



QUESTIONING THE POSSIBILITY OF UPLIFTMENT OF FARMERS IN TELANGANA AND ANDHRA PRADESH THROUGH ENTREPRENEURIAL OPTION IN LAND TENANCY

Dr. G. Mallikarjun¹

Abstract: Tenancy reform is an important policy mechanism to provide better access to and distribution of our country's land resources. It was established within the country to achieve the dual purpose of rationalizing the use of scarce land resources by changing tenure terms and setting caps on such tenure. Therefore, he has two purposes in it. One is to protect tenants from unfair rents and sudden evictions, and the other is to protect the rights of landlords. Another is to redistribute agricultural land in favour of the less fortunate classes and improve the conditions of actual farming by actual farmers. Since then, various states, where most people in rural areas depend on agriculture and related activities for their livelihoods, have enacted rental laws eliminating intermediaries. Regulate rents, provide security for tenants or transfer ownership to ensure a fairer distribution of land resources to initiate agricultural restructuring through farm consolidation to prevent land fragmentation. The paper tries to explore the Tenancy Laws in the State of Telangana and Andhra Pradesh and thereafter the problems with the exiting law and its implementation are explored to provide a possible solution by exploring the option of entrepreneurship to plug the gaps.

Key Words: Tenancy Reform, Intermediaries, Consolidation of Land and Prevention Fragmentation

I. INTRODUCTION

It is a well-known fact that the enhancement of efficiency in the case of resource allocation forms a central theme of economic development in any nation, and land is in itself one such vital resource. In the case of India, the need for land,² and the indisputable and categorical privileges towards it are owing to the basic fact that India is chiefly an agrarian country and thus its economic advancement is predominantly associated with land, and its availability. The right to land is a fundamental right directly related to the right to subsistence, which is the minimum level that needs to be guaranteed for proper functioning and a sustained level of living of the nation's people. Further land proves to be the main strength and add to the security of the individual, apart from being a mere socio-economic privilege³. Therefore, land rights, mainly in countries like India, where agriculture is also principally the largest employer in numeric terms, plays a vital role, in both economic and social

¹ Asst. Professor of Law, NALSAR University of Law, Hyderabad.

² In agrarian countries like India, no or limited access to land can be effectively seen as a hindrance in the way to make income, i.e., the process of generating capabilities to spawn income, even according to celebrated thinkers like Streeton.

³ The distributive measures were meant to achieve this by delivering material resources to the poor as promised by the Constitution of India, especially those who required land as a productive resource. This was to be achieved by redistributing land ownership from large landholders to the landless, specifically from socially weaker sections. See R.S. Deshpande, 'Current land policy issues in India', available at <http://www.fao.org/docrep/006/y5026e/y5026e0b.htm> (last accessed October 01, 2015).

respects, and the limited or no access to land may make the populace insecure and incompetent to meet their basic requirements.

Tenancy reforms are one major policy mechanism which has strived to enable better access and distribution of land resources in our nation. It has been instituted in the country to fulfill the following two purposes: one, to rationalize the use of the scanty land resources by altering the conditions of holdings and imposing ceilings on such holdings, and two, to redistribute agricultural land in favour of the less privileged classes, and improve the terms and conditions of cultivation by the actual tillers. Therefore, its aim is twofold: one to protect the tenants from irrational rents and sudden eviction, and on the other hand to protect the rights of the land owners. Consequently, various States, including Andhra Pradesh⁴ where more than 75% of the people in rural areas depend on agriculture and allied activities for their livelihood, have enacted tenancy legislations which abolish intermediaries; regulate rent, provide security of tenure to tenants or confer ownership in order to ensure more equitable distribution of land resources. These legislations have also imposed ceilings on land holdings; and ushered agrarian reorganization by consolidating holdings and preventing fragmentation of land, a process which has helped in the setting up of cooperative farms. Some of these legislations have also enabled tenants to obtain institutional credits.

Part II of the Paper explores the Tenancy Laws in the State of Telangana and Andhra Pradesh. Thereafter the Problems with the Law and its implementation are explored in Part III in a detailed manner. Part IV and Part V try to provide a solution to the problems highlighted by exploring the option of entrepreneurship and exploring the avenues in which the Government has tried to plug the gaps. In Part V, the issues involved with the proposed solution are also explored, and the paper is then concluded in Part VI.

