PROCEEDINGS AND PAPERS OF THE SEMINAR ON LAND REFORMS A RETROSPECT AND PROSPECT

PLANNING COMMISSION
GOVERNMENT OF INDIA
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FOREWORD

The Planning Commission had organised a two day (7-8 June 1989) Seminar on "Land Reforms—a Retrospect and Prospect" as an exercise in participatory self appraisal. It was felt that the seminar will provide us with an opportunity for frank and free exchange of views on important issues such as land tenures including tenancy, ceiling and redistribution of land, consolidation of holdings, maintenance of record of rights, protection of interests of tribals, Scheduled Castes and women etc.

Since the beginning of the planned era, land reforms have been accorded a high priority in the strategy of agricultural development and more significantly in achieving the socialistic and egalitarian pattern of society as enshrined in our Constitution. It has been considered as an integral part of the plan for uplifting poor and down trodden in rural India. However, there is a feeling emerging that the task is unfinished as yet. On the threshold of the Eighth Plan, we felt that there was a need to review the situation and chalk out the future course of action. We have had some very rich discussion on all the vital aspects of land reforms policy. The deliberations of the seminar have reaffirmed the economic case for land reforms both in terms of achieving a higher level of production and income as well as better distributive justice.

I would like to extend my sincere thanks to all participants, who attended the seminar and made the discussion meaningful.

Sd/-
MADHAVSINH
Deputy Chairman
Planning Commission

PREFACE

A two-day Seminar on 'Land Reforms—A Retrospect and Prospect' was organised by the Rural Development Division of the Planning Commission with the object of bringing together eminent economists, civil servants, and field workers. The seminar reviewed the implementation of various land reforms legislation with the aim of drawing leassons for future. In particular, it focussed on the policies related to tenancy, ceiling, redistribution of land, maintenance of land records, consolidation of holdings, and protection of interests of weaker sections and women, Scheduled Castes, and Scheduled Tribes.

The seminar was inaugurated by Shri Madhavsinh Solanki, Deputy Chairman, Planning Commission. Session-I, on the 'Status and Review of Land Reforms Policy' was chaired by Prof. G. S. Bhalla. Session-II on, 'Policy on Tenancy' was chaired by Prof. A. M. Khusro. Session-III on, 'Consolidation of Land Holdings, Preparation and Maintenance of Land Records and Problem of Prolonged Litigation' was chaired by Shri V. C. Pande, Secretary, Department of Rural Development, Session-IV regarding, 'Policy on Ceiling and Land Distribution' was chaired by Prof. V. M. Dandekar. Session-V regarding 'Policy on Protection of Interest in Land of Weaker Sections—Scheduled Castes/ Scheduled Tribes and Women' was chaired by Shri S. S. Verma, Secretary, Ministry of Welfare. The Valedictory Session was chaired by Shri Bhajan Lal, Minister for Agriculture.

The proceedings and main recommendations of the Seminar are presented in Part-I followed by the details of proceedings in Part-II. The background note for discussion prepared by the Rural Development Division is in Part-III and the papers contributed by the participants are in Part-IV of the Volume.

The two day deliberations in the Seminar have helped the Planning Commission to take stock of the situation. The main suggestions made at the Seminar were :

(1) The economic case for land reforms was still strong and had to be pursued as a deliberate policy for achieving, both, a higher level of production and income as well as better distributive justice.

(2) Despite the ban on tenancy and absentee landlordism, cultivation by leasing lands continued to

flourish under the concealed and informal tenancy arrangements in several places. Therefore, a major challenge was to detect oral and informal tenants and to implement a strict definition of 'personal cultivation' so as to bring all the oral and informal tenants on record and prevent circumvention of the land reform policy.

(3) The existing ceiling limit as approved in the national guidelines of 1972, should be enforced in all the States. Exemptions, in general, including those relating to educational and charitable institutions should be done away with.

(4) A major plan scheme should be taken up for updating the land records and strengthening the revenue machinery.

The successful implementation of land reforms measures is also very vital in realisation of the objectives of agro-climatic zonal planning which has been initiated in the agricultural sector. It is known that the informal tenancy prevails over a large areas and that the cultivators are unable to take advantage of subsidised facilities offered by the government in the interest of higher production. Further, in many parts of the country, lack of up-to-date and reliable land records stands in the way of promoting more rational land-use pattern and tenant farmers taking advantage of government schemes for the agricultural sector. It is, therefore, necessary, that such constraints are eased if the larger objectives of widespread agricultural development are to be realised.

The above suggestions would be kept in view while finalising the future policy for land reforms in the Eighth Plan.

We are thankful to the participants who responded to Planning Commission's invitation to attend the Seminar. We would like to place on record our sincere appreciation of the cooperation extended by the Department of Rural Development and the staff of the Rural Development Division.

YOGINDER K. ALAGH
Member, Planning Commission.

PART : ONE

PROCEEDINGS AND MAIN RECOMMENDATIONS OF THE NATIONAL SEMINAR ON "LAND REFORMS—A RETROSPECT AND PROSPECT"

PROCEEDINGS AND MAIN RECOMMENDATIONS OF THE NATIONAL SEMINAR ON 'LAND REFORMS—A RETROSPECT AND PROSPECT'

The Planning Commission convened a two-day senimar on June 7 and 8, 1989 on 'Land Reforms—A Retrospect and Prospect'. It was attended by eminent economists, senior civil servants and field workers. The Seminar was inaugrated by Shri Madhavsinh Solanki, Minister of Planning and the Valedictory session was chaired by the Minister of Agriculture. The seminar reviewed the status of land reforms in historical perspective. In particular, it focussed on policies related to tenancy, ceiling, redistribution of land, maintenance of land records, consolidation of holdings and protection of the interests of weaker sections. The session-wise recommendations of the Seminar are given in the following paragraphs.

Recommendations

Session I : Status and Review of Land Reforms Policy

(1) The economic case for land reforms is still very strong and should be pursued as a policy for achieving both a higher level of production and income as well as better distributive justice. Since the number of agricultural labourers was increasing and non-agricultural employment was growing slowly, labour absorption in the agricultural sector was important.

(2) The lowering of the average size of holdings which may result from the implementation of Land Reforms legislation does not stand in the way of taking advantage of the benefit of modern agricultural technology. Small Peasant oriented agriculture has proved viable under Asian conditions with the application of modern technology and inputs. This was also true for India. Access to inputs, technology and credit, however, would need to be ensured.

(3) Poverty alleviation programmes and Land Reforms may be implemented jointly rather than parallelly, so that the two support each other.

(4) The success of the implementation of Land Reforms would depend largely on the commitment which the political leadership shows to such a programme. The chances of success would

improve if the agricultural labourers and small and marginal farmers can be effectively organised.

Session II : Policy on Tenancy

(1) It was noted that despite the formal ban on tenancy and absentee landlordism, cultivation by leasing lands has continued to flourish with an estimated 1/3rd of land under concealed and informal tenancy arrangements. The two policy options available are either to recognise tenancy, detect it and provide security to tenure to those actually cultivating land or to keep the original spirit of land reforms alive, whereby all intermediaries were eliminated and land rights vested in actual cultivators. Keeping in view the historical perspective and the question of credibility which any new legislation legitimising tenancy may face in the present day context, it was felt that the objective should be achieved by better implementation of the existing laws and a strict definition of 'Personal Cultivation'. The definition should provide for the landowner's residing within 5 kms., bearing the major costs of cultivation, contributing personal or family labour and deriving a major portion of his income from agriculture. Detection of oral and informal tenants has to be pursued vigorously and monitored regularly.

(2) Successful implementation of Tenancy Reforms in the States of Gujarat, Maharashtra, Karnataka and West Bengal was discussed at length. It was felt that Operation Barga in West Bengal provides a model which might be feasible in some areas only. Three important elements for the success of the operation were—(i) political organisation of poor peasants (ii) reduction in the extreme dependence on bureaucrats (iii) provision of institutional support for development of land after the recording of rights. The identification of tenants and sharecroppers should be made at the village level by association of village community and the Panchayati Raj Institutions. The indentification and recording of rights should be followed by financial assistance for development of land and purchase of inputs.

(3) Lately a phenomena of small and marginal farmers leasing out land to bigger landlords had been noticed. while some participants felt that it was a disturbing trend and should be prevented, others were of the opinion that it was inevitable especially in areas with increasing mechanisation. However, there was a need to protect the interests of these small and marginal farmers so as to allow them to resume their lands, provided they took up personal returned to agriculture cultivation within a specified period of time.

Session III : (*i*) *Policy on Consolidation of Holdings*

1. There was a consensus that consolidation of holdings had not been really successful except in Punjab, Haryana and parts of UP. Implementation had not been satisfactory in the States where it was taken up on voluntary basis. Consolidation was more likely to be successful in areas which were irrigated by canals since in such areas it would lead to better management and greater productivity from land.

2. Consolidation should be taken up only after the rights of tenants and sharecroppers have been protected in the records. Otherwise large scale evictions take place.

3. There was a need for restrictions on fragmentation of land. Yet it was felt that placing of such restrictions may not be feasible especially on account of excessive pressure on land, lack of enough employment opportunities outside agriculture and the prevailing laws governing inheritance.

(ii) *Problem of prolonged litigation*

1. It was noted that 80% of the cases in the district and lower courts related to land. In other cases also, land was at the centre of disputes. This was primarily due to the poorly maintained and confusing state of land records.

2. For speedy disposal of land disputes, legal procedures had to be cut down and a reduced number of appeals and revisions allowed.

3. Article 323 B of the Constitution should be invoked for creation of Special Benches of the High Courts for early disposal of land cases.

4. A distinct disincentive needs to be built into the law against those who resorted to prolonged litigation and delayed the disposal of cases.

5. Disposal of cases ought to be monitored by the authorities through an efficient management information system.

6. In the long term there was a need to build up an effective village level justice administration system, which laid greater emphasis on field enquiries as against documentary evidence and disposed of cases through summary and less formal and more open proceedings.

(iii) *Preparation and Maintenance of Land Records*

1. The present condition of land records was recognised as grim and required urgent attention especially in view of the growing and prolonged litigation. The One-man Committee appointed by the Planning Commission is already looking into the Status of land records. In addition it was felt that a Revenue Commission should go into the details of providing an efficient system of maintenance and updating of the land records.

2. A major Plan scheme needs to be taken up in the Eighth Plan for the preparation, maintenance and updating of land records by use of new techniques of survey, data storage and retrieval. In addition the scheme should provide for strengthening of revenue administration. Training and provision of infrastructure facilities for the field staff would be vital inputs.

3. There should be a major thrust on induction of sophisticated technology by way of computerisation and use of scientific and accurate survey equipments, so as to cut down the costs and make the revenue administration less staff oriented.

4. Officers in the revenue department are in many States expected to take change also developmental work. There was a need to rationalise the work of patwaris and other revenue officers.

5. Training of revenue functionaries at different levels had to be taken up so as to improve their skills, knowledge of laws and attitudes. For this purpose, training programmes would need to be established.

6. There is a need to make an indepth review of the agrarian laws and manuals so as to simplify them. These laws and manuals should be made available to all revenue functionaries.

7. The interests of tribals in land were not being recorded appropriately in the record of rights. This aspect required attention, particularly at the time of survey and settlement operations.

Session IV : Policy on Ceilings and Redistribution of Land

1. There was a general agreement that existing ceiling limits, as approved in the national guidelines of 1972, should be uniformly enforced in all States. The majority of the participants were against lowering of ceiling limits any further.

2. Ceiling limits may be redetermined in all cases of land-owners, whose lands have been upgraded by irrigation on account of public investment, by stricter implementation of the existing legislative provisions.

3. Exemptions to religious, educational and charitable institutions from operation of ceiling laws may be removed and, instead, provision made for payment of a fixed amount every year as annuity for their maintenance.

4. Deterrent legal provisions be made in ceiling laws and IPC for summary eviction of those dispossessing the allottees of ceiling land.

5. No court should recognise any transfer or adverse possession on surplus land allotted to beneficiaries. In case there was nobody to inherit the allotted land the same should revert to the State.

6. The view was also expressed that the whole issue of ceilings on urban incomes and urban property had to be considered side by side with rural land reforms since the burden of employing the landless, small and marginal farmers cannot be placed only on the rural community.

7. The unculturable lands available under ceiling surplus, Bhoodan etc. it was felt, could be used for setting organised groups/cooperatives for development of eco-systems.

Session V : Policy on Protection of Interests in Land of Weaker Sections—Women, Scheduled Castes and Scheduled Tribes

Women

1. Women need to have independent access to agricultural land, and not merely access through male family members. This needs to be the guiding principle in all land reform schemes. In all future allotments of ceiling surplus land, some percentage should go exclusively in the name of women beneficiaries, if they are otherwise eligible.

2. Where lands are allotted to male beneficiaries the patta should be issued jointly in the name of husband and wife.

3. The government lands, wherever possible, may be distributed preferentially to Homogenous groups of women rather than to individual persons or families. These groups should only have the usufructory rights and not the right of alienation.

4. The distribution of village common lands to fulfill land distribution targets should be stopped as should all privatisation of common land. This will have positive implications for women in poor households. The growing privatisation of communal lands in tribal areas also needs to be stemmed.

5. Existing State land reform statutes specifying devolution of agricultural land under tenancy etc. discriminate against women. There is a strong case for amending these laws. In the event of the death of a tenant or a sharecropper, the rights enjoyed by him should accrue to the widow if she is prepared to continue the tenancy.

6. Share of female members of the family must be recorded in the Record of Rights.

Scheduled Castes and Scheduled Tribes

1. The law concerning alienation of land belonging to SCs and STs and restoration of illegally or irregularly transferred lands should be made stringent, so as to include a comprehensive definition of the word 'transfer' to cover all possible techniques by which tribal and Scheduled Caste lands are usurped by members of other communities, prohibit future transfer exclude jurisdiction of civil courts and provide for compulsory restoration of land within a stipulated period.

2. The participants were concerned by the growing trend whereby the State had intervened in a big way as the owner in respect of lands especially forests and wastelands, held by tribals after the enactment of the central law on conservation of forests. Such lands which had been under occupation of tribals should be restored to them and their rights recognised and defined. Any commercialisation of tribals lands (especially forest and wastelands) would be detrimental to the community and should be prohibited. The fear that the management of the lands by the tribals would be difficult or qualitatively inferior was unfounded.

3. Payment of reasonable minimum wages to the farm labour had to be ensured irrespective of the effect on the farm produce price.

4. The need for developing non-agricultural occupations for generating more jobs in villages was recognised. For this purpose, strengthening of infrastructure machinery for supporting the commercial transactions in tribal areas was emphasized.

PART : TWO

DETAILS OF PROCEEDINGS

Inaugural Address of Shri Madhavsinh Solanki, Minister of Planning for the Seminar on "Land Reforms—A Retrospective and Prospect, organised by the Planning Commission in New Delhi 7-8 June, 1989.

I take this opportunity of extending a very hearty welcome to all of you in this Seminar on 'Land Reforms—A Retrospective and Prospect' organised by the Planning Commission. This Seminar is an exercise in participatory self-appraisal and I firmly believe that this will provide us with an occasion for frank and free exchange of views.

We are meeting at an important juncture of plan development of our country. This is the last year of the Seventh Five Year Plan and we are in the process of formulation of the 8th Plan. We may now take stock of what we have achieved so far in the sphere of land reforms and what could be further achieved during the 8th Plan or beyond that.

Since the beginning of the planned era, or perhaps much before Independence, Land Reforms have been accorded a high priority in the strategy of agricultural development and more significantly in achieving the objective of socialistic and egalitarian pattern of society as was enshrined in our constitution. it has been considered as an integral part of the plan for upliftment of the poor and down trodden in the rural India.

Abolition of intermediary tenures was on the top of the agenda of Land Reforms in the country when it attained independence. Accordingly in the 50s most States passed legislation abolishing zamindari, jagirdari, taluqdari, Inams and a host of other tenures as also the rent receiving interests of landlords and intermediaries bringing an estimated 20 million cultivators in direct relationship with the State. Occupancy or ownership rights were confirmed on the tenants or real cultivators of the land, and though bulk of the work has been done in this field intermediary tenures continue to exist, or have newly developed in certain areas.

We also find that despite our long standing commitment to the policy that land shall belong to the tiller, oral and informal tenancies have emerged as a very disconcerting trend. Some studies have estimated that about 30 per cent of land is involved in these oral tenancies much against the provision of law. Such tenancies are emerging in all States under the guise of personal

cultivation, though laws have been passed to provide security of tenure to tenants. Successive conferences of revenue ministers have recommended that a drive should be launched with the assistance of panchayats, voluntary bodies and the active involvement of rural poor to ascertain the details of such persons who are actually tilling the land under oral and informal arrangements and without any protection or security of tenure. But the effort in the direction of identifying such tenants and recording their names in the revenue registers has been found by and large to be dismal.

Unless security of tenure is ensured to the tenants and share croppers, we can neither make any significant strides in agriculture growth nor change the socio-economic structure of the rural areas.

I would, therefore, urge upon the distinguished economists and social scientists assembled here to suggest a modus operandi to tackle the burning problem of tenancy.

We have given a very high priority under the 20 Point Programme to the allotment of land to the landless. Laws were enacted by most State Governments in early seventies imposing a ceiling on individual holdings of agricultural land so that sufficient surplus land could become available for re-distribution among the landless. However, the declared surplus land has been much less than what was estimated. Even the entire area of 73.48 lakh acres of land declared surplus by Land Tribunals in various States could not be taken into possession. Of the land acquired, 44.92 lakh acres have been distributed. Even where the land has been distributed, there are complaints of delays in attestation of mutation which would bring the land allottees in the revenue records as occupant owners. Quite often physical demarcation of the allotted land and handling over of its physical possession does not take place at all. In some cases allottees already given possession are forcibly dispossessed.

The Mid-Term Appraisal of the Seventh Plan has taken cognizance of the fact that in the general landholding pattern of the country the distribution of ownership holdings has remained unequal with nearly three quarters of the land being owned by one-quarter of the land owning households. It is also noted that the proportion of marginal farmers both for land owned and land operated has increased, thereby indicating that we have not been able to make a real dent on the concentration of the land in a few hands inspite of the ceiling

legislation. Meanwhile the marginalisation of the poor peasantry has been going on at a faster rate forcing them to lease out their marginal holdings to others for cultivation and themselves work for wages on a full time basis.

Against this background it has become necessary to look into the entire issue of ceiling on agricultural landholdings again. No doubt we have to take effective measures for plugging loopholes in ceiling law, set np tribunals under Article 323B of the Constitution for expeditious disposal of pending ceiling cases, bring areas newly irrigated by public investment under appropriate ceilings, but perhaps there is also need to redefine the 'family' so as to include major sons and further reduce the ceiling limits both in case of irrigated and unirrigated land. There is an urgent need to re-examine the concept of 'personal cultivation' as defined in various land reform laws.

But any ad hoc revision of ceiling limits may not be appreciated unless the economics of such a reduction is sound. I hope that this eminent gathering will give due attention to all these issues and make suitable recommendations.

Consolidation of agricultural holdings operations have been successful only in a few northern States. In other areas these have not made much progress due to fear of displacement among tenants and sharecroppers, and a very strong apprehension among most people that the big landlords are able to get a better deal. Plan after plan we have been emphasizing the desirability of taking up consolidation operations so as to have a better utilisation of irrigation facilities as well as for making the whole agricultural operation more productive.

However the time has come to take stock of the ground realities and decide whether we should go in for compulsory consolidation in all areas ? Moreover unless we are able to put a halt on fragmentation, all efforts at consolidating the land will be set at naught in course of time.

Other important aspect of the problems of Land Reforms is the Record of Rights. It is well established that correct and uptodate land records are pre-requisites not only for recording the rights of ownership or tenancies and saving them from undue litigation but also for planning agricultural credit, crop insurance and food procurement etc. Our land records need a lot of improvement. The existing land records have deteriorated over the last several years due to poor management and upkeep. There are still

large areas in the country which are yet to be properly surveyed. The Planning Commission has therefore, set up a One man Committee to study the status of records of rights in land and we expect that the findings of the committee will throw light on the present position of land records in various states.

I am told that inspite of the Commission's effort the Committee is facing problems in getting the required information. Methods have to be found to record the ground reality in our records.

The conferences held by the department of Rural Devlopment last year have highlighted the position of record of rights and recommended modernisation of survey and settlement organisations, induction of new technology in preparation, maintenance and updating of land records and strengthening of revenue administration.

In the Eighth Plan, we feel that a major plan scheme may perhaps have to be taken up for strengthening the revenue machinery and updating the land records. Science and Technology inputs will have to be pressed into service to quicken the pace, reduce the cost of data base creation and to make the information open and easily accessible.

A word about the protection of tribal land owners against elienation of their land in favour of non-tribals. Most States have provisions of law which either prevents or restricts transfer of land to non-tribals and in some cases also provides for resttoration of the alienated land back to the tribals. However, there are instances of frequent dispossession and eviction of tribals from their land even when restored, against which no effective protection is available to them. Large scale acquisition of tribal lands for public purposes without any satisfactory rehabilitation of displaced persons have virtually made them destitutes. Development efforts will not make any dent on this situation unless we can protect in the first place whatever lands tribals already possess and also undertake simultaneously restoration of alienated land and distribution of available surplus and Government land to them.

As you are aware, recently, the Government of India has placed a constitutional amendment Bill in the Parliament with the objective of invigorating and fully involving the Panchayati Raj institutions in the process of development. I would like this august assembly to consider as to how such institutions can be involved in the programme of agrarian reforms. Viable

programmes of agricultural investment particularly in land development, water harvesting and improved crop planning as well as agro-processing generate employment and income on a widespread basis. If special efforts are made, such programmes can strengthen the economic base of small farmers and landless labrourers. This would provide the framework in which improved land tenurial systems function. It is proposed to involve beneficiaries and the Panchayati Raj agencies in such schemes. Your advice on modalities would be highly appreciated.

Friends, I have broadly tried to highlight only some of the issues involved in Land Reforms. I hope, you will give your considered views on these and other important issues which may come up so that we are in a position to arrive at some consensus on the future policy of land reforms for the Eighth Five Year Plan and complete this unfinished task without further delay. On the threshold of the Eighth Plan we have to accelerate the pace in achieving the goal of a just and egalitarian rural society.

I heartily thank you all for responding to our invitation to attend the seminar and I hope that the deliberations at this seminar will help us follow the right path. With these words I inaugurate the seminar and wish it all success.

JAI HIND

Vote of thanks by Minister of State for Planning.

It gives me immense pleasure to move a vote of thanks to eminent scholars and administrators who have come from different parts of the country to participate in this national seminar on land reforms.

The Government is fully committed to the speedy enforcement of agrarian reforms and has accorded a high priority to it in the strategy of agricultural development and transformation of rural society since the planning process was initiated. However, much needs to be done in this direction.

In the Seventh Plan a new direction was sought to be given and an attempt was made to integrate land reforms implementation with poverty alleviation programmes. It was recognised that anti-poverty programmes, which aim at endowment of income generating assets on those who have little or none, cannot achieve their objective if they are not accompanied by redistributive land reforms and security of tenures to the informal tenants. There was a clear realisation that without land for such essential needs as homested, a backyard kitchen garden or a patch of land for growing fodder, an asset endowment programme itself will not generate the anticipated incomes and self-reliance which are essential for the rural poor to break away from the clutches of the socio-economic power structure prevailing in the village. The guidelines for implementation of various rural development programmes like the IRDP, NREP, RLEGP and now the new Jawahar Rozgar Yojana emphasize the need for developing the unproductive land owned by or allotted to the under-privileged groups such as Scheduled Castes, Scheduled Tribes, bonded labourers etc.

We hope that he two-day deliberations in this seminar will help us to take stock of the situation and chalk out the future policy for land reforms in the Eighth Plan. With these words I again thank you for being with us.

Prof. G. S. Bhalla, Chairman for the session suggested that the two vital aspects of land reforms on which it might be useful to centre the discussion are (a) the economics of land reforms and (b) the politics of land reforms. Although it was fairly clear that the economic grounds for land reforms were favourable, it was at the same time quite obvious that politically land reforms were not acceptable. This may be the essential dilemma that needs to be resolved. With these opening remarks, he invited the principal discussants Prof. P. C. Joshi and Prof. G. Parthasarathi to present their thoughts.

Prof. P. C. Joshi, while regretting the fact that the issues relating to land reforms had not attracted the serious attention of planners, administrators and intellectuals during the last decade and-a-half or so, welcomed for that very reason the present Seminar. Over the years there had been very far reaching changes in the ground situation which had totally changed the perspective and therefore called for a drastic change in the outlook to land reforms. These changes encompassed the political, social, economic and technical parameters of the rural polity and economy. In his opinion, there is no fixed definition of what constitutes land reforms, and therefore there is need for a re-examination of the whole gamut of issues relating to the aims, approach, programmes and instruments of land reforms. This, he felt, is the intellectual challenge which must be faced.

Elaborating on the changes that had taken place since the heyday of land reforms in the 'fifties and the sixties', he explained that whether it was in the Nehruvian model of economic growth with social justice and democratisation sans violence, the Bhoodan-Gramdan approach based on the philosophical tenet of the land owners' wider social responsibility, or the Leftist approach of a wide-based ownership pattern of productive assets, during that period there was a widely accepted consensus of opinion in favour of land reforms for giving the land to the tiller. However, with the implementation of successive measures of land reforms beginning with the abolition of intermediaries, an elite landed class has emerged, both in the rural and the urban polity, which dominates the power structure right from the village to the national level. This elite class has cornered for itself benefits from each and every measure of land reforms

that has been enacted and implemented; whether it was the abolition of intermediaries, the imposition of land ceilings, the banning of tenancies or the consolidation of holdings. This dominant landed elite now constitutes an entrenched interest group which effectively stands in the way of achieving the ultimate goal of giving the land to the tiller.

The question whether modern agricultural technology is relevant and viable for the kind of small holdings that will predominate in the scheme of a wide-based land ownership pattern which is the envisaged ideal for the country, will have to be seen in the context of the existing socio-political reality described above. While the technology per se is viable and relevant, it has been rendered non-viable and irrelevant in the prevailing power structure, which is reflected in the existing dichotomy in the structure of land holdings, which effectively bars the small land holders from access to infrastructural support, inputs, credit, etc. because of the domination of the elite group.

Drawing a comparison of the European experience with the Asian experience of economic development in the second half of the Twentieth Century, Prof. Joshi highlighted the crucial difference between the large-farm based approach of the former leading to a dualistic and often conflicting polity, with the small-farm based approach of Japan, Taiwan and Korea which harmoniously solved the twin problems of production and equitable distribution simultaneously. From this the lesson to be drawn is that the policy of land reforms has to be pursued to its logical end for achieving a broad-based peasant economy in India.

Prof. G. Parthasarathi, basing his analysis on data from the 37th Round of the NSSO, stated that if changes in the agrarian structure have been aimed at achieving (i) improved access to land to the landless, (ii) reduction in the concentration of land holding at the top and (iii) encouragement to enterprise based on owner-cultivation, the available evidence suggests that partial success has been achieved only in respect of the latter two objectives. Relevant data on the pattern of land ownership or the structure of operational holdings, or the incidence of agricultural labour clearly suggest that there has been no improvement in the access to land of the landless. This is disturbing because the prospect of absorption of the growing rural labour force does not seem to be very bright either in the non-agricultural sector or in the agricultural sector itself.

Since the economic case for land reforms is still very strong, it is clear that this has to be pursued as a deliberate policy for achieving both a higher level of production and income as well as better distributive justice. But there are doubts about the political feasibility of undertaking such measures because there are strong, entrenched landed interests in the rural areas which oppose these. Recently these pressure groups have added an ethical dimension to the whole issue by arguing that the urban sector also has a responsibility towards the uplift of the rural poor.

Prof. Parthasarathi suggested that the prospects for achieving the object of land to the tiller could be improved if in the areas to be brought under irrigation in future, which may be as much as 25%, it is ensured that ceilings are also lowered simultaneously. This would release a substantial area for redistribution to the landless. The encouragement to agro-processing through the involvement of large firms might also provide an opportunity if some of the benefits could also be made to flow to the small farmers by organising them. Rigorous enforcement of tenancy laws particularly in respect of the ceiling on rents would also have a positive effect on poverty alleviation. He further suggested that considering the large tracts of waste-lands existing in the country, it would be desirable to consider how the objectives of land reforms and preservation of the environment might be simultaneously achieved.

Prof. Parthasarathi stated that there could be no doubt that land reform measures have to be pursued to their logical end if the broader objectives of economic growth with social and political justice are to be achieved.

The consensus of views that emerged from the subsequent open discussion that ensued are as follows.

Efforts in the past at the implementation of land reform measures have borne some positive results, but much still remains to be achieved. However, there have also been some undesirable political fall-outs from these, mainly in the emergence of a dominant, landed elite group.

The economic gains from land reforms, which are clearly visible, are a compelling reason for pursuing land reform measure vigorously in future. The lowering of the average size of holdings which may result from this would not stand in the way of their taking advantage of the benefits of modern agricultural technology. However, the prevailing power structure

stands in the way of access to these benefits by the small farmers. Sari P. S. Appu suggested that poverty alleviation programmes and land reform measures may be impiemented conjointly, rather than parallelly, so that the two buttress each other.

There is bound to be serious political opposition to attempts at a vigorous pursuit of land reforms, although this will not be open and explicit. As things stand, there is little chance of succeeding through normal legislative and administrative action. Therefore, apart from a commitment to such programmes by the political leadership, as happened in the case of West Bengal in particular, the chances of success will improve only if the small and marginal farmers and landless agricultural labourers can be effectively organised.

Although most speakers favoured a strict enforcement of ceiling laws, including the provision for reduction in the ceiling consequent on the availability of irrigation facilities, Prof. V. M. Dandekar felt that land ceilings amounted to putting a ceiling on talent and returns to effort and enterprise in agriculture.

It was widely agreed that abolition of tenancy was not only impractical, but undesirable and perhaps also flies in the face of economic logic. Instead of driving this widely prevalent phenomenon underground, it would be far better to legitimise it and bring it out in the open where it could be controlled. Prof. A. M. Khusro explained that if security of tenure can be assured, the other two objectives of tenancy laws, i.e. reduction of rents and granting of the right of purchase to the tenant, would automatically be taken care of Shri Madhavsinh Solanki, Minister of Planning, however, placed the issue of tenancy in its historical perspective and raised the question whether having already abolished earlier all intermediaries—and everyone agreed that this was a good thing—it would not be a retrograde step now to legitimise it. Relevant in this context is the suggestion made by some speakers that the definition of owner-cultivator may be made more rigorous, perhaps with a proximity of residence condition included as in Gujarat.

Land reforms was recognised as a necessary step to the attainment of a just and equitable polity in India. That these have to be carried through was therefore not a debatable question.

Summing up the discussion, the Chairman noted that while there was unanimity in the opinion that land reforms must be

pursued, there appeared to be some dilution in the objectives particularly on the question of tenancy. Perhaps this was a necessary compromise on practical considerations. However, he wondered whether it was not worth pursuing the objectives as earlier set before the nation, if only as the ultimate ideal.

Session Two—Policy on Tenancy

Prof. Khusro, the Chairman for the session, introduced the topic by saying that during the 50s and 60s there were two major schools of thought regarding land reforms. One view was that tenancy was so widespread that without land reforms aiming at land to the tiller, no efficiency in agricultural production was possible. According to the second school, which had a US-orientation, productivity in agriculture was dependent on inputs, investment and technology and not land reforms. He felt that in retrospect both seemed to be right. In areas where tenurial systems were not too adverse and inputs and minimum infra-structural facilities were available like in Haryana, Punjab and Western U.P., advances in agriculture had been achieved. The same, however, could not be said for 3/4th of the country where no agricultural revolution is on the horizon due to lack of infra-structure and administrative will to implement land reforms. Clearly there is some relationship between security of tenure, minimum infrastructure and productivity.

Of course, the question also arises that even if land reforms are not important for production, still they are important for reasons of welfare and social justice. The other issue that arises is what area of the country and what proportion of the farmers are free from disabilities of tenancy, including too small a size of holdings. Approximately, 25% of the area according to Prof. Khusro's estimates, were under tenancy. In the 1961 census certain questions relating to land holdings were asked and on that basis it was estimated that open tenancy was over 25% and it would be approximately the same under concealed tenancy making a total of 50%.

Prof. Khusro said that the economic benefits of the tenancy reforms are obvious. Given that the marginal productivity curve is downward slopping and the cost of production curve a straight line, the difference between the two gives us the profit. Assuming that same conditions prevail for both the tenant and the owner cultivator since the tenant has to pay rent, the net productivity curve for the tenant would be lower than that for the owner cultivator and consequently the gains from agricultural production would also be less for the tenant. Hence inputs used by tenant cultivator would be less than the owner cultivator as also the

profits. With the introduction of new improved technology both the marginal productivity curve and the cost curve are bound to rise but the production rises more so that the profits will be higher than before. The tenant would have to pay a higher rent as well as incur higher costs. In fact, it is possible that the net gain for the tenant after the application of the new technology would be less than the previous profit. Consequently, he will not use the new technology in the same proportion as an owner—cultivator. As a natural process if the tenant does not use the new technology, the landlord would be willing to share the cost of new inputs so that it is beneficial to both. In fact, tenancy is a way of equating demand for and supply of land and should not be abolished by a stroke of the pen. Leasing in and leasing out of land may lead to a fair market rent and may remove some of the disabilities that exist. Prof. Khusro concluded by saying that tenancy should be recognised by identifying tenants and giving them rights including security of tenure, reduction of rent and the right to purchase the land.

In his discussion, Prof. Nripen Bandyopadhyay limited himself to the experience of West Bengal. According to him in West Bengal the peasant movement including the land grab movement preceded Operation Barga under which share-croppers were recorded and given rights in land. Under the Operation Barga 1.2 to 1.4 million share-croppers were recorded. He pointed out that 12% Barga land and 8% surplus land totalling 20% of total cultivated area in West Bengal, had been affected by land reforms. However, even in West Bengal, recording of share-croppers was difficult as there was no initial estimate of share-croppers and only 3 lakh Bargadars had been recorded till 1974. In 1977 the Left front Government took a new initiative to implement the laws which had been enacted much earlier and in a span of five years, 1.2 million Bargadars had been recorded. One important amendment to the earlier land reforms Act was made whereby the definition of 'personal cultivation' was made more stringent so that a person claiming to have land under self-cultivation, had to reside within 5 kms. and make use of family labour on the land. This was with a view to curbing absentee landlordism. According to Dr. Bandyopadhyay the active participation of beneficiaries and of the administration made recording of share-croppers rights in land, possible.

Shri P. S. Appu, in his discussion, observed that informal tenancy is a big problem particularly in the fertile lands of major river valleys. According to him, even though no new laws had

been enacted in West Bengal, success had been achieved because the balance of power had shifted in favour of Bargadars which had not happened elsewhere. The political will had made it a reality. This was lacking in other States. According to him, the idea underlying the earlier plans was that the nexus between the tenant and the landlord should be ended as it cannot be mended. However, the legislation had led to the emergence of concealed tenancy. Also when a person leased out his land, and had no hope of getting it back as in Kerala, land remained unutilised by preference, but was not leased out. Hence, he opined that there is a case for questioning the policy of banning tenancy altogether. But we cannot have a uniform policy for the entire country. A flexible approach is needed for different parts of the country.

After this, the discussion was thrown open to the participants. The following points emerged :

1. Operation Barga provides a kind of model which may be feasible in some areas only. Alternate experiences in states like Gujarat and Maharashtra were also discussed. Three elements important for the success of the operation are—(a) political organisation of poor peasants; (b) reduction in the extreme dependence on bureaucrats; (c) provision of institutional support for development after the recording of rights.

2. In the field all over the country, tenants are not being recorded. It was mentioned that even in Punjab 30% concealed tenancy existed. Policy intervention is required to tackle this problem.

3. Earlier, intermediaries existed between the State and the tenants and they had an absolute right to terminate the peasant's access to land. However, now we have a class of people who own land directly under the State and their holdings are below the ceiling levels. 92% of all operational holdings are held by owner cultivators out of which 89% are small and marginal farmers. A number of small and marginal farmers are also leasing out land and relatively large farmers are leasing in land. It was felt that if the land is given to the tiller, these small and marginal farmers will become landless.

4. On the contrary, there was also a view that if a person leases out land and has some other means of livelihood, he should have no rights in the land even though he is a marginal or small farmer because he has income from other sources. In order to realise this, physical participation by having a stricter definition of personal cultivation, must be made compulsory. In a land hungry country this would be more equitable.

5. Policy should aim at recognising tenancy and protecting rights of tenants. In case of application of better inputs all the incremental output should go to the tenant, if he bears the cost and it should be shared with the landlord if he shares the costs with the tenant.

6. In the context of Gujarat, based on a study made by Gandhi Labour Institute, it was observed that in some highly developed villages producing HYV cotton, large farmers were leasing in and small farmers leasing out land which was a form of reverse tenancy. Instances of eviction of backward classes from lands earlier leased to them had also been noticed, whereby their access to land had been reduced. In another village, where occupational diversification had taken place, labour was not available for cultivation with the result that part of land had been leased out, the other part had been cultivated by women.

Broadly, there were two lines of reasoning which emerged from the discussion in the session. The first option available was to recognise tenancy, detect it, record it, and provide security of tenure to those actually cultivating the land. The other was that the tenancy is a modern form of slavery operating in a situation of inequitable distribution of land and it should be abolished and land rights vested in those actually cultivating. This was in keeping with the original spirit of land reforms policy pertaining to tenancy. Concluding the discussion, the Minister of Planning opined that legitimising of tenancy would mean reintroduction of intermediaries. Drawing from the experience of implementation of tenancy reforms under the Bombay Tenancy Act in Gujarat and Maharashtra, he felt that definition of personal cultivation needed to be made more strict and should provide for land owner's residing within a defined limit, bearing the major costs of cultivation, contributing personal or family labour and deriving a major portion of his income from agriculture.

Session Three :

(i) Consolidation of land holdings

(ii) Preparation and maintenance of Land Records

(iii) Problem of Prolonged Litigation.

Shri V. C. Pande, the Chairman for the session, initiated the discussion by pointing out the problems relating to preparation and maintenance of land records. He stated that the matter had been reviewed recently during the Revenue Ministers' Conference and the position on the whole was very grim. In certain areas of North-Eastern region no records were available. For bulk of other States the last settlement was conducted more than 40 years ago. After the settlement, even regular updating of land records was not being done with the result that Patwaris' records had become totally unreliable. Mutations were not regularly attested and after attestation, these were not brought on record. Some States had passed this work to Panchayats where the position had become worse because of wrong entries.

2. The Chairman further said that the situation relating to land records administration was quite pathetic. In some States, survey departments had been abolished. The relevant provisions of revenue law were not known to the District Collector and their assistants who spent most of their time in development administration. Finances which came mainly from non-plan were scarce. The number of patwaris available were much below requirements and nearly 60% of their time was spent on matters totally unrelated to their functions. There were no patwari training schools to impart knowledge of surveying. There were no copies of land laws available at different levels of administration, which worked as a grave handicap to the officers/officials working in the field. Besides the laws itself were extremely complicated.

3. The Chairman pointed out that ever since the distinction between Revenue and Development functions was made, the former had been relegated to the background. In many cases, the bare essentials of infrastructure such as typewriters, papers, photocopier, jeep were conspicuously absent. The type of technology

in vogue was outmoded : The privilege of obtaining a copy of record of a survey number was, therefore, a matter left entirely to the whim of the patwari.

4. As regards litigation, he stated, 80% of the cases in the district and lower courts related to land. The culprit was the confusing, poorly maintained and updated status of land records. For the first time in the 7th Plan a scheme for Strengthening of Revenue Machinery and updating of Land Records had been taken up with an outlay of Rs. 20 crores. However with this only two three States could be helped. During the Eighth Plan a scheme of about Rs. 200 crores would be required for taking up survey and settlement operations on a scientific basis, preparing and updating the land records. He suggested that a Revenue Commission ought to be set up, which should look into all aspects relating to revitalisation of revenue administration.

5. The Chairman said that there should be a major thrust on inducting technology so as to cut cost and make the revenue administration less staff oriented. Computerisation of land records would help and was being already tried on experimental basis in some States. He felt that additional patwaris were not required, instead proper work allotment was necessary. Some of the functions that had been dumped on the patwaris could be handled by other officials. The simplification of procedures could also help in reducing the cost of revamping the system. A uniformity in the forms should be evolved for all the States.

6. Regarding litigation, he suggested, that legal procedures should be cut down and fewer appeals/revisions allowed. Article 323-B of the Constitution could be invoked for creation of Special Bench of the High Court for early disposal of land litigation cases. A distinct disincentive had to be built into law against those who prolonged litigation and delayed the disposal of cases. He referred to the initiative taken by the State Government especially Madhya Pradesh, which had passed a law whereby all lands declared surplus would be taken possession of and distributed notwithstanding the cases pending in the courts. Subsequently, in case the Government lost the suit, the land owner would get compensation at market value. He also said that too much reliance on documentary evidence under the Indian Evidence Act worked against the interest of tribals.

7. The Chairman said that consolidation of holdings had not been really successful except in Punjab, Haryana and parts of U.P. Consolidation had been used as a weapon by the land owners to get rid of sharecroppers and tenants. Wherever it had

been taken up on voluntary basis, as in Rajasthan, it had to be shelved subsequently. It could be successful in the canal areas where consolidation would lead to better management of land.

8. Prof. D. C. Wadhwa re-emphasized the issues raised by the Chairman and stated that revenue staff was engaged in all other work except revenue. Land Reforms, survey and settlement were given least priority by the State Governments. The provision of budget and staff with Director, Land Records was really inadequate in most States. Generally officers were unwilling to join the Department. No infrastructure was available and a mere pittance was paid to the field staff for office-cum-residential accommodation, travelling allowance and even stationery charges, though they were required to provide a lot of copies to the people.

