

# **Land Leasing Reform for Agricultural Transformation**

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## **I. Introduction**

Land leasing plays an important role globally in providing flexible access to farmland to more productive producers and is more likely to increase productivity than sales due to the limited capital outlay required and ability of the parties to adjust the terms in response to market inefficiencies (Deininger 2003). Many farms in the US and Europe operate on both owned and rented land, with rented land providing flexible land access and freeing up capital for long-term investments on owned land. Land leasing (also known in India as land tenancy) is very important to agriculture in India, given the context of scarce land, surplus labour and small farm efficiency. Tenancy arrangements are estimated to cover as much as 13.65 percent of farmers (21.3 million) cultivating 11.6 percent of the total cultivated area (10.6 million ha) as per NSSO 70<sup>th</sup> round, 2012-13 (GoI, 2014).

However, official statistics on land leasing are widely acknowledged to under-report the actual extent of agricultural tenancy (Planning Commission, 2013). This is due primarily to the fact that most tenancy arrangements (land leases) are based on either purely oral agreements or written agreements that are not formally recorded in either the deeds registry or the record of rights: only about 12.8 percent of the total estimated leased-in area was recorded in 2012-2013 (Rao, 2019). As such, statistics on land leasing rely heavily on household surveys and census, those deploy widely different methodologies, meta data and periodicity, also reporting different statistics. These include regularly administered surveys, such as the National Sample Survey Office (GoI, 2014) and the Agriculture Census, as well as other surveys, such as the India Human Development Surveys (2004-05 and 2011-12) and the NABARD All India Financial Inclusion Survey (NAFIS, 2018).

Post-independent land reforms that banned or heavily restricted tenancy, including by allowing long-term tenants to acquire ownership and/or providing tenants various forms of protection against eviction, have had several unintended consequences (GoI, 2016). These include reducing the total cultivated area by compelling (absentee and non-cultivating) landlords to fallow their land instead of risk losing their ownership rights and incentivizing landlords who chose to rent out their land to rely on unregistered short-term leases. As a result, tenants have relatively less formal access to land, less tenure security, and less ability to make long-term investments. Since most tenants lack a formally registered lease agreement, they are also less able to access institutional credit and government support to farmers, including direct benefit transfers (DBT) and crop insurance (GoI, 2016). Given the high incidence of informal tenancy, Indian agriculture as well as a good number of tenant farmers, suffer from comparative disadvantage, negatively affecting farm production, agricultural transformation and sustainability.

The lack of reliable official data on land leasing, however, makes it difficult to quantify such impacts and factor the contributions, thereby making this important variable either invisible or confounded in the India farm production and income discourses. Nevertheless, in this paper we try to use the available statistics and literature to illustrate, on the one hand, the continued importance of land leasing as a crucial land access strategy, especially for the poor, and on the other hand, the

implications of continued leasing restrictions for fallowing behaviour and tenants' access to government agriculture entitlements.

## **II. Tenancy Trends and Implications for Agriculture**

The paper compares relevant statistics on the change in the incidence of tenancy and tenancy recording, fallowing, and landlessness from the 1980s to the 2010s using NSSO data across states grouped according to their level of legal restrictions on tenancy.<sup>1</sup> While this limited analysis does not consider other potentially relevant variables, we note that in general the incidence of tenancy increased over the period analysed in all states except for those with restrictions on the lease terms and/or tenant purchase rights. Moreover, states with greater restrictions on tenancy tended to see larger increases in tenancy incidence over this period, both in terms of the number of parcels and total area under tenancy. Surprisingly, however, there seems to be no correlation between tenancy restrictions and recording as of 2012-13.

Similarly, the area under current and other fallow land as a percentage of the state's geographic areas has increased in all states except those without any explicit or implicit tenancy restrictions; in these states, the fallowed area actually decreased during the period studied. By contrast, the increase in the fallowed area was largest in the states that completely ban tenancy. Finally, except for the extreme outliers, the incidence of landlessness appears to be higher in states that severely restrict tenancy compared to those with fewer tenancy restrictions.

Around 15 percent of farmers i.e. about 23.4 million are estimated by Bansal et al (2017) as tenants using NSSO (2012-13), though as noted this estimate is likely to be grossly under-reported (GoI, 2014). Because state land records do not typically include tenancy data, it is difficult to precisely identify the characteristics of tenant farmers. According to the NSSO, most farmers operating leased-in land are either smallholders (i.e. they own and operate some of their own land together with land they lease-in from others) or landless (i.e. they own no land of their own and only cultivate leased-in land; we will refer to these farmers as "pure tenants"). About 86% of tenants (about 20 million) were small farmers (operating less than 2 ha of land) who account for more than 50% of leased-in holdings (5.8 m ha) as per the 70<sup>th</sup> round of the NSSO (2012-13).

