

Report

on

**LAND GOVERNANCE ASSESSMENT
FRAMEWORK, JHARKHAND**

Prepared by

Jharkhand State Team



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The six State institutions and LGAF teams are supported by the **Technical Advisory Group (TAG)**; a highly qualified and capable team of nationally recognized experts each covering one of the LGAF thematic areas. The TAG provides backstopping and quality assurance for the entire LGAF exercise, from manual adaptation to the Indian context, State level implementation to national level consolidation of the State reports. The LGAF process and TAG are coordinated by the TAG secretariat, hosted by CSD, the Center for Sustainable Development in Delhi. CSD coordinated also the work with DoLR and The World bank that has provided financial support and methodological guidance on the use of the LGAF instrument which is applied in over 30 countries globally.

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Executive Summary

This report is the result of a comprehensive study conducted in the state of Jharkhand to assess the performance of the Government of Jharkhand in the field of land governance using the diagnostic tool “*Land Governance Assessment Framework*” (LGAF), prepared by World Bank

The Land Governance Assessment Framework (LGAF) is a diagnostic tool that has been developed for the evaluation of the legal framework, policies and practices relating to land policy, administration, use and management. LGAF is the result of a comprehensive study that covers all kind of issues and concerns related to the governance of land and land use. These issues and concerns are divided in nine broad thematic areas, The nine thematic areas are (i) Land Rights Recognition (ii) Rights to Forest and Common Lands & Rural Land Use Regulations (iii) Urban Land Use Planning and Development (iv) Public Land Management (v) Transfer of Public Land to Private Use (vi) Public Provision of Land Information: Registry and Cadastre (vii) Land Valuation and Taxation (viii) Dispute Resolution and (ix) Review of Institutional Arrangements and Policies. The LGAF framework consists of 27 *land governance indicators* (LGI) that covers these panel topics. Each indicator is further broken down into a number of “*dimensions*” with pre-coded statements (on a scale of A to D). In total there are 118 dimensions in the LGAF.

An executive summary of the finding of all nine themes as are as follows.

Panel 1: Land Rights Recognition

Two separate tenancy laws, Chota Nagpur Tenancy Act (CNT Act) 1908 and Santhal Pargana Manuals and Santal Pargana Tenancy (Supplementary Provisions) Act, 1949 (SPT Act), determine incidence of tenancy, the respective rights and obligations of the tenants and the state, in two separate administrative divisions of Jharkhand, Chota Nagpur and Santal Pargana respectively. Both are time- tested laws. The major thrust of both these tenancy Acts was to protect the interest of weaker and vulnerable section (Schedule Tribes, Schedule Caste, and Backward Caste) of the society. It makes stringent provisions to regulate the transfer of land from these weaker sections of the society to others.



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Both these Acts respects individual as well as common rights over land in both urban and rural areas. These Acts also specifically recognizes certain customary rights and practice regarding land use and holding. Both these Acts respects, e.g. CNT Act specifically protect rights of *Mundari Khuntkattidari* (a special kind of tenancy that recognises the traditional ownership of original clearer of the forest) over forests and exclude such forests from the jurisdiction of Indian Forest Act 1928.

Massive cadastral and revisional surveys were conducted in pre-independence era by British government that forms the basic records of rights. One of the major drawbacks in the area of land governance in Jharkhand is that the government has not been able to complete fresh revisional surveys of land, therefore, the available records of rights for most of the parts of Jharkhand belongs to pre-independence era. However fresh revisional survey has begun in several areas, and program for computerisation of all land records is also undergoing, however the speed of these works are not very satisfactory.

Though stringent provisions have been made to prohibits the transfer of land belonging to ST, SC and BC communities to others communities, still several cases have come out where fraudulent transfer has indeed taken place and many a time such transfer has taken place by using loopholes in the existing Act. Recommendation to tap these loopholes has been made in this detailed report.

Other major drawbacks in recognition of individual rights over land in Jharkhand pertains to the fact that among schedule tribe communities women have very limited rights over landed property. These deprivations exist because of customary practices of these tribes that deny such rights on landed property to women. Both in the state level validation workshop and in panel discussion, these issues were recognised and it was recommended that a broader consensus is required to remove these anomalies.

Panel 2: Rights to Forest and Common Lands & Rural Land Use Regulations

Right to Forest

The state of Jharkhand has very unique relationship with forest, the name Jharkhand itself mean “area of land covered with forests”. The total forest and tree cover put together, it



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constitutes about 32.48% of the geographical area of the state against the national average of 23.81%. . Jharkhand inherited the forest management practices and forest legislations from the parent state of Bihar, though quite a few legislations have been enacted after the formation of Jharkhand either by the Government of India or the state itself. After independence, the Govt. of the day, through land reform measures, wrested the ownership and control over these forests from the ex-landlords and princes. Gradually the rights of the subjects were regulated and ultimately restricted to annual right holder coupes over a limited period of time extending from a week to a month, in the said interest of the scientific management of these forests through induction and implementation of successive working plans of the forest divisions. Another peculiar aspect of forest governance in Jharkhand is the existence of *Mundari Khuntkattidar* and *Bhuinhar* forests. They constitute a separate category of forest land and are completely out of the control and interference of the forest department. Both of these categories of forests were under the sole discretion of the tribal village headmen, including right of conversion to agricultural land.

One of the major concerns that emerge from the study is that despite the fact that *Khatian* Part II specifically acknowledges rights of *raiya*s with respect to forest produce and common land, there are problems in free exercise of these rights because Indian Forest Act does not recognise rights guaranteed under *Khatihan* part II. Indian Forest Act should be amended accordingly to clearly acknowledge those rights. Failure of the Forest Departments in the implementation of many good policies in its true spirit, e.g. as per the policy 90% of the forest produce should go to Village Forest Committee. Though this policy came into existence in 2001, still even in 2014 there is no implementation. Village forest authority was ensured 50% of the forest money to encourage them but not a single farthing has gone to them. Forest account code has not been amended. Also 50% of the forest administrative posts in the village level are vacant. It is recommended that these posts should be filled on priority basis.

Common Land

Jharkhand has plenty of common land which is of two categories- *GM malik* and *GM aam*. The *GM Aam* land includes village pathways, wasteland, playground, orchards, grazing grounds, cremation/ burial ground. There is steady decline in *GM Aam* land as well *GM khas* because of unattended encroachment. Scant regard is paid to protection, development and



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reinvigoration of *Aam* land. For development and rejuvenation of common lands it is necessary to identify common land including village common land from last survey records and examining the competence of privatisation, it is also necessary to sincerely implement B. P. L. E. Act 1961, survey town common land in district headquarters (to begin with) and build fencing to clearly identify and to protect further privatisation of these CPR.

Panel 3: Urban Land Use, Planning and Development

The evolution of the cities in Jharkhand has been mostly haphazard. Three kinds of townships emerged in Jharkhand; 1) Administrative Townships mostly in district headquarters, like Ranchi, which later become trading centres, 2) Industrial townships like Jamshedpur, Bokaro, and 3) Mining cities, like Dhanbad. There was no land use policy for urban locality therefore most of these cities, except those which were under specific authorities like industrial township of Jamshedpur, HEC parts of Ranchi, were developed in very haphazard and irregular manner. Restrictive provisions under CNT and SPT Act which restricted the transfer of tribal land to non-tribal hand were not implemented strictly and now there is a situation where large housing colonies and residential zones have come up in illegally transferred tribal land. Now it is impossible to revert back, therefore there is a need to regularise them. Jharkhand government brought an Act for regularisation but due to various pitfalls people did not come up to own their irregular construction and the move has practically failed. The problem of widespread encroachment of public land is another menace that cannot be tackled unless a fresh survey of land is started to clearly identify encroached public land.

Jharkhand Municipal Act, 2011 creates a town planning mechanism however the process for town planning is still very slow because for almost all districts, planning is still under process including the new Master Plan of Ranchi. Common land like *Akhra*, *Sarna* land should be clearly identified. Adhocism in town planning should be avoided. Open space in master plans should be provided in government or public land and not in *raiya* land. There should be a process of regularisation of irregular constructions but there shall be zero tolerance where construction has come up in river banks, water recharges sources, prime agricultural land.

Panel 4: Public Land Management

The connotation public land comprises land owned by the government through successive entries in the record of right, through acquisition of private land, through land traditionally



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under the direct management, *nazul* or *khasmahal* land, through acquisition of surplus land under the ceiling law and community land, which is also known as common property resources. In Jharkhand both CNT Act as well as SPT Act makes specific provisions with respect to CPR. Certain customary collective rights over land are also recognised under these Acts.

One of the major drawbacks concerning the management of public land is the existence of widespread encroachment on public land. Since state has not been surveyed at one stretch in a short time framework, the actual quantum of public land loosely cannot be ascertained. It has been recommended that Jharkhand government should complete a wholesome survey of land to determine actual quantum of public land available and remove encroachment from there. It also emerged from the study that though large tract of *khasmahal* land exist in district of Ranchi, Jamshedpur, Hazaribagh and other major towns, still these lands are being governed under old Bihar Khasmahal Manual of 1953, whereas , Bihar herself has brought a new *Khasmahal* Policy in 2011. It is recommended that Jharkhand government may adopt the new policy to govern *Khasmahal* land

Panel 5: Transfer of Public Land to Private Use Follows a Clear, Transparent, and Competitive Process

Lands which are under direct management and control of government are called *Khasmahal* land, the transfer of such *khasmahal* land to private users are regulated under Bihar Government Estate (*Khasmahal*) Manual 1953. It is pertinent to mention here that this Manual is a legacy from Bihar and now when parent state Bihar has come with new *Khasmahal* policy, it is suggested that government of Jharkhand should consider revising the old Manual to suit current requirement. Industrial Area Development Authority (IADA) is responsible for land acquisition and infrastructure facilities such as roads, drainage, parks, water supply and public utilities for industrial areas. Usually IADA enters into a 30 years lease which is renewable. Jharkhand government also has a policy to create land bank, 200-250 acres in each district for industrial purpose. Government of Jharkhand came out with a Re-Settlement and Rehabilitation Policy, 2008. Though the aim of this Policy is to reduce the conflict and antagonism between displaced person and land acquiring authorities but many recent agitations against displacement shows that this policy is not being implemented in its true spirit. Under Environment Protection Act, it is mandatory for all projects above the size



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of 25 hectares to seek environmental clearance. Usually an Environmental Public Hearing (EPH) is conducted but many a times it has been reported to be stage managed and without properly involving every stake holders, recently one such EPH conducted by a corporation in Noamundi (Dist. West Singhbhum) became controversial and a representation in this regard was sent by concerned people to Central Pollution Board. The government procedure to transfer public land for private use is open and transparent, and payments for public leases are based on market value of the land but government market value calculated on the basis of last few lease transaction does not always reflect the true market price of the land.

Government of India has enacted a new Land Acquisition Act but government of Jharkhand is still in the process of making rules for the implantation of new Act.

Panel 6: Public Provision of Land Information: Registry and Cadastre

The history of cadastral and revisional survey of land in Jharkhand began in colonial era when in 1839 first survey of land was conducted to identify the original inhabitants of the land (*Bhuinhars*) and the land that were under personal cultivation of *Zemindars*. It was soon realised that this survey did not cover all kind of tenancy and tenure, therefore, a massive survey and settlement process to record and map each and every parcel of land in a village was conducted under colonial government. Cadastral and revisional survey of each and every village of Jharkhand was conducted and map of every parcel of lands were prepared.

Khata of every parcel of the land recorded names and rights of tenants and tenure holder along with nature and characters of the land. The result of these surveys was published and they form the basic records of rights. After independence, Government of Bihar enacted Bihar Land Reforms Act, 1950 and abolished all the intermediary tenure holders creating a direct nexus between state and tenant. Fresh revisional surveys of the land were launched by government but except in few districts, revisional surveys could not be completed due to various reasons. Therefore, the records of rights prepared in pre-independence era are still the authentic records of rights for most of the districts in Jharkhand.

The history of registration in Jharkhand dates back to the latter half of 18th century with the enactment of Bengal Regulation Act 1779. Now Registration Act of 1908 provides for a legal framework relating to the registration of documents & the overall administrative framework for registration establishments like IG Registration, District Registrar, District Sub Registrar,



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Sub Registrar etc. It collects revenue by way of stamp duty & registration fee on various types of instruments. The digitations of department of registration has been taken up with great enthusiasm by Department of registration in Jharkhand and now due to various initiatives such as computerisation and Networking of Registration Offices a citizen could get his original Registered deed back in 30 minutes. The job of digitizing the index Registers of the entire State from 1970 onwards has been completed which enables anybody to search for any land or any party, the database of the registration deeds since 1970 onwards, on a central basis. It is also be possible to generate the non-encumbrance certificates for any land, which are required by people desirous of purchasing any land.

However one of the major drawbacks is that registration offices still do not have up-to-date land records and land maps because fresh revisional surveys of land records has not been completed except in Lohardaga and Latehar districts. There is lack of coordination between registration office and local revenue offices which leads fraudulent transfer of land. A need to integrate the registration office with revenue department is the need of the hour but the slow speed of computerisation of land records is one of the main obstacles in this process. Stamp duty for registration is charged on the basis of market value but usually government market value does not reflect the true market value because of which government losses large sum of money that it could have earned on stamp duty. There is also a need for simplification of registration process and some standardization of registration deeds could be a first step towards it.

Panel 7: Land Valuation and Taxation

The levy and collection of stamp duty and registration fees during the land/ property transfer are regulated under the Indian Stamp (IS) Act, 1899 and the Indian Registration (IR) Act, 1908 and the Rules framed there under as applicable in Jharkhand. Government notify the district wise prevailing market value of land for the purpose of land registration and stamp duty on yearly basis. This valuation is ward wise for urban area and village wise for rural area, and for tribal land where the market of the land is limited it is based on capitalized value of the produce. Urban property tax is collected levied by Urban Local Bodies as per Jharkhand Municipal Act 2011. Land the structures in urban and rural areas have been classified in four categories. In rural area land is classified as agricultural, industrial, residential and commercial and in urban area land is classified as residential, Main Roads,



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other Roads, commercial. Non registration of property transaction in urban area, because many structures are made on illegally transferred tribal land violating provisions of CNT Act, and SPT Act is one of the major problem. Though Government of Jharkhand came up with Ordinance to regularise the irregular/unauthorised structures by levying regularisation fee, however the public response was very poor due to various reasons.

Panel 8: Dispute Resolution

There are institutions to resolve disputes regarding land issues at various levels of the administrative hierarchy for example cases pertaining to schedule Area in Jharkhand are adjudicated in Schedule Area Regulation (SAR) Court as per S. 71(A) of CNT Act 1908. In survey and settlement, *badar* (mistakes) and *Tenezas* (disputes) are raised at *Khanapoori* level and are resolved at the level of the Assistant Settlement officer /or *Kanoongo*. There are no appeals against these decisions. Objections are raised and disposed of in the camp itself. Appeals and revision lies against draft and revisional entries made in draft publication of ROR. In mutation there is a fixed appellate and revisional jurisdiction. In ceiling cases there is an appellate and revisional jurisdiction. With regard to dispute pertaining to a Government land, ceiling surplus land, ceiling procedure itself, mutations, encroachments, survey and settlement consolidation, land acquisition, tribal land alienation and other facets of land administration, there is a clear cut hierarchy of courts in laws concerned. The quasi-judicial forums of land dispute administration are affordable however one cannot vouch safe for expeditious disposal of cases because of the adjournment taken by either of the parties for adducing evidence or on miscellaneous grounds. Apart from Revenue court land dispute can also be taken to a competent civil court as well where the disputing parties have to bear much more cost and the gestation period is also large because of various reasons.

In this regard it was recommended that government of Jharkhand follow the example set by parent state of Bihar where Bihar Land Dispute Resolution Act, 2009 is already enacted giving uniformity and a common platform on which parties aggrieved by disposal under various Acts could straightaway approach.

Panel 9: Institutional Arrangement and Policies

The regulation of land sector in Jharkhand is based on sound institutional framework. It carries the legacy of laws, rules and regulations formulated in undivided Bihar including the



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legacy of laws formulated in colonial era. There is no manifest overlap in the administrative hierarchy and role and responsibilities of government department and agencies are well defined. As per the Rules of Executive Business the Department of Revenue and Land Reforms at headquarter level is responsible for policy formulation while down the line in the divisional and district hemisphere the responsibilities of various role takers are defined. All land related matters including land transfer, land settlement and leases are as per Town *Khas Mahal* Manual, all intra departmental land transfer are processed in Revenue Department before the transfer proposal goes to the cabinet.

One of the significant problems in land governance in Jharkhand is that state has not been able to complete fresh revisional survey of land in many of its part. There is an urgent need to finish fresh survey of land for which Government requires to recruit and train staff at every level. There is also no comprehensive land policy as such; however policies can be inferred by looking at tenancy Acts, where the Jharkhand is also facing some stagnancy with new legislative measures. Land is still governed under old pre-independence laws and there is need to reinvigorate the existing legislative provisions to cope up with current demands. The parent state of Bihar has come with several new legislations and its time that government of Jharkhand should initiate for adoption of some of these legislative mechanisms in Jharkhand.

Policy matrix



JHARKHAND POLICY MATRIX			
Issues	Recommendations	Responsible Agencies	Monitoring indicator
<p>1. Rural land records are not updated regularly, presumptive and lack spatial synchronization; Records and maps are not updated and do not reflect ground reality; revisional survey incomplete. Slow progress with computerization of land records;</p>	<ol style="list-style-type: none"> 1.1 Identify and implement on a priority basis, cost-effective ways of verification and updating of textual records and revisional survey based on ground reality, set deadline, and regular assessment of progress 1.2 Computerise all land records and make available on website (incl register II); maintain continuous <i>Khatihan</i> (Records of Rights) regularly without failure, set deadline 1.3 Develop and implement mechanism for continued updating of textual and spatial records, prompt service delivery and seamless connectivity, review mission mode implementation with stakeholders and possibilities to overcome need for special drives; 1.4 Assess the resource requirements for digitized record maintenance (regular and frequent sync), verification and resurvey in different situations (with special attention for survey & settlement of lands above 10 degrees slopes) 1.5 Develop a comprehensive program that would allow to accomplish record maintenance and resurvey in a specified and realistic time frame; 1.6 Regular Publication of Land Use and Ownership Status and Land Revenue Administration Report. 	Department Of Revenue and Land Reforms	<p>% of records verified and updated</p> <p>% of records identified on maps</p> <p>% of area mapped with land holder identified</p> <p>% of area mapped with land holder identified having documentation of tenure (gender and community –SC and ST disaggregated)</p> <p>% of rural households having updated land records</p>
<p>2. Urban land records are incomplete and not spatially referenced; High level of housing is in violation with urban regulations and tenancy laws regulation;</p> <p>Many urban dwelling are on tribal public lands, but the status of “<i>khasmahal</i>” land is unclear as lease renewal of thousands of cases did not take place</p>	<ol style="list-style-type: none"> 2.1 Review and update policy for <i>khasmahal</i> land, and learn lessons from Bihar approach 2.2 Establish base map for all cities, using existing information as much as possible; establish a common spatial data infrastructure focusing on maintenance and updating of records rather than. Make easily accessible to all citizens 2.3 Review laws, schemes/programs and systems in place and possibilities for streamlining for formalization of urban housing ; for tenure upgrading in informal settlements and expanding availability of affordable housing; 2.4 Define workflows and responsibilities involved in urban land management and records maintenance, building permits and enforcements and re-engineer where possible, effectively and sustainably. 2.5 Based on this analysis, clearly assign institutional responsibilities, ensure appropriate role of Urban Local Bodies and citizen participation and assess the resource requirements and gaps 2.6 Facilitate coordination among urban land-institutions 	Department of Urban Development, Department Of Revenue and Land Reforms	<p>% of area mapped with land holder identified having documentation of tenure (gender disaggregated)</p>

<p>3 Records are not updated automatically and not all transactions are registered</p> <p>Registration and revenue dept are not integrated. All index registers from 1970 onwards are digitalized and (printed) registration deeds as well as non-encumbrance certificates are rapidly available (max. 30 min).</p>	<p>3.1 Ensure that registration takes place following proper verification of land records. Consider opening registration offices and integrate with revenue circle office, which requires amendment of Registration Act</p> <p>3.2 Simplify registration procedures and standardize registration of deeds</p> <p>3.3 Enable online updating ROR and maintenance of continuous <i>khatihan</i></p>	<p>Department of Registration, Department Of Revenue and Land Reforms</p>	<p>Ratio of number of textual to spatial parcels Ratio of Registered vs. mutated transactions Number of new registration per month</p>
<p>4. Legal and administrative opportunities to enhance women's access to land are not used sufficiently</p> <p>When there is no female descendant, female names are not recorded in ownership column of <i>khatihan</i>/ Record of Right (ROR), either exclusively or jointly. Everywhere the name of the <i>Karta</i> of the family is recorded, implying spouses as well. Except in tribal communities, equality of women's property rights to those by men is established by law and followed in practice most of the time. Among schedule tribe communities women have very limited rights over landed property, because of customary practices. Both in the state level validation workshop and in panel discussion, these issues were recognized and it was recommended that a broader consensus is required to remove these anomalies. Ceiling law was amended to provide reservation to 50% of the ceiling surplus land to the eligible categories from women. Similarly with regard to the house sites for <i>mahadalit</i> families, 100% of the purchased lands are to be purchased exclusively in the name of the women beneficiaries.</p>	<p>4.1 Develop broad consensus (CBO, other stakeholders) on tribal women's land rights and involve media</p> <p>4.2 Explore possibilities for collective leasing for women's cooperatives of CPR and other govt lands</p> <p>4.3 Promote and monitor title on name of women for public land/housing distribution;</p> <p>4.4 Introducing 'gender' parameter in recording of information in Record of Rights to help tracking of progress with respect to women land rights.</p>	<p>Department of Urban Development, Department Of Revenue and Land Reforms</p>	<p>Share of ROR held by women Share of homestead and agricultural land issued to women (Share of women holding land?) % share of new registrations with woman's name</p>
<p>5 Effectiveness of public land redistribution for eligible poor and the actual possession for granted public land needs strengthening</p> <p>Dispossession of granted land is a risk in Jharkhand, particularly for ceiling lands, but there are no data as no survey has been carried out</p>	<p>5.1 Monitor forcible dispossession of allottees in government land; ensure prompt action act in the these cases</p> <p>5.2 Discourage dispossession by making it a cognizable offense.</p>		<p>% of area mapped with land holder identified having documentation of tenure (gender disaggregated Ratio of % of land allotted in the name of SC/ST to the % of their population % of continued possession of land</p>



			allotted to ST
<p>6. Lack of clarity in assignment of institutional responsibility for forest land and tribal land prevents assigning ownership</p> <p>Traditional village structures are still in charge of management of some common lands and some customary practices recognized in the tenancy Act. Records and maps do not reflect the reality of forests and commons on the ground; fresh revisional surveys are incomplete.</p> <p>Most of the right holding PFs institution of JFM likes VFMPs or VEDCs exist but they have to be activated and motivated, limited implementation capacity of FD (see 4). Micro plans to ensure sustained supply of minimum village requirements for firewood, small wood and timber have been prepared and submitted to the forest department, but are not acted upon. Dispossession of tribal lands is continuing and has not been halted or reversed by legislation to protect forests and CPR</p>	<p>6.1 Define responsibilities and workflows involved in forest/CPR. tribal land management and assignment of ownership/CPR rights and re-engineer where possible</p> <p>6.2 Undertake <i>anchal</i> wise inventory of common lands; establish clear distinction between CPR and other categories, such as barren and uncultivable lands, non re-distribution <i>parches</i>; include in CPR waste lands and fallows in addition to pastures, common grazing, protected, unclassified and other waste lands with common purpose</p> <p>6.3 Undertake enquiry and action for identified fraudulent transfers, settlements or illegal occupation.</p> <p>6.4 State amendments India forest Act 1927 to remove legal and procedural impediments in JFM implementation in Jharkhand</p> <p>6.5 Address conflicting provisions JFMP and FPC resolutions and ensure enactment; Strengthen coordination JFMP and FPC so that they function in tandem; improve local awareness of local users rights to manage CPR via JFM</p> <p>6.6 Supervise FRA implementation and monitor (survey, application, disposal, leases of pattas)</p> <p>6.7 Assess and sanction village micro plans on forest use; Simplify procedures for use and sale of <i>rayati</i> forest produce and enhance accessibility for villagers.</p> <p>6.8 Ensure completion EIA before conversion of forest to non-forest use</p> <p>6.9 Strengthen regulatory authority in districts to monitor land, forest and water issues and empower Gram Sabha</p>	<p>Department of Forest, Department of Panchayati Raj, Department Of Revenue and Land Reforms,</p>	<p>FRA implementation (survey, application, disposal, leases of pattas)</p> <p>% of land mapped identified as CPR/public land + management responsibilities clearly identified (CPR or not)</p> <p>% of CPR land under management of GP</p>
<p>7. Urban development and expansion is unplanned with infrastructure put in place afterwards</p> <p>Some cities in Jharkhand are well planned and the Jharkhand Municipal Act (2011) provides provisions for town planning, but authorities for town planning are not in place.</p> <p>Most city expansion took place at the expense of tribal lands and on public lands, where large colonies have sprung up. The status of these lands also prevents collection of holding taxes. Government and public lands have been encroached by influential and greedy persons; Prohibition of construction in green zones are not respected and many houses are built in these areas despite the restrictions Policy of affordable housing for urban poor.</p> <p>Jharkhand town public lands are very much prone to encroachment.</p>	<p>7.1 Create authority for town planning and developed and issue notification; Assess the resource requirements for town planning; urban development and design strategy to address capacity constraints;</p> <p>7.2 Prepare an urban land use policy, and detailed urban plan (50 year horizon) which earmarks land for and plans for growth of residential, commercial, industry, green belt, parking/ public transport uses</p> <p>7.3 Develop and maintain publicly accessible databases that allow for routine and effective implementation of land use restrictions.</p> <p>7.4 Survey of all urban land; Establish base maps for all cities to establish a common spatial data infrastructure focusing on maintenance and updating of records</p>	<p>Department of Registration, Department Of Revenue and Land Reforms, Department of Urban Development</p>	<p>% of urban land with claimant identified/ documented evidence</p>



	<p>7.5 Identify encroachments and prepare for swift recovery as per Encroachment Act</p> <p>7.6 Review the justification for restrictions on urban land use, ownership and transferability, eliminate those that do not serve any useful purpose and improve enforcement. Involve ULB and public in such decision making</p>		
<p>8: Transfer of Public land to Private use Jharkhand has good potential for industrial and mining development and several industrial and mining corporations have been established in past that has caused huge displacement of local population living in those areas. People displaced for establishment of SAIL in Bokaro or mining belts in Pakud and in Dhanbad are not fully rehabilitated till date. Agitation of displaced persons has become a permanent administrative problem in Jharkhand.</p> <p>Jharkhand government has developed a Jharkhand Industrial 2008 and a Resettlement and Rehabilitation Policy 2008, which exists only in paper. Land acquired for building of dams (Kanke, Hatia) is encroached. Public lands not protected nor managed effectively; Transfer of public land to private investors does not always serve growth and contribute to inequity and conflict</p> <p>Tenancy Acts of Jharkhand still lay out principles for public lands and have not been updated (contrary to the parent state of Bihar). Public land records and maps are incomplete and not updated.</p>	<p>8.1 Prepare an up-to-date data on number of people displaced in these industrial and mining belts and address their rehabilitation including their economic well being</p> <p>8.2 A fresh institution needs to be created to address the problem of displacement under the department of revenue and land reforms.</p> <p>8.3 Inventory and adequate-recording and demarcation of commons and public lands with effective Gram Sabha engagement</p> <p>8.4 Establishment unified land data base and management system for land possessed by different State / Central Government Departments and Public Sector Corporations. The public land database will be easily accessible and interpretable by using GIS tools and enabling syncing of public land information across spatial and textual records along with ground situation</p> <p>8.5 Restoration of encroached public land, using Encroachment Act</p> <p>8.6 Review and streamline responsibilities and procedures for public lands and assess resource requirements for every department having public land and legal responsibility for safeguarding public property, and strengthen capacities and training</p> <p>8.7 Implement new Land acquisition Act (2013); explore possibilities to simplify procedures and ensure adequate resources for implementation, without sacrificing adequate compensation to land losers;</p> <p>8.8 Consider requirement approval by local panchayats and PESA and setting-up district land acquisition committee</p> <p>8.9 Introduce third party monitoring of contracts between former land holders who lost land through acquisition and land requiring agency</p> <p>8.10 Regular publication of transfers and lease/rent payment, which also allows follow-up; consider third party monitoring to ensure compliance of contractual obligations by investor and grievance mechanisms</p>	<p>Department Of Revenue and Land Reforms</p>	<p>No. of people displaced/ no. of people rehabilitated/ no of people absorbed in industrial set up</p> <p>Share of land in different categories mapped with ownership and use rights clearly assigned</p> <p>Number of land acquisition disputes</p> <p>Ratio of land allocated through auction to total Govt. land allocated to Industry</p>
<p>9. Improve tax collection and rationalize exemptions Tax and revenue collection is low; Official market value does not</p>	<p>9.1 Identify and publicize revenue potential vs. actual collection for all major cities; Review cost to government of exemption of taxes</p> <p>9.2 Survey of urban land and housing for holding taxes</p>	<p>Department of Registratio</p>	<p>% Property tax collection/ potential by municipalities</p>



reflect the true market value of land. Holding taxes cannot be collected for housing colonies constructed on public and tribal lands for which the status has not been changed.	9.3 Verify in random manner the suppressed market value with the consultation of PRIs and ULBs; institutionalize procedure 9.4 Review and streamline procedures for tax collection and assess resource requirements to improve the administrative capacity	n, Department Of Revenue and Land Reforms	Increase in registration revenue
10. Enhance effectiveness of dispute resolution mechanisms and develop monitoring capacity Interest of scheduled tribes protected by Schedule Area Court, but they lack power of execution. Specific tribunal for land disputes do not exist. A large number of ceiling cases are pending in various courts of law.	10.1 Revitalise Schedule Area Court, and grant power of execution to them; and regular monitoring cases by DC 10.2 Consider establishing fast track courts to settle grievances on land, forest and water issues 10.3 Enactment of land specific tribunal, based on review of results in Bihar and legislation put in place (Bihar Land Dispute Resolution Act,2009/Rules2010 and The Bihar Special Survey and Settlement Act 2011, Rules 2012) 10.4 Empower Gram Cutcheries, Bihar Panchayati Raj Act, 2006 10.5 Invest in dispute resolution by improving coordination between anchal and police officers 10.6 Monitor delays in quasi-judicial courts and set timelines for dispossession		For various courts/ instances & categories of disputes (no. of cases filed by ST, disposal in whose favour; disposal within 3 months; cases related to encroachment land ceiling, mutation, and dispossession. Tribal land alienation, <i>khashmahal</i>
11. Revision of Legislative and institutional framework to eliminate outdated and ineffective sections in Tenancy laws, and update specific sections; and improve institutional coordination Legislation is in place to prohibit transfer of land from SC, ST and BC communities to others, but three provisos of Section 46 tends to regularize transfer on fraudulent terms undermining the essence of this law. The Indian Forest act (1927) has not been amended sufficiently to accommodate the provision of the JFM resolution (2001). A comprehensive umbrella land policy does not exist and land use boards are dysfunctional; Although there is no vertical institutional overlap, FD and RD staff at the grass root level is insufficiently trained and insufficient in numbers.	11.1 Review experience in Bihar with new legislation (Recent Acts on conversion of land use, special survey & Settlement, Land dispute Resolution, law of mutations, <i>Khashmahal</i> Policy etc.) to improve effectiveness of land administration, such as simplification legal framework and innovations 11.2 Make available more funding for staff recruitment and training for <i>anchal</i> and survey staff/officers, and forest dept (incl forest guards); strengthen internal communications and supervision 11.3 Build training capacity in the State for RD and FD 11.4 Prepare Land use policy for the long-term; Set a minimum percentage of CPR per village; address CPR at village and State level and define roles and responsibilities of local user groups, community based organizations, <i>Gram Sabha</i> , state and central government; 11.5 Revitalize dysfunctional Land Use Boards 11.6 Strengthen land use management capacity of <i>Gram Sabha</i> (infrastructure, human resources etc) 11.7 Incorporate main text of 71A, model law for scheduled areas in section 46 of CNT Act and delete current sections in 71A on	Department Of Revenue and Land Reforms, Department of Forest, Department of Personnel and Administrat ive Reforms	Efficiency/output indicators Geographical coverage of staff



	regularization on transfer in case of adverse possession; bring section 241 CNT Act on “ <i>mundatri Khunkattidar</i> ” in line with sect.49 11.8 Strengthen people’s participation in policy decision making and develop procedures to collect feedback on implementation of laws and policy		
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CHAPTER 1

State Context

SECTION 1.1: INTRODUCTION

The history of the state of Jharkhand may be said to be started after the partition of Bihar. The Jharkhand Mukti Morcha launched a regular agitation during the post-independence period and forced the government to create an autonomous body known as the Jharkhand Area Autonomous Council in 1995. It is this autonomous body that finally led to the formation of a separate state named Jharkhand.

On 15th November, 2000, the territory of Jharkhand was carved out of Bihar: the southern part of Bihar was given a separate entity and named Jharkhand, which literally means '**the territory of forests**'. Jharkhand shares its border with the states of Bihar to the north, Uttar Pradesh and Chhattishgarh to the west, Odisha to the south, and West Bengal to the east. It has an area of 79,000 sq. km and gives residence to 32 million people according to 2011 Census. The industrial city of Ranchi is its capital. Jamshedpur is the largest and the biggest industrial city of the state. Some of the other major cities and industrial centres are Dhumka, Dhanbad, Bokaro and Hazaribagh. Jharkhand occupies a forest track in the Santhal Pargana and the Chotanagpur plateau.

SECTION 1.2: SOME FEATURES OF JHARKHAND REGARDING LAND AND LAND GOVERNANCE

Land Classification

The land is classified mainly as:

- a) Don: It is wet land in which paddy is grown. It is usually terraced and boundary is given to store rain water for paddy crops. It is known as Bad and Bera and Dhaai in the districts of Singhbhum (Kolhan) and Santhal Pargana respectively.

- b) Tanr: It is upland and dry cultivated land. It is known as Gora and Bari in the districts of Singhbhum (Kolhan) and Santhal Pargana respectively.

Land Use

Land use is determined by the two sets of factors –a) the physical factors like topography, climate and soils and b) the human factors like the density of population, economic and social status of the occupying population and markets. Sometimes the transport and communication facilities control the extent to which the resources of land can be utilised.

In the state of Jharkhand, the physical factors those controlling land use pattern are the forest having rough terrain, drainage pattern, poor accessibility and suitable climatic conditions. There are some ethnic communities of the state those who are still depending on the forest for livelihood. Next the agricultural use of land comes, especially on slopes and plain land of the river valleys. The presence of mine, industries, transport network, settlements etc. are examples of non-agricultural use. There are some orchards also near the settlements.

About 9% of the land is under non-agricultural use. Waste land covers nearly 7% of the land consisting of rocky, bare, rugged barren hills or plateau, because development of agricultural land is very difficult in these areas. Miscellaneous trees and groves cover 1.42% of the total land of the state. This class of land plays important role in fruit markets. The state has also 2.48% of area under permanent pasture and grazing land. Pasture land is considered essential for the domestic animals because agriculture depends on cattle but pastures lands have been mostly converted into other uses. Also there is existence of cultivable waste land (3.44%). These land can be used for cultivation if efforts are made to improve the irrigational facilities.

Land Reforms

At the time of independence ownership of land was concentrated in the hands of a few. This led to the exploitation of the actual cultivators and was a major hindrance towards the socio-economic development of the rural population. Equal distribution of land was therefore an area of focus of Independent India's government, and land reforms were seen as an important pillar of a strong and prosperous country. Land Reforms aim at redistributing ownership



holding from the viewpoint of optimum utilization of land .Besides this, there is the problem of conditions of tenancy, i.e., the rights and conditions of holding land. Land Reforms aim at providing security of tenure, fixation of rents, conferment of ownership etc. The entire concept of land reforms aims at the abolition of intermediaries and bringing the actual cultivator in direct contact with the state.

The government of Jharkhand has been trying to distribute surplus land from ceiling and wasteland among the landless farmers, SC, ST, and backward class people. Still much needs to be done.

Update and computerization of land records, finalization of survey work needs special attention under national land records. Modernization program are initiated by government of India, project has been sanctioned for Dumka, Pakur, Dhanbad, Koderma districts of the state. Again government of India has sanctioned projects for remaining sixteen districts of the state namely Ranchi, Loherdaga, East Singhbhum and Latehar in which computerization has been partially completed.

Department of Land Resource under the Ministry of Rural Development is the nodal agency for matters related to land reforms including distribution of ceiling, surplus land , computerisation of land records and updating of land records .

The system of land records management varies from state to state, often even within a state, depending upon their historical evolution and local traditions. Several departments are involved in managing land records in most of the states, and the citizen has to approach 3 to 4, or even more, agencies for complete land records, e.g., Revenue Department for textual records and mutations; Survey & Settlement (or Consolidation) Department for the maps; Registration Department for verification of encumbrances and registration of transfer, mortgage, etc.; the Panchayats (in some States, for mutation), and the municipal authorities (for urban land records), leading to waste of time, exposure to rent seeking, and harassment.

In 2008 it was decided to merge the two existing Centrally-sponsored schemes of Computerization of Land Records (CLR) and Strengthening of Revenue Administration & Updating of Land Records (SRA&ULR) and to replace them with a modified Centrally-sponsored scheme in the shape of the National Land Records Modernization Programme



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(NLRMP), with the ultimate goal of ushering in the system of conclusive titles with title guarantee in the country.

Management of Land

Land is managed by a number of authorities. Agricultural Land and Government land is managed by Ministry of Revenue and Land Reforms. Urban Land is managed by Department of Urban Development while forest land is managed by Department of Forest. Department of Revenue and Land Reforms is managed by Minister as head. Under the Minister, Secretary Land Revenue and Land Reforms conduct the management of land problems who is assisted by a number of joint secretaries, Deputy Secretaries and under Secretaries with a number of support staff to assist.

Below the Secretary the Commissioner assisted by secretaries and Regional Development Officers to look after the Land problems at the commissioner level.

The actual management of land is conducted at the district level where Deputy Commissioners are the Chief administrators under both CNT Act and SPT Act. The office of Deputy Commissioner is assisted by Additional Collectors, Deputy Collectors Revenue, S.D.O.s and D.C.L.Rs.

In the field, Anchal Adhichari (Circle Officer) manages land related problems at the block level who is assisted by circle inspectors and a number of Revenue staff known as *Halka Karmacharis*.

Thus from Secretary Revenue and Land Reforms at the top of the Pyramid with *Halka Karmacharis* at the bottom works like a hierarchical network of the officers and staff to manage land and deal with Land related problems. But the issue of title can only be decided by the concerned civil courts that alone have power to decide disputes regarding title (Legal right of the Land).

In the same way forest land is managed by Secretary, Forest at the top and Range Officers and *Vanpal* (Forest Guard) at the bottom of the hierarchical pyramid.

The technical wing is headed by Principal Chief Conservator of Forests, Divisional Forest Officers, Range Officers and Forest guards.



Urban land is managed by the Department of Urban Land and Urban Development headed by Secretary Development and assisted by Joint Secretaries and Deputy Secretaries.



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Tenure Typology in Jharkhand

The basic framework of land governance in India was structured under British rule. Land revenue was a major source of income for British Government and the land administration was basically structured for the purpose of facilitating the collection of land revenues. There were three major systems under which land revenues were collected.

Zamindari system; where a *zamindar* or Landlord was responsible for the collection of land revenue from the territory that was under his control, prevailed in Bengal Presidency from where State of Bihar was crafted. Jharkhand was crafted out of the erstwhile state of Bihar; Therefore, Jharkhand was governed primarily under *Zamindari* System.

A major structural change in the area of land governance came after independence from British Rule, with the enactments of Bihar Land Reforms Act, 1950 which abolished the *Zamindari* system. Bihar land Reforms Act provided for the vesting in the state of all lands, estates and interests in (other than *raiyyati*) land abolishing all intermediate tenures and transfer of all lands recorded in the names of *Seminar* (Landlords) and other tenure holders to the state except those tenures which were specifically saved.

Current Land Tenure System

System of Land Records: Government maintains records of all land in *Khatihan* (also known as Records of Rights, ROR). It has three parts: Part I, called *Cheat* or records of rights, it shows the order of rights and interests in each plot of land; Part II that records community rights and Part III is a Village Note providing a general description of the social and economic organization of every village. We can get all relevant information about a particular piece of land like its history, possession and fertility by reading its entry in *Khatian*. *Khatihan* is considered to be the mother of all land records and all claims with respect to land are decided by looking into the entries made in *khatian*. The current *khatian* was prepared under British colonial rule and was published in 1930-32.

After Independence from colonial government, the state government did not have a very clear picture of the land so the government decided to conduct a fresh survey of the land which except for few districts (Lohardagga, Latehar), is still continuing and where revisional



survey is complete, final publication of survey result is still awaited. Hence the categorization of land is still made on the basis of *khatian* published in 1930-32.

On the ground of entries in the *Khatihan* (records of rights); and many of the notifications issued by the state government, the land of Jharkhand can be divided into three broader categories; State Land, *Raiyati* land and special kind of customary tenancy which did not vests in state.

State Land

The non-agricultural land meant for common use, under the control of state government is known as *GAIRMAJARUA*¹ land. *GAIRMAJARUA* land is further classified in two categories *GAIRMAJARUA Aam Land* and *GAIRMAJARUA Khas Land*.

- **GAIRMAJARUA AAM LAND:** *Gairmajarua aam land* is under the control of state government on which every common people has rights. However, in reality much of the pieces of this land have been encroached upon by influential persons. So the entries in land records may not reflect the actual status of possession.
- **GAIRMAJARUA KHAS LAND:** Earlier *Gairmajarua Khas Land* was recorded in the name of local *zamindar* (landlord) and *zamindar* had the power to settle individuals on these lands through registered deeds and in many cases through *sadda hukumnama* (unregistered deeds). After abolition of *Zamindari*, these lands are vested in state government and this type of land can be settled with *raiyyats* that is individual settlers, through lease or regular settlement or *Patta* to persons belonging to scheduled castes, scheduled tribes and backward classes. In the government record *lakhs* of acres of *gairmajarua khas* land are available but in reality *gairmajarua khas* have been distributed by the previous landlords (*zamindars*).
- ***Kaisere Hind* Land:** Apart from *Gairmajarua aam* and *Gairmajarua Khas* lands, there is another variety of land called *kaisere hind* (Government of India) which are lying scattered in every nook and corner of the state under the exclusive

¹ *Gairmajarua* literally means uncultivated.



control of the union government. Recently the union government through its operational circulars has allowed the state government to use *Kaisere Hind* land for government purposes.

Tribal Land

Large tract of land in Jharkhand are classified as tribal land. Two Acts, Chota Nagpur Tenancy Act (CNT Act) 1908 and Santhal Pargana Manuals and Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 (SPT Act) regulate the affairs related with tribal land. These laws have strict procedure that practically prohibits transfer of tribal land to the people of non-tribal communities. Two special class of tenancy that did not vest in state are *Bhuhari* and *Mundari Khuntkattidar* tenancy.

BHUINHARS and MUNDARI KHUNT-KATTIDARS: *Section 8, 10, 18 of Chota Nagpur Tenancy Act*, recognizes these tenancies, which have not been vested in the state government. As per the tribal custom, the original clearer of the forest land used to get recognition of usufruct right over the area. These lands were supposed to belong to the persons who originally cleared the land, since the members of the village families have been considered to be *direct descendants* of that original founder of the village so these lands have now come to be recorded in the name of the whole community. In the broken *Khuntkatti*² villages of original clearers of forests are recorded as *Bhuhars*.

In some parts of Jharkhand, land is governed under traditional system, in Chotanagpur territory, this system is known as known as *Munda Manki* system and in Santhal Pargana territory it is known as *Pradhani* and *Mool raiyati* system. The *Munda and Maniki* system still prevails in the districts of Singhbhum and neighbouring area. Before independence of India, the *zamindars* did not claim proprietary right on the *munda* village and after independence the state government still respects the *munda* system. The *munda* being the head of the village settles the land without government interference and collects rents. A number of villages of *mundas* work under the control of the *Manki*. Similarly in Santhal Pargana, Village headman, known as *Pradhan* exercise that powers and in some parts of districts of Deoghar, there are certain *mool raiyats* whose rights are recognised under law.

² Broken Khuntkatti means where the collective landholding system was broken.



Some other special categories of land recognised under tenancy laws are 1) Korkar land: Section 64 of CNT Act, clearly states that if a person has reclaimed or converted land fit for paddy cultivation; his rights of occupancy can be recognized. Large members of *rai-yats* have been successful in getting rent receipt issued in their names for their *korkar* rights, but still a great number of *rai-yats* have not got their *korkar* rights from the revenue administration. 2) *Sarna* land, ((the sacrificial grove), *Sasan* (the burial ground), *Akhra* land (Dancing place): No individual of the village can claim any proprietary rights over these lands.

SECTION 1.3: DESCRIPTION OF APPROACH, METHODOLOGY AND WORK PLAN

The objective of this study is to assess the performance of state of Jharkhand in the field of land governance, more specifically; to evaluate the legal framework, policies and practices regarding land and land use in the state of Jharkhand³. The current study is part of a larger study that World Bank is conducting in six states⁴ in India to assess the performance of a those states in the field of land governance. The final result of this study could be of great help for those concerned with the issue of land governance because it will present a comparative picture of performance of different states over different areas relating to land governance. Policy makers can see the area of good practices of other states and work upon the areas where they perform badly by learning from the experience of other states.

The Land Governance Assessment Framework (LGAF) is a diagnostic tool that has been developed for the evaluation of the legal framework, policies and practices relating to land policy, administration, use and management. LGAF is the result of a comprehensive study that covers all kind of issues and concerns related to the governance of land and land use. These issues and concerns are divided in nine broad thematic areas, The nine thematic areas are (i) Land Rights Recognition (ii) Rights to Forest and Common Lands & Rural Land Use Regulations (iii) Urban Land Use Planning and Development (iv) Public Land Management (v) Transfer of Public Land to Private Use (vi) Public Provision of Land Information: Registry and Cadastre (vii) Land Valuation and Taxation (viii) Dispute Resolution and (ix)

¹State of Jharkhand is one of the federating states of Union of India. The government structure of Union of India is federal in nature. Union of India is divided in 28 federating unit called states and 7 union territories. Constitution of India specifically allocates different governmental functions between Central government and State government. Land governance falls within the domain of state government.

²Andhra Pradesh, Bihar, Karnataka, Jharkhand, Orissa and West Bengal.



Review of Institutional Arrangements and Policies. The LGAF framework consists of 27 *land governance indicators* (LGI) that covers these panel topics. Each indicator is further broken down into a number of “*dimensions*” with pre-coded statements (on a scale of A to D). In total there are 118 dimensions in the LGAF. .

