

Report on



Right to Housing and Homestead Land in Rural Bihar

Status, Issues and Challenges

With an Introduction by K.B. Saxena

Sanjay Kumar • P. D. Singh

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**Report
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Executive Summary

This report analyses the various dimensions of the issue of the right to housing and homestead land in rural areas, focusing particularly on its status, issues and challenges in Bihar. The report discusses the assessments of rural housing shortage; provisions under the existing laws, rules and regulations in Bihar pertaining to access and ownership rights over homestead land; the process and procedures involved in implementation of laws, policies and provisions; and patterns of displacement and settlement of landless rural households, and its implications on the right to housing and homestead land.

The report is based on secondary as well as primary data. Secondary data and information were used to locate the right to housing and homestead land as a fundamental human right; to analyse the magnitude of the problem of rural housing shortage; and to discuss the provisions in the laws, rules and regulations in Bihar. Primary micro-data was taken from an action research conducted by Deshkal Society in partnership with GNK and LSSK in Gaya District in Bihar for a Project on “Capacity Building and Advocacy for Development Change Among the Musahar Community”, under the PACS 1 Programme of DFID, India in 2006. This was used to analyse the administrative practices and procedures involved in the process of acquiring access and ownership rights over homestead land in rural Bihar; and to identify the reasons for the large number of eligible landless rural and marginalized communities households being denied these rights.



Rural Life Around Settlements of Rural Landless Labourers

In order to ensure the realization of the goal of right to housing and homestead land as envisaged by the existing laws and policies, this report identified the following issues that need urgent attention and the initiative of policymakers and practitioners:

- i) Streamlining and simplifying administrative procedures and processes for effective implementation of laws and policies:

It is a pity that there is such a high volume of rural housing shortage in Bihar despite there being laws, policies and regulations to grant legal rights to homestead lands of various types (*raiya*, *gairmazarua khas* and *gairmazarua aam*) as well as for acquisition or purchase and

It is a pity that there is such a high volume of rural housing shortage in Bihar despite there being laws, policies and regulations to grant legal rights to homestead lands of various types.

distribution of house sites by the government to those without access to land. Past experience shows that the administrative procedures and processes as well as the paperwork required for acquiring the right to homestead land are so complex and cumbersome that it is difficult for the rural poor to pursue and acquire their legal right. The specific issues that need to be addressed in this regard are:

- The government needs to adopt a bottom-up proactive approach to identify, record and process for settlement all the eligible cases of landless households that need to be granted homestead rights.

Collecting various types of information required for filing applications for legal rights over homestead land is an arduous task, and certainly an insurmountable one for the landless and marginalized communities. Therefore, instead of filing individual applications, Block level officials should be entrusted with the task of recording and processing all the eligible cases with the help of village Panchayats and Gram Sabhas. This can be done in a mission mode by organizing village camps. The Circle Officer and the Sub-Divisional Officer should also be made responsible to ensure that *parcha/parwana* holders get physical possession of the land, along with the granting of *parchas/parwanas*.

- While *raiya* land can be settled by the Circle Officer and the *gairmazarua khas* land by the DCLR/Sub-Divisional Officer, cases pertaining to *gairmazarua aam* land go up to the Revenue and Land Reforms Department, on the recommendation of the Divisional Commissioner. The process of settlement of *gairmazarua aam* land can be further simplified by giving the District Collector the authority to settle such land. However, it should be kept in mind that a large area of *gairmazarua aam* land has been encroached upon by powerful landed interests. There should be proper checks and balances to ensure that non-eligible persons do not take undue advantage of the simplification of the processes to regularize their illegal encroachments.
- The provision of the maximum area currently fixed by the government for allotment of house sites needs to be revised and enhanced. Earlier, the maximum area had been fixed at 2 decimals which were later increased to 3 decimals. In the light of the observations and recommendations of the Eleventh Five Year Plan, the Government of Bihar should also increase the minimum area of homestead land to be allotted to the landless households to 10 decimals so that along with shelter it provides space for some supplementary sources of livelihood such as livestock rearing, fodder development and planting fruit trees or vegetables growing etc, to the rural landless and marginalized communities. Studies have also shown that house plots of this size can make significant contributions to improvement in food, nutrition and livelihood security of the households.
- Since land revenue is no longer an important source of income for the government, revenue administration is being neglected. The impact of the government's drive to reduce the size of its administrative structure has been worst on revenue administration, especially at the lower levels. The government has stopped fresh recruitment of the lowest ground-level revenue functionaries called *karmacharis*. As a result, a large

number of *karmacharis*' posts are vacant, and the existing *karmacharis* have to cover numerous villages and bear a heavy burden of work. Moreover a *karmachari* has no fixed office. No one can approach him at any fixed place at any fixed hour on any working day. If one wants to submit an application for the settlement of homestead land, it becomes very difficult for that person to locate and approach the *karmachari* to measure and map the land and verify other records.

Like other staff, the *karmacharis* should be provided a permanent office space with the necessary facilities required to discharge their duties. The existing *karmacharis* should also be given appropriate training to upgrade their knowledge and skills to function effectively. There should be at least one Circle Inspector for 25-30 revenue villages. Each Circle Inspector should be assisted by one trained *Amin*.

- Land records have not been updated for a considerably long period of time in Bihar. Finding the required land records and cadastral maps of villages is a monumental task. The government departments simply do not bother to keep these records updated. Even old records are very difficult to find. Obviously, for a poor landless labouring householder it is a monumental task to arrange for these records. The government should update the land records and revenue maps of all the villages. These records should be properly maintained and made available to the public on demand.
- Copies of government circulars and policy guidelines are not available at the Block, Sub-division or District offices, including that of the District Collectorate. Due to unavailability of all the circulars and guidelines, and ignorance about them, different officials are prone to interpret the rules and laws differently. The officials, therefore, do not know what they ought to do when someone submits an application for grant of ownership right. The government should compile copies of laws, circulars and policy guidelines as well as prepare an official manual which can provide guidelines to officials at various levels to take appropriate action. These should be made available at all the Block and District offices. The government should also organize periodic training programmes for revenue officials to familiarize them with the system of land revenue administration, the laws and policies.
- The government needs to have the political will and initiative to give priority to implementation of the existing laws and policies guaranteeing the right to homestead land. The Block and District level officials should be activated and directed to take up the issue on a priority basis.

ii) Data generation on access to housing and homestead land in rural areas:

Though the assessments of rural housing shortage by different agencies vary widely in their estimates from 148.33 lakh (Census 2001) to 577 lakh (NHB, 2007), even going by the most conservative estimate, the shortage is substantial and appears to be growing. Bihar ranks first among all the Indian states in terms of the magnitude of rural housing

Instead of filing individual applications, Block level officials should be entrusted with the task of recording and processing all the eligible cases with the help of village Panchayats and Gram Sabhas.