9. Referring to the prolonged litigation in the courts, he said that in addition to 80% of cases in district and lower courts relating to land, of the remaining 20% too, the majority centred around land. The primary cause is the old and in some places, non-existent records. Certain districts in Bihar, for instance, do not possess any record. In some places records had been prepared about 80 years back and were being still used. To rectify this, re-surveying had begun in some districts, but even this had progressed slowly as it had got bogged down by lakhs of objections raised. Hence survey settlement operations took as long as 20—25 years in a district, by which time, the record became out-dated. He mentioned that even in allotment of surplus land, due to lack of proper records, land that had already been distributed was re-allotted, further compounding the confusion further. Specification of the exact location of allotted land was not found. In West Bengal updating of land records was done at the time of implementing ceiling laws and operation barga, but no regular updating was taken place now.

10. His field visits had revealed that compulsory consolidation had failed totally. In Gujarat, efforts at deconsolidation were under serious consideration. In Maharashtra, consolidation was over in 1974, but the map had not yet been printed.

11. Regarding mutation attestation, the position was very grim. Mutations were either on account of successions or due to transfer. In both cases mutations were not being done in time and were often pending for 15—20 years. While registering documents of the transfer of lands, State was only collecting stamp duty without certifying the legality of the transfer and verifying the title of the property. The Registration Laws had to be overhauled and the State made responsible for certifying the

transfer of the title of property while registering a document. He mentioned that unfair practices were rampant. In some places the revenue officials were maintaining two sets of registers one for collection of land revenue from people actually possessing land and the second, where the original land owners still continued on record. Receipts were made out in the names of those who had already sold their interest in land. Prof. Wadhwa also commented on the accumulated backlog of cases pending in the High/Supreme Courts and urged immediate government action in this matter.

12. Shri R. K. Rath said that revenue administration was not given any importance and very few able administrators were willing to serve in this area. The rank of the Settlement Officer was that of an Additional District Magistrate in Orissa and persons who were not otherwise useful were sent on the post. Besides, their knowledge of the law was very limited. They were not able to provide proper guidance or quickly dispose the cases. He suggested that copies of the law should be made available to all revenue functionaries. There was a need to improve the quality of the manuals. An acceleration of the revisional survey and settlement process will also help in improving matters considerably. There was a need to provide an office-cum-residence for the Patwari and rationalise the Patwari's jurisdiction. Patwari Training Institutes would need to be established. He also referred to the long pendency of cases in Supreme/High Courts and felt that urgent action was required to tackle this disturbing phenomena.

13. The other points that were made during the discussion were as follows :

(1) In view of the grave situation of land records, a Commission on Land Records should be set up to consider schemes of modernisation, procedural changes and other issues relating to revitalisation of revenue administration. There was also a need to fix a reasonable time span for the completion of the work to be undertaken by the Commission.

(2) The maintenance and up-keep of land records should be included as a plan scheme with an adequate budget.

(3) Computerisation in itself was not an answer to all problems. It had to be preceded by an updating of land records.

(4) Regarding consolidation, it was suggested that it should be carried out only after the rights of tenants and sharecroppers have been protected or otherwise large scale evictions also take place.

It was also pointed out that fresh consolidation even in States of Haryana and Punjab was no longer possible as was brought out by the number and type of objections raised in the villages which were yet to be consolidated in these two States. Therefore, to say that consolidation was successful in areas having canal irrigation was not correct because people were most unwilling to part with land on which they had made improvements. Invariably consolidation worked against the interest of the small land owners.

It was also suggested that there was a need to have restriction on fragmentation of inherited land or otherwise the whole purpose of consolidation was defeated after a few years.

(5) The inadequacies in the recording of rights in land in respect of tribals was also raised and it was pointed out that this aspect required attention at the time of preparation of land records during survey and settlement operations.

Section-Four Policy on Ceiling and Land Distribution

Professor V. M. Dandekar, the Chairman for the Session, initiated the discussion by raising three broad issues namely political feasibility of redetermination of ceiling limits, moral question of having ceilings on agricultural land without considering ceilings on urban lands and property, and the issue of efficiency in terms of productivity of land. He invited Dr. T. Haque, the principal discussant to make his presentation.

Dr. T. Haque, the first discussant, agreed that socio-economic desirability, political feasibility and possibility of implementation were necessary actors which could not be ignored since State Governments had not implemented the existing laws properly. However, he felt there was a case for lowering ceilings keeping in view both agricultural efficiency and equity. Based on his analysis of agricultural census and N.S.S. data, he indicated that there were rising trends in concentration ratios of both ownership and operational holdings. The average size of large farms had increased during the 70s. There was a growing trend of landless labourers and unemployed and neither the effective implementation of existing ceiling laws nor poverty allevation programmes could help the situation. There was a case for enforcement of existing land ceilings, fixation of lower ceiling on land holding and redistribution of land to marginal farmers to make their holdings economically sustainable. In his opinion 1 to 3 hectares would be sufficient viable holding at current level of technology adoption and 0.7 hectare at the recommended level of technology adoption.

Countering the argument very often put forward that economic development requires movement of population out of agriculture into a growing industrial sector, he stated that the intention of land reforms was not to remove disincentives in farm production due to existence of uneconomic non-viable marginal farms on one hand and unmanageably large farms on the other. He also pointed out that the cost of cultivation data in respect of Punjab and Haryana shows that small and marginal farms are relatively more efficient than the larger farms.

The issue of Government playing a major role in the purchase of land reaching the market or under tenancy and effect its sale

to landless or tenants on easy terms requires careful examination in view of heavy administrative and financial commitments.

Finally, he supported suggestions like not allowing additional unit to a family having more than 5 members, withdrawal of exemptions granted to various categories of land, bringing newly irrigated land under purview of ceiling and setting up of land tribunals under Article 323-B of the Constitution.

Drawing from his experience of Uttar Pradesh, Shri A. K. Singh, argued that the two phases of ceiling laws had not been able to get the estimated surplus due to loopholes in the law. In the first phase, ceiling had been fixed at 40 acres but due to a wrong definition of family, large number of exemptions, opposition from powerful lobby of land owners, as against 4 lac acres estimated surplus only 2.32 lac acres could become available out of which 2.01 lac acres was distributed. In revised laws ceiling was fixed at 7.3 hectares definition of family was modified, yet some of the earlier exemptions were retained. One full year was lost after declaration of intention with the result that out of 8 lac hectares only about 3.21 lac acres could be declared surplus.

He felt that there was a case for reducing the ceiling in view of large proportion of marginal farmers and agricultural labourers and the large area involved in holdings above 10 hectare. He suggested 5 hectares as the reasonable level of ceiling. Relaxations for unirrigated land etc., need to be also reduced.

On the moral issue raised, he felt that the proposition, that an egalitarian structure should come up in all sectors of economy was not a good argument against ceiling on agricultural lands.

He also felt that agrarian reorganisation should not get limited by State boundaries. Madhya Pradesh had a lot of area on which agricultural labourers of Uttar Pradesh could be settled.

Other suggsetions made by Shri Singh related to group cooperative activity for allottees of ceiling surplus land; taking up agro-forestry, animal husbandry, horticulture in case land was unsuitable for cultivation; bigger grants for land development and having public meetings in village for identifying surplus land.

The U.P. experience was again referred to by Shri Jha, who gave some additional facts. He mentioned that in 1/6th of the

land ceiling cases in U.P., involving roughly 1½ lac acres of land, notices were missing. He supported doing away with exemptions, not providing any units to major sons, but felt strongly that before taking on a third round of reducing ceiling limits it might be better to pay compensation to absentee landlords and even legalise benami through a voluntary disclosure scheme and have the land for redistribution.

Other issues raised in the session by the participants were as follows :

(1) Dr. S. S. Khanna said that there was a need to have a minimum lower ceiling for a viable holding. He was also concerned that the best lands were going out of cultivation and being put to non-agricultural uses.

(2) Shri R. P. Kapoor, was of the view that further reduction of ceiling would not help the growing population of marginal farmers and agricultural labourers. We could instead provide credit for purchase of land as an asset by the landless and marginal farmers just as we were providing for other types of assets.

(3) Shri Kripa Shankar raised the issue of unutilised land in the shape of permanent fallows, current fallows and culturable wastelands which were all on account of the inability of the large farmers to manage their lands. This unutilised land could be used for better purposes by the landless and marginal farmers.

(4) Prof. Parthasarthy felt that the ethical question cannot be decided on the basis of the argument that since we are not having ceilings on urban lands and incomes we should not think of the rural sector. In fact, we should make the urban sector also share the burden.

The second issue was regarding the agrarian structure that could be visualised for the next 10 to 15 years. He felt that going by the present trends the number of marginal farmers and agricultural labourers would rise and they would not all be absorbed in the non-agricultural sector. Therefore, effective land reforms alone could change the situation. The unfertile land, he opined could be purchased not for redistribution and taking on cultivation but for settling organised groups for development of eco-systems. He also felt that within the existing ceiling limits we should monitor the areas which are brought under irrigation by public investment.

(5) Shri Amitabh Bhattacharya expressed the view that the whole issue of compensation as available under Land Acquisition Act needed to be studied. Moreover, barren land could be subjected to contour bunding and cooperatives of beneficiaries set up on such lands. As far as finances were concerned, IRDP subsidy could be the equity and other funds could flow from NABARD for taking up agro-processing kind of schemes.

(6) Shri Soyantar mentioned that land was a social property, a common pool for production. There was a need, however, to correlate productivity with justice. He felt that area which is capable of cultivation by a person for his family should be considered as the cut off point for ceiling.

(7) Dr. B. D. Sharma was of the opinion that if the wages of agricultural labourers were suitably raised, the equity question could be handled without further reducing ceiling limits.

(8) Shri B. B. Patel raised the issue of regional aspects of redistribution since agriculturally developed areas had low surplus but larger population of agricultural labourers. Further, whether the land should be distributed to marginal farmers or to the landless labourers required consideration. He also referred to the successful experiments made in Gujarat where a number of tribal families have been given lands for raising plantations.

Concluding the session, the Chairman said that there was a feeling emerging that the rural man was not receiving justice and was being taxed more as against his urban counterpart. Moreover, we had to allow room for growth of agriculture with the coming new technology. Therefore, he felt that lowering of ceiling may not be justified and burden of employing landless and marginal farmers should not pass only to agriculture. He was also sceptical of barren lands being used by cooperatives for plantation as suggested by some participants. However, this could be tried in areas wherever it was successful. As far as the future agrarian structure is concerned, he feared that the smaller and marginal farmers would ultimately be squeezed out of agriculture.

In sum, there was a general agreement that existing ceiling limits as approved in the national guidelines of 1972 should be uninformly enforced in all States. Special care had to be taken to redetermine ceiling limits in all cases of land owners whose lands have been upgraded by irrigation on account of public investment by stricter implementation of the existing legislative

provisions. Further exemption to religious, educational and charitable institutions had to be removed. While a section of the participants felt that the ceilings had to be lowered, the majority were against lowering of ceilings any further.

The Chairman, however, held the view that agricultural ceilings had to be looked at also in the context of the ceilings on urban incomes and urban property. We could not pass on the burden of employing the landless, small and marginal farmers to the land owners in the rural areas without at all touching the urban areas.

Session Five : Policy on Protection of Interests in Land of Weaker Sections—Scheduled Castes/Scheduled Tribes and Women.

In his opening remarks, Shri S. S. Verma, Chairman of the Session emphasized the importance of framing a proper land reforms policy for protecting the interests in land of the weaker sections. He felt that a successful implementation of the legislative provisions would only determine the real benefits accruing to the weaker sections. He invited Dr. Bina Agarwal to initiate discussion on the rights of women in relation to land.

Dr. Bina Aggarwal, in her presentation, explained the factual position obtaining in various parts of the country and highlighted the bias operating against women. She stressed the need to provide independent access to title in land for women. She mentioned that in several statutes regarding devolution of titles there was a general bias against women which needed correction. For example, under section 4 (2) of the Hindu Succession Act 1956 the tenancy rights could devolve on female heirs but the State Laws were usually less progressive than the personal succession act and placed female heirs at a disadvantage. Hence for instance under Section 117 of the UP Zamindari Abolition Act dealing with the succession to a holding, the rules clearly favour agnates with a priority for males in that group. The rights of the widow and married or unmarried daughters come not only after those of lineal male descendants but even after the widows of those males.

Also, tenancy rights have been defined in this section of the UP Act to cover all interests arising in and out of agricultural lands. This means in UP, daughters and widows who by the Hindu Succession Act are Class I heirs, come way down in the order of heirs with respect to agricultural lands. She said that UP was just an illustrative case. Several other States would have the same anomaly, although there were exceptions, such as, Tamil Nadu and Maharashtra which did not provide for any special rules for the devolution of tenancies. Hence, she pleaded, that there was a case for amendments to these laws. Land Reform Statutes governing the devolution of agricultural land need to be examined for different States and brought at least at par with more progressive personal laws relating to other property.

Even where policies provide for women's rights to be recognised the implementation machinery, out of inertia did not respond adequately. In regard to community lands, she felt, that any process which led to distribution of community land to private individuals should be stopped. In tribal areas, the privatisation of communal land was highly detrimental, particularly to the women's interest. One way of stopping privatisation of common lands was to allot it to homogenous groups of women who need such land for collective action.

She drew attention to the total absence of genderwise data and emphasized the need for the larger surveys such as NSS and Census taking care of this deficiency in future. Regarding distribution of government or ceiling surplus land, she opined that the joint Pattas started in Sixth Plan did not make much impact. It would be better instead to allot the land to women on group basis. Joint operation of land would prevent fragmentation and provide for access to a larger number of families. It would also serve to create assets under the control of the poorer sections. In this connection she referred to an interesting experiment in Udaipur where collective allotment of land to women had produced very encouraging results. The same applied also to the tree-patta scheme. She summed up her presentation with the following observations :

(i) It is important for women to have independent access to agricultural land, and not merely access via male family members. This needs to be the guidling principle in all land reform schemes.

(ii) Existing State land reform statutes specifying devolution of agricultural land under tenancy etc. discriminate against women. There is a strong case here for legal reform.

(iii) Gender bias in the official implementation of land reform needs correction.

(iv) The distribution of land for village commons to fulfil land distribution targets should be stopped as should all privatisation of common land. This will have positive implications for women in poor households. The growing privatisation of communal land in tribal areas likewise needs to be stemmed.

(v) There is a critical need for introducing gender-wise break down of data for land and asset ownership

and use in large scale surveys. To begin with this could be attempted on a pilot basis in the NSS and subsequently extended to the Agricultural Census.

(vi) In Government Land redistribution schemes, the distribution should not be to individual persons or families but to group of women who have usufructuary rights to it, but no rights of alienation.

Dr. B. D. Sharma, touched upon the major recommendations concerning interests of Scheduled Castes and Scheduled Tribes in land as made in the Twenty Eighth Report (1986-87) of the Commissioner for Scheduled Castes and Scheduled Tribes, extracts of which had been circulated to all participants. He mentioned that the Scheduled Castes were largely farm labour whose interests were not protected in the legislation. The policy of land to the tiller was not implemented. He felt that government should purchase land and give it to the weaker sections. Land which had today become a marketable property carrying high price tag should be taken out from the market system and made available at reasonable cost to the weaker sections. At the same time minimum wages to the farm labour should be ensured even if it leads to pushing up the farm produce price. Regarding the Scheduled Tribes, he mentioned that the State had intervened as the owner in respect of most of tribal lands including forests. Moreover, waste lands were also being privatised against the interest of the tribals. He felt that land should be restored to the tribal community. Any fear that the management of such land by them would be difficult or qualitatively inferior was unfounded. In respect of rights of women in tribal society, the tribal customs and traditions regarding rights in land should prevail over the rights of women in other sections of society.

He generally agreed with the suggestions contained in the background paper circulated by the Planning Commission and endorsed it. Emphasis was laid by him upon the implementation of the suggestions.

The Minister of State for Rural Development, Shri Janardhana Poojary, intervening in the discussion mentioned that land to the tiller was and should remain the policy of the Government. However, the quality of implementation of land reforms legislation varied from place to place depending upon political will, dedication and administrative competence. Citing the example of Karnataka, he mentioned that the tribunals were able to give occupancy rights even though no documentary evidence was available. The evidence was collected on the spot

and the public in the villages supported right decisions. In West Bengal land reforms were generally known to have been implemented more effectively. But in effect the landlords were still operating in a clandestine manner. In some States, vested interests even resorted to muscle power. There are deficiencies in tenancy implementation but the Government is determined to rectify them. It may take some time but vigorous action would certainly solve the problem. By better implementation of land reforms more jobs can be created, if simultaneously investment in agriculture is stepped up.

In the discussion that took place subsequently the following points were made :—

(i) It was mentioned that girls were enrolling in courses on agriculture and agricultural engineering in a big way. There was a need to recognise women as real partners in agricultural operations. Therefore, women's rights in land should be recognised.

(ii) A view was expressed that in the present social system, women were being made to relinquish their rights voluntarily and that the rights which the legislation sought to confer on them were being made ineffective.

(iii) Referring to the studies made by experts like M. V. Nadkarni of ISAC, Prof. B. K. Roy Burman in Orissa and Mukul Sanwal in Hill Areas of UP a view was expressed that social control of land was perhaps a romantic idea. It was also mentioned that traditional rights of tribals in land posed complex problems, such as, land being vested in the Government over a certain gradient. He recognised the need to have a continuous dialogue with the concerned authorities in the States for appropriately recognising and defining the tribal community rights on land and protection of such land against commercialisation.

(iv) The need for developing non-agricultural occupations for generating more jobs in villages was recognised. For this purpose strengthening of infrastructure machinery for supporting the commercial transactions in tribal areas was emphasised.

(v) It was mentioned that tenancy rights were a fact of life and it would be unrealistic to ban them. The small land owners had to be allowed to resume the land, which may be given to the tenants for a period of time when they were pursuing some other occupations.

Valedictory Session

Shri Madhav Sinh Solanki, Minister of Planning, welcomed the Chairman of the Session Shri Bhajan Lal, Agriculture Minister and observed that the seminar had been organised by the Planning Commission to discuss some of the vital issues concerning land reforms. It was widely accepted that land reforms were necessary for greater agricultural productivity and social justice. But lately, lull had been perceived in the implementation of land reforms legislation. The Planning Commission had already initiated the Eighth Plan exercises and organised the Seminar with the earnest hope that the eminent social scientists and economists would be able to make some suggestions which would help in the formulation of the future policy.

Shri Bhajan Lal, Agriculture Minister, observed that though a large number of land reforms enactments were passed with good intentions, yet the implementation of these laws had not been always satisfactory. A lot of land had been declared surplus, but a large chunk was still locked in litigation or not suitable for cultivation. Even the land which had been allotted to the landless continued to be in the possession of land owners in a number of areas. He felt that no useful purpose would be served by reducing the ceiling limits further. He was concerned that 80 per cent of the disputes in the country were related to land. This was mainly on account of poor upkeep and maintenance of our land records. He suggested that a National Commission on Land Records should be set up to look into these issues. He was of the view that after the fresh records are prepared, they should be placed with the Panchayats and be accessible to all. He pleaded for greater involvement of the Panchayats in the management of land matters.

This was followed by a presentation of the reports for the various sessions. Prof. Joshi, summing up the discussion for the first session on 'Status and Review of Land Reforms Policy', observed that there was an agreement that economic case for land reforms was still very strong. Small peasant oriented agriculture had been found viable under Asian conditions with the application of modern technology and inputs. This was also true of India.

Prof. Khusro presented the gist of the deliberations in the second session on 'Policy on Tenancy'. The problem of informal

and oral tenants was found to be most challenging. The two options discussed were to recognise tenancy, detect it and provide security of tenure to those actually cultivating the land or to keep the original spirit of land reforms alive whereby all rights in land had vested in those actually cultivating it. Though Prof. Khusro personally preferred the first option, a note of caution had been sounded in the session by the Minister of Planning, who supported a strict definition of 'personal cultivation' to get over the problem.

Shri R. K. Rath summarising the proceedings of the third session, higlighted the problems of maintenance of land records and suggested the need for a National Commission on Land Revenue to go into all aspects. A smaller jurisdiction for patwaris, residential cum-office-accommodation, training and provision of better facilities were some of the vital inputs necessary for strengthening of Revenue Administration. Referring to the problem of prolonged litigation, he pleaded for exclusion of the jurisdiction of High Courts from revenue proceedings. As far as Consolidation Operations are concerned, he felt that it could succeed in areas irrigated by canals, but the problem of eviction of tenants had to be considered sympathetically.

Prof. Dandekar in his summary presentation of the proceedings of the session on 'Policy for Ceilings and redistribution of land' observed that the majority of the participants favoured application of ceilings on agricultural lands, though there was a general agreement that reducing of ceiling limits further was counter productive. But in the minority view agriculture had to be allowed room for growth Moreover, urban income and property should also share the burden of employing the landless agricultural labourers and marginal farmers.

Shir S. S. Verma, Chairperson for the session regarding 'Protection of interests in land of weaker sections — Women, Scheduled Castes and Scheduled Tribes' observed that the general consesus was in favour of making the land accessible to women directly rather than through the male members. Further community lands could be allotted to groups of women of taking up economic activity. In no case, should the privatisation of community lands be allowed. The suggestions made by the Commissioner for SC and ST for protecting the lands against alienation were also endorsed.

Concluding the discussion, the Chairman said that he did not favour the lowering of ceilings on agricultural lands further. He supported the suggestion for bringing the urban lands under ceiling. Above all, he felt the State of land records had to be improved.

List of Participants

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2. Shri Janardhan Poojary,
   Minister of State for Rural Development.
3. Prof. G. Parthasarthi,
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4. Prof. P. C. Joshi,
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5. Prof. A. M. Khusro,
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13. Shri R. K. Rath,
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15. Shri A. R. Bandyopadhyay,
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22. Shri S. N. Acharya,
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23. Shri Nripen Bandopadhyay,
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25. Shri P. K. Jha,
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26. Shri V. C. Pande,
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Planning Commission

30. Shri Madhav Sinh Solanki,
Minister for Planning.

31. Shri B. S. Engti,
Minister of State for Planning

32. Prof. Y. K. Alagh,
Member (Agriculture)

33. Shri J. S. Baijal,
Secretary

34. Shri P. B. Krishnaswamy,
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35. Dr. (Mrs.) I. K. Barthakur,
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37. Shri A. K. Saikia,
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39. Dr. S. S. Khanna,
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40. Prof. S. R. Hashim,
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42. Shri Arun Sinha,
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43. Dr. (Mrs.) Rohini Nayyar,
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44. Dr. B. N. Sahay,
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45. Smt. Asha Swarup,
Director (RD)

46. Shri M. S. Narula,
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47. Shri P.S.K. Menon,
Dy. Adviser (BC)

48. Shri P. N. Deb,
Dy. Adviser (Agr.)

49. Shri K. R. Dasgupta,
Senior Research Officer (RD)

50. Mrs. Seema,
Research Officer (RD)

51. Miss Usha Krishnan,
RO (Tpt. Division)

52. Miss Pushpa Thottan,
RO (DP)

List of Chairperson, principal discussants and rapporteurs

Session I : Status and Review of land Reforms Policy

Chairperson : Prof. G. S. Bhalla

Discussants : Prof. P. C. Joshi
Prof. G. Parthasarthi

Rapporteur : (i) Mr. P. N. Deb
(ii) Mr. K. R. Dasgupta.

Session II : Policy on Tenancy

Chairperson : Prof. A. Khusro

Discussants : Shri P. S. Appu
Shri Nripen Bandyopadhyay

Rapporteur : (i) Dr. Rohini Nayyar
(ii) Mrs. Seema.

Session III : Other Issues—

(i) Consolidation of Holdings

(ii) Preparation and Maintenance of Land Records

(iii) Problem of prolonged litigation

Chairperson : Shri V. C. Pande

Discussants : Prof. D. C. Wadhwa
Shri R. K. Rath
Shri K. B. Saxena

Rapporteur : (i) Miss Pushpa Thotan
(ii) Shri Munish Goyal.

Session IV : Policy on Ceiling & Land Redistribution

Chairperson : Prof. V. M. Dandekar

Discussants : Dr. T. Haque
Prof. A. K. Singh

Rapporteur : (i) Mrs. Asha Swarup
(ii) Shri M. S. Narula.

Session V : Policy on Protection of Interests in Land Weaker Sections— Sections - Scheduled Castes/Schedued Tribes and Women

Chairperson : Shri S. S. Verma

Discussants : Dr. B. D. Sharma
Dr. Bina Aggarwal

Rapporteur : (i) Dr. P. S. K. Menon
(ii) Miss Usha Krishnan.

PART : THREE

BACKGROUND NOTE FOR THE SEMINAR ON "LAND REFORMS — A RETROSPECT AND PROSPECT"

Background Note for the seminar on "Land Reforms— A Retrospect and Prospect"

SESSION ONE

Status and Review of Land Reforms Policy

Land Reforms Programme has virtually come to a dead end. After the remaining undistributed surplus ceiling land is allotted to rural poor, there would be no new redistributive programme for implementation. On the other hand, there is a strong opinion in the country that land reforms have really not been implemented.

Land Reforms—Historical background

2. Land Reform measures, of course, are nothing new to India. There is a history of such legislation dating back to 1859 in Bengal, the chief aim of which was to protect the rights of tenants. Nationalist Writers and Speakers during 1920s and 1930s laid a heavy responsibility upon the Imperial Raj for the sad condition of Indian agriculture. The main burden of Congress argument, as set forth in the resolutions passed by annual Congress Sessions, was that British had saddled the Indian peasantry with a host of functionless intermediaries whom they characterised as outmoded vestiges of feudalism.

3. Commitment to land reforms is a part of heritage of our national freedom movement. The poverty in rural society and extreme exploitation of peasantry by intermediaries, moneylenders and others leading to their impoverishment and misery attracted the attention of national leaders during the freedom struggle and formed an important plank of the programme of Indian National Congress. Starting from the Resolution adopted at Kisan Conference at Allahabad in 1935, the concern was later reflected in the Agrarian Programme adopted at the Faizpur Session of the Congress. The Congress Election Manifesto, 1946 gave prominent place to the need for reform of land system. The question of effecting a change in the

Prepared on the basis of available reports by Smt. Asha Swarup Director (Rural Development), Planning Commission.

system of land tenure got a decisive thrust in the recommendations of the Report of the Economic Programme Committee set up by the All India Congress Committee under the chairmanship of Shri Jawahar Lal Nehru in November, 1947. The Land Reforms policy finally took shape in the programme formulated by the Congress Agrarian Reforms Committee under the Chairmanship of Shri J. C. Kumarappa, which had been set up at the unanimous request of Revenue Ministers made in their Conference held in December, 1947. The thrust of the policy was that there was no place for intermediaries and land must belong to the tiller of the land. This was particularly relevant in the context of pre-independence agrarian structure when there were many layers of tenants and sub-tenants, between the actual owner of the land and its cultivator. Other aspects of Agrarian structure such as size of holding. Rights in land, Land management, Indebtedness of Peasantry also figured in the report. The thinking on the subject crystallized in the Memorandum of the Economic Planning Sub-Committee of the Congress followed by the resolution on 'Agriculture and Agrarian Reforms' adopted by a Conference of Chief Ministers and PCC Chiefs held to discuss the programmes of land reforms. These reforms were considered necessary not merely from the view-point of improving agricultural production and removing exploitation of the peasantry but also for establishing a more just and egalitarian society. A comprehensive land reforms policy thus evolved which consisted of :—

(a) abolition of intermediaries and bringing tenants in direct contact with the Government;

(b) tenancy reforms with a view to providing security to actual cultivators of land against eviction;

(c) redistribution of land by imposition of ceiling on agricultural holdings;

(d) consolidation of holdings; and

(e) updating of land records.

Abolition of Intermediary tenures

4. This agrarian reform measure which was taken up all over the country in the early years of independence during 1950–55 essentially involved removal of the intermediary levels or layers of interests in land between the State and the actual cultivator, bringing the actual cultivator in direct relationship

with State, giving permanent rights in land to them and rationalisation of land revenue system. More than 20 million tenants benefited as a result of this agrarian reform but not all of them received permanent, heritable and transferable rights without any strings attached. The abolition provided the cultivators with incentive, freedom from fear, freedom from being ordered around and enhanced their political and social standing. Other benefits of the measure included simplification of number of tenures (in U.P., for example, out of 40, only three types emerged), rationalisation of rent and distribution of a large proportion of 6 million hectares of waste, fallow and other classes of land, which had vested in the government, among the landless rural poor and marginal farmers.

5. However, the original objective was diluted due to a number of reasons. Firstly, States took unduly long to bring the law on the Statute Book. The case of U.P. will elucidate the point. 4½ years lapsed between original resolution and eventual enactment. Even after the law came into existence, its implementation was blocked by erstwhile landlords through prolonged legal battles. This process was aided by the extremely conservative attitude of higher judiciary towards any matter affecting the property rights.

6. It is pertinent to note that some residual matters regarding this agrarian reform measure are still pending. These relate to matters pending in the Courts, as for example abolition of some Jagirdari tenures in Rajasthan. Secondly, in some States intermediary, interests still remain to be abolished. Thirdly after abolition of intermediaries and taking over of estates, survey and settlement of land have not been done in many States. Fourthly, under the law, intermediaries were allowed to retain with them a huge area of land under the garb of 'personal cultivation'. These lands continued to be operated by tenants and share-croppers who got no protection from this measure. One study has estimated that in Bihar alone, old Zamindars managed to retain nearly 15 lakh acres of land in their 'Khas' possession. Besides, most of the Zamindari areas did not have proper land records. Therefore, crop sharers and tenants did not have documents to prove their rights. Under the legislation such crop sharers were not treated as tenants. As a result, such lands also were claimed by Zamindars under 'personal cultivation'. The abolition of intermediaries did not benefit sub-tenants and crop sharers as they did not have occupancy rights in the land they cultivated.

7. When this balance sheet is seen in the context of huge amount of compensation, nearly Rs. 670 crores, paid to the landowners for effecting this reform, it would not be difficult to appreciate how even this reform of land tenure system, which had overwhelming support, eventually got diluted in the process of implementation.

Tenancy Reform

8. The tenancy reform measures were built around the following guidelines :

(a) rent payable to the landowner should not exceed 1/5th to 1/4th of gross produce;

(b) tenants should be given permanent rights to the land they cultivate subject to a limited right of resumption to be given to landowners;

(c) landlord-tenant relationship should be ended by conferring ownership rights on tenants in respect of non-resumable land.

Tenancy legislations were enacted by States incorporating some or all of the above features. An estimated 7.7 million tenants have acquired ownership of about 5.6 million hectares of land. But tenancy reform measures have not succeeded in fully meeting the objective due to following reasons :—

(a) Insecurity among tenants and sharecroppers was created by loopholes such as providing for resumption of land for personal cultivation by landowners. For example, in Assam an owner could resume 33-1/3 acres, while in Punjab it was 30 standard acres. In Andhra, the landlord could resume the entire area. Moreover, in most legislation, the term 'personal cultivation' was loosely defined so as to include cultivation through servants or labourers. There was thus a built-in contradiction between the right of resumption on one hand and security of tenure on the other.

(b) Due to provision for 'voluntary' surrenders in tenancy laws, tenants were evicted from their land which they were cultivating by obtaining surrender documents under pressure.

(c) While rent was fixed at 1/5th or 1/4th of the produce, in reality crop-sharers had to part with

half the produce as rent. Provision of fair rent was effective only for those tenants who had security of tenures reflected in record of rights. However, most of the lease arrangements were oral. Whenever tenants asked for fair rent, they were evicted from land. Under crop sharing arrangements, fair rents could not be enforced. Many landowners created confusion by calling themselves as owner cultivators and called crop sharers as servants—a subterfuge which continues to this day.

(d) As the Reform was in the air before the enactment of laws, this combined with long delays in passing the law made it possible for the landlords to reduce the number of claimants for rights in the land by evicting tenants or shifting them to the status of farm hands. The same holds true after the laws went into effect. The eviction movement was widespread. Some data available on this point pertaining to the early 1950s in respect of former States of Bombay and Hyderabad from the Planning Commission Panel on Land Reforms would indicate the magnitude of eviction. In Bombay, between 1948 and 1951, the number of "protected" tenants declined from 1.7 million to 1.3 million (or by 20%). In Hyderabad, between 1951 and 1955, the number declined by 57% and the area held by them by 59%. One study of reform movement in Hyderabad by Professor A. M. Khusro—sponsored by Planning Commission, estimated that between 1951 and 1954, 12% tenants purchased their land, 2.4% were legally evicted, 22% illegally evicted and 17% had voluntarily surrendered their claims to land. Cases were detected where tenants had to leave due to their inability to pay enhanced rents, despite the law. In plenty of cases, force had been used for evictions.

(e) As regards converting tenants into owners, some tenants purchased land from their owners but relatively little land changed hand from landlord to tenant. The price of land was often much too high for tenant to pay it; instalment payments were spaced within too limited a period of time and transaction itself was essentially a matter of bargaining between landlord and tenant in which the outcome was

heavily weighted in favour of the landlord. That is why some States later enacted legislation that gave the State right to resume land directly for reallocation to tenants but not many states actually enforced it.

(f) Tenancy Legislation disturbed the traditional lease arrangements which existed for a long time. While the landlords succeeded in evolving arrangements which put the tenants at a greater disadvantage than before, the tenant continued to cultivate the same land individually without any official record of his cultivating possession over the land, replacing open tenancy by concealed tenancy. There was also a change from long period to short period, annual to seasonal, written to oral and formal to informal arrangements. In States where landlords forcibly evicted tenants from land which they were cultivating in the name of resuming land for personal cultivation, the evicted tenants were again given land on lease without formally registering them as tenants. The Green revolution also led to large scale eviction of tenants as it made self cultivation more profitable. Many landowners evicted tenants by making use of mechanical methods like tractors, harvesters etc.

9. Yet, West Bengal, Karnataka and Kerala reportedly have achieved certain measure of success in this respect. In West Bengal, more than 13 lakh share-croppers (Bargadars) have been recorded under the 'Operation Barga'. This was done in collaboration with groups of beneficiaries and with the active assistance of rural workers organisations and Panchayati Raj Institutions. Karnataka set up land tribunals for deciding tenancy issues and conferring occupancy rights of land to tenants. More than three lakh applications were decided in favour of tenants involving more than 11 lakh acres of land. In Kerala, upto 1980, nearly 24 lakh applications from tenants for claiming ownership rights had been accepted. Tenants associations were the main force which helped the Government in this work.

10. Tenancy reform does not seem to have made much impact if the position is to be judged by the incidence of informal or oral tenancies today. Such tenancies have come

up even where leasing has been expressly banned. Thus providing some modicum of security to this category of tenants is the most burning problem of agrarian reform today which has persisted from British times despite more than 40 years of land reform implementation.

Fixation of Ceilings on agricultural land holdings

11. Fixation of ceiling on agricultural holdings was taken up predominantly as a redistributive measure. The compelling case for land ceiling arose from the absolute and permanent shortage of land. The idea basically was to ration land, a crucial asset, in such a way that, above a certain maximum, the surplus land is taken away from the present holders and is distributed to the landless or small holders in accordance with certain priorities. The skewed distribution of land in India with nearly a quarter of the rural house-hold owning no land at all and another 1/5th owning less than an acre each provided ample social and economic reason for the use of ceiling as a means of redressing this imbalance. The ceiling question gave rise to more debate and arguments than any other reform issue as it touched on the raw nerve of tampering with private property rights. Legislation for ceiling on existing holdings and future acquisition were enacted in most of the States during the Second Plan Period. The policy with reference to the enactment and implementation of ceiling legislation differed among the States. The ceiling limits were different because of different types of land and their income giving capacity. There were also differences in the law on some other aspects. With a view to bring about some degree of uniformity, the ceiling laws were revised on the basis of national guidelines evolved in 1972. Some States, however, have lower ceiling than those recommended in these guidelines. Judged by the quantum of land declared surplus, this reform measure has not achieved the desired objective fully. As against the estimated availability of Surplus land ranging between 120 lakh acres to 302 lakh acres computed by various surveys, the total area declared surplus so far has been 73.35 lakh acres only (less than 2% of the cultivated area) of which 44.45 lakh acres has been distributed among 41.19 lakh beneficiaries. The reasons are not far to seek.

12. The provision of large number of exemptions from ceilings and many loopholes in the legislations led to frequent interventions by Courts of Law. The mala-fide transfers

reduced the quantum of surplus land. One study in respect of Bihar has estimated that over a period of 10 years ending with 1962 nearly 5 lakh acres were transferred over the normal rate of transfer i.e. 1.70 lakh acres of land annually. These constitute a rough estimate of fictitious transfer by gifts, will, surrender etc. In a large number of cases, landowners surrendered inferior and uncultivable land while they kept superior land with them. Also in many cases, surplus land supposed to have been surrendered continues to be in unauthorised occupation of landlords.

13. Besides certain other provisions in the ceiling law are chiefly responsible for poor availability of Surplus land. These are :—

(a) provision to give Separate ceiling limit for major sons in the family ;

(b) provision for holding land upto twice the ceiling limit by families with over 5 members.

(c) provision for treating every shareholders of a joint family under applicable personal law as a separate unit for ceiling limits ;

(d) misclassification of lands ;

(e) non-application of appropriate ceilings for lands newly irrigated by public investment, etc.

14. The poor impact of this land reform measure is also on account of (a) a large number of surplus land being locked in litigation and, therefore, unavailable for distribution; (b) frequent complaints of eviction by ceiling land allottees; (c) much of this available surplus ceiling land being of a low quality and therefore unfit for cultivation unless huge funds are spent for upgrading it.

Bhoodan Land

15. Quite independent of the ceiling legislation, almost preceding it, another attempt at redistribution of land was made through the Bhoodan (landgift) movement. Through this movement, Vinoba Bhave impressed upon the landowners to demonstrate their compassion by donating 1/6th of their

holdings and envisaged that the land so collected would then be suitably redistributed. This movement, however, failed to have any appreciable impact on the problem of landlessness and inequitous distribution. Out of 45.88 lakh acres donated under Bhoodan Scheme, only 22.49 lakh acres have been distributed. The balance still remains for distribution, because of a number of complications surrounding procedural aspects. Also, much of the land donated in Bhoodan was rocky, barren or otherwise agriculturally poor or was under dispute in current litigation. In other States, land donated was found to be just the excess, which under reform legislation already on the Statute Book or then before the legislatures, the donors were required to handover to the State. Much greater difficulties were encountered, in practice, in distributing such land as were donated. Only a small percentage was turned over to the landless.

Consolidation of land holdings

16. Consolidation of fragmented land holdings though necessary for efficiency and economy in agriculture and better development planning at the village level is not essentially a redistributive measure. It is simply a rearrangement of land on the basis of existing rights. Even so, most states have not shown any enthusiasm for it. Some have either relegated it to a 'voluntary' character or have not enacted any law for it or have kept the already enacted law in abeyance. Only in Punjab, Haryana and U.P. this programme has made substantial progress largely due to the even availability of irrigation facilities which does not permit sharp difference in quality and estimation of land and, therefore, facilitates farmers, acceptance. Orissa, Bihar H.P. etc. have also taken up consolidation in a big way. But so far around 1397 lakh acres have been consolidated which constitutes a small part of the cultivated land. Apart from increasing pressure on land and lack of alternative employment opportunities outsides the farm sector inhibiting the progress of this programme, consolidation operations are generally feared to favour the more influential and substantial landowners. The small landowners, therefore, feel that they would not get a fair deal. Besides experience has been that sub-tenants and share-croppers with no recorded evidence of their rights get evicted through this process. In some places, clever landowners are reported to have supported land consolidation precisely for this purpose. In addition because of drought and flood and such other natural factors,

landowners in many States have tended to support fragmented holdings in order to cope with these factors better.

17. Consolidation of fragmented land holdings has already achieved a fair degree of success in increasing agricultural production, resolving land based conflicts and bringing better harmony and social facilities to village life, in those parts of the country which are serviced by canal irrigation. In other parts of the country, it has not made much headway because of the feeling of insecurity among the small and marginal farmers, share-croppers and tenants on account of their apprehension that they may get an unfair deal. This sense of insecurity among the weaker sections could be allayed if prior to taking up consolidation, land reform measures pertaining to security of tenure etc. are effectively implemented. Since consolidation of land holdings is considered necessary for overcoming of the obstacles which come in the way of intensive cultivation and permanent improvement of land, it needs to be taken up on a priority basis in areas covered by stable irrigation system preceded by recording of tenants and share-croppers and updating of land records.

Updating of land records

18. It is an admitted fact that in most States land records are not up-to-date and, even where land records are regularly rewritten, the ground level reality is not reflected in them, particularly regarding tenancy and share-cropping. This has been largely due to pressures from landowning classes with the specific objective of subverting legal provisions regarding protection to tenants and share-croppers. The State Governments have been usually responsive to such pressures.

19. Some States especially in North-East do not have any land records system at all while many others, which have a land records system, have not been able to find sufficient resources to get the land resurveyed and land records updated. The inadequate machinery for regular updating of land records and insufficient financial provision for this purpose are among the factors responsible for the present state of affairs. The archaic system of preparing land records and updating them is also responsible for its poor upkeep.

Conclusion

20. Despite the lack of desired success in achieving the objective set out for the comprehensive land reform policy, land reforms as an issue is not likely to just fade away. This is because land is central to village economy and about 80% of rural people depend upon land for their survival. A large number of these people are either landless agricultural labourers or/and tenants and share in croppers working on oral leases which make them liable to eviction. Rents in most parts are commonly 50 or 60% of the crop even when the landlord contributes only the land while all other elements of production are supplied by the tenants. In this situation of insecurity of tenure with high rents neither any surplus is left with the cultivator to invest in land nor there is any incentive to put in more labour since the greater beneficiary of such an effort would be the land-owner. Besides, in many cases, the margin of subsistence is so narrow that tenants can afford little risk; any innovation in productive practices that goes wrong may result in starvation. Apart from these crippling conditions, credit facilities are not available to such share-croppers in the absence of any evidence of their status in the record of rights. For this very reason, even the benefits of the law regarding security of tenure do not accrue to them. In a study commissioned by Reserve Bank of India, Dr. Sen has identified prevalance of share-cropping on a large scale as one of the main reasons for inadequate growth in rice production in the eastern region. Various other research studies also have high-lighted this point. Therefore, if sufficient determination is not shown in enforcing the provisions regarding security of tenure and payment of rents, we shall not merely fail to achieve any breakthrough in agriculture production but also evade our responsibility towards the rural poor who are victims of the existing unjust agrarian structure with no bargaining capacity to get their rights under the law enforced.

