidly. Water saturation dramatically raises the dielectric of a material, so a survey area should be carefully inspected for signs of water penetration.

5.44.8 Metals are considered to be a complete reflector and do not allow any amount of signal to pass through. Materials beneath a metal sheet, fine metal mesh, or pan decking will not be visible.

5.44.9 Radar energy is not emitted from the antenna in a straight line. It is emitted in a cone shape. The two-way travel time for energy at the leading edge of the cone is longer than for energy directly beneath the antenna.

5.44.10 Because it takes longer for that energy to be received, it is recorded farther down in the profile. As the antenna is moved over a target, the distance between them decreases until the antenna is over the target and increases as the antenna is moved away. It is for this reason that a single target will appear in a data as a hyperbola, or inverted "U." The target is actually at the peak amplitude of the positive wavelet.

5.44.11 Data are collected in parallel transects and then placed together in their appropriate locations for computer processing in a specialized software program. The computer then produces a horizontal surface at a particular depth in the record. This is referred to as a depth slice, which allows operators to interpret a plan view of the survey area.

Recommendations

(i) As Ground Penetrating Radar (GPR) is a latest tool for capturing information on sub surface features, which are not captured by Aerial Photography or Satellite Imagery, and is likely to be a popular technology for ground water, soil taxonomy, minerals, etc, it is recommended to sensitise officials and people for this emerging technology so that the acceptability and use of this technology could be enhanced when available.

(ii) The GPR Information Base gives great value addition to the land parcel data and

proven technology and processes are available in Africa and Europe where GPR is introduced.

5.45 LiDAR Technology

5.45.1 Ground control point independence: Each LiDAR pulse is individually georeferenced using the onboard GPS, INS, and laser measurements. Only one or two GPS ground stations are required for improving the GPS accuracy by the differential method. Independence from GCPs makes it an ideal method for inaccessible or featureless areas like wastelands, ice sheets, deserts, forests, and tidal flats.

5.45.2 LIDAR is an acronym which stands for Light Detection and Ranging (radar is also an acronym). A Lidar is similar to the more familiar radar, and can be thought of as laser radar.

5.45.3 In a radar, radio waves are transmitted into the atmosphere, which scatters some of the power back to the radar's receiver. A lidar also transmits and receives electromagnetic radiation, but at a higher frequency. Lidars operate in the ultraviolet, visible and infrared region of the electromagnetic spectrum. A lidar contains a transmitter, receiver and detector system. The lidar's transmitter is a laser, while its receiver is an optical telescope.

5.45.4 Different kinds of lasers are used depending on the power and wavelength required. The lasers may be both cw (continuous wave, on continuous like a light bulb) or pulsed (like a strobe light). The receiving system records the scattered light received by the receiver at fixed time intervals. Lidars typically use extremely sensitive detectors called photomultiplier tubes to detect the backscattered light. Photomultiplier tubes convert the individual quanta of light, photons, first into electric currents and then into digital photocounts which can be stored and processed on a computer

5.45.5 Lidar is used for rural and urban planning, where dense data is captured and analysed. Lidar has no limitations like cloud penetration, day and night and even canopy, so for urban and pheriphery of urban area applications, generally Lidar is preferred.

5.45.6 The basic concepts of airborne LiDAR mapping are simple. The airborne LiDAR instrument transmits the laser pulses while scanning a swath of terrain, usually centred on and co-linear with, the flight path of the aircraft in which the instrument is mounted. The scan direction is orthogonal to the flight path. The round trip travel times of the laser pulses from the aircraft to the ground are measured with a precise interval timer. The time intervals are converted into range measurements, i.e. the distance of LiDAR instrument from the ground point struck by the laser pulse, employing the velocity of light. The position of aircraft at the instance of firing the pulse is determined by differential Global Positioning System (GPS). Rotational positions of the laser pulse direction are combined with aircraft roll, pitch, and heading values determined with an inertial navigation system (INS), and with the range measurements, to obtain range vectors from the aircraft to the ground points. When these vectors are combined with the aircraft locations, they yield accurate coordinates of points on the surface of the terrain.

Application of LiDAR

i. Time of data acquisition and processing: The data capture and processing time is significantly less for LiDAR compared to other techniques. LiDAR can allow

surveying rates of up to 90 km2 per hour with post-processing times of two to three hours for every hour of recorded flight data

ii. Minimum user interference: User interference is minimum, as most of the data capture and processing steps are automatic except the maintenance of the ground GPS station.

iii. Weather independence: LiDAR is an active sensor and can collect data at night and can be operated in slightly bad weather and low sun angle conditions, which prohibit the aerial photography.

iv. Canopy penetration: Unlike photogrammetry, LiDAR can see below canopy in forested areas and provide topographic measurements of the surface underneath. Additionally, LiDAR generates multiple returns from single pulse travel, thus providing information about understory.

v. Data density: LiDAR has the ability of measuring subtle changes in terrain as it generates a very high data density (due to firing of 2000 - 80000 pulses per second).

vi. Cost: One of the major hindrances in the use of LiDAR had been the cost of the equipment. However, in recent years the purchase price of these instruments has been reduced so that cost is no longer a barrier to companies capable of investing in standard aerial photogrammetry equipment. Furthermore, with more and more users opting for LiDAR the cost of the system and operation is likely to go further down. The overall performance evaluation of available topographic techniques for coastal terrain, found that LiDAR could achieve good performance at a lower cost.

Recommendations

(i) It is recommended that wherever Lidar Data is available as a upsuit of urban area mapping project, these data should be available for Land Management projects.

(ii) Where aerial photographs along with Lidar is available these data would also be used for Land Management.

(iii) Where detailed Data Base with very dense features are there on the ground Lidar Data could give precise information for Land Management

(iv) Officials and people need to be exposed to Lidar Applications as future Satellites will carry Lidar Scanners and the Data will be readily available in coming years which will be very useful for Land Management purpose.

Section - V

5.46 Training support

Requirement of Training

5.46.1 The Sub-Group recognises the importance of training for skill formation, attitudinal change, motivation, group behaviour and change in dynamics. The British system had a strong training back up. There were training schools for all categories of employees and qualification in training courses had been made compulsory for promotion. There were separate training schools for Amins, Surveyors, Patwaries etc.

5.46.2 While these training institutions continue to exist the emphasis on training has declined. The Sub-Group notes with dismay that completion of training is no longer being looked upon as a necessary tool of revenue administration and is not linked to an incentive-disincentive system. The training institutions have not been updated and there is a noticeable

neglect for the same. In fact what is true of the general training institutions in the country also holds good of the land management system.

5.46.3 On the other hand there is a clear increase in sophistication in the land management system on account of introduction of technologies like the GIS, GPS, DGPS, Satellite Imagery etc. The new management system of land which is emerging is totally IT application based. Hence, there is requirement of a high level of skill at the entry stage, an equally high level of skill supplement through training and motivation and reorientation to work directly under the grassroots training institutions. Hence, they call for dynamic and rotating training policies.

5.46.4 The need for capacity building for the Elected Panchayati Raj Representatives is also equally recognised. There is a pre-existing framework of the National Capacity Building Framework for the EPRs which of course did not take into account the requirements of management of lands at the village level. Once this task is added to that of the Panchayat a whole lot of institutions will have to emerge and the skills of the rural masses in general and of the EPRs will need a total upgradation.

5.46.5 There is also the need for integration at the apex level for integration of training activities amongst the national institutions. Institutions like the NIRD, School of Training for the GIS etc have acquired high level expertise in the matter. Yet there are others like the IITs, the other technical institutions, the Agricultural Universities and the like which can create a Network to aid the task of putting in place the New People Based Land Management System.

Recommendations

(i) ***Capacity Building of the Panchayat Functionaries and Elected Panchayat representatives***

- ***a. Capabilities have to be created amongst members of the Panchayat for understanding of the revenue records, surveying, creation of the of record of rights and their maintenance. A National Plan may be prepared as a part of the National Capability Building Framework already prepared for the Panchayats.***
- ***b. The revenue component will be a part of all training components to be administered to the Panchayat functionaries and to the elected Panchayat Representatives.***
- ***c. The training will also include basics in computer operation, maintenance of records and data management***

(ii) Training Institutions:

- ***a. Premier training institutions like the NIRD, LBSNAA should create a network of training institution for the entire country.***
- ***b. The SIRDs/ the Administrative Training Institutes should be developed into the apex training Institutions for revenue related training at the State level***
- ***c. At the district level the ETCs or some other training institutions should be inducted as the lead training institution***
- ***d. The civil society based organization who have sufficient capacity could also be developed into training institutions.***

e. Such Panchayats which have done very well in this area should also be projected as models and should be allowed to develop into training institution themselves.

f. Such Panchayat Training Institutions can provide training to the villages/Panchayats around them and provide handholding support.

(iii) Training Infrastructure

a. The Training Infrastructure can be availed from multiple sources — the existing infrastructure like the computerization programmes of the different Ministries, the DRDAs, the ETCs, the other lead training institutions etc.

b. The e-PRI can be pushed at a fast space and the revenue training will form a part of the e-PRI training

c. Such institutions like the NIC and others can take up the task of training the members of the Panchayats.

d. The existing survey training schools could become nodal training institutions for training the Panchayat and other functionaries

(iv) Content of Training

a. A basic framework of Training should be designed at the national level. The States should have their own training framework.

b. The training content in self taught mode in very very simple form

c. The training curriculum should include basic knowledge of computer application, relevant revenue laws, data management, principles of taxation, accounting, Panchayat related laws, delivery system in the Panchayats, etc.

d. The apex institution must make a an appraisal of the training content and the quality of training at the field level.

e. The State Governments are to ensure that there should be a minimum tenure for the trained personnel for utilizing their expertise.

(v) Cost of the Programme

a. The cost of the programme including the infrastructure cost, training cost , revision of manuals, etc will be borne by the Central Government under the NLRMP on 100 per cent basis.

b. The existing guidelines of the programme should be suitably amended for this purpose.

2. Conclusion

5.47.1 The nation has persisted with the existing land administration for the last 60 years of our independence in the name of continuity with disastrous consequences. It is totally opaque, rent seeking, colonial in character, favours the rich and deprives the poor and further entrenches the interlocked rural elite. The events have been overtaken by growth of viable and robust people's institutions. The Committee on Agrarian Relations argues for putting the land management system back on its feet by putting in place the New People Based Land Management System.

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Chapter – VI

Common Property Resources & Issues Related to Conversion of Agriculture Land to Non – Agricultural Use

(Report of the Sub Group – VI)

Introduction

Land governance has always been a bone of contention and is the cornerstone of management of all natural resources. Land use in India has historically been determined by the revenue or production mindsets.

Land being a state subject the entire land use paradigm in the country is governed by the respective state revenue codes. Most of these revenue codes have been inherited from the British times and were made keeping in mind revenue generation from respective states viz. forest produce extraction from well forested areas, feudalistic administration systems and collection of cess from agency areas like Orissa. Post Independence the same laws were adopted with minor modifications but by and large most of these land laws had provisions for most of the livelihood practices in that particular agricultural region. Most of the land ownerships were broadly divided into three categories:

i. Occupied lands: Private lands/Lands under private possession
ii. Unoccupied lands: Govt lands/Lands being used for common purposes
iii. No access lands like Protected Areas (national parks and sanctuaries)/Lands used by the government departments/PWD, Railways etc.

These lands could be further divided broadly into:

- Occupied Lands
  - Agriculture lands
  - Non-agriculture lands (used for residential, mining, industrial purposes)

- Unoccupied
  - Common lands (CPRs or lands used for community purposes)
  - Lands called Wastelands but also being used for common purposes but not fit for agriculture

But with the advent of time and linking up of local economies with the global economies many of the regions started giving more importance to alternate land use practices like industry and other development needs. Many of the state laws were also amended from time to time to give ways to diversion or conversion of these lands for other purposes.

Though the land laws had been carrying provisions for preventing the diversion of lands from one category indiscriminately but still many of the land uses were misappropriated in two forms:

1. Firstly in the form of Unoccupied lands diverted to the first category illegally in the form of encroachments on public lands.
2. Secondly in the form of agriculture lands (mainly category 1.a) being diverted for other development needs through either purchase by private players or through the Land Acquisition Act of the government.

Given this misappropriation of land use it is high time that the country comes up with a land use prioritization regime that deals with three overarching concerns**.** These are:

1. Ecological Concerns – Concerns relating to having a bare minimum area under green cover to render the ecological services.
2. Food Production Concerns – A certain amount of land should be devoted to agriculture purpose which should not be diverted for any other purposes till the productivity of existing agriculture land is not enhanced enough to compensate for the diversion
3. Livelihood concerns – Apart from the mainstream society's way of life, the tribal and pastoralists way of life is critical and needs to be conserved at all costs. Their bonafide livelihood needs comprise of dependence on common lands for grazing, collection of forest produce and other communal purposes. Unauthorized and short-sighted diversion of such lands in the Scheduled areas has led to increased marginalisation of such societies already bereft of access to basic services like education and health.
4. Given the above concerns, the development needs of the country need to be done judiciously to allocate land for industrial and development purposes.

CONVERSION PRACTICES OF LAND USE

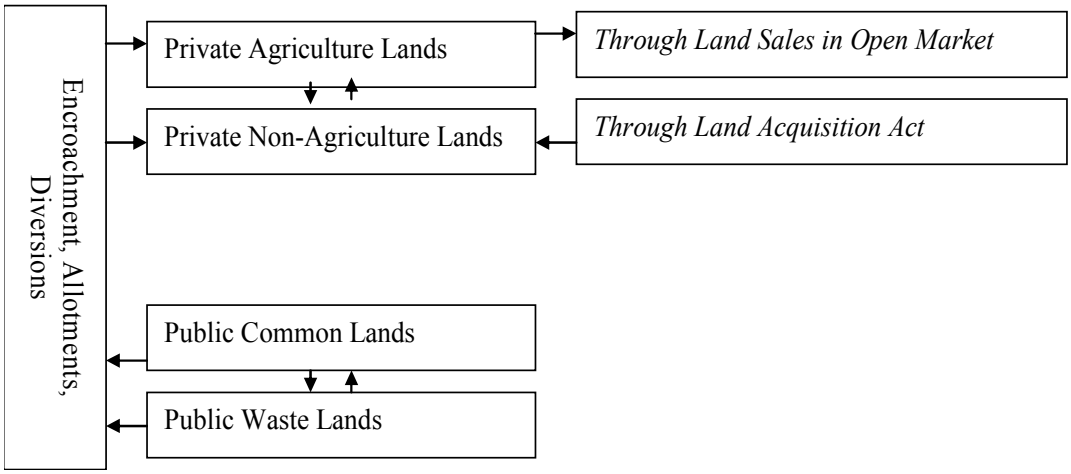

Figure 6.1 Conversion Practices of Land Use

Land Use Planning

There is a need to have appropriate guidelines to be followed by state governments before diversion or conversion of land use so as to check unregulated misappropriation of lands vital for the survival of various kinds of livelihood practices without compromising or slowing down the industrial progress of the country. Hence, the urgent need for bringing in a national perspective on land use is gaining more ground and should be done by bringing more of monitoring role for the central government (land reforms department) than just advisory role.

