

Land Rights

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

The Human Rights Council, under the Universal Periodic Review (UPR), examined India's human rights record in 2008 (UPR I) and 2012 (UPR II). Neither UPR I nor UPR II made any recommendation on land. Several recommendations on reducing poverty and inequality, eliminating discrimination, promoting gender equality, and improving living conditions, however, relate to the right to land.

NATIONAL FRAMEWORK

The 2011 census recorded nearly 20.14 crore people belonging to various scheduled castes in the country. The total number of Dalits is probably much higher as Muslim and Christian Dalits are not included in these figures. In India, caste-based discrimination and the practice of "untouchability" is prohibited by the Constitution. Article 17 of India's Constitution abolishes untouchability and the Protection of Civil Rights Act, 1976 (PCR Act) and Rules, 1977 make the practice of untouchability a cognizable and non-compoundable offense warranting enhanced terms of imprisonment, prescribes appointment of prosecutors for these offenses and establishes Special Courts and Committees to assist state governments in implementing anti-untouchability measures.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 defines criminal, economic, political and property-related

offenses committed against Scheduled Castes (SCs) and Scheduled Tribes (STs) as atrocities and designates a system to bring atrocity cases under the jurisdiction of Special Courts. In December 2015, the SC and ST (Prevention of Atrocities) Amendment Bill, passed by Parliament, made several critical changes. New activities were added to the list of offences to strengthen it further.

Despite constitutional provision and formal protection by law, for millions of Dalits, or 'untouchables', discriminatory treatment remains endemic and continues to be reinforced by the state and private entities. Reservation policies for "Scheduled Caste/Scheduled Tribes" in education, employment in the public sector and political representation are in force, but effectiveness in implementation is yet to be fully ensured.

CHALLENGES

Absence of land and agrarian reform

India is marked by extreme inequality in land ownership. Only seven percent of the population holds 47 percent of the land, while 93 percent of the population has access to only 53 percent of the land. India has the largest number of landless persons (over 500 million) in the world. Fifty-six per cent of rural households (101.4 million) do not own any land while 30 per cent (53.7 million) households consist of landless labourers who face the worst deprivation. Eighteen million rural families are completely landless – lacking even a house site. Another estimated 60 million families use land but do not have secure rights to it. Despite the existence of land reform legislation, most states have failed to redistribute land to the landless poor.

Census of India 2011 reports that 56.4 per cent of the workforce or 263 million people are engaged in agriculture; over 50 per cent are agricultural labourers. Seventy-five per cent of farmers are marginal farmers owning between 1-2 hectares of land. The failure to implement human rights-based agrarian reform has resulted in an acute agrarian crisis with high rates of poverty and indebtedness among small farmers and agricultural labourers; this has resulted in an alarming number of farmer suicides (over 300,000 since 1995).

Land alienation resulting from infrastructure, mining, power, and coal projects, and Special Economic Zones (SEZ)

India has the world's highest number of people displaced from ostensible 'development' projects – over 70 million since its independence (1947).

A 2014 report by the Comptroller and Auditor General of India reveals discrepancies in the functioning of SEZ, especially regarding land acquisition and use. Of 392 notified SEZ, only 152 were operational, while fourteen per cent of the land was diverted for commercial purposes.

Large dams have resulted in widespread displacement and submergence of land across India. For instance, the Mapihel Dam in Manipur recently resulted in loss of homes and farmland, creating a humanitarian crisis of food insecurity and impoverishment.

Discrimination and impeded access to land for marginalized groups

Scheduled Castes (SC)/Dalits, including women, often face discrimination and violence while trying to access land. They own the lowest percentage of land in rural India (9.23 per cent); the average area owned per SC household is 0.27 hectares. The share of rural land owned by Scheduled Tribes (ST) is 13.06 per cent, while the average area of land owned per ST household is 0.65 hectares. Scheduled Tribes have suffered disproportionately from forced land acquisition and displacement. Land has been acquired in tribal areas for projects including mining, industrialization, and other non-agricultural purposes. The Fifth and Sixth Schedules of the Constitution protect tribal lands, but are violated. Declarations of 'Reserve/Protected Forest' have rendered forest-dwelling Particularly Vulnerable Tribal Groups landless. About 89 per cent of denotified tribes and 98 per cent of nomadic and semi-nomadic communities do not own land.

Informal nature of tenancy

'Informal' tenants are unable to easily access credit or government programmes and services. A large percentage of small farm 'owners' do not have secure legal rights to land.

ISSUES AND IMPACTS

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Lack of awareness among officials	Many revenue officials lack specific knowledge about land legislation and land records, and are thus unable to adequately implement and enforce pro-poor land laws and policies.
Slow rate of resolution of land disputes	Land disputes are common and cases take a long time to be solved. This creates a backlog in courts, costs resources, and creates tenure insecurity for those involved in arbitration.
Lack of clarity in the law	Land laws in most states are overly numerous and confusing. This makes implementation weak and fraught with obstacles.
High fees	Registration and stamp fees for land transactions, and for adding women's names to land records are high. This precludes many people from registering land/including women's names.
Non-implementation of the Forest Rights Act 2006	This is a major challenge for tribals and other forest dwellers. The Act was expected to rectify historical injustice with regard to tribals and other forest dwellers, but statistics show that ten years since its passage, violations continue. Of 42,99,778 claims for individual forest rights and 1,14,144 claims for community forest rights filed across the country, only 16,73,544 claims of individual and 41,367 claims of community forest rights were admitted.

RECOMMENDATIONS

Implement the Draft National Land Reforms Policy 2013, in order to provide guidelines for land reform action at the national and state levels. Re-establish the government task force on land reform. On the basis of the draft policy, promulgate a National Land Reform Act, ensuring land to the landless, especially women, SC, ST, bonded labourers, and nomadic, semi-nomadic, and denotified tribes.

Implement the LARR Act 2013, and take measures to prevent dilution of its progressive provisions by states.

Promulgate a National Right to Homestead Act, based on the Draft National Right to Homestead Right Bill 2013, to provide landless rural families with land for housing and livelihoods.

Collect disaggregated data (as called for by UPR II recommendation 138.71) on land ownership and tenancy, especially with regard to gender.

Create land reform and land law reform commissions at the state levels to make recommendations on implementing land reform and on simplifying and updating land legislation.

Ensure national and state-level implementation of the land purchase mechanism under Pradhan Mantri Awas Yojana – Gramin (earlier Indira Awas Yojana).

Ensure community participation and transparency in all land record updating work, and integrate a community-led land problems inventory under the Digital India Land Records Modernisation Programme.

Ensure adequate implementation of the Forest Rights Act, including for community rights, with incremental resources and time-bound targets.

Create Women's Support Centres (such as the models piloted in Odisha), which identify single women and connect them to land allocation programmes and other government schemes.

Provide education and training on land laws, policies, and people's rights through State Rural Livelihood Missions.

Provide training on land laws and land records to all revenue officials.

Integrate a community paralegal programme focused on land issues within the various State Legal Services Authorities.

Reduce registration and stamp fees for land transactions in order to encourage formalization of such transactions and promote increased access to land.

Protect women's rights to land/property/inheritance. Ensure that all redistributed/state distributed land is in the names of the women of the household. Create incentives for men to add women's names to land records; for example, by not charging any registration and stamp fees when adding women's names.

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