These figures suggest not only that land leasing remains a crucial land access strategy for land-poor farmers, but also that some 20 million small farmer tenants may currently be partially excluded from agricultural services and entitlements linked to land (ownership) records, i.e the record of rights (RoR). These include DBT schemes at the central and state levels, as well as the Pradhan Mantri Fasal Bima Yojana (PMFBY) crop insurance scheme, Kisan Credit Cards (KCC), farmer producer organizations (officer registration), and to some extent public grain procurement in states that practice decentralized public procurement, such as Odisha. Commercial banks also often require land rights records (typically the RoR) to access institutional credit.

We compared available statistics on the number of tenant farmers, and where possible the number of "pure" tenants that own no land of their own, with eligibility criteria and beneficiary data for four important central and state-level agricultural entitlement schemes (PM Kisan—India, KALIA—Odisha, Rythu Bandhu—Telangana, and Rythu Bharosa—Andhra Pradesh) to estimate the extent of tenants' exclusion from these programs. Given the lack of comprehensive official statistics on land tenancy and tenant farmers, our findings should be treated with appropriate

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<sup>1</sup> One of the panelists suggested reviewing the grouping of certain states based on their tenancy restrictions.

caution, and the panellists noted the importance of clarifying where the analysis uses data on the total number of tenants as compared to only those tenants who are not landowners to estimate the extent of tenants' exclusion from these DBTs.

Keeping these caveats in mind, the available data suggest that tenants, who are often among the most vulnerable farmers, are being substantially excluded from these flagship schemes that meant to support farmers, moreso the poor and vulnerable. The exclusion of tenants from these programs has important implications not only in terms of equity, but also for the achievement of these programs' overall objectives, i.e. to increase farmers' access to capital, and, ultimately, for India's ability to achieve inclusive agricultural growth, given that tenants represent up to 15% of all farmers nationally.

### **III. Recommendations**

Considering the increasing importance of the land records (RoR) for determining farmers' eligibility for agricultural entitlements and services, including for COVID-19 economic relief, the paper argues that (long-term, e.g., at least one year) tenancy rights should be incorporated into the Record of Rights, as Uttar Pradesh now requires. Given that the RoR constitutes legal recognition of land use, recording (long-term) lease agreements—either in a dedicated column on tenancy rights, which already exists in some states, or in the remarks column of the RoR—could provide tenants the tenure security needed to make long-term land investments without challenging landowners' rights. Dedicated information and education campaigns among both tenants and landlords will, however, be critical to ensure landlords feel confident they will retain their ownership rights.

Recording tenancy rights in the RoR would also ensure these rights are surveyed (which is not the case for the deeds registry, where lease contracts can also be registered), which would enhance the reliance of area-based entitlements than on farmers' estimates of their land area. More broadly, augmenting the RoR to incorporate tenancy rights rather than creating a stand-alone tenancy or farmer registry would be more fiscally sustainable and would reduce the potential for discrepancies between databases and thus opportunities for conflict, rent seeking, and forum shopping.

Making the marginal investment to incorporate tenancy rights into the RoR as part of the on-going Digital India Land Records Modernization Programme (DILRMP) activities thus seems timely and indeed necessary to accomplish the Union Government's policy objectives in the agriculture sector. Where not already allowed under existing law, provision for the incorporation of tenancy rights into the RoR, with clear terms of access, implementing regulations, and institutional arrangements, can be made by the States while enacting or implementing leasing reform laws.

The panellists confirmed the importance of facilitating formal lease markets for agricultural transformation and expressed their support for formally recording lease agreements. The panellists also raised several important considerations that would need to be addressed to accomplish this policy objective. These include updating the land ownership records and ensuring effective contract enforcement mechanisms and regulations are in place to ensure landowners can confidently enter into formal lease agreements and the interests of women, dalits and small farmers tenants are well protected. It is also important to implement targeted communications to ensure both landlords, tenants and other relevant actors viz. bankers are aware of recent legal reforms and understand the benefits of formal land leasing. The need for separate provisions and protections for women farmers and Dalits to ensure they benefit equitably from land leasing reform was also

highlighted, and the panellists affirmed that governments should regulate rather than intervene in leasing to facilitate efficient transactions.

#### **IV. Selected References**

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