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shortage, and, within Bihar, a majority of rural Dalit households lack access to and ownership rights over homestead land. Moreover, these estimates do not appear to bring out the number of those households which have constructed their houses on land over which they do not have secure ownership rights, and, therefore, are always at risk of eviction. As Deshkal's study in the villages of Gaya District shows, the number of such households, particularly among the Dalit communities, may be quite large. However, in the absence of any official data and records, it is difficult to estimate the number of such households to make accurate assessments of the total rural housing shortage. Since there is no data or information available on ownership of rural homestead land, the following

steps need to be undertaken:

- Village surveys need to be conducted in Bihar to identify the households that do not have legal ownership rights over their homestead land as well as those that do not have access to land for house sites. Such a survey is already being conducted by the government for Mahadalit households. It should be extended to cover landless poor households from all communities in every village in the state.
- Village Panchayats can be roped in for this exercise and given the responsibility to collect, maintain and display the complete list of all landless households that need to be allocated housing sites and those that do not have legal rights over their existing homestead plots.
- The village Panchayats, with the cooperation of Block officials and the approval of the Gram Sabha, should also record and maintain an inventory of land with their locations under private ownership, public use and common property (grazing, fallow land, etc.), as well as of land that can be made available for allocation to landless households for house sites. These records should be available at the village level for easy access by all.

land, etc.), as well as of land that can be made available for allocation to landless households for house sites. These records should be available at the village level for easy access by all.

- The state government should create a database of available land. It should also take the initiative to seize *gairmazarua* land under encroachment, land owned in excess of stipulated ceilings, community common land and other types of public land held by the landowners.



A Hut built at the foot of a Hilllock

This would help in the suitable reallocation of land to accommodate the demand for homestead land.

- iii) Need for increasing the quantum of subsidy-based construction of houses for rural poor:

Since there is a huge gap between demand for housing among the rural poor, and supply through Indira Aawas Yojna (IAY), it is necessary to significantly step up the quantum of rural housing added every year under the IAY scheme. The Government of Bihar can also initiate suitable schemes to meet the housing needs of the Below Poverty Line (BPL) families that remain left out under the IAY scheme.

- iv) Need for integrating habitat development and improvement with housing schemes for the rural poor:

Habitat development and improvement is currently not linked with the schemes for allotment of house sites to the landless poor. Along with allotment of house sites, assistance for house construction under IAY, and provision of facilities such as safe drinking water, sanitation, etc. can be undertaken by the Department of Rural Development under its various schemes. There is a need for coordination and convergence of these schemes with the scheme for allotment of house sites to the landless rural population.

This report recommends that the government needs to urgently adopt a multi-pronged approach in dealing with these issues, to eradicate obstacles and streamline the administrative processes and procedures. It needs to identify all the landless households that do not have access to and ownership rights over homestead land, and compile village and tola based data on them. The village Panchayat, and Block and District level officials must be galvanized to adopt a proactive approach, act in a mission mode and reach out to all those who need to be granted right to housing and homestead land.

The government needs to urgently adopt a multi-pronged approach in dealing with these issues, to eradicate obstacles and streamline the administrative processes and procedures.

Introduction

A secure shelter is the most basic need of human life. One cannot even conceive of sustaining life without appropriate shelter. We are currently discussing people's right to suitable shelter, the existing government policies and programmes for its provisioning, the framework of entitlements and its deficiencies and people's struggle for securing this right. For appreciating the nature, complexity and dimensions of the problem, it is necessary to place it in a proper perspective by analyzing how the problem has arisen and what has been done to resolve it.

The need for a proper homestead which can protect human life from the vagaries of nature and threat to safety falls within the realm of natural rights.

Right to Shelter: From a Natural Right to a Legal Right

The need for a proper homestead which can protect human life from the vagaries of nature and threat to safety falls within the realm of natural rights. It is a right so fundamental that it precedes even the emergence of society. It is the very first thing which a living being requires. Not only humans, even animals require a secure shelter for their survival. Ordinarily, therefore, such a requirement should not depend on any authority to provide or sanction. Every human being should have the freedom and the ability to obtain it. Yet, we have today a situation in the country where a large number of people do not have a shelter at all, and many of those who do have a semblance of shelter, have no secure right over it. It is, therefore, evident that societal evolution and state formation progressively circumscribed human freedom to arrange for a secure shelter. That is why this natural right had to be articulated in terms of a legal right in order to force society to recognize this elementary need for dignified human existence and obligate the state to make provisions for it.

How has this progression from a natural right to a legal one come about? Initially, when there was no social organization and human beings roamed the earth without forging themselves into social groups, they faced no difficulty in choosing a safe place to shelter for themselves. There was no authority to question them and ordinarily no competition was encountered in this quest. Subsequently, when complexities in life began to surface, individuals formed social groups for a more orderly existence. They earmarked a territory for their movement and operations and constructed their shelters within those territories. The formation of social groups was essential so that one social group could protect food sources from competition against other social groups.

In the early stages, social groups comprised hunters and food gatherers who roamed from place to place and constructed temporary shelters wherever they stayed for a period

The emergence of an agrarian society also coincides with the advent of the family as a social unit which necessitated a secure shelter for all its members too.

of time. The shelters were temporary since they lived in small groups and their material activities (hunting and food gathering) required continuous mobility for their survival. Within such a society, there was no differentiation between members and each member could construct his (her) shelter according to his (her) needs.

Right to Shelter in the Agrarian Society

The need for a static shelter arose when all material needs could be satisfied from a particular location and the need to move to a different place was no longer necessary. This happened with the advent of agriculture. Thus, the need for static shelter is related to the emergence of an agrarian society, initially with shifting cultivation, and later with settled agriculture. The nature of agrarian activities was sedentary and did not require movement across large areas. It comprised concentrated and prolonged activities within a small area of operation. In this type of arrangement, it was necessary to stay near the area of operation to satisfy material needs.

The emergence of an agrarian society also coincides with the advent of the family as a social unit which necessitated a secure shelter for all its members too. Even so, the construction of static shelter for the family did not pose a problem as there was ample forested land from which vegetation could be cleared to construct shelters within the boundaries of territories carved out by each social group. The agrarian society also required larger social groups to be formed and, therefore, norms for land use and management evolved to avoid friction and satisfy material needs harmoniously. The land was under the collective control of the community with each family using a specified area for its subsistence. There was no concept of private property or ownership of land. If an individual or a household desired to move out of such a setup, it had the freedom to do so, identify other vacant land not in the possession of another group, clear the forest and use it for shelter or cultivation. Within the members of a group, there was no differentiation since each household could cultivate land in accordance with its capacity and the level of existing technology, and it could construct a shelter according to its need without any competition from others.

The difficulties in access to land, whether in respect to shelter or cultivation, arose when technology enabled the production of surplus beyond the needs of the household. This created differentiation in society and the desire in those families that produced a surplus to protect the wealth generated from it, and pass it on to its heirs. This further resulted in differentiation in the access to cultivable land and requirements of land for construction of shelter. The social conflict arising from such a situation required rudimentary state formation to resolve these and associated issues and design appropriate regulations for distribution. But, there was no problem in accessing vacant land to construct a shelter or for cultivation, since vast stretches of forest land were available which were bereft of any ownership claims and could be reclaimed without restrictions. This position, by and large, continued in pre-colonial society. The changes introduced by the colonial government altered this situation drastically.

Right to Shelter in the Colonial Period

The colonial government claimed sovereign right over the entire land in the territory it occupied and appropriated all land and forest which were not under private or exclusive use. This curtailed free access to land based on customary practices. It also introduced property rights in land with a legal system to enforce them. The ownership of land signified property rights over it and constituted the only valid basis for its use, thereby disregarding customary land use with the sanction of the community. Land, thus, became a commodity which could be transacted in the market. Individual control over land superseded the social control of the community. These changes were reflected in the pattern of land settlements resorted to by the government. The most iniquitous form of settlements emerged in cases where large tracts of land were permanently settled with individuals on payment of fixed rent. This land system known as the *Zamindari* system created a situation in which some individuals had more land than they needed to meet their material needs, while a large number did not have any land. Under this dispensation, households lost their freedom to access land for their use, whether for agriculture or shelter. A person who needed land, whether for shelter or cultivation, had to seek it from the government or from the person who occupied or controlled land. Since most of the cultivable land was settled, access to land could be obtained from landowners who imposed the most exploitative terms and conditions to provide it. These iniquitous agrarian relations constituted the background for the articulation of the demand for a legal right to secure land which in turn culminated in the enactment of land reforms laws.

