

LAND RIGHTS IN BIHAR: A STUDY

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ABSTRACT

The Bihar Land Tribunal is constituted to address the land related issues of raiyats of state. Disputes relating to land pending before different forums in the State of Bihar are huge in number and the present machinery including Civil Court is over burdened because of pendency of huge number of disputes relating to land. Right, title and possession over land is regulated under various land laws operating in the State of Bihar. The different forums under different land laws have been provided for adjudication of disputes. The State government is faced with complexities arising out of the multiplicity of adjudicating machinery and delay in the settlement of disputes. The State government strives to ensure speedy disposal of disputes under various land laws. In the absence of a common adjudicatory body, the people of the State are faced with undue hardship in getting their grievances redressed. There is mandate to constitute a tribunal under Chapter XIII of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, with such modification and with such enlargement of jurisdiction as may be deemed expedient. The Constitution of India has conferred jurisdiction under Article 323B on appropriate legislature, to provide for adjudication or trial by Tribunals, by law, of any dispute, complaints or offences with respect to all or any of the matters specified in clause with respect to which such legislature has power to make laws. In larger public interest and in the interest of the people of the State, it is deemed expedient to create a consolidated forum for adjudication of all disputes appertaining to land in the State of Bihar. With a view to provide a common and uniform forum for adjudication of disputes, it is necessary to create a Tribunal .

Keywords: Bihar Land Reforms , State of Bihar, Land Governance, Legal Framework

INTRODUCTION

Land has become a significant resource in the context of economic development, rapid urbanization and industrialization, increase in food demand, climate change. In developing countries, the effect of weak^{at the highest level in the hierarchy.} management of land is harmful, especially to poor, to whom the land is primary means for livelihood. The need for good land governance, argued by) reinforced by the global trends of (i) the volatile commodity price and population growth, (ii) the climate change; and (iii) to receive external assistance. In addition, to reduce opportunity for corruption

and bribery, the good land governance identified as critical as a precondition for sustainable economic development and social justice Land governance is argued to be a key to sustainable development and poverty reduction. In rural as well as urban area land is the key source of income and livelihood. It, as argued, provides foundation for economic activities and functioning of market and non-market institutions. In India, as well as in Bihar, land has enormous economic, social, and symbolic relevance. Land governance can be briefly described as how property rights to land (for groups or individuals) are defined, enforced, can be exchanged, and transformed. It also talks about the way land is managed, planned and regulations are prepared and implemented and also how land is taxed. It also focuses on acquisition and disposal of land and the way disputes related to land are resolved and conflicts are managed. Given this imperative the present paper attempts to review the status of land governance issues in Bihar based on existing laws, report from related government departments and discussion with key officials of departments. Accordingly the paper is divided in following sections. Section 2 presents a brief historical background of evolution of land governance in Bihar. Section 3 explores Land tenure typology in Bihar. Section 4 assesses critical land governance issues in Bihar. Section 5 Draw the implication, make recommendation and concludes the study.

HISTORICAL BACKGROUND

The historical background of land governance in Bihar can be traced back in the year of 1757. Just after the victory in battle of Plassey in 1757 and the battle of Buxar in 1764, British obtained political control of the modern states of Bengal and Bihar (formerly Bengal Presidency). The British were formally granted revenue-collection rights in these areas in 1765. The present study shall analyse the historical background in two phases, pre-British and pre-independence period and post independence period.¹

PRE-INDEPENDENCE PERIOD

Land revenue was the main source of revenue traditionally to *Mughal* as well as to British. During the period of *Mughal* rule in the sixteenth and seventeenth centuries, land revenue was collected by non-hereditary, transferable state officials (the *Mansabdari* system introduced by Emperor Akbar). Land revenue, or land tax, was the major source of government revenue during British times as well.² In 1841, it constituted 60 percent of total British government revenue, although this proportion decreased over time as the British developed additional tax resources. Not surprisingly, land revenue and its collection were the most important issues in

policy debates during this period. Different arrangements of land revenue system or land tenure system were made by British to facilitate their collection of land revenue. These systems defined who had the liability to pay the land tax to the British.³ Up to a first approximation, all cultivable land in British India fell under one of three alternative systems: (a) a landlord-based system (also known as *zamindari* or *malguzari*), (b) an individual cultivator-based system (*raiyyatwari*), and (c) a village-based system (*mahalwari*). The revenue rates used to determine on fairly ad hoc grounds, based on a diverse set of factors, primarily based on soils and secondarily on consideration of the caste of the tenant, capabilities of irrigation, command of manure etc.⁴