21. Land Reforms have largely been looked upon as a part of rural development activities because restructuring of agrarian relation is considered necessary for improving agricultural production and productivity. It is not sufficiently realised that in our rural society land is important not merely as a factor of production but it provides a social status to its holder. Even a small piece of land restores to the rural poor human dignity and helps them in disengaging themselves from the exploitative relationship imposed by the land-owners. Land Reforms, therefore,

have in this context more than a mere economic rationale. They contribute to redistribution of social status and political power and help in establishment of a more egalitarian society. A more egalitarian social order would naturally permit rural poor, the deprived and the weak to absorb benefits of various development programmes which may otherwise be cornered by the more powerful who socially and economically control the rural poor. In this sense also, effective implementation of land reforms cannot be avoided.

SESSION TWO

Policy on Tenancy : Issues

1. The tenancy reforms had provided for banning of tenancy and conferment of ownership rights on tenants. But it also disturbed the equilibrium in the tenous landlord-tenant relationship. With the result, the access of poor to land for cultivation has been considerably reduced, since under the new circumstances the large land owners are not leasing out land on specified terms to the share-croppers for fear of losing it. Thus the most burning problem is the detection of informal and oral tenancy and bringing such tenancy on record.

In this scenario the following need specific consideration :—

(a) Is it beneficial for the informal tenants/share-croppers to have tenancy banned by law ?

(b) Is it more benficial for the share-cropper/informal tenants to have a legal provision securing tenancy rights or a provision for one time vestment of ownership rights ?

(c) What should be the requisite methodology for bringing the informal tenants on record ? Will organisation and conscientisation of potential beneficiaries help ? If so, which organisation should undertake such conscientisation ? Will fixation of specific targets under 20-Point Programme help in bringing the informal tenants/share-croppers on record ?

(d) Should we not move towards a stricter definition of the term 'personal cultivation' which would *inter-alia* provide for the landowner's bearing the entire risk of cultivation, residing within 5—10 kms. of his land for a greater part of the agricultural season, contributing personal labour or labour of members of the family and deriving a major portion of his income from agriculture ?

(e) Whether we should not do away with the exemptions provided in law for specified categories of owners ?

2. A phenomena of 'reverse tenancy' has also been observed in some areas where small and marginal land holders for a variety of reasons are reported to have leased out their lands to bigger land owners. Why small and marginal landholders are resorting to leasing of lands needs to be analysed in depth? Is this trend due to unequal access and ownership of resources as well as commercialisation of agriculture? Further, is this trend restricted to certain areas only which have commercialised agriculture? If so, in such areas, how can the interests of small and marginal farmers be protected so that they are not elbowed out to join the class of agricultural labourers?

SESSION THREE :

Policy on Protection of Interests in Land of Weaker Sections— Scheduled Castes, Scheduled Tribes and Women : Issues

1. *Protection of tribal interest in Land*

Protecting tribal land from alienation to non-tribal has been a part of the State policy for a long time. The legal and administrative arrangement for enforcing these provisions and for restoring alienated land back to tribals have not been very effective. This has been brought out by a number of studies. With a view to achieve the objective of State policy the following measures are suggested for consideration :—

(a) Strengthening of legal provisions regarding checking alienation of tribal land by the following :

(i) The protection should also be applicable to tribals in areas not covered by the legal arrangements so far.

(ii) The period of limitation should be extended and a certain cut off year (for example 1940 as recommended by National Committee on Backward Areas) be fixed after which any alienation of tribal land should be liable to be restored to its tribal owner.

(b) The word 'transfer' in the legal provisions should be comprehensively defined to cover all possible techniques by which tribal lands have been usurped by non-tribals.

(c) There should be a complete ban on transfer of land from tribals to non-tribals. Where the sale of tribal land is considered unavoidable and in the interest of tribal himself, the Government alone should purchase such land at the market value and allot land so purchased to eligible landless tribals.

(d) The District Collector should be authorised to act *suo-moto* for detection of alienated tribal land and its restoration to tribals.

(e) The jurisdiction of civil courts should be barred in-these proceedings which should be disposed by Revenue functionaries in camp courts to be held in village panchayats.

(f) State must be a compulsory party in all proceedings concerning tribal land so that tribal interest can be defended by the State.

(g) In case of conflict between the legal provisions concerning tribal land alienation and other laws, the former should prevail.

(h) Clear provisions should be made about the manners of dealing with *pucca* structures on alienated tribal land at the time of restoration. Where it is decided to nominally compensate the alienator of tribal land in respect of this structure, the State should make arrangement for payment of compensation to be subsequently realised from the tribal landowner.

(i) Restriction may be placed on jurisdiction of High Court in such cases.

(j) Administrative arrangements for detection of tribal land and its restoration should be suitably strenthened through measures such as additional Courts, mobile Squads, larger number of Revenue Officers etc.

(k) A massive programme of creating awareness among tribals about their rights in land and mobilising traditional tribal community organisations for protecting their interest in land should be undertaken.

(l) A large number of tribals have been living on and cultivating land which has been declared/considered forest land. Earlier, the arrangements were made for looking into such cases and depending upon the merit of the case such lands were kept out of the forest boundary. Where tribals have been occupying such lands prior to the enactment of central law on conservation of forest land, these should be regularised.

(m) A definite policy on providing consumption credit to tribals should be initiated as indebtedness has been primarily responsible for land alienation.

II. Access of women to land

Women constitute half the size of the productive labour force. In rural areas, particularly among the communities which are engaged in agricultural work, men and women both share work in agricultural operation and there is a well-defined division of labour. Despite this, women have virtually enjoyed no real rights in terms of ownership of land or share of produce of the land. Even where rights of inheritance in property under the respective customary laws allow women share in the property of the husband or father, these rights remained unenforced due to weak position of women. Most agricultural land is privately owned. Therefore, ensuring rights to women in respect of such land is more complex. But where Government itself allots land, rights of women can be more easily safeguarded.

Some suggestions made are as follows :

(i) In all future allotment of land by Government under any programme at least 30% of allotment should go exclusively in the name of the women beneficiaries if they are otherwise eligible.

(ii) Where lands are allotted to male beneficiaries, the patta should be issued jointly in the name of husband and wife.

(iii) Share of female members of the family must be recorded in the Record of Rights.

(iv) Discrimination against female members in matters of inheritance in tribal customary laws should be undone subject to safeguards being provided against alienation of tribal land to non-tribals as a result of tribal men/women marrying non-tribals.

(v) In the event of death of a tenant or a sharecropper, the rights enjoyed by him should accrue to the widow if she is prepared to continue tenancy.

SESSION FOUR :

Policy on Ceiling and Land Redistribution : Issues

1. Is there a case for lowering ceilings further keeping in view efficiency of resource use as well as equity ? Recently it has been argued in the context of Haryana and Punjab that the inverse relationship between farm size and productivity does not hold as mechanisation has made larger farms economically more viable. Moreover, a phenomena of 'reverse tenancy' i.e. small and marginal landlords leasing out land to big land lords has also emerged in the agriculturally developed areas. How does one, take this trend and in this context, what should be the ideal size for an economic holding ? Should it differ from State to State and depend upon the level of development ?

2. In view of the land becoming increasingly scarce and no longer available for redistribution, land markets functioning in a highly inequitable manner to the detriment of smaller holders/ tenants, can the Government play a major role in the purchase of land reaching the market or under tenancy and effect its sale to landless or tenants on easy terms ? Will such a suggestion be workable ?

3. Some of the other suggestions which have been made in different forums in the past for having more land available for redistribution among the rural poor, are as follows and need consideration.

(a) Under ceiling laws, additional unit to a family having more than five members may not be allowed.

(b) Ceilings may redetermined for landowners in respect of land which has been upgraded by irrigation.

(c) Exemptions to religious, educational and charitable institutions from operation of ceiling laws may be removed and, instead, provision made for a fixed amount annually as annuity for their maintenance.

(d) Where landowners do not cultivate their land personally or through family labour, a separate lower ceiling be prescribed with a view to curtail absentee landlordism.

(e) Deterrent legal provisions be made in ceiling laws and IPC for summary eviction of those dispossessing the allottees of ceiling lands.

(f) Setting up land Tribunals under Article 323-B of the Constitution for speedy disposal of cases under litigation.

(g) No court should recognise any transfer or adverse possession on surplus land allotted to beneficiaries. In case there is nobody to inherit the allotted land, the same should revest in the State.

(h) Curtailing Appellate/revisionary forums for expeditious disposal of litigation.

(i) Removing loopholes in ceilling laws which have helped landowners evade its provisions.

(j) Surplus ceiling land should not be reserved for public purposes or transferred to Government institutions or any public agency. It should be distributed only among the rural poor.

(k) Financial assistance for making this land cultivable or developing it for other purposes should be provided. This assistance should be admissible to allottees of Government Waste land/Bhoodan land also.

SESSION FIVE : OTHER ISSUES

I. Policy on Consolidation of Holdings : Issues

1. Should we go in for consolidation of holdings on a compulsory basis in all areas in view of difficulties being faced in protection of interests of tenants and share-croppers as well as small and marginal land holders during consolidation ? Or should we consolidate land on a priority basis only in the irrigated areas keeping in view the success of the consolidation operations in Punjab, Haryana and Western UP ?

2. Can we stop the process of fragmentation of holdings, once the consolidation has been done ? Many States have provisions for prevention of fragmentation by regulating transfers and partitions. But these do not govern inheritance. What should be the floor size of a holding beyond which fragmentation may not be allowed even for inheritance ?

II. Preparation and Maintenance of Land Records : Issues

1. Should a Revenue Commission be set up to assess the present state of records and make recommendations for strengthening of Revenue Machinery and suggest a uniform system of preparation, maintenance and updating of land records for the country ?

2. Should there be a major plan scheme in the Eighth Plan for preparation, maintenance and updating of land records by use of new technique of survey, data storage and retrieval as well as computerisation ? Should the scheme also provide for revitalisation of revenue administration by taking up training of revenue staff, inducting new technology and infrastructure facilities for the field level staff ?

III. Problem of Prolonged Litigation : Issues

Excessive litigation and the manipulation of legal procedures by the rural rich has been serious stumbling block in the implementation of land reforms. A radical departure is needed here. The Law Commission has thought of 'Gram Nyayalayas' which can take decisions without compliance of CPC or Indian Evidence

Act, by considering cases at the village level itself. But the idea has not yet been picked up for any serious consideration. Effective Land Reforms implementation requires a thorough change in the judicial system and legal processes, so that bulk of the cases are settled speedily at the village or Panchayat level and substantive justice is available in a simple manner. This aspect is of extreme importance and should engage the attention of experts so that a solution is available before the formulation of the Eighth Plan. What is required among other things is—(i) curtailing the jurisdiction of High Court in respect of land reform cases; (ii) keeping the jurisdiction of Civil Courts out; (iii) reducing the number of appeals and revisions in Revenue Courts; (iv) effective village level justice administration system; and (v) adequate arrangements for legal defence of rural poor.

Consensus arrived at the conference of Revenue Ministers of States/UTs on 18.5.85

1. Indentification, estimation and allotment of various Government waste lands for Social Forestry and conferment of usufructuary rights to the rural poor in the trees planted under the Social Forestry Scheme :—

(a) The Revenue Departments would identify and make an estimation of unculturable waste lands that are available with the Government, panchayats or communities.

(b) While estimating and identifying unculturable waste lands, lands available by the sides of railway tracks, roads, canal banks etc., be also identified in consultation with the officers of the concerned departments.

(c) The Chairman, Railway Board and Secretary, Shipping & Transport should be requested to issue necessary instructions to their field staff in respect of land along the railway tracks and national highways.

(d) The preliminary list of such lands shall be prepared and handed over by officials to be designated by the Revenue Departments to different DRDAs and blocks along with authorisation note as and when ready but in any case by 31.7.85 to start work on such lands for social forestry during this monsoon period itself. The list will be block/Tehsilwise.

(e) Efforts should be made to get maximum plantation of fuel wood and fruit trees and fodder done during the coming monsoon season itself.

(f) The Forest Department will provide necessary technical guidance. However, the particular species of trees to be planted shall be left to the discretion and choice of panchayats and individuals concerned.

(g) There was a consensus in favour of making legislative provision for grant of trees pattas for usufructuary rights in trees. A small group consisting of representatives of Department of Rural Development and Ministry of Forest and Wildlife, Government of India, NABARD and a few states be constituted to evolve guidelines for grant of tree pattas/leases, the extent of usufructuary rights on trees planted through social forestry schemes on Govt., Panchayat or community lands and a model form thereto. The group should report by 31st July, 1985. The terms and conditions of tree patta should be such that the beneficiaries concerned are able to take loans from banks. Besides the rights of enjoying fruits, loppings etc. right of cutting the tree at the end of its life may be considered. Necessary legislations including amendments to the existing provisions may be made by December, 1985. The group may be constituted by the Rural Development Department.

2. Conferment of homestead rights and acquisition of land for house sites :

It was noted that the target for conferment of homestead rights and distribution of house sites to the homeless set during the Sixth Five Year Plan could not be completed, partly due to the time consuming land acquisition process. In order to provide a simpler and shorter procedure, it was agreed that the scheme of West Bengal Acquisition of Homestead Land for Agriculture Labourers, Artisans and Fisherman Act, 1975 and the method of direct purchase through negotiations as in Gujarat may be considered. Ways and means may be devised either through appropriate legislation or by modifications of the existing codes/laws to speed up the process of conferment of homestead rights and provision of housesites to the homeless by the States and Union Territory Administrations. This may be completed by 31-3-1986.

It was noted that both under NREP and RLEGP, provision for earmarking 10 percent of the funds exists for creation of assets for SC/ST, most of which is used for building houses for them. Recently the Finance Minister has announced an additional allotment of Rs. 100 crores exclusively for housing for SC/STs. The concept of habitat has to be developed, which would meet the cultural, social and economic needs of these communities, along with the provision of better housing facilities.

3. Strengthening of revenue administration and updating land records, support for free flow of agricultural credit and agricultural census :—

(a) Land and crop records are basic for various purposes agricultural credit, agricultural census, small and marginal farmers schemes, food procurement, crop insurance etc. Lack of up-to-date and accurate land records was identified as one of the major constraints for terms loans and credit being provided to cultivators.

(b) Survey and settlement operations whereever still pending be expedited.

(c) In non-land record States arrangement should be made as expeditiously as possible for devising machinery for introduction and maintenance of land and crop records and keeping them up-to-date.

(d) It was agreed that revenue department schemes should be brought under plan and the centrally sponsored scheme of strengthening of revenue machinery and updating of land record was welcomed. Lowest revenue functionary level needs to be strengthened by reduction of existing jurisdiction, which may be brought down to manageable level such as four villages or 3000 Khasra numbers per Patwari. The immediate supervisory level of Kanungo should also be strengthened, so that he may conveniently supervise about 10 Patwaries. All these persons should be Government servants and trained. Refresher courses for these functionaries at the interval of 3 years be also arranged for giving them new management inputs and reorienting their attitudes towards various programmes.

(e) Register of operational holdings required for agricultural census should be built up from the village level and collated a Taluk level over a period of 5 years. Wherever Patwaris are associated with agricultural census work, this should be specified as a part of their duties.

(f) Since the next agricultural census will be held in 1986 with the agricultural year 1985-86 as reference year, the year 1985-86 should be observed as a land records year'. The land records are to be brought up-to-date by taking up a campaign.

(g) States in which crop based statistics are not available would take action to introduce them as early as possible.

(h) It was considered difficult to have a uniform format of land records. However, all basis data required for various purposes including agricultural census should be incorporated in the land records.

(i) Patta pass-books with legal status should be issued to landlords as well as tenants. The existing provisions may be suitably revised or new provisions made by 31-3-1986.

(j) Revenue departments would prepare lists of small and marginal farmers and ceiling surplus land allottees and provide these to DRDA/Block agencies, as early as possible. These should be periodically updated.

(k) Since the benefit of Crop Insurance Scheme is dependent upon timely and well supervised conduct of crop cutting experiments, more attention should be paid by Revenue machinery to this important work. The results of these experiments should also be promptly communicated to General Insurance Corporation.

(l) To begin with, computerization of land and crop based statistics should be taken up on pilot experimental basis at one Tehsil/revenue circle level in each State/U.T.

To examine the various requirements for introducing computerization group should be formed by the Department of Rural

Development with representatives of the Department of Agriculture, Central Statistical Organisations and Representatives of States of Karnataka, Madhya Pradesh, Tamil Nadu, Uttar Pradesh and Maharashtra.

This pilot project for computerization should be wholly funded by the Centre.

4. Implementation of Land Acquisition (Amendment) Act, 1984.

(a) As publication of notifications under Section 4 & 6 in two daily newspapers besides in the gazette and giving notice in the locality was found to be very expensive, the Act may be amended to provide for only the gist of notifications to be published in newspapers. It may also be considered whether publication can be in the gazette or newspapers and not necessarily in both.

(b) The newly added section 15A provides for calling of record of any proceedings by the appropriate Government at any time before the award is made to satisfy itself as to legality or propriety of any order passed or as to regularity of such proceedings and any order prejudicial to any person cannot be passed by the Government without affording such person a reasonable opportunity of being heard. It has been held by the High Courts that a personal hearing has to be given to a person who makes application under Section 15A. It has been found that just before a month is left before the expiry of the one year period between the notification under Section 4 and that under Section 6, applications are given with a view to stalling proceedings and after the said one year period expired, fresh notification under Section 4 has to be made. Hence section 15A may be amended to exclude the period spent in proceedings under it subject to a maximum of six months, while computing the period of one year between publications of notifications under Section 4(1) and 6(1) and the period of two years between notification under Section 6(1) and making of award under Section 11.

(c) Rural Development Department may circulate a model form for consent award under Section 11(2).

(d) States may be addressed to designate a nodal agency to examine the various state legislations to bring them in line with the amended Central Land Acquisition Act.

(e) Suggestions for making a provision in the land Acquisition Act for rehabilitation of persons displaced by compulsory acquisition, cost of such rehabilitation being borne by the acquiring authority and uniform norm for acquisition and rehabilitation particularly in respect of inter-state projects be referred to the Committee constituted under the Chairmanship of Secretary (Expenditure).

5. Abolition of intermediary tenures :

(a) By and large, intermediary tenures have been abolished in most part of the country. However, a review of the pending work in all such states/UTs may be undertaken. Except the payment of compensation, the list of pending items and details of consequence of abolition be spent by the Revenue Secretaries to the Rural Development Department by 30-9-1985.

(b) Efforts should be made to expedite court cases, if any, and to complete the implementation of measures relating to abolition of intermediaries by 31st March, 1986.

(c) Where intermediary interests are yet to be abolished necessary legislation be enacted within 2 years and completed by the end of VIIth Plan.

6. Tenancy Reforms

(a) A detailed investigation may be conducted by 30-6-1986 in all the States/UTs to find out the extent and spread of informal tenancies and thereafter appropriate legal and administrative action to be initiated by 31-12-86.

With the determined efforts of the official machinery enlisting cooperation of the local people, Panchayats and voluntary organisations clandestine informal tenancies may be unearthed to prevent slippage of land from the pool for distribution to the needy. All insecure informal and oral tenants and

share croppers may be brought on record. A drive may be undertaken in all the States/UTs irrespective of whether tenancy is recognised and abolished.

(b) Andhra Pradesh (Andhra area), Haryana and Punjab, where the maximum rent is higher than the recommended level of 1/4th to 1/5th of the gross produce, may bring it down.

(c) In cases where the land holder fails to cultivate the resumed land and the tenant is unwilling to take it, provision be made for its being taken over by Government to settle it with landless persons. This may be duce, may bring it down.

(d) States/UTs may consider moving towards a stricter definition of personal cultivation in order to prevent informal tenancies with cultivating possession. The existing definition of 'persons under disability' and exemptions for 'privileged tenants' and other exempted categories of landlords may be reviewed and consequential remedial measures, legal and administrative, taken to plug loopholes and to bring the legislation in line with national policy guidelines. This may be done by 31-3-1986.

(e) Existing law banning leasing may be enforced vigorously and tenants conferred right under the law.

Legislative provision, where it does not exist, should be made for banning leasing except for specified exempted categories, by March 1986. Exemptions to lease the land should be restricted to minors, widows, defence personnel and persons actually suffering from physical and mental disability specifically providing that the disability of such a nature that it may not be possible for the disabled persons to cultivate the land. Provisions at variance with the policy of prohibition of leases may be done away with.

(f) Existing legal provisions providing security of tenure, wherever not effectively implemented be enforced and implementation completed by the end of the VIIth Plan.

Existing provisions of the law in Assam be implemented early.

(g) Legislative provisions where non-existent be enacted for conferment of ownership rights on all categories of tenants including bargadars, except the exempted categories.

(h) Legislative provisions for banning transfers of agricultural land to non-agriculturists, wherever such provisions do not exist, be enacted by 31-3-1986.

(i) Existing provisions regarding land held by religious institutions and tenants of these lands may be reviewed. Tenants under these institutions should get security of tenure wherever they do not have it. Conferment of ownership rights on such tenants may also be considered by leaving sources of reasonable income for the institutions or by way of provision of an annuity to compensate for possible loss of land. Necessary legislation including modification of the existing one(s) may be considered for enactment by March, 1986.

(j) Views of the State Governments/UT Administrations on the recommendation of the national seminar on tenancy policy held in December, 1981 and action taken thereon so far be sent to the Rural Development Department by 30-9-1985.

(k) Provision for barring lawyers in proceedings relating to conferment of ownership rights on tenants may be considered.

7. Protection of interests of tribals in land.

(i) While noting that legislation exists in most states for protecting the interests of tribals in land it was agreed that a scrutiny of existing provisions regarding banning of transfer of land belonging to tribals to non-tribals and its implementation with particular reference to :—

(a) **sub-moto action**

(b) extension of limitation period

(c) raising plea at any stage in the proceedings before courts.

(d) making state as a party in civil proceedings

(e) bringing trespass within the ambit of law, and

(f) physical restoration of land free from encumbrances be completed by 31-12-1985 and necessary legislation for these and to plug loopholes be enacted by 31-12-86.

(ii) Survey may be undertaken to detect old cases which could be taken up under the law.

(iii) Continuous review of legislative and executive measures would be necessary.

(iv) Updating of land records in Scheduled areas be completed in a phased manner by the end of VIIth Plan.

(v) Complete reports on the recommendations of the Commissioner for the Scheduled Castes and Scheduled Tribes be sent by concerned State Government/UT administrations so as to reach the Rural Development Department by 30-6-85.

(vi) Pending proposals for inclusion in the IXth Schedule of constitution be sent as to reach the Rural Development Deptt. by 30-6-85.

8. Ceiling on Land Holdings.

(a) The implementation of existing ceiling laws, pre-revised and revised both, should be monitored vigorously by the State/UTs. They may analyse and intimate the reasons as to why after so many years, even the preliminary stage of scrutiny of returns has not been completed. Disposal of pending returns should be completed by 30-6-85.

(b) An analysis of the gaps between estimated surplus and declared surplus, between declared surplus and area taken possession of, and between area taken possession of land area distributed requires to be done for taking remedial action. Disposal of returns, cases pending in various courts including the remanded and re-opened ones, taking possession of area declared surplus and its distribution followed by prompt mutations, issue of certificates/pattas, physical demarcation on spot and handing over possession etc. need

special attention. Time bound programme for this be prepared by 30-6-85 and implementation completed as early as possible.

(c) Details of number of SC/ST and other beneficiaries of land allotted separately under the pre-revised and revised ceiling laws upto 31-3-85 be intimated to the Rural Development Department by 30-6-85. Likewise details of land involved in litigation at various stages, land unfit for agriculture, that set apart for afforestation and other public purposes under the two Acts separately be also intimated by 30-6-85.

(d) Creation of Tribunals under Article 323B of the Constitution and/or creation of special courts/Bench in High Court in consultation with the concerned High Courts for quick disposal of ceiling cases may be considered.

(e) States may ensure that the posts of officials, revenue as well as judicial concerned with the disposal of ceiling cases, do not remain vacant. The general feeling among these officers that posting for ceiling work was punitive, needs to be dispelled as early as possible. Well experienced and competent officers need to be posted to man these posts.

(f) Sizeable areas in Andhra Pradesh, Haryana, Bihar, Punjab, U.P. and West Bengal have gone out of the total quantum of surplus land as a result of court decisions. Even land already distributed had to be de-notified in many cases causing considerable hardship to the assignees who had invested their resources. State Governments should scrutinize such cases to examine how such a situation came about and take up the matter to available legal forums and also initiate suitable steps to see that the causes for such adverse decisions are not repeated. A campaign to detect cases of evasion and review of the existing legislation may be taken by the State Government/UT administration.

(g) Evasion and avoidance of law need to be looked into seriously. Vigorous action to investigate and determine the types of benami transfers and circumventions of law has to be taken followed by con-

crete remedial measures, legislative and otherwise, as may be necessary.

(h) Survey, may be random, needs to be undertaken by the States to ensure whether the surplus land said to be unfit for cultivation was really so and also if it is a fact that there were no takers where such pleas are advanced for non-distribution of surplus land.

(i) Steps have also to be taken to ensure that the classification of land under the ceiling law and as in land records are similar.

(j) Classification of land in land records, particularly in areas brought newly under irrigation needs to be suitably revised in land records first. The review of application of ceiling laws in newly irrigated areas irrigated by projects and schemes financed by the public exchequer should be taken up to subject them to the appropriate ceilings.

(k) Lowering of the ceiling limits and inclusion of major sons in the definition of family at this juncture as suggested in the agenda may be considered by the States/UTs. They may also consider land with religious and charitable institutions within the purview of land ceilings laws.

(l) Legal provision be made by the States/UTs for giving joint pattas in the name of the head of the household and the spouse whenever land is allotted by Government or the Gram Sabha.

(m) Provision should be made for taking over that part of land which has been declared surplus and which is not the subject matter of litigation.

(n) Making of provision for taking over surplus land in anticipation of the completion of proceedings where the parties are agreeable, may be considered by the State/UTs.

(o) Legislative provisions, wherever non-existent, may be made for barring lawyers from representing parties in land ceiling cases.

(p) Firm legal provisions to provide security to the surplus land assignees from eviction and for prompt restoration be made.

(q) Proposals, if any, for inclusion of legislations which are considered challenge-prone in the court, unless these have withstood the test of time, in the IXth Schedule of Constituion, be sent so as to reach the Rural Development Department along with the prescribed information by 30-6-85.

(r) Land Reforms Division of Department of Rural Development may take up monitoring of distribution of waste and Bhoodan lands like that of ceiling surplus land.

(s) Legislative provisions as indicated above and others including those by way of amendments to the existing ceiling law, be made by 31-3-86.

9. Financial assistance to assignees of ceiling surplus land.

(a) The Revenue Departments would take action to effect mutations, issue pattas/patta pass books, demarcate land and give physical possession of ceiling surplus land to the allottees.

(b) In order to ensure that the allottees of surplus land, waste land etc., get the benefits of development programmes the guidelines for rural development programmes, like the IRDP, NREP and the RLEGP should be so modified as to give priority to the assignees of such lands.

(c) The implementation of the scheme of financial assistance to allottees of ceiling surplus land be entrusted to DRDAs so that they can effectively integrate it with the scheme of IRDP/NREP/RLEGP/DPAP/DDP, etc. The Revenue, Department would furnish a list of allottees of ceiling surplus land to the respective DRDAs. Programmes like IRDP, NREP, RLEGP etc. and the small and marginal farmers' programmes of the Ministry of Agriculture should be so organised as to ensure that the right kind of assistance is given to the assignees at the right stages. Redistributive land reforms should be orchestrated with these programmes, wherever land is available for distribution. The instructions issued in Govern-

ment of India Circular No. 16011/6/83-LRD dated 19/21st May, 1984 need to be effectively coordinated and implemented.

10. Consolidation of Holdings.

(a) The study of dispersal of agriculture holdings and identification of consolidable area be completed within a period of two years.

(b) Updating of the land records and bringing on record share croppers and informal tenants was agreed to be pre-conditions to consolidation of holdings and hence these need to be expedited.

(c) Necessary legislative provisions for compulsory consolidation including preparation and updating of land records and bringing on record the rights of tenants/ share croppers and informal tenants with cultivating possession be made by 31-12-1986.

(d) Effort should be made to cover 25 percent of consolidable area during the Seventh Plan giving priority to irrigated areas and on a selective basis for more efficient delivery of services to areas where holdings of small and marginal farmers and ceiling surplus land allottees are in large number.

(e) Effort should be made for such selective consolidation in those blocks which have been selected for intensive rice cultivation in the Eastern region.

(f) Legislative provisions may be made by 31-3-1986 for prevention of fragmentation, wherever not existing.

(g) For an appreciation and smooth conduct of consolidation proceedings in the on-going areas and new areas, study tours of people's representatives and concerned officials to other States where good consolidation work has been done, may be organised.

(h) Training of Staff earmarked for consolidation operations also needs to be organised.

Consensus at the Conference of Revenue Ministers held on 25th November, 1986.

The consensus as it emerged from the Revenue Ministers Conference is as follows :—

7.1 The States in which intermediary tenures still survive will take early steps for the abolition of such intermediary tenures, by enacting necessary legislation by the end of next year and its complete implementation by the end of 7th Plan.

7.2.1 The drive to find out the extent and spread of informal or concealed tenancies as suggested last year, should be continued wherever already started and initiated on a crash basis, wherever not yet started so far. It should be followed by conferment of ownership rights on all categories of tenants including sharecroppers excepting the specifically exempted categories. However, names of tenants tilling land belonging to exempted categories also should be recorded in record of rights and they should be provided security of tenure.

7.2.2 The results of this drive should be regularly and vigorously monitored at the highest level by the respective State Governments.

7.3 In order to prevent emergence of informal and oral tenancies, States may take steps to provide for a stricter definition of personal cultivation, wherever not already done.

7.4 The existing definition of persons under disability and privileged tenants and provisions regarding exemptions in respect of other exempted categories including religious institutions should be reviewed. Necessary steps should be taken to plug loopholes in order to bring the existing legal provisions in conformity with national policy guidelines. Governments of Orissa, Rajasthan, Sikkim, J&K expressed some difficulties in doing so in view of certain socio-historical reasons.

7.5.1 It was agreed to examine the possibility of debarring lawyers in proceedings relating to conferment of ownership rights on tenants. If there are certain inherent legal difficulties in the way of enacting such provision, the State Governments may provide free legal aid to tenants so that they can defend their rights in the courts.

7.5.2 Where allottees of surplus land, government wasteland and mosestead land allotted by the Government are involved in litigation, State Governments should defend their interests also in the concerned courts.

7.5.3 Revenue Minister, Bihar, however, suggested that considering the difficult resource position of the State, it would be better if on both these recommendations central schemes are formulated with central financial participation.

7.6.1 It was agreed that—(a) suggestions made last year in respect of giving protection to tribals concerning their rights on land should be implemented without delay, if not already done so; (b) Administrative and judicial machinery should be suitably strengthened to detect cases of alienation under the existing laws and for speedy disposal of these cases respectively; (c) effective arrangements including deterent legal provisions should be made for ensuring that tribals were not evicted from land restored to them. In the context of the concern expressed about growing alienation of tribal lands, inspite of the existence of protective provisions, sufficient awareness must be created among the tribals about their legal rights; (d) while taking action to restore land to tribals from which they have been dispossessed the law of limitation and any other law seeking to nullify protective provisions should not apply. Suitable legislative proposals must be undertaken by the States for such enabling provisions.

7.7.1 All steps should be taken for speedy disposal of cases arising out of the alienation of tribal land so that such lands can be restored to them under the existing legal provisions and the possession of tribal over the restored land can be effectively protected.

7.7.2 Most States did not consider setting up of special courts necessary because the disposal of such cases is done by the Revenue Courts. However, where such arrangements do not exist and the cases are triable by judicial courts, special courts may be set up. Appellate and revisionary forums should be curtailed to ensure speedy implementation of protective laws in favour of tribals.

7.8 It was indicated that provisions already exist in most State tenancy laws to protect the interests of serving defence personnel, ex-servicemen and the families of those who lose their lives while on duty. Some States have given priority to them in allotment of land also. States where such provisions do not exist may take suitable action to protect the interests of defence personnel regarding permitting tenancy on their land while they are serving and resumption when they are no longer in service.

7.9.1 While generally reiterating the recommendations made in the last conference for identifying, acquiring and distributing ceiling surplus land, it was agreed that the already declared ceiling surplus land should be distributed to eligible beneficiaries at the earliest.

7.9.2.1 Wherever pending, litigation stands in the way of distribution of surplus land, effective measures should be taken to get the cases disposed of by the concerned courts. Some States have made elaborate arrangements for constitution of special legal cells in the Revenue Department for persuing these cases. Other State may take similar steps.

7.9.2.2 It was considered useful to constitute land tribunals under Article 323-B so that cases pending in High Courts and other courts under ceiling laws can be disposed of speedily. It was agreed that steps in this direction would be taken at the earliest.

7.9.3 It was particularly necessary that information should be collected about various steps including legal measures taken by different States to implement land ceiling as well as other land reform laws to circulate them to other States so that they may benefit from their experience in case they face problems of similar nature. At present there is no such arrangements for dissemination of such information. It was also suggested that a Cell should be constituted in the Rural Development Department of the Central Government to monitor decisions taken in these conferences. This Cell should, among other things, also keep track of important judgements in High Courts and Supreme Court on significant aspects of land reform legislations and to advise States on suitable measures to be taken by them including necessary amendments in law for effective and speedy implementation of land reform measures on the basis of such judicial pronouncements.

7.9.4 No State reported any progress in respect of the consensus arrived at the last Revenue Ministers Conference regarding lowering of ceiling limits, including inclusion of a major son as member of the family unit. States/UTs concerned may report action taken at the earliest.

7.9.5 It is observed that in some States the average areas allotted under surplus ceiling land to Scheduled Castes and Scheduled Tribes is much less than allotted to other beneficiaries. This trend needs to be corrected immediately. Revenue Minister, Bihar pointed out that in his State, greater priority has been given to Scheduled Castes.

7.10 It was agreed to make suitable provision in the existing ceiling law whereby the State Government could be conferred the power for choice of an alternative piece of land in case the piece of land surrendered as surplus by the landowner is not fit for distribution.

7.11 The ceiling surplus land should not be earmarked for distribution to persons displaced under projects. Such persons should be rehabilitated at prcject cost.

7.12 It was agreed that vigorous steps have to be taken to identify benami, farzi and clandestine transaction in land undertaken to evade provisions of ceiling law. This task cannot be effectively accomplished without active cooperation of organisations of rural workers, panchayat bodies, voluntary organisations etc. which alone can provide concrete evidence to be gathered in respect of oral and informal tenancies. However, the organisations of rural poor, the share-croppers and other persons in the rural areas may not easily come forward to provide necessary information due to fear of eviction from their land or repraisals from land-owners or police action against them at the behest of vested interests. It was pointed out that generally it was difficult to provide adequate protection to beneficiaries of land reform measures in such situations due to the unhelpful attitude of the law and order machinery and lack of control of revenue machinery over them. It was, therefore, suggested that suitable steps should be taken to ensure than protection of law and order machinery is available to share-croppers, tenants and beneficiaries of restoration in respect of tribal land against harassment and oppression by land owners and other vested interests. Bring together revenue, development and police officers and beneficiaries of land reforms measures together in such a way that problems at present encountered while implementing land reforms programmes can be overcome and officers are enabled to change their orientation for this work, may be considered.

7.13 Land pattas to be granted in future could be made jointly in the names of husband & wife. But in respect of pattas already granted and distributed as it would require huge administrative effort to convert them into joint pattas, it was felt that old pattas could be converted into joint pattas at the time of updating of records or on a specific demand from a beneficiary even earier.

7.14.1 Efforts be made to extend the area of consolidation while ensuring that rights of tenants and share croppers are adequately protected.

7.14.2 The benefits of consolidation would be set at naught if the trend in favour of continued fragmentation of land remains unchecked. States/UTs may examine whether this problem could be solved through any legal action.

7.15.1 There was unanimity on strengthening of revenue administration which seems to be in poor share shape in most of the States. It was complained by all Revenue Ministers/ Secretaries that this being a non-plan department, they do not got even minimum funds for maintenance of their existing infrastructure not to speak of strengthening of improving it. It was, therefore, recommended that land reforms programmes should be brought within the ambit of plan activity so that development funds can be regularly allocated to this department.

7.15.2 Revenue Minister, Bihar observed that merely bringing the land reforms programmes in the plan scheme will not serve the purpose because it would amount to reduction in the Plan size of other development schemes of the State unless the total State Plan size is augmented. Therefore, considering the importance and urgency for land reforms schemes, such programmes should not only be brought within the plan sector but provision of funds for these schemes should be over and above the State Plan provision.

7.16.1 All States welcomed the Central Scheme to strengthen Revenue machinery of the State Governments for updating land records and its modernisation. It was, however, pointed out that the funds earmarked for it were too meagre as envisaged at present. The States wanted Central Government to finance assistance in strengthening revenue machinery at the village and supervisory level for maintenance and updating of records, carrying out survey and settlement operations, improving the infrastructure and mobility of the revenue functionaries, modernisation, computerisation of land records system and setting up of training institutes for imparting training to various revenue functionaries. Further, it was felt necessary that more funds should come forth under this scheme under the existing plan and the scheme should continue in the next plan as a long term measure.

7.16.2 Wherever, no land records are maintained at present, early steps would be taken to complete survey and settlement work. The facilities provided by survey of India for training of staff in survey techniques would be availed to the maximum advantage. Its details should be circulated to all. Similarly

State Governments would consider deputing its officers to National Remote Sensing Agency etc. to familiarise themselves with the latest techniques for such future use as is considered necessary.

7.16.3 Priority may be given to 430 Blocks selected for Eastern India Rice Programme, North-East Union Territories, States and Scheduled and other tribal predominent areas in completing survey, settlement, building up system of maintaining land records, periodic updating thereof and strengthening of Revenue Machinery.

7.17 While most States have taken some action regarding tree patta scheme, a few States including Assam, Kerala and North-Eastern States were not in favour of the scheme for different reasons. It was agreed that the Rural Development Department may continue its dialogue to convince them about the utility of the Scheme.

7.18 It was agreed that a vigorous drive would be launched to distribute the remaining land donated in bhoodan among the eligible landless poor at the earliest and steps would be taken to deliver possession in to the allottees simultaneously.

7.19 While there was a general agreement that the implementation of the Land Acquisition Act should be watched for some time before any further amendments are contemplated, a few States were in favour of doing away with the provisions regarding compulsory publication of notification in newspapers and retrospectivity of payment of solatium and interest as provided in the Amended Act. It was suggested by them that the Rural Development Department may examine whether the gist of notification incorporating all the necessary information about the affected land-owner would not meet the objectives of the Act.

7.20 The time limits suggested for various items of work were generally agreed to.

7.21 Recommendation of the May 1985 Conference which have not been fully implemented so far may be implemented by the States at the earliest.

7.22 Since land tenure system is not uniform throughout the country and certain regions have special problems not faced by others, some Ministers from North-East and Southern regions suggested holding of regional conferences before and all India Conference of Revenue Ministers. The suggestion was welcomed by some Ministers from other region also.

PART : FOUR

PAPERS CONTRIBUTED BY THE PARTICIPANTS

AN INTEGRATED STRATEGY FOR A NEW AGRARIAN STRUCTURE

By

A. M. KHUSRO*

It is assumed for this discussion that all the major planks of land reforms i.e. ceiling impositon, tenancy legislation, consolidation of holdings and cooperative farming are desirable and feasible. Their feasibility increases with suitable adjustments in the light of past failures. With these assumptions, we develop a strategy which integrates all these measures in the right sequence in the belief that only one or two sequences are likely to succeed and others amount to putting the cart before the horse.

The objectives of this strategy are the same as the acknowledged objectives of Indian land reforms. Rising productivity of agriculture with a much more equitable income and power distribution and with a new structure suited for technological change are the objectives. In amplification of some of these objectives it is asserted that land being an asset in almost absolute shortage should be rationed through ceilings and the surplus distributed to certain preferred categories such as (a) landless labourers, (b) marginal farmers and (c) perhaps displaced tenants (if some resumptions by small land owners are to be permitted). The proportion of total available land to be given to these categories can be determined according to administrative, economic and political feasibilty. It is also asserted that share-cropping tenants who pay rent as a proportion of output, employ less input per acre and get less output per acre and less profit per acre than owner cultivators. Therefore, their investment per acre, credit per acre and expansion potential through the acceptance of new agricultural technology is much less than that of owner cultivators. In view of all this a social mobility has to be promoted through land reforms and in particular through tenancy reforms such that landless labourers (called category 4 here) move into the category of owner cultivators (category 1) or cooperative cultivators: unrecognised tenants (share-croppers, Bergadars, Panniyals, etc.) (category 3) move into the category of recognised tenants (category 2); and, finally,

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members of categories 3 and 2 move into category 1 of owner-cultivators.

The strategy begins with a 12-months horizon of implementation and is sought to be implemented through a newly created Land Reform Agency.

1. Ceilings will be forthwith imposed at the beginning of the year with all the promptness it deserves. If a land-owner had 30 acres and ceiling in the area was fixed, say, at 18 acres, then 12 acres will be surrendered by him. Of these, let us say, 10 acres were already under tenants. These tenants will be recognised and their names and acreage entered in village Khatas as owners. A first-stage improvement in the Record of Rights will thus take place. Some redistribution of ownership will have occurred.

2. Out of the 12 acres surrendered, 2 acres were under owner-cultivation of the landlord. These will be redistributed in predetermined proportions among the three categories mentioned earlier, namely the landless, the marginal farmers and dispossessed tenants (the last-named category will emerge in the following paragraphs). These recipients of land will also be the beneficiaries of the first-stage improvement in the Record of Rights.