The Problem of Shelter during the Colonial Period

The foremost issue which confronts us today is the magnitude of homelessness. This has two dimensions. One category consists of cases where some sort of a shelter exists, but with insecure rights over the land on which it has been constructed. The other is the absence of any shelter. Insecure shelters can be directly traced to the land settlements carried out during the colonial period. The *Zamindars* or other owners of large areas of land could not cultivate it on their own. They required other people to work on their lands. Those lands which were already under the cultivation of *raiyyats* prior to settlement were leased out to them on payment of rent, while the vacant land had to be reclaimed and made cultivable to derive economic value from it. The *Zamindars*/large landowners therefore, had to bring in labourers from outside to clear the land and cultivate it. The people who came from outside were temporarily housed on the *Zamindars*'/landowners' lands. However, they had no rights over the land on which their houses existed and could be evicted when the work was completed or even earlier, if the *Zdar*/landowner so wished.

Besides, even the land under the 'personal cultivation' of the *Zamindar*/landowner required agricultural labourers to assist them in cultivation. To ensure that these labourers were readily available when required, they had to be provided housing facilities if they were brought in from outside. These labourers were, therefore, permitted to construct shelters on the owner's land. The *Zamindars*/landowners also required various social services such as those of washer men, barbers, blacksmiths, potters, etc. These people also had to live on the

While the landed gentry used their own land to meet the expanding needs of households, the landless in the village usually encroached on vacant land for this purpose. In all these cases, households remained insecure occupants.

Zamindars'/landowners' land if they were not already residing in the villages. Further, as the population grew, many of the existing labourers needed additional land for residential purposes. While the landed gentry used their own land to meet the expanding needs of households, the landless in the village usually encroached on vacant land for this purpose. In all these cases, households remained insecure occupants of shelter and the Zamindar/landowner exploited the situation of insecure tenants and extracted unpaid services/labour from them. Insecure tenancy became a major issue of peasant mobilization which attracted the attention of the national leaders.

Considering the problems related to insecure homestead tenancies and the sufferings of the people affected by it, the interim government in Bihar, even before India got independence, enacted a law called the Bihar Privileged Persons' Homestead Tenancies Act, 1947 to legitimize the occupation of *raiya* land for shelter, with a view to ensure that such occupants were not evicted. After independence, similar legal provisions were made by several other state governments either as a part of tenancy reforms or independently. The Bihar law is the simplest and the best in this regard. It is designed to ensure that the occupant of a shelter on *raiya* land is not harassed in securing permanent and heritable rights, and that such a tenant is fully protected against eviction. The law provides a summary process of disposal of claims filed for this purpose. The power of disposal has also been delegated to the *Anchal Adhikari*, i.e. the Block Revenue Officer so that the affected person does not have to travel very far to get their claims settled. The eligibility conditions merely require continuous occupation for a specified period to obtain the benefit of the law.

Homelessness in Post-Colonial India

The problem of insecure homestead tenancies is not confined to shelters existing on *raiya* land. It extends to shelters constructed on government/public land. The latter problem emerged largely after independence with the abolition of intermediary tenures. The vacant lands under the control of *Zamindars* and lands falling outside the area declared as 'personal cultivation' by him were taken over by the government. Therefore, the shelters existing on such land also become insecure since there was no documentary proof of land having been leased/settled by the *Zamindar*. Once such land becomes government land, it required authorization (*patta*) from the government for its legitimization. The number of such shelters over a period of time has grown considerably – far more than those existing on *raiya* land. This is because after the enactment of land reforms, the *raiya*s would not allow homeless people to construct shelter on their lands. Vacant government land, therefore, was the only space available to the rural homeless to meet their pressing needs of shelter. But occupation of government land whether for construction of a shelter or for cultivation in the absence of a valid settlement is considered as 'encroachment' under the existing laws and regulations, and therefore, the occupants are liable to be evicted summarily. State governments have, however, made provisions to regularize such encroachments by conferring right of ownership on the

occupants by way of issuance of a *patta* to them. The implementation of these provisions, however, has been tardy, thereby creating a huge backlog of insecure occupants.

There is another dimension to the problem. There are people/households who do not have any shelter at all; nor do they have any land to construct a shelter. But provisions exist in the state policies which commit the government to provide land to landless people to construct houses. These provisions remain largely unimplemented on account of the insensitivity of the bureaucracy which is apathetic to the needs and entitlements of the poor and has failed to prioritize this beneficial provision for vigorous implementation.

The problem of homelessness has grown enormously over the years due to several factors. The most important of these relate to natural calamities such as floods, tsunamis, soil erosion, etc. which destroy people's existing habitats and displace them. The most acute cases of homelessness arising from natural calamities are in Bihar and Assam, where a large number of villages are affected by changes in the courses of the major rivers. The number of households rendered homeless runs into lakhs. The area affected by the Kosi river in Bihar is the worst in this regard. Displaced families have lived on the embankments of the Kosi river or on the roadside for as long as 25-30 years. They have no secure shelter and face constant threat of eviction. The state government has failed to make any credible intervention to provide secure shelter to these households. The area affected by the Brahmaputra river in Assam is the other acute case of homelessness in this category.

The second major cause for homelessness is the phenomenon of the development-induced displacement which arises out of compulsory acquisition of land for public purposes by the government. The failure of the government to adequately resettle people so displaced with secure shelter and employment opportunities, creates this problem. The National Policy for Rehabilitation and Resettlement, 2007 does make a provision for access to land for construction of a house or the provision of a constructed house for every displaced person. But the policy applies only to cases where a specified number of people are displaced.

The problem is also exacerbated by man-made calamities such as communal riots, caste atrocities, ethnic cleansing or other internal conflicts. The victims are forced to move out of the area for their physical safety and occupy whatever vacant government space is available. In the case of communal riots, this has led to ghettoization where people squeeze themselves into overcrowded areas with members of the same community, while in the case of caste atrocities, the affected Dalits/Adivasis settle on the roadside or vacant government land away from their villages. The lack of state intervention to restore them to their original habitat with adequate security or to resettle them elsewhere with secure rights over land has created this problem.

There is also another dimension to the problem. Earlier, every village had a sufficiently large area of common land within its boundaries. A large part of this land was used for common purposes such as grazing. A small part was used for expansion of village settlements resulting from the growth of families in existing households. The village common land has now shrunk enormously as a result of various public policies and encroachment by the rural

The problem of insecure homestead tenancies is not confined to shelters existing on raiyati land. It extends to shelters constructed on government/public land.

