

# Riding the Crest of People's Movements

**INDIA** Country Paper  
Land Watch Asia





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## Acronyms

<b>AVARD</b>	Association of Voluntary Agencies for Rural Development
<b>BJP</b>	Bharatiya Janata Party
<b>CPI</b>	Communist Party of India
<b>CPI(M-L)</b>	Communist Party of India (Marxist-Leninist)
<b>CPM</b>	Communist Party (Marxist)
<b>CSOs</b>	Civil Society Organizations
<b>DFID</b>	Department for International Development
<b>FD</b>	Forest Department
<b>GOI</b>	Government of India
<b>IFA</b>	Indian Forest Act
<b>IFAD</b>	International Fund for Agriculture Development
<b>IFI</b>	International Financial Institutions
<b>INC</b>	Indian National Congress
<b>MJVS</b>	Manav Jeevan Vikash Samiti
<b>NAC</b>	National Advisory Council
<b>NAP</b>	National Agriculture Policy
<b>NDA</b>	National Democratic Alliances
<b>NSS</b>	National Sample Survey
<b>PESA</b>	Panchayat Extension to the Scheduled Areas
<b>POs</b>	People's Organizations
<b>SCs</b>	Scheduled Castes
<b>SEZs</b>	Special Economic Zones
<b>STs</b>	Scheduled Tribes
<b>UPA</b>	United Progressive Alliance
<b>UNPA</b>	United National Progressive Alliance
<b>VANI</b>	Voluntary Action Network of India
<b>WLPA</b>	Wildlife Protection Act

## Glossary

<b>Baiga</b>	A tribe in India.
<b>Bazar</b>	Market.
<b>Bhoodan</b>	Land gift.
<b>Dalits</b>	Scheduled Castes.
<b>Jan andolan</b>	People's movement.
<b>Janadesh</b>	People's verdict; Retrieving people's dignity through land and livelihood campaign in India in October 2007
<b>Lakh</b>	One hundred thousand.
<b>Panchayat</b>	Local governance unit.

# INDIA



## QUICK FACTS

- In 1971–72, large and medium-size holdings covering 54% of the total land area were owned by the top 10% of landowners. By 2003, the proportion of owners of large and medium-size holdings had declined to 4%, and their combined area had been reduced to 35% of all land.
- The proportion of marginal holdings has increased from 63% in 1971–72 to 80% in 2003. Over the last 10 years, the proportion of marginal holdings has increased in all states.
- About 43% of the population is still absolutely or near landless, owning less than 0.2 hectare.
- An estimated 87% of landholders among Scheduled Castes (SCs) and 65% of landholders among STs in the country are classified as small and marginal farmers. Fifty-four (54) percent of SCs and 36% of STs are primarily agricultural workers.
- According to the Ninth Plan, 77% of SCs and 90% of STs are absolutely landless, though this is inconsistent with data from the 1992 National Sample Survey that states that 13.34% and 11.5% of SCs and STs respectively are absolutely landless.

## Overview of Land Policy Formulation in India

Land management has been an important issue in India even in pre-British times. The land-revenue system introduced by the Mughal Emperor Akbar (1556–1605) is widely believed to be the beginning of systematic efforts to manage the land. Akbar introduced a system of land survey and assessment that was adapted to local conditions (Majumdar, Chaudhuri, Dutt, 1946). Succeeding Mughal Emperors continued and extended this land management and revenue system. Under the pre-British Mughal regimes, the State was regarded as the sole owner of all land, and all land revenues accrued to it.





When the British came, they made drastic changes in the above system and introduced a complicated, government controlled and operated land management and revenue system based on a pattern imported from the West. The new system they introduced was basically of two types: (i) *Zamindari* system<sup>1</sup>; and (ii) *Ryotwari* system<sup>2</sup>.

However, there was a third one, called *Mahalwari* system, which was a modified version of the *Zamindari* system. In all of these systems, excessive land revenue to be paid to the government was as high as 33–55% of gross production. In the permanent settlement *Zamindari* areas, it even reached 60%. It resulted in decay of agriculture, heavy indebtedness of peasants and total loss of community autonomy and initiative. These three systems were in existence when India won freedom from British colonial rule in 1947.

### Land Policy Formulation in Independent India

'Land to the tiller' was the promise of the National Freedom Movement. Accordingly, land policy formulation in independent India has gone through five phases:

#### PHASE 1: Tenancy Reforms, Abolition of Intermediaries (1950–1955)

At the time of independence, land was concentrated in the hands of a few, while intermediaries proliferated and tenants were exploited. Land records were in extremely poor shape, leading to large-scale corruption and litigation.

Between 1950 and 1955, the Government sought—through the enactment of laws and administrative measures—to tackle issues such as exploitation by *zamindars* and other intermediary right-holders, and to protect the rights of tenants of arable land. However, land reforms being a State subject, it was left to the States to enact their respective laws to address land related concerns.

##### Abolition of Intermediaries

The Uttar Pradesh *Zamindari* Abolition and Land Reforms Act of 1950, which covered Uttar Pradesh, the most populous State of India, was the first State land reforms law to be enacted. While the law was in the process of being enacted and enforced, the *Zamindars* (intermediaries) sold or disposed of unassigned land, particularly by assigning it to relatives and family controlled trusts, or through *benami* (false-name) transactions, or to other influential persons for consideration due to certain loopholes in the law. The Act was struck down by the High Court of Uttar

Pradesh as being invalid. When the Indian Constitution was amended for the first time in early 1951, the Act was incorporated in the Ninth Schedule of the Constitution, and thereby became immune and enforceable. By the end of 1955, all the States had enacted laws for the abolition of *Zamindari* and other intermediary interests.