While distributing land under this head, a serious attempt will be made to use land as a lever or an incentive for cooperative farming among very small holders. Landless people and marginal farmers will be told that they could acquire more land provided they agree to cooperativisation. It will be demonstrated that individual allotment of 1 and 2 acres is wasteful of bullocks and other indivisibilities; hence cooperation. Cooperatives will only be of small people, uninhibited by large and unequal elements.

3. Of the 18 acres below the ceiling limit which remain with the land-owner, say, 5 acres, were under personal cultivation and 13 had been leased out. It would be possible under the present laws and procedures to allow the right of resumption to owners. But this will open up several issues in particular the eviction of tenants, prolitarianisation and the need to allot more lands to them out of an already very small surplus. Political non-feasibility of tenant displacement in some areas of the country will be quite serious. As the right, to resumption conflicts with the right of the tenant to purchase the land, the right to resumption should be seriously constrained (a) by time

and (b) by quantity of land to be resumed. No more than 12 months time should be allowed for resumptions. Moreover, a ceiling on operational holdings is an absolutely necessary concomitant of the ceiling on ownership holdings and must not be neglected. Subject to an operational holding limit, preferably the same as the ownership ceiling, and subject to a one-year time limit for resumption, it can be considered whether the right to resumption should exist. If such limited resumptions were allowed, the displaced tenants would have to be allotted some surplus lands and would also become beneficiaries of the first stage improvement in the Record of Rights.

4. Believing that surplus land to be had from a vigorous land reclamation programme (with appropriate techniques and organisation) has a much bigger potential of land distribution than ceilings, major efforts in land reclamation will be started under suitable agencies. Such reclamation and land allotment to preferred categories will be a continuing programme.

5. Simultaneously with the implementation of the four measures mentioned above, village committees will be set up with suitable representations of tenants, landless labourers, landowners and government (with substantial weightage to tenants) to identify in each village those hidden and unrecorded tenants who are contributing to farms not only their labour but also some capital inputs, e.g. bullocks, plough manure, seed etc. Tenants are distinguished from labourers precisely by their contribution of capital to the farm rather than labour. Once the tenants are identified, a second stage improvement in the Record of Rights will be quickly made, the new names being entered in the relevant village registers. This amounts to an upward mobility of category 3 of unrecorded tenants into category 2 of recorded tenants.

6. While this identification and improvement takes places in 12 months, the last date for the resumption of lands by land owners (item 3 above) is also over. All unresumed lands will have become non-resumable lands. Now a Tillers' Day can be arranged. On this day all the tenants (those of category 3 who moved into category 2 and those who were already in category 2) become owner-cultivators. They all move into category 1. The new owners pay compensation but at less than full market price of land, extended over a period, while the government pays the old owners according to pre-announced schedules and collects from the new owners.

7. The tillers day leads to a third-stage improvement in the Record of Rights. Ideally, and hopefully, it eliminates all tenancy. Every cultivator becomes an owner-cultivator. At this stage consolidation of holdings will be undertaken with the usual procedures. The idea will have to be propagated intensively among States which have no experience yet in this line. Consolidation of a village will be so undertaken that lands of all the prospective co-operators are clusters adjacent to each other i.e. in one block. This eliminates one of the most serious drawbacks in co-operative schemes, namely, that willing cooperators have their lands far from each others. Consolidation could also take care of some social objectives. Harijans lands could well be consolidated with others unless it is intended to perpetuate the stratification! Over and above this, fragmentation can be eliminated and co-operativisation made feasible. Consolidation always, saves some land which can be utilized for public purposes—schools, community centres, etc.

8. Co-operativisation can now take its full shape. In this strategy co-operativisation is not imposed on those who do not wish to co-operate. It is confined to willing small co-operators but incentives to co-operate are used. Land distribution is the mala lever and individual titles to land are not surrendered. At this stage, credit organisations like banks, credit co-operatives and other financial institutions and various service organisations can move in and provide facilities for the co-operators as well as others.

9. When all this is over, it appears as though tenancy has been abolished. This, however, is incorrect. In a dynamic society, there will always be people who will want to leave the villages and go to the cities or take up other occupations and professions and would, therefore, like to lease out their lands even if it be for a short period. There will always be able and qualified people emerging who will want to cultivate more land (within the permissible limits) than their families have at present. Minors will be growing up into majors, setting up their own families and demanding more lands. Those now demands for land-use will always emerge in the tenancy market but luckily new supplies will always be forthcoming to match them, not always from reclamation but from those who wish to lease out for a hundred good reasons. If tenancy were not permitted it will cause great hardship, very often to small people.

Tenancy is a good method of equating the demand for land with its supply. In the absence of tenancy underground arrange-

ments are bound to subsist. Even today tenancy exists on a substantial scale everywhere, including all those States that have attempted to abolish it. It is much better that tenancy of a limited scale, for a limited period, say, 3 years, is permitted openly so that a prospective migrant to the town or anyone else who wishes to lease out can always do so with the knowledge of the relevant Department for a given period with a fixed rent and with complete openness. With adequate safeguards such as tenants unions, open recorded tenancy, cost-sharing between landlord and tenant and better consciousness among tenants, tenancy loses its exploitative edge and is regarded in many parts of the world as a help rather than a hindrance.

10. While this strategy aims at increasing productivity, improving the income distribution in agriculture, augmenting the marketable surplus and introducing technological change within agriculture it must be linked up with the industrial and other sectors of the economy. To maintain a steady flow of surpluses from agriculture to industry and to promote industrial growth on which the gainful employment of the surplus agricultural labour force eventually depends, agricultural taxation with progressivity and incentive built into it will have to be used. This will also serve as an egalitarian measure.

LAND REFORMS : RETROSPECT AND PROSPECT

KRIPA SHANKAR*

The crucial issue in land reforms is the issue of land ownership. Do those who till and operate the land really own it ? If the tillers are divorced from ownership it will mean a great disincentive for agricultural improvement. Independent India inherited a colonial land structure where, by and large, the actual tillers were not the owners of land. There was great concentration in the ownership of land resulting in widespread tenancy.

Land reform measures in the post-independence period no doubt abolished intermediaries but the principle of "land to the tiller" was not strictly adhered to. Early reform measures did not envisage any land redistribution and when in early sixties ceiling measures were introduced they did not lead to any sizeable surplus and the revised ceiling laws in early seventies also did not change the situation. The land declared surplus does not form even 2 per cent of the agricultural land. The ceiling laws provide that the landowners will surrender the land of their choice and as such owners have large holdings, some land consists of very inferior quality. The large farmers in the country account for half of the cultivable waste land in the country and naturally they surrendered the worst part of this land. What purpose would it serve to transfer such land to resourceless landless persons ? How tardy has been the distribution of even such land will be evident from the fact that only three-fourths of the land declared as surplus has been taken possession and the distributed area forms only less than 60 per cent of the declared surplus. Area locked in litigation constitutes 14 lakh acres and is nearly 20 per cent of the area declared as surplus despite the fact that land laws have been put under the Ninth Schedule of the Constitution and cannot be challenged in any court of law but landlords find many other grounds to approach the law courts. There has been no decline in the concentration ratios and average size of large farm continues to be 17 hectares. According to Agricultural Census 1980-81 farms of the size of 10 hectares and above account for 2.4 per cent of the farms but account for 22.8 per cent of the operated area. Marginal holdings account for 57 per cent of the holdings and 12 per cent of the area.

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Small farms account for 18 per cent of the holdings and 14 per cent of the area. The area held by large farmers is equal to the area held by bottom 60 per cent of the land operating households. According to Haque and Sirohi the concentration ratio (Gini Coefficient) in operational holdings increased from 0.586 in 1971-72 to 0.613 in 1981-82 although in terms of ownership holdings it remained nearly constant at 0.710 and 0.713 respectively.[1]

It has been suggested that apart from further reducing the ceiling level major sons should be treated as members of the family and not allowed a separate ceiling; the land held by religious, educational and charitable institutions should be brought within the purview of ceiling laws, cancelling all benami and farzi transfer; correct classification of the land; distributing the land set apart for public purposes. While these recommendations are on right lines no State Government has acted on these although each year the Revenue Ministers Conferences ditto the same and the Plan documents reiterate it.

It will be worthwhile in this context to examine if there are levels and plugging the loopholes are concerned, the issue is nearly a closed one and no State Government is willing to move in that direction.

It will be worthwhile in this context to examine if there are other routes to land distribution on which a greater concensus may be arrived at.

It seems that the policy of "land to the tiller" which has been accepted but not implemented should onwards from the core of land reform measures. All those who do not physically participate in agricultural operations should not be allowed to own agricultural land. Those who do not reside in the village, likewise, should be debarred from holding land. Those who have non-agricultural sources of income and the same constitutes the major portion of the income should likewise be debarred from holding agricultural land unless the physically participate in agricultural operations and reside in the village.

1. T. Haque and A.S. Sirohi : Agrarian Reform and Institutional changes in India, Cocept Publishing Co., New Delhi, 1986 p. 146 and (ii) T. Haque : Temporal and Regional Variation in Agrarian Structure in India, Indian Journal of Agricultural Economics July—Sept. 1987 p. 319.

By making physical participation as a basic condition for land ownership the entire question of absentee landlordism and tenancy will be nearly eliminated as no one can own land if he does not personally cultivate it. There is great resistance on the part of rural elite that when there is no ceiling on urban wealth and property why should there be a ceiling on agricultural land. But there would be little resistance if one is not allowed to own land if he is not in a position to cultivate it. Because it is a question of non-utilisation of a scarce resource a near unanimity can be achieved on it unlike on the issue of further lowering of the ceiling limit.

Thus the policy thrust should be in the direction of very strict enforcement of the concept of personal cultivation after stringently defining it wherein anyone not physically cultivating the land should be dispossessed from the land. It is not denied that in such an eventuality many persons would prefer to keep the land fallow rather than get dispossessed on the ground of not cultivating the same personally. Hence as a corollary it should be made equally stringent that if land which can be used for agricultural and allied purposes is kept fallow, say for three consecutive years, the owner will stand dispossessed and the Government can distribute such land to others.

It may be mentioned in this context that if tenancy is prohibited and strictly enforced a similar situation may emerge. The lessors may prefer to keep the land fallow rather than lease out. And the law as it is, cannot force the owners not to do so. Hence the thrust should be equally on not allowing land to remain unutilised beyond a specified period of time.

This brings us to the question of unutilised but utilisable land in the country and its ownership. According to Ministry of Agriculture the permanent fallow land in the country measures 9.5 million hectares. Such land has been under cultivation but is out of operation because of the unwillingness of the owners to do so. Barring land owned by small farmers all such good quality land can be acquired for redistribution and the area available for distribution will be nearly three times of what has been declared surplus under ceiling laws. Unlike the ceiling land this land is of high quality.

Again in the country there are 16.3 million hectares of cultivable waste land. Such land has remained unutilised because the bulk of it is owned by large farmers who have no need to utilise it. About half of such land is in large holdings of 10

hectares and above according to Agricultural Census. Such land should also be taken over on the ground that it is not being utilised. It should be allotted to rural landless for plantation of suitable trees as it will be difficult to reclaim such land for agricultural purposes but there is no reason why trees like babool, eucalyptus, 'ber' (Zizphus jujuba) and the like cannot grow there. If nothing else it will improve the availability of fuel, fodder and timber which is in such short supply in case of poorer rural households. Such households with their abundant family labour can make some use of it by planting suitable trees.

The 'current fallow' land in the country is of the order of 14 million hectares forming one-tenth of the net area sown. Large farmers keep a large area under current fallow for the simple reason that on account their large holdings they have no necessity to cultivate their entire agricultural land. The Agricultural Census has found that large farmers do not cultivate 23 per cent of their land. This is a reflection on the iniquitous land ownership in the country and strengthens the case for lowering the existing ceiling limits.

If it is decided to take over all permanent fallow land and cultivable waste land on account of its being utilised by their owners roughly 25 million hectares of land will be available for redistribution as against 3 million hectares of land declared as surplus so far. Incidentally this land will not be inferior to the land declared as surplus under ceiling laws and the permanent fallow land will be definitely superior to it. A stringent implementation of physical participation as a condition for owning land will also lead to a restructuring of agrarian relations which will give a death blow to the exploitative tenancy system.

The working of the land market needs close scrutiny if concentration in land ownership is to be weakened. It is well-known that there have been large scale fictitious and 'benami' transfers to evade ceiling laws and our hunch is that the working of the land market is negating the gains of redistribution.

There is no study available about the working of the rural land market. In a study of land transfer in U.P. Kripa Shankar[1] found that roughly 0.2 per cent of the agricultural land was being transferred annually in the State. Land owners in the size

1. Kripa Shankar : Land Transfers in U.P., Govind Ballabh Pant Institute, Allahabad 1906 (Mimco).

category of 10 acres and above accounted for more than 30 per cent of all the land purchase and one-third of the land was sold by those who sold their entire holding. Those who sold their entire holding accounted for 95 per cent of the net land alienation while the marginal farmers accounted for the remaining 5 per cent. Among the categories which had a net gain, farmers in the size category of 10 acres and above accounted for 40 per cent of the net gain followed by 5—10 acre category with 35 per cent of the net gain. This shows that lower categories are losing land and middle and higher categories are adding land. Those who sold their entire holding, by and large, belonged to lower categories. While it would not be correct to generalise for the whole country on the basis of data of one State and that too based on a sample of 19 Nayaya Panchayats, yet it is reasonable to assure that as large landowners have larger surplus they are more in a position to buy the land. The decline in the number and area under large holdings may not mean much as such land owners partition their land to pre-empt ceiling laws. Likewise the increase in the number and area under marginal and small holdings may be a reflection of the partitions that usually take place in the family.

If the private land market is working in favour of the affluent some corrective measure is required to reverse this trend. In view of the great skewness in land ownership and vast land hunger it may be ordained that, say those owning 10 acres and above cannot purchase any agricultural land. Such owners can still raise their income by more intensive cultivation and optimum utilisation of their existing holdings. Likewise it can be provided that no non-agriculturist or a person residing in an urban area can purchase agricultural land although a strict provision of personal cultivation will itself exclude these categories from owning agricultural land.

The failure of the land reform measures has not been so much due to the fact that laws were defective and inadequate although it has also its due share, but more so, due to the fact that they were never seriously implemented. Why they were not faithfully acted upon is a question worth investigating. Ladejinsky had long pointed out that in countries where "legislative assemblies are still dominated by land-propertied classes, it is not difficult to see why both the enactment of appropriate legislation and its enforcement present such formidable problem. Thus land reforms despite its economic implication commences as an essen-

tially political question involving a most fundamental conflict of interest between the "haves" and the "have-nots".[1]

It seems that the weight that the landed elements have in the ruling coalition coupled with unorganised state of the rural poor has stood in the way of genuine implementation. It is also worth noting that when the rural poor assert the state machinery acts in a very ruthless manner to supress it in the name of containing the Naxalites but when it comes to the implementing the land laws the same state-machinery becomes so supple.

One of the serious defects in the implementation of land reform has been that implementation has been entirely left to the revenue bureaucracy which was created by the British for a different purpose and which had earned a notoriety for corrupt practices at the lower level. Besides, and more importantly, the rural poor were never associated even distantly with the implementation. As a matter of fact the first step should have been to constitute "land reform implementation committees" consisting only of rural poor at the village level which should have been actively associated with the implementation work. Even if at this late stage such committees are constituted and asked to report about fraudulent transfers and violation of tenancy laws, it can go a long way in undoing the machinations of landed elements. In fact it is by giving some legal power to such committees that the resistance of the landed oligarchy can be broken and real advance can be made in implementation. It may also be emphasised that in this political battle unless the State gives up its pro-landlord bias and openly supports the poor it will be difficult to move forward. As a matter of fact this is the most important block in the implementation of land laws.

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[1]Ladejinsky : Agrarian Reforms as Unfinished Business Oxford University Press 1977 p. 361.

EXCERPTS FROM THE TWENTY-EIGHTH REPORT (1986-87) OF THE COMMISSIONER FOR SCHEDULED CASTES AND SCHEDULED TRIBES

DR. B. D. SHARMA*

Abrogation of Disabilities—A wider Frame

2.15 The disabilities referred to above are not merely social in their portent but are manifestations of a deeper malaise of the system which can be traced to the economic relationships. While some sections of the society in the course of history acquired command over resources including land, others were denied free access in that gift of nature. In this process the labourer was alienated from the land which he tilled. He was at the mercy of the landowner and could be denied with impunity the fruits of his labour. Further, in this system tasks involving physical labour got denigrated. In particular the uncongenial and arduous tasks got transferred into an incontrovertible social obligation which had to be discharged with no regard whatsoever for equity concerning the remuneration for that work. Accordingly the removal of disabilities as envisaged in the Consitution has to be perceived in a wider frame and not within the narrow ambit of untouchability and atrocities only.

The Tiller of Land

2.19 There is a marginal increase in the proportion of landowners amongst the Scheduled Castes in 1981 compared to 1971 (Chapter V). This appears to be largely because they have received a due share in land distribution schemes of the State. However, the situation in relation to ceiling surplus lands is not satisfactory. They have not been even realistically identified, bulk of them having gone under *benami* cover. Moreover, a substantial part of these lands has also been subjected to protracted litigation.

2.20 While protection to tenants was universally extended in the first flush after Independence, the results on the ground are uneven. The most notable omission has been in respect of share-croppers who have remained unprotected. *West Bengal* is perhaps the only exception where the practice has been formally recognised and conditions of share-cropping regulated

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under the law. The irony is that in many States the violation of conditions of tenancy affects the tenant rather than the landowner. If this is the position at the formal level where equity at least in principle has to be conceded, the situation in the field cannot but be dismal.

2.21 The most continuous development in relation to land ownership is the emergence of land as a valuable property which people can hold on in complete negation of the basic principle that land is source of livelihood which should be controlled by the person who works on it. The benefit of education in rural areas first went to those communities which were in a position to send their children to schools. They largely comprise the people with land. A substantial section of these educated people have entered the organised sector and man the same in the cities and also the sprawling network of new agencies in rural areas. But they also continue to hold on to the land with impunity. In many cases the hold of this group has become much stronger than earlier because they themselves are now members of the powerful establishment. Secondly most of these people enjoy comparatively higher incomes with reference to the general situation in the villages. Therefore, they do not mind even if the land were to remain unutilised or underutilised and yielded only meagre returns. Their main interest lies in the appreciation of its capital value. The neo-feudal stronghold of absentee landlords in many rural areas has assumed a menacing proportion. But it is being ignored by policy makers since these people comprise powerful pressure groups. Moreover, policy makers themselves in many cases are interested parties. The neo-rich in urban areas are also getting interested in this inequitous deal. They are establishing new states in and around the towns and sometimes even far away in rural setting in search of a unique blend of peace, prestige, pelf and power at the same time.

2.22 The situation in tribal areas is qualitatively different. In the beginning all the tribal people as a rule were landowner even though their rights may not have been formally recognised. Therefore, the first impact of the extension of the formal system was to put question mark on their rights over natural resources including land. This incongruous situation has not been rectified anywhere even though its ill effects are quite well-known. The tribal people are now at the mercy of others even for the recognition of their rights which they have traditionally enjoyed and for access to the resource which they have effectively managed

through the ages. Consequently, alienation of tribal land has continued unabated notwithstanding enactment of a bevy of laws and promulgation of regulations for protecting the same. It is an irony that programmes drawn up for development of the tribal people have accentuated this process. For example, cooperative credit is being used as a convenient ploy for evading protective laws and sale of land in accordance with due processes of law itself. No wonder, cooperative has become one of the major causes of land alienation.

2.23 In certain tribal areas it is almost axiomatic that any land which is plain and, therefore, agriculturally valuable belongs to non-tribal while whatever is undulating and marginal belongs to tribal. Similarly whatever is irrigated and green belongs to non-tribals while dry and unproductive lands belong to the tribal. The developed land is much too valuable to be possessed by the tribal people. The areas which come under the command of irrigation projects are replete with trails of misfortune which befall the simple tribal people there. Even as a new project is just formulated and the potential of development becomes vaguely known, the articulate move in and plunder begins as happened on an extensive scale, e.g. in the command of the Machkund in Koraput (*Orissa*). And when water begins to flow, it becomes free for all with no bars to restrain. Ironically since there is no worthwhile effort in advance to prepare the people for the new technology, the tribal himself is ill at ease in the new setting. And he is surrounded by all sorts of people with temptations of all kinds with the sole objective to somehow force, cajole, convince or contrive him into a situation that he is 'willing' to be relieved of that 'new liability'. The more enterprising amongst non-tribals when resort to insidious methods of procuring a belle or even more and use their names successfully for circumventing the protective laws. The girls believe that they are their wives with little realisation that is not so and that they will be thrown out the moment they are no longer required for holding that property and the lustre of their youth fades.

2.24 *I, therefore, recommend that :*

The law concerning alienation of land belonging to SCs and STs and restoration of illegally or irregularly transferred lands should be made stringent. The Central Government should prepare a model Regulation/law in this regard which may be forwarded to the States for adoption within stipulated time frame

of not more than one year. These provisions in particular should provide for :

(i) *prohibition of all future transfers of land by members of SCs and STs in favour of members of other communities as also to such Scheduled Tribe women who may have married or may be living with a non-tribal;*

(ii) *regulation of transfer of land by a member of one tribal community to members of other community as also to such Scheduled Tribe women who may have married or may be living with a non-tribal;*

(iii) *prohibition of sale of land of a Scheduled Caste/ Scheduled Tribe person in realisation of dues including loans advanced by individuals, cooperatives or institutions notwithstanding the provisions in the law or the decree of a court;*

(iv) *prohibition of consent of passing of decrees by courts which may involve transfer of land by a Scheduled Caste/Scheduled Tribe person;*

(v) *prohibition of appearance of pleaders in cases involving restoration of lands to SC/ST persons;*

(vi) *provision for summary proceedings in cases involving alienation of lands belonging to SC/ST persons;*

(vii) *provision for only one appeal in cases where transfer of land by a Scheduled Caste/Scheduled Tribe person is held by the court as illegal or malafide;*

(viii) *provision for compulsory restoration of land after the decision in favour of a Scheduled Caste/ Scheduled Tribe person and within a stipulated period but not later than the harvesting of crop, if any, already in the field and prohibition of stay orders by the appellate authorities in case an appeal is preferred; and*

(ix) *occupation of land within three years of the date of restoration of land to a Scheduled Caste/ Scheduled Tribe person by any person should be made a cognizable offence.*

2.25 The question about the access to and command over resources including land has yet another important dimension.

In the traditional setting, where agricultural skills were universal and the tools for cultivation were also the same, the effective command over land could be that of the person actually cultivating the land even though the landlord could commandeer a substantial part of the produce or could also engage hired labour. There was a sort of dependence on the tiller of the land even in the feudalistic mould. With advances in science and technology there is some differentiation in level of skills of cultivation but the differential with regard to the individual's capacity to use modern inputs and improved tools including agricultural machinery has grown phenomenally. Consequently, the position of the tiller of the land has become weaker. Moreover, poorer people are being denied the opportunities of even working as agricultural labourers in the face of labour-displacing machines which are being increasingly used in capitalistic agriculture. In the new parameters of land utilisation which are emerging, the traditional resource use is being dubbed as sub-optimal and new forms of land use, ostensibly more efficient and economical, are being adopted in which the stronger sections have naturally a great advantage and are, therefore, able to perfect their claims on the land and its produce. Thus there are two facets of the new situation. Firstly, the people's traditional claims are getting derecognised. This process, therefore, is in the nature of backlash of development. Secondly, the people are being denied a reasonable share in the benefits of modern science and technology. Thus the claims of the poorer people as partners in development are not being conceded. The ordinary people are therefore, losers on both these counts.

2.26 There are serious inroads from yet another side on the rights of the people who have been eking out a living from what are mistakenly termed as wastelands. In our country not an inch of land is unencumbered and whatever can yield anything worthwhile is being put to use by the people unmindful of input-output considerations or the extent of hard labour which may be involved. This has no doubt resulted in serious strain on the ecology. But the fact remains that people have no alternative. In a bid to reverse the process and restore ecological balance an alternative ecologically beneficial land use like tree-culture (any activity which is tree-based like forestry, plantations, horticulture and growing of trees for fodder) is being planned. But in that process these 'wastelands' are being assigned to corporate organisations and the non-poor. Ostensibly the premise is that these lands are unencumbered and the task is so big that there is scope for participation of all including

the poor, the non-poor, the State and the private sector. In this vitiated milieu bulk of these lands particularly having better potential are being cornered by the non-poor with hardly any place for the poor in the new scheme. Thus the access of the poor to land resources has been severely curtailed which ironically has gone unnoticed and unrecorded. This is of nature which the mother earth has bestowed on all her children equably, which is being effaced through a variety of machinations by a system which claims to be rational, just and humane. The resistance by the poor people is being dubbed as 'unjustified' since they have no rights and 'anti-development' since the alternative plan is to make optimal use of the wasted resources. His inalienable right to an equitable entitlement in the national economy—present and future—better remains unmentioned.

2.27 The developments in agriculturally advanced areas have also not generally favoured the weaker sections. In many cases farmers have adopted capital-intensive technology dispensing with the need of employing ordinary labourers. There is also a growing tendency of better agricultural lands being put to labour-extensive use such as growing of tree crops and fodder. In fact, there is a new trend of lands being leased in by the non-poor from the poor which is just the first overt form of the ultimate and inevitable dispossession and disinheritance. The wages in many rich agricultural pockets have remained low particularly as large number of people from depleted resource regions, which are unable to provide even bare sustenance to the growing population, seasonally migrate and become competitors in the local labour market accepting even meagre sub-subsistence wages.

2.28 The access of our people to land resources is thus becoming increasingly precarious. The erstwhile feudal lords are clinging to their larger holdings using a variety of subterfuges including benami arrangements. The ceilings on lands are quite high and even as the potential of land is rising with irrigation and use of better agronomical practices, any downward revision is not even on agenda. A big class of neo-feudal absentee landlords has emerged who are using their positions in and relationship with the organised sector in general and establishment in particular to continue their hold on the land. The people drawing their sustenance from marginal lands are being deprived of the same and this resource base is being cornered by the non-poor specially the corporate sector under any convenient guise-ecology, economy or development. The rich

is raising the virtual pressure of population on scarce land resources and leading to sub-optimal utilisation of available manpower. They are also indulging in labour-extensive land use which is pushing the poorer people out of their traditional occupations. They are also commandeering lands of the poorer peasants and extending their holdings using the new found power of technology which the latter can hardly afford. The urban neo-rich have also joined the fray and are grabbing land not only in and around growing cities but also in distant places as a safe investment with an eye on unearned windfalls. The access to the forest of the people specially the tribal people which has provided sustenance to them for ages is now severely restricted, if not completely denied. A large number of tribals are facing eviction without due consideration of their cases even though many of them have been living there for generations and have acquired legal rights. These issues have been discussed at length subsequently.

2.29 Thus an ominous situation is developing in the country of the poorer sections where the poor is not only being divested of his command over land but is also being denied the opportunity of gainful labour use. And there is no hope even in the future as the new paradigm of land use has no place for the poor. The position of the Scheduled Castes and Scheduled Tribes, who comprise bulk of the rural poor and even amongst them the most deprived, is as a corollary the most precarious.

2.30 It is imperative that this process of alienation of labour from those resources which form the basis of his economy is checked effectively and reversed. Unless this first step is taken, the aspirations of the vast majority amongst the poor people in the country will remain frustrated. The only skills which most of these people have relate to activities in the primary sector which largely comprise agriculture and allied activities. If the nexus between their vital skills and the command over relevant resources and means of production is allowed to become weaker and finally disappear, the great war waged for establishment of an egalitarian order could have been lost even though there might be some gains in small skirmishes here and there which could be eulogised as great achievements by those who would prefer to enjoy the warmth of a make-believe world. The resources would have been commandeered by those who have the right links with the modern system, be it in terms of knowledge, skills, technology, money, capital, influence or

authority. *Therefore, the first task is to correct these basic parameters of the national economy and make them compatible with the dictates of the egalitarian social order. That can be the only dependable foundation on which equity for members of the Scheduled Castes and Scheduled Tribes can be ensured making use of the Constitutional provision for positive discrimination in their favour. Unless this is done the effort needed even to keep their position unchanged will continually increase as the condition of the poorer people in the country becomes more and more vulnerable. As a part of this frame the principle of land to the tiller must be unequivocally reaffirmed tearing apart all rationalisation which have sustained and even supported the reverse non-egalitarian trends.*

2.31 In view of the fact that the relationship between labour and the means of production is a basic determinant of equity and social justice and also that members of the Scheduled Castes and Scheduled Tribes, who are expected to be provided effective protection against all forms of exploitation, primarily depend on the fruits of their physical labour, skilled or otherwise.

2.32 *I, therefore, recommend that :*

(a) *the principle of land to the tiller must be renunciated and suitable laws should be enacted for enforcing the same, and*

(b) *the access to and command over the resource base of the people, particularly members of the Scheduled Tribes, should not be disturbed and they should be enabled to use the same optimally consistent with the constraints of ecology, if any, and made partners in development.*

In particular, the following msasures may be taken immediately as the first step towards achieving the goal.

(i) *The practice of share cropping should be formally recognised under the law and the conditions of share cropping regulated such that the share cropper as tiller of the land is entitled to not less than two-thirds of the gross produce.*

(ii) *No person in a nuclear family, one of whose members has a permanent employment in the organised sector or is engaged in another vocation which yields an income equivalent to that of the lowest grade employee in the organised sector should be entitled to own agricultural land. Coparceners in an ex-*

tended family, tenants and share croppers should have a right of preemption in case of land being transferred by any person on any count whatsoever and the consideration payable in these cases should be statutorily fixed adopting the same principles as for ceiling surplus lands.

(iii) All land held by a variety of trusts and such cooperative societies in which all members are not actual tillers of land should be taken over by the State and distributed to the landless people. The State may assume the responsibility of supporting the public purpose, if any, for which a trust might have been established and other claims whatsoever should lapse.

(iv) The position of land which is held by corporate bodies and which is not being used for non-agricultural purposes should be reviewed and such areas as may be in excess of their immediate requirements should be taken over by the State.

(v) The ceilings on land should be drastically reduced. The present two-way classification, viz. irrigated and unirrigated, for this purpose should be replaced by a finer classification based on parameters such as the quality of land, extent of its development and productivity.

(vi) The land which becomes available to the State in terms of the formulations at (iii), (iv) and (v) above should be distributed to landless labourers and marginal farmers in that order with due share for members of the Scheduled Castes and Scheduled Tribes which should not be less than their relative strength amongst the landless labourers.

(vii) The State should create a special fund for giving advance to members of the Scheduled Castes and Scheduled Tribes for purchase of land which may become available in terms of the formulation at (ii) above. The loan should be interest-free and recverable in not less than ten annual instalments.

A NOTE ON CEILINGS ON LAND HOLDINGS

T. HAQUE*

The background note circulated by the Planning Commission for this seminar has raised a number of important issues for discussion and therefore, I shall concentrate mainly on the issues raised :

1. *Is there a case for lowering ceilings keeping in view efficiency of resource use as well as equity ?*

The question whether ceiling levels should be reduced further needs to be examined from the points of view of its socio-economic desirability as well as political feasibility and possibility of being implemented. Since most of the State Governments have not effectively implemented even the existing ceiling laws and have recently expressed their reservations about reducing the ceiling levels, the question of political feasibility of any reduced ceilings being enforced would require more detailed examination at varius levels. However, assuming that the State Governments could be moved and the potential beneficiaries of the land redistribution scheme could be organised for effective implementation of any reduced ceiling, there is a case for lowering ceilings keeping in view both agricultural efficiency and equity.

It seems reasonable to argue that unless ceiling levels are reduced, the area available for redistribution would not be adequate to make any significant impact on the poverty situation in the country. In fact, the quantum of surplus land available for redistribution is a function of (i) the levels of ceilings fixed and (ii) the size distribution of holdings. So far, the area estimated to be surplus is low mainly because the ceilings fixed are many times higher than the average size of holding. Considering the country as a hole, while the average size of marginal holdings (accounting for about 56 per cent of the total holdings) is only 0.39 hectare, the average size of large farms (above 10 hectares) is as high as 17.24 hectares. Furthermore, the recent Agricultural Census as well as NSS data show that not only the distribution of land continues to be

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highly skewed, but also there have been rising trends in the concentration ratios of both ownership and operational holdings in recent years.[1] In fact, during 1970-71 to 1980-81, the average size of large farms remarkably increased in a number of States.

It has been estimated that even the best available crop production technology under double cropping situation would not be able to secure a position of economic viability for the marginal farmers and liberate them from the vicious circle of poverty and underemployment, unless supported by both radical redistribution of land and development of non-crop enterprises in their favour. Also the recent NSS data show that there have been rising trends in the proportion of landless labour households and the proportion of unemployed in most of the states. In fact, the existing agrarian scene representing the rapid growth of landless and semi-landless population in many regions coupled with low rates of actual and potential migration to urban areas and slow growth of rural diversification and industrialisation, presents a very pessimistic outlook for future. Neither the effective enforcement of the existing ceiling laws would be able to contain rural tensions which are likely to grow out of the barrels of poverty stricken dualistic agrarian economy, nor would the existing anti-poverty programmes would suffice. Kurian[2] has recently observed that IRDP has helped hardly 10 to 12 per cent of the beneficiaries to cross the poverty line.

Therefore, the gravity of the situation demands not only effective enforcement of the existing land ceiling laws, but also the fixation of low ceilings on land holdings and effective redistribution of the surplus land among the marginal farmers. This would not only ensure greater resource use efficiency and equity, but also would make the marginal holdings economically sustainable. A broad estimate[3] of the basic necessary size of holding shows that about 1 to 3 hectares of land would suffice at the current level of technology adoption, while with the use of recommended crop production technology, about 0.66 hectare of land would give the necessary income to keep an average family above poverty line. Broadly speaking, even if the ceiling is fixed at 6 hectares of land, the area available for redistribution would be about 38.6 million hectares which if distributed among 50 million marginal farmers, would raise the average size of marginal holdings to 1.16 hectares in the country as a whole. In many States including Haryana, Punjab, Gujarat and Madhya Pradesh, this would permit redistribution

of surplus land even among a large number of landless labourers without reducing the size of holding below the minimum size required to keep an average household above poverty line. (Applying the present ceiling levels, D. Bandopadhya estimated the surplus area to be 5.96 million hectares, which could be raised to 9.8 million hectares if a lower ceiling of 12 hectares for dry land was assumed.)

Now the question is how long this would sustain, particularly under the heavy pressure of population on land ? It is often argued that under the growing pressure of population on land, the average size of holding is declining and any further redistribution of land among the landless or semi-landless, would increase the number of non-viable farms. Secondly, it is said that in a developing economy like India where three-fourths of the total population depend on agriculture (directly or indirectly) for their livelihood, economic development requires movement of population out of agriculture into a growing industrial sector, for raising the levels of both aggregate income and employment in the economy. It is feared that the creation of new peasant proprietorship would impede such a movement. In reality however, most of the above fears are based more on suppositions than on tested facts. It is not at all the intention of redistributive land reform to dismantle large farms and create economically non-viable marginal farms. Instead, the emphasis is on the removal of disincentives in farm production due to the existence of unmanageably large as well as non-viable marginal farms.

In this context, it is also incorrect to say that in States like Punjab and Haryana, the inverse relationship between farm size and productivity does not hold as mechanisation has made larger farms economically more efficient. The recent data collected for the cost of cultivation scheme of the Directorate of Economics and Statistics and our own study show that even in Punjab and Haryana, small and semi-medium farmers were relatively more efficient than the large farmers (efficiency being measured in terms of yield and labour absorption).

Thus, the objective of low ceiling should be to take away land from large farmers and redistribute them among marginal farmers so that marginal farms could be converted into small viable farms and ensure greater efficiency. Moreover, efficient agro-management centres could be set up to cater to the mechanisation and other input needs of various groups of

farmers instead of relying on individually owned expensive farm implements for timely operations. In fact, due to relatively efficient institutional facilities of credit marketing and irrigation, small farms in Punjab do not suffer so much from inability and disincentive to invest in farm production. Furthermore, it needs to be clearly borne in mind that due to slow growth of industrialisation and diversification of the rural economy and rapid growth of population both in the rural and urban sectors, there may not be any significant scope for transfer of population from agriculture to industry at least in the short run, although in the long run, there would be no alternative to the growth of employment outside of agriculture on a large scale. In other words, for quite some years to come, we have to depend on the development of the agricultural sector for any solution to the problem of rural poverty. Redistributive land reform is important in this context, in as much as it is intended to improve the prospects for raising farm productivity, income and employment through the creation of new incentives and opportunities for increased work and investment. In fact, redistributive land reform being supported by appropriate technological and institutional charges can go a long way to solve the viability, efficiency and equity questions.

2. *The question whether the Government can play a major role in the purchase of land reaching the market or under tenancy and effect its sale to landless or tenants on easy terms,* would require more careful examination because of its requirement of heavy administrative and financial commitments.

3. Other suggestions like (i) *not allowing additional unit to a family having more than five members,* (ii) *withdrawal of exemptions granted to various categories of land,* (iii) *bringing newly added irrigated land under the purview of ceiling;* (iv) *setting up land tribunals under Article 323-B of the Constitution for speedy disposal of cases under litigation* are also important for any meaningful implementation of the ceiling laws.

However, in the absence of strong political will and an element of coercion in implementation on the part of Government, no such redistributive reform could be successfully carried out. Therefore, before the ceiling levels are reduced, the State Govments concerned should be sure that they have the will and ability to implement it. Otherwise, mere legislative provisions

may have harmful results. Besides, peoples' active participation at the village level would be a pre-requisite to successful implementation of such radical reform. It is only the local people who know who is who in the village, who owns what land and how much and so on. Therefore, in order to enforce such reform, there should be a Land Commission in each village, made up of all classes of farmers, which would take all decisions relating to such reform at the village level and work in close coliaboration with statutory administrative units to be created at block/sub-division levels for the purpose.

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WOMEN, LAND AND TECHNOLOGY IN INDIA : A CROSS-REGIONAL PERSPECTIVE

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The considerable overlap between a rural household's access to agricultural land—the crucial means of production in agrarian societies — & its relative economic, political and social position is well documented, both in village studies and in macro-data based analysis for India. The implications of inequalities in land ownership and control patterns for technological change and increased agricultural productivity have also been subject to considerable scrutiny in the literature. The evidence clearly reveals that the gains from modern agricultural technology are directly linked with and proportional to the land owned or operated in the rural areas.

However, a characteristic feature of these studies is their focus on the *household* as the unit of analysis and the virtual neglect of the *intra*-household gender dimension. Typically unexplored are the inter-linkages between women having direct access to land and their economic and social well-being, ability to exercise autonomy, and contribute to higher agricultural productivity. Equally neglected is an examination of the barriers women face in gaining such access or in exercising control over farm cultivation and management, due to biases in existing laws, social customs and practices, and State policies. This paper focuses on these interlinked issues. In specific terms it examines :

1. The significance of women's direct access to agricultural land for their economic and social well-being;
2. Women's customary rights in land across communities and regions;
3. Barriers to women exercising their existing legal claims;

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For a more detailed discussion of the issues outlined in this paper, see Agarwal (1988).

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4. Barriers to women self-managing land, including biases in access to agricultural technology; and
5. Research and policy pointers stemming from the above.

Information on these questions, which have been little explored in the Indian, or even the South Asian context is difficult to come by. Even on land ownership and use, none of the existing national-level or even region-specific surveys in India [such as the Agricultural Census, National Sample Surveys (NSS) Farm Management and Cost of Cultivation Sudies (CCS)] under which such data is routinely collected, have a genderwise breakdown. This paper thus draws primarily on village studies, including unpublished research, virtually none of which focuses specifically on the issue of women and land but which, in one way or other, throw light on the questions under discussion. This is supplemented by my fieldwork observations in Rajasthan and, on legislative aspects, by legal documents. A multidisciplinary approach has been followed here. The work is essentially exploratory in nature and the findings presented are therefore basically in the form of pointers and open to further detailed investigation.

I. Women, Land and Poverty

Access to cultivable agricultural land can take varied (although not necessarily equivalent) forms : individual ownership through inheritance, gift or self-acquisition; joint family ownership; usufructuary rights to communal or private land, and tenancy rights—temporary or inheritable. While in none of these forms does access in itself guarantee control over management and production decisions, or the right to alienate the property, it provides, at the very least rights to a part of the produce from the land, and strengthens the *possibilities* of control over the land itself.

At the level of the rural household there is considerable evidence that land serves as a security against poverty and as a means to basic needs in both direct and indirect ways. An estimated 89 per cent of rural households in India own some land and an estimated 74 per cent operate some (as of 1981-82 : NSSO, 1986, 1987). Although, given the high degree of land concentration, the majority of these households only have marginal plots of 1 ha or less (owned or operated),[1] this can yet significantly reduce a household's risk of absolute poverty,[2] partly due to direct production posibilities (for crops, fodder or trees—

unless of course the land is totally barren), and partly due to indirect advantages such as serving as collateral for credit from institutional and private sources, reducing the risk of unemployment,[3] helping agricultural labour maintain its reserve price and even push up its real wage rate,[4] serving as a critical reserve in years of bad harvests, and, where the land is owned, serving as a mortgagable or saleable asset during a crisis.[5] Also, the importance of access to privatised land has been increasing with the rapid depletion and decline of village common property resources (CPRs) and forests, on which the poor in general and women in particular are dependent in considerable degree for subsistence needs (Jodha, 1986; Agarwal, 1978a).

However, there are substantive reasons for querying the assumption (implicit in almost all land reform programmes) that solely *male* access to land which would render the household *as a unit* less susceptible to poverty, will automatically and in equal degree provide this protection to all family members, including the females. There is growing evidence of a systematic intra-household bias against women and female children in the sharing of benefits from any assets or resources possessed by the household, and especially in the provision of basic necessities such as food and health care.[6] Also studies covering several States of India document noteworthy gender differences in household spending patterns, with women's earnings much more than men's in poor households going towards the family's basic needs, with the absolute contributions by women being substantial in all cases.[7] A corollary to this is research findings that under poverty conditions the children's nutritional status is much more closely linked to the mother's earnings than the father's.[8] In other words, the risk of poverty and physical well being of a woman and her children could depend critically on whether or not she has direct access to income and productive assets such as land, and not just access *mediated* through her husband or male kin.