The mandate of the committee on agrarian relations is to prioritize between the four overarching concerns while keeping in mind the administration practicalities and existing capabilities.
The committee's Sub-group VI's report forthwith shall be having two separate sections dealing with:

- **Common Property Resources –** This is basically dealing with priorities first and third, i.e., ecology needs to be safeguarded from unauthorized misappropriation and conserved for the coming generations. At the same time, keeping in mind the priority third, i.e., livelihood needs of the forest and CPR dependent communities.
- **Conversion of Agriculture land for non-agriculture purposes –** This is dealing with priorities second and third and how to balance food production needs and industrialization and urbanization needs. In a way, it should also be seen as a conflict between rural and urban needs or local and global needs.

Section I – Common Property Resources

Introduction

Broadly speaking, common property resources (CPRs) include all such resources that are meant for common use by people and to support ecology. To add, it is well proven that CPRs have a crucial role to play in rural India. Apart from sustaining rural livelihoods, they also play a pivotal role in strengthening community solidarity. Traditionally in rural societies CPRs development was always in favor of the community. During pre-British era, CPRs have achieved the above role without much contention as most of the lands in the country were treated for common purpose. However, after 1950-52 land settlement CPRs have declined drastically and are getting increasingly scarce. Moreover, due to multiple claims – livestock sustenance, distribution of CPRs to landless families, privatization including corporatization, control on CPRs by resource-rich farmers, diversion for non-agricultural purpose is causing disputes over CPRs. These multiple claims is reducing the area under CPRs and causing physical degradation of these resources. Such deterioration of CPRs is threatening rural livelihoods taking its toll on the people, livestock, and ecology.

In the last few decades, number of disputes over CPRs have surged pointing to immense dissatisfaction among the community about lack of favorable public intervention on CPRs. Considering the growing disputes and multiple-claims over CPR that is making it increasingly scarce, there is an urgent need to protect and manage CPRs for the very purpose they exist. Although there are initiatives to develop CPRs, it has largely failed to address the real concern around CPRs. Due to this, the committee formed under the Ministry of Rural Development was assigned the responsibility to provide advisory and implementable recommendations to ensure access of the poor to common property and forest resources. This report presents the findings of the research carried out by the committee.

Common Property Land Resources – Concept, Définition and Geographical Expansé

Definition – "Rural common property resources are broadly defined as resources to which all members of an identifiable community have inalienable use rights. In the Indian context CPRs include community pastures, community forests, Government Wastelands, common dumping and threshing grounds, watershed drainages, village ponds and rivers etc. The first

three resources are particularly important because of their large area and their contribution to people's sustenance." [59]

The National Sample Survey Organization (NSSO, 1999) study[60] - an enquiry on CPRs was conducted during January - June 1998 as a part of the 54th round survey of the NSSO. This report pertains mainly to the role of CPRs in the life and economy of the rural population and is based on data collected on the area of common property land resources, collection of different items such as fuel-wood, fodder, and other forest produces from the CPRs. The enquiry was carried out through a household survey based on random sampling and a survey of 78,990 rural households in 5242 villages was conducted for the purpose. (NSSO, 1999, p-12)

Since early 1980s, a large number of field studies on CPRs, of varying scale, have been conducted, particularly in the arid and semi-arid areas or hill and forest fringe regions of the country. The NSSO enquiry is the first attempt to provide comprehensive state and national-level estimates of size, utilisation and contribution of CPRs. It also provides separate estimates for agro-climatic zones. The NSSO data set is unique, in that it is the only such comprehensive countrywide study of common pool resources anywhere in the world. (Vira, 2002) .[61] CPRs in the NSSO study are looked at from two angles[62]:

De Jure - This approach says "a resource becomes common property only when the group of people who have the right to its collective use is *well defined*, and the rules that govern their use of it are set out clearly and followed universally". Thus, this method was used for collection of data on the size of CPRs. In this approach, only those resources were treated as CPRs which were within the boundary of the village and were formally (i.e. by legal sanction or official assignment) held by the village *panchayat* or a community of the village.

De Facto - At the one extreme, there is an approach treating all that is not private property as common property. This approach was adopted for collecting information on use of CPRs. In this approach, the coverage of CPRs was extended to include resources like revenue land not assigned to *panchayat* or a community of the village, forest land, or even private land in use of the community by convention. All such land in practice used as common resources (including common use of private property confined to particular seasons) were treated as CPRs for data collection on benefits accruing to villagers even if they were located outside the boundary of the village.

NSSO Estimates: The NSSO estimates (Table - 6.1) on availability of common property land resources was obtained using *De Jure* approach from the survey. Common property land resources, as per this approach, include the categories of land like community pasture and grazing grounds, village forests and woodlots and village sites, on which the villagers have legal usufructuary rights. These also include all other land formally held by the *panchayat* or a community of the village. In fact, all *panchayat* land, even when given on lease to an individual or to any organisation was considered as common property. Government forests, i.e., land under the jurisdiction of the Forest Department, and land put to

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[59] Jodha N S Depletion of Common Property Resources in India – Micro-level evidence

[60] Report No. 452(54/31/4), Common Property Resources in India, NSS 54th Round January 1998 – June 1998, National Sample Survey Organisation, Department of Statistics and Programme Implementation, Government of India, December 1999

[3] Vira Bhaskar, Conceptualising The Commons: Power and Politics In Globalising Economy, Department of Geography, University of Cambridge,

[62] Concepts and Definition, Report No. 452: Common Property Resources in India, Jan - June 1998, NSS 54th Round, National Sample Survey Organization, Department of Statistics and Programme Implementation, Government of India, pp 7

non-agricultural uses (except the land under water bodies) were excluded from the coverage of common village land in *de jure* approach.

Table - 6.1: NSSO estimates of common pool resources in India

Indicator (all India figures)	NSSO estimates
Share of common property resources in total geographical area	15%
Common property land resources per household (in ha.)	0.31
Common property land resources per person (in ha.)	0.06
Reduction in common pool resource land in last 5 years (per 1000 ha.)	19 ha (0.38% p.a.)

(Source: NSSO, 1999)

Also, 23% of reported common pool resource land is community pasture and grazing lands, while 16% is village forests and woodlots, and 61% is attributed to the 'other' category. 'Other' includes the village site, threshing floors, and other barren and waste land.

Significantly the other category is vague and includes categories whose ownership and use is ill-defined. Therefore, it seems that large part of the free access revenue land was misidentified as CPRs.

Chopra and Gulati (2001)[63] reclassify India's Agricultural Land Use Statistics data for 1991 to estimate the extent of common pool resources in 16 major states. Their estimation is based on the 9-fold classification (explained in the next paragraph and table-6.2). The total common property land resources in the country have been defined as the sum of:

1. Cultivable wastes and Fallows other than Current
2. Common Pastures and Grazing land
3. Protected and Unclassified Forests
4. Barren, uncultivable and other government lands that are being used as for common purpose

Table - 6.3 reports the data and estimation. This procedure suggests that non-forest common pool resources in India in 1990-91 were 48.69 million hectares, which is 14.81% of the total land area, a figure that is remarkably close to the 15% reported by the NSSO survey.

Nine Fold Classification System -The Present System

The 9-fold classification system recognizes agriculture as a land use practice. To start with, the agriculture statistics system in the country was more concerned with increasing agriculture production and therefore the nine-fold classification that is collected through a well-established and internationally acknowledged Agricultural Statistics System.

In India, agricultural statistics system is decentralized both horizontally and vertically. Primary statistics are collected by the provincial governments and consolidated for the country by the Ministry of Agriculture, Government of India. Thus, basically it is a decentralised system with the State Governments – (State Agricultural Statistics Authorities

[63] Chopra, K. and S. C. Gulati (2001) Migration, Common Property Resources and Environmental Degradation: Interlinkages in India's Arid and Semi-Arid Regions, New Delhi, Sage.

(SASAs). To be more specific, it plays a major role in the collection and compilation of Agricultural Statistics at the State level, while the Directorate of Economics and Statistics, Ministry of Agriculture (DESMOA) at the centre is the pivotal agency for such compilation at the national level. The other principal data-gathering agencies involved are the NSSO, and the State Directorates of Economics and Statistics (DESs). Major data sources for agriculture statistics are the agriculture and land use survey aided by the Land Use Survey of the National Remote Sensing Agency. The data collected in the agriculture census pertain to number and area under operational holdings, tenancy, crop and land use pattern, irrigation status, etc. The land use survey is conducted annually and is based on 9-fold classification. Table 6.2 provides the categories of land under 9-fold classification. This table further illustrates the categories that are considered as CPRs based on legal rights and convention along with specific control and types of control by the government departments.

Ownership of CPRs[64]

As mentioned in table 2 the forest lands are under the authority of the Forest Department. In Reserve forest areas, all activities are prohibited unless permitted which implies that all rights are with the department and not even access rights rest with people (as per the provisions of Indian Forest Act). Protected Forest areas as notified under the provisions of the Indian Forest Acts have limited degree of protection. In protected forests, all activities are permitted unless prohibited. Unclassed forest- an area recorded as forest but not included in reserved or protected forest category. Ownership status of such forests varies across states. For the state, the forest dwellers are mainly tribal people. The Forest Act 2006 has given them the right of ownership on the forestland for bonafide (self use purposes). The revenue department has owned the categories like Pasturelands etc. The Panchayat has virtually very little authority over the use of CPR land. As a result, encroachments reduce the size and the productivity of the land in question. Agriculture department does not influence the size and productivity of CPR lands like lands other than current fallows, but its policies regarding agriculture product pricing, subsidies on fertilizers and power can affect the CPR land.

The results of the NSSO and those obtained by Chopra and Gulati are similar for six states (Haryana, Karnataka, Orissa, Punjab, Rajasthan and West Bengal), but are substantially different for eight others (Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Tamil Nadu and Uttar Pradesh). The broad patterns of both studies, however, suggest that common pool resources are most important for states in the arid and semi-arid zones, and in the Himalayan regions, while the agriculturally-dominated states of the Indo-Gangetic plains have a relatively low proportion of common pool resource land.

Some authors have pointed out that land use data may not be a good indicator, since it does not register decline in actual access to common lands. (Iyengar and Shah, 2002)[65] There is also general agreement that these resources are facing pressures from competing land uses, in some cases affecting their legal extent, but usually impacting more on access and use than on their *de jure* status[66].

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[64] Shukla, Nimisha, Status of Common Property Resource (CPR) Land in Gujarat, Gujarat Vidyapeeth, Ahmedabad

[65] Iyengar, Sudarshan and Nimisha Shukla. 2002. 'Scope of Poverty Reduction through Regeneration of Common Property Land Resources (CPLRs): A Review' in Indian Economy: Agenda for the 21st Century, (Eds.) Raj Kumar Sen and Biswajit Chatterjee, Deep and Deep Publication Pvt. Ltd.

[66] Vira Bhaskar, Conceptualising The Commons: Power and Politics In Globalising Economy, Department of Geography, University of Cambridge,

Table- 6.2: Ownership of CPRs

Land Category	*Sub-Category*	*Definition (Source: www.krishiworld.com)*	*Status as CPR*[67]	*Source of Sanction for access*[68]	*Department*	*Type of Controls*
Forests	Reserved Protected Unclassified	Forests include all lands classed as forest under any legal enactment dealing with forests or administered as forests.	*No* *Partial* *Yes*	*No Access* *Partial user rights* *User rights by law*	*Forests*	*Proprietorship, Management, Use Regulation, Control over Access*
Not available for cultivation	Land under non-agricultural use	This category included all lands occupied by buildings, roads & railways or under water, e.g. rivers & canals, & other lands put to uses other than agricultural.	*May be Included*	*No Access*	*Revenue*	*Proprietorship, Use Regulation*
	Barren & unculturable land	This category covers all barren & unculturable lands, including mountains, deserts, etc. which cannot be brought under cultivation, except at a high cost, is classed as unculturable, whether such land is in isolated blocks or within cultivated holdings.	*No*	*No access*		
Other un-cultivated land	Permanent pastures & other grazing land	This category covers all grazing lands whether they are permanent pastures or meadows or not. Village commons & grazing lands are included under this category.	*Yes*	*User rights by law*	*Panchayat*	Use Regulation
	Miscellaneous tree crops & groves.	Under this class is included all cultivable land which is not included under the net area sown, but is put to some agricultural use.	*No*	*Use Rights by Law*		
	Culturable wasteland	This category includes all lands available for cultivation, whether taken up for cultivation or not taken up for cultivation once, but not cultivated during the current years & the last 5 years or more in succession. Such lands may be either fallow or covered with shrubs & jungles, which are not put to any use.	*Yes*	Partial user rights by convention	*Revenue*	*Proprietorship, Use Regulation*
Fallow land	Current fallows[69]	This class comprises cropped areas, which are kept fallow during the current years only. For example, if any seedling area is not cropped again in the same year, it may be treated as current fallow.	*No*	*On uncultivated owned land: limited user rights*	*Agriculture*	*Indirect Regulation*
	Fallow land other than current fallow land[70]	This term denotes the net area sown under crops & orchards, counting areas sown more than once in the same year only once.	*Yes*	*User rights by convention*	*Agriculture*	*Indirect Regulation*
Net area sown			*No*	*On uncultivated owned land: limited user rights*		*Indirect Regulation*

[67] Chopra, Kanchan, Wastelands And Common Property Land Resources, 2001

[68] Chopra, Kanchan and Purnamita Dasgupta. 2002. Common Pool Resources in India: Evidence, Significance and New Management Initiatives, Institute of Economic Growth. New Delhi.

[69] Net sown area (including area under miscellaneous tree crops) and current fallow constitutes together a private property resource to which non-owners do not have access.

[70] In 1991, limited common access to uncultivated private land existed in the seven states of Andhra Pradesh, Bihar, Himachal Pradesh, Karnataka, Madhya Pradesh, Maharashtra and Rajasthan.