##### The *Bhoodan* Movement of Vinoba Bhave<sup>3</sup>

Land related violence had escalated between 1950 and 1955. The Tebhaga Movement, which called for the reduction of land rent by a third, had turned violent, and in Telangana in the State of Andhra Pradesh, rampant land grabbing had led to armed uprising. It was at this stage that Vinoba Bhave, a follower of Mahatma Gandhi, intervened and started the *Bhoodan* ("Land Gift") movement. On 18 April 1951, Bhave went around Telangana, asking landlords to hand over to him part of their land, which he would thereafter redistribute to the landless. Bhave estimated that landless families comprised one-sixth of the country's rural population at the time. Hence, he demanded that all landholders donate to him a total of 20.23 hectares of land, which, by 1957, made up one-sixth of the total cultivable area in the country. Reiterating this demand, he travelled all over India—over 80,000 kilometers—on foot, carrying a "beggar's bowl." Before his death in November 1982, the *Bhoodan* movement had collected some 1.94 million hectares of land. However, only 0.68 million hectares of this were redistributed to the landless, while the remaining 1.26 million hectares could not be distributed for various reasons, such as opposition from the donors' heirs, the donated land being unusable, or the inefficiency of the distributing agencies. However, the latest (2006) GOI data shows that 1.13 million hectares of *Bhoodan* land has been redistributed so far.

#### PHASE 2: Imposition of Land Ceilings and Review of Land Reforms (1955–1971)

The second phase of governmental land reform measures was significant in the imposition of ceilings on agricultural land-holdings. This measure was endorsed by the Planning Commission based on its own review in 1955. West Bengal was the first State to impose a ceiling on agricultural holdings by enacting the West Bengal Land Reforms Act of 1955, which introduced a uniform family landholding ceiling of 10 hectares. In the same year the law was implemented, some 0.35 million hectares of surplus land reverted to the State. In 1957, the National Development Council directed the other States to enact their own land ceiling laws by the end of March 1959, and to implement such laws within the next three years.

By December 1970, about a million hectares of ceiling surplus agricultural land had reverted to the States for redistribution to the landless. Fifty per cent of this land was redistributed to the rural poor—but not necessarily to the landless—because most if not all of the land ceiling laws failed to provide clear eligibility criteria for recipients of surplus land.

From 1965 to 1969, India faced a severe food crisis, widespread agrarian unrest, armed movements by communist groups resulting in the killing of landlords and land-grabbing, as well as a split in the ruling Congress Party. The Ministry of Home Affairs categorically stated that the failure of land reform measures was directly responsible for the widespread agrarian unrest. This led to the third phase—comprehensive land reforms—which included lowering of the land ceilings and restrictions on exemptions from the land ceiling laws.

### PHASE 3: Comprehensive Land Reform Program (1971–1985)

A conference of the chief ministers of States in New Delhi on 23 July 1972, marked the beginning of the third phase of India's land reform venture. At this conference, the Government managed to push a proposal for a comprehensive land reform program, which included a lowering of land ceilings. A ceiling of four to seven hectares was imposed on government-irrigated land; and five to seven hectares, on privately irrigated land. However, the ceiling on other kinds of agricultural land was higher.

The new land ceiling law provided that landless agricultural laborers, particularly those belonging to Scheduled Castes (SCs) and Scheduled Tribes (STs), would be prioritized in the redistribution of ceiling surplus land. The States were directed to amend their respective laws in accordance with the new land ceiling law by 31 December 1972. Yet, in spite of the directive to the States and the implementation of a 20-Point National Program (during the National Emergency), which also included land reforms to be enforced in letter and spirit, no significant headway was made in the implementation of the land ceiling laws. According to data compiled by the Ministry of Agriculture, by the middle of 1986, only 1,850,447 hectares of land had been declared ceiling surplus; of this, 1,312,536 hectares had reverted to the States, and only 922,529 hectares had been redistributed. Hence, the new land ceiling laws had yielded few improvements compared to the old ones: a 58% increase in ceiling surplus land; a 27% increase in land that reverted to the States; and a 10% increase in land

redistributed to the landless. However, the Eleventh Plan (2007–12) document shows that 2.1 million hectares of 2.98 million hectares of ceiling surplus land have been redistributed so far.

### PHASE 4: Land Development Program (1985–1995)

This phase was characterized by increased attention to land development programs. Soil and water conservation measures were implemented through the Drought Prone Areas Program (DPAP), the Desert Development Program (DDP), and wastelands development initiatives. A massive program was undertaken for watershed development by establishing a Watershed Development Authority.

### PHASE 5: Impact of Liberalization Policy and Mainstreaming of Land Reform Agenda (1995 onwards)

Due to the liberalization policy adopted by the Government, the relevance of a number of land laws has become the subject of debate, and proposals for the computerization of land records have been put forward. Land policies are being reviewed in the light of issues related to land fragmentation, among others, and the wisdom of opening up the tenancy market.

During the fifth phase, India has seen an increase in caste and class violence. The Naxalite movement in Bihar was fed by the age-old exploitation of agricultural laborers and by the latter's resentment and the apathy of the authorities. Left-leaning parties and other major political parties in the State believe that land reforms are the key to checking extremism in Bihar. Therefore, in 2006 the Bihar government appointed a Land Reforms Commission headed by D. Bandyopadhyay. In its report submitted recently (2008) to the government of Bihar, the Commission recommended sweeping land reforms such as providing legal safeguards to *bataidars* (sharecroppers), improving the revenue administration, identifying and taking over ceiling surplus land still illegally held by landlords, and addressing the discrepancies in contract farming. In addition, it recommended:

- abolition of the distinction between agricultural and non-agricultural land;
- doing away with the general exemption given to plantations, fisheries, etc;
- a ceiling of 15 acres per family as well as per religious establishment and per sugar mill;
- acceptance of 9 July 1949 as the cut-off date, absentee landlords to be given the option of personal cultivation or through government;
- and the allotment of between one acre and 0.66 acre of





ceiling surplus land to 16.68 lakh households of landless agricultural workers and assignment of 10 decimals of land to each of 5.84 lakh households of homeless non-farm rural workers. The report also attributed the rural violence in Bihar to the failure of land reforms and inequitable, inequalitarian and exploitative agrarian asset holdings.

At the national level, the Government has started computerizing land records all over India, thereby promoting transparency and efficiency. Under its fifth phase, it has come under pressure from civil society organizations, the leftist political parties and extremists to carry out the unfinished agenda of land reforms.

## Impact of Reforms

By 31 March 1995, some 2.66 million hectares of land had reverted to the States under the old and new land ceiling laws. This is less than 1.5% of the country's total agricultural land. Of the 4,949 million target beneficiaries, at least 5% had not actually received the allotted land. Moreover, much of the allotted land was of poor quality.

