

***REPORT OF THE WORKING GROUP ON LAND
RELATIONS FOR
FORMULATION OF 11th FIVE YEAR PLAN***



**PLANNING COMMISSION
GOVERNMENT OF INDIA
NEW DELHI**

JULY 31, 2006

Σ LAND REFORMS \equiv

Secure access to Land + Security of tenure + non land support services + participation

Resistance from the Land owning class + Corporate Vested interests

CONTENTS

		Page No.
1.	Executive Summary	1-23
2.	Chapter I - i) Working Group & its Terms of Reference ii) Introduction	24 25-30
3.	Chapter II - Modernization of Land Management	31-34
4.	Chapter III - Implementation of appropriate Ceiling and Tenancy Laws	35-39
5.	Chapter IV- Alienation of Tribal Land	40-45
6.	Chapter V - Development of Land Markets, Contract Farming and Implementation of Homestead Rights	46-58
7.	Annexure - Order of constitution of Working Group	59-61
8.	Reports of the four Sub Groups of the Working Group	62-134
9.	Report of the Sub Committee on PESA	135-140

EXECUTIVE SUMMARY

1.0 COMPOSITION AND TERMS OF REFERENCE OF THE WORKING GROUP

The Working Group on Land Relations for formulation of 11th Five Year Plan was set up by the Planning Commission under the Chairmanship of Shri D. Bandyopadhyay with the following composition and Terms of Reference:

1.1 Composition

1. Shri D. Bandyopadhyay	:	Chairperson
2. Shri V.S Sampath	:	Member
3. Dr. T. Haque	:	Member
4. Prof. Bina Aggarwal	:	Member
5. Prof. Kancha Iliah	:	Member
6. Shri T. R. Raghunandan	:	Member
7. Prof. R.S. Rao	:	Member
8. Shri L.C. Singhi	:	Member
9. Shri P.V. Rajagopal	:	Member
10. Shri Balaji Pandey	:	Member
11. Smt Aditi Mehta	:	Member
12. Shri Aurobindo Behera	:	Member
13. Dr. Arvind Virmani	:	Member
14. Shri Rajiv Chawla	:	Member
15. Shri T.C. Benjamin	:	Member
16. Shri Sukumar Das	:	Member
17. Shri Subhash Lomte	:	Member
18. Shri Lambor Rynjah	:	Convener Member
19. Shri D.P. Roy	:	Co-convener Member

1.2 Terms of Reference

- 1) 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.

- 2) Use of modern technological developments for on-line maintenance of land records and demarcation and digitization of land boundaries.
- 3) To analyse the agrarian and related economic causes for the rural unrest prevailing in a number of states and to suggest appropriate remedial measures including the assessment of the efficacy of the current land ceiling laws and their effective implementation.
- 4) To examine the issues relating to alienation of tribal lands including involuntary displacement of tribals from their habitats and livelihood for development purposes and to suggest realistic measures for restoration of such lands to them and for economically viable and culturally acceptable resettlement of project affected tribals.
- 5) To examine the issue of bringing the tenancy including sub-tenancies into the open and suggest framework to enable cultivators of land to lease in and lease out with suitable assurances for fair rent, security of tenure and with right to resumption.
- 6) To examine the development of Land Markets in the present context and suggest for its improvement, keeping in view the interests of small and marginal farmers.
- 7) To look into the pros and cons of the economics of contract farming to protect the interests of small and marginal farmers and landless agricultural workers and to make them economically viable retaining their autonomous status as free economic agents in the present Indian context, particularly keeping in view some adverse effects noticed in some Latin American and Caribbean countries.
- 8) Recommend measures to prevent sale and purchase of agricultural land for speculative and non-agricultural purposes.
- 9) Suggest measures for comprehensive implementation of homestead rights.
- 10) Any other issue of relevance concerning the agrarian relations in India.
- 11) Any other Term of Reference that may be decided by the Working Group in its first meeting.

1.3. Formation of Sub-Groups

The Working Group in its first meeting held on 13.4.2006 at the Planning Commission formed four Sub-Groups for in depth study of the terms of reference and preparation of report thereon. The following Sub-Groups were constituted :

Sub-Group I

Terms of Reference

- 1) Modernization of land management with special reference to updating of land records, proper recording of land records and speedy resolution of conflicts and disputes relating to land.
- 2) Use of modern technological developments for on-line maintenance of land records and demarcation and digitization of land boundaries.

Composition :

- i) Shri Rajeev Chawla, Secretary/Settlement Commissioner, Govt. of Karnataka, Convenor.
- ii) Shri T.C. Benjamin, Settlement Commissioner, Govt. of Maharashtra.
- iii) Shri Sukumar Das, Land Reforms Commissioner, Govt. of West Bengal.

Sub-Group-II

Terms of Reference

- 3) To analyse the agrarian and related economic causes for the rural unrest prevailing in a number of States and to suggest appropriate remedial measures including the assessment of the efficacy of the current land ceiling laws and their effective implementation.
- 5) To examine the issue of bringing the tenancy including sub-tenancies into the open and suggest framework to enable cultivators of land to lease in and lease out with suitable assurances for fair rent, security of tenure and with right to resumption.

Composition

- (i) Prof. R.S. Rao, B-13, University Quarter, Centre University Post Office, University of Hyderabad, Gachibouli, Hyderabad.

- (ii) Shri P.V. Rajagopal, Ekta Parishad, Gandhi Peace Foundation, Deen Dayal Upadhyay Marg, New Delhi.
- (iii) Shri L.C. Singhi, Professor, Centre for Rural Studies, LBSNAA, Mussorie, Uttaranchal - Convenor

Sub-Group – III

Terms of Reference

- 4) To examine the issues relating to alienation of tribal lands including involuntary displacement of tribals from their habitats and livelihood for development purposes and to suggest realistic measures for restoration of such lands to them and for economically viable and culturally acceptable resettlement of project affected tribals.

Composition

- (i) Shri Subhash Lomte, National Convenor, National Campaign Committee for Rural Workers, 125, Samrath Nagar, Aurangabad.
- (ii) Shri Balaji Pandey, Institute of Socio-Economic Development, 28, Dharma Vihar, Bhubaneswar.
- (iii) Shri Aurobindo Behera, Secretary (RD), Govt. of Orissa – Convenor
- (iv) Ms. Aditi Mehta, Joint Secretary, M/o Panchayati Raj, GOI.

Sub-Group-IV

Terms of Reference

- 6) To examine the development of land markets in the present context and suggest for its improvement keeping in view the interests of small and marginal farmers.
- 7) To look into the pros and cons of the economics of contract farming to protect the interests of small and marginal farmers and landless agricultural workers and to make them economically viable retaining their autonomous status as free economic agents in the present Indian context, particularly keeping in view some adverse effects noticed in some Latin American and Caribbean countries.
- 8) Recommend measures to prevent sale and purchase of agricultural land for speculative and non-agricultural purposes.

- 9) Suggest measures for comprehensive implementation of homestead rights.

Composition

- i) Shri V.S. Sampath, DG, NIRD, Hyderabad - Convenor
- ii) Dr. T. Haque, Chairman, Commission for Agricultural Costs and Prices, Govt. of India, New Delhi.
- iii) Prof. Bina Aggarwal, Institute of Economic Growth, Delhi University, Delhi.
- iv) Shri Kancha Ilaiah, Professor of Political Science, Osmania University, Hyderabad
- v) Shri T.R. Raghunandan, Joint Secretary, M/O Panchayati Raj, GOI.

1.4 Procedure adopted for drafting the Report

The Working Group met on 13.4.2006 at the Planning Commission in Yojana Bhawan mainly to explain the terms of reference and form sub-groups to work on them. The second meeting of the Working Group was held on 30.5.2006 during which various sub-groups presented their group reports and received suggestions and comments from all the members of the Working Group. The third meeting of the Working Group was held on 3.7.2006 for final round of discussion on the sub-group reports. Concluding the meeting, the Chairman, thanked all the members for their active participation & valuable contribution and formed a small group from among the members of the working Group to prepare the final document, based on reports of various sub-groups and discussions held. The final meeting of the Working Group was held on 31.7.2006. A Sub-Committee had visited Raipur, Chhattisgarh to assess the field situation regarding land acquisition. It presented its report in the meeting of the Working Group held on 31.7.2006 which was taken on record.

1.5 BACKGROUND

The Working Group on Land Relations for formulation of 11th Five Year Plan was set up by the Planning Commission under the Chairmanship of Shri D. Bandyopadhyay, vide order No. M-12018/1/2005-RD dated March 13, 2006, having the terms of reference and members as indicated in pages 1-2.

The Working Group met on 13.4.2006 at the Planning Commission in Yojana Bhawan mainly to explain the terms of reference and form sub-groups to work on them. The second meeting of the Working Group was held on 30.5.2006 during which various sub-groups presented their group reports and received suggestions and comments from all the members of the Working Group. The third meeting of the Working Group was held on 3.7.2006 in for final round of discussion on the sub-group reports. At the end, the Chairman, thanked all the members and formed a small group from among the members of the working Group to prepare the final document, based on reports of various sub-groups and discussions held. The concluding meeting of the working group was held on 31.7.2006. A Sub- Committee had visited Raipur, Chhattisgarh to assess the field situation regarding land acquisition/PESA. It presented its report in the concluding meeting of the Working Group held on 31.7.2006 which was taken on record.

2.0 INTRODUCTION

In the wake of economic liberalization, land reform seems to have lost its flavour and favour with the government. However, as a general proposition it may be stated that land reform should remain an essential element of national agricultural and rural development strategies not only because land based agricultural occupation must continue to provide livelihoods to a vast majority of rural population, but also because macro economic growth in most contexts has failed to create improved prospects for the rural poor to acquire assets, gain employment, or increase their income and quality of life. While one cannot seriously challenge the above proposition, the world over the experience had been that government budgets for agriculture and rural development had been reduced, farmers' cooperatives had disintegrated especially in Latin America, prior focus on tenancy improvements had been replaced by a focus on land markets and flexible labour conditions and land prices had escalated due to speculative activities and general pressures on land. Under the circumstances it became extremely difficult for the rural poor to access new productive land and maintain secure tenure unless there was a significant policy shift towards comprehensive land tenure reform with the active participation of the intended beneficiaries.

Land reform can change not only the current culture of exclusion so that the poor can gain access to land, credit, technology, markets and other productive services, but also become active partners in the development of government policies and programmes affecting their livelihood.

It would not be a cake walk. There would be strong resistance from the vested interests particularly from the land owning classes. The key to success would be the strong organizations of prospective beneficiaries vociferously demanding the change in their favour backed up by equally forceful political will of the state to intervene in favour of poor and the dispossessed.

Against this overall background which fully justifies land reform both on theoretical and pragmatic grounds, the Working Group on Land Relations would respond to specific issues mentioned in the Terms of Reference set by the Planning Commission.

3.0 KEY NOTES AND RECOMMENDATIONS

3.1 Modernization of Land Management

The primary goal in land management in the 11th Five Year Plan should be to achieve a fairly high level of credibility in land records. The aim should be to make land records closer to ground reality, so that it becomes a catalyst in the overall development of the nation.

3.1.1 Key Recommendations:

- a) Amend/introduce laws to facilitate the registration of deeds, through an authority called 'Land Officer' who will substitute the 'Registrar and the 'Revenue Tehsildar' or its equivalent rank officer.**
- b) Computerise all pending mutations of all existing land parcels.**
- c) Update and digitize all sub-divisional (parcel) spatial data (Phalnis). Once spatial data is digitized, it will be possible to put it on the web and be made available to whoever needs it. Such data on web will be useful as true copy of registration cum mutation.**
- d) Revise the registration system in such a way that the land officers take primary responsibility for checking both questions of procedure and substance. This system would include production of the sketch of the land intended to be transacted clearly demarcating the transacted extent, which could be incorporated into the cadastral map with appropriate check later.**

3.2 Addressing the Problem of Rural Unrest through Effective Implementation of Appropriate Ceiling and Tenancy Laws

3.2.1 Ceiling Laws

Even though ceiling laws have been enacted and enforced in majority of the states, there are wide inter-state variations in the legal frame work as well as effectiveness of ceiling laws. In most states, ceiling on land holding applies to owned land and land taken on lease. However, in Orissa, Uttar Pradesh and West Bengal, ceiling applies only to owned land and not to tenanted land. Litigation withholds a substantial part of the ceiling surplus land in almost all the states. Also a significant portion of the area declared as ceiling surplus in many states is either unfit for cultivation or not available for distribution due to 'miscellaneous reasons'. Besides, a number of benami and clandestine transactions have resulted in illegal possession of significant amount of land above ceilings. In addition, any unirrigated land becoming irrigated by private sources has not been considered for the purpose of determination of ceiling. Thus, due to several factors, the result of implementation of ceiling laws was far from satisfactory. Both equity and efficiency demand proper implementation of ceiling laws with streamlining of various categories of land with variety of ceilings applicable to them. Securing land based livelihood to the rural poor is the best way to mitigate if not eliminate, violent rural unrests. This Group fully endorses and reiterates the statement contained in the Common Minimum Programme of the United Progressive Alliance declared on 27th May,2004 to the effect that "Landless families will be endowed with land through implementation of land ceiling and land redistribution legislation. No reversal of ceiling legislation will be permitted"

3.2.1.1 Key Recommendations:

- i) In view of increased land productivity under the impact of new technology and improved agronomic practices, the ceiling limits should be re-fixed and implemented with retrospective effect. The new limit should be 5 to 10 acres**

in the case of irrigated land and 10 to 15 acres in the case of non-irrigated land, to be decided by the concerned state governments.

- ii) **Reclassification of newly irrigated areas should be undertaken with joint effort for bringing these lands within the ambit of ceiling laws. Besides, land covered under private irrigation and supply of water from a perennial source should be included in ceiling laws.**
- iii) **The Benami Transactions (Prohibition of the Right to Recover Property) Act, 1989 should be suitably amended so that evasion of provisions of the ceiling law through benami land transactions can be detected, checked and nullified.**
- iv) **Introduce Card Indexing System for prohibiting fictitious transfers in benami names. Recent developments in IT should be properly used to have accurate Card Indices in a speedy manner.**
- v) **Set up a special squad of revenue functionaries and gram sabha members for identification of benami and fictitious transaction in a time bound manner.**
- vi) **Remove exemption granted to religious, educational, charitable and industrial units 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.**
- vii) **Impose criminal sanction on the failure to furnish declaration of ceiling surplus land by land holders**
- viii) **Insert a penal clause in the existing Land Ceiling Laws, making the officers responsible for intentional lapses if any.**
- ix) **Set up Land Tribunals or Fast Track Courts under Article 323-B of the constitution for expeditious disposal of appeal cases.**
- x) **States to empower the concerned authorities to expedite allotment of ceiling surplus land. Bar the jurisdiction of civil court in respect of ceiling on agricultural land.**
- xi) **Investigate all cases of illegal or improper allotments of ceiling surplus land and cancel such allotments. All such transactions after commencement of ceiling law should be declared null and void.**

- xii) Absentee landlords or non-resident land owners should have lower level of ceiling.**
- xiii) For addressing problems relating to land a single window approach to be provided by the administration.**

3.2.2 Amendments in Tenancy Laws

Despite ban on agricultural tenancies in most states, the incidence of a type of tenancy particularly in various forms of crop sharing is still substantial in some regions. As tenancy is contracted orally in most cases in violation of the law, such tiller's position remains precarious. He has no incentive to cultivate land efficiently. In several regions, landowners keep the land fallow for fear of losing their rights if they let out illegally. It also restricts poor peoples' access to land through leasing in. Currently, there is no appropriate legal system for recording of such cases of tilling arrangement. Also there is a growing problem of reverse tenancy.

3.2.2.1 Key recommendations:

- i) While discouraging the pernicious system of rent seeking sub-infeudation, 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.**
- ii) 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.**
- iii) Leased out benami land should be acquired and distributed to the landless poor for cultivation.**
- iv) 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.

- v) Under-raiyats/sharecroppers should be recognized by law with sufficiently over riding evidentiary value as under section 57 of the Indian Evidence Act.
- vi) 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.
- vii) 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.
- viii) 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.

3.3 Alienation of Tribal Land

In the past few years, rural unrest has increased in most tribal areas. While displacement caused due to development projects have resulted in confrontation between authorities and local tribals, there are other factors such as growing indebtedness, forcible eviction of tribals from their land by non-tribals, conversion of land from communal ownership to individual ownership, increasing urbanization, treating tribals as encroachers in traditionally occupied forest land and lack of substantive possession by tribals of government land allotted to them and so on. In order to prevent further deterioration in the situation, there is an urgent need to look into the ownership of resources by tribals, especially the resources on which they depend for livelihood, such as land, forest and water.

3.3.1 Key recommendations:

- (i) 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.**
- (ii) It is necessary that, whenever land is acquired for industrial or mining projects, the exact extent of land required for the projects assessed by the concerned project authorities should be reassessed by a neutral agency/expert body consisting of experts, with the representatives of tribal community.**
- (iii) The Central Land Acquisition Act of 1894 and the Central Coal Bearing Areas (Acquisition & Development) Act 1957 should be amended in the line of the provisions of PESA.**
- (iv) 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.

- (v) The tribals who are displaced, should preferably be resettled in a zone adjacent to the affected area in consonance with their social, ecological, linguistic and economic affinity.**
- (vi) 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.**
- (vii) Unmarried daughters/sisters, physically challenged persons, orphans, widows and women divorcees should be treated as separate families in the R&R policy.**
- (viii) All tribal communities must be rehabilitated strictly in compliance with ILO convention No. 107.**
- (ix) Efforts should be made to ensure that all tribal families are resettled together to the extent possible. The minimum unit for relocation must be a hamlet or clan.**
- (x) 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.**
- (xi) Shifting the cut off date beyond 1980 with regard to regularization of tribal settlements in forests and extending R&R benefits to tribal families in the event of their relocation/eviction must be undertaken.**
- (xii) 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.**
- (xiii) 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 Vth Schedule of the Constitution and modify the Land Acquisition Act to provide for consent of the Gram Sabha prior to the acquisition of land.

- (xiv) 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 mandatorily done in the States with Schedule areas and such lands should be settled in favour of tribals doing 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.
- (xv) All tribal states should provide a share of the royalty to the Gram Sabha, as in case of Chhattisgarh.
- (xvi) 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.
- (xvii) The sale of tribal land could be permitted by a competent authority senior enough to be able to exercise judgement in order to 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 Govt. 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.
- (xviii) The Government land encroached by poor tribal families should be settled in their favour.
- (xix) 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.

3.4. Development of Land Markets, Contract Farming and Implementation of Homestead Rights

3.4.1 Land Markets

The sale and purchase of agricultural land among cultivators constitute normal land market transactions. Many small and marginal farmers are compelled to sell their land mainly due to two factors: (i) emergency family needs caused by illness, marriage and similar events and (ii) uneconomic holdings. The lease market basically works through tenancy. In the last five decades, tenancy reforms in India have gone through many phases and regional variations. In some states, tenancy was prohibited and the effort was to confer rights of ownership to the tillers. Elsewhere tenancy was allowed, with an emphasis on recording the tenancy arrangement. Also there were instances of reverse tenancy in some states. However, both blanket bans on tenancy and giving tenants the right in some states/ regions to purchase leased land, have acted as a major deterrent for the lessee as well as the lessor, and obstructed access to land by the poor. These provisions also encourage concealed tenancy that is exploitative to the lessee'. Furthermore, increase in urbanization and in the area under non-agricultural uses due to various development activities, speculation in land markets around cities and towns has also grown. Moreover, land acquisition by the government for development projects raises land values in surrounding areas. In many cases, state governments often promise enterprises (both public and private) land at low prices and as a result, the farmers tend to be net losers in the compensation they receive. Since the land market is generally weighted against small and marginal individual farmers, to enhance their bargaining power, a group approach should be adopted wherever possible.

3.4.1.1 Key Recommendations:

- (i) 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, either in terms of**

collectively purchasing or collectively leasing in land in groups. 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.

- (ii) 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 in land from the government on 10-year leases for fish ponds.
- (iii) In farmer's cooperatives and other related institutions, there should be special provisions and rates for poor farmers, and especially 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.
- (iv) Restrictions on land leasing within ceiling limits should be removed to help improving poor peoples 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.
- (v) Indiscriminate, large-scale, ecologically damaging, socially harmful transfers of agricultural land to non-agricultural use should be checked.
- (vi) Speculative land markets in the immediate periphery of urban areas should be checked.
- (vii) The new areas which come under the urban development plans should be notified.
- (viii) To prevent long term speculative transactions on agricultural land the government should enact suitable laws.
- (ix) Farmers should be entitled to their share in rising land prices in the wake of urbanization and any form of major investment.

- (x) 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.**

3.4.1.2 Key Recommendations on Company and Government Land Acquisitions:

- (i) Land Acquisition processes**
- (a) For land acquisition by a company there should be clearly laid-out procedures and transparency. The company should provide facts and figures to those losing land on how the project will help them and community in terms of full package of rehabilitation and resettlement.**
- (b) In case the company purchases land directly in the market, the Government should fix a floor price below which farmers would not sell the land to any company.**
- (c) 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.**
- (d) Government land acquisition in the name of “public purpose” should be properly defined to include mainly the public utilities.**
- (e) As far as possible, fertile agricultural land should not be acquired for or by any company. The industrial units should be located in areas where wasteland is available.**
- (f) 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 labourers, artisans, tenants, etc. should also be compensated with housing and livelihood security.**
- (g) All compensation should follow the principle of gender equity.**

- (h) 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.**
- (i) 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.**

3.4.2 : Contract Farming

Contract farming refers to a system of farming in which agro-processing or trading units enter into a contract with farmers to purchase a specified quantity of any agricultural commodity at a pre-agreed price. By entering into a forward contract, the company reduces the risk of not getting the required quantity of needed raw materials and the farmer reduces the risk of fluctuating market demand and prices for his/her produce. Small farmers in India are generally capital starved and cannot easily make major investments in new technical inputs. If the contracting company provides them quality inputs and technical guidance, contract farming could fill this gap. Also contract farming is different from corporate farming, as the land rights of contract farmers remain unaffected and fully protected. Theoretically contract farming could work to the benefit of both parties in the contract. In practice, however, there are several obstacles to the small farmers' ability to realize this potential for which government support and institution building could help. Since farmers, particularly small and marginal farmers operate in a market of unequal exchange vis-à-vis corporate and or trading houses, they are apt to lose heavily unless the state provides adequate protection and safeguards.

3.4.2.1 Key recommendations:

- (i) Set up a Formal Legal Framework for Contracts:** There is need for a legal framework for contract farming, as informal contracts are exploitative of small and marginal farmers.
- (ii) Legalise Tenancy:** In many parts of the country, agricultural tenancy is legally banned, although concealed tenancy exists. Tenants who do not enjoy security of tenure are not able to participate in contract farming. Hence, legalization of tenancy would be a precondition for enabling the tenant farmers to benefit from contract farming.
- (iii) Institutional Arrangements For Recording Contracts, Dispute Settlements Etc. on the following lines :**
 - a) All contracts should be recorded, say through the local panchayat and some authorized Government institution. This will promote confidence between the parties and these should be based on model draft which would give fair treatment to all contracting parties.**
 - b) A Block level committee could be formed to deal with any disputes arising from a violation of the contract. The committee should have the representation of farmers, the company, the panchayat and a local government official. Farmers as well as the company should be able to approach the designated committee, duly empowered by law to mediate and settle the dispute.**
 - c) The contract should be managed in a transparent and participatory manner so that there is social consensus on how contract violations by either party can be settled without costly and lengthy litigation. Also the contract needs to specify all conditions clearly without ambiguity and ensure that farmers are fully aware of all the clauses.**
- (iv) Provide Backward and Forward Linkages:** The contract should have provision for both forward and backward linkages. Unless both the supply of inputs and

marketing for the produce are assured, on fair and equitable terms, small farmers will not be able to gain from contract farming.

- (v) **Help the Farmers to open Bank Account :** All contract farmers, especially those who are small and marginal, should have facilities for opening a bank account. Credit facilities should also be provided to them. If the payment for contractual produce is made through banks, the recovery of loans will be easier. In fact, there should be a tri-partite agreement between the contract farmers, the company and the bank for this purpose.
- (vi) **Provide Crop Insurance Facility to Contract Farmers :** In case of crop loss due to either pests and disease or adverse weather, contract farmers should be adequately covered by crop insurance, for which the premium should be paid equally by the farmers and the company.
- (vii) **Provide Environmental Safeguards:** The Government needs to ensure that contract farming, which is generally commodity specific and tends to promote monoculture does not threaten bio-diversity and agricultural ecology in the country. To prevent this from happening it would be desirable to provide guidelines for land use in different regions.
- (viii) **Incursion of corporate bodies for agriculture, horticulture, tree farming should be discouraged to protect the livelihood of peasant farmers and others whose occupation are directly related to farming, otherwise, it will increase the army of rural proletariat, leading to rural unrest and militancy. Government wasteland should not be settled or let out to corporate bodies. It should be reserved for distribution among the landless poor and public purpose. However, a view was expressed that contract farming mitigates against the concept of autonomous peasant farming and therefore, it should be discouraged if not banned.**

3.4.3 Homestead Rights

In the vision of an emerging India, 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 a right to basic education. The supreme court held right to shelter is a fundamental right in *UP Avas Evam Vikash Parishad vs. Friends Co-operative Housing Societies* (list ARI, 1997, SC 152). The 11th Five Year Plan provides the opportunity to realize this vision.

An estimated 13 to 18 million families in rural India today are reported to be landless of which about 8 million lack homes of their own. They live either in spaces provided by landlords (in case of farm labour), or park on government land, or on village common land, and so on. None of these options provide basic human security.

3.4.3.1 Key Recommendations:

- (i) 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.**
- (ii) When regularizing the homesteads of families occupying irregular and insecure homesteads, the homesteads so regularized should be in the names of both spouses.**
- (iii) 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.**
- (iv) 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.

- (v) 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. HUDCO/Housing Development Corporation, may open special windows to help homeless families to secure dwellings on the plots to be allotted to them.

CHAPTER – I

1. The Working Group and their Terms of Reference

The Working Group on Land Relations for formulation of 11th Five Year Plan was set up by the Planning Commission under the Chairmanship of Shri D. Bandyopadhyay vide Order No. M-12018/1/2005-RD dated March 13, 2006. A copy of this Order is placed at **Annexure.**

1.1 Terms of Reference

- i) 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.
- ii) Use of modern technological developments for on-line maintenance of land records and demarcation and digitization of land boundaries.
- iii) To analyse the agrarian and related economic causes for the rural unrest prevailing in a number of states and to suggest appropriate remedial measures including the assessment of the efficacy of the current land ceiling laws and their effective implementation.
- iv) To examine the issues relating to alienation of tribal lands including involuntary displacement of tribals from their habitats and livelihood for development purposes and to suggest realistic measures for restoration of such lands to them and for economically viable and culturally acceptable resettlement of project affected tribals.
- v) To examine the issue of bringing the tenancy including sub-tenancies into the open and suggest framework to enable cultivators of land to lease in and lease out with suitable assurances for fair rent, security of tenure and with right to resumption.
- vi) To examine the development of Land Markets in the present context and suggest for its improvement, keeping in view the interests of small and marginal farmers.
- vii) To look into the pros and cons of the economics of contract farming to protect the interests of small and marginal farmers and landless agricultural workers and to make them economically viable retaining their autonomous status as free economic agents in the present Indian context, particularly keeping in view some adverse effects noticed in some Latin American and Caribbean countries.
- viii) Recommend measures to prevent sale and purchase of agricultural land for speculative and non-agricultural purposes.
- ix) Suggest measures for comprehensive implementation of homestead rights
- x) Any other issue of relevance concerning agrarian relations in India.
- xi) Any other terms of reference as decided by the Working Group in its first meeting.