The problem is also exacerbated by man-made calamities such as communal riots, caste atrocities, ethnic cleansing or other internal conflicts.

rich. Therefore, vacant land which could be used for the expansion of village settlements is not available in many places. This has created acute distress for the landless poor, particularly vulnerable groups such as the Dalits. In Bihar, for example, in many places, three generations of a Dalit household live in a single-room thatched hut. The *raiya*s of village do not permit the landless poor to use their private land to construct a shelter. They also object to use of the village common land for this purpose. This has created considerable social conflict between the communities in the village. There has been no government intervention to tackle this issue by allotting house sites to landless families to accommodate their expanding needs. This problem emanates largely from unequal distribution of land where a large section of the population has no access to it even for construction of a house, while a small section owns large areas for cultivation and has spacious houses.

Laws and Policy on Homestead Land

The problems of homelessness and insecure rights over shelter are recognized by the government. Its response is covered by a policy framework which has three dimensions. One dimension relates to shelter existing on *raiya* land. The problem here is not the provision of a shelter or the land to construct a shelter, but security to the occupant against eviction which can be provided by the conferment of ownership and heritable rights. This part of the problem is viewed by the government as a tenancy problem. The occupant of the shelter is regarded as a tenant in the same way as the cultivator of leased land is considered a tenant. Therefore, relief has been provided to such tenants under the tenancy reform laws. In some states such as Bihar, tenancy relating to homestead land is considered a category apart and such tenants are treated as 'privileged persons' requiring special protection and support. The Bihar Privileged Persons Homestead Tenancy Act, 1947 provides precisely this protection.

However, those who occupy government land are not treated as tenants. Their occupation is considered as encroachment. In their case, relief against the threat of eviction can be provided by legitimizing/regularizing their occupation. This is done by the settlement of the land on which the house is constructed. While the outcome in both cases is the same, the characterization of the problem in the two situations is different. This is why the state government has made rules/regulations for the settlement of land in such cases. But here, the problem has arisen on account of the nature of government land over which the shelter is located. The land under government ownership is of two types. One type is the erstwhile *Zamindari* land which was transferred to the government after the abolition of *Zamindari*. This is known as *khas* land meaning the personal land of the *Zamindar*. The other category of government land is known as *aam* land which is used for common purposes/activities of the villagers. This land was customarily under the control of the village community in the pre-colonial period.

The provisions in the state government's policy to deal with 'encroachments' in the two types of government land are different. The provisions are relatively more liberal and accommodating in the settlement of *khas* land with individual households belonging to the

landless poor, but extremely restrictive and strict in relation to *aam* land. The process of settlement of *khas* land to landless persons for homestead purposes is even simpler than for cultivation and the decision-making in respect of such settlements has been considerably decentralized. Regarding settlement of *aam* land, the general policy is that such lands are not to be settled to ensure that the already shrunk common land is not further squeezed and the village community is not deprived of this facility. Considerations of 'common good' prevail over individual interest in this case. There is also resistance from the residents of the village against settlement of government land whether *khas* or *aam* even for shelter for the homeless, particularly by the powerful landowners who would like to perpetuate their exploitative stranglehold over them. Most of these homeless in Bihar are Dalits.

The most disturbing aspect of these hurdles relates to the lack of adequate knowledge about the legal provisions and policy circulars issued by the government among the officials charged with their implementation.

However, even with regard to the *aam* land, some opening is provided for settlement. There is a provision in government policy that in certain situations, the settlement of *aam* land can also be considered where, for example, there is strong evidence that the 'common use' character of such land has changed over a period of time and the land is no longer under common use. The government can consider settlement of this land if the conditionalities specified for this purpose are satisfied. But the process of settlement of such land is more difficult and the power of decision-making for such settlement rests with the government, i.e. the Revenue and Land Reforms Department/Board of Revenue in the Secretariat. In those cases where it is decided that *aam* land on which houses have been constructed cannot be settled with the occupants, the government is obliged to provide alternative land to the insecure occupants so that they construct a shelter there. In other words, if the government cannot regularize their occupation on government (*aam*) land for shelter, it has to provide house sites to them elsewhere. Despite these comprehensive provisions, as the action research¹ by Deshkal Society has shown, there are a large number of cases in both categories of government land where eligible people have been unable to secure their entitlements.

Implementation of Law and Policy

This brings us to the implementation of law and policy. It is not enough that the right to homestead land has been recognized and law and policy exist for securing this right. The process of implementation, as the action research by Deshkal society has brought out, creates enormous hurdles in attaining this benefit. The most disturbing aspect of these hurdles relates to the lack of adequate knowledge about the legal provisions and policy circulars issued by the government among the officials charged with their implementation. This ignorance exists at all levels of district administration including the Collector. The record-keeping of government directives is so bad in Bihar that even the Collector's office does not have

¹. An action research on the right to homestead land was conducted by Deshkal Society in partnership with GNK and LSSK in Gaya district in Bihar for a project on capacity building and advocacy for developmental changes among the Musahar community, under the PACS programme of DFID India in 2006.

It is, therefore, a matter of some satisfaction that Deshkal Society has compiled a volume comprising the relevant circulars and the text of the law.

a compilation of all circulars and policy guidelines issued by the state government on the subject. There was a practice of maintaining a guard file of important government circulars in the Collector's office which served as a source of reference in cases of doubt or lack of clarity while disposing of cases. This system has now in disuse. The state government has also not thought it fit to compile all such circulars and print them in a compact volume for distribution to its officers at various levels. Under these circumstances, the implementing officials tend to reject a claim, keep it pending or make queries seeking further information from their subordinates. This situation can be eliminated if the government supplies a printed volume of these circulars to all the concerned officials and updates it periodically. But the Bihar government has not done so.

If a non-official organization were to produce such a volume, the knowledge gap in the officials and other interested parties could be eliminated. But the tendency of implementing officials is to question the authenticity of documents contained in such a volume produced by a non-official agency unless the state government has authorized its publication. Still, a volume produced by a non-government agency and a well-known publisher as a reference guide both for officials and advocacy groups is the most feasible alternative to a government publication. A non-official effort also has a better chance of being widely circulated than an officially printed volume which is restricted to government offices. Besides, officials have a habit of taking away such publication for their personal use rather than leaving it in the office for ready reference by any incumbent of office. A non-official publication has the advantage that it can be purchased from the market or obtained from the agency whenever it is required.

It is, therefore, a matter of some satisfaction that Deshkal Society has compiled a volume comprising the relevant circulars and the text of the law. This has been distributed among officials where Deshkal's projects are being implemented. So far, they have not met with much resistance from the officials to consult the document or doubt its authenticity. It provides easy access to information for the concerned people to file their claims in the prescribed format and pressure the relevant officials to decide their cases.

Another difficulty has been encountered in implementation of the law and policy. In the absence of a government publication containing all relevant circulars and policy guidelines, the implementing officials tend to rely on the few circulars that are available in their offices and take decisions based on these. This hurts the interests of the affected people. A glaring example of this was brought up at a seminar held in Patna on the subject.² Deshkal Society informed the gathering that the Gaya collectorate had prescribed a pro forma comprising 25 columns which needed to be filled before a petitioner's claim could be entertained by the local block revenue officials. During discussions on the subject, the senior officers of the Revenue Department claimed to be unaware of prescribing a 25-column pro forma for this purpose. After considerable cross checking, it transpired that this pro forma was

². A seminar on Policy on Ownership Rights on Homestead Land was organized by Deshkal Society in partnership with FES India, at Patna on 24 May, 2008

meant for cases where allotment of *aam* government land is sought for cultivation and is not required for settlement of homestead land. Since the district officials did not have all relevant circulars, they were ignorant about this distinction. Therefore, they were using a wrong pro forma, either deliberately to harass the petitioners, or by way of abundant caution against taking a wrong decision for which they could be held responsible and face punitive action. This shows the huge communication gap that exists between the government in the Secretariat, and its field officers in the districts. Ultimately, it is the poor people who suffer the consequences of this information gap.