Stage 1: Preparation of Background Report by Expert Investigators

As the first step of the study the expert investigators began their investigation to prepare their report. Since no (or very limited) primary data was to be collected for this study; therefore, persons with wide working experience, familiar with local conditions have been entrusted to work as expert investigators. Expert investigators drawing from their experience, conducting structured and semi structured interviews with people in key governmental positions, consulting stakeholders, and studying data available in the public domain prepared a background report and first hand dimension ranking. The background report compiles and analyse impact of the topics discussed in the particular theme for local livelihoods, economic advancement, equity and development pathways, recent debates and controversies for the assigned domain, state and national Acts impacting on the topic area, policies, programmes, discussing origin, and reason for establishment, funding, results and sustainability of assets created, good practices and challenges and institutional analysis for the domain. This background report was evaluated and approved by the *Technical Advisory Group (TAG)*, a highly qualified and capable team of nationally recognized experts each covering one of the LGAF thematic areas.

Stage 2: Panel Discussion on Background Report of Expert Investigators

As second step of the study, state coordinator prepared a list of experts according to the thematic area for conducting panel discussion on every thematic area. Panel composition consisted of representatives from relevant government departments, retired government officers, members of civil society, activists, lawyers, representatives from academia and other stake holders. This report was then presented before such panel. The background report and dimension ranking prepared by experts on all nine themes were discussed in detail in these panels meetings and a consensus ranking with respect to every dimension was reached. The



panel experts also evaluated the policy recommendation suggested for the improvement in the relevant field.

Stage 3: Preparation of Draft Report Adopting Observations Made in Panel Discussion

State coordinator prepared a comprehensive draft state level LGAF report incorporating inputs provided by panellist.

Stage: 4: State Level Validation of LGAF Report

The draft report endorsed by the panellists was presented before a larger gathering drawing participation from all over the state for a state level validation of this report. Eminent personalities from bureaucracy, academics, judiciary, chamber of commerce, social work and other stake holders participated in the state level validation workshop. This report was approved in above mentioned state level workshop.

Therefore this report is the result of an inclusive and participatory study in which extreme care has been taken to ensure that it presents views of all stake holders so that it reflects a true picture of the status of land governance in Jharkhand.

SECTION 1.4: PLAN OF THE STUDY

The report is divided into twelve chapters. Chapter 1 focuses on State Context. In Chapter 2 we have discussed Land Rights Recognition (Panel 1) whereas in Chapter 3 we have focused on Rights to Forest and Common Lands & Rural Land Use Regulations (Panel2) Chapter 4 deals with Urban Land Use Planning and Development (Panel 3) Chapter 5 focuses on Public Land Management (Panel 4). In Chapter 6 we have dealt with Transfer of Public Land to Private Use (Panel 5). Chapter 7 deals with Public Provision of Land Information: Registry and Cadastre (Panel 6) (vii) Focus of Chapter 8 is on Land Valuation and Taxation (Panel 7), Dispute Resolution (Panel 8) and Review of Institutional Arrangements and Policies (Panel 9) are dealt in Chapters 9 and Chapter 10 respectively. In Chapter 11 we shall highlight some good practices. Chapter 12 will conclude the report with policy recommendations.



CHAPTER 2

Panel 1: Land Rights Recognition

SECTION 2.1: BACKGROUND REPORT

Jharkhand was separated from Bihar in the year 2000. It is a Vth Schedule state comprising of two distinct divisions – Chota Nagpur and Santal Pargana. A proper mapping of existing tenure typology of Jharkhand cannot be done without contextualizing the existing system within its historical emergence.

Separate tenancy Acts govern land tenancy in these region. Chota Nagpur is governed under Chota Nagpur Tenancy Act (CNT Act) 1908, and Santhal Pargana is governed under Santhal Pargana Manuals and Santal Pargana Tenancy (Supplementary Provisions) Act, 1949 (SPT Act). These two tenancy Acts tend to determine incidence of tenancy, the respective rights and obligations of the tenants and the state. Both are time- tested laws. Another major Act that brought a structural change in the set up under which land was governed in Jharkhand, is Bihar Land Reforms Act, 1950 (BLR Act)

The BLR Act is a landmark Act in the history of tenancy legislation as much as it ended the permanent settlement (made between government and intermediary land tenure holders) in 1793 by Lord Cornwallis, BLR Act ended this colonial legacy and established direct link between the state and tenant. Abolition of intermediary tenure holders (for all practical purpose that meant vesting of *Zamindari* or landlord's right in State) made a very deep impact on the way land rights were governed in Jharkhand. To grasp today's scenario it is very important that we trace the emergence of these intermediary tenures rights and subsequent abolition of it and its impact on the land relation of people in the way it developed.

For the purpose of this study Jharkhand is divided into two broad categories, Chota Nagpur division and Santhal Pargana division.



SECTION 2.1.1: CHOTA NAGPUR DIVISION

Chota Nagpur region is a hilly and forested area that covers most of the existing state of Jharkhand. Chota Nagpur derive its name from an ancient kingdom known as *Nagnabshi* kingdom that acquired allegiance of primitive tribes of this region around 10th Century.

State of Jharkhand is home of different people, a substantial portion of them (26% as per 2001 Census) belongs to Schedule Tribes communities who settled in these hilly terrain in different period of times in due course of history. Currently there are 32 Tribes who belong to schedule tribe categories. *Mundas* are the maximum in numbers. It is believed that at some uncertain point of history *Munda* tribes started settling in Chota Nagpur through western border side of Chota Nagpur and thereafter other tribes like Oraon and other communities started entering and settling in Chota Nagpur.

As stated above, it cannot be said with certainty as to when different Schedule tribes communities entered Jharkhand, however they are considered to be the ancient settlers of the land. Jharkhand is a Vth schedule state meaning thereby that Union government via Governor can take certain special measures for the protection of the interest of Schedule Tribes including declaring that certain laws shall not be applicable in certain areas.

In addition to people belonging to schedule tribes, Jharkhand is also home of different non-tribal communities who have settled here in the due course of history. Many of them were settled by local king when slowly by slowly he started getting influenced by other local kings belonging to mainstream Hindu communities through matrimonial alliances.

A major chunk of outsiders were also settled by the local king after he was defeated and subdued in battle by Ibrahim Khan, a lieutenant of Moughal Emperor Jehanghir. He was taken to Moughal Court in Delhi and was kept in house arrest for 12 years. However later on he was released when he accepted to rule Chota Nagpur as a tributary of Moughal Empire. Even after this subjugation, Moughal Empire could never get such strong hold over Chota Nagpur that they could exercise control over its internal affairs. After this defeat, he induced several high caste Hindu adventurers for settling in Chota Nagpur by grant of land and *jaghir*.



Further many people belonging to non-tribal population settled here in the colonial period and after independence as working professionals when many large industries and mining projects opened in several parts of Jharkhand.

Jharkhand, though it's a Vth Schedule territory, meaning thereby that a large chunk of population belonging to Schedule tribes resides here and their interest is to be protected by special measures; it should not be forgotten that many people belonging to non-tribal groups have also settled here in long course of history.

In the field of land governance Jharkhand has long history of fierce struggle over the point as to who has legitimate control over land. Settlement of non-tribal in the territories that were historically home of tribal communities has created several conflicting interests. Land alienation among schedule tribes has been a burning problem of Jharkhand from very long times and to quell this unrest several stringent provisions were made in tenancy laws restricting transfer of land belonging to tribal communities from tribal hands to non-tribal hands. However no one would deny that in spite of such stringent provisions, lands were always being transferred and such historical non-implementation of these restrictions clause (and misuse of the inherent lacuna in it) has created a unique problem where several residential quarters, commercial set up has come on tribal land which according to the provisions of the CNT Act could not have come into existence because land was illegally transferred to developers of land.

Additionally it must be noted here that basically tenancy laws were enacted to govern agricultural land and with passing of time and expansion of township, many land that were hitherto being best utilized in agricultural work, are now being considered to be more profitable (and better use) for non-agricultural purposes like establishment of residential complexes, market, factory etc.

History of Tenancy Laws in Chota Nagpur

The tenancy laws were basically enacted to regulate agricultural land. Chota Nagpur has long tradition of agricultural activities where they were converting wasteland and jungle land in agricultural land. In fact the literal meaning of *Khuntkattidar* (a special class of tenancy recognized and still existing under CNT Act) is one who has cut forest to convert it into an agricultural land.



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The land of Chota Nagpur was not very suitable for agricultural activities but it was surrounded by hilly forest but the deficiencies of agricultural produce were compensated by forest produce. Therefore historically people of Chota Nagpur were as much dependent upon agricultural produce as much on forest produce. Therefore, forest played a large role in the development of life style and civilization of people of local inhabitants of Chota Nagpur.

Pre-colonial Administrative System of Chota Nagpur

Though Chota Nagpur has long history of settled civilization, it never had any strong centralized system of governance. Different tribal communities were governing their affairs through their own village centric administrative system.

One ancient ruler who received allegiance of *munda* tribes (most numerous schedule tribes) was a *nagbanshi* king known as Phani Mukut Rai (around 11th century AD), but he also never disturbed the internal administrative system of village based communities. Later in history *Moughal* empire tried establishing stronghold in the region. Though they were able to gain a formal allegiance of local ruler but they never actually penetrated the Chota Nagpur region deep enough to get such stronghold on the region to supplant their own centralized system of governance over the existing village based administrative system.

Munda Manki System

This village based administrative system varied depending upon the communities but usually it was governed by a village headman and a priest. Among *Mundas* and *Hos* the headman was known as *Munda* and the priest was known as *Pahan*. Among *Oraon* the headman was called *Mahto*. Networks of 10-12 villages were headed by a “*Manki*” who used to solve dispute arising between different *mundas*.

All the lands were held jointly (or in communion) by the villagers and there was no understanding of an individual holding land as a proprietor of land in his own personal capacity. Different portion of the land were divided for the purpose of performing different tasks, like some portion of the land marked as *rajhas*, whose produce used to be reserved for sending tribute the king, certain portion were reserved for religious activities called *sarana* land, some portion of land for communal dancing and celebration known as *akhra* land, some portion for agricultural produce for everyday uses.



Structural Change in Local Administrative System in Colonial Era

No outsider has been able to disturb such arrangement till British East India Company came into picture. East India Company in 1765 received *deewani* right of *Bengal subha* from *Moughal* emperor. *Deewani* right was basically a right to collect land revenue. Chota Nagpur fell in the *Bengal Subah*, and East India Company asserted its right to collect land revenue in cash from the inhabitants of Chota Nagpur. There was no existing system for collection of revenue in (cash) Chota Nagpur region through which East India Company could have collected land revenue. Therefore, they had to bring in their own system.

The existing framework of land governance in India owes its allegiance to this system that East Indian Company brought in to collect land revenue. They formed three major systems through which they collected land revenues.

Zamindari system; where a *zamindar* or a Landlord was responsible for the collection of land revenue from the territory that was under his control, ***Royyatwadi*** system, where the individual *raiya*s or actual cultivator was responsible for paying land revenue, ***Mahalwadi*** system, where the whole village was collectively responsible for collection of land revenue.

East India Company applied *Zamindari* system to collect land revenue in Bengal Presidency. Chota Nagpur region was part of *Bengal Subaha*, therefore, *Zamindari* system prevailed here.

East India Company first entered into an agreement with Chota Nagpur Maharaj (Ratu Maharaj) in 1772 for the fixation and collection of land revenue for Chota Nagpur region. The total revenue was assessed at Rs. 12,000. However *maharaja* failed to collect and pay that amount because, as discussed, there was no system for collection of land revenue and more so there was no custom of collecting it in cash. The agreement was renewed in 1775 for Rs. 15001. He again failed to pay the land revenue.

Repeated failures in collection of land revenue forced Company to think about a new system for collection of land revenue and Lord Cornwallis, the then Governor General of East India Company came up with *Permanent Settlement* scheme under which total annual revenue for a particular revenue village was fixed and a local landlord (person claiming to be the master of village) was asked to pay that fixed amount.



Local landlord was free to further fix the revenue on fellow villagers so that he could pay his fixed revenue of the village and he was free to keep the excess revenue with him. Local *zamindar* also had the power to settle *raiyyats* (individual cultivators) in his territory and also remove *raiyyats* if they failed to pay their share of land revenue. All Common land of the village came under the control of local *Zemindars*.

Impact of Change on Local people

It is to be noted that hitherto the chief of the village in India (more so in Chota Nagpur) never had such absolute power over his territory and neither the chief was considered to be the lord of the land in the way East India Company *Zamindari* system made him to be. Village headman (or *munda*) was not the proprietor of all land in the village but he was just first among equal. But with the introduction of *Zamindari* system, now he became proprietor of all lands falling within his *Zamindari* with almost absolute control over land of his *raiyyats*.

East India Company established two major administrative units to facilitate and mediate over the collection of land revenue; Office of Collector and Police Stations (*Thanas*). In the early era it was the responsibility of the local *Zemindar* to raise police however in later period police came under direct control of colonial empire. Whole of Chota Nagpur division was governed under two *Collectariat* (office of Collector) Chatara and Gola.

Under this new system when a *zamindar* used to fail in paying his due revenue, his *zamindari* rights were auctioned in an open court to recover due land revenue. Many of the local *zamindar* failed to pay their due rent and their villages were auctioned in open court, many a time much before local *zamindar* knew their villages were auctioned out to an outsider. Speculators and trading communities (mostly people from outside Chota Nagpur) with cash in their hands bought several such *zamindaris* and became landlords of villages whose customs and system they hardly knew. They were also very strict in collection of revenue which resulted in many local people losing claim over their ancestral land which they owned and were cultivating for generations.

Such hardship and alienation from their land united people against this new system and the first major rebel broke out in *Kolhan* region (part of modern days Districts of Singhbhum) known as *Kol* Rebel in 1832. Though the rebels were suppressed but it made East India Company to rethink its land governance policy. It was agreed that local administrative



system of tribal community should not be interfered with and local landlord should be encouraged and protected against the outsiders who were buying *zamindari* in auction and becoming new chief of villages to which they had no cultural or social affinity.

In recognition of these realization *Wilkinson's Rule* were formulated which debarred the authority of civil court in *kolhan* area. One of the most important provision of *Wilkinson's Rule* was that it prohibited transfer of any landed property without the Agent's consent on any account whatsoever. It also debarred jurisdiction of civil court in the area. These rules are still valid and there had been a lot of controversies on the applicability of Wilkinson's rule in today's context.

Another major Act that was brought was Chota Nagpur Encumbered Estate Act 1876 under which if a landlord failed to pay his land revenue, his estate was bought by the Board constituted under the Act and when *zamindar* was able to repay his arrears of land revenue his estate was restored back to him.

Further dissatisfaction against Company rule led to the first war of independence (also known as *Spey Mutiny* in colonial records) in 1857. Though the East India Company was able to suppress the rebellion of Indian *sepoys* and local *zamindars*, as a result of this war, governance of Indian empire of East India Company went directly into the hand of British Monarchy and it started a new era of colonial government where British government assumed direct responsibility of governing Indian empire of East India Company.

British government realized that it was necessary to conduct a proper survey of all the land to determine the rights of different communities over land.

Babu Rakhil Das was appointed as first Surveyor whose task was to conduct a survey of land to determine all the tenure holders of Chota Nagpur region. The aim of this survey was to clearly demarcate lands which were under the *khas* possession of *Zamindar*, (also known as *nij jot*, meaning thereby the lands which were in direct and immediate possession of *Zamindar*) and *Bhuniars* land, meaning the land of original settlers of village. The survey was compiled and records were prepared. This survey is called *Bhuniari* survey. The record of this survey is still available in government records room. This survey was recognized under Chota Nagpur Tenure Acts, 1869. The holders of tenures entered in any register under



Chota Nagpur Tenures Act, 1869 is recognized as settled *raiyyat* of that village under Section 5(b) of CNT Act. Following type of *Bhuinhari* tenures were recorded in that survey:

1. *Bhuinhari*, the cultivation of original clearers of the village
2. *Bhuinhari Mahtoi*, official cultivation of Mahto (head of the village)
3. *Bhuihari Munda*, official cultivation village Munda
4. *Bhuinhari pahani*, official cultivation of village priest or pahan
5. *Bhuihari Panbhara* lands given for the service of carrying water at village sacrifice
6. *Bhuihari Dulkatari*: Lands the income of which is devoted to religious proposes in the village

However *Bhuinhari* survey was never a complete record of existing land holding because only two types of land were surveyed but many different kind of tenure and tenancy existed in Jharkhand. *Bhuinhari* survey did not survey land of ordinary individual *raiyyat*, or *Mundari Khuntkatti* villages or *Sarna* (scared groves of *Mundas*) land.

Therefore, the conflict between tenant and landlord continued. The main reason of these conflicts was gradual land alienation of tribal population because of oppressive *Zamindari* system that has made it possible for *Zemindar* to evict tribal from their ancestral land on the ground of failure to pay rent. The peak of rebellion reached with Birsa Munda leading a campaign against land alienation. These rebellions were quelled but the necessity for an altogether new Tenancy Act specifically suited for Chota Nagpur was deeply felt by the colonial administration.

It was believed that until record of right after a detailed survey is not prepared, it was impossible to say with certainty which provisions of the law were suitable for land governance in Chota Nagpur. Therefore British Colonial government launched massive cadastral survey of land within Chota Nagpur in 1902.

Within one year government has enough data to understand another unique kind of tenancy that existed in Jharkhand, *Mundari Khuntkattidar* and it was believed certain restriction on transfer of such tenure must be brought in the law. Accordingly an Amendment Act was passed in 1903 that provided restriction on the transfer of *raiyyati* rights or rights of *Mundari Khuntkattidar*. These restrictive provisions enacted in 1903 are the same as those which are contained in sections 46 to 48 and section 240 of present Chota Nagpur Tenancy Act 1908.



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By 1908 government has enough data to come up with a final tenancy Act suited to the conditions of Chota Nagpur. Accordingly Chota Nagpur Tenancy Act, 1908 (CNT Act) was enacted.

The purpose of the CNT Act was to consolidate certain enactments relating to the law of Landlord and Tenant and settlement of rents in Chota Nagpur.

Under Section 4 of the CNT Act classes of tenants were defined. Four classes of tenants were recognized as follows;

1. Tenure holders, including tenure holders (Now all the tenure holders rights have vested with state)
2. Two classes of *Raiyats* (*raiayat* basically mean individual cultivator, defined under Section 6 of the Act as a person who has acquired a right to hold and cultivate land including his successor)
 - a. Occupancy *raiayat* meaning *raiayat* having a right of occupancy in the land held by them.
 - b. Non-occupancy *raiayat*, meaning *raiayat* not having such right of occupancy,
 - c. *Raiyats* having *khunt-katti* rights (defined under Section 7 as *raiayat* in occupation of, or having any subsisting title to land reclaimed from jungle by original founders of the villages or their descendants in the male line, when such *raiayat* is a member of family which founded village or a descendant in the male line of any member of such family).
3. Under- *raiayats*, tenants holding under *raiayat*
4. *Mundari Khunt-kattidar*, defined under Section 8, *Mundari khunt-kattidar* means a *Mundari* who has acquired a right to hold jungle land for the purpose of bringing suitable portions thereof under cultivation by himself or by male members of his family, and includes, the heirs male in the male line of any such *Mundari*, regards any portions of such land which have remained continuously in the possession of any such *Mundari* and his descendants in the male line, such descendants.

Security of Tenancy under CNT Act:

CNT Act defined rights and duties of all tenants and tenure holder (now State). It gave protection to occupancy *raiayat* under Section 16 of CNT Act by ensuring the continuance of



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their occupancy in the land. Under Section 17 of CNT Act they defined settled *raiyat* (and their heir) as someone who has been holding land since last 12 years before the enactment of CNT Act. Under section 19 all the settled *raiyat* were granted occupancy rights of the land that was settled to them. These provisions have solidified the position of *raiyat* against unjust alienation from their ancestral land which was the major source of strife between them and government.

Under Section 18 of the Act, *Mundari Khunt-kattidars* and *Bhuinhars* (surveyed in 1869 as discussed above) are deemed to be settled *raiyats* of their village and their occupancy right is guaranteed.

Raiyats can use land in any manner authorized by local custom or usage or in any manner which does not materially impair the value of land or render it unfit for the purpose of tenancy. It further defines what does not impair the value of land. Following use of land are deemed to not impair the value of land materially or to render it unfit for purposes of tenancy.

1. Manufacture of bricks and tiles for the domestic or agricultural purposes of the *raiyats* and his family
2. Excavation of tanks or the digging of wells or the construction of bandhs and ahars intended to provide a supply of water for drinking, domestic, agricultural or piscicultural purposes of the *raiyats* and his family
3. Erection of building for the domestic or agricultural purposes of for the purpose of trade or cottage industries of the *raiyat* and his family.

Raiyat can plant, cut, cut down and appropriate trees and bamboos, cut, cut down and appropriate any trees standing on such land, appropriate the flower, fruits and other products of such land, rear lace cocoons subject to the provisions made in records of right.

Post-Independence Change

Land Reforms Initiatives

Abolition of Zamindari: Land reforms and abolition of *zamindari* system was one of the foremost agenda of Congress (leading political party of the independence movement). Accordingly government of Bihar (Jharkhand was then part of Bihar) passed Zamindari Abolition Act and Bihar Land Reforms Act 1950 (BLR Act).



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The BLR Act, 1950 was a truly landmark legislation in the sense that it ended colonial land governance system that established *zamindari* system by abolishing all intermediary (tenure holder) between State and tenant and brought State and tenant in direct relationship. All intermediary interests except the *Mundari khuntkatti* tenancy within the meaning of CNT Act, 1908 and the *bhuinhari* tenure vested in the State.

Government enacted many other pro-poor land reforms legislation whose main purpose was to make land available to poor landless people especially belonging to schedule tribes, schedule castes and other weaker landless people.

Bhoodan Movement: Bihar Bhoodan Yajna Act, 1954 was enacted to give effect to Bhoodan Yajna initiated by Vinoba Bhave. The Act provides for (i) donation of lands in connection with *Bhoodan yajna* initiated by Vinoba Bhave and (ii) settlement of such lands with landless persons. A Statutory Committee was established under section 3 of the Act to administer all lands vested in committee for the purpose of Bhoodan Yajna. According to Audit Report of Controller and Auditor General of Jharkhand, Draft Para No.- 42-year 2009-10 Working of Revenue and Land Reforms Department, Jharkhand, there is 2,44,080.50 Acre Bhoodan land in Jharkhand out of which 17.621.77 Acre land is settled as yet. Similarly there are 4, 89.607.085 Acres gairmazrua Khas land is in Jharkhand, reported in A.G. Jharkhand. Audit Report Draft Para No. 42 in which 2.38.081.405 Acre land is settled.

Land Ceiling: In 1961, the State Government enacted the Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act. Section 4 of the Act lays down the extent of ceiling area for the different categories of lands, namely, (i) 20 acres, if irrigated by flow irrigation; (ii) 30 acres, if irrigated by lift irrigation; (iii) 40 acres for orchard; (iv) 50 acres, for *diara* land and (v) 60 acres for hilly and sandy lands.

Maintenance of Land Records: As discussed above colonial government conducted a massive cadastral and revisional survey to prepare of record of the land holder. The Revisional Survey and Settlement Operations (1927) settled rents of the *raiyyats* of every denomination. Every *raiyyat* was given a *khatihan* which contains the description of the plots of his land and the rental which he has to pay to the landlord. The record completed in this revisional survey is still the only authentic records for majority of districts in Jharkhand.



In the *Zamindari* period, *Zemindars* were the custodian of all common land and they also had the power to settle *raiyat* in those common land. Therefore, in that period true records of land were actually maintained by the *Zemindars*. After the abolition of *Zamindari*, the government did not have credible records of land holders therefore the government asked all the *zamindars* to file returns. Some of the *zamindar* filed returns but many big landlords like *Raja of Ramgarah* and many other big *Zamindars* did not file *Zamindari* returns. Government initiated a survey known as *Bhujharat*, however this *Bhujarat* could never be completed. Therefore government actually does not have very credible records of all lands till date except what was there in the Record of Rights *khatihan* that was published in 1932 for majority of territory.

However the government initiated survey settlement work for the purpose of preparing records of right. Jharkhand was divided in 6 Settlement division covering 24 districts of state.

Table 2.1: Survey Settlement work for preparing records of right in different districts in Jharkhand

SN	Name of the Division	Day of Constitution	Districts covered
1.	Ranchi	23.12.1975	Ranchi, Ghumla, Lohardagga, Simdega
2.	Singhbhum (Jamshedpur)	18.01.58	East Singhbhum, West Singhbhum, Saraikela-Kharnsawa
3.	Dhanbad	12.02.81	Dhanbad, Bokaro
4.	Dumka	08.08.78	Dumka, Deoghar, Godda, Jaamtara, Pakur, Sahebgunj
5.	Hazaribagh	07.12.95	Hazaribagh, Giridih, Koderma, Chatra, Ramgarah
6.	Palamu	17.12.76	Palamu, Garahwa, Laatehar

Source: Government of Jharkhand



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Fresh Survey and Settlement work were initiated in all the Survey divisions of Jharkhand post independence but barring few districts, nowhere this survey settlement process ever got completed. In several places it is continuing since decades or two. Lohardagga is only districts where fresh settlements were carried after independence and it was finally published in 1988-89.

Computerization of land Records

Computerization of land records is going on under centrally funded National Land Records Modernization Programme (NLRMP); however, the progress on this front is not very satisfactory as per the government's own admission. As per the report prepared on 08.01.2014, total number of *khata* in is around 25 lakhs out of which only 9.21 lakhs *khatas* have been entered. The data that is being used is also old records prepared in colonial period except for the district of Singhbhum (1964) and Lohardagga and Laatehar.

Best Practices and Strength of Chota Nagpur Region:

1. Section 46 of CNT Act 1908 puts restriction on transfer of Schedule Tribes (ST), Backward Class (BC) or Schedule Caste (SC) land. An occupancy *raiya* who is a member of ST may transfer with the previous sanction of Deputy Commissioners, his right in his holding or a portion thereof by sale, exchange, gift or will to another person who is a member of schedule tribe and who is a resident within a local limits of the area of a police station within which holding is situated. Similarly previous sanction of deputy commissioner is required for a member of SC or BC. These restrictions are immensely beneficial to the member of Schedule Tribes, Schedule Caste and Backward Classes.
2. No Transfer in contravention of the above provisions shall be registered or shall be in any way be recognized by any court, whatever, in exercise of its civil, criminal or revenue jurisdiction.
3. The Deputy Commissioner shall be a necessary party in all suits of civil nature related to any holding or portion thereof in which one of the parties of the suit is a member of schedule tribe and the other party is not a member of a schedule tribe.



4. The Deputy Commissioners on his own motion or on application filed by a tribal *raiyat*, for annulling an illegal transfer, hold an enquiry and if he finds the transfer as illegal he shall annul the transfer and evict the transferee from such holding or portion thereof and put the transferor in possession thereof.
5. Section 48 puts restriction on the transfer of *Bhunihari* tenure, the manner and extent of the restriction are same as is in the case of an aboriginal *raiyat* and Deputy Commissioner is empowered to evict unlawful transferee.
6. Section 49 allows and *raiyat* to transfer his land for industrial, mining purpose and for other purposes subsidiary thereto. Section 71 'A' provides immense power to restore to member to Schedule Tribes over land unlawfully transferred. It is the most ideal law in the country (had there been no loopholes, which will be referred to later). This section broadens the definition of transfer. It removes time bar regarding filing in of application. It provides for eviction of transferee without payment of compensation. It provides for restoration of the transferor or heir of any other bona-fide tribal raiyati of the village.
7. Section 72 of the CNT Act provides for the surrenders of land by a *raiyati* only with a previous sanction of Deputy Commissioner in writing. (As amended in 1947).

Weaknesses

Section 46 of CNT Act pertains to the Schedule area in Jharkhand. It provides for enquiry by Deputy Commissioner and annulment of illegal transfers. However time limit for filing for application is 12 years. Further the following two provisions provides for validation of offer transfer with regard to "Substantial Structure"....

Provided that if the transferee has constructed any building or structure, such holding or portion thereof, the Deputy Commissioner shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period of six months from the date of the order, or within such extended time not exceeding two years from the date of the order as the



Deputy Commissioner may allow failing which the Deputy Commissioner may get such building or structure removed:

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1969 (President's Act 4 of 1969) he may, notwithstanding any other provisions of this Act, validate such a transfer made in contravention of clause (a) of the second proviso to sub-section (1), if the transferee either makes available to the transferor an alternative holding or portion of a holding, as the case may be, of the equivalent value, in the vicinity or pays adequate compensation to be determined by the Deputy Commissioner for rehabilitation of the transferor.

Explanation.-In this Section "substantial structure or building" means the structure or building of the value exceeding five thousand rupees on the date of holding inquiry, but it does not include such structure or building of any value the materials of which cannot be removed without incurring substantial depreciation in its value.]

The following three proviso of section 71 sap the very essence of section 71 A

Provided that if the transferee has, within 30 years from the date of transfer, constructed any building or structure on such holding or portion thereof, the Deputy Commissioner shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period of six months from the date of the order, or within such extended time not exceeding two years from the date of the order as the Deputy Commissioner may allow, failing which the Deputy Commissioner may get such building or structure removed :

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before coming into force of the Bihar



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Scheduled Areas Regulation, 1969, he may, notwithstanding any other provisions of the Act, validate such transfer where the transferee either makes available to the transferor an alternative holding or portion thereof as the case may be, of the equivalent value of the vicinity or pays adequate compensation to be determined by the Commissioner for rehabilitation of the transferor:

Provided also that if after an inquiry the Deputy Commissioner is satisfied that the transferee has acquired a title by adverse possession and that the transferred land should be restored or re-settled, he shall require the transferor or his heir or another Raiyat, as the case may be, to deposit with the Deputy Commissioner such sum of money as may be determined by the Deputy Commissioner having regard to the amount for which the land was transferred or the market value of the land, as the case may be and the amount of any compensation for improvements effected to the land which the Deputy Commissioner may deem fair and equitable.

[Explanation I-In this Section “substantial structure or building” means structure or building the value of each on the day of initiation of inquiry, was determined by the Deputy Commissioner to exceed Rs.10,000 but does not include structure or building of any value, the material of each can be removed without substantially impairing the value of.]

[Explanation II-A Bhuinhar or Mundari Khunt-Kattidar, who is deemed to be a settled Raiyat under the provisions of Section 18 of this Act shall also be deemed to be a Raiyat for the purpose of this Section].

Recommendations

- (1) The main text of section 71 A (Model Law) which operates in Schedule Area, should be incorporated in Section 46 as well for non – schedule area.



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(2) Section 46 deals with removals of illegal structure by Deputy Commissioner. Restoration should be provided after such removals. The second provision in sec 46 should be deleted.

(3) The three provisions to sec 71 A which provide for regularization of transfer in case of adverse possession should be deleted.

Section 20(5) 3rd proviso is antithetical to Section 42.

(4) Section 241 of CNT Act dealing with *Mundari Khunkattidar* and his vague power of transfer should be brought in tune with Section 49 meaning thereby that like other schedule this *raiya*s Mundari *khunt kathidar raiyat* also opt for industrial and mining purposes

SECTION 2.1.2: SANTAL PARGANAS

Moving on to Santhal Pargana, it will be pertinent to trace in brief the origins, customs and history of the inhabitants of the region.

This region is lavishly endowed with gifts of nature in natural and minerals wealth, in addition to forest wealth which is in abundance. The earliest inhabitants of whom there is any record appear to be *Malers* who were living in the north of the Rajmahal hill. During the early British rule the *Maler (Surya Paharia)* in the north and the *Malpharia* in the south west of the Rajmahal hill, drove out the Ghatwals and the entire plain lay at the foot of their mercy. The raids of the hill men upon the people of the valley became more frequent and systematic. The government brought civic sense among the *paharia* by various measures including grant of land and stipend to *sardars*.

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The *paharia* now pacified retired to the hills, there started immigration of *santals* in large way in this area during the last quarter of 18th century. The *Santals* migrated from Orissa, Dhalbhum, Manbhum, Badabhum, Chotanagpur, Palamu, Hazaribagh, Midnapore, Pankur and Birbhum. It is recorded in Sutherland's report to government dated 1818:- "An immense expanse of forest covers the plains extending from the base of these hills. For several years



many families of the industrious tribes called Sonthur (Santals) have established themselves in these forests and have been clearing and bringing into cultivation were tracts of lands.”

The *Santals* had no perfect security in the possession of land which they made fit for habitation and cultivation by clearing of the forests. The *Dikku* (outsider) or non *Santal* settlers gradually acquired more and more land from the *Santals* by exacting mortgages from them in return for loans. The *Santals*, thriftless and improvident, easily got into debt; exorbitant interest was charged, and once he had contracted a debt he had little chance of escape. *Mahajans* and their *mustajirs*, the police, the revenue and Court *amlas* all exercise a combined system of extortions, oppressive exactions, forcible dispossession of property, abuses and personal violence and a variety of pretty tyrannies upon the timid and yielding *Santals*.

Iniquitous socio-economic system prevailing in Damin-e-Koh led to *Santals* rebellion 1855. It was uprising directed more against their oppressor, (the *mahajans* and others.....and other ends non Santal settles) then against administration. The creation of the district of Santal Pargana was the direct result of the *santhal* rebellion of 1855. Although the uprising was easily crushed, its message was not lost to the government. By the act 37 of 1855, the Santal Pargana was removed from the operation of general laws and regulation. The stave of a second *santhal* rebellion in 1871 had a sobering effect on the administration and the result was the Santal Settlement II of 1872.

The first settlement of the district was carried under regulation III of 1877 by Mr. Browne Wood (1872-1873). The Regulation III of 1872 was further amended by Regulation II of 1904 and Regulation III of 1908. The latter definitely declared the non transferability of *raiyyati* lands and affirmed the power of the Deputy Commissioner to interfere with illegal alienation and, generally, to enforce the provisions of the settlement record. In 1949 these tenancy laws of this district was further supplemented by Bihar Act XIV of 1949, the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949 which have placed some of the customary laws of the district in the statue book, e.g. exchange of *raiyyati* land, sub letting lands under certain circumstances rate of landlord’s fees on transfer, rights of *raiyyats* on trees grown on them etc.



The social life of the *Santals* is highly organized and complete in itself, the village organization and the political organization of the tribe need special attention. A number of villages form part of one local administration unit, which is administered locally by a *praganait*. He is the custodian of all social functions of the villages and his area. The important officials of the Santals are, the *Manjhi* (headman), the *paramanik*, the *Jog Manjhi*, the *Naike* and the *Gorait*. Besides these, the *Paramanik* and the *Naike* have their assistants, viz. The Jog Paramanik and the Kudam Naike

The *Manjhi* is the headman of the village. He collects rent and receives a commission on the same. He holds rent free land for his services. He settles disputes of the village through the village council (*Panchayat*). His post has become hereditary. He is assisted by the *Jog manjhi*.

The officials of the *Santals* perform their functions in accordance with the tribal system. The pattern of the village government of the *Santals* is democratic and is on a republican basis which very well compares with the democratic institutions, such as the *Panchayat* and Parha-system of the *Oraons* and the *Mundas* of Chotanagpur. But now with the introduction of government sponsored Panchayat, the social control of the traditional Panchayat of the Santals is gradually being undermined. With the vesting of the private estates in the government, the functions of the Paraganait have also gone a radical change. He is left there as a man without power. The non regulation district of Santhal Pargana has become an administered area.

Pradhani System

On the application of *raiyyat* of any *khas* village and with the consent of two thirds of Jamabandi *raiyyat* of the village, the Deputy Commissioner may declare that headman shall be appointed for the village. The duties of the headmen (pradhan) are follows.

During the currency of his lease, it is the duty of the headman-

- a.) To collect and punctually pay the rents to the proprietor (now State).
- b.) To perform the prescribed police duties.
- c.) With the assistance of the *raiyyats* to repair dykes, dams and tanks belonging to the village other than those which are within the meaning of section 8, and also village



paths and boundary marks, and to preserve the camplug and grazing grounds. No one may cultivate such water reservoirs.

- d.) To observe all such orders and resolutions as government has passed or may hereafter pass prohibiting or regulating the transfer in any way of the office of head man, and the transfer or subdivision of *raiya* holdings does not at present exist in the village.
- e.) To guard the respective rights of Government, of the proprietor, and of the *raiya*s.
- f.) To preserve intact for cultivation the headman's private holding, and his official holding, if any.
- g.) To realize from the *raiya*s and to pay to the parganait, chaukidar and other such officials, however styled their customary or other legal dues.
- h.) To assist the proprietor in procuring sarkari rasad.
- i.) To realize from the *raiya*s and to pay over to the proprietor road and public works cess, as ordered by Government.

Rights of the headman

During the currency of his lease the headman is entitled-

- a.) To enjoy the official holding, where such exists, on payment of rent.
- b.) On a *raiya*'s absconding or dying without heirs, to settle his holding with one or other of the following, giving preference in the order mentioned below:-
 - 1.) With a resident *jamabandi raiya* of the same community.
 - 2.) With himself, if resident, or with a resident *jamabandi raiya* of a different community.
 - 3.) With himself, if non-resident *jamabandi raiya*.
 - 4.) With a non-*jamabandi raiya*.

Distinctive features of tenancy situation in Santhal Pargana region

Prior to the passing of the Santhal Pargana Tenancy (Supplementary Provisions) Act, 1949, there was no self-contained codified law of tenancy for the areas. Some of the tenancy laws were contained in Regulation III of 1872. Some were to be found in the Record of Rights and Duties as contained in settlement Report, in the ruling of the Commissioner Bhagalpur and the Deputy Commissioners and the decisions of civil and revenue courts and also in the executive instructions of the Government and revenue authorities issued from time to time.



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The Santal Pargana enquiry in its report in 1938 felt that the codification of various laws, rulings and executive orders should be taken up at the same time, it was conscious that straight codification might result in rigidity and inflexibility.

The Santhal Pargana Tenancy (Supplementary Provision) Act 1949 tends to amend and supplement the existing tenancy laws of Santal Pargana. It codifies some of the customary laws of relating to exchange of *raiya* lands, subletting of *raiya* lands under certain circumstances, settlement of vacancies and abandoned holdings, rate of landlord's fees on transfer, rights of *raiya*s relating to tanks and water reservoir, grazing land and *jaherthan* and rights of *raiya*s on trees on his lands etc.

After 1949 the Bihar act of 1949 was further amended by a series of amendments through the following notable legislations.

- a) The Bihar Scheduled Areas Regulation 1969 (Regulation 1 of 1969)
- b) The Bihar Scheduled Areas Regulation, 1972 (Regulation 1 of 1972)
- c) The Santhal Pargana Tenancy (Supplementary Provisions) Amendments Act, 1975 (Bihar Act 17 of 1976)

The following are some of the distinctive features of tenancy situation in Santal Pargana.

1. Those who have acquired good title under Regulation III of 1872 could not be evicted.
2. *Raiya* rights have never been transferable in Santal Pargana. Regarding the prohibition against transfer, after incorporation of Section 27 in Regulation III of 1872, in 1908 by the Santhal Pargana Settlement (Amendment) Regulation 1908, (Regulation III 1908) the matter was concluded by the decision of Supreme court in the *Ram Christo Mendal Vs Dhen Ksito Mendal* (AIR 1964 SC 204) that no incidence of transferability attended to land of the *raiya* in Santal Pargana and they were inalienable. The relevant portion from the said decision is quoted here
 - i. *“The language of Sec 27 is clear and unambiguous. It prohibits any transfer of and holding by a raiyat either by sale, gift, mortgage or lease or by any other contract or agreement. Sub-section 2 of Section 27 in clear terms enjoins upon the court not to recognize any transfer*



of such land by sale, mortgage, lease etc. or by under any other agreement or contract whatsoever”

3. Restriction on transfer in the Santhal Pargana region are reasonable ones and fully justified in the interest of the Village Community and for the protection of the schedule tribes residing therein as it will be they who will have preferential right of getting those lands in the event of any *jamabandi* raiyats aboriginal or non-aboriginal becoming extinct or abandoning any holding

Best Practices and Strength

1. Section 20 of the SPT Act bar transfers by all raiyat Section 2(1) runs as follows .eel no recorded.

Section 20(5) is common with section 71 ‘A’ CNT Act; both 71‘A’ 20(5) were incorporate following schedule Area Regulation 1969.

2. Section 42 of the SPT Act provided for ejectment of a person in unauthorized possession of agricultural land.
3. Section 64 ousts law of limitations for an application U/S 42. It remains a wonderful pieces of legislation and runs as follows:-
4. Section 69 puts a bar to land held or acquired in construction of the provision of fact. 20.

Weaknesses

The three proviso to section 20(5) mar the very essence of the preceding text of the Sec 20(5) as they tend to regularize the transfer and provide for adverse possession to the transferees In fact the third proviso (inserted 1969) run counter to the otherwise provision in Section 42, Section 64 and Section 69 of the SPT Act which removes all time bars in filing application.

Recommendations

Three provisos to section 20 (5) should be deleted. This will remove the anomaly between existing third proviso to section 20(5) and run parallel to the older provision contained in section 42,64, and 69 of the same act.



Before closing the discussion it seems essential to point all out concerted efforts are to be made in Jharkhand to unearth illegal transfer made in the past and arrest such tendencies by strict enforcement of laws after plugging their loopholes.

SECTION 2.2 DIMENSION ANALYSIS

Indicators

1. **Recognition of a continuum of rights:** the law recognizes a range of rights held by individuals (incl. secondary rights of tenants, sharecroppers, women etc.)
2. **Respect for and enforcement of rights**

1	1	(a) Individuals' rural land tenure rights are legally recognized
<p>A: Existing legal framework recognizes rights held by more than 90% of the rural population</p> <p>B: Existing legal framework recognizes rights held by 70% - 90% of the rural population</p> <p>C: Existing legal framework recognizes rights held by 50% -70% of the rural population</p> <p>D: Existing legal framework recognizes rights held by less than 50% of the rural population</p>		

A

Comments:

As discussed in accompanying background report of this analysis; both CNT Act and SPT Act provides for different classes of individual *raiya*s viz. *raiya*s (defined as individual including his successor-in-interest, who has right to bring the land under cultivation), Occupancy-*raiya*s and non-occupancy *raiya*s, *raiya*s having khuntkatti right, under *raiya*s, *Mundari Khuntkattidar*.⁵ Both the tenancy Acts clearly provides for the rights of *raiya*s with

⁵ See Section 4 and section 10 of the CNT Act and SPT Act that defines different classes of tenancy,



respect to the use of lands⁶ which allows them to make use of land in any manner which is authorized by local customs and usages or irrespective of local customs and usages if it does not materially impair the value of the land or render it unfit for the purpose of tenancy. Further, Section 16(1) and 17(1) of the CNT Act secure continuance of their tenancy rights. Similarly Section 14 of SPT Act provides for the continuity of the tenancy.

1	1	(b) Individuals' rural land tenure rights are protected in practice
		<p>A: Existing legal framework protects rights held by more than 90% of the rural population</p> <p>B: Existing legal framework protects rights held by 70% - 90% of the rural population</p> <p>C: Existing legal framework protects rights held by 50% -70% of the rural population</p> <p>D: Existing legal framework protects rights held by less than 50% of the rural population</p>

A

Comments:

In existing legal framework, Chotanagpur Tenancy Act 1908 (CNT Act) and Santal Pargana (Miscellaneous Provisions) 1949 (SPT Act) makes adequate provisions have been made to protect rights held by rural population including the members of Schedule Tribe (ST) communities. The provisions of Schedule Area Regulation Act 1969 have been incorporated in the aforesaid Acts. After the promulgation of the Schedule Area Regulation 1969, the sub-section 5 was added in Section 20 of the SPT Act and Section 71(A) was added in CNT Act. The aforesaid 20(5) of SPT Act and Section 71(A) of the CNT Act tend to enlarge the definition of transfer. All sort of transfer including collusive suits have been brought under the ambit of transfer. Time restriction in filing transfer cases by the assignee have been removed in the main body of the section. No compensation is to be paid to the transferees. The Deputy

⁶ See Section 21 and Section 13 of CNT Act and SPT Act respectively



Commissioner in Chota Nagpur area can at any time, *suo-motto* or on an application by concerned person can start proceeding as per Section 71 (A) of CNT Act.

SPT Act restricts transfer with respect to all *raiya*s. The original section 20(1) starts with the words “no *raiya* can transfer.....” in the Santal Pargana a *raiya* can transfer only if the right to transfer has been recorded in RoR and that too only to the extent to which it is recorded. He may transfer to *Ghar-Jamai* (Son-in-Law who lives in the in-laws home) but to none else. In spite of the above golden law there are serious loop-holes in the aforesaid new insertions.

Three common provisos have been appended to section 20(1) of the SPT Act and Section 71 (A) of CNT Act. Three provisos tend to regularize transfer and also recognize the adverse possession right of the transferees after a lapse of 30 years.

These provisos sap the very essence of main body of section 20(5) and Section 71(A) of these aforesaid Acts.

Section 49 of CNT Act imposes a restriction on sale of *raiya*ti rights under order of the court. No decrees or orders shall be passed by any court for sale of rights of *Bhunihari* tenure. Section 49 provides for Deputy Commissioner’s power to permit transfer of land of any occupancy *raiya* or any member of *bhunihari* family for industrial and mining purposes only.

1	2	Customary tenure rights are legally recognized and protected in practice.
		A: There is legal recognition and effective protection of all customary rights
		B: There is legal recognition of all customary rights but these are only partly protected in practice
		C: There is partly recognition and effective protection of customary rights
		D: Customary rights are not legally recognized and not protected in practice

B

Comments:

Section 76 of the CNT Act runs as follows...



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"Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by its provisions"

In SPT Act the office of village headman (*pradhan*) and *mool raiyat*, in Deoghar district, is customary and has been codified in chapter 2 of the SPT Act.

The SPT Act codify some of the customary laws relating to exchange of *raiya* land, subletting of *raiya* land under certain circumstances, settlement of vacancies and abandoned holding, rate of landlord's fee on transfer, rights of *raiya* relative to tanks, water reservoir, grazing land and rights of *raiya*'s on his tree etc.

Further both CNT and SPT Act gives every *raiya*s a right to use land in any manner authorized under local customs and usages.

Further U/A 12 of the Constitution of India customs is a valid source of law. However there is a need for a systematic anthology of such customs to monitor how many of them are actually being observed, nonetheless customs codified or uncoded (unless repealed by any statute or repugnant to the provisions under Part III of the Constitution of India) have force of law and therefore have due protection of law.

1	3	Indigenous rights to land and forest are legally recognized and protected in practice.
		A: Recognition and effective protection of all indigenous rights
		B: Recognition of indigenous rights but only partly protected
		C: Partly Recognition of indigenous rights, which are protected
		D: Indigenous rights are not recognized and not protected

B

Comments:

In so far it is a fact that indigenous right to land have been recognized and protected in theory, registration of illegal transfer is banned but in actual practice there is transfer in both



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the Chota-Nagpur and Santal Parghana (SP) region. In the SP region no *raiyat* (including non tribal) can transfer. Despite these provisions there have been hundreds and thousands of informal transfer has taken place; against which mutation might or might not have been done. By taking recourse of three provisos of section 20 (5) of SPT Act and section 71(a) of CNT Act, predated transfer document (including *kufras*) are cooked up collusively with a view to regularize the illegal transfer. The Schedule Area Regulation Courts functioning in Chota Nagpur region might be taking cognizance of transfers by unfair means thereby regularizing transfers.