II. TENANCY LAWS IN TWO TELUGU STATES: AN OVERVIEW

Tenancy in Telangana

The leasing out of land by large landholders is prohibited. Small holders owning below three family holdings are, however, allowed to lease out land. The lease in such cases shall be for such periods as the Collector may fix. Landholders owning land up to three family holdings may lease out their land for a period of five years and must, subject to a right of resumption, renew it for further periods of five years. The right of resumption is limited to one family holding for each adult member in the landholder's family. As the family holding can be a considerable area, the resumption can result in total or substantial dispossession of the tenant who is not guaranteed a minimum area. Thus, in reality, there is no effective restraint on the leasing out of land nor is the tenant accorded real security of tenure.

Tenancy in Andhradesh

Tenancy in the Andhra Area is governed by the AP (AA) Tenancy Act of 1956. The main object of this legislation is to see that the tenant feels secure and dedicates himself to the task of production and it was thought that this feeling of security can be created in him by conferring certain occupancy rights for him in the

⁴ Andhra Pradesh has legislated many enactments in order to ensure secure land rights to the poor some of which include AP Land Reforms (Ceiling on Agricultural Holdings) Act, 1973; AP (Andhra Area) Tenancy Act, 1956; AP (Telangana Area) Tenancy And Agricultural Lands Act, 1950; and Andhra Pradesh Occupants Of Homesteads (Conferment Of Ownership) Act, 1976, etc.

land and by fixing maximum rent payable to the landlord and all the rights of cultivating tenant are heritable. The cultivating tenant has a right to first purchase the land leased to him. However, in the event of a change in the ownership of any land, the cultivating tenant shall be entitled to continue the tenancy on the same terms and conditions.

All tenants under the Act were treated as single class unlike in the Telangana Act. The maximum period of all further leases was fixed at 6 years. Provision was made for the termination of the tenancy and eviction of the tenant during the currency of the lease in case the tenant failed to pay the rent due or misused the land. The landlord was also permitted to take back the land from his tenant for “personal cultivation”, which was defined loosely to include cultivation through supervision by any member of the landlord’s family.

III. WHERE DOES THE PROBLEM LIE?

Historically, in 1947 after the independence, India inherited three types of land revenue systems from the British which broadly defined the relationships among the layers of land rights and control exercised by the state, landowners, landlords, tenants, and laborers.⁵ Consequently, instantaneously a certain sect of the society got intermediate rights to control the land and its revenue to the disadvantage of the poor and landless, who were the actual possessors and cultivators of the land, making a living from the said pieces of land. The then tenancy system strongly helped the landowners to enrich themselves and their riches, at the cost of the tillers. Immature legal protection was provided to this aspect. Tenancy agreements continued to be made orally, or even if written, were terminated pre-maturely without any minimum notice period and the rents charged were phenomenally high, mainly due to the prevalent illiteracy of the cultivators and incompetent teaching of the law.

Land reform measures focussing on the abolition of intermediaries, tenancy reform and the imposition of land ceilings, as discussed above, were drafted and enforced, but have however had limited impact. These improperly implemented legislations in conjunction with imperfections in other key markets (e.g., the market for credit), resulted in inequalities continue to constrain long-run economic growth and, in particular, the transfer of land towards high return activities. Thus, intense debates have emerged around how governments should regulate the terms on which land can be handled to benefit the society as a whole, including the landowners and tenants.

Further, in India most of the tenancies being oral and informal, it is very difficult to make an accurate estimate of the incidence of tenancy. Even after passing of tenancy laws by various states, the position of tenants, particularly of share croppers, continues to be precarious in several parts of the country. In the circumstances, it is contended that there is a need to plug the loopholes in the existing tenancy laws and to better implement enacted laws, rather than liberalizing tenancy and the lease market.

⁵ See P.S. Appu, Land Reforms in India, (Vikas Publishing, 2006); Also see G. Kotosky, Agrarian Reforms In India, (People’s Publishing House ,1964).