Yet another problem highlighted by Deshkal Society relates to the enormous shortage of revenue officials to dispose of land-related matters. In the drive to reduce the size of the establishment, curtail government non-plan expenditure and lower fiscal deficit under pressure from the Government of India, the post of *Anchal Adhikari* who headed the revenue administration at the block level has been abolished. His work has been given to the Block Development Officer (BDO). This has resulted in the neglect of land-related work. Development work takes priority for the BDO, who has a large number of high-profile programmes to handle with huge financial allocations. There is tremendous pressure for timely implementation of these programmes which are also rigorously monitored. Critics may also attribute the neglect of revenue work to corruption in development activities which induces the BDO to give this work priority. As a result, he/she has little interest or even time for work relating to land reforms.

The government also gives low priority to programmes relating to land, since land revenue does not constitute a significant source of income. This explains why even the existing posts of *Karamcharis* (village-level revenue functionary) and circle inspectors (a supervisory revenue functionary above the *Karamchari* in the hierarchy) who handle land-related matters at lower levels in the Block are lying vacant. There has been no recruitment to fill these posts for a long time. As a result, one *Karamchari* now looks after a large number of villages which is beyond his capacity to handle. He neither has a fixed office nor mobility. There is an additional problem of non-availability of an *Amin* to measure the land. Without this measurement, the petitioner's claim cannot be processed. The petitioner, therefore, has to run after the *Karamchari* and *Amin* and arrange for a suitable time and day when they can both visit the site, verify the claim, record their findings and attach the map of the land, so that the claim can be processed for decision-making. It takes a long time, and considerable effort and resources to accomplish this task.

The Deshkal study has highlighted the abysmal lack of in-service training for the officials of the Revenue Department. After their initial training at recruitment, there is no programme in place for periodical training subsequently with the result that the knowledge level of officials is extremely poor. The state government has not even felt the necessity of asking District Collectors to arrange this training for lower level officials. Such training courses would fill the gaps in the officials' knowledge, clarify their doubts and apprehensions and help in expeditious disposal of claims.

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In the absence of in-service training, a manual for the officials, which lays down the step-by-step sequence of the process of implementation of law and policy in relation to homestead land, would have helped. The manual should clearly specify the requirements for filing a claim by a petitioner, the information to be incorporated for this purpose, and how decisions should be taken and at what levels. The state government has not even prepared such a manual which would create confidence in the officials about the correct procedure to be adopted and assist them in taking quick decisions without the risk of committing errors.

Yet another problem faced by the seekers of entitlement relates to the tendency in officials to shirk decision-making and to unnecessarily pass on this responsibility to a higher level. The law and policy conferring ownership on homestead tenants of *raiya* land and settlement of government land with insecure occupants on which shelter is constructed comprises the most decentralized process of decision-making. The final decision can be taken at the level of the *Anchal Adhikari* where *raiya* land is involved and at the level of the Sub-Divisional Officer (SDO) where government (*khas*) land is involved. This has been done purposely to avoid harassing petitioners in getting their claims decided. But what actually happens is that the prescribed decision-making authority does not take a decision, whether out of ignorance of the law and official directions or deliberately to avoid responsibility. He/she sends the file to the next higher level official, the SDO, so that the responsibility for the decision is taken by him. The SDO, likewise, sends the file to the Collector. In this process, decision-making is unnecessarily delayed and even complicated since the Collector and SDO are at a greater distance from the village where the problem exists, compared to the *Anchal Adhikari*.

The higher the level of officials involved in decision-making, the greater is the tendency to raise queries with a view to satisfying themselves about the genuineness of the claim. Officials raise queries owing to lack of knowledge of legal provisions, government circulars/instructions or lack of application or a thorough study of the case record. If the query is raised by the Collector, the case returns to the SDO and from him to the *Anchal Adhikari* and then to the *Karamchari* for a reply. The *Karamchari* has to record his view satisfying those queries and return the file again through the same channels. It also happens that all queries are not raised at one time but in more than one submission of the file. In this back-and-forth movement of the file, the case remains pending, the petitioner is harassed, both physically and financially, and the objective of law and policy is defeated.

This highlights the fact that it is not sufficient to have rights and entitlements. The process by which the benefit of the right accrues to the entitled persons is also important. The process of implementation creates enormous hurdles which deprive genuine claimants of their rights. Therefore, it is essential to simplify the process of implementation for the rights seekers as well as the decision-makers. Unfortunately, sufficient action has not been taken by the state government to ensure that the simplified process laid down in its circulars is observed in the disposal of cases.

The other aspect of this ignorance is that people are unaware that if their houses are located on *raiya* land they can get permanent ownership rights without any cost. This lack

of awareness makes them victims of exploitation. The landowners cheat them. They threaten eviction if they do not purchase the land or alternatively render free labour. Several such tenants on *raiya* land have succumbed to this pressure and purchased land from the owners. Alternatively, they have rendered free labour to the landowners to protect themselves from eviction. This makes them bonded labourers. No action is taken by the district administration to create the requisite awareness about the law and policy and to spread this knowledge among the affected people.

Homestead tenants are also weak and lack unity. They operate as individuals rather than as an organized group. This makes them even more vulnerable to exploitation. Political parties do not take up their cause. There are no civil society agencies to mobilize them either. They, therefore, approach government officials individually to secure their rights. In the absence of an organization, they are unable to exert the necessary pressure on officials for expeditious disposal of their cases. The police and revenue officials collude with landowners to deprive them of their rights and frustrate the intent of the law and government policy. In some cases, officials also seek illegal gratification for attending to their claims.

The process of implementation creates enormous hurdles which deprive genuine claimants of their rights.

The Right to Shelter: A Neglected Issue in Policy and Governance

The problems of homelessness and insecure occupants of shelter also become invisible due to the government's lack of accurate information on the number of cases in the three categories where necessary entitlements are required to be provided to eligible persons. There is no consolidated information of insecure tenancies on homestead land. Similarly, there is no estimate of the number of people who have constructed a shelter on government land which can be regularized by settling the land to them. There is also no data on the number of people requiring house sites. As a result, government officials, both in the district administration and the Secretariat do not realize the enormity of the problem. The requisite information is not even collected, as a result of which they tend to make assessments on the basis of the small number of claims filed and pending decision. This makes the enormity of the problem invisible. The government agencies are, therefore, prone to underestimate the problem or even deny its existence. This is evident from the fact that while at the national level, Bihar emerges as the state where the problem of homelessness is the highest, the number of cases reported as pending in the various districts of this state is very low.

The District Collectors in Bihar base their estimates on the number of claims filed. They are not aware of the huge number of unreported claims about which no attempt is made to collect accurate information. This can be substantiated by citing the case study of Araria District in Bihar which was formed into a new district from the old Purnea District. I had occasion to visit the district in 1992 in my capacity as Additional Chief Secretary of Bihar. During this visit, I enquired from the Collector about the number of cases where homesteaders on *raiya*/government land have not secured ownership rights or those who have no access to land for construction of a shelter. I invariably sought this information from the Collector during my visits to the districts. The Collector almost invariably denied that the problem existed in their district, barring a few cases pending at the block level. As

The requisite information is not even collected, as a result of which they tend to make assessments on the basis of the small number of claims filed and pending decision. This makes the enormity of the problem invisible.