Meanwhile, less than half-a-million beneficiaries received grants to improve the land that had been given to them. As a result, the general return from the allotted land was between Rs. 1,000 to 1,200 per acre per annum (approximately US\$ 58 to \$70 per hectare per annum, at year exchange rate). In most cases, the beneficiaries received less than 0.3 hectare of land each, and hence could not provide adequately for their families by farming alone. Forty percent of the holdings should have been allotted exclusively for women beneficiaries, with the remaining 60% allotted as joint holdings to husband and wife. This provision has not been implemented.

Therefore, considering the five phases of land-reform measures, it can be said that, notwithstanding certain notable gains from abolition of intermediaries, redistribution of ceiling surplus land and other tenancy reforms, the promise of the National Freedom Movement—"land to the tiller,"—has remained unfulfilled or only partly fulfilled so far. Landholdings are still skewed to a large extent.

## Size of Landholdings

Government statistics show a drop in the number of large and medium-size holdings, and increase in the number of small-size

and marginal holdings. In 1971–72 large and medium-size holdings owned by the top 10% of landowners covered 54% of the total land area. By 2003, the proportion of owners of large and medium-size holdings had declined to 4%, and their combined area had been reduced to 35% of total land. On the other hand, the proportion of marginal holdings has increased from 63% in 1971–72 to 80% in 2003. The proportion of the area under marginal holdings has also increased from about 10% in 1971–72 to 23% in 2003. The proportion of marginal holdings to total number of holdings has increased in all the States over the last 10 years.

## Landlessness Among Scheduled Castes and Tribes

The incidence of landlessness is more pronounced among the SCs and STs, the bulk of whom are agricultural laborers having minuscule holdings, sharecroppers, or other types of insecure tenants<sup>4</sup>.

Around 87% of the landholders among the SCs and 65% per cent of landholders among the STs in the country belong to the category of small and marginal farmers (Agricultural Census 1990–91). According to the 1991 Census of India, 64% of the SCs and 36% of the STs are primarily agricultural workers. The poorest among the poor in Indian society are largely from these groups.

The National Sample Survey (NSS) conducted in 1992 reported that 13.34% of the SCs and 11.50% of the STs belong to the "absolutely landless" category. This report is inconsistent with the Ninth Plan document, which reported a much higher incidence of landlessness among these groups: 77% among the SCs, and 90% among the STs. The discrepancy in the data on landlessness from different government sources raises obvious questions of accuracy and reliability. This inconsistency calls for a detailed study of landlessness in India.

The *Bhoodan—Gramdan* movement has benefitted members of SCs and STs all over the country. Records show that of the 1,935,986 hectares of land that had been collected as "gifts" across the country, 683,326 hectares were distributed to 709,209 poor households, most of them Scheduled Caste and Tribe households. In Bihar State, where the most land was received and redistributed, a survey in late 1960s revealed that about 75% of the beneficiaries of the redistributed *Bhoodan* land were in possession of the land as against less than 20% of the beneficiaries of government redistributed ceiling surplus land.

## Access to Land and Its Relationship to Poverty, Peace and Development

The poor in rural India are found mostly among landless agricultural laborers and marginal and small farmers. NSS data indicate that landlessness is the best indicator of poverty in India (Rao, 1992). In the first quantitative study of its kind in India, Besley and Burgess (1998) investigated the relationship between land reforms and poverty reduction at the State level, using panel data for the 16 major States. Their main conclusion is that land reforms appear to have led to poverty reduction in India. In their analysis, the authors controlled for other factors that may be associated with poverty reduction, in order to rule out the possibility that land reform activity merely served as a proxy for other policies. Their detailed analysis showed that while skepticism is warranted with respect to the prospects for redistributing land through land ceilings, the abolition of intermediaries and other tenancy reforms (at least in some States) appear to have been more successful in reducing poverty. These findings accord reasonably well with existing, empirical assessments of the relative success of Indian land reforms.

### Naxalite Movement

The Naxalite movement<sup>5</sup> is closely associated with loss of land, forests, lack of any alternative livelihood, and an insensitive government. In early 2005 the Government informed Parliament that 126 districts (from a total of 600) in 12 States were Naxalite-affected; of these, 76 districts in nine States were said to be "badly affected." The reasons for the Naxals' success are fairly straightforward. Naxals flourish where there are huge disparities in assets and incomes, and where injustice and violence by the privileged have run rampant. Prakash Singh, former Border Security Force chief and author of a book on Naxalism, wrote:

*The Naxal movement is irrepressible because it draws sustenance from the grievances of the people which have not been addressed by the government... Regarding land reforms, even the Tenth Plan document admits, 'the record of most States in implementing the existing laws is dismal.'*<sup>6</sup>

There are a number of Naxalite groups, but originally it was spearheaded by the Communist Party of India (Marxist-Leninist) or the CPI (M-L). Even though the CPI (M-L) has now joined the democratic process and taken part in elections, the other Naxalite groups do not subscribe to parliamentary democracy. However, they have had an impact on the resolution of land access issues.

The Naxalite movement started in West Bengal, but it has now spread to several States. Big landlords, money lenders, and other groups closely associated with the State, besides the security forces, are targets for Naxalite attacks. Simultaneously, they mobilize the extreme poor in rural areas—laborers, the SCs, and STs. The Naxalites still hold some of that base, but their agenda has widened. A number of them indulge in terrorism, or are known to have links with terrorist organizations in India and abroad. Yet, it cannot be denied that the Naxalite movement has resulted in a much more vigorous debate on agrarian reform.

## Issues and Trends Affecting Access to Land and Tenurial Security

### Forest Act and Wildlife Protection Act

The Indian Forest Act of 1927 (IFA) allowed the British colonial government to declare as reserved forest huge swaths of land inhabited by indigenous communities to serve their commercial interests. The IFA is still being misused by the Indian Government to forcibly acquire land. Between 1951 and 1988, some 26 million hectares were brought under the control of the Forest Department (FD). Sixty percent of these lands are located in regions whose populations were predominantly indigenous groups and tribals.