The present era of economic liberalization, has placed small and marginal farmers at a disadvantage when it comes to participating in domestic and foreign markets. This disadvantage stems from their inability to grow the commodities that are in demand in world markets due to lack of knowledge and the high cost of cultivation of these goods. It has been argued that this disadvantage can be overcome by allowing entrepreneurs to enter the agricultural sector and incur the risk of competition. To enable this change of policy, a re-examination of land reforms is being advocated. It is also being argued that liberalization of tenancy would not only increase the availability of land in the lease market but would also increase the poor people's access to land.

There are scholars (for example Haque)⁶ who question the blind adoption of this approach and ask policymakers to examine whether tenancy laws of various states in fact constrain agricultural growth; whether liberalization of tenancy would lead to the improvement in the condition of poor tenants or whether it would bring back the era of absentee landlordism.

IV. ENTREPRENEURSHIP AS AN OPTION IN AIDING FARMERS THROUGH LAND TENANCY

Today, land reform in rural India is at a cross-roads now. Increasingly, there is a demand for re-examination of the land reform issue. The new draft National Agricultural Policy states that its approach on land reforms will focus on the 'development of lease market for increasing the size of the holdings by making legal provisions for giving private lands on lease for cultivation and agri-business'. It is also envisaged that "private sector participation will be promoted through contract farming and land leasing arrangements to allow accelerated technology transfer, capital inflow and assured market for crop production, especially of oilseeds, cotton and horticultural crops". Several state governments, in Andhra Pradesh, Gujarat, Karnataka, Punjab and Tamil Nadu, are actively promoting contract farming, changing laws to enable and support it, and providing companies interested in it with a variety of incentives, including lifting of land ceilings, subsidies and tax rebates. Other state governments, including in West Bengal, are under active pressure to change their policy towards contract farming.⁷ It is also being argued that liberalization of tenancy would not only increase the availability of land in the lease market but would also increase the poor people's access to land. Apart from the past costs of large-scale evictions, many commentators point to the on-going costs of this large body of tenancy reform legislation. These include: (1) reduced supply of land available for rent, resulting in decreased land access for poor (and other) households who would like to rent-in; (2) non-use or under-utilization of land by landowners who are unwilling or unable to cultivate their land and fear losing their land if they rent it out; and (3) lack of any legal protection for most tenants who are forced to operate in concealed, informal tenancies.⁸

⁶ Tajamul Haque, *Impact of Land Leasing Restrictions on Agricultural Efficiency and Equity in India* 134-142, available at http://www.landandpoverty.com/agenda/pdfs/paper/haque_full_paper.pdf (last accessed October 01, 2015); Pushpendra and B.K. Sinha, 1999. Some Aspects of Tenancy Debate: Implications for Policy Reforms, *Contributory Papers for National Workshop on 'Whither Tenancy?'* (Mussoorie: Centre for Rural Studies), xi-xvi.

⁷ Jayati Ghosh, *Corporate agriculture: The implications for Indian farmers* (2003), available at http://www.macrosan.org/fet/dec03/pdf/Corp_Agri.pdf (last accessed October 01, 2015).

⁸ UN FAO, *Land and livelihoods: Making land rights real for India's rural poor, a document produced food and agricultural organisation of the United Nation*, available at <http://www.fao.org/docrep/007/j2602e/j2602e03.htm> (last accessed October 01, 2015).

Therefore, liberalizing or removing tenancy reform legislation is a controversial issue in India. Most policymakers lack a balanced understanding of the trade-offs and make ill-informed assumptions that the existing legislation protects the poor. On the other hand, there are a growing number of voices advocating generally for tenancy liberalization. Some of those "pro-liberalization" voices point out that the debate cannot be reduced to a choice between status quo and liberalization. Rather, because different socio-economic-legal settings merit varying treatments, the option in each setting will necessarily reflect the nature and extent of ongoing regulation⁹. Those promoting liberalization of tenancy restrictions often connect the desired liberalization to increased investment by (and benefits accruing to) large farmers or agri-business concerns, a connection that generates understandable resistance from those representing the interests of marginal/small farmers and agricultural labourers.¹⁰

The Tenth Five-Year Plan recognizes the problems with state tenancy restrictions, but offers little in the way of specific policy guidance:

"[T]he prohibition of tenancy has not really ended the practice. On the other hand, it has resulted in agricultural practices that are not conducive to increased production. This, in turn, also depresses employment opportunities for the landless agricultural labourers." Section 3.2.73.