With regard to indigenous right to forest we already have central Acts namely Forest Rights Act 2006. We will be making separate mentions of action taken on aforesaid Act at an appropriate place (while discussing Panel 2 on Forestry) in our report.

1	4	Urban land tenure rights are legally recognized and protected in practice.
<p>A: Existing legal framework recognizes rights held by more than 90% of the urban population</p> <p>B: Existing legal framework recognizes rights held by 70% - 90% of the urban population</p> <p>C: Existing legal framework recognizes rights held by 50% -70% of the urban population</p> <p>D: Existing legal framework recognizes rights held by less than 50% of the urban population</p>		

A

Comments:

At the theoretical level the existing local framework recognizes rights held by more than 90% of the urban population. The extent of CNT Act 1908 and Santhal Pargana (Miscellaneous Provisions) Act 1949 includes urban area as prescribed in Jharkhand Municipal Act 2011.

The rest of submission have already been made with related to theory and practice of Law in LGI1 dimension 1 and dimension 2 which hold good equally for the urban areas.



		<i>Land Governance Indicator 2</i>
LGI	Dim.	<i>Respect for and enforcement of rights</i>
2	1	<p>Accessible opportunities for tenure individualization exist.</p> <p>A: The law provides opportunities for those holding land under customary, group, or collective tenure to fully or partially individualize land rights if they so desire. Procedures for doing so are affordable, clearly specified, safeguarded, and are observed in practice.</p> <p>B: The law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land rights if they so desire. Procedures to do so are affordable and include basic safeguards against abuse.</p> <p>C: The law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land rights if they so desire. Procedures are not affordable or clear, leading to discretion in their application.</p> <p>D: Although there is demand, the law provides no opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land rights.</p>

A

Comments:

There have been cases in which group rights devolved on members of group. Intact *Mundari Khuntkattidari* villages where the interest of the *Mundari Khuntkattidar* was not divided in the names of *Mundari Khuntkattidari* (beginning with headman) were jointly entered in one serial number of the *khewat*. The entire *Gaimazrua* waste and jungle in the village was entered under this *khewat*. The non *Mundari Khuntkattidar* tenants were given *khatihan* under this joint serial number. In some intact *Mundari Khuntkatti* villages, however, it was found that the *Mundari Khuntkattidar* group had divided their cultivated lands in accordance with the various family groups within the village. In those cases they paid their *chandras* to



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the *Mundas* not all jointly, as in the first mentioned type of intact villages but separately by family groups in accordance with the division of their holdings. In these cases the village headman or *Munda* was recorded alone in the first *batta* number of the *khewat* serial and remaining *Khuntkattidari* in the following *batta* numbers of this serial according the family groups into which they had divided themselves. A *shamilat* serial of all these *batta* numbers was prepared under which the joint interest of all the *Mundari Khuntkattidari* in the jungle and waste was recorded. The non *Mundari khuntkattidar* tenants were also given *khatihans* under this *shamilat* serial number. In one or two cases in south-west Tamar police station it was found that the *khuntkattidars* had partitioned portions of *gaimazurua* waste and jungles amongst themselves instead of holding them in common. In these cases the partitioned portions of *gairmazrua* lands were entered under the *batta* serials of the particular groups which had right in them.

As far as Hindu are concerned, Hindu united families are governed by Hindu Succession Act, 1956 wherein property devolves to individual co-partners.

2	2	Individual land in rural areas is recorded and mapped.
		A: More than 90% of individual land in rural areas is formally recorded and mapped.
		B: Between 70% and 90% of individual land in rural areas is formally recorded and mapped.
		C: Between 50% and 70% of individual land in rural areas is formally recorded and mapped.
		D: Less than 50% of individual land in rural areas is formally recorded and mapped.

A

Comments:

As per the provisions of Section 81 of the CNT Act all the particulars of the tenant and land to be recorded which includes, rights, restrictions and liabilities on land along with mapping of the land at the time of preparation of Record of Rights. As discussed in the background



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report massive cadastral and revisional surveys were conducted by colonial empire to record right of every land holders. In these surveys each and every village were mapped and recorded. The Revisional Survey and settlement Operations (1927) settled rents of the *raiyats* of every denomination. Every *raiyat* was given a *khatihan* which contains the description of the plots of his land and the rental which he has to pay to the landlord. Therefore, it can be said that almost 100% rural lands are recorded and mapped. It is certain that many of the actual holders of the land today would not be the person in whose names land was recorded. But still record of rights (*Khatihan*) prepared in 1932 is considered to be a conclusive evidence to determine who is the true holder of the land. Tenancy laws allowed continuity of occupation of tenant (including his successor in interest and transferee) over the land. Government launched fresh survey and settlement process after independence but barring few districts nowhere survey settlement process has reached to final publication. However that does not mean rural lands are not recorded and mapping of the land is not available.

2	3	Individual land in urban areas is recorded and mapped.
		A: More than 90% of individual land in urban areas is formally recorded and mapped.
		B: Between 70% and 90% of individual land in urban areas is formally recorded and mapped.
		C: Between 50% and 70% of individual land in urban areas are formally recorded and mapped.
		D: Less than 50% of individual land in urban areas is formally recorded and mapped.

B

Comments:

Some areas in urban land have not been surveyed. However many of the township are actually expansion of the earlier village which have been mapped and recorded in Revisional Survey and Settlement Operations (1927). Therefore, it can be said with some accuracy that more than 70% of the urban land is mapped.



2	4	The number of illegal land sales is low.
<p>A: Few, if any, illegal transactions occur in practice and mechanisms to unambiguously identify illegal sales exist and are applied routinely.</p> <p>B: The number of illegal land transactions is low and some are unambiguously identified on a routine basis.</p> <p>C: The number of illegal land transactions is high and some are unambiguously identified on a routine basis.</p> <p>D: The number of illegal land transactions is high and none are unambiguously identified on a routine basis.</p>		

A

Comments:

It is difficult ascertain with surety the number of illegal lease transaction because in registration department register deeds presented before it irrespective of ownership and title. Persons adversely affected by illegal lands sales or transfer or by any other models (including gift) are supposed to take recourse to competent civil courts. It is difficult determine exact numbers of illegal land sale until and unless revisional survey de-novo is conducted from scratch through application of modern technology and records of right is linked with registration department.

2	5	The number of illegal lease transactions is low.
<p>A: Existing legal restrictions on land leases if any, are clearly identified, widely accepted and fully complied with.</p> <p>B: Existing legal restrictions on land leases, if any, are clearly identified,</p>		



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justified and accepted by all parts of society, but not fully understood by land users, so that compliance is partial.

C: Existing legal restrictions on land leases are clearly identified but not fully justified or accepted by land users, so that compliance is partial.

D: Existing legal restrictions on land leases are routinely neglected.

A

Comments

Leases could be registered and unregistered. Certain leases to be executable have to be compulsory registered. Nonetheless there is no legal restriction on land lease. A competent person can execute leases at his own will. In case leases are registered there is no restriction on registration as per the Indian registration Act. While registering deeds presenting before Registration officer he is concerned only with registration and stamp fee and he is not supposed to look into the ownership question of lesser.

2 6 Women's property rights are recorded.

A: More than 45% of land recorded to physical persons is recorded in the name of women either individually or jointly.

B: Between 35% and 45% of land recorded to physical persons is recorded in the name of women either individually or jointly.

C: Between 15% and 35% of land recorded to physical persons is recorded in the name of women either individually or jointly.

D: Less than 15% of land recorded to physical persons is recorded in the name of women either individually or jointly.

D

Comments:

In a traditional patriarchal society when there is no female descendant, female names are not recorded in ownership column of *khatihan*/ Record of Right (ROR), either exclusively



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or jointly. However, it hardly means that women's right are extinguished on account of non inclusion of name in ROR. Traditionally everywhere the name of the *Karta* of the family is recorded, implying his spouses as well.

2	7	Women's property rights to land are equal to those by men both in law and in practice.
		A: Women's property rights are equal to those by men both across and within generations both in law and in practice.
		B: Equality of women's property rights to those by men is established by law and followed in practice most of the time.
		C: Equality of women's property rights to those by men is established by law, but there are considerable limitations to exercising such rights in practice.
		D: Equality of women's property rights to those by men is not established by law.

B

Comments:

Except in the case of tribal communities equality of women's property rights to those by men is established by law and followed in practice most of the time. In general tribal women do not have an access to property rights. In Chotanagpur area *Mundari Khuntkattidar* tenancy provides rather unequivocally about male heirship only. Section 8 of CNT Act runs as follows:-

Mundari-khunt-kattidar means a Mundari, who has acquired a right to hold jungle land for the purpose of bringing suitable portions thereof under cultivation by himself or by male members of his family, and includes,-

(a) the heirs male in the male line of any such Mundari when they are in possession of such land or have any subsisting title thereto, and

However the widow of a *Mundari Khuntkatti* in possession cannot be ousted by next senior most branch of family.



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Section 20 of the SPT Act incorporates certain rights to women but only in a limited way. Gifts by recorded Santal raiyat to a sisters and daughter are permissible under Santal law; such a raiyat may with the previous permission of Deputy Commissioner validly make such gifts. Further an aboriginal raiyat with the previous written permission of the Deputy Commissioner, make a grant in respect of his land not exceeding half of the area of his holding to his windowed mother or to his wife for her maintenance after his death. Further a transfer may be made by an aboriginal raiyat of his right in his holding or a portion thereof in favour of his *ghar jamai*.

The post of headman (pradhan) *in* Santal Pargana can be held by eldest female heir of the outgoing *pradhan*. There is no gender bias here.

The rule of succession among the *khuntkattidar* is equal division among son; daughter having no rights. The *khuntkattidar* are the descendant of the male line of the original founder of the village.

In the SPT Act Section 20 which bans transfer of raiyati right give certain exemption with regard to women. It is provided that a recorded Santal raiyat can with previous permission of Deputy Commissioner, validly make such gifts

It is also provided that an aboriginal *royal* may with the previous written permission of the Deputy Commissioner, make a grant in respect of his land not exceeding one half of the area of his holding to his wife for her maintenance after his death.

A transfer made by an aboriginal *raiyyat* of his right in his holding or portion thereof in favour of his *ghar jamai*.

As far as non-tribal Hindus are concerned HUF families are governed by Hindu Succession where in property devolves, similarly in all other communities women can hold landed property in her own right.



CHAPTER 3

Rights to Forest and Common Lands & Rural Land Use Regulations

SECTION 3.1: BACKGROUND

SECTION 3.1.1 FOREST

Jharkhand inherited the forest management practices and forest legislations from the parent state of Bihar, though quite a few legislations have been enacted after the formation of Jharkhand either by the Government of India or the state itself.

The erstwhile Bihar, when India gained independence, inherited the forest management practices and the relevant legislations from the past colonial rulers. The colonial rulers promulgated Indian Forest Act in 1927 and constituted large chunks of then existing forests as their reserve known as Reserve Forests ostensibly for their scientific management with the foremost purpose of ensuring the maximum amount of Timber production on sustained basis. Local villagers and tribals of the locality were denied any rights in these reserves which were earlier intricately woven in their way of life and had coexisted with them in a symbiotic relationship. Still large tracts of forests remained under the sway and management of erstwhile princes and landlords who had granted wide ranging rights to their subjects over much of the forests under their control. These rights included cattle grazing rights and collection of timber and firewood for bonafide domestic and agricultural requirements. The rights were recorded in khatian part-II.



Some Important Features of Jharkhand

1. Geographical area of the State -	79,714 Km ²
2. Forest area.	- 23.605Km ²
3. Population.	- 329.7 Lakh.(Census of India,2011)
a) Rural.	- 75.95%. (Census of India,2011)
b) Urban.	- 24.05%. (Census of India,2011)
4. %age of Tribal Population	- 26.20%. (Census of India,2011)
5. Reserved Forests.	- 4387 Km ²
Protected Forests.	-19185 Km ²
Unclassified.	- 33 Km ²

Total	- 23,605Km ²
6. Average density of Population –	413 Persons/Km ²
7. Per Capita Forest area	- 0.0716HQ.
8. Forest Cover (Density distribution)	(India State of Forest Report 2011- Jharkhand)
9. Very Dense –	2590 Sq.km.
Moderately Dense-	9917 Sq.km
Scrub Forest –	683 Sq.km
Open Forest-	10470 Sq.km
10. No. of Forest Guards:	- (Official Records of Forest Dept.)
Sanctioned Posts-	3883
Working Strength	- 970

Forest Rights Act (2006)

11. Total Claims Filed at Gram Sabha level –	49,219
Individual	-45482
Community-	3737
Claims Recommended to SDLC	- 25,345



Individual - 24507

Community -838

12. Total Patta given - 18203

Individual - 17616

Community-587 Source: Dept.of Welfare, Government of Jharkhand

13. Forest land released - 15254.62 Ha. Up to June 2013, PCCF Office, Jharkhand

14. Number of National Parks- 1

15. Number of Wildlife Sanctuary- 10

16. Total Area under National Park and Sanctuaries- 2194.392 KM (sq.) ; 2.63% of total geographical area and 9% of total recorded forest (of Jharkhand)

Classification of Forests based on Status of Rights

- Reserve Forest – Free from all Rights of villagers, Govt. the sole Proprietor
- Protected Forest – Bearing Rights of villagers as recorded in Khatian Part 2
- (Wild Life) Protected Areas – Comprising Reserve Forest as well as Protected Forest with rights of the villagers suspended permanently
- Mundari Khuntkatti & Bhuinhari Forest -- Left out of Forest Notification, outside the control & management of the Government, under the sole discretion of the village headman, the only restriction being on conversion to agriculture under Forest Conservation Act, 1980.

1. Nature of Rights

- Grazing Rights
- Collection of Timber, Smallwood & Firewood for bonafide domestic & agricultural use
- Right to collect, process & market Minor Forest Products (MFPs)

Relevant Forest Regulations in Vogue

- Indian Forest Act, 1927
- Wild Life (Protection) Act, 1972
- Kendu Leaf Act, 1973



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- Forest Conservation Act, 1980
- Forest Produce (Trade Regulation) Act, 1984
- National Forest Policy, 1988
- JFM Resolution, 1990
- (Modified) JFM Resolution, 2001
- Transit Rules, 2004
- Forest Rights Act, 2006

2. Historical Background

A) Pre- Independence

1. Promulgation of Indian Forest Act, 1927 – Large chunks of forest were taken over by the state as “ Reserve Forest” with the sole purpose of sustained timber production
 -- Free from all rights of the villagers
2. Bihar Private Forest Act, 1946 --- Giving a measure of power of intervention to the Govt. in the management of private forest.

B) Post- Independence -

1. Land Reforms and Nationalization of Forests:

In the course of land reform measures, the forests under the ex-landlords and princes were brought under govt. control through various notifications declaring these as Protected Forest.

2. Recognition and Regulation of Rights:

The rights of the adjoining villages, extended to them vide Khatian Part-2, were recognized in the course of forest settlement.

Through implementation of successive working plans of different forest divisions these rights were restricted to annual coupes over a brief period of a week to a month.

3. Creation of Forest Development Corporation (FDC)

Alongside the enactment of Wild Life (Protection) Act, 1972 and Kendu Leaf Act, 1973, mid seventies in Bihar saw the creation of Forest Development Corporation for promoting commercial value of forests by substituting naturally growing miscellaneous species of little or no commercial value by more valuable species like Teak in some better cropped forest areas in Palamau and Singhbhum districts.



This further added fuel to the tribal discontentment.

The practice was subsequently abandoned, the corporation restricting itself to the trade of MFPs.

4. Forest Conservation Act, 1980:

The decade of seventies culminated with the enactment of this Act, which was an important milestone in forest conservation efforts.

5. Forest Produce (Trade Regulation) Act, 1984 :

The annual sale of timber coupes to private contractors was abandoned in the year 1989. Forest Produce (Trade Regulation) Act, 1984 came into being, which consolidated the monopoly of trade in almost all forest produce in the hands of the State Govt. or FDC.

6. National Forest Policy, 1988:

By the time this policy came in 1988, the realization had dawned upon the Govt. that the forests could not be treated as a source of revenue. All commercial extractions had been done away with and all green felling including right-holder coupes were stopped.

The National Forest Policy, 1988 stressed on ensuring active participation of the local village communities in protection and growth of the forests by assuring them a major share in the accruals from the forests.

7. First Generation JFM:

In compliance to the NFP, 1988, the Govt. of Bihar passed a resolution in 1990, placing the degraded portions of the forests under protection of JFM-Committees of the villages having recorded rights over them.

The Resolution pledged 90% of the future accruals from the degraded forests, after they attained exploitable growth, to the villagers.

But despite initial enthusiasm, the policy failed in its purpose principally on two counts:

- A. The villagers were to wait empty-handed till the degraded forests attained exploitable growth.
- B. In spite of assured 90% returns from the forests, not a single farthing ever went to the JFMs' kitty.



8. Forest Development Agency (FDA):

Schemes under FDA were sanctioned directly by the centre with the condition of the same being executed through JFMCs.

This move ultimately resulted in making the President of JFMCs additional co-sharers of the booty of illegal savings from the schemes.

9. Modified JFM Resolution, 2001

State of Jharkhand came out with next generation of JFM resolution 2001.

- Under this resolution JFMCs (christened VFMPs) elected by the *gram sabha* of village/villages having recorded rights over a particular forest were to be actively involved in the protection and management of entire forest (degraded or otherwise).
- These JFMCs were to have no say in the management of (wildlife) Protected Areas or Reserve Forests, though they (as VEDCs) were to fully cooperate in the protection of these areas in lieu of liberal grant of funds for village development as per the Micro Plan prepared by the VEDC.
- The VFMPs were also required to prepare Micro Plans for the development of forest as well as their villages just after constitution. The VEDCs were to prepare the Micro Plan only for the village development.
- These Micro Plans were to be speedily sectioned by the concerned Conservator of Forests for early implementation.
- Detailed provision were made for the creation of village development fund, forest development fund and working fund for the JFMCs
- After meeting the domestic requirements of the villagers, the surplus of forest produce was to be sold in the market and 90% of the return was assured to the VFMPs.
- In case of diversion of forest land under FCA, 90 % of the crop value apart from a portion of the value of the land was assured to the JFMCs
- Half of the revenue from compounding of cases was also supposed to go to the JFMCs



10. Forest Rights Act, 2006

This Act was a laudable piece of Central legislation to do away the age old denial of land use rights of the forest dwellers, tribal or others, a significant cause for alienation of the forest dwellers from the forest management.

4. Exercise of Right vis-a- vis Forest Protection

The idea prevailed for long that the exercise of rights by the villagers was detrimental to forest protection. Thus recorded rights of villages were first restricted to annual right holder coupes and subsequently effectively denied in practice. Though these rights were recognized under JFM resolution, they have not yet been allowed to be legally exercised. The villagers continue to surreptitiously gather their domestic requirement of timber and firewood from the forest. The rights in the protected forests comprised within protected areas (wildlife) have been terminally suspended without any compensation or valid alternative.

5. Present Status of JFM

- Even after 13 years of JFM resolution 2001 not a single Micro Plan has been approved and implemented.
- Not a single farthing has so far gone to the JFMC's kitty
- The villagers, having no alternative still continue to gather their daily requirements of timber and firewood illegally from the forest.
- Some of the JFMCs are also known to collect some levy form the villagers in return for their collections from the forest.

The technical alibis offered are

All receipts under FCA go to CAMPA as instructed by the GOI.

- i. Forest Account code does not permit sharing of compounding money with the JFMCs.
- ii. Micro Plans have to conform to the Working Plans of forest divisions.

6. Problems & Weaknesses of Forest Administration

- More than 75% of the sanctioned posts of forest guards and foresters are lying vacant, depriving the department of representation at the JFMC level.



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- Indian Forest Act, 1927 and Forest Account Code have not been suitably amended to accommodate the provision of JFM resolution 2001.
- The JFM resolution has no legally binding force
- The community rights as per Khatian part –II have not been so far legally recognized.
- Transit Rules restrictions play demotivating role in social forestry as well as collection and trade of MFPs

7. Existing Strengths

Positives of the prevailing situation

1. In most of the rights holding PFs institution of JFM like VFMPs or VEDCs already exist, only they have to be activated and motivated.
2. The required legislative and executive structures are almost all in place, only a few amendments are required
3. Cultural homogeneity, particularly in tribal villages, is likely to facilitate easy motivation and organization.
4. *Rakshabandhan* (tying of sacred knot) movement under the inspiring leadership of Mahadeo Mahto of Tatijharia in Hazaribag has been gaining momentum in the locality.

Recommendations

- Indian Forest Act, 1927 and Forest Accounts Code have to be suitably amended, through State amendments, so as to remove all the legal and procedural impediments in the way of 100% implementation of JFM in the state.
- All the vacancies in the cadres of Forest Guards and Foresters should immediately be filled up.
- The Micro plans already prepared and submitted with the Forest Department have to be immediately taken up and speedily sanctioned. The remaining ones have also to be prepared and speedily sanctioned. All these Micro plans must ensure sustained supply of the minimum domestic requirements of firewood, small wood and timber to the villagers.
- The procedure for sale and utilization of raiyati forest produce must be simplified and freed from bureaucratic hassles, so as to provide “service at door” to the villagers.



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SECTION 3.1.2 : COMMON LAND

Jharkhand has plenty of common land which is of two categories i.e. *Gairmajarua Malik Khas* and *Gairmajarua Aam*. The *GM khas* are known as *Gairabad Malik* (uncultivated) in cadastre survey record. The ex *zamindars* were the custodian of such lands. They also had the power to settle such land with raiyats for cultivation purpose through plain paper *Hukum Nama* or registered deed. Such *Sada Hukum Nama* could be ascertained from the entries in the Return Filed by the *zamindars* to the effect and also by the fact of opening of *Jamabandi* in the local Revenue offices quick upon the heels of the abolition of *zamindari*.

The *Gairmajarua Aam* land includes village pathways, waste land, playground, orchards, cremation grounds and burial places. Public Land denotes land owned by the government through entries in the record of rights, through acquisition of private land, land under the direct management of the government *Khasmahal* land, Kaisere Hind Land, acquisition of surplus Land under the Land under the Land ceiling Laws, community Land, *Bhoodan* Land, and abandoned Land etc. In brief , all Land which is not a private Land is common land.

Land Use Plan

Section 6 of the CNT defines a *raiya* primarily a person who has acquired a right to hold for the purpose of cultivating it by himself ,or by members of his family or by hired or by the aid of partners, and include the successors, in interest of persons who has acquired such a right but does not include a *Mundari Khuthatidar* . Section -13 of SPT Act enumerates the right of the raiyats in respect of use of the Land and provides that the *raiya* may use Land of his holding in any manner which does not materially impair the value of Land or render it unfit for cultivate. (*Smt. Kalpana Pandey Vrs. State of Jharkhand* and others 2008(4) JCR -389 (JHAR).

Some Relevant Sections of the Tenancy Laws Regarding the Public Land

S.P.T. Section 38 prohibits grazing Land or GOCHAR Land to be cultivated.

(i) No land recorded s village grazing land/ *Gochar* shall be settled or brought under cultivation or utilized for any purpose other than grazing by any one.



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(ii) If the area recorded as grazing LAND OR Gochar be less than 5% of the total area of the village, the Deputy commissioner may, in consultation with the Landlords, village headman or *mulraiyat* and *raiyats*, set apart suitable area of village Waste Land for grazing .Such land when so set apart shall be governed by the provision of Sub- Section (I).

Section 27 of SPT Act prescribes settlement of Waste Land to be made by Patta in prescribed form.

Section 28 of SPT Act prescribes principles to be followed in setting Waste Land or Vacant holdings.

Section 59 of the SPT Act gives power to Deputy Commissioner to revision of the suspected transfer of Public Land.

Similarly section 60 of the SPT Act gives power to review the order passed by the subordinate courts.

Section 28 – Mandatory provisions for setting Waste Land and vacant holdings. These are to be followed necessarily. All the prerequisites for setting waste land and vacant holdings settlement must be with a *Jamabandi raiyat* or must be permanent *raiyat* or must be permanent resident of the village and they are recorded in the record of right. There was no infirmity in the order passed by the Deputy Commissioner and the Divisional Commissioner. [*Sheikh Allauddin Vres.State of Bihar*, 2000 (3) BLJ 95 (Pat)]

CNT Section 63- A gives power to settle Waste Lands belonging to the State government shall be made by a *patta* or *amanama* in the prescribed form .The *Patta* or *amanama* shall be prepared in duplicate, of which one copy shall be given to the raiyat concerned and one copy shall be sent to the Deputy Commissioner of the district.

Section 63-B describes settlement liable to be set aside if any Land settled as aforesaid not being brought under cultivation within the period of five years from the date of settlement or the Land being alienated in contravention of the provision contained in Section 46 , it shall be open to the Deputy Commissioner of the district to set aside settlement and make resettlement of such land in accordance with the provisions of Section 63-A.



CNT Section 65 provides provision for conversion of Land into 'Korkar' with Deputy Commissioner's permission.

Notwithstanding anything contained in Records of Rights or any custom or usage to the contrary, every cultivator or landless Labourers resident of the village or a contiguous village shall have the right to convert Land in that village into *Korkar* with permission of the Deputy Commissioner previously obtained.

Section 65 of the CNT prescribes the power to eject or leave him possession. Section 66 prescribes prohibition against conversion of certain land into *Korkar* .Nothing in section 64 shall authorize any cultivator to convert into *Korkar* any orchard or cultivated or homestead land in the direct possession of any other person

Section 67 prescribes the right of occupancy in *Korkar* Land and Section 67-A described the mode of assessment of rent on Land converted in to *Korkar*.

From April 2013 to October 2013, total GM Khas land distributed among SC female was 1860.61 acres, such lands were distributed among 2548 ST females covering an area of 3740.06 acres 699 other castes beneficiaries got the area of 816.27 acres.

During the period 214 ST beneficiaries got 157.66 acres of land ceiling surplus land and 200 SC beneficiaries got 239.64 acres of ceiling surplus while 134 other Backward Castes got 47.8 acres of land ceiling surplus land.

Weakness

1. There has been a steady decline in *Gairmajarua Aam* as well as *Khas* land because of unattended encroachments.
2. Scant regard is paid to protection, development and rejuvenation of GM aam land.
3. A large number of ceiling cases are pending in various courts of law which leads to inordinate delays which in acquisition and distribution of surplus lands.

Recommendations



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1. All out effort should be made to identify common land including village common land for last survey records and examine the competence of privatizing them as and when the case is.
2. Severe and diligent implementation of B.P. Encroachment 1961 is required.
3. The Bihar Model of allotting 50% of Ceiling Surplus in the name of females be emulated in Jharkhand as well.
4. Surveying town land in district headquarters and fencing with boundary walls are required.
5. Schemes for development and rejuvenation of common Public Records be taken up in Jharkhand.

SECTION 3.2: DIMETION ANALYSIS

Indicators

3. Rights to forest and common lands
4. Effectiveness and equity of rural land use regulations

		<i>Land Governance Indicator 3</i> <i>Rights to forest and common lands</i>
2	1 1	Forests and common lands are clearly identified in law and responsibility for use is clearly assigned.
		A: Forests and common lands are clearly identified and responsibility for land use is unambiguous assigned.
		B: Forests and common lands are clearly identified, responsibility for land use is clearly identified but implementation is ambiguous.
		C: Forests and common lands are not clearly identified; but responsibility for land use is clearly assigned.
		D: Forests and common lands are not clearly identified and responsibility for land use is not defined.

B

Comment



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Forest lands are clearly identified in law and are notified as Reserved Forests, Protected Forests, Wild Life Sanctuaries, National Parks or Wild Life Reserves. Rights of use and responsibilities for management and conservation are clearly defined.

Common lands are also well identified in R.O.R and marked on maps. Rights of usage are also defined in R.O.R. Unfortunately Common public land has been shrinking in area due to encroachments which needs to be removed. A fresh survey of common land and forest land may be undertaken to have clear picture. The unfortunate aspect of common Land is that there is large scale of encroachment by the powerful and influential persons with and without the connivance of the revenue authorities at the lower level as no special drive to unearth Common Land has been made under Bihar Encroachment Act.

2	1	2	Rural group rights are formally recognized and can be enforced.
			A: The tenure of most groups in rural areas is formally recognized and clear regulations regarding groups' internal organization and legal representation exist and can be enforced.
			B: The tenure of most groups in rural areas is not formally recognized but groups can gain legal representation under other laws (e.g. corporate law).
			C: The tenure of most groups in rural areas is formally recognized but ways for them to gain legal representation are not regulated.
			D: The tenure of most groups in rural areas is not formally recognized.

C

Comment

In protected forests, the rights of rural groups are clearly recognized in *Khatian* Part II and the provision for their exercise is also well elaborated in the resolutions (of 1990 and 2001) of the government. But these rights are neither fairly exercised nor regulated in practice. Also gaining legal representation for disadvantaged right holders is not within access for them nor is the ways and procedures regulated.



In common lands also the tenure of rural groups and communities are formally recognised and recorded in ROR, but legal representations in cases of infringed group or community rights are often neither regulated nor easy to gain.

Solution

There is need to streamline and strengthen revenue and forest management to identify rural group rights and enforce as per Tenancy Laws.

2 1 3	Users' rights to key natural resources on land (incl. fisheries) are legally recognized and protected in practice.
	A: Users' rights to key natural resources are legally recognized and consistently and effectively protected in practice throughout.
	B: Users' rights to key natural resources are legally recognized but only some are effectively protected in practice or enforcement is difficult and takes a long time.
	C: Users' rights to key natural resources are not legally recognized but enjoy de facto protection in virtually all cases.
	D: Users' rights to key natural resources are not legally recognized and often not protected in practice.

B

Comment

Forests: - Limited rights of the users (right-holders) are legally recognized - such as collection of fire wood, small wood and timber for domestic or agricultural requirements, as recorded in Khatian Part II but in effect only some as free access and grazing are protected in practice. Even these rights have been banished in Wild life Sanctuaries and National Park, though in practice this banishment is seldom practiced in full measure. Fishery in wet lands within forests is not recognized as users' right.

Common Lands: - In common lands also users' rights are legally recognized but not all such rights are effectively protected in practice due to illegal encroachments and even settlements of common lands in favour of influential individuals. The regulation of PESA is very weak .The Panchayati Raj department which works at nodal department have not been able to



pressurize forest, mines, road and welfare and all other related departments to incorporate the implementation of PESA regulation.

SOLUTION:

The regulation of PESA should be implemented in letter and spirit.

2 1 4	Multiple rights over common land and natural resources on these lands can legally coexist.
	A: Co-existence of multiple rights is possible by law, respected in practice, and any disputes that may arise are swiftly resolved.
	B: Co-existence is possible by law and respected in practice but mechanisms to resolve disputes are often inadequate.
	C: Co-existence is possible by law but rarely respected in practice.
	D: Co-existence is not possible by law.

C

Comment

In forest and also on common lands multiple rights of users can coexist without any legal obstruction. In forests the rights to regulate the management in the interest of conservation and growth rests with the government, while Khatian Part II and PESA along with government resolution of 2001 recognised the villager rights’ of not only collection of NTFP and their domestic forest - produce requirement but also of regulating their management. However this multiplicity of rights is the only partially observed and respected in practice, since the forest management in practice remains the exclusive domain of the government.

On common land also multiple rights can legally coexist, such as rights of surface use and underground or sub – soil mining rights, but simultaneously exercise of these multiple rights is a rare sight.



2	1	5	Multiple rights over the same plot of land and its resources (e.g. trees) can legally coexist.
			A: Co-existence of multiple rights is legally possible, respected in practice, and any disputes that may arise are swiftly resolved.
			B: Co-existence is legally possible and respected in practice but mechanisms to resolve disputes are often inadequate.
			C: Co-existence is legally possible but rarely respected in practice.
			D: Co-existence is not legally possible.

B/C

Comment

The real situation exists somewhere between B and C. Co-existence is neither fully respected in practice nor its practice is rare.

2	1	6	Multiple rights over land and mining/ other sub-soil resources located on the same plot can legally coexist.
			A: Co-existence of land and mining rights is possible by law, respected in practice, and any disputes that may arise are swiftly resolved.
			B: Co-existence of land and mining rights is possible by law and respected in practice but mechanisms to resolve disputes are often inadequate.
			C: Co-existence is possible by law but rarely respected in practice.
			D: Co-existence is not possible by law; mining rights override land rights.

B

Comment

Within the forests the ownership remains with the forest department under Forest Conservation Act, 1980, even when mining rights are granted to other agencies, however, in case of disputes, the mechanism being inadequate, confusion prevails for long.

Mining and land use rights can also coexist on common lands, but again the mechanism is often found inadequate to resolve disputes in case they arise, as in the case of harmful effect of mining over the nature of land use.



2	1	7	Accessible opportunities exist for mapping and recording of group rights.
			A: The law provides opportunities for those holding land under customary, group, or collective tenure as a group to record and map these rights if they so desire. Procedures for doing so are affordable, clearly specified, safeguarded, and are observed in practice.
			B: The law provides opportunities for those holding group land under customary, group, or collective tenures to record and map these rights if they so desire. Procedures to do so are affordable and include basic safeguards against abuse.
			C: The law provides opportunities for those holding group land under customary, group, or collective tenures to record and map land rights if they so desire. Procedures are not affordable or clear, leading to discretion in their application.
			D: Although there is demand, the law provides no opportunities for those holding group lands under customary, group, or collective tenures to record and map land rights.

B

Comment

There is no legal or practical hindrance in way of mapping and recording their rights by the holders of customary group or community rights over forests or common land. The procedures are simple, affordable and safeguards are against abuse.

The ignorance and illiteracy of the common people and the lack of strong will from the government makes the procedure unclear. As the matter of fact, the government is more concern with the development of the projects; hence uptodation of mapping and recording of group rights does not get adequate attention and finance.



2	1	8	Boundary demarcation of communal land.
			A: More than 70% of the area under communal and/or indigenous land has boundaries demarcated and surveyed and associated claims recorded.
			B: 40-70% of the area under communal and/or indigenous land has boundaries demarcated and surveyed and associated claims recorded.
			C: 10-40% of the area under communal and/or indigenous land has boundaries demarcated and surveyed and associated claims recorded.
			D: Less than 10% of the area under communal and/or indigenous land has boundaries demarcated and surveyed and associated claims recorded.

D

Comment

Boundaries of common lands are surveyed and well demarcated on maps, though in case of common lands other than forests visible demarcation on ground does not often exist. Demarcation of forests is marked on ground by boundary pillars. Right associated either with forests or with common lands is also recorded. There is need to demarcate Common Land for which again survey of common land is required. Boundary demarcation needs huge expenditure and policy decision which has not materialized except in the places of acute dispute that may flare up in community tensions, the government has to demarcate boundary in some cases.

<i>Land Governance Indicator 4: Effectiveness and equity of rural land use regulations</i>			
2	2	1	Restrictions regarding rural land use are justified and enforced.
			A: Regulations regarding restrictions on rural land use effectively serve public purpose and are enforced.
			B: Regulations regarding restrictions on rural land use effectively serve public purpose but enforcement is weak.
			C: Regulations often do not effectively serve public purpose and enforcement is difficult.
			D: Regulations rarely effectively serve public purpose, but can be enforced.

B



Comments

Land use restrictions on forest land do serve public purpose and are enforced through exercise of Forest Conservation Act, 1980.

In case of common lands, the nature of land-use is well recorded, though enforcement is often weak.

2 2 2	Restrictions on rural land transferability effectively serve public policy objectives.
	A: There are a series of regulations that for the most part serve public purpose and that are enforced.
	B: There are a series of regulations that are for the most part serving public purpose but that are not enforced.
	C: There are a series of regulations that are generally not serving a public purpose but are not enforced.
	D: There are a series of regulations that are generally not serving public purpose and are enforced.

A

Comment

Forest: - Firm restrictions are there on land transferability that does serve public purposes and these restrictions are well enforced in practice.

Common Land: - Though restrictions on transferability on land are very well there under CNT Act and SPT Act and they are imposed only in the interest of public purpose. The enforcement on ground is often weak. Violations of these restrictions are common. These restrictions are aimed to protect the interest of tribals whose land has been grabbed by those influential persons.

2 2 3	Rural land use plans are elaborated/changed via public process and resulting burdens are shared.
	A: Public input is required and sought in preparing and amending rural land use plans (incl. rezoning) and relevant decisions are arrived at in a transparent



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	and public process.
	B: Public input is required and sought in preparing and amending rural land use plans (incl. rezoning) but decisions are arrived at in a non-transparent process.
	C: Public input is required and sought in preparing and amending land use plans but comments are not reflected in the finalization of land use plans.
	D: Public input is not required and/or sought in preparing and amending land use plans.

None of the above

Comment

Rural land use plans as such, unlike that in case of forests, do not exist in Jharkhand. The tenancy Acts clearly states that land are primarily for cultivation purposes i.e. agricultural purposes and any use in non-agricultural activities which make the land unfit for cultivation is prohibited. For the change from agricultural use to non-agricultural use, the permission of competent authority is required.

There is no land use plan prepared by the state except the provision of the tenancy acts which prescribe the rural land for cultivation purpose. For change to the non agricultural use the permission of the competent authority is required. Further the CNT under section 6 and section 13 of SPT act enumerates that *raiyyats* can use land for cultivation purposes only. For non agriculture use the raiyyats have to obtain permission of the competent authority.

2	2	4	Rural lands, the use of which is changed, are swiftly transferred to the destined use.
			A: More than 70% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use (e.g. forest, pastures, wetlands, national parks etc.).
			B: Between 50% and 70% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use (e.g. forest, pastures, wetlands, national parks etc.).
			C: Between 30% and 50% of the land that has had a change in land use



	assignment in the past 3 years has changed to the destined use (e.g. forest, pastures, wetlands, national parks etc.).
	D: Less than 30% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use (e.g. forest, pastures, wetlands, national parks etc.).

C

Comment

No survey has been conducted by the state government and even by the NGO s. This aspect of rural land use plan needs to be surveyed and studied by the agricultural students in details. The tenancy laws prescribed land in the rural area to be used by the raiyats for the cultivation purposes.

2 2 5	Rezoning of rural land use follows a public process that safeguards existing rights.
	A: Processes for rezoning are public and clear with effective mechanisms in place to safeguard existing rights and compensation in case of loss in areas where land use is to be restricted.
	B: Processes for rezoning are public and clear but mechanisms to safeguard existing rights are not fully effective.
	C: Processes for rezoning are not public but care is taken to safeguard existing rights in virtually all cases.
	D: Rezoning processes are not public process and rights are ignored or not properly or promptly compensated in the majority of cases.

None of the above

Comment

There is no process in vogue for zoning or rezoning of rural land though CNT and SPT Acts have priority of agricultural tenure over other land usage. No rezoning of rural land exists however for the improvement of agriculture and preservation of ecosystem. Dams, irrigation-ponds are being constructed and some areas are earmarked for Forestry and sanctuaries.



There is no state land use plan for rural land except the provision of tenancy acts which allow land to be used for agricultural purposes.

2 2 6	For protected rural land use (forest, pastures, wetlands, national parks etc.) plans correspond to actual use.
	A: The share of land set aside for specific use that is used for a non-specified purpose in contravention of existing regulations is less than 10%.
	B: The share of land set aside for specific use that is used for a non-specified purpose in contravention of existing regulations is between 10% and 30%.
	C: The share of land set aside for specific use that is used for a non-specified purpose in contravention of existing regulations is between 30% and 50%.
	D: The share of land set aside for specific use that is used for a non-specified purpose in contravention of existing regulations is greater than 50%.

B

Comments

In case of forest land or any portion thereof set aside for a specific use, the extent of contravention or non-specified use of the land hardly exceeds 10%, since ownership and rights are seldom in dispute and regulations are unequivocally laid down. In case of common land other than forests encroachment adverse possession and the problems of displacements and rehabilitation invariably crop up and often make the exercise of the specific designated use difficult to ensure.



CHAPTER 4

Panel 3: Urban Land Use, Planning, and Development Jharkhand

SECTION 4.1: BACKGROUND

Jharkhand the twenty eighth state of India was carved out of Bihar on 15th November 2000. It was supposed to be the most urbanised part of erstwhile Bihar. During 2011, its total population was 3.29 crores and a geographical area of 79710 sq kms. The urban population was 79.33 lakhs constituting 24.05% of the total population. The urban population is primarily concentrated in five to six districts of the state where the industrial towns like Bokaro , Jamshedpur , mining town Dhanbad , Ranchi are located .Jharkhand has been a typical example of urban growth with rural stagnation , the major urban agglomerations have developed primarily as ‘enclaves’ .

It is worth mentioning here that almost 50% of the geographical area dominated by the tribals. The area is governed by Vth Schedule of the Indian Constitution which has specific provisions. Jharkhand is one state where the urban local bodies (ULBs) were formed very late because the matter went up to the Supreme Court. The contentions were that the 74th Amendments were not directly applicable to these areas because of the constitutional provisions of Vth Schedule .Besides all the post of chairpersons in the scheduled areas ULBs were reserved for the STs , and 1/3rd of which was reserved for the tribal women .This was upheld by the Supreme Court and only then the elections could be held in the State .

SECTION 4.1.1: IMPORTANT LAWS PERTAINING TO JHARKHAND FOR URBAN AREAS IN PAST



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There have numerous laws under the multiplicity and institution organizations operate, some of them having overlapping jurisdiction and conflicts in the function causing in implementation of various programmes.

The important laws relevant for land use planning particularly concerning urban bodies in past have been Patna Municipal Corporation Act, 1951, Bihar Regional Development Authority Act 1974, The Chotanagpur Tenancy Act, (CNT) 1908, The Santhal Paragana Tenancy Act (SPT) 1948 and Scheduled Areas Regulation Act (SAR), 1969. Bihar Public encroachment Act ,1950, Coal Bearing areas acquisition and development Act 1957, the Land Acquisition Act 1894 Mineral Development Authority Act, 1986, Hazariabagh Mines Board Act, 1936.etc .and various notifications of the government from time to time .

The CNT Act is one of the most important protective legislations for the tribals in the area. The Act not only recognises the traditional land rights of the tribals like Khuntkattidari and Bhuinhari (rights of original settlers), Mahatoi, Pahanai etc. (privileged land of village headmen) but it also recognised various other rights to the tribals. The Act prohibits transfer of the land of tribals to the non-tribals. The temporary alienation as mortgage is however, permitted for 7 years (to individuals) known as Bhugat Bandha, after which it is automatically restored to the tribals.

DC has been given the responsibility of providing executive protection to the tribals. The tribal land has been made almost inalienable. The SAR 1969, empowers the DC for restoring the illegally alienated land to the tribals. SAR 1969 also has a provision of regularising the land to the transferees after suitable compensation to the tribals in question, if a substantial structure has been built up on the alienated land before 1969. This provision has been widely misused in the city and has reached scandalous provisions. If a tribal files a petition for restoration, DC automatically becomes a part of the case. DC can initiate the cases suo moto.SPT Act is even more restrictive

SECTION 4.1.2: CITY DEVELOPMENT POLICIES AND ZONING LAWS PRIOR TO FORMATION OF JHARKHAND AND AFTER THE FORMATION OF JHARKHAND



Till early sixties, there was no city development plan in the city. The settlement was primarily confined to certain areas and no strict laws for the construction of houses, alignment of roads were made. Some of the settlements were on the government lease land. Certain roads were constructed and the settlement was asked to remain to the alignments. Most of the settlements were, however, on the uplands (known as *tanr*) and there were large orchards. The agricultural land was hardly affected by the settlements. As a result some of the areas of old Ranchi become very congested. The old parts of the city continues to have narrow lanes and by lanes.

It was for the first time on 9th November, 1959 that Ranchi Improvement Trust was constituted under the Bihar Town Planning and Improvement Act, 1951 for the improvement, development and expansion of Ranchi town and Doranda. It has a jurisdiction of 50 square miles. The Bihar Restriction of Uses of Land Act, 1948 was enforced in Ranchi and surrounding areas to regulate the use of land. The trust consisted of a Chairman and Trustees. It also had an Engineering Department. The trust prepared the first Ranchi Master Plan in 1965 which was approved by the Government in 1972. It was the first town plan of Ranchi in which the plan for future development of city was made after a detailed survey of Ranchi town and Doranda. In this plan residential, commercial and industrial areas including open spaces and Green land were demarcated.

In September, 1975 RRDA was constituted which made a draft plan in 1983 which was valid till 2001. This plan covered an area of 9050 hectares of Ranchi, Doranda, Namkum, Kanke and Jagannathpur town (RUA) including 73 villages. In the proposed land use 46% was been kept for residential, 3.57% for commercial purpose, 12.29% for industrial use. 1.82% for administration use, 5.13% for educational uses, 21.99% for public and semi public facilities and 8.99% for circulation. As compared to the actual land of 1978, the rise of 38.47% in the area has been proposed for residential zone, almost 6.05% rise in the commercial zone. As per the town planning Ranchi is going to be a predominantly residential and commercial city.

Bihar Regional Development Authority Act, 1974 made elaborate provisions for the preparation of regional plan, master plan and zonal development plan. The plan was submitted to State Government for approval. The plan was published and date of its operation is fixed. There were also restrictions on the change in the use of land, excepting in the case it



is used for agricultural purposes. There were also elaborate provisions regarding uses in the land use zones for residential, commercial (retail and wholesale), industrial, public and semi public uses and agricultural uses. There were also extensive norms of construction of building, structural safety and development of both apartments and residential areas. All these functions are now assigned to Ranchi Municipal Corporation for the area under RMC area with the enactment of JMA, 2011.

After the formation of Jharkhand, all the legislations and rules were adopted by the state. However, in the light of the 74th amendments and the requirements of JNNURM a number of changes have also been made.

The urban land use and urban planning was governed by the following major Acts before they were repealed by Jharkhand Municipal Act 2011

1. Jharkhand Municipal Act, 2000, and Ranchi Municipal Corporation Act, 2001
2. Jharkhand Regional Development Authority Act, 2001, its jurisdiction is not in the municipal corporation areas of Ranchi
3. Mineral Area Development Authority Dhanbad , set up under the Jharkhand Mineral Development Authority Act, 1986
4. Hazaribagh Mines Board set up under the Hazariabagh Mines Board Act, 1936.

There have been large violations of various Acts resulting into unplanned growth and encroachment of public land. This invited a number of PILs and High court orders resulting into demolition of some such structures in many towns. The encroachments have been primarily on river belts, common vacant public land, land acquired and kept vacant by public sector enterprises/institutions, vacant railway land. Due to the public outrage the demolition works have slowed down but these irregular structures have long term implications for urban planning and land use.

For regularisation of illegal/unauthorized structures an ordinance was promulgated in 2011 - Jharkhand Regularization of Unauthorized/Deviated Construction through Compounding in Urban Areas Ordinance but this failed to have desired impacts because of two reasons, first, the penal rates were very high and secondly, it restricted the regularisation.