Legally the *zamindars* were considered to be the owners of the land. But in reality their role was that of government-appointed middlemen who collected revenue from the title-holders. Revenue used to be paid in cash to the government and it used to be major part of the revenue paid by the title-holders to the *zamindars*. But *zamindars* had the right to collect any amount of revenue as they wished from the title-holders.⁵ And then there were the title-holders at the second level who had obtained the right from the owners of the land or from other title-holders to collect revenue. At the third level there were the occupancy *raiyyats* who used to pay revenue for the land they had occupied and cultivate the lands by themselves or with the help of the members of their family or by hired labourers or with the help of their partners. They could transfer their rights to someone else. Below them were the non-occupancy *raiyyats* who had to pay revenue for occupying the land on a temporary basis.⁶ Then there were sub-tenants who had to pay revenue for getting land on a temporary basis from the *raiyyats*. In the 30s and 40s, in Bihar, a flood of peasant movement was gushing forth. The main role in these movements for *zamindari* abolition during the British raj was of occupancy and non-occupancy *raiyyats*. And tenants-at-will and labourers also participated. This is the reason why the biggest benefit of *zamindari* abolition went to the occupancy and non-occupancy *raiyyats*.⁷

Towards the end of 1938, the Govt. of Bengal appointed a land revenue commission to examine the existing land revenue system with reference to the Permanent Settlement. The commission submitted its report in 1940. Some serious defects of the *zamindari* system were pointed out. It was recommended by the commission that *zamindari* system should be abolished to improve the economic condition of the cultivators of lands and the Government should be brought into the direct relationship with the actual cultivators.⁸

POST-INDEPENDENCE DEVELOPMENTS IN LAND POLICY

With assumption of office by the congress ministry in 1946 highest priority was given to the abolition of zamindari system of the state of Bihar. In this context, the Bihar State Acquisition of *zamindari* Bill 1947 was drafted and introduced. The nomenclature of the bill was subsequently changed in the Bihar Abolition of *zamindari* Bill and was passed in 1948.¹⁰

After independence, several states passed legislation in the early 1950s, formally abolishing landlords and other intermediaries between the government and the cultivator. Other laws have also been passed by different states at different times regarding tenancy reform, ceiling on land holdings, and land consolidation measures (Banerjee & Iyer, 2005). Bihar was the state where land reforms legislations were first brought in. In 1950s, just before the *zamindari* abolition, there were 2,05,977 regularly revenue-paying, permanently settled, holdings.¹¹ They accounted for 90% of the land area. Bihar Land Reforms Act 1950 was amended and passed as the Bihar Land Reforms (Amendment) act 1953, making all intermediaries interests vested in the state with publication of the notification absolutely free from all encumbrances. The process of abolition of *zamindari* completed in 1956, but before the abolition, proprietary interest in land was vested in the proprietors of the estate in which the land was comprised. The estates were of three classes as follows

- a) Permanently settled estates.
- b) Temporarily settled estates
- c) Government estates

The permanently settled estates used to belong to those estates, the proprietors of which took engagement with the East India Company to pay the land revenue demand assessed in accordance with regulation 1 of 1793 (generally known as Permanent Settlement Regulation). Temporarily settled estates were of two categories, firstly, these estates were the estates of those persons who for one reason or the other failed to take out engagement with the East India Company for payment of land-revenue demand assessed at the time, and secondly the estates which were held revenue-free on invalid or unjustifiable titles. The lands fall under category of government lands were (a) waste land, (b) *thanadari* land for police station, (c) lands escheated to Government in default of legal heirs or claimants, and (d) lands forfeited for any State offence.¹²

ZAMINDARI ABOLITION AND LAND REFORM

Bihar government passed the *Zamindari* Abolition Act in 1947. In 1948, this was amended and published as Bihar *Zamindari* Abolition Act (1948). Bihar Land Reforms Act was passed in 1950. This act was also challenged and Patna High Court, declared the act contravening the article 14 of the constitution. Then a Bill called the Constitution Bill, 1951 (First Amendment) was introduced in the Parliament which *inter alia* provided for certain amendment to article 31 of the constitution (Government of Bihar, 1956).¹³ With this act the rights of *zamindars* and title-holders on land and at the same time trees, forests, fish-breeding ponds, markets, mines and minerals, were legally terminated. And these rights were directly vested with the state government. To break concentration of land holding in the hands of few, in 1955 the ceiling bill which is called Bihar Agricultural Land (Ceiling and Management) Bill was prepared, but could not be presented due to strong resistance from prosperous landowners. In 1961 a revised version of the earlier bill - Bihar Land Reforms (Ceiling, Land Allocation and Surplus Land Acquisition) Act - was brought in. In this act any 'person' (not the family) cannot keep more than certain specified amount of land, depending upon the category of the land.¹⁴