In this context, female-headed households (estimated to be over 18% of all households in India)[9] are rendered particularly vulnerable economically—even those whose parental or marital families could be classified as 'rich peasant'. In rural Maharashtra and Rajasthan for instance, not uncommonly, women—divorced, deserted or widowed—are found working as wage labourers for survival on the farms of their well-off brothers or brothers-inlaw.[10] Women household heads (including those who are *de facto* heads due to say long-term male outmigration) are also

strongly disadvantaged without land titles in getting credit from institutional sources or moneylenders, or technology and information on productivity-increasing agricultural practices and inputs (in the dissemination of which both a class and gender bias prevails)[11], while often being left with the prime or even sole responsibility for the family's upkeep. In fact, poor peasant women in Bihar, during a discussion on land access and government credit insisted : "If the land is in women's names, the loan money cannot be spent on drink or frittered away" (Alaka and Chetna, 1987 : 26).

Likewise, where men's and women's land use priorities fail to correspond *whose* priorities prevail has an important bearing on the use patterns of both public and private land. There are several examples both from semi-arid Rajasthan (from areas where new planting on the village commons is being undertaken), and from the *Chipko movement* in Uttar Pradesh, which reveal poor and hill women's much more direct concern with protecting and planting species that regenerate the environment and provide for daily subsistence needs as compared with men's greater pre-occupation with short-term profits.[12]

Apart from the economic dimension of women's land access and its links with female poverty, survival and productivity is its effect *socially* on gender relations, especially women's ability to challenge male oppression in society and within the home. A telling illustration is provided by the Bodhgaya movement in Bihar that emerged in the mid-1970s in which women and men of landless households participated in an extended and partially successful struggle for the ownership of the plots they cultivated, held illegally by the local religious body, and during which women raised the demand for independent land rights. Where only men got titles there was an increase in drunkenness and threats : "Get out of the house, the land is mine now"; where women got the titles (as they did in two villages) they could now assert : "We had tongues but could not speak, we had feet but could not walk. Now that we have the land, we have the strength to speak and walk" (Alaka and Chetna, 1987 : 26).

However, notwithstanding the clearly strong case for women's independent rights to land, their customary access has been extremely limited, as discussed below.

II. *Women's Customary Access to Land*

Table 1 gives an idea of women's customary land access, cross-regionally, among 145 agricultural communities where the

households have some access (as owners or tenants)[16]. The overwhelming normative pattern (in 131 of these communities) is clearly parilineal. It is only in small pockets of the north-east (principally the states of Meghalaya and Assam) and the southwest (mainly Kerala) that matrilineal and bilateral inheritance patterns have been in existence and continue to prevail among certain communities—in the north-east these are the Garos, Khasis, Pnars and Lalungs (all tribal communities), and in the southwest the Nayars of Kerala, the Tiyyars, Mappilas, Phadias and Chettis of northern Kerala, and the Bants of southern Karnataka. Among all these communities, the inheritable property included land and other immovables, and was typically held in joint family units, except for the Garos among whom all land was communally owned by the clan and not individually inheritable. In addition, the Nangudi, Vellalar of Tamil Nadu practised matrilineal descent and bilateral inheritance, with property (including land) passing from father to son and from mother to daughter, the latter transfer being in the form of a dowry (Dumont, 1957).

It was patriliny, however, which has prevailed in most part. Under traditional Hindu Law, according to both the main legal systems — *Mitakshara* — and *Dayabhaga* — women did not inherit immovable property such as land (although they could be gifted it), and at best enjoyed a life interest in ancestral property under special circumstances — as widows, or as daughters in son-less families with uxorilocally resident son-in-law. Even this custom cannot be seen as affirming female inheritance rights since usually the daughter only acted as a custodian on behalf of the son, and even as a direct heir essentially inherited *as if* she were a son[13]. Islamic Law did recognise women's rights to inherit assessment property, including immovables, but not equal to men's and in relation to agricultural land, in most states, the religious law was superseded by regionally prevailing customary law under which women were typically excluded. In fact the only communities among whom there was a clear recognition of women's rights to inherit (but not alienate) immovable property were some of the matrilineal groups. Usufructory rights were somewhat more common, but mainly confined to tribal (matrilineal or other) communities, especially in eastern and north-eastern India.

What is noteworthy is that : (a) Even in communities which traditionally recognised women's inheritance rights in land, the recognition was not unconditional but was usually linked to the

woman remaining in the parental home or village and the husband joining (or visiting) her there.[14] This served as a means of ensuring that the land remained within the control of the extended family. (b) Over time, even these limited rights, whether usufructory, as in most tribal (matrilineal or other) communities, or of inheritance, as among non-tribal matrilineal communities such as the Nayars of Kerala, have been systematically eroded. The decline in matriliny, especially since the turn of the century, is a result of a complex mix of factors. In particular, State policy in both the colonial and post-colonial periods has played a primary role to triggering or strengthening other changes. This is especially so in the tribal northeast, where among communities such as the matrilineal Garos, as long as land was communally owned and shifting cultivation practised, women had direct use rights to land and were the primary cultivators. But shifts to settled agriculture, technological modernisation, and land privatisation has been associated with the marginalisation of female labour, the registration of the private plots in male names, and a systematic deprivation of Garo women of their traditional land rights[15].

Indeed we need to seriously re-examine our land ownership and use policies in the tribal north-east where analysis suggests that the traditionally egalitarian class and gender relations could have been better preserved if technological change had been more uniformly spread across households, and the control and cultivation of land encouraged more along communal and gender-egalitarian lines (Agarwal, 1987a). An explicit recognition of this could perhaps still help mould appropriate policies for the future.

III. *Barriers to Women Claiming their Legal Shares Today*

Modern legislation, especially since independence, has given women of most communities in India the rights to individually own, use and dispose of land and other immovable property, although the nature of these rights varies according to the personal laws governing different religious communities and even regions. But a common feature of all the laws is that these rights are still not on an equal basis with men's. For instance, the relatively progressive 1956 Hindu Succession Act has reduced but not eliminated pre-existing gender biases in Hindu Law, and several forms of inequalities remain, especially relating to unpartitioned coparcenary property. In general too, in relation to agricultural land, various tenancy acts and land reform laws prevailing in different states supersede more gender-progressive

personal property laws for most communities (see Appendix for details).

Even more critical are the factors which restrict women's ability to exercise their limited legal claims, and to control and independently farm the land where they do get access, as discussed below.

(a) *Post-marital residence*

In parts of India where patrilocality, village exogamy, and long distance marriages are the norm, women typically relinquish their claims to parental land in favour of their brothers. In the northwest, for instance, marriages are usually outside the natal village (within village marriages being forbidden in most communities) and at considerable distances from the natal village (see Table 2). In this context, not merely are women constrained in laying claim to land to which they may have a legal right but also the brother becomes a vital link with the natal home. He is seen as providing social, economic, and even physical security in case of marital discord, ill treatment, and marriage breakup, apart from playing a ritual role especially in children's weddings. In actual practice, material support from the brother may not necessarily be forthcoming or substantial.

These considerations impinge less severely in the northeast and the south where, by contrast, there is a strong preference for in-village or close location marriages.

(b) *Intimidation by male kin*

Where women as sisters and daughters in traditionally patrilineal groups do not voluntarily give up their rights in favour of their brothers and instead file claims (possibly at the instigation of their husbands), male kin have been noted to resort to various methods for circumventing modern laws. Fathers leave wills disinheriting daughters, or wills have been forged by relatives after the person's death (Parry, 1979); or the brothers have appealed to revenue authorities (who maintain land registers) that their sister is wealthy and does not need the land, or that she is an absentee landlord as she is living with her husband in another village (Mayer, 1960). This last can become a significant way of preventing women from claiming land where village exogamy is usually mandatory. Land disputes are found to be increasing, and usually center around male attempts to prevent sisters or daughters from inheriting. (Mayer, 1960).

Single women (unmarried or widowed) are particularly vulnerable to harrassment by male kin who may involve them in expensive litigation, which forces them to mortgage their land for paying legal expenses and thus lose it, or who may threaten to kill them if they insist on exercising their claims. Cases of direct violence to prevent women from filing their claims or exercising their customary rights have been noted, especially in Bihar, beatings being common, and murder, often following accusations of witchcraft, not unknown.[17]

(c) *Official responses*

Official policies and programmes reflect and reinforce traditional attitudes. Prevailing biases have affected both court judgements and the formulation and implementation of government policies, including the land reform programme. And although the Sixth Five Year Plan mentioned that government land distributed to the landless should be under the joint ownership of husband and wife, this was not reiterated in the Seventh Plan document. In any case, it is not the formulation but the implementation of laws, policies and programmes that remains the biggest bottleneck. A couple of recent examples, both relating to the 1980s, would illustrate this. In the Bodhgaya struggle mentioned earlier, when the landless women who had been granted rights in two villages sought to formally register the land in their names, the district officer initially refused, on the grounds that titles could only be given to men since they were the heads of households (Manimala, 1983). Again when landless women in Udaipur district (Rajasthan) claimed a part of the village wasteland to grow herbs, fodder etc. the bias of the local official was clear : "But we do not allot to women". When asked by not, he said with unbeatable logic : "Because we never have, so that is why we won't". (Lal, 1986).

This systematic bias in the implementation of State policy is found even in the context of matrilineal tribal communities. Among the Garos of the northeast, for instance, women have traditionally inherited property, but under the land privatisation encouraged by the State, the title deeds granted to individual households are typically in male names. In Wajadagiri village for which there is quantified evidence, out of 23 households 14 got title deeds, 11 in the names of men, 1 of a widow and 2 of unmarried daughters (Majumdar, 1978).

IV. *Barriers to Women Self-Managing and Cultivating Land*

Quite apart from the obstacles to women claiming their inheritance in land, it is typically not easy for those who do inherit to maintain control over it, or to self-cultivate it. Several factors (outlined below) circumscribe women's ability to function as independent farmers, and also to lease in land where they own little or none. While most of these obstacles affect women as a gender, their importance and implications are especially adverse for women in poverty.

(a) *The ideology of seclusion*

Where women inherit as daughters, in areas where village exogamy and long distance marriages are the norm, these pose obvious practical difficulties in managing the land. This is compounded by the ideology of seclusion which prescribes that women confine their movements and visibility within circumscribed spaces and restrict their interaction with male strangers.[18]

This places women (even where the land is in their village of residence) at a considerable disadvantage in seeking information on agricultural practices, purchasing inputs, hiring labour and machinery to plough the fields, selling the produce, etc. Contacts developed by men in the market place considerably ease their ability to obtain labour and inputs on time, or solicit help from fellow farmers. Men also have a greater command over the labour of relatives than women who cannot provide reciprocal labour or favours in the same way. Women's limited mobility in general can also directly or indirectly restrict their access to credit and agricultural inputs. For instance, credit and input cooperatives situated in the urban centres are rendered relatively inaccessible to many of the women who are unfamiliar with bus routes and forms of urban interaction, and are often illiterate in addition. Several poor widows to whom I spoke in Rajasthan while doing fieldwork there, described a visit on their own to the nearest town, as a traumatic event. At the same time, many of them found it difficult to get loans within the village as well : "The money-lender often refuses to lend to us but men can get credit more easily since they can find some wage work, if necessary by migrating, to repay the debt." (Here the example of the Grameen Bank in Bangladesh inevitably comes to mind since there credit to rural women is especially facilitated by the absence of a need for collateral and by the bank official coming to disburse credit and collect repayments weekly, from the village itself).[19]

In general, the ideology of seclusion restricts women's physical mobility and participation in activities outside the home— be it work in the fields, interactions in the market place, or wider contact with the world — and consequently her ability to manage farming independently.

These factors would operate with less severity or negative consequences among communities and in regions where village endogamy is the rule and social control over women less rigid— as in the northeastern and southern states of India, where female labour participation in agricultural fieldwork (although varying by class) is also in general much greater than in the north.

(b) *Male control over technology, especially the plough*

Successful self-management of land by women is also constrained by restrictions to their access to agricultural technology imposed by their limited control over cash for purchasing modern inputs, gender (along with class) biases in extension services, lower literacy levels than men, and ritual taboos against women ploughing.

Taboos against ploughing which appears to be widespread across most cultures, and certainly hold across all communities in India, is perhaps one of the biggest obstacles. Some communities, such as the Oraon tribals of Bihar, believe that if a woman were to plough, there would be no rain, and calamity would follow (Dasgupta and Maiti, 1986). Himachali men told Sharma (1980) that God had decreed women should not plough. When women in desparate circumstances have ploughed family land they have usually been severally punished by the villagers (Dasgupta and Maiti, 1986).

In effective terms this taboos makes dependency on men in settled cultivation unavoidable and greatly restricts women's ability (especially if poor) to farm independently. Poor female-headed households are placed in a particular quandry. As Sharma (1980 : 114) notes from her study in Punjab; "It is at ploughing time that Durgi complained most bitterly of her widowhood. No one was prepared to plough her fields for her without being paid; and even those who would do it for pay would only do it after they had completed their own ploughing". In Kithoor village (Rajasthan) several widows told men that tractor owners demand advance or immediate cash payment for ploughing their fields : "A man doesn't face this problem be-

cause it is assumed that he will be able to find work and repay". Delayed ploughing also adversely affects crop yields which are linked to timely field prepartion.

SUMMARY OBSERVATIONS AND POINTERS FOR RESEARCH AND POLICY

In summary, some of the main points that emerge from the discussion so far as below :

(a) It is important for women to have independent access to agricultural land, and not merely mediated access via male family members, for the economic and social well-being of women and children.

(b) Existing laws relating to almost all communities, in one way or another, systematically discriminate against women's rights to inherit agricultural land.

(c) In addition, in many parts of India, social practices of long-distance marriages, female seclusion, and intimidation by male kin, constrain women from exercising what legal rights they do possess : and also from operating as independent farmers. This is compounded by taboos against women ploughing and biases in extension and credit disbursement which restrict their access to agricultural technology.

(d) The social barriers are strengthened by gender biases in the attitudes and approaches of official law and policy implementing agencies—village councils, bureaucracy and even judiciary—which generally favour male access to land and technology. The harmful effects of this are particularly apparent in tribal areas where women's traditional usufructory rights to communal land are being systematically eroded with the privatisation of land in male names.

In short, the barriers to gender equality in land access exist at several levels—legal, social and administrative/implementational.

What are the research and policy implications of these observations ? On research, as noted in the beginning of the paper. the discussion here is essentially based on existing ethnographies which help provide significant pointers, but also leave scope for a more detailed exploration. This would need,

firstly, much more systematic data collection. For instance, there is clearly a strong case here for introducing a genderwise breakdown for land and asset ownership and use, in large-scale ongoing agricultural surveys. To begin with, this could be attempted on a pilot basis in say the NSS and CCS and subsequently extended to the Agricultural Census. Such data would be highly revealing, especially for states with significant pockets of communities traditionally practicing matrilineal inheritance such as in Meghalaya, Assam, Kerala and southern Karnataka.

Second, there would need to be a more region and household specific focus in data as well as analysis, on an inter-disciplinary basis, to answer the more detailed questions such as :

> To what extent are women as daughters and as widows filing claims to their legal rights in land today and to what extent are they inheriting land without having to file such claims ? Is their a cross-regional pattern in this ?
>
> To what extent do women who own land, self-cultivate it ? What kinds of problems do they face in doing so ?
>
> How biased is the functioning of government and legal agencies as reflected in their decisions relating to women's legal claims and in the attitudes of the officials in the official bodies ? This would mean examining legal case material as well as interviewing government bureaucrats and legal executives.
>
> Many more such questions could be listed.

The policy issues that emerge from this discussion are equally diverse and complex. Social barriers to women's access to land would perhaps be the most difficult to tackle, but progress on the legal and administrative/implementational front would indirectly also impinge on the social. In this context, a significant issue which in my view needs addressing is whether *ownership* rights to land on an *individual* basis, as mentioned in the government's National Perspective Plan for Women document (1988), and as has also been raised as a demand in recent years by several women's groups would be the appropriate measure. *An alternative* would be to promote *use* rights on a *group* basis —with groups of poor rural women cultivating and managing land cooperatively. Land ownership rights on an individual basis (or even jointly with husbands) raises all the attendant problems

associated with land fragmentation, and with social barriers to individual self-cultivation by women. It would also be subject to the danger of male members of the family taking over management and control of the land and its produce even if the women have the titles, of daughters losing out if the mother chooses to will the land to sons, or of daughters' claims being disputed by male relatives after the mother's death.

In contrast, cooperative management of the land by groups of women who actively cultivate it, with none having the right to fragment, sell or otherwise alienate it, would help overcome most of these difficulties, while also enabling larger numbers of women to gain use access to land via the cooperatives, even if no individual woman may be able to subsist on this basis alone. While the logistics of any such scheme would need to be worked out in concrete terms by the women involved, in principle it would be a step towards recreating communal assets in the hands of the poor and a shift away from the current trend towards privatisation in which very few poor persons, and even fewer women, get a share. Some success stories of the group approach to land use, although micro in scale, can in fact be found in South Asia, such as experiments involving groups of landless rural women managing jointly-owned land to grow medicinal herbs and trees in Rajasthan and West Bengal in India, or the provision of credit to small groups of women for leasing in agricultural land by the Grameen Bank in Bangladesh. More generally too it could be argued that creating technological assets in the hands of groups of women would be much more effective than an individual-oriented approach. Such a *group approach* has also been found to have the potential for strengthening women's ability to deal with other forms of social oppression, including gender violence in the home, more effectively[20].

TABLE 1

WOMEN'S CUSTOMARY ACCESS TO LAND

Aspect/Region*	Northern		Central		Eastern		North-Eastern		Southern		Total Cases	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1	2	3	4	5	6	7	8	9	10	11	12	13
Norms of Land Inheritance												
Communal ownership	—	—	—	—	—	—	1b+1c	(10)	1	(2)	3	(2)
Patrilineal	53	(100)	16	(100)	14	(100)	14	(74)	34	(79)	131	(90)
Matrilineal	—	—	—	—	—	—	3d	(16)	7d	(16)	10	(7)
Bilateral	—	—	—	—	—	—	—	—	1	(2)	1	(1)
Access via Specific Customs												
Under Patriliny												
As daughters in son-less families	12+4c	(30)	7	(44)	5+1c	(43)	—	—	4+1c	(12)	34	(23)
As widows	4	(8)	2	(12)	2	(14)	—	—	—	—	8	(6)
Usufructory rights only	3	(6)	2	(12)	2	(14)	2	(10)	3	(7)	12	(8)
As dowry	—	—	—	—	—	—	—	—	6	(14)	6	(4)

1	2	3	4	5	6	7	8	9	10	11	12	13
Mention of Actual Possession												
Under Patriliny												
As daughters in son-less families . .	1	(2)	2	(12)	—	—	—	—	2	(5)	5	(3)
As widows	4	(8)	2	(12)	—	—	—	—	2	(5)	8	(6)
Usufructory rights only	—	—	—	—	1	(7)	—	—	—	—	1	(1)
Total no. of communities examined .	53	(100)	16	(100)	14	(100)	19	(100)	43	(100)	145	(100)

Notes:

a Includes all communities of non-cultivating households, large and small owner-cultivators, and tenants.

b Garos: Historically matrilineal inheritance in other than land—land communally owned; now shifting to individual ownership and matrilineal or bilateral inheritance in hand.

c Paite: Historically patrilineal inheritance in other than land—land communally owned; now shifting to individual ownership and matrilineal or bilateral inheritance in land.

d Historically matrilineal inheritance Shifting or shifted to bilateral inheritance.

e Cases where land can be inherited by the uxorilocal son-in-law, or held on behalf of male children by the daughter or uxorilocal son-in-law.

Northern : Jammu and Kashmir; Himachal Pradesh; Punjab; Haryana; U.P. and Rajasthan.
Central : Gujarat, Maharashtra and Madhya Pradesh
Eastern : Bihar, Orissa, West Bengal.
North-eastern : Assam, Meghalaya and further north-east.
Southern: Tamil Nadu, Karnataka, Andhra Pradesh and Kerala.

TABLE 2

MARRIAGE LOCATION AND POST-MARITAL RESIDENCE

Aspect/Region	Northern		Central		Eastern		North-Eastern		Southern		Total-Cases	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
1	2	3	4	5	6	7	8	9	10	11	12	13
Village Endogamy												
Practiced	10	(19)	10	(62)	6	(43)	7	(37)	21	(49)	54	(37)
Forbidden	22	(41)	1	(6)	2	(14)	—	—	1	(2)	26	(18)
No information	21	(40)	5	(31)	6	(43)	12	(63)	21	(49)	65	(45)
Village Direction Specified	10	(19)	2	(12)	1	(7)	—	—	—	—	13	(9)
Post-marital Residence												
Patrilocal/Virilocal	40	(75)	16	(100)	14	(100)	9	(47)	25	(58)	104	(72)
Matrilocal/Uxorilocal	—	—	—	—	—	—	3	(16)	2	(5)	5	(3)
Others	—	—	—	—	—	—	2[a]+1[b]	(16)	2[b]+4[c]	(14)	9	(6)
No information	13	(24)	—	—	—	—	4	(21)	10	(23)	27	(19)
Distance From Natal Home												
Far	10	(19)	1	(6)	—	—	—	—	1	(2)	12	(8)

1	2	3	4	5	6	7	8	9	10	11	12	13
Near	8	(15)	2	(13)	3	(21)	2+4[d]	(32)	5+4[d]	(21)	28	(19)
No information	35	(66)	13	(81)	11	(79)	13	(68)	33	(77)	105	(72)
Uxorilocality Practiced												
As a Special Case[e]	13	(24)	7	(44)	6	(43)	2	(10)	5	(12)	33	(23)
Total no. of communities examined	53	(100)	16	(100)	14	(100)	19	(100)	43	(100)	145	(100)

Notes: [a] Neolocal residence.
[b] Duolocal residence.
[c] Avunculocal residence.
[d] Not strictly applicable since residence is matrilocal or duolocal
[e] E.g. in son-less families in communities where normal residence is virilocal.

NOTES

1. These estimates are based on the 37th round of the National Sample Survey (NSS) carried out in 1981-82. According to the Survey, 66.5 per cent of land-owning households in rural India owned 1 ha or less and accounted for only 12.2 per cent of all land owned by rural households (NSSO, 1987). The distribution of *operational* holdings is almost as skewed (NSSO, 1986).

2. See Ali, *et al.* (1981); Sundaram (1987); Sundaram and Tendulkar (1983); Gaiha and Kazmi (1981). Estimates by Ali, *et al.* (1981), quoted in Sundaram (1987) for 1975, indicate a consistent decline in the percentage of rural population below the poverty line as operational holding size increases (see the table below) :

Size Class	Percent Share in Rural Population	Percent below the Poverty Line (2250 calories)
0·00	12·3	81·7
0·00-00·50	18·6	75·4
0·51-1·00	15·7	67·0
1·01-2·02	18·5	57·0
2·03-4·04	16·3	45·3
4·05-8 09	10·7	31·7
8·10 and above	7.9	4·5
All	100.0	56·2

Source : Sundaram (1987 : 179),

Sundaram & Tendulkar (1983) on the basis of NSS data for 1977-78 and that the incidence of poverty among households dependent mainly on agricultural labour for a livelihood is almost twice that among cultivating households (58.8 per cent relative to 30.1 per cent) Gaiha and Kazmi (1981) again find the highest risk of poverty among agricultural wage labour households on the basis of the NCAER data for 1971-72.

3. Lipton (1983) in a survey article on labour and poverty provides several examples from rural India on

the three-way link between landlessness, unemployment and poverty.

4. See for instance Raj and Tharakan (1983) on the Kerala experience.
5. See Lipton (1983, 1985).
6. For a detailed review of issues and literature relating to this, as well as discussion on the causes of the bias see Agarwal (1968a). Also see the review of evidence by Harries (1986).
7. See Gulati (1978); Mencher and Saradamoni (1982); Mencher (1987); and Dasgupta and Malti (1986).
8. Kumar (1978); Gulati (1978).
9. Youssef and Hetler (1981).
10. See Omvedt (1981) for Maharashtra; personal observation in Rajasthan.
11. For a useful review of material on the class bias in agricultural extension services, see Dasgupta (1977); and on gender bias see Agarwal (1985).
12. See Agarwal (1986b); and Shiva and Bandhyopadhyay (1987).
13. For a more detailed discussion on traditional legal systems and the gender inequalities inherent therein see Agarwal (1988a).
14. For instances this was traditionally so among the Garos, Khasis and Lalungs—the three main matrilineal tribes of the northeast; as well as among the matrilineal Nayars of central and southern Kerala, the Mappilas of northern Kerala; and the Nangudi Vellalars of Tamil Nadu.
15. For a detailed discussion on the factors underlying the decline of matrilineal inheritance patterns in the tribal northeast see Agarwal (1987c).
16. Definitions of different types of post-marital residence are as below :

    Matrilocal : Normal residence with or near the female matrilineal kinsmen of the wife.

    Uxorilocal : Equivalent to matrilocal but confined to instances where the wife's matrikin are not aggregated in matrilocal or matrilineal kin groups.

Patrilocal : Normal residence with or near the male patrilineal kinsmen of the husband.

Virilocal : Equivalent to patrilocal but confined to instances where the husband's patrikin are not aggregated in patrilocal or patrilineal kin groups.

Avunculocal : Normal residence with or near the maternal uncle or other male matrilineal kinsmen of the husband.

Neolocal : Normal residence separate from the relatives of both spouses.

Duolocal : Normal residence of wife with her matrilineal kinsmen, and of husband with his or elsewhere, in a visiting relationship.

17. See *e.g.* Minturn and Hitchcock (1966); and Kishwar (1987).
18. For a detailed discussion on this see especially the 'Introduction' in Afshar and Agarwal (ed : 1988).
19. For details see Hossain (1984); and Rehman (1986).
20. For a brief overview of this see Agarwal (1987b).

APPENDIX

THE LEGAL POSITION

Inheritance laws existing in India today vary primarily by religion (Hindu, Muslim, Christian and Parsi) and among the Christians also by region (with variations between Goa and Pondicherry, and the rest of the country).

(*i*) *Ancient laws*

The Hindu law of property goes back historically to the classical Indian legal treatises or *Dharamshastras* composed between 200 BC and AD 200. However, it was during the twelfth century that the two main Hindu systems of law—the *Mitakshara* and the *Dayabhaga*—emerged and prevailed upto the late nineteenth century when the British first introduced modifications.

Under the *Mitakshara* system (prevalent in much of India) there existed a community of interests and rights to ancestral property of the Hindu undivided family, held jointly only by male

coparceners consisting of four generations of males—man, son, son's son, and son's son's son—who became coparceners on birth. Devolution was by survivorship, the living coparceners having an interest in the property of deceased ones, the actual share being determined only at partition, decreasing by the number of births and increasing by the deaths. Any coparcener could sue for partition but every coparcener was entitled to a share upon partition. However, over self-acquired property (if acquired without obligation to the father's estate) a man had absolute ownership rights.

Under this system, a woman could be an heir to her father's ancestral property only if she had no brothers, in which case she could inherit either directly, or indirectly on behalf of her son. Essentially, this gave her an interest in the property and not the right to alienate it. Such cases also usually involved uxorilocal residence by the husbands. In all other instances, daughters and in-coming wives had maintenance rights only, and widows enjoyed a limited interest.

Under the *Dayabhaga* system (prevalent mainly in Bengal) the man had absolute ownership over all his property (whether ancestral or self-acquired) and could bequeath it to whoever he chose. Division took place only at the death of the owner, and the property, if unbequeathed, went, in the first instance, equally to his sons. The share of a predeceased son would devolve on the latter's son or failing this on his son's son. Women inherited as widow or daughters in the absence of heirs in the male line, but they enjoyed only a life interest in this inheritance, having the right to manage but not alienate it.

There was nevertheless some recognition in traditional law of female property rights as expressed in the concept of *stridhan*, although interpretations of what this constituted varied. A succinct discussion of these interpretations in Tambiah [1973] indicates that in the earliest *Dharmashastra* texts, it included only movable gifts (such as ornaments, clothes and household utensils) given to a woman at marriage and meant to be under her control. In the later texts, it tended to include any property given to her before, at or after marriage by members of her natal and marital families (except immovable property given by the husband). Under *Mitakshara*, the property that a woman inherited, or obtained via partition of joint property, was also considered a part of *stridhan*. Some differences in interpretation exist, however, on the degree of control that the woman could in fact exercise over

her *stridhan*. There are also differences between different sub-schools of *Mitakshara* on the method of devolution of *stridhan* among different types of heirs. Under the *Dayabhaga* system, a distinction was made between (a) gifts received by the woman from parents/relatives before or at marriage and from her husband (except immovable property) and (b) property inherited by partition and that self-acquired. Traditionally, women controlled (and could alienate) only the first independently of the husband, and this constituted their *stridhan*.

In general, therefore, according to both *Mitakshara* and *Dayabhaga*, women did not inherit immovable property such as land (although they may be gifted it), and at best enjoyed a life interest in ancestral property under specific circumstances.

Islamic law by contrast did legally recognise the woman's right to ancestral property, including immovables, although not equal to men's (as discussed later). At the same time, in relation to agricultural land, in most states, Islamic law was superceded by regionally prevailing customary law under which women were typically excluded. In Punjab, for instance, under customary law, the widow, mother and even daughter were excluded by male agnates and often by near male collaterals as well. At best, rights of maintenance were granted [*Sivaramayya*, 1973]; (see also Kaul [1988]).

In fact, the only communities among whom there appears to have been a clear recognition of women's rights to inherit landed property are some of the matrilineal groups. In this context, the *Marumakkattayam* and *Aliyasanthana* law systems require a special mention. Under these systems, applicable to the matrilineal communities of Kerala and South Kanara (Karnataka) respectively, and deriving from custom and usage rather that specific texts, females and their descendents were the primary heirs. These customary laws received a special treatment in enactments both by the British and subsequently under the 1956 Hindu Succession Act. (The *Marumakattayam* system as prevailed traditionally, and modifications therein, are examined in section III of the article when discussing the Nayars.)

(ii) Laws today

Over time, the above described legal systems have undergone modifications, especially under various enactments; and the succession laws applicable today are briefly described below.

*The Hindus** : The property rights of Hindus are today governed by the Hindu Succession Act of 1956 (applicable to all states other than Jammu and Kashmir and covering 86 per cent of the Indian population). This Act sought to unify the *Mitakshara* and the *Dayabhaga* systems, and purported to lay down a law of succession whereby sons and daughters would enjoy equal inheritance rights, as would brothers and sisters. Under the enactment, in case of a Hindu woman dying intestate, any property inherited by her from her parents, husband or father-in-law, in the first instance, devolves equally upon her sons, daughters and children of predeceased children. In the case of property from any other source (including self-acquired) the husband too counts as a primary heir. If she has no children or grandchildren from predeceased children, the property devolution dulers according to the source of acquisition; that inherited from parents passes to the father's heirs; that inherited from the husband or father-in-law to the husband's heirs; and that acquired in ways other than these to her husband.

In case of a Hindu male dying intestate, all his self-acquired and separated property, in the first instance, devolves equally upon the mother, widow, sons and daughters. In addition, if there is a predeceased son, his children and widow get the share he would have if alive; the children of a predeceased daughter get her share likewise; and the children and widow of a predeceased son of a predeceased son again inherit a share as representatives of the deceased. All these are the primary or Class I heirs under the Act. For joint family property, if the male propositus was earlier governed by the *Dayabhaga* system the same rules of succession as relate to other types of property apply to this as well. However, for those previously governed by *Mitakshara* law, the concept of *Mitakshara* coparcenary property devolving by survivorship *continues to be recognised*, with some qualifications as follows : In case of an intestate male who has an interest in *Mitakshara* coparcenary at the time of his death and who leaves behind Class I female heirs, or male relatives specified in Class I as claiming through Class I female heirs, his interest devolves not according to the *Mitakshara* principle of survivorship but according to the 1956 Act, his share in the joint property and hence the shares of his heirs being ascertained under the assumption of a 'notional' partition (that is, as if the partition had taken place just prior to his death). This does not enable his heirs to

*The personal laws governing Hindus also extend to Buddhists, Jains and Sikhs.

gain actual possession of their shares since no actual partition takes place. If the propositus does not leave behind Class I female heirs or claimants through such heirs the devolution is according to the *Mitakshara* rules. Either way this does not affect the *direct* interest in the coparcenary held by male members by virtue of birth; it affects only the interest they may hold through the propositus.

Under the Act, all heirs (male or female) have absolute ownership over all property inherited and not just a life interest in it. The Act also gives unrestricted testamentary rights to the owners.

The 1956 Act has reduced but not eliminated pre-existing gender inequalities, and several major sources of inequality persist, such as the following :

(i) Since the concept of the *Mitakshara* joint family succession continues to be recognised (except in Kerala and Andhra Pradesh where there have been modifications subsequent to the Act), some of the basic gender inequalities inherent in relation to unpartitioned coparcenary property persist, such as those indicated below :

(a) As only the males can be coparceners in the joint family property, sons, for instance, have rights both in the deceased father's 'notional' share of the coparcenary, and directly as coparceners by birth themselves; while daughters have a right only in the father's 'notional' share.

(b) The coparcener can renounce his rights and/or give up his share after partition. Here while males continue to maintain their independent rights to the coparcenary, females lose the possibility of benefiting from such property.

(c) A man can convert self-acquired property to coparcenary property, in which case daughters who would have enjoyed equal shares with sons in the self-acquired property lose out.

(d) A man's self-acquired property, if inherited by the son, becomes coparcenary property for the son's children; thus his son's daughters lose out.

(e) Married daughters (even if facing marital harassment) have no residence rights in the

ancestral home. And while daughters who are unmarried, separated, divorced, deserted or widowed do have residence rights, even they cannot demand a share if the males do not partition.

(ii) The children of predeceased daughters of predeceased daughters do not figure at all among the Class I heirs.

(iii) Upon divorce, the wife has no claim to the husband's self-acquired property, acquired after marriage. In other words, in the Act there is no recognition of the notion of matrimonial property.

(iv) Tenancy rights are exempted from the scope of the Act. This point is critical in the present discussion since it directly affects the devolution of land. In fact the Act leaves unaffected any law providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights relating to such holdings. Such laws vary among states and, further, because the meaning of 'tenancy rights' is unclear, states usually define these to include *all* interests arising in and out of agricultural lands. In most cases these regional laws place direct female heirs at a disadvantage. For instance, under the Uttar Pradesh Zamindari Abolition and Land Reforms Act dealing with the devolution of a holding or intestacy, there is a strong preference for succession among agnates with a priority in favour of males in that group (quoted in Sivaramayya [1973 : 43—4]). The rights of the widow and married or unmarried daughters come not only after the rights of lineal male descendents in the male line of descent, but even after the widows (who have not remarried) of those males.

(v) The unrestricted rights to will away property provides an important means by which females can be disinherited.

The Muslims : A vast majority of Muslims (constituting 11.4 per cent of the population) in India follow the Hanafi School of Sunni law, and a small percentage the Shia law. The Hanafi rules are complex and will not be spelt out in detail here (for an elaboration see especially Carroll [1983]). Broadly,

heirs are divided into three major categories : agnatic heirs who are almost all male, Koranic heirs who are mostly female, and agnatic co-sharers. A daughter as an only child receives a half share of the deceased parent's estate as a Koranic portion and is excluded by none. If there are two or more daughters and no sons they jointly get a two-thirds share which is divided equally among them. The presence of a son who is an agnatic heir however converts a daughter's right from that of a Koranic heir to an agnatic co-sharer under which she gets half of what the son gets. Sons and daughters are excluded by none. Similarly a husband and wife as Koranic heirs are excluded by none—the husband receiving ¼th share in case there is a child or son's descendants, and a half share if there are no such heirs. A widow similarly gets ⅛ or ¼ of the husband's estate, depending on whether or not there is a child or son's descendants. In case of more than one widow, the collective share of all is ⅛ (or ¼), shared equally among them. Full sisters and consanguine sisters also share as Koranic heirs and can get excluded by male agnatic descendants and ascendants, as can uterine sisters under specific circumstances. The mother gets a basic Koranic share of 1/6, as does the father.

The Shia law of succession is noted to differ from the Sunni law especially in two respects (see Carroll [1985]); (a) No relative of the propositus is excluded merely on grounds of their sex or because she/he is related to the propositus through a female link. Hence males and females who are linked to the propositus in equal blood or degree inherit together, although female shares continue to be half those of males; (b) The emphasis is on the nuclear family and direct descendants.

In general, therefore, Muslim women have inheritance rights in ancestral immovable property, although unequal to men. Also, this right has some degree of protection from testation. Among the Sunnis, for instance, without the consent of all the heirs no part of the estate can be willed to one or more heirs and only upto a third can be so willed to a stranger. Under Shia law, however, bequest to an heir or heirs upto a third of the property is permitted without the consent or other heirs. It is noteworty, however, that in several states in the application of both Sunni and Shia laws, agricultural land gets excluded if there is a local statute superseding the Muslim law of succession in regard to such property, as is also the case under Hindu law. Typically, such statutes (as noted) give primacy to male heirs.

The Christians : The laws applicable to the Christians (who constitute 2.4 per cent of India's population) have tended to vary

by location. Until recently those from Goa and Pondicherry were governed by the Portugese civil code, those from Cochin and Travancore (Kerala) by the Cochin and Travancore Acts respectively, and the rest by the Indian Succession Act (ISA) of 1925. Under the above laws, other than the ISA, women have only a life interest in land and other immovable property and have no direct inheritance rights. Under the ISA, however, a widow gets one-third of all property of the deceased male dying intestate, and sons and daughters get equal shares in the rest—there being no restrictions on testation. As a result of a Supreme Court decision in 1986 on a case concerning a Kerala Christian woman, Travancore and Cochin will also now be governed by the ISA of 1925 (see, for example, *AIR* [1986]).

The Parsis : They are still governed by the Indian Succession Act of 1925, with a specific set of amendments (enacted in 1939) applicable only to Parsis, whereby the property of male and female intestates devolves according to separate rules (see especially Paruck [1977]). In the deceased man's property (other than agricultural land) the widow and each son get double the share of each daughter. If the man leaves behind parents in addition to a widow and children, his father receives a share equal to half that of his son and his mother half that of his daughter. In agricultural land the devolution is noted to be in accordance to the Parsi rules of succession applicable prior to the 1939 enactment. Here the daughter gets one-fourth of what the son gets and the widow double of what the daughter gets. The parents of the deceased get none. In a deceased woman's property, the husband, son and daughter get equal shares. Hence daughters share equally with sons in the mother's property but unequally in the father's property. There are no restrictions on testation on either the man or woman.

In overview, therefore, legally in relation to men, today women of almost all communities in India (excepting essentially those in the matrilineal south-west which retain many of the positive features of the traditional *Marumakkattayam and Aliyasanthana* systems) have highly unequal access to immovable property in general, and to agricultural land in particular. It is noteworthy, however, that despite this inequity, the passing of the Hindu Succession Act of 1956 which was a substantial improvement over the Indian Succession Act of 1925 has increased fears among Hindu families that women will claim land, and attempts (as discussed in section IV) are being made to circumvent this possibility in various ways.

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LAND REFORM : AN UNFINISHED AGENDA

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This paper is a humble effort to contribute towards a new opening in a crucial and critical arena viz,—"Land Reforms", without losing sights of reality and on the other hand grasping the essential of the newly emerging 'problematic' in this sphere.

However, before venturing into this topic, I would like to caution about a few points which generally tend to distort the specific field of vision in question. These are :

(a) Mass Peasant Movement and Movements from Below are something which, alas, cannot be manufactured like, say, footwear. That is to say, if they are absent, then their "lack" should be accepted as a matter of fact. In fact, from Patiala to Patna, except a few notable exceptions in a few pockets, mass peasant movements are singularly absent.

(b) Humanistic, emotional concerns should not be allowed to colour the specificity, objectivity, scientificity and facticity of our problematic. In this regard, it would suffice to ask and say that "we should be guided by TRUTH-PRINCIPLE" which should be implicit in out total endeavour. In simple words, this would mean "on whose side are we" ? Are we on the side of Masters, Elites and Dominant Power Groups or are we on the side of Oppressed, subordinated ? Thus, it turns out to be a critical Ethical Question.

(c) Thus, finally it should be the reality principle which should guide our action Policy-Making Exercises.

With these precautions, I would now come to the main topic of "Land Reforms" related and located to U.P., Bihar, Orissa, M.P., Rajasthan etc. However, in this large area, Uneven Phenomenon cannot be ignored. But for the sake of brevity, I would attend to generalisations ..... which does, however, been close; correspondence with reality.

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The picture of low distribution leading to class sizes.

A quick review through any of these states would tell us that roughly about 85—90% of small and marginal holdings exists, comprising of 45—55% of entire cultivable land. Intermediate size holdings constitute roughly 8—10%, comprising 30—35% of land. The large 1-2% however, comprises 15—20% of land.

Thus the facticity of land—Picture at once suggests grave limitations in terms of Adverse Land—Man Ratio and Very Acute Pressure on Land.

The conclusion is inescapable. The "Play" in terms of Massive Land Redistribution is now strictly curtailed, in view of above. However, more than this, past 30 years of experience of Ceiling Reforms has clearly pointed its futility. Not more than 2% of cultivable land has been declared surplus which is a pittance, but more seriously, it made two generations of peasantary, dishonest and more and more selfish. Thus ceiling as a new meants to achieve redistributive justice would not go far. However, it does not mean a closer of this option, but rather a hard cold look on its past to envisage its future course. Thus, in this scenario where ceilings limitations are self-evident, one must now concentrate on NEW ELEMENT which are emerging Rural Land Sector. They are given below :

(a) *ONE SECTOR PHILOSOPHY* :

A new class has emerged which may be designated as "Absentee Tenure Class". These are the people who, for good, have migrated to urban occupation and are getting their land tilled through informal share-cropping arrangements.

