



Dispassionate Review on India's Agrarian Laws: With Special Reference to The State of Tamil Nadu

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INTRODUCTION:

It is an acclaimed fact that India is predominantly an agrarian country. The prodigious population of people depends upon agriculture for sustenance. So, agrarian laws and reforms is noteworthy for the economy of our country. India being an agrarian nation has contributed 19.9 % to the gross domestic product of India in 2020-2021. Indeed farmers who may be the landlord or a cultivating tenant faces many stumbling blocks which make them to give up their profession and move on to urban areas . The major cause of this situation arises to problems faced by the farmers especially one related to land.

PRE – INDEPENDENCE AGRARIAN LAWS:

Traditionally, before arrival of British in India, ownership of land was an unfamiliar concept. Generally lands was owned by village community Later on during the reign of Akbar by Todar Mal land revenue system was initiated in which land was measured, classified and rents were fixed accordingly .India being ruled by several rule , rural economic policies kept on changing. The main aims of these policies were to earn more money and wealth, ruthlessly exploiting poor peasants, without caring much about the interest of the cultivators. During the advent of British rule primarily three types of land tenures was established. Firstly “**Zamindari system**” was introduced by lord Cornwallis, in which dominion of land was under rich landowners called “Zamindars” they served as an intermediate class who collects the tax. This system also known to be permanent land settlement system extended in Bengal, Bihar, Banaras division of northern western provinces. Land revenue was fixed by zamindars which broke the back of peasants .so under this system zamindars were the benefited as landlords in perpetuity. Their title of land was hereditary, land was retained within same families for generations as a result rich became richer and poor became poorer .

Another system similar to Zamindari system was “**Jagirdari system**” was developed during the time of Muslim rule in early 13th century. jagirdars were holders of land assignment in lieu of judicial and political duties. Jagirs are official appointee of the state of the state who collects revenue of estate and governing power was bestowed on them.

Subsequently **Ryotwari system** was established in Madras presidency in 1820 by Sir Thomas Munro. Under this system, government and cultivators had a direct relationship and land revenue was settled between them, without any middlemen. This was followed in parts of Bombay, Assam along with Madras presidencies. Later Mahalwari **system** was introduced by William Bentick's in which land revenue was collected by village headmen on behalf of the whole village from the farmers. The revenue was calculated based on the production which would be revised on a regular basis. This system did not benefit village communities, they suffered due to exorbitant tax assessments that could not be complied with. Consequently cultivators and landholders were not able to meet out taxation rates and large areas of land were sold to moneylenders and merchants.

POST-INDPENDENCE AGRARIAN LAWS:

As soon as British left India there were many things to get rectified which damaged our economy and society. At times of British rule farmers did not have actual ownership, it was with the intermediaries like zamindars, jagirdas as discussed earlier. Only after independence, the government realized that way to boost the production was to make the tillers of land as its owner. Efforts on abolishing intermediaries was made, known to be land reforms, aiming to bring systematic changes to the agrarian structure of the country and thereby preventing exploitation of tenant farmers by the hands of landlord. The land reforms of the independence India focused on four major components. The first important legislation was on abolishing the Zamindari system, removing middleman between cultivators and state. This reform was much more effective than other reforms, succeeding in many areas especially in states of Uttar Pradesh, Bihar, Andhra Pradesh, where surplus lands were seized from the landlords by the state. By this **abolition of zamindari system** nearly 2 crore tenants became owners of their own lands.

The reforms further promoted '**consolidation of holdings**'. The land owned by the parents is inherited by their wards resulting in decrease of plot size with successive generations. Later on these lands became economically infeasible in terms of agricultural produce. Under these scheme farmers having few plots of land in the village would be consolidated into a big piece of land which can be done either by purchase or exchange of land. This kind of reform is to solve the problem of land fragmentation.

There are two types of consolidation viz voluntary consolidation and compulsory consolidation. In voluntary consolidation the farmers voluntarily agree to get his holdings to be consolidated which was first initiated at Punjab in 1921. Secondly compulsory consolidation, where consolidation is made compulsory by law. Further this is divided into partial compulsion where majority of farmers in the village agrees to get their holdings to be consolidated, which makes the rest of the farmers to agree for consolidation according to the law. And complete consolidation, in which legislative enactment of the Government introduces an element of compulsion to consolidate.

Next major problem was issues related to tenancy regulations, which is an institutional factor affecting the development of agriculture. So "**land tenure system**" or "**cultivating tenure system**" was brought to establish cordial relationship between landlord, cultivator and the Government.

