

## **Assessment of Urban Encroachment on Agriculture Land Aurangabad Bihar**

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### **Abstract**

*Land governance can be briefly described as how property rights to land, for groups or individuals, are defined, enforced, can be exchanged, and transformed. Land governance is argued to be a key to sustainable development and poverty reduction. In India, as well as in Bihar, land has enormous economic, social, and symbolic relevance. The present paper is an attempt to understand the issue of land governance from different perspective. The present study explores the historical background of development of land tenure typology and provides a detail account of land tenure system in the context of Bihar. As there are incidents of concentration in the ownership of the land and large number of disputes related to it, the paper analyse the available legal framework for dispute resolution. The present study also analyse some critical issues related to land governance and provide recommendation to bridge the gap for better land governance in the context of Bihar.*

**Key Words:** Bihar, Land Governance, Legal Framework, Tenure Typolog

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### **I. 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 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 Deininger, Selod & Burns (2012) 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 (Deininger K. , 2003). 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 (Deininger K. , 2003). 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.

### **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. 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. 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. 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 titleholders. 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. 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 titleholders to collect revenue. At the third level there were the occupancy raiyats 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 raiyats who had to pay revenue for occupying the land on a temporary basis. Then there were subtenants who had to pay revenue for getting land on a temporary basis from the raiyats. 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 nonoccupancy raiyats. 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 raiyats. (Jha, 1997). 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.

### **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. 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. 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.

### **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). 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.

### **Land Tenure Typology in Bihar**

Land Tenure system, as defined by Food And Agriculture Organisation (2002) as the relationship, whether legally or customarily, among people, as individuals or groups, with respect to land. It argues the land tenure system as an institution i.e., rules invented by societies to regulate behaviour. These rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions (Food And Agriculture Organisation, 2002). The concept of 'tenure' is a social construct that defines the relationships between individuals and groups of individuals by which rights and obligations are defined with respect to control and use of land (Economic Commission for Africa, 2004). In this line, section 5(1) of the Bihar Tenancy Act, 1885 (Government of Bihar, 1885), defined tenure holder as primarily a person who has acquired from a proprietor or from another tenure-holder a right to hold for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes also the successors in interest of person who have acquired such a right. Here the tenure means the interest of a tenure holder or under tenure holder. The tenure may be classified as follows: a. Tenures derived from ancient rights; b. Tenures which arose from the desire of the zamindar to improve his estate by extending his income and at the same time, to divest himself of the trouble and responsibility of direct management. There is no reliable record as to its origin. Some of these might have been distinctly created by the zamindar after the Permanent Settlement; others existed from before that date. For the purpose establishing and ensuring rights over land and between landlords and tenants as well to resolve disputes, the Bihar Tenancy Act, 1885 has defined tenants in following three categories. i. Occupancy raiyats ii. Non-occupancy raiyats iii. Under raiyats Occupancy raiyat is a person having a right or occupancy in the land held by him and who holds any land suitable in a village for twelve years either himself or through inheritance, becomes a settled raiyat of that village, such a raiyat gets rights of occupancy in all lands for the time being held by him as raiyat in that village. Non Occupancy raiyat, on the other hand, does not have such right of occupancy over land. The under raiyats are those who holds tenancy immediately or mediately under a raiyat.

### **Recognition and Record of Right of Land**

Recognition of right on land is a concern in Bihar. The basic reason behind the recognition of right on land is that an entry of name in the record of rights is not a conclusive proof of title and it does not confer a guarantee to its title, which is applicable to rural as well urban lands. The Bihar Tenancy Act, 1885 gives the occupant of the land possession holder as an Occupancy Right on that land and he is declared as a raiyat of this land. Bihar Privileged Person Homestead Tenancy Act, 1947 provides right to homeless privileged persons occupying a piece of land for homestead. So far as the customary tenure rights are concerned, in Bihar Tenancy Act, 1885 under section 179, 180 and 181 there are provisions with respect to custom due to permanent mukarrari leases (formal contract), char (inundated with water), diara lands and right of occupancy in service tenure as specified above. But in Bihar, there is no provision as such regarding indigenous right to land in Bihar. Regarding rights of rural people around the forest, the rural group rights are now ensured through Joint Forest Management guidelines and Bihar Panchayat Raj Act, 2006. In 1995-96 Supreme Court intervened to protect National Park and Sanctuary. Through the order of the Supreme Court, all legal rights and customary practices of the communities around the National Park and Sanctuary stopped.

### **Informal Channels of Dispute Resolution**

In the state land disputes are also resolved by Gram Panchayat (Panch constitutes reputed village elders and Sarpanch mutually agreed by both the party). Minor disputes like boundary, share of land of the family members etc. are resolved in the information channels. This is based on the principle of mutually accepted agreement by village level informal panchayat of the elders of the village / community. Here, it is to be noted that, resolution of dispute through Gram Panchayat is not encouraged. The people who supposed to resolve disputes are not trained to settle disputes through arbitration, conciliation mediation. The argument against the informal arrangements is that government interest may not be kept in view while deciding the disputes through informal channel. The Bihar Land Dispute Resolution Act, 2009 also does not mention settlement of disputes through informal channels. However, the same are being practice in the villages.

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