POLITICS OF LAND REFORMS IN BIHAR

Politics of land reforms can be understood through the role of parties and their commitment towards radical agrarian restructuring. We don't see very clear-cut position of different parties on the issue of land reforms. Their priority often changes at different point of time, even the method of achieving the goal of equitable land distribution gets changed. If we take the example of Congress party, among the goals enunciated by the congress movement prior to the achievement of independence from the United Kingdom was that of comprehensive agrarian reforms. But over the period of time the Congress party got divided on the issue of land reforms. Within the Congress party there were some people who were committed to radical reforms. These people were mainly from the Congress socialist party which was comprised of people like Jaya Prakash Narayan, Rammanohar Lohia, and Minoo Masani. Jawahar Lal Nehru also had similar view as of Congress socialist Party. On the contrary there were people like Rajendra Prasad who had traditional and conservative view on land question. Even Gandhi, whose influence generally bridged the gap between radicals and conservatives, was probably ambivalent on the question of agrarian reforms. He was closely associated with the landed middle classes and large industrialists particularly Marwari and Gujrati businessmen, the principal financier of congress movement. Gandhi taught the lesson of mutual forbearance and tolerance between the landlords and industrialists and peasants and workers.¹⁵ They

kept speaking the language of radical economic and social change while assuring that no action would be taken to unduly upset conservative landed and industrial interest within the party. Even after independence was achieved, radical language on land policy, followed by conservative action, became standard practice within the Congress throughout India, and especially in Bihar. Periodic directives have been given to the state by the centre to both legislate and implement the reforms consistent with the “directive principles of state policy” within the constitution of India. Bihar, the third most populous state in the country with 3 % of the geographical area of India and about 8% of its population, is frequently characterized as the ‘most backward state of India’. At Present it is the least urbanized state of India. With an urban population of about 10% the agricultural sector, employing about 73% of the workforce in the state, is very backward with low product.¹⁶ The productive employment in the non-agricultural sector has not grown as much as in other states. Rural industries which are there in the state such as sugar, jute etc. have collapsed in recent years⁴. The above characterization of Bihar as backward state has something to do with its historical context. Bihar, at pre-independence period was one of the region where permanent settlement was introduced in 1793 wherein the zamindars were made the intermediaries for collection of land revenue from peasants and in return they had to pay the fixed amount of land revenue to the state under the permanent settlement, the revenue demanded was fixed at 9/10 of the rent that the zamindars were assumed to collect from their tenants. The right of the land was vested in the landlords, but no protection was given to the class of actual cultivators (tillers). It was only through Act 19 of the 1859 and more clearly through Act of 1885 (Bihar tenancy Act) that the right of tenants got some legal recognitions⁵. Often, zamindars framed out the right of rent collection to subordinate against who imposed their own arbitrary assessment on the Raiyats.¹⁷ The hierarchy of land tenure that was stabilized by hierarchy proved inimical to agricultural revolution. It shows clearly the agrarian structure inherently exploitative and detrimental to agricultural development. Immediately after independence, Bihar was the first state in the country to do away with the zamindari system, whereby the much hated system of intermediaries between the actual tillers and the state was abolished and the tillers came in direct contact with the state. However, zamindari was abolished; the former zamindars were not deprived of their homestead and private lands, which were quite large. And therefore, zamindari abolition was complemented by the imposition of ceiling Act passed in 1962. Though, a number of legislative measures were taken by the government with regard to the agrarian sector, the implementation of the various laws remains far from satisfactory. In spite of all the laws enacted continued to be exploitative and detrimental to growth. However, there have been some important changes in the class status of the various sections of rural society over the