THE TAMIL NADU CULTIVATING TENANTS PROTECTION ACT:

The Tamil Nadu Cultivating Tenants Protection Act was enacted to protect the cultivating tenants from certain area in the State of Tamil Nadu from unjust eviction. It provides certain grounds other than which the cultivating tenant cannot be evicted. The term cultivating tenant is defined under section 2 (aa) of the Act¹ as “ it not only includes the person who actually entered into an agreement with the landlord but also any members of his family who contributes his/her physical labour, sub-tenant, tenant after the determination of lease who contributes his physical labour in the cultivation of the land”. However, it does not include mere intermediary between the landlord and the tenant.²

The term “landlord” is defined in a wider sense which not only means the owner of the land but also the person entitled to evict the cultivating tenant from such holding or part.³

CULTIVATING TENANT:

In *Sudalaimuthu v. Palaniyandavan*⁴ the Court held that in case of a joint family, even if one of the members of a joint family contributes his physical labour in cultivation of the land that would be sufficient to hold that the family is entitled to the protection under the Act.

As per section 58 (d) of the Transfer of Property Act, 1882 an Usufructuary mortgagee is entitled to possession of the land⁵.

When the usufructuary mortgagee let out the property to the tenant, such tenant can protection from eviction under the cultivating tenants protection act, since the tenancy originated in an agreement and since because of redemption such agreement came to an end but the tenant continued in possession he will squarely be within the inclusive definition of the term ‘cultivating tenant’ as against the mortgagor.⁶

GROUNDS FOR EVICTION OF TENANTS:

According to section 3(1)⁷ of the Tamil Nadu Cultivating Tenants Protection Act, the cultivating tenant cannot be evicted except under the grounds mentioned in the Act.⁸

Subsection (2) is an exception to subsection (1). The cultivating tenant cannot get protection from eviction only under the following grounds viz., (i) on account of failure to pay the rent within the stipulated time,⁹ (ii)

¹ The Tamil Nadu Cultivating Tenants Protection Act, 1955

² Cultivating tenant- (i) means of person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied; and (ii) includes – (a) any such person who continues in possession of the land after the determination of the tenancy agreement; (b) the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land; (c) a sub-tenant if he contributes his own physical labour or that of any member of his family in the cultivation of such land; or but (iii) does not include a mere intermediary or his heir

³ Section 2(e) - landlord in relation to a holding or part thereof means the person entitled to evict the cultivating tenant from such holding or part

⁴ AIR 1966 SC 469

⁵ Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same] in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest [or] partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

⁶ Chandrasekaran v..Kunju Vanniar, AIR 1975 Mad 227 (FB)

⁷ Section 3: Landlords not to evict cultivating tenants.- (1) Subject to the next succeeding sub-sections, no cultivating tenant shall be evicted from his holdings or any part thereof, [.....] by or at the instance of his landlord, whether in execution of a decree or order of a Court or otherwise.

⁸ Krishna Kambar vs Muthiah Thevar , (1967) 2 MLJ 237

⁹ Section 3 (2) (a) and 3 (2) (aa) of the Act, 1955

causing damage or injury to the land,¹⁰ (iii) using the land for any other purpose other than agriculture or horticulture purposes¹¹ and (iv) wilful denial of the title of the landlord¹².

FAILURE TO PAY THE RENT:

Any cultivating tenant fails to pay the rent on the time stipulated is not entitled to get protection under this Act.

INJURY TO THE LAND:

Causing damage or injury to the land or crop either by the act of the cultivating tenant or by negligence is a ground for his eviction. Also in *Chandrasekaran vs Kunju Vanniar And Ors*¹³. if he fails to cultivate the land, he cannot get protection. In *Rethinam v. Kuppusamy Odayar*¹⁴, it was held that the value of the land would be adversely affected if single crop is cultivated in double crop land and it is within the meaning of causing damage to the land.

DENIAL OF TITLE OF THE LANDLORD:

In *Munisami Naidu vs C. Ranganathan*¹⁵ it was held that there was denial of title by the tenant of the landlord which would by itself warrant his eviction.

From the above provisions and case laws it is very clear that a cultivating tenant cannot be evicted easily from the land provided he should satisfy the definition under section 2 (aa) of the Act.

However, the cultivating tenants were not able to get protection under the Act, 1955 as the Act requires that there must be an agreement in writing to establish the protection under the Act.¹⁶ In fact, most of the cultivating tenants are illiterate and were not aware of the provision and thereby were not able to get protection from eviction.