It's my belief that this class is now ripe for one sector occupation. Thus, Government must by voluntary and coercive measures take away all such land and compensate them adequately. This would make available a great amount of land.

(b) *BENAMI HOLDINGS*

A large amount of land in our country side is still being held benami. Then there are lands in great quantity which are protected through various kinds of trusts.

It is my belief that this entire area should first be LEGITIMIZED AND THEN NATIONALISED. Thus, it

would mean identifying real owners on the basis of possession and taking the land away from them and adequately compensating the real owners.

This would give us a very large share of land. It can be safely presumed that by measures enunciated above we can aim at getting 6—10% of total cultivable land. This would principally go to Bataidars, Share-Croppers, Landless agriculturists of poor sections.

Thus, simultaneously we would; have to identify all such people (share-croppers, etc. .....) and give them RIGHTS after acquiring the land.

Mere Identification of Informal, Underground Tenancy would be a futility, it is ..... the psychological fear and balance of power on the side of rural elite would effectively stall any such identification.

(c) *CO-OPERATIVE FARMING IN MARGINAL/SMALL SECTOR*

We must aim at a "five acre" unit in this sector, if at all we are interested in growth and productivity. The abovementioned "Unit" is t hebottom limit. The upper limit should be left open. This can be done in two ways :

(i) Voluntary Co-operative Farming as a LAND REFORMS MEASURES;

(ii) Easing out of such small, marginal tenure holder who has shifted substantially to other sectors. Such land should, however, go only to the small and marginal farmers. Hence, this area must be given top most priority.

(d) *A NEW JURISPRUDENCE SYSTEM FOR LAND CASES*

The reasons are well-known. They don't need repetition. What we need is a clear break from old system. Thus, in the new system, "SITE" should become the key-player. The oral evidence, local witnesses, local level bodies to adjudicate (alongwith Government machinery.....) would gain upper hand.

It may be hoped, that a new future, a completely Village Oriented Judicial System would be evolved and implemented.

LAND CEILING LEGISLATION IN U.P. : AN ASSESSMENT

AJIT KUMAR SINGH*

First Phase of Land Reforms

U.P. was among the more progressive states during the first phase of land reforms initiated after Independence, which aimed at the abolition of intermediary land rights with a view to give 'land to the tiller'. *The Uttar Pradesh Zamindari Abolition and Land Reforms Act passed in* 1951 was one of the earliest and most progressive measure of land reforms introduced anywhere in the country. The Act abolished all intermediary rights in land and brought the actual tiller of the soil in direct contact with the state. Among other progressive features of the Act were prohibition of sub-letting, prevention of sub-division of holdings below a minimum size, ceiling on future, acquisition of holdings and vesting of common land in the village community.

Though not without blemish the *U.P. Zamindari Abolition and Land Reforms Act* ended the bewildering variety of land rights which existed in U.P., removed a large parasitic class of zamindars and by conferring permanent and heritable rights on the tiller of the land removed the motivational hurdle for raising land productivity.[1]

The peaceful and swift abolition of the vested interests of over 2 million zamindars was no mean achievement by any standards. However, a serious lacuna that remained in the tenurial structure of the state was the continuation of the practice of sub-letting.[2] Though sub-letting was legally not permitted except under certain specific circumstances, it has continued under the garb of share-cropping, with all its pernicious effects. The share croppers usually bear the entire cost of cultivation and pay as much as half of the product as rent, while they are not allowed to remain on the same land for any length of time.[3] It has been officially estimated, that there are roughly 45 lakh share-croppers in U.P.[4] Efforts are being made to register the names of share-croppers and other categories of lease holders in the revenue records with a view to provide them security of tenure.

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Second Phase of Land Reforms

While one could look at some degree of satisfaction at the first phase of land reforms which aimed at the abolition of the parasitic intermediary land interest, the performance of the state in the second phase of land reforms, which aimed at a more equal distribution of land, has been by and large depressing as in other parts of the country. The success of the first phase in a way was responsible for the failures of the second stage of land reforms. The old zamindars, who were allowed to retain large tracts under *sir* and *khudkasht* for self-cultivation, emerged as rich farmers and retained their political and economic clout not only dominating the rural society and cornering the benefits of the developmental programmes, but also occupying seats in the state legislatures and the Parliament in sizeable numbers. Their vested interests in land had become stronger with growing commercialization of agriculture, which had become a profitable economic activity. In this situation no programme of land distribution could be expected to succeed especially when it was unbacked by a strong political commitment and mass pressure.

Thus while land ceiling legislations were passed for their populist appeal enough loopholes were left in them both at the legislation and implementation stage to make them almost self-defeating. The fate of the two rounds of land ceiling legislation in the state is an ample testimony to this.

Land Ceiling Act, 1960

The first U.P. Imposition of Ceilings of Land Holdings Act was passed in January 1960. The Act provided for a land ceiling of 40 acres of fair quality land for a tenure holder. The family was taken as the unit of ceiling and for a family of more than five members 8 acres of land were allowed for every additional member subject to a maximum ceiling of 64 acres. 'Fair quality land' was defined as the land whose hereditary rate was more than Rs. 6 per acre. One acre of fair quality land was treated equal to 1½ acre of medium quality land and two acres of poor quality land. Thus the maximum ceiling could vary from 40 acres to 128 acres of land.

The Act of 1960 also provided for a large number of exemptions including the following categories of land : (i) grove land; (ii) land used for industrial purposes; (iii) cattle shed; (iv) residential house; (v) cremation ground; (vi) tea, coffee and rubber plantations; (vii) medicinal plantations; and (viii) co-operative societies.

The above loopholes in the land ceiling legislation as well as its ineffective implementation in the face of opposition by the powerful lobby of land owners rendered the 1960 Land Ceiling Act an extremely weak instrument which could have hardly any marked impact on the agrarian structure of the state. In the first place the extent of ceiling was too high and self-defeating. Secondly, full advantage was taken up by the landlords of the various loopholes and a large number of transfers, often fictitious, took place in favour of cooperative societies, educational and religious organizations, relatives, servants, etc.[5] Thus, most of the surplus land remained outside the purview of the Ceilings Act.

Originally about 4 lakh acres of surplus land was expected to be available for distribution but even after more than a decade of its implementation it was found that till 1973 only 2,32,000 acres of land could be declared surplus, while possession was taken on 2,01,000 acres.[6] Out of that settlement could be made only on 1,10,000 acres, involving in many cases temporary settlement with the original land-holders.

The Uttar Pradesh Land Settlement Enquiry Committee 1972—74 under the Chairmanship of Shri Mangal Dev Visharad has highlighted the various ways through which big landholders were able to save their surplus land from the operation of the Ceilings Act.[7] The Committee also discovered all over the state the continued existence of large farms even after the imposition of the ceilings.[8] Thus, the first round of land ceiling legislation could not be regarded successful from any perspective.

Land Ceiling (Amendment) Act, 1972

The Land Ceilings Act was amended in 1972 in the light of national level guidelines. Under the amended Act family of a tenure holder, excluding major souse, was taken as a unit and ceiling was fixed at 7.30 hectares of irrigated land. In addition, 2 hectares for each additional member for a family with more than 5 members were allowed subject to a maximum of 6 hectares. One and a half hectare of unirrigated land was treated equal to one hectare of irrigated land for the purpose of the ceiling. Similarly two and a half hectare of grove land or barren land was treated equal to one hectare of irrigated land.

The amended Act ended some of the exemptions granted under the earlier enactment such as grove land but retained many of the earlier exemptions, such as, (i) land used for industrial purposes; (ii) land occupied by a residential house; (iii) cremation

ground and grave yard; (iv) tea, coffee and rubber plantations; (v) charitable endowments; and, (vi) land held by a *goshala*. At the same time one exemption was added to the list namely, land held by stud farms.

Although the amended ceiling Act reduced considerably the ceiling, it allowed escape routes in the form of various exemptions. In addition, the revised Act contained some provisions which were expected to dilute considerably the impact of the Act. Thus, while the decision to lower down the ceilings was announced by the State Government on 24 February, 1970 the revised Act provided that the transfers made prior to 24 January, 1971 will not be taken into account for purpose of ceilings. Thus, almost one whole year was available to big landholders to transfer their surplus land .

Three further provisions, done ostensibly to benefit the large landholders, took out the sting from the revised ceiling legislation :

(a) Transfers in favour of Central/State Government, local bodies, government company or corporation, University, Degree College, Banking Company, Co-operative Bank, Land Development Bank and *bhudan samiti*, even if done after 24 January, 1971 will be taken into consideration while determining the ceiling limit.

(b) Any transfer done with 'bonafide' intentions and for sufficient consideration and which is not a *benami* transfer will be taken into account while determining the Ceiling limit.

(c) All partition suits filed before 24 January, 1971 and decided after this date will be given effect to while determining the ceiling.

Thus, the revised land ceiling legislation of 1972 represented a compromise between the populist instance of the government and the vested landed interests, which blunted the edge of the legislation and considerably defeated its basic purpose of a acquring sizeable land for redistribution among the poor.

Defective as the revised ceiling legislation was its tardy implementation in face of stiff opposition by the landlords rendered it a practically ineffective measure of agrarian change. The affected landlords fought pitched and prolonged legal battles right from the court of the prescribed authority to the Supreme Court. Thus, objections were filed against nearly 88 per cent of the 66,233

notices issued under the amended Act. As shown in Table 1 even after 15 years of the enactment of the ceiling legislation over 5,000 cases are pending at various levels involving an area of nearly 1.5 lakh hectares.

Till the end of 1988 out of the expected surplus land of 7,98,431 acres only 3,21,008 acres could be declared surplus and possession could be taken on 2,93,461 acres, out of which only 2,64,237 acres have been settled so far (see Table 2). Nearly 15 per cent of the acquired land was found unfit for cultivation and had to be vested in *gaon sabha*. Thus, after all the hue and cry only 2,11,477 acres of land could be distributed to 2,26,749 landless labourers over a 15 years period. In other words, less than 0.5 per cent of the operated area in the state has been re-distributed among 4.4 per cent of the 52 lakh agricultural labourers of the state.

Even the limited number of beneficiaries to whom the surplus land was distributed could not gain much from it. On an average

Table 1 : **Progress of Ceilings Under Revised Ceiling Act in Uttar Pradesh as on 31-12-1988**

(Area in acres)

1.	Number of Notices Issued under amended Ceiling Act	66,233
2.	Area proposed	7,98,431
3.	No. of Notices against which objections filed	58,432
4.	No. of cases pending in Prescribed Authority Court	1,396
5.	Area involved in pending cases	54,498
6.	Appeals pending in P.A. Court	1,438
7.	Area involved in pending appeals	33,976
8.	No. of Writ petitions pending in High Court	2,389
9.	Area involved in the pending cases	48,788
10.	No. of pending S.L.P. in Supreme Court	263
11.	Area involved in the pending S.L.P.	6,287
12.	Land declared surplus under revised Ceiling Act	3,21,008
13.	Declared surplus land over which government has taken possession	2,93,461
14.	Area of land declared surplus which is involved in litigation	23,999
15.	Area of land involved in consolidation	1,500
16.	Area of land involved in Proceeded formalities	2,048
17.	Total area of land balance for taking over possession	27,547

Source : Board of Revenue, Uttar Pradesh.

slightly less than 1 acre of land has been distributed to one person. Often this land was of very poor quality and was scattered over several tiny pieces. The landless labourers to whom the land was given did not have adequate resources to bring the land into productive use. The financial assistance given to them under the

Table 2 : **Land Acquired and Settled Under Revised Ceiling Act in Uttar Pradesh as on 31-12-1988**

(Area in acres)

1. Area expected to be acquired	7,98,431
2. Land of declared surplus	3,21,008
3. Land on which possession taken	2,93,461
4. Surplus Land Allotted to Landless Labourers :	
(a) **Scheduled Castes**	
No.	1,60,381
Area	1,50,723
(b) **Scheduled Tribes**	
No.	1,480
Area	1,955
(c) **Others**	
No.	64,888
Area	58,799
(d) **Total**	
No.	2,26,749
Area	2,11,477
5. Area unfit for cultivation vested in Gaon Sabha	43,570
6. Area transferred to other government departments	9,198
7. Area of total settled land	2,64,237
8. Balance area for settlement	29,244

Source : Board of Revenue, Uttar Pradesh.

centrally sponsored scheme was too meagre to be of much avail. In these circumstances it was not surprising to find that many of the allottees either sold their land or let it out. Adverse possession by the erstwhile owners is also frequently reported.

The Next Step

The story of the second phase of land reforms in U.P. as in other parts of the country is the story of pious intentions not of real achievements. According to the *Census of Agricultural Holdings* 1980-81 there are still 72.1 thousand holdings in U.P. which are above 10 hectares in size accounting for 11.11 lakh hectares or 6.2 per cent of the total area under holdings. On the other hand, there are 51.77 lakh agricultural labourers and 125.72 lakhs marginal farmers with less than one hectare of land. These distortions in the pattern of land holdings have to be removed through a more effective programme of land ceilings.

In the prevailing circumstances a reasonable and realistic level of ceiling would be 5 hectares rather than 7.30 hectares as at present. The various exemptions available at present must be carefully examined and done away with wherever possible. In particular, exemptions for industrial use, educational and religious institutions, stud farms, *goshalas,* non-genuine co-operative farms, etc. have to be made more restrictive if not to be altogether eliminated. Similarly, relaxations in favour of unirrigated land, low productive land, grove land, etc. have to be reduced as they are standing in the way of proper development and utilization of land resources. On a rough reckoning a legislation on the above lines can yield a surplus of at least 15 lakh hectares, which along with another 10 lakh hectares of the existing cultivable wasteland, can be used to settle a good proportion of the landless labourers to give them some economic security.

The policy of land distribution should also be given a more careful thought than in the past. The beneficiaries should be encouraged to form cooperative societies for farming and inupt supplies. Besides overcoming the handicap of their lack of resources, the success of such efforts may create a favourable climate for agrarian reorganization on community basis in the long run. Furthermore, it is not necessary that the entire land so acquired is used for cultivation purposes. Depending upon the suitability of land it may be put to appropriate uses like animal husbandry, agro-forestry, horticulture, etc. At the same time a much stronger organizational back up must be provided to the land aliottees in the form of supply of services like credit, inputs, extension, marketing, etc. to sustain them as viable economic units.

We have demonstrated elsewhere that given the adverse land-man ratio in the state even a very drastic reduction of land ceilings will not yield sufficient land to meet the pervasive land hunger.[11] Perhaps the time has come when we must start thinking about the land question in a national perspective rather than within the confines of existing state boundaries in the light of the variations in the land-man ratio in different parts of the country.

To carry out the land reform on the lines suggested above would indeed be a difficult task. If the third round of land ceilings is not to meet the dismal fate of the two earlier rounds, it has to be backed up with a strong political determination, administrative preparedness and ideological commitment.[12] Implementation of such a reform cannot be left to the administrative machinery alone. The landless and the small peasants will have to be mobilized and involved in the process of identification and distribution of surplus land. The intelligentsia and the political parties have to play a critical role in the process of ideological preparation and mobilization of the rural poor for bringing about the necessary changes in the agrarian structure in the country.

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Some comments in the light of West Bengal Experiences on Asha Swarup's note on Tenancy Reforms.

—Nripen Bandhyopadhyaya

— The note has highlighted most of the issues in a correct perspective.

— All data reveal that the task of comprehensive land reforms has largely gone by default.

— In the set of issues comprising a thoroughgoing land reforms in the country the worst casualty have been the programme–'ceiling' & redistribution of land to landless & semi-landless and regulation of tenancy especially sub and/or under-tenancy.

— Swarup's note rightly indicates that the issue of tenancy reforms to-day has very largely become co-terminus with the problem of informal and/or concealed tenancy.

— The relative success of Left dominated states like Kerala & West Bengal in implementing land reform measures is well known. West Bengal's achievements in the field of establishment of rights of bargadars (share croppers) through compaigns like 'operation argab' is of considerable significance.

— In quantitative terms West Bengal has succeeded in recording between 1.2 & 1.4 million sharecroppers (there are some differences in estimates) and has been able to take possession of 8 p.c. of the state's cultivable area for purposes of redistribution. Actually redistributed area exceeds 6 p.c. of total cultivable area in the state.

— It is generally assumed that the establishment of Left Front Government in West Bengal in 1977 was the pre-condition of the successes achieved.

— But for the purposes of drawing proper lessons for this discussion as also for getting the historical records straight it is necessary to underline that prior to the establishment of the Left Front Government a continuous conscious and militantly organised active mobilisation of the poor peasantry in West Bengal

especially since the early sixties played the most vital role in the process and sequence of events.

— The acute crisis of Bengal's economy was not tragically demonstrated by the famine in 1943.

— The experiences of 43 famine at the grass root level had direct bearing on the subsequent peasant uprising ('46) known as tebhaga. The very name tebhaga and its rallying demands make it obvious that the alienation of the toiling peasantry from their rights on land and its produce was most acute and widely felt in case of share-croppers, than the largest mass of poor peasant cultivators.

— That the practice of share tenancy (traditionally 50 : 50 and hence known as 'adhiyari' in many areas) was widely prevalent in the areas covered by Permanent Settlement (1973) and especially in Bengal was well known through settlement reports. Report of the Floud Commission and Ishaque Survey Report. Yet the vast masses of cultivators engaged in share tenancy were consistently denied any 'dejure' recognition since 1885 (B7A). One great contribution of 'tebhaga' struggle was its indelible mark on all subsequent enactments in the post-independence period. Share-cropping was recognised as an important form of tenancy.

The first in the train of Post-independence legislations for regulating share-tenancy came the Bargadari Act of 1950. The same was subsequently incorporated in the West Bengal Land Reform Act (1955). Further there were several amendments leading upto the one in 1979 wherein most of the loophole in the Act were plugged and 'Operation barga' made possible.

What is important in this context in the fact that all these legislative steps were in response to vigorous and active peasant mobilisation preceding the Acts and its amendments.

While all the legal steps tried to tackle the two vital issues of exploitative rates of rent and insecurity of tenure the crucial problem of identification and implementation remained largely unresolved. Like in most other states today, the share-cropper in West Bengal before operation barga did not have any dejure status and as such no records to support their claims. In the fifties vested interest in the country side of West Bengal launched a tremendous offensive of eviction against the traditional share-croppers incumbent on their land. In the initial

phase (upto the early sixties) the poorer share-croppers and their mobilisation was on the defensive and failed to prevent the first flush of evictions both physical and legal. The lack of determined political will of the then state apparatus contributed to the success of the vested interest at that time, since the mid-sixties. Particularly since the large scale rupture in the monolith of power represented by congress before '67, brought about a share change. This was the period of acute & widespread class struggles in West Bengal's countryside. The movement of the toiling rural masses developed to the stage of forcible occupation & seizure of both barga and excess concealed land. Resistance against forcible eviction of share-croppers and seizure of potentially vestible land faced into one irresistible movement sweeping the West Bengal countryside. The two short spells of left-oriented governments in '67 and '69 helped the struggling peasants. In fact, the so called Naxalbari movement originating in North Bengal and parts of Midnapur actually took off from this larger mobilisation.

The basic strength of the movement was such that the gains through occupation and seizure could not be negated in the subsequent phase of Cong (I) rule till 1977. In fact, in 1971, the Siddhartha Roy Ministry incorporated quite a few progressive amendmends in favour of bargadars and pattadars (vested land occupiers).

The situation briefly described above created the basis for success in West Bengal for its better implementation of land reform measures enacted since the mid-fifties. Left Front's coming to power with a more stable majority was very largely conditioned by the strength of the mobilisation of the rural poor undertaking 'defacto' land reforms. To be correct, the Left Front Government was more a result than the cause of such a movement. Legal and administrative action alone could never unearth concealed land to the extent of about 10 per cent of the cultivable area in a state like West Bengal where the land : man ratio is extremely unfavourable and the proportion of total cultivable area held by large land owners was much less than in most other states.

From the point of view of administrative procedure identification and recording of share-croppers faced the following major obstacles.

Firstly, there was the absence of basic records, Notwithstanding some guesstimates based on kisan sabha's deposition

before Floud Commission (1940), Ishaque report based on very limited sample survey (1944–45) and Ashok Mitra's attempts at indirect estimate (census 1951) there was hardly any dependable estimate of the total number of share-croppers and area of land under share tenancy in the state. Settlement records did not provide any unitwise list of share-croppers. A thorough resettlement survey with provisions for compulsory recording of share-cropping incumbency on each plot and recording of share-croppers was a pre-condition to any effective implementation of growingly favourable tenancy legislations 'Juridico-administrative default' was mainly concentrated in this area. This is reflected in the slow pace of recording of barga before 1977.

In the first two decades after L. R. Act of 1954 only 3 lakh bargadars could be recorded. While bargadars through organised movement resisted physical eviction, the tardy and counterproductive juridico-administrative procedures failed them in getting recorded. And it is in this area that the political will and determination shown by the Left Front since 1977 made a breakthrough.

'Operation barga' conducted by the Left Front Government in West Bengal does not comprise of any new set of enactments. It was essentially a package of administrative efforts to implement laws already enacted. It was carried out with a proper sense of urgency, partisanship and co-ordination. Again, this was a desirable politico-administrative response to the demands of the organised poor in the rural areas for their legitimate rights. Operation barga resulted in the recording of 1.2. million additional share-croppers within a span of five years.

For purposes of brevity I refrain from detailing out the procedural steps of operation barga. These are well documented in our evaluation report (ILO Showover)* and publication of the state government. I may mention in this respect that operation barga guaranteed the following :

— departments and officials connected with the issue should work in a co-ordinated manner and not at cross purposes and should meet the rural poor in groups and in localities where they would feel uninhibited to arriculate their claims. Help of socio-political

*Evaluation of Land Reform in West Benga!—
N. Bandyopadhyaya &

activists and organisations championing the cause of the rural poor were sought for the success of this 'operation'.

Two amendments to the existing L. R. Act (1954–55) helped the operation immensely. These were the amendments relating to definition of personal cultivation and responsibility of disputes.

For purpose of entertaining eviction application against any share-cropper personal cultivation was defined as cultivation by physical labour of members of the land owner's family residing within 2 kms from the plots under dispute, (both these points have been incorporated in Swarup's note). The responsibility of disproof against claims of share-cropping rights was clearly laid with the land owners.

— Besides, the crucial role of continuous and active mobilisation of the rural poor and the establishment of a Left Front Government in the state of West Bengal another factor contributed to the relative success in effectively implementing land reforms measures. This was the existence of a core of civil servants largely free from any vested interests in land. This distinctive character of the state's civil service had its roots in the specificity of the evolution of the middle class intelligention of this state. Whatever the socio-historical reasons the helpful role played by the state administration in general should not be overlooked.

I have tried to outline at some length the experiences of West Bengal only to underline that tackling of concealed and/or informal tenancy in the rest of the country would weed a combination of active organisation of the beneficiaries and determined juridico-administrative measures on the part of the establishment on a significant scale.

Tenancy Reform in India

P S Appu

Recent years have witnessed a revival of public interest in land reform. This renewed interest is, however, largely confined to the question of ceiling on agricultural holdings. In a predominantly agrarian economy, the salient features of which are a very high man-land ratio, unequal distribution of holdings, scarcity of capital, and slow growth of non-farm employment, the relevance of a policy of radical redistribution of land is obvious.

A well-conceived ceiling law, efficiently and honestly implemented, will no doubt, remove some of the glaring inequalities in our agrarian structure and foster agricultural growth. While efforts should continue towards the streamlining and better implementation of ceiling laws, it will be unfortunate if the preoccupation with the ceiling question leads to the neglect of other important aspects of land reform.

One fruitful field where resolute action can yield quick results is tenancy reform. Most of the tenancies being oral and informal it is very difficult o make an accurate estimate of the incidence of tenancy. The 1961 *Census revealed that about one-quarter of the cultivated land in the country was under tenancy, open or concealed. In all probability, even now, about one-fifth of the land is under tenancy. And, in certain regions the incidence of tenancy may be as high as 40 per cent. Even after two decades of tenancy reform, the position of tenants—particularly of share-croppers—continues to be precarious in several parts of the country.*

Insecure tenures have not merely resulted in the perpetuation of social and economic injustice; they have also turned out to be formidable stumbling blocks in the path of the modernisation of Indian agriculture. High priority should, therefore, be given to the plugging of loopholes in the existing tenancy laws and the better implementation of enacted laws.

An atempt will be made in this paper to review policy, legislation, and implementation. Some leading policy issues will also be dealt with briefly.

I

EVOLUTION OF POLICY

Before proceeding to take up a review of tenancy reform in India, it is necessary to define the terms "Tenancy Reform". At the time of Independence nearly one-half of the areas was covered by the Zamindari and other intermediary tenures, while the remaining part of the country was under the Raiyatwari system. With the abolition of most of the intermediary interests within the first few years of Independence, the whole country came under more or less the same kind of tenurial system—local variations notwithstanding. Though the Raiyatwari system was supposed to have been one of peasant proprietorship, in actual practice leasing out of land was widespread in the Raiyatwari areas also. And, in the erstwhile Zamindari areas there had been sub-leasing. Most of these leases in Raiyatwari areas and sub-leases in Zamindari areas were oral and terminable at will. Legislative efforts had been made, even before Independence, to provide a measure of security to the tenants. After Independence, the matter was pursued with greater vigour. Legislation was enacted to afford security of tenure of tenants, to provide for fixation of fair rent, and in some cases for conferment of owenrship rights on tenants. These are the measures that constitute 'Tenancy Reform".

The national policy on tenancy reform has assumed its present shape after gradual evolution spread over a period of nearly four decades. With its transformation into a broad-based national movement under Gandhi's leadership, the Indian National Congress started to take interest in agrarian problems. Some of the high points of the agrarian struggle spearheaded by the Congress were the historic Bardoli Satyagraha, the non-tax campaign in North Canara, the agrarian unrest in Uttar Pradesh, etc. The burning questions in those days were the heavy burden of land revenue and rent, and the inequities of the Zamindari system. Those were the problems highlighted at the Kisan Conferences and at the sessions of the Indian National Congress. A Kisan Conference held at Allahabad in April 1935, under the Presidentship of Sardar Patel, passed a resolution which among other things recommended "the introduction of a system of peasant proprietorship under which the tiller of the soil is himself the owner of it and pays revenues to the Government without the intervention of any

zamindar or talukdar".[1] At its 50th Session, held at Faizpur in 1935, the Indian National Congress adopted a resolution on the agrarain programme which inter alia recommended that "fixity of tenure, with heritable rights, along with the right to build houses and plant trees should be provided for all tenants".[2] After the attainment of Independence, the Indian National Congress set up a high-powered committee with Jawaharlal Nehru as its Chairman to draw up a economic programme. That Commitee in its report, presented to the Congress President in 1948, made the following recommendations on agrarian reform :

> "All intermediaries between the tiller and the State should be eliminated and all middlemen should be replaced by non-profit taking agencies, such as co-operatives.
>
> "Land should be held for use as a source of employment. The use of lands of those who are either non-cultivating landlords or otherwise unable for any period to exercise the right of cultivating them, must come to rest in the village co-operative community subject to the condition that the original lawful holder or his successor will be entitled to come back to the land for genuine cultivation.
>
> "In the case of minors and the physically incapacitated persons, a share of the produce of the land should be given to them.
>
> "The maximum size of holdings should be fixed. The surplus land over such a maximum should be acquired and placed at the disposal of the village co-operative. Small holdings should be consolidated and steps taken to prevent further fragmentation."[3]

Later on a Committee headed by J. C. Kumarappa was set up in order to formulate, in more precise terms, the policy of Indian National Congress in the matter of land reform. The recommendations of that Committee provided the guidelines for the formulation of land reform policies in independent India. The Committee recommended that all intermediary interests should be abolished and that land should belong to the tiller. It also recommended that leasing of land should be prohibited except in the case of widows, minors, and other disabled persons. It further recommended that all tenants who had been cultivating lands continuously for a period of

six years should be granted occupancy rights. The Committee also suggested that the tenants should have the right to purchase the holdings at reasonable price to be determined by a land tribunal. All these recommendations were accepted by the Congress party.

The Indian National Congress at its 57th Session, held in Delhi on the eve of the first general election, passed an economic programme resolution which, among other things, said :

> "Land is the base of India's economy. The agrarian system should be so organised that the fruits of labour are enjoyed by those who toil and land is worked as a source of welfare for the community."[4]

After Independence, the Indian National Congress became the ruling party at the Centre. It is, therefore, not unreasonable to assume that the policy statements adopted by the party over the years would have provided the guiding principles in formulating land policy in independent India. As was to be expected, Indian economic planning laid considerable emphasis on land reform, right from the First Five Year Plan. We shall now examine how the national policy on tenancy reform was set forth in the first four Five Year Plans.

The first authoritative exposition of the national policy on tenancy reform is to be found in the chapter on Land Policy (Chapter 12) of the First Five Year Plan. While dealing with the question, the Plan divided the tenants-as-will into two categories : those cultivating land belonging to large landholders and those cultivating land belonging to small and middle owners. It was recommended that all landholders be allowed to resume tenanted land for personal cultivation. The recommendation regarding large landowners was that :

> "although a number of states have not yet imposed limits for future acquisition and for resumption for personal cultivation, we consider that the determination of these limits is an essential step in land reforms."[5]

While leaving it to the states to fix the exact limit up to which land could be resumed by large owners, the Plan recommended that, "broadly speaking, following the recommendations of the Congress Agrarian Reform Committee, about three

times the family holding would appear to be a fair limit for an individual holding". A family holding was defined as

> "being equivalent, according to local conditions and under the existing conditions of technique, either to a plough unit or to a work unit for a family of an average size working with such assistance as is customary in agricultural operations."[6]

In other words, the First Plan recommended that in the case of large landowners they be allowed to evict their tenants-at-will and bring under personal cultivation land up to the ceiling limit to be prescribed in the state. It was, however, suggested that tenants on non-resumable land be given occupancy rights on payment of a price to be fixed as a multiple of the rental value of land.[7]

Regarding small and middle owners, the Plan made the following recommendation :

> "The expressions small and middle owners cannot be defined precisely, but for most purposes, it might be sufficient to consider owners of land not exceeding a family holding as small owners and those holding land in excess of one family holding but less than the limit of resumption for personal cultivation (which may be 3 times the family holding) as middle owners. In the case of small and middle owners, the social considerations which apply are of a different order from those relevant to the circumstances of the large owners. The general aim of policy should be to encourage and assist these owners to develop their production and to persuade them to organise their activities, as far as possible on co-operative lines....
>
> "Lands belonging to small and middle owners may be divided into two categories, *viz*, those under direct cultivation and those leased to tenants-at-will. The problems which the former present are those of finance, technical assistance, and organisation of co-operative activity. As regards the latter, two considerations are important. In the first place any measures which are taken to protect the tenants of small and middle owners should be simple to administer and, as far as possible the problems which they raise should be solved at the village level by the people themselves. Secondly, care

should be taken to ensure that measures for the protection of small and middle owners do not operate seriously to reduce the movement of the people from rural areas into other occupations whether in towns or in villages... There is little to be gained by treating the leasing of land by small and middle owners as examples of absenteeism to be dealt with along the same lines as lands belonging to substantial holders which are cultivated by tenants-at-will. At the same time, steps will have to be taken to afford adequate protection to the tenants of small and middle owners."[8]

Thus the First Plan did not contemplate permanent and heritable rights being conferred on tenants of landowners owning land below the ceiling limit. Only very limited protection was envisaged for such tenants. The recommendation was :

"The central question to be considered in respect of tenants-at-will who are engaged in the cultivation of lands belonging to small and middle owners relates to the terms on which the latter may, resume land for personal cultivation. A distinction may be made between those small and middle owners who cultivate themselves and those who do not. Land could only be resumed for cultivation by an owner himself or by the members of his family. We suggest that resumption should be permitted on this ground for the number of family holdings not exceeding 3 which can be cultivated by the adult workers belonging to an owner's family with the assistance of agricultural labour to the extent customary among those who cultivate their own land. A period may be prescribed—five years for instance—during which an owner may resume for personal cultivation. If he fails to do so during this period, the tenant should have the right to buy the land he cultivates on terms similar to those suggested earlier for the tenants of the larger landholders.

The rights of tenants who cultivate the lands of small and middle owner's need to be defined. The two principal questions to be considered relate to the period of tenancy and the rent which the tenant may have to pay. We suggest that the tenancy should ordinarily be for 5 to 10 years and should be renewable, resumption being permitted, as suggested earlier, if the owner himself wishes to cultivate. As regards the determination of

> rent, in recent years in various states, rents have been steadily reduced..... While it is difficult to suggest a generally applicable maximum rate of rent, over the greater part of the country a rate of rent exceeding one-fourth or one-fifth of the produce could well be regarded as requiring special justification."[9]

Thus the policy laid down in the First Five Year Plan was that large landowners could resume land for personal cultivation upto the ceiling limit and tenants would acquire permanent and heritable rights in land over and above the ceiling limit. As it was open to the landowner to choose the plots that he would bring under personal cultivation he could threaten all his tenants and thus, all tenancies would be rendered insecure. Landowners owing land below the ceiling limit could, within a period of five years, resume land for personal cultivation. So all their tenants would be in a precarious position for 5 years. The term 'personal cultivation' was to be defined as cultivation either by the owner himself or other members of his family with the assistance of agricultural labourers.

In the case of tenants of small and medium landowners, only in the event of the landowners failing to resume land for personal cultivation within five years would tenants acquire permanent and heritable rights. The definition of personal cultivation not being rigid, it would be easy for most small and medium landowners to resume all the tenanted land. The only safeguard suggested in the Plan for the tenants of such landowners was that tenancy should be for periods of five to ten years and that rent should not exceed the level of one-fourth to one-fifth of the gross produce.

With the threat of resumption for personal cultivation hanging over the heads of all tenants there was no basis for hoping that the recommendations in the Plan regarding fixity of tenure and fairness of rent would become really effective. Thus the bold pronouncement on the eve of the first general election that "the agrarian system should be so organised that the fruits of labour are enjoyed by those who till the land", was considerably watered down while being incorporated in the Plan document.

SECOND FIVE YEAR PLAN

While formulating the Second Five Year Plan, it was recognised that the efforts towards reform of tenancy had failed to confer any measure of security on tenants. It was found that

there had been large scale ejectment of tenants under the guise of 'voluntary surrender' of tenancy. The Second Plan diagnosed "the ignorance on the part of the people of legislative provisions regarding security of tenure, possible lacunae in the law, inadequate land records and defective administrative arrangements"[10] as the main causes for the ejectment of tenants. It was, therefore, suggested that voluntary surrenders should become valid only after ratification by prescribed revenue authorities. It was also realised that it would not be possible to afford effective protection to tenants unless the expression 'personal cultivation' was more rigidly defined. In all the state laws, 'personal cultivation' included cultivation through servants or hired labour, but there were variations in respect of the nature of supervision and the mode of payment to servants or hired labourers. With a view to bringing about a degree of uniformity in the definition of the term 'personal cultivation', the following recommendation was made in the Second Plan :

> "Personal cultivation may be said to have three elements, *viz,* risk of cultivation, personal supervision, and labour. A person who does not bear the entire risk of cultivation or parts with a share of the produce in favour of another cannot be described as cultivating the land personally. The expression 'personal cultivation' may include supervision by the owner or by a member of his family. In order to be effective, supervision should be accompanied by residence during the greater part of the agricultural season on the part of an owner or a member of his family in the village in which the land is situated or in a nearby village within a distance to be prescribed. As an element in personal cultivation, the performance of minimum labour, though agreed in principle presents difficulties in practice. It is, therefore, suggested that the expression 'personal cultivation' should be defined so as to provide for the entire risk of cultivation being borne by the owner and personal supervision being exercised in the manner described above by the owner or by a member of his family. When land is to be resumed for personal cultivation, however, the desirability of providing also for the third element in personal cultivation, *viz,* personal labour, may be considered. If the land is not brought under personal cultivation or is let out within a period to be specified, the ejected tenant may have the right of restoration."[11]

The Plan went on to suggest that "existing legislation should be re-examined in terms of the definition of 'personal cultivation' set out above, and suitable action should be taken to confer tenancy rights on individuals who have in the past been treated merely as labourers or as 'partners in cultivation'. Because the definition of 'personal cultivation' has been generally defective in the past, a number of crop-sharing arrangements which have all the characteristics of tenancy are not recorded as such and crop-shares are denied rights allowed to tenants".[12] The Second Plan defined 'personal cultivation' with greater precision. The recommendation was, however, generally ignored by the state governments and it was not fully incorporated in any tenancy law.

From the tenants' point of view, the most pernicious provision was the landowners' right of resumption of tenanted land for personal cultivation. After considering the different aspects of the question, the Second Plan held that "on general grounds it is accepted that resumption of land for personal cultivation should be permitted.[13] It was not explicitly stated what exactly were those 'general grounds'. In the context of the social, economic, and political conditions prevailing in the country, it was perhaps inevitable that such a right should have been allowed to landowners. Having accepted the principle that the right of resumption should continue, the Second Plan proceeded to tackle the problem of affording protection to tenants. An attempt was made to reconcile the conflicting interests of landowners who wished to resume land for personal cultivation and of tenants who hoped to acquire permanent rights. The following was the prescription given in the Second Plan :

> "The economic circumstances of small owners are not so different from those of tenants that tenancy legislation should operate to their disadvantage. It is desirable that small owner wishing to resume land for personal cultivation should be permitted to do so. At the same time, it is difficult to disregard the position of the tenant. There is a consensus of opinion that owners with very small holdings should be permitted to resume their entire area. The limit may be set at what is described as a 'basic holding'. The expression 'basic holding' is employed in legislation relating to the prevention of fragmentation which generally defines the minimum area needed for profitable cultivation. For practical purposes it may be convenient to assume that a family holding is made

up, say, of three "basic holdings". Thus owners with less than one-third of a family holding, may be free to resume their entire area for personal cultivation. As regards owners whose holdings lie between a basic holding and a family holding the recommendation is that they should be permitted to resume for personal cultivation one-half of the area held by the tenant, but in no event less than a basic holding. Where tenants are left without any land or with areas smaller than a basic holding, the suggestion is that the Government should endeavour to find land for them so as to bring the tenancy to the level of a basic holding. To an extent this effort would be facilitated when ceilings are imposed and areas in excess of the ceiling become available.

"In the case of owners whose holdings fall between one family holding and the limit prescribed for resumption for personal cultivation the main consideration is that a minimum area should always be left with the tenants. What this minimum should be would depend upon the area of land which an owner has under personal cultivation. It is proposed that :

(1) Where the land-owner has under his personal cultivation land which exceeds a family holding but is less than the ceiling limit, he may have the right to resume land for personal cultivation, provided that his tenants is left with a family holding and the total area obtained by the owner together with the land already under his personal cultivation does not exceed the ceiling ;

(2) If the land-owner has less than a family holding under his personal cultivation, he may be allowed to resume one-half of the tenant's holding or an area which, together with land under his personal cultivation makes up a family holding, whichever is less, provided that the tenant is left with not less than a basic holding.

It is desirable that the area which the land-owner is entitled to resume should be demarcated as speedily as possible. A reasonable period, say six months, should be prescribed within which the land-owner should apply for such demarcation and the resumable and non-resumable

areas should be determined by revenue authorities in an equitable manner. In areas in execess of the limit of resumption for personal cultivation, tenants should have continuing and heritable possession. They should also have limited rights of transfer which would enable them to obtain loans on the security of land from Government and from co-operative societies. Tenants of lands liable to resumption for personal cultivation should have heritable (but not permanent) rights and the right to make improvements. It is also desirable to prescribe a period within which the right of resumption may be exercised so that hereafter rights of ownership may be conferred on the tenants. For this purpose, the period of five years contemplated in the First Five-Year Plan appears to be sufficient. In the case of small owners it is not necessary to prescribe a period during which resumption for personal cultivation should necessarily take place."[14]

All these meticulous exercises in hair-splitting and verbal jugglery inspired by a solicitude for the so-called 'small owners' and an anxiety to balance nicely the conflicting interests of landowners and tenants, seem to have been undertaken ignoring the realities of the power equation in the Indian countryside and the character and capability of the administrative machinery. With the connivance of a corrupt and pliable revenue administration, most big landlords would pass as 'small owners' the right to resume a part of the tenanted land would lead to the eviction of most tenants, and even land-owners living hundreds of miles away from their land would succeed in proving the factum of personal cultivation. The basic fact is that the policy of 'land to the tiller' could not have been carried out without hurting private property rights. But the policy-makers were unwilling to wound and afraid to strike.

The Second Plan reiterated the proposal in the First Plan that fair rent should be reduced to the level of 20 to 25 per cent of the gross produce. The Second Plan went on to suggest that produce rent should be commuted into cash rent and that preferably the maximum rent should be fixed as a multiple of land revenue. The Plan also suggested that tenants of non-resumable areas should be enabled to purchase ownership rights by paying purchase price fixed at a reasonable level. The purchase price should be payable in instalments which might be so fixed that, inclusive of land revenue, the

burden on the tenant did not exceed 20 to 25 per cent of the gross produce.

THIRD FIVE-YEAR PLAN

After reviewing the steps taken in the different states in the field of tenancy reform, the Third Plan made this telling understatement :

> "the impact of tenancy legislation on the welfare of tenants has been in practice less than was hoped for"[15]

The reasons for this state of affairs were diagnosed, as the failure of the states to enact legislation for regulating the so-called 'voluntary surrenders' and for defining 'personal cultivation' in the manner recommended in the Second Plan and the free exercise of the right of resumption by landowners. It was suggested that the conditions under which resumption would be allowed should be made more stringent. Accordingly, the following recommendation was made :

> "Experience of the working of legislation relating to resumption on grounds of personal cultivation leads to certain broad conclusions. In the first place, whatever the conditions, the right to resume land creates uncertainty and tend to diminish the protection afforded by the legislation. Both in the First and in the Second Plan, it was contemplated that it would not be necessary to allow resumption beyond a period of five years. It is considered that except for owners holding land equivalent to a family holding or less, in view of the period which has already elapsed there should be no further right of resumption. Further uncertainty for tenants would not be in the interest of agricultural development. In the second place, small owners, that is, owners with a family holding or less, deserve special consideration. As suggested in the Second Plan, owners with less than a basic holding (that is, one-third of a family holding) should be free to resume their entire area for personal cultivation and to lease out their lands. As reards owners whose holdings lie between a basic holding and a family holding, they may be permitted to resume for personal cultivation, within a specified period, one-half of the area held by the tenant but in no event less than a basic holding. Where a tenant is left without

any land or with area smaller than a basic holding, the Government should endeavour to find land for him to cultivate. The general aim should be to encourage small owenrs, and specially those among them with very small holdings, to enter into co-operative farming societies. Membership in a co-operative farming society would enable them to move to other work if they so desire. For such owners it would not be necessary to prescribe a period beyond which resumption for personal cultivation should not be permitted.