"The ban on tenancy, which was meant to protect tenants, has only ended up hurting the economic interests of the tenants as they are not even recognized as tenants. As a result, they are denied the benefits of laws that provide security of tenure and regulate rent." Section 3.2.35.

Though Haque concedes that in the wake of economic liberalization, there is a demand for liberalization of agricultural tenancy in order to promote diversified agricultural growth but argues that one needs to examine whether tenancy laws of various states as such constrain agricultural growth. It is particularly important to analyse, whether liberalization of tenancy would lead to the improvement in the condition of poor tenants in all parts of the country or whether this would lead to the growth of absentee landlordism once again.¹¹ It looks at the safeguards that must be provided for before taking such drastic measures, which are in fact diametrically opposite the reforms in the past.

In the wider-global context, it is clear that the small and marginal farmers are handicapped when it comes to participation in domestic and foreign markets. Their competitiveness is hampered by the crops they produce, by market imperfections and by a lack of access to available information. Other factors that inhibit India's farmers in competitive world markets include the small size of landholdings and low throughput of production. It is

⁹ Tajamul Haque, *Impact of Land Leasing Restrictions on Agricultural Efficiency and Equity in India* 134-142, available at http://www.landandpoverty.com/agenda/pdfs/paper/haque_full_paper.pdf (last accessed October 01, 2015); Pushpendra and B.K. Sinha, 1999. Some Aspects of Tenancy Debate: Implications for Policy Reforms, Contributory Papers for National Workshop on 'Whither Tenancy?' (Mussoorie: Centre for Rural Studies), xi-xvi.

¹⁰ See Ghosh, at note 6.

¹¹ Elisabeth Sadoulet, et al., *Access to Land via Rental Markets*, in de Janvry et al (eds), *Access To Land , Rural Poverty, and Public Action* (Oxford: Oxford University Press, 2001).

difficult for the small and marginal farmers to grow the commodities that are in demand in the world market, mainly because of the high cost of cultivation of these goods and their limited knowledge of them. On the other hand, some other economists argue that the new technology may be size neutral but is undoubtedly not resource neutral. In many parts of the country, the cultivating castes are also the big and medium landholders. Through better access to credit and other material resources, they have shown better results in agriculture than poor farmers. The small farmers have lost their traditional yield advantage because of inferior access to on-farm surplus, cheap credit, non-crop incomes (which increase risk-bearing capacity) and private tube wells¹². Thus the findings on the relationship between farm size and output may be similar. Still, there is agreement that small farmers utilize capital and use labour in a more socially desirable manner. On the other hand, large farmers invest more capital, increasing the cost of cultivation, and thus demand a higher price for their produce, forcing the Government to push the Minimum Support Price upwards¹³.

Theoretically, landlords can choose between different ways of exploiting their land to generate a return, including selling land and investing in other assets. The attractiveness of operating land when tenants have stronger user rights depends on the extent to which landlords can extract returns from doing so, while the ability to sell land depends on the capital market opportunities of potential owner-cultivators. Tenancy reforms make renting out land less attractive to landlords. We, therefore, expect less use of tenancy and more land sales. This will lead, in turn, to a change in the distribution of land ownership as well as increased labour demand and hence increased agricultural wages.

As already discussed, it has been seen that the tenancy reforms have come a long way in India, however now Indian policy is likely to do a full turn-around with this policy initiative by way of the new National Agricultural Policy. Under the proposed regime, the liberalization of markets has been forecasted and aimed at, in order to support the farmers and enhance their capabilities. This Policy approach focuses on 'development of lease market for increasing the size of the holdings by making legal provisions for giving private lands on lease for cultivation and agri-business', and in effect promotes increased private participation in the sector in order to boost accelerated technology transfer, capital inflow and assured markets for crop production, etc. . However, care must be taken that such liberalization should be only to permitted only for the small and marginal farmers to ensure its best benefit and to ensure that the tenancy reforms are not undone.