RECORD OF TENANCY RIGHTS ACT:

The implementation of tenancy laws in Tamil Nadu was very much retarded for want of authentic record of tenancy rights. The conditions stipulated in the Tamil Nadu Cultivating Tenants Protection Act, 1955 for land owners to execute lease deeds to tenant annually was not observed. The tenants were therefore, at the mercy of the landlords in acknowledging their tenancy rights. Moreover, the landlords were not in a habit of delivering the receipts for rent. The landlords took action to evict the tenants forcibly, taking advantage of the absence of a record of tenancy. Except in rare cases, the leases were mostly oral and there was no record to prove the tenancy, the tenants found it difficult to establish their rights by recorded evidence. So, protection was needed to the tenants.

¹⁰ Section 3 (2) (b) - who has done any act or has been guilty of any negligence which is destructive of, or injurious to, the land or any crop thereon or has altogether ceased to cultivate the land;

¹¹ Section 3 (2) (c) of the Act

¹² Section 3 (2) (d) of the Act

¹³ AIR 1975 Madras 227 FB

¹⁴ AIR 1981 Madras 170

¹⁵ AIR 1991 SC 492, also see (1991) 1 MLJ 42 SC

¹⁶ Section 2 (aa) —Cultivating tenantl- (i) means of person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied;

In order to safeguard their rights, the Tamil Nadu Government enacted legislation for their better protection viz., The Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969¹⁷ (herein after in short Act, 1969). The object of the Act is to provide for the preparation and maintenance of record of tenancy rights in respect of agricultural lands in the State of Tamil Nadu.

The term tenant¹⁸ includes "tenant" in respect of any area in the State (other than the Kanyakumari district)- (a) means in relation to any land to which the Tamil Nadu Cultivating Tenants Protection Act, 1955 (Tamil Nadu Act XXV of 1955), applies, a cultivating tenant as defined in clause (a) of section 2 of that Act.

STRUGGLE IN ENFORCING THE LEGISLATION:

The Tamil Nadu Cultivating Tenants Protection Act, 1955 and the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 requires inter-alia that every tenancy agreement between the landlord and the cultivating tenant shall be executed in triplicate. Despite these provisions many land lords and tenants prefer to keep the leases oral and consequently a correct, complete and reliable record of tenancy rights in the State was not available. The absence of a complete and reliable record of tenancy rights is an impediment in the way of the enforcement of legislative protection to the cultivating tenants.

PREPARATION OF RECORD OF TENANCY RIGHTS:

Section 3 of the Act, 1969 lays down the procedures relating to preparation of record of tenancy rights. The section consists of 10 subsections. Firstly, the Government shall direct the preparation of record of tenancy rights in such village(s) by notification published in the official gazette (fort St. George Gazette).¹⁹

Such notification requires the particulars viz., the (a) the survey number or sub-division number, extent and local name of the land, the name and address of the land owner, cultivating tenant, intermediary (if any) and the relevant particulars²⁰.

After notification, the record officer appointed for the purpose of the Act will notify/publish a notice in the village with regard to the preparation of the record of tenancy²¹.

DRAFT RECORD OF TENANCY RIGHTS:

On the basis of information obtained by the record officer and the information furnished by the advisory committee [constituted under section 5A²²] and after giving opportunities to the parties concerned, the record

¹⁷ Tamil Nadu Act 10 of 1969

¹⁸ Section 2 (8) (i) (a) of The Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969.

¹⁹ Section 3 (1): The Government may, by notification, direct the preparation of a record of tenancy rights for such village or villages as may be specified in the notification and such record shall be prepared, maintained and revised in accordance with the provisions of this Act and the rules made thereunder.

²⁰ Section 3 (2) of the Act, 1969

²¹ Section 3(3) of the Act.

²² Section 5A- Constitution of Advisory Committees. - (1) For the purpose of advising the record officer in the discharge of his functions and in particular in the preparation of record of tenancy rights under section 3, the Government may, by notification, constitute an Advisory Committee for every taluk in a revenue district.