Table- 6.3: Estimation of common pool land resources using land-use data[71]

Land use type	1990-91
1. Total Geographical Area (ASI)	328.73
2. Owned land (AC)	165.51
3. Net sown area (ASI)	143.00
4. Current fallows (ASI)	13.70
5. Private land with common access (2 - 3 - 4)	8.81
6. Cultivable wastes (ASI)	15.00
7. Other fallows (ASI)	9.66
8. Common pastures & grazing land (ASI)	11.40
9. Land under misc. tree crops (ASI)	3.82
10. Non-forest common pool resource (5+6+7+8+9)	48.69
11. As % of total area	14.81%
12. Protected forest (SFR)	23.30
13. Other forest (SFR)	12.21
14. Common pool resource including forests (10+12+13)	84.20
15. As % of total area	25.61

Importance of Common Property Resources

Common Property Resources in India are important sources of livelihood to rural households. Despite this still there is no clear agenda for designing public interventions on CPRs. In the context of villages in India CPRs perform several functions. Their contribution to people's livelihood is well accepted by the government and others who work to conserve and develop such resources. To mention, report no. 452 of NSS 54th round has clearly highlighted the importance of CPRs to household income, livestock sustenance; more importantly, to strengthen community solidarity. As per the report, the total contribution from CPRs to household income at a national level is INR 693. This, however, varies according to the agro-climatic zone; gains from CPRs are highest in the Western Himalayas, i.e., INR 1939 and lowest in trans-gangetic plains (INR 230). These figures also differ according to the economic conditions of the households. The findings of the study by Singh and Ambust (2004) in Gujarat to assess criticality of commons suggest this. They found that rich derived 23 % of total income from village CPR; major portion of income (67%) was for fodder from commons. The middle group derived 52 % of its income from CPRs. While in case of poor group CPR contributed 54 % of their total income. To add, greater dependence on CPR products by landless households is most noticeable with regard to fuel wood. Among the landless households, 59.7 percent of them collect fuel wood.[72] This suggests that CPRs are important sources from which domestic energy needs of the landless households are met. Similarly, dependence on CPRs by both landowners and landless possessing livestock is considerable. In the NSS document, it is reported that the percentage of

[71] Sources: Agricultural Statistics of India (ASI, 2002); Agricultural Census (AC, 2002); State of Forest Report (SFR, 1991)

[72] Abstracted from the chapter on Uses of CPRs from the Report No. 452: Common Property Resources in India, Jan - June 1998, NSS 54th Round, National Sample Survey Organization, Department of Statistics and Programme Implementation, Government of India

landless families using CPRs to collect fodder is 31.8 percent. In case of tribal areas, the figure is even more than 50 percent. Also, at the household level livestock's contribution is much more in case of smallholders who comprise a sizeable population of rural households.[73] These households derive large amount of animal fodder and water requirements from CPRs. However, the number of livestock dependent on per hectare area of CPR is increasing; table 4 clearly indicates this. In addition to all these, the livelihood of pastoralist communities is also highly depended on CPR.[74] These figures vividly explain the criticality of CPRs for rural India in general and poor households.

Table 6.4: CPR land available for livestock in the country

Resource	1980-81	1990-91	2002-03
Livestock units per hectare of CPR	5.0	5.9	8.8

(Source: Ministry of Agriculture, Government of India)

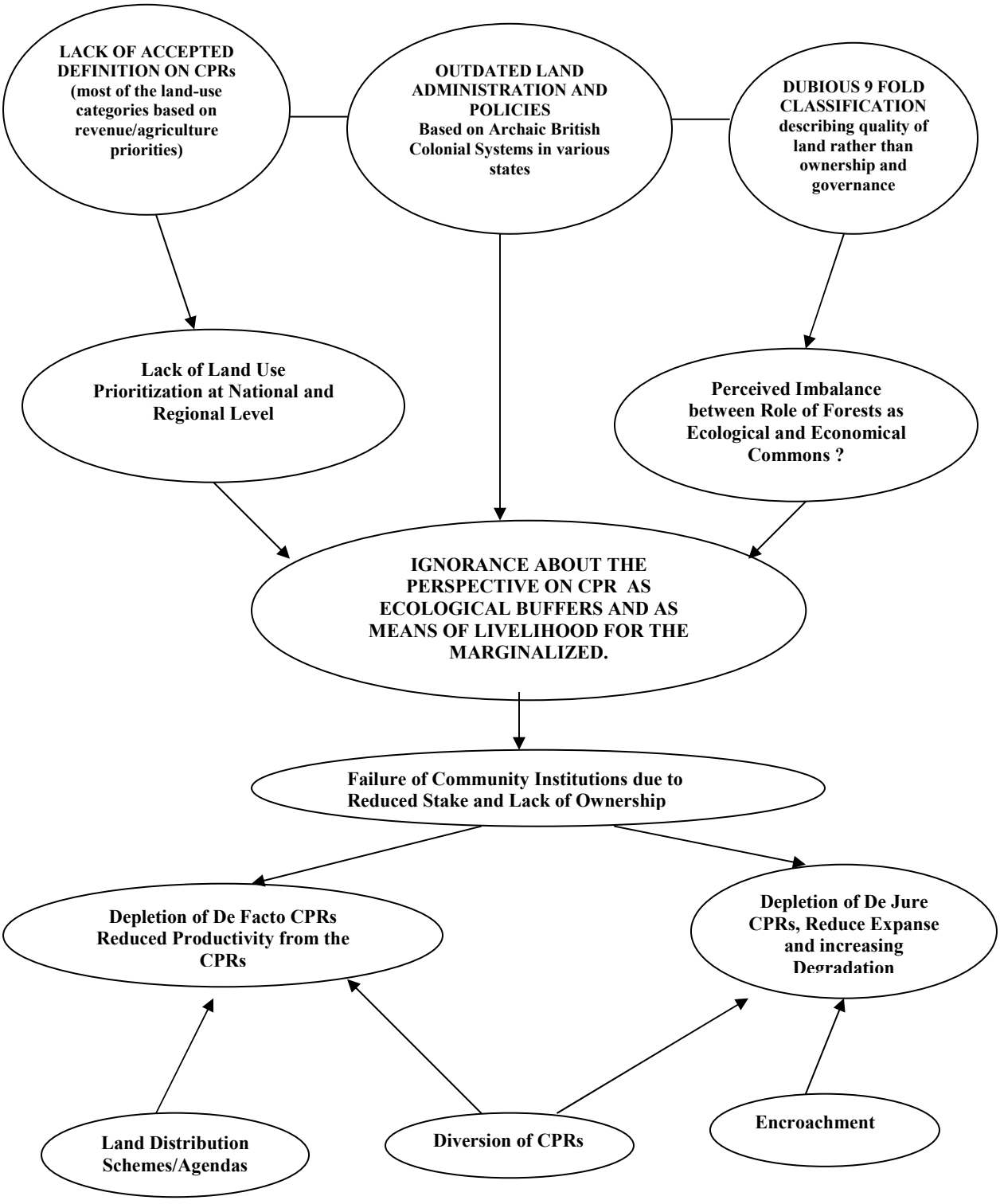
CPRs are important from ecological perspective, too. In most of the hilly regions – south Rajasthan, Western Ghats, Central India, Himalayas and Eastern India large tracts of forests lands are part of many local watersheds. In hilly, tribal regions the proportion of these common lands could be as high as 50 to 70 percent of the total watershed area[75]. Proper development and management of these common lands is critical to the success of a watershed as they act as reservoirs of water and for providing returns to the poorer households.[76] Since these categories of lands not only constitute a significant proportion of the total watershed but are also often located along the watershed ridges, proper protection and management of these lands are important technical and ecological considerations at micro as well as macro level that supports the biomass growth of the region. So the criticality of CPRs is also important from an ecological perspective.

Issues Arising from State Visits

Lack of clarity of what constitutes CPR: There is a general lack of clarity on what constitutes CPRs out of the various categories used by the government for their land use statistics (i.e., 9-fold classification). Moreover, the 9-fold classification (Lele, 2008) [77] gives data for land coverage for different categories of land but it is hard to estimate from it how much land is under common property land resources. Thus, clear definition of CPR would help in actually recognizing the categories of land to be considered as common property land resources. The definition of certain category like revenue wastelands making them susceptible to distribution and encroachments even when they are being used by the communities in one form or the other. The categories of lands included in the definition of CPRs differ drastically from ownership and access or use aspects which further creates confusion in the government, especially for identifying and estimating the magnitude of CPR in the country.

[73] Jabir Ali - NSS
[74] Pandey,Amitabh, Status paper on Common Property Resources (CPR) in MP, IIFM, Bhopal
[75] Seva Mandir Newsletter, Udaipur, 2007
[76] Paper submitted to the Parthasharthy committee on watersheds by Seva Mandir
[77] Lele, Sharachhandra, State Level Consultations, September, 2008

Figure 6.2 Problem Analysis of CPRs



Reduction in *de Jure* CPRs: The size of CPR land has been declining over the years. There has been a steady decrease in all kinds of common lands – pastures, village forests, ponds, or even burial grounds. Decline in CPR area 55% in 1955 to 31% today in MP. (Pandey, 2008 [78]). Permanent Pasture and other grazing land-25, 24, 000 ha (1999-2000) have been declining from the previous years- (Ministry of Agriculture, GOI). Dependence on CPR land has been affected as a result of decline in size and deterioration of CPR land (Lele, 2008 [79]). In a paper Orissa 2020, it is highlighted that CPR area as percentage of total geographic area of the state has declined from 20.39 percent in 1970-71 to 15.54 percent in 2000-01. This is quite alarming considering the context that 22 percent of the scheduled tribe population of the state is still dependent on CPRs to fulfill their requirements (Mearns and Sinha 1999).[80]

Diversion of Land-Use

Diversion of land-use for other purposes has led to reduction in the size of CPRs. This has also been detrimental because "Pastoral communities may not be consulted/given recognition in decisions because they are 'not there', not 'citizens'" Major reasons for such phenomena being (Lele, 2008) primarily when meeting global needs along with local needs like:

Urbanisation – Sometimes high value of the land leads to huge pressure for privatization as has been evident in the case of urbanization (especially around urban settlements).

Industrial needs - Industrial plantations (coffee or tea to replace forests in the estates of Western Ghats etc.). Also, alternate land use patterns like promotion of bio-fuels (Ratanjot, Palm oil etc.) as a means to utilize wastelands have threatened the livestock dependent communities. The Governments of Gujarat and Rajasthan with a view to bring large area of wastelands under productive utilization have come up with Bio-diesel policies, public-private partnerships so as to grant land on lease basis to big industrial houses and individual; corporate farmers for cultivation of horticulture and bio fuel trees. (2005) [81]. Most of the land that is leased for 15 years but is put to uses other than for what it is leased. 90 % of the time this is a land grabbing strategy. Instead of horticulture and biofuels, the land is put to other uses.

Mining - Iron ore and granite are very important resources, mostly located in public lands so there has been wanton utilisation of these industrial resources. E.g. Government of Gujarat decided to allot Gauchar land for industrial purpose, when gauchar land is adequate (2004). Industrial Pollution is also becoming a concern, e.g., sponge iron pollution in fertile land and water resources in Chattishgarh.

Pressure of Developmental Projects like Dam, etc.

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[78] Pandey Amitabh, State Level Consultations, August, 2008

[79] Lele, Sharachhandra, Status paper on Common Property Resources (CPR) in Karnataka,CISED, Bangalore, 2008

[80] Robin Mearns and Sourabh Sinha. "*Social Exclusion and Land Administration in Orissa, India*". World Bank Policy Research Paper 2124, May 1999.

[81] Government of Gujarat. Revenue Department, Various Resolutions.

Diversion of land for Residential/homestead needs – (Land Distribution schemes of the state governments) - In many states the government policies have gone about converting these for non-agriculture purposes (like cremating grounds, playgrounds) as well as purposes other than livelihoods, especially for residential/homestead uses.

For example "The Government of Gujarat has allotted and regularized the CPR Land with dual objectives of supporting the socially and economically backward population in the villages there by improving their income earning capacity and of providing land for the housing purpose. It distributed land acquired under Land Ceiling Act twice, in 1960 and 1976. By 1985, 22277 holdings were allocated to landless families with average of 2.5 ha. per family. The fertility of most of the land was below average and the allottees had neither skill nor monetary resources to improve the productivity. There existed a possibility of conflict as the poorest section depends upon CPR land for fodder and fuel wood and other minor forest produce (in case of forest). When the CPR land is distributed to a specific group of population, neither they nor the rest of the CPR land dependent population benefit. "Till March 2008, the government has distributed 7568.94 ha. of culturable waste to 6723 beneficiaries, that amount to be around 38 per cent of the total culturable waste. Besides many of the lands have also been distributed to the Industrial sector totally unmindful of the people dependent upon them.

The Revenue Department has passed a resolution under which Gauchar land can be allotted for industrial use. Many village gauchars have been given to large industrial houses like Reliance Petroleum (Jamnagar), Adani (Mungra port), GMDC (Bhavnagar) have became famous for struggle against land acquisition in recent times. Loss of CPR for various activities like government buildings, school, Anganwadi centre, etc in CPRs and other sacred groves have been a major reason for their decrease in area (Pandey 2008). Such policies may have serious repercussions and might lead to the unending downward spiral of land distribution schemes till there is no common land left. Also, it might also pre-empt more encroachments.

Diversion for agricultural and non-agriculture use by community members (Encroachments) **-** Substantial area under CPR land has been encroached and privatized. Most of the common lands in Arid and Semi-Arid areas of Rajasthan and Gujarat, as on date the exact status of the availability of CPRs on ground and for which access is open for the community is variable and unascertainable due to encroachments. Also, it is not easy to quantify the extent of encroachments. Commons in Chattishgarh and MP (state consultations) are rife with encroachments. This has led to people becoming dependent upon agriculture residue and fallow lands for their biomass needs. In forested areas like the Western Ghats, elite already have individual control over portions of the public lands (Lele, 2008). Areas like North-East and Orissa suffer from entirely different set of problems with even the Cadastral surveys yet incomplete in many of the hill areas.

Encroachments have been since long attributed to landlessness owing to population increase though most of the time it is resource rich who are found to be possessing the land. Patron Client Relationships and lackadaisical behavior of the revenue department in monitoring any encroachment and failure to vacate the existing encroachments has also contributed to the same. Incapability of village institutions has contributed to a significant extent towards the same. In other cases incomplete surveys and unresolved disputes between forest and revenue records have led to insecure estimates and tenures.