2. INTRODUCTION

Gone are the days of fifties and sixties of the last century when equity, egalitarianism, socialism and social control of productive resources for common good were ingredients of thought processes of the leaders of almost all the democratic nations. Die-hard capitalist countries opted for welfarism. Others adopted various forms of socialism from the mixed economy of the Nehruvian variety to the puritan socialism of Maozedong type. The commonality among all was the acceptance of the interventionist role of the States to tilt the scale for the poor, disadvantageous and marginalized segments of the society. The first flush of land reform in India was a product of that ambience when the Indian State felt and thought it had a direct responsibility towards the majority of the citizens particularly the rural masses who had very low bargaining power in a market of unequal exchange.

Enthusiasm for land reform abated from mid sixties when India faced a major food crisis particularly in the Eastern parts. The focus shifted from land reform to enhancement of foodgrain production and productivity. Programme of land reform receded from the frontal visibility. But the result of first phase of land related rural unrest in the late sixties and early seventies brought to the fore the issue of land reform. In 1972 the then Prime Minister convened a meeting of Chief Ministers to tackle the problem of rural unrest commonly known as naxalism. In that meeting the then Home Minister of India Mr. Y.B. Chavan made the oft-quoted famous statement “we would not allow the green revolution to turn into a red revolution”. In that meeting a consensus was arrived to reduce land ceiling and to introduce family based ceiling on land, tenancy reform and similar other measures. All of them were very progressive not only in the context of the prevailing situation, the principles and the philosophy behind them remain valid even now. The point to note is that at the height of green revolution when the entire effort of the Indian State was to be self sufficient in foodgrain to shake off the shackles of PL 480, the Government of India could think drastically to reduce the land ceiling for redistributive land reform. After that the first flush of rural violence died a natural death.

From the mid-eighties when liberalization started entering the Indian economy at first rather stealthily and then with thunderous gale force from 1991, land reform went off the radar screen of the Indian polity. It became a forgotten agenda. Marketers in the Government find it repugnant to talk about it, just in case the operators in the market get frightened by any state intervention in the land market. They are finding the existing land reform laws that were enacted on the basis of Central Guidelines of early seventies not only unwanted road blocks but also obnoxious to the free play of capital in the land market. Hence there is strong lobby to enhance or give up land ceilings, to recognize tenancies and allow free market forces to determine terms and conditions of tenancy leases to allow corporate houses to enter the agrarian sector to introduce direct capitalist farming or to go in for contract farming to move away from tradition of crop husbandry to export oriented crop production and the like. The short question is whether land reform has become totally irrelevant in these days of liberalization, privatization and globalization. The State has to ponder over this issue for a while.

According to the assessment of the Ministry of Home Affairs, GOI about 120 to 160 districts (total number being 602) spread over 12 states are “naxal infested”. Normal writs of the Indian States do not run in these districts. One could not be too sure whether these figures are exaggerated to obtain more funds for the policies in which the Ministry of Home Affairs has some vested interest or understatement to hide their failure. In the absence of any other authentic figure, one has to accept them as true till anything is proved to the contrary. Suffice it to say that this does not speak well of any Government where 20% to 25% of its internal mainland territory is being practically governed by extra legal and in some places illegal authorities. It also shows that the militants whoever they are have established some rapport with the local population due to which they can move “freely” evading and avoiding the pincers or crab claws of law enforcing authorities. They are proving to the hilt the doctrine of Maozedong of “fish in water”, where fish are militants and water is the mass of disgruntled and disaffected peasantry and landless agricultural workers. If the disaffection of the latter could be substantially reduced, militants would disappear due to inanition. That’s what exactly happened in West Bengal in late sixties

and early seventies. The massive government programme of vesting of ceiling surplus lands (1967-1969-71) in which the sharecroppers, agricultural workers and marginal farmers took part in tendering oral evidence to disprove the well crafted false benami documents, led to their disengagement from the militants and brought them back to the “mainstream”. Naxalism disappeared from West Bengal to reappear elsewhere. The present spurt of rural violence has again brought the land and jungle issues to the fore. But this knee-jerk response to issue of land use may be short-lived if for other reason the present violent movements collapsed. Are there any enduring factors which might bring back the issue of land reform in the national agenda of action?

As a general proposition it may be stated that land reform should remain an essential element of national agricultural and rural development strategies not only because land based agricultural occupation must continue to provide livelihoods to a vast majority of rural population, but also because macro economic growth in most contexts has failed to create improved prospects for the rural poor to acquire assets, gain employment, or increase their income and quality of life. While one cannot seriously challenge the above proposition, World over the experience had been that government budgets for agriculture and rural development had been reduced, farmers’ cooperatives had disintegrated especially in Latin America, prior focus on tenancy improvements had been replaced by a focus on land markets and flexible labour conditions and land prices had escalated due to speculative activities and general pressures on land. Under the circumstances it became extremely difficult for the rural poor to access new productive land and maintain secure tenure unless there was a significant policy shift towards comprehensive land and tenure reform with the active participation of the intended beneficiaries.

In India nearly 58% of the labour force is still engaged in agriculture producing about 22% of the GDP. Due to dismal and tardy implementation of ceiling laws only 7.35 million acres of ceiling surplus land vested in the state (March, 2002) of which 5.39 million acres were distributed among 5.65 million beneficiaries. In West Bengal, over 1.3 million acres of land vested in the state which were distributed among 2.5 million beneficiary households. Land holding still remains quite skewed. In 1995-96 tiny holdings constituted 78% of the

total operational holdings commanding 32% of the area. Thus 22% of operational holdings command 68% of the arable area. It looks that there is still considerable scope of further vesting of surplus land even with the existing ceiling laws, not to speak of a situation with further reduction of family ceilings.

In the tenancy front, the picture is equally dark. The NSS figure of 7 to 8% tenancy is generally acknowledged as serious understatement. Micro studies in different states done by individual scholars indicate that the incidence of concealed tenancies vary between 15% and 35%. These are all covert oral contracts where burden and liabilities are heavily weighted against the informal and invisible tenants. Worst forms of exploitations are noticed in this sector. Moreover, emergence of "reverse tenancy" in certain areas in certain states is a matter of serious concern. Employment in the organized sector increased very slowly from 24 million in 1983 to 28 million in 1999-2000. It meant annual incremental employment of little over 2 lakh which was insignificant compared to the annual growth of rural labour force. Thus, organized sector's share in the absorption of the addition to the labour force will remain quite insignificant in years to come. As a result, under the compulsion of circumstances, a major proportion of the additions to the labour force will have to be absorbed both in farm and the non farm sectors in the rural areas and in the unorganized informal segments of the urban areas. Since the growth of labour force would continue to outpace the land availability for cultivation resulting in increase in landlessness and accentuation of rural poverty, alternation of land relations both in regard to proprietary and user rights to land is essential to contain both rural poverty and consequential rural unrest.

In order not to rattle landowners in the rural areas and to diffuse the growing rural uneasiness verging on violence, a move was made to implement market based land reform programmes through financial and technical support from key international agencies and land banks were established with the aim of offering credit to poor cultivators for purchase of land. Although this approach might have helped a few poor peasants to access some land, in overall context it was found to be not much of a success. In the first place sufficient land was not available in the market on a voluntary "willing seller, willing

buyer” basis to satisfy the land hunger of the land hungry poor peasants. Secondly, wherever the operation took place the land prices shot up favouring the landowner to the disadvantage of the land purchasers. Land purchase and titling were frequently onerous for the small peasants. Some independent scholars were critical of the market based land reform arguing that it provided an easy escape route for the unwilling states to undertake redistributive land reform through state intervention.

The World Conference on Agrarian Reform and Rural Development held in Rome in 1979 declared in its Peasants’ Charter that the rural poor must be given access to land and water resources, agricultural inputs and services, extension and health facilities, they must be permitted to participate in the design, implementation and evaluation of rural development programmes; the structure and pattern of international trade and external investment must be adjusted to facilitate the implementation of the poverty oriented rural development strategies. Growth is necessary but not sufficient; it must be buttressed by equity and above all by people’s participation.....”(FAO, 1981,iii). The two subsequent World Summits in the nineties-World Conference on Hunger and Poverty in 1995 and the World Food Summit in 1996 established a direct link between resource rights, particularly access to land for overcoming hunger and poverty. The Summits of the Nineties examined pending crises relating to environment, development, energy and food. But a deeper analysis would show that these are not separate crises. They are all one and the same. The single most important and common cause and effect is poverty resulting from unequal access and use of resources. The call would be for action on the inequitable distribution of wealth, the lack of access by the poor to productive resources, insufficient participation by the poor in decisions which affect their daily lives and the need for reform in the macro-economic policies that adversely affect the rights of the poor (Whose Land ? Ed. K. Ghimire et al, IFAD-UNRISO Joint Publication, 2001).

The interactions between poverty, food security and resource right are starting to bring about a refocusing of national agenda on the revival of agrarian reform and resource tenure for agricultural communities as well as fisher folk and coastal communities, forest dwellers and other traditional resource users. Agrarian reforms is primarily about changing

relationships. First it aims to change access and tenure relationships. Second, it aims to change the current culture of exclusion so that the poor can gain access to credit, technology, markets and other productive services. Third, it aims for the poor to be active participants in the development of government policies and programmes affecting their livelihood.

It would not be a cake walk. There would be strong resistance from the vested interests particularly from the land owning classes. The key to success would be the strong organizations of prospective beneficiaries vociferously demanding the change in their favour backed up by forceful political will of the state to intervene in favour of poor and the dispossessed.

Against this overall background which fully justifies land reform both on theoretical and pragmatic grounds, the Working Group on Land Relations would respond to specific issues mentioned in the terms of Reference set by the Planning Commission.

CHAPTER - II

3. Modernization of Land Management

Land Records through out the country can broadly be classified as textual and spatial though variations exist from State to State. Another way of classifying land records would be as rural and urban, though the latter exists in an established form only in a few states like Gujarat and Maharashtra where city survey has been carried out in densely populated areas. Regardless of such classifications, all land records suffer from lack of proper maintenance over the years, jeopardizing their very credibility, so required for sound governance.

The 'modernisation' exercises taken up hitherto can be summed up as "Computerisation of Land Records", as precious little has been done beyond this. Even computerization is yet to be completed in many states despite the passage of several years of its initiation by Government of India. Again, computerization has been restricted to written land records only (principally the Records of Rights) and not to the spatial land records.

Computerisation in itself has limited benefits, unless it is made one of the means through which the land records achieve the desired credibility. The efforts in the 11th Five Year Plan should therefore be to take the modernization efforts forward in the right direction so that the land records enjoy more credibility and thus become a catalyst in the overall development of the nation.

The primary goal in land management efforts in the 11th Five Year Plan should be to achieve a fairly high level of credibility in land records. How can this credibility be achieved ? While the concepts of "conclusive title" or "guaranteeing title" is one we should strive towards, our aim at this stage should be to make our records closer to ground reality. Once this objective is reached, migration to titling system would be feasible and much easier. Our

land-records system, which owes its origin to the colonial regimen and protocol, largely evolved with the objective of identifying the land revenue payable by each land holder. The rights of the land holder was a secondary aspect. Now that we must give the priority to rights from land records, the level of reliability land records should reach for the purpose of establishment of the rights is the issue that should engage attention of the Govt. first.

Though land records in India is not the “conclusive proof” of ownership but rather the “evidentiary” or “presumptive” proof, we share the constitutive system of registration of title (i.e., creation of transfer of rights takes place upon registration) with countries like Australia and England. But, the process of registration lacks the required thoroughness in our country, and to a large extent, this becomes a major hurdle in making our land records indefeasible (i.e., a situation where the records cannot be annulled or made invalid). If we make our registration system fool-proof, i.e. if information entering the registration system is accurate and truthful, then the system is more likely to be regarded with confidence; and such system can produce and sustain land records with better credibility.

The idea, then, is to move incrementally towards the conclusive title status, not by any large scale survey and enquiry of all land holdings (which apart from being prohibitively costly, will, more importantly, lead to a spate of court litigations) but by strengthening the registration process for future transactions and making the existing records reflect ground reality.

The first step in achieving this goal is to combine the functions of registration (presently conducted by the Sub-Registrar) and mutation (presently conducted by the Tehsildar or his or her subordinate) into one function of registration of the deeds. The authority to carry out this work should be called “land officer”. He/She should be required to check, before registering the title, the legality of the transaction and the competence of the parties to take part in the transaction. That is, registries should not be passive repositories of documents that meet just the minimum procedural requirements, but should be agents that create/ diminish rights after taking cognizance of all the relevant information it can possibly procure.

One of the relevant information for registration of the deeds would be to make mandatory the sketch of the parcel of the land which is sought to be transacted. For parcel maps to be provided by the citizens to the Land Officers, it is necessary for Government to create the enabling environment. Firstly the parcel maps and village maps with the Government need to be updated for incorporating the new changes which take place. Once all the parcel maps are updated incorporating already completed transactions, these data should then be incorporated in village maps and they are also updated. The parcel maps can then be connected to the digitized village maps so as to create an enabling environment where the printouts of any parcel can be taken on demand. The parcel maps digitization should be done in such a way so as to be absorbed by various modern survey equipments and hand held devices so that these parcels can be updated in the field as and when any sub division takes place. Now citizens can get the sketch of that portion of the parcel of the land which they intend to transact. This work can be done by the Government either through its own surveyors or through the private surveyors licensed by Government. Production of such survey report being made mandatory before registration would ensure dual purpose. Firstly both the parties involved in transactions would know accurately what portion of land they are willing to transact and secondly the spatial data would be immediately updated after the registration. The above process would lead to land records becoming more accurate and updated leading to painless migration to titling system at a later date.

Registration of title will also require a search of the past mutations, so that the title being registered is clear and uncontested. For this purpose, it will be necessary to provide the Land Officer with the computerized archive of mutations of every existing holding over the past 50 years. The creation of such an archive has to be taken up across the country on a time bound manner.

Such a system will do away with the 'deed' and 'mutation'. As the system matures, the credibility of land records will reach a stage when guaranteeing the title becomes possible. Private Title Insurance Companies can then be authorized to insure the title and they in turn will find this quite feasible, with the credibility of the system in place.

Gram Panchayats, which are constitutional bodies, should also be involved in land administration process by giving access to electronic land records system so that they can view any land records and can also view pendency of mutations. This will help them to take control of pending cases and take up the issue with the concerned authorities.

In a few States, hereditary Village Accountants are still continuing. These hereditary posts need to be abolished and Village Accountants should be recruited as in other Government offices through open selection process.

The land records system should facilitate maintenance of data regarding Government lands like burial ground, grazing land, forest land etc. so that any encroachment on this land can be easily and effectively monitored. After the land records data is computerized, it should be made public so that wide accessibility to citizens can make this data more authentic and correct.

3.1 Recommendations:

The 11th Five Year Plan should envisage the following activities to be taken up in a time bound manner.

- a) Amending/introducing laws to facilitate the registration of deeds, through an authority called 'Land Officer' who will substitute the 'Registrar and the 'Revenue Tahsildar'.
- b) Computerisation of mutations over 50 years of all existing land parcels.
- c) Updating and digitizing all sub-divisional (parcel) spatial data (Phalnis).
- d) Devising the registration system in such a way that the land officers take primary responsibility for checking both questions of procedure and substance. This system would include production of the sketch of the land intended to be transacted, clearly demarcating the transacted extent.

These steps should see the country moving towards a more credible land record administration, with reliable land record systems and procedures.

CHAPTER – III

4. Addressing the Problem of Rural Unrest through Effective Implementation of Appropriate Ceiling and Tenancy Laws

4.1 Ceiling Laws

Even though ceiling laws have been enacted and enforced in majority of the states, there are wide inter-state variations in the legal frame work as well as effectiveness of ceiling laws. In most states, ceiling on land holding applies to owned land and land taken on lease. However, in Orissa, Uttar Pradesh and West Bengal, ceiling applies only to owned land and not to tenanted land. While some states have fixed the limit for various types of land uniformly for all districts, in states like Bihar, Andhra Pradesh, Gujarat, Karnataka and Kerala, it varies depending upon classification of land according to agro-climatic characteristics. Since there is difficulty in the appropriate categorization of land, the big landowners often use it to avoid the ceiling laws in connivance with local officials. So far only 3.01 million hectares of land has been declared ceiling surplus in the country of which nearly 2.31 million hectares has been taken over and 1.76 million hectares distributed among five million beneficiaries, half of whom are SCs and STs. In several states, a considerable part of the area taken possession of by the state has not been distributed. Litigation withholds a substantial part of the ceiling surplus land in almost all the states. Also a significant portion of the area declared as ceiling surplus in many states is either unfit for cultivation, or not available for distribution due to 'miscellaneous reasons'. Besides, a number of benami and clandestine transactions have resulted in illegal possession of significant amount of land above ceilings. Moreover, ceiling laws of all states excepting West Bengal and Gujarat did not prohibit transfer of land retrospectively. As a result, big landowners, in anticipation of ceiling laws had resorted to partitions and fictitious transfer in benami names on a very large scale. In addition, any unirrigated land becoming irrigated by private sources has not been considered for the purpose of determination of ceiling. Thus, due to several factors, the result of implementation of ceiling laws was far from satisfactory.

4.1.1 Issues involved in Land Ceiling

- i) Ceiling Acts did not provide for prohibiting transfer retrospectively. The big land owners, in anticipation of ceiling laws had resorted to partitioned and fictitious transfers in benami names on a very large scale. Only Gujarat and West Bengal had given it retrospective effect. Other states have ban on transfer only after enforcement of the ceiling laws or much later from the date of notification as in Mysore Act.
- ii) Any unirrigated land becoming irrigated by private irrigation work after ceiling laws came into affect was not treated as irrigated for the purpose of determination of ceiling area. Only land becoming irrigated by State irrigation work is to be treated as irrigated. This classification does not appear to be reasonable, as land covered under private irrigation work is not included.
- iii) The religious trusts hold a large area of land/ unused land, it was allotted/ taken possession under exemptions given by the State. Under land ceiling act exemptions have been given to lands held by these trusts and institutions. The number of exemptions was so large that it provided a scope for evasion on a big scale through the device of change in classification or otherwise, thereby making the ceiling legislation ineffective.
- iv) Incidences of large number of litigations pending in revenue and other courts restrict the allottees to cultivate the land, as lands have remained with the original owners,
- v) Poor enforcement of ceiling laws at ground level increases the land dispute and this issue should be readdressed in a time bound manner.

4.1.2 Recommendations:

- i) In view of increased land productivity under the impact of new technology and improved agronomic practices, the ceiling limits should be re-fixed and implemented with retrospective effect. The new limit should be 5 to 10 acres in case of irrigated land and 10 to 15 acres in case of non-irrigated land, to be decided by the concerned state governments.
- ii) Reclassification of newly irrigated areas should be undertaken with joint effort for bringing these lands within the ambit of ceiling laws. Besides, land covered under

private irrigation and supply of water from a perennial source should be included in ceiling laws.

- iii) The Benami Transactions (Prohibition of the Right to Recover Property) Act, 1989 should be suitably amended so that evasion of provisions of the ceiling law through benami land transactions can be checked.
- iv) Introduce Card Indexing System for prohibiting fictitious transfers in benami names.
- v) Set up a special squad of revenue functionaries and gram sabha members for identification of benami and fictitious transaction in a time bound manner.
- vi) Remove exemption granted to religious, educational, charitable and industrial units under ceiling laws of various states.
- vii) Impose criminal action on the failure to furnish declaration of ceiling surplus land by land holders.
- viii) Insert a penal clause in the existing Land Ceiling Laws, making the officers responsible for intentional lapses if any.
- ix) Set up Land Tribunals or Fast Track Courts under Article 323-B of the constitution for expeditious disposal of appeal cases.
- x) Empower the District Magistrate or Deputy Commissioner to expedite allotment of ceiling surplus land and bar the jurisdiction of civil courts in respect of ceiling on agricultural land.
- xi) Investigate all cases of illegal or improper allotments of ceiling surplus land and cancel such allotments. All such transactions after commencement of ceiling law should be declared null and void.
- xii) Absentee landlords or non-resident land owners should have lower level of ceiling.
- xiii) For addressing problems relating to land, a single window approach to be provided by the Administration.
- xiv) Distribution of all ceiling surplus land should invariably be in the name of husband and wife on joint ownership basis to ensure gender equity.

4.2 Amendments in Tenancy Laws

Despite ban on agricultural tenancies in most states, 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 tenancy is contracted in violation of the law, the tenant's position remains precarious and he has no incentive to cultivate the land efficiently. In several regions, landowners keep the land fallow for fear of losing their rights if they let out illegally. It also restricts the access of the poor people to land through leasing in. Currently, there is no appropriate legal system for recording of tenancy. There is also lack of institutional safeguards for checking the leasing out of land by small and marginal farmers. Besides, there is ambiguity in the definition of tenants. Moreover, tenancy laws do not provide for any suo-moto action by government in favour of tenants. In addition there is the growing problem of "reverse tenancy".

4.2.1 Recommendations:

- i) Tenancy should be made open and an ongoing process.
- ii) Recording the names of all persons who hold land on the basis of written/oral leases including sharecroppers, in the record of rights.
- iii) Gram panchayats/gram sabha should be empowered to update land record and enter the name of the tenant as a cultivator in Khatauni record of rights after due enquiry.
- iv) Leased out benami land should be acquired and distributed to the landless poor for cultivation.
- v) 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.
- vi) Under-raiyats/sharecroppers should be recognized by law with sufficiently overriding evidentiary value as under section 57 of the Indian Evidence Act.

- vii) There is a need for streamlining the tenancy laws in various states, so that the small land owners cum migrant workers are protected.
- viii) There should be a maximum rent on agricultural land fixed in all the states. In case of crop land, rent should not exceed one fourth of the principal crop, if the costs are borne by the tenant and $\frac{1}{2}$ if the costs are borne by the landowner.
- ix) Personal cultivation should be strictly defined for the purpose of resumption of land tilled by the tiller.

CHAPTER - IV

5. Alienation of Tribal Land

In the past few years, extremist activities have increased in 160 districts, the majority of which are dominated by tribals. Displacement caused due to development projects has resulted in confrontation between authorities and local tribals. The examples are Kashipur and Kalinga Nagar in Orissa, Polavaram in Andhra Pradesh and Narmada Valley Project in Madhya Pradesh etc. These developments demonstrate that there is an urgent need to look into the ownership of resources by tribals, specially the resources upon which they depend for their livelihood. Land, forest and water come under this category.

Large scale displacement on account of development projects such as multi purpose irrigation and power projects, mining, industry, highways and urbanization has affected mostly the Scheduled Tribes. There is a need to analyse the grounds for displacement and the response of the States to such displacement. Minimizing displacement of tribals is the first issue. The next issue to have an Resettlement and Rehabilitation Policy which would not only ensure that the displacement undertaken is the minimum required and the process is painless by ensuring better off environment for the displaced families. Various studies indicate that land in excess of requirement is acquired by the State in the name of development projects thereby causing hardship to the affected displaced people. Some other factors responsible for alienation of tribal land are as follows:

- i) Sale and transfer of land by tribals to other tribals and non-tribals.
- ii) Indebtness.
- iii) Forcible eviction of tribals from their land/unauthorized occupation of tribal land by non-tribals or by public authorities.
- iv) Conversion of land from communal ownership to individual ownership.
- v) Increasing urbanization
- vi) Treating tribals traditionally occupying forest land as encroachers.
- vii) Govt. land allotted to tribals under various Schemes but substantive possession not given.

- viii) Environment disturbing developments take place close to tribal habitats, forcing the tribals to move out, though there is no formal transfer and acquisition of land.

The problems of displacement and rehabilitation has to be dealt with in a two pronged ways:

- i) Keeping displacement to the minimum which would necessitate a proper and objective assessment of land required for development projects and keeping the interests of the tribals central rather than the notional estimated land which will be required for the purposes of future expansion of the project.
- ii) R & R Policy which takes into account the special vulnerability of tribals.

5.1 Recommendations:

- i. 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 the villages/areas where there is a sizable tribal population/where majority of the population consists of scheduled tribes. As such, as per Section 4(b) of PESA “a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with the traditions and customs”.
- ii. It is necessary that, whenever land is acquired for industrial or mining projects, the exact extent of land required for the projects assessed by the concerned project authorities should be reassessed by a neutral agency/expert body consisting of experts, with a tribal representative.
- iii. It should be ensured that land acquisition is not done in a mindless and aggressive manner. The Central Land Acquisition Act of 1894 and the Central Coal Bearing Areas (Acquisition & Development) Act 1957 should be amended in line of the provisions of PESA. Specifically prior to serving

- individual notices to the landholders, the consent of Gram Sabha/ Palli Sabha should be obtained. In view of the fact that coal bearing areas are predominantly in Scheduled Area, there is a strong case for amending the Land Acquisition Act as per the provisions of PESA.
- iv. The Land Acquisition Act should be amended to incorporate R&R policy for all projects. The States should modify their PRI Acts to reflect the land acquisition provision as provided in the Central Act. 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.
 - v. Resettlement and rehabilitation should be completed prior to the commencement of the project. Already committees have been constituted to oversee R&R arrangements. The Committee should consist of not only government officials but also prominent civil society institutions as well as representatives of the displaced families. Any land acquisition within the village boundary should require the consent of the Gram Sabha/ Palli Sabha. The Gram Sabha should not be held with a pre-determined decision. Neutral observers should be there to oversee the Gram Sabha proceedings. It may not be feasible to explain all aspects of a project to the affected persons in one meeting of the Gram Sabha. Therefore, the authorities should be prepared to conduct the meeting in phases so that all the details are properly explained to every one concerned and the people can make an informed choice.
 - vi. The recent Orissa R&R Policy has some progressive features such as unmarried daughters/sisters more than 30 years of age should be treated as separate families. Similarly, physically challenged persons irrespective of age and sex are to be considered as separate families. Orphans who are minors, widows and women divorcees are also to be treated as separate families. These features should be replicated in other States. Ideally all daughters should also be treated at par with sons when it comes to rehabilitation benefit.

- vii. In the Orissa Policy it is said that no physical displacement shall be made before completion of resettlement work. The Collector would issue the certificate of completion of resettlement. However, it would be better if the certificate of completion is issued not only by the Collector but also by a Committee headed by the collector having civil society institutions and representatives of displaced families as members. Alternatively Rehabilitation Advisory Committee for the relevant project can also issue this certificate. The Orissa Policy also talks about additional compensation to the extent of 50% of the normal compensation in case of multiple displacements.
- viii. In a situation where direct purchase of land from the scheduled tribes is permissible, there is a possibility that vulnerable people of disadvantaged sections may be duped by such entrepreneurs. Therefore the mediation of the State would still be required and the State should not shy away from this.
- ix. 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. Specifically the provision should lay the onus on the mining departments for obtaining no objection certificate (NOC) and this should be done after the Gram Sabha has been provided with the map of the areas to be mined and information, which is relevant to this. The Gram Sabha should take an informed decision.
- x. 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 in the V Schedule of the Constitution and through the Tribals Advisory Council and the Governor of the State should modify the Land Acquisition Act to provide for consent of the Gram Sabha prior to the acquisition of land in the Schedule- V areas.
- xi. 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. The Working Group endorses the recommendation made by the Expert Group on Tribal Land Alienation with regard to enjoyment survey. Survey of the hill

slopes up to 30 degrees should be mandatorily done in the States with Schedule areas and such lands should be settled in favour of tribals doing 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 JFM irrespective of the classification of the Podu area.

- xii. All tribal states should provide a share of the royalty to the Gram Sabha, as in case of Chhattisgarh. There is a need to develop a mechanism whereby the mines owner is held responsible to the villages even after the NOC is given. This could be in the form of an agreement between the Gram Sabha and the mines owner laying down ground rules for mining. .
- xiii. 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. The lack of transparency in the process of land acquisition needs to be addressed. Even when the villagers are receiving notices as required by law, they do not get a clear picture of the project details and the land that is being acquired. A sensitization programme for officials of different departments to the needs of the tribals may be a useful step in this direction.
- xiv. In some states having high concentration of STs, permission of a designated competent authority is required before a tribal can dispose off his land. There is a ban on the sale of tribal land to non-tribals in certain states like Orissa. In States where sale of land is possible with the permission of competent authority, sometime such competent authorities have misused the power and permission has been accorded in an indiscriminate manner. As a result, unscrupulous elements have been able to take away large chunks of tribal land in certain areas. Imposing a ban on the sale of land by the tribals is also an extreme position. Under such dispensation, genuine sale of land would not be possible. Therefore, the Group is of the opinion that sale of tribal land could be permitted by a competent authority senior enough to be able to exercise judgement in favour of the 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 Govt. 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.
- xv. Un-objectionable encroachments in the rural areas should be settled in favour of tribal migrant labourers, in case the settlement is of some minimum duration, for example 5 years or so. Similarly in the urban areas and semi-urban regions, areas should be demarcated for settlement of tribals who come in search of work and have to build their accommodation on almost permanent basis. It is necessary that the cohesion of these groups is not disturbed and it would be ideal if such settlements come up in compact areas. These settlements should be converted into Planned Settlements.
- (xvi) 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.

