Model Agricultural Land Leasing Act, 2016: Some Observations

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The Expert Committee on Land Leasing chaired by T Haque has among other things, prepared a Model Agricultural Land Leasing Act. An analysis of the model act reveals that the act favours the lessee over the landowner, and risks of aiding in the diversion of land hitherto used for field crops to being used for allied agricultural activities, which may not be the best use of land in the long run.

Absence of a sound institutional framework facilitating land leasing had been viewed as a major obstacle for private investment in agriculture resulting in poor productivity. In this context, NITI Aayog had appointed an Expert Committee on Land Leasing, under the chairmanship of T Haque (NITI Aayog 2016).

Besides, reviewing existing agricultural tenancy laws of states, the expert committee had to suggest appropriate amendments with a view to legalise and liberalise land leasing; and, more importantly, to prepare a model act. The expert committee had consultations with states, farmer associations and civil societies. In the final report, the committee provides a Model Agricultural Land Leasing Act (henceforth Model Leasing Act), which contains provisions that pose a direct threat to the food security of the country.

Tenancy Laws in States

Land distribution was quite skewed in favour of influential people during the British rule and therefore, land leasing was very common during that period. Although the percentage of area leased out was estimated at 20.6% at the all-India level National Sample Survey Office’s (NSSO) 8th Round, a considerable amount of land leased out on the basis of oral or hidden tenancy accounted for 35% to 40% of the total cultivated area (Datt and Sundharam 1989).
During the post-independence period, the major agenda of the government on land reforms, next to the “abolition of zamindari system,” was tenancy reforms. All states had adopted legislation concerning agricultural tenancy in the 1960s or 1970s. Most of those tenancy laws were amended by states from time to time, partially in response to policy suggestions emerging through various five-year plans.

The provisions of tenancy laws adopted by various state governments had covered defining tenants, regulation of rent, security of tenure, landlords’ right to resume personal cultivation on leased land, conferment of ownership rights to tenants, surrender of tenancy rights with mutual consent, prohibition of future tenancies, tenants’ rights of preemptive purchase, correcting the tenancy records, abolishing oral tenancies, etc.

Although tenancy laws differed from state to state, they were generally found to be very restrictive in the sense that they had almost prohibited agricultural tenancy (Table 1). The tenancy arrangements, as it existed, were primarily informal in nature, leaving tenants insecure and thus rendering the system inefficient, while reducing the operational mobility of landowners. The expert committee was therefore of the view that restrictive tenancy laws of states had adversely affected agricultural efficiency, equity, occupational diversification, and rapid rural transformation.

<table>
<thead>
<tr>
<th>Category of States</th>
<th>Nature of Restrictions in Tenancy Laws</th>
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<tbody>
<tr>
<td>1. Kerala and Jammu &amp; Kashmir</td>
<td>Leasing out of agricultural land is legally prohibited without any exception.</td>
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<tr>
<td>2. Telangana, Bihar, Jharkhand, Karnataka, Madhya Pradesh, Chhattisgarh, Uttar Pradesh, Uttarakhand and Odisha</td>
<td>Leasing out of agricultural land is allowed only by certain categories of landowners such as disabled, minors, widows, defence personnel, etc.</td>
</tr>
<tr>
<td>3. Punjab, Haryana, Gujarat, Maharashtra and Assam</td>
<td>Leasing out of agricultural land is not specifically banned, but the tenant acquires the right to purchase the tenanted land after a specific period of creation of tenancy (six years in Pun and Har) except if landowner is disabled.</td>
</tr>
<tr>
<td>4. Andhra Pradesh, Rajasthan, Tamil Nadu, and West Bengal</td>
<td>There are no restrictions on land leasing, although in West Bengal, only share cropping leases are legally permitted.</td>
</tr>
</tbody>
</table>
5. In Scheduled Tribe areas of Andhra Pradesh, Bihar, Odisha, Madhya Pradesh, and Maharashtra, transfer of land from tribal to non-tribal even on lease basis can be permitted only by a competent authority. The idea is to prevent alienation of land from tribal to non-tribal.


Table 2: State-wise Proportion of Operated Area Leased-in (%)