Though at the same time increased demand for cultivable land has also contributed to the same (Iyengar, 2008). For example, Gujarat - In the last decade (1991-2001), state population rose by 22.66 per cent. With increasing facility for irrigation, there has been a tendency to encroach more land. It is not always true that only rich farmers encroach, poor farmers also encroach as and when opportunity arises. There are many kinds of encroachments on CPR land (Shukla, 2007, pp-14) :

- Removal of soil from grazing land and other public land where productivity is good (private farmers and potters).
- Encroachment of grazing land and other public land including forest for private agriculture (farmers irrespective of land ownership size).
- Encroachment to public land adjacent to land allotted by the government (individuals who were allotted land and those who leased in from the actual allottees)
- For non-agriculture uses (Individuals for residential purpose and Cooperatives and private industries)

Table 6.5 CPR land availability and Use of CPR land (Iyengar, Sudarshan)[82]

No.	CPR land availability	Agriculture Productivity	Use of CPR land
01	High	High	Higher scope of CPR land based activities, more encroachment
02	High	Low	Not much use as over all land productivity is low
03	Low	High	More use of land, Higher probability of encroachment

- **Shrinkage in *de facto* CPRs:** The physical status of CPR land is highly degraded or degradation is still continuing. This has been a result of various factors principle amongst them being (Lele, 2008; Bhise, 2004) [83]
- Abuse of the commons by the influential
- Conflicting policies of the government for dealing with diversion of common lands for agricultural or other purposes encouraging their misuse and improper upkeep.
- Poor or no institutional arrangements
- Conflicts/barriers to collective action within local communities
- Fuzziness in boundaries/records and lack of external support for enforcement
- Lack of finances for regeneration (once degraded)

In long run, there is a possibility of degraded CPR land influencing privately owned cultivated land as most of these CPRs comprise the upper watersheds in the undulating and hilly regions of the country and therefore the general health of ecosystem is taking a severe beating with the degradation of these CPRs. The effects are evident in the way the lower Indo-gangetic

[82] Iyengar, Sudarshan. 1997. "Common Property Resources in Gujarat: Some Issues in Size, Status and Use", in Jyoti Parikh and Sudhakar Reddy (Eds.) *Sustainable Regeneration of Degraded Land*, Tata McGrow Hill Publishing Company Ltd., New Delhi

[83] Bhise S N, Decolonising the commons, Seva Mandir, Udaipur, 2004

plains are being flooded due to degeneration of CPRs of the Himalayas. Western Ghats forests may in general have more biodiversity value (Lele, 2008). Soil erosion or hydrological issues may depend critically upon slope, soil type & rainfall, but is important everywhere.

Amount of usufruct from the same also has been on the decline in terms of the biomass available and being harvested. This has had severe impact on the livestock intensive economies. This has had a severe impact on Pastoralist, which are the second largest population and DNT (denotified tribes) third group dependent on CPR (Pandey, 2008).

Similarly, in developed states like Karnataka - Spread of Irrigation facilities, Biogas and LPG, Modern animal husbandry & chemical fertilizers means less grazing dependence (less livestock & more purchased feed). Livestock population in Karnataka (other than cross breed cattle and poultry) shows a decline. There is an overall decrease of 10.18% in livestock population between 1997 – 2003[84].

Tribals and Forest land - Forests have traditionally served as commons both ecologically and economically for the tribals dependent upon them. Biodiversity of the ecologically fragile regions like the north-east and western ghats also need to be safeguarded to ensure their role as ecological buffers for the burgeoning human populations.

These have served as commons owing to the Privileges and Concessions (for withdrawal of minor forest produce and bonafide livelihood needs) traditionally enjoyed by the tribal people vis-à-vis Indian Forest Act and various state forest acts. For example, in the context of Karnataka, rural public CPLRs include all 'forest' land categories like Reserve Forests, Minor Forests, Protected Forests, Village Forests, Soppinabettas*, Baanes* where there is villager access and the reason for this diversity being inheritance from 5 administrations including the British and agency areas and no rationalisation afterwards.

Problems related to diversion of forest lands for non-forestry purposes **-** However the depleting status of CPRs as well as growing populations have meant that the same forests are now incapable of sustaining the demands of biomass, fuel-wood and fodder and therefore more number of encroachments are happening.

Fuzziness of land records (which enables encroachments, creates conflicts, reduces tenure security) **-** Most of the Records are out of date and do not reflect the actual ground reality. There is a huge mismatch between FD and RD records [Rao et. al 1998; Dilipkumar et al., 2005][85]. Conflict between revenue and forest records has meant that huge chunk of land called Orange Areas have been reflecting on both revenue and forest records. There is a continous conflict on some types of land such as those Chota Jhad Ka Jungle and Bada Jhad Ka Jungle that till today are entered inaccurately in both revenue and forest records. In certain areas there are problems with rights and concessions in contiguous villages.

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[84] 17th Indian Livestock Census: All India Summary Report

[85] Dilip Kumar, P. J., S. Nagaraj, S. Lélé and K. S. Shashidhar, 2005, "Induction, development and impact of GIS/RS facility and applications in Karnataka Forest Department: Assessment of past and ongoing programmes and strategic planning for the future", Evaluation Project Report no. PCCF (EWPRT)/EVAL.PROJ/001/2005-06, Karnataka Forest Department, Bangalore.

Land Disputes and Conflicts have been dragging along thereby endangering the very existence of many forest villages/forest dwellers and encouraging many more to come and settle. In the north-east most of the immigrants have settled on common lands especially forest lands[86]. Extremists have cleared huge chunk of forest lands to substantiate illegal possessions.

Boundary Disputes - Resurvey of boundaries have been proceeding at snail's pace. Deeper reasons rest behind this refusal to rationalise land tenure regimes (because politically sensitive?) and refusal to resurvey because fuzziness helps vested interests.

Forest Rights Act - The same issues have prompted and have been flagged in the Forest Rights Act in a bid to correct the historical injustices but improper implementation of the same for the community may lead to a severe threat of this act becoming a land distributive scheme.

- **Reduced productivity of CPRs**: The impact of growing pressure on CPRs due to human and livestock population and diversion for non-agricultural purposes is clearly visible in terms of decline in the proportions of CPR lands. And because of this the productivity has plummeted dramatically. The evidence is in the form of decline in the number of products, too. This is largely due to disappearance of number of plant and tree species, which community used to collect from CPRs in the past (i.e., before early 1950s). Many literatures have highlighted this as a major indicator of reduced productivity of CPRs. The degradation of CPRs is also due to poor-upkeep both by the community and the government. Indeed, this has emerged from all the state level consultations.
- **Failure of institutional arrangements**: Over-exploitation of CPR definitely points to poor-upkeep of these resources. Although overcrowding is cited as the major reason, absence of proper usage regulations from both the government and the community is equally responsible. It is widely noticed that the traditional institutional arrangements to govern CPRs have declined throughout the country. Indeed, in most of state consultations this has emerged as one of the major challenges, as weakening of traditional arrangements is leading to encroachments on common lands. In a micro level study of village Sayar of Vidisha district in Madhya Pradesh, it was found that due to lack of proper traditional management at the village level CPR is subjected to encroachment by the dominant castes.[87] This points to the fact that traditional institutions have either weakened or disappeared and have failed to enforce norms. According to a study by Jodha, traditional community institutions have weakened and almost 90 % of them fail to enforce norms.

  During consultations, some people felt that Gram Panchayats may not be the appropriate institutional body to govern CPRs. Role of Local institutions like Panchayats, FPCs has been insufficient in the management and development of CPRs leading to their ultimate degeneration. Also**,** Revenue Dept control has never been interested in productivity, being too remote to manage and with lack of funds to develop it. Their major role has been more of a record keeper rather than that of developer.
- **The custodian and enforcer of land:** The custodian and enforcer in case of revenue land is the same body. Given the immense workload at local level, need felt to delink these

[86] State Consultations in Guwahati, Assam in September
[87] Pandey, Amitabh, State Consultation in Bhopal, MP on Common Property Resources.

two roles. District and even state officials felt that they were not always able to stand up to political pressures.

- **Poor land administration:** The complex nature of land administration is to the disadvantage of the rural poor. To further aggravate the situation is the inconsistencies in land records. This gives ample space for corruption at lower levels. This situation and the power of the bottom level functionaries make land administration more prone to corruption. Moreover, lack of staff and financial resources contributes to the poor structure of land administration. There is too much of workload on *Patwaris*.
- **Absence of a long-term land perspective:** A long-term perspective towards land seems to be missing both at the government and community levels. This shows a clear absence of a political vision for having this perspective. In most of the states the respective land-use boards formed are utterly dysfunctional. So far there is no document available for land-use in any of the states except Karnataka. This shows absence of a long-term perspective towards land in general. In the short-term, however, there is a clear perspective of economic benefit from land sacrificing social and ecological stabilities.

Recommendations

To resolve problems related to CPR the government can address definition, diversion, development model, institutional arrangement, and long-term perspective aspects of CPR on priority. Having clarity on these aspects is the foremost step to improve CPR management. Also, addressing these will build towards developing a more comprehensive and state-specific CPR policies. Thus, in a nutshell the central government should formulate guidelines on these aspects and should advice the state governments to formulate CPR polices according to it. This chapter provides recommendations on these aspects that are important to improve the CPR status in the country. The recommendations are divided in two sections – advisory and implementable.

Advisory Recommendations

i **Definition of CPR**: It is not appropriate to provide a uniform national definition of CPR; however, the perspective through which the CPRs need to be looked at should be defined at the national, state or local contexts. Thus, it is recommended that CPR should be defined according to its importance to support rural livelihoods (land based and livestock based) and Ecology as a whole. To add, according to the use of the resources both land and water in a village being used for common purpose, (to meet bonafide livelihood needs should be defined as CPRs) and the definition of CPR based on these conditions should be officially accepted in a state. At a broader level the definition of CPR is –

"Rural common property resources are broadly defined as resources to which all members of an identifiable community have inalienable use rights. In the Indian context CPRs include forests, community forests, community pastures, government wastelands, watershed drainages, village ponds and rivers that are used for common purpose. All these resources are particularly important because of their large area and their contribution to people's sustenance."

Along with defining CPR, there should be emphasis on defining common property land resources. Thus, according to the 9-fold classification, the following categories of land should be considered as legal common property land resources:

- Cultivable wastes and Fallows other than Current.
- Common Pastures and Grazing land,
- Protected and Unclassified Forests.
- Barren, Uncultivable and other Government Wastelands that are being used for common purposes.

The state government after assessment should legally define CPR and the categories of land included under CPLR according to the use of such resources for common purpose in their state.

ii **Institutional arrangements to govern CPR**: For proper management of CPR the role of the user groups, the central and state governments, and community based organizations, especially those working on it are critical. The roles of each of the institutions should be laid out properly outlining ownership, access and rights and benefit aspects (Refer Table 6.6).

iii **Minimum percentage of CPR in a village**: There should be a provision for having at least some percentage of a total land in a village under CPR. The figure for the same should be based on rationality like number of livestock per hectare of CPR land keeping in mind the growth trend of the livestock population, estimation based on fodder and fuel requirement of the village population based on the trend of the village population growth, or in a general level to meet bonafide livelihoods of the dependent community. The rationality for capping should be decided by the state governments.

iv **Banning diversion of CPR land for other purposes**: Based on the criticality of CPRs a complete ban on diversion of these resources should be approved. The ban should be imposed on the capped CPR area.

v **Development model of CPR**: The development model for CPR should be similar to the JFM model. The entire rights over the management of CPR should be assigned to its users. As in case of JFM funds should be made available for its development both from the central and state governments. There should be a provision to allocate budget for development of CPRs from both union and state budgets every year. To add, dedicated CPR funds should be set up in states and districts for its development.

vi **Evolving long term perspective on land through developing land use plan**: A long-term perspective on CPRs should be evolved through developing land use plans of each state. The land use plans should be prepared based on present situation and future needs. More importantly, the land use plans should provide details about how CPRs should be developed considering their importance. Land use plans should be prepared from national and regional levels all the way to the village master plan level. In such plans guidelines should be laid out for land development and allocation. This will foster balance between the development needs and the ecological concerns.

Table - 6.6 : Ownership, Access and Control, Rights and Responsibilities, and Benefits over CPRs

Categories of lands to be included	**Ownership**	*Access and Control*	*Rights and Responsibilities*	*Benefits*
Protected and Unclassed forests – Such areas should be officially demarcated according to land use plan	Forest Department	The local users group should be provided access and control to the forests and other government lands that are used as common property resources. The user groups should be responsible for development, protection and management of CPRs along with the respective government department. The role of the community based organizations should also be laid out clearly. Their involvement with the user groups and the respective government departments should be encouraged.	The entire rights over the produce should be given to the local users to sustain their livelihoods. The Forest and the concerned departments should provide the users legal documents specifying their rights over the forests and other lands as in case of Madhya Pradesh where Nistar documents are provided vividly mentioning about the rights and responsibilities of the user groups. Such legal documents should be formulated in other states too and should be in the possession of the user groups. The lands considered as CPRs should be recorded in the revenue records and such records should be available with the user groups	The benefits should be shared among the user groups and the Forest Department according to a mutually agreed upon sharing proportion. NTFP and other produce to meet fuelwood, fodder and grazing requirements should be allowed to the user groups according to the Forest Settlement rules.
Cultivable wastes and Fallow other than current – such areas should be officially demarcated according to land use plan and transferred to the Panchayat Common Pastures and Grazing land Barren, uncultivable and other government wastelands – areas should be demarcated according to land use plan and transferred to the Panchayat	Panchayat			The benefits of the produce should be shared between the user groups and the Panchayat as per consensus. The benefits from government lands which are used for common purpose should be shared as per the rights provided to the user groups as similar to the rights in case of Common Pastures and Grazing lands

vii **Distributive Access – (Should CPRs be Distributed?) -** Britishers had been historically using this land for distribution to the landless and hence the tradition has meant that the government lands have become land banks. This means that the government lands are the first lands to be distributed. This has further taken the form of alienation of the CPR dependant local people and land being handed over to the private or individual interests, which is a dangerous trend. The logic of distribution of public lands should be based on:

- Availability of other kinds of lands/private lands for allocation
- Position of implementation of ceiling and availability of surplus lands
- Alternate uses of lands/Opportunity costs of non-diversion
- Land market and prevailing market rates
- Use being made of such allocated lands
- Possibility of off-farm or non-agriculture employment for the landless.
- The ecological role/criticality of such lands

The common property land **should not be distributed**, as there are a lot of other categories (like barren and uncultivable lands) under which land is locked. Therefore a clear distinction needs to be made between CPRs and wastelands, which might as well be utilized for non-livelihood purposes like mining, quarrying and industry. The surplus land

after being capped for the common purpose could be allotted to landless families or other marginalized groups according to the recommendations of the Sub-group I.