I was quite used to getting this kind of negative reply, I would go to the village along with the district officials to lay bare the magnitude of the problem and convince them about the need for the vigorous implementation of the existing provisions of law and policy. I visited a randomly selected village in Araria too. The Collector was with me. We went to the Scheduled Caste *basti* of the village and asked the residents about number of people who did not have ownership rights on the land, whether *raiyati* or government, on which their shelter was located. Initially, there was some reluctance to answer this question owing to fear of the landowners. However, gradually, people started opening up and intimating the names of those who lived either on *raiyati* or government land without a secure right. We sat in the village up to 9 p.m. by which time we could note down the names of nearly 90 such people. There were still several names we could not record. We had to leave as we had a long distance to cover to reach the district headquarters. I therefore asked the Collector to visit the village on the following day to complete the list.

The Collector was visibly embarrassed at the discovery of the large number of cases in only one village, when he had denied the existence of the problem in the entire district. He realized that the problem was not confined to one village and could be widespread. Being a sensitive officer, he sought six months to survey the problem exhaustively and extend the benefits of the law and policy to the eligible people. Normally, Collectors make such promises to senior officers but rarely fulfil them as they get busy with other urgent activities for which there is pressure from the government. But this Collector was different. He informed me after eight months that he had given secure rights to 60,000 people in the district.

This one case highlights the invisibility of the problem in the perception of the officials. Deshkal Society's action research project refers to 346 cases pending in the office of Gaya District Collector. But this number does not reflect the actual number of people who are deprived of their entitlements. If an exhaustive survey is conducted, the enormity of the problem would emerge not only in Gaya district but in other districts of the state as well.

The problem of homelessness does not merely relate to insecure homestead tenancies on *raiyati* land or unauthorized occupation of government land. A larger problem relates to cases where alternative land has to be provided, since occupation on government (*aam*) land cannot be regularized, or where house sites have to be given for which vacant government land has to be identified or private land has to be acquired where no such vacant land is available. This aspect of the problem is more complex because acquisition of land requires prior government sanction as well as allotment of funds. The acquisition of land is also a time-consuming process. In comparison, the problem with regard to conferment of tenancy rights and the issue of *parchas* on government (*khas*) land is much simpler and can be accomplished in a short period. Despite this, the lack of action in this direction points to the insensitivity of government officials towards the problems of the poor.

The implementation of land reform laws has always been beset with several difficulties and the beneficiaries of land reforms have failed to get their entitlements because they are

pitted against powerful adversaries. This is why the entitlements contained in the provisions to provide security to tenants, enforce ceilings and distribution of surplus and Bhoodan land could not be implemented effectively. In the existing agrarian relations, informal tenants, landless peasants and insecure occupants of shelter are the weaker parties. They need to mobilize themselves into a collective entity and use their combined strength to fight landowners for their rights. They require a strong organization to support them, since the landowners have enormous financial and muscle power to frustrate the implementation of these progressive measures.

However, compared to other land reform laws, securing rights on homestead land does not involve too much of a struggle. This is because the law on homestead tenancy is a relatively minor part of the land reforms policy. The law is comparatively simpler and the processes of implementation are minimal. A claimant of this right does not require documentary evidence to support his/her case since the existence of house where the claimant resides can be physically verified with ease. The claimant has little risk of facing litigation from the landowner because the provisions of the law leave no loopholes. The government, therefore, can implement the provisions relating to homestead land if it has the necessary political will to do so. Unlike tenancies on agricultural land and identification of surplus ceiling land, the implementation of the law and policy on homestead land can be enforced without the risk of facing much political opposition.

It is unfortunate that despite the least controversial nature of this programme, it is not on the agenda of any government or manifesto of any political party. This programme does not even figure in the national land reforms policy which includes five programmes, namely, abolition of intermediary tenures, tenancy reforms, ceiling on agricultural holdings, consolidation of land holdings and updating of land records. The provision for securing rights in relation to homestead land was not included in that policy when it was framed and the position continues to remain the same. Thus, the issue of rights relating to homestead land has been kept on the margin – virtually ignored. This explains why even the minimum information is not available on the subject at the national or the state level. We have no information on the number of people who have been conferred ownership rights on their homestead land under tenancy laws or the number who have been given *parchas/pattas* on government land. Neither the Government of India nor the state government collects this information.

The non-availability of information on the progress made in this programme is due to the absence of any monitoring at the state and central levels. It is surprising that despite being a matter of importance for landless peasants and homeless people, and the availability of policy provisions and legal entitlements which are easy to implement, it has suffered such neglect at the political as well as the bureaucratic levels.

Given this perspective, the political potential of this programme is enormous. The vigorous implementation of the programme to provide secure rights on homestead land and house sites to the homeless should be on the top of the agenda of any political party that is interested in taking up pro-poor programmes. Its successful implementation would earn them their gratitude and political support.

The Collector was visibly embarrassed at the discovery of the large number of cases in only one village, when he had denied the existence of the problem in the entire district.

But it is necessary to realize that rights and entitlements have to be won, and even after they have been secured in law and policy, the battle has to continue for their implementation.

Conclusion

I understand that the Bihar government has decided that every homeless person would get three decimals of land and the government would acquire private land for this purpose where no government land is available. Let us hope that this commitment is fulfilled expeditiously, even if belatedly. But it is necessary to realize that rights and entitlements have to be won, and even after they have been secured in law and policy, the battle has to continue for their implementation. The government's commitment in the form of a declaration or even a written assurance is not sufficient.

It is, therefore, necessary that all people with insecure shelter or the lack of shelter should unite and form an organization to exert pressure on the government to implement the provisions of the law and policy. It is not difficult to build an organization around this issue because it is not likely to encounter much resistance from the government or the landowners. Once this mobilization takes place and an organization emerges, political parties would take note of it and support it. What is required is for some organization or individual to trigger this process. Deshkal may consider taking the first step in motivating the affected people to forge a social bond and build an organization. This would help in generating a larger movement for securing entitlements related to homestead land.

K. B. Saxena

Access to Housing and Homestead Land: A Basic Human Right

Housing is one of the basic requirements for human survival. Every citizen needs to have a safe, secure and healthy place to live, work and lead a life of dignity. A house provides not only physical protection against the vagaries of nature, but also space and privacy to an individual and his family for physical, emotional and intellectual growth. More importantly, ownership of a house brings about a profound change in his social existence, endowing him with an identity, dignity and a sense of belongingness, thus integrating him with his immediate social milieu and enhancing his opportunity for participation in social, economic and cultural life of the society. Considering its importance for the overall well-being of individuals and families, right to housing has been enshrined as a basic human right in international human rights instruments and *teaties* as well as in the Constitution of India as interpreted by the Supreme Court in many of its judgements.