An unauthorized development shall not be regularized under subsection (2) of Section 2 of the ordinance in the case where unauthorized development is carried out on any of the following lands namely:

1. Land belonging to State/Central Government/ PSUs, local authority or statutory body or land in respect of which a dispute exists in relation to its title or tenure,
2. Land allotted by the State Government, local authority or statutory body for a specific purpose;
3. Water sources and water bodies like tank beds, river beds, natural drainage and such other places;
4. Land under alignment of roads/streets/pathways indicated in development plan or a town planning scheme or under alignment of a public road or an internal road, of approved layout;
5. Areas earmarked for the purpose of obnoxious and hazardous industrial development.
6. Where construction has taken place on lands transferred in contravention of the provision of CNT/SPT Acts,
7. Where construction has been undertaken unauthorized, violating the requirement of parking space for Group Housing Projects/commercial/residential complexes, shopping complexes, hotels and other such establishments.
8. Where construction has public/private road and on the drainage channel identified been undertaken over alignment of the natural by the Development Authority/Urban Local Body or construction undertaken in the public open spaces/green belts designated by the competent authorities.
9. Where construction has been undertaken violating the height limitation for the area notified by the Airport Authority. Archaeological Survey of India or the State Department concerned.
10. Where the plot does not have any authenticated access/approach road to the plot.

SECTION 4.1.3: PESA AND MASTER PLAN

The master plan of Ranchi has been put on the website of RMC but it has invited a numbers of objections under PESA 1996. As per the act, consent of Gram Sabha is required for any development activity or inclusion of the area in Municipal Corporation.



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SECTION 4.1.4: JAWAHARLAL NEHRU NATIONAL URBAN RENEWAL MISSION

The scheme named after Jawaharlal Nehru, the first Prime Minister of India was launched by Government of India under Ministry of Urban Development in 2005. The scheme was launched to encourage cities to initiate steps for improving their civic service levels in phases. Former Prime Minister Manmohan Singh inaugurated the programme on 3rd December 2005 for a seven year period (upto March, 2012). The tenure of the scheme has been extended upto March 31, 2014. In order to strengthen municipal governance in accordance with the 74th Constitutional Amendment Act, 1992, the mission adopted the strategy of upgrading the social and economic infrastructure in cities, provision of basic services to the urban poor and wide ranging urban sector reforms. In Jharkhand the following may be mentioned regarding the implementation of the scheme.

- Urban Local Bodies constituted
- Schemes sanctioned under JNNURM worth Rs. 1694 Cr (Central Share –Rs.1068)

Source: Economic Survey -2011-12.

SECTION 4.1.5: RAJIV AWAS YOJANA

The Rajiv Awas Yojana, the scheme for housing for the poor in the urban is being implemented slowly. It will be implemented at Bokaro (Chas), Dhanbad, Jamshedpur and Ranchi at the first phase. So far, implementation of Rajiv Awas Yojana in Ranchi Municipal Corporation is concerned only 5 D.P.R for five slums have been sanctioned and rests are in process.

SECTION 4.1.6 : ANALYSIS OF THE SURVEY REPORT OF JHARKHAND

The progress report of survey and settlement operation of Government of Jharkhand highlighted the following points:

1. All the twenty four districts are in the different stages of survey operations
2. Gumla and Latehar districts have completed Revisional Survey work. The progress of Gurwa is satisfactory.
3. Hazaribagh, Kodarma, Bokaro, Chatra, Giridih are on khanapuri stage only.



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4. Godda district primary publication has yet to take place.
5. The progress of survey is very slow.
6. The no. of staff is very less where we see the establishment of survey. Out of 1711 sanctioned posts only 402 staff is working. Definitely no progress in survey work can be achieved without increasing the staff.
7. The aim of updating of Records can't be solved with this slow rate of progress.

SECTION 4.1.7: COMPUTERIZATION OF LAND RECORDS

The computerization of land records is one of the policies initiated by government of India to provide instant report about the land records but the question is computerization of dead or obsolete survey records will not mean anything. Although a praiseworthy attempt but one should not be misled that, computerization of land records are update rather some old outdated data.

The needs for up-to-date and correct land records are necessary to make any plan about land use. The problem of tenancy records and particularly the rights of the share cropper is not satisfactory throughout India (APPU 1975). It was during the seventh plan that two ambitious schemes called computerization of land records and strengthening of revenue administration and updating of land records were launched by the Central Government.

The broad objectives of computerization of land records:-

1. Computerization of ownership and plot wise details for delivery of timely and accurate copy of the records of the rights to the land owners.
2. To achieve low cost easy reproducible storage media for reliable preservation for long time.
3. To provide fast and efficient retrieval of information both graphic and textual.
4. Creation of land information, system and database for agriculture census.
5. To focus on citizen centric services related to land revenue information.
6. To ensure accuracy, transparency and speedy dispute resolution.
7. On demand distribution of computerized records of right to the land owners at reasonable charges with a provision of online mutation module for ownership charges, seasonal crop updating etc. at the block level.



The Eleventh five year plan 2007 clearly expressed the need for correct and defect free land record. Correct and up-to-date records are crucial for the security for land rights and to encourage investment. These result in fewer disputes and conflicts, allow land to be used as collateral lower transaction costs and corruption, ensure efficient land markets and help in implementation of land reforms and planning for various development programmes.

Recommendation

1. Preparation of state land use policy
2. Integration of Registry Offices with up-to-date land records and land map agencies.
3. Creation of more courts in the interiors where people has more accessibility for disposal of land disputes.
4. Land tribunals at the state head quarter and district head quarter headed by Judicial Officers of knowledge and integrity, assisted by revenue officers with sound knowledge of revenue matters and land related problems with reputed journalist and or intelligentsia of sound knowledge of land related problem for disposal of land conflicts and disputes.
5. Panchayats involvement in land record preparation and also in the calculation of market value of land for registry purposes.
6. Devolving more power to the lower judicial courts for land related cases and also to the executive courts for land possession cases.
7. Survey of records has been going for the last 30-40 years but yet to be completed. By the time it is completed the data will be old and obsolete. Hence a fresh survey is needed with a zeal and mission of Census and Election work. That to be completed in one goes within one or two years with all the formalities and procedures necessary for this.
8. Encroachers should be identified and notices should be issued and due procedures for removal of encroachment should be followed to remove unauthorised encroachments under Bihar Public Land Encroachment Act 1951.
9. The encroachers may be rehabilitated if the government thinks on new acquired land for the purpose with due economic packages if thought necessary for the below poverty line people.



10. The planned rehabilitation should take due care on the economic conditions of the encroachers to avoid public resentment and law.
11. There should be zero tolerance regarding encroachment in water rechargeable areas. Also zero tolerance should be there regarding encroachment of Greenland and tribal land.

SECTION 4.2: DIMENSION ANALYSIS

LGI: 3.1 *Restrictions on rights: land rights are not conditional on adherence to unrealistic standards*

3	1	1	<p>Restrictions on urban land ownership/transfer effectively serve public policy objectives.</p> <p>A: There are a series of regulations that are for the most part serve public purpose and that are enforced.</p> <p>B: There is a series of regulations that are for the most part serve public purpose but enforcement is deficient.</p> <p>C: There are a series of regulations that are generally not serving public purpose but are not enforced.</p> <p>D: There are a series of regulations that are generally not serving public purpose and are enforced.</p>
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If considered useful, a split can be applied:

3.1.1a: existing legal framework for regulations and

3.1.1b; evidence of enforcement in practice

B

Comments

CNT, SPT, Bihar Land Reforms Act, PESA all are relevant.

The major restrictions on the land ownership and transfers under CNT Act and SPT Act are protective legislations for the interest of tribals and such other groups but their enforcement is



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very poor. There are large scale violations. The following steps need to be taken in this regard :High priority should be given to fresh survey of the land including identification of encroachments on public land and construction of houses on tribal land, river beds, green zone areas and government land.

1. Encroachers should be identified and notices should be issued and due procedures for removal of encroachment should be followed to remove unauthorised encroachments under Bihar Public Land Encroachment Act 1951.
2. The encroachers may be rehabilitated if the government thinks on new acquired land for the purpose with due economic packages if thought necessary for the below poverty line people.
3. The planned rehabilitation should take due care on the economic conditions of the encroachers to avoid public resentment and law.

3	1	2	Restrictions on urban land use (disaster risk) effectively serve public policy objectives.
			<p>A: There are a series of regulations that are for the most part serve public purpose and that are enforced.</p> <p>B: There are a series of regulations that are for the most part serve public purpose but that are not enforced.</p> <p>C: There are a series of regulations that are generally not serving public purpose but are not enforced.</p> <p>D: There are a series of regulations that are generally not serving public purpose and are enforced.</p>

C

Comments

The **restrictions** particularly in the coal /mining, disaster prone areas / water bodies, / streams, / common land though meant for public good have very poor enforcement.



Panel 3.2 Transparency of land use restrictions: changes in land use and management regulations are made in a transparent fashion and provide significant benefits for society in general rather than just for specific groups.

3	2	1	<p>Process of urban expansion/infrastructure development process is transparent and respects existing rights.</p> <p>A: Information on planned urban expansion and infrastructure development is publicly available with sufficient anticipation and a process is in place to deal with land rights by those affected that corresponds to internationally recognized standards.</p> <p>B: Information on planned urban expansion and infrastructure development is publicly available with sufficient anticipation and a systematic process to deal with land rights by those affected in a way that is not fully in line with international standards.</p> <p>C: Information on planned urban expansion and infrastructure development is publicly available with sufficient anticipation but the way in which land rights by those affected are dealt with is largely ad hoc.</p> <p>D: Information on planned urban expansion and infrastructure development is not publicly available.</p>
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D

Comments

Information is partially available in Ranchi but it is not available in other parts of the state.

The process is not clear and at times is in conflict with the community rights particularly in the scheduled areas leading to conflicts and denial of rights. For the changes in urban area, land use plan on the basis of a clear public participation should be prepared in which, area for



residential, commercial, industrial and green zones should be earmarked and the spaces for public parks, play ground, health services and other services should be clearly earmarked.

3	2	2	<p>Changes in urban land use plans are based on a clear public process and input by all stakeholders.</p> <p>A: Public input is sought in preparing and amending land use plans and these responses are explicitly referenced in the report prepared by the official body responsible for preparing the new plans. This report is publicly accessible.</p> <p>B: Public input is sought in preparing and amending land use plans and the public responses are used by the official body responsible for finalizing the new plans, but the process for doing this is unclear or the report is not publicly accessible.</p> <p>C: Public input is sought in preparing and amending land use plans but the public comments are largely ignored in the finalization of the land use plans.</p> <p>D: Public input is not sought in preparing and amending land use plans.</p>
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B

Comments

The transparent process has begun with public comments being sought on the master plan of Ranchi. This process was adopted earlier also. Public process is relatively clear now.



3	2	3	Approved requests for change in urban land use are swiftly followed by development on these parcels of land
			<p>A: More than 70% of the land that has had a change in land use assignment in the past 3 years has been developed to its destined use.</p> <p>B: Between 50% and 70% of the land that has had a change in land use assignment in the past 3 years has been developed to its destined use.</p> <p>C: Between 30% and 50% of the land that has had a change in land use assignment in the past 3 years has been developed to its destined use.</p> <p>D: Less than 30% of the land that has had a change in land use assignment in the past 3 years has been developed to its destined use.</p>

None of the above.

Comments

We can not fix the quantum as data are not available. No land use plan is there except in Ranchi and Jamshedpur. DC's permission is needed for change of land use from agriculture to non –agriculture. Building by law is applicable in urban area.

The land use changes have been highly untimely. In Ranchi for e.g. the last plan made was in 1983. It is only after three decades that master plan has been put on the web for public comments. The status of other towns is worse.

Due to political instability even the master plan for the establishment of new secretariat and its allied offices have not been cleared. A consensus among the stake holders is required for clearance of secretariat establishment and formation of land use plan for the urban area.



LGI: 3.3 *Efficiency in the urban land use planning process: land use plans are current, implemented, do not drive people into informality, and cope with urban growth.*

3	3	1	<p>Policy to ensure delivery of low-cost housing and services exists and is progressively implemented.</p> <p>A: A policy for low cost housing and services and effective instruments to implement it exists so that there is a clear trajectory to provide adequate shelter for all.</p> <p>B: A policy for low cost housing and services exists but implementation is not always effective. As a result, the number of those with inadequate shelter declines but still remains high.</p> <p>C: There is a policy for low cost housing and services but implementation has major gaps so that the number of those with inadequate shelter actually increases.</p> <p>D: There is no policy for low-cost housing and services and no provisions that would require private developers to cater to the lower end of the housing market.</p>
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C

Comments

There is policy in the Jharkhand Municipal Act 2011, **Section 427** which has provisions for reserving apart, from area developed by developers for low cost housing. State housing board has hardly been able to take up new projects due to large scale resistance against land acquisition and earlier houses may be for economically weaker section and low income group have been grabbed by richer sections of the society. The Rajiv Awas Yojana, the scheme for housing for the poor in the urban is being implemented slowly.



3	3	2	Land use planning effectively guides urban spatial expansion in the largest city.
			<p>A: In the largest city, urban spatial expansion is guided effectively by a hierarchy of regional/detailed land use plans that are updated regularly, with land use intensity being matched with carrying capacity of infrastructure.</p> <p>B: In the largest city, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban spatial expansion is guided by the provision of infrastructure without full implementation of the land use plans</p> <p>C: In the largest city, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban spatial expansion occurs in an ad hoc manner with infrastructure provided some time after urbanization.</p> <p>D: In the largest city, a hierarchy of regional/detailed land use plans may or may not be specified by law and in practice urban spatial expansion occurs in an ad hoc manner with little if any infrastructure provided in most newly developing areas.</p>

D

Comments

Urban expansion has been highly unplanned and has violated almost all the zoning restrictions in almost all the cities of the state.

Ranchi being the capital of the state does not have Land Use Planning for the systematic guidance on spatial expansion of the city. A Land use plan is to be formulated by the state government.

3	3	3	Land use planning effectively guides urban development in the four next largest cities.
			<p>A: In the four major cities urban development is guided effectively by a hierarchy of regional/detailed land use plans that are regularly updated, with land use intensity being matched with carrying capacity of infrastructure.</p>



B: In the four major cities, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban development is guided by the provision of infrastructure which implements only a part of the land use plans.

C: In the four major cities in the country, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban development occurs in an ad hoc manner with infrastructure provided some time after urbanization.

D: In the four major cities in the country a hierarchy of regional/detailed land use plans may or may not be specified by law and in practice urban development occurs in an ad hoc manner with little if any infrastructure provided.

D

Comments

It has been highly ineffective primarily because of lack of technical personnel and/enforcement authority in place, large scale corruption, delays as well as political interference. There is no land use plan for the state except some primary guidelines from the Tenancy Acts. The growing urbanisation in the light of liberalisation requires a fresh look at the problem at the decision making stage

The state of Jharkhand has yet to finalise a plan for housing facilities and other services for economically weaker sections and lower income groups. The Tenancy laws should be suitably amended for this purpose.

3	3	4	Planning processes are able to cope with urban growth.
			A: In the largest city, the urban planning process/authority is able to cope with the increasing demand for serviced units/land as evidenced by the fact that almost all new dwellings are formal.
			B: In the largest city, the urban planning process/authority is able to cope to some extent with the increasing demand for serviced units/land as evidenced



by the fact that most new dwellings are formal.

C: In the largest city, the urban planning process/authority is struggling to cope with the increasing demand for serviced units/land as evidenced by the fact that most new dwellings are informal.

D: In the largest city, the urban planning process/authority cannot cope with the increasing demand for serviced units/land as evidenced by the fact that almost all new dwellings are informal.

D

Comments

Planning process has not been able to cope up with urban growth of the state. Urban planning has been one of the neglected sectors in the in state in pre Jharkhand period. There is need of the system which should look into the problems of urban growth in the state. Each urban centre should be equipped with latest picture of land records and maps up-to-dation of land records and maps and computerisation of these should be given highest priority.

LGI: 3.4 Speed and predictability of enforcement of restricted land uses: development permits are granted promptly and based on reasonable requirements.

3	4	1	Provisions for residential building permits are appropriate, affordable and complied with.
			A: Requirements to obtain a building permit are technically justified, affordable, and complied with.
			B: Requirements to obtain a building permit are technically justified and affordable but only partly complied with.
			C: Requirements to obtain a building permit are technically justified but not affordable for (and not complied by) the majority of those affected.
			D: Requirements to obtain a building permit are over-engineered technically and not affordable.



Dimension can be split if deemed necessary for proper analysis:

3.4.1a: Provisions for residential building permits are appropriate.

3.4.1. b Provisions for residential building permits are e, affordable; 3.4.1.c Provisions for residential building permits are complied with.

B

Comments

Hundreds of applications for approval of Housing plans have been pending due to over technicalities. Many of the plans are on Public Land, prohibited land and tribal land against the provisions of the CNT and SPT Acts.

There is need to have fresh survey of land particularly the Public Land, Parks, green zones and the tribal land to have the clear picture of the situation to have a policy decision by the competent authority.

3	4	2	A building permit for a residential dwelling can be obtained quickly and at a low cost.
			A: All applications for building permits receive a decision within 3 months.
			B: All applications for building permits receive a decision within 6 months.
			C: All applications for building permits receive a decision within 12 months.
			D: All applications for building permits receive a decision after a period exceeding 12 months.

B

Comments



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It depends on the types of building. According to House Building Act permission from fire is also necessary and permission from airport is also needed where necessary. Technical manpower required to support the golden rule of receiving permits within three months.

3	5	1	<p>Formalization of urban residential housing is feasible and affordable.</p> <p>A: The requirements for formalizing housing in urban areas are clear, straight-forward, affordable and implemented consistently in a transparent manner.</p> <p>B: The requirements for formalizing housing in urban areas are clear, straight-forward, and affordable but are not implemented consistently in a transparent manner.</p> <p>C: The requirements for formalizing housing in urban areas are neither clear, straight-forward, or affordable but many applicants from informal areas are managing to satisfy the requirements.</p> <p>D: The requirements for formalizing housing in urban areas are such that formalization is deemed very difficult.</p>
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D

Comments

It is partly feasible and also affordable. The ordinance for the regularization of unauthorized constructions in Jharkhand by an ordinance failed due to multiple reasons - constructions in the green areas and on the illegally alienated tribal land. The encroachments were demolished partly but the rehabilitation was not very successful because in many places the resettlement was opposed by local community. It is partly feasible as they can be settled on the Government land, if properly planned.



3

5

2

In cities with informal tenure, a viable strategy exists for tenure security, infrastructure, and housing.

A: Existing regulations do not provide incentives for new informal occupations and a strategy exists to regularize land rights and provide services to existing informal occupants.

B: A strategy exists to regularize land rights and provide services to existing informal occupants but existing regulations provide incentives for new informal occupations.

C: Strategies to deal with urban informality exist but focus only on either land or services but not both.

D: There is neither process nor strategy to implement it.

B

Comments

Informal occupants are not regularised. However some services are provided to them. The State polity is divided on the ground of vote bank and other vested interests, while one group wants regularisation of the informal tenure which is vehemently opposed by the other group.



3

5

3

A condominium regime allows effective management and recording of urban property.

A: Common property under condominiums is recognized and the law has clear provisions for management and publicity of relevant records that are followed in practice.

B: Common property under condominiums is recognized and the law has clear provisions for management and publicity of relevant records but these are not always followed in practice.

C: Common property under condominiums is recognized but the law lacks clear (or regulations) for management and publicity of relevant records.

D: Common property under condominiums is not recognized.

D

Comments

There are rules for the same but are violated on large scale in the state. The rules need to be implemented by regular monitoring in the construction stage itself.



CHAPTER 5

Panel 4: Public Land Management

5.1: Background

The connotation the public land comprise land owned by the government through successive entries in the record of right, through acquisition of private land, through land traditionally under the direct management, **nazul or khasmahal** land, land through acquisition of surplus land under the ceiling law and community land, which is also known as common property resources.

In Jharkhand all this aforesaid typology of land is available. In the cadastral survey there was a nomenclature called *gairabaad malik* land which was characterised as *anabad Bihar sarkar, Jharkhand sarkar* in the revisional survey. Jharkhand was bifurcated from Bihar in 2000. Prior to that land system was governed under Bihar Land Reforms Act 1950, (BLR Act) that being the basic Act of *zamindari* abolition, holds good till date in Jharkhand as well. Since from the earlier times, tenancy Acts were different for the three distinct geographically region of Bihar. Jharkhand is governed by Chotanagpur Tenancy Act, 1908 and Santhal Pragana Tenancy (Miscellaneous Provisions) Act 1949 which was preceded by scores of regulations (promulgated in 19th century onwards), rest of Bihar was governed by Bihar Tenancy Act 1885. The three tenancy Acts deals with landlord and tenant relation in detail, including rights and obligation of tenant's maintenance and settlement of waste land and the legal provision pertaining to survey and settlement.

A special section of BLR Act 1950, is called for, because the ex intermediaries were assigned the twin task of collecting rent from the tenant, deposit the same in the treasury, management of *gair abaad malik* lands and settling the same to *raiyyats*. The BLR Act highlighted the procedure for management, settlement of *gair abaad malik* land by ex land lord. Never the less it will not be out of context to allude to service grant availed by the ex intermediaries. Since they rendered useful services to the government, the intermediaries were allowed to keep small or large tracks of arable land under their procession, this was



called Khas possession Bakashat (B → self, kashat → cultivation). There is a plethora of court rulings to suggest that same has to be a direct physical, personal cultivation and not “constructive” possession. By constructive possession is meant the *zamindar* might have referred to such land as under his cultivation and in return filed after abolition of *zamindari*, but might not be in actual possession on the ground. Somebody else might be in possession in that eventually such land has to be treated as and recorded government land. Coming to *gair abaad malik land*, these outgoing intermediaries were under the obligation to manage it so as to sub-serve public interest as also power to settle it. *Zamindari* settlement could be pre-dated. In such cases two checks were deployed

- 1) Whether such settlement had been reflected in zamindari returns upon the heels of the abolition of zamindari that cannot be satisfied by any means
- 2) There were number of cases in which zamindari returns had not be filed at all, like the raja of Ramgarh (Jharkhand) never filed any returns. In such cases benefit of doubt could accrue to the settle, if he got his settled land muted in his name in revenue offices

But for the above two checks the settlement was not to be relied upon and so called settled land has to be treated as public land.

A further check on motivated transfer, settlement of public land made by the ex intermediaries by in section 4 (h) of **Bihar land reforms act 1950**. It provided that all transfer made by outgoing intermediaries 1946 will be inquired to ascertain the bonafide of the transfer.

Section 63 A of CNT Act 1908 deals with settlement to be made by patta , it runs as follows settlement of waste lends belonging to the state government shall be made by a “PATTA” or “*amalnama*” in the prescribed form. The “PATTA” or “*amalnama*” shall be prepared in duplicate, which one copy shall be given to the “*raiyat*” concerned and one copy shall be sent to the deputy commissioner of the district

Section 63 B of the aforesaid Act provides for the circumstances setting aside of the settlement. It runs as follows “in the event of any land settled as aforesaid not being brought under cultivation within a period of five years from the date of the settlement, or the land being alienated in contravention of the previous **section 63A**



In the SPT act chapter 4 deals with the settlement of waste land and vacant holding such settlement is to be made by **PATTA section 28** lays down principles to be followed in setting waste land or vacant holding which are as follows

- a) Fair and equitable distribution of land according to the requirements of each raiyat and his capacity to reclaim and cultivate
- b) Any special claim for services rendered to the village community, society or state;
- c) Contiguity or proximity of the waste lands to *jamabendi* land of the *raiya* was made;
- d) Provision for landless labourers who are bonafide permanent resident of the village and are recorded for dwelling house in the village

In context of Jharkhand mostly public land for public use defined as below Kaiserehind (Land of Union government), *Gairmazurua Khas* land, *Garmazrua aam* land (*Anabad Sarva Sadharan*), *Parti Kadim*, *Parties Patthar*, Grazing field, *Saran sthal* (Place of worship for tribal), *Masna Haragadri*, *Pokhar*, *Ashar* (public tank), *Asmashan*, *Kabristan*, Place of worship of different religion etc., Forest land under State government etc.

Any entry of public land in records of right or acquisition under the provisions of Land Acquisition Act, acquired by purchase, grant or in any other way would make such land as public land, land vested in state under Bihar (Jharkhand) Land Reforms Act 1950 is also public land.

Any land over which the public or community has a right of user becomes public land.

For this purpose, public undertaking shall mean:-

- (i) Any industrial undertaking owned by a corporation constituted under any law for the time being in force or
- (ii) Any industrial undertaking in which the government owns more than 50 per centum of the share capital thereof or any other industrial undertaking which is declared to be a public undertaking by the state government, by notification in the official gazette.

The surplus land notified under land ceiling Act, 1961 are also public land. Land donated to and held under Bhoodan Yagna Committee Act 1954 can also be put under category of public land. According to Audit Report of Controller and auditor General of Jharkhand,



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Draft Para No.- 42-year 2009-10 Working of Revenue and Land Reforms Department, Jharkhand, there is 2,44,080.50 Acre *Bhoodan* land in Jharkhand out of which 17.621.77 Acre land is settled as yet. Similarly there are 4, 89.607.085 Acre *gairmazrua Khas* land is in Jharkhand, reported in A.G. Jharkhand. Audit Report Draft Para No. 42 in which 2.38.081.405 Acre land is settled.

Vacant/ abandoned holding declared u/s 28 of SPT Act 1949 and u/s 73 of CNT Act 1908 can also be treated as public land. There is provision in u/s – 20(b) of SPT Act 1949 and sec 71A of Chotanagpur Tenancy Act 1908 to restore possession of land to a raiyat who is scheduled tribes over land unlawfully transferred. In the case, when transfer or his heir is not available or is not willing to agree to such restoration, Dy. Commissioner may re-settle it with another raiyat belonging to scheduled tribes considering fair and equitable distribution of land to landless person.

Above mentioned all type land should be surveyed, physically verified, listed and registered consolidated at District level under Dy. Commissioner for the purpose of Land bank which will serve cause of land distribution to landless person and make available land for development work.

Conclusion

- (1) For better land management, a roadmap for land reforms should be made for that firstly all types of data regarding land revenue matter should be maintained at Revenue Department level and district level. It was experienced during preparing this report, that most of information/data required is not available or maintained in secretariat level.

For example, for the time being these information/data should be maintained in state level totally and district wise.

- A.
 - (1) Gairmazrua Aam Land in Jharkhand
 - (2) Gairmazrua Khas Land
 - (3) Khas meal land and renewal of lease
 - (4) Encroached public land
 - (i) By landless person
 - (ii) By influential person



- (5) Kaiser hind land (land of government of India)
- (6) Parti Kadim
- (7) Parti Pather
- (8) Gochar land (grazing field)
- (9) Sarna Sthal
- (10) Banial ground
- (11) Place of worship of different religion
- (12) Hal Jalkar
- (13) Pradhan Jote and Pradhan Ka Jote
- (14) Mulraiyyati Jote
- (15) Land of Bhoodan Yagna Samiti
- (16) Surplus land declared under Ceiling Act
 - (i) In which distributed to landless person.
 - (ii) In litigation.

B. (1) Land Acquired for various project

(2) Abandoned holding.

C. (1) In Santhal Pargana

(2) In Old Chotanagpur division

(2) Land availability for development work, future project, community facility and distribution for landless person, a land bank of suitable land should be maintained at state level and district level.

(3) Functioning at Bhoodan Yagna committee is in doubtful. It should be placed under direct control of Dy. Commissioner attached to Revenue section of district.

(4) When large tracts of land acquired for a big project displaced tenants, raiyats, inhabitants deprived not only from their land but from their livelihood, community facility, right of easement, religious places, customary rights on land, actually then possessed their land, social religious, customary, culture, economic status. Establishing project and government should jointly make arrangement of that facility from which displaced person are deprived in the vicinity and make them engaged in that project.



Best practices

1. Both the CNT and SPT Act deal with public land and principles have been laid down to settle such land nevertheless the methods of dispossession hangs over perennially for with the government machinery at the grass root needs to be cautious and pro-active in favour of decline with govt. settle. Ceiling law if implemented properly and pending laws disposed of expeditiously there cannot be any doubt that surplus land will be available for redistribution
.
2. Collective rights prevail with regard to *Mundari Khuntkattidari* tenure, such group rights are absent in Bihar. It is a matter of Survey to what extent these group rights are exercised that common tribal has got access to public lands including forest produce.
3. An amended **section 49** delimits the power of Deputy Commissioner for allowing tribal land for industrial and mining purposes only. It is a subject matter of survey and review how many such permission been granted and whether resettlement and rehabilitation package are available for land displaced person on account of industry and mining.

Weaknesses

This section of the panel needs to be presented in comparison with Bihar counterpart. In Bihar the following Acts:-

1. BIHAR LAND DISPUTE RESOLUTION ACT, 2009

This Act besides other things makes a state of necessary party in all case of civil dispute in which one of the parties to the dispute is a public land allotter.

2. BIHAR SPECIAL SURVEY & SETTLEMENT ACT, 2011

This Act provides for special survey and settlement all over the state in a squeezed manner. Since, the earlier surveys took many years to complete.

3. THE BIHAR LAND TRIBUNAL ACT, 2009 a land tribunal has been constituted in Bihar under the chairmanship of Retired Judge of high court. This court is dealing exclusively with matter pertaining to land including public land.



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4. **THE BIHAR LAND MUTATION ACT, 2009** Section 9 of this Act provides of cancellation of an illegal opened Jamabandi on private or public land.
5. None of the aforesaid legislative matter has been taken up in Jharkhand leading to a guard on public land front.

In Bihar a new KhasMahal policy was promulgated in 2011 to take care of Khasmahal and which is public land under the direct management of Khasmahal land which are public land, this Act provides for stringent provision for violation of Khasmahal lease deed violation.

In Jharkhand even now such land are dealt with Bihar Khasmahal land Manual 1953.

This despite the fact that vast tract of Khasmahal land exist in Ranchi, Jamshedpur, Hazaribagh and other major town.

No survey of dispossession from public land has been carried out in a systematic fashion in Jharkhand. The very purpose of settlement is defeated if poor Raiyat are whisked away by goons and administrators remain silent, stoic separator enquiries into settlement made by Ex- landlord under section 4(h) of the BLR Act, 1950 have not been carried out properly hence many motivated transfers still remain unattended.

Unlike Bihar, where district town lands were recent surveys and provision for boundaries wall was made in Jharkhand town public land are very much prone to encroachment.

Rule 467 of the Bihar Settlement Manual is hardly invoked to cancel illegally opened against public land.

Recommendations



1. Evidently recommends emanate from subsection on weakness supra. The govt. of Jharkhand would like to adopt aforesaid enactment including Khasmahal policy without any further loss of time. There is no point in repeating whatever is stated above.
2. Cases under Bihar public land encroachment Act should be filled as and when necessary to its conclusion.

SECTION 5.2: DIMENTION ANALYSIS

LGI: 4.1 Identification of public land and clear management: public land ownership is clearly defined, effectively serves the public purpose, is inventoried, under clear management responsibilities, and relevant information is publicly accessible.

4	1	1	Criteria for public land ownership are clearly defined and assigned to the right level of government.
			<p>A: Public land ownership is justified by provision of public goods and effectively and transparently managed at the appropriate level of government.</p> <p>B: Public land ownership is justified by provision of public goods at the most appropriate level of government but management may be discretionary.</p> <p>C: Public land ownership is justified by provision of public goods but management responsibility is often at the wrong level of government.</p> <p>D: Public land ownership is not serving the public interest by the cost effective provision of public goods.</p>

A

Comments

Pubic and ownership is defined in survey khatiyan and mostly ownership is vested in government, in district level Dy. Commissioner is custodian of public land.



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Administration set up for land management in Jharkhand state is explained as below:-

- (1) At state land there is Revenue and land Reforms Department headed by secretary, a senior India Administration Officer.
- (2) Lowest level
- (3) At above Halka Karmachari – Circle Inspector is a Supervisory Officer.
- (4) At Block cum Anchal level – Anchal Adhikari is overall responsible and Controlling Officer regarding land revenue matters. Anchal Adhikari an Officer of Jharkhand Administration Officer posted by revenue and land reform department.
- (5) Above Anchal level Sub-divisional Officer and Dy. Collector land reforms are responsible for land management including public land.
Dy. Collector land reforms are specially posted for performing land management. Sub-divisional Officer is also responsible for solving land related matters.
- (6) Above Sub-divisional level Dy. Commissioner at district level is overall responsible and controlling officer regarding land revenue matter. Additional Collector is specially posted to assist Dy. Commissioner regarding land revenue matter.

At local level Anchal Adhikari, (Circle Officer) posted by revenue department is responsible for management of Public land.

Data of public land is available on state level Revenue Department, Govt. of Jharkhand.

Lowest level of maintaining and management of public land is Halka for which Halka Karmchhari is responsible. Records, any information regarding public land can be obtained by any public be applying for certified copy or under Right to Information Act.

Some public land which is used by specific purpose by concerned community is managed by that community but government also assist them.

Therefore it could be said that there is very little question of discretion in public land management because hierarchy and responsibilities are clearly demarcated. Therefore, there is no question of management by wrong level of government. Similarly there is no question of public land could not be serving public interest.

Though public land ownership is duly justified, however the management suffers from severe shortfalls due to historic reason of poor management or no management. There are instances



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of public land being recorded in individual's name without order of competent authority. Hardly the state government moves the civil court to reclaim the public land. Secondly even if the title remains with government in ROR, many a time the land is in permissive or adverse position of individual. Jamabandhi has been opened wrongfully for wrongful gain and due to political compulsion encroachment is not getting removed. The problem is historic because this problem was not born in a day. It reflects lack of concern and connivance of authority at various levels in the post-independence period.

4	1	2	There is a complete recording of public land.
			<p>A: More than 90% of public land is clearly identified on the ground and on maps.</p> <p>B: Between 60% and 90% of public land is clearly identified on the ground and on maps.</p> <p>C: Between 30% and 60% of public land is clearly identified on the ground and on maps.</p> <p>D: Less than 30% of public land is not clearly identified on the ground or on maps.</p>

A

Comments

There is complete recording of public land. More than 90% approximately 100% of public land is clearly identified on maps.

(7) Above district level Divisional Commissioner is also performs duty as a revenue officer dealing with land revenue and review functioning of anchal to district level.

There are 5 divisions in Jharkhand:

No. of district - 24
 No. of sub-division - 37
 No. of Anchal Offices- 245
 No. of Halka Karmchari - 2014
 No. of Revenue Villages - 35,722

There are six survey and settlement offices in the state i.e. (1) Ranchi (2) Dumka (3) Palamu (4) East Singhbhum (Jamshedpur) (5) Dhanbad and (6) Hazaribagh : They have not own



their building. It was proposed to construct six new survey and settlement office building in 12th year plan.

Record of Rights Survey and settlement of Chotanagpur was completed in 1932 and in Santhal Pargana completed in 1935, present survey process is going on at present position is as below:-

Table 5.1 : Present Position of Record of Rights Survey

Sl. No.	Survey Office	District	Village	Kistvar	Khanapuri	Tasdik (Attestation)	Final Publication
1	Ranchi	Gumla	948	948	948	948	386
		Ranchi	1330	1302	1302	1302	0
		Khunti	757	377	340	190	0
		Lohardaga	354	354	354	354	Published
		Simdega	451	237	237	197	2
2	Dumka	Deoghar	2742	2698	2698	2213	0
		Godda	2313	2293	2293	2293	0
		Jamtara	1313	0	0	0	0
		Dumka	2495	2467	2467	2467	1322
		Pakur	1265	652	613	0	0
		Sahebganj	1817	1793	1793	1756	0
3	Palamu	Garhwa	915	907	907	907	673
		Palamu	1894	1894	1894	1894	517
		Latehar	775	775	775	775	Published
4	Dhanbad	Bokaro	743	299	298	273	0
		Dhanbad	1193	1193	1193	1193	793
5	Hazaribagh	Chatra	1460	1460	1460	1460	0
Sl. No.	Survey Office	District	Village	Kistvar	Khanapuri	Tasdik (Attestation)	Final Publication
		Kodarma	665	665	665	665	0
		Giridih	2751	2751	2751	2751	0
		Hazaribagh	1743	1094	1053	49	0
6	Singhbhum	East Singhbhum	1805	1805	1805	1805	Published
		West Singhbhum	1677	1677	1677	1677	Published
		Saraikeela	1223	1184	1184	1184	1184

Source: Government of Jharkhand



Lohardagga is only districts in Jharkhand where present survey of all 354 villages is completed and all record of rights are computerized in NIC, Lohardagga and can be accessed on website “Basudha”.

Though public land is not displayed by informative sign board but it can usually be distinguished by their conventional use.

Public and ownership is defined in survey khatiyani or ROR (Record of Right) and mostly ownership is vested in government, in district level by Dy. Commissioner is custodian of public land and in local level Revenue Anchal Adhikari, revenue officer posted by revenue department is responsible for management of Public land.

Point of Concern

Since the state has not been surveyed at one stretch in a short time framework, the Actual quantum of public land loosely cannot be ascertained. In one word, Survey in the state has been a sporadic, in fragment, and excessively dilatory and time consuming. By the time a given survey ends the end product is rendered obsolete by a flux of time. Besides, this new survey of land should be conducted applying global positioning system.

4	1	3	Information on public land is publicly accessible.
			<p>A: All the information in the public land inventory is accessible to the public.</p> <p>B: All the information in the public land inventory is accessible to the public, but information for some types of public land (land used by the military, security services, etc.) is not available for justifiable reasons.</p> <p>C: All the information in the public land inventory is only available for a limited set of public property and there is little or no justification why records are not accessible.</p> <p>D: No information in the public land inventory is accessible to the public.</p>

B

Comments



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Information on public land is publicly accessible. All the information of the public land inventory is accessible to public. Anyone can obtain this information by applying for certified copy or by way of using Right to Information Act. Information regarding military security services cannot be obtained due to security and national interest.

However, as mentioned above, the survey and settlement in Jharkhand has been a sporadic, in fragment, and excessively dilatory and time consuming. By the time a give survey ends the end product is rendered obsolete by a flux of time. Therefore prior to accessibility the availability of data should be first question.

4	1	4	<p>The management responsibility for different types of public land is unambiguously assigned.</p> <p>A: The management responsibility for different types of public land is unambiguously assigned to serve objectives of equity and efficiency and this is implemented by properly equipped institutions.</p> <p>B: The management responsibility for different types of public land is unambiguously assigned but this is not always consistent with objectives of equity and efficiency or institutions are not always properly equipped so that sometimes these are not achieved.</p> <p>C: There is ambiguity in the assignment of management responsibility or capability for different types of public land and/or major gaps in the extent to which equity and efficiency are often not attained in practice.</p> <p>D: Ambiguity in management responsibility/ability for key public land makes it near impossible to manage these equitably and efficiently.</p>
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B

Comments

The management responsibility for different types of public land is unambiguously assigned. In state of Jharkhand indicators B is seems appropriate, though this is consistent with objective of equity but efficiency or institutions are not always properly equipped so that sometimes these are not achieved.



In Santhal Pargana region where Santhal Pargana Tenancy Act 1949 is in force, there are three types of Revenue Village for land management – (1) *Mauza Khas* (2) *Pradhani* Village and (3) *Mul Raiyati* Village

- (1) *Khas* Revenue Village is managed by *Halka Karmachari* (Govt. Official)
- (2) *Pradhani* Village office of the *Pradhan* is hereditary, after the death of village headman (*Pradhan*), the next heir who is fitted should be appointed, but the right to succeed to pradhanship is not also absolute, if heir is considered unfit, he may be refused succession. The choice of 2/3 raiyati of village is also a sector to be taken into consideration.

Sub-divisional officer is empowered to appoint a village headman following prescribed provision. Even in *Khas* village, on application of two-third of *jamabandi raiyati* of the village, a headman shall be appointed following prescribed manner. Section 5-6 of SPT Act 1949 deals with appointment of village headman.

- (3) *Mulraiyyati - Mulraiyyats* are found in the Deoghar Sub-division of Santhal Pargana. In the course of settlement during 1876-77 eighty men who had been recognized as headmen styled on *mulraiyyats* who possess special rights to transfer his *mulraiyyati* rights office of the *mulraiyyati* in purely hereditary does not require consents of 2-3 *jamabandi* rights of village. Hence recognition of *mulraiyyat* is not.

But state government is making improvement in this field. Land records and maps are being computerized under the guidance of Jharkhand Space Application Centre and revenue department. Therefore, we can say that in theory yes, but in practice equity and efficiency could have been a casualty in many cases. At formal level of government due care is taken to assign managerial responsibilities and capabilities. However due to individual incapability and connivance at various rungs of bureaucracy, the derived result are not forthcoming.

Due to lack of strong will, initiative and connivance, public land i.e. government land is being encroached while there is sufficient power and provision is made in Jharkhand (Bihar) land encroachment Act. Revenue officers should take initiative on priority for removing encroachment. It is not difficult. There is example, after direction issued by Hon'ble High



Court; Patna in historic C.W.J.C. 2290/90 more than 96% of encroachment on public land was removed.

The institution of *pradhan* and *mulraiya*t is a peculiarity of the Santhal Pargana Pradhan or *mulraiya*t is an intermediary between the Government and the raiyats of a village. Their main function is collection of rent from raiyats on behalf of the land lord and settlement of waste land (government land – *gairmazrua khas*) and abounded holding. Thus, we see that they have power of *karmachari* for collecting rent and power of sub-divisional officer for settlement of land. *Pradhan* and *mulraiya*t are not trained and qualified as *karmachari*, *anchal adhi*kari and sub-divisional officer but performs function of K.C., A.A. and S.D.O. In case of settlement of *gairmazrua khas* land they do not follow the process as sub-divisional officer follows the prescribed process. Often *pradhan* or *mulraiya*t misuse their power in case of settlement of *gairmazrua* land.

From 2002-03 to 2011-12, 720 *Tehsil Katchheries*, 23 *Damin Bunglow*, 101 *Tehsils Offices-cum-Halka Karmachari* quarters and 98 Circle Officers quarters have been constructed under strengthening of Revenue Administration in 12th year plan 2012-17. It is proposed to construct rest 147 Circle Officers quarters, 245 circle Inspector’s quarters, 1225 quarters for LDC, UDC and Head Clerks at Circle Offices and 1143 quarters for *Halka Karmachari* under strengthening at revenue administration.

4	1	5	Responsible public institutions have sufficient resources for their land management responsibilities.
			A: There are adequate financial and human resources available to ensure responsible management of public lands (integrated cadastral maps and filled positions).
			B: There are some constraints in the financial and/or human resource capacity but the system makes most effective use of available resources in managing public lands adequately.
			C: There are significant constraints in the financial and/or human resource capacity but the system makes effective use of limited available resources, with limited impact on managing public lands.
			D: There are either significantly inadequate resources or marked



inefficient organizational capacity leading to little or no management of public lands.

B

Comments

Indicator B seems to be appropriate response. There are some constraints in the financial and human resources capacity but the system makes most effective use of available resources in managing public lands.

POINT OF CONCERNS

As mentioned earlier one of the foremost requirement for a better management of Public Land, there is a need of fresh survey of Land. There are financial as well as human resource constraints for carrying out survey/re-survey of the entire state in one attempt within a short period of 2-3 years (to avoid obsolesce) for which large sum of money will be required. Nevertheless money alone will not suffice. Over the three to four decades of many of the survey knowing staffs have retired and no fresh recruitment has taken place. Modern technology gives maps only. Ground mapping and filling Records of Rights structure, equipping them with technical knowhow and supervise them to avoid malpractice. A note of caution is also to be attached as collusive surveys will lead to plethora of land disputes, public land are not to be surveyed distinctly. Private land also has to be surveyed concurrently. So it has to be comprehensive holistic exercise.

However, state government with the assistance of the government of India, Ministry of Rural Development and the Department of Land Resources has started a new integrated schemes on the National Land Records Modernization Programme in place of the ongoing scheme as computerization of Land Records (CLR) and strengthening of Revenue Administration and updating of Land Research (SRA & ULR), Jharkhand space application centre is giving technical assistance.

Digitization of land map – land map is being digitized by Jharkhand space application centre in survey and settlement office. Hazaribagh Digitization Work will be started in Ranchi, Dumka and Palamu settlement office. But there is problem of non availability of village map of all 35,722 revenue villages (mauza) at present only map of 14,789 villages is available of



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which digitization is being made. Problem is that original maps at all villages are kept in government press, Gulzarbagh, Patna (Bihar), Jharkhand Government is making efforts and requesting Bihar Government for years for obtaining maps of Jharkhand villages but Bihar Government is not agreed to give maps to Jharkhand Government as yet. Non availability of map is also a major problem in better land management.

4	1	6	All essential information on public land allocations to private interests is publicly accessible.
			<p>A: Key information for public land allocations (the locality and area of the land allocation, the parties involved and the financial terms of the allocation) is recorded and publicly accessible.</p> <p>B: Key information for public land allocations (the locality and area of the land allocations, the parties involved and the financial terms of the allocation) is only partially recorded but is publicly accessible; or the key information is recorded but only partially accessible.</p> <p>C: Key information for public land allocations (the locality and area of the land allocations, the parties involved and the financial terms of the allocation) is recorded or partially recorded but is not publicly accessible.</p> <p>D: There is no recorded information on public land allocations.</p>

A

Comments

All essential information on public land allocation to private interest is publicly accessible. Key information for public land allocation (the locality and are of the land allocation, the parties involved and financial terms of the allocation) is recorded and publicly accessible which can be obtained on demand by certified copy or under the provision or Rights to Information Act.

Information on public land allocation is a formal structural process adopted at the concerning appropriate levels. Necessary entries are made in assignment record and some are publically accessible. Computerized data entry of land record can be accessible on website “Basudha” of Jharkhand Government.



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LGI: 4.2 Justification and time-efficiency of acquisition processes: the state acquires land for public interest only and this is done efficiently

4	2	1	There is minimal transfer of acquired land to private interests. ⁷
			<p>A: Less than 10% of land acquired in the past 3 years is used for private purposes.</p> <p>B: Between 10% and 30% of land acquired in the past 3 years is used for private purposes.</p> <p>C: Between 30% and 50% of land acquired in the past 3 years is used for private purposes.</p> <p>D: More than 50% of land acquired in the past 3 years is used for private purposes.</p>

A

Comments: There are no such instances that land acquired for public interest is transferred to private purposes. However, state government acquires land separately on the request of private parties under prescribed law.

4	2	2	Acquired land is transferred to destined use in a timely manner.
			<p>A: More than 70% of the land that has been acquired in the past 3 years has been transferred to its destined use.</p> <p>B: Between 50% and 70% of the land that has been acquired in the past 3 years has been transferred to its destined use.</p> <p>C: Between 30% and 50% of the land that has been acquired in the past 3 years has been transferred to its destined use.</p> <p>D: Less than 30% of the land that has been acquired in the past 3 years has been transferred to its destined use.</p>

A

⁷In some countries in the process of urban expansion privately land held maybe acquired before land use planning is implemented and then sold/returned to previous owners in a different form. This is not to be considered for ranking this dimension. Transfer of acquired land to private interests is excluded.



Comments

More than 70% of the land acquired has been transferred to its destined use and possession of land is given to concerning department.

4	2	3	The threat of land acquisition does not lead to pre-emptive action by private parties.
A: None at all.			
B: Some.			
C: A lot.			
D: A lot and regressive.			

A

Comments

In a free society we can't prevent private parties from taking pre-emptive actions. Land Acquisition process is governed under well defined laws by appropriate proceedings including cut of date. But it is found generally that when acquisition process for any project is about to start, before that persons having vested interest and its motive indulge in selling or purchasing land in locating. Besides this people get settled government land illegally by influencing Revenue Official.