CHAPTER – V

6. Development of Land Markets, Contract Farming and Implementation of Homestead Rights

6.1 Land Markets

The sale and purchase of agricultural land among cultivators constitute normal land market transactions. A recent study by NIRD based on 16 villages spread over four districts in Orissa and Bihar indicates that many small and marginal farmers are compelled to sell their land mainly due to two factors: (i) emergency family needs caused by illness, marriage and similar events and (ii) uneconomic holdings. Typically small and marginal farmers have poor access to credit, inputs, new technology, information on innovative farm practices etc. thus often making farming non-viable. The study also reveals that there are high rates of tenancy ranging from 18 per cent in Bihar to 27 percent in Orissa. The lease market basically works through tenancy. In the last five decades, tenancy reforms in India have gone through many phases and regional variations. In some states, tenancy was prohibited and the effort was to confer rights of ownership to the tillers. Elsewhere tenancy was allowed, with an emphasis on recording the tenancy arrangement. Also there were instances of reverse tenancy in some states. However, both blanket bans on tenancy and giving tenants the right in some states/ regions to purchase leased land, have acted as a major deterrent for the lessee as well as the lessors, and obstructed access to land by the poor. These provisions also encourage concealed tenancy that is exploitative to the lessee.

Furthermore, increase in urbanization and in the area under non-agricultural uses due to various development activities, speculation in land markets around cities and towns has also grown. Speculators purchase prime agricultural land at low prices and make fortunes by selling them to builders and urban dwellers at very high prices. Also land transfers to non-agriculture often cause environmental damage. Moreover, land acquisition by the government for development projects raises land values in surrounding areas. In many cases, state governments often promise enterprises (both public and private) land at

low prices and as a result, the farmers tend to be net losers in the compensation they receive. Since the land market is generally weighted against small and marginal farmers, a group approach should be adopted wherever possible to enhance their bargaining power.

6.1.1 (A) Recommendations on rural land market, tenancy:

- (i) Recognizing that functioning in groups can provide gains both in terms of reducing the risk and vulnerability of small and marginal farmers and increase their farming efficiency, it is strongly recommended that a group approach to farm investment and cultivation wherever possible should be followed. Indeed, a shift from an individual based approach to a group approach should be a key element in any tenancy reform, and in any scheme for reviving land markets to enhance their bargaining capacity which is weighted against them. This will greatly help the poor function more effectively in land markets, and undertake viable farming.
- (ii) To facilitate group investment and cultivation, there should be enabling provisions in all pro-poor programmes. 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, either in terms of collectively purchasing or collectively leasing in land in groups. Institutional credit also should be made available by way of medium or long-term loans for group investment and farming activities.
- (iii) Poor dalit women should be especially assisted to purchase or lease in land in groups through targeted schemes. Funds from development programmes like SGSY could be used in this way, or a separate scheme set in place for this purpose. Also groups of poor women should be helped to obtain land on medium or long-term leases (15-20 years) for group farming.
- (iv) 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 in land from the government on 10-year leases for fish ponds.
- (v) In farmer's cooperatives and other related institutions, there should be special provisions and rates for poor farmers, and especially 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.

- (vi) To enable the poor and especially women to increase their farm productivity, there needs to be gender sensitizing training programmes for village level workers and those delivering farming information and technology.
- (vii) There is wide variation in tenancy laws across the states. Many states either ban tenancy or allow it only under restricted conditions. As a result, concealed or oral tenancy is rampant which is exploitative for small and marginal farmers. There is need for having uniform tenancy laws in all the states. The laws should be liberal and allow leasing of land. However, there should be legal safeguards in the lease contracts that would protect the small and marginal farmers, and a clear recording of tenancies. At present, landowners don't record tenancies out of fear of losing land ownership. Oral tenancies leave the small tenant vulnerable to being evicted. He/she also cannot access institutional credit forcing them to borrow from moneylenders at high interest. Under the 73rd Constitutional Amendment, land management devolves on Panchayats. Therefore, the task of recording tenancies should be placed under the Gram Panchayats and the latter authorized to issue tenancy certificates which could be used for various purposes, including bank borrowing.

6.1.1 (B) Recommendations on Land transfers to Non-agricultural use:

- (i) Indiscriminate, large-scale, ecologically damaging, socially harmful transfers of agricultural land to non-agricultural use should be checked.
- (ii) Speculative land markets in the immediate periphery of urban areas should be checked.
- (iii) The new areas which come under the urban development plans should be notified.
- (iv) To prevent long term speculative transactions on agricultural land, the government should enact suitable laws.
- (v) Farmers should be entitled to their share in rising land prices in the wake of urbanization and any form of major investment. For this (a) it is necessary to publicize

urban development plans in the villages and make them more transparent. (b) The gram panchayat could also be mandated to provide information on potential market prices for land to farmers. (c) For farmers being asked to sell their land for urban use, the Urban Development Authority could take responsibility for auctioning such land periodically on behalf of the farmers/landowners so that they get the right market price for it.

- (vi) In any transfer of agricultural land to non-agricultural uses, environmental safeguards must be made so that this shift does not lead to long-term soil degradation, or water contamination or groundwater depletion (e.g. where a project uses so much water that the water table drops permanently). All medium to large-scale transfer of land from agricultural to non-agricultural use should thus be subject to an environmental protection clause, and its strict implementation

6.1.1. (C) Recommendations on Company and Government Land Acquisitions:

(i) Land Acquisition processes

- (a) For land acquisition by a company there should be clearly laid-out procedures and transparency. The company should provide facts and figures to those losing land on how the project will help them and the community in terms of job creation. etc.
- (b) 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.
- (c) Government land acquisition in the name of “public purpose” should be minimized to the extent possible, such as for providing only basic infrastructure like roads, sewage, etc. A stepwise approach should be followed starting from the drawing up of a comprehensive town and country plan. This plan should be shared with the public through local hearings. After the hearings, the plan should be put to vote and only if two-thirds of the public agree it should be passed.

(ii) Compensation to original owners

- (a) Steps are needed to ensure that the original landowners share maximally in the benefits of the projects for which the land acquisition takes place. The compensation for land taken over should be at the real market price and not the government fixed one. There should be a benchmark minimum price also for such land.
- (b) The government should evolve an arrangement by which a neutral authority, possibly the respective Urban Development Authority arrange a suitable method by which land needed by companies can be disposed of so that the benefit of land value appreciation goes to the genuine land owners and not to speculators.
- (c) 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 labourers, artisans, tenants, etc. should also be compensated with housing and livelihood security.
- (d) All compensation should follow the principle of gender equity. Hence, for instance, in households that are compensated for land acquired, spouses of owners should be given half the compensation. If the land is jointly held with the extended family, gender equity should again be ensured.

(iii) Rehabilitation of those displaced by government land acquisition for development projects:

- (a) A detailed rehabilitation/resettlement plan must be formulated with sufficient financial earmarking.
- (b) 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.
- (c) The displaced must be guaranteed a minimum living standard (above poverty line) after rehabilitation. Rehabilitation should include access to adequate infrastructure in

terms of health, education, water and sanitation provision and community interaction.

- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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.

6.2 Contract Farming

Contract farming refers to a system of farming in which agro-processing or trading units enter into a contract with farmers to purchase a specified quantity of any agricultural commodity at a pre-agreed price. By entering into a forward contract, the company reduces the risk of not getting the required quantity of needed raw materials and the farmer reduces the risk of fluctuating market demand and prices for his/her produce. Small farmers in India are generally capital starved and cannot easily make major investments in new technical inputs. If the contracting company provides them quality inputs and technical guidance, contract farming could fill this gap. Also contract farming is different from corporate farming, as the land rights of contract farmers remain unaffected and fully protected. Potentially, therefore contract farming could work to the benefit of both parties in the contract. In practice, however, there are several obstacles to the small farmers' ability to realize this

potential for which government support and institution building could help, as outlined further below.

In India, commercial crops like cotton, sugarcane, tobacco, tea, coffee, rubber and dairy enterprises have been under contract farming to some extent for a long time. In recent years, crops such as tomato, cucumber, chillies, paprika and to some extent potato and even basmati rice and groundnut have come under contractual arrangements with centralized processing and marketing units. Notable examples of companies undertaking this are Hindustan Lever Limited in tomato in Punjab (they took over from Pepsico in 1995); Pepsico in basmati rice (in Punjab), Maxworth fruits in horticultural crops (in Andhra Pradesh, Karnataka and Tamil Nadu), VST National Products Limited in cucumber, paprika (in Andhra Pradesh), Cadbury in Cocoa (in Karnataka), and NDDDB in bananas (in Maharashtra). In addition, the National Seeds Corporation of India has entered into contracts with farmers in several regions for the production of quality seeds for various crops. Moreover, in dairy, aquaculture and poultry, etc several small companies have initiated industry-farmer linkages through contractual arrangements.

The effects of these initiatives on small and marginal farmers are mixed. On the positive side, some recent case studies show that contract farming has notably improved the yields and incomes of farmers and brought gains for both the farmers and the companies. Also the growth of agro-processing units has provided new employment opportunities. On the negative side, however, there are problems and constraints which leaves the small and marginal farmers especially vulnerable.

A range of global literature, including from Latin America, and India, provides a wealth of experience through case studies. A general picture that emerges is that typically companies enter into contracts with larger farmers and not with small and marginal farmers. Where they do involve small farmers, the latter are vulnerable to exploitative deals with companies dictating their terms. Typically the terms do not protect the farmer against the risk of crop rejection on grounds of uneven quality, etc.; the price given is often low; and capital and input transfers are rare. Also there are negative gender effects. The workload of women in farming households increases while the cash generated tends to be controlled by the men. The shift from subsistence to commercial farming also carries the risk that the money will not be spent on basic food items which were earlier grown on the farm for self

consumption. This can have adverse nutritional consequences. Intra family tensions have also increased in some countries.

Moreover, in India, except for Haryana, there are no laws to guide the terms of the contract. In other states, the existing contract farming arrangements are usually informal in nature. In case the contract is violated by either side, there is no legal protection. In any case, small tenant farmers including sharecroppers have insecure land access, since under existing land reform laws, tenancy is not protected in most states. Hence, legalization of tenancy would be necessary to enable them to participate in contract farming.

Given that contract farming is likely to expand over time, measures are essential to protect the interests of the small and marginal farmers so that they can gain by this process rather than be exploited by it.

It is also notable that the rare examples where small and marginal farmers have gained are those where they have entered into contracts on a collective and not on individual basis. For instance, in Punjab a consortium approach was followed by the Mahindra Shubhlabh Services Ltd for maize farming, and a number of safeguards for risk protection have been built into the contract. Again in South India, contracts were signed with women's self help groups for tea cultivation by the United Planter's Association of South India, where some companies buy 90% of their tea from SHGs. Basically, unless the small and marginal farmers are organized into self-help groups or co-operatives or associations, their bargaining power vis-à-vis the company will remain weak. Such a group contract would help the small farmer, and contracts given to women's groups could ensure that both men and women gain.

A comprehensive legal framework and guidelines should also be developed to ensure basic safeguards, such as a fair price for the produce, procedures for dispute settlement and a farmer's representative or a Panchayat to act as a go-between to ensure fair contractual terms, risk sharing, etc.

6.2.1 Recommendations:

- (i) **Legalise Tenancy:** In many parts of the country, agricultural tenancy is legally banned, although concealed tenancy exists. Tenants who do not enjoy security of tenure are not able to participate in contract farming. Hence, legalization of tenancy would be a precondition for enabling the tenant farmers to benefit from contract farming.
- (ii) **Set up a Formal Legal Framework for Contracts:** There is need for a legal framework for contract farming, as informal contracts are exploitative of small and marginal farmers.
- (iii) **Institutional Arrangements For Recording Contracts, Dispute Settlements Etc.** on the following lines :
 - a) All contracts should be recorded, say through the local panchayat or some Government institution. This will promote confidence between the parties.
 - b) A Block level committee could be formed to deal with any disputes arising from a violation of the contract. The committee should have the representation of farmers, the company, the panchayat and a local government official. Farmers as well as the company should be able to approach the designated committee, duly empowered by law to mediate and settle the dispute.
 - c) The contract should be managed in a transparent and participatory manner so that there is social consensus on how contract violations by either party can be settled without costly and lengthy litigation. Also the contract needs to specify all conditions clearly without ambiguity and ensure that farmers are fully aware of all the clauses.
- (iv) **Provide Backward and Forward Linkages:** The contract should have provision for both forward and backward linkages. Unless both the supply of inputs and marketing for the produce are assured on fair and equitable terms, small farmers will not be able to gain from contract farming.

- (v) **Help the Farmers to open Bank Account** : All contract farmers, especially those who are small and marginal, should have facilities for opening a bank account. Credit facilities should also be provided to them. If the payment for contractual produce is made through banks, the recovery of loans will be easier. In fact, there should be a tri-partite agreement between the contract farmers, the company and the bank for this purpose.
- (vi) **Provide Crop Insurance Facility to Contract Farmers** : In case of crop loss due to either pests and disease or adverse weather, contract farmers should be adequately covered by crop insurance, for which the premium should be paid equally by the farmers and the company.
- (vii) **Focus on groups (especially women's self help groups) and associations or cooperatives:** To the extent possible, farmers should be encouraged to enter contracts in groups rather than as individuals - small farmer associations, cooperatives, women's self-help groups are all potential candidates for this. This will improve the bargaining power of these small cultivators vis-a-vis the company, enable them to reap economies of scale, and promote equality of partnership in any contractual arrangement. These associations can also replace the middlemen or commission agents who are involved in marketing of the contract commodities on behalf of the company. In fact, as noted above in the case of tea production, some companies have already followed the route of contracting women's self help groups. This could be tried for some other commodities as well.
- ix) **Provide Environmental Safeguards:** The government needs to ensure that contract farming, which is generally commodity specific and tends to promote monoculture does not threaten bio-diversity and agricultural ecology in the country. To prevent this from happening it would be desirable to provide guidelines for land use in different regions.

6.3 Homestead Rights

In the vision of an emerging India, 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 a right to basic education. The supreme Court held that right to shelter is a fundamental right in *UP Avas Evam Vikash Parishad vs Friends Co-operative Housing Society* (List ARI, 1997, SC 152). The 11th Five Year Plan provides the opportunity to realize this vision.

An estimated 13 to 18 million families in rural India today are reported to be landless of which about 8 million lack homes of their own. They live either in spaces provided by landlords (in case of farm labour), or park on government land, or on village common land, and so on. None of these options provide basic human security. Also the number of the near-homeless are increasing as new development projects (large dams, roads, urbanization) displace families and sometimes entire communities. We need a comprehensive policy for providing homestead rights to all who lack a home today as well as those who might be rendered homeless due to development processes in the foreseeable future. This will require both regularizing existing living arrangements for some categories of people, and providing land to set up homes to others.

The government's common minimum programme mentions that landless families will be given some land through the implementation of land ceilings and the redistribution of ceiling surplus land. Since the scope for acquiring such land is now limited for a complex set of reasons, the government will need to draw on other sources for providing homestead land to the landless poor, including identifying and distributing government land and, where necessary, purchasing land from the open market for such distribution.

It is also important that the land given to each family is of a minimum size (10-15 cents) so that the average family not only has enough space to live, and also has a few cents extra for supplementary livelihood activity, such as growing fodder and keeping livestock (cows, buffaloes, goats, poultry etc.), planting fruit trees or vegetables, or undertaking other land-based economic activities (farm or non-farm) to improve their food, nutrition and livelihood security.

Research studies in India and abroad show that homestead plots of 10 to 15 cents in size can significantly improve the socio-economic status of poor landless families. In fact, Kerala has already implemented a scheme of providing 10 cents to each landless family. This has had a notable impact on poverty reduction in the state. Similarly, in 2005, the governments of Karnataka and West Bengal initiated schemes to give homestead-cum-garden plots to landless families. Now it is necessary to have a more comprehensive scheme covering all the states, with support from the Central government.

In any such land allotment, women need to be given priority. Women tend to be the most commonly landless and are the poorest even among poor households. At the same time, in the rare cases where women have land or a house of their own it is found to make a critical difference to them and their family's welfare. For instance, such women face less risk of destitution and domestic violence, and improved economic well being. The welfare of their children also improves. A mother's assets are found to have a greater positive effect on children's nutrition, education and health than the father's assets. Women also tend to spend more of their income on the children's needs than men. Allotments made to women would therefore benefit both poor women and their families.

Allotments given to groups of families in a consolidated space would be more beneficial than scattered allotments, for several reasons. One, allotments that are all together will help create a community in which people can socially interact and help each other. Two, it is easier to provide infrastructural support – such as drinking water and sanitation, primary school, primary health center etc – to a consolidated group. In fact such support services should be a part of the initial plan when land is distributed to the landless.

A women's resource center, catering to women especially of poor communities, could also be planned alongside. At present, village women have no designated public place where they can comfortably go to obtain information and learn about livelihood opportunities, and about their rights and laws. A resource center catering only to women, with a particular emphasis on poor dalit women would go a long way in fulfilling this need. It should provide relevant information relating to government loan schemes, employment schemes, their legal rights, legal aid, farm technology, health care, and so on. This information could be given through written material as well as electronic media.

6.3.1 Recommendations:

- (i) All landless families with no homestead land as well as those without regularized homestead should be allotted 10-15 cents of land each. The estimated cost of the above scheme would be about Rs.10,000 per beneficiary households, including the costs of land purchase and other support system. Some of the required sum could be arranged through reallocation of resources from existing schemes, such as the Indira Awas Yojana, SGSY, NREG etc.
- (ii) When regularizing the homesteads of families occupying irregular and insecure homesteads, the homesteads so regularized should be in the names of both spouses.
- (iii) 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.
- (iv) 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.
- (v) 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.

Annexure

No.M-12018/1/2005-RD
Government of India
Planning Commission
(Rural Development Division)

Yojana Bhavan, Sansad Marg,
New Delhi, the 13th March, 2006

ORDER

Subject: Working Group on Land Relations for formulation of the Eleventh Five Year Plan.

It has been decided to set up a Working Group on Land Relations for formulation of the Eleventh Five Year Plan.

II. The Composition of the Working Group is as under:

- | | | |
|--|---|-------------|
| 1. Shri D. Bandyopadhyay,
Executive Chairperson,
Council for Social Development,
New Delhi | : | Chairperson |
| 2. Prof Amit Bhaduri,
Professor Emeritus,
Council for Social Development,
New Delhi | : | Member |
| 3. Prof R.S. Rao,
B-13, University Quarter,
Centre University Post Office,
University of Hyderabad, Gachibouli,
Hyderabad. | : | Member |
| 4. Shri P.V. Rajgopal,
Ekta Parishad,
Gnadh Peace Foundation,
Deen Dayal Upadhyay Marg,
New Delhi. | : | Member |
| 5. Shri Balaji Pandey,
Institute of Socio-Economic Development,
28, Dharma Vihar,
Bhunabeshwar. | : | Member |
| 6. Prof V.S. Vyas,
Chairman, Institute of Development Studies (IDS),
8B Jhalana Institutional Area,
Jaipur. | : | Member |
| 7. Shri Kancha Iliah,
Professor of Political Science,
Osmania University,
Hyderabad. | : | Member |

- | | | | |
|-----|---|---|-----------------|
| 8. | Prof. Bina Aggarwal,
Institute of Economic Growth,
Delhi University, Delhi. | : | Member |
| 9. | Shri Subhash Lomte,
National Convenor,
National Campaign Committee for Rural Workers,
125. Samrath Nagar,
Aurangabad, Maharashtra. | : | Member |
| 10. | Shri B.S. Lalli,
Secretary, Ministry of Panchayati Raj,
Krishi Bhawan, New Delhi. | : | Member |
| 11. | Dr. Arvind Virmani, Principal Adviser (DP),
Planning Commission Yojana Bhawan, New Delhi. | : | Member |
| 12. | Shri V.S Sampath,
Director General,
National Institute of Rural Development (NIRD),
Hyderabad | : | Member |
| 13. | Shri Rajeev Chawla,
Secretary/Settlement Commissioner,
Government of Karnataka,
Bangalore. | : | Member |
| 14. | Shri Aurobindo Behera,
Secretary (RD), Government of Orissa,
Bhubaneshwar | : | Member |
| 15. | Shri T.C. Benjamin,
Settlement Commissioner,
Government of Maharashtra,
Pune. | : | Member |
| 16. | Shri Sukumar Das,
Land Reforms Commissioner,
Government of West Bengal,
Kolkata, | : | Member |
| 17. | Shri Lambor Rynjah,
Additional Secretary,
Department of Land Resources,
Ministry of Rural Development,
NBO Building, Nirman Bhawan,
New Delhi. | : | Convener-Member |

III. The Terms of Reference of the working Group will be as follows:

- 1) 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.

- 2) Use of modern technological developments for on-line maintenance of land records and demarcation and digitization of land boundaries.
- 3) To analyse the agrarian and related economic causes for the rural unrest prevailing in a number of states and to suggest appropriate remedial measures including the assessment of the efficacy of the current land ceiling laws and their effective implementation.
- 4) To examine the issues relating to alienation of tribal lands including involuntary displacement of tribals from their habitats and livelihood for development purposes and to suggest realistic measures for restoration of such lands to them and for economically viable and culturally acceptable resettlement of project affected tribals.
- 5) To examine the issue of bringing the tenancy including sub-tenancies into the open and suggest framework to enable cultivators of land to lease in and lease out with suitable assurances for fair rent, security of tenure and with right to resumption.
- 6) To examine the development of Land Markets in the present context and suggest for its improvement, keeping in view the interests of small and marginal farmers.
- 7) To look into the pros and cons of the economics of contract farming to protect the interests of small and marginal farmers and landless agricultural workers and to make them economically viable retaining their autonomous status as free economic agents in the present Indian context, particularly keeping in view some adverse effects noticed in some Latin American and Caribbean countries.
- 8) Recommend measures to prevent sale and purchase of agricultural land for speculative and non-agricultural purposes.
- 9) Suggest measures for comprehensive implementation of homestead rights.
- 10) Any other issue of relevance concerning the agrarian relations in India.
- 11) Any other Term of Reference that may be decided by the Working Group in its first meeting.

IV. The Chairman of the Working Group may set up sub-groups/task forces, if necessary, for undertaking in-depth studies and formulation of proposals for the Eleventh Five Year Plan.

V. The expenditure of the official members for attending the meetings of the Working Group will be borne by the respective parent Department/Ministry/Organisations as per the rules applicable to them. The expenditure regarding TA/DA of non-official Members will be borne by the Planning Commission according to the appropriate rules and practices.

VI. The Working Group may co-opt non-officials/experts/representatives of other agencies, if required.

VII. The Working Group will submit its final report to the Planning Commission by 31st July, 2006.

Sd/-
(Rupinder Singh)
Deputy Secretary to the Govt. of India

To
The Chairman and Members of the Working Group

**REPORTS OF THE SUB-GROUPS OF
THE WORKING GROUP**

Report of Sub-Group I on Modernization of Land Management.

1. Though variations exist from State to State, land records throughout the country can broadly be classified as textual and spatial. Another way of classifying land records would be as rural and urban, though the latter exists in an established form only in a few states like Gujarat and Maharashtra where city survey has been carried out in densely populated areas. Regardless of such classifications, all land records suffer from the lack of proper maintenance over the years, jeopardising their very credibility, so required for sound governance.
2. The 'modernisation' exercises taken up hitherto can be summed up as "Computerisation of Land Records", as precious little has been done beyond this. Even computerisation is yet to be completed in many states despite the passage of several years of its initiation by Government of India. Again, computerisation has been restricted to written land records only (principally the Record of Rights) and not to the spatial land records.
3. Computerisation in itself has limited benefits, unless it is made one of the means through which the land records achieve the desired credibility. The efforts in the 11th Five Year Plan should therefore be to take the modernisation efforts forward in the right direction so that the land records enjoy more credibility and thus becoming a catalyst in the overall development of the nation.
4. The primary goal in land management efforts in the 11th Five Year Plan should be to achieve a fairly high level of credibility in land records. How can this credibility be achieved? While the concepts of "conclusive title" or "guaranteeing title" is one we should strive towards, our aim at this stage should be to make our records closer to ground reality. Once this objective is reached, migration to titling system would be feasible and much easier. Our land-records system, which owes its origin to the colonial regimen and protocol, largely evolved with the objective of identifying the land revenue payable by each land holder. The rights of the land holder was a secondary aspect. Now that we must give the priority to rights from land records, the level of reliability land records should reach for the purpose of establishment of the rights is the issue that should engage our attention, first.
5. Though land records in India is not the "conclusive proof" of ownership but rather the "evidentiary" or "presumptive" proof, we share the constitutive system of registration of title (i.e., creation of transfer of rights takes place upon registration) with countries like Australia and England. But, the process of registration lacks the required thoroughness in our country, and to a large extent, this becomes a major hurdle in making our land records indefeasible (i.e., a situation where the records cannot be annulled or made invalid). If we make our registration system fool-proof,

i.e. if information entering the registration system is accurate and truthful, then the system is more likely to be regarded with confidence; and such system can produce and sustain land records with better credibility.

6. The idea, then, is to move incrementally towards the conclusive title status, not by any large-scale survey and enquiry of all land holdings (which apart from being prohibitively costly, will, more importantly, lead to a spate of court litigations) but by strengthening the registration process for future transactions.
7. The first step in achieving this goal is to combine the functions of registration (presently conducted by the Sub Registrar) and mutation (presently conducted by the Tahsildar or his/her subordinate) into one function of registration of the deeds. The authority to carry this out should be called "Land Officer". He/She should be required to check, before registering the title, the legality of the transaction and the competence of the parties to take part in the transaction. That is, registries should not be passive repositories of documents that meet just the minimum procedural requirements, but should be agents that create/diminish rights after taking cognizance of all the relevant information it can possibly procure.
8. One of the relevant information for registration of the deeds would be to make mandatory the sketch of the parcel of the land which is sought to be transacted. For parcel maps to be provided by the citizens to the Land officers, it is necessary for Government to create the enabling environment. Firstly the parcel maps and village maps existing with the Government needs to be updated for incorporating the new changes which take place. Once all the parcel maps are updated incorporating already happened transactions, this data should then be incorporated in village maps and they also updated. The parcel maps can then be connected to the digitized village maps so as to create an enabling environment where the printouts of any parcel can be taken on demand. The parcel maps digitization should be done in such a way so as to be absorbed by various modern survey equipments and hand held devices so that these parcels can be updated in the field as and when any sub division takes place. Now citizens can get the sketch of that portion of the parcel of the land which they intend to transact. This work can be done by the Government either through its own surveyors or through the private surveyors licensed by Government. Production of such survey report being made mandatory before registration would ensure dual purpose. Firstly both the parties involved in transactions would know accurately what portion of land they are willing to transact and secondly the spatial data would be immediately updated after the registration. The above process would lead to land records becoming more truthful and updated leading to painless migration to titling system at a later date.
9. Registration of title will also require a search of the past mutations, so that the title being registered is clear and uncontested. For this purpose, it will be necessary to provide the Land Officer with the computerized archive of mutations of every

existing holding over the past 50 years. The creation of such an archive has to be taken up across the country on a time bound manner.