Implementable Recommendations

i **Enumerating CPR in every National Sample Survey**: To identify and estimate the magnitude of CPRs in the country the National Sample Survey Organization should enumerate this in every round. The estimation of CPR should be based on the definition provided in the advisory recommendations part. And should also clearly illustrate the contribution of CPRs to support rural livelihoods and ecology. Such accurate estimation of the real CPR will help in formulating appropriate polices based on field realities.

ii **Initiating fast track and time bound processes for resolving disputes on CPRs**: CPRs throughout the country are highly contested for innumerable reasons (as highlighted in chapter 4) denying access to its users for common purpose. Thus, it is imperative that disputes over CPRs should be resolved on priority and the central government should initiate fast track and time bound processes for resolving disputes over CPRs.

iii **Providing directions to the existing land use boards in each state**: The existing defunct state land use boards should be advised and provided guidance to make those effective. They should be provided necessary resources and directions to develop land use plans of each village.

iv **Removing inconsistencies in land records on priority**: The discrepancies in land records in the country should be rectified immediately. This should be solved through carrying out fresh land survey and settlement. For this purpose, funds should be made available to use latest technologies like GPS, satellite images, digitization, hiring of adequate staff and skills up gradation of existing ones.

v **Re-classification of land:** Reclassification of land should be done on priority basis based on governance parameters and land use requirements.

vi **Protecting existing *de jure* CPRs**: It is high time to safeguard existing *de jure* CPRs. Funds should be made available and investment should be carried out for their development. To add, diversion of existing *de jure* CPRs should be banned.

vii **Disincentives against encroachment**: There should be disincentives against encroachments. The penalty paid by encroachers is paltry which hardly discourages them from encroaching.

viii **Building public awareness:** Building greater public awareness is the need of the hour. More importantly, people's perspective on CPRs should be thoroughly understood and taken into consideration while designing public interventions. In this way, the institutional support, especially from the community should be strengthen and garnered towards better CPR management.

ix **Better land administration**: For the entire recommendations to be executed the land administration has to do its due diligence. Unless there is initiative and innovation to improve the existing structure, the laws cannot be implemented properly. The skills of the staff should be enhanced, meritocracy based land administration should be brought in, measures should be taken to curb corruption and strict action should be taken against dishonest staff. Apart from this, there should be a better land coordination between various government agencies like revenue, forest, agriculture, etc.

Moreover, there is an urgent need to simplify the revenue administration. Other models of revenue administration as well as land governance, registration and acquisition systems should be looked upon. Most of the revenue system in various states are archaic and date back to the British systems. There is also need to removal of intermediaries.

Conclusion

The fact-finding process clearly indicates that CPRs are crucial to support rural livelihoods and ecology. There is a large rural population, especially marginal and landless that heavily depend on CPRs to enhance household income, meet their domestic energy and livestock needs. Additionally, these CPRs support the local ecological balance by acting as reservoirs in a watershed. The development and management of CPRs should be looked upon from these perspectives.

There are innumerable issues that have come up from the state consultations that are threatening the existence of CPRs. Because of those reasons CPR area in the country is decreasing; more importantly, biomass production has reduced drastically from this resource ultimately jeopardizing rural livelihoods and ecology. So it is imperative to design public interventions on CPR to avoid further worsening of the situation. Thus, for effective public interventions on CPR the following set of advisory recommendations – defining CPR according to the situation prevailing in a state, including CPR in the concurrent list, capping minimum CPR area in each village, banning diversion of capped CPR area, evolving long term perspective on land through developing land use plan and setting up proper institutional arrangements to govern CPRs are significant. In terms of implementable recommendations – enumeration of CPR in every NSS round, initiating fast track and time bound processes for resolving disputes on CPRs, making functional existing land use boards of the states, removing inconsistencies in land records, reclassifying the land-use, protecting existing *de jure* CPRs, creating greater public awareness and improving land administration. These sets of recommendations should be executed at the earliest involving the community, governments and the voluntary sector. To summarize, at this juncture CPR governance should be improved by formulating an effective regulation along with greater public consciousness and awareness.

Section II – Conversion of agriculture land for non-agricultural purposes

Introduction

At present, a little over 46% of the country's area is cultivated. This area, however, is getting increasingly scarce. According to the Ministry of Agriculture, the net sown area declined by around 1.5% between 1990 and 2003. While in percentage terms this may seem insignificant, in absolute terms it translates to more than 21 Lakh hectares. On the other hand, between 1990 and 2004, land under non-agricultural use has gone up by 34 Lakh hectares. According to official figures, Tamil Nadu lost more than 10 Lakh hectares of agriculture land between 1991 and 2003. Mineral-rich Orissa, Jharkhand and Chattishgarh are losing agricultural land to mining and power projects. In Kerala, between 1997-98 and 2001-02, over 80,000 hectares of crop land were diverted for non-agricultural uses. Even in the case of a small state like Himachal Pradesh, the net sown area has declined by 33,000 hectares between 1991 and 2001. Between 2002 and 2007

about 90,000 hectares of agriculture land across 25 mandals in and around Hyderabad have been diverted for real estate and mega-projects. Another 63,000 hectares across 20 mandals of Ranga Reddy district have been lost over the past 10 years. A mind-boggling 5 Lakh hectares of agriculture land have been lost in Andhra Pradesh in recent years.[88] This ever growing hunger for agriculture land continues unabated.

Briefly put, the purposes for which agriculture land is being transferred are: infrastructure development like roads, housing colonies, dams, etc; industrial purposes like Special Economic Zones; allotment of land for bio-diesel plantations and other commercial plantations; and urbanization. This has surged land prices and people are finding it more lucrative to dispose off their agricultural lands rather than getting significantly low returns from agriculture. Such conversion is causing innumerable problems – threatening people's livelihood and food security, and sprouting agitation leading to violence across the country. To address this there is a need for suitable interventions to deal with conversion of agriculture land. This report addresses the issue of conversion of agriculture land for non-agricultural purposes. The report briefly discusses the drastic consequences of conversion. Thereafter, the major drivers that have come up from state visits, literature review and from status papers are highlighted. Lastly, recommendations are provide for immediate action to address this grim situation.

Consequences of the conversion of agriculture land

The conversion of agriculture land for non-agricultural uses is leading to serious consequences. In this chapter, the major consequences of the issues are:

i. **Reduced agriculture production:** The opening up of Indian economy has led to subsequent increase in conversion of agriculture land for non-agricultural uses. This conversion of agriculture land is often cited as the major reason causing food shortage as agriculture production is constantly reducing. Table - 6 clearly indicates that food grain production have reduced after economic reforms.

Table - 6.6 : Food grain production before and after economic reforms (in percentages)

Growth rate of Food grain production	Before economic reforms 1981-82 10 1992-93	After economic reforms 1993-94 to 2004-05
	3.00	0.67

(Source: Kamat, Tupe and Kamat)

A micro-level study of Saharanpur, Uttar Pradesh shows (Table -7) that the agriculture production has reduced by 39.7 per cent from 1988 – 1998. This reduction has led to food shortage in the region. At the national level securing food for 1.1 billion people is becoming a huge challenge for the policy makers. Half of the world's hungry population lives in India and feeding them requires at least 170 hectares of agriculture land. In a recent move to increase availability of the food grain in the country the government curbed food export. This move has been abhorred by the international community.

[88] August 4-10, 2007, issue of the ***Economic and Political Weekly*** by V R Reddy and B Suresh Reddy

Table - 6.7 : Loss of agricultural area and production in Saharanpur

Year	Area under Agriculture in hectares	Food grain production in quintals	Loss of food grain production	
			Quintals	%
1988	5178	155,340		
1998	3495	104,850	50,490	39.7

(Source: Saharanpur study)

ii. **Tribal land alienation:** The people most affected due to conversion are the tribals and other marginalized groups whose livelihoods are dependent on agriculture. Apart from large-scale conversion of their agriculture land, there are far more families that work as agricultural laborers whose livelihoods are threatened. Tribals and other groups already displaced still have not been provided any or adequate compensation. An estimated 40 million people (of which nearly 40 percent are tribals and 25 per cent dalits) have lost their land since 1950 on account of displacement due to large development projects. They still await compensation and rehabilitation. This situation is aggravating due to addition of more number of people in this 'inhumane' category every year. These people are immensely dissatisfied with government's apathy towards them.

iii. **Growing social unrest throughout the country:** More importantly, large-scale conversion of agriculture land for non-agricultural purposes is threatening livelihoods of the people who heavily depend on agriculture. To add, inequitable distribution of benefits from the new land use, quantity of compensation not commensurating with the market value, and social trade offs like rehabilitation not done properly are leading to immense dissatisfaction among the project affected people. This is leading to gruesome social unrest as witnessed in Nandigram and Singur in West Bengal and Kalinganagar, Orissa, where many people were killed. Such violence can escalate and spread in other parts of the country too if project affected people are not properly consulted, compensated and rehabilitated.

Major Drivers of Rampant Conversion of Agricultural Land

The information collected for preparing this report has raised concerns over number of points. Those points are quite diversified and actually are drivers of rampant conversion of agriculture land. In this chapter, those points have been summarized in the following three points:

i. **Decreasing incentives from agriculture:** The decreasing incentive from agriculture sector has been cited as one of the major reasons because of which there is conversion of agriculture land. The total national income coming from agriculture sector in 1951 was 55 per cent whereas in 2003 it was merely 24 percent.[89] Such decrease has been observed throughout the country affecting both cultivators and agricultural laborers. More and more farmers every year are abandoning agriculture as their primary source of livelihood. Furthermore, farmers also become severely indebted in order to practice agriculture. More than 60 per cent of the surveyed households in Karnataka in the NSSO's *Situation*

[89] Indian agriculture in the new economic regime , 1971 – 2003 – Kamat, Tupe and Kamat

Assessment Survey of Farmers, 2003 showed that they were in debt with an average debt of more than Rs18, 000. Moreover, at times because of water shortage agriculture is difficult to practice. This ultimately makes agriculture less viable and profitable.

ii. **Industrialization and urbanization:** The globalization policy led to the arrival of the information technology, related service industries and other industries. This is pulling huge demand for land up. And has sparked an urbanization and industrial boom. The Ministry of Commerce intends to develop 2 Lakh acres as Special Economic Zones. The Haryana government has proposed to set up 14 new townships and theme-based cities which will be connected by a 135 kilometers long expressway developed on 620 hectares. About 45, 000 hectares of land will be developed as residential sectors and industrial zones by state-run and private agencies. In Madhya Pradesh alone more than 12,000 hectares of land have been acquired under Special Economic Zones proposals with a total investment of Rs50, 000 Crores. Similar is the case in other states, too. Correspondingly, this huge demand for land to support industrialization and urbanization is leading to exorbitant land rates. Such sky rocketing land prices has sparked widespread legal and illegal conversion of agriculture land for non-agricultural uses.

iii. **Changing aspirations of the people:** Apart from both the above reasons, changing aspirations is also responsible for rising disenchantment towards agriculture profession. Moreover, surging opportunities from others sectors of the booming economy drives them out of agriculture.[90] A large proportion of rural youth from rural and semi-urban areas are on their way out of agriculture.[91] This human phenomenon is hard to control unless there are proper incentives to create opportunities in rural areas.

All these factors are drivers of voluntary and involuntary conversion of agriculture land for non-agricultural purposes. And both types of these conversions can be either legal or illegal. Although it will be hard to curb legal voluntary conversion without making the agriculture sector viable and profitable *per se*, appropriate policy interventions can help in policing all involuntary and voluntary illegal conversions of agriculture land.

Recommendations to Prevent Conversion of Agriculture Land for Non-Agricultural Uses

The concerns reflected in the above chapter are due to lack of a comprehensible policy to improve agriculture in general. Moreover, there is clear absence of the perspective to protect agriculture land through laws, especially Land Acquisition Act. The foremost step to deal with the conversion issues is to make the agriculture sector more viable and profitable. So addressing the concerns of the agriculture sector is imperative; however, providing specific recommendations to improve the agriculture sector is beyond the scope of this report. Nevertheless briefly put, adequate subsidy, better access to technology and credit should as assured to farmers for encouraging agriculture. The recommendations provided here are to deal the conversion of agriculture land for non-agricultural uses. And are divided in two categories - advisory and implementable. These set of recommendations are interlinked. So to address the conversion issue there should be an emphasis on speedy execution of advisory and implementable recommendations.

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[90] The tipping point in Indian Agriculture – Understanding the Withdrawal of Indian Rural Youth – Amrita Sharma and Anik Bhaduri

[91] Ibid

Advisory Recommendations

i **Stakeholders consent**: Consent of all the stakeholders should be considered before land is acquired. This is imperative for smooth implementation and also for getting the right kind of benefits to the people.

ii **Perspective land use plan**: The land use plan should be prepared based on present situation and future needs. Land use plans should be prepared from national and regional levels all the way to the village master plan level. In such plans guidelines should be laid out for land development and land allocation. For example, The Perspective Land Use Plan for Karnataka – 2025 is commendable. It presents the projected land use plan under various land use categories for Karnataka up to 2025. Formulation of such plans should be encouraged in other states.

iii **Reclamation and development of unutilized and used land**: It has emerged from the state visits that in many instances unutilized land acquired for a public purpose is difficult to reclaim. There should be a speedy process to reclaim and take possession of the unutilized land. Moreover, used land, especially in case of coal and other mines should be reclaimed and acquired instead of acquiring agriculture land for public purpose.

iv **Environmental impact and social impact assessments (EIA and SIA):** These assessments should be thoroughly carried out involving the stakeholders before projects are executed. And based on these assessments future course of action should be decided. Social impact assessment is highly advisable to deal with compensation, rehabilitation and resettlement issues.

v **Barren and uncultivable land should be used for non-agricultural uses**: According to official figures, there is roughly 177 Lakh hectares of barren and uncultivable land lying unused. So barren and uncultivable land should be acquired for public purpose as far as possible. Although this is clearly mentioned in most project proposals, its execution has been a problem. To ensure that barren and uncultivable land is acquired proper monitoring should be adopted.

vi **Better infrastructure designs**: At this juncture of the growing economy better design of infrastructures should be promoted. There should be emphasis on approving and promoting multi-storey buildings that occupy less land space, especially for urban development.

vii **Better land administration**: A larger political vision of improving the government machinery should be the agenda of every political party. Regular deliberations should be encouraged for inviting suggestions to create a transparent and fair land administration system.

Implementable Recommendations

i **State land use boards**: The existing defunct state land use boards can be advised and provided guidance to make land use plans of the state. Resources – financial and human required by them can be provided to develop the plans.

ii The following recommendations of the standing committee on SEZ as presented in table 8 should be approved and implemented at the earliest.