years. The upper middle castes, particularly the three numerous dominant castes, Yadav, Koeri, and Kurmi, had significantly improved their economic position in the post-independence period. These three castes have been the important beneficiaries of the so called green revolution in Bihar, in whatever small manner this might have happened in the state. However, in spite of these changes in the fortune of the backward castes, the fortunes of agricultural labourers and the poor peasants (comprising mostly schedule and lower backward castes), who constitute about half the rural households, did not change, in several parts of the state it deteriorated. The three years of famine in the mid 1960's led to a further deterioration in their already miserable condition. More and more poor peasants were converted into agricultural labourers.¹⁷ This social, economic and cultural exploitation of the downtrodden prepared a fertile ground for a militant movement. It provided fertile ground for some groups with revolutionary Maoists ideology to start working in some part of the state. It first started with Bhojpur district and soon the flames of agrarian tension reached to other districts. In the wake of these changes, the socialist party and communist party also launched 'the land grab movement' in 1970-71 directed against the big landlords. With the mounting frustration of the poor more and more areas came under the hold of Naxal bari type movement.¹⁸

PHASE OF ZAMINDARI ABOLITION ACT

If we specifically talk about the Zamindari abolition in Bihar, it was the earliest state that had passed the zamindari abolition act in 1947. Then in 1948 it was amended and published as Zamindari Abolition Act (1948). During the period when Bihar land reform act was passed in 1950, Zamindars of Bihar opposed this bill in their fullest strength. With this act the rights of Zamindars and title holders on land, trees forests, fish breeding ponds, markets mines and minerals were legally terminated. These rights directly vested with the state government. Not to say about the poor implementation of this act. Zamindars despite of government order had not submitted the document of their estates. Land survey and field survey was progressing at the very slow pace mainly because the assembly and the administrative were full of people coming from this gentry. By 1952 notices could be sent to only 155 zamindars. Looking at the delay this act was amended again in 1954 and 1959 then only notices were sent collectively to all zamindars in Bihar. At the same time clauses V, VI and VII of this act permitted the zamindars to keep enough homestead land, khasland and land for the purpose of trade handicraft, commerce and for storage etc. Not only they were given many provisions for protection of their land but they also got a lot time to

utilize these provisions. As a result zamindars started evicting the title holders fast and occupied large tracts of land in the capacity of occupancy Raiyats.⁸ Only those title holders could become the owners of land who had the right of occupancy Rayiats. They divided their land to keep their land within the ceiling.¹⁹

PHASE OF LAND CEILING ACT

Despite of the implementation of Zamindari abolition act, most of the erstwhile zamindars still retained a large part of their land. A good number of occupancy and non occupancy Raiyats became big jotdars, many rich people from the town also purchased in fewer amounts. In this case with the aim of breaking this centralization of land, for the first time in the 1955 the ceiling bill which is called Bihar Agricultural Lands (Ceiling and Management) Bill was introduced in assembly. This bill probably have not been put forward by the Government of Bihar but by the then revenue minister K.B Sahay.¹¹ ²⁰ Due to the strong resistance from the prosperous landowners this bill remained in the cold storage. In 1961, a very loose kind of legislation – Bihar Land Reform (ceiling, Land Allocation and Surplus Land Allocation) Act was brought in .The ceiling act of 1961 was a diluted version of Bihar agricultural lands (ceiling and management) bill, 1955. A careful comparison of the provision of the bill of 1955 and the act 1961 make obvious that the ceiling legislation now in force in Bihar is much less stringent in its intended effect than the legislation earlier proposed, debated and tabled. Benami, or factious, transfer of land became the accepted legal method of preserving right on land far in excess of the variable ceiling established by law. By establishing variable ceiling and allowing the landholder to resume lands from his tenants for “personal cultivation”, the act permitted the eviction of thousand of under-raiyats or tenants from lands they had tilled for many years, sometimes for generations, without being recorded occupancy-rayatsatus.²²

As the third stage in land reforms the question of tenancy reform came to the fore. The weakest tiller of the land have always been tenants, sub tenant and sharecroppers who have been evicted at will and exploited by those having superior rights interest in land. It has been estimated that there are still about million concealed tenants in India who have not received the legal protection provided under the law.¹⁴ The agriculture census figures for Bihar shows that both during 1971 and 1981 the leased in area was 0.4% to total operated area. On the other hand the NSS data shows that the operated area lease in during 1971-72 was 14.50% and it declined to 10.72% during 1981-82. Apart from that the study conducted by A.N Sinha Institute indicates that the percentage of households leasing in during 1981-82 in the state was as high as 59.04%.¹⁵ NSS data further indicates that Bihar emerged as the

state with the highest incidence of share cropping (73.32%). Therefore, knowing the fact that sharecropping is the major form of tenancy it becomes important to talk about the security of tenure and fair rent of tenants.²³