From the 1970s onwards, the State, particularly its Forest Department, shifted its emphasis from production oriented forestry and forest management to conservation. This was facilitated by laws like the Wildlife Protection Act (WLPA) of 1972 and the Forest Conservation Act of 1980. Under the WLPA, large forest areas were brought under the Protected Area Network of National Parks and Wildlife Sanctuaries, which were intended to be "human-free" wilderness zones.

Today, there are 94 national parks and 492 sanctuaries in India. About four million people reside in these areas and are regarded as illegal occupants. No survey was conducted prior to delineating these protected areas to take into account the current occupants and their land rights. Thousands of communities have been displaced. For instance, in Pench National Park in the State of Madhya Pradesh, eight villages composed of 16 households were resettled. There is no record of what became of the people from the other villages or where they have been relocated. At the same time, between 1951 and 1981, a total of 4.238 million hectares



of forest land were cleared for purposes like river valley, infrastructure, and industrial development projects.

### Special Economic Zones

Land is acquired by the State for "public purpose" to set up Special Economic Zones (SEZs), or free trade zones. These are special enclaves with their own infrastructure to churn out export products exclusively.

State governments have thrown their doors wide open to SEZs to be set up by big businesses and industries because they are thought to bring in jobs and investments, promote the export of goods and services, and finance infrastructure development. According to government figures, nearly 500 SEZ projects have been approved and approximately 59,685 hectares of land have been acquired and allotted for the purpose.

Land acquisition for the purpose of establishing SEZs is covered by the "public purpose clause" of the colonial vestige that is the Land Acquisition Act of 1894. Unfortunately, much of the land that has been acquired for the SEZs is agricultural land. Their acquisition affects the livelihood of the affected people, who protest the acquisition as arbitrary. Conflict has inevitably erupted.

SEZs enjoy several tax breaks and other exemptions, which, when totted up, would result—within five years of an SEZ's operations—in a loss of revenue to the State of over Rs. 1,750 billion. Yet, the Government remains undeterred. Prime Minister Manmohan Singh has repeatedly said that SEZs are the necessity of the moment. No wonder agricultural land, which is a scarce commodity,

is suddenly available in abundance. Despite the fact that the per capita landholding is already an abysmally low 0.1 hectare, the Government continues to acquire any land it sets its sight on, using the draconian Land Acquisition Act. For the first batch of SEZ applications approved by the Government, a total of 125,000 hectares of prime agricultural land would be taken over. The second batch would require an area just as large.<sup>7</sup>

### Corporate/Contract Farming

Under contract farming, a farmer agrees to put his land and labor to use by a company (contractor) to produce a particular kind of crop. In return, the contractor provides the material inputs and the required technology. The farmer is expected to provide a specific quantity of the produce for which he gets an agreed price.

The National Agriculture Policy (NAP) issued in July 2000 emphasized corporate farming. As a result, several States, including Karnataka, Andhra Pradesh, Punjab, and Gujarat are actively promoting contract farming. However, it has been found that in the long run, contract farming does not result in continuous growth in income among farmers.

There are other concerns about corporate farming, such as corporate farming vs. food security, food security vs. biofuels and corporate farming vs. cooperative farming.

Although the above NAP has since been replaced by the National Policy for Farmers (NPF) of 2007, the latter also makes a reference, though subdued, to contract farming for symbiotic contracts which would confer benefits to both producers and

## CASE STUDY

### India's Unprotected Forests

The eviction of members of the Baiga tribe from the village of Luri exemplifies the harassment suffered by many tribal communities at the hands of the Indian Forest Department (FD).

Luri, with a population of 700, is home to a number of tribal groups, namely the Baiga, Gond, Ahir, and Dhoba. These tribes had traditionally practiced shifting cultivation, but discontinued it following a ban imposed by the government. Prior to 1970, Baiga families had already been engaged in farming; seven Baiga families even held land titles. However, at the start of the 1970s, FD officers began to evict the tribals from the land. But the tribals were adamant and stayed put. They started to farm as a group—from sowing the seeds to harvesting their crops.

In July 1990, the FD launched a massive campaign to drive out the tribals from the land. The FD and members of the local police, together numbering 150, torched 22 houses and razed the tribals' crops to the ground. They also hauled and arrested five bystanders at a nearby bazaar.

Through the efforts of Ekta Parishad, a People's Organization (PO), the Baigas have started farming again, in spite of threats from the FD. The tribals have pinned their hopes of regaining their rights to forest land on the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act of 2006) notified on 1 January 2008 for enforcement. In the meantime, their lives and livelihood remain at risk.



purchasers. Similarly, the Eleventh Plan (2007-2012) document refers to contract farming as another mechanism whereby the private corporate sector can establish linkages between farmers and markets, with adequate safeguards for farmers' interest and dispute resolution.

## Legal and Policy Framework for Access to Land and Tenurial Security

### The Constitution of India

The Constitution of India guarantees fundamental rights. Equity and social justice are the basic tenets of the Constitution.

"Land to the tiller" is the guiding principle of India's land reforms program. But the *right to property* is not provided for in Part III of the Indian Constitution. In other words, it is not a justiciable right. Nevertheless, the concept of equity is built into India's Constitution. For instance, the 44<sup>th</sup> Amendment to the Constitution, altered Article 38 to introduce the following clause:

*The State shall, in particular, strive to minimize the inequalities of income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst the individuals but also among groups of people residing in different areas or engaged in different vocations.*

Article 38 falls within the Directive Principles of State Policy (Articles 36 to 51) that are non-justiciable but outline the philosophy that will guide policy, in the hope that these provisions will one day become law.

Article 39 of the Constitution provides that the ownership and control of the material resources of the community should be distributed in such a way that the common good is best served, and that the economic system does not result in the concentration of wealth and the detriment of the means of production. Thus, the equitable distribution of assets and social justice are given emphasis in the Indian Constitution. The latter also stipulates that *States [must] direct policies to ensure that all citizens have the right to adequate means of livelihood and that all community resources be distributed so as to serve the common good.*

It is important to note that the Constitutional makers also gave each State, rather than the Central Government, the exclusive power to make laws with respect to land, including land reform laws.