V. PROPOSED STRUCTURE: ISSUES INVOLVED IN IT

As discussed earlier, there has been a proposal to move towards the liberalization of the agricultural land holding sector. Those promoting liberalization of tenancy restrictions often connect the desired liberalization to increased investment by (and benefits accruing to) large farmers or agri-business concerns, a connection that generates understandable resistance from those representing the interests of marginal/small farmers and agricultural labourers.

¹² See Dr. N.C. Saxena, *Tenancy reforms vs open market leasing – what would serve the poor better?*, available at <http://planningcommission.nic.in/reports/articles/ncsxna/index.php?repts=leasing.htm#null> (last accessed October 01, 2015).

¹³ *Ibid.*

It is pertinent to note the reasons that go behind making this proposal which include non availability of sufficient capital with marginal farmers for investment in modernisation, the marginal farmers' desire to maximise income through leasing out land and wage earnings by hiring out employment both within and outside agriculture, the large farmers' desire to maximise income by expanding the size of operational holdings especially when they lack the skill or aptitude to take up non-farm activities, and the population pressure which forces all landowners to look for additional income, amongst a host of other problems being faced by the tillers as of now.

Tracing through these equilibrium effects complicates the overall welfare impact. Those cultivators who remain as tenants will gain, but marginal tenants will lose out as they become landless labourers. However, their opportunities in the labour market should improve. Households with better capital market opportunities are more likely to end up as owner-cultivators.

The powerful landowner also shuffles his tenants so that no rights are claimed on the basis of long-term cultivation. In this case, the tenant has no incentive to make any long term investments in the land or cultivate it efficiently by providing higher levels of purchased inputs and applying larger doses of his own labour. Though theoretically both the landlord and the share-cropper stand to gain by sharing the cost of cultivation and cultivating the land more efficiently, it still is not clearly assured that the same would happen, as the historically India has seen that invariably the tyranny of the land owners is tormenting, as they fill their coffers with the fruits of the efforts of the farmers.

However, it is understood that the proposed scheme would ensure greater regulation and legal recourse to the farmers and would grant them more secure rights, but it is uncertain as to the extent of its actual implementation and the percolation of the said benefits is guaranteed or not. It is to be seen how the Government is going to ensure that the feudal lords do not exploiting the innocent tillers and make use of legal loopholes or through illegal strategies, since even now, after years of economic liberalization have not made any significant dent on the lives of the absolute poor, who remain outside the ambit of the 'market', lack education, awareness and are overwhelmingly from the bottom of India's caste hierarchy.

The allowing of entrepreneurial holding of lands is being proposed so as to inject greater influx of funds in order to operate on a larger scale and achieve economies of scale in production, marketing, and selling which is possible only if there are large holdings. An alternate solution in order to achieve the same ends is the pooling small farms together to form formal or informal groups of producers for purposes of marketing.¹⁴ The problem with larger holdings would become lack of personal control, creeping in of feudalism, lesser motivation for the farmers to work for others since the legal ownership over the lands, etc., and these cannot be overlooked. Furthermore in case of disempowered or the people who do not know their rights well, the leasing of lands and

¹⁴ See M. R. Carter, Y. Yao, and K. Deininger, Land Rental Markets Under Risk: A Conceptual Model for China (2002).

giving it up to the entrepreneurs should be regulated, with a proper intervening authority to help protect them from unscrupulous dealings.

The issue whether commercialisation benefits small producers or leaves them worse was at the centre stage of all controversies in agriculture three decades back, as there was evidence to support contradictory positions. In this relation, marginalization of land holdings and land administration are also of major concern.¹⁵

VI. CONCLUSION

Land reforms in general and tenancy reforms in specific alone will not rid India of its vast number of the abject poor. In addition there is a need to spread the net of education, awareness to those who are at the bottom of the ladder in the countryside. You need a national consensus on the caste system and an end to the ritual discrimination of low-castes. You need credit reform to enable the poor to get out of the clutches of the money lenders. But without the effective implementation of land reform and tenancy reforms, it is difficult to see how the lot of the rural poor can be changed. In the final analysis, land reform is not a sufficient but a necessary condition for poverty eradication¹⁶.