Provision regarding resumption for personal cultivation could be abused if medium-sized owners were to act *mala fide* and transfer their lands to relatives or others and so come within the definition of small owners. With a view to ensuring that the provisions for resumption are observed, legislation in Gujarat and Maharashtra was amended in 1957 so as to restrict resumption in respect of such land as stood in the name of a land holder or any of his ancestors in the record of rights on the first day of January 1952. In the legislation in Kerala, which includes special provision for small holders, it has been provided that any transfers or partitions carried out after the 18th day of December 1957, shall not entitle the land holder or the transferee to the benefit of the provisions for small holders. A condition on these lines would be generally desirable."[16]

The Third Plan reiterated that the final goal should be to confer rights of ownership on as large a body of tenants as possible. It was suggested that the objective of providing ownership rights to tenants may be achieved in one of the following three ways :

"(1) by declaring tenants as owners and requiring them to pay compensation to owners in suitable instalments, responsibility for recovering unpaid instalments as arrears of land revenue being accepted by Government;

(2) through the acquisition by Government of the rights of ownership on payment of compensation and transfer of ownership to tenants, compensation being recovered from them in suitable instalments; and

(3) through the acquisition by Government of the landlord's rights and bringing tenants into a direct rela-

> tionship with the State, option being given to tenants to continue as such on payment of fair rent to the Government or to acquire full ownership on payment of the prescribed compensation."[17]

The Third Plan made a specific recommendation that, before the end of the Plan, steps should be taken to complete the programme for conferring rights of ownership on the tenants on non-resumable land. It was suggested that this could be achieved either by the state acquiring the rights of ownership and transferring such rights to tenants or by declaring tenants as owners and requiring them to make payments in instalments. The Plan went on to add that the better arrangement would be to provide for direct payment by tenants to Government rather than to owners, as this would put an end to the landlord-tenant nexus.

Regarding the right of ownership to tenants in respect of land owned by small owners, the Plan did not make any new recommendation. Though it was considered desirable, in principle, that tenants of non-resumable land of small holders should also be conferred rights of ownership, it was thought that :

> "In view of the large number of petty owners involved, a uniform approach might not be feasible".[18] It was, therefore, suggested that: "the problem should be studied by States in the light of their conditions with a view to determine the action called for in this direction".[19]

FOURTH FIVE-YEAR PLAN

While formulating the Fourth Plan it was realised that, even after years of tenancy reform, the position of tenants-at-will continued to be extremely precarious. The Plan says :

> "It has been observed that under the present arrangement of informal tenancy and share-cropping, the landlord considers it unwise to invest in improving his land; likewise, the share-cropper or the tenant is either unable or reluctant to invest in inputs like fertilisers. The insecurity of tenancy has not only impeded the widespread adoption of the highyielding varieties but in some cases led to social and agrarian tensions. In the present context, therefore, it is essential that a cultivating tenant or

a share-cropper should have effective security of tenure of the land he cultivates and the existing tenancies declared non-resumable and permanent."[20]

In order to provide security of tenure to tenants and sub-tenants, the Plan proposed that the following measures be taken :

"(a) To declare all tenancies non-resumable and permanent (except in cases of landholders who are serving in the defence forces or suffering from specified disability);

(b) Where resumption has been permitted and where applications have already been made arrangements for quick disposal of such applications; where there is likelihood of large number of evictions as a result of resumption, for further restricting it with a view to reducing the number of cases of resumption;

(c) Regulation of 'voluntary surrenders' prohibiting landowners from taking possession of land at present tenanted and empowering the Government or local authority to settle other tenants, thereon;

(d) Provision for complete security of tenure in respect of homestead lands on which cultivators, artisans and agricultural labourers have constructed their dwelling houses;

(e) Implementation of legislation relating to security of tenure to sub-tenants and ensuring that the provisions of law are not circumvented by the landlords;

(f) Provision for penalty for wrongful evictions."[21]

Regarding the creation of tenancy in future, the Plan recommended that leasing-out should be permitted in furture only in special cases such as a person suffering from disability or in case a person joins the defence services. In such cases, the tenancy should be for a period of three years at a time subject to renewal unless the disability ceases. In case the person belongs to the defence services, it is recognised that he should be able to take possession of the tenanted land without any delay."[22]

II

Review of Legislation and Implementation

Three important guidelines were laid down in the Five-Year Plans for the reform of tenancy. As we have already seen, these broad guidelines were :

First, that rent should not exceed the level of one-fifth to one-fourth of the gross produce;

Secondly, the tenants should be accorded permanent rights in the land they cultivate subject to a limited right of resumption to be granted to land owners; and

Thirdly, that in respect of non-resumable land the landlord-tenant relationship should be ended by conferring ownership rights on tenants.

Now we shall examine the extent to which these guidelines have actually been adopted in the state legislation on tenancy reform and the manner in which the laws have been implemented.

REGULATION OF RENT

All states have enacted legislation for regulating the rent payable by cultivating tenants. Fair rent has been fixed at levels not exceeding those suggested in the Plans in all states except Punjab, Haryana, Jammu and Kashmir, Tamil Nadu, and the Andhra area of Andhra Pradesh. In Punjab and Haryana, fair rent is one-third of the gross produce. In Jammu and Kashmir, for tenants of land owners holding above 12.5 acres fair rent is one-fourth of the gross produce for wet-lands and one-third for dry lands. However, in the case of tenants of landowners who own less than 12.5 acres of land, fair rent is one half of the gross produce. In Tamil Nadu fair rent is 40 per cent of the gross produce for irrigated lands, 35 per cent where irrigation is supplemented by lift irrigation, and 33.33 per cent in other cases. In the Andhra area of Andhra Pradesh the maximum limit has been put at 30 per cent of the gross produce for irrigated land and 25 per cent for dry land.

The procedure prescribed under several tenancy laws for the fixation of fair rent is rather protracted. In a few states, the procedure has, however, been simplified by providing for fixation of fair rent in multiples of land revenue. Thus in Madhya Pra-

desh, fair rent has been fixed at 2-4 times the land revenue depending upon the classification of land. In Gujarat and Maharashtra, fair rent is not to exceed one-sixth of the gross produce or 3 to 5 times the land revenue, whichever is less. In Rajasthan, fair rent is fixed at one-sixth of the gross produce, and in case of cash rents, at twice the land revenue assessment. Experience has shown that the most satisfactory arrangement is to fix fair rent in multiples of land revenue, and where, for any reason, it is not feasible to do so, to fix specified amounts for different classes of land in different areas.

It has been found that the provisions regarding fair rent are effective only for tenants who actually enjoy security of tenure. This is so because, where there is no security of tenure, the tenant who asks for the fixation of fair rent faces the risk of immediate ejectment. Even where the law provides for security of tenure, it is extremely difficult for tenants to claim tenancy rights successfully because most of the leases are oral and informal. At the 1981 Census it was estimated that about 82 per cent of the tenancies in the country were insecure. Since 1961, there has been significant improvement in the conditions of such insecure tenants only in a few areas. Hence the majority of the existing tenants have not derived much benefit from the provisions in the tenancy laws for fixing fair rent. This assessment is supported by the author's personal observation in different parts of the country. Though the Bihar Tenancy Act fixes the landowner's share at 25 per cent of the gross produce, the writer knows from his personal experience spread over a period of two decades in that state that the share-croppers invariably have to hand over one-half of the gross produce to the landlords.

In the course of field visits in the Balasore District of Orissa in March 1972, it was observed that there too the share-croppers were giving 50 per cent of the produce to the landowners. Even in a village, not far from Calcutta, where the peasantry was politically conscious, it was found in 1971 that the share-croppers were giving one-half of the produce to the landowners. All the share-croppers knew that under the law they were required to hand over only 25 per cent of the produce to the landowners. On being questioned, the share-croppers said that if they insisted upon their rights under the law and refused to hand over half the produce to the landowners, they would be thrown out of the land and the administration would not be able to protect them. There were many people in the village willing to take up cultivation of the land and share the produce with the landowners in

the ratio of 50 : 50. It is not only in Eastern India that the produce continues to be shared between the share-cropper and landlord in the ratio of 50 : 50. In a village situated only about 20 miles from Bangalore it was observed that the share-croppers were invariably giving one-half of the produce to the landowners though under the law the maximum rates of rent were 20 to 25 per cent of the gross produce. Some share-croppers were even ignorant of the provisions of the law. These facts go to show that the provisions regarding fair rent have remained largely unimplemented in most parts of the country as far as share-cropping tenants are concerned.

SECURITY OF TENURE

The second important guideline laid down in the first three Five-Year Plans was that tenants should be accorded permanent rights in the lands leased in by them subject to a limited right of resumption to be granted to landowners. In accordance with this guideline, laws have been enacted in most of the states for conferring security of tenure on tenants. The degree of protection actually available to the tenants in any particular area depends upon the following important factors :

(a) Definition of the term 'tenant';

(b) The circumstances in which landowners are allowed to resume tenanted land for personal cultivation;

(c) Definition of the term 'personal cultivation';

(d) Provisions for regulating 'voluntary surrender' of tenancy; and

(e) Status of land records.

Persons who cultivate the land of others on payment of rent in cash or kind are treated as tenants in all the tenancy laws in the country. In some states, the status of tenant has not however been accorded to share-croppers who pay rent by the division of the produce. In Uttar Pradesh, it has been laid down that "any arrangement whereby a person is entitled to a right merely to a share in the produce grown on land in consideration of such person assisting or participating with the tenure holder in the actual performance of agricultural operation is not a lease". Thus share-croppers (locally known as 'Sajhis') are not treated as tenants in that state. In West Bengal, on the abolition of Zamindari, landlords were not allowed to resume lands held by raiyats or under-raiyats. Share-croppers (known as 'Bargadars'

in West Bengal) were not, however, treated as underraiyats and no protection was extended to them until July 1970 when the West Bengal Land Reforms Act was amended to accord limited protection to 'Bargadars'. In the other states, the definition of 'tenant' is wide enough to include share-croppers also. The bulk of the insecure tenancies in the country are informal crop-sharing arrangements. The first necessary step in affording protection to the share-croppers is to amend the tenancy law, where necessary, to bring them within the definition of the term 'tenant'.

On the abolition of Zamindari in Uttar Pradesh and West Bengal, landowners were not allowed to resume any tenanted land, and the then existing tenants were given permanent and heritable rights in the lands that they had been cultivating. As already pointed out, in both the states, however, share-croppers were not treated as tenants; hence, the landlords could, under the law, resume all the land cultivated through share-croppers.

A limited right of resumption was allowed to landowners in all the other states. In Gujarat, Jammu and Kashmir, Kerala, Madhya Pradesh, Maharashtra, Karnataka, Orissa, and Rajasthan, landowners were allowed to exercise the right of resumption within a limited period; and in all those states the prescribed period has ended. The landowners enjoy a continuing right of resumption in Assam, Bihar, Haryana, Punjab, Tamil Nadu and West Bengal (in West Bengal in respect of land leased to 'Bargadars').

In a few states the landowners were permitted to resume land right upto the ceiling limit, while in others the maximum area that could be resumed was fixed well below the ceiling limit. Thus, in Bihar, Haryana, Orissa, Punjab and Rajasthan, the landowners were allowed to resume land upto the ceiling limit, whereas in the other states the maximum area that could be resumed was fixed below the ceiling limit.

In several states the law provided for a minimum area of land to be left with the tenant on the landlord being allowed to exercise the right of resumption. In Kerala, Orissa, Gujarat, Himachal Pradesh, Maharashtra, Karnataka, and Tamil Nadu, the law provides for one-half of the tenanted land being left with the tenant. The Bihar law provides that, in the case of a landowner having land in excess of the ceiling area, on resumption, 5 acres or half the area leased, whichever is less, shall be left with the tenant. In West Bengal, the area to be left with the bargadar is one hectare or the actual area under cultivation, whichever is less. In Assam, Punjab, and Haryana, a minimum area of land

is to be left with the tenant until alternative land is allotted to him.

Special provisions have been made in respect of small holders in Bihar, Jammu and Kashmir, Karnataka, the Vidarbha and Marathwada areas of Maharashtra, and the Telengana area of Andhra Pradesh. Under the Bihar law a small holder has been defined as a person holding not more than 5 acres of irrigated or 10 acres of other land. In Vidarbha a small holder is one who holds 7 to 40 acres of land, and in Marathwada one who has 2 to 24 acres of land. According to the Jammu and Kashmir law, a landowner whose monthly income does not exceed Rs. 500/- is allowed to resume up to 3 standard acres of land. In the Telengana area of Andhra Pradesh, a small holder is one who has 13 to 20 acres of land. Under the Bihar law, a tenant of a small holder cannot acquire occupancy rights and hence such tenants enjoy no security of tenure. In Karnataka, a continuing right of resumption has been accorded to landowners holding less than 4 standard acres of land. Under the laws governing the other areas referred to above, small holders were allowed to resume the entire area leased out to tenants.

There is no special provision regarding defence, personnel in the laws of Rajasthan and West Bengal. In Punjab and Haryana, even in the case of land owned by defence personnel, the tenant should, on resumption by the landowner, be left with 5 acres until alternative land is allotted to him. In the other states, defence personnel returning to civilian life have been allowed to resume tenanted land without being required to leave any minimum area with the tenant.

Most of these provisions regarding resumption of tenanted land were made in accordance with the recommendations in the Second Five-Year Plan. In course of time it was found that, even the limited right of resumption granted to landowners resulted in all tenures being rendered insecure and the tenants being harassed. Even where a limit was put on the area that a landowner could resume, he could threaten to exercise his right against any of his tenants. Consequently all tenancies were rendered insecure. Where tenancies are oral and informal, even a provision as in the Maharashtra law that the right of resumption should be exercised in strict chronological order beginning with the latest tenancy, is of little avail. For, in a situation in which it is extremely difficult to prove the very existence of the tenancy itself, it is almost impossible to prove the date of its cammencement. The experience of the last few years

has also shown that tenancies came to be created on land ostensibly resumed for personal cultivation. Keeping these facts in view, the Fourth Five-Year Plan recommended that all tenancies should be declared non-resumable except in the case of landowners who are serving in the defence services or suffer from a specified disability.

'PERSONAL CULTIVATION' AND 'VOLUNTARY SURRENDER'

Though there are minor variations in the definition of the term 'personal cultivation' in the various state laws, the interesting point about all of them is that in no law, does 'personal cultivation' mean what it should : viz., preparation of land for growing crops by one's own labour. In every tenancy law, the term 'personal cultivation' has been so defined as to include cultivation through servants or labourers provided they are remunerated in cash or kind, but not in crop share. No tenancy law made even personal supervision an essential requirement; supervision by any member of the family will do. Strangely enough, such supervision need not even be exercised by residing in or near the village where the land is located. The suggestion made in the Second Plan, that when a landowner was allowed to resume land for personal cultivation he should also be required to put in personal labour in cultivation the land was incorporated in the laws of only Manipur and Tripura. The term 'personal cultivation' having been defined in this loose manner, absentee landlords have had no difficulty at all in showing that they have been 'personally cultivating' their land. And, as was to be expected, the tenancy laws have not resulted in any appreciable reduction in the incidence of absentee landwonership.

Legislative and administrative efforts made in the years since Independence to extend security of tenure to tenants have been frustrated to a large extent by 'voluntary' surrender of tenancy rights by tenants. Many a landowner has successfully circumvented the tenancy laws and regained possession of tenanted land by 'persuading' his tenants to give up tenancy rights 'voluntarily'. The persuasion was, of course, often accompanied by threats and, in some cases, even the use of brute force. Most of the 'voluntary' surrenders were anything but voluntary. It is small wonder that living as they do in conditions of social and economic bondage, the tenants easily succumbed to the pressures applied by the landlords. When it was realised that such 'voluntary' surrenders tended to defeat the aim of tenancy legislation,

the following suggestions were made in the Third Five-Year Plan for regulating voluntary surrenders :

(a) Surrenders should not be regarded as valid unless they were duly registered with the revenue authorities; and

(b) even where the surrender was held to be valid, the landowner should be entitled to take possession of land only up to his right of resumption permitted by law.

Later it was found that even these suggestions did not go far enough. For, the landowners would continue to engineer 'voluntary' transfers as long as they could regain possession even of small areas of tenanted land. It became clear that surrenders could be effectively checked only if it was ensured that the landowners would have no incentive at all to coerce the tenants into surrendering tenancy rights. Accordingly, it was suggested in the Fourth Plan that no landowner should be allowed to regain possession of surrendered land that the Government should have the power to allot such land to eligible persons.

The suggestions made in the Third and Fourth Plans are yet to be acted upon by several state governments. No provision for regulating surrenders has been made in Haryana, Punjab, Tamil Nadu and Uttar Pradesh. As far as Uttar Pradesh is concerned, as long as 'Sajhis' are not treated as tenants, the incorporation of any provision for regulating surrender of tenancies will be of no avail. Provision has been made for the scrutiny of surrenders by the Revenue authorities in Andhra Pradesh, Assam, Bihar, Gujarat, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Tripura and West Bengal. However, the suggestion made in the Fourth Plan, that all surrenders should be in favour of the Government only, has been acted upon only in Gujarat, Himachal Pradesh, Kerala, Orissa, Karnataka and West Bengal. Thus, in several states, the provisions made for regulation of surrenders are inadequate and ineffective.

LAND RECORDS

The existence of correct and up-to-date records of tenancy rights is a pre-requisite for the effective implementation of ten-

ancy laws. A person will be able to prove that he is actually a tenant only if his name is inscribed in the record of rights. Though the importance of building up and maintaining correct and up-to-date land records has been emphasised in the Five-Year Plans, the fact remains that, in large parts of the country no record of tenancy exists and in areas where such records exist they are invariably incomplete and out-of-date.

In the states of Gujarat, Haryana, Himachal Pradesh Jammu and Kashmir, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, and Uttar Pradesh, the land records are expected to be kept up-to-date through annual revision. Though the names of the tenants are required to be entered in the relevant village records as a matter of fact, several names remain unrecorded. In many cases, the tenants do not insist on their names being recorded because of the danger of being evicted. Considering that the tenants are weak-socially and economically, that they are obliged to the landowners in many ways, and that in the context of the ever-increasing population pressure there is keen competition to lease in the available land, such an attitude on the part of tenants is not at all surprising. Another reason for not recording the names of tenants is that the subordinate functionaries of the Revenue Department often act in collusion with the landowners. In many areas, the annual revision is done in a perfunctory manner with the result that it serves little purpose. Thus even in areas where the records are required to be kept up-to-date, they are far from being complete or reliable.

In states like Andhra Pradesh, Assam, Bihar, Karnataka, Kerala, Tamil adu, Orissa and West eBngal there is no system of annual revision of record of rights. (Recently, Tamil Nadu and Bihar have enacted laws laying down the procedure for preparation of record of rights and according presumptive evidentiary value to such records.) The records are usually brought up-to-date only during resurvey and settlement. As these operations are usually done at very long intervals, the records remain out of date most of the time. Even when resurvey and settlement are undertaken, not much care is taken to record the names of tenants.

The absence of correct and up-to-date records of tenancy has been one of the main reasons for the unsatisfactory implementation of the enacted tenancy legislations. No significant improvement in the position can be expected unless this weakness is removed.

The policy prescription in the Five-Year Plans was that in respect of non-resumable land the landlord-tenant relationship should be ended by conferring rights of ownership on tenants. Several states have enacted laws accordingly.

There is no provision in the tenancy laws of Tamil Nadu or of the Andhra area of Andhra Pradesh for conferring rights of ownership on tenants. Sharecroppers, in Uttar Pradesh and West Bengal, cannot acquire rights of ownership in the land they cultivate. In Rajasthan, the tenants admitted to tenancy after 1961 have no security of tenure nor are they entitled to rights of ownership. Tenants of landlords who own land below the ceiling limit are not entitled to rights of ownership in Bihar, Punjab and Haryana. All the other states have enacted laws for the conferment of rights of ownership on tenants.

No estimate is available for the country as a whole of the total number of tenants who were entitled to purchase ownership rights under the various state laws, of the number of cases still pending, and of the number of tenants who have been ejected from their lands in accordance with the law. Such figures are, however, available for the state of Maharashtra, where the land records were in a better shape. A Committee set up by the Government of Maharashtra in 1968, for the evaluation of land reforms, reported that out of the 26 lakh tenants who were entitled to purchase ownership rights, only about 3.75 lakhs had acquired ownership rights by the time the Committee submitted its report. (Since then the figure has gone upto 11.18 lakhs.) The Committee also reported that "in most of the remaining cases the tenants lost the right to cultivate the leased land which returned to the owners". M. L. Dantwala and C. H. Shah, who studied the implementation of the Bombay Tenancy and Agricultural Land Act, 1948 (with amendments), in 36 villages spread over two districts of Maharashtra and one district of Gujarat have listed[23] the following nine reasons for the tenant losing the chance to acquire rights of ownership :

(i) his name does not appear in the village records, or

(ii) his land falls in the exempted category, or

(iii) his tenancy has been already terminated for his default, or

(iv) he has surrendered his interest in the land to the landlord, or

(v) the landlord has resumed land for personal cultivation or for non-agricultural use (so that only a part of the land can be claimed by the tenant), or

(vi) he does not appear before the tribunal at the time of hearing, or

(vii) his tenancy right is not established, and his case is, therefore, dropped, or

(viii) he declares his unwillingness to purchase the land, or

(ix) he defaults in the payment of the purchase price.

Dantwala and Shah found that, in the villages of Maharashtra covered by the study, for every two cases of effective purchase there was one case of ineffective purchase, because of the absence of the tenant at the time of enquiry or his unwillingness to purchase the land or his default in the payment of purchase price. In their view, the reason for such a large proportion of ineffective purchases was that the land would revert to the landowner when the purchase became ineffective. The landlords, therefore, had every reason to exert pressure on the tenants and make the purchase ineffective. It should not be forgotten that many more tenants lost the land under their cultivation for some of the other reasons listed in the previous paragraph. Even when all the cases are disposed of, probably not more than 50 per cent of the tenants who were entitled to purchase rights of ownership would acquire such rights in Maharashtra.

M. B. Desai's study of the implementation of the tenancy abolition law in the former Bombay area of Gujarat revealed[4] that, out of the 10,45,305 tenancy cases that existed on April 1, 1957 only 8,90,758 cases had been disposed of by April 1, 1964. In 3,14,838 cases, the existence of tenancy was denied. Tenants declined to purchase ownership rights in 56,503 cases, and in 41,183 cases tenants dropped out of the proceedings after having applied for ownership rights. By April 1, 1964, tenants had been permitted to purchase ownership rights in 3,95,111 cases.

Out of these, in 45,900 cases the purchase was eventually declared ineffective as the tenants failed to pay the purchase price. (According to the latest information available, there were in all 12.97 lakh tenants and ownership rights have been purchased by 7.73 lakh tenants). After considering all the aspects of the matter ,Desai came to the following conclusion:

> "The results of tenancy abolition, however, were not as expected. About half the area previously under tenancy passed into the ownership of their respective erstwhile tenants. About 12 per cent of the land held by 9 per cent of the tenants continued under recognised tenancy. A little over 2 per cent of the lands of tenants slipped from them in default of payment of compensation amounts. The rest were the cases in which the tenants either denied tenancy, surrendered their lands to the landowners or kept away from the hearings of the tribunals and, therefore, missed of their own volition to be owners of the land they cultivated on lease. Thus a sizeable tenancy escaped ownership under tenancy abolition."[25]

Adequate data are not available for a similar assessment of the implementation of the laws of the other states.

III

Some Policy Issues

The foregoing review reveals that tenancy reform has not been much of a success in this country. Such having been our experience during the last 25 years, the question arises whether there is any point at all in suggesting further refinement of policy. There is little doubt, as long as the tenants continue to be weak socially, economically and politically there will be significant improvement in the situation. But then, the possibility of strong organisations of tenants coming up in certain areas in the future cannot be ruled out. It is even possible that

in some regions the balance of political forces may shift in favour of the weaker sections of the population. Hence the efforts directed towards further refinement of policy are not entirely meaningless.

Another point that is, often made against the pre-occupation with the problems of tenancy is that only a very small portion of the total cultivated land in the country is under tenancy, and that, therefore, tenancy is not a question of any great importance in the overall context of Indian agriculture. This view would apparently get considerable support from the 1971 Agricultural Census. According to the preliminary data compiled recently, 91.53 per cent of the operational holdings in the country accounting for 91.90 per cent of the cultivated area are wholly owner operated. Wholly rented holdings account for only 4.02 per cent of the total number of holdings and 2.44 per cent of the cultivated area. Partly owned and partly rented holdings constitute 3.92 per cent of the total number of holdings and 6.08 per cent of the total area. It is however, necessary to bear in mind that the data collected at the last Agricultural Census regarding tenancy are not very reliable, because they were based entirely on the village records of rights. It is common knowledge that most of the tenancies are oral and informal and that few of the tenancies are recorded in the village records. The data collected on the basis of village records cannot, therefore, be a true measure of the actual incidence of tenancy.

How unreliable are the data obvious from the fact that Bihar, where the incidence of share-cropping is even now substantial, has the largest percentage of area under owner cultigation for any state, i.e. 99.60 per cent. In that state, according to the 1971 Agricultural Census, tenancies constitute only 0.22 per cent of the number of operational holding and 0.17 per cent of the number of operational holding and 0.17 per cent of the cultivated area. It is interesting to note that, according to the Census of India 1961[26] while the incidence of tenancy for the whole country was 23.56 per cent the figure for Bihar was 36.65 per cent. Knowledgeable persons familiar with field conditions in Bihar believe that even today there are districts where more than 30 per cent of the Cultivated area is under share-cropping. Though it is true that in the context of tenancy reforms all over the country, millions of tenants have lost possessions of the land they were cultivating, the bulk of those

evictions seem to have taken place before the 1961 census. It is also to be remembered that in several parts of the country, even after ousting the old tenants landowners have been in the habit of leasing out the land to new sharecroppers. Bearing these points in mind, it will not be unreasonable to assume that, even today, about 15 to 20 per cent of the cultivated land is under tenancy. In some districts of Eastern India the incidence of tenancy is much higher than that.

Thus tenancy continues to be a problem of crucial importance in some parts of the country; it is, therefore, unwise to ignore it. As a matter of fact, absentee land-ownership and the widespread incidence of share-cropping characterised by insecurity of tenure and extortionate rents continue to be two of the most formidable obstacles to the modernisation of agriculture in some parts of the country, particularly in Eastern India[27] Some policy issues which merit consideration are discussed below.

The first question to be considered is whether the policy of 'land to the tiller' is likely to be implemented faithfully. Strictly interpreted, the policy would mean that ownership rights in land should go to the persons who work on it as tenants or hired labourers. And, none should be allowed to own land unless he has also been cultivating it by his own personal labour. The effective implementation of such a policy will result in the transfer of ownership rights in land from millions of landowners belonging to the so-called upper castes, who have traditionally been averse to any kind of manual labour. In the context of the objective conditions prevailing in the country at present there is no basis or hoping that such a policy will be effectively implemented. It will be much more practical and worthwhile to look at the entire problem of tenancy reform from the limited, short-term point of view of stepping up agricultural production. From this angle, a sharp distinction can be drawn between absentee landowners and those landowners who live in the village and carry on cultivation under their personal supervision. The absentee landowners take little or no interest in cultivating their land. They usually lease out their land to share-croppers or get it cultivated under the supervision of a manager or a relative through hired labourers. Generally, such farms are operated at a low level of efficiency. On the other hand, many of the landowners who live in the village and personally supervise the

cultivation of their land maintain much higher standards of efficiency. They bear the entire risk of cultivation, make the investment decisions, use their own or borrowed funds and often take keen personal interest in maintaining a high level of operational efficiency. The aim of policy should be to put an end to absentee land ownership and at the same time encourage owner-cultivators to raise output by putting their land to the best possible use.

The attainment of the above objective will be facilitated if the definition of personal cultivation is suitably revised and the amended law is strictly enforced. As recommended by the Planning Commission Task Force, the definition of the term 'personal cultivation' may be amended so as to provide for the compulsory residence of the landowner or a member of his family (the term 'family' being defined as in the ceiling law) in the village in which the land is located or an adjacent village. It may also be provided that all transfers of agricultural land in future should be only to persons who reside in the same village in which the land is located or in an adjacent village. The implementation of these provisions will, indeed, be very difficult. But the problem can be reduced to manageable proportions if in accordance with the suggestion made later on in this paper small landowners who own less than 5 acres of land are legally permitted to lease out their land. With the strict enforcement of these provisions the absentee landowners will be compelled to give up their lands. Such land may be taken over by Government and distributed to eligible categories of persons. The effective enforcement of such a law will probably make more land available for redistribution than is likely to become available on the enforcement of the present ceiling laws.

The amendment of the law on the above lines and its enforcement will help to put an end to absentee landownership. The problem of inefficient management of land owned by some indolent resident landowners will however, remain. Where such landowners have leased out their land to share-croppers the problem can be tackled by identifying the share-croppers and conferring on them ownership rights. There are, however, many resident landowners who, in the wake of tenancy reform, have started cultivating the land themselves or through wage labour, yet carry on cultivation in an indifferent manner. This problem can be tackled only if a law is enacted requiring individual landowners to conform to certain minimum standards of efficiency.

A suggestion to enact such a law was made in the First Five Year Plan, and reiterated in the Second Plan. Certain broad principles on which such legislation should be enacted were indicated in the Second Five Year Plan. The Third Plan made only a brief reference to the subject. There is, however, no mention of the subject in the Fourth and Fifth Plans. Nothing seems to have been done in pursuance of the suggestion made in the Five Year Plans. In 1972, Sri Lanka enacted a law requiring owners or occupiers of agricultural land to conform to certain minimum standards of efficiency. Where the owner or occupant of the land fails to conform to the requirements of the law, provision has been made for the taking over of such land by Government. The question of enacting a law to enforce minimum standards of cultivation on individual landowners, and for penalising them by depriving them of their land if they fail to conform to these standards, merit serious consideration. In spite of the obvious difficulties in enforcing such a law, the matter is worth pursuing. Effective action against a few landowners who neglect the cultivation of their land will have a salutary effect.

Another important question of policy which calls for careful consideration is : whether or not, tenancies should be allowed to be created in future. The recommendation in the First Five Year Plan document was that landowners who owned land below the ceiling limit should be allowed to lease out their land. That suggestion was based on the view that "voluntary movement of villagers into other vocations has considerable advantage for the development of rural economic life, especially in conditions in which those who go out of the village for work retain their village roots and are encouraged to maintain an active sense of obligation towards the village community of which they continue to be members".[91]

The view taken in the Second Five Year Plan was that "complete prohibition of leases introduces a degree of rigidity in the rural economy and is difficult to enforce administratively".[92] It was accordingly suggested that persons serving in the armed forces, unmarried women, widows, minors, and persons suffering from mental or physical infirmities, should be permitted to lease out land and should have the right to resume for personal cultivation when the disability ceases.[93] No specific recommendation was made in the Second Five Year Plan regarding small

owners being allowed to lease out land. However ,while dealing with the right of resumption to be granted to landowners, it was suggested that a period should be prescribed within which all landowners other than small owners should be required to resume land for personal cultivation. Regarding small owners the suggestion was that "It is not necessary to prescribe a period during which resumption for personal cultivation should necessarily take place.[31] Apparently, the intention was that small owners should be allowed to lease out their land in future.

The Third Five Year Plan only reiterated the recommendations made in the Second Plan. The policy formulation in the Fourth Five Year Plan was "It is proposed to permit leasing in future only in special cases such as of a person suffering from disability or in case a person joins the defence services. In such cases, the tenancy would be for a period of three years at a time subject to renewal unless the disability ceases."[32] On the ground that past experience showed how difficult it was to regulate tenancies, the Planning Commission's Task Force on Agrarian Relations recommended that "leasing out should be permitted only in such rare cases like physical disablity, service in the defence forces etc. Even in such cases, all contracts of tenancy should be in writing and should be for fixed periods and when the landowner resumes the land a part of the tenanted land should be left with the tenant if he has no land of his own."[33] This recommendation has been incorporated in the Draft Fifth Five Year Plan document.[34]

Past experience, no doubt confirms that in the conditions existing in India it is extremely difficult to regulate tenancies. At the same time, it has also been the experience of the states that prohibited or severely restricted leasing out of land, that informal and oral tenancy arrangements continue to be made in a clandesine manner in violation of the law. The restrictions on leasing out of land have only resulted in tenancies being pushed underground. So long as a class of landowners who are reluctant to engage in manual labour and a vast army of landless agricultural labourers and marginal peasants co-exist, any legal ban on tenancy in the Indian rural society will remain a dead letter. And, in a situation in which employment opportunities are not expanding commensurate with the rise in population, the landowners will even be able to push up further their share of the produce. In the circumstances in which we are placed at present, it is unrealistic to expect that any ban on tenancy will be effective.

Apart from the fact that a total ban on creation of tenancies will be unworkable, there are also serious doubts about the advisability of completely prohibiting leasing out of land. One of the weighty reasons advanced against such a ban is that it will seriously hamper the mobility of labour. As A. M. Khusro has put it : In India in the 1970s, when one expects a great deal of transfer of population from agricultural to urban areas, thanks to the process of industrialisation, many small people in the country are destined to leave their lands and move out into the cities in search of gainful, high wage employment. Given the uncertainties of finding a job, if rural people, particularly small man, are forced to sell their lands, rather than lease them out for the time being, a great loss of welfare can be demonstrated to occur. It should not be an objective of agricultural policy to make it difficult for people to adjust their occupations and to improve their mobilities. Permission to lease out one's land is an important aspect of the mobility of labour."[35]

A complete ban on future tenancies will also adversely effect social mobility. In a traditional agrarian society such as ours, most landless workers yearn to become tenants and eventually own a piece of land. This kind of upward movement on the agricultural ladder will not be open to those at the bottom of the society if tenancies are completely prohibited.

Considering the pros and cons of the question, the balance of convenience seems to be in favour of allowing small landowners to lease out their land subject to the following conditions :

(a) a small land owner may be defined as one who owns less than five acres of land.

(b) the leases should be for periods of five years and there should be provision for six months' notice if the lease is to be terminated at the end of five years. In the absence of such notice, the lease should be automatically renewed for further periods of five years.

(c) all lease deeds should be reduced to writing and lodged with the Gram Panchayat.

(d) the rent payable should not exceed one-fourth of the gross produce and it may be fixed in cash for different categories of land in different areas. In a year of serious failure of crops, the tenant should have the option to pay the rent by sharing the produce.

(e) If any landwoner leases out his land in violation of these conditions, penal action should be taken against him and ownership rights should be conferred on the tenant.

IV

Conclusion

The review of policy, legislation and implementation, made in this paper, leads to the conclusion that in the field of tenancy reform performance has lagged far behind promise. We have seen how the anxiety to preserve private property rights and the lifestyle of the parasitic upper classes of the rural society who loath any kind of manual labour, led to a certain ambivalence in policy.

The laws enacted by many states fell short of loven that diluted policy. And finally as noted by the Planning Commission's Task Force the implementation of the enacted laws has been half-hearted, halting, and unsatisfactory, in large parts of the country". In the circumstances, tenancy reform failed to usher in substantial changes in the outmoded agrarian structure. Even so, we cannot afford to give up tenancy reform as a lost cause, because in several parts of the country absentee landownership and share-cropping tenancies constitute two of the most formidable obstacles in the path of the modernisation of Indian agriculture. Keeping in view the supreme need to combat successfully these twin evils, and also bearing in mind the social, economic and political conditions that exist in the country at present, certain modifications of policy have been suggested in this paper.

While every effort should be made to amend the laws on the lines suggested and remove the shortcomings and loopholes that exist in them, what is infinitely more important is to enforce strictly the existing laws. In the sphere of implementation, a matter of the foremost importance is to build up quickly tenancy records and maintain them up-to-date by periodic verification. In the states in which the records have not been accorded presumptive evidentiary value, laws should be enacted on the lines of the recent enactments of Tamil Nadu and Bihar. The entire administrative machinery should be geared to carry out a drive for identifying tenants and recording their names. Organisations of tenants and, where such organisations do not

exist ad-hoc committees of tenants should be associated with the work of preparation of record of rights. If the work is taken up seriously and executed vigorously it should be possible so complete it in two seasons. Thereafter, all tenants who were in possession on a specified date may be declared owners. As provided in the latest law of Himachal Pradesh, ownership rights may be conferred on tenants in respect of a minimum area without their being required to submit petitions or pay any compensation. Such a step will benefit millions of small peasants. As suggested in the Fourth and Fifth Five Year Plans, all rights of resumption should be done away with. Tenancy may be allowed in future, subject to the condition suggested in this paper.

Most of the tenants are extremely poor and have no access to credit and other inputs. Security of tenure, by itself, will be of little avail unless necessary supporting facilities are extended to all tenants. While identifying beneficiaries under the special schemes like the Small Farmers' Development Agency and Command Area Development, special care should be taken to include in the list all tenants. Special efforts will also be necessary to ensure that they get credit from cooperative institutions and banks. All these steps will not usher in the milennium for the poor peasantry. But, if honestly implemented, these steps will lead to a substantial improvement in the poor peasants' present condition. Hopefully, action on these lines will also result in the removal of some of the obstancles to the modernisation of Indian Agriculture.

Notes

1. H. D. Malviya, Land Reforms in India, All India Congress Committee, New Delhi, p. 59.
2. *Ibid*, p. 64.
3. *Ibid*, p. 80.
4. *Ibid*, p. 94.
5. Government of India, Planning Commission, First Five Year Plan, p. 188.
6. *Ibid*, p. 189.
7. *Ibid*, p. 190.
8. *Ibid*, pp. 190—192.
9. *Ibid*, pp. 182-193.

10. Government of India, Planning Commission, Second Five Year Plan, p. 185.

11. *Ibid*, p. 186.

12. *Ibid*, p. 186.

13. *Ibid*, p. 187.

14. *Ibid*, pp. 188-189.

15. Government of India, Planning Commission, Third Five Year Plan, p. 224

16. *Ibid*, pp. 226-227.

17. *Ibid*, pp. 227-228.

18. *Ibid*, p. 228.

19. *Ibid*, p. 229.

20. Government of India, Planning Commission, Fourth Five Year Plan, p. 177.

21. *Ibid*, p. 177.

22. *Ibid*, p. 179.

23. M. L. Dantwala and C. H. Shah Evaluation of Land Reforms, Volume 1, Department of Economics, University of Bombay, p.33.

24. "Tenancy Abolition and the Emerging Pattern in Gujarat"—M. B. Desai, Department of Agricultural Economics, M. S. University of Baroda, pp. 64—66.

25. *Ibid*, p. 123.

26. Census of India, 1961, Volume I—Part XI-A(i) Table III, p. viii.

27. For a fuller discussion of the subject P. S. Appu, Uneyual Benefits from Koshi Project—*Economic and Political Weekly* ,June 16, 1973.

28. Government of India, Planning Commission, First Five Year Plan, p. 198.

29. Government of India, Planning Commission Second Five Year Plan, p. 184.

30. *Ibid*, p. 187.

31. *Ibid*, p. 189.

32. Government of India, Planning Commission Fourth Five Year Plan, p. 179.

33. Government of India, Planning Commission Report of the Task Force on Agrarian Relations (1973), p. 18.

34. Government of India, Planning Commission Draft Fifth Five Year Plan—Part II, p. 44.

35. A. M. Khusro, "The Economics of Land Reform and Farm Size in India", p. 33.

APPENDIX I

PROVISIONS IN THE LAWS OF THE VARIOUS STATES ON LANDLORDS RIGHT TO RESUME TENANTED LAND

Andhra Area of Andhra Pradesh :

A landowner holding less than two-thirds of the ceiling area under his personal cultivation is entitled to resume tenanted land not exceeding one-half of the area held by a tenant, provided that, after resumption the total extent of land held by the landowner under his personal cultivation does not exceed two-thirds of the ceiling area. Land can be resumed from all categories of tenants, but the right of resumption is to be exercised within six months of the appointed date. In the case of defence personnel and disabled landowners, the time limit for resumption will expire after six months from the date of discharge from service or cessation of disability. Where the landowner does not bring the land under personal cultivation within a period of one year from the date of resumption or if he ceases to cultivate it personally for a continuous period of one year within a period of six years, the dispossessed tenant will, on application, be restored to possession.

Telengana Area of Andhra Pradesh :

A land holder was entitled to resume from protected tenants (i.e., tenants with six years' possession on specified dates or tenants whose landlords held more than three family holdings) lands up to three family holdings. He was not, however, entitled to resume more than a family holding unless the income by the cultivation of such land was the main source of his income. A family holding varied between 4 to 60 acres. Resumption was further subject to the condition that a protected tenant would retain an area equal to a basic holding (i.e., one-third of the family holding) or half his land whichever is less. An owner

owning a basic holding or less was, however, entitled to resume the entire area.

A landlord was to reserve the land he wanted to resume for personal cultivation before September 12, 1957, and apply for resumption before February 4, 1959. Consequently now all the lands held by protected tenants are non-resumable. Defence personnel can resume within one year of termination of service and disabled persons within one year of cessation of disability.

If a landlord, after terminating the tenancy did not cultivate the land personally within one year of resumption, or if after having commenced such cultivation the landlord discontinued the same within 10 years, the tenants were entitled to restoration.

