

Land Leasing: A Big Win-Win Reform for the States

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Land leasing laws relating to rural agricultural land in Indian states were overwhelmingly enacted during decades immediately following the independence. At the time, the abolition of Zamindari and redistribution of land to the tiller were the highest policy priorities. Top leadership of the day saw tenancy and sub-tenancy as integral to the feudal land arrangements that India had inherited from the British. Therefore, tenancy reform laws that various states adopted sought to not only transfer ownership rights to the tenant but also either prohibited or heavily discouraged leasing and sub-leasing of land.

Politically influential landowners were successful in subverting the reform, however. As P.S. Appu documents in his brilliant 1996 book *Land Reforms in India*, till as late as 1992, ownership rights were transferred to the cultivator on just 4% of the operated land. Moreover, just seven states, Assam, Gujarat, Himachal Pradesh, Karnataka, Kerala, Maharashtra, and West Bengal, accounted for some 97% of this transfer.

In trying to force the transfer of ownership to the cultivator, many states abolished tenancy altogether. But while resulting in minimal land transfer, the policy had the unintended consequence of ending any protection tenants might have had and forced future tenants underground. Some states allowed tenancy but imposed a ceiling on land rent at one-fourth to one-fifth of the produce. But since this rent fell well below the market rate, contracts became oral in these states as well, with the tenant paying closer to 50% of the produce in rent.

Many large states including Telengana, Bihar, Karnataka, Madhya Pradesh and Uttar Pradesh ban land leasing with exceptions granted to landowners among widows, minors, disabled and defence personnel. Kerala has for long banned tenancy, permitting only recently self-help groups to lease land. Some states including Punjab, Haryana, Gujarat, Maharashtra and Assam do not ban leasing but the tenant acquires a right to purchase the leased land from the owner after a

specified period of tenancy. This provision too has the effect of making tenancy agreements oral, leaving the tenant vulnerable. Only the states of Andhra Pradesh, Tamil Nadu, Rajasthan and West Bengal have liberal tenancy laws with the last one limiting tenancy to sharecroppers. A large number of states among them Rajasthan and Tamil Nadu, which otherwise have liberal tenancy laws, do not recognize sharecroppers as tenants.

The original intent of the restrictive tenancy laws no longer holds any relevance. Today, these restrictions have detrimental effects on not only the tenant for whose protection the laws were originally enacted but also on the landowner and implementation of public policy. The tenant lacks the security of tenure that she would have if laws permitted her and the landowner to freely write transparent contracts. In turn, this discourages her from making long-term investments in land and also leaves her feeling perpetually insecure about continuing to maintain cultivation rights. Furthermore, it deprives her of potential access to credit by virtue of being a cultivator. Landowner also feels a sense of insecurity when leasing land with many choosing to leave land fallow. The latter practice is becoming increasingly prevalent with landowners and their children seeking non-farm employment.

Public policy too faces serious challenges today in the absence of transparent land leasing laws. There are calls for expanded and more effective crop insurance. Recognizing that such insurance is likely to be highly subsidized, as has been the case with the past programmes, a natural question is how to ensure that the tenant who bears the bulk of the risk of cultivation receives this benefit. The same problem arises in the face of a natural calamity; if tenancy is informal, how do we ensure that the actual cultivator receives disaster relief.

In a similar vein, fertilizer subsidy today is subject to vast leakages and sales of subsidized fertilizer in the black market. In principle, these leakages could be sharply curtailed by the introduction of direct benefit transfer (DBT) using Aadhar seeded bank accounts along the lines of the cooking gas subsidy transfer. But in face of difficulty in identifying the real cultivator and therefore intended beneficiary, DBT cannot be satisfactorily implemented.

In the context of the difficulties in land acquisition under the 2013 land acquisition law, states wishing to facilitate industrialization can further benefit from liberal land leasing if they simultaneously liberalize the use of agricultural land for non-agricultural purposes. Currently, conversion of agricultural land for non-agricultural use requires permission from the appropriate authority, which can take a long time. State governments can address this barrier by either an amendment of the law to permit non-agricultural use or by the introduction of time-bound clearances of applications for the conversion of agricultural land use in the implementing regulations. The reform opens up another avenue to the provision of land for industrialization: long-term land leases that allow the owner to retain the ownership while earning rent on her land. In addition, she will have the right to renegotiate the terms of the lease once the existing lease expires.

Therefore, the introduction of transparent land leasing laws that allow the potential tenant or sharecropper to engage in written contracts with the landowner is a win-win reform. The tenant will have an incentive to make investment in improvement of land, landowner will be able to lease land without fear of losing it to the tenant and the government will be able to implement its policies efficiently. Simultaneous liberalization of land use laws will also open up an alternative avenue to the provision of land for industrialization that is fully within the state's jurisdiction and allows the landowner to retain ownership of her land.

A potential hurdle to the land leasing reform laws is that landowners may fear that a future populist government may use the written tenancy contracts as the basis of transfer of land to the tenant and therefore would oppose the reform. This is a genuine fear but may be addressed in two alternative ways. The ideal way would be yet another major reform: giving landowners indefeasible titles. States such as Karnataka that have fully digitized land records and the registration system are indeed in a position to move in this direction. For other states, such titles are a futuristic solution. Therefore, in the interim, they can opt for the alternative solution of recording the contracts at the level of the Panchayat eschewing acknowledging the tenant in the revenue records. They may then insert in the

relevant implementing regulations the clause that for purposes of ownership transfer, only the tenancy status in revenue records would be recognized.

State governments must seriously consider revisiting their leasing (and land use) laws to determine if they could bring about these simple but powerful changes to enhance productivity and welfare all around. We, at the NITI Aayog, stand ready to assist them in this endeavour.

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