Table - 6.8 : Recommendations of the Standing Committee on SEZ[92]

Issue	SEZ Standing Committee Recommendations
Verification of land	State government and gram panchayat should verify type of land and hold a public notice for objections to the stated type of land to prevent manipulation of land records
Limitations on land	Prevent developers from acquiring more land than necessary by prescribing maximum area for various types of SEZs and 50% of area should be used as "processing area"
Consent of landholders	With the exception of land acquisition for national security, the affected parties should give their consent
Inform affected persons	Land acquisition law should inform affected persons of the purpose for acquisition, its implications, and resettlement provisions
Unused land or failed projects	Lease the land so land owners receive a lump sum and periodic rent. If SEZ fails or dissolves, land goes back to the original owner
Land ownership	Land should be leased to the developer, even if the state government acquires the land
Calculation of compensation	Compensation should be calculated on prevailing market rates
Market rates	State governments should devise a system of periodic market surveys to determine periodic market rates
Shares in company	Offer equity shares in the developers company

iii Proposed amendment in the Land Acquisition Act

(a) **Definition of Public Purpose**: The issue of the definition of public purpose in the Land Acquisition Act is considered as unclear. In most of the consultations government officials and the participants have shown consent on this aspect of the Act. Their concern is to make clear what consists of "public purpose". The recent proposed amendment of 'public purpose' in the Act which is before the Parliament for acceptance is appropriate. The proposed definition of public purpose, i.e, (i) strategic naval, military, or air force purposes, (ii) public infrastructure projects, or (iii) for any purpose useful to the general public where 70% of the land has already been purchased from willing sellers through the free market should be accepted and approved. However, in case of public infrastructure projects the compensation to the affected people should be given on the prevailing market prices. The definition of public purpose should also include ecological considerations in it.

(b) **Gram Panchayat should be consulted at the time of acquiring land**: The process of consulting the Gram Panchayat should be made mandatory except in case of national security. This process should be clearly elaborated in the Land Acquisition Act.

(c) **Banning excess land being acquired for public purpose:** Developers who acquire land under Land Acquisition Act or SEZ should be prevented from acquiring more land than

[92] Source: PRS legislative, CPR New Delhi

required. The rationality to acquire land presented by the developers should be thoroughly examined.

(d) **EIA and SIA:** Environmental impact and social impact assessments should be carried out by the developer and should be discussed with the stakeholders and after that only should be presented to the government.

(e) **Compensation based on market rate**: The compensation for the acquired lands should be based on the prevailing market rates.

Conclusion

Decreasing incentives from agriculture, changing aspirations of the people and, industrialization and urbanization are the major drivers for rampant conversion of agriculture land for non-agriculture uses. The conversions can be either voluntary or involuntary and can be operationalised either legally or illegally. At a broader level, the conversion issues can be handled by making agriculture sector viable and more profitable. As discussed earlier, this can be controlled only through suitable interventions like desirable subsidy to farmers, better access to credit and technology to practice agriculture. This is imperative to prevent conversions where people are giving up agriculture due to significantly low returns. Whereas agriculture land is also threatened due to rapid industrialization and urbanization. In such cases proper laws and its implementation is the need of the moment. So there should be strict measures in the Land Acquisition and Special Economic Zones Acts to prevent conversion of huge chunk of agriculture land for non-agricultural uses. More importantly, the interests of the affected people should be taken into consideration before even deciding about projects. And it is urged that adequate compensation, proper rehabilitation and settlement of the affected people should be executed through a participatory, transparent and fair process.

Chapter - Seven

Land Management in North Eastern States
(Report of the Sub Group – VII)

1.1 Introduction

North East India (NEI) consists of eight political units of the Union of India namely, the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and Sikkim, known together as the North Eastern Region or the NER. These together have an area of 2,62,185sq. kms accounting for 7.98 % of India's total land area and with 388.58 lakh accounts for 3.79% of India's total (2001 Census). About 70% of the region is hilly, rugged and generally inaccessible physiographic terrain, cultural and ethnic diversity of tribes, the relative historical seclusion and the strategic location have combined to forge the region into an important geopolitical unit of the country as well as in the world. The region has remained overwhelmingly rural in seven out of eight states returning over three fourths of their population with only returning higher urbanization at 49.63. The NER is the homeland to a mosaic of Tribal communities. The

1.2 General Administrative Structure

The political boundaries of the British Empire in the region left many tribes divided which continued into the post independence and led to the creation of States. Nagaland, Mizoram and Meghalaya, Arunachal Pradesh were carved of erstwhile Assam of British India, while Manipur, Tripura were princely kingdoms converted into states. Each State of the Northeast has a different administrative structure under the Constitution of India, North Cachar Hills, Karbi Anglong and Boro Territorial Council, the whole of Meghalaya and the Hill areas of Tripura are covered under the provisions of the Sixth Schedule, provisions of Article 371A cover Nagaland while Article 371G covers Mizoram.

Recognizing that the administrative structure at the village level has serious implications on the land relations, it is necessary to understand the administrative structure of the north eastern states.

Table -7.1: Administrative Structure of North-Eastern States

States	Special Constitutional Provisions	Administrative structure
Arunachal Pradesh	Art.371H	No Autonomous Councils, the state has adopted the Panchayati Raj
Assam	VIth Schedule Read with Art. 371B (for Schd. Areas only)	Three Autonomous Councils: (i). Karbi-Anglong, (ii). North Cachar Hills, (iii). Bodo Territorial Council.
Manipur	Art.371C	lage Authorities in Hill Areas Act, 1956
Meghalaya	Sixth Schedule	Three Autonomous Councils: (i). Khasi Hills, (ii). Jaintia Hills, (iii). Garo Hills
Mizoram	Sixth Schedule Read with Art.371G	Three Autonomous Councils of Pawi, Lakher, Chakma, and other areas without the Autonomous Council
Nagaland		No Autonomous District Councils
Tripura	Sixth Schedule	Tripura Tribal Area Autonomous District Council, Khumulwang

The governance in most States and Districts of the NE manifests co-existence of both the modern and the traditional, the Autonomous Councils act as administrators with regulatory functions, Village Councils act as the planning and development organs. In Arunachal Pradesh, Sikkim and plain districts of Manipur, Tripura and most of the districts of Assam PRIs fulfil the development function.

1.3 Land System

Two broad types of land tenure systems operate in the region i.e. (i) Revenue administration under government operates in the plains and valleys of Assam, Tripura, Manipur and in the hilly state of Sikkim and (ii) Customary land tenure system under Village level authority operates in the hilly states of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland and in the hilly parts of Assam, Manipur and Tripura with State wise and region wise variations [93]

Traditionally and upto the present, the land of most Naga tribes is classified broadly into primary or agricultural land and reserved land. The reserved land consists of (i) land kept for public purposes including forestland under the control of the village council. (ii) Clan or *khel* land used by clan members (iii) Inherited or acquired privately owned land. (Tamuly 1985: 96-98).

Among the Thadou of Manipur land is under the control of the village chief, who after consulting his ministers called *Semang Pachang,* allocates *jhum* plots and ensures all families get an equal share. Each family pays a tax. Families unhappy with their chief can leave the village and live elsewhere. (Rajkhowa 1986: 96).

For the Mizos, land was under the village council controlled by the chief, who allocated for *jhum* with advice of experts on shifting cultivation called *Ramhual*. Villagers paid tribute in terms of paddy. The chiefs' power in respect of land were not touched by the British (Das 1990: 6). However the Government of Assam abolished the chieftainship in 1954 through *The Assam Lushai Hills District (Acquisition of Chief's Rights) Act 1954* (Assam Act XXI of 1954), and brought land under the state. Four kinds of land continue in Mizoram, i) district forest under state control and ban on agriculture; ii) 'safety supply reserve forests by district councils with a ban on ariculture; iii) village council owned 'safety and supply reserve forests' for the benefit of the villagers for fuel wood for personal use and not sale; iv) unclassed forest under the village council allotted to individuals on patta or leases for homestead and cultivation (Mahajan 1991: 81-82).

Tripura had a different regime with jhum land allotted by the ruler through his collectors, who in turn were assisted by a village Choudhury. Land was classified into six categories; i) Jhum land belonging to the community and managed by the village authority under the control of the Choudhury, ii) *Nal* – fertile land individually owned, inheritable not alienable; iii) *Lunga*, land between hills for; permanent cultivation allotted to tribals with yearly tax; iv) *Chera*- land

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[93] . NIRD Studies (2008); "Land Records in North East;" Halloi PK; North Eastern Regional Centre, Guwahati;

was situated on both sides of the river owned by villagers and allotted for cultivation; v) *Bhiti* and *Bastu* individually owned and heritable but not transferable land. (Roy 1986: 59-62). However very little remains because tribes are reduced to a minority and only individual alienable title is recognized. (Debbarma forthcoming).

Land ownership in Arunachal Pradesh varied from tribe to tribe. For Nyishis and Galo, CPRs were demarcated and managed by the village council. For the Adis, land vested in the community and allotted by the chief to individual households.(Agarwal 1991: 44). Aka had no tradition of ownership, each family cultivated as much jhum or riverbank lands as needed. (Fernandes and Bharali 2002: 22-23).

Khasis of Meghalaya has four broad categories of land; i) *Raid* - community land managed by the village council and used only by permanent Khasi residents for housing, common facilities and agriculture; (ii) *Rykynti* – private land; iii. Clan land. owned by the respective clans iv) forest land divided into sacred forest, village community forest controlled by the village darbar, protected forest for domestic use not for sale and v) individual forest used by the owner (Dutta 2002: 59). Ri Bhoi District in Khasi hills was unique because land was communally owned, controlled and managed by the chief representing a cluster of villages in almost the entire district (Nongkyrih forthcoming). However the power of the *Darbar* is reduced, though traditional systems of land ownership continues. (Dutta 2002: 2).

In the Garo Hills (Meghalaya) land was traditionally under the control of the Chief (*Nokma*) while homestead plots were owned but by the community (Kar 1982: 29). At present, hilly land, almost 95 percent of the total land, is covered by customary law while plains lands are governed by the *Assam Land and Revenue Regulation Act of 1886,* adopted by the Garo Hills Autonomous District Council in 1952. (Phira 1991). In Jaintia territories of Meghalaya, CPRs were owned by the Chief, *Syiem, till* the British ownership of the CPRs on the State and converted all the *Rajhali* (*Syiem's* private land) into Government land. Thus, community land in Jaintia hills was made government land, tillers given *pattas* for ten years and subjected to land revenue (Pyal 2002: 24).

Land in the plains and valleys of NE belongs to the state while in the hills, land belongs to the people with the village authority council as custodian. Kuki, Sema, Mizo are exceptions with land belongs to the Village Chief and villagers are tenants with occupancy rights as the chief permits. In matters related to sale, Chief is the authority to decide and residence of the buyer makes no difference. Chieftainship was abolished for the Mizos while it continues with the Kuki and Sema. However rumblings of revolt against oppressive land regimes are felt in many Kuki villages in Manipur.

1.4 Livelihood Systems and food insecurity

Current tenural and resource management practices contribute to growing food insecurity, while customary laws come into conflict with the modern state systems and regulatory legislation, which recognises the customary practices and form of ownership in principle, but the ambiguous authority of the Government over land generates conflict and has crippled its implementation.

1.5 Land and Agriculture

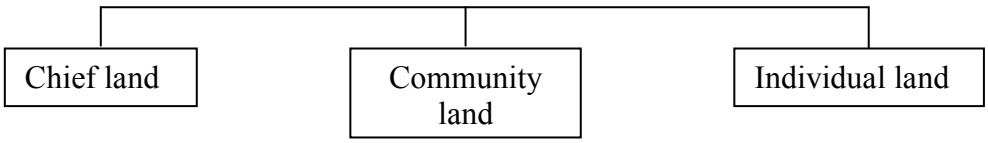
The table- 7.2 below distinguishes land as hills and plains to identify patterns of land use pattern in the region. By and large the table makes it clear that tribes practicing shifting cultivation inhabit the hilly regions and while settled cultivation is predominant in the plains.

Table - 7.2 : Location of tribals

Region	Location	Tribes
Plains (30%)	Brahmaputra Valley. Barak Valley of Kachar Tripura Manipur (valley)	Assamese, Bodos, Adivasis and other plain tribes Bengalis and tribals. Tripuris, and Bengali Meiteis
Hills (70%)	Meghalaya Mizoram Manipur (hill) Nagaland Arunachal Pradesh	Khasis, Garos, Pnars, Tiwas, Lyngams. Mizos: Kuki-Chin family of tribes. Various kuki-chin and Naga Tribes. Naga tribes: .Ao, Angamis, Semas, Lothas, Rengmas, Sangthams, Changs, Phoms Konyaks. Adis, Akas, Apatanis, Khamtis, Miris, Mishmis, Nishis, Noctes, Wanchos.

1.6 Tenure System

While customary regimes and government regulation co-exist in the entire region, custom governs the tenure system, particularly in the hills and three forms of land ownership are observed.



(i) ***Control and management of lands by village chiefs with right to cultivation for individual members*** is observed in tribes belonging to the Kuki-Mizo constellation (in Manipur, Mizoram); Semas, Konyaks (in Nagaland) and Noctes, Wochos (in Arunachal Pradesh), with strong chieftainship systems. While the chief cannot deny land to a villager nor own in a manner that reduces the of the villagers, he exercises has prerogative to determine allotment of plots for cultivation and manage community resources and receives tribute in exchange and not rent for land.

(ii) ***Lands owned by the villagers collectively*** was recorded, in ethnographic accounts, as prevalent among tribal people practicing jhum and holds good in most even today. Land is held in trust as a social guarantee against unemployment and destitution for all willing to work. Uncultivated land reverts back to the community and can assigned to any other member.

(iii) ***Land owned by the individual families*** is observed in the plains. The low conferred private ownership since 1886 in Assam, while private ownership is seen in Tripura and Manipur from 1960. Ahom, Manipur and Tripura kings acquired proprietary rights over land through conquest hence other rights were subsidiary to the rights of the king. Individual ownership is seen in settled agriculture in the hills and private ownership recognized without title deeds (patta) where land reforms were initiated. *Patriarchal*

inheritance and descent is observed in most of the tribes of North East with the exception of Khasi, Jaintia and Garos of Meghalaya where matriarchy is practiced though ironically the maternal uncle has the control over sale or purchase.

1.7 Management Practices

Subsistence farming, dependent on family labour was the hallmark of the economy in the plains shifting farming in the hill villages. Sub tenancy or share cropping was absent as pressure on land was low and landlessness unknown. However, new land use patterns are emerging. Its causes and effects are manifold.

1.8 Land alienation and landlessness with emerging land use pattern

Tea plantation in the middle of nineteenth century and exploitation of natural oil and coal brought in new economic activities which brought in migrant labour while the indigenous population continued with agriculture resulting in decline in control over local resources. Population pressure has reduced fallow periods of jhum cultivation and affected yields. Government programmes like terrace farming with ownership right (a measure to address deforestation) and timber plantations have begun to alienate people from their habitat. Emergent commercialization is also impacting land use patterns as (a) land after jhum is now put to continual use with transfer rights; (b) large area of community land has converted into private land by design of vested interests; (c) sale and purchase of land under settled cultivation has led to emergence of absentee landlords (inherited, purchased or acquired), tenancy and share cropping. Reversion of land to the community does not arise due to continual use of land.