A Woman Resting under the Shade of Her Hut

1.1 Right to Housing in International Human Rights Instruments

The right to adequate housing as a component of the right to an adequate standard of living is enshrined in many international human rights instruments. Most notable among these are the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1976). Article 25.1 of the Universal Declaration of Human Rights states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (http://www.unhabitat.org/downloads/docs/788_62781_Human%20rights.pdf)

The International Covenant on Economic, Social and Cultural Rights in its Article 11.1 reiterates:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. (<http://www2.ohchr.org/english/law/pdf/cescr.pdf>)

Since the adoption of the Universal Declaration of Human Rights in 1948, the right to adequate housing has been recognized as an important component of the right to an adequate standard of living. During the 1990s, the right to adequate housing gained further recognition among the human rights community, and many governments adopted or revised their housing policies to include various dimensions of human rights. The Second United Nations Conference on Human Settlements (Habitat II) in 1996 harnessed this momentum. The outcomes of the conference--the Istanbul Declaration and the Habitat Agenda--constitute a framework where development of human settlements is linked with the process of realizing human rights in general and housing rights in particular. The Habitat Agenda, in its paragraph 61, states that 'within the overall context of an enabling approach, Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing' (www.unhabitat.org/downloads/docs/1176_6455_The_Habitat_Agenda.pdf).

These actions include: a) providing legal security of tenure and equal access to land for all, including women and those living in poverty, as well as effective protection from forced evictions that are contrary to the law, taking human rights into consideration and bearing in mind that homeless people should not be penalized for their status; and b) adopting policies aimed at making housing habitable, affordable and accessible, including for those who are unable to secure adequate housing through their own means.

Subsequently, the Commission on Human Settlements adopted resolution 16/7 on 'the realization of the human right to adequate housing' in May 1997. The resolution recommended that UN-HABITAT

Governments should take appropriate action in order to promote, protect and ensure the full and progressive realization of the right to adequate housing.

and the Office of the United Nations High Commissioner for Human Rights (OHCHR) elaborate a joint programme to assist States with the implementation of their commitments to ensure the full and progressive realization of the right to adequate housing (http://www.unhabitat.org/downloads/docs/788_86084_HS-C%20Resolution%2016-.htm). More recently, the Commission on Human Rights in April 2001 adopted resolutions on adequate housing as a component of the right to an adequate standard of living, requesting UN-HABITAT and OHCHR to strengthen their cooperation and to consider developing a joint housing rights programme. Consequently, the United Nations Housing Rights Programme (UNHRP) was launched in April 2002, as a joint initiative by UN-HABITAT and the OHCHR.

The right to shelter is a fundamental right which springs from the right to reside and settle in any part of India under Article 19 (1)(e) and the right to life and personal liberty under Article 21 of the Constitution.

1.2 Constitutional Provisions in India

Under the provisions of the Constitution of India, the right to housing/shelter stems from Articles 19(1)(e) which guarantees the right to reside and settle in any part of India, and Article 21 which guarantees the right to life and liberty. In various cases, the Supreme Court has enlarged the meaning of the right to life under Article 21 of the Constitution to include within its ambit, the right to shelter. In the *UP Awas Evam Vikas Parishad vs. Friends Coop Housing Society Ltd.*, the Supreme Court declared that the right to shelter is a fundamental right which springs from the right to reside and settle in any part of India under Article 19 (1)(e) and the right to life and personal liberty under Article 21 of the Constitution (AIR, 1997, Supreme Court [SC] 152). In *PC Gupta vs. State of Gujarat and Ors*, in 1994, the Court went further holding that the right to shelter in Article 19(1) (g) read with Articles 19(1) (e) and 21, included the right to residence and settlement. Protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter to enjoy the meaningful right to life. The right to residence and settlement was seen as a fundamental right under Article 19(1) (e) and as a facet of inseparable meaningful right to life as available under Article 21.

In some cases, upholding the right to shelter, the Court looked at differentiating between a mere animal-like existence and a decent human existence, thereby bringing out the need for a respectable life. Upholding the importance of the right to a decent environment and a reasonable accommodation, the Court in the *Shantistar Builders vs. Narayan Khimalal Totame*, held that

The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body, for a human being it has to be a suitable accommodation, which would allow him to grow in every aspect – physical, mental and intellectual. (AIR 1990 SC 630)

In the *Chameli Singh vs. State of UP* (1996, 2 SCC 549) a three-judge bench of the Supreme Court had considered and held that the right to shelter is a fundamental right

Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right.

available to every citizen and had enlarged the meaning of the right to shelter to include within its ambit reasonable space, clean and decent environment as well as other infrastructural facilities. Para 8 of the judgment reads: Shelter for a human being, therefore, is not a mere protection of his life and limb. It is his home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right.

Right to housing has, thus, been acknowledged as a fundamental human right and is considered an essential component of the right to adequate standard of living. The meaning of adequate housing has also been gradually enlarged whereby it refers to not only a physical dwelling unit but also includes provisions for basic services like safe drinking water, sanitation, drainage, clean and healthy surroundings and environment, which are essential for decent living.

In recent years the socio-political and economic benefits of housing have also begun to be emphasized. For instance, in rural India, where the traditional practice of landlords providing homestead land to landless agricultural labourers has been a major source of bonded labour relations (Beman, 1974), ownership of even a small plot of homestead land increases the status and self-image of rural households and their ability to participate in the socio-political affairs of the village. Even now, in many parts of the country, a number of landless rural families continue to reside on such land which originally belonged to some

landowner. Since they do not have secure ownership rights over their homestead land, these families are always at the risk of eviction by the landowner, and, therefore, are vulnerable to subordination and exploitative unfree labour relations. Ownership of homestead land can provide these families freedom of choice of their employer and increase their bargaining power for higher wages and better working terms and conditions.

Studies have also shown that ownership of homestead land can confer multiple other important benefits to rural households in



Children Reading Amidst Belongings Kept Out of A Hut

terms of income, food and economic security, particularly when the plots are large enough to include a kitchen garden and space for a few animals. (Hanstad, Brown and Roy Prosterman, 2002; Hanstad, Haque and Nielson, 2008.). Small plots of homestead land can increase the quantity and quality of food intake, and improve family nutrition and health by providing opportunity to grow fruits and vegetables. It can also be used to shelter and rear livestock which can in turn be additional source of food and nutrition. Homestead plots also provide an important safety net through their value as a source of food, income and capital for families in times of drought, unemployment, or other hardships. Such plots also increase a family's ability to access formal and informal sources of credit for investment purposes or in times of distress. Many of the important benefits accrue specially to women. Such plots provide women with a place close to home to undertake economic activities such as tending livestock and cottage industries that can provide them with an important source of independent income. If women hold or share legal ownership right over homestead plots, it can also enhance their status and decision-making power within the household as well as provide security to them in case of husband's death.

Keeping in mind the economic benefits of housing, the Eleventh Five year Plan of the Government of India also recommends that

the land given to each family is of a minimum size (10- 15 cents), so that the average family not only has enough space to live, but also has a little space extra for supplementary livelihood activities, such as growing fodder and keeping livestock, planting fruit trees or vegetables, or undertaking other land-based economic activities (farm or non-farm) to improve their food, nutrition, and livelihood security' (Government of India, 2008).

Ownership of house and homestead land is thus important for the overall well-being and empowerment of the poor, especially the landless rural labourers. As rural areas account for about 71 per cent of the population and nearly 65 per cent of the housing shortage in the country (Census of India 2001), India faces a daunting challenge in the task of ensuring that its commitment to right to housing becomes a reality.

Ownership of even a small plot of homestead land increases the status and self-image of rural households and their ability to participate in the socio-political affairs of the village.