10. Such a system will do away with the 'deed' and 'mutation'. As the system matures, the credibility of land records will reach a stage when guaranteeing the title becomes possible. Private Title Insurance Companies can then be authorized to insure the title and they in turn will find this quite feasible, with the credibility of the system in place.

11. Gram Panchayats, which are constitutional bodies, should also be involved in land administration process in the following way:

The gram panchayats can be given access to electronic land records system so that they can view any land records and can also view pendency of mutations. This will help them to take control of pending cases and take up the issue with the concerned authorities.

12. In few of the States, there are still hereditary Village Accountants in place. These hereditary posts need to be abolished and Village Accountants should be recruited as like in other Government offices through open selection process.

13. The land records system should facilitate maintenance of data regarding Government lands like burial ground, grazing land, forest land etc. so that any encroachment on this land can be easily and effectively monitored. After the land records data is computerized, it should be thrown open in public domain so that wide accessibility to citizens can make this data more pure and correct.

14. In short, the 11th Five Year Plan should envisage the following activities to be taken up in a time bound manner.

- a) Amending/introducing laws to facilitate the registration of deeds, through an authority called "Land Officer" who will substitute the "Registrar" and the "Revenue Tahsildar".
- b) Computerisation of mutations over the past 50 years of all existing land parcels.
- c) Updating and digitizing all sub divisional (parcel) spatial data (phalnis).
- d) Devising the registration system in such a way that the "Land Officers" take primary responsibility for checking both questions of procedure and substance. This system would include production of the sketch of the land intended to be transacted clearly demarcated the transacted extent.

These steps should see the country moving towards a more credible land record administration, with reliable land record systems and procedures.

Report Sub Group II on Ceiling & Tenancy

Based on the suggestions of Working Group on Land Relations for formulation of the Eleventh Five Year Plan constituted on 13th April 2006, by the Planning Commission (Rural Development Division, Government of India), a Sub-Committee was further set up for giving suggestions on Ceiling and Tenancy.

The Terms of reference of this Sub-Committee are:

1. To analyse the agrarian and related economic causes for the rural unrest prevailing in a number of States and to suggest appropriate remedial measures including the assessment of the efficacy of the current land ceiling laws and their effective implementation.
2. To examine the issue of bringing the tenancy including sub-tenancies into the open and suggest framework to enable cultivators of land to lease in and lease out with suitable assurances for fair rent, security of tenure and with right to resumption.

The Members of this Sub-Committee are:

1. Shri L C Singhi, LBSNAA, Mussoorie (Convener of the Sub Committee)
2. Shri Rajagopal P V, Ekta Parishad
3. Prof. R S Rao (Retd.), University of Hyderabad Campus, Hyderabad.

Starting from Unfinished Agenda:

"Growth with Social Justice" had been the "mantra" prescribed as most suitable by all-the sociologists, the economists, planners, politicians and the reformers et al. On the one hand, experts say that there is a need to revisit the existing laws and land reform measures to discourage the division of land below the economically viable size of 5 or 8 acres per family and on the other hand there are people who suggest that economically the small farmers should not be ignored. Policies, which have led to their marginalization have meant a continuation of the vicious cycle of poverty for many sectors, resulting in highly uneven development. This has prevented many developing countries including India to attain satisfactory levels of overall development.

Small farmers have traditionally survived on subsistence production. During recent years many of them have experimented with cash crops with occasional success and many failures. But they have not benefited from industrialization and export-orientation of agriculture. In the globalized market, small players have been marginalized. A senior official from the National Bank for Agriculture Research and Development (NABARD) had stated:

"It is difficult to get a reasonable return on investment in small-land farming since the cost of inputs remained same as in the case of cultivation of larger farms,"

NABARD AGM P. R. Krishnamurthy also says small farmers do not have any surplus income from their cultivation while the input costs like fertilizers, water and ploughing practices remain the same as in the case of larger farmers.

In developing countries, agriculture continues to be the main source of employment, livelihood and income for between 50-90 per cent of the population. And small farmers make up the majority of the farming population. Despite steady economic growth in many Asian countries over recent decades, small farms still dominate in rural areas. According to the 1990 FAO World Agricultural Census as of the mid- to late 1990s farm size averaged 1.6 hectares in both Africa and Asia. While in Latin America it averaged 6.7 hectares, reflecting highly unequal land distribution. In fact, land holdings are becoming increasingly subdivided, suggesting that agriculture is absorbing the rising population. In Africa, for instance, the average size of landholdings shrank from 1.5 hectares in 1970 to 0.5 hectares in 1990 in Congo, 62 per cent of all farm households operated land holdings of less than 0.5 hectares.

There is increasing evidence that in many developing countries, redistribution of land in favour of landless and near-landless peasants has significant impact on poverty and income. It is agreed by many economists that total output per hectare is higher on small farms mainly because their intensity of land use is higher. As such redistribution of land may not lead to fall in the agricultural production. It is very difficult to define optimal size of land holding, which is economically viable on the basis of agricultural productivity criteria too. Because many studies on land size and productivity relationships have shown that agricultural sector exhibits Constant Return to Scale. The arguments in favour of 'Equal distribution of resources (Land) and inputs should help rather than hinder growth of output' can be considered on the ground that inequality in land holdings is socially and economically unjustified.

A six-country study by the International Labour Organization (ILO) reveals that, "If land were equally distributed among all agricultural families (including the landless), and the new equal holdings achieved yields equal to present holdings of the same size and used a similar level of inputs, food grain output could potentially rise from 10 per cent (Pakistan) and 28 per cent (Colombia and rice-growing Malaysian regions) to 80 per cent in north-eastern Brazil. Such a radical redistribution is of course, rarely attempted – but the figures indicate the theoretical potential." The view of potential higher productivity of a small farm-based food and agricultural system is even supported by a World Bank publication titled 'The Assault on World Poverty – Problems of Rural Development, Education and Health'. This study notes that in Thailand, plots of 2-4 acres produce almost 60 per cent more rice per acre than farms of 140 acres or more. An analysis of the difference in the value of output on large and small farms in Argentina, Brazil, Chile, Colombia, Ecuador and

Guatemala revealed that small farms were three to four times more productive per acre than large farms. Frances Lappe and Joseph Collins examined the data of net income per acre by farm size in the US from 1960 to 1973. In 12 out of 14 years the net income per acre was greater on the (smaller) family farms. Genuine Land reform policies are to be attempted to create egalitarian relations (particularly man and land relation) within the agrarian structure. Land should be owned by the class of people, who can optimize the production level.

Land Ceiling- Across Five Year Plans:

After Independence, India was transformed into a democratic country, based on the philosophy of social justice and equity. The nature of India agrarian structure was not egalitarian in nature. Even abolition of intermediaries, tenancy reforms were not able to remove inequality in landownership. Accordingly, the Economic Programme committee (EPC) recommended the imposition of ceiling on agricultural holdings. The ceiling on agricultural holdings implicitly was there, as the landlords were allowed to own land according to resumption right as prescribed by law. However, the roadmap of land ceiling Acts was not conceived. Congress Agrarian Reforms Committee which submitted its report in July 1949 had given specific suggestions for the imposition of ceilings. The First Plan merely called upon the States to conduct a census of land holdings during the year 1953. When the A.I.C.C. met at Agra in July 1953 there was no criticism of the inordinate delay in the imposition of ceilings. All that the A.I.C.C. did was to pass the following resolution approving the line adopted by the Planning Commission.

“The State Governments should take immediate steps in regard to the collection of the requisite data and the fixation of ceilings on land holdings, with a view to redistribute the land, as far as possible, among landless workers.”

The Draft Outline of the First Five Year Plan contains a comprehensive analysis of the agrarian problem. The preponderance of uneconomic holdings was identified as the greatest handicap to increasing agricultural production. The Planning Commission considered the question of imposing ceilings on large holdings, taking over the surplus land and distributing it so as to raise the area of the uneconomic holdings to the desired size. After pondering over all aspects of the matter the Commission came to the conclusion that the problem of uneconomic holdings could not be solved by the redistribution of surplus land. The Commission thought that too little land would be available, and that its distribution among the various classes of peasants, namely, the small owners, tenants and landless agricultural labourers would present “numerous practical problems involving basic social conflicts”. The Commission felt that if ceilings were imposed “on larger farms the production would fall and it may have a serious implication on the well-being and stability of rural society as a whole. Having reached that conclusion, the Commission rejected outright the idea of imposing ceilings on large holdings.

The First Five Year Plan did not visualize any large scale redistribution of land by imposing ceiling on large holdings. It was left to the State Governments to fix ceilings within the broad parameters indicated by the Agrarian Reform Committee. In May 1955 the Planning Commission set up a Panel on Land Reforms to review the progress in the implementation of the land policy laid down in the First Plan and suggest further steps to be taken during the Second Plan. The Committee, however, accepted the principle that there should be an absolute limit to the amount of land which any individual might hold. The Committee recommended that the ceiling should apply to owned land under personal cultivation but could not arrive at any agreed conclusion regarding the distribution of surplus land and the imposition of a floor below which individual farming should not be permitted.

In the Second Five Year Plan the main goal of agrarian policy was increased production of food and raw materials to meet the requirements of a growing population and support rapid industrialization. A ceiling on agricultural holdings was not perceived to play a positive role in promoting agricultural growth, and hence it was not advocated with any great zeal or conviction. Taking into account the need to promote social justice the Second Plan recommended. "It is proposed that during the Second Plan steps should be taken in each state to impose a ceiling on existing agricultural holdings. The ceilings would apply to own land (including land under permanent and heritable rights) held under personal cultivation, the tenants being enabled to acquire rights of ownership on lines indicated earlier."

Thus the Planning Commission rejected as impractical the suggestion to relate the concept of family holding to any particular level of income. As already pointed out, it was, however, left entirely to the State Governments to decide whether they would have ceilings for individuals or families and in the latter case, what allowance should be made for the size of the family in the application of the ceiling.

Regarding the distribution of ceiling-surplus land, the Second Plan recommended that preference should be given to tenants displaced as a result of the resumption of tenanted land by landlords, farmers with uneconomic holdings and landless workers. What should be the inter-se priority among these categories was not spelt out nor was it indicated if there should be any upper limit to the area of land to be allotted to each individual. It was, however, suggested that as far as possible settlements should be on co-operative lines.

The Third Five Year Plan gave no new guide lines on ceilings. Though it was found that the States had adopted different principles in enacting the laws, no attempt was made to bring about a measure of uniformity. The view taken was that

"Once legislation had been enacted amendments should aim primarily at eliminating deficiencies and facilitating implementation rather than in introducing fundamental changes in the principles underlying legislation."

By the time the Fourth Five Year Plan came to be finalized, land reform had ceased to be a subject of topical significance. In the Fourth Five Year Plan there was only a brief reference to the question of ceilings. However, it was during Fourth Five Year Plan legislation has been enacted in almost all the States for a ceiling on land holdings. Although there was a considerable variations in the provisions relating to level of ceilings, transfers and exemptions from ceiling in the States. Even the legislation as it existed has not been pursued and implemented effectively as one finds a large gap in most of the States between the area which has been taken possession of and the area distributed. This has happened due to administrative difficulties in selecting the allottees in accordance with the Rules made under the Ceiling Acts, stay order's obtained from High Courts, and inferior quality of land surrendered by the landholders. With the result, the legislation was reviewed in the light of recent technological developments and social requirements so that the implementation of the ceiling law and distribution of surplus land can be done systematically. In Kerala and Tamil Nadu the level of ceiling has been brought down substantially by legislation.

Similarly under tenancy reforms measures by facilitating wider adoption of high yielding varieties, intensive cultivation and multi cropping measures were emphasized keeping in view of the increasing in employment for agricultural labour. In a large number of States, legislation also included provision for security of tenure in respect of homestead lands on which tenants and agricultural workers have constructed their dwellings. Such provisions were considered as important as security of tenure in respect of agricultural lands.

During Sixth Five Year Plan laws on ceiling of agricultural land, based on the national guidelines on land ceilings, were enacted and implemented in practically all the States where ceiling was relevant i.e. except Nagaland, Meghalaya, Arunachal Pradesh and Mizoram where land is generally held by the community. However, the progress of taking over and distribution of ceiling surplus land had been tardy. The distribution of ceiling surplus land has benefited 11.54 lakh landless persons, of whom 6.13 lakh beneficiaries were SCs and STs.

During Seventh Five Year Plan emphasis was given on reassessment of ceiling surplus land especially in the command areas and other newly irrigated areas. It was seen that a very large chunk of surplus distributable land was blocked due to litigation. In Eighth Five Year Plan under a newly inducted scheme, the allottees of surplus ceiling land were given Rs. 2500/- per hectare for land development. States were asked to make 40% allotment of surplus land to women and the remaining in joint names of husband and wives. At the end of eighth five year plan, 74.9 lakh acres was declared as ceiling surplus and 52.13 lakh acres was distributed among 5.5 million beneficiaries.

The Ninth Five Year Plan laid strong emphasis on agrarian restructuring to make agriculture more efficient leading to increased "output and employment". However, progress on different components of the land reforms package had been extremely limited. There had

been no progress in the detection of concealed land and its distribution to the landless rural poor.

Tenancy laws in the States were different and had a different pattern. Several States (Uttar Pradesh, Bihar and Orissa) have either banned tenancy completely or have imposed such restrictive conditions that leasing out of the land was rendered virtually impossible. This had paved way for the concealed tenancy. As per estimation over 34% of land was operated under concealed tenancy in Bihar. Thus, the enforcement of ban on tenancy which was introduced for the protection of tenants has only damaged to the economic interests of the tenants as they were not even recognized as tenants. Eventually they were deprived of the benefits of laws that provide security of tenure and protection from oppressive rent charges..

The Tenth Five Year Plan witnessed lack of progress in the components of the land reforms programme, viz. implementation of land ceiling laws, security of tenure to tenants, etc. Land reforms took a back seat in the 1990s. Liberalization Policy has liberalized the land laws in order to promote large scale corporate farming which was in sharp contrast to the land reforms policy mainly based on equity considerations. Though the pressure of population has led to sub-division and fragmentation of land holdings, thereby considerably weakening the case for further lowering of land ceilings.

Ceiling Laws: Framework & Reality:

Ceiling laws were enacted and enforced in two phases. The earlier phase covering the period 1960-72 (before the National Guidelines were laid down) and the latter phase since 1972 after adoption of the National Guidelines. The legislative measures in the first phase were full of loopholes, which were taken advantage of by the bigger landed interests to circumvent the law. Several enactments relating to land reforms were successfully challenged in the Law Courts on the ground that they abridged the Right to Property guaranteed by Article 19 (1) (g) of the Constitution or that they provided inadequate compensation and are, therefore, hit by Article 31 of the Constitution. The Constitution (25th Amendment) Act, 1971 inserted Article 31C so as to enable the State Legislatures to pass laws in the field of land reforms without payment of adequate compensation. Article 31-B was also inserted validating all previous legislations on land reforms specified in the 9th Schedule. The Constitutional validity of a previous or a future Act could no longer be challenged. But in spite of the adoption of the National Guidelines, there were lot of variations in the ceiling laws enacted by the States and it would be pertinent to throw some light on this aspect.

The State Variations in Ceiling Legislation

Holding land in excess of the ceiling area is prohibited in all State laws. 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, Uttar Pradesh and West Bengal where ceiling limits applies only to owned land and not to tenanted land. Though there is a national guideline, on the basis of which, each state has fixed its own ceiling

limits keeping in view 'local' considerations. While some states have fixed the limit for various types of land uniformly for all districts, in states like Bihar, Andhra Pradesh, Gujarat, Karnataka and Kerala it varies depending upon the local agro-climatic conditions. West Bengal and Kerala have the lowest ceiling limits. On the other hand, Rajasthan has highest limit, which is justified for its 'hilly terrain and desert area'. Moreover, except West Bengal, ceiling limits in all other states are dependent upon crop potential. The Ceiling limit in the second round of ceiling laws has been fixed by considering family as a unit by all the states. 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. Uttar Pradesh Ceiling 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. The ceiling limits on the basis of National Guidelines as fixed by different States after amendments of Ceiling laws under implementations by various States are mentioned in the table given below. These kinds of fixation of ceiling limits creates enormous difficulty in the appropriate categorization of land which gives ample scope to the dominant big landowners to avoid the ceiling laws in connivance with local officials (Deshpande 1998).

Table –I Land Ceiling Limits under Revised Laws (In Hectares)

State	Irrigation Required For		Dry Land
	Two Crops	One Crop	
Andhra Pradesh	4.05-7.28	6.07-10.93	14.16-21.85
Assam	6.74	6.74	6.74
Bihar	6.07-7.28	10.12	12.14-18.21
Gujarat	4.05-7.29	6.07-10.93	8.09-21.85
Haryana	7.25	10.90	21.80
Himachal Pradesh	4.05	6.07	12.4-28.33
Jammu and Kashmir	3.60-5.06	NA	5.95-9.20
Karnataka	4.05-8.10	10.12-12.14	21.85
Kerala	4.86-6.07	4.86-6.07	4.86-6.07
Madhya Pradesh	7.28	10.93	21.85
Maharashtra	7.28	10.93	21.85
Manipur	5.00	5.00	6.00
Orissa	4.05	6.07	12.40-18.21
Punjab	7.00	11.00	20.50
Rajasthan	7.28	10.93	21.85-70.82

Tamil Nadu	4.86	12.14	24.28
Sikkim	5.06	NA	20.23
Tripura	4.00	4.00	12.00
Uttar Pradesh	7.30	10.95	18.25
West Bengal	5.00	NA	7.00
Limit Suggested in The National Guidelines	4.05-7.28	10.93	21.85

Source: www.agricoop.nic.in

Ceilings on landholdings were imposed in the early 1960s and the surplus land was taken over and distributed among the landless. The 1960s ceiling legislation was further amended in the early 1970s, making it more progressive. However, implementation of land ceiling laws remained disappointing. As a result of the implementation of the land ceilings since the 1960s, a total of 3.01 million hectares (mha) of land was declared surplus, nearly 2.31 mha (less than 2 per cent of the cultivated land) was taken over and 1.76 mha was distributed among five million beneficiaries, half of whom were SCs and STs (Source: Annual Report, Ministry of Rural Development, 1992).

Following the implementation of ceiling laws, each state has declared surplus land and distributed to the landless. The ceiling surplus limit is remarkably higher in West Bengal during first round of implementation of ceiling laws. In many states a significant proportion of surplus land has not been taken under possession. In Karnataka, only 59 percent of the surplus area has come under possession. Similarly, in almost all other states a considerable part of the area has been taken under possession is not distributed. While in Karnataka only 42 percent of the area declared surplus has been distributed in Kerala it comes to 47 percent. Apart from this, though the national guidelines suggests that 50 percent of the land to be distributed through land reform measures should be made available to scheduled castes and scheduled tribes beneficiaries, the distribution pattern in states like Tamil Nadu, Rajasthan, Punjab, Maharashtra and Kerala reveals a bias in favour of non-scheduled groups. Although, in Kerala, the population of scheduled castes and scheduled tribes is much lower than in other states (10 percent). But in states like Rajasthan and Punjab where the population of scheduled groups is around 30 percent, the percentage of allotted land is much lower.

The state-wise figures related to land declared surplus and distribution after the implementation of first round ceiling laws are given in the following table.

**Table – II The State wise Ceiling Land Distribution –
(As on December 1970)**

States	Area taken possession	Area Distributed
Andhra Pradesh	29,500	N.A.
Assam	27,200	NA
Gujarat	16,500	5,600
Haryana	72,900	22,000
Jammu & Kashmir	180,000	180,000
Madhya Pradesh	30,250	5,000
Maharashtra	152,000	46,600
Punjab	76,650	24,150
Tamil Nadu	10,100	6,250
Uttar Pradesh	96,240	48,250
West Bengal	346,250	138,840

Source: A Country Paper Prepared for the F.A.O., Special Conference on Agrarian Reform, P.14, mimeo, GoI, Ministry of Agriculture, December 1970.

A cursory glance at the data given in the above table reveals that the area of land distributed among the beneficiaries over area of land taken possession was very less. West Bengal and Jammu Kashmir as mentioned earlier were two states, where largest area of land was declared surplus or Jammu & Kashmir was the only state, where after first round of ceiling laws total land taken possession was distributed. But the progress of ceiling legislation was disappointing till 1972 in other states. It was found that only about 23 lakh acres of land was declared surplus. Of this, only about 13 lakh acres were redistributed.

Looking at the reasons why the surplus area is not available for distribution, it is found that litigation withholds a major part of the land in almost all the states. Sizable areas in Karnataka, Gujarat, Punjab, Andhra Pradesh, Tamil Nadu, Madhya Pradesh, Orissa and West Bengal have gone out of the total quantum of surplus land as a result of court decisions. It is disheartening to note that a significant portion of the area declared as ceiling surplus in many states is either unfit for cultivation or not available for distribution due to 'miscellaneous reasons'. Of the area not available for distribution, 57 percent is unfit for cultivation in Uttar Pradesh and 41 percent in Bihar accounts for 'miscellaneous reasons'.¹

¹ Land Distribution among Scheduled Castes and Tribes, B. B. Mohanty, EPW, October 06, 2001.

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 Uttar 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 have 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 Uttar 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 laws 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.

During Revenue Ministers' Conference held on 17th September, 1998 in Delhi, it was resolved that large cases involved in litigation in the Revenue Courts may be disposed off on a priority basis and such lands should be distributed among the SCs, the STs and the landless poor.

It has also been resolved during the previous Conference of Revenue Ministers that the States, where the incidences of pending litigation is high, should constitute Land Tribunals under Article 323-B of the Constitution or set up Special Benches for hearing to expedite the disposal of such cases.

Issues Involved in Land Ceiling:

1. Ceiling Acts did not provide for prohibiting transfers retrospectively. So the big landowners, in anticipation of ceiling laws had resorted to partitions and fictitious transfers in benami names on a very large scale. Only Gujarat and West Bengal had given it retrospective effect. Other States had banned transfer only after enforcement of the ceiling laws or much later from the date of notification as in Mysore Act.
2. Any un-irrigated land becoming irrigated by private irrigation work after Ceiling laws came in effect was not treated as irrigated for the purpose of determination of ceiling area. Only land becoming irrigated by State irrigation work is to be treated as irrigated. This classification does not appear to be reasonable, as land covered under private irrigation work is not included.
3. The religious trusts hold a large chunk of land/ unused land, which was allotted/, possessed under exemptions given by State. Under Land Ceiling Acts exemptions have been given to lands held by these trusts and institutions. The number of exemptions was so large that it provided a scope for evasion on a big scale through the device of change in classification or otherwise, thereby making the ceiling legislation ineffective. In a recent decision of Chhattisgarh Government, thousands of acres of land allotted to religious trusts etc., have been exempted from ceiling
4. Incidences of large number of litigations pending in revenue and other courts restrict the allottees to cultivate the land. In the States where large number of cases involved in ceiling related litigation is pending with the revenue courts, lands have remained with the original owners.
5. The rights of the tenants in ceiling surplus land had not been secured appropriately. Holding land in excess of the ceiling area is prohibited in all State laws. 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, Uttar Pradesh and West Bengal where ceiling limits apply only to owned land and not to tenanted land.
6. Poor enforcement of ceiling laws at ground level increases the land disputes, and this issue should be readdressed within a time bound manner.
7. The issues that continue to remain important are not the same as in the earlier rounds of the 1950s and 1960s. In India the abolition of intermediary tenures is not any more an issue. The important issues that may be considered to be still relevant are:

- (a) Redistribution of ceiling surplus land to the landless,
- (b) Security of tenure,
- (c) Modernization of Land Records,
- (d) Tribal land alienations,
- (e) Land alienations on the ground of Developmental projects.

Remedial Measures

- Ceiling limits must be re-fixed and implemented with retrospective effect. The new limit should be 5-10 acres in case of irrigated land and 10-15 acres in case of non-irrigated land- to be decided by the concerned state governments.
- Re-classification of newly irrigated areas should be undertaken with joint efforts of Revenue Department and Gram Sabhas for bringing these lands within the ambit of Ceiling Laws.
- Bringing irrigated land by private sources under the ceiling provisions could perhaps discourage the private irrigation. So the land irrigated by private sources should be excluded from the preview of ceiling.
- Introducing Card Indexing System for prohibiting fictitious transfers in Benami names, the card system should have co-relation with their Voter I/D Card or PAN.
- The Benami Transactions (Prohibition of the Right to Recover Property) Act, 1989, should be suitably amended so that evasion of provisions of the ceiling law through Benami land transactions can be checked.
- Distribution of all ceiling surplus land should be in the name of husband and wife on joint basis as it will enable to control the benami land. The issue of land ceiling should go with a built in clause of gender equity. It should not just assume that there is a law to address it.
- Setting up a special squad of revenue functionaries and Gram Sabha members for identification of Benami and Farzi transactions in a fixed time frame.
- Discontinuation of the exemptions granted to religious, educational, charitable and industrial units- these must be brought under the ambit of land Ceiling Laws.
- The term 'family' needs to be defined uniformly and having consistency with some degree of justice and equity involved. Amended Hindu Succession Act to be applied in all states and in respect of all lands including agricultural lands.

- At present the system of implementation of the Ceiling Act is based either on the landlord himself declaring land held in excess of the ceiling limit or the revenue authorities at the grassroots level. The Lekhpal and kanoongo are supposed to report the evasion of land ceiling provisions but the landlords with the connivance of these officials evade the land ceiling provisions. Failure to furnish declaration by landholders should be visited with criminal sanction unless sufficient cause is shown.
- Increasing numbers of cases where landlords create legal hurdle for harassing the allottees to take ownership of the allotted land.
- Because it is found that landowners take full advantage of appeal and revision provisions to defeat the purpose of the Act. It is observed that after fighting the case before the highest revenue courts i.e. Board of Revenue, a party can file a civil suit against the order in lower courts and again they can allow the process of appeal and revision. Usually there has been considerable delay in taking possession of the land by the Government thus the landowner continues in physical possession of such land. Generally after a case has been disposed of and surplus land declared by the appropriate authority, at the trial level, the declarants approach High Court, as the case may be for interim orders. The interim orders either in the form of stay or in the form of injunction is liberally granted, not always on sufficient grounds. Such orders stand in the way of execution and delay or obstruct the process of taking possession of surplus land.
- Set up Land Tribunals or Fast Track Courts under Article 323-B of the Constitution for expeditious disposal of cases.
- There are increasing numbers of atrocities and incidences of land grabbing by landlords after the allotment. There is lack of authorized/ legalized monitoring system, which prevents the allottees rights and possession over land.
- Penal provision for non-submission of returns in respect of ceiling surplus holdings should be made stringent. A penal clause in the existing Land Ceiling Laws to be inserted making the officers responsible for intentional lapses, and such lapses should be severely punished.
- The District Magistrate or Deputy Commissioner should be empowered to expedite allotment of ceiling surplus land (a) Civil Court jurisdiction to be totally barred in respect of agricultural land, (b) Any decree/ order passed by any court to be treated as 'Nullity'.
- No decree/ order to evict an allottee to be executed, unless such decree or order is approved by (a) The Board of Revenue if it is a decree/ decision from a revenue functionary or (b) by the High Court, if it is from any Civil Court.
- Cases of illegal or improper allotments of ceiling surplus land to be investigated and allotments to be cancelled- A provision to be made to that effect.

- All transactions after commencement of Ceiling Law to be declared null & void².
- Land ceiling should take into account the local environment such as reserved areas where indigenous people are residing.