4	3	1	Compensation is provided for the acquisition of all rights regardless of their recording status.
A: Fair compensation, in kind or in cash, that allows maintenance of previous social and economic status, is paid to all those with rights in acquired land (ownership, use, access rights etc.) regardless of the recording status.			
B: Compensation, in kind or in cash, is paid, however the level of compensation where rights are not recorded does not allow for maintenance of social and economic status.			



C: Compensation, in kind or in cash, is paid for some unrecorded rights (such as possession, occupation etc.), however those with other unrecorded rights (which may include grazing, access, gathering forest products etc.) are usually not paid.

D: No compensation is paid to those with unrecorded rights of use, occupancy or otherwise.

A

In Jharkhand PESA-2006 is in force, according to which consent of 80% of *gram sabha* is must to start acquisition process for any scheme/project.

Comments

Fair compensation, in kind or in cash, that allows maintenance of previous social and economic status, is paid to all those with rights in acquired land (ownership, use, access rights etc.) regardless of the recording status. Land Acquisition Act provides for reference to court. The Act required is duty free to move redressal of his grievance. According to u/s-18 of land acquisition Sub-Judge I of local Civil court.

4 3 2 Land use change resulting in selective loss of rights there is compensated for.

A: Where people lose rights as a result of land use change outside the acquisition process, compensation in cash or in kind is paid so that these people have comparable assets and can continue to maintain prior social and economic status.

B: Where people lose rights as a result of land use change outside the acquisition process, compensation in cash or in kind are paid so that these people have comparable assets but cannot continue to maintain prior social and economic status.

C: Where people lose rights as a result of land use change outside the acquisition process, compensation in cash or in kind are paid such that these people do not have comparable assets and cannot continue to maintain prior social and economic status.



D: Where people lose rights as a result of land use change outside the acquisition process, compensation is not paid.

D

Comments

There is no provision for fixing compensation to persons who lose rights as a result of land use outside the acquisition process. With the promulgation of new Land Acquisition Act i.e. R & R Policy, which is promulgated on 23 December, 2013 and comes in force from tenancy 2014, provision is made that before displacing any person. He should be rehabilitated. Besides, compensation will be paid 100% or two time of present market value of land in urban area and surrounding area and four times of market value of land in rural area.

4	3	3	Acquired owners are compensated promptly.
			A: More than 90% of acquired land owners receive compensation within one year.
			B: Between 70% and 90% of acquired land owners receive compensation within one year.
			C: Between 50% and 70% of acquired land owners receive compensation within one year.
			D: Less than 50% of acquired land owners receive compensation within one year.

A

Comments

There is one year statutory limit for paying compensation but more realistic picture may emerge if we take some case studies and do intensive studies on it. However, in most of cases after the award declaration u/s 11 of L.A. Act 1884/94 - 80% of compensation amount is made within one year.

4	3	4	There are independent and accessible avenues for appeal against acquisition.
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A: Independent avenues to lodge a complaint against acquisition exist and are easily accessible.

B: Independent avenues to lodge a complaint against acquisition exist but there are access restrictions (i.e. only accessible by mid-income and wealthy).

C: Avenues to lodge a complaint against acquisition exist but are somewhat independent and these may or may not be accessible to those affected.

D: Avenues to lodge a complaint against acquisition are not independent.

D

Comments

There is no provision for fixing compensation to persons who lose rights as a result of land use outside the acquisition process. With the promulgation of new land acquisition sufficiency will be taken care of in this respect as per provisions of new law.

4	3	5	Timely decisions are made regarding complaints about acquisition.
A: A first instance decision has been reached for more than 80% of the complaints about acquisition lodged during the last 3 years.			
B: A first instance decision has been reached for between 50% and 80% of the complaints about acquisition lodged during the last 3 years.			
C: A first instance decision has been reached for between 30% and 50% of the complaints about acquisition lodged during the last 3 years.			
D: A first instance decision has been reached for less than 30% of the complaints about acquisition lodged during the last 3 years.			

A

Comments The question is vague within the provision of Land Acquisition procedure. Grievance redressal have been clearly laid down and put to provision. The word complaint is foreign to Land Acquisition Act. If it means malpractices adopted by official the same are taken care of at appropriate level of Government as prescribed.



CHAPTER 6

Transfer of Public Land to Private Use Follows a Clear, Transparent, and Competitive Process

6.1: BACKGROUND

Public land as defined in sec (3) of the Bihar Public Land Encroachment Act 1956 refers to all land belonging to union or to the state or to local authority or to any public undertaking or to any educational institution or to railway company or to Gram Panchayat and includes any land over which the public or the community has got a right of uses, such as right of way, burials, cremation, pasturage or irrigation. . Meaning of Transfer from Transfer of Property act 1982⁸ (chapter II Transfer Of Property By Act Of Parties (A) Transfer of property, whether movable or immovable) **Transfer of property defined:** Transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

Transfer of public land to private use can be processed under the Bihar Government Estates (*KHAS-MAHAL*) Manual, 1953 which deals with principles, policy and procedure for *Khas* management of estates under the management of the government.

Meaning of “Government Estate” The term Government Estates is used to denote estates under the direct management of government whether these are the property of government or are the estates of private individuals brought under direct management of the government .It may also mean any land which is the property of the government and as such would include estates owned by government which have been let in farm and lease for periods and also

⁸ Transfer of property Act 1982



waste lands but would not include lands belonging to other departments of government e.g.; roadside lands, so long as they are not relinquished by the department to the collector for management

SECTION 6.1.1: PRINCIPLES OF MANAGEMENT OF GOVERNMENT ESTATE

Direct management: - It is the declared policy of the government that as many government estates should be retained under direct management as possible. 'Town estates', whether small or large, should always be kept under *Khas* management. This would enable revenue authorities to obtain continuous practical information which is very difficult to obtain in any other way of the progress of agriculture, to the extent to which productive powers of the land are being developed and of the increased money value of the produce.

SECTION 6.1.2: RATES OF RENT AND SALAMI FOR SETTLEMENT OF KHAS MAHAL LANDS IN URBAN AND RURAL AREAS

1. Commercial lease in urban and semi-urban areas.

- a) Public notice should be given of the intention of government to grant leases of particular plots of land subject to terms and conditions specified in the notice.
- b) Settlement should be made to the highest tender.
- c) A reserve or minimum *salami* should be fixed for every plot of land with reference to the prevailing market value of the land and no tender should be accepted which is lower than the reserved amount.
- d) The prevailing market value of the land should be the amount equal to the *salami* plus the capitalized value of the rent.
- e) As a rule, one person should not tender for more than one plot of land and such tenders should not be accepted.
- f) In case of tie between two or more persons preference should be given to a local man.
- g) Each such settlement should be made with the approval of the revenue department.
- h) The existing procedure laid down in the Bihar Government Estates Manual 1941 regarding the approval of building plan of residential leases by the



collector/deputy commissioner should be followed for sanctioning building plans for commercial leases too.

- i) The usual restriction on sub-lease and transfer in case of *Khasmahal* lands in urban area should apply to commercial lease as well.

SECTION 6.1.3: JHARKHAND RE-SETTLEMENT AND REHABILITATION POLICY 2008

Following are the objectives of the Jharkhand re-settlement and rehabilitation policy;-

- a) As far as possible, there should be minimum displacement, no displacement or to promote alternatives of minimum displacement.
- b) Active participation of persons affected and ensures adequate packages for rehabilitation and implement rehabilitation package effectively.
- c) For vulnerable weaker sections, specially provide security to the rights of the members of SC/ST and give special attention and show sensitivity to the problems and try to solve them with utmost care.
- d) Joint efforts to be made to improve the standard of living for the affected families.
- e) To integrate rehabilitation with development works.
- f) Where displacement takes place on account of land acquisition, there should be mutual co-operation and amicable relation with land acquiring body with the affected families.

Thus we find that the rehabilitation and resettlement state policy 2008 has tried to remove the antagonism and conflict between the displaced persons and the land acquiring authorities by prescribing pious policies but actual implementation could not remove the agitations and conflicts concerning land acquisition. Much needed to be done. In paper it was an attempt to remove conflict between the land losers and the acquirers of land but in practice the pious resolution have not been implemented which is evident from widespread agitations against land transfer or land acquisition by the state government.

SECTION 6.1.4: HOW LAND TO BE ACQUIRED UNDER THE INDUSTRIAL POLICY



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1. Industrial Area Development authority Area (**IADA**) will be responsible for land acquisition and infrastructure facilities such as roads, drainage, parks, water supply and public utilities for industrial areas.
2. Land/sheds in these authorities would be allotted to entrepreneurs for setting up their industrial units on lease for 30 years on annual rent with the facility for renewal. It would be ensured that land is allotted as per the actual requirement of the unit proposed to be installed and only for setting up industrial units.
3. Efforts to create land bank in each district for acquiring of 200-250 acres of land for industrial purposes with provision of industrial infrastructure.
4. Comprehensive exercise to identify and utilize government/common land.
5. Industrial units (central public undertakings, state government undertakings and private enterprises) are retaining excess of land for more than 20 years.
6. Scrutiny of project proposals for setting of industrial units.
7. For land acquisition voluntary or involuntary or direct purchase from *raiya*s as per Chota Nagpur Tenancy Act (CNT) and Santhal Pargana Tenancy Act, Jharkhand Voluntary Land Acquisition Rule 2010 and Schedule Area Act (PESA) will be applicable.
8. GM or government land will be transferred to the investing company only when *raiya*t and other land availability have been ensured.
9. Government common land to be leased for 30 years. However, the land should be used for the purpose allotted within 5 years of the date of transfer.
10. In case of conversion of agricultural land for industrial purpose, the existing land rate will be modified.
11. a) All efforts should be made to avoid double cropped agricultural land and minimize R&R requirements.
b) Waste land/ degraded forest land may be made available by the state on long term lease basis after taking permission from government of India under section 2 of Forest Conservation Act 1980.
12. Industrial Area Development Authority to acquire at least 1000 acres of land and develop infrastructure facilities for commercial exploitation/revenue generation.
13. To undertake comprehensive land zoning plan in respect of industrial estate, parks etc would integrate with existing industrial units.



14. 5% of the revenue generated by IADA will be earmarked for skill development.
15. 25% of the available allot able land in any new industrial area will be earmarked for land losers who have one acre or above land. The land will be offered to such losers at prevalent market rate for setting up industries provided land is available and they fulfill the eligibility criteria.

SECTION 6.1.5: LAWS RELATED TO MINING IN JHARKHAND

In Jharkhand all the central laws with regard to the mining of major minerals are applicable, except for minor minerals. These laws are for the acquisition of land for mining and related purposes such as regulation of mines, environmental concerns, welfare of the labours .Besides these; the regional tenancy Acts which regulate the transfer of land in Jharkhand are also significant in the context of mining. The Panchayat (Extension to Schedule Areas) Act 1996, PESA which gives villages control over natural resources, including minor minerals is another important legislation.

SECTION 6.1.6: PESA OR GRAM SABHA CONTROL OVER MINING

The Panchayat (Extension to Scheduled areas) Act, 1996, PESA stipulates that in the Fifth Scheduled Areas, the *gram sabha* has to be consulted before land acquisition for any development project. According to 4 (K) and 4 (I) of PESA, the recommendation of *grams sabha* is mandatory before granting leases for minor minerals or concessions for the exploitation of minor minerals by auction. A Government of India order dated November 11, 1998 further laid down the procedure for acquisitions of land in Schedule V areas. However many of the revenue and mining officers in Jharkhand are ignorant about this law. Even when their attention has been drawn to the provisions of PESA, they have chosen to ignore the provisions. Some cases illustrate the reality.

The *gram sabha* of Aita, a village in West Singhbhum district in two consecutive years in 1998 and 1999 demanded under PESA that the auction should not be held for the mining of sand and lease for sand mining in their village “ghat” should be granted to a cooperative formed by the villagers. But, this was refused by the district authorities.

In December 2001, the government of Jharkhand allotted about 11 sq. km. of land for coal mining in Pachwara in Amarapara Block of Pakur district to a joint venture company formed



by the Punjab State Electricity Board and Eastern Mining Trading Agency. Six hundred and forty acres of land were taken for this purpose, besides 360 hectares of forest land and 100 hectares of grazing land. The *gram sabhas* were not consulted before allotting land for the mining and despite enactment of PESA.

SECTION 6.1.7: SAMTHA JUDGEMENT

The Jharkhand *Panchayati Raj* Act (JPRA) supposed to be drawn on the pattern of PESA has failed to address the problems of devolving problems to the *gram sabha* for control over natural resources including minerals. This is in clear violation of PESA. The judgment of Supreme Court in the case of *Samtha Vrs. State of Andhra Pradesh and others* in 1997, has far reaching consequences on allotment of the land for mining in schedule V areas. More than half of Jharkhand state falls under schedule V. The *Samtha* judgment, though with particular reference to Andhra Pradesh, categorically ruled that governments can't grant mining leases to non-tribal in schedule V areas.

SECTION 6.1.8: THE PROCESS OF GRANTING MINING LEASES

The Central Government Mines and Minerals (Regulation and Development) Act 1957 (MMRDA) and Mines Concession Rules, 1960 (MCR) form the basis of all procedures and process for granting of licensing or mining leases for all minerals except coal, lignite, atomic minerals and minor minerals. Applications for the license / mining lease had to be submitted to the state government and the state government would grant the license / mining lease to the applicant only with the prior approval of the central government. The license could be granted to only Indian national and in the case of the company or association; all members had to be Indian citizens. The state government could take maximum of nine months to dispose of an application. The Jharkhand government is trying to further simplify the procedure for getting approval from the ministry of environment and forests to expedite the process of giving mineral grants. There is promise by the government to grant lease within three months. It is a good step but there are some more important issues which are still to be take care of such as human rights, especially those of indigenous communities, protection of environment, conservation of forests etc which should not be compromised in the process.



SECTION 6.1.9: ENVIRONMENTAL PROTECTION ACT

Notification 1994, under the Environmental Protection Act (EPA) had made it mandatory that all projects above the size of five hectares have an environmental impact therefore they hold an Environmental Public Hearing (EPH). Recently the ceiling has been raised to 25 hectares in this regard the project proponent has to prepare an executive summary consisting of project detail and the findings of the EPA study and make it available to all concerned parties

Information in the public domain suggest that these public hearings are mostly stage managed and if there is any objection raised on the managed hearing they are turned deaf ear to it.

In September 2004 Tata Steel organized an environmental public hearing at Noamundi for the expansion of their mining activities and prior information was not given to public. When villagers came to know the purpose of the meeting the protest started against it with the demand for cancellation of meeting. They also sent representation to state Central Pollution Control Board and got information about the corroboration of state and pollution control board in providing no-objection certificate from the ministry of environment and forest.

Thus, above are the brief background of the procedures and real practices of granting license for mining in Jharkhand.

Recommendations

- 1 State land use policy should be prepared and approved by the legislature.
2. One institution should be earmarked for land governance in place of multiple agencies.
3. Allowing Panchayats and the local people to participate in project approval; if people are consulted there will be no agitation in the future.
4. Local community should be consulted in preparing land use plan at local level.
5. A land Bank in each district should be created. Only non-agricultural land should be earmarked for industrial and commercial purposes. Land bank would easily provide land to investors.
6. The regulation of PESA should be implemented to obtain community participation and control of on land use and natural resources should be encouraged.



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7. Last but not the least the most important suggestion would be creating a balance between growth and right of people on Land. A consensus should be created at the state and national level for growth with equity and justice.

SECTION 6.2: DIMENSION ANALYSIS

Indicators

LGI: 5.1 Transfer of public land to private use follows a clear, transparent, and competitive process and payments are collected and audited (with the exception of transfers to improve equity such as land distribution and land for social housing).

5	1	1	Public land transactions are conducted in an open transparent manner.
			<p>A: The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is greater than 90% (Except for equity transfers).</p> <p>B: The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is between 70% and 90%. (Except for equity transfers).</p> <p>C: The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is between 50% and 70%.</p> <p>D: The share of public land disposed of in the past 3 years through sale or lease through public auction or open tender process is less than 50%. (Except for equity transfers).</p>

D

Comments:

The share of public land disposed of in the past three years, through sales and lease through public action or open tender process is less than 50%. Transfer of land is done more appropriately through law and procedure of Bihar(adopted in Jharkhand as well) in Government Estates (Khasmahal Manual). No complaint has come to surface. Lease transfer is done through open and transparent tender process. Desirous investors procure land through lease of Land for thirty years which can be renewed if the contract of lease is not broken. The



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collector /Deputy Commissioner forwards and recommends the proposal with sufficient justification along with the plan proposal .For the commercial lease in urban and semi urban areas a public notice is issued with the particulars of “plot”. The settlement is made to the highest tender. Minimum salami is fixed as per market value of each plot. As a rule one person should not tender more than one plot .In case of tie preference is given to the local people.

A

Comments

As per Khas Mahal manual, the transfer of public land starts only when 80% of the market value of the land is deposited in government treasury and the remaining 20% collected at the final sanction of lease. Hence, we may conclude that 90% of the total agreed payments are collected from private parties on the lease of the public land.

5 1 3 Public land is transacted at market prices unless guided by equity objectives.

A: All types of public land are generally divested at market prices in a transparent process irrespective of the investor’s status (e.g. domestic or foreign) and the purpose for which the public land is assigned (e.g. education, health or infrastructure).

B: Public land is generally divested at market prices in a transparent process, but this only applies to a particular type of investor (e.g. domestic only or foreign only) and for certain purposes only.

C: Only some types of public land are generally divested at market prices in a transparent process irrespective of the investor’s status (e.g. domestic or foreign) or the purpose for which the land is assigned.

D: Public land is rarely or never divested at market prices in a transparent process.

B

Comments: Public lands are generally transacted at market price in a transparent manner irrespective of investor status. In the theory there is no discrimination between domestic and foreign investors in acquiring land.



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5	1	4	The public captures benefits arising from changes in permitted land use.
			A: Mechanisms to allow the public to capture significant share of the gains from changing land use are regularly used and applied transparently, based on clear regulation.
			B: Mechanisms to allow the public to capture significant share of the gains from changing land use are not always used, although generally applied transparently.
			C: Mechanisms to allow the public to capture significant share of the gains from changing land use are rarely used and applied in a discretionary manner.
			D: Mechanisms to allow the public to capture significant share of the gains from changing land use are not used.

D

Comments

The illiterate and ignorant people do not share in the gains from changing land use most of the times. Those gains are usually captured by the investors and common people are not benefitted. Some corporations do spend some amount of profit in the form of corporate social responsibility (CSR). The future appreciation of Land value is neglected and the Land losers only get market value of the Land + 50% on voluntary decision to transfer Land + 60% of the market value as solarium.

5	1	5	Policy to improve equity in asset access and use by the poor exists, is implemented effectively and monitored.
			A: Policy is in place to improve access to and productive use of assets by poor and marginalized groups, is applied in practice and effective
			B: Policy is in place to improve access to and productive use of assets by poor and marginalized groups, is applied in practice, but is not effective
			C: Policy is in place to improve access to and productive use of assets by poor and marginalized groups but is not enforced



D: No policy in place to improve access to and productive use of assets by poor and marginalized groups.

D

Comments

There is no policy as such to allow poor and marginalised groups to share in the improved assets and use them but for some relief given through the corporate social responsibility mechanism. This gift is quite insufficient and poor, marginalised are left unattended. This leads to great disenchantment among the deprived groups which ultimately leads to great resentment and at times a great law and problem which not only affects the productivity of the project but also strains the social ecosystem. There is no system or mechanism to calculate the potential value of the Land and the consequent deprivation to land users.

LGI: 5.2 Private investment strategies

5	2	1	Land to be made available to investors is identified transparently and publicly, in agreement with right holders.
			A: A policy to clearly identify land that can be made available to investors exists and has been arrived at based on comprehensive assessment of land potential, community consultation that is free and informed and reached an agreement, and is applied in more than 90% of identified cases.
			B: A policy to identify land that can be made available to investors exists, based on ad hoc assessment of land potential but with community consultation and agreement, and is applied in more than 90% of identified cases.
			C: A policy to identify land that can be made available to investors exists, based on ad hoc assessment of land potential and limited consultation with communities and is applied in more than 90% of identified cases.
			D: There is no policy in place to identify land to be made available to investors so that any transfers are based on ad-hoc investor demands.

C



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Comments:

1. Land is made available to investors is identified but no comprehensive assessment of land potential is taken. There is widespread complaint that agricultural lands are given to investors which result in widespread agitations by the farmers. The assessment is done on ad-hoc manner without giving importance to the wishes and need of the local people especially to deprived people whose land has been acquired. Further the economics of agriculture and ecosystem are neglected.
2. Community consultation is quite on paper and the so called community approval is taken in perfunctory manner which annoys the community at large.

5	2	2	Investments are selected based on economic, socio-cultural and environmental impacts in an open process
			A: Process is in place that properly considers both national and local benefits and is adhered to. Benefit sharing mechanism are in place
			B: Process is in place that considers only national benefits, but that is adhered to. No local benefit sharing in place
			C: Process is in place but many investments go ahead that are either not according to the policy or despite unfavorable outcomes.
			D: No process in place.

C

Comments

Investments are selected on the interest of the investors. Jharkhand though is rich in natural resources (some 37 % of natural resources like coal, bauxite, iron ore, limestone, mica etc.), but the local rural people are quite poor. The industrial policy of the state encourages investors and the state claims to be investor friendly. Hence, the decisions to locate industrial/commercial projects are selected by investors and economic socio-cultural environmental impacts are often neglected or to conform regulatory directions are only on



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paper devoid of reality .Assessment of economic, socio-cultural and environmental impacts are done on paper in which affected people are not consulted.

5	2	3	Public institutions transferring land to investors are clearly identified and regularly audited
			<p>A: Institutions to make decisions are clearly identified and have the necessary capacity (incl. resources for field verification) and strong incentives in ensuring socially beneficial outcomes in a way that minimizes transaction costs.</p> <p>B: Institutions to make decisions are clearly identified and have the necessary capacity (incl. resources for field verification) and strong incentives in ensuring socially beneficial outcomes but processes may be complex and difficult for investors.</p> <p>C: Institutions to make decisions are clearly identified but lack either capacity or incentives in ensuring socially beneficial outcomes or their decisions are not always implemented.</p> <p>D: Institutions are not clearly identified</p>

C

Comments

Part VII of the Land Acquisition Act 1894 deals with land acquisition for the government company. Hence the investors first go with proposal to department of Industry, Government of Jharkhand where they sign MOU with the government. The MOU along with proposal of investors are sent to department of Land Reforms and Revenue which transfers the land as per Khas Mahal manual rules for government Land and for Acquisition of private land, the land acquisition under this act starts. Hence for large tracts of land minimum two state departments are involved i.e. department of industry for signing agreement with the investors and the department of Land Revenue and Reforms for transfer and acquisition of land under Khas Mahal rules and Land Acquisition act. So the public institutions are clearly identified. But, the department of Land Revenue and Reforms lack capacity to study social beneficial



outcomes. Land transfer/ acquisition are done in mechanical manner as per rule and act and socio-economic benefits of the project are not evaluated properly.

5	2	4	Public bodies transferring land to investors share information and coordinate to minimize and resolve overlaps (including sub-soil).
			<p>A: A policy is in place for effective inter-ministerial coordination to ensure that decisions on land use and land rights are well coordinated across sectors, and are applied effectively.</p> <p>B: There is effective coordination to solve competing land use, although no policy is in place for effective inter-ministerial coordination to ensure that decisions on land use and land rights are well coordinated across sectors.</p> <p>C: No policy is in place but some decisions on land use and land rights are coordinated across sectors.</p> <p>D: No policy is in place and decisions on land use and land rights are not coordinated across sectors.</p>

D

Comments

There is no policy as such and decisions of land use and land rights are not co-ordinated across sectors. However the revenue secretary and chief secretary call meeting of the concerned ministries and other concerned institutions and persons and try to resolve conflict issues.

The departments usually work in their interest of specific departments and do not think in holistic manner. The disputes are however solved at the secretary and chief secretary level.

For a new investor, it becomes quite confusing to run from multiple authorities for expediting their proposal and the time and confusing response destroys the entrepreneurial zeal. In this way many projects fail due to government apathy and neglect. [Sri Bimal Jalan, Ex-Governor RBI, in his book Emerging India]



5	2	5	Compliance with contractual obligations is regularly monitored and remedial action taken if needed.
			<p>A: There is regular monitoring of compliance and results are publicly available and any gaps identified trigger effective remedial action.</p> <p>B: There is regular monitoring of compliance, results are publicly available but remedial action is taken only in some cases.</p> <p>C: Monitoring of compliance is limited or only part of the results accessible to the public</p> <p>D: No monitoring or no publicity of results.</p>

C

Comments

The Land Acquisition Act and the Khas Mahal Rules which deals with transfer of public land to investor do refer to the monitoring of the provision of the lease but that monitoring becomes an inspection on receipt of complaint. Fortunately Jharkhand Industrial policy does make the provision of monitoring the implementation and grievance redressal system however it is more in theory than in practice.

5	2	6	Safeguards effectively reduce the risk of negative effects from large scale land-related investments.
			<p>A: Substantive application and disclosure of safeguards (EIA, SIA etc.) are in line with global best practice, and mostly applied.</p> <p>B: Substantive application of safeguards (EIA, SIA, etc.) is in line with global best practice but only part of the information is disclosed.</p> <p>C: Safeguards (EIA, SIA, etc.) are partly in line with global best practice</p> <p>D: Safeguards do not exist or are applied only in an ad-hoc manner.</p>

D



Comments Safeguards do not exist or are applied only in an ad-hoc manner. Large land related problems are left to be dealt by the Department of Land Revenue and Reforms. The global based practices have not been talked and debated.

5	2	7	The scope for resettlement is clearly circumscribed and procedures exist to deal with it in line with best practice.
			A: Substantive application of resettlement and rehabilitation policy that is in line with global best practice.
			B: Applied resettlement policy is partly in line with global best practice, and in most cases applied
			C: Resettlement policy exists, but is only in part of the cases applied.
			D: Resettlement policy does not exist; if resettlement takes place than it is in an ad-hoc manner.

C

Comments: Jharkhand Industrial Resettlements and Rehabilitation Policy of 2008 is quite a comprehensive policy to defend the cause of the people whose lands are acquired or who suffer from transfer of public land to private investors. Further the industrial policy have tried to attract investors by providing a number tax relief and other concession. The documentary provision of the Jharkhand Industrial Resettlement and Rehabilitation policy is well drafted and well intentioned but it has not been applied fully. The only defect with the industrial policy is that it does not provide special protection to local people in jobs, hence it can be called anti local people. The local intellectuals have simmering discontent against the employment \job\policy of the investors.

LGI:5.3 Policy implementation is effective, consistent and transparent and involves local stakeholders.

5	3	1	Investors provide sufficient information to allow rigorous evaluation of proposed investments.
			A: Investors' business plans (application materials) require sufficient evidence of technical viability, community consultation, and availability of resources to



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effectively identify project risk and viability and effectively monitor progress.

B: Investors' business plans (application materials) require some evidence of technical viability, community consultation, and availability of resources but this is only sufficient to identify project risk ex ante.

C: Investors' business plans (application materials) require some evidence of technical viability, community consultation, and availability of resources but this is insufficient to effectively identify project risk ex ante.

D: Investors' business plans (application materials) is insufficient to assess technical viability, community consultation, and availability of resources.

D

Comments

Investor's business plan is insufficient to assess technical viability, community consultation and availability of resources. The investors provide insufficient, information to allow regional evaluation of proposed investments'. The information may be lacking but the evaluation agencies need to convince the investors about the deficiencies in the friendly manner and encourage investors. On the other hand investors also do not give information as sought for, so the problem lies partly with the government agencies and partly with the investors as well.

5	3	2	Approval of investment plans follows a clear process with reasonable timelines.
			A: All investment application related documents are reviewed according to a uniform process and receive a response within 3 months of date of submission
			B: All investment application related documents are reviewed according to a uniform process and receive a response within 6 months of date of submission
			C: The review process for investment application related documents is not uniform and stable over time; in most cases, investors receive a response within 9 months of date submission
			D: The review process for investment application related documents is



not uniform and stable over time, and in most cases a response is received after more than 9 months from date of submission.

D

Comments

The approval of investment plans do not contain certain necessary documents

- This is either due to ignorance of the investors or due to mechanical approach of plan approving authority.
- Usually the investors have to face and satisfy multiple authorities. They do not try to help or facilitate the investment process.
- Since the response is delayed in the government offices the plan proposal does not work in time.
- In Jharkhand the new industrial policy of 2011 promises to help the investors which is more in theory than in practice .Therefore with teeming resources cheap labour the investment plans still have not materialized.

5 3 3

Right holders and investors negotiate freely and directly with full access to relevant information.

A: Those holding rights to land with potential for investment have incentives and opportunities to obtain truthful information on the extent of their rights (and the most effective ways to utilize them), and the true potential of their resources.

B: Those holding rights to land with potential for investment have clearly defined rights and incentives to properly negotiate but opportunities to obtain relevant information and assistance at reasonable cost are limited.

C: Those holding rights to land with potential for investment have incentives to properly negotiate but their rights are unclear or opportunities to obtain relevant information or assistance do not exist.

D: Current users have limited or no rights.

D



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Comments

The CNT Act and SPT Act do not allow transfer of tribal land to non tribal. Originally it was enacted to protect the rights of tribal's on land against money lenders and users. But in changed scenario land is required for industrialization and commercial purposes. The CNT Act prohibits any transfer of land except for mining and industrialization. The SPT Act also prohibits any transfer of land and there is no provision for the development of housing purposes or SEZ .Hence the tenancy laws impedes industrialization. There is some attempt to amend the tenancy acts but there is vehement oppose to the amendment. At present there is tussle between the pro- amendment group and the anti amendment group which usually take the form of street agitation and heated discussion on the floor of legislation.

5	3	4	Contractual provisions regarding benefit sharing are publicly disclosed.
			A: Benefit sharing modalities are routinely included in relevant contractual arrangements, and disclosed publicly. Existing right holders are recognized.
			B: Modalities for benefit sharing are routinely included in relevant contractual arrangements, but there is limited public disclosure.
			C: Modalities for benefit sharing included in a significant share of relevant contractual arrangements and affected parties are aware of these and of ways to enforce them even though there is limited public disclosure.
			D: The majority of contractual arrangements do not include information on benefit sharing

D

Comments

Contractual provisions regarding benefit sharing do not prevail .People that loses their land get monetary value and solatium and the interest on the delay in payment of resettlement and rehabilitation. The concept of benefit sharing of industrialisation has not been implemented which is one of the core demands of the land right losers.



LGI: 5.4 Contracts involving public land are public, easily accessible, with agreements monitored and enforced.

5	4	1	Information on spatial extent and duration of approved concessions is publicly available.
			A: Comprehensive and consolidated information on spatial extent, duration, and parties involved in concessions/leases is available publicly.
			B: Spatial and temporal information is available to relevant government institutions and made available routinely to interested private parties upon request.
			C: Spatial information and temporal information is available to relevant government institutions but not accessible on a routine basis by private parties.
			D: Comprehensive and consolidated information on spatial extent and duration of concessions/leases is not readily available to government or different departments rely on different sources of information.

D

Comment

Relevant government institution knows the approved concessions but these are not publicly available.



5	4	2	Compliance with safeguards on concessions is monitored and enforced effectively and consistently.
			<p>A: Third-party monitoring of investors' (and the states) compliance with safeguards is routine and mechanisms to quickly and effectively reach adherence in case of problems exist.</p> <p>B: Third-party monitoring of investors' (and the states) compliance with safeguards is practice in some cases, but mechanisms to quickly and effectively reach adherence in case of problems exist.</p> <p>C: There is little third-party monitoring of investors' compliance with safeguards and mechanisms to quickly and effectively ensure adherence are difficult to access for affected communities.</p> <p>D: There is little third-party monitoring of investors' compliance with safeguards and mechanisms to quickly and effectively ensure adherence are virtually non-existent.</p>

D

Comments

Third –party monitoring of investors grievances and safeguards do not work in systematic manner. However, there complaints before the government are looked into in. The Jharkhand industrial policy has made elaborate provisions for the safeguard of the interest of the land right losers to monitor the concession which need to be effectively monitored to provide much demanded relief of the people

5	4	3	Avenues to deal with non-compliance exist and obtain timely and fair decisions.
			<p>A: Third-party monitoring of investors' (and the states) compliance with contractual provisions is routine and mechanisms to quickly and effectively reach arbitration in case of problems exist.</p> <p>B: Third-party monitoring of investors' (and the states) compliance with contractual provisions is practices in some cases but mechanisms to quickly</p>



and effectively reach arbitration in case of problems exist.

C: There is little third-party monitoring of investors' compliance with contractual provisions and mechanisms to quickly and effectively reach arbitration are difficult to access for affected communities but work for investors.

D: There is little third-party monitoring of investors' compliance with contractual provisions and mechanisms to quickly and effectively reach arbitration are virtually non-existent.

D

Comment

There is little third party monitoring of investors grievances with contractual provision and mechanism to quickly and effectively reach arbitration. Instead of allowing land right holders to go to the courts which need much time and resources there should be routine mechanism to quickly and effectively reach arbitration in the cases where problem exist.



Chapter 7

Public Provision of Land Information: Registry and Cadastre

7.1: Background

The history of registration in Jharkhand dates back to the latter half of the 18th century. Registration offices were established in different parts of Jharkhand under the provision of the **Bengal Regulation Act 1779**. The registration under this regulation was however optional.

The first complete enactment as to the registration of document was passed in **1864, e.g. Act 16 of 1864** stands out as a landmark in the history of the law of registration. It was first comprehensive legislation on the subject. It introduced for the first time the system of compulsory registration of document in British India.

Registration Act 1908 came into operation on 1st January 1908. This Act extends to the whole of India except in the state of Jammu and Kashmir.

Registration Act, 1908 established that a non-testamentary instrument which purports or operates to create, declare, assign, limit or extinguish in present or future any right, title or interest whether vested or contingent to any immovable property of the value of Rs. 100 and above shall be compulsorily registrable, otherwise the instrument does not affect any immovable property comprised therein or shall not be received as evidence of any transaction affecting such immovable property.

Other notable feature of this Act may be enumerated as follows:

- 1) Provision for time limit within which a document may be presented for registration.
- 2) Provision for fixation of place at which document may be produced for registration and person competent for such production.
- 3) Provision for the maintenance of register books in which registered deeds are copied and preserved as a permanent records.



4) Provision for maintenance of an additional book for such wills which are submitted under sealed covers.

Registration Act 1908 was drafted during British period to meet the requirement of the changed scenario, this Act has undergone a lot of changes and made till date at least 20 amendments. The last central amendment was under Registration and Other Related Laws **(Amendment) Act 2001**. Notable features of this amendment are:-

- 1) Provision for maintenance of regulation records in electronic form
- 2) Provision for official photograph and finger prints of the parties on the deed to put check on cases of impersonations.

Other important registration and Stamp Acts and rules that apply in Jharkhand are as follow:-

- Stamp [Bihar Amendment) Act 1988
- Registration (Bihar Amendment) Act 1991
- The Indian Stamp (Bihar Amendment) Act 1991
- MVR Rules 1995
- Deed Writers Licensing Rules 1996
- Franking Machine Rules, 2009
- M V R [Amendments] Rules 2012
- Exemption on mortgage to bank upto 5 lakh values.
- The Chotanagpur Tenancy Act, 1908
- The Santhal Pargana [Supplementary Provisions] Tenancy Act, 1949
- Bihar Land Reforms Act
- Transfer of Property Act

In the state of Bihar registration was a part of the Revenue Department, Ministry of Revenue and Land Reforms. It was formally accorded the status of an independent department vide Government of Bihar resolution no. 1724 dated 8th August 1991.



ORGANISATIONAL STRUCTURE OF REGISTRATION DEPARTMENT



SECRETARY



INSPECTOR GENERAL –REGISTRATION



DEPUTY I. G. REGISTRATION



A I G REGISTRATION



INSPECTOR OF REGISTRATION OFFICES

(ONE FOR EACH DIVISION)

DISTRICT –SUB- REGISTRAR ----- 24 ----- ONE FOR EACH DISTRICT

SUBREGISTRAR-----16-----ONE FOR EACH SUB REGISTRATION OFFICE

With a view to provide the benefit of information technology Jharkhand introduces the system of computerised registration of deed. A web based computerised system of registration of document has been developed and launched in all over the state. This system is expected to complete the registration of document in 45 minutes and the document is made deliverable to the people immediately. The system also contains the provision of online source and inspection of registered deeds and downloading of certified copies.

Further, for registration people have been given many options for the payment of stamp duties. Apart from paper stamp the registrant people may pay stamp duty by E-stamping and franking method.

However, neither Registration nor any of its supplementary Acts have any provision which feel need of the registration of title. The current legal position is that registering process only



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registers an instrument and it does not ensure any title or right to the property about which the document is made. Hence, legally what the purchaser gets by getting a sale deed registered that the seller transferred the property if the seller has the title. Thus, the main aim of the Registration Act is merely to facilitate registration and not verification of title. Current circumstances have resulted in multiple claimants leading to disputes which disturb the societal peace.

Law relating to registration of document provide for the registration of document only and not for the registration of title. Hence a deed does not in itself prove title; it is merely a record of transaction. It shows that a particular transaction took place but it does not prove that the parties to the transaction were legally entitled to carry out the transaction. The practice, however, is different; a registered deed is accepted as an instrument of title and can be challenged only in a court, thus a dichotomy between the legal perception and public perception contains and creates problems when legal recourse is made.

Thus, the present system is not able to cope with the emerging challenges and the time has come when Jharkhand state should move towards a system which protects the property rights of the people in a better way. A shift from mere recording of transaction to record of conclusive title has to be made. This requires the availability of correct land records that the area is updated in real time and accepted as final.

For this, the need is to integrate the property registration and land records to provide the real time information on property ownership. Once the registration of a particular property is transacted ownership is changed. It is to be updated in the corresponding land records immediately. The integration can be done by allowing registering authority to update it. **Anchal Adhikari (Circle Officer)** being the owner and custodian of land records should further rectify the land records after completing necessary field verification. This would provide the real time information on property ownership vis-a-vis land records database. The state has to move in this direction.



SECTION 7.1.1 : SOME FEATURES OF REGISTRATION DEPARTMENT OF JHARKHAND

- Jharkhand is one of the first states in India to develop, web- based computerized system of registration of documents. This system completes the registration of documents in 45 minutes and the document is made immediately deliverable to the people.
- The provision of search and inspection of registered deeds is also being made by online search module.
- To facilitate the availability of stamp papers in every district post offices have also been authorized to sell stamp papers. As an alternative, a system of stamping documents by franking method has also been made available to various banks. E – stamping system has been implemented in important districts of Jharkhand such as Ranchi, Jhamsedpur, Dhanbad and Bokaro. In a very short time this system will be implemented throughout the state. The Department is getting very positive response from the people.
- The system of online marriage registration is also working in the state.
- For the online registration of societies and firms, the software is being developed with Active support of **JAP-IT**.
- In public interest the people of below poverty line have been given complete exemption from stamp duty on the deed of purchase of 5 decimals of the land. For development Activities related to agriculture, the limit of stamp duty exemption has been exempted from 3 lakh to 5 lakh in mortgage deeds.
- People have to spend 7% [4% stamp duty and 3% registration fee] on the registration of a sale deed whereas in Bihar one has to pay 8% [6% stamp duty and 2% registration fee].

The stamp duty rate of Schedule -1A, of Jharkhand is given below.



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Table: 7.1 Stamp Duty Rate of Schedule- 1a

ARTICLE NO	INSTRUMENT	PRESENT STAMP DUTY (In Rupees)		
1	Acknowledgement	0.35		
2	Administration Bond	2.10		
3	Adoption deed	42.00		
4	Affidavit	4.20		
5	Agreement or memorandum of an agreement (a) if relating to the sale of a bill of exchange (b) if relating to the sale of a government security or share in an incorporated company or other body corporate (c) if not otherwise provided for	0.45 Subject to maximum of Rs.31.50, Rs. 0.35 for every 10,000 or part thereof , of the value of the security or share Rs.1.60		
6.	Agreement relating to deposit of title deeds, pawn or pledge, that is to say an instrument evidencing an agreement relating to (i)The deposits of title deeds or instruments constituting or being evidence of the title to any property whatever (other than a marketable security) or (ii)The pawn or pledge of movable property where such deposits, pawn or pledge has been made by way of security for the repayment of money advanced or to be advanced by way of loan of an existing or future debt---			
	(a) If such debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement	If drawn singly	If drawn in set of set two for each part of the set	If drawn in set of set three for each part of the set
	When the amount of the load or debt does not exceed Rs 100	0.45	0.35	0.25
	When the amount of the load or debt exceeds Rs 100 but does not exceed Rs 200	1.30	0.65	
	When the amount of the load or debt exceeds Rs 200 but does not exceed Rs 400			
	When the amount exceed Rs 400 but does not exceed Rs 600	3.05	1.60	1.05
	When the amount exceed Rs 25,000 but does not exceed Rs 30,000 and for every additional Rs 10,000 or part thereof in excess of 30,000	28.35	14.20	9.45
		Half the duty payable on a loan or debt under clause (a) (i) clause (a) (ii) or clause (iii) for the amount secured.		
7.	Appointment in execution of a power (a) Whether of trustees or (b) Whether or property movable or immovable when made by any visiting net being a will	Rs. 52.50		
8	Appraisalment or valuation (a) When the amount does not exceed Rs 1000/- (b) If any other case	The same duty as in bond no. (15) for such amount 15.75		
9	Apprenticeship deed	15.75		
10	Article of Association of a company	105.00		
11	Article of clerkship	525.00		



12	Award ,that is to say any decision in writing by as arbitrator or umpire not being an award directing a partition, on a reference made otherwise than by an order of the court in the course of a suit	The same duty as on bond no. 15 for such amount
	(a)Where the amount or value of property to which the award relates as set forth in such award does not exceed Rs.1,000	Rs 15.75
	(b)If it exceed Rs.1000 but does not exceed Rs.5000 and for every additional Rs 1000/- or part thereof in excess of Rs 5000/-	Rs.1.05 subject to a maximum of Rs.105.00
15	Bond as defined by Section 2(5) not being a Debenture (no. 27) and not being otherwise provided by this Act or by the Court Fees Act 1870....	
	Where the amount or value secured does not exceed Rs 10/;	0.35
	where it exceed 10 and does not exceed Rs .50	0.55
	Ditto 50 ditto 200	Rs.12.00+110% surcharge
	Ditto 200 to 600	2.5% + 110% surcharge
	Ditto 600 to 800	3 % +110% surcharge
	For every Rs.500 or part there of where it exceeds 1000 and does not exceed 5000; where it is exceed 5001 but does not exceed 50,000 and where it is exceed 5,0000	
17	Cancellation	Rs. 21.00
18	Certificate of sale (a) Whether the purchase money does not exceed Rs 10/-	Rs 0.45
	When exceed Rs.10/- but does not exceed Rs. 25 If any other case	Rs 0.85 The same as conveyance (22) 4% of the purchase money
20	Charter Party	Rs 4.20
22	Composition deed	Rs.31.50
23	Conveyance	4% of the amount of or market value of the property + 3% registration fee
24	Copy of extract	Rs.1.60 to Rs.3.15
25	Counterpart or Duplicate (a) If the duty with which the original instrument is chargeable does not exceed Rs. 3.15 (b) If any other case	The same duty as is payable on the original Rs. 3.15
26.	Customs bonds (a) Whether the amount does not exceed Rs 1000/- (b) If any other case	The same duty as in bond no 15 for the same amount Rs. 21.00
27	Debenture (a) By endorsement or by a separate instrument of transfer (b) By delivery	The same duty as bond (Rs. 15) The same duty as conveyance (23)
29	Divorce	Rs 42.00
30	Entry as an advocate	Rs 750/-
31	Exchange of property	The same duty as conveyance (23) for a consideration or market value, equal to the market value of greater value which is the subject matter of exchange i.e. 4%



32.	Further charge- Instrument of that is to say, any instrument imposing a further charge on mortgaged property-	
	(a)When the original mortgage is one of the description referred in clause (a) of Article No.40 (That is with possession)	The same duty as a Conveyance (N0.23) for a consideration 3[or market value] equal to the amount of the further charge secured by such instrument.
	(b)When such mortgage is one of the descriptions referred to in clause (b) of Article No.40 (that is without possession)... (i) If at the time of execution of the instrument of further charge possession of the property is given or agreed to be given under such instrument: (ii) If possession is not so given	The same duty as a Conveyance (N0.23) for a consideration 2 [or market value] equal to the amount of the charge already made) less the duty already paid on such original mortgage and further charge. The same duty as a Bond (No.15) for the amount of the further charge secured by such instrument.
33	Gift...Instrument of, not being a Settlement (No.58) or Will or Transfer (No. 62)... (i) When the value of the gift does not exceed Rs.1000 (ii) When it exceed Rs. 1000 but does not exceed Rs. 10,000 (iii) When it exceeds Rs.10,000	The same duty as a Conveyance for a consideration or market value, equal to the market value of the property, which is the subject matter of gift. Rs. 31.50 for the first thousand rupees and Rs. 21.00 for every Rs. 500 or part thereof by which the value of the gift exceed Rs.1000. The fee under clause (ii) and in addition, Rs.31 50 for every Rs.500 or part thereof by which the value of the gift exceeds Rs.10,000

Source: Government of Jharkhand

SECTION 7.1.2: CALCULATION OF MINIMUM VALUE OF LAND AND PROPERTY IN JHARKHAND

As per Jharkhand Stamp (Minimum valuation) Amendment Rule 2012, the land and property have been calculated for rural area and urban area separately. Land has been classified as urban area and rural area. In the urban area ward wise valuation and in rural area revenue village or village wise calculation of the land is being calculated as per decimal while that of structure is being calculated per square feet.

Village Area (Land)



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- For agriculture
- For industry
- Residential
- Commercial

Urban Area (Land)

- Residential (on other roads/ place)
- Residential (on main road)
- Commercial (on other road/ places)
- Commercial (on main road)

Structure of Village Area

- Deluxe house/ apartment
- Building with R.C.C. roof
- Building with asbestos /tiles etc

Classification Of Structures In Urban Areas

Types of structure	Residential on other road	Residential on main roads	Commercial on other road	Commercial on main road
Deluxe house/apartment				
Building with R.C.C.				
Building with asbestos/tiles				

Process For Minimum Price Calculation Rural Area

- All transfers of more than 14 decimal of area registered in previous year is taken into consideration for the fixation of minimum value of agricultural land. .



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- Total transfer amount of the registered deeds will be divided by the total area. The average price will be the minimum price for the agricultural land which will be :

$$\text{Base rate } Y = \frac{\text{Total amount of the registered deeds}}{\text{Total Area of the deeds}}$$

1. **Agricultural land = Y**
2. **Industrial land = Y X 1.5**
3. **Residential land = Y X 2**
4. **Commercial land = Y X 3**

For calculation of minimum price of structures, for deluxe building /apartment 10 % will be added in present rate and for other structure 5 % will be added.

Urban Area

The district sub-registrar will obtain transfer data from registrar office of the previous year. Ward wise all the transfer amount will be divided by all the area to obtain average price which will be minimum price for residential area. Commercial areas minimum price will be two times of the residential area.

Total value of the deeds = Base rate Residential area Commercial land

Total area of the deeds (Y) Y Yx2

If residential and commercial lands are located on Main/Principle road, the minimum value of these lands will be 20% more.