Several negative effects can be seen a) communities are moving out of economic formations akin to primitive communism to form of feudalism; b) concentration of economic power in few hands is visible with land being alienated from other members; c) landless shift from the land to timber felling and drawing water; d) growing food insecurity e) conflict over cultural values of equity and sharing.

1.9 Ineffective Land Regulation

The major limitation in customary laws is absence of codification, and where codified, chances of opportunistic interpretation. On the other hand, absence of extensive land reforms deprives the common man from accessing resources from formal institutions. This gives rise to a piquant situation where customary laws is ineffective to address the emerging land use and land legislation remains ineffective, as governments are not proactive in enforce them. States are also in a dilemma in assessing community response to formal regulation and a dilemma whether to expedite privatization of landholding or strengthen community notwithstanding manipulative forces acting in the communities.

1.10 Forest and Bio-diversity Conservation

The NE supports vast tropical rain forest forests, spread over 75 million hectares (25% of India's forest cover) and constitutes one of the ten bio-geographic zones of the nation, as a repository of diverse variety of flora and fauna, some of which are endemic and endangered.

Unfortunately forest cover in the NE had declined between 1993 and 1995 by 0.47%, while increasing by 0.06% in the rest of the country, the maximum loss is in Assam (1.82%) and lowest in Arunachal Pradesh (0.06%). Marked improvement in dense forest is offset by rapidly deteriorating open forest. Livelihood security of the hill people in the region is closely linked with traditional Jhum agricultural practices in the forests. Village authority governs management of forests which communities recognize as their own, raising conflict between tribal governance and emerging political organization.

The major loss of forest cover (Table- 7.3), approximately 80%, is due to Jhum, though in Assam, 377 sq. km. has been lost to tea plantation. Improvement in transport is witnessing a growing trend in private forest, making a shift in community land use patterns to timber plantation. Mizoram is an exception, where the forests are owned by the state and protected from large-scale commercial exploitation.

Table – 7.3 : Reasons for the Loss to Forests

Reasons for loss/gain of forest cover (in sq. km)

State	Forest Cover in Sq. KM		Loss due to			Gain due to			Net loss
			Jhum	Other reasons	Total loss	Regeneration in jhum areas	Other reasons	Total gain	
	1993	**1995**							
Arunachal Pradesh	68,661	68,621	169		169	129		129	-40
Assam	24,508	24,061	224	377	601	115	39	154	-447
Manipur	17,621	17,558	65		65		2	2	-63
Meghalaya	15,769	15,714	218		218	163		163	-55
Mizoram	18,697	18,576	792		792	671		671	-121
Nagaland	14,348	14,291	58		58		1	1	-57
Tripura*	3,119	3,127							
Total	5,538	5,538	**1526**	**377**	**1903**	**1078**	**42**	**1120**	
	168261	**167486**							

1.11 Livestock and Pisciculture

Livestock keeping, poultry, piggery and cattle rearing, serves household consumption and secondary income in a few cases. However current practices of livestock management result in high mortality rates due to absence of veterinary care and services. People still catch fish from hill streams though pisciculture is not developed. Of late, efforts are being made to popularise it in irrigated rice paddies in Nagaland and Arunachal Pradesh. In Mizoram, periodic lease of water bodies is done under the Mizo District (Land and Revenue) Act, 1956.

1.12 Land Administration in Assam

The situation is different for Assam than other hill states, which are 100 % tribal districts, where cadastral surveys have not been done and communities own the lands. In Assam 30 % of the states area is covered under Revenue Class Land, (revenue department or private lands) and consists of i) Industrial lands, ii) Business class lands, iii) Homestead lands, iv) Agriculture lands. Another 30% of land is Revenue Class (revenue department, non-private and unclassified government lands) and consists of i) PGRs and VGRs, ii) Wetlands iii) Khas lands (Fallow lands, cultivable wastelands, iv) Other government lands, v) Rivers and rivulets, vi) PWD, vii) Irrigation lands. A Mandal is the revenue unit, which falls under a revenue circle. 40% of the states area consists of Forests (under Forest Department) and consists of i) Reserve forests, ii) Proposed Reserve forest areas and iii) Unclassified forest areas.

Land development was brought under the provisions of the Land Administration Act 1886, though a harmonious blending of this act could not be completed due to tribal revolts. Rajas also refused land surveys. The Assam railway trading company facilitated clearing of forests and creation of tea estates, oil exploration and iron mining. Logging began with supplying timber to the railways and later led to development of the plywood industry. Shifting river courses, particularly the Brahmaputra, has resulted in the loss of approx 4000 sq kilometres of land about 7 % of the state's area. Siltation of these non-cadastral areas is occupied on a first-come first-serve basis.

Development pressure on land is enormous. Demands of industry are on the rise, particularly SEZs. Displacement and alienation of vulnerable groups is also on the increase while allotment of common land to the landless has fallen. CPRs like water resources managed as *chithas* under the sarkari and non-sarkari lands are ill preserved having no government agency responsible. Hill areas considered biodiversity hotspots are covered under the Assam Hills and Ecological Sites Act. Most of government land known as Khaas or non-patta lands, which includes revenue wastelands and culturable wastelands etc., as well as the VGRs and PGRs are CPRs and kept for non-agriculture use are rife with encroachments, though Section 18 of the Assam Land Revenue Act provides for eviction without notice. Legalization generally benefits resource rich people. The need of the hour is to create a roadmap for the land prioritization which would try to address issues like marginalisation of tribal people, preservation of biodiversity that renders ecological services and investments in improving the productivity of land and strengthening peoples' capacities to undertake their own development.

1.13 Forest & Forest Lands.

Implementation of the Forest Rights Act 2006 has not begun in Assam and the problems of Orange Areas prevail. Uncertainty over government forest categories particular proposed reserve forests in CPR are reasons for worry. JFM is still marginal and the debate around the forest centers round forests as local or global commons. Large tracts of forest are encroached by the rich in particular and forest land and cash changes hands not withstanding it being illegal.

1.14 Tribal Governance and Public Administration

Governance in the NE ranges between absolute chieftainship and republican democracies. Sema Konyak, Nocte, Woncho Nagas, Kukis, Khasis, Khamtis and Lushais follow hereditary chieftainship pattern, head of the Village Council drawn from various clans. The council a consultative body dependent and subservient to the chief assists in administration and dispensation of justice. Some others like the Khasis have chiefs as nominal heads, with power in the village or elders council. At the other end are tribes who subscribe to republican democracies with strong village council, whose consensus based decisions were final, composed of clan elders respected for their knowledge, status, wealth and spirit of public service.

The colonial rule created a new elite group of Dobashis (translators) and Goanburas (old men) who became agents of the Colonials. Dobashis dispensed justice based on customary laws and wielded power and authority. They formed a new class and sought to protect their own autonomy in the local administration which were reflected in the Government of India Bill 1935 and the recognition of *Excluded Areas* from the purview of the administrative and statutory control, which was reflected in the Sixth Schedule and Article 244 of the Constitution. However, its provision did not encompass all the hill areas of Assam and Nagaland. The Sixth Schedule, while conferring legislative, executive, financial and judicial powers to the Autonomous District Council, recognise the existence of community and state process with a clearly delineated spheres and without impinging on one another. The experience of fifty years shows that the Autonomous Districts Councils have failed in performing their task in the absence of a clear provision for co-ordination of their activities with that of the state government. As a result the ADC sought to draw their legitimacy mainly from the state rather than the community and judicial autonomy abused and customs misinterpreted.

The Sixth Schedule provides no scope for the councils in development and social welfare, hence councils are at the mercy of the state governments. In terms of power Panchayats than Autonomous Councils are in a better position after the 73rd Amendment. For example, Councils manage only primary schools and dispensaries while Panchayats cover even secondary schools, hospitals and PHCs. primary health centers come within the purview of the panchayat bodies. Further, finance for Council depends on the state government while Panchayats are covered by the Fifth Finance Commission.

Village councils exist in all NE states by different names, 'republics' in Manipur, Council in Mizoram, Village development boards (VDBs) in Nagaland. However party politics has entered institutions eroding their autonomy in the North East and community life politicised, emerging elites affiliate themselves to political party.

Recommendations

(i) The concept of private property is absent and *Jhum* lands are under community ownership and traditionally managed. Most acts rules are insensitive to the local customs and de facto land usage but compensation mechanisms in disaster are poor in the absence of land titles. Land Acquisition Act does not deal with acquisition of community owned lands and in the absence of titles to land, village and individual lands cannot be

distinguished. In some states there are systems of Village forests, Individual forest and private forests. The same need to be recognized. These systems have to be adopted in the formal system.

(ii) FRCs are not formed nor gram sabhas conducted. Grave danger of gross misutilisation of the Forest Rights Act 2006 due to immigration of Bangladeshis. Threat of non-tribals staking claims rather than forest dwellers a major cause of concern.

2. Land Records in the North East

Survey and settlement operations have been carried out only in some parts of the northeast hence land records are not available for vast area. As land rights are based on customs and the traditions, no revenue is paid to the government As field registers are not maintained a front-ended system to handle grievances is lacking.

2.1 Arunachal Pradesh

Three regulations sill govern land in Arunchal Pradesh, i) The Balipara Frontier Tract Jhum Regulation of 1947, ii) Sadiya Frontier Tract Jhum Regulation of 1947 and iii) Tirup Frontier Tract Jhum Regulation, 1947. The *Sadiya Frontier Tract Jhumland Regulation,* 1947 restrained transfer of *jhum land* under community customary right to another community or individual without the permission of the Land Conservator or Deputy Commissioner (Shimray 2006). Ultimately this law vested the ownership of the such community land with the State. However no regular survey and settlement has been done in Arunachal Pradesh, only piecemeal efforts covering government lands in the capital, district, sub-divisions and circle headquarters. Though unlike other NE states, there is no tribal resistance to survey and settlement. The state should deal with various issues related to effective management of land and enact a comprehensive land legislation for land revenue administration; complete survey and settlement at the earliest using advanced equipments given the difficult terrain.

2.2 Assam

A cadastral survey was undertaken between 1900-1927 in Kamrup district. Before 1935, different tenancy laws, like the Goalpara Tenancy Act and the Sylhet Tenancy Act. governed different areas. In 1935 the Assam Tenancy Act covered districts of Kamrup, Darrang, Nawgong, Sibsagar, Lakhimpur and Cachar excluding Karimganj sub-division and extended to temporarily settled estates in Goalpara district. The hill districts of Karbi Anglong and North Cachar hills are covere under the VIth Schedule and administered by the Autonomous District Councils which initially adopted the Assam Land Revenue Regulation 1886 and subsequently enacted the N.C. Hills Land Revenue Act, 1953 and 1982. Half Karbi Anglong villages and 1/5th of NC Hills are surveyed with two types of pattas, annual without transferable rights and 30 years. Jhoom land cannot be sold and individual land only with permission of ADC. In Karbi Anglong the land is calcified into class -I, class-II and class-III categories with variable rates revenue. *The Assam Adhiars Protection and Regulation Act 1948* provides security to the *adhiars*on payment of 20-25% of first crop to *zamindar.* But the law has remained on paper and 50% of private land continues as *eksonia pattas* (Bora 1986: 53).

Manipur

The Raja of Manipur enjoyed absolute ownership and made land grants to Brahmins, sepoys, priests, idols, his relatives and employees with no rent or tax in perpetuity, rent was paid on if cultivated land was increased. Revenue was payable in the form of paddy. Other lands were cultivated by tenants, with revenue in kind. The Assam Land and Revenue Regulation 1886 and the Rules were extended to Manipur in 1947 and to Manipur Valley in 1952. Survey and Settlement was taken up in 1960 and completed in 1976. and surveys initiated for different classes of land. The Manipur Land Revenue and Land Reforms Act, 1960 followed the pattern of the Tripura Land Revenue and Land Reforms Act, 1960, the only variation being in the Tripura Act the state acquired the rights of the intermediaries. The Manipur LRA applies to 31% of the villages, 550 villages in the plain districts. It does not apply to notified 1191 villages in the hill-areas and 115 villages in Churachandpur and Senapati district.

Meghalaya

Meghalaya, home to the Khasi, Garos and Jaintia tribes under separate ADCs covering seven districts in the Khasi, Garo and Jayantia Hills. The societies are matriarchal and descent, inheritance and succession is through the mother. The land is governed under customary land tenure system with private and community lands. Jhoom lands are community lands by rule but generational property by practice. Durbars settle matters related to land and forest. Cadastral survey has been resisted by the tribal people. No formal legislation covers the basic land system, but sections of the Assam Land and Revenue Regulation, 1886 are used to deal mainly with recovery of arrears of land revenue, powers of officers, appeals, revisions and ejection. The *Meghalaya Land Survey and Record Preparation Act*, 1980 attenpted to bring the state under the cadastral survey operation, without much progress.

2.5 Mizoram

The land of Mizos with nine districts in two covered by ADCs with the majority Mizo and Lai, Mara and Chakma tribes. Land is governed under customary land tenure system with the chieftain at the helm in the past with Jhoom as the primary mode of production. Families were provided 2 ha of land close to the settlements along the roads in early nineties under the *'New Land Policy'* which was subsequently discontinued. In 1972 the *Pawi-Lakher Regional Council* was abolished and replaced by three separate District Councils, namely, Pawi, Lakher and Chakma. Each of ADCs have their own legislation or allowed the legislations of the *Pawi-Lakher Regional Council* to continue. The Mizo District Council was also abolished replaced by an Administrator, who sill implements the laws of the erstwhile District Council.

2.6 Nagaland

Nagaland, home of 16 major tribes is governed by Village Councils and functions like a Republic. Nagaland has no comprehensive land laws as civil affairs are run according to customary laws. Land belongs to people and governed under customary land tenure system with management of village, forest, Jhoom lands vested in the Village Council. Privatisation of

community land by manipulation of customary laws is being reported. A few acts exist such as the *Nagaland Jhum land Act*, 1970 and the *Nagaland Village and Area Council Act,* 1978. The *Nagaland Jhum* Act bans all transfer of land outside the tribe. No cadastral survey has been conducted in Nagaland except in Dimapur area and plain pockets bordering Assam brought under the *Assam Settlement Act.* Recognizing Naga repugnance to land revenue the British imposed only a house tax. Survey opposition from the Nagas. Notwithstanding tragic incidents British stressed on realisation of revenue as a symbol of authority leading to a showdown with powerful Naga tribes. Currently survey is done only for i) administrative headquarters, government lands and private lands in urban areas; ii) newly created non- traditional villages numbering 200 iii) for Dimapur mauza comprising 49 villages governed by the Assam Land Records System. New villages known as non-traditional villages pose a problem to the Directorate of Land Records as the administration does not define the boundaries of these villages by proper survey and mapping resulting in disputes. Land disputes are rare in traditional villages.