Tenancy: Framework and Reality

Generally, persons who cultivate the land of others on payment of rent in cash or kind are treated as tenants in all the tenancy laws in the country. In some States, the status of the tenant has not, however, been accorded to sharecroppers who pay rent by the division of the produce³. Granting of the right to use a piece of land to others, either on rent or free, by the owner without transferring the title is termed land lease. Agreements of such lease, even when made orally, are considered as lease contracts in the Land Holding Survey of NSSO. On the other hand, hereditary tenancy and long term lease for 30 years or more are not treated as land lease --they are treated as land ownership. But possession of encroached private land is treated as leased-in land (free of rent)⁴. Despite the fact that there are variations with respect to definition of tenants across the states of the country, one consensus emerges out that the socio-economic conditions of tenants are deplorable. The terms and conditions of tenancy have always remained in favour of the land owners. Barring the practice of reverse tenancy, the tenants are mostly exploited by the land owners, who are leasing out land. There are instances, where in addition to rent payments, the tenants are providing various kinds of free services to the land owners. In most of the cases, tenancy is orally or informally being carried on and in some cases recorded tenancy is being practiced. Evictions of tenants are more frequent, where tenancy is being practiced informally. Tenancy specifically informal not only discourages agricultural investment but also leads to low agricultural productivity. Depending on various terms of leasing, the tenants are prone to exploitations by the lessors. According to NSS survey, various terms of lease⁵ on which the area was leased out to the lessee households are:

- (i) for fixed money
- (ii) for fixed produce
- (iii) for share of produce
- (iv) for service contract
- (v) for share of produce together with other terms
- (vi) under usufructuary mortgage

² Study on Land Reforms conducted in various States by Officer Trainees, Land Reforms Unit, LBSNAA, Mussoorie, Recommendations of various Workshops organized by C.R.S. in different States.

³ Appu, P.S., Land Reforms in India, Vikash Publishing House Pvt. Ltd., Delhi, 1996, P. 97.

⁴ NSS 48th round, January – December 1992, P.9

⁵ NSS 48th round, January – December 1992, P. 12, internet site (http://mospi.nic.in/rept%20%20pubn/ftest.asp?rept_id=407&type=NSSO).

- (vii) from relatives under no specified terms and
- (viii) Under other terms.

It may be noted here that leasehold under crop-sharing basis meant that the owner of land received a stipulated share of the produce but he did not participate in the work nor did he manage or direct or organize the agricultural operations on the plot of land which he had leased out. Leasehold under service contract meant that an employer gave some land to an employee for cultivation in lieu of the services provided by him on the condition that the land could be retained so long as the employee continued to serve the employer and no other specific terms of lease was contracted. The contracts by which the mortgagor retained the ownership of land till the foreclosure of the deed but the possession of the land was transferred to the mortgagee would be considered as lease of land under usufructuary mortgage. Sometimes land owned by a household is looked after and used by a close relative. For example, a person staying away from his village may own a piece of land in the village which is looked after and used by his brother's household. All such land possessed by the household operating a holding but owned by some relative's household under no contract of payment of any kind to the owner, was treated as leased in from 'relatives under no specified terms'. Lease on terms other than those specified for types (1) to (7) stated above was treated as 'under other terms'. All rent free leases, other than from 'relatives under no specified terms', were treated as leases 'under other terms'.

Tenancy Reforms is the most important component of land reform policies. Since British Period various legislations with respect to tenurial security and protection of tenant rights have been enacted. After independence tenancy reforms more rigorously taken up by various state governments. Planning Commission also suggested various measures to protect rights of the tenants.

Three important guidelines were laid down in the Five Year Plans for the reform of tenancy. These were:

1. The rent should not exceed the level of one-fifth to one-fourth of the gross produce;
2. The tenants should be accorded permanent rights in the land they cultivate subject to a limited right of resumption to be granted to landowners;
3. In respect of non-resumable land, the landlord-tenant relationship should be ended by conferring ownership rights on tenants⁶.

All States have enacted legislation for regulating the rent payable by cultivating tenants. Fair rents have been fixed at levels not exceeding those suggested in the Plans in all States except Punjab, Haryana and the Andhra area of Andhra Pradesh. In Punjab and Haryana fair rent is one-third of the gross produce.

⁶ Appu, P.S. , Land Reforms in India, Vikash Publishing House Pvt. Ltd., Delhi , 1996, P. 95

The desired direction of policy towards tenancy reforms was laid down by the National Commission on Agriculture, 1976 in the following words:

“The principle of abolition of intermediaries having been accepted, the idea of continuance of tenancy under the private land owner is anomalous. Tenancy reforms should be directed to the stage of finally breaking up landlord-tenant nexus. Agriculture should be treated as a family occupation of the peasant cultivator and not as a source of subsidiary unearned income. In a normal peasant proprietor economy there is no place for absentee landlordism, which should be discouraged and ultimately curbed.”⁷

Main objectives of Tenancy Reforms:

- Rent should not exceed the level of one fifth to one fourth of the gross produce
- Tenants should be accorded permanent rights in the land that they cultivate, subject to the special rights of resumption to be exercised by the privileged category of landowners
- The sub-tenants/ under raiyats/ share-croppers should enjoy a degree of permanence in respect of land being cultivated by them
- There should be security to the sub-tenants/ under raiyats/ share-croppers against eviction at will
- The landlord-tenant relationship, except in the case of the few privileged categories, should end in the conferment of rights upon the tenants

Concealed Tenancy: Its Magnitude

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

⁷ National Commission on Agriculture, 1976, Abridged Report, P. 690

- 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.⁸

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 lessor or if the later 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 subjected. Extension of government procurement directly from the producer at fair minimum support prices will help to loosen the strong hold of private traders. It will also facilitate 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.

Empirical Analysis- Inequality in Land Holding and Tenancy

There were over 103 million operational holdings, of which more than 90% were operated by residents of rural areas by the year 1991-92. The total operated area was estimated at 131 million hectares. The total operated are in rural areas (125 million ha.) has remained largely unchanged during the 1970s and 1980s. The net sown area accounted for 93% of

⁸ Readings in Land Reforms by Dr. C. Ashokvardhan, 2004, pp. 190-192, Centre for Rural Studies, LBSNAA, Mussoorie.

the total operated area in 1991-92. At the national level, average size of an operational holding was 1.34 hectare in the rural sector and 0.61 hectare in the urban sector. the average size of rural holdings has declined by 50% between 1960-61 and 1991-92. The number of fragments per holding was 2.7. The number of operational holdings in rural areas has grown by about 80% since 1960-61. During 1981-91 the percentage rise in the number of operational holdings was 31.5%⁹.

Land Size Distribution

Generally speaking, notwithstanding the progressively downward shift in the distribution, the highly skewed nature of the size distribution of operational holdings has remained unchanged over the last three decades. However, during the last two decades the Gini's coefficient (a measure of inequality) of the size distribution has risen from 0.586 to 0.641. During the last three decades, the number of marginal holdings has trebled, from 19.8 million in 1960-61 to 58.7 million in 1991-92. As against this, the absolute numbers of large and medium holdings have declined steadily during this period. The percentage share of operated area under marginal holdings has increased from 7% to 16% during these three decades.

Trend in Concentration of Operated Area:

From the table given below, it can be observed that percentage of area operated by top 5% of land holders has increased from 30.5 % in 1961-61 to 33.6% by the year 1991-92. This implies that in terms of operational holding the large farmers are strengthening their positions marginally. Hence, the instances of reverse tenancy can not be ignored. The share of bottom 30 % land holders in the total area operated has declined during the years 1961-62 to 1991-92.

Table-III: Distribution of Operated Area (All India)

Group of operational holding	Percentage share in operated area			
	61-62 (17 th)	71-72 (26 th)	81-82 (37 th)	91-92 48 th
Bottom 30%	4.6	4.4	2.2	3.0
Bottom 60%	18.3	18.6	14.9	14.2
Top 10%	46.0	45.0	47.2	47.6
Top 5%	30.5	30.6	32.4	33.6

Sources: 17th, 26th & 37th rounds: NSS Report Nos. 144, 215 & 331

Similarly the share of bottom 60% land holders in the area operated too has gone down from 18.3 % in the year 1961-62 to 14.2 % during 1991-92. However, the share of top 10 % land holders has marginally increased. All these facts indicate that the large and medium farmers are more active in the land leasing market.

⁹ NSS 48th round, January – December 1992, P. 20, internet site (http://mospi.nic.in/rept%20_%20pubn/ftest.asp?rept_id=407&type=NSSO)

The following table shows Gini coefficients separately for the four NSS surveys, the gini coefficients being measures of inequality in land holdings, provide insights to tenancy trends in India.

Table- IV Gini Coefficients (All India – Rural)¹⁰

Year	Gini's coefficient ²	
	Operational holdings	Ownership holdings
1960-61	0.583	0.731
1970-71	0.586	0.709
1981-82	0.629	0.712
1991-92	0.641	0.710

Gini coefficients, as observed from above table have increased for operational holdings from 0.583 in the year 1960-61 to 0.641 by the year 1991-92, whereas the same in case of ownership holdings has marginally fallen from 0.731 in the year 1960-61 to 0.710 in the year 1991-92. So it can be concluded that practices of tenancy is becoming one of the causes of increasing in inequality in operational holdings.

Trends in Tenancy of Land by Operational Holdings

During the thirty years beginning with 1960-61, land tenure status of operational holdings has undergone significant changes. The data from various NSS surveys reveals that the percentage of holdings with partly or wholly owned operated area increased steadily from 82% in 1960-61 to 96% in 1991-92, whereas that of holdings operating on partly or wholly leased in land (henceforth called 'tenant holdings') declined sharply from 24% to 11% during the same period. This trend, indicating a continuous shift from tenant cultivation to self cultivation, has been a characteristic feature of Indian agriculture in the post- Independence period. The extent of tenancy measured in terms of percentage share of area leased in reveals a similar trend during 1960-61 to 1981-82. The share of leased-in land in operated area came down to 7% in 1981-82 from 11% in 1960-61. Over the last decade, however, there has been a rise, instead of a fall, in this share.

- The NSS surveys of various rounds suggest a reversal of the trend towards a decline in the incidence of tenancy that was evident between 1960-61 and 1981-82. The total leased-in operated area, which has declined from 14 million hectares in 1960-61 to 9 million hectares in 1981-82, rose to 10.5 million hectares during the eighties. However, the incidence of tenancy again has increased in the post 90s.
- The rise in the total leased-in operated area is mostly accounted for by a sharp rise in the total leased-in area in the large holdings. This was accompanied by a significant rise, both in

¹⁰ Sources: 17th round: NSS Report No. 144], 26th round: NSS Report Nos. 144 & 215, 37th round: NSS Report Nos. 330 & 331, Gini's Coefficient for ownership holdings for 1991-92 is taken from NSS Report No. 309

terms of percentage share and the total leased in area, in tenancy under fixed rent terms. However, area under share cropping has remained stable during the 1980s.

**Table –V Important Indicators of Land Tenure Status in 1991-92
(All India – Rural)**

Sl. No.	Item	Estimate
1.	No. of tenant holdings (mill.)	10.27 (10.99%)
2.	Total operated area leased in (mha.)	10.36 (8.28%)
3.	Area leased in per tenant holding (ha.)	1.01
4.	No. of holdings with other wise possessed land (mill.)	3.87 (4.14%)
5.	Total otherwise possessed operated area (mha.)	1.26 1.01%

(ii) Figures in parentheses indicate the percentages to number of holdings or total operated area

Tenancy and Land Holding

Though the measures of land reform undertaken since Independence appear to have deterred the growth of exploitative tenancy, there is still a high proportion of tenanted land in total operated area. What is most remarkable about tenancy in rural India is the significantly high proportion of total tenanted land operated by a small proportion of holdings. The percentage of tenant holdings shows, largely, a rising tendency with the holding size. In the lowest class -- i.e. holdings below 0.20 hectares constituting 28% of the operational holdings -- the percentage is much smaller than in the rest of the classes (As reported by 48th NSS Survey).

**Table – VI Percentage of tenant holdings by categories of operational holdings:
(1960-61 to 1991-92) (All India – Rural)**

Categories	Percentage of tenant holdings			
	61-62 (17 th)	71-72 (26 th)	81-82 (37 th)	91-92 48 th
Marginal	24.1	27.0	14.4	9.3
Small	25.1	27.8	17.9	14.9
Semi-medium	23.6	24.8	15.9	12.2
Medium	20.5	20.0	14.5	13.1
Large	19.5	15.9	11.5	16.7
All categories	23.5	25.7	15.2	11.0

Sources: 17th, 26th & 37th rounds: NSS Report Nos. 144, 215 & 331

State Wise Variations

(I) Land Holdings:

In India 40 percent of the rural households are either landless or own less than 0.2 hectares of land. Less than 1 (0.88) percent of the households own 14 percent of the land. In such a situation the poorer households lease in land. Even though leasing has declined 15 percent of the rural households continue to lease in land according to NSS Report 1992. In Uttar Pradesh where leasing is illegal except in rare cases, 23 percent of the rural households reported leasing-in of land and most of these are landless households. At the all-India level 61 percent of all landless households leased land.

At all India level, 15 percent of the rural households lease in land. Significantly it is Bihar where the percentage of households leasing in land is lowest at 7 percent with the exception of Jammu & Kashmir. In Kerala the same is 9.6 percent. Orissa has the highest percentage (22 percent) followed by Tamil Nadu (19.5 percent), Haryana (18.3 percent), West Bengal (17.8). The average area of leased-in land was 0.62 hectares at the all-India level but significantly it was highest at 3.2 hectares in Haryana which shows the existence of reverse tenancy. At the all-India level 9 percent of the area was under lease but surprisingly in Haryana 41 percent of all land was under lease followed by Punjab (18.2 percent), Tamil Nadu (12.4 percent), West Bengal (12 percent), Uttar Pradesh (11.8 percent), Orissa (11.4 percent) and so on. All-India level 29 percent of the lease contract was for fixed money and another 18 percent was for fixed produce. The customary terms of produce-sharing generally in the ratio of 50:50 accounted for only 40 percent of the term. Earlier sharing of produce was the only form as the 'Bataidari' denotes. That is being replaced by fixed money or fixed share of the produce showing that the lease market is becoming more regressive so far as the tenant is concerned. Those who leased out land used to bear a part of the risk they got a share of the produce. Now when they lease out on fixed money or fixed produce they bear no risk as such. Now all the risk is to be borne by the lessee. Leasing-in is becoming more exploitative as regard the tenant for in case of crop failure or very low produce he will have to borrow to met the cash or fixed produce requirement. As the lessor demand cash in advance the poorest among tenants are being squeezed out for they cannot generally pay in advance and only the relatively more resourceful can get the land on lease¹¹.

(II) Fair Rent:

All States have enacted legislation to regulate the rent payable by cultivating tenants. Maximum rates of rent have been fixed at levels not exceeding those suggested in the Five Year Plan in all States except Punjab, Haryana, Jammu & Kashmir, Tamil Nadu and the Andhra area of Andhra Pradesh. In Punjab and Haryana fair rent is 33 1/3 per cent of the gross produce, in Tamil Nadu 33 1/3 per cent to 40 per cent of the gross produce. The Andhra Pradesh State Assembly recently passed a Bill for reducing fair rent to the level of

¹¹ Tenancy Reforms: Rhetoric and Reality, Kripa Shankar, EPW Commentary, November 20-26, 1999.

30 per cent of the produce for irrigated land and 25 per cent for dry land. In Jammu and Kashmir, for tenants of landowners holding above 12 ½ acres of land fair rent is 25 per cent of the gross produce for wet land, and 33 1/3 per cent for dry land. However, for tenants of landowners who own less than 12 ½ acres of land fair rent is 50 per cent of the gross produce.

(III) Security of Tenure:

Several States have enacted legislation for conferring security of tenure on tenants. Under the existing law the position of tenants, and particularly of share-croppers, continues to be insecure in Bihar, Tamil Nadu, the Andhra area of Andhra Pradesh, the Saurashtra area of Gujarat, Punjab and Haryana. Provisions have been made in several States to enable tenants to acquire ownership rights. Necessary legislation for this purpose is still to be enacted in Andhra Pradesh, Assam, Bihar, Haryana, Jammu & Kashmir, Punjab and Tamil Nadu. Thus, in several States in the matter of tenancy reform, legislation falls short of the accepted policy. And what is even worse, the implementation of the enacted laws has been half-hearted, halting and unsatisfactory in large parts of the country. In accordance with the policy laid down in the Second Five Year Plan the laws enacted by several States provided for the resumption within certain limits of tenanted lands by land-owners for personal cultivation. The term 'personal cultivation' was wide enough to cover all cases of cultivation under the landowner's own supervision or the supervision of a member of his family. The provision for resumption of tenanted land by land owners resulted in the ejections of many tenants.

Tenancy Laws: The Ground Realities

1. Under tenancy, concealed tenancies are a universal phenomenon.
2. There is lack of appropriate legal system for recording of Tenancy at village level.
3. Ownership of non-resident agriculturists in rural areas is increasing.
4. There is a lack of institutional safeguards for checking the leasing out by small and marginal farmers.
5. There is an ambiguity in the definition of Tenants.
6. The tenants do not come forward to register their tenancy.
7. Religious trusts, Agriculture Universities, Horticulture Farms and Agro Corporations do not follow the tenancy laws.
8. The risk of crop failure increases the food insecurity of the tenants.
9. Tenancy Laws do not envisage Suo-Moto taking up the cases in favour of tenants.

10. There is a lack of appropriate authority for taking actions against non-recording of tenancy.
11. Even where the administrative machinery was generally keen to record the names of share-croppers in the record of rights, the response from the beneficiaries was found to be inadequate because they were most reluctant to annoy the landowners on whom they were dependent in many ways.

Tenancy Laws: Remedial Measures

1. Tenant should be a cultivator: A tenant should be a cultivator and the moment the tenant ceases to be a cultivator, he should cease to be a tenant in the eye of law. Tenancy is permanent but a pre-requisite for that has to be "cultivation". Because an owner may not cultivate as he has the choice to induct a tenant for cultivating the land or he can opt to keep it fallow, but a tenant can not be given that choice as the basis of tenancy is "cultivation". There are two types of tenants: i) occupancy tenants and ii) Non occupancy tenants. Occupancy tenants are conferred rights that are heritable, transferable and permanent, but in case of a non-occupancy tenant the rights are heritable but not permanent or transferable (even if these are transferable it is only during the subsistence of the tenancy). Suitable amendments to the Tenancy Laws should be made so that no transfer of tenancy takes place to a non-cultivator.

2. Tenancy should be an on-going process. This is based on the basic principle that a person who ceases to be a cultivator should also cease as a tenant. This will necessitate constant updating of the Land Records and the Tenants Records of Rights. Constant updating of Records will automatically take care of the concealed tenancy and under tenancies or benami tenancies. The Tenancy Laws should therefore provide for:

- (a) Recording the names of all persons who hold land on the basis of written or oral leases, including share-croppers, in the record of rights;
- (b) Ensuring that not more than the legally stipulated share of crop is taken from the share-croppers by the land-owners;
- (c) Ensuring that no ejectment takes place either on the basis of "voluntary" surrender documents like "Fala Gutte Karar", "Istafanama", "Khetmazdur kauliat" etc. or through other extra-legal or illegal methods;
- (d) Ensuring inheritance to the heirs of the share-croppers on their death where law provides for it;
- (e) Providing supporting services including credit to share-croppers to free them from the clutches of land-owners and money-lenders.

3. The definition of 'Personal Cultivation' should be revised and made stricter in relation to residence, income and participation. An important question is whether the term 'personal cultivation' should be defined so as to make personal labour an essential element. If the slogan of "land to the tiller" is to be meaningful and honestly implemented, the land should certainly go to those who cultivate it, namely those who perform the various operations like ploughing, sowing, transplanting, harvesting, etc. Conversely, persons who do not personally participate in these operations should not be allowed to take recourse to inducting unrecorded tenancies.
4. Gram Panchayats should be provided an authority with necessary administrative resources and functionaries to manage land specifically for updating land records and recording tenancy. Based on the resolution of the Gram Sabhas the Revenue Authorities to consider entering the name of the tenant as a cultivator in Khatauni, after due enquiry. There is no need to give unbridle power to the gram sabha as they are caste bridle.
5. All states should have provision for conferment of ownership rights upon the under-raiyats/ sharecroppers.
6. Suitable amendments may be initiated in the laws so as to make uncorroborated testimony of the under-raiyats/ sharecroppers admissible with sufficiently over-riding evidentiary value as under Section 57 of the Indian Evidence Act.
7. The jurisdiction of Civil Courts in regard to all issues of tenancy should be barred. Probably it is high time that a tribunal with appellate hierarchy be constituted right from the village level with adequate representation for the weaker sections and representatives from the unorganized rural labour.
8. Where there is provision for payment of compensation in lieu of ownership rights the same may be paid by the State Government on behalf of the under-raiyats.
9. There should be an in-built mechanism providing for correction of the Records of Rights of tenants without going through the gamut of mutation proceedings.
10. There should be a provision that during the pendency of a dispute , possession of the tenants/ under-raiyats should in no way be affected. The law should provide for adequate safeguards against eviction of tenants- failure to cultivate the land on account of natural calamity should not be a ground for eviction of a tenant- eviction proceedings can be initiated only if there is a willful negligence or deliberate default to cultivate the land for atleast 3 seasons.
11. Lands held by the temples and religious institutions should be brought within the operation of amended tenancy laws. The income derived from land may be substituted by annuity.

12. Lands held by religious trusts and other public/ private institutions should be brought under tenancy laws.
13. Suitable amendments are to be made, so that transfer does not take place in favour of a non cultivator.
14. The marginal and small farmers to be assisted and linked with institutional support, anti poverty programmes and rural development schemes so that they are not compelled to lease out their land to big owners corporate houses.
15. There should be a legal provision that during the pendency of a dispute, the tenancy should not be disturbed.
16. Suitable amendment to be initiated so as to make uncorroborated testimony of the under-raiyat/ sharecropper admissible with sufficiently over-riding evidentiary value as under Section 57 of the Indian Evidence Act.
17. There is need for streamlining the Tenancy laws, so that the rights of the migrant agricultural labourers are protected with respect to wages, hours of work and other safeguards.
18. There is a need to work out a national level tenancy rent pattern. Maximum rent to be uniform & fixed. In case of crop rent it should not exceed 1/3rd of the principal crop, if the costs are borne by the tenant and 1/2, if the costs are borne by the landowner¹².
19. Adequate safeguards should be incorporated, in case of transfer of land by lease or otherwise by the small or marginal farmers in favour of large farmers or corporates. Efforts should be made to check and address the issue of land alienation by "reverse tenancy".

Institutional Mechanism For Land Reforms

After a series of failures in implementation of Land Reforms in various States the Committee came into the conclusion that there is a need for adopting three phase institutional arrangements:

I. State Land Authority (Policy Formulation & Implementation)

- To monitor the implementation of land re-distribution
- To supervise updating of land records and making them accessible

¹² Study on Land Reforms conducted in various States by Officer Trainees, Land Reforms Unit, LBSNAA, Mussoorie, Recommendations of various Workshops organized by C.R.S. in different States.

- To supervise identification and monitor the distribution of surplus land
- Monitoring and ensuring the regularization, rehabilitation and resettlement of the project affected communities should have statutory power to direct State governments and other agencies.

II. Fast Track Courts (Adjudication)

- Constituted at district level/ Sub-divisional level
- To deal with long delay in ensuring land entitlement, adjudicating land disputes, and minimizing harassment and reducing costs
- Cases against Scheduled Caste and Scheduled Tribes should be given special cognizance

III. Single Window System (Administrative Implications)

- To be Constituted at district level/ Sub-divisional level
- To conduct re-survey and settlement
- To deal with mutation, registration of tenants, migrant labourers, diversion of land etc.
- For updating and making land records accessible
- To monitor and register the atrocities on Scheduled Castes and Scheduled Tribes regarding land alienation¹³

¹³ New Vision of Land Reforms, a discussion note for the Prime Minister of India dated 24 December, 2005 by Ekta Parishad.

REPORT OF SUB-GROUP III ON ALIENATION OF TRIBAL LAND

Four Sub-Groups were constituted in the 1st meeting of the Working Group on Land Relations held on 13.4.2006 under the Chairmanship of Sri D. Bandyopadhyay. The terms of reference of the Sub-Group No.3 are as follows:

“To examine the issues relating to alienation of tribal lands including involuntary displacement of tribals from their habitats and livelihood for development purposes and to suggest realistic measures for restoration of such lands to them and for economically viable and culturally acceptable resettlement of projected affected tribals”.

The members of the Sub-Group are as follows:

1. Shri Subhash Lomte
2. Sri Balaji Pandey
3. Ms. Aditi Mehta
4. Sri Aurobindo Behera

The Sub-Group held 2 formal sittings - one in Delhi on 3rd May, 2006 and the second one at Bhubaneswar on 10.5.2006, in addition to informal sittings between members. Besides these 2 formal sittings, the Sub-Group members held discussions with experts and activists, whose names are indicated in Annexure-I.

As provided in the original Terms of Reference for the Working Group, there is flexibility to expand the scope and mention matters not specifically mentioned in the TOR, but impinging on the subject of ownership and possession of tribals on resources like land. The Sub-Group kept this in view while formulating its recommendations.

Government of India, Ministry of Rural Development had set up an Expert Group to study the issue of alienation of tribal land and suggest ways to prevent alienation of such lands belonging to tribals and the restoration of lands alienated. The report of the Expert Group has been published in October, 2004. The Sub-Group constituted studied the recommendations of the Expert Group. The other documents, which the Sub-Group referred to, are listed in Annexure-II.

In the last few years extremist activities have increased in 160 districts, the majority of which are dominated by tribals. Displacement caused due to development projects has resulted in confrontation between authorities and local tribals. The examples are Kashipur and Kalinga Nagar in Orissa,

Polavaram in Andhra Pradesh and Narmada Valley Project in Madhya Pradesh etc. These developments demonstrate that there is an urgent need to look into the ownership of resources by tribals, especially the resources upon which they depend for their livelihood. Land, Forests and Water come under this category.

The proposed Scheduled Tribes (Recognition of Forest Rights) Bill 2005 is currently under consideration of the Govt. of India. The cut off date in the proposed bill is 1980 when the Forest Conservation Act came into existence. The National Rehabilitation & Resettlement Policy has in the meantime been gazetted. Some States have come up with R&R Policies, which have got some progressive features.

In India, large-scale displacement has taken place on account of development projects and studies show that the majority of such displaced people belong to the Scheduled Tribes.¹⁴ In other words the tribals suffer disproportionately from project related displacement. More than 50% of the persons displaced due to mines and mining projects are tribals. Almost 86 lakh tribals have been displaced due to development projects and mining projects during the four decades, from 1951 to 1990. There is a need to analyse the grounds for displacement and the response of the State to such displacement. Minimizing displacement of tribals is the first issue. The next issue is to have an R&R Policy which would not only ensure that the displacement which is undertaken is the minimum required and that the process is painless while also ensuring that the displaced families are better off in the new environment.

Land is acquired by the State not only for public purposes such as irrigation projects and roads but also for industries and mining purposes where there is a large private stake. Displacement of tribals also takes place by notifying areas as National Parks, Sanctuaries etc. Experience shows that the area of land, which is acquired for industrial and mining projects, is often more than what is actually required for these projects. As a result, displacement, far in excess of what is absolutely necessary, takes place and unnecessary and unjustifiable hardship is caused to affected people.

Of all the factors behind the large-scale alienation of tribal land, displacement in the name of development and conservation projects is the most visible and important.

Other causes of alienation of tribal land are as follows:

-
1. ¹⁴ Harsh Mander (2002): Displacement, Resettlement and Rehabilitation in India: Suggested Direction for Policy; paper presented in a workshop on Engendering Resettlement Policies and Programmes in India, India International Centre, New Delhi, organized by Action Aid, New Delhi and IDS, Sussex (unpublished).

1. Sale and transfer of land by tribals to other tribals and non-tribals.

The report of the Expert Committee on Prevention of alienation of tribal land contains figures of tribal land alienated, and the extent of land restored to them through legal means. Practically in all the states there is no restriction on sale of land by a tribal to another tribal.

It is possible that the more aware and enterprising tribal groups would come to possess more land in the course of time than the groups which are less au fait regarding the land market. Most of the States have put a ban on transfer of land of tribals to non-tribals. Though at macro level this kind of ban can be justified in order to ensure that the total land under the possession of tribals does not get drastically depleted due to operation of market forces, at the micro level it amounts to restricting the freedom of the tribals to dispose of their assets even when there are compelling circumstances. Therefore it may be necessary to evolve a mechanism by which individual tribal families enjoy the liberty to dispose of the assets, while ensuring that at macro level the overall ownership of land by the tribals does not get reduced over a period of time.