### State Land Reform Laws

Every State has enacted its own land reform laws on subjects and issues as follows:

- Abolition of *Zamindari* system to eliminate intermediaries;
- Ceiling on land holdings to do away with uneven distribution of land and for redistribution of ceiling-surplus land among the landless;
- Tenancy reforms to ensure security of tenure for peasants, regularization of rent/revenue, and ownership;
- Regulation of share-cropping to safeguard the interest of the share-croppers;
- Protection against alienation of land belonging to weaker sections such as SCs and STs;
- Consolidation of fragmented land holdings;
- Provision of homestead to the landless households;
- Providing government land to the landless on long-term lease including tree-lease; and
- Statutory minimum wages to agricultural labor.

These land reform laws were included in the Ninth Schedule of the Constitution, which was introduced in the very first amendment in 1951 as a means of immunizing certain laws against judicial review.

### Forest Rights Act of 2006

The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 recognizes and gives forest rights, as well as rights to occupy forest land, to STs and other traditional forest dwellers and provides the framework for recording forest rights. There are, however, several aspects of the law that leave room for doubt as to how effective it would be in terms of rectifying what the Government of India has conceded as "historical injustices" to the forest dwelling STs and other traditional forest dwellers. Until these discrepancies are addressed and the loopholes in the Act are removed, the land rights of forest dwelling communities will remain insecure.

### Constitutional and Legal Provisions for Tribal Land Rights

Article 244 of the Constitution in Schedule Five makes it mandatory for the State to ensure the total prohibition of immovable property to any person other than a tribal group and to protect the possession, title and interests of the tribals. The provisions under Schedule Five of this clause are not only applicable to the administration of areas designated as "scheduled areas" but also to those assigned to original tribal owners.



In 1960, the Debhar Commission, pursuant to Article 339 of the Constitution, recommended that all tribal land alienated since 26 January 1950—the day the Constitution came into force—be returned to their original tribal owners.

The Provisions of the Panchayats (Extension to the Scheduled Areas) Act (PESA) of 1996 came into force on 24 December 1996. It gives wide ranging powers to the *Gram Sabha*, or village assembly, for taking decisions on: (1) land acquisition within scheduled areas; (2) granting mining leases (for minor minerals); and (3) ownership of minor forest produce, etc. Section 4 (i) of PESA clearly states that the *Gram Sabha* shall be consulted before making the acquisition of land in the scheduled areas for development projects and before resettling or rehabilitating persons affected by such projects in the scheduled areas.

In the landmark Samatha judgment, in 1997, the Supreme Court further interpreted the Fifth and Sixth Schedules of the Indian Constitution as intending not only to prohibit acquisition and alienation of land in tribal areas by non-tribals, but to ensure that the tribals remain in possession and enjoyment of lands in scheduled areas for their economic empowerment, social status, and dignity of their person.

### Policy on Women's Land Rights

Land reform laws have not adequately addressed the issue of unequal ownership of land between men and women. The Land Ceiling Act classifies the family unit as comprising husband, wife and three minor children. While adult sons are considered separate units, unmarried adult daughters are left out. Even the Tenancy Act gives priority to males (from the father's side) in inheritance and to widows only in the absence of male heirs. However, now the Hindu Succession (Amendment) Act of 2005 has been enacted to remove gender discriminatory provisions in the Hindu



Succession Act of 1956, and make the daughter a coparcener in her own right by birth in the same manner as the son.

## Factors Facilitating or Impeding Access to Land and Tenurial Security

### Government

While land reforms are under the jurisdiction of the States, the Central Government has taken the following measures to promote land reforms:

- Directed State governments to enact agricultural land ceiling laws, and to redistribute ceiling-surplus land among landless and marginal farmers;
- Amended the Constitution 13 times to remove legal obstacles to land reforms;
- Formulated Five-Year Plans (through the National Planning Commission) which consistently emphasized land reforms and incorporated policy guidelines in this regard. The current Eleventh Five-Year Plan (2007–2012) has also incorporated the component of land reforms in all its dimensions.
- Ministry of Rural Development—Department of Land Resources as the nodal agency in the Central Government has since been active in promoting land reforms in various ways.

### Political Parties

India has a multi-party system with the two largest parties alternatively leading coalition governments at the Center: The Indian National Congress (INC) and the Bharatiya Janata Party (BJP). The INC-led alliance is called the United Progressive Alliance (UPA), while the BJP-led alliance is called the National Democratic Alliance (NDA). The two formations—despite pulls and pressures from the alliance partners who have their own power centers in the States—have been generally stable. The third emerging alliance is the United National Progressive Alliance (UNPA), which would form a non-INC, non-BJP “third front.”

The parties have articulated their position on land reforms in detail as follows.

#### *Bharatiya Janata Party (BJP)*

The BJP<sup>8</sup> is regarded as rightist, but would rather be characterized as nationalist. The NDA, a coalition of which the BJP is the major partner, has carefully avoided the issue of land distribution through land reforms since it was formed in 1998.

However, in its election manifesto in 2004, the BJP spelt out specific steps to implement land reforms. Furthermore, in discussions on "land use and acquisition" at the party's National Council Meeting on 28–29 January 2008, the BJP decried that fertile land was being lost to development. It described the Land Acquisition Act of 1894 as "outdated," citing its misuse and the "mindless" acquisition of land in the name of 'public purpose.' The BJP proposed that this law be amended to ensure that the government does not acquire fertile irrigated land arbitrarily for private companies and that it should serve the public purpose. A BJP document on this matter stressed the need to define "public purpose" for which government forcibly acquires agricultural land from the farmers. It said that the government should acquire land on behalf of private companies only in exceptional circumstances and that in such cases the farmer should be paid the prevailing market price for his/her land and made a shareholder in the company for which his/her land was acquired.

### Indian National Congress (INC)

The INC<sup>9</sup> was the first national party to call for land reforms in the 1930s (before independence). As the first party to form a government following independence, the INC spearheaded land reforms and directed the State governments to enact similar laws in their States. The party's manifesto for the Elections in 2004 proclaimed that State governments would be urged to enact laws conferring ownership rights of minor forest produce on tribal people, particularly those dwelling in forests. Landless families would be given some land through the proper implementation of land ceiling laws. The manifesto also demanded more effective systems of relief and rehabilitation for tribal communities displaced by development projects.