PHASE OF LAND CONSOLIDATION

Like tenancy reform the work of holding was given up after some time. Absence of up to date records of land itself blocked its progress. Wherever there were efforts to keep it going, large land owners using the muscle and money power took over the fertile land of peasants into their possession and left their infertile lands to them. Seeing an attack on their interests the peasants stated opposing land consolidation and finally this process came to a halt. It was said that land consolidation was a major cause for the development of agriculture in Punjab. But in Bihar this was the reason for peasant's problem.²⁴

WOMEN RIGHT OVER LAND IN BIHAR

Though women make crucial contribution towards agriculture and rural enterprises, the right of women over land is often found not ensured, even by legally. Women comprise an average of 43 percent of the agricultural labour force of developing countries. The female share of the agricultural labour force ranges from about 20 percent in Latin America to almost 50 percent in Eastern and South Eastern Asia and sub-Saharan Africa (Food and Agriculture Organisation, 2011). It also found that compared to men, women comprise on average between less than 5 percent to less than 20 percent of agricultural landholders in the main developing regions (Food and Agriculture Organisation, 2011).²⁵

The right over land makes women not only vocal in domestic decision making, it also make them confident to participate in the development spaces. The Ministry of Rural Development, (Ministry of Rural Development, 2011) found that 10% of rural land is actually titled to women, whereas 83% of rural women provide agricultural labor. Women with right over land are less vulnerable from domestic violence. The study of Panda & Agarwal (2005) in the context of Kerala found that the women who have right over land are less likely to be tortured domestically compared to women have no ownership over land. In Bihar, the women are very much socially vulnerable and neglected. It is also found that no due importance in giving them the right to land.²⁶ The *Zamindari* Abolition, Land Ceiling and Tenancy Reform though have tried to ensure legal compulsion for more equitable distribution of land, but the gap in implementation has made them ineffective. The review of the legal proviso gives that the very objective of Tenancy Act in Bihar was not to safeguard the interest of the women; rather the very purpose of the Bihar Tenancy Act, 1885 was to enact the laws for better relationship between the landlord and the tenants. Although chapter VI-A of the Bihar Tenancy Act,

1885 deals with the provision for the protection which has been extended to the members of schedule caste, schedule tribes and backward classes, but under this chapter no protection to women has been extended in any way.²⁷ After abolition of *zamindari* system some of the major land reforms were taken up by the state government but unfortunately no specific steps were taken to recognise women right over land. The Bihar Privileged Persons Homestead Tenancy Act, 1947 was passed in 1948 to make provisions relating to the laws between the land lord and tenants in respect of homestead land held by certain classes of person in rural areas.²⁸ This act was just enforced to improve the condition of the weaker section of the society but under this act no provision was made especially for the betterment of women in particular. Even the *purcha* (written entitlement) or *patta* (legal document of land) of homestead lands are given in the name of the male family members. Different direction, especially in 1990s, state government's direction to revenue officials to issue the settlement *patta/parwana* mentioning also the name of women member of the family was not followed strictly, resulting therein only the name of the male members of the family are indicated or mentioned in revenue record. It is evident that, individually women hold 12.8% of total land in Bihar . Though, women have rights to inherit her ancestral property as well women have equal rights in comparison to men, no special provision as to women's rights has been incorporated in Bihar Tenancy Act, 1885 for protection of their rights over land.²⁹

CONCLUSION

One of the basic problems in Bihar regarding the effective land governance is the age old land record. The available land record is more than 100 years old. Though several attempts have been made to revise the land record through Revisional Survey and through Special Survey, but their progress is also not found satisfactory. There is also an ever widening gap in infrastructure and manpower related to land administration. In Bihar, merely 12.8% of total lands are held by women. Though women have rights to inherit her ancestral property, but there is no such special provision to ensure women right over land. The lack of up to date record of right and gap in proper infrastructure might have contributed to several land disputes in the state. Among the total cases recorded in court, a significant percentage is of cases related to land disputes like encroachment, mutation land ceiling etc. There are around 15 acts and rules directly related to dispute resolution related to land but still the progress of dispute resolution is very slow. A large number of cases are pending and among them significant proportion are pending for more than five years. Bihar government has set up Bihar Land Tribunal for speedy and effective disposal of disputes related to land. An up to date record of right which will ensure and recognize individual tenure right is call of the day. Completion of land survey with map and record of right along with its access to people shall reduce the conflict

over land and land related disputes. The present study also argues for special provision to ensure women right over land both in law and in practise.

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