On the one hand the sale of land by tribals is prohibited, on the other land acquisition of tribal land for projects is permissible. Thus there is a contradictory situation, which requires resolution. The R&R policy of some states permit acquisition of tribal land by private companies through negotiation.

2. Alienation of land due to indebtedness.

The study undertaken by Tribal Research & Training Institute, Ahmedabad in 1986 reveals that almost all the problems of land alienation among the tribals of Gujrat were directly related to the problems of indebtedness. A study on the problems of land alienation of the tribals in and around Ranchi by S.P. Sinha (1968) states that tribal indebtedness is one of the main causes of land alienation. Some of the landowners were in heavy debt for one reason or the other and to pay off the loan they often sell the land for paltry sums of money.

3. **Forcible eviction of tribals from their land/ unauthorized occupation of tribal land by non-tribals or by public authorities.**

Though sale of tribal land is not permitted or is permitted only with the consent of the competent authority, unauthorized occupation of tribal land by non-tribals is quite rampant in certain areas. There are instances where the non-tribals are in occupation of tribal lands without any form of documentation evidencing grant of any right, title or interest to do so. In certain cases, public authorities and government agencies also have been found to be occupying tribal land without the consent of the tribals or without giving adequate compensation to them.

4. Conversion of land from communal ownership to individual ownership.

Dr. B.K. Roy Burman refers to the hazard of recording communal land in the name of individuals. He gives example of Totopada in West Bengal where because of conversion of land from communal ownership to individual ownership, the tribals as a group lost a sizeable chunk of land over which they used to exercise control. This may be the case in other states also though the exact estimate of such conversion of land from communal ownership to individual ownership is not known.

5. Increasing urbanization.

The growth of urban centres in the heart of tribal areas is exerting pressure on land. This has accelerated the process of alienation of tribal land in and around growing urban centres.

6. Treating tribals traditionally occupying forestland as encroachers.

The traditional rights of forest dependant Scheduled Tribes on land required for cultivation and homestead purposes was not adequately recognized and recorded during the consolidation of state forests during the colonial period as well as in independent India, though the Indian Forest Act 1927 had

provided for the determination of such rights. The problems of these communities was further compounded after passing of the Forest Conservation Act, 1980 when the forest dependent people, especially tribals inhabiting these forest habitats for generations were treated as encroachers. Even development activities in these habitations were termed as non-forestry activities. This issue will hopefully to be addressed by the Scheduled Tribes (Recognition of Forest Rights) Bill 2005.

7. Govt. land allotted to tribals under various schemes but substantive possession not given.

It has been observed that though the avowed policy of the State Govts. is to give priority to tribals in the allotment of land under various schemes such as ceiling surplus land allotment, land for homestead and agricultural purposes etc., actual possession has not been handed over to the allottees. In fact lands that are often encroached upon by powerful interests in the villages are re-allotted to tribals in the naïve hope that cultivatory possession will also be transferred upon formal paper transfer of land rights. Micro studies have shown that tribal land allottees are not in possession of much of the land allotted to them. The studies also show that the quality of land allotted to them is more often than not unfit for cultivation. This situation is one of a de facto alienation of land by tribals. The exact extent of such land has not been estimated, but the problem seems to be quite acute.

8. Environment disturbing developments take place close to tribal habitats, which force the tribals to move out, though there is no formal transfer and acquisition of land:

For example, by the very nature of mining activities, areas have to be demarcated for purposes of blasting and to prevent injury or accident due to rubble run-off, thus making the normal day-to-day activities of tribals difficult. Similar examples can be found in large reservoir projects etc.

SECTION – II

As mentioned, large-scale displacement of tribals has taken place due to development projects such as multi purpose irrigation and power projects,

mining, industry, highways and urbanization. Displacement has been caused due to acquisition of land for urbanization, the setting up of different institutions, defense establishments, notifying areas as national parks, sanctuaries, reserve and protected forests, special tourism zones etc. The problem of displacement and rehabilitation has to be dealt with in a two-pronged way.

1. Keeping displacement to the minimum, which would necessitate a proper and objective assessment of land required for development projects, and keeping central the interests of the tribal rather than the notional estimated land which will be required for purposes of future expansion of the project.
2. R&R Policy, which takes into account the special vulnerability of tribals.

One of the aspects of displacement and rehabilitation, which has been highlighted in recent times, is that the projects get implemented before a comprehensive rehabilitation and resettlement plan has been drawn up and even if such an R and R policy exists on paper, the imperative to attract investments is such that LAOs (Land Acquisition Officers) are pressurized to certify that land has been given for rehabilitating displaced tribals where land has not even been identified for such rehabilitation . There is growing resentment and anger among the tribals because the project implementation takes precedence over rehabilitation and resettlement of the displaced families – one of the most celebrated cases in recent time being the case of the Narmada project. There are similar experiences in many other parts of the country.

It has been alleged that there is a huge backlog of families to be rehabilitated due to displacement in various projects over the years dating back to 1950s. It has been estimated that between 1951-1990 86 lakh tribals have been displaced by various development projects in India of which only 21.16 lakh have been resettled so far.¹⁵ There have been multiple displacements of the same people in some cases. Yet, no institutional mechanism is in place to deal with such cases coherently and consistently. This perhaps is the single most important cause of unrest among the tribals and therefore has to be addressed on a priority basis.

One important feature of the latest GoI policy on R&R is that it applies only to projects that displace 500 families in the plains areas and 250 in the hills and scheduled areas. This militates against natural justice and implies that

¹⁵ Walter Fernandes & Vijay Paranjapaye (1997) : Rehabilitation Policy and Law in India : A Right to Livelihood.

tribals living as they do in disbursed hamlets will fall between the cracks even vis a vis the R and R policy document.

The Committee strongly recommends that the principle of equity and natural justice apply to all PAPs indiscriminately and there should be no floor or minimum level for the R and R policy to be in force. If this is not amended, this criterion will adversely affect the tribals who are already disadvantaged leading to the tribal families dispersed in smaller numbers living in double jeopardy. Thus even if the number of families is less, the policy must apply to them. The salient features of the national R&R policy in relation to tribals are listed below.

1. Each project-affected family of ST category shall be given preference in allotment of land.
2. Each Tribal PAF shall get additional financial assistance equivalent to 500 days minimum agriculture wages for loss of customary rights/usages of forest produce.
3. Tribal PAFs will be re-settled close to their natural habitat in a compact block so that they can retain their ethnic, linguistic and cultural identity.
4. Tribal PAFs shall get land free of cost for community and religious use.
5. Tribal PAFs resettled out of the district or taluk will get 25% higher R&R benefits in monetary terms.
6. The Tribal Land alienated in violation of the laws and regulations in force on the subject would be treated as null and void and the R&R benefits would be available only to the original tribal landowners and not those who have come to enjoy occupation through illegal or unfair means.
7. The Tribal families residing in the Project Affected Areas enjoying fishing rights in the river/pond/dam shall be given fishing rights in the reservoir area.

The National Advisory Council has suggested certain modifications in the National Policy on R&R with a view to giving it a greater relevance to the actual situation of tribals. The salient recommendations of the NAC are as follows:

1. Whenever a project displaces tribal communities, the tribals must preferably be resettled in a zone adjacent to the affected area in consonance with their social, ecological, linguistic and economic affinity.
2. All tribal communities must be rehabilitated strictly in compliance with the ILO- 107 Convention.
3. Efforts must be made to ensure that all tribal families are resettled together to the extent possible. The minimum unit for relocation must be a hamlet or a clan.

4. Special drive to ascertain rights of all tribals before the commencement of the land acquisition proceedings must be undertaken on a compulsory basis.
5. Shifting the cut off date beyond 1980 with regard to regularization of tribal settlements in forests and extending R&R benefits to tribal families in the event of their relocation/eviction must be undertaken.
6. 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.

Michael Cernea, R&R Advisor to World Bank for over three decades has enumerated the eight fold impact of displacement on tribals: landlessness, joblessness, homelessness, marginalisation, food insecurity, increased morbidity and mortality, loss of access to common property & services and social disarticulation. In his view every case of displacement is not justified and even when displacement is planned, mass impoverishment itself is not a necessary outcome and therefore should not be tolerated as inexorable'. Cernea advocates land for land as the most successful strategy and views compensation in cash an inadequate measure as it generally fails to ensure income restoration.

While projects are needed for development, displacement of large numbers of people to accommodate the projects is a matter of serious concern as the displaced end up being the worst sufferers.

Land Acquisition in Scheduled areas and PESA:

Acquisition of land in Scheduled V areas is supposed to be done in keeping with the provisions of PESA. In Sub-Section (i) of Section IV of PESA Act 1996 it is provided that the Gram Sabha or the Panchayat at the appropriate level shall be consulted before making the acquisition of land in the scheduled areas for development projects. Despite almost ten years since the enactment of PESA, it is a shocking inditement of state policy intent that detailed executive instructions have yet to be issued by Govt. of India to the State Governments to describe the modalities of consultation with the Gram Sabha or with the Panchayat where more than one Gram Sabha is involved. The procedure to be followed for acquisition of land in Schedule V areas was deliberately made difficult so as to discourage projects which displaced tribals. For instance, if actually applied, PESA mandates that the companies which require land must produce a letter of consent from each of the concerned Gram Panchayats, in favour of the proposed acquisition of land.

It has been seen that Gram Sabha meetings are held in a casual and perfunctory manner without giving any scope to the villagers to discuss all the issues and take a conscious decision for parting with their land. Thus a laudable Act such as PESA has not been able to achieve the objective it was designed to achieve.

Of special significance in this context is the case of tribals not having records in support of their possession of land. As such the people belonging to this category are deprived of benefits on account of acquisition of land. When it comes to acquiring land and awarding compensation, there is complete reliance on documentary evidence of possession rather than on the traditional occupation of land by tribals.

Forest laws and land rights of forest dependent people:

The forest areas of many States are co-terminus with tribal areas. Therefore the relationship of tribals with forests and forestland determines their livelihood opportunities. Because of a large chunk of forests land being declared as reserve forests, protected forests and sanctuaries, the land traditionally occupied by tribals does not remain their own. They are considered to be illegal occupants.

Though the Forest Conservation Act, 1980 was enacted with the objective of protecting the forests and making diversion of forest land difficult, as a result of the operation of the Forest Conservation Act, many tribal habitations in forests could not be regularized and tribals were deprived of normal livelihood opportunities and benefits to which they would have been entitled in the normal course. The forest laws and laws relating to national parks and sanctuaries make it difficult for the tribals to eke out their living even when such use of forest resources would be in the interests of conservation itself. Between 1950 and 1980, 43 lakh hectares of forestlands were diverted for non-forestry purposes. Only half of this was for agricultural purposes.

Recently in the case of Orissa, the Hon'ble Supreme Court has conditionally allowed regularization of some of these habitations for which proposals had been submitted to the MoEF. This is a welcome development. It is to be seen how all such cases from various States can also get regularized as early as possible.

Even though distinction is made between pre-1980 and post-1980 encroachments, these differences are quite immaterial at the ground level. The circumstances and reasons may be the same for both types of encroachments, but the Forest (Conservation) Act provides a legal remedy only for encroachments prior to 1980. It is a matter of record that a large number of pre-1980 encroachments, running into hundreds of thousands of hectares, have

not been regularized even after 25 years. Finally, Government assumes that eviction of people from forests is the only solution to the problem of encroachment. However, there is no policy or remedy on what to do with evicted people of the post-1980 period.

Encroachment in 2002 (in lakh ha.)

Andhra Pradesh	3.413
Assam	2.547
Chhattisgarh	1.504
Karnataka	1.090
Maharashtra	0.936
Madhya Pradesh	0.728
Orissa	0.756
Kerala	0.459
Jharkhand	0.339
Uttar Pradesh	0.252
Uttaranchal	0.104

Source: VK Bahuguna, IG Forests, Presentation on problems of Encroachment on Forest Lands RUPFOR Series number 3, presented at Van Vigyan Bhavan, new Delhi, 15 November, 2002.

Historically, the tribal communities have been living in forests and for centuries nature, wildlife and human habitation survived with a perfect symbiotic relationship. However, with rapid deforestation and environmental degradation and rising environmental activism in late 1970s and early 1980s, the government decided to "eliminate human interference in the forests. What was implied was elimination of felling by the forest department or timber lobby, but it worked out as elimination of tribal forest-dwellers from the dense forests."¹⁶ Today, India has 54 National Parks with about 21,003 sq. km of area and 372 Wild Life Sanctuaries with about 88,649 sq. km of area.

The members of the Subgroup believe that the interest of forest dwellers and wild life need not clash. Rather they can be harmoniously blended, as has been the experience over the years.

Strictly speaking a tribal family may not be treated as displaced if he has not been dispossessed of any land; but in real terms, if access to forests is denied, the tribal family is deprived of one of its main sources of livelihood.

¹⁶ (Report of the Expert Group on Prevention of Alienation of Tribal Land and its Restoration, Ministry of Rural Development, GoI – 2004 pp 108-109)

MINING AND TRIBAL LAND

It so happens that tribal areas of India are also mineral rich areas. Tribal families bear a disproportionate brunt of the adverse effects of mining. Either their land is acquired or it is rendered useless due to the adverse effects of mining operations in their close vicinity.

By the very nature of mining activity areas have to be demarcated thus excluding normal day-to-day activities of tribals. The use of explosives in mining activities puts people at risk, sometimes making their existence difficult. Post-mining reclamation of land does not get due attention as has been seen in many mineral rich areas of Orissa, Jharkhand and Chhatisgarh etc.

MIGRANT LABOUR

A large section of the tribals belong to the category of migrant labour. These people go to different places in search of work and settle down in semi-permanent settlements in areas where job opportunities are available. These tribal groups do not have any land resource of their own in the new area of settlement. Their semi permanent existence goes un-noticed and un-recorded. A special dispensation is required for these groups.

The Sub-group feels that un-objectionable encroachments in the rural areas should be settled in favour of such migrant labourers, in case the settlement is of some minimum duration, for example 5 years or so. Similarly in the urban areas and semi-urban regions, areas should be demarcated for settlement of tribals who come in search of work and have to build their accommodation on an almost permanent basis. It is necessary that the cohesion of these groups is not disturbed and it would be ideal if such settlements come up in compact areas. These settlements should be converted into Planned Settlements.

SECTION - III

Recommendations

(i) 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 not by the concerned project authorities only, but also by a neutral third party agency/expert body consisting of experts and industry representatives.

(ii) It should be ensured that land acquisition is not done in a mindless and aggressive manner. The Central Land Acquisition Act of 1894 and the Central

Coal Bearing Areas (Acquisition & Development) Act 1957 should be amended in the line of the provisions of PESA. Specifically prior to serving individual notices to the landholders, the consent of Gram Sabha/Palli Sabha should be obtained. In view of the fact that coal bearing areas are predominantly in Scheduled Areas, there is a strong case for a separate land acquisition act for such areas with the provisions of PESA duly reflected. PESA also provides for consultation in the case of resettlement and rehabilitation, which also needs to get reflected in the Land Acquisition Act as well as Coal Bearing Areas Act.

(iii) The Land Acquisition Act should be amended to incorporate the 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. As per the PESA Act the consent of the Gram Sabha has to be made mandatory for major minerals also. The Mines and Minerals (Development & Regulation) Act 1957 should be suitably modified to reflect the above provision. The States should modify their PRI Acts to reflect the land acquisition provision as provided in the Central Act.

Impoverishment risks as enumerated by Cernea are hardly addressed by the project planners during planning stage that enforces displacement. Absence of risk recognition/assessment at the planning stage has resulted in a vicious cycle of unending crisis and hardships for the displaced persons. Risks must be addressed comprehensively. Besides, sincere efforts of project management are required for regeneration of community institutions in new locations, which would ensure social inclusion of the new settlers and prevent social disarticulation. Long term planning is required to prevent food scarcity risks, which is more pronounced in case of vulnerable groups (children, elderly, pregnant women, etc). Project management should emphasize organizing displaced persons and ensure collective help to the most vulnerable groups in the new location.

(iv) Pending legislation on the Central Act on land acquisition and incorporating the provisions of PESA, the State Governments with scheduled areas should utilise the flexibility provided in the Constitution and through the Tribes Advisory Council and the Governor of the State should modify the Land Acquisition Act to provide for consent of the Gram Sabha prior to the acquisition of land in the Schedule-V areas.

(v) 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. The Sub Group endorses the recommendation made by the Expert Group on Tribal Land Alienation with regard to enjoyment survey. Survey of the hill slopes up to

30⁰ should be mandatorily done in the States with Schedule areas and such lands should be settled in favour of tribals doing 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 JFM irrespective of the classification of the Podu area.

(vi) In Orissa and Rajasthan minor mining concession rules should be modified to reflect the provision requiring consent of the Gram Sabha/Palli Sabha for each. Specifically the provision should lay the onus on the mining departments for obtaining NOC and this should be done after the Gram Sabha has been provided with the map of the areas to be mined and information, which is relevant to this. The Gram Sabha should be empowered to take an informed decision.

(vii) All tribal states should provide a share of the royalty to the Gram Sabha, as in case of Chhatisgarh. There is a need to develop a mechanism whereby the mines owner is held responsible to the villagers even after the NOC is given. This could be in the form of an agreement between the Gram Sabha and the mines owner laying down ground rules for mining. 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. The lack of transparency in the process of land acquisition needs to be addressed. Even when the villagers are receiving notices as required by law, they do not get a clear picture of the project details and the land that is being acquired. A sensitization programme for officials of different departments to the needs of the tribals may be a useful step in this direction.

(viii) Resettlement and rehabilitation should be completed prior to the commencement of the project. Already committees have been prescribed to oversee R&R. The Committee should consist of government officials but also prominent civil society institutions as well as representatives of the displaced families. Any land acquisition within the village boundary should require the consent of the Gram Sabha/Palli Sabha. The Gram Sabha should not be held with a pre-determined decision. Neutral observers should be there to oversee the Gram Sabha proceedings. It may not be feasible to explain all aspects of a project to the affected persons in one meeting of the Gram Sabha. Therefore, the authorities should be prepared to conduct the meeting in phases so that all the details are properly explained to every one concerned and the people can make an informed choice.

(ix) The recent Orissa R&R Policy has some progressive features such as unmarried daughters/sisters more than 30 years of age should be treated as separate families. Similarly, physically challenged persons irrespective of age and sex are to be considered as separate families. Orphans who are minors, widows and women divorcees are also to be treated as separate families. These features should be replicated in other States. Ideally all daughters should also be treated at par with sons when it comes to rehabilitation benefits.

(x) In the Orissa Policy it is said that no physical displacement shall be made before completion of resettlement work. The Collector would issue the certificate of completion of resettlement. The Sub-Group suggests that it would be better if the certificate of completion is issued not only by the Collector but also by a Committee headed by the Collector having civil society institutions and representatives of displaced families as members. Alternatively Rehabilitation Advisory Committee for the relevant project can also issue this certificate. The Orissa Policy also talks about additional compensation to the extent of 50% of the normal compensation in case of multiple displacements. This should be replicated.

(xi) In some states having high concentration of STs, permission of a designated competent authority is required before a tribal can dispose off his land. There is a ban on the sale of tribal land to non-tribals in certain states like Orissa. In states where sale of land is possible with the permission of competent authority, sometime unscrupulous competent authorities have misused the power and permission has been accorded in an indiscriminate manner. As a result, unscrupulous elements have been able to take away large chunks of tribal land in certain areas. Imposing a ban on the sale of land by the tribals is also an extreme position. Under such dispensation, genuine sale of land would not be possible. Therefore, the Sub Committee felt that sale of tribal land could be permitted by a competent authority senior enough to be able to exercise judgment in favour of the 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 Govt. land in the tribal areas for agriculture and homestead purposes should be more than proportionate to the percentage share of tribals in the population of the village.

(xii) 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.

In conclusion, we have to locate the problems of tribal land alienation within the overall developmental paradigm and specifically in the political institutions created by the State to protect and respect tribal life and culture. The matter assumes great significance and urgency given the fact that over

170 districts in the country out of 607 are supposedly out of the ambit of control of the State and are controlled by extremists/Naxalites. The sub group is of the opinion that the Naxalite problem should not be viewed only as a law and order problem. While Naxalism in the aggressive form is the manifestation of desperation, the same problem is reflected in large-scale out- migration from PESA areas and relocation of the tribals in clusters in the hinterland of urban areas. Monitoring of the above has to be taken out of the purview of the civil service to civil society institutions, i.e. grass-root institutions with credibility. Due to the present nature of routine functions of regular permanent civil service, the need for committed grass roots organizations assumes greater significance.

For issues relating to protection of land, water and other common property resources of the tribals, long term solution can come only through patient, committed organizational processes. The only way this can be constructively achieved is through institutionalized collaborative arrangements between government and peoples' movements. For this purpose, the committee strongly recommends that an independent body be formed in the Planning Commission, which should include representatives of State governments. The same Group should be able to appoint reporters and special commissioners to conduct investigations and submit reports. If any State is not implementing the provisions of PESA in letter and spirit, Government of India should not shy away from issuing specific directions in accordance with its powers to issue directions under proviso 3 of Part 'A' of the Fifth Schedule.

One of the ways in which implementation of PESA provisions can be ensured at the grass root level is to establish a forum at the Central level so that violation of the provisions of the enactment, could be brought before this forum and necessary correctives applied. The Planning Commission may take the initiative to work out the details of composition and functions of the Forum, so that it starts functioning as early as possible.

The true impact of PESA will be felt on the ground when the tribal community is able to use grass roots institutions such as the Gram Sabha, Palli Sabha and elected PRIs to articulate demand for home developments, livelihoods and social services. This is possible only when upfront investment is made in the capacity building of grass roots institutions such as Gram Sabha, Palli Sabha, PRIs etc.

The concept of the PESA legislation in respect of land acquisition, rehabilitation, restoration of land etc. is not reflected in the majority of State legislation, depriving of Gram Sabha the powers which were intended to be conferred by the Central legislation. The State wise review of the relevant

legislation is required to bring this critical part of the law in strict conformity of the Central Legislation.

As in the case of primitive tribal groups of MP, namely the Sobaria, Bhariaga and Banga who were given exemptions to the 1980 criteria for preventing cultivatory possession of forest land and were allowed cultivatory possession of such lands, similar orders should be issued in respect of other PTGs in Schedule V areas.

The tribal land which have been alienated in the past decades through Government programmes, unscrupulous economic transactions/maneuvering, change of records of rights, setting up Adivasi agricultural co-operative societies etc. should be identified and their restoration to the original title holders (or their heirs) should be taken up on priority basis in all PESA areas.

Traditional and legal rights over common property resources; especially forests should be listed and strictly adhered to. Nistar Patraks (entitlements over Timber, Fodder etc.) have been executed in very States but are not honoured on the ground leading to harassment and inconvenience of the community.

A time bound programme of Lok Adalats/Nyaya Panchayats should be organized in a time bound manner to free the tribal house holds from the burden of legal complications arising out of not-so-serious violation of Forest laws.

Institutions created for protecting the interests of the tribals, like the Governor, Tribes Advisory Councils in the States and Tribal Developmental Agencies are not responding to the interests of the tribal people, so this Group recommends that these institutions should be made effective and accountable.

ANNEXURE -I

1. Prof. B.K. Roy Burman
2. Sanjoy Patnaik
3. Achyut Das
4. C.R Bijay

ANNEXURE -II

1. Report of the Expert Group on Prevention of Alienation of Tribal Land and it's Restoration - Ministry of Rural Development, GoI, New Delhi. - 2004
2. Self-Governance for Tribals - Volume-I, National Institute of Rural Development, Ministry of Rural Development, GoI, Hyderabad - 2005
3. Resolution dated 17.2. 2004 issued by the Ministry of Rural Development (Deptt. of Land Resources)
4. Draft National Development, Displacement and Rehabilitation Policy-May 2005 of National Advisory Council.
5. Tribal Development in India - Myth and Reality, 1994 by L.K. Mohapatra
6. Rehabilitation Policy and Law in India: A Right to Livelihood, Econet-Indian Social Institute by Walter Fernandes & Vijay Paranjpye
7. Environmentalism and the Left - Contemporary Debates and Future Agendas in Tribal Areas of 2004 by Archana Prasad.
8. Report of the Study Group on Landholding Systems in Tribal Areas, GoI, Planning Commission, 1986.
9. Workshop Papers (2002) on Engendering Resettlement Policies and Programmes in India, India International Centre, New Delhi, organized by Action Aid, New Delhi and IDS, Sussex (unpublished).
10. Policies for Tribal Development: Analysis and suggestions by Dr.N.C.Saxena

REPORT OF SUB-GROUP IV ON LAND MARKET, CONTRACT FARMING AND HOMESTEAD RIGHTS

Sub-Group Members:

Mr. V. S. Sampath

Prof. Bina Agarwal, Prof. of Economics, Institute of Economic Growth, Delhi

Dr. T. Haque, Chairman, Commission for Agricultural Costs and Prices

Mr. Kancha Illaiah, Professor of Political Science, Osmania University, Hyderabad

Background documents search: Amrita Roy and Kaveri Deb (JNU students)

TERMS OF REFERENCE FOR SUBGROUP IV

In largely agrarian economies, land has been and continues to be the primary means of production and the main source of livelihood for millions across the developing world. Not surprisingly, therefore, after India's Independence, agrarian reform and agrarian relations received major policy attention in the Five Year Plans. A brief outline of how these issues were approached in previous Five Year Plans is given in Annexure I. However, a range of new questions and concerns have arisen, especially over the past decade in the context of economic reform, that require a new focus and approach to the issue of rural inequality and agrarian relations. Subgroup IV focused on the following aspects as delineated in its terms of reference.

Terms of Reference :

1. To examine the development of land markets in the present context and suggest measures for their improvement, keeping in view the interests of small and marginal farmers (ToR 6);
2. To look into the pros and cons of contract farming to protect the interests of small and marginal farmers and landless agricultural workers and to make them economically viable, retaining their autonomous status as free economic agents in the present Indian context, particularly in view of adverse effects noticed in some Latin American and Caribbean countries (ToR 7);
3. Recommend measures to prevent the sale and purchase of agricultural land for speculative and non-agricultural purposes (ToR 8); and
4. Suggest measures for comprehensive implementation of homestead rights (ToR 9).

This Report begins by briefly stating the vision and approach of this sub-group in dealing with the ToR and then outlines in detail its analysis and recommendations, organized in three sections, with a clubbing of ToR (1) and (3) under Section I, since these two issues are closely intertwined:

- Section I: This deals with both ToR 6 and ToR 8 since they are closely related, viz, the issue of land markets and the use of agricultural land for speculative and non-agricultural purposes.
- Section II: This deals with ToR 7, viz. contract farming and related issues.
- Section III: This deals with ToR 9, viz. homestead rights.

VISION AND OVERALL APPROACH

Our underlying approach to the issues under deliberation has two overarching elements:

- Building institutional and legal mechanisms for protecting the small and marginal farmers
- Following a group approach to land access and use, as opposed to the individual- oriented approach followed in large part thus far. There is today a great deal of evidence that functioning in groups can improve the bargaining power of the poor and vulnerable and also prove economically more efficient and viable in terms of production.

Our recommendations on each of the terms of reference keep these aspects in mind.

SECTION I: LAND MARKETS AND LAND ACQUISITION

Land markets are the conduit for land transfers through sale, lease, mortgage, and so on. For this report we examine rural land markets from the perspective of small and marginal farmer interests in relation to the following types of land transactions:

1. Normal private land market transactions in rural areas, in which tenancy is an important sub-category
2. Land transactions in the urban periphery, especially speculative acquisitions
3. Agricultural land acquisition for projects (a) by the corporate sector (b) by of agricultural land and government acquisition of agricultural land for social and physical infrastructure projects, such as roads, railways, schools, hospitals, airports, etc.