The Economic Agenda of the INC stipulates that land reforms, particularly in States where progress has been slow in this regard, must receive high priority, along with the consolidation of fragmented and subdivided holdings. Tenurial reforms are given equal importance as the enforcement of land ceilings, and the computerization of land records is accorded the highest priority. All land holders, especially marginal farmers, must be given land titles.

The declarations of the INC's President Sonia Gandhi represent its stand on various land related issues:

*Prime agricultural land should not normally be diverted to non-agricultural uses...Industry requires land no doubt. But this must be done without jeopardizing our agricultural prospects. Farmers must get proper compensation*

*when their land is acquired. Could farmers also not become stakeholders in the projects that come up on the land acquired from them? Our resettlement and rehabilitation policies must be strengthened and implemented in an effective and credible manner which will inspire confidence in the people who are displaced.*

She noted that no discussion on agriculture was complete without reference to issues concerning land rights and land access, particularly concerning SCs, STs and women. "Land alienation among the STs is very high and has certainly fuelled Naxalism," said Mrs. Gandhi.

### Communist Party (Marxist) (CPM)

The Communist Party (Marxist) (CPM)<sup>10</sup> is India's leading left-wing party, with 45 representatives in the Indian Parliament. It was formed after the split in the Communist Party of India (CPI) in 1964.

The CPM contends that even in States where land reforms had been implemented, the old relations of production continue. For instance, tenants who have benefitted from land reforms in Kerala and West Bengal are subject to the same laws as their counterparts in other States and regions. This has resulted in the growing number of landless and near landless, along with the emergence of the big and mid-size landowners.

The CPM has declared that "keeping in mind that 70% of the people of India live in the rural areas, the single most important step for rural transformation is the implementation of land reforms." The CPM demanded that loopholes in existing laws be plugged; surplus land taken over and distributed to the landless, with priority being given to landless SCs and STs in land distribution; land records be corrected; the tenurial security of tenants ensured; and land titles be issued jointly to husband and wife.

The CPM called for the protection of indigenous communities and for the restoration of land that had been illegally taken from them. It sought to ensure these groups' right of access to forests and forest produce, by amending the Forest Act of 2006 and by recording the names of forest dwellers. The CPM protested against the implementation of projects that resulted in the displacement of tribal people without providing for a comprehensive and sustainable rehabilitation package. Such a scheme must be put in place before any displacement or work begins. Ultimately, CPM called for regional autonomy for tribal compact areas.



### Donor Agencies and International Institutions

Donor agencies have traditionally played an important part in supporting India's land reform movement, and this has become more pronounced against the backdrop of a modernizing India and growing conflict on issues of land ownership, equity, and land acquisition for development. Among them are the Ford Foundation, ActionAid, and Christian Aid.

International Financial Institutions (IFIs) have made a deep impact on the country's land reform efforts. The neo-liberal policies endorsed by the IFIs such as World Bank endorse market-assisted land reform models. Several IFIs like the World Bank have large-scale programs in India.

### The Private Sector

The involvement of the private sector in development is nothing new; it has invested in large-scale giant industries like manufacturing, mining, etc. Its recent foray into corporate farming has prompted a land buying spree. Using its money and connections, the private sector, with the Government acting on its behalf, has sought to acquire large areas of land. Just a dozen companies are about to gain hold of 50,000 hectares of land, which is over a third the size of Delhi. POSCO (Korean) and Salim (Indonesian) are just two of the companies that have joined the race for India's land.

According to officials in the Commerce Ministry, the land requirement of the SEZ applications that have been approved runs to 75,000 hectares. This does not yet include large scale projects, like the Tata Small Car Plant in West Bengal and Anil Ambani's Dadri Power Plant in Uttar Pradesh.

### Corporate Interest in Agriculture

A number of corporate players have entered into agreements with farmers with major investments to tap the potential of Indian agriculture, as follows:

- Skol Breweries India Ltd., the wholly owned subsidiary of SAB Miller India, has entered into a contract farming agreement with barley farmers in Haryana.
- Adani Agrifresh has lined up a US\$ 251.77 million investment to create a supply chain from farms to retailers of fresh fruits and vegetables in the next three years.
- Cadbury India Ltd. has entered into an agreement with the Tamil Nadu Horticulture Department to promote cocoa farming in 50,000 acres.
- Mahindra Group intends to tap Punjab's agriculture potential by taking up potato seed development in the State through contract farming.
- Himalaya Drugs plans to solicit the help of farmers across southern Indian States to source at least 70% of its herbs.
- PepsiCo, after introducing farmers to high-yielding basmati rice, mangoes, potatoes, chilies, peanuts and barley for its Frito-Lay snacks, has launched a five-year program with the Punjab Government to provide several hundred farmers with four million sweet-orange trees for its Tropicana juices by 2008.
- Reliance Retail plans to establish links with farms in Punjab, West Bengal and Maharashtra with a US\$ 5.6 billion investment.

### Civil Society

NGO networks in India operate at the national and regional level. The Sarva Seva Sangh, Association of Voluntary Agencies for Rural Development (AVARD) and the Voluntary Action Network of India (VANI) are among the networks working nationwide. Networks operating at the regional level are Mazdoor Kisan Shakti Sangathan, Manav Kalyan Trust, Dalit Land Rights Federation, Bharat Nirman, Disha, Janvikas, Janpath, CECODECON, Confederation of Voluntary Organizations (COVA), FIAN, and several others. A few NGOs focus on working on access to land, like AAK, Allahabad; Gorakhpur Environment Action Group (GEAG); ActionAid; Vikalp, and Banwasi Seva Kendra (UP); MGSA, NRSS, MJVS, Nayi Disha in Madhya Pradesh; Prayog, GVP in Chhattisgarh, PGVS, Prayas in Bihar; APVVD, Samata in Andhra Pradesh; NCAS, Pune, and Gandhi Peace Foundation (GPF).