(2) Such committee shall consist of the following members, namely:-

(a) one landless agricultural labourer belonging to the Scheduled Castes or Scheduled Tribes; (b) one tenant; and

officer shall prepare a Draft record of tenancy rights for the notified village(s).²³ After the completion of the preparation of the Draft record of tenancy rights, it will be published in the *District Gazette* and it will be served to the landowner, tenant and the intermediary concerned.²⁴

REMEDY FOR AGGRIEVED PERSONS:

According to section 3 (6), if any person is aggrieved, he may submit an application to the record officer within the time prescribed for the rectification of the entry or for the inclusion of any particulars in the draft record. However, such particulars shall be accompanied by the relevant reliable documents as evidence in support of his claim.²⁵

ROLE OF RECORD OFFICER:

After receipt of such application, after giving reasonable opportunities of being heard, the record officer may either accept or reject the application as per the provisions of section 3 (8). After disposal of all the applications, the record officer shall make necessary alterations in the draft record of tenancy rights and prepare the *final record of tenancy rights* for the village.²⁶ As per section 3 (10), the final record of tenancy rights shall be published in the Tamil Nadu Government Gazette and the such record so published shall be called *the approved record of tenancy rights*. The approved record of tenancy rights shall also be published in the District Gazette of the district in which the village is situated and in such other manner as may be prescribed.

APPEAL & REVISION:

Any person aggrieved by the entry, shall prefer an appeal before such authority specified by the Government in this behalf.²⁷ According to section 7, the revision shall lie before the District Collector or any officer specified by the Government. He has the power to call for records before the record officer or appellate authority and pass such orders as he thinks fit.

After publication of the approved record of tenancy rights, the parties are entitled to get certified copy of any entry in the approved record of tenancy. Any entry in the approved record of tenancy rights shall be presumed to be true and correct until the contrary is proved or a new entry is lawfully substituted.²⁸

BAR OF JURISDICTION OF CIVIL COURTS:

Section 16 A ousts the jurisdiction of the courts in any matters pending before the record officer. Accordingly, no civil court shall have the jurisdiction in respect of any matter which the record officer, the district collector or any officer or authority empowered by or under this Act to determine. In *Sankaralinga*

(c) three social workers

²³ Section 3 (4) of the Act, 1969.

²⁴ Section 3 (5)

²⁵ Section 3 (7) of the Act, 1969

²⁶ Section 3 (9) of the Act, 1969

²⁷ Section 6 of the Act

²⁸ Section 15 of the Act, 1969.

Thevar v. Thirumalammal,²⁹ it was held that if the action before the civil court had been instituted before section 16-A was inserted, the Act has no application.

So it is decided this Act has attempted to bring out equity and ensure social justice marking an end to past atrocities towards farmers. As well it prevents exploitation of tenant farmers in the hands of wealthy landlords.

MODEL LAND LEASING ACT, 2016:

The NITI Aayog prepared and approved the Model Land Lease Act, 2016 which provides an appropriate template for the States and Union Territories to draft their own legislation in consonance with the local requirements by adopting the template.

After independence, the major task before the Government on land reforms is that tenancy reforms. Most of the States had adopted legislations pertaining to agricultural tenancy even in 1960s and 1970s which were subject to time to time amendments in response to policy suggestions emerging through various five-year plans.

The tenancy laws adopted by the State Governments had covering the definition of tenants, landlords/land owner, regulation of rent, grounds for eviction of tenants, landlord's right of restoration of possession on land leased, conferment of ownership rights on tenants, surrender of lease/tenancy rights, prohibition of sub-lease, record of tenancy rights, etc. Primarily the tenancy agreements were informal in nature which led the tenants insecure and rendered the system inefficient which affected the agricultural efficiency, equity, occupational diversification and rapid rural transformation.³⁰

The Expert Committee on Land Leasing was constituted by NITI Aayog under the chairmanship of Dr T. Haque submitted the model Agricultural Land Leasing Act, 2016 on March 31, 2016. The model Act intended to permit and facilitate leasing of agricultural land to improve access to land by the marginal farmers and landless. For the first time, it provides for recognition of farmers cultivating on leased land to enable them to access loans through institutional credit.

The Act defines 'lease' and 'land leasing agreement'. According to the Act, the enforcement of the lease agreement is vested with the tahsildar or a revenue officer of equal rank who will be responsible for the enforcement of the terms of lease and facilitating return of the leased out agricultural land to the owner on expiry of the lease period.³¹

As per the expert committee report, as a case of a usual tenancy agreement, the land owner is bound to hand over possession of the leased-out land to the cultivator immediately after the execution of the lease and he is also entitled to the restoration of possession of the land on the expiry of the lease period. His right to convey

²⁹ (1977) IMLJ 189.