If the residential and commercial structures are located on main/principle road the minimum value of these structures/buildings will be 20% more.

Market Value



Evasion of stamp duty by mentioning value of the consideration money lower than actual has been an old age common practice all around. The phenomenal increase of real estate prices after 1960s has invited attention of the State Government, preventing aversion of stamp duty for tapping in its revenue earning potential.

Prior to the Stamp Amendment (Bihar) Act 1988 there was no provision for the examination of market value by the registering authority. By this amendment, Section 47 was added in the Indian Stamp Act. The scheme of Section 47 A is to deal with those cases where private parties by arrangement deliberately undervalue the property comprising the subject matter of transfer with a view to defraud the government of legitimate revenue by way of stamp duty.

For the implementation of the provision of Stamp Amendment (Bihar) Act 1988, rules was drafted which is known as Bihar Stamp Prevention of under Valuation of Instruments of Rules 1995. The rule had been amended in 2009 and 2012. Under these rules, the District Sub-Registrar has been authorised to prepare a Guideline Register of the estimated minimum value of different categories of rural and urban areas of the district on the basis of average value of all conveyances registered of that areas in the preceding financial year. If no conveyances of land have been registered in the preceding financial year, then the estimated minimum value of that category shall be determined by adding 5% on the value of previous year in rural and 10% in urban area. Revision of the estimated value has to be made every year in case of urban area and in case of rural area after every two years with effect from 1st August, 2012.

The Guideline Registered or Estimated Minimum Value the *de facto* indicator of market value, they are prepared by the Registration Department of which revenue is sacrosanct. The registering officers are expected to collect stamp duties and registration fees according to the value calculated on the basis of estimated minimum value. If the party declines to accept the value stated in Minimum Value Register the document has to be referred to the Collector under **Section 47** of the Stamp Act for the determination of market value and realisation of deficit stamp duty. This guideline Register is intended merely to assist registering officers to ascertain *prima facie* whether the market value has been set forth in the instrument or not.



Table 7.2: Revenue Collection for Financial Year 2010 -11 to 2012 -13

<u>SL .NO</u>	<u>FINANCIAL YEAR</u>	<u>TARGET (</u> <u>CRORE)</u>	<u>ACHIVEMENT</u> <u>(CRORE)</u>
1.	2000-01	63.60	51.97
2.	2001-02	80.00	62.60
3.	2002-03	90.00	73.00
4.	2003-04	108.00	84.24
5.	2004-05	125.00	74.61
6.	2005-06	125.00	77.51
7.	2006-07	150.00	102.02
8.	2007-08	300.00	139.76
9.	2008-09	300.00	171.69
10.	2009-10	320.00	213.05
11	2010 -11	325.00	314.56
12	2011-12	450.00	418.00
13	2012-13	495.00	389.00
14.	2013-14	568.00	356.00 (TILL 31 DEC 2013)

Source: Department of Registration, Government of Jharkhand

SECTION 7.1.3: NON-ENCUMBRANCE CERTIFICATE

For advancing loans Banks require non-encumbrance certificate from Registration Offices. As the registration staffs are overburdened with routine work. They issue non-encumbrance certificate without thoroughly verifying the records. This leads to unnecessary litigation.

The solution is that Bank should try to their get the encumbrances verified from Records of Registry offices themselves. The Registry should provide the record after realizing the required searching fee. Online search module is being implemented in Jharkhand.



SECTION 7.1.4: COMPUTERISATION OF REGISTRATION PROCESS

- All the Registration offices have been computerized.
- Web-based registration process has been implemented in all the registration offices in Jharkhand having data centre at Ranchi.
- Implementation of e-payment gateway.
- Initiation of on-line search module to access index and certified copy after paying the requisite fees through payment gateway.
- Digitization of Index from 1971 and onwards.
- System of pre-registration and payment of registration fees.

SECTION 7.1.5: ALTERNATIVE OF PAPER STAMP

- Implementation of e-stamping system at Ranchi, to be extended all the district of Jharkhand.
- Use of franking machine

SECTION 7.1.6 : FUTURE PLAN

- Development of Society and firms registration module.
- Scanning and Digitization of registered documents from 1971 and onwards with expected expenditure of Rs.10 cores.

SECTION 7.1.7 :CADASTRE

Cadastre is normally a parcel of land based on up-to-date land information system containing a record of interests in land i.e. .rights, restrictions and responsibilities.

Chotanagpur Tenancy Act 1908, Chapter XII deals with the provisions to prepare record of rights and settlement of rent.

Section 80 of the Act States “The (State) Government may make an order directing that a survey be made and a record of rights be prepared by a revenue officer, in respect of the lands in any local area, estate or tenure or part thereof”



A notification in the Official Gazette of an order under Sub Section I shall be conclusive evidence that the order has been duly made.

The survey shall be made and the record of rights shall be prepared in the prescribed manner.

Section 81 of the CNT Act describes the particulars to be recorded as follows:

- a) The name of each tenant or occupant
- b) The clan to which each tenant belongs, that is to which each tenant belongs. In other words, whether he is a tenure holder, *mundari khunt kattidar* settled *raiyat*, *raiyat*, having *khunt kati* rights or under *raiyat* and if he is a tenure holder, whether he is a permanent tenure holder or not and whether his rent is liable to enhancement during the continuance of his tenure.
- c) The situation and quality and one or more of boundaries of the land held by each Tenant or occupier.
- d) The name of each tenant's landlord
- e) The name of each proprietor in the local area or estate.
- f) The rent payable at the time of the record-of-rights is being prepared.
- g) The mode in which that rent has been fixed whether by contract, by order of a Court, or otherwise.
- h) If the rent is a gradually increasing rent, the time at which and the steps by which it increases.
- i) The rights and obligations of each tenant and landlord in respect of
 - 1) The use, by tenants, of water for agricultural purposes, whether obtained from a *river, jhil, tank* or well or any other source of supply and
 - 2) The repair and maintenance of appliances for securing supply of water for the cultivation of the land held by each tenant whether or not such appliances be situated within the boundaries of such land.



- j) The special condition and incidents (if any) of the tenancy
- k) Any easement attaching to the land for which the record-of-rights is being prepared.
- l) If the land is claimed to be held rent-free –whether or not rent is actually paid and if not paid whether or not the occupant is entitled to hold the land without payment of rent, and ,if so entitled under what authority;
- m) [The existence, nature and extent of] the right of any person whether a landlord or tenant or not, to take forest –produce from jungle-land or waste-land, or to graze cattle on any land [or to take fish from any water, or of any similar right] in any village in the area to which the record-of-rights applies.
- n) The right of any resident of the village to reclaim jungle-land or waste –land, or to convert land into *korkar*.

The latest position of survey in Jharkhand is placed below.

Table 7.3 Latest Position of Survey in Jharkhand

District	Total Mauja	Total Sheets	Blue Print	Not Final	Final	Status of the survey
Ranchi	1389	2726	235	2344	145	Tasdik
Gumla	973	2639	219	276	2144	R.S. Last Publication
Simdega	454	1729	751	726	125	R.S.
Khunti	768	1467	707	760	0	1928-29
Lohardaga	354	815	0		815	1988-89
Hazaribagh	1364	2812	253	2559		Khanapuri completed
Ramgarh	351	756		756		Verified in two zones. 89 in 1 and 83 in the other
Koderma	665	958	205	753		Khanapuri completed
Bokaro	434	968		968		Khanapuri completed
Chatra	1423	2412	954	1496		Khanapuri completed
Giridh	2690	3312	2013	1507		Khanapuri completed
Dhanbad	1534	1699	No. of sheets available = 1699			R.S. Hall Survey
Garhwa	778	1916		84	1832	Map of hall survey available
Palamu	1902	2986		2102	884	Since the map was printed in Gulzarabad press, only 117sheets are available



Latehar	775	Information Unavailable				Final maps are submitted with the keeper of archives of Latehar district
Dumka (Excluding M.C. 30 REV. Village)	2922	3190		1231	1959 (Is available and is printed)	In 8 zones and 1080 villages, 1231 seats are outstanding against Gulzarabagh
Jamtara	1175	1079				No. of available sheets- 23
Pakur N.C.	(1255+7) 1262	(1475+7) 1482	693	782		No. of available sheets- 701 of C.S
Godda Including M.C.	(2307+7) 2314	(2570+7) 2577	3	2564		The map of all the zones is final and verified but has not been printed. The map hasn't been sent to the Gulzarabagh press.
Sahibganj	1812 1792 villages 35 M.C. 12 diyara ho 1829	(2084+35) 2119		2084		no. of sheets available- 1245 mauja sheets unavailable-860-C.S
Deoghar M.C. 39	(2704+39) 2743	(2427+39) 2466		2425		
W. Singhbhum (Chaibasa)	1676	Information Unavailable Total 639 partial maps of mauja available				R.S map will be digitized
E. Singhbhum (Jamshedpur)	1805	2523				No information about the availability of the maps. According to the upper Deputy Commissioner, all the maps are unavailable. According to Jamshedpur's settlement in the last publication, out of 1810 maujas only 1074 sheets are available.
Saraikela-Kharsawan	1247	1582				24 sheets available. R.S is done. 1958.60

Source: Department of Land Revenue, Government of Jharkhand



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SECTION 7.1.8 :ANALYSIS OF THE SURVEY REPORT OF JHARKHAND

On the perusal of the progress report of survey and settlement operation of Government of Jharkhand following points appear:-

- All the twenty four districts are in the different stages of survey operations
- Gumla and Latehar districts have completed Revisional Survey work. The progress of Gurwa is satisfactory .
- Hazaribagh, Kodarma, Bokaro, Chatra, Giridih are on khanapuri stage only.
- Godda district primary publication has yet to take place.
- The progress of survey is very slow.
- The number of staff is very less where we see the establishment of survey. Out of 1711 sanctioned posts only 402 staff are working. Definitely no progress in survey work can be achieved without increasing the number of staff.
- The aim of updating of Records can not be solved with this slow rate of progress.

Solution

1. The revisional survey work started in 1975-80 but even after the lapse of more than 30 years survey has not been completed. Even the data that will appear will become some 30 or 40 years old and obsolete data which will not reveal the present scenario of land and computerisation of this old data will serve no purpose.
2. Hence there is need to go for a fresh land survey in one go lasting for two years within which all the operations of survey should be completed. Definitely it requires huge resources and the availability of skilled professional to complete. This work needs to be completed with zeal as that of Election work and Census, the mechanical and bureaucratic approach will not accomplish the task. Of course huge expenditure is required to get the up to date picture of land. After independence, State Government gave more priority to development work and land revenue and land administration could not get due attention. A strong political decision is required. The huge expenditure can be met by the help from World Bank.



SECTION 7.1.9: ANALYSIS OF RECORD OF RIGHTS PREPARATION

1. The ordinary rule with regard to official documents such as record of rights being that they must be presumed to be correct until the contrary is shown. It must be presumed that entries made in the record of rights are those entries only which are, required to be made in the order passed under Section 80 and if the person wishes to dispute the validity of entry, on the ground, that the particulars entered were not in fact required, the onus would be upon him to produce the order under Section 80. (*Kalyandas v Joytilal* AIR 1927 pat 97)
2. A perusal of the progress report of survey work of the state reveals that plot formation and other field work started some thirty years ago. Still the finalization of the survey work is in progress. Thus by time the land survey work is completed it will take 30 to 40 years, by that time the nature of the plot and in many cases the owners of the plot changes which makes all the survey work obsolete and futile exercise with heavy expenditure on the state exchequer.
3. There is need to get the land survey work completed in one or two years like a mission or movement to find the clear picture of the plots where on some policy decisions could be taken.
4. The survey work is a huge task to prepare manually which required large numbers of skilled and professional staff with continuous monitoring of the progress. Definitely a strong political will and large allocation of revenue is required.

As per article in Economic and Political weekly, June 15 2013, written by Pradeep Nayak titled “Policy shifts in land records and management” some part of the article need reproduction below:-

“Contrary to the popular belief that land records maintained during colonial period are a reliable mean to understand agrarian relations in India, Dietmar Rothermund argues that such records were conspicuous by their absence, the records of rights were never correctly set out and were meant to accommodate the wealthy and powerful sections of Indian society. Land rights were recorded only with an eye on the collection of revenue and security of land titles was purely incidental in nature. The revenue records were not treated as record of title. The convenience of maintaining the record of rights for presumptive rather than conclusive value



was apparent to the British authorities. The courts established by them relied thus on oral evidence rather than records of presumptive value.

The most important common feature of land records in India is their presumptive nature which means that entries in the record of rights are presumed to be correct unless contrary is proved. According to the one man committee on Record of Rights in land (1989) in many parts of the country, the land records exist in the name of the person's who no more is or the land has been transferred without quick consequential mention in the record. The record of rights in India continues to be presumptive and fiscal in nature as long as the owner of the piece of the land continues to pay the land revenue. He or she is presumed to be proprietor or title holder of the land units until contrary is proved. This means that the entries made in the records of rights are not final and are open to challenge in a court of law. The State Government or its officials are not liable against any claim for an entry made in any record or register that is maintained by government or to have any entry omitted or amended or added due to presumptive nature of land records. (Wadhwa, 2002)

SECTION 7.1.10: COMPUTERIZATION OF LAND RECORDS

The computerization of land records is one of the policies initiated by Government of India to provide instant report about the land records but the question is computerization of dead or obsolete survey records will not mean anything. Although a praiseworthy attempt but one should not be misled that, computerization of land records are update rather some old outdated data.

The needs for up-to-date and correct land records are necessary to make any plan about land use. The problem of tenancy records and particularly the rights of the share cropper is not satisfactory throughout India (APPU, 1975). It was during the seventh plan that two ambitious schemes called computerization of land records and strengthening of revenue administration and updating of land records were launched by the Government of India.

The broad objectives of computerization of land records:-

- Computerization of ownership and plot wise details for delivery of timely and accurate copy of the records of the rights to the land owners.



- To achieve low cost easy reproducible storage media for reliable preservation for long time.
- To provide fast and efficient retrieval of information both graphic and textual.
- Creation of land information, system and database for agriculture census.
- To focus on citizen centric services related to land revenue information.
- To ensure accuracy, transparency and speedy dispute resolution.
- On demand distribution of computerized records of right to the land owners at reasonable charges with a provision of online mutation module for ownership charges, seasonal crop updating etc. at the block level.

The Eleventh five year plan 2007 clearly express the need for correct and defect free land record, correct and up-to-date records are crucial for the security for land rights and to encourage investment. These result in fewer disputes and conflicts, allow land to be used as collateral lower transaction costs and corruption, ensure efficient land markets and help in implementation of land reforms and planning for various developmental programmes.

Recommendation

- Preparation of state land use policy
- Integration of Registration Offices with up-to-date land records and land map agencies.
- Creation of more courts in the interiors where people has more accessibility for disposal of land disputes.
- Land tribunals at the state head quarter and district head quarter headed by Judicial Officers of knowledge and integrity, assisted by Revenue Officers with sound knowledge of revenue matters and land related problems with reputed journalist and or intelligentsia of sound knowledge of land related problem for disposal of land conflicts and disputes.
- Panchayats involvement in land record preparation and also in the calculation of market value of land for registry purposes.
- Devolving more power to the lower judicial courts for land related cases and also to the executive courts for land possession cases.



- Survey of records has been going for the last 30-40 years but yet to be completed. By the time it is completed the data will be old and obsolete. Hence a fresh survey is needed with a zeal and mission of Census and Election work. That to be completed in one -go within one or two years with all the formalities and procedures necessary for this. The unfortunate part is that most of the survey knowing staffs has retired so huge man power is required to be trained in the skill of survey operation. The survey operation is not an ordinary job which requires great professional skill. So this will involve huge expenditure on human resources and other resources. The State Government cannot afford to stop developmental work which is the priority of a welfare state. Hence the Pandora box opens how to finance and from where to finance. Definitely, World Bank can be requested to help in up-to-dation of land records and survey report to accomplish this huge task.
- The governance should put emphasis more on the result and less on the procedure and practices as suggested by Bimal Jalan (2012), Ex. Governor of RBI, in his book “Emerging India, Economics, Politics and Reforms”.
- There is need to provide a passbook indicating *khata* (Account No.), *khesra* (plot no.) and area of land to each land holder.
- A land related tribunals, comprising judges of the high court and retired civil servants should be formed to examine the complaint against wrong entries in records of rights in summary manner.

SECTION 7.2: DIMENSION ANALYSIS

LGI: 6.1 *Mechanisms for recognition of rights*

6	1	1	Land possession by the poor can be formalized in line with local norms in an efficient and transparent process.
			A: There is a clear, practical process for the formal recognition of possession and this process is implemented effectively, consistently and transparently.
			B: There is a clear, practical process for the formal recognition of possession but this process is not implemented effectively,



consistently or transparently.

C: The process for the formal recognition of possession is not clear and is not implemented effectively, consistently or transparently.

D: There is no process for formal recognition of possession.

B

Comments

There is clear and practical process for the formal recognition of possession .The record of rights, rent receipts, government gazetteers and settlement reports. *Patta* rights, lease documents by the government offices/institution and local enquiry enable to formally recognise the right of the people in an efficient and transparent manner. Sometimes, problem does arise on the recognition of rights on *gairmajarua khas* land (Uncultivated Government land). There is tendency to treat the possession of *gairmajarua khas* land (Uncultivated Government land) with suspicion either due to apprehended fear or as a way of precaution.

The CNT Act 1908 under title occupancy–*raiyats* describes about occupancy *raiyats* (Section 16) and defines settled *raiyats* (Section 17).

Settled raiyat -Every person who for a period of 12 years, whether wholly or partly before or after the commencement of this Act has continuously held as a *raiyat* land situated in any village, whether under a lease or otherwise, shall be deemed to have become on the expiration of that period a settled *raiyat* of that village.

Kokar land settled under Section 65 of CNT Act, *Patta* under Bihar Privilege Person Homestead Tenancy Act, *Bhodan patta*, settlement of waste land by S.D.O through *patta* provide clear recognition of the rights of the land holder on the land. So the recognition of rights on land is clearly defined by tenancy laws and government orders.

6 1 2 Non-documentary evidence is effectively used to help establish rights.

A: Non-documentary forms of evidence allow full recognition of claims to property when other forms of evidence are not available.



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B: Non-documentary forms of evidence are used to obtain recognition of a claim to property along with other documents (e.g. tax receipts or informal purchase notes) when other forms of evidence are not available. They have about the same strength as provided documents.

C: Non-documentary forms of evidence are used to obtain recognition of a claim to property along with other documents (e.g. tax receipts or informal purchase notes) when other forms of evidence are not available. They have less strength than the provided documents.

D: Non-documentary forms of evidence are almost never used to obtain recognition of claims to property.

C

Comments

Non –documentary form of evidence are used to obtain recognition of a claim to property along with other documents (e.g. tax receipts or informal purchase note) when other forms of evidence are not available .They have less strength than provided by registered document.

In course of preparation of record of rights, it has been observed that powerful person have purchased the records of rights making authorities and got many of the public lands recorded in their names which were in reality under the possession of poor and weaker persons. Though, in practice only documentary evidences are accepted as the evidence of possession such as entry of the names of forefathers in the records of rights and rent receipts and local enquiring by the revenue authorities. The fact remains that the record of rights are not all correct, so thousands of cases against the entry of rights of records is pending in revenue and civil courts for adjudication. Fortunately, the High Court gives recognition of none – documentary evidences in many cases.

6 1 3 Long-term unchallenged possession is formally recognized.

A: Legislation exists to formally recognize long-term, unchallenged possession and this applies to both public and private land although



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different rules may apply.

B: Legislation exists to formally recognize long-term, unchallenged possession but applies only to one specific type of land (e.g. either public land or private land).

C: Legislation exists to formally recognize long-term, unchallenged possession but due to the way this legislation is implemented, formal recognition is granted to very few or no applicants for recognition on either public or private land.

D: Legislation to formally recognize long-term, unchallenged possession does not exist.

C

Comments

Under the civil law 12 years adverse possession or unchallenged possession is recognised legally as claim of title. But most people are not aware of the legal provision. The need is to advertise this rule so that common people may be aware of this.

6 1 4 First-time recording of rights on demand includes proper safeguards and access is not restricted by high fees.

A: On-demand recording of rights includes proper safeguards to prevent abuse and costs do not exceed 0.5% of the property value.

B: On-demand recording of rights includes proper safeguards to prevent abuse and costs do not exceed 2% of the property value.

C: On-demand recording of rights includes proper safeguards to prevent abuse and costs do not exceed 5% of the property value.

D: On-demand recording of rights does not include proper safeguards to prevent abuse or costs exceed 5% of the property value.

A



Comments

Registration of deeds does not confer any right and title. The instrument of deeds has presumptive value. For the recording of rights in the process of preparation of records of rights, no fee is charged. But for registration in Registry Offices 7% (4% stamp duty and 3% registration fee is charged).

Section 35 of the Indian Stamp Act clearly mandates that a document upon which stamp duty has not been paid cannot be recognised for any purpose. As stated above registration of deeds mere states transaction from seller to purchaser without having title right. Registration has only evidentiary and presumptive values. The transactions of land and property are accessible on web.

The learned panellists agreed on response “A” which states on demand recording of rights include proper safeguard to prevent abuse and costs do not exceed 5% of the property. The CNT Act Section 80, 81,82,83,84 and 85 has elaborate provision for the proper safe guards to prevent abuse and no cost is charged for preparation of Records of Rights.

LGI: 6.2 *Completeness of the land registry*

6	2	1	Total cost of recording a property transfer is low.
			A: The total cost for recording a property transfer is less than 1% of the property value (time and effort costs, informal and official fees etc.).
			B: The total cost for recording a property transfer is between 1% and less than 2% of the property value.
			C: The total cost for recording a property transfer is between 2% and less than 5% of the property value.
			D: The total cost for recording a property transfer is equal to or greater than 5% of the property value.

D

Comments



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The total cost for recording a property transfer is greater than 5% of the property value .In Jharkhand registration fee and stamp duty is 7% of the property value, for recording the transfer of the property.

6	2	2	Information held in records is linked to maps that reflect current reality.
			A: More than 90% of records for privately held land recorded in the registry are readily identifiable in maps (spatial records).
			B: Between 70% and 90% of records for privately held land recorded in the registry are readily identifiable in maps (spatial records).
			C: Between 50% and 70% of records for privately held land recorded in the registry are readily identifiable in maps (spatial records).
			D: Less than 50% of records for privately held land recorded in the registry are readily identifiable in maps (spatial records).

NONE OF THE ABOVE

Comments

Alternatives do not capture the present scenario of land registration. During registration, maps submitted by the purchaser and seller are jointly signed by them are neither identifiable by the maps kept in Revenue offices nor in the district records room. The maps submitted during registry are merely outlines or sketch maps which do not reflect ground reality and the onus of incorrect map lie on seller and purchaser. However, the preparation of records of rights under 80, 81,82,83,84 and 85 of the CNT do record more than 90% of the records for privately held land and are recorded and identifiable in maps. The areas entered in the Records of Rights do reflect the ground reality.



6	2	3	All relevant private encumbrances are recorded.
			<p>A: Relevant private encumbrances are recorded consistently and in a reliable fashion and can be verified at low cost by any interested party.</p> <p>B: Relevant private encumbrances are recorded consistently and in a reliable fashion but the cost of accessing them are high.</p> <p>C: Relevant private encumbrances are recorded but this is not done in a consistent and reliable manner.</p> <p>D: Relevant private encumbrances are not recorded.</p>

D

Comments

There is tendency not to mention or conceal private encumbrances by the settlers to dupe or earn unwarranted or immoral financial gain.

6	2	4	All relevant public restrictions or charges are recorded.
			<p>A: Relevant public restrictions or charges are recorded consistently and in a reliable fashion and can be verified at a low cost by any interested party.</p> <p>B: Relevant public restrictions or charges are recorded consistently and in a reliable fashion but the cost of accessing them is high.</p> <p>C: Relevant public restrictions or charges are recorded but this is not done in a consistent and reliable manner.</p> <p>D: Relevant public restrictions or charges are not recorded.</p>

A



Comments

Relevant public restrictions or charges are recorded consistently and in a reliable fashion and can be verified at a low cost by any interested party.

All the registered documents are the in the website. 4% stamp duty and 3% registry are charged which is one of the lowest in the country. With the computerisation of land records, registered documents are handed over to the purchaser on the same day.

There is no charge for the preparation of Record of rights.

6	2	5	There is a timely response to requests for accessing registry records.
A: Copies or extracts of documents recording rights in property can generally be obtained within 1 day of request.			
B: Copies or extracts of documents recording rights in property can generally be obtained within 1 week of request.			
C: It generally takes more than 1 week after request to produce a copy or extract of documents recording rights in property.			
D: It is not unusual that an extract or copy of a record cannot be produced in response to a request as the original record cannot be located.			

A

Comments

Copies or extracts of documents recording rights in property can generally be obtained within 1 day of request. With the comprehensive computerization of registry work and introduction of digitalisation, this facility is one of the achievements of Department of Registration.



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6 2 6 The registry is searchable.

A: The records in the registry can be searched by both right holder name and parcel.

B: The records in the registry can only be searched by right holder name.

C: The records in the registry can only be searched by parcel.

D: The records in the registry cannot be searched by either right holder name or parcel.

A

Comments

The records of registration of deeds can be searched in which the name of settlers, purchasers, *khata* no. (Account No.), *khesra* no. (Plot No.), area can be known. Search can be made by either the seller or purchaser. Registered deeds are computerised and put on web. It is in public domain. However, the records of rights of rights prepared in 1932-35 and Revisional Survey being conducted has not come to logical conclusion save in the district of Lohardaga and Latehar.

6 2 7 Land information records are easily accessed.

A: Copies or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee, if any.

B: Copies or extracts of documents recording rights in property can only be obtained by intermediaries and those who can demonstrate an interest in the property upon payment of the necessary formal fee, if any.

C: Copies or extracts of documents recording rights in property can only be obtained by intermediaries upon payment of the necessary formal fee, if any.

D: Records on land rights are not publicly accessible or can only be



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obtained by paying an informal fee.

A

Comments

Computerization of land registration is a relief but integration between Registration Offices and revenue offices is essential for better information of land records. Copies of extract of documents recording rights to property can be obtained by anyone who pays the required fee. In fact, after registration it becomes public document. Certified copy can be obtained by any one. Jharkhand has provided the facility for downloading from internet the abstract of certified copies of these documents which has been registered through computerised method.

Even the certified copies of Record of Rights are issued after deposit of formal fee. Records of rights of Jharkhand has not been computerised and put on web.

6	3	1	Information in public registries is synchronized to ensure integrity of rights and reduce transaction cost.
			A: Links are in place for all types of public land information registries; mandatory checks are performed to ensure legitimacy of any transactions that materially affects certain parties' land rights before they can be finalized.
			B: Links are in place for all types of public land information registries but checks on the legitimacy of transactions that affects certain parties' land rights are only performed ex post.
			C: Links are in place for some types of land information and checks are insufficient to eliminate a significant number of potentially fraudulent transactions.
			D: Few or none of the relevant links exist.

C

Comments



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Links are in place for some types of land information and checks are insufficient to eliminate a significant number of potentially fraudulent transaction. The registered land documents do not have title value as they have only been taken as presumptive evidence and other evidences are required to quality for title. Higher courts in several judgements have declared the importance of land registered documents as merely of presumptive evidence and not as title of rights and possession. The courts have further opined that purchasers are best judges to know about the purchased land.

6	3	2	Registry information is up-to-date and reflects ground reality.
			A: More than 90% of the ownership information in the registry/cadastre is up-to-date and reflects ground reality.
			B: Between 70% and 90% of the ownership information in registry/cadastre is up-to-date and reflects ground reality.
			C: Between 50% and 70% of the ownership information in registry/cadastre is up-to-date and reflects ground reality.
			D: Less than 50% of the ownership information in the registry/cadastre is up-to-date and reflects ground reality.

D

Comments

Land ownership information in cadastre has not been computerized. The registration of deed is only presumptive in valuation. The record of rights is presumed to be correct unless proved contrary by courts. There are sizeable land transfers which can be called as fraudulent deeds. Till now there has been no survey by Government or by NGO. But the cadastre information i.e. record of rights are presumed to be correct unless proved to be contrary. The onus of proving contrary lies on the aggrieved party. The sad part is that revision survey which began in 1970 is yet to be completed and if record of right survey is completed in future data will be forty years old and obsolete. In the SPT area, the registry data base does not contain any information about *raiya* land. The data base only confines to information regarding *Basauri* Land (Land fit for residence.)



LGI: 6.4 Cost-effectiveness and sustainability: land administration services are provided in cost-effective ways that are sustainable in the long term.

6	4	1	The registry is financially sustainable through fee collection to finance its operations.
<p>A: The total fees collected by the registry exceed the total registry operating costs. (Total operating costs include all non-capital investment costs (i.e. salaries and wages, materials, transportation, etc.) associated with registry operating costs.)</p> <p>B: The total fees collected by the registry are greater than 90% of the total registry operating costs.</p> <p>C: The total fees collected by the registry are between 50% and 90% of the total registry operating costs.</p> <p>D: The total fees collected by the registry are less than 50% of the total registry operating costs.</p>			

A

Comments

The total fees collected by the registration department exceed the total registration operating costs. The perusal of income of registration offices of the state and expenditure on salary combine with other expenses show that registration department is huge earning department of the state. The table of annual income through registration fees and stamp duty far exceeds the cost involved. The expenditure is less than 10 % of the annual income of the registry department while registration in cadastre is not economically viable. The main purpose is to up-to-date land records for law and order problem and the revenue collection is far low compared to expenditure involved.



6	4	2	Investment in land administration is sufficient to cope with demand for high quality services.
			A: Investment in human and physical resources is sufficient to achieve or maintain high service standards and to proactively respond to future needs and new developments in the sector.
			B: Investment in human and physical resources is sufficient to maintain high service standards but does not allow for proactively responding to future needs and new developments in the sector.
			C: Human resources and physical capital investment are sufficient to maintain medium service standards but does not allow to proactively adapt to new developments.
			D: There is little or no investment in capital in the system to record rights in land.

D

Comments

There is little or no investment in capital in the system to record of rights of land. Since independence the State Government concentrated more on development works such as construction of roads, bridges, hospitals, schools, irrigation projects etc and insufficient amount has been earmarked for land revenue administration. The Department of Revenue and Land Reforms do not earn enough to sustain. Hence, government grants alone to empower it in its running. The revenue administration, management and preparation of record of rights could not get due attention for want of revenue and resources. If we want to improve standards of land revenue administration both human and capital resources are required to make it worthy of service.

LGI: 6.5 *Fees are determined transparently to cover the cost of service provision*



6	5	1	Fees have a clear rationale, their schedule is public, and all payments are accounted for.
			<p>A: A clear rationale and schedule of fees for different services is publicly accessible and receipts are issued for all transactions.</p> <p>B: A clear rationale and schedule of fees for different services is not publicly accessible, but receipts are issued for all transactions.</p> <p>C: A clear rationale and schedule of fees for different services is publicly accessible, but receipts are not issued for all transactions.</p> <p>D: A clear rationale and schedule of fees for different services is not publicly accessible and receipts are not issued for all transactions.</p>

B

Comments

Fees and stamp duty collection is one of the lowest in the country. The computerization e-stamping, e-payments have improved the standard of services. All fees and stamp duties are properly received and accounted for and money receipts are issued to registration of deeds in the state. The income and expenditure of Registration offices are regularly audited and checked by Department. of Finance and Auditor General.

6	5	2	Informal payments are discouraged.
			<p>A: Effective mechanisms to detect and deal with illegal staff behavior exist in all registry offices and all cases are promptly dealt with.</p> <p>B: Mechanisms to detect and deal with illegal staff behavior exist in all registry offices but cases are not systematically or promptly dealt with.</p> <p>C: Mechanisms to detect and deal with illegal staff behaviour exist in some registry offices.</p> <p>D: Mechanisms to detect and deal with illegal staff behaviour are</p>



largely non-existent.

C

Comments

Effective mechanisms to detect and deal with illegal staff behaviour exist in all registration offices and all cases are promptly dealt with. However, there are the complaints of extra extortion which is dealt by the appropriate level of administration.

6 5 3 Service standards are published and regularly monitored.

A: There are published service standards (including dealing with deal with illegal staff behaviour), the registry actively monitors its performance against these standards and results are public.

B: There are published service standards, but the registry does not actively monitor its performance against these standards.

C: Service standards have been established, but have not been published and there is little attempt to monitor performance against the standards.

D: There are no service standards set and no attempt to monitor customer service or illegal behaviours by staff.

C

Comments

The Government of Jharkhand has issued the charter of services to be provided including the standard of service for Registration Offices as well which are mechanically monitored at the appropriate administrative level.



CHAPTER 8

Land Valuation and Taxation

SECTION 8.1: BACKGROUND

The topic land valuation and taxation covers the income of the state through Land Revenue, Registration fee and Stamp duty collected by Registration Department and property taxes and taxes collected by Urban Local Bodies under the Department of Urban Development.

State earns revenue from land by stamp duty, registration fees, leasing /renting of land under its management. For the Urban Local bodies, tax on property is very important source of revenue .Valuation of land and property becomes very important for revenue of the state.

8.1.1: LAND REVENUE.

Laws governing the Land Revenue Administration in the state are as follows. They have been adopted by Jharkhand after the formation of the State on 15th Nov, 2000.

1. Bihar Tenancy Act ,1885
2. The Chotanagpur Tenancy Act ,1908
3. The Santhal Pargana Tenancy Act ,1949
4. Bihar Land Reforms Act, 1950
5. Bihar Land Reforms Act, 1961
6. Bihar Bhoodan Act , 1954
7. Bihar Government Estate (*Khas Mahan Manual*),1953
8. Bihar Public Encroachment Act ,1950
9. Bengal Cess, 1880
10. Various circulars of the Government

The land revenue is collected from land rent including cess, *spirit*, *salami*, commercial /residential rent. The major source of revenue has been salami which is based on market value of land. It is a share in the increased value of land during the period of lease.



The collection from land revenue has been fluctuating in the state .It was Rs.26.26 crores in 2007-8, increased to Rs.130.65 crores during 2010-11 and decreased to Rs 52.9 crores during 2012-13 which has primarily depended on leases.

Government of Jharkhand has issued notifications from time to time under the *Khas Mahal* Manual, till 2011 which are available on the official website. The notifications of state orders :

1. For fresh leases for commercial and residential purposes *salami* at current market value of land besides annual rental at the rate of two percent and five percent respectively for residential and commercial purpose.
2. The lessees are liable to pay penal rent to pay interest at the rate of 10% on the differential of proposed rent and rent already paid.
3. In case of transfer of government land GM (*Aam /Khas*) *salami* at the prevailing value market rate and 25 times the commercial rent as capitalized value.

Enhancement of Rent and Reduction of Rent

Chotanagpur Tenancy Act (CNT) has the provision for enhancement of rent. Enhancement of Rent is exercised through the Section 25, 26, 27 and 28 of the Act.

Reduction of Rent is executed under Section 33A, 34 of CNT. Also there are provisions for presumptions as to fixity of rent under Section 51A and also for methods of payment of rent under Section 52-53.

Settlement of waste lands.

63A. Settlement of waste lands to be made by *patta*. - Settlement of waste lands belonging to the State Government shall be made by a *patta or amalnama* in the prescribed form. The *patta or amalnama* shall be prepared in duplicate, of which one copy shall be given to the *raiyyat* concerned and one copy shall be sent to the Deputy Commissioner of the district.

Miscellaneous provisions as to landlord and tenant.

Korkar



[64 - Conversion of land into *korkar* with Deputy Commissioner's permission. - [(1) Notwithstanding anything contained in any record-of-rights or any custom or usage to the contrary, every cultivator or landless labourers resident of village or a contiguous village shall have the right to convert land in that village into *korkar* with the permission of the Deputy Commissioner previously obtained :

Provided that no permission of the Deputy Commissioner shall be required under sub-section (1) to the conversion of land into *korkar* by a cultivator where he was entitled on the date of the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1947 (Bihar Act 25 of 1947), by virtue of any entry in the record-or-rights or any local custom or usage to convert such land into *korkar* without the consent of the landlord.

(2) On receipt of an application for permission to convert land into *korkar*, the Deputy Commissioner shall in the prescribed manner serve on the landlord a notice of the date on which he intends to hear the application and after hearing the parties and holding such inquiry as he thinks proper the Deputy Commissioner shall either grant or refuse the permission and his decision shall be final:

Provided, that the Deputy Commissioner shall dispose of an application made under this Section within a period of three months from the date of receipt thereof by him.]

Relevant Sections from Santhal Pargana Tenancy Act regarding fixation of Rent

RENT

43.Rent in the kind not to be released or recognized by any Court – (1)Nothing in contract ,express or implied between a landlord ,a village headman or a *mulraiya* and a *raiya* made before or after the commencement of this Act, shall entitle the landlord of the village headman or the *mulraiya* to rent in kind whether known as *bhaoli ,batai, krisani,dana-bandi* or otherwise.

(2) No rent in kind shall, in any way, be recognised as valid by any Court whether in exercise of civil, criminal or revenue jurisdiction:

Provided that if the Deputy Commissioner directs that a holding given in *khas* possession to a decree –holder for satisfaction of decree under the provision of the *Santhal* Civil Rules be



made over for cultivation to the evicted *raiyyat* or his heirs, the decree holder shall be entitled to take not more than half the produce as a share by division.

1[43-A. Time for payment of rent. - (1) notwithstanding anything to contrary contained in the Santhal Pargana Settlement Regulation, 1872 (Reg. III of 1872) or the village record of rights prepared there under, a money rent payable by a tenant shall be paid in four equal instalments falling due on the last day of each quarter of the agricultural year.

(2) Every tenant of the mortgagee of his holding or tenure shall pay each instalment of rent before sunset of the day on which it falls due.

(3) Any instalment of part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed to be an arrear:

Provided that where rent is payable to the State Government any instalment of part of an instalment not duly paid at or before the time when it falls due shall be deemed to be an arrear only at the end of the agricultural year.

44. *Raiyyat*, village headman and *mulraiyyat* not liable to transferee of landlords or *mulraiyyats* interest for rent paid to former landlord or *mulraiyyat*, without notice of the transfer. – (1) When the interest of the landlord or *mulraiyyat* is transferred, no *raiyyat*, village headman or *mulraiyyat*, as the case may be shall be liable for rent which became due after the transfer and was paid in good faith to the landlord or *mulraiyyat*, as the case may be, whose interest was so transferred unless the transferee has before the payment served notice of the transfer on the *raiyyat*, village headman or *mulriyyat*.



8.1.2: LAND REVENUE COLLECTION IN JHARKHAND

The following table will give Land Revenue collection in Jharkhand from 2008-09 to 2012-13

Table 8.1: Land Revenue collection in Jharkhand from 2008-09 to 2012-13

Year	Land Revenue (in Rs. Crore)		Percentage of total Revenue Receipts
	Target	Collection	
2008-09	52.75	53.33	1.42
2009-2010	60.00	41.28	0.92
2010-2011	66.00	130.00	2.29
2011-2012	83.49	52.94	0.76
2012-2013	82.00	96.38	1.17

Source: Singh (2013)

8.1.3: CALCULATION OF MINIMUM VALUE OF LAND AND PROPERTY IN JHARKHAND

As per Jharkhand Stamp (Minimum valuation) Amendment Rule 2012, the land and property have been calculated for rural area and urban area separately. Land has been classified as urban area and rural area. In the urban area ward wise valuation and in rural area revenue village or village wise calculation of the land is being calculated as per decimal while that of structure is being calculated per square feet.

Village Area (land)

For agriculture, For industry, For Residential, For Commercial

Urban Area (land)

- Residential (on other roads/ place)
- Residential (on main road)
- Commercial (on other road/ places)
- Commercial (on main road)

Structure of Village Area

- Deluxe house/ apartment
- Building with R.C.C. roof
- Building with asbestos /tiles etc

Classification of Structures in Urban Areas

Types of structure	Residential on other road	Residential on main roads	Commercial on other road	Commercial on main road
Deluxe house/apartment				
Building with R.C.C.				
Building with asbestos/tiles				

Process for Minimum Price Calculation Rural Area

- All transfers of more than 14 decimal of area registered in previous year is taken into consideration for the fixation of minimum value of agricultural land. .
- Total transfer amount of the registered deeds will be divided by the total area. The average price will be the minimum price for the agricultural land which will be :

$$\text{Base rate } Y = \frac{\text{Total amount of the registered deeds}}{\text{Total Area of the deeds}}$$

- **Agricultural land = Y**
- **Industrial land = Y X 1.5**
- **Residential land = Y X 2**
- **Commercial land = Y X 3**

For calculation of minimum price of structures, for deluxe building /apartment 10 % will be added in present rate and for other structure 5 % will be added.



Urban Area

The district sub-registrar will obtain transfer data from registrar office of the previous year. Ward wise all the transfer amount will be divided by all the area to obtain average price which will be minimum price for residential area. Commercial areas minimum price will be two times of the residential area.

Total value of the deeds = Base rate Residential area Commercial land

Total area of the deeds (Y) Y Yx2

If residential and commercial lands are located on Main/Principle road, the minimum value of these lands will be 20% more.

If the residential and commercial structures are located on main/principle road the minimum value of these structures/buildings will be 20% more.

Market Value

Evasion of stamp duty by mentioning value of the consideration money lower than Actual has been an old age common practice all around. The phenomenal increase of real estate prices after 1960s has invited attention of the State Government, preventing aversion of stamp duty for tapping in its revenue earning potential.

Prior to the Stamp Amendment (Bihar) Act 1988 there was no provision for the examination of market value by the registering authority. By this amendment, Section 47 was added in the Indian Stamp Act. The scheme of Section 47 A is to deal with those cases where private parties by arrangement deliberately undervalue the property comprising the subject matter of transfer with a view to defraud the government of legitimate revenue by way of stamp duty.

For the implementation of the provision of Stamp Amendment (Bihar) Act 1988, rules was drafted which is known as Bihar Stamp Prevention of Under Valuation of Instruments of Rules 1995. The rule had been amended in 2009 and 2012. Under these rules, the District



Sub-Registrar has been authorised to prepare a Guidelines Register of the estimated minimum value of different categories of rural and urban areas of the district on the basis of average value of all conveyances registered of that areas in the preceding financial year. If no conveyances of land have been registered in the preceding financial year, then the estimated minimum value of that category shall be determined by adding 5% on the value of previous year in rural and 10% in urban area. Revision of the estimated value has to be made every year in case of urban area and in case of rural area after every two years with effect from 1st August, 2012.

The Guidelines Registered or Estimated Minimum Value the *de facto* indicator of market value, they are prepared by the Registration Department of which revenue is sacrosanct. The registering officers are expected to collect stamp duties and registration fees according to the value calculated on the basis of estimated minimum value. If the party declines to accept the value stated in Minimum Value Register the document has to be referred to the Collector under **Section 47** of the Stamp Act for the determination of market value and realisation of deficit stamp duty. This guideline Register is intended merely to assist registering officers to ascertain *prima facie* whether the market value has been set forth in the instrument or not.

SECTION 8.1.4: ASSESSMENT OF ANNUAL RENTAL VALUE AND HOLDING

For assessment of Annual Rental value and holding is guided by the powers conferred by Section 227 read with sub-section (1) and (2) of Section 130 of Patna Municipal Corporation Act 1951 (Bihar Act XII OF 1952) the Governor of Bihar is pleased to make the rules, Assessment of Annual Rental Value and Holding Rules, 1993 adopted by Government of Jharkhand as well.

SECTION 8.1.5: LAND REVENUE COLLECTION TILL OCTOBER, 2013

We shall give details of Rent and Cess collection as per the report compiled at the Department of Revenue and Land Reforms, Government of Jharkhand upto October, 2013.



Table 8.2: Rent and Cess collection in Jharkhand upto October, 2013.

Rent						Cess						Total
Demand			Collection			Demand			Collection			Total Collection
Present Year Target	Arrear Target	Total Target	Present Year	Arrear	Total	Present Year Target	Arrear Target	Total Target	Present Year	Arrear	Total	
1	2	3	4	5	6	7	8	9	10	11	12	13
9535171	907579	10442750	32502887	186605	3436892	10451005	1498921	11949925	4422382	230029	4652411	8089303

Source: Department of Revenue and Land Reforms, Government of Jharkhand

Table 8.3 Revenue Collection for Financial Year 2000 -01 To 2013 -14 by the Department of Registration, Jharkhand

SL .NO	FINANCIAL YEAR	TARGET (CRORE)	ACHIVEMENT (CRORE)
1.	2000-01	63.60	51.97
2.	2001-02	80.00	62.60
3.	2002-03	90.00	73.00
4.	2003-04	108.00	84.24
5.	2004-05	125.00	74.61
6.	2005-06	125.00	77.51
7.	2006-07	150.00	102.02
8.	2007-08	300.00	139.76
9.	2008-09	300.00	171.69
10.	2009-10	300.00	213.05
11.	2010 -11	302.50	314.56
12.	2011-12	450.00	418.00
13.	2012-13	495.00	389.00
14.	2013-14	568.00	356.00 (TILL 31 DEC 2013)

Source: Department of Registration, Government of Jharkhand



Report of Notified *Khas Mahal* Land

Large no. of lease cases of Ranchi, Jamshedpur, Hazaribagh, Latehar, Palamu and other districts of the state are pending at district level and state level for want of approval of lease cases which has been depriving state of the necessary taxes which can be ascribed to lack of monitoring and strong political direction.



Table 8.4 Arrear and Collection from Khas Mahal, November, 2013

Sl.No.	District	Khas Mahal November,2013					
		Demand			Collection		
		Arrear	Recent	Total	Arrear	Recent	Total
1	2	3	4	5	6	7	8
1	Ranchi	0	0	0	0	0	0
2	Khunti	0					
3	Gumla						
4	Lohardaga	0					
5	Simdega	-	-	-	-	-	-
6	Chaibasa	0	0	0			
7	Jamshedpur	374157	22763	396920	0	0	0
8	Saraikela						
9	Hazaribagh	43647.50	298830.50	342478.00	100372.00	256164.00	356536.00
10	Ramgarh	0					
11	Chatra						
12	Kodarma	0	0	0	0	0	0
13	Giridih	0	0	0	0	0	0
14	Dhanbad						
15	Bokaro						
16	Dhumka	0	0	0	0	0	0
Sl.No.	District	Khas Mahal November,2013					
		Demand			Collection		
		Arrear	Recent	Total	Arrear	Recent	Total
17	Deoghar	0	0	0	0	0	0
18	Godda						
19	Sahibgang		-	-	-	-	-
20	Pakur						
21	Jamtara						
22	Palamu		-	-	-	-	-
23	Garwa	0	0	0	0	0	0
24	Latehar		-	-	-	-	-
	Total	417804.50	321593.50	739398.00	100372.00	256164.00	356536.00

Source: Department of Revenue and Land Reforms, Government of Jharkhand



Table 8.5: Renewal of Lease of Khas Mahal, November, 2013

Sl. No.	District	Area	Settlement by lease		Lease due for renewal as on 1.04.13		No. of lease whose lease has been renewed	Lease transfer without	List of pending cases			
			No. of lease	Area	No.	Area			No.	Area		
1	2	3	4	5	6	7	8	9	10	11	12	13
1	Ranchi	489.73	1245	489.73	1245	489.73	14	251.99	0	0	1231	237.74
2	Simdega	88.57	12	1.01	11	0.875	0	0			11	0.875
3.	E. Sighbhum	373.89	64	28.63	59	24.27	5	4.36	1	0.3	58	23.97
4.	W. Sighbhum	767.30	2353	688.33	1625		31	4.98	0	0	1594	0
5.	Hazaribag	796.17	1499	710.49			352	61.81			1147	648.87

Continued...