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>21.2</td>
<td>9.0</td>
<td>6.2</td>
<td>9.6</td>
<td>9.97</td>
<td>35.70</td>
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<td>Assam</td>
<td>43.0</td>
<td>16.7</td>
<td>6.4</td>
<td>8.9</td>
<td>5.06</td>
<td>4.20</td>
</tr>
<tr>
<td>Bihar</td>
<td>12.4</td>
<td>14.5</td>
<td>10.3</td>
<td>3.9</td>
<td>11.76</td>
<td>22.67</td>
</tr>
<tr>
<td>Gujarat</td>
<td>19.4</td>
<td>3.9</td>
<td>2.0</td>
<td>3.3</td>
<td>5.08</td>
<td>5.82</td>
</tr>
<tr>
<td>Haryana</td>
<td>39.8</td>
<td>23.3</td>
<td>18.2</td>
<td>33.7</td>
<td>14.38</td>
<td>14.82</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>n.a.</td>
<td>15.9</td>
<td>3.2</td>
<td>4.8</td>
<td>2.87</td>
<td>5.33</td>
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<tr>
<td>Jammu &amp; Kashmir</td>
<td>22.1</td>
<td>8.1</td>
<td>2.5</td>
<td>3.7</td>
<td>0.32</td>
<td>0.20</td>
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<tr>
<td>Karnataka</td>
<td>21.5</td>
<td>15.9</td>
<td>6.0</td>
<td>7.4</td>
<td>3.68</td>
<td>6.90</td>
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<tr>
<td>Kerala</td>
<td>20.2</td>
<td>8.6</td>
<td>2.1</td>
<td>2.9</td>
<td>4.18</td>
<td>8.93</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>19.8</td>
<td>7.5</td>
<td>6.6</td>
<td>6.3</td>
<td>2.83</td>
<td>5.14</td>
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<tr>
<td>Maharashtra</td>
<td>19.7</td>
<td>6.2</td>
<td>5.2</td>
<td>5.5</td>
<td>4.59</td>
<td>3.44</td>
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<td>Odisha</td>
<td>12.6</td>
<td>13.5</td>
<td>9.9</td>
<td>9.5</td>
<td>13.15</td>
<td>16.96</td>
</tr>
<tr>
<td>Punjab</td>
<td>39.8</td>
<td>28.0</td>
<td>16.1</td>
<td>18.8</td>
<td>17.84</td>
<td>24.42</td>
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<tr>
<td>Rajasthan</td>
<td>21.0</td>
<td>5.3</td>
<td>4.3</td>
<td>5.2</td>
<td>2.81</td>
<td>7.11</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>27.0</td>
<td>13.1</td>
<td>10.9</td>
<td>10.9</td>
<td>6.10</td>
<td>13.54</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>11.4</td>
<td>13.0</td>
<td>10.2</td>
<td>10.5</td>
<td>3.49</td>
<td>7.89</td>
</tr>
<tr>
<td>West Bengal</td>
<td>25.4</td>
<td>18.8</td>
<td>13.4</td>
<td>10.4</td>
<td>9.42</td>
<td>14.73</td>
</tr>
<tr>
<td>All India</td>
<td>20.6</td>
<td>10.6</td>
<td>7.2</td>
<td>8.3</td>
<td>6.60</td>
<td>10.41</td>
</tr>
</tbody>
</table>

In consonance with the prohibitive tenancy laws, the percentage share of leased-in area in total operated area had continuously declined over the years (Table 2). However, the average share of leased-in area showed a sudden increase in 2012–13. This may be due to declining interest of cultivator farmers on account of declining profitability in crop cultivation, better income opportunities outside the agriculture, and so on.

Moreover, the percentage distribution of leased-in area by various terms of lease during the last four decades indicates that the share of “share of produce” term in total number of lease contracts has declined from 48% in 1970–71 to 28.7% in 2012–13, whereas that of “fixed money” term has gone up from 15.4% to 41.1% during the same period. Surprisingly, in West Bengal where only “share cropping” is legally permitted, the fixed money is the most common term of leasing (52%). Share of produce was the next most common form of leasing (38%) (from NSSO reports, various rounds). Thus, the term of lease against share of produce is slowly losing importance, whereas fixed money as a term of lease is increasingly gaining popularity. This change is taking place at a time when the proportion of leased-in land in operated area is rising.

**Key Features of Model Act**

The key features of the Model Leasing Act, 2016, as proposed by the committee includes (i) legalise land leasing to promote agricultural efficiency, equity and poverty reduction; (ii) legalise land leasing to ensure complete security of land ownership right for land owners and security of tenure for tenants; (iii) remove the clause of adverse possession of land in the land laws of various states; (iv) allow automatic resumption of land after the agreed lease period; (v) allow the terms and conditions of lease to be determined mutually by the land owner and the tenant without any fear on the part of the landowner as well as tenant; (vi) facilitate all tenants to access crop insurance and bank credit; and (vii) incentivise tenants to make investment in land improvement.

**Inherent Limitations:** The Model Leasing Act, if adopted in the proposed form, may
encourage the diversion of agriculture land from crop cultivation to commercial use because it allows leasing of agricultural land for activities like plantation crops, animal husbandry and dairy, poultry farming, stock breeding, fishery, agroforestry, agroprocessing and other related activities in addition to crop cultivation. Once agricultural land is transferred to allied activities, it will not only reduce the total land stock available for crop cultivation with an adverse impact on production of field crops but will also change the land-use pattern, if not permanently, at least for a very long period. This will be particularly true if land is used for plantation crops, agroforestry and agroprocessing activities. It is very likely that the transferred land may not remain suitable for growing field crops once it is resumed to the lessor.