### People's Organizations

People's Organizations working on land issues in India generally have a non-formal structure. Some examples of such organizations are: Adivasi Mukti Sangathan (MP), Bharat Jan Andolan (MP), Chattisgarh Mukti Morcha (Chattisgarh), Ekta Parishad (Eight States of India), Methchi People's Movement (Tamil Nadu), Narmada Bachao Andolan (Madhya Pradesh), Raigarh Bachao Sangarsh Morch (Chhattisgarh), Bhoomi Bachao Sangrash Morcha, Kushingar (Uttar Pradesh), National Alliance of People's Movements, Jamin Adhikar Andolan, National Committee on Rural Workers, National Forum of Forest People and Forest Workers, NCCRW, National Campaign for Land and Livelihood (NCLL), Wada Na Todo Abhiyan, Mazdoor Kisan Shakti Sangathana, Rajasthan; Uttar Pradesh Land Alliance (UPLA); Mushar Vikas Pahal, in Eastern part of Uttar Pradesh; The Campaign for Survival and Dignity; CWLR; etc.



More than 300 such organizations have supported the land rights movement in the 2007.

**Janadesh 2007:** Ekta Parishad led a non-violent peoples' movement to ensure the land and livelihood rights. The Janadesh "People's Verdict" conducted a non-violent pilgrimage or people's march to force the Government to address the land and livelihood concerns of marginalized communities, such as the Scheduled Castes/Tribes and indigenous groups. The march lasted for 28 days, starting from Gwalior and ending in Delhi, and was participated by 25,000 people from the Scheduled Castes and indigenous communities. On the way to Delhi, they were joined by supporters from more than 250 civil society organizations. On 29 October 2007, the Union Rural Development Minister met with the marchers in Delhi and made a commitment to form a National Land Reforms Council and a National Land Reforms Committee that would look into the marchers' demands.



**The Singur Struggle in West Bengal:** Several independent activists, organizations, intellectuals and other groups showed their solidarity with the people of Singur, who were protesting the conversion in 2006 of cultivable land—abetted by the West Bengal government—to make way for a small car unit of the Tata company. The Singur protest had been violently put down by the State government. The movement that sprung out of this struggle demanded the relocation of the car unit, censured the State government for resorting to violence, and denounced the massive human rights violations in and around the site. The movement continues.

In a similar case, a people's protest has forced the West Bengal Government to drop a SEZ planned in Nandigram by Salim Group; however, the clash and violence persist.

## Opportunities and Strategies to Advance Access to Land and Tenurial Security

### Strategic Policy Level Interventions

In his paper entitled "A Critical Evaluation of Land Reforms in India", Das Sukumar (2000) states that, based solely on the figures, it is possible to provide all the farm households of India with economically viable landholdings.

However, India would have to adopt the following land policies and programs, and implement these to the extent possible in order to complete the unfinished task of land reforms:

1. Abolish absentee landlordism by denying the right to own land to non-farming sectors or those who do not depend on agriculture for a living; acquire such land by paying compensation to their owners and distribute the land to the actual tillers and other eligible rural poor groups;
2. Confiscate all land that has been left fallow by their owners, following payment of compensation, and distribute the same to the landless poor;
3. Develop all cultivable wasteland that lies idle and distribute it to the STs and SCs;
4. Complete the distribution of all ceiling-surplus land, other vested land, and *Bhoodan* land;
5. Restore all alienated tribal land; regularize all agricultural land held by the tribals in forest areas;
6. Legalize tenancy to promote the productive use of all lawfully held land, and enact laws to ensure that the tenant and the landowner (who is unable to cultivate the land) enjoy equal privileges to the land;
7. Conduct a special drive to fully record all tenants and sharecroppers and update the revenue records, incorporating the land rights of the government allottees;
8. Undertake legislative and administrative measures to prevent the conversion of agricultural land to non-agricultural uses, and to prevent the degradation of farm land through misuse of land, etc.; and
9. Expedite the consolidation of landholdings and simultaneously develop irrigation and drainage facilities;

In addition to the aforesaid urgent land reform measures, the government may also extend all the necessary support services, including the development of infrastructure, provision of credit and inputs, remunerative marketing facilities, development of agro-processing, etc. Rural industrialization will also prove help-





ful in utilizing additional workforce in non-farm activities so as to reduce the excessive pressure on land, and increase the incomes of farm households. These measures are necessary to gradually make farming viable in the future and also to meet the growing demand of the industrial sector by producing commodities both for domestic and international markets.

Unless and until about 68% of India's rural population that is engaged in agriculture and allied activities finds an economic holding of arable land and/or enhanced income from subsidiary sources, the country cannot achieve growth with equity and social justice.

### Strategic Policy Level Interventions: From the People's Perspective

These are summarized below:

- **The Government of India should formulate a 'People's Land Policy' based on the following principles:**
  - > As Mahatma Gandhi used to say, land should be considered a common natural resource, like water and air, for everybody's benefit.
  - > Redistribution of surplus land and protection of the land rights of the poor, especially those belonging to ST and SC groups should be considered a national priority, to ensure the social, economic, and political empowerment of marginalized groups and to promote national food security.
  - > Land should be considered a precious resource and its actual use should be systematically audited and monitored.
  - > Protection and enrichment of the productivity of cultivable lands should receive the highest priority. Food security of the most vulnerable groups should be assured as much as possible through local production and distribution.
  - > The land legislation and administrative system inherited from colonial times is unsuitable to the needs and aspirations of the poor in independent India, and needs to be completely overhauled. Women, SCs, and indigenous groups should be accorded the status and role of empowered partners in the just and sensible management of natural resources.
  - > The destruction of established livelihoods and community life systems by unilateral demolitions and acquisitions should be banned. Land and natural resource stress faced by the country should be reduced in a humane and planned manner with the participation and inputs from representatives of the poor, forest-dwellers, industry bodies, environmental experts, CSOs and peoples' movements.

- **Land reform should be aggressively regenerated and pursued across India by:**

- > Formulating laws that promote land reforms, such as the West Bengal land reforms law to: (1) plug loopholes that allow evasion of the land ceiling laws; (2) prevent absentee landlordism; (3) bring holdings of all trusts, industries, government and non-government institutions under ceiling restrictions; and (4) ensure that entitlements are issued jointly to men and women;
- > Formulating laws that provide for land registration, and that legalize tenancy across the country, on terms that are fair to both landowners and tenants;
- > Setting up a centrally funded program for creating and displaying at a public place in each village, colored maps showing the different kinds of land (Panchayat land, forest land, grazing land, etc.) along with details of all holdings;
- > Formulating a program for detecting concealed surplus holdings and concealed tenancies, and demarcating all ceiling-surplus allotments, by holding block and village level camps with the involvement of local people and NGOs, in a three-to-five-year "campaign";
- > Setting annual land redistribution targets (in terms of area of land and number of beneficiaries) for all States, with financial incentives like higher allocation of funds for high performance; and
- > Acquiring/transferring unused large holdings of big government, industry, and educational organizations for redistribution or for low-cost housing.