Sl. No.	District	Area	Settlement by lease		Lease due for renewal as on 1.04.13		No. of lease whose lease has been renewed		Lease transfer without		List of pending cases	
			No. of lease	Area	No.	Area	No.	Area	No.	Area	No.	Area
1	2	3	4	5	6	7	8	9	10	11	12	13
6.	Kodarma											
7.	Giridhi	54793.70	0	0.00	0	0.00	0	0.00	0			0.00
8.	Sahibganj											
9.	Palamu	622.45	1622	224.53	1622	207.44	58	17.09			1564	207.44
10.	Gadhwa											
11.	Latehar	162.69	341	131.83	340	130.95		0.88			340	130.05
	Total	58094.5	7136	2274.55	4902	853.265	461	341.11	1.00	0.30	5945	1249.65

Source: Department of Revenue and Land Reforms, Government of Jharkhand



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Weakness

1. Many holdings have grown on Public land and tribal lands.
2. The pace of computerization of land records is very slow.
3. .The picture of *khas mahal* land is not clear. Lease renewal of thousands of cases in Ranchi , Palamu ,Latehar, Jamshedpur, Hazaribagh and other districts of the state has not been done.
4. The government and public land have been encroached upon by the influential persons
5. The green zones have been violated and many holdings have sprung upon these prohibited areas.
6. The areas of dams such as Kanke, Haiti and others have been encroached upon.
7. Large unauthorized colonies have sprung upon public land and tribal lands which make it difficult to collect holding taxes

Recommendations

1. Highest priority should be given to the preparation and uptodation of Land records with the active participation of local people particularly of the tribals. The provisional survey which started in some 30 years ago even if completed in two or three years will not serve the purpose as the data will be too old and obsolete to rely upon. Hence, there is need to go for a fresh survey of land to be completed in one goes for two or three years. This requires huge expenditure in manpower and other technological support. The State Government is not financially capable to bear this huge expenditure at the cost of developmental projects. There is need of help from outside; World Bank may be requested to help in the modernization of land records.
2. The preparation of land uptodation process should be conducted under the guidance of district level committee headed by Deputy Commissioners consisting of the members of the Municipal Committee, ward members and representative of NGOs.
3. Campaign mode should be followed for verification of title and possession of Public land.
4. The revenue machinery shall call upon the non-tribal in possession of tribal land and public land to substantiate their claims of possession.



5. Modern technologies which have been evolved by the Survey of India, ISRO, universities and private companies should be adopted.
6. The community land and public land must be recorded in the name of community and the Government of Jharkhand as the case may be.
7. The State Government has to take a major policy decision either to demolish the structures on Public Land or Tribal Land or regularize these holdings by charging penalty to be deposited in state treasury and to be deposited in the accounts of the tribals whose land have been fraudulently acquired.

SECTION 8.2: DIMENSION ANALYSIS

LGI: 7.1 Transparency of valuations: valuations are based on clear principles, applied uniformly, updated regularly, and publicly accessible. Describe the process of fixing and revising land valuation.

7	1	1	There is a clear process of property valuation.
			<p>A: The assessment of land/property values for tax or compensation purposes reflects market prices with <u>less than 25%</u> differences between recorded values and market prices across different uses and types of users and valuation rolls are regularly updated.</p> <p>B: The assessment of land/property for tax or compensation purposes reflects market prices, but there are <u>25-50%</u> differences between recorded values and market prices across different uses and types of users; valuation rolls are updated regularly</p> <p>C: The assessment of land/property for tax or compensation purposes has some relationship to market prices, but there are <u>50-75%</u> between recorded values and market prices across different uses or types of users and valuation rolls are not updated.</p> <p>D: The assessment of land/property for tax or compensation purposes is not clearly based on market prices.</p>



A

Comments:

1. For registration of land and property there is clear notification by the Department of Registration to calculate minimum value of land and property by the Deputy Commissioners and the District Sub-Registers for every two years while the valuation of land and property of cities and big towns is done annually.
2. In the urban areas, annual rental value of holding is calculated under the rules of Patna Municipal Corporation act 1951 (Which has been adopted in Jharkhand state as well).
3. The government of Jharkhand has tried to implement fresh valuation of urban land and holding which has been approved by the state cabinet to be passed by the state legislature...
4. Valuation rolls for registration land and property and for urban holding are accessible on the website of Registration Offices and Municipalities.
5. The minimum valuation of land and property reflect the real value of land and property in the market.
6. The CNT Act Section 25, 26, 27, 28, 29 and 30 prescribed the procedure for the enhancement of rent of agricultural land. Further, the sections 51-A, 52, 53, 54,55,56,57 prescribe the modality of rent collection while Section 58, 59 and 60 regulates the process of collection of arrears of rent. Section 61, 61A, 62 prescribe the manner of communication of rent payable in kind.
7. The SPT Act Chapter V starting with the section 43,43-A,44,45 ,46,47,48,49,50,51 and 52 prescribe the procedure of rent collection in the SPT area.



7	1	2	Valuation rolls are publicly accessible.
			<p>A: There is a policy that valuation rolls be publicly accessible and this policy is effective for all properties that are considered for taxation.</p> <p>B: There is a policy that valuation rolls be publicly accessible and this policy is effective for most of the properties that are considered for taxation.</p> <p>C: There is a policy that valuation rolls be publicly accessible and this policy is effective for a minority of properties that are considered for taxation.</p> <p>D: There is no policy that valuation rolls be publicly accessible.</p>

B

Comments There is a policy that valuation rolls be publicly accessible and this policy is applicable for all properties that are considered for taxation.

LGI: 7.2 Collection efficiency: land and property taxes are collected and the yield

7	2	1	Exemptions from property taxes payment are justified and transparent.
			<p>A: There are limited exemptions to the payment of land/property taxes, and the exemptions that exist are clearly based on equity or efficiency grounds and applied in a transparent and consistent manner.</p> <p>B: There are limited exemptions to the payment of land/property taxes, and the exemptions that exist are clearly based on equity or efficiency grounds but are not applied in a transparent and consistent manner.</p> <p>C: The exemptions to the payment of land/property taxes are not always clearly based on equity or efficiency grounds and are not always applied in a transparent and consistent manner.</p> <p>D: It is not clear what rationale is applied in granting an exemption</p>



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to the payment of land/property taxes and there is considerable discretion in the granting of such exemptions.

D

Comments

There is no exemption for any type of land or property. Government acquisition, transfer and gift to Government are exempted from stamp duty and registration fee for government purpose. In public interest the people of below poverty line have been given complete exemption from stamp duty on the deed of purchase of 5 decimals of the land. For development activities related to agriculture, the limit of stamp duty has been exempted from 3 lakh to 5 lakh in mortgage deeds.

7 2 2 All property holders liable to pay property tax are listed on the tax roll.

A: More than 80% of property holders liable for land/property tax are listed on the tax roll.

B: Between 70% and 80% of property holder liable for land/property tax are listed on the tax roll.

C: Between 50% and 70% of property holder liable for land/property tax are listed on the tax roll.

D: Less than 50% of property holders liable for land/property tax are listed on the tax roll.

D

Comments

All the urban households should be surveyed and legitimate household should be assessed and necessary actions should be taken against illegal construction.

The data from Ranchi Municipal Cooperation reveals that some 90,000 property holders have been assessed and more than 40,000 of the urban property holders have not been assessed as these holdings are located on Public Land, green zones, drains, riverbeds and on tribal lands.



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7	2	3	Assessed property taxes are collected.
			A: More than 80% of assessed land/property taxes are collected.
			B: Between 70% and 80% of assessed land/ property taxes are collected.
			C: Between 50% and 70% of assessed land/property taxes are collected.
			D: Less than 50% of assessed land/property taxes are collected.

C

Comments

Though no general data are available from department of urban development on the collection of taxes, information was gathered by contacting some of the *Nagar Panchayats* and Municipal Corporation and on the basis of feedback given by them the conclusion has been drawn on response C.

7	2	4	Receipts from property tax exceed the cost of collection.
			A: The amount of property taxes collected exceeds the cost of staff in charge of collection by a factor of more than 5.
			B: The amount of property taxes collected is between 3 and 5 times cost of staff in charge of collection.
			C: The amount of property taxes collected is between 1 and 3 times cost of staff in charge of collection.
			D: The amount of property taxes collected is less than the cost of staff in charge of collection.

D

Comments



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Registration department is revenue earning department and the income is far greater than the cost of collection. The property tax collected by the Urban Local Bodies does not exceed the cost of staff. The property taxes are very small compare to the expenditure involve in the collection of taxes. These bodies are not self sufficient economically and heavily depend on the grants of the State Government for survival.



CHAPTER 9

Disputes Resolution

SECTION 9.1: BACKGROUND

Conflicts are bound to arise in interpersonal relations. There could be a blurring of claims a rights oven a given tracts of land. There could be conflicts with regard to village community rights. No wasteland can be settled with a *non-jamabandi* raiyat in Santhal Pargana without the consent of the Sub-divisional officer and the proprietor in the *zamindari* period. In the pre-*zamindari* abolition era, if a village headman in Santhal Paragana wrongly settled wasteland, the proprietor or *raiya*t could petition the sub-divisional officer who was competent to set aside the settlement. In the pre-*zamindari* abolition even raiyati land were illegally recorded in the Santhal Paragana in the name of non-tribal by taking recourse to rent eviction, abandonment, surrender and someone dying intestate without will or heir. These exceptional provisions of the tenancy Acts were grossly violated to suit the vested interest of non Santhal and such obnoxious recording continues till date. Despite the fact the non-tribal never come in tribal possession over the lands in dispute. They lived in the block *bazars* area doing small business including money lending and has kept land in villages as status symbol, even the revisional survey continued the historical injustice and the ignored the continuing dispossession of the tribal over the last two centuries.

Circumstances as mentioned in the foregoing are bound to lead to resentment, heart burning and dispute. It requires a lot of commitment and will power at various levels to deal with sensitive issue like tribal land alienation. The non-tribal or vested interest had political and financial clout, and while the tribal raiyat is source less and speechless. In fact elaborate survey and settlement is the only comprehensive forum where factum position is determined and incident of tenancy recorded. If that forum itself gives a truncated verdict injustice are bound to continue under a judicial seal of approval.

As in the North-East, contractors and suppliers have already deep inroads into the forest wealth of Jharkhand. That fact alone brings to a naught the notion of an autonomous village community welding collective communal rights. How to prevent these tents is the real



challenge before the governance and bureaucracy. What policy initiative does the government of Jharkhand propose to remove at formal and informal level in vast scale is to be amply brought to the light.

In Santhal Pargana, even a non-tribal raiyat cannot transfer his land as per section 20(1) of SPT Act. Nevertheless large scale transfer has been made during last few decades and even though there is no registration / mutation, informal transfer persist unabated

Conflict and dispute are to be viewed not only as direct confrontation between two-individuals, rather its nucleus is to be seen in the central tenancy itself which is observed more in breach than in observation

As far as Chotanagpur region is concerned, there are Scheduled Area Courts manned by revenue functionaries who are responsible for adjudicating transfer cases but they have no power of execution. Hence, even though they pass order of evicting non-tribal transferees, it remains on paper only. Moreover there are loopholes in law in the law itself. Section 71 A, which is a very ideal law on transfers, is followed by three provisos, which saps the very essence of the main text. These provisos provide for regularisation of transfer and accrual of adverse possession right to the transferees.

Steadily, with the influx of time the role of traditional of dispute resolution lost teeth. *Mundari khunkattidar/ manki* in Chotanagpur and the village *pradhan* in Santhal Pargana have waned down in strength and people are ever increasing taking recourse to civil courts

Thus what could be an alternative dispute resolution mechanism, entrenched in tradition nothing could be more tragic than that, because civil courts are already overburdened with cases. This leads inevitably to pro-castration in adjudication and delivery of justice, especially for the poor.

Strength and Best practices

The strength of any revenue system worth the name lies in the fact as to what extent the system is capable of and willing to take stresses and strain. It is one thing to have a plethora of model law, it is another to unanswered long pending question of lacuna in law for instance the three proviso of sec 71 “A” of the CNT Act and section 20 (5) of the SPT Act which tend to recognize tribal land alienation

Weaknesses



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- 1) The aforesaid three provisos of the said section sap the very essence of the tenancy laws tribal land alienation
- 2) Section 49 of CNT Act has been constricted to the Deputy Commissioner permitting tribal land transfer for industrial and mining purpose only; however there has been no corresponding modification in section 241 of the CNT Act dealing with *Mundari khuntkahidar*. In their case, transfer can be permitted for any reasonable and sufficient purpose having relation to the good of the tenancy or of the tenure or estate in which it is comprised, such as the use of the land for any charitable, religious or education purpose or for the purposes of manufacturer or irrigation or as building ground for any such purpose, or for access to land used, or required for any such purpose
- 3) There are no powers of execution to Schedule Area Regulation Court, hence any order of restoration is not enforced
- 4) Dispute with repaid to raiyati, land or public land allottee are not chronicled
- 5) The machinery of grievances redressal given in the ceiling law or Bhoodan Act is lying dormant.
- 6) Forcible dispossession of allottees in government land is not chronicled, monitored and attended to.
- 7) In the absence of special time bound survey on the, it is difficult to say how much time the current conventional survey will take in reaching at up to date final facts and figures. It goes without saying dispute would be mitigated to a great extent if there is a time bound up to date record of right of private as well as public land including CPR

Recommendations

Law is the engine of any administration. We recommend the enactment of two following laws in Jharkhand on the Bihar pattern without any further loss of time

1) The Bihar Land Dispute Resolution Act, 2009/ Rules 2010

This Act empowers a revenue officer Deputy Collector Reform with most of the power of the civil court in revenue matters. The jurisdiction the DCR is as follows

- a) Unauthorized and lawful dispossession of any settlee or allottee from any land or part thereof, settled with or allotted to him under any Act contained in schedule 1 to aforesaid Act by issuance of any settlement document/*parcha* by a competent authority
- b) Restoration of possession of settled / allotted land in favor of legally entitled



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settle/ allottee or his successors / heirs, upon adjudication of unauthorised and unlawful dispossession;

- c) Threatened dispossession of a legally entitled settlee/allottee
- d) Any of the matters enumerated in (a) and (c) above appertaining to raiyati land
- e) Partition of land holding
- f) Correction of entry made in record of rights including map/survey map
- g) Declaration of the right of person
- h) Boundary dispute
- i) Construction of unauthorized structure

The Deputy Commissioner Land Revenue is required to dispose of all proceeding under the Act summarily in accordance with the provisions of this Act

As per the aforementioned Act “*Notwithstanding any contained in any provision in any law, for the time being in force, in all cases of civil nature, concerning a land or a portion thereof and in which one of the parties to the case is an alotee or settlee under sec.2 of the Act , the state shall be a necessary party*”

The DCLR has been required to dispose the cases in a maximum period of 3 years.

The appellate authority is Divisional Commissioner; the collector is empowered to exercise superintendence, supervision and control over the function of the DCLR

2) The Bihar Special Survey and Settlement Act 2011, Rules 2012

The Act tends to squeeze the long drawn out process of survey and settlement without sacrificing quality, transparency and grievance redressal. Maps are to be prepared by adopting modern technology, technical rule also have been formulated in Bihar to take care of technical aspects

- 3) Section 42, 64, and 69 of the SPT Act prohibit all transfer. The Govt. of Jharkhand may reconsider deletion of third proviso which allows adverse possession right for the transferees



SECTION 9.2: DIMENSION ANALYSIS

LGI: 8.1 Assignment of responsibility: responsibility for conflict management at different levels is clearly assigned, in line with actual practice, relevant bodies are competent in applicable legal matters, and decisions can be appealed against.

8	1	1	<p>There is clear assignment of responsibility for conflict resolution.</p> <p>A: There are no parallel avenues for conflict resolution or, if parallel avenues exist, responsibilities are clearly assigned and widely known and explicit rules for shifting from one to the other are in place to minimize the scope for forum shopping.</p> <p>B: There are parallel avenues for dispute resolution but cases cannot be pursued in parallel through different channels and evidence and rulings may be shared between institutions so as to minimize the scope for forum shopping.</p> <p>C: There are parallel avenues for dispute resolution and cases can be pursued in parallel through different channels but sharing of evidence and rulings may occur on an ad-hoc basis.</p> <p>D: There are parallel avenues for dispute resolution and cases can be pursued in parallel through different channels and there is no sharing of information.</p>
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A

Comments



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The word parallel responsibility leads nowhere because in a given situation there is an official forum and appellate or revisional forum. There cannot be any cross or overlapping of jurisdiction.

In survey and settlement *badar* (mistakes) and *Tenezas* (disputes) are raised at *Khanapoori* level and are resolved at the level of the Assistant Settlement officer /or *Kanoongo*. There are no appeals against these decisions. Objections are raised and disposed of in the camp itself. Appeals and revision lies against draft and revisional entries made in draft publication of ROR. There is no uniform mechanism or system of resolving the conflict or dispute. In mutation there is a fixed appellate and revisional jurisdiction. In ceiling cases there is an appellate and revisional jurisdiction.

Here there is clear assignment of responsibilities for conflict resolution nevertheless there are no parallel avenues or dispersal of responsibilities as delineated in dimension1. The very meaning of A,B,C,D has nowhere been clarified as far as sharing of information and court ruling is concerned, everything is on record and various quasi-judicious forums are independently free to refer to the case law as and when necessary.



8	1	2
<p>Conflict resolution mechanisms are accessible to the public.</p> <p>A: Institutions for providing a first instance of conflict resolution are accessible at the local level in the majority of communities.</p> <p>B: Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities but where these are not available informal institutions perform this function in a way that is locally recognized.</p> <p>C: Institutions for providing a first instance of conflict resolution are accessible at the local level in less than half of communities, and where these are not available informal institutions do not exist or cannot perform this function in a way that is locally recognized.</p> <p>D: Less than a quarter of communities have institutions formally empowered to resolve conflicts and a variety of informal institutions may be available in the rest.</p>		

A

Comments:

Institutions for conflict resolutions are in place at various level of the administrative hierarchy for example cases pertaining to schedule Area in Jharkhand are adjudicated in Schedule Area Regulation (SAR) Court as per S. 71(A) of CNT Act 1908. The ambit of the word “transfer” has been enlarged already through SAR 1969 and it is the duty of the SAR Courts to entertain and adjudicate cases with regard to transfer of the land belonging to member of schedule tribe. Section 46 of CNT Act provides that Deputy Commissioner shall be a necessary party in all cases of suits of civil nature in which one of the parties to the suit is a member of ST communities. This provides lots of protective cover to the members of ST. However, the SAR Court is yet to be assumed with power of execution which ought to have



been there as a logical corollary to their decrees and orders. The Government should make necessary provisions in this regard otherwise orders passed by SAR will remain on paper only.

SPT Act also provides for protection of rights of tribal *raiylats* vide section 20(5) of the ACT. Section 71(A) of CNT Act and section 20(5) of SPT Act are *ad verbatim* the same as they are drawn from SAR 1969.

Common drawbacks of the aforesaid provision is that courts concerned do not have power of execution and further there are three provisos to the main body of the amending law which sap the very essence of amendments and runs at cross purposes from the main body of the amending law.

A scope for regularising transfer has been provided for aforesaid proviso and the transferor is obliged to pay to the transferee the market value of the land alienated, whereas the main body of the law talks about *ad infinitum* /initiation of cases either *suo motto* or on application; as well as restoration of alienated land without compensation.

What we mean to say in the foregoing paragraph is that despite conflict /dispute resolution forums being in place; delivery of equitable justice will remain a far cry so long as the loopholes in the main body of law are allowed to persist. The fact remains that no quasi individual forums can go beyond law if law itself is weak, justice too cannot touch ideal standard.



8 1 3

Mutually accepted agreements reached through informal dispute resolution systems are encouraged.

A: There is a local, informal dispute resolution system that resolves a significant number of conflicts in an effective and equitable manner and which is recognized in the formal judicial or administrative dispute resolution system.

B: There is a local, informal dispute resolution system that resolves a significant number of conflicts in an effective and equitable manner but which is not recognized in the formal judicial or administrative dispute resolution system.

C: There is a local, informal dispute resolution system that makes decisions that are not always equitable but this system is recognized in the formal judicial or administrative dispute resolution system.

D: There is no effective informal or local dispute resolution system in place that can resolve a significant number of land related disputes effectively.

C

Comments:

Lok Adalat provide informal forum for conflict resolution. However there is no land related feedback available readily. Hence it is difficult to gauge the specific contributions made by the Lok Adalat system. It is significant to point out here land disputes may be resolved amicably between two contesting parties provided they agree on error of fact and concede the legitimate claims laid. Nevertheless the complicated cases of civil law and revenue laws do occur regularly and at competent forum where evidence could be adduced and examined systematically. Hence informal channels are neither approached by contestants, bent upon to continuing land did not relate litigations nor do such forums possess competence.

Here it will be pertinent to point Bihar mode of land dispute resolution in which the competent authority is vested with the power of civil court and is obliged to dispose of cases



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within 90 days of filing presents a unique example of ADR (Alternate Dispute Redressal). Though formally structured it is quite distant from civil court processes, which are prohibitively expensive and time taking. Furthermore D. C. L. R. is a competent officer with long experience in revenue laws. Hence people rely on this institution for application of mind and quantitative disposal of cases. Other ADR forums like Lok Adalat are yet to show up on the land dispute front.

8	1	4	There is an accessible, affordable and timely process for appealing disputed rulings.
			<p>A: A process exists to appeal rulings on land cases at reasonable cost with disputes resolved in a timely manner.</p> <p>B: A process exists to appeal rulings on land cases at high cost with disputes resolved in a timely manner.</p> <p>C: A process exists to appeal rulings on land cases at high cost and the process takes a long time/ the costs are low but the process takes a long time.</p> <p>D: A process does not exist to appeal rulings on land cases.</p>

C

Comments:

There are diverse appeal forums in diverse laws. With regard to dispute pertaining to a Government land, ceiling surplus land, ceiling procedure itself mutations, encroachments, survey and settlement consolidation land acquisition , tribal land alienation and other facets of land administration, there is a clear cut hierarchy of court in laws concerned. The quasi judicial forums of land dispute administration are affordable however one cannot vouch safe for expeditious disposal of cases because of adjournment taken either of the parties for adducing evidence or on miscellaneous grounds.



Apart from Revenue court land dispute can also be taken to a competent civil court as well where the disputing parties have to bear much more cost and the gestation period is also large because of various reasons.

LGI: 8.2 *The share of land affected by pending conflicts is low and decreasing.*

8	2	1	Land disputes constitute a small proportion of cases in the formal legal system.
			A: Land disputes in the formal court system are less than 10% of the total court cases.
			B: Land disputes in the formal court system are between 10% and 30% of the total court cases.
			C: Land disputes in the formal court system are between 30% and 50% of the total court cases.
			D: Land disputes in the formal court system are more than 50% of the total court cases.

B

Comments:

Following data shows the list of pending cases before High Court of Jharkhand and civil court.

Table: 9.1 Pending cases in the 2nd quarter of the year 2013, ending as on 30th June, 2013

Court	Total Number of Pending cases	Civil Cases	Criminal Cases
Jharkhand High Court	68,495	35375	33120

Source: Jharkhand High Court



Table: 9.2: District and Subordinate Courts of Jharkhand

Year	Total Number Pendency	Civil	Criminal
2009	2,27,296	47,884	2,25,412
2010	2,92,592	51,976	2,40,616
2011	2,92,215	54,814	2,37,401
2012	2,99,265	64,216	2,35,049
2nd Qtr' 2013	299249	64816	234433

Source: Jharkhand High Court

It is difficult to make any prediction with certainty the total number of land related cases. There are no readymade data available on land related matter. Land related matter could come in many different ways before a court. Some may have a direct relation with land, like cases challenging land acquisition proceeding, or title suit with respect to land, but land could also be a subject matter of partition suits, or could be a subject matter in a probate proceeding. Some criminal cases may also be related to land, like criminal trespassing, cheating, and forgery of land documents. For the purpose of this study if we only take cases of civil nature, total number of civil cases pending before Jharkhand High court as on 31/12/2013 is 37,962. Nature wise categorizations of these pending cases are as follows.



Table: 9.3: Nature wise categorization of pending cases in the civil court

Cases Type	No. of Cases Pending
First Appeal	1912
Misc. Appeal	1590
LPA	934
Tax Cases	23
Civil Revision	141
Second Appeal	2536
MJC	24
Civil Review	379
Civil Reference	2
Election Petition	4
CWJC	345
Test Cases	1
Company Appeal	4
Company Petition	28
Title Suit	2
Compensation Appeal	11
Request Case	1
Company Appeal (SJ)	4
Tax Appeal	269
Case Type	No. of Cases Pending
Writ Petition	26058
Cross Objection	58
Civil Contempt	2129
Civil Restoration	1189
LET. Administration	1
Prob. Case	3
ARB. Appeal	119
Civil Trans	73
Appeal Case (DB)	6
Appeal Cases (SJ)	75
ARB. Application	44

Source: Jharkhand High court



As per the information received from the office of Joint Registrar (Administration) out of these 37692 civil cases pending before High Court, the number of land related cases are 3760. That's 8%. If we include cases at Trial Court level then it could be said that around 30 % of the cases are land related.

8	2	2	Conflicts in the formal system are resolved in a timely manner.
			A: A decision in a land-related conflict is reached in the first instance court within 6 months for more than 90% of cases.
			B: A decision in a land-related conflict is reached in the first instance court within 1 year for 90% of cases.
			C: A decision in a land-related conflict is reached in the first instance court within 18 months for 90% of cases.
			D: A decision in a land-related conflict is reached in the first instance court within 2 year or more for 90% of cases.

D

Comments:

No readymade data with respect to land related matter in court of first instance is available to make any concrete ranking but looking the sheer number of pendency a consensus ranking was reached in panel discussion that a decision in a land-related conflict is reached in the first instance court within 2 year or more for 90% of cases.



8	2	3	There are few long-standing (> 5 years) land conflicts.
			A: The share of long-standing land conflicts is less than 5% of the total pending land dispute court cases.
			B: The share of long-standing land conflicts is between 5% and 10% of the total pending land dispute court cases.
			C: The share of long-standing land conflicts is between 10% and 20% of the total pending land dispute court cases.
			D: The share of long-standing land conflicts is greater than 20% of the total pending land dispute court cases.

D

Comments

As per the information received from the office of Joint Registrar (Administration) out of 37692 civil cases pending before High Court, the number of land related cases are 3760. Out of these 3760 cases, 2160 cases are pending for more five years.



CHAPTER 10

Institutional Arrangements & Policies

SECTION 10.1: BACK GROUND

The Regulation and Management of land sector is based on a sound institutional framework. The word ‘institution’ carries with it the legacy of the past to a certain modicum and its break with the past to address new demands and challenges with lapse of time. While some new institutions may come up, the continuing legacy of institutions rooted in the past gets a face lift. The legal institutions provide the basis for running a system. In revenue parlance a law essentially lays down the inter relationship between the Government and the citizen and rights and obligations *interse*. During the colonial era, land revenue formed the basis for running the administration, for collection of revenue purposes a whole class of intermediaries was created to run the revenue administration. The intermediary stood not only between the Government and the *raiyyat* (individual cultivator), he was also almost the proxy of the Government in certain matters. He was also the custodian of the Government land and was empowered to settle the same with private persons. He could resettle land in cases of surrender, abandonment of heirless demises. These institutions fell in disrepute for a variety of reasons including exorbitant rents assessed and collected so much so that during freedom movement itself it was avowed aim of many political groups to abolish *Zamindari* soon after independence. The Bihar Land Reforms Act 1950 (covering undivided Bihar) aimed at *Zamindari* abolition.

After independence, the posts of circle officer, circle inspectors and *Halka Karmacharies* were created with delineated responsibilities. The Circle Offices reported to D.C.L.R. (Deputy Collector Land Reforms), DCLR reported to Additional Collector, Additional Collector reported to Collector and Collector reported to Divisional Commissioner and Government.



On the survey side, there was A.S.O.s at the camp level reporting to the Charge Officers/Settlement Officers. Settlement Officers reported to Director Land Record and Surveys.

The broad parameters of institutional strength lie in the capacity of the institution to take the load of assigned tasks, manpower development, financial provisions, and involvement of user groups in the decision making process, efficacy of delivery systems, channels of outreach and effectiveness of monitoring, evaluation and inspections. We will examine these parameters of institutional strengths one by one in the context of situation pertaining to Jharkhand.

SECTION 10.1.1: CAPABILITY OF THE INSTITUTION TO TAKE THE LOAD OF ASSIGNED TASKS

Capability of the institution to take the load of assigned tasks is a value laden parameter. The question is also, which task and by what strategy? In Jharkhand like anywhere else state policy is embodied in a given set of laws, executive instructions, regulations and policy pronouncements.

Tenancy laws have their roots in the tribal tenancy history of Chotanagpur and Santhal Pargana regions; they embody customs, traditions and usages as well to some extent. They further represent the historical background to Government efforts to safeguard to tribal interest in land and to some extent in forest. The Chotanagpur Tenancy Act is dated 1908 and deals with scheduled and non-scheduled areas in Jharkhand. Distinct provisions and yet common to certain extent have been made in regulating the incidence of tenancy in both the areas. The Scheduled Area Regulation 1969 was passed making a special provision with regard to tribal land alienation and restoration of land in Chotanagpur and Santhal Pargana Regions (Now in Jharkhand). Section 71(A) was added to the CNT Act and a new Sub Section 5 was added to Section 20 of the SPT Act. The main text of the amending Act states that if at any time it comes to the notice of the Deputy Commissioner that a land belonging to a member of the scheduled tribe has been transferred in contravention of the provision of the Act, the Deputy Commissioner either *suo motto* or on an application proceed to hold an enquiry and if the transfer is found to be illegal, shall annul the transfer and order for the restoration of the transferred land to the transferor without payment of compensation to the transferee. The amending Act broadened the definition of transfer by including in it transfers



made by force, fraud and forgery, collusive suits, surrender and settlements forming part of the same transaction. Nothing can be more ideal than this because the starting words of the amending Act, viz., “if at any time it comes to the notice of the Deputy Commissioner...” removes time bar. Nonetheless, three provisos to the amending Acts sap the very essence of the amending Act. The first two provisos tend to regularise pre-1969 transfers if the transferee has raised a substantial structure (defined valued at Rs.10, 000/-) over the transferred land. The third proviso acknowledges rights accruing to the transferee if his possession is more than 30 years. In that case the tribal transferor in order to get his land back shall have to pay compensation to the transferee. Under Section 46 of the CNT Act the time bar is kept at 12 years. Under Section 46 of the CNT Act, transfers in non-scheduled areas have been dealt with. A member of the schedule tribe may transfer his land to another member of the schedule tribe with the prior permission of the Deputy Commissioner. The beauty of Section 46 lies in the fact that in all suits of a civil nature in which one of the parties to the dispute is a member of the schedule tribes, the Deputy Commissioner shall become a necessary party. It could be a matter of legal finesse whether the adverse possession clause under the law of limitation as incorporated in the third provision to Section 71(A) through Bihar Schedule Area Regularization Act 1969, could as well be applicable to *Bhunihari* and *Mundari Khuntkattidari* tenures. The regulation failed to amend Section 48 and Section 242 of the CNT Act which deal with *Bhunihari* and *Mundari Khuntkattidari* tenures respectively; as per the provisions of the sections, no occupancy rights can be created in favour of a transferee in this tenancy and hence the amending Act of 1969 and on the one hand Section 48 and 242 of the CNT Act run at cross purposes. Similarly there is manifest incongruence in the transfer provisions enshrined in the Santhal Pargana Tenancy (Supplementary Provision) Act 1949, preceded by numerous Regulation passed in the colonial era, the provisos to Subsection 5 of Section 20 puts a time bar of 30 years under the Law of Limitations.

Nevertheless, the continuing primordial provisions contain Section 42, Section 64 and Section 69 of the SPT Act; continue to banish time bar altogether with respect to land transferred in Santhal Pargana. Judged in this context law appears to run at cross purposes in both the regions of Jharkhand and the Government of Jharkhand is well advised to set things right in proper perspective. Formally and unequivocally, permissions have been the bane of



the Tribal Tenancy Laws in many parts of the country, in the Fifth Schedule Areas. There is likelihood of the permission clause being misused by bureaucracy to subserve vested interests. Permission clause existed in SPT Act many years ago and was subsequently deleted. Section 49 under the CNT Act as it originally stood provided for Deputy Commissioner permitting transfer for educational, religious, and charitable and for any other public purpose notified as such by the State Government, even though, housing had not been notified as public purposes, permission was granted for housing purposes. Upon an enquiry report submitted by Dr. C. Ashokvardhan nearly 20 years ago Tribes Advisory Council met in Patna and recommended an amendment in the original Section 49 of the CNT Act. After amendment such permission can be granted only for industrial and mining purposes.

Another outstanding provision under Section 72 of the original CNT Act relating to surrender lies in the fact that previous sanction of Deputy Commissioner in writing was made mandatory in 1947, for a member of the Schedule Tribe to surrender his land to the landlord. This went a long way in arresting the trend of fake and manipulated surrenders managed by vested interest. All the SDMs and all the DCLRs in all the districts in Jharkhand has been vested with the power of adjudicating land alienation cases in scheduled and non scheduled areas of Jharkhand. However, the incidence of collusive decrees cannot be ruled out altogether, for that it is to be seen if such courts have been vested with the power of execution as per the provisions of the CPC.

Santhal Pargana is, in a way, unique as it falls in *damin-e-koh*. There was Hull Rebellion in 1855 which alarmed the British Government to bring about tenancy reforms and the protective legislation. Surveys and settlements were conducted by Mr. Brown Wood, Mr. Mc. Pherson and Mr. Gantzers in the Santhal Pargana in the late 19th Century. There was huge influx of non-tribals in Santhal Pargana who in connivance with this survey and settlement machineries in 1925 got their names entered in the RORs prepared by Mr. F. Gantzers. Provisions in tenancy Regulations with regard to rent eviction, surrenders, abandonments and original *rai-yats* dying intestate or heirless were misused. Nonetheless, possession continues to remain with the Santhals. The outsiders confine themselves to peripheral *bazaar* areas doing a small trade and business and money lending. It is a case of historic injustice and continuing wrong.



Although tribal women are deprived of any property rights, Subsections (i-iv) of Section 20 incidentally deal with property rights of women. As per Section 20 of the SPT Act “No *raiya*” can transfer his land. This means that even a non-tribal cannot transfer his land. However, a *raiya* can transfer his land to the extent it is recorded in the record of rights. Secondly, *raiya* can transfer his land to his sister, *garjamai*, widowed mother and to his wife for her future maintenance in the eventuality of his death.

In a nutshell, the legal mechanism in Jharkhand appears to be sound but for the three provisos to section 71(A) of the CNT Act and Section 20(5) of the SPT Act. Otherwise it is basically a question of the bona fide of the adjudicating authority so much so that group rights which are common feature in the clans and tribes of the North-East in the Sixth Schedule areas are prevalent in Mundari Khuntkattidari tenancies in Chotanagpur. There are collective and community rights over forest land as well and even cases in which apportionment has been made among families of a Mundari Khuntkattidari tenancies, there is a similar *khata* with one plot no.(encompasses all the apportion subplots) is prepared in the name of clan.

SECTION 10.1.2: FINANCIAL PROVISIONS

Financial provision forms the mainstay of the institutional strength. There are resources of the state and the funds provided by Central Government. Funds of the State Government are mostly for the establishment purposes or raising infrastructure including building. It is to be seen whether staff requirement in Jharkhand from headquarter to bottom have been worked out to meet the targets in a time bound manner. How much is sanctioned strength, what are the vacancies and what concrete steps are being taken to fill up these vacancies. Ideally, if the whole state has to be covered by a special survey and settlement within 3-4 years in one go how will be the requirement of officers and staffs, whether budgetary provisions in phases are designed and made accordingly. What is the present physical status of office buildings and residential quarters at the *anchal* level? What is the current status of Revenue *Kacharry* buildings? Whether there is any scheme for renovating such buildings dilapidated in course of time? Whether there is any training and manpower budget to meet massive training requirement at all levels? Whether the training monoliths at state headquarter has broken itself in divisional /district chapters to cater to the training/refresher training of *Halka Karmacharies* (CIES/Cos/DCLRs and Additional Collectors). The fact remains that despite



the best of the laws and best of the policy pronouncements if delivery outlets are weak, truncated and emaciated at the cutting edge level all the ideals will end up in a fiasco. We also feel that apart from the training in revenue laws our officers and staff should also have some grounding in personal/succession laws. Survey and settlement machinery while preparing RORs has invariably to deal with the devolution of coparcenary interest. Finally, with the steady introduction of modern technology a demonstrative training with modern gazettes like ETS/DGPS/Aerial photogrammetric should be made compulsory for trainees as well as for TOT (Training of Trainers). Jharkhand seems to go a long way for all these fronts including construction of data centers under NLRMP.

SECTION 10.1.3: PARTICIPATION IN DECISION MAKING PROCESS

Participation in decision making process is yet another pillar of institutional strength. This element seems to be wanting in Jharkhand. Old tenancy laws and revenue laws in general hardly had any prior consent or prior participation element. There are no new laws ever since, so we can discuss this factor with respect to Jharkhand in a different route. We can ask the Government functionaries whether a feedback on implementation either from the implementing agencies or from the user group has any way moulded formulation of policies or initiation of legislative innovations. A comprehensive rehabilitation and resettlement policy has been worked out here which is now to be matched with the new central law on the subject. Whether the feedback received from field officers at district/ divisional and state headquarter levels had any impact on policy formulation is yet to be assessed. Whether information gathered during field visits and inspections by senior bureaucrats had any bearings on policy formulation is yet to be assessed. To what extent field inspections and visits result in making a dent on nonperforming employees and whether the compliance reports received from them is actually substantive or perfunctory is to be assessed. Based by the inspecting officers themselves, it is a subject matter of a series of self evaluation for which enormous time and field visits will be required, something which cannot be the case with these groups.

We must acknowledge the importance of removal of overlaps institutional setup. Such overlap tends to create confusion, chaos and adhocism. There is no such manifest overlap in Jharkhand. The Revenue Department is the nodal department for public land administration



and its management, responsible for conducting survey and settlements of private and public land periodically. The Department is also responsible for public land settlement with eligible persons through leases of *Khas Mahal* land falling in its direct management in the town *Khas Mahal* areas as well as for land acquisition and intradepartmental transfers/policy formulation/legislation. There is no vertical or horizontal overlap and the post independence tradition of uniformity in command hierarchy and quasi judicial jurisdiction under various revenue related laws remains intact.

When all said, we venture to suggest that it is not as much ‘overlap’ that should demand our attention rather it is the quality and pace of administration’s effort and output that should be the criteria to evaluate administration at the head quarter level and its field outlets.

SECTION 10.2: DIMENSION ANALYSIS

LGI: 9.1 Clarity of mandates and practice: institutional mandates concerning the regulation and management of the land sector are clearly defined, duplication of responsibilities is avoided and information is shared as needed.

9	1	1	Land policy formulation, implementation and arbitration are separated to avoid conflict of interest.
			<p>A: In situations that can entail conflicts of interest or are sensitive to abuse (e.g. transfers of land rights) there is a clear separation in the roles of policy formulation, implementation and arbitration.</p> <p>B: In situations that can entail conflicts of interest or are sensitive to abuse (e.g. transfers of land rights) there is some separation in the roles of policy formulation, implementation and arbitration.</p> <p>C: In situations that can entail conflicts of interest or are sensitive to abuse (e.g. transfers of land rights) there is some separation in the roles of policy formulation, implementation and arbitration.</p> <p>D: In situations that can entail conflicts of interest or are sensitive to abuse (e.g. transfers of land rights) there is no clear separation in the</p>



roles of policy formulation, implementation and arbitration.

A

Comment

There is no ambiguity of mandates and practice in Jharkhand, in fact the Government of Jharkhand came into existence in November, 2000. It carries the legacy of laws, rules and regulation formulated in undivided Bihar including the legacy of laws formulated in the colonial era. After bifurcation, some of the laws including the Ceiling Law and the Bhudan Law were adopted in this newly formed state, meaning hereby that many laws are more or less common. Law is the power of administration. It sets rights and obligations on the part of the state on the one hand and the citizen on the other. So much so that executive instructions framed in pursuance of Government policies and programmes also remain common. It can be safely surmised that legal mandate is clear including rights and obligations of Government and citizen inter-se and there is no ambiguity in role description of functionaries acting under various enabling provisions of various laws. There is a clear cut distinction between the collector of the district and the collector under the Act, e.g., under the Ceiling Law, the Bihar Privileged Persons Homestead Tenancy Act and Public Land Encroachment Act and in the Bhoodan Yogyia Act, the role of the Bhudan Yagyia Committee is clearly defined. The committee is responsible for getting donated lands verified /confirmed through the Deputy Collector Land Reforms and distributing *parchas* after identifying beneficiaries. The circle officer is responsible to carry out mutations and take necessary steps in cases of disposition. Government land assigned to eligible persons is heritable but not transferable. If transferred, the same returns back to the Government and transfer deeds are set aside. Similarly, if Bhudan Land is transferred, the transfer is declared ipso facto null and void and the land concerned returns back to the Bhudan Yagyia Committee for re-allotment.

It is a fact of law and practice that, in all the Acts dealing with revenue administration, the original Appellate and revisional forums are clearly demarcated and any overlap is just inconceivable, otherwise, the entire scheme of law will go haywire.



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Similarly the procedure for acting against dispossession of Government land allottees, Bhudan land allottees and ceiling land allottees is embodied in laws concerned and in executive instruction issued from time to time.

A distinctive feature of tenancy laws in undivided Bihar lies in the fact that even before bifurcation three distinctive Tenancy Laws governed the relationship between the Government and the tenants inter se. The Chotanagpur Tenancy Act 1908 dealt with the Chotanagpur region and the Santhal Pargana Tenancy (Supplementary Provisions) Act 1949 covered the Santhal Pargana region (Both are in Jharkhand now). The rest of Bihar was and is governed by the Bihar Tenancy Act 1885. Thus territorially the Tenancy Laws are distinct. There is no occasion for judicial conflict among competent authorities, various customs, usages special to the tribal main land in Jharkhand and reflect a customary reality which in no way clashes with ground realities continuing till date. For example the institutions of *Pradhans* in Santhal Pargana, *Manki Mundas* and *Mundari Khuntkatidari* rights in Chotanagpur, while there is no notion of tribal women's partaking of share in family property certain exceptions are to be found in the Santal Pargana where a tribal *raiyyat* can gift land to his widowed sister or to his *Gharjamai* or his widowed mother or to his wife for her future provisions in the event of his death. No *raiyyat*, can transfer his land in Santhal Pargana save and except the extent he can transfer as a specifically provided in the record of rights. All these customary practices have been embodied in the SPT Act 1949 preceded by numerous Regulations.

What we are driving at is that when we talk about jurisdictional conflicts between institutions assigned with roles and responsibilities, one should also keep in mind the non-institutional universe that is the roles and responsibilities of individuals towards each other and unto themselves where there should be scope of ambiguity. It is here that customs creep in and act as a cementing force.

As far as conflict resolution is concerned survey and settlements lay down the modality for preparation for records of rights. Like anywhere else, surveys and settlements in Jharkhand are to be taken too. An elaborate procedure is to be taken too. An elaborate procedure for conflict resolution at various stages, here also original Appellate and revisional authorities are clearly delineated.



9	1	2	Responsibilities of the ministries and agencies dealing with land do not overlap (horizontal overlap).
			<p>A: The mandated responsibilities exercised by the authorities dealing with land governance are non-overlapping with those of other land sector agencies.</p> <p>B: The mandated responsibilities of the various authorities dealing with land administration issues are defined with a limited amount of overlap with those of other land sector agencies but there are few problems.</p> <p>C: The mandated responsibilities of the various authorities dealing with land administration issues are defined but institutional overlap with those of other land sector agencies and inconsistency is a problem.</p> <p>D: The mandated responsibilities of the various authorities dealing with land administration are defined poorly, if at all, and institutional overlap and inconsistency is a serious problem.</p>

A

Comments

Roles and responsibility of government departments and agencies dealing with land do not overlap or else there will be total chaos and adhocism. The Department of Revenue and Land Reforms at the headquarter level is responsible for policy formulation while down the line in the divisional and district hemisphere the responsibilities for various role takers are defined. For instance the land requisition records starts at the Anchal level move upto the Collector of the district finally send to the government for approval under Section 4 and 6 of the prevailing land acquisition law. The role of one functionary cannot be supplanted or usurped by some other functionary.

As per Rules of Executive Business, the Revenue and Land Reform Department is the nodal department for all. land related matters including land transfer, land settlement and leases as per the Town Khas Mahal Manual, all intra departmental land transfer are processed in the Revenue Department before the transfer proposal goes to the cabinet. Land acquired for



various requisitioning bodies lying underutilized or declared not to be put into use, revert back to the Revenue Department for making enquiries regarding an alternative use. Lands falling in the direct management of government are administered exclusively by the Revenue Department.

It is worthwhile pointing out here that public lands falling in municipal area are dealt with by Urban Development Department. The mandated responsibilities of various authorities dealing with land administration are enumerated under the Jharkhand Municipality Act 2011. The Khas Mahal lands which fall under the direct management of the government. They are leased out to private individuals on a 30 years renewable lease basis. Leases may be cancelled in case of violation of lease deed terms and condition and dereliction leases may be evicted as per the process of laws. Leases may be for residential and commercial purposes. In urban area such lands are managed by the Urban Development Department.

In rural areas *Gairmazrua aam* land are owned by the village community while *Gairmazrua khas* land falls under exclusive domain of the Revenue Department.

As is the fact elsewhere in the country, transferred lands belong to the department to which transferred. Acquired land belongs to the requisitional bodies.

9	1	3	Administrative (vertical) overlap is avoided.
			<p>A: Assignment of land-related responsibilities between the different levels of administration and government is clear and non-overlapping.</p> <p>B: Division of land-related responsibilities between the different levels of administration and government is clear with minor overlaps.</p> <p>C: Division of land-related responsibilities between the different levels of administration and government is characterized by large overlaps.</p> <p>D: Division of land-related responsibilities between the different levels of administration and government is unclear.</p>

A



Comments

As has been shown in passing in 9.1.2, there is no horizontal and vertical overlap in Jharkhand. Vertical overlap is inconceivable or else there will be total chaos and miscarriage of law and justice. The legal regime in Jharkhand draws clear dividing lines between the Department of Revenue on the one hand and line agencies on the other. While government in Revenue Department is primarily responsible for policy formulation and amendments in laws as per the need of the hour, the agencies responsible for implementation fall vertically down the line while there is always a scope for a feedback from below, it hardly amounts to replacement of roles. Policies may be guided by local contingencies but their formulation or legislation proper is the executive prerogative. Similarly while government functionaries may have the discretion to hold monitoring sessions with field functionary and to make field visits to check quality and pace of implementation, it is the field establishment which is responsible for putting forth the government decisions in practice. If a large number of ceiling related cases are pending in different courts of original and Appellate Jurisdiction in various forums, the executive wing at headquarter cannot assume the role and authority of quasi judicial court upon itself. Being the administrative department, the Revenue Department can only require various competitive authorities including Board of Revenue to expedite the disposal and clear backlog as soon as practicable in cases of gross irregularities or inordinate delay. The revenue department can seek report from the Divisional Commissioner/ Collector and initiate departmental proceedings against the officials concerned and make move as per law with regard to the cases disposed of in certain manner.