This fear is further compounded by the lack of clarity on the definition of lessee cultivator. The Model Leasing Act defines a lessee cultivator as a “person who leases in agricultural land.” It is not clear whether corporates and absentee landlords willing to manage cultivation through their employees/representatives can be allowed to lease-in agricultural land or the leasing should be restricted to farmers/group of cultivators (self-help groups/joint liability groups/farmers producers organisations) including landless cultivators. Further, whether contract farming, particularly by corporates, should also fall under the purview of the proposed Model Leasing Act. There should not be any problem in leasing of agricultural lands by corporates if land use is restricted to cultivation of agricultural crops only since the leasing-in by corporates may lead to increased flow of investment to the agriculture sector. However, such contracts would affect the food security in the country, if choice of crops is solely motivated by profit.

Perhaps what is more worrisome is allowing lease contracts between the parties for an indefinite period and that the “government shall not fix a minimum or maximum lease period.” Prescribing ceiling on lease period, say for a maximum of five or six years, will not only help the lessee to complete one life cycle of agricultural allied activities (animal husbandry, etc) but will also help the lessor to resume the cultivation if he/she had quit the cultivation in search of an alternative income opportunities but failed to succeed. Further, it would also reduce the risk of any influence/pressure on the lessor to lease out the land for a very long period and it might become very difficult for the survivors in the family to resume operating the land from an influential lessee. Thus, if the government does not fix maximum lease period, it will increase the risk of losing the contracted land permanently from food crops.

The Model Leasing Act, though provides for lessors to resume the land if any damage to the soil health is done by the lessee, it does not clearly define what constitutes damage to soil
health. It is felt that interpreting the “damage to soil health” would vary from person to person and it may give rise to disputes between the lessors and lessees. The Model Leasing Act also allows lessees to build structures or any fixtures on the land with permission from the lessor. These ambiguous provisions are not any better than the existing system in terms of its provisions to improve security of the tenant. Therefore, in all likelihood it would reduce the incentive for tenants to step up investment and improve land productivity.

Moreover, the Model Leasing Act’s proposed schemata of addressing the issue of change of land ownership, is inimical to the interests of both landlords and tenants and hence needs a relook. Once the ownership of land is changed on account of sale or gift, lease contract may be terminated unless the new landlord and lessee agree to continue the contract for the rest of the agreed period. Further, the act is also silent on whether a land already under lease agreement can be mortgaged or not, keeping in view that the lessee might be interested in availing crop loans or term loans in case of allied activities.

While dealing with termination of lease, the Model Leasing Act has blatantly ignored why lessor should not terminate lease contract if the lessee keeps or intends to keep the contracted land fallow in a normal case due to his loss of interest in cultivation (except in case of natural calamities when the land becomes uncultivable). Keeping a cultivable land fallow defeats the very purpose of enacting the Land Leasing Act which aims at ensuring productive and optimal use of scarce resources.

Finally, it appears from the format of “standard lease agreement” that the existing contract can be extended mutually by lessor and lessee without any endorsement from any authority. Endorsing the renewal proposal by a competent authority will help avoid any undue pressure/influence from lessee to lessor. In fact, the extension of lease contract should be no less than a fresh contract and hence this entire format needs to be looked at again.

**Missing Two Vital Issues:** There are two appropriate issues that were not addressed by the expert committee and hence not included in the Model Leasing Act. The first one relates to the ceiling on ownership holdings. It is of utmost importance that operational holdings, as stipulated by states, should include leased-in land of the tenants in normal cases. Perhaps, no restriction should be placed if land is leased-in by a joint liability group or producers’ organisations.
Second, keeping in view the fact that most land parcels/holdings are quite small in size in India, leasing out only a part/portion of the land plot at a particular location will only lead to further fragmentation. Leasing out the entire parcel of land available at a particular location by a lessor will not lead to fragmentation of such lands. However, if the parcel of land is quite big (say more than one acre), the lessor may consider contracting it to more than one lessee.

Overall, the Model Leasing Act aims to benefit both lessors who prefer to enter into a lease agreement without the fear of losing ownership rights, and lessees who require protection from premature termination of lease contracts. No doubt, legalising the tenancy will result in better productivity of crops grown on the contracted land by replacing an unwilling cultivator with a willing cultivator, provided the contracted land remains to be used for cultivation of field crops only. However, the Model Leasing Act appears to be lopsided and seems to be giving an edge to lessees over the landlords. Also, allowing the contracted land to be used for activities other than crop production that too for an indefinite period will certainly threaten the food security of the country in the long run. An attempt is made here to highlight those issues for further consideration by the NITI Aayog so that a balanced and more acceptable model would come into force.

**References:**