(1) Normal Rural Land Transactions, especially tenancy

The sale and purchase of agricultural land among cultivators constitute normal land market transactions. Studies indicate that a large number of such transactions are among small and marginal farmers and in irrigated areas. A recent study by NIRD based on 16 villages spread over four districts in Orissa and Bihar indicates that many small and marginal farmers are compelled to sell their land mainly due to two factors: (i) emergency family needs caused by illness, marriage, and similar events; and (ii) uneconomic holding size and/or fragmented holdings.¹⁷ Typically small and marginal farmers have poor access to credit, inputs, new technology, information on innovative farm practices, etc., thus often making farming nonviable. The study also reveals rather high rates of tenancy (18% in Bihar and 27% in Orissa). The terms of tenancy vary according to the land's irrigation status (usually irrigated lands are leased-in on a fixed rental basis and dry land on a sharecropping basis). Interestingly though, in Bihar not just the majority of sellers but also most of the buyers in open markets are small and marginal farmers. The buyers among such farm families tend to be those who get large remittances from migrant family members which they use for purchasing land to increase their holding size. In Orissa, farmers of all size categories are engaged in

¹⁷ Srivastava, S.C., C. Radhika Rani, and B.K. Thapliyal (2006): Agrarian Relations and Rural Poverty, NIRD.

sale and purchase, although the relative magnitude varies from village to village, depending on their irrigation status and development levels (Excerpts from the executive summary of this study are given in annexure II).

In contrast to Bihar and Orissa, however, in the country's more prosperous belt - Punjab, Haryana and Western UP - the pattern is more toward small and marginal farmers either selling or leasing out their land to medium and large farmers. In other words, reverse tenancy is common here.

The lease market basically works through tenancy. In the last five decades, tenancy reforms in India have gone through many phases and regional variations. In some states, tenancy was prohibited and the effort was to confer rights of ownership to the tillers. Elsewhere tenancy was allowed, with an emphasis on recording the tenancy arrangement. Currently, as noted above, we see reverse tenancy in some states. Since land on most issues is basically a state subject, the legal provisions vary by state, as described below.

States can broadly be classified under two categories in terms of their tenancy laws:

- States where leasing is prohibited, except under restrictive conditions: these include Andhra Pradesh (Telangana region), Bihar, Himachal Pradesh Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Manipur, and Uttar Pradesh. In Kerala, J&K and Manipur there is a total ban on tenancy while the following states permit it under conditions noted in Table 1.
- States where there is no general restriction on leasing, but there are certain regulations, especially for acquiring ownership rights: These include Andhra Pradesh (Non-Telangana Areas), Assam, Gujarat, Haryana, Maharashtra, Orissa, Punjab and Rajasthan. Here the provisions for acquiring land rights are as follows:
 - (a) *Assam*: An ordinary tenant acquires the right of occupancy after three years of continuous possession and an occupancy tenant has a right to purchase leased land.
 - (b) *Gujarat and Maharashtra*: Tenants acquire the right to purchase leased in land even if the tenancy is less than one year old.
 - (c) *Haryana and Punjab*: Tenants acquires rights to purchase leased in land after six years of continuous occupation.
 - (d) *AP (Non Telangana) Orissa, Rajasthan*: there is no minimum period on the right to purchase land.
 - (e) *West Bengal*: Here sharecropping tenancy has been regularized and recorded under 'Operation Barga'.

Table 1: Categories of persons permitted to lease out land

State	Laws under which leasing is permitted	Category of persons allowed to lease out land
1. Andhra Pradesh (Telengana Area)	The Andhra Pradesh (Telengana Area) Tenancy and Agriculture Lands Act, 1950 (Section-7)	Disabled, Armed Forces Personnel; and land owners who own not more than three times a “family holding” may lease out land
2. Bihar	Bihar Land Reforms Act, 1961	Disabled: Armed forces; SC/ST/OBCs may lease out.
3. Himachal Pradesh	Himachal Pradesh Tenancy & Land Reforms Act, 1972	Minor unmarried women, widows, divorcees, the disabled, and defense personnel
4. Karnataka	Karnataka Land Reforms Act, 1961; (Section 5)	Soldiers or Seamen
5. Madhya Pradesh	Madhya Pradesh Land Revenue Code, 1959	Disabled, Armed forces personnel, and those imprisoned can lease out land. Others may also lease out for one year in any three years
6. Uttar Pradesh	Uttar Pradesh Zamindari Abolition and Land Reforms Act, (Section 157)	Disabled, Armed forces personnel, those imprisoned, and bonafide students

Both blanket bans on tenancy and giving tenants the right in some states/regions to purchase leased land have acted as a major deterrent for the lessee as well as the lesser, and obstructed access to land by the poor. These provisions also encourage concealed tenancy that is exploitative to the lessor.

At the time of Independence, nearly 36% of total cultivated area was under tenancy.¹⁸ Subsequently, as various NSSO rounds show, there was a steady decline across the country. In 1991-92, an estimated 9% of the total operated area was under tenancy (NSSO, 48th Round). However, the low level of recorded tenancy could be due to various factors such as concealed tenancy, problems in identifying and recording tenants, underreporting, etc. An important factor in the underestimation of tenancies is the outright abolition of tenancy in some states, notably in Andhra Pradesh (Telangana Region), Maharashtra, Gujarat and Uttar Pradesh. In practice, as smaller surveys show, the leasing of land is still widely prevalent in rural India and plays an important role in the rural economy.

Except West Bengal, which undertook this task under “Operation Barga”, no other state has done a comprehensive recording of tenancies and the unearthing of concealed/oral tenancies. Maharashtra (Vidarbha region) and Tamil Nadu have such provisions, but none have done appreciable work in this regard. Following West Bengal’s lead, recognizing tenancy to protect the interests of both lesser and lessee would be helpful in other states.

¹⁸ T. Haque (2000): “Contractual Arrangements in Land and Labour Markets in Rural India”. *Indian Journal of Agricultural Economics*, July- September.

Equally important we need a new approach - a group approach - to strengthen the ability of small and marginal farmers to operate in land markets: There is ample evidence that small and marginal farms are often economically nonviable when operating on an individual basis. This is amply borne out by an ongoing study at the National Institute of Rural Development (NIRD) based on samples from Karnataka, Andhra Pradesh, Jharkhand, and Bihar.¹⁹ In contrast, a group approach is found to help Small and marginal farmers improve their access to credit, and economize on the use of inputs and marketing costs thus making agriculture more productive and viable. This group approach has been especially tried and found effective with women's groups, including Self-Help Groups (SHGs). There are several examples of women cultivators leasing in land for both crop production and other activities like fish and vegetable cultivation.

Among the success stories illustrating the merits of a group approach for increasing the access of the poor to land markets is a programme launched jointly by the Government of India and the UNDP in Andhra Pradesh, Uttar Pradesh and Orissa. This programme promoted group access to land and collective cultivation by women and some 50,000 women were a part of this initiative.²⁰ Similarly NGOs such as the Deccan Development Society in Andhra Pradesh have successfully demonstrated that a group approach can help the poor gain access to land markets. They have promoted group leasing and purchase of land by poor dalit women as well as group cultivation in the Medak district of Andhra Pradesh. The programme is now functioning in 75 villages, with group leasing in 52 villages.

Our recommendations on the above issues are given further below. Meanwhile consider the issue of land markets in the urban periphery.

(2) Land Markets in the Urban Periphery

In recent years there has been a phenomenal increase in urbanization and the area under non-agricultural uses due to various development activities. More and more land has been transferred to housing, roads and railways, canals and other infrastructure, industrial activities, transport systems, recreational uses, irrigation and projects such as ports, airports, special economic zones, etc.

Between 1950-51 and 2000-01 land under urban use increased from 9.4 million hectares to 23.6 m ha. Also during 1981-1991, the population in urban agglomerates (with over one million people) grew by 45% (from 43.97 million to 64.01 million) and the land area under such agglomerates grew by 24% (from 5.8 million ha to 7.2 m ha). This does not include some of the fastest growing cities like Hyderabad, Ahmedabad, Surat and Vadodara due to non availability of data.

¹⁹ Thapliyal, B.K., S.C. Srivastava, Ch. Radhika Rani (forthcoming): "Institutional Arrangements and farming systems; Emerging options for small and marginal farmers", NIRD.

²⁰ See e.g. (1) Burra, N: "Empowering women for household food security: UNDP's experience", UNDP, Jan, 2004. (2) Government of India-UNDP: "Strengthening Natural Resource Management and Sustainable Livelihoods for Women in Tribal Orissa", Annual Report 2004-05. Institute of Management of Agricultural Extension, Siripur, Bhubaneswar, Orissa. (3) Ministry of Agriculture, GOI and UNDP: "Strengthening Natural Resource Management and Sustainable Livelihoods for Women in Tribal Orissa", 2004.

In many states the proportion of land under non-agricultural uses is higher than the all-India average (Table 2). Eight states - Andhra Pradesh, Madhya Pradesh, Uttar Pradesh, Bihar, Tamil Nadu, Rajasthan, Orissa and Karnataka - together account for over two-thirds of the land under non-agricultural use in the country.

With increasing urbanization, speculation in land markets around cities and towns has also grown. Real estate operators and dealers purchase prime agriculture lands at low prices and make fortunes by selling it to builders and urban dwellers at very high prices. Although it is difficult to get reliable data on the volume of agriculture land shifted to non-agriculture uses, the trend is unmistakable. This is happening despite laws in many states preventing such shifts.

This trend might continue, given that the current decade will see enormous expansion of infrastructure in the country. Already real estate operators/ dealers and others have started grabbing land around highways to benefit from price increases in the coming years. Similarly a number of industrial estates/townships are emerging across the country, and prime agricultural lands are being purchased by Real Estate Businesses. The gainers are often neither the farmers nor the end users.

Land transfers to non-agriculture also often cause environmental damage. Soil degradation and water contamination is common. Breweries operating in rural areas are a case in point. Similarly tanneries have been causing high water pollution in many areas. In Tamil Nadu there has even been a civil society movement against it. Even though companies are required to follow environmental safeguards they seldom do so.

Rural populations are usually unable to prevent land transfers, and suffer its indirect consequences in terms of loss of land-based livelihoods and environmental degradation. In most states the Urban Development Authorities formulate plans for city expansion and urban infrastructure growth. These plans are often known to the real estate brokers/builders but not to the land owners/farmers. This asymmetrical information enables the brokers/builders to speculatively buy land cheap.

Table 2: State-wise Area Under Non Agricultural Uses (2000-2001)

(Area in '000 hectares)

States	Total reporting Area	Area under non-agricultural uses	Area under non-agricultural uses as a percent of total reporting area
All India	306249	23569	7.73
Andhra Pradesh	27440	2624	9.56
Assam	7850	1070	13.63
Bihar (Incl. Jharkhand)	17330	2430	14.02
Chandigarh	7	4	57.14
Chhatisgarh	13787	679	4.92
Delhi	147	77	52.38
Goa	361	37	10.25
Gujarat	18812	1141	6.07
Haryana	4402	368	8.36
Himachal Pradesh	4547	314	6.91
Jamu & Kashmir	4505	291	6.46
Karnataka	19050	1312	6.89
Kerala	3885	382	9.83
Madhya Pradesh	30755	1889	6.14
Maharashtra	30758	1301	4.23
Manipur	2211	26	1.18
Meghalaya	2227	87	3.91
Nagaland	1589	66	4.15
Orissa	15571	999	6.42
Pondicherry	49	15	30.61
Punjab	5033	327	6.50
Rajasthan	34265	1740	5.08
Sikkim	710	97	13.66
Tamil Nadu	12991	1986	15.29
Tripura	1049	131	12.49
Uttar Pradesh (incl. Uttaranchal)	29767	2579	8.66
West Bengal	8688	1567	18.04

(3) Land Markets in Project-Affected Areas

The government is the major user of land for development projects and often acquires land from farmers for this purpose. However such acquisition has at least two effects: it shifts land to non-agricultural projects, and raises land values in the surrounding areas. Transactions on land surrounding the project area usually don't take place in the open market and are subject to insider information. In addition, there is competition among states for attracting industries. For this state governments often promise companies (both public and private) land at low rates. Sometimes the

companies also get much more land than they actually need. Farmers tend to be net losers in the compensation they receive.

There are state-level differences in the stringency of rules of land acquisition. Some states have lenient systems for transfer from agriculture to non-agriculture. For instance, in Karnataka after the application for acquisition has been put in if there is no response within 45 days the land is deemed to have been alienated.

Another problem is that such shifts bear no link between land alienation and town and country planning Act. There are also no integrated laws.

The methods of land valuation from farmers are also archaic. Under the Land Acquisition Act the person who loses his/her land in this way should get enough compensation money to be able to purchase an equivalent piece of land. But in practice the compensation given to the landowner is not only below the land's market price but it is also much less than that needed to purchase an equivalent plot. In addition, for big projects the acquisition is done over large areas, but the many who lose their livelihoods are not adequately compensated. Due both to inadequate compensation and livelihood loss there is sometimes great local resistance to land acquisition for the projects.

Another segment of landowners who lose out due to land acquisition for major projects are those owning land surrounding the project area. Like landowners in the urban periphery, these landowners often fail to gain from appreciating land values because they lack insider information. Again real estate middlemen who purchase such land from gullible owners make exorbitant profits.

For all categories of landowners there is need for devising methods of adequate compensation. The Land Acquisition Act is over a century old and its compensation clauses need examination and amendment. Basically, landowners who lose their land should get compensation based on prevailing market prices. In addition, there is need to provide an appropriate rehabilitation and resettlement package to compensate for livelihood loss. Land acquisition should be done only if the system can ensure that farmers face no consequential hardship.

Moreover, assetless families and individuals in the area (landless labourers, artisans, tenants etc) who have depended on the land of others for livelihoods and drawn on the local common property resources also lose their livelihoods and homes. They too need to be compensated to ensure their housing and livelihood security.

Overall a public debate is needed on the issue of land transfers from agriculture to non-agriculture. We need information from the companies who get this land how many local jobs they will create and what other benefits the displaced families will get, what the ancillary industry linkages are, etc. At present, there is little transparency or explicit information on these counts.

Given that insider information is used in all kinds of ways, especially to get shares in companies that are going to set up the project and people have benami transactions in acquired land, we need to have strict disclosure mechanisms. Companies wanting to acquire land must also provide shareholder details.

The private sector apart, the government also acquires land in the name of “public purpose” but there is little clarity on the definition of public purpose. This should be spelt out. Where possible, the government should acquire land minimally, say only for basic infrastructure such as roads, sewage lines, etc.; the rest could be in the private sector. It could be a stepwise process. For instance, suppose x acres have to be acquired to set up an IT park. This first needs the drawing up of a comprehensive town and country plan. This plan should be shared with the public. Local hearings should be held and the plan put to vote and approved only when say two-thirds vote for it. Also there needs to be a benchmark price offered to those whose land is taken over.

Another route could be to have the project authority or the Urban Development Authority act as the sales intermediary between the companies wanting to obtain the land and the farmers. The land could be sold through, say, an open auction so that the benefit of value appreciation would go to the genuine landowners.

RECOMMENDATIONS FOR SECTION I:

LAND MARKETS, LAND TRANSFERS TO NON AGRICULTURAL USES

(A) Recommendations on rural land markets, tenancy etc

1. Recognizing that functioning in groups can provide gains both in terms of reducing the risk and vulnerability of small and marginal farmers and increase their farming efficiency, it is strongly recommended that we follow a group approach to farm investment and cultivation where possible. Indeed, a shift from an individual based approach to a group approach should be a key element in any tenancy reform, and in any scheme for reviving land markets. This will greatly help the poor function more effectively in land markets, and undertake viable farming.
2. To facilitate group investment and cultivation, there should be enabling provisions in all poor programmes. 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, either in terms of collectively purchasing or collectively leasing in land in groups. Institutional credit also should be made available by way of medium or long-term loans for group investment and farming activities.
3. Poor dalit women should be especially assisted to purchase or lease in land in groups through targeted schemes. Funds from development programmes like SGSY could be used in this way, or a separate scheme set in place for this purpose. Also groups of poor women should be helped to obtain land on medium or long-term leases (15-20 years) for group farming.
4. 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 of this in Bihar where NGOs have helped tribal women lease in land from the government on 10-year leases for fish ponds.

5. In farmer's cooperatives and other related institutions there should be special provisions and rates for poor farmers, and especially 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.
6. To enable the poor and especially women to increase their farm productivity, there needs to be gender sensitizing training programmes for village level workers and those delivering farming information and technology.
7. There is wide variation in tenancy laws across the states. Many states either ban tenancy or allow it only under restricted conditions. As a result, concealed or oral tenancy is rampant which is exploitative for small and marginal farmers. There is need for have uniform tenancy laws in all the states. The laws should be liberal and allow leasing of land. However, there should be legal safeguards in the lease contracts that would protect the small and marginal farmers, and a clear recording of tenancies. At present, landowners don't record tenancies out of fear of losing land ownership. Oral tenancies leave the small tenant vulnerable to being evicted. He/she also cannot access institutional credit forcing them to borrow from moneylenders at high interest. Under the 73rd Constitutional Amendment land management devolves on Panchayats. The task of recording tenancies should be placed under the Gram Panchayats and the latter authorized to issue tenancy certificates which could be used for various purposes, including bank borrowing.

(B) Recommendations for land transfers to non-agricultural use

1. Indiscriminate, large-scale, ecologically damaging, socially harmful transfers of agricultural land to non-agricultural use should be checked.
2. To reduce speculation in land markets, the following measures should be taken:
 - (a) 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.
3. Farmers should be entitled to their share in rising land prices in the wake of urbanization. For this
 - (a) it is necessary to publicize urban development plans in the villages and make them more transparent.
 - (b) The gram panchayat could also be mandated to provide information on potential market prices for land to farmers.
 - (c) For farmers being asked to sell their land for urban use, the Urban Development Authority could take responsibility for auctioning such land periodically on behalf of the farmers/landowners so that they get the right market price for it.
4. In any transfer of agricultural land to non-agricultural uses, we need to build in environmental safeguards so that this shift does not lead to long-term soil degradation, or water contamination or groundwater depletion (e.g. where a project uses so much water that the water table drops

permanently). All medium to large-scale transfer of land from agricultural to non-agricultural use should thus be subject to an environmental protection clause, and its strict implementation

(C) Recommendations on company and government land acquisitions

1. Land Acquisition processes

(a) For land acquisition by a company there should be clearly laid-out procedures and transparency. The company should provide facts and figures to those losing land on how the project will help them and the community in terms of job creation, etc.

(b) 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.

(c) Government land acquisition in the name of “public purpose” should be minimized to the extent possible, such as for providing only basic infrastructure such as roads, sewage, etc. A stepwise approach should be followed starting from the drawing up of a comprehensive town and country plan. This plan should be shared with the public through local hearings. After the hearings the plan should be put to vote and only if two-thirds of the public agree should it be passed.

2. Compensation to original owners

(a) Steps are needed to ensure that the original landowners share maximally in the benefits of the projects for which the land acquisition takes place. The compensation for land taken over should be at the real market price and not the government fixed one. There should be a benchmark minimum price also for such land.

(b) The government should evolve an arrangement by which a neutral authority, possibly the respective Urban Development Authority arrange a suitable method by which land needed by companies can be disposed of so that the benefit of land value appreciation goes to the genuine land owners and not to speculators.

(c) The Land Acquisition Act should be amended to incorporate compensation not only for the landed individuals but also for those who are landless but dependent on the land for livelihoods, for homes, and items obtained from local common property resources. In other words, landless labourers, artisans, tenants, etc. should also be compensated with housing and livelihood security.

(d) All compensation should follow the principle of gender equity. Hence, for instance, in households that are compensated for land acquired, spouses of owners should be given half the compensation. If the land is jointly held with the extended family, gender equity should again be ensured.

3. Rehabilitation of those displaced by government land acquisition for development projects:
- (a) A detailed rehabilitation/resettlement plan must be formulated with sufficient financial earmarking.
 - (b) 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.
 - (c) The displaced must be guaranteed a minimum living standard (above poverty line) after rehabilitation. Rehabilitation should include access to adequate infrastructure in terms of health, education, water and sanitation provisioning and community interaction.
 - (d) 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.
 - (e) 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.
 - (f) 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.
 - (g) 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.²¹ 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.

SECTION II: CONTRACT FARMING

This section deals with TOR 7, namely examining the economics of contract farming and recommending measures to protect the interests of small and marginal farmers and landless agricultural workers.

Contract farming refers to a system of farming in which agro-processing or trading units enter into a contract with farmers to purchase a specified quantity of any agricultural commodity at a pre-agreed price. By entering into a contract, the company reduces the risk of not getting the required quantity of needed raw materials and the farmer reduces the risk of fluctuating market demand and prices for his/her produce. Small farmers in India are generally capital starved and

²¹ Agarwal, B. (2002): "The Family in Public Policy: Fallacious Assumptions and Gender Implications", in Facets of the Indian Economy ed. Rakesh Mohan (Delhi: Oxford University Press).

cannot easily make major investments in new technical inputs. If the contracting company provides them quality inputs and technical guidance, contract farming could fill this gap. Also contract farming is different from corporate farming, as the land rights of contract farmers remain unaffected and fully protected. Potentially, therefore contract farming could work to the benefit of both parties in the contract. In practice, however, there are several obstacles to the small farmers' ability to realize this potential for which government support and institution building could help, as outlined further below.

In India, commercial crops like cotton, sugarcane, tobacco, tea, coffee, rubber and dairy enterprises have been under contract farming to some extent for a long time. In recent years, crops such as tomato, cucumber, chillies, paprika and to some extent potato and even basmati rice and groundnut have come under contractual arrangements with centralized processing and marketing units. Notable examples of companies undertaking this are Hindustan Lever Limited in tomato in Punjab (they took over from Pepsico in 1995); Pepsico in basmati rice (in Punjab), Maxworth fruits in horticultural crops (in Andhra Pradesh, Karnataka and Tamil Nadu), VST National Products Limited in cucumber, paprika (in Andhra Pradesh), Cadbury in Cocoa (in Karnataka), and NDDDB in bananas (in Maharashtra). In addition, the National Seeds Corporation of India has entered into contracts with farmers in several regions for the production of quality seeds for various crops. Moreover, in dairy, aquaculture and poultry, etc several small companies have initiated industry-farmer linkages through contractual arrangements.

The effects of these initiatives on small and marginal farmers are mixed. On the positive side, some recent case studies show that contract farming has notably improved the yields and incomes of farmers and brought gains for both the farmers and the companies.²² Also the growth of agro-processing units has provided new employment opportunities. On the negative side, however, there are problems and constraints which leaves the small and marginal farmers especially vulnerable.

A range of global literature, including from Latin America, and India, provides a wealth of experience through case studies.²³ A general picture that emerges is that typically companies enter into contracts with larger farmers and not with small and marginal farmers.²⁴ Where they do involve small farmers, the latter are vulnerable to exploitative deals with companies dictating their terms.²⁵ Typically the terms do not protect the farmer against the risk of crop rejection on grounds of uneven quality, etc.; the price given is often low; and capital and input transfers are rare. Also there are negative gender effects. The workload of women in farming households increases while the cash generated tends to be controlled by the men.²⁶ The shift from subsistence to commercial farming also

²² In the non-Indian context, this view is especially propounded by Goldsmith, A. (1985): "The Private Sector and Rural Development: Can Agribusiness Help the Small Farmer?" *World Development*, 13: 1125-261.

²³ For a good overview of some of the issues and a detailed examination of the Mexican situation, see specially, Runsten, David and Nigel Key (1996): "Contract farming in developing countries: theoretical aspects and analysis of some Mexican cases". Economic Commission for Latin America and the Caribbean, RLC/96/14-RLCP-01. For overviews for India, see especially: Singh, Sukhpal. 2000. "Theory and Practice of Contract Farming: A Review", *Journal of Social and Economic Development*, 3 (2): 228-46; Kumar, Parmod, 2006. "Contract Farming in India: Options and Implications for Small and Large Farmers", Institute of Economic Growth working paper No. E/267/2006.

²⁴ Singh, Sukhpal. 2000. op. cit.

²⁵ Warning, Matthew, Key, Nigel, and Wendy Soo Hoo. "Small Farmer Participation in Contract Farming", draft. These authors examine the reasons for small farmer exclusion from cases studies relating to Mexico and Senegal.

²⁶ Collins, J.L. (1993): "Gender, Contracts and Wage Work – Agricultural Restructuring in Brazil's Sao Francisco Valley", 24 (1): *Development and Change*, January, pp. 53-82.

carries the risk that the money will not be spent on basic food items which were earlier grown on the farm for self consumption. This can have adverse nutritional consequences. Intrafamily tensions have also increased in some countries.²⁷

Moreover, in India, except for Haryana, there are no laws to guide the terms of the contract. In other states, the existing contract farming arrangements are usually informal in nature. In case the contract is violated by either side, there is no legal protection. In any case, small tenant farmers including sharecroppers have insecure land access, since under existing land reform laws tenancy is not protected in most states. Hence, legalization of tenancy would be necessary to enable them to participate in contract farming.

Given that contract farming is likely to expand over time, measures are essential to protect the interests of the small and marginal farmers so that they can gain by this process rather than be exploited by it.

It is also notable that the rare examples where small and marginal farmers have gained are those where they have entered into contracts on a collective and not an individual basis. For instance, in Punjab a consortium approach was followed by the Mahindra Shubhlabh Services Ltd for maize farming, and a number of safeguards for risk protection have been built into the contract. Again in South India, contracts were signed with women's self help groups for tea cultivation by the United Planter's Association of South India, where some companies buy 90% of their tea from SHGs.²⁸ Basically, unless the small and marginal farmers are organized into self-help groups or co-operatives or associations, their bargaining power vis-à-vis the company will remain weak. Such a group contract would help the small farmer, and contracts given to women's groups could ensure that both men and women gain.

A comprehensive legal framework and guidelines should also be developed to ensure basic safeguards, such as a fair price for the produce, procedures for dispute settlement and a farmer's representative or a Panchayat to act as a go-between to ensure fair contractual terms, risk sharing, etc.

RECOMMENDATIONS FOR SECTION II ON CONTRACT FARMING

In view of several observed and perceived benefits of contract farming as well as the mentioned constraints, we need measures to protect and benefit small and marginal farmers. To this end, a number of recommendations are given below

1. Legalising tenancy: In many parts of the country, agricultural tenancy is legally banned, although concealed tenancy exists. Tenants who do not enjoy security of tenure are not able to participate in contract farming. Hence, legalization of tenancy would be a precondition for enabling the tenant farmers to benefit from contract farming.

²⁷ See e.g. Bulow, D.V. and A. Sorensen (1993): "Gender and Contract Farming: Tea Outgrower Schemes in Kenya" Review of African Political Economy, Vol. 23, cited in Kumar, op cit.

²⁸ Singh, Sukhpal, 2000. op cit

2. **Setting up a formal legal framework for contracts:** There is need for a legal framework for contract farming, as informal contracts are exploitative of small and marginal farmers.

3. **Institutional arrangements for recording contracts, dispute settlements etc.**

- d) All contracts should be recorded, say through the local panchayat or some Government institution. This will promote confidence between the parties.
- e) A Block level committee could be formed to deal with any disputes arising from a violation of the contract. The committee should have the representations of farmers, the company, the panchayat and a local government official. Farmers as well as the company should be able to approach the designated committee, duly empowered by law to mediate and settle the dispute.
- f) The contract should be managed in a transparent and participatory manner so that there is social consensus in how contract violations by either party can be settled without costly and lengthy litigation. Also the contract needs to specify all conditions clearly without ambiguity and ensure that farmers are fully aware of all the clauses.

4. **Special provisions for backward and forward linkages:** The contract should have provision for both forward and backward linkages. Unless both the supply of inputs and marketing for the produce are assured, small farmers will not be able to gain from contract farming.

5. All contract farmers, especially those who are small and marginal, should have facilities for opening a bank account. Credit facilities should also be provided to them. If the payment for contractual produce is made through banks, the recovery of loans will be easier. In fact, there should be a tri-partite agreement between the contract farmers, the company and the bank for this purpose.

6. In case of crop loss due to either pests and disease or adverse weather, contract farmers should be adequately covered by crop insurance, for which the premium should be paid equally by the farmers and the company.