9	1	4	Land right and use information is shared by public bodies; key parts are regularly reported on and publicly accessible.
			A: Information related to rights in land is available to other institutions that need this information at reasonable cost and is readily accessible, largely due to the fact that land information is maintained in a uniform way.
			B: Information related to rights in land is available to interested institutions and although this information is available at reasonable cost,



it is not readily accessible as the information is not maintained in a uniform way.

C: Information related to rights in land is available to interested institutions but this information is not readily accessible or not available at a reasonable cost.

D: Information related to rights in land is not available to interested institutions as a matter of policy or practice.

A

Comments

Even though there are certain lacunae in the land right and use, sharing and accessibility, the response is marked as A, as B, C and D have a focus on non-accessibility, which is not the case. Data is accessible to all concerned including *raiya*s and user agencies and interested persons and institutions. The question in many parts of the country including Jharkhand and Bihar is not much of accessibility as of its being up to date and reliability of information. Updation through a regular procedure of original Appellate and revisional jurisdiction exercise of powers accords reliability to data people having a grudge against original entries move higher forums for redressal of their grievances and even after exhausting all channels in the revenue hierarchy somebody still nurture grievances, he is at a liberty to move civil court after records of right is finally published.

We are raising the fundamental concern about updation quality and objectivity of the data because users are primarily concerned with them but these focal themes are missing in the dimensions. No purpose is served even if there is accessibility to out of date data replete with aberration.

In the special context of Jharkhand it can be said with a lament that the pace of resurvey and settlement as per NRLMP guidelines is tardy. One never knows approximately by what point of time the exercise will be completed. Whether time logistics have been dully worked out, whether officers and staffs in position, whether resistance to revisional survey and settlement had been taken care of and road blocks removed. In a word whatever data is accessible in the



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context of land rights and use are not in tuned with up to date ground realities and though accessible in revenue offices hardly serve any purpose as they reflect cadastre survey situation or a situation pertaining to a long drawn out revisional survey, that to carried out quite a few decades ago. The similar dismal situation extends to computerization of land records taken up under the CLR scheme of the Government of India.

Regarding the data of land use there exist a chasm between entries in revenue records and situation obtaining on ground. There is wide spread encroachment of trust and managed lands. There are cases of lease deeds against directly managed public land under nomenclature of Khas Mahal which are not being renewed for decades together after they lapsed. There are cases of gross violation of lease deeds conditions and yet no punitive action has been initiated. Hence even though information in formal shape is available in the revenue records and accessible through proper channels the question is also one of the quality and reliability, upon which this dimension is silent.

A further aspect of accessibility of putting land data on website, which is required under the NRLMP. Here too Jharkhand lags behind but dimension uses the word “accessibility”-- it is not clear whether accessibility could be ensured only by the availability of information on khatihans maintained at the Anchal level or by putting the whole thing on website.

Similar is the sad tale of maps as the existing revenue map hardly reflects hereditary devaluation and land transfers through various modes. However, all maps are readily available to anybody interested on payment of requisite fees.

We are of the firm opinion that question under this dimension should be remodelled in the light of our observation made in foregoing response here.

9	1	5	Overlaps of rights (based on tenure typology) are minimal and do not cause friction or dispute.
			A: The issues identified in the tenure Legal framework and procedures for land-related matters (incl. renewable and subsoil resources) are fully consistent and a unified mechanism for complaint and grievance redress is available in case of overlap.



B: The Legal framework and procedures for land-related matters (incl. renewable and subsoil resources) are fully consistent but there may be differences in the way complaints and grievance redress are handled.

C: The Legal framework and procedures for land-related matters (incl. renewable and subsoil resources) deal with land-related matters very differently but have functioning mechanisms for redressing overlap in place.

D: The Legal framework and procedures for land-related matters (incl. renewable and subsoil resources) deal with land-related matters very differently and effective mechanisms for addressing overlap are not in place.

A

Comments

As far as rights based on tenure typology are concerned they are fully consistent and unified mechanism for taking care of complaints and grievances is in place. A mention here will be pertinent to the Schedule Area Regulation Act 1969 where upon Section 71 A was inserted in the CNT Act and Section 20(5) was inserted in SPT Act. These two amendment deal with tribal land alienation and restoration in schedule area of Jharkhand. There is no need to reiterate on the text of the Regulation and aforesaid amendment as they have already been discussed at length with reference to the dimension, it will suffice to point out that ideal provision for tribal land alienation and restoration do exist in Jharkhand. There are of course, provisos to the main text of the law. Pre 1969 transfer where the transferee has raised a substantial structure may be regularized. May be in the garb of this legal relief (since the Regulation came into existence only in 1969), vested interest in league with Revenue Court have got even post 1960 transfers regularized, but that is not the fault of law.

As far as courts for the enforcement of the Regulation are concerned in both the schedule and non-schedule areas of Jharkhand, SDM and DCLR have ex-officio been vested with powers of adjudication of alienation and restoration. Ranchi being a large district Additional



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Schedule Area Regulation has been sanctioned and is functional. The period of limitation in schedule area has been kept at 30 years while in non-schedule area is 12 years.

There are finer points of interpretation of law involved here to which one can only point out in passing. Time bar of 30 years as per 3rd proviso to section 20(5) of SPT Act must construed to be infructuous since certain primordial provision like once contained in Section 42, 64 and 69 under the SPT Act preclude time bar altogether. Similarly Section 242 of the CNT Act and Section 48 of CNT Act preclude time bar in the context of Mundari Khuntkattidari tenancy and Bhuinhari tenancy respectively. However, these are issues of legal interpretations and courts ruling prima facie, legal framework and procedure for land related matter are fully consistent and a unified mechanism for complaint and grievance redressal is available in case of overlap in Jharkhand.

In the backdrop of the aforesaid it is but a logical corollary to grade this dimension under marking A.

9	1	6	Ambiguity in institutional mandates (based on institutional map) does not cause problems.
A: The processes applied by public institutions dealing with land are fully integrated and consistent.			
B: With minor exceptions, the processes applied by public institutions dealing with land are fully integrated and consistent.			
C: Different public institutions deal with land-related matters very differently but functioning mechanisms for coordination are in place and regularly used.			
D: Different public institutions deal with land-related matters very differently and effective mechanisms for coordination are not in place.			

A

Comments



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By and large the processes applied by public institutions dealing with land are fully integrated and consistent. As had been shown in practice, when it comes to intra departmental coordination quite often a firm equation point presents difficulties to arrive at, for instance, when it comes to the transfer of agricultural department's land for non agricultural but equally compelling public purpose, the agriculture department shows its reluctance to hand over its land being use as seed multiplication firm or the like. The State Government also have their priorities and declared stance with regard to agriculture department's land. Alternative sites are proposed. Many agricultural department farms, once upon a time away from the city, but with expansion of cities and overcrowding such farms are now surrounded by habitation. A prudent decision in such cases could be the shifting of the farm away from the present city by acquiring fresh lands but a firm decision lingers. Similar could be the case with animal husbandry and other sector specific lands. Here the policies are pronounced and clear, interdepartmental transfer processes are clear and yet conclusive decisions and consequential land acquisition processes take their own toll of time.

To corroborate further, the indecisiveness involved in land acquisition for irrigation purposes in on enormous scale. So much so that residential irrigation colonies came up on acquired lands which are now marooned and dilapidated. And yet the irrigation department official keep themselves glued to such lands and no initiatives is taken to allow its reversion to Revenue Department for resettlement with some other departments. Such paternalistic approach leads to either indecision or inordinate delay in inter departmental allocation of land.

Quite often, compensatory afforestation also raises issues like timely availability of compensatory lands in requisite quantity. Hundreds of acres of forest lands are often submerged in water in Mega Irrigation projects. Arranging huge quantum of alternative land is often problematic for revenue department.

In a word, while processes and procedures applied by public institution dealing with land are explicit, integrated and consistent, on the application side on either paternalism or difficulties in procuring alternatives compensatory land.



LGI: 9.2 Equity and non-discrimination in the decision-making process: policies are formulated in a broad public process, address equity, and implementation is meaningfully monitored.

9	2	1	<p>Land policies and regulations are developed in a participatory manner involving all relevant stakeholders.</p> <p>A: A comprehensive land policy exists or can be inferred by the existing legislation, and those affected by decisions were consulted beforehand and their feedback on the resulting policy is incorporated.</p> <p>B: A comprehensive land policy exists or can be inferred by the existing legislation, and sections of the community affected by these decisions are informed, but feedback is usually not sought or not used in making decisions</p> <p>C: Policy exists or can be inferred by the existing legislation but it is incomplete (some key aspects are missing or only covers part of the country such as only urban or only rural areas) and decisions that affect some sections of the community are made without prior consultation.</p> <p>D: No clear land policy exists or can be inferred by the existing legislation and land policy decisions are generally taken without consultation of those affected.</p>
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B

Comments

A major part of the existing legislation in Jharkhand especially with regard to tenancy is rooted in colonial era or in aftermath of independence. It is difficult to say at this stage of time whether such enactments or regulations were the product of a participatory process. In fact the very notion of participatory process is rather modern.

Another point to be noted in this regard is that every law addresses itself to the current need of the times and participation or no participation, it address issues of concern for both; the



government and citizens. Only a few bills are put in the public domain for eliciting public opinion. Only a few bills are recorded to a select committee for further investigation. Nevertheless it is the responsibility of the executive and legislators to formulate such laws that are relevant in a given context. Amendments are necessitated due to subsequent public reaction and constraints shortcoming surfacing during implementation. Public does have say on the implementation and feedbacks reaches the executive either through public statements or through resistance to implementation of the policy or the legislation. In many parts of the country land acquisition projects had to be scrapped due to public resistance and protest. In overall there are occasions of indirect public participation in formulating and implementing a policy.

Equity is an issue of value judgment, there could be variation in the approach to equity. For example 3-4 years ago ceiling law in Bihar was amended to provide reservation to 50% of the ceiling surplus land to the eligible categories from women. There was no pressure on the government in this regard and no participation of women's group but the government in its own wisdom decided like that. Similarly with regard to the house sight for *maha dalit* families, 100% of the purchased lands are to be purchased exclusively in the name of the women beneficiaries. This policy initiative came from the government alone.

There is definite tilt in favour of the schedule tribes *raiyyats* in the two tenancy laws in Jharkhand. This tilt is hardly inequitable as the tribals are a depressed lot. The sole aim of the tribal tenancy laws is to safeguard the interest of tribals. It is here, at the stage of law making and implementation that the question of inequity often creeps in. There are loopholes in laws which we can go against the safe guards given to the tribals, e.g. regularisation of tribal land transfers. Permission accorded by bureaucrats for such transfers, surrenders and abandonments have also been often misused misinterpreted to suit vested interest.

There are loopholes in laws which block equity, such loopholes have to be plugged to ensure equity in land administration.

As far as implementation and monitoring are concerned, they are on a back seat in Jharkhand. Neither the targets are achieved nor are the quality and speed ensured at various levels. This is a matter of grave concern as the situation gradually slips out of hands.



9	2	2	Land policies address equity and poverty reduction goals; progress towards these is publicly monitored.
			<p>A: Land policies incorporate clearly formulated equity and poverty objectives that are regularly and meaningfully monitored, and their impact on equity and poverty issues is compared to that of other policy instruments.</p> <p>B: Land policies incorporate clearly formulated equity and poverty objectives that are regularly and meaningfully monitored but their impact on equity and poverty issues is not compared to that of other policy instruments.</p> <p>C: Land policies incorporate some equity and poverty objectives but these are not regularly and meaningfully monitored.</p> <p>D: Equity and/or poverty issues are not considered by land policies.</p>

A

Comments

Government launched many programs and policy initiatives in the field of land administration after independence. Many reformative legislations like, Bihar Land Reforms Act 1950, Land Ceiling Act, Bhoodan Yagya Act were enacted for creating an equitable structure of land holding. Bihar Land Reforms Act abolished *zamindari* and other intermediary tenure holders and established a direct link between state and land holders. All public land and common land came under direct control of government. Ceiling Act set upper limit for agricultural land holding and ceiling surplus land came under direct under control of government. Bhoodan movement imitated a by a visionary leader Binoba Bhave, urged land holders to willingly surrender surplus land. All these surplus lands have been distributed among landless people belong to Schedule Tribes, Schedule Caste and other backward communities. The aim of these initiatives is to develop a more equitable pattern of land holding with an intention to bring down poverty.



The programs of land distribution are implemented through state administrative agencies. These programs are regularly monitored in monthly meeting of Anchal level officers at district headquarters, reports from grass roots are sought, similarly at state level monthly meetings of Additional Collectors are conducted and monthly report is prepared and submitted at state level.

Therefore it could be said that at institutional level, land policies incorporate clearly formulated equity and poverty objectives that are regularly and meaningfully monitored, so far their impact on the grass root is concerned; it has brought substantial degree of change in the poverty status of those who were beneficiary of such land distribution.

However it is recommended that there is a need to reinvigorate revenues law of Jharkhand. Much can be learnt from the neighbouring and parent state of Bihar where many new initiatives were launched in recent times..

9	2	3	Land policies address ecological and environmental goals; progress towards these is publicly monitored.
			<p>A: Land policies incorporate clearly formulated ecology and environmental sustainability objectives that are regularly and meaningfully monitored, and their impact is compared to that of other policy instruments.</p> <p>B: Land policies incorporate clearly formulated ecology and environmental sustainability objectives that are regularly and meaningfully monitored but their impact is not compared to that of other policy instruments.</p> <p>C: Land policies incorporate some ecology and environmental sustainability objectives but these are not regularly and meaningfully monitored.</p> <p>D: Ecology and environmental sustainability issues are not considered by land policies.</p>



D

Comments

As mentioned in the foregoing, land laws and policies in Jharkhand badly need a re-touch up in the context of current realities. Jharkhand is replete with forest and minerals wealth which impinge on ecology and environment to what extent revenue laws could address to these concerns is a subject to be probed and debated at competent levels in the Government what should be the coordination points and interface with the forest and mine departments is to be decided at the highest level in the Government. Chief Secretary Jharkhand is well advised to look into the various aspects of the matter. It is this in this context that Forest Rights Act and PESA assume greater relevance at the moment land policies hardly addressed these issues.

9	2	4	The implementation of land policy is costed, matched with benefits and adequately resourced.
			A: Implementation of land policy is costed, expected benefits identified and compared to cost, and there are a sufficient budget, resources and institutional capacity for implementation.
			B: The implementation of land policy is costed, though not necessarily based on a comparison of expected benefits and costs. There is an adequate budget, resources and institutional capacity.
			C: The implementation of land policy is not fully costed and/or to implement the policy there are serious inadequacies in at least one area of budget, resources or institutional capacity.
			D: The implementation of land policy is not costed and there is inadequate budget, resources and capacity to implement the land policy.

C



Comments

Budget provisions and allocation are annually made under appropriate heads of Revenue Department. A major partition of the budget is the establishment budget be it regular revenue bureaucracy from *Halka Karmchari* to DCLR level or Survey and Settlement establishment budget. The question remains the quantity & quality of output. Returns on the survey & settlement front are far from satisfactory while government of India funds in centrally sponsored schemes remains underutilized. There is also issue pertaining to capacity of officers & staffs to cope with obligations and responsibilities. There are no refresher courses organized periodically for various rungs of revenue bureaucracy top to the bottom. Costs are not matched with benefits and no scales have been derived to measure investment returns. For want of regular institutional training, institutional capacity has dwindled.

Following the Bihar pattern there is a need for opening chapters of ATI in divisional/district headquarter with sufficient staff and training materials have to be procured and training module have to be developed.

9	2	5	There is regular and public reporting indicating progress in policy implementation.
			A: Formal land institutions report on land policy implementation in a regular, meaningful, and comprehensive way with reports being publicly accessible.
			B: Formal land institutions report on land policy implementation in a regular and meaningful way but reports are not made public.
			C: Formal land institutions report on land policy implementation but in a way that does not allow meaningful tracking of progress across different areas or in a sporadic way.
			D: Formal land institutions report on policy implementation only in exceptional circumstances or not at all.

D



Comments

Reports are received from Circle level to district level and again from district level to divisional and State level in fixed proforma. Meetings of Additional Collectors is convened periodically at state headquarter. Nevertheless, non performing areas and officers are not changed properly and rigorously. Inspections of local offices go by default. Field visits are not properly planned and are basically ad-hoc. There is no serious follow up of field visits, inspection and review meeting. Benchmarks for performance have not been laid down. Tragically enough no serious effort is being made to arrest the trend of laissez faire. Thus even though reports are received on policy implementation and reviews take place there is no diligent pursued to logical ends.

9	2	6	Land policies help to improve land use by low-income groups and those who experienced injustice.
			A: Policy is in place to improve access to and productive use of assets by poor and marginalized groups, and is applied in practice and is effective
			B: Policy is in place to improve access to and productive use of assets by poor and marginalized groups, is applied in practice, but is not effective
			C: Policy is in place to improve access to and productive use of assets by poor and marginalized groups but is not enforced
			D: No policy in place to improve access to and productive use of assets by poor and marginalized groups.

B

Comments

There are Acts and Policies in Jharkhand which aimed at improving access to assets by poor and marginalized group. However much remains to be done in making the best out of these policies. Here, there has to be a convergence of Revenue, Agriculture, Animal Husbandry,



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Minor Irrigation, Tribal Welfare and other related departments. It is difficult to encapsulate policies and programs of myriad departments at one place but here the dimension is multi dimensional. To what extent the policies aim at optimal land use by low income groups and illiterate people needs to be probed by an empowered committee. One cannot make a hunch but the Revenue, FRA and PESA have so far registered minimal success in implementation, while no new revenue laws are in place. Not much has been done to implement FRA and PESA in right earnest. People's control over natural resources is a far cry and all out efforts are required to bridge the gaps. The pivotal role of access to land, water and forest in poverty alleviation has to be understood and backward and forward linkages are to be created to achieve the desired results.

9	2	7	Land policies proactively and effectively reduce future disaster risk.
			A: Policy is in place to prevent settlement in high risks areas which is enforced, and translates anticipated future risks into land use planning that is enforced.
			B: Policy is in place to prevent settlement in high risks areas which is enforced, and translates anticipated future risks into land use planning but which is not enforced.
			C: Policy is in place to prevent settlement in high risks areas but which is not enforced.
			D: No policy is in place to prevent settlement in high risks areas or anticipated future risks.

D

Comments

Jharkhand does not have any land policies to effectively reduce disaster risk. The two tenancy Acts have tried to identify, define and map land for public utilities such as *gochar* land, burial land, *sarna* land and forest grooves for religious and community purposes but no land policies protectively and effectively have been framed to prevent settlement in high risk areas or anticipated future risks. To tackle post disaster rehabilitation places such as schools,



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colleges, hospitals have been identified as a part of disaster management but these arrangements at the district-state capital levels do not form the part of state land policies.



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CHAPTER 11

Strength, Best Practices and Weaknesses

Some of the best practices and weaknesses emerging from LGAF study for the state of Jharkhand are summarized here.



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Panel	Strength, Best Practices	Weaknesses
Panel 1: Land tenure recognition	<ul style="list-style-type: none"> • Stringent provision to prohibit transfer of land from SC, ST and BC communities to other communities • Statutory recognition of customary practices under tenancy Acts, traditional tenancy like <i>Mundari Khuntkattidari</i>, <i>Bhuinhari</i> did not vest in state • Land governance in some parts is still under traditional village heads, like <i>munda manki</i> system in certain parts of Singhbhum, Ranchi, Pradhani villages in Santhal Pargana • Recognition of group rights over land, like saran land, Akhra land... 	<ul style="list-style-type: none"> • Three provisos of Section 46 which tends to regularize the transfer of tribal land to non-tribal sap the whole essence of otherwise model law on protection of tribal interest. • Non-completion of fresh revisional surveys • Tardy progress in NRLMP and computerization of land records
Panel 2: Rights to forest and common lands & rural land use regulations : Forest	<ul style="list-style-type: none"> • In most of the rights holding PFs institution of JFM like VFMPs or VEDCs already exist, only they have to be activated and motivated. 	<ul style="list-style-type: none"> • More than 75% of the sanctioned posts of forest guards and foresters are lying vacant, depriving the department of representation at the JFMC level.
	<ul style="list-style-type: none"> • The required legislative and executive structures are almost all in place, only a few amendments are required • Cultural homogeneity, particularly in tribal villages, is likely to facilitate easy motivation and organization. • <i>Rakshabandhan</i> (tying of sacred knot) movement under the inspiring leadership of Mahadeo Mahto of Tatijharia in Hazaribag has been gaining momentum in the locality. 	<ul style="list-style-type: none"> • Indian Forest Act, 1927 and Forest Account Code have not been suitably amended to accommodate the provision of JFM resolution 2001. • The JFM resolution has no legally binding force • The community rights as per Khatian part –II have not been so far legally recognized. • Transit Rules restrictions play demotivating role in social forestry as well as collection and trade of MFPs



<p>Panel 3: Urban land use, planning, and development</p>	<ul style="list-style-type: none"> • Some well planned city exist in Jharkhand like, Bokaro Steel City, Jamshedpur, HEC part of Ranchi • New Jharkhand Municipal Act, 2011 provides for a town planning mechanism 	<ul style="list-style-type: none"> ○ Many holdings have grown on Public land and tribal lands. <p>2.The pace of computerization of land records is very slow.</p> <ul style="list-style-type: none"> • The picture of <i>khas mahal</i> land is not clear. Lease renewal of thousands of cases in Ranchi, Palamu, Latehar, Jamshedpur, Hazaribagh and other districts of the state has not been done.
		<p>4.The government and public land have been encroached upon by the influential persons</p> <p>5.The green zones have been violated and many holdings have sprung upon these prohibited areas. The areas of dams such as Kanke, Haiti and others have been encroached upon.</p> <p>Large unauthorized colonies have sprung upon public land and tribal lands which make it difficult to collect holding taxes</p>
<p>Panel 4: Public land management</p>	<ul style="list-style-type: none"> • Principles for dealing with public land are provided in details in both the tenancy Acts of Jharkhand. • Recognition of Collective rights of <i>Mundari Khuntkattidari</i> tenure 	<ul style="list-style-type: none"> ○ Lack of new policy initiatives. Old laws dating from Bihar times still govern land in Jharkhand whereas parent state Bihar has come up with severa new legislation.



<p>Panel 5</p>	<ul style="list-style-type: none"> • Jharkhand has formulated a detailed Jharkhand Re-Settlement and Rehabilitation Policy 2008 that aims to ensure minimum displacement and secure interest of weaker section of the society. • Jharkhand came with a detailed Jharkhand Industrial Policy 2011 with an aim to convert Jharkhand into a favoured destination of investors and to promote industrial growth of the state. 	<ul style="list-style-type: none"> • Jharkhand still has to enact rules for the implantation of new Land Acquisition Act
<p>Panel 6: Public provision of land information</p>	<ul style="list-style-type: none"> • The digitations of department such as computerisation and Networking of Registration Offices a citizen could get his original registered deed back in 30 minutes. • The job of digitizing the index Registers of the entire State from 1970 onwards has been completed. this enables anybody to search for any land or any party, the database of the registration deeds since 1970 onwards, on a central basis. • It is also be possible to generate the nonencumbrance certificates for any land, which are required by people desirous of purchasing any land. 	<ul style="list-style-type: none"> • Non-completion of revisional survey • No integration between Registration Department and Revenue Department • Slow progress in computerization of land records.
<p>Panel 7: Land valuation and taxation</p>	<ul style="list-style-type: none"> • Extremely low land revenues 	<ul style="list-style-type: none"> • The picture of <i>khas mahal</i> land is not clear. Lease renewal of thousands of cases in many districts of the state has not been done.



Panel 8: Dispute resolution	<ul style="list-style-type: none"> • Schedule Area Court to protect interest of Schedule Tribes communities. 	<ul style="list-style-type: none"> • No power of execution to SAR courts • No land specific Dispute Resolution Tribunal
Panel 9: Institutional arrangements & policies	<ul style="list-style-type: none"> • Sound institutional mechanism with no vertical overlap 	<ul style="list-style-type: none"> • 1. No new policy initiatives • 2.No comprehensive umbrella land policy. • 3.Inadequate and untrained staff at grass root level



CHAPTER 12

Key Policy Messages for the State of Jharkhand and Conclusion

12.1: THE KEY POLICY MESSAGE FOR THE STATE OF JHARKHAND

The Key policy message for the state of Jharkhand can be summarized as follows.



Panels	Short Term	Long Term
<p>Panel 1: Land tenure recognition</p>	<ol style="list-style-type: none"> 1. The main text of 71 A (Model Law) which operates in Schedule Area should be incorporated in Section 46 of the CNT Act as well 2. The three proviso of Section 71 A of CNT Act which provide for regularization of transfer in case of adverse possession should be deleted 3. Section 241 of CNT Act dealing with <i>Mundatri Khunkattidar</i> and his power should be brought in tune with Section 49 of the CNT Act. 4. Schedule Area Regulation Courts be activated; Regular monitoring by DC. <ol style="list-style-type: none"> 1. How many cases filed by Tribal? Disposal: in whose favour? 2. Disposal within 3 months, Sec. 71 A: DC a necessary party. Power of superintendence and supervision to DC, Power to report to Government Power of execution to SAR Courts 5. Homestead Rights: 03 decimals: BPPHT Act, Public land <i>Pattas</i>/ Cluster approach /IAY link 	<ol style="list-style-type: none"> 1. Land Survey should be completed within 2 years 2. Computerization of land records be done within two years 3. Land Records including Records of right and Register II should be put on website 4. Evolve proforma on Dispossession: Monitoring at Dist. HQ /State level: Cases filed/ Disposed off/ in whose favor ; evolve sources of information on dispossession: weekly staff meetings <i>Anchal</i> level/ Dist. Committee on POA Act 5. Dispossession a cognizable offense 6. Developing consensus with respect to Tribal Women's Land Rights



<p>Panel 2: Rights to forest and common lands & rural land use regulations : Forest</p>	<ol style="list-style-type: none"> 1. All the vacancies in the cadres of Forest-guards and Foresters should immediately be filled up. 2. The JFMPCs and FPCs have to be well coordinated so that they, while allowed to retain some measure of working autonomy, actually are made to function in tandem 3. The Micro plans already prepared and submitted with the Forest Department have to be immediately taken up and speedily sanctioned. The remaining ones have also to be prepared and speedily sanctioned. All these Micro plans must ensure sustained supply of the minimum domestic requirements of firewood, small wood and timber to the villagers 4. Effective superior level monitoring of FRA implementation: survey, application, disposal, leases of <i>pattas</i> 	<ol style="list-style-type: none"> 1. Indian Forest Act, 1927 and Forest Accounts Code have to be suitably amended, through State amendments, so as to remove all the legal and procedural impediments in the way of 100% implementation of JFM in the state. 2. The procedure for sale and utilization of raiyati forest produce must be simplified and freed from bureaucratic hassles, so as to provide “service at door” to the villagers. 3. The conflicting provisions of the JFM and FPC- resolutions have to be sorted out and the respective resolutions amended accordingly. These amended resolutions have to be enacted by the legislature so as to give them some legal force. 4. Diversion of forest region to non forest use: environmental impact Assessment (EIA) independent agencies /GIs 5. Regulatory Authority at Dist. Level to monitor land, forest and water issues and fast track courts for settling of grievances Empowerment of <i>Gram Sabha</i>
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<p>2: Rights to forest and common lands & rural land use regulations : Common Land</p>	<ol style="list-style-type: none"> 1. <i>Anchal</i> wise inventory of common lands, Enquiry into fraudulent transfers/settlements/illegal occupation /Action 2. Law on conversion of agricultural land to non agricultural use 3. Clear distinction between CPR and categories of barren and uncultivable lands, no re-distribution / <i>parches</i> of CPR 	<ol style="list-style-type: none"> 1. A Long term perspective on CPRs should be evolved through developing land use plans of each village, state as a whole, inventory survey of such land 2. CPR should include cultivable waste land and fallows other than of current common pastures and grazing land, protected and unclassified and other govt. wastelands tracts being used for the common purpose 3. Lay out the role of user groups/ state of and central govt. / community based organizations. Management by <i>Gram Sabha</i> 4. Capping: A certain % of CPR every village 5. Create public awareness 6. Right to manage CPRs to users/ JFM Model 7. Similar development model, collective leasing for women cooperatives and other governmental lands, whose nature has changed 8. Revitalize existing Land Use Boards/ now dysfunctional
<p>Panel 3: Urban land use, planning, and</p>	<ol style="list-style-type: none"> 1. The authority for town planning and development should be created and defined; Notification to be issued 2. Urban land use policy should be created which should 	<ol style="list-style-type: none"> 1. Survey of land in all urban area to be conducted to discover the public land encroachers 2. All cases of encroachers to be dealt swiftly



<p>development</p>	<p> earmark land for residential, commercial, parking, Bus Stand, industry zones etc. for present and future growth 3. Survey of urban land and household for holding taxes</p>	<p>3. A detailed plan for urban land use should be made which should foresee the future growth for 50 years to 100 years</p>
<p>Panel 4: Public land management</p>	<p>1. Public Land to be identified and de-encroached as per Encroachment Act 2. Vast tract of <i>Khasmahal</i> land exists in Ranchi, Jamshedpur, Hazaribagh, Palamu and other major towns. A fresh <i>Khashmahal</i> policy need to be made on the pattern of Bihar initiative</p>	<p>1. The topmost requirement for better management is to have updated information on land particularly about public land. There is a need for finalization of survey works which was started 30 years ago 2. Need for fresh survey of land records to be completed within 4-5 years 3. Expediting NRLMP program 4. A Participatory survey and settlement process under the purview of the <i>gram sabha</i> to recognize and record public lands falling in the village 5. Provide adequate infrastructure, manpower and other support for the <i>Gram Sabha</i> in order that it functions 6. The state should initiate training and mobilization for effective protection and management of public land</p>



<p>Panel 5: Transfer of public land to private use</p>	<ol style="list-style-type: none"> 1. New Land acquisition Act 2013 needs to be implemented. A working rules for implementation of the new Act should be prepared 2. Social impact Assessment Study, Environmental clearances mechanism, preparation of rehabilitation and resettlement scheme by administrator should dealt with immediately 3. Third party monitoring mechanism should be established to avoid breach of the contract between land losers and land requiring agency. 	<ol style="list-style-type: none"> 1. New Land Acquisition Act prescribes cumbersome process which will take about three years for any new land acquisition to materialize. An attempt should be made to make the process simple and less time consuming without sacrificing the benefits to the losers of the land. An attempt should be made to make the process of simple and less time consuming without sacrificing the benefits to the losers of the land. Social Impact Assessment, Environmental clearance and Rehabilitation and Resettlement process should work simultaneously and conclude within one year 4. There is a need to take the approval of local Panchayats and PESA implementation to obtain peoples participation. The Land Acquisition mechanism such as Land Acquisition Officer should be well equipped with the manpower resources. A district level Land Acquisition Committee should be set up in which apart from Land Acquisition Officer, Deputy Commissioner, local MLA, MP and members of Federation of Commerce and Industry should be made members.
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Panel 6: Public provision of land information	<ol style="list-style-type: none"> 1. Opening of Registration Office in each revenue circle so that Registration is done after proper verification of land records. Hence require amendments in Indian Registration Act 2. In urban area the suppressed market value should be verified in random manner; An agency should be created for that purpose 3. Simplification of Registration; standardization of registration deeds 	<ol style="list-style-type: none"> 1. Preparation of land use policy, Forest Land and Public Land should be put on website to automatically stop the fraudulent transfer of public land 2. Integration of Registration offices with Revenue Circle offices 3. Uptodation of records of rights and online maintenance of continuous <i>khatihan</i>
Panel 7: Land valuation and taxation	<ol style="list-style-type: none"> 1. Computerization of land records should be done within six months 2. Market value of land should be prepared with the consultation of PRIs and ULBs 3. Registration of deeds, holding taxes should be put up on websites 	<ol style="list-style-type: none"> 1. Uptodation of land records should be done and a process should be created in which uptodation of land records particularly continuous <i>khatihan</i> should be strictly followed 2. Official market value currently does not reflect the true market value of land; a more realistic approach is to be taken over here
Panel 8: Dispute resolution	<ol style="list-style-type: none"> 1. Enactment of land specific tribunal; two following law in Jharkhand on the Bihar pattern may be adopted without any further loss of time; The Bihar Land Dispute Resolution Act,2009/Rules2010 and The Bihar Special Survey and Settlement Act 2011, Rules 2012 	<ol style="list-style-type: none"> 1. Coordination between Police officers /Anchal officers: nip disputes in bud 2. Training and empowerment of Gram Cutcheharies, Bihar Panchayati Raj Act, 2006 3. Quasi Judicial follow up



<p>Panel 9: Institutional arrangements & policies</p>	<ol style="list-style-type: none"> 1. Enable on some legislative initiation on Bihar pattern that will clean the rut, set new direction, encompass innovative policy, and simplify procedure through rules. Bihar –Recent Acts on conversion of land use special survey & Settlement Land dispute Resolution, law of mutations, <i>Khashmahal</i> Policy etc. 2. Provides funds to fill up vacancies posts, special drive to recruit officer 3. Training/ reforms training for Anchal & Survey staffs/ Officers 	<ol style="list-style-type: none"> 1. long term training & Refresher training on Continuum / Decentralised ATI, special training institutes for special purpose 2. Set into motion people’s participation in decision making procedure, Take feedback on implementation of policies & laws; field visits by senior officer to asses impact of policy change. Communication to headquarter for modification, improvement... 3. Check delays in quasi judicial courts relating to encroachment land ceiling, mutation, and dispossession. Tribal land alienation, <i>khashmahal</i> 4. Set timelines for dispossession 5. Equity homestead policy 100% purchase lands to women beneficiaries 6. 50% of govt. land to women beneficiaries 7. Hold brainstorming session with stakeholders. CBO on tribal women’s right. Strike a via media, Take proposals to TAC 8. Strengthen <i>gram sabhas</i>. Encourage Women and Cooperatives for joint management of common land, people control over natural resources
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12.2: CONCLUSIONS

This report presents a detailed study that assesses the performance of state of Jharkhand in the field of land governance using the diagnostic tool, Land Governance Assessment Framework (LGAF) prepared by the World Bank. This study evaluates the performance of state government on nine key thematic areas concerning land governance. Extreme care has been taken to make this report as inclusive and participatory as possible by taking into account the views of all stake holders. In addition to evaluating the performance of state government, this study also deliver some key policy recommendations, which can help government in improving its performance in the field of land governance.

It emerges from the study that though Jharkhand has sound institutional and legislative framework that aims to protect the interest of land rights of vulnerable section of the society, still it requires some quick policy and operational interventions to reinvigorate the land governance structure. One of the main aims behind the enactment of tenancy laws was to provide protection to the schedule tribes of Jharkhand, both the tenancy Acts provides for stringent mechanism against transfer of land from tribal communities to non-tribal communities; still some inherent lacuna in the Acts itself gives scope for the regularisation of such transfer of land. There is an urgent need to remove these anomalies from the Acts.

The topmost area of concern in the field of land governance in Jharkhand is the lack of up-to-date data on land. Government of Jharkhand has not been able to complete the revisional survey of lands in all districts due to various reasons including inadequate staffs. There is an urgent need to complete revisional survey of all lands in Jharkhand with a missionary zeal by using modern scientific tool. The progress in the implementation of central government sponsored NLRMP for the modernisation of land records has also been very slow. There is an urgent need to address these issues if land governance has to match the challenges of today's time.

State of Jharkhand is very richly endowed with natural beauties, forest and valuable minerals. Government of Jharkhand has formulated new Resettlement and Rehabilitation Program, 2008 and Jharkhand Industrial Policy, 2011, however unless the land governance framework is strengthen, the developmental aspiration of people of Jharkhand may not be achieved.



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FINAL DIMENSION SCORE

Panel	LGI	Dim.	Panel, Indicator, and Dimension	Score
1			PANEL 1: LAND TENURE RECOGNITION	
1	1		<i>Recognition of a continuum of rights</i>	
1	1	1	Individuals' rural land tenure rights are (i) legally recognized and (ii) protected in practice.	A
1	1	2	Customary tenure rights are legally recognized and protected in practice.	B
1	1	3	Indigenous rights to land and forest are (i) legally recognized and (ii) protected in practice.	B
1	1	4	Urban land tenure rights are legally recognized and protected in practice.	A
1	2		<i>Respect for and enforcement of rights</i>	
1	2	1	Accessible opportunities for tenure individualization exist.	A
1	2	2	Individual land in rural areas is recorded and mapped.	A
1	2	3	Individual land in urban areas is formally (i) recorded and (ii) mapped.	B
1	2	4	The number of illegal land sales is low.	A
1	2	5	The number of illegal lease transactions is low.	A
1	2	6	Women's property rights are recorded.	D
1	2	7	Women's property rights to land are equal to those by men both in law and in practice.	B
2			PANEL 2: RIGHTS TO FOREST AND COMMON LANDS & RURAL LAND USE REGULATIONS	
2	1		<i>Rights to forest and common lands</i>	
2	1	1	Clear identification & assignment of use for (i) forests (ii) CLs	B
2	1	2	Group rights recognized & enforceable	C
2	1	3	Use rights recognized even on state land	B
2	1	4	Multiple rights over common land can legally coexist.	C
2	1	5	Multiple rights on other lands can legally coexist (e.g. trees).	B/C
2	1	6	Rights over & subsoil can legally coexist.	B
2	1	7	Opportunities for registration & mapping of group rights.	B
2	1	8	Boundary demarcation of communal land.	D
2	2		<i>Effectiveness and equity of rural land use regulations</i>	
2	2	1	Restrictions regarding rural land use are enforced.	B
2	2	2	Restrictions on rural land transferability serve public purpose.	A
2	2	3	Rural land use changes based on public input, burden sharing.	None
2	2	4	Rural land use changes implemented in a timely manner.	C
2	2	5	Public process for rezoning safeguards existing rights.	None
2	2	6	Plans in line with actual use.	B
3			PANEL 3: URBAN LAND USE, PLANNING, AND DEVELOPMENT	
3	1		<i>Restrictions on rights: land rights are not conditional on adherence to unrealistic standards</i>	
3	1	1	Restrictions on land use serve public good, are enforced.	B
3	1	2	Land use restrictions serve public purpose, are enforced.	C



3	2		<i>Transparency of land use restrictions</i>	
3	2	1	Process for urban expansion clear, public, respects rights.	D
3	2	2	Urban land use plans & changes to them based on public input.	B
3	2	3	Changes to the assigned land use done in a timely manner.	None
3	3		<i>Efficiency in urban land use planning</i>	
3	3	1	Policy for low-cost housing & services exists, implemented.	C
3	3	2	Land use planning guides expansion in the largest city.	D
3	3	3	Land use planning guides expansion in other cities.	D
3	3	4	Planning copes with urban growth.	D
3	4		<i>Enforcement of restricted land uses</i>	
3	4	1	Provisions for residential building permits appropriate.	B
3	4	2	Short process to obtain residential building permit.	B
3	5		<i>Tenure regularization schemes in urban areas</i>	
3	5	1	Formalization of urban residential housing is feasible and affordable.	D
3	5	2	Process to improve informal settlements exists.	B
3	5	3	Condominium regime exists to manage common property.	D
4			PANEL 4: PUBLIC LAND MANAGEMENT	
4	1		<i>Identification & management of public land</i>	
4	1	1	Public land ownership clearly defined & well managed.	A
4	1	2	There is a complete recording of public land.	A
4	1	3	The inventory of public land is accessible to the public.	B
4	1	4	Unambiguous assignment of management responsibility for different types of public land.	B
4	1	5	Sufficient resources are available to fulfill responsibilities.	B
4	1	6	Key information on public land allocations accessible to public.	A
4	2		<i>Justification and efficient acquisition processes</i>	
4	2	1	There is minimal transfer of public land to private interests.	A
4	2	2	Acquired land is transferred to destined use in a timely manner.	A
4	2	3	Land acquisition threat does not lead to pre-emptive action.	A
4	3		<i>Fairness of acquisition procedures</i>	
4	3	1	Compensation paid for all rights regardless of registration status.	A
4	3	2	Compensation for land use change	D
4	3	3	Acquired owners are compensated promptly.	A
4	3	4	Independent & accessible avenues for appeal in acquisition.	D
4	3	5	Timely decisions regarding complaints about acquisition.	A
5			PANEL 5: TRANSPARENT PROCESS OF TRANSFER OF PUBLIC LAND TO PRIVATE USE	
5	1		<i>Transfer of public land to private use</i>	
5	1	1	Public land transactions conducted openly & transparently.	D
5	1	2	Payments for public leases are collected.	A
5	1	3	Public land transferred at market prices (except if for equity).	B
5	1	4	The public captures benefits from changes in permitted land use.	D
5	1	5	Policy in place to improve equity in access to and use of assets.	D



5	2		<i>Private investment strategy</i>	
5	2	1	Land that can be made available to investors clearly identified in agreement with land rights holders.	C
5	2	2	Investments are selected based on economic, socio-cultural and environmental impacts in an open process.	C
5	2	3	No intutional overlap for public institutions involved.	C
5	2	4	Public bodies involved share information & coordinate	D
5	2	5	Investors' compliance regularly monitored & acted upon if needed.	C
5	2	6	Safeguards applied to prevent infringement on existing rights.	D
5	2	7	Cases with resettlement are circumscribed well implemented.	C
5	3		<i>Policy implementation consistent</i>	
5	3	1	Information from investors sufficient to assess effects.	D
5	3	2	Approval of investment plans follows a clear time-bound plan.	D
5	3	3	Free negotiations between right holders and investors.	D
5	3	4	Contractual provisions, incl. benefit sharing, publicly available.	D
5	4		<i>Contracts are public</i>	
5	4	1	Info. on spatial extent & duration of concessions is public.	D
5	4	2	Compliance with safeguards monitored and enforced effectively.	D
5	4	3	Avenues for complaints if investors do not meet obligations.	D
6			PANEL 6: LAND INFORMATION	
6	1		<i>Mechanisms for recognition of rights</i>	
6	1	1	Transparent process to formalize unchallenged land possession.	B
6	1	2	Non-documentary evidence effectively used to establish rights.	C
6	1	3	Long-term unchallenged possession is formally recognized.	C
6	1	4	First-time registration includes proper safeguards	A
6	2		<i>Completeness of the land registry</i>	
6	2	1	The total cost of registering a property transfer is low.	D
6	2	2	Record information incorporated in maps and reflects reality.	None
6	2	3	All relevant private encumbrances are recorded.	D
6	2	4	All relevant public restrictions or charges are recorded.	A
6	2	5	Timely response to requests for accessing registry records.	A
6	2	6	The registry is searchable.	A
6	2	7	Land information records are easily accessed.	A
6	3		<i>Reliability</i>	
6	3	1	Information in registries routinely & effectively synchronized	C
6	3	2	Registries information is up-to-date and reflects ground reality.	D
6	4		<i>Cost-effectiveness & sustainability</i>	
6	4	1	The registry is financially sustainable through fee collection.	A
6	4	2	Investment is sufficient to provide high quality services	D
6	5		<i>Fees are determined transparently</i>	
6	5	1	(i) Clear rationale for fee determination; (ii) public schedule	B
6	5	2	Informal payments are discouraged.	C
6	5	3	Service standards are published and regularly monitored.	C



7			PANEL 7: LAND VALUATION AND TAXATION	
7	1		<i>Transparency of valuations</i>	
7	1	1	There is a clear process of property valuation.	A
7	1	2	Valuation rolls are publicly accessible.	B
7	2		<i>Collection efficiency</i>	
7	2	1	Exemptions from property taxes payment are justified & clear	D
7	2	2	Property holders to pay property tax are listed on the tax roll.	D
7	2	3	Assessed property taxes are collected.	C
7	2	4	Receipts from property taxes exceed the cost of collection.	D
8			PANEL 8: DISPUTE RESOLUTION	
8	1		<i>Assignment of responsibility</i>	
8	1	1	There is clear assignment of responsibility for conflict resolution.	A
8	1	2	Conflict resolution mechanisms are accessible to the public.	A
8	1	3	Agreements through informal dispute resolution encouraged.	C
8	1	4	Accessible, affordable and timely process for appeal	C
8	2		<i>Low share with pending conflicts</i>	
8	2	1	Land disputes are a small share of formal legal cases	B
8	2	2	Conflicts in the formal system are resolved in a timely manner.	D
8	2	3	There are few long-standing land conflicts (greater than 5 years).	D
9			PANEL 9: INSTITUTIONAL ARRANGEMENTS AND POLICIES	
9	1		<i>Clarity of mandates</i>	
9	1	1	No conflict of interest between Implementation & arbitration	A
9	1	2	No horizontal overlap	A
9	1	3	Administrative (vertical) overlap is avoided.	A
9	1	4	Land information shared among institutions; accessible to public.	A
9	1	5	Overlaps of rights (based on tenure typology) are minimal	A
9	1	6	Ambiguity in institutional mandates does not cause problems.	A
9	2		<i>Equity and non-discrimination</i>	
9	2	1	Policy exists; developed in a participatory manner involving all	B
9	2	2	Meaningful incorporation and monitoring of equity and poverty	A
9	2	3	corporation & monitoring of environmental & sustainability goals	D
9	2	4	Implementation is costed, and adequately resourced.	C
9	2	5	Regular public reporting of progress in policy implementation.	D
9	2	6	Land policy ensures land access for smallholders & EWS	B
9	2	7	Land policy effectively prevents settlements in high risk areas	D



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ABBREVIATIONS

BC: Backward Caste

CAMPA: Compensatory Afforestation Fund Management and Planning Authority

CNT Act: Chota Nagpur Tenancy Act 1908

CPR: Common Property Resources

DC: Deputy Commissioner

D C L R: Deputy Collector Land Reforms

EPH: Environmental Public Hearing

FCA: Forest Conservation Act, 1980

FDA: Forest Development Agency

FDC: Forest Development Corporation

FCA: Forest Conservation Act, 1980

GM: Gairmajarua (Uncultivable)

GOI: Government of India

IR Act: Indian Registration Act, 1908

IS Act: Indian Stamp, 1899

JFM: Joint Forest Management

JMA, 2011, Jharkhand Municipal Act

JNNURM: Jawaharlal Nehru National Urban Renewal Mission

LGAF: Land Governance Assessment Framework

MFP: Minor Forest Produce



NFP: National Forest Policy

NLRMP: National Land Records Modernization Programme

PESA: Panchayats (Extension to Scheduled Areas) Act, 1996

RMC: Ranchi Municipal Corporation

S D O: Sub-divisional Officer

SAR Court: Schedule Area Regulation Court

SC: Schedule Caste

SPT Act: Santhal Parghana Manuals and Santal Pargana Tenancy (Supplementary Provisions) Act, 1949,

ST: Schedule Tribes

ULB: Urban Local Bodies

VEDC: Village Eco-Development Committee

VFMP: Village Forest Planning and Management Committee



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