- **In the interim, land-related litigation should be fast tracked by:**

- > Directing States that have not done so to set up land tribunals under Article 323-B of the Constitution; and
- > Formulating an enabling centralized law to bar civil courts from hearing land ceiling cases.

However, a long-term national land use policy has to be drawn up, involving all stakeholders and keeping in mind the following:

- > Food and livelihood needs of the poor;
- > Food requirements of the entire country;
- > Availability of adequate water; and
- > Protection and expansion of the country's forest cover.

### Opportunities to Pursue Land Reforms

- **Space for Strategic Interventions**

The land issue is becoming more and more complex. Dealing with it requires patience, a step-by-step approach, and multi-level stakeholder involvement.

Land reforms should not be approached in isolation from other issues. The strategies need to consider land, water, and forest as a single unit and the direct link to livelihood issues.

Action plans would work only if they are undertaken in alliance with other stakeholders.

- **Legal Interventions**

The legal framework needs to be thoroughly understood and strategies adopted accordingly. Public interest litigation provides space to tackle land and tenurial security issues. To maximize this space however, CSOs and POs should have a solid grounding on the issues.

- **Participatory Spaces**

The land issue is triggering events all over the world, and there is growing awareness of this fact. Events happening at the national, regional and international levels could provide opportunities to bring back the land agenda at the national and international levels. To be able to use this space, activists must be able to look beyond their local concerns, and see how external events bear on the issues they are dealing with.

- **Space for Non-violent Mass Actions**

Non-violence is being increasingly practiced and talked about. More such actions need to be undertaken. Peace marches, signature campaigns, distribution of information materials, focused letter writing campaigns and sit-ins are a few examples of non-violent actions. There are many ways in which these actions can be conducted. What is important is conviction and follow-through. Sustained non-violent actions at all levels can create the conditions necessary to bring about a change in attitudes and to create harmony and synergy in society.

- **Policy Level Spaces**

There are policy level spaces that are available to land advocates. Recently, the Government of India formed the Committee on State of Agrarian Relations and the Unfinished Task of Land Reforms. Participating in seminars and conferences and offering one's opinion constitute one such space.

- **Advocacy**

Effective political and social advocacy is needed. A joint massive campaign at the national level is a good example of this kind of advocacy. The campaign has to start at the grassroots level and built up towards the national level. The first step is to create awareness and enhance capacity. Advocacy tools, such as organizing and mobilizing; staging rallies, marches, and hunger strikes; and lobbying with government and other stakeholders need to be sharpened and used effectively. The space provided by sympathetic national, regional and inter-

national organizations should be explored and maximized for advocacy purposes.

- **Media Space**

Media can be a vital ally to influence policy, create awareness, and conduct advocacy. A letter writing campaign directed at newspaper editors/publishers, being interviewed in a radio or television program, and using the internet to launch an information campaign are a few ways in which the influence of media could be used to the advocates' advantage.

- **More Space for Women and Gender Equity in Land Rights**

Giving women space and opportunity at all possible levels is important. To promote gender equity in regard to land rights, it is necessary to first create awareness of this issue, empower women, and lobby for the enforcement of laws providing for equal rights to land between women and men.

- **Right to Livelihood as a Fundamental Right**

Land and livelihood is a theme that resonates all over the world. There is need for advocacy to make the "Right to Livelihood" a fundamental right. The efficient conservation and development of land through land management aimed at promoting food security among small and marginal farmers should be undertaken through various programs.

- **Space for Democratic Mass Actions**

The number of CSOs has increased tremendously, while similar network groups have emerged. These groups are coalescing to harness the collective power of the common people. Multi-level and multi-pronged networking around a shared vision and program of action is needed to bring together different types of networks, such as those of farmers, NGOs, and others. Advocates need to keep their watch to spot and respond to incidents of land grabbing or forcible land acquisition, or diversion of agricultural land to non-agricultural purpose. To keep up the pressure on the target stakeholders, participatory actions will have to be organized from time to time.

## Concluding Remarks

In sum, India is rich in legislations and policies, but relatively poor in their implementation. Given the current political and socio-economic context in India, a line needs to be drawn between what is desirable and what is feasible. Accordingly, strategic interventions to enhance access of the poor to land and tenurial security will have to be planned, prioritized and pursued with utmost care, perseverance, patience and pragmatism.



## Endnotes

- <sup>1</sup> Under this system, land could be acquired mostly free of charge from the British colonial government. The landowner or *Zamindar*, did not cultivate the land himself but rented it out to cultivators.
- <sup>2</sup> There was no intermediary between the State and the cultivator under this system. The cultivator, or *ryot*, had the right to sell, transfer, or lease his land and his tenure remained secure as long as he paid the land revenue.
- <sup>3</sup> *Bhoodan* (Land Gift) movement received millions of hectares of land. State governments enacted Bhoodan Yagna Acts to legalize and facilitate gift and redistribution of Bhoodan land to the landless.
- <sup>4</sup> Diwakar, D.M. "Dalit questions of inequality, exploitation and mobilization (*Articles*)", *Journal of Indian school of political economy*, Vol. 10 no.2, April-June 1998
- <sup>5</sup> The Naxalite movement takes its name from a peasant uprising which took place in May 1967 at Naxalbari—a place on the northeastern tip of India situated in the state of West Bengal.
- <sup>6</sup> Bidwai, P., "Meeting the Naxal challenge, Rediff News, October 11, 2005, <http://www.rediff.com/news/2005/oct/11bidwai.htm>
- <sup>7</sup> Devinder S. and Goswami, B. "India's new maharajas," *InfoChange News & Features*, CCDS, Pune, December 2006, <http://www.infochangeindia.org/analysis193>
- <sup>8</sup> Excerpts taken from <http://www.bjp.org>
- <sup>9</sup> Excerpts taken from <http://www.congress.org.in>
- <sup>10</sup> Excerpts taken from <http://www.cpim.org>

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