7. In order to guide contract farming, the government, in collaboration with the participating company, should identify some commodities in each state for initial trial and gaining experience.

8. **Focus on groups (especially women's self help groups) and associations or cooperatives:** To the extent possible, farmers should be encouraged to enter contracts in groups rather than as individuals - small farmer associations, cooperatives, women's self-help groups are all potential candidates for this. This will improve the bargaining power of these small cultivators vis-a-vis the company, enable them to reap economies of scale, and promote equality of partnership in any contractual arrangement. These associations can also replace the middlemen or commission agents who are involved in marketing of the contract commodities on behalf of the company. In fact, as noted above in the case of tea production, some companies have already followed the route of contracting women's self help groups. This could be tried for some other commodities as well.

9. **Environmental safeguards:** The government needs to ensure that contract farming, which is generally commodity specific and tends to promote monoculture does not threaten bio-diversity

and agricultural ecology in the country. To prevent this from happening it would be desirable to provide guidelines for land use in different regions.

SECTION III: HOMESTEAD RIGHTS

In the vision of an emerging India, 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 a right to basic education. The 11th Five Year Plan provides the opportunity to realize this vision.

An estimated 13 to 15 million families in rural India today lack homes of their own. They live either in spaces provided by landlords (in case of farm labour), or park on government land, or on village common land, and so on. None of these options provide basic security. Also the number of the near-homeless are increasing as new development projects (large dams, roads, urbanization) displace families and sometimes entire communities. We need a comprehensive policy for providing homestead rights to all who lack a home today as well as those who might be rendered homeless due to development processes in the foreseeable future. This will require both regularizing existing living arrangements for some categories of people, and providing land to set up homes to others.

The government's common minimum programme mentions that landless families will be given some land through the implementation of land ceilings and the redistribution of ceiling surplus land. Since the scope for acquiring such land is now limited for a complex set of reasons, the government will need to draw on other sources for providing homestead land to the landless poor, including identifying and distributing government land and, where necessary, purchasing land from the open market for such distribution.

It is also important that the land given to each family is of a minimum size (10-15 cents) so that the average family not only has enough space to live, and also has a few cents extra for supplementary livelihood activity, such as growing fodder and keeping livestock (cows, buffaloes, goats, poultry etc.), planting fruit trees or vegetables, or undertaking other land-based economic activities (farm or non-farm) to improve their food, nutrition and livelihood security.

Research studies in India and abroad show that homestead plots of 10 to 15 cents in size can significantly improve the socio-economic status of poor landless families. In fact, Kerala has already implemented a scheme of providing 10 cents to each landless family. This has had a notable impact on poverty reduction in the state. Similarly, in 2005, the governments of Karnataka and West Bengal initiated schemes to give homestead-cum- garden plots to landless families. We now need a more comprehensive scheme covering all the states, with support from the central government.

In any such land allotment, women need to be given priority. Women tend to be the most commonly landless and are the poorest even among poor households. At the same time, in the rare cases where women have land or a house of their own it is found to make a critical difference to them and their family's welfare. For instance, such women face less risk of destitution and domestic

violence, and improved economic well being. The welfare of their children also improves.²⁹ A mother's assets are found to have a greater positive effect on children's nutrition, education and health than the father's assets.³⁰ Women also tend to spend more of their income on the children's needs than men. Allotments made to women would therefore benefit both poor women and their families.

Allotments given to groups of families in a consolidated space would be more beneficial than scattered allotments, for several reasons. One, allotments that are all together will help create a community in which people can socially interact and help each other. Two, it is easier to provide infrastructural support – such as drinking water and sanitation, primary school, primary health center etc - to a consolidated group. In fact such support services should be a part of the initial plan when land is distributed to the landless.

A women's resource center, catering to women especially of poor communities, could also be planned alongside. At present, village women have no designated public place where they can comfortably go to obtain information and learn about livelihood opportunities, and about their rights and laws. A resource center catering only to women, with a particular emphasis on poor dalit women would go a long way in fulfilling this need. It should provide relevant information relating to government loan schemes, employment schemes, their legal rights, legal aid, farm technology, health care, and so on. This information could be given through written material as well as electronic media.

Although given the mandate of this sub-group the focus is on rural areas, our vision should be to provide all citizens with a roof over their head. Measures to ensure this in urban areas are therefore also warranted.

RECOMMENDATIONS FOR SECTION III ON HOMESTEAD RIGHTS

1. All landless families with no homestead land as well as those without regularized homestead should be ensured 10-15 cents of land each.

The estimated cost of the above scheme would be about Rs.10,000 per beneficiary households, including the costs of land purchase and other support system. If implemented over the next 5 years, this would mean only Rs 2,600 crore per year for providing homestead plots to 26.2

²⁹ Agarwal, Bina (1994): *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press). Panda, Pradeep and Bina Agarwal (2005): "Marital Violence, Human Development and Women's Property Status" *World Development*, October.

³⁰ Duraisamy, P. 1992. "Gender, Intrafamily Allocations of Resources and Child Schooling South India", *Economic Growth Center Discussion Paper No. 667*, New Haven, CT: Yale University; Duaraisamy, P. and Malathy, R. 1991. "Impact of Public Programs on Fertility and Gender Specific Investment in Human Capital of Children in Rural India: Cross Sectional and Time Series Analyses", in T. Schultz (ed): *Population Economics*, Vol. 7, Greenwich, CT: JAI Press, pp. 157-87.

lakh landless families each year (and covering 13 million families in five years). Some of the required sum could be arranged through reallocation of resources from existing schemes, such as the Indira Awas yojana, SGSY, NREG etc.

2. When regularizing the homesteads of families occupying irregular and insecure homesteads, the homesteads so regularized should be in the names of both spouses.

3. 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.

4. 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 a primary school, PHC, drinking water, and a women's resource center.

5. 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

ANNEXURE I

LAND REFORM DISCUSSIONS IN EARLIER FIVE YEAR PLANS: APPROACHES AND ACHIEVEMENTS

Even before Independence, the issue of land as an instrument of growth and social justice was dealt with in great detail by the Congress Economic Programme Committee, in 1948. Two of the major concerns then were (a) land reforms and (b) increased productivity in agricultural sector. The Agrarian Reforms Committee, 1949 (better known as the Kumarappa Committee)* laid down the following guidelines:

- i) Elimination of all intermediaries between the state and the actual tillers of the soil.
- ii) Subletting in future to be prohibited, except in case of widows, minors and disabled owners/persons.
- iii) Actual tillers who were themselves not owners, if cultivating for more than six years should become owners of the land.
- iv) In other cases the owner may have the option of resuming cultivation in a specified time period, subject to well defined conditions including putting in minimum labour and participation in actual agricultural operations. Even in such cases, the resumption was to be restricted to the extent that his self-cultivated holdings, inclusive of other lands, were economically viable, and that the tenant-holding did not become uneconomical. An economic holding was to be determined based on whether it provided full employment for a family of normal size, and at least a pair of bullocks, and provided a reasonable standard of living. The optimum holding size was fixed at three units.
- v) In the case of land held by charitable institutions, the management of the land was to vest in the Land Commission and the actual cultivators were to hold land as long as they rendered service. The provincial governments were expected to make appropriate arrangements for their income.

The commission also recommended the setting up of a separate Central Land Commission along with an independent machinery, vested with necessary powers to quicken the pace of land reforms.

First Five Year Plan

The first authoritative outline of a national policy on land reforms, including a ceiling on agricultural holdings, was set out in the First Five Year Plan (1951-56). Treating the issue of land ownership as a fundamental one in national development, the First Five Year Plan emphasized land reforms in terms of reducing exploitation, providing security of tenure to tenants and workers, and providing equality of status and opportunity to different sections of the rural population. Three important policy initiatives were taken during the First Five Year Plan to achieve the objectives of social justice with growth:

- Reorganization of land relations in rural areas (by abolition of middlemen and Zamindars)

* Government of India, Agrarian Reforms Committee Report, 1949, Government of India.

- Providing security of tenure to tenant cultivators and redistributing land to the landless; and linking society with the development administration through a Community Development Programme;
- Creation of Institutional channels for the delivery to all of key inputs of production such as credit, seeds, fertilizers etc. and providing post-production services like marketing.

The policy attempted to create a new institutional arrangement of co-operative farming, It was also envisaged that the delivery of key inputs also could be best done by co-operatives. While the concept of co-operative farming did not gain much currency at that time, the system of service and credit co-operatives survived and continues till date.

The most significant aspect of the approach taken during the First Five Year Plan was its comprehensiveness and holistic nature. Land reforms did not include land alone, they included all the necessary dimensions needed for the productive use of land by ensuring inputs as well as marketing.

Second Five Year Plan

The Second Five Year Plan (1956-61) noted that tenancy reforms failed to provide security of tenure to the tenants and also failed to confer occupancy rights to tenants. The plan therefore further recommended that personal cultivation should be precisely defined and surrenders by tenants should be regulated. The plan was a leading document for the future as it defined the term personal cultivation, which had implications for future policy. Personal cultivation was defined as having three elements: the risk of cultivation, personal supervision, and personal labour. Unless the entire risk of cultivation was borne by the landholder it should not come under 'personal cultivation'. Supervision should be by the owner, or a member of his own family. In order to be effective, supervision should be accompanied by the owner or a member of his family residing during the greater part of the agricultural season in the village in which the land is situated. It also recommended that all tenants of non-resumable category may be brought in contact with the state.

The Second Plan suggested that ceiling imposition should be on the basis of a definition of a family. These definitions varied by state but in the Plan, the family was deemed to include the husband, wife, dependent sons, daughters and grand children. It also recommended that attention should be given to prevent malafide transactions in the future and that all transfers that had been made should be reviewed. It should also be considered whether old transfers could be taken into account for determining the ceiling.

Third Five Year Plan

For effective implementation of the land reforms the following measures were suggested in the Third Five Year Plan (1961-66): a) removal of legal and administrative deficiencies relating to registration of voluntary surrender and resumption of land; b) completing the programme of conferring rights of ownership on tenants in respect of non-resumable land, and (c) making arrangements to provide for direct payment or rent to the government instead of through landlords. It was noted that many states had failed to regulate the claims of voluntary surrender and define personal cultivation in the manner suggested in the Second Plan. It was further suggested that the

dates from which transfer may be disregarded may be the date of publication of ceiling proposals or an earlier date as may be prescribed in view of local conditions.

Fourth Five Year Plan

The Fourth Plan (1969-74) reiterated that the law relating to ceiling on agricultural land should be effectively implemented. The Plan also recommended that all tenancies should be made non-resumable and permanent except in the case of defense personnel and the disabled.

The Chief Minister's Conference on 23rd July 1972 agreed to lay down revised guidelines for implementation of the law relating to ceiling on agricultural land. These guidelines were very clearly affected by change in the emphasis of the objectives of planned development as mentioned above. The guidelines inter alia provided that:

- i) The ceiling on the best category of land with assured irrigation and capable of yielding two crops should not exceed 4 to 7.2 hectares, taking into account fertility and other conditions.
- ii) The ceiling on land having private irrigation facilities should be worked out by equating 0.5 hectares of land, with 0.4 hectares. The irrigation from private sources was defined as irrigation from a tubewell or lift irrigation from a perennial water source operated by diesel or electric power.
- iii) In case of land having assured irrigation for one crop only, the ceiling was not to exceed 10.8 hectares, and for other types of land it was not to exceed 21.6 hectares of land. Priority should be given for allotment of ceiling surplus land to landless agricultural workers, particularly those belonging to Scheduled Castes/Scheduled Tribes.
- iv) It was contemplated that the provisions of private irrigation schemes in future, in land mentioned in category (iii) above, would not lead to revision of ceiling. In the case of religious institutions the committee suggested that the state government at its discretion may grant exemption to genuine religious, charitable, and educational trusts of a public nature. No exemption was to be allowed to be private trusts. However, even in the case of such public trusts, they were not to be exempted from the operation of the tenancy laws.
- v) The revised guidelines were made effective from 24 January 1971. The ceiling was to have been worked out on the basis of the family as a unit consisting of husband, wife, and minor children. Every major son was to be treated as separate unit for the application of the ceiling law.

Fifth Five Year Plan

The Fifth Five Year Plan (1974-79) did not give much weight to the rural development programme as the increase in agricultural production was the Plan's main emphasis plan and the green revolution introduced the element of profit and market in the agricultural sector, leading away from the philosophy of "voluntary surrender".

Sixth Five Year Plan

The Sixth Five year Plan (1980-85) emphasized the importance of updating of the land record along with other constituents of land reforms. According to the provisions of the Sixth Five Year Plan period (1980-85) -

1. States which do not have legislative provisions for conferment of ownership rights on all tenants except for specified exempted categories serving defense personnel, minors, disables etc.) shall introduce appropriate legislative measures to do so within a period of one year, i.e., by 1981-82.
2. The programme of taking possession and distribution of ceiling-surplus lands would be completed within a period of 2 years, i.e., by 1982-83. Priority in allotment of surplus land would be given to scheduled castes and scheduled tribes among the landless.
3. A systematic programme would be taken up for compilation/updating of land records, to be phased for completion within a period of 5 years, i.e., 1980-85. A system of pass book to the cultivators was also envisaged during the plan. The focus was thus shifted to modernization of land record system for better management and administration.
4. The programme for the provision of house-sites to the landless will be completed.
5. The ceiling laws should be automatically brought into force, in accordance with the stipulated water utilization pattern of a particular irrigation system, so that the use of irrigation resources built at considerable cost is not withheld at the choice of individuals.

In addition, the Plan mentioned that it would give joint titles to spouses in the distribution of land and home sites.

Seventh Five Year Plan

The Seventh Five Year Plan (1985-90) reemphasized the importance of Land Reforms as a vital element of anti-poverty strategy along with modernization and increased productivity in agriculture. Redistribution of land could provide a permanent asset base for a large number of rural landless poor for taking up land-based and other supplementary activities. Similarly, consolidation of holdings, tenancy regulation and updating of land records, would widen the access of small and marginal land-holders to improved technology and inputs and thereby directly lead to increase in agricultural production. Emphasis was given on speeding up the land redistribution programme. This Plan document however did not reiterate the issue of women's land rights.

Eighth Five Year Plan

The Eighth Plan (1992-97) focused on:

- i) Ensuring an atmosphere whereby the actual cultivators are made aware of their rights and enabled to claim their benefits.
- ii) Ensuring steps for early detection of surplus lands.
- iii) Bringing about the newly acquired lands under profitable agronomic practices, thus meeting the twin objectives of poverty alleviation and output growth.
- iv) Capacity building of the lower level official machinery for better management of land records.

On the question of tenancy, there are three aspects which it emphasized needed to be examined in some detail. First, the need to inculcate among tenants a degree of solidarity so that they can, at a time, counter the dominance of the landed classes as well as make the revenue administration accountable to themselves. Second, the mechanisms for transfer of title to the actual cultivator will require to be professional and sensitive. The third, and perhaps the most important aspect, is to make the gains real by getting from the land the quickest returns via access to a package of modern input. Measures would be taken to make real the gains of tenancy laws by restricting the right to resumption; tackle absentee landlordism by defining personal cultivation more precisely and reviewing the provisions for regulating voluntary surrender.

On the question of land ceilings, the two aspects needing urgent attention were: (a) detection of surplus lands, hitherto unavailable because of recourse to evasive methods like benami transfers, partitions, fraud, collusion with official machinery etc., and (b) ensuring that the allottees retain possession and severe penalty for dispossession. The lacunae in the laws will have to be removed to help resolve both these issues. Suitable creative options need to be built into the law so that once the land is declared surplus, unless mala fide is established against the official machinery concerned, the land would vest in the government, and it would be open to the Courts to award only compensation to the landlord. Another option is to set up Land Tribunals under Article 323-B to deal with litigation and eliminate court jurisdiction. Some of the policy interventions will be to reduce the exemptions and review the provisions for major sons to have independent shares. The existing limits will be reviewed.

The Eight Plan also directed all state governments to give 40% of ceiling surplus land to women alone, and the rest jointly to both spouses.

In respect of consolidation of holdings, two aspects that need attention are; (a) The smaller farmers harbour strong apprehensions about getting a raw deal in the process of exchanging parcels of land towards the consolidation of holdings and (b) The process of breaking up of holdings is a continuous one and a one-time settlement does not really solve the problem. The solution will therefore lie in making the farmer recognize that it is advantageous to share income from land rather than the land itself. The modality of bringing these aims into the land-related customs and practices will be more effective than the passing of laws.

On common property resources, the Plan noted that these have traditionally been a source of economic sustenance for the weaker sections of society. Measure will be taken to survey their extent so that the encroachments by more influential sections can be removed. This is an area where voluntary organisations and local democratic institutions will be associated with the administrative machinery to restore to the panchayat/community the ownership of common property resources so that further encroachments do not take place. Efforts will be made to develop these resources so that the option is once again open for the poorer sections for supplementing their income.

Ninth Five Year Plan

The Ninth Five Year Plan (1997-2002) re-emphasized access to land as a major source of livelihood and that its possession enhances the status of people in rural society. While the ingredients of the

land reform policy would continue to be the same as before, the focus would shift to a few critical areas. All efforts would be made to detect and redistribute the ceiling surplus land and to enforce the ceiling laws stringently. Given that small and marginal farms are viable, both from the efficiency and equity points of view, it is desirable that the existing ceiling limits are strictly enforced. More importantly, tenancy reforms would have to be taken up especially in States characterized by semi-feudal modes of production. The rights of tenants and sharecroppers need to be recorded and security of tenure provided to them. Leasing in of land should be made permissible within the ceiling limits. The poor should be given access to wastelands and common property resources. The land rights of women must be ensured. This would require amendment of the existing legislations in some States to ensure women's rights with regard to inheritance of both owned land and land under tenancy. The Plan document also recommended group farming programmes for women, and the gathering of gender disaggregated data on land ownership and use in the agricultural census and the National Sample Surveys.

In addition, updating of land records would have to be expedited as this is a necessary prerequisite of any effective land reform policy. Since land reforms is a State subject the States would have to be persuaded to take up these measures.

Tenth Five Year Plan (2002-2007)

While reiterating the fact that successive Five-Year Plans have addressed the issue of secure rights in land for increased agricultural productivity under the land reforms programme, the tenth Plan highlighted that land reform legislations have, besides abolishing intermediaries and providing ownership rights to farmers, also provided for security of tenure to tenants and regulation of rent. During the Plan period a new thrust was given to the urgency for redistributing the ceiling surplus land and also the issue of tribal land alienation was emphasized to be resolved.

ANNEXURE II:
**EXCERPTS FROM THE NIRD REPORT ON “AGRARIAN RELATIONS AND RURAL
POVERTY IN THE POST REFORMS PERIOD: A STUDY OF BIHAR AND ORISSA”**

VIII Land Ownership and Access to Land

- Twenty percent of the farmers belonging to large farmers' category owned more than fifty eight percent of the total land in Bihar and fifty two percent in Orissa. Though average land holding of the large farmers in the two states was nearly the same, but their access to irrigated land was relatively lower at fifty four percent and fifty one percent respectively in the two states.
- The difference between the land owned by small farmers (thirty two percent) and by the marginal farmers were much wider than the difference in the land owned by the small and marginal farmers in Bihar. The difference in land owned by the small and marginal farmers was comparatively lower in Orissa. The access to irrigated land was found to be slightly better in case of small and marginal farmers in case of Bihar but it was highly discouraging in case of Orissa.
- The large farmers had fairly good amount of dry land which was either leased out or left as fallow. The large farmers alone account for nearly seventy percent of the dryland in Begusarai and sixty nine percent in Katihar (Bihar). The ratio of large farmers and small farmers who possess the wet land slightly varied with around 60:33 in the underdeveloped district of Orissa when compared to the developed district where it was 70:26 per cent of the total wet land possessed. This means that in the under developed district large farmers were having slightly less of irrigated land and small farmers were having slightly more of irrigated land when compared to the large and small farmers of developed district.

IX Land Market: Leasing Out

- The lease market was found to be active in both the districts of Bihar and in non tribal villages in Orissa and irrigation was a key factor in lease market. Leasing out of irrigated land was usually on rental basis and dryland on crop sharing basis.
- Large farmers were the main suppliers of land followed by marginal farmers (as proportion to total owned land). Ninety two percent of the total leased out land was supplied by the large farmers in the study areas.
- Due to uneconomical holding size, some proportion of the marginal farmers having wet land also leased out their land. Thus the phenomenon of “reverse tenancy” was also found in the developed district. Although their contribution to total leased out land was just five percent. As percentage of total owned land, nearly four percent of the land of the marginal farmers was leased out. The main takers of the land of the marginal farmers were belonging to the category of small farmers.

Leasing in

- Eighteen percent of the total farmers in Bihar and twenty seven percent in Orissa reported leasing in of land. Small and marginal farmers accounted for more than eighty percent of the

leased in land. Twenty percent of the total sample households belonging to small and marginal farmers in Bihar were dependent on leased in land for their sustenance. The dependency on leased land on part of marginal farmers was very acute in the agriculturally underdeveloped district as leased land constituted nearly thirty seven percent of their net sown area. The incidence of tenancy was thus found to be fairly high in the study area. In case of Orissa the large farmers dependency on leased in land was also fairly high.

Sale and Purchase of Land

- Only 13 percent of the farmers (26 out of 200) in Bihar and 11 percent of the farmers in Orissa (11 out of 200) reported open sale of land during the reference period (last five years). The sale of land in Orissa was mainly confined to the developed districts. Nearly half of the farmers reporting sale of land belonged to the category of marginal farmers followed by nearly twenty percent small farmers. However while in Bihar land selling was confined to small and marginal farmers only in all the areas, in Orissa even big farmers also sold their land and their proportion was similar to that of small farmers.
- The most significant difference found in the two states was however, regarding the category of the buyers. While in Bihar, though surprisingly, much of the land was sold to marginal farmers and marginal farmers-cum migrant labour, in Orissa land was sold mostly to large farmers in developed areas and to small and marginal farmers in underdeveloped areas. Looking at the district wise trends in Bihar, it was found that land was sold mainly to small farmers in Begusarai and marginal farmers in Katihar. Four out of twenty farmers became marginal farmer after selling their land. In Orissa on the other hand, land was sold by the small and marginal farmers in the developed district and purchased by the large farmers, whereas in the underdeveloped district it was sold by the large farmers and also purchased by large farmers mainly.

Report of the Sub Committee on PESA

Terms of Reference

- To document specific violations of PESA
- To conduct interviews with local adivasis and local level administrative personnel
- To recommend specific ameliorative and other measures to rectify the alleged violations

Team

Shri Rajagopal P.V. (Member)
Shri Subhash Lomte (Member)
Shri Balaji Pandey (Member)
Shri Ramesh Sharma (Coordinating Secretary)

Grey areas of PESA in Raigarh

- Denial of gram sabha resolutions
- Land acquisition without appropriate consultation with gram sabha
- Tribal land alienation
- Acquisition and/ or encroachment on common property resources i.e. land, forest and water bodies
- Violations of human rights
- Lack of knowledge about PESA at village and administrative level
- Significant numbers of pending cases in lower courts and at administrative level
- Lack of transparency on land acquisition/ purchasing
- Lack of rehabilitation of project affected population
- No compensation for landless

Denial of Gram Sabha resolutions

Not a single Gram Sabha supported land acquisition/ purchasing for industrial purposes
(TARAIMAL Panchayat)

1. Nalwa Steels
2. Anjani Steels
3. Seleno Steels
4. Shyam Steels
5. Vandana Energy & Power
6. Siddhi Vinayak Steels
7. BS Steels
8. Harsh Steels
9. Ambika Steels
10. Raigarh Steels
11. Balaji Alloyes
12. RS Steels
13. East West Steels
14. Banjari Steels
15. Jagdamba Steels
16. Sriram Hightech Steels
17. Mamta Electro Casting
18. Siddhi Vinayak Oxygen Plant
19. Shobha Steels
20. Oreyon Ferro Alloyes
21. Epic Alloyes
22. Survodaya Steels
23. Consultanous Steels
24. Banke Bihari Steels
25. Alok Steels
26. Radhe Gobind Steels
27. Eureka Steels
28. Geyon Steels
29. GP Global Industry

Land Acquisition without consultation with gram sabhas

Taraimal and Ujjwalpur gram sabhas filed complaints against land acquisition for Nalwa Steels but 17 hectares of Forest Land (Orange Area) transferred to the Industry.

- Forest land was acquired for Nalwa Industry in 2001
- Nalwa Plant had applied for project expansion in 2002
- Gram Sabha resolution by Anant Ram (Sarpanch) on 03.10.2002 and 10.02.2003 against new land acquisition
- District Collector(s) accepted the request of gram sabha
- A letter was received by district administration (9-A/19-3/ 2003-2004) from State government regarding permission
- Allotment of the same land for Nalwa Industry

Dishonor of Gram Sabha resolution

In Tamnar block whole 52 gram sabhas had passed resolutions against land acquisition for JSPL

- JSPL was given permission by State government in 1998 without any consideration of gram sabha resolutions
- Land was forcefully purchased and grabbed by the company
- Wrong methods of handling of gram sabha resolutions
- Lack of transparency / information sharing with gram sabha regarding projects
- State/ District administration had not taken proper/ formal action before installation of water pipeline (18 Kms) through agricultural land, common property land and forest land; unfortunately neither complaints for the villagers were registered nor actions were taken
- Varied range of compensation were offered /paid by company
- No rehabilitation at any level
- No compensation for landless families

Rehabilitation whose responsibility

A large chunk of land acquired for Coal mining but no where rehabilitation work started till the date

Major acquisition

1. South Eastern Coal Fields, Barod (72 hectares)
2. Jindal Steels and Power Limited, Dongamoha (705 hectares)
3. Monet Steels, Milupara (830 hectares)
4. Jindal Power, Dongamoha (964 hectares)
5. Raipur Alloys and Steel, Karwahi (336 hectares)
6. Jaisawal Nicco Kondkel (885 hectares)

Land grabbing and rights of the minority

- In village Punjipathra, 12 acres of land which was owned by Ms Verenica Lakra was taken by JSPL
- In village Singhanpuri, about 30 hectares of land forcefully grabbed by Monet Steels
- In village Kalmi, benami transactions were practiced by JSPL
- In village Ujjwalpur, about 32 acres of land was forcefully taken by Nalwa Steels
- In village Parsada, benami transaction were practiced by Monet Steels

Administrative sabotage

- In village Saraipali, JSPL directly entered for identification and purchasing of land and the same created a lot of violent conflicts between villagers and the company
- In village Patrapali, the whole community was totally de-rooted before any prior intimation to the villagers
- In village Nagarmuda, Dhaurabhata, Janjgir etc in Dongamoha mining area, no compensation was offered to the landless families
- No jobs were offered to project affected community in Patrapali, Gorkhagaon, Mohapali, Depapara etc.
- District administration along with the company management forced the villagers to accept the Rabo Dam proposal

Compensation offered

No where the policy of 'land for land' was implemented for the project affected/ farming community

About 5000 acres of land was transferred for industrial purposes but nowhere 'commonly accepted compensation' was given to the affected community

- In village Saraipali, private as well as community resources are captured by JSPL and now the villagers are offered to give pucca houses (under land revenue code) but ownership rights are not transferred to the project affected community
- In village Harratola, no compensation was offered to the families who will come under submergence of Rabo Dam
- In Rabo, villagers were promised a lot but not many promises were fulfilled by the company

Who cares for water bodies

Rabo village passed Panchayat Resolution against the construction of Rabo Dam but no attention was given to the fact either by State government or the company

- 8 villages in Gharghoda tehsil passed gram sabha resolutions against construction of Dam on Kurkut river but the construction work is in progress
- District administration gave official order for conducting gram sabha to obtain clearance for the Dam
- Ground work started without official permission
- District administration of Raigarh created a situation that forced the people to leave the village
- Now the Kurkut River in the complete control of JSPL

Follow up

- A final report will be prepared after receiving the necessary information from District authorities of Raigarh and the State government of Chattisgarh
- Preparing a video documentary on PESA violations
- Visiting Raigarh and nearby areas again, if needed, for the verification of information
- organizing consultations for people's education on PESA