³⁰ Gyanendra Mani, "Model Agricultural Land Leasing Act, 2016: Some Observations", Economic and Political Weekly, Vol. 51, Issue No. 42, 15 Oct, 2016, ISSN (Print) - 0012-9976 | ISSN (Online) - 2349-8846

³¹ Report Summary Model Agricultural Land Leasing Act, 2016, available at https://prsindia.org/files/policy/policy_committee_reports/1462167280_Report%20Summary%20land%20leasing%20act,%202016.pdf

the land by way of sale, mortgage, and gift shall be subject to the rights of the cultivator. He is responsible to pay all the revenues to the Government.³²

On the other hand, the cultivating tenant is entitled to undisturbed possession and enjoyment of the land. He can use the land for agriculture and allied activities. His right of sub-lease and mortgage of the land is prohibited. The model Act, 2016 provides that the cultivating tenant is eligible to get loans from financial institutions and banks without mortgaging the leased-out land. He is entitled to compensation for any improvements or fixtures made by him on the land. Indeed, he is responsible for handover the possession on termination of lease/tenancy.³³

The model act removes the clause of adverse possession of land and it facilitates all tenants to access crop insurance and bank credit. It also encourages incentivise tenants to make investment in land improvement.

TERMINATION OF LEASE/ EVICTION OF TENANT:

The landlord can terminate the lease on the following grounds viz., (i) failure to pay the rent/lease amount after a grace period of three months (ii) use the land for any other purpose specified in the agreement, (iii) sub-leasing the land and (iv) causes damage to the land.

DISPUTE SETTLEMENT MECHANISM:

If any dispute arises between the landlord and tenant, it can be settled using third-party mediation or gram panchayat or gram sabha. The aggrieved party can file a petition before the Tahsildar, or a revenue officer of equal rank when the dispute cannot be settled by third party mediation. The authorities have to adjudicate the dispute within four weeks. The appeal shall lie before the collector or district magistrate.

SPECIAL LAND TRIBUNAL:

The apex authority under the Model Act is the Special Land Tribunal constituted by the State Government for this purpose which will be headed by a Retired High Court Judge or District Court Judge. The Model Court completely ousts the Jurisdiction of the Civil Court over the disputes under the Model Leasing Act.

LIMITATIONS OF THE MODEL ACT:

- (i) *Threat to plant crop cultivation:* since the Model Leasing Act adopted that the agricultural land can be used for cultivation and allied activities like animal husbandry, dairy, poultry farming, live stock breeding, fishery, agroforestry, agro processing in addition to the crop cultivation, there are possibilities that the agricultural land may be diverted from using for crop cultivation. Indeed, the land may not be suitable for growing crops when the lessor/land owner resumes possession.

³² Ibid

³³ Ibid

- (ii) There is a lack of clarity on the definition of lessee cultivator.³⁴ The Model Leasing Act defines a lessee cultivator as a “person who leases in agricultural land.” There is a lacuna that whether the leasing should be restricted to farmers/group of cultivators (self-help groups/joint liability groups/farmers producers organisations) including landless cultivators but also includes corporates and any other person willing to manage cultivation through their employees/representatives can be allowed to lease-in agricultural land. If corporates fall under the purview of the model leasing act, then such contracts would affect the food security in the country, if choice of crops is solely motivated by profit.
- (iii) No maximum period: as the Government does not fix the maximum lease period, it may increase the risk of losing the land permanently from food crops.
- (iv) The Act fails to include one more ground for termination of lease viz., keeping the cultivating land unplanted/unused which defeats the very purpose of the Act as the Act aims to ensure the productive and optimal use of the scarce resources.
- (v) Ceiling on ownership holdings is not included in the Model Leasing Act. However, under The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961³⁵ the cultivating Tenant can hold only 5 standard acre of land for cultivation. If such provision is included then the very object and purpose of the Act will be protected.

As a beginning of effort , Model Agricultural Land Leasing Act, 2016 strives hard to reduce farmer’s fear on losing their rights ,ownership , title over his own land on leasing . lots of land remain fallow for those who disagrees oral lease , therefore it is mandatory for a legal recognition inorder to explicitly protect the interest of the land owner It brings extended definition of lessee cultivator with a clarity which enables them to claim various benefits from the government as well as credit institutions

CONCLUSION:

Though the Legislations on tenancy laws are enacted by the State of Tamil Nadu immediately after independence and much early to the modern laws, though the agricultural labourer and cultivating tenants know the execution of tenancy agreements, still, most of the land leasing is as per the direction of the land owners. Therefore, it is recommended that the State Government, through the executing authorities shall give awareness about the rights of cultivating tenants and the Model Leasing Law.

³⁴ Section 2 (b) “Lessee Cultivator” means a person who leases in the agricultural land for the purpose of agriculture and allied activities against a consideration in cash or kind or a share of produce payable to the Land owner - Lessor as per the lease agreement;

³⁵ Tamil Nadu Act 58/61