The above provisions do not apply to ordinary tenants. Tenants admitted within three years of the commencement of the Hyderabad Tenancy Act, 1950, were given a non-renewable term of 10 years. Tenants admitted after three years have a renewable term of five years unless the landlord requires the land for personal cultivation at the end of a term.

Assam :

Intermediaries and occupancy raiyats can resume land without any limit from under-raiyats who have not acquired rights of occupancy subject to the condition that 3-1/3 acres of land is left with each under-raiyat until he has been allotted alternative land of equivalent value in the locality. The defence personnel who resume tenanted land are not required to leave any minimum area with the under-tenants. The right of resumption is continuing. If the resumed land is not brought under personal cultivation within one year of resumption, or if the landowner sublets it, the under-raiyat is entitled to restoration of possession.

Bihar :

Under the Bihar Tenancy Act, 1885, the right of occupancy accrues to under-raiyats after 12 years of continuous possession. Non-occupancy under-raiyats holding land on written losses are tenants-at-will and are liable to ejectment on the expiry of the term of lease, while those holding land on oral leases are not liable to ejectment except on grounds of non-payment of rent or improper use of land. As most of the leases are oral and

informal, all under-raiyats do not, however, in practice enjoy any security of tenure.

The Bihar Ceiling Act allows the land owners who hold land in excess of the ceiling area to resume tenanted land up to the ceiling limit. The landowners is allowed to resume all land held by the under-raiyats in excess of 5 acres and, if the under-raiyat holds less than 10 acres, the land holder is entitled to resume half the area—subject, however, to the condition that a minimum area of one acre will be left with the under-raiyat including the area owned by him, if any. As regards under-raiyats holding land from persons who are not subject to ceiling, the provisions of the Bihar Tenancy Act of 1885 are applicable. The Act was recently amended in order to provide that under-tenants of landowners who own less than 5 acres of irrigated or 10 acres of unirrigated land would not acquire occupancy rights in the lands they cultivate. Thus, small landowners, owning less than 10 acres of unirrigated or 5 acres of irrigated land, enjoy a continuing right of resumption.

Gujarat :

In the former Bombay area of Gujarat, permanent tenants got complete security of tenure. Landowners were permitted to resume half of the tenanted land from all tenants other than permanent tenants. On resuming the tenanted land, landowners were required to leave a minimum of half the leased area with the tenant. The right of resumption has ended. Defence personnel and disabled landowners, however, have a continuing right of resumption. In the case of defence personnel, the application for resumption is to be made within two years of discharge from service, and in the case of disabled landowners, within one year of the cessation of disability. Defence personnel are not required to leave half the leased land with tenants.

In the Kutch area of Gujarat there is a further provision that a small holder can resume the entire tenanted land without leaving any minimum area with the tenants.

In the Saurashtra area, sub-leasing of agricultural lands was prohibited in 1953. The existing tenants were given no rights.

Himachal Pradesh :

Under the Himachal Pradesh Big Landed Estates and Land Reforms Act, 1953, security of tenure was conferred on all categories of tenants and sub-tenants. A limited right of resumption

was allowed to landowners, subject to the stipulation that no tenant could be evicted from more than one-fourth of the area leased to him. After the merger of some former Punjab areas in Himachal Pradesh, the Himachal Pradesh Tenancy and Land Reforms Act, 1972, was enacted. It is applicable to the entire state. According to the provisions of this Act, a landowner having under his personal cultivation an area of land not exceeding 1½ acres of irrigated or 3 acres of unirrigated land can resume land up to half the area leased to a tenant, provided that the total area under his personal cultivation after resumption will not exceed 1½ acres of irrigated or 3 acres of unirrigated land.

In the case of defence personnel, the limit of resumption is 5 acres while for disabled landowners it is the same as for others.

The most progressive feature of Himachal law is that the tenant acquires ownership rights in the first 1½ acres of irrigated land or 3 acres of unirrigated land, without being required to file any petition or to make any payment.

If the resumed land is not brought under personal cultivation within one year after taking possession, it will vest in the state government and will be disposed of in the prescribed manner, preference being given to the tenant from whom the land was resumed.

Jammu and Kashmir :

Under the Kashmir Agrarian Reforms Act, 1972, a landowner whose monthly income' including that of the other members of the his family, does not exceed Rs. 500 and who was on 1st September 1971 an inhabitant of Jammu and Kashmir may resume for personal cultivation land not exceeding 3 standard acres provided that the total extent of land held by him after resumption, including orchards, does not exceed 3 standard acres. No land can be resumed from occupancy tenants. A landowner can resume only land leased out to non-occupancy tenants and even in such cases a minimum area of 2 standard acres must be left with the tenant. A person serving in the armed forces on any date between 1st April, 1965 and 1st September, 1970, or on his death in military operations during this period his widow and/or dependents can resume land up to the ceiling area, including any other land already held. If the resumed land is not brought under personal cultivation within 8 months of entry into possession, it will vest in the state and will be disposed of in the prescribed manner.

The right of resumption was to be exercised within 180 days after the appointed date under the Jammu and Kashmir Agrarian Reforms Act 1972. The implementation of that law has, however, been suspended.

Karnataka :

Land holders other than companies, and religions and charitable institutions, whose income by the cultivation of land is the principal source for their maintenance and who had not eexrcised the right of resumption under the earlier law, were allowed to resume up to three family holdings or half the leased area, whichever is less. Land-owners were not, however, allowed to resume any land from permanent tenants. They could resume only land leased out to protected tenants or ordinary tenants. On resumption, protected tenants were to be left with one basic holding or one-half of the leased land, whichever was more and the ordinary tenants were to be left with one-half of the leased land. The right of resumption has since expired.

Kerala :

A small holder, i.e. a landlord who did not have interest in land exceeding 8 standard acres (or 10 ordinary acres in extent), was allowed to resume half the area leased to a tenant subject to a maximum of 2 standard acres. No resumption, was, however, permitted from tenants who had already acquired fixily of tenure immediately before January 21, 1961, under any law then in force. Where the tenant held land exceeding the ceiling area, the small landholder could resume the excess land up to 5 standard acres including any other land already in his possession. No resumption could be made however, from tenants belonging to Scheduled Castes and Scheduled Tribes or homestead tenants. If the resumed land was not brought under personal cultivation within three years of resumption, the evicted tenant could apply for restoration. The right of resumption has ended in all cases.

Madhya Pradesh :

A land holder could resume land from his tenants on the ground of personal cultivation, subject to the conditions that (i) the total area of the land which the land holder could resume, including the land already under his personal cultivation, did not exceed 25 acres of unirrigated land or equivalent area; and (ii) the tenant was left with 10 acres of unirrigated land if the land had been under the possession of the tenant for a period of less

than 5 years and 25 acres of unirrigated land if it had been in his possession for a period of more than 5 years (1 acre of irrigated land was treated as equal to 2 acres of unirrigated land). The right of resumption expired on October 1, 1960. If the londlord failed to cultivate personally the resumed land during the agricultural year next following the date of resumption, the tenant was entitled to restoration.

Maharashtra :

Bombay Area : The provisions are similar to those in the former Bombay area of Gujarat.

Vidarbha Region : All landowners are permitted to resume land up to three family holdings (i.e., from 21 to 120 acres) subject to the following conditions :

(a) Where the total holding of a landlord was equal to or less than one-third of a family holding, the landlord could resume for personal cultivation the entire land leased by him;

(b) Where the total holding of a landlord exceeded one-third of a family holding but did not exceed a family holding, the, landlord could resume one-third of a family holding or half of the land leased by him, whichever was more;

(c) Where the total holding of a landlord, exceeded a family holding, he could resume half the area leased by him;

(d) The income by the cultivation of the land of which he was entitled to take possession was the principal source of income for his maintenance. This condition did not however, apply to a landlord whose total holding did not exceed a family holding and whose principal occupation was agriculture;

(e) A land holder holding land up to a family holding could resume the entire holding if the tenancy was created on or after April 1, 1957, and was terminable but for the Vidarbha Ordinance of 1957.

The right of resumption has ended in all cases.

Defence personnel are allowed to resume tenanted land within two years of discharge from service and upon such resumption no minimum area is to be left with tenants. Landowners suffering

from specified disability are permitted to apply for resumption within one year of the cessation of disability.

If the landowner failed to cultivate the resumed land within one year of resumption or ceased to cultivate it during the next 12 years, it would be restored to the evicted tenant.

Marathwada Area : The provisions applicable to Telengana area were in force in the Marathwada area with some minor modifications, inasmuch as the provisions relating to protected tenants have been extended to ordinary tenants also.

Manipur :

Tenants including sharecroppers have security of tenure, subject to the owner's right to resume land for personal cultivation. The provisions for resumption follow the recommendations in the Second Five Year Plan. The limit on resumption is 25 acres, i.e., the ceiling area. A person who owns a basic holding or less can resume the entire area owned by him. A person who owns more than a basic holding but not exceeding a family holding, may resume one-half of the leased area or an area as well make up a basic holding under his personal cultivation, whichever is greater. A person who owns more than a family holding and is cultivating less than a family holding, may resume half the area leased to a tenant so as to make up a family holding under his personal cultivation; provided the tenant is left with not less than a basic holding. A landowner will, however, have a prior right to make up at least a basic holding. If the landowner is cultivating more than a family holding, he can resume only such land as is held by a tenant in excess of a family holding. A basic holding is equal to 2.5 acres and a family holding 7.5 acres.

In determining whether a person holds a basic holding or a family holding, or more, any transfer made after March 6, 1956, will be disregarded.

A further provision has been made that no tenant shall be evicted from the minimum area of 1.25 acres, unless alternative land has been provided to him.

A landlord is required to apply for reservation of land for personal cultivation within one year of the commencement of the Act, and to apply for the possession of resumable land within five years thereof. If he fails to cultivate personally the resumed land within one year of its resumption, or ceases to cultivate it during the next four years, the tenant will be entitled to restoration.

Orissa :

Landowners were allowed to resume tenanted land up to the ceiling limit but half the tenanted land was to be left with each tenant. The application for resumption was to be submitted within three months of the commencement of the Act. Defence personnel and disabled landowners, however, enjoy a continuing right of resumption.

Punjab and Haryana :

Landowners owing land up to the ceiling limit enjoy a continuing right of resuming tenanted land up to the ceiling area. A tenant is, however, entitled to continue holding land up to 5 standard acres till alternative land is allotted to him by Government. There is no special provision for defence personel or disabled landowners. Tenants of defence personnel are, however, given priority in the matter of allotment of Government land so that defence personnel would be able to resume all their land expeditiously.

Rajasthan :

Landowners were allowed to resume land for personal cultivation up to the ceiling limit from tenants of Khudkast and subtenants provided that the tenant was left with a minimum area which could provide him a net income of Rs. 1,200 per year (in terms of acreage the minimum area varied from 15.6 acres to 125 acres). The right of resumption expired in 1958. There are no special provisions regarding defence personnel, disabled landowners or small holders.

Tamil Nadu :

Landowners who own less than 13 1/3 acres of wet land or 40 acres of dry land and are not assessed to sales tax, professional tax, or income-tax, have a continuing right of resumption. They are allowed to resume half the leased land subject to a maximum of 5 acres of wet land or 15 acres of dry land. Defence personnel can resume the entire land they had leased out at the time of joining armed forces.

Tripura :

The provisions in Tripura follow the provisions in the Manipur law except that there is no provision for a minimum area of 1.25 acres being left with the tenant. A basic holding in Tripura is equal to 2 standard acres. In determining whether a person holds

a basic holding or a family holding, the date from which the transfers are to be disregarded is August 10, 1957.

Uttar Pradesh :

In Uttar Pradesh, all tenants and sub-tenants were brought into direct relationship with the state. Resumption of tenanted land by land owners on grounds of personal cultivation was not permitted. Leases in future are not permitted except by defence personnel or landowners suffering from a specified disability. It has, however, been stipulated in the law that "any arrangement whereby a person is entitled to a right merely to a share in the produce grown on the land in consideration of such person assisting or participating with tenure holder in the actual performance of agricultural operations is not a 'lease'. Thus, sharecroppers holding land as 'Sajhis' are not treated as tenants. Therefore, all landowners in effect enjoy a continuing right of resumption in respect of land cultivated through Sajhis.

West Bengal :

As in Uttar Pradesh so in West Bengal also, on the abolition of intermediary interests, all raiyats and under raiyats were brought into direct relationship with the state. But sharecroppers (bargadars) were not treated as under-raiyat. A landowner who owns less than 7½ acres of land enjoys a continuing right of resumption in respect of land leased out to bargadars. When a landowner resumes tenanted land from a bargadar a minimum area of one hectare is to be left with the bargadar. There is no special provision regarding defence personnel or disabled landowners.

APPENDIX II

Definition of Personal Cultivation in the Various State Laws

Andhra Pradesh :

ANDHRA AREA OF ANDHRA PRADESH

'Personal cultivation' means cultivation of land by a person on his own account—

(i) by his own labour or by the labour of any member of his family; or

(ii) by servants on wages payable in cash or in kind or both but not in crop-share, or by hired labour, under his personal supervision or under the personal supervision of any member of his family. [Section 2 (gg) Andhra Pradesh (Andhra Area) Tenancy Act, 1956].

TELENGANA AREA

'To cultivate personally' means to cultivate on one's own account—

(i) by one's own labour; or

(ii) by the labour of any member of one's family; or

(iii) by servants on wages payable in cash or kind, but not in cropshare or by hired labour under one's personal supervision or the personal supervision of any member of one's family.

Explanation : In the case of an undivided Hindu family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.

[Section 2(g) Hyderabad Tenancy & Agricultural Lands Act, 1950].

Assam :

"Personal cultivation" means cultivation by the person himself, or by a member of his family or by hired labourers on fixed remuneration payable in cash or kind but not in cropshare, under personal supervision of the person himself or any member of his family, provided it is accompanied by the bearing of risks of cultivation by the owner and by residence in the village in which the land is situated or nearby village or town within a distance of 5 miles during the greater part of the agricultural season.

Provided that in the case of a person who is a widow or a minor, or is subject to any physical or mental disability, or is a member of the Defence Forces of the Indian Union, or is a student below the age of 21 years of an educational institution recognised by the state government, the land shall be deemed to be under personal cultivation even in the absence of such personal supervision [Section (10) of Assam (Temporarily Settled Areas) Tenancy Act, 1971].

Bihar :

"Personal cultivation" with its grammatical variations, means cultivation by the raiyat himself or by members of his family or by servants or hired labourers on fixed wages payable in cash or kind but not in crop-share under his personal supervision or supervision of any member of his family during main agricultural operations.

[Section 2(i) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land Act, 1961].

Gujarat :

FORMER BOMBAY AREA

"To cultivate personally" means to cultivate land on one's own account :

(i) by one's own labour; or

(ii) by the labour of any member of one's family; or

(iii) under personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop-share, being land, the entire area of which—

(a) is situated within the limits of a single village, or

(b) is so situated that no piece of land is separated from another by a distance of more than five miles; or

(c) forms one compact block.

Explanation I—A widow or a minor, or a person who is subject to physical or mental disability , or a serving member of the armed forces shall be deemed to cultivate the land personally if such land is cultivated by servants, or by hired labourers or through tenants.

Explanation II—In the case of a joint family, the land shall be deemed to have been cultivated personally, if it is cultivated by any member of such family; and in the case of a family other than a joint family, a person other than the husband, or as the case may be, wife of the person concerned or any of his lineal descendants dependent on him, shall not be deemed to be a member of the family.

Explanation III—The expression "personal supervision" means giving from time to time instructions or directions to the labourers or servants in regard to the cultivation of land, and exercising control in respect thereof, during the entire process of cultivation, or according to the circumstances, during a substantial part of the entire process of cultivation by the person concerned residing during the major part of agricultural season in the village in which the land is situated or at a place in another village situated at a

distance not exceeding fifteen kilometres from the land : Provided that, for the purpose of this *Explanation,* it shall not be necessary for a person to reside in such village or place if a certificate is granted by the Collector to such person that owing to the smallness of his holding, limited income from agriculture or any other reason as may be prescribed it is not possible for him to so reside in such village or place, without detriment to his means of livelihood, and such certificate is in force. [Section 2(5) of the Bombay Tenancy and Agricultural Lands Act 1940—as extended to Bombay area of Gujarat].

SAURASHTRA AREA

"Cultivate personally" or any cognate expression means to cultivate on one's own account—

(a) by one's own labour,

(b) by the labour of any member of one's family, or

(c) by servants on wages payable in cash or kind, but not in a share of the crops or by hired labour under one's personal supervision or supervision of any member of one's family.

(The Saurashtra Prohibition of Leases of Agricultural Lands Act, 1953).

KUTCH AREA

"To cultivate personally" means to cultivate on one's own account—

(i) by one's own labour, or

(ii) by the labour of any member of one's family, or under the personal supervision of oneself or of any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share.

Explanation I—A widow or a minor, or a person who is subject to any physical or mental disability, or a serving member of the armed forces shall be deemed to cultivate the land personally if it is cultivated by her or his servants or by hired labour;

Explanation II—In the case of a joint family, the land shall be deemed to have been cultivated personally if it is cultivated by any member of such family.

[The Bombay Tenancy and Agricultural Lands (Vidarbha Region and Kutch Area) Act, 1958].

Haryana :

FORMER PUNJAB AREA

"Self cultivation" means cultivation by a landowner either personally or through his wife or children, or through his brothers or collaterals in the first degree or real uncles and nephews whether maternal or paternal or under his supervision.

(The Punjab Security of Land Tenures Act, 1953, and Rules framed thereunder.)

PEPSU AREA

The expression "to cultivate personally" with its grammatical variations and cognate expressions means to cultivate on one's own account—

(i) by one's own labour; or

(ii) by the labour of one's mother, wife, father, husband, son, grandson, daughter, grand-daughter, brother, nephew, uncle, brother-in-law, maternal uncle, son of brother-in-law or of maternal uncle; or

(iii) by servants or hired labour.

(The Pepsu Tenancy and Agricultural lands Act, 1955 and Rules framed thereunder.)

Himachal Pradesh :

To "cultivate personally" means to cultivate—

(i) one's own account;

(ii) by one's own labour;

(iii) by the labour of any member of one's family; or

(iv) under the personal supervision of oneself or any member of one's family or by servants on wages payable in cash.

Explanation I—A widow or a minor or any unmarried girl or a person who is subject to physical or mental disability or serving member of the armed forces shall be deemed to cultivate the land personally if such land is cultivated through tenants.

Explanation II—In the case of a joint family the land shall be deemed to have been cultivated personally if such land is cultivated by any member of such family [Section 2(4) of Himachal Pradesh Tenancy and Land Reforms Act, 1972].

Jammu and Kashmir :

"Personal cultivation" by a person means cultivation—

(a) by the person himself; or

(b) by any member of his family; or

(c) by a *khana-nishin* daughter, or *khana-damad* or a parent, or a major;

(i) son;

(ii) adopted son;

(iii) pisarparmardah; or

(iv) unmarried adopted daughter, of the person, or

(d) in the case of religious institutions by the management; or

(e) in the case of a person, who is minor, insane, physically disabled or incapacitated by old age or infirmity, widow, or serving in Defence Forces by a servant or hired labourer under the personal supervision of any member of his family or guardian or any agent of such person.

Provided that such servant or hired labourer or agent or guardian does not bear the cost or risk of cultivation nor receives wages or remuneration as a share of crop.

Explanation—Personal cultivation shall not cease to be so merely because of engagement of hired labour to help in agricultural operations provided that the labour is paid wages in cash or kind but not in crop share [Section 2(7) of the Jammu and Kashmir Agrarian Reforms Act, 1972].

Karnataka :

To cultivate personally means to cultivate land on one's own account—

(i) by one's own labour; or

(ii) by the labour of any member of one's family; or

(iii) by hired labour or by servants on wages payable in cash or kind, but not in crop-share, under the personal supervision of oneself or by a member of one's family.

Explanation I—In the case of an educational, religious or charitable institution or society or trust, of a public nature capable of holding property, formed for an educational, religious or charitable purpose, the land shall be deemed to be cultivated personally, if such land is cultivated by hired labour or by servants under the personal supervision of an employee or agent or such institution or society or trust.

Explanation II—In the case of a joint family, the land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.

(The Mysore Land Reforms Act, 1961.)

Kerala :

"Cultivate" with its grammatical variations means cultivate, either solely by one's own labour or with the help of the members of his family, or hired-labourers or both, or personally direct or supervise, cultivation by such members or hired labourers, or both, provided that such members or hired labourers have not agreed to pay or to take any fixed proportion of the produce of the land they cultivate as compensation for being allowed to cultivate it or as remuneration for cultivating it and in the case of a member of the Armed Forces or a Seaman, 'cultivation' includes cultivation on his behalf by another person. (The Kerala Land Reforms Act, 1963.)

Madhya Pradesh :

"To cultivate personally" means to cultivate on one's own account—

(i) by one's own labour, or

(ii) by the labour of any member of one's family, or

(iii) by servants on wages payable in cash or kind but not in crop share, or

(iv) by hired labour under one's personal supervision or the personal supervision of any member of one's family. (The Madhya Pradesh Land Revenue Code, 1959).

Manipur :

Personal cultivation means cultivation by a person on his own account—

(i) by his own labour; or

(ii) by the labour of any member of his family; or

(iii) by servants or by hired labour on wages payable in cash or in kind but not as a share of produce under his personal supervision or under the personal supervision of any member of his family.

Explanation I — Land shall not be deemed to be cultivated under the personal supervision of a person unless such person or member resides in the village in which the land is situated or in a nearby village within a distance to be prescribed during the major part of the agricultural season.

Explanation II — In the case of a person under disability, supervision by a paid employee on behalf of such person shall be deemed to be personal supervision. In the case of a person who has resumed land for personal cultivation, land shall not be deemed to be under the personal cultivation of a person (not being a person under disability) unless such person or a member of his family engages himself in the principal agricultural operation. [Section 2(i) and 120 of Manipur Land Revenue and Land Reform Act, 1900.]

Maharashtra :

BOMBAY AREA

"To cultivate personally" means to cultivate land on one's own account —

(i) by one's own labour; or

(ii) by the labour of any member of one's family; or

(iii) under the personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share, being land, the entire area of which—

(a) is situated within the limit of a single village; e village;
or

(b) is so situated that 'no piece of land is separated from another by a distance of more than five miles; or

(c) forms one compact block :

Provided that the restrictions contained in clauses (a), (b) and (c) shall not apply to any land — (i) which does not exceed twice the ceiling area; (ii) upto twice the ceiling area, if such land exceeds twice the ceiling area.

Explanation I—A widow or a minor, or a person who is subject to physical or mental disability, or a serving member of the armed forces shall be deemed to cultivate the land personally if such land is cultivated by servants, or by hired labour, or through tenants.

Explanation II—In the case of a joint family, the land shall be deemed to have been cultivated personally, if it is cultivated by any member of such family.

MARATHWADA AREA

As in Telengana area (Andhra Pradesh)

VIDARBHA AREA

As in Kutch area (Gujarat).

Orissa

"Personal cultivation" with its grammatical variations and cognate expressions means to cultivate on one's own account—

(a) by one's own labour; or

(b) by the labour of any member of one's family; or

(c) by servants or hired labour on wages payable in cash or kind but not in crop-share, under one's personal supervision or the personal supervision of any member of one's family.

(Orissa Land Reforms Act, 1960.)

Punjab

Same as in Haryana.

Rajasthan:

"Land cultivated personally" with all its grammatical variations and cognate expressions, shall mean land cultivated on one's own account :—

(i) by one's own labour; or

(ii) by the labour of any member of one's family; or

(iii) under the personal supervision of oneself or any member of one's family by hired labour or by servants on wages payable in cash or in kind but not by way of a share in crop.

Provided that in the case of a person who is a widow, or a minor or is subject to any physical or mental disability or is a member of the military, naval or air service of India or who, being a student of an educational institution recognised by the state government is below the age of twenty-five years, land shall be deemed to be cultivated personally even in the absence of such personal supervision.

(The Rajasthan Tenancy Act, 1955.)

Tripura :

Same as in Manipur.

Uttar Pradesh :

Personal cultivation includes cultivation through 'Sajhis', 'Sajhi' is a kind of sharecropper.

West Bengal :

'Personal cultivation' means cultivation by a person of his own land on his own account :—

(a) by his own labour; or

(b) by the labour of any member of his family; or

(c) by servants or labourers on wages payable in cash or in kind or both.

(West Bengal Land Reforms Act, 1955.)

Appendix III

Provisions in the State Laws Regarding Surrender of Tenancy Rights

Andhra Pradesh :

TELENGANA AREA

A tenant may surrender his rights in land provided that such surrender is made in writing and is admitted by him before and to the satisfaction of the Tehsildar. There is no restriction on the extent of surrendered land which the landlord may occupy. The law is silent as to what will happen. If the tenant does not report to the Tehsildar his intention to surrender.

ANDHRA AREA OF ANDHRA PRADESH

A cultivating tenant may terminate his tenancy and surrender his holding at the end of any agricultural year after giving to the landlord and the Special Officer at least three months' notice expiring with the end of such agricultural year. The surrender shall be effective only if it is accepted by the Special Officer that it is voluntary and genuine. (Section 14 of Andhra Pradesh, Andhra Area Tenancy Act, 1956).

Assam :

No surrender shall be valid :—

(i) if it is not approved by the Deputy Commissioner;

(ii) if the tenant does not give at least three months' notice in writing to the landlord; and

(iii) if it is done without the consent and approval of the encumbrancer or under-tenant or tenant when there is an encumbrancer or an under-tenant or tenants as the case may be :

Provided that the landlord shall not be eligible to resume the land for personal cultivation, the Deputy Commissioner may, when he permits a surrender place a landless agriculturist in the holding who shall, thereafter, become a non-occupancy tenant of the landlord (Section 63. The Assam Temporarily Settled Areas Tenancy Act, 1971).

Bihar :

In Bihar, if any sub-lessee wishes to surrender the land, he has to submit an application to the collector who shall, if satisfied about its voluntariness, accord permission thereto and register the same. The collector shall then, in consultation with the landlord, sub-let the land on behalf of the landlord for the remainder of the term of the original lease. The provision for consultation with the landlord practically amounts to giving the landlord the right to change his tenants. Further, the applicability of this provision is restricted to sub-lessees admitted after the commencement of the Ceiling Act (19th April, 1962), and the landlord can take possession of the entire land. In the case of tenants holding land from before the commencement of ceiling legislation, surrenders are not regulated even to this limited extent. Further, if the sub-lessee does not report to the collector his intention to surrender, the latter has no jurisdiction. There is no provision for *suo moto* action by the collector.

Gujarat :

No tenant can surrender his right in land in favour of the landlord. The intending tenant has to intimate his intention to surrender to the landlord and the collector. The land is to vest in the state and is to be settled with another person entitled to allotment of land as a tenant. The landlord gets compensation for the land equal to the purchase price payable by the tenant. There is no provision for *suo moto* action by the revenue authorities nor is there any penalty provided for non-observance of the provision relating to surrenders.

Himachal Pradesh :

No tenant can relinquish his tenancy in favour of a landowner. Where a tenant wants to surrender his tenancy land, the same shall be in favour of the state government who shall have the right to induct any suitable tenant or landless agricultural labourer in the prescribed manner.

Jammu and Kashmir :

A tenant may surrender his tenancy by giving oral or written notice to the landlord. He may, instead of or in addition to giving notice to the landlord, apply to a Revenue Officer for causing the notice to be served on the landlord informing him of his intention to surrender the land. The landowner will be

entitled to take possession of the entire surrendered area. Where a tenant was unlawfully dispossessed after December 9, 1955, he could apply for his restoration wihin six months of his unlawful dispossession. If, on enquiry, the Revenue Officer finds that the tenant was illegally dispossessed, he may restore him to possession. During the course of enquiry for wrongful dispossession where the Revenue Officer finds that the surrender was not made in writing and was not certified by a Revenue Officer, the defence of the landlord that the possession of the land was voluntarily surrendered by the tenant shall not be entertained. There is no provision for *suo moto* action by the Rvenue authorities.

Karnataka :

Letting out of land is permitted only in case of landowners who are soldiers or seamen. A tenant of such a landowner cannot surrender land, except in favour of the state government : Provided that any such surrender shall not be effective unless made in writing and the tenant has admitted the same before the Tehsildar and the same has been registered in the office of the Tehsildar. The state government is authorised to lease the surrendered land to any person if possession thereof is not claimed by the soldier or seaman for personal cultivation. The new lessee will pay rent directly to the landlord.

Kerala :

A tenant can surrender his rights only in favour of Government. Even such a surrender is to be in writing and to be admitted by the tenant before the land tribunal, and it is to be registered in the office of the land tribunal. The government is to pay fair rent to the landlord till a new tenant is settled on the land. The surrendered land is to be let out by the government to another person entitled to distribution of land, who will pay fair rent to the landlord directly. If a landlord enters into possession of any land surrendered by the tenant, he shall be punishable with imprisonment which may extend to one year or with fine which may extend to Rs. 2,000, or with both.

Madhya Pradesh :

No surrender by occupancy tenant is to be valid unless it is effected under a registered deed. The *bhumiswami* will be entitled to take possession of the surrendered land only to the

extent of his right of resumption and the excess land is to vest in the state for which the *bhumiswami* will be paid compensation. No penalty has been provided in case of non-observance of the conditions for surrender, nor is there any provision for *suo moto* action by the revenue authorities for restoration of the tenant in the case of an invalid surrender.

Maharashtra :

A tenant may surrender his rights in land, provided the surrender is made in writing and admitted before the Mamlatdar. The landlord can take possession of the entire surrendered land, subject only to the ceiling limit. No penalty has been provided in case of non-observance of the conditions for surrender, nor is there any provision for *suo moto* action by the revenue authorities for restoration of the tenant in case of an invalid surrender.

Manipur :

No tenant can surrender his land and no landowner can enter upon the surrendered land without the previous permission in writing of the competent authority. Such permission will be granted if the competent authority is satisfied that the surrender is *bona fide* and does not exceed the resumable limit of the landowner. Where the permission to surrender is refused and the tenant gives a declaration in writing relinquishing his rights in land, the competent authority shall lease out the land to any other person in accordance with the rules made in this behalf. If the tenant does not report his intention to surrender to the competent authority, the latter has no jurisdiction as there is no provision for *suo moto* action by the revenue authorities for restoration of the tenant in case of an invalid surrender.

Orissa :

No surrender to the landlord, or abandonment of any holding or any part thereof, by a raiyat or a tenant shall be valid unless such surrender or abandonment has been previously approved by the Revenue Officer.

Any raiyat or tenant desiring to surrender or abandon his holding, or any part thereof, may furnish information thereof in writing to the Revenue Officer, who may—after holding such inquiry as may be prescribed—either approve or disapprove the proposed surrender or abandonment.

Where the surrender or abandonment of any holding, or part thereof, is approved by the Revenue Officer the holding or part thereof shall be settled by the government with any other person in accordance with specified priorities.

Where any raiyat or tenant surrenders or abandons his holding, or part thereof, without the previous approval of the Revenue Officer and the landlord enters into possession, the latter shall be liable to a penalty of an amount not exceeding two hundred rupees per acre of the land so surrendered or abandoned for each year or any part thereof during which the possession is continued (Section 22-A. Orissa Land Reform Act.)

Rajasthan :

A tenant can surrender his tenancy by giving a registered notice to the landowner. The surrender is to be accompanied with a writing attested by the Tehsildar or the Chairman of a Municipal Board.

Tripura :

Same as in Manipur.

West Bengal :

Where a bargadar surrenders his right in land, the landowner may give information in writing of such fact to the prescribed authority. The prescribed authority will give notice to the bargadar and, after hearing both the parties, determine whether the surrender was *bona fide*. Where the surrender was not *bona fide* the prescribed authority may restore the bargadar to cultivation. Where the bargadar is not available, or is not willing to restoration of cultivation, the landowner shall not resume the land for personal cultivation but he may, with the permission of the prescribed authority, get the land cultivated by another person as a bargadar who is entitled to distribution of land under the Land Reforms Act. Even where the surrender was *bona fide* the landowner cannot bring the surrendered land under personal cultivation, but he may with the permission of prescribed authority get the land cultivated by another bargadar entitled to distribution of land under the Land Reforms Act. Where a person resumes cultivation of surrendered land, he is liable to be punished with imprisonment up to six months or with a fine which may extend to Rs. 1,000—or with both. There is no clear-cut provision for penalty if the landowner does not report the surrender to the prescribed authority, nor is there any provision for *suo moto*

action by the revenue authorities for restoration of the tenant in case of an invalid surrender. However, there is a provision in Section 19-A, that if the landowner terminates the cultivation of a bargadar in contravention of the provisions of the Act, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to Rs. 1,000—or with both. The state government may, if they so desire, make use of this provision in cases of irregular surrenders also.

Other States :

Surrenders are not regulated in the states of Haryana, Punjab, Tamil Nadu and Uttar Pradesh.

APPENDIX IV

PROVISIONS IN TENANCY LAWS OF VARIOUS STATES FOR CONFERMENT OF OWNERSHIP RIGHTS ON TENANTS

Andhra Pradesh :

TELENGANA AREA

All the tenants of such landholders as have at least three family holdings are given the status of protected tenants. They are given the right to purchase ownership rights so, however, that the landholder is left with at least two family holdings and the land in the ownership of the protected tenant does not exceed one family holding—inclusive of the land that he may already have in his ownership. In areas to be notified by the government, ownership rights are automatically conferred on the protected tenants in respect of the land they are entitled to purchase. The purchase price payable by the tenant is fixed at 12 times the land revenue, and it is payable in lumpsum or in 16 instalments.

Andhra Area :

The cultivating tenant has only the first option to purchase the tenanted land when the landowner intends to sell it.

Assam :

All occupancy tenants, non-occupancy tenants, and under-tenants can acquire ownership rights in respect of non-resumable area held by them under their personal cultivation. Land owned by persons suffering from specified disabilities and members of the

defence services are excepted. The law provides for acquisition of ownership at the initiative of the tenant. Alternatively, at any time from the commencement of the Act, the state may notify such transfer of ownership rights at its own initiative subject to the conditions laid down in the law for purchase by the tenant. The purchase price is fixed at 50 times the land revenue and is payable in 5 instalments.

Bihar :

Under-raiyats of raiyats holding land in excess of the ceiling area can acquire occupancy rights in respect of non-resumable land. Such a right is in no way different from the right of a tenant to be allowed that part of the landowners' surplus land which has been under the tenants' cultivating possession. In reality, the great majority of tenants, who are mostly share-croppers, do not enjoy even security of tenure. Consequently, the question of their acquiring ownership rights does not arise at all.

Gujarat (Bombay Area) and Maharashtra (Bombay Area) :

All permanent and non-permanent tenants who cultivated lands personally were deemed to have acquired ownership rights with effect from April 1, 1957, in respect of non-resumable area. The purchase price is fixed at 20 to 200 times the assessment, and can be paid in lumpsum or in 16 instalments. Certificate of purchase is given after the whole amount is paid. Certain conditions are specified in the law which may render infructuous the purchase deemed to have taken place on April 1, 1957.

Gujarat (Kutch Area) and Maharashtra (Vidarbha Area) :

In the Kutch area of Gujarat and the Vidarbha area of Maharashtra, the provisions are similar to those in the Bombay area, except that they came to be effective from April 1, 1900.

Gujarat (Sourashtra Area) :

In the Saurashtra area of Gujarat, the tenants are entitled to acquire occupancy rights on payment of a price subject to the Girasdar's right to allotment of certain specified measures of lands. There is, however, no provision for conferment of ownership rights on tenants.

Maharashtra (Marathwada Region) :

In the Marathwada region of Maharashtra, the provisions are similar to those for the Andhra Pradesh (Telengana area). The purchase is deemed to have become effective from April 1, 1958.

Himachal Pradesh :

Occupancy tenants have been conferred ownership rights and the purchase price payable by them is 48 times the land revenue. Subject to a minimal right of resumption or small landowners, so defined in the law, ownership rights vest in non-occupancy tenants also and the purchase price payable is 96 times the land revenue. The tenant, however, acquires ownership rights in the first 1-½ acres of irrigated land or 3 acres of unirrigated land out of the non-resumable area, without having to make any payment.

Jammu and Kashmir :

The landlord's rights vested in the state from September 1, 1971, and the state government conferred ownership rights on the tenants personally cultivating the land. Only small landlords with a monthly income of less than Rs. 500, and not cultivating land personally on September 1, 1971, may resume, within six months, 3 standard acres for personal cultivation. However, defence personnel or the dependents of deceased defence personnel owning land on September 1, 1971, are allowed to resume upto the ceiling area. The right of resumption is subject to the tenant's rights to hold 8 standard acres, including orchards, and all lands owned or held by him from before. Payment for the ownership right is to be made to the state government as per rules framed under the Act.

Karnataka :

All the tenanted lands, except those owned by defence personnel, vest in the state and all permanent tenants, protected tenants, other tenants, and lawful sub-tenants, are entitled to be registered as occupants of tenanted lands being personally cultivated by them, subject to the ceiling limit and on payment of a premium to the state. The purchase price payable is fixed at 100 to 150 times the land revenue.

Kerala :

All lands held by such cultivating tenants who are entitled to fixity of tenure, and who have not received certificates of purchase under Section 59, shall vest in the state free from all encumbrances from the notified date. The government may at any time after the vesting, assign the rights, titles, and interest in respect of those lands to the cultivating tenant who will be bound to accept such assignments. The state pays compensation to the erstwhile

landowners and the amount is recovered from the cultivating tenant. The compensation payable is 16 times the fair rent.

Madhya Pradesh :

The landowners were allowed one year's time from the commencement of the Madhya Pradesh Land Revenue Code, 1959, to resume land not exceeding a specified measure for personal cultivation, subject to the condition that a specified area is left with the tenant. The tenant acquires ownership right over the non-resumable area at the end of one year from the date of commencement of the Code. The tenant is required to deposit with the Revenue Officer the price payable for the land, and the Revenue Officer shall pay the amount to the landowners. The purchase price is fixed at 15 times the land revenue and is payable in 5 instalments.

Manipur :

From the date the land held by a tenant is declared resumable, it shall stand transferred from the landholder to the tenant who then becomes its owner. The compensation payable is 30 times the land revenue. The law has not, however, been enforced yet.

Orissa :

Either the landlord or the tenant should apply within three years of the commencement of the Orissa Land Reforms Act, 1955, for the determination of the resumable and non-resumable areas of the tenanted land. While determining this, the compensation payable has also to be determined and, from the beginning of the year following the date of issue of the certificates, the tenant becomes a raiyat in respect of the non-resumable area. (A further period of 3 months was allowed from the date of the commencement of the 1966 amendment of the Act.) Where neither the landlord nor the tenant made an application under the above provision, the tenant could apply within two years of the commencement of the Orissa Land Reforms (Amendment) Act, 1973, for determination of fair and equitable rent and the payable compensation. The Revenue Officer is empowered to determine, on his own motion, the fair and equitable rent and the payable compensation. The Revenue Officer is empowered to determine, on his own motion, the fair and equitable rent and compensation payable within one year of the expiry of the two-year period, if the tenant fails to apply within the said period. The purchase price payable by tenant shall not exceed 10 times the fair rent and is payable in five annual instalments.

Punjab and Haryana :

The tenants of landlords who own land in excess of the permissible ceiling area can acquire ownership rights on land which is outside the landlords permissible area. In the Punjab region, however, there is a further restriction that tenants of non-resumable area can acquire ownership, provided they have been in continuous possession of the tenanted land for six years. Compensation payable is not to exceed Rs. 200—or 90 times the land revenue in the old PEPSU area. In the Punjab area, the compensation payable by the tenants is to be fixed at three-fourths of 10 years' average market value of similar lands.

Rajasthan :

Ownership rights were conferred in respect of non-resumable land on tenants and sub-tenants who held land at the commencement of the Act of 1955. The compensation payable to the landholder was 15 times the rent for unirrigated lands and 80 times the rent for irrigated lands, and was payable in annual instalments not exceeding crop tenants admitted after the commencement of the Act cannot enjoy security of tenure nor can they acquire ownership rights as the landowner is entitled to take back the land after the expiry of lease.

Tamil Nadu :

There is no provision for conferring ownership rights on tenants.

Tripura :

Provisions are similar to those in Manipur. However, under the Tripura Land Revenue and Land Reforms (Second Amendment) Act, 1974, the state government may, by notification with effect from such date as may be specified therein, declare all land held by under-raiyats in any local area, to be their non-resumable lands. On such declaration, the ownership thereof will stand transferred to the under raiyat with effect from the date of such declaration.

Uttar Pradesh :

After the abolition of intermediaries, there are only two tenures—*viz*, Bhumidars and Sirdars—and one sub-tenure—viz, Asamis, Bhumidars and Sirdars hold land directly under the

government, Bhumidars have permanent, heritable and transferable rights. Sirdars have permanent and heritable, but not transferable rights. Sirdars can acquire Bhumidari rights on payment of a sum equal to 10 times the hereditary rates. Asamis are under-tenants who hold land under disabled Bhumidars or Sirdars or are tenants of Gaon Sabhas. Their rights are not transferable nor can they acquire Sirdari or Bhumidari rights. 'Sajhis' (sharecroppers) are not treated as tenants and, therefore, there is no question of their being allowed to acquire rights of ownership.

West Bengal :

On the abolition of intermediary interests, all categories of tenants other than bargadars (sharecroppers) were brought directly under the government. Though limited security of tenure has been conferred on the bargadars, they cannot acquire ownership rights.

APPENDIX V

CONFERMENT OF OWNERSHIP RIGHT ON TENANTS

State/Union Territory	Number of Tenants Who Have Become Owners	Area Involved (Hectares)
Andhra Pradesh (Telengana area)	33000	82000
Gujarat	772651	983878
Punjab and Haryana	22000	59000
Kerala	1349	1344
Maharashtra	1118000	1325000
Rajasthan	199000	378000
Uttar Pradesh	1500000	800000
Tripura	10000	4800
Himachal Pradesh	54000	21000
Delhi	29000	16000
Total	3738990	3671022

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