However, it is doubtful if any tangible progress can be expected now in the field of greater tenurial security to unrecorded tenants in the absence of requisite political will, which is demonstrated by the large gaps between policy and legislation and between law and its implementation. If political will was weak in the 1960's and 1970's, it is even weaker now in the wake of economic liberalisation policies. The general climate in the country today is against distributive policies, which require strong and honest implementation machinery and also clear directions from the political masters¹⁷. Therefore it would not be suggestible for us to allow private entrepreneurs altogether into the sector.

One of the major ways in which loopholes in land reforms can be plugged is through computerisation of land records. Computerization and automation of this aspect would go a long way in ensuring the rights and protecting the interests. In 2009, the Ministry of Rural Development under the aegis Government of India had proposed the National Land Records Modernization Programme, in view to revamp the existing system of property-records' management, and to set up an proficient system that would grant conclusive land title guarantee.¹⁸ This programme involved modernising of the system of administration of land records, updating

¹⁵ Klaus Deininger, Land Policies for Growth and Poverty Reduction 85-6 (World Bank, 2003). Land tenancy markets serve an important function in equalizing returns to non-tradable factors of production, such as family labour and bullocks in India. If the distribution of the surplus is not too skewed between landlord and tenant, rental will have an important positive impact on equity. Also see E. Skoufias, *Land Tenancy and Rural Factor Market Imperfections Revisited*, 16(1) JOURNAL OF ECONOMIC DEVELOPMENT 37-55 (1991).

¹⁶ Patralekha Chatterjee, *Land Reform in India Necessary but not Sufficient to Fight Poverty*, D+C Development and Cooperation (No. 2, March/April 2002, p. 21 - 22), available at www.inwent.org/E+Z/zeitschr/de202-8.htm (last accessed October 01, 2015).

¹⁷ See Sadoulet, p. 2 at note 10.

¹⁸ 'Title' over a piece of land means the "ownership of an immovable property and stands against the right of anyone else to claim the property". See Land Titling Bill 2010, Clause 2(xxv).

entries, mutations and surveys/resurveys, resolving disputes, facilitate transparency in the maintenance of land records and ease of access of these records to property owners and interested parties.¹⁹

Keeping this in mind, it would be highly impractical for us to go with the increased privatization and allowing of private entrepreneurs into the sector. It is, therefore, advisable to keep in mind the suggestion given by the Land Committee²⁰ on land leasing, they are:

- 1 In order to facilitate land leasing, standard contracts in simple language protecting the rights of both the parties should be devised. Steps should be taken to create institutions for decentralised enforcement of tenancy contracts.
- 2 Tenancy should be legalised in order to provide the rural poor with access to land, discourage the land being left fallow and for enhanced occupational mobility of the rural poor. Subsequently, depending upon the experience leasing could be legalised for all areas up to the ceiling limits.
- 3 While discouraging the pernicious system of rent seeking sub-infatuation, leasing in and leasing out of agricultural land, particularly for the purpose of tilling should be permitted within ceiling limits. The state laws should recognize systems of share cropping and protect the share croppers by giving security of tenure and fixation of equitable share of the crop without conferring the title to land.
- 4 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.
- 5 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.
- 6 All States should impose ceiling on operational holdings and not just ownership holdings. Under no circumstances should the landowners having land above the ceiling limit be allowed to lease in land for agricultural purposes. By any household, total operation area, including owned and leased-in land, should not exceed the ceiling land

¹⁹ See <http://www.protectingpropertyrights.org/story.aspx?id=4181&pubid=4270> (last accessed October 01, 2015).

²⁰ Draft Report submitted on January 9th 2008 by Committee on State Agrarian Relations and unfinished task of Land Reforms, Ministry of Rural Development, Government of India, available at http://www.rd.ap.gov.in/IKPLand/MRD_Committee_Report_V_01_Mar_09.p (last accessed October 01, 2015).