It would be in the interest of the state to notify all non-revenue villages as revenue villages and survey them together with 200 non-traditional villages after an awareness campaign to convince people of the benefits of the survey for personal rights and development and after putting adequate legal safeguards in place to protect the customary rights so that the people do not view the survey as interference in their rights and customs.

2.7 Tripura

No cadastral survey was carried out in Tripura till its accession with Union of India. A piecemeal survey was made for settlement of land, by applying the prismatic compass method. The maps and records were damaged with frequent use and did not serve much useful purpose. There were no land records in Tripura during the time of the Raja. The Tripura Land Revenue and Land Reforms Act, 1960 (TLRA) was enacted by the Parliament to consolidate and amend the law relating to land revenue and provide for acquisition of estates, tenancy reform, ceiling on land holdings and prevention of fragmentation. All lands, public roads, lanes not property of any individual are declared state property. Rights to mines, quarries, minerals, and mineral products including mineral, oil, minerals gas and petroleum were vested in Government. The collector decides property dispute with an appear through a civil suit within six months of collector orders. The *TLRA* recognises only individual land and hold community lands are state property. Thought the objective of the TLRA was to guarantee permanent heritable and transferable rights to the tribals over land, it has had an adverse impact since the tribals traditionally did not have individual ownership and land registration. Hence the State alienated much of the tribal land from them and used it to resettle the Bangladeshi Hindu immigrants. As a result, the tribals lost more than 60 percent of their land to the immigrants by 1979. The tribal population declined from 58% in 1951 to 31 percent today (Bhaumik 2003: 84). Survey and settlement operations were launched in full swing after the enactment of the TLRA and completed by 1968. A revision survey was undertaken after Khas lands were allotted to nearly 1.5 million refugees from erstwhile East Pakistan. The progress of survey in Tripura has been far from satisfactory, due to shortage of some staff, low levels of skill, tribal and Bengali disharmony and today by insurgents.

It will be advantageous for Tripura to give training to it survey and settlement personnel particularly in modern equipment and techniques. Revisional record of Rights be rapidly prepared for both for rural and urban areas. Adequate protection be given to survey officials.
Sikkim is composed of Bhutias, Lepchas and Nepalese. The Lepchas were the original inhabitants but reduced to a minority and most backward today. The Bhutias, who are strong and aggressive, came along with the Lamas overcame the Lepchas and occupied their land. A Revenue Order in 1917, permitted only the Lepchas of Zenghu to settle in Zengu area. But Chogyal,the then ruler settled many big landlords within this restricted area, undermining the hopes of the Lepchas. A Revenue order in 1917 restrained Bhutias and Lepchas from trtansferring land to non Bhutias or Lepchas without prior sanction while a Revenue Circular in 1924 placed a ceiling on land holding with little efffect. The Sikkim Cultivators Protection Act, 1975 and Rules of 1975 were the first measures which protected tenants and the cultivators (Ahiadars and Kutidars) from termination, fixed the maximum rent at half the principal produce. The Sikkim Regulation of Transfer and use of Land Act Rules, 1975 prohibited transfer of land without permission, Sikkim Agricultural Land Ceiling and Reforms Act and Rules 1978 provided for a ceiling on agricultural lands to prevent concentration bring about an equitable distribution. No survey and settlement was carried out during the British rule. The Department of Survey and Settlement was started in 1975-1976 but survey and settlement was completed in Sikkim by 1983-84.

3. Current Status Of Land Management

3.1 Land Revenue Administration

3.1.1 Arunachal Pradesh

The Arunachal Pradesh government has taken steps to organise survey and settlement. The organisational set-up at the headquarter includes Director, Deputy Director, office staff, and field staff of surveyors, supervisor, recorders, chainmen and draughtsmen. There is no training institute to train the surveyors and the surveyors are sent to other state for training. For strengthening of revenue administration and updating of land record, the office has received funds from the central government and made use of the same. Also the state has not undertaken aerial survey and computerisation of land records. Since there is no land record prepared, the implementation of computerisation project becomes non applicable.

3.1.2 Assam

The land records administration in Assam is headed by the Commissioner, Land Reforms and he is assisted by the Director, land record and surveys. The actual operations in the field is led by the Settlement Officer , assisted by the Senior Assistant Settlement Officer, Assistant Settlement Officers, kanungos and patwaris. There is also a survey and demarcation wing under Deputy Director, Surveys and demarcation. There are assistant Director under him and other supervisors and technical personnel like draftsmen, surveyors, machine printers and so on. The land record maintenance is looked after by the deputy commissioner, sub divisional officer, deputy collectors, kanungos and patwaris.

3.1.3 Manipur

The maintenance of land records administration is headed by the Deputy Commissioner and aided by sub divisional officer, sub-deputy collector, kanungos, mandals, revenue inspectors and zilladars. A Director heads the land records administration assisted by the Settlement Officer, Assistant Settlement Officer, Revenue Inspector and Amins.

3.1.4 Meghalaya

The Department of Land Records and Survey is headed by a Director, its is the administration control of the office conduct of survey for preparation of preliminary records as embodied in the Meghalaya Land Survey and Record Preparation Act, (MLSRPA) 1980. The Department controls demarcation of district, sub-division, inter state and international boundaries. Management of land is vested with the District Councils through whom the cadastral survey scheme is being implemented. The District Councils make laws with respect to the allotment, occupation, or use or the setting apart of land, other than reserved forest for agriculture, grazing, residential or other non-agricultural purposes.

3.1.5 Mizoram

The Land, Revenue and Settlement Department headed by a Director, with supporting technical staff of Surveyors, and cartographer. An Assistant Settlement Officer deals with updating land records and disputed cases. The Deputy Commissioner assisted by a Assistant Settlement Officer, with technical staff of surveyors, assistants and cartographer handle survey and settlement at the state level while the S.D.O. assisted by a Assistant Settlement Officer and field staff is in charge down to the field as there are no circle level and village level functionaries.

3.1.6 Nagaland

The Directorate of Land Records and Survey established, in 1973, is headed by a Director has the following wings a) Map Production b) Survey Training Institute c)District Offices with Land Records and Survey Officers. Survey and land records of administrative headquarters, government lands a few private lands has been done. Villages have their boundaries known to the villagers inter-se who do not see the need of surveys.

3.1.7 Tripura

The Directorate of Land Records and Survey under a Director of Land Records along with other technical staff was set up in 1954 in order to carry out the survey and settlement operations and maintenance of land records. Settlement officers and the Asst. Survey officers carry out operations at the district level and attempt an accurate picture of the rights, assess a fair and equitable land revenue and facilitate land reforms legislation. The directorate also conducts a soil and land use survey.

3.2 Computerisation Of Land Records

Computerisation has not made headway in the north-eastern states. Data entry work is over in 10 out of 27 districts and in progress in 13 other districts in Assam. Computerised RORs are issued in 9 districts. Digitisation of Maps has begun as per directive of the Department of Rural Development in Kamrup, Jorhat and Tinsukia. Computerisation has been undertaken in Imphal, Bishnupur and Thoubal districts of Manipur. Computerisation of land records is planned at the tehsils of the valley districts. Corrections of land records and cadastral maps is done by the SDOs. Computerisation and preparation of RoR is very tardy in Meghalaya, due to lack of any commitment of the state government and absence of funds. A project for computerisation was sanctioned up to 1994 in Mizoram and the government has decided to start computerisation of land records in 5 districts for which digitisation of cadastral maps has also begun on a pilot project basis. The government of Nagaland had tried to accommodate computerisation under the strengthening of revenue administration and updating of land records on 50:50 centre state sharing basis. Progress is very tardy. A pilot project of computerisation of land records was started in Tripura (north) in 1990-91 and data entry has been completed in that district, 1 subdivision has been taken up for digitisation work. Sikkim has led from the front in the field of land record using advanced technology. All land records are entered into the computer and instant updating and querying successfully developed. Records of land are complete in three of 4 districts, on-line mutation is under progress in 1 district.

Issues and Recommendations

1. Why a special sub-group for North-East?

As Geographically, sociologically, anthropologically, culturally, and historically the North-East constitutes an entity by itself and the geo-physical context varies on the intra-regional and intra-state basis. The problems of North-East also vary from those prevailing in the districts of Assam. The understanding of common property resources differs from area to area and while the Hills have strong customary traditions, the plain areas in Assam have developed land management like the rest of the country.

2. Problems as seen in Assam and other areas of North-East

(i) Major problems dealing with common lands are

a. Encroachment on the common lands
b. Discrepancies in Land Records
c. Low productivity of common lands especially those being called wastelands

(ii) Most of the forest areas have problems related to

a. Encroachments on Forest Lands by local people or immigrants from Bangladesh etc.
b. Improper and incorrect Surveys and Settlements.
c. Unsettled forest villages.
d. Irregular declaration of state forests.

(iii) Pasture lands have reduced drastically.

(iv) Diversion of agriculture land for non-agriculture purposes through the Land Acquisition Act

a. Brick Kiln
b. Creation of Industrial Parks
c. Residential Areas

(v) Major changes in the land use through other land use practices like

a. Mono-cultivation
b. Tea – Estates
c. Privatization of common lands
d. Monocropping practices in agriculture areas and forest plantations threaten biodiversity.

Recommendations Relating to Land System

1. The Sub-Group is of the firm opinion that retaining and strengthening the community based land management system that prevails in some of the Hills areas of the North-East is in the vital interest of the tribes living therein. Derogation of the traditional system has led to iniquitous land relationship and a differentiated land structure and will undermine the self-governance of the tribes and their social institutions.

2. The sub Group recommends that codification of the traditional rights of the village council and other institutions of self-governance are taken up promptly as all states do not formally recognize traditional rights of the community and Courts often overturn decisions of the communities leading to further erosion of the authority and prestige of the village council and traditional governance.

3. The Sub-Group appreciates the Nagaland Communitisation of Public Institutions and Services Act, 2002, which has contributed substantially to the improvement in delivery of communitised services and added to the prestige, strength and authority of the Village Councils and other village institutions. It, strongly recommends adoption of the underlying principles, legal frame and structure in respect of land and forest management system in the rest of the Hill areas.

4. The Sub-Group further recommends that space be kept for the existing traditional institutions and innovations even within the formal framework of the Communitisation Act to take care of intra-and inter tribal differences in their self-governing institutions.

5. The Sub Group also recommends that Government of India set-up a specialized body with strong representation of local tribal communities and their elders for providing assistance to the state governments in drafting such an enactment.

6. The Sub Group recommends a wide process of informed consultation before bills are presented before state assemblies and consensus building of all the District Hills Councils and Autonomous District Councils.

7. The Sub-Group recommends creation of a Village Land Council to manage all common/ village common lands including the waste lands in the village with command over all

land resources, water resources, forest resources and mining rights within the village territory as provided by the Panchayat (Extension to the Scheduled Areas) Act, 1996 in the Schedule V Areas.

8. The Sub-Group recommends that the VLC must be empowered to put reasonable restrictions on transfer of ownership lands and their alienation to the other communities or to persons residing outside the police station or such other jurisdiction. As also decide on leasing out of land and impose such conditions of leasing as it may deem fit.

9. The Sub-Group recommends that the VLC be empowered to order restoration of land without or with such compensation as it may deem fit in cases where alienation of land has taken place in express violation of one any existing provisions of law customary rights, edict of the village council. Any person so ordered failing to vacate the land be evicted by an appropriate authority.

10. The Sub Group recommends that the VLC be empowered to decide the land use pattern and prepare a land use plan setting aside areas for agriculture, housing, forest, pasture, agro-industry zones, etc. with the approval of the Village Council and Village Assembly.

11. The Sub Group recommends that the VLC be also empowered to define the area under jhoom, conditions for allocation of jhoom lands, frequency of jhoom cycle, measures for regeneration of jhoom land, utilisation of timber standing thereon and preparation water harvesting structures on such jhoom lands.

12. The Sub Group recommends that the VLC be made be responsible for all forests in the village including reserved, proposed reserved, regenerated forests, sacred groves, unclassified forests, degraded forest lands and the like, lay down policies and rules for felling and plantation of trees. The VLC will also determine the mode and extent of collection of forest produce including the sharing of usufruct between the state government and itself.

13. The Sub Group recommends that the VLC be empowered to decide and enforce the community forest rights and may make rules for the same be considered the first body for the dispute resolution including counselling, mediation and arbitration before undertaking adjudication and the department officials of revenue and forest should cooperate with this committee.

14. The Sub Group recommends that the powers of management of land at the ground level will be with the VLC subject to the control of the General Assembly of the village and No acquisition and alienation of the land will take place without the informed consent of the village assembly.

15. The Sub Group recommends that the jurisdiction of Civil Courts be barred in respect of decisions taken by the VLC or in the functioning of the VLC and the state government appoint an authority, comprised of village elders, social workers, public representatives and government officials, at the block or at district level to hear and decide appeals against the decisions of the VLC.

16. The Sub-Group is strongly of the opinion that all lands in the North-East should be surveyed use of DGPS (Differential Global Positioning System) and satellite remote sensing imagery using Cartosat I and II and records of rights created within a period of three years with the involvement of the local people and that local people be trained in survey methodology and land literacy

17. The Sub Group recommends that the ROR prepared and a Dispute Resolution Committee be set up in the village for resolution of such disputes as may arise during the course of the survey operations and final publication of Record of Rights will be made following the approval of the General Council and the Village Assembly. The Records-of-Rights shall comprise the village map indicating inter alia the land use, the record of different categories of land, the community rights, the government rights, ownership rights, the habitation and the infrastructure and maintained in the Gram Panchayat Office, District Records room and Block Office.

18. The Sub Committee recommends creation of a dedicated revenue portal at the State Level in interactive mode with revenue records and maps stored on the State Revenue Portal with open space and in restricted page use space.

19. The Sub Group recommends that qualifying exams on local laws, customary rights and traditions constitute a pre-qualification for posting of officials in tribal areas even while the state governments undertake to promote legal literacy drive in respect of the customary and other rights of the people.

20. The sub group recommends that the role of the State will be to provide support including logistics, technical, process led and financial support to the village council in management of lands as defined in the sets of the recommendations. At the District level revenue powers be vested in the Autonomous District Council, Hill District Councils or as the case may be. In no case shall these bodies encroach upon rights of the VLC.

21. The Sub Group recommends that a Directorate of the Survey and Settlements, under an officer in the rank of Commissioner, for undertaking surveys and creation of records-of-rights. This will include technical deputy or joint director well versed in GIS, Remote Sensing and DGPS technologies.

22. The Sub Group recommends the creation of a State level Training Institute (STI) in all the North Eastern States with its Regional Centers in the remote areas to impart training to all the revenue functionaries in data entry, data management, satellite imagery, photogrammetry, GPS and other modern techniques, computerisation of land records and digitisation of maps and in relevant land and administrative laws of the land. The Government of India will extend financial support both for development of structure and running of training courses.

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