Assessment of Shortage of Rural Housing in India and Bihar

There are various dimensions of houseless-ness in rural India. These are related to access to homestead land, ownership/tenurial status, type of structure and dwelling, population growth, congestion and overcrowding, etc. Taking into account these various dimensions, houseless people in rural areas can be classified into five categories. The first category consists of people who have neither a house of their own nor access to land which they can use for constructing a house. Such people are usually compelled by circumstances to

In order to formulate appropriate interventions for ensuring the right to housing in rural areas, it is important to understand and estimate the magnitude of the challenge posed by the shortage of rural housing taking into account these various dimensions.

live with either a relative or an employer or at public places such as temples. The second category is of people who have constructed a house on land over which they do not have secure ownership rights. The land belongs to the employer or some other landowner, and therefore, the occupants are always facing the risk of eviction. The third category of people includes those who, being landless, have constructed a house on government land or on land belonging to some other public agency, such as the forest department, irrigation department or Panchayat. They do not have any rights over these lands or any authorization to construct a house over it, and therefore, are always at the risk of eviction. The fourth category consists of people who have land of their own and have also constructed a small house over it, but, as the family has grown further, the house is too small to accommodate adult daughters and adult/ married sons. They do not have resources to acquire additional land, and therefore, can neither construct a separate house nor make the present house large enough to accommodate the additional members. The fifth

category is of people who have a *kutchra* (thatched) house built on a small piece of land over which they have secure rights, but have no resources to build a proper house. In order to formulate appropriate interventions for ensuring the right to housing in rural areas, it is important to understand and estimate the magnitude of the challenge posed by the shortage of rural housing taking into account these various dimensions.

2.1 Assessment of Rural Housing Shortage by Government Agencies

Concerned with the problem of housing for the rural poor, various government agencies and departments have tried to assess the shortage of rural housing by taking into account its different dimensions. As described below, although these assessments vary widely from each other, they all point towards the magnitude of the problem.

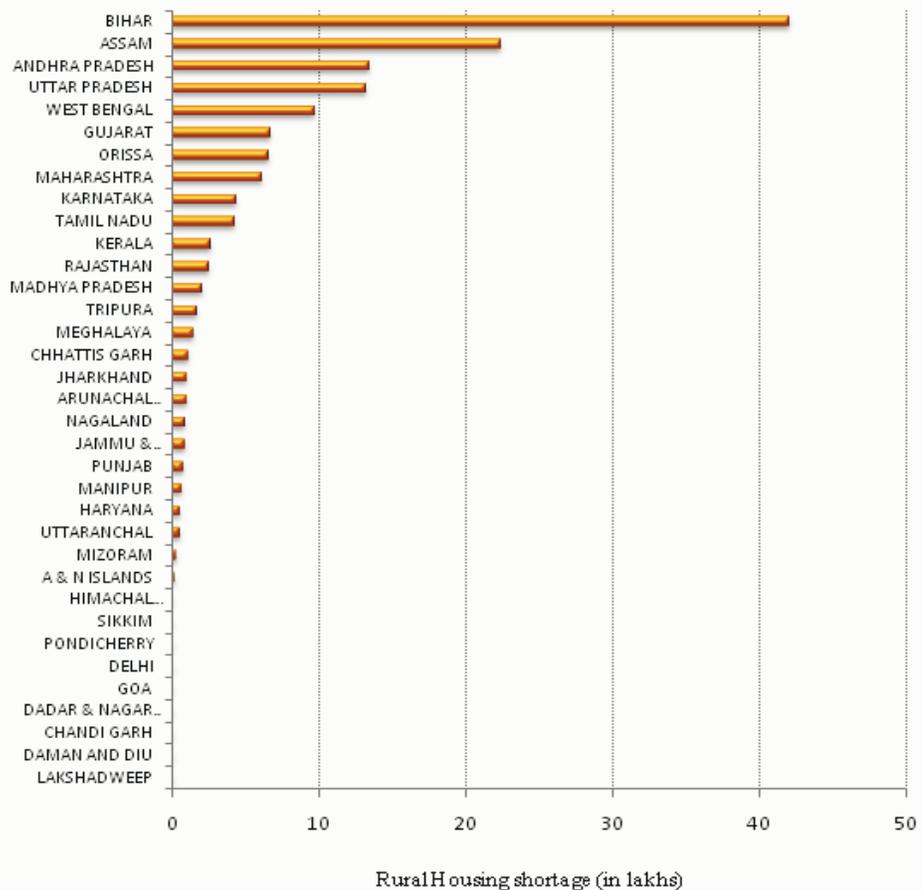
2.1.1 Assessment by the Registrar General of India (RGI)

On the request of the Ministry of Rural Development, the RGI in 2005 assessed rural housing shortage. Based on the data from Census 2001, the housing shortage was estimated to be 148.33 lakhs. State-wise data³ (Figure 2.1) shows that Bihar has the highest incidence of rural housing shortage (42.10 lakhs) in the country. Also the magnitude of the shortage is nearly double of that in the state ranked second, and triple of that in states ranked third and fourth.



A Mixed Settlement

Figure 2.1: State-wise shortage of housing in rural areas (in lakhs)



Source: Census of India, 2001.

³. See state-wise data in Annexure I.

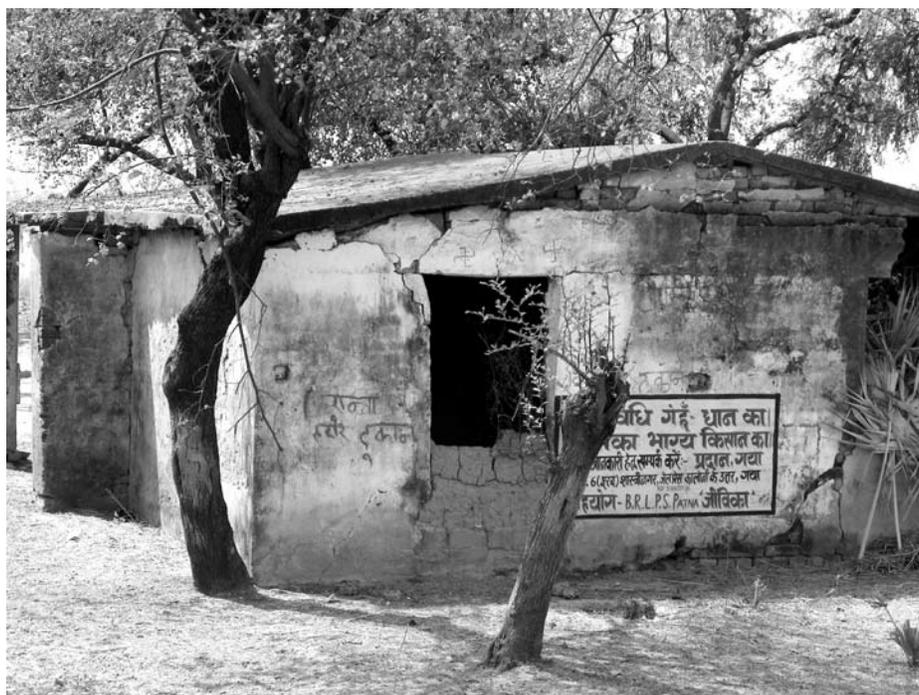
Taking into account houses likely to have been affected by natural calamities, the figure of incremental shortage of 9 lakh houses per year has been adopted by the Ministry of Rural Development.

The Ministry of Rural Development has also assessed the annual incremental increase in demand for rural housing at around 9 lakh houses. This has been done on the basis of the housing shortage of 137 lakhs as per the 1991 Census, the housing shortage of 148.33 lakhs as per the 2001 Census, and the 65 lakh houses that were constructed under IAY from 1991-2001.⁴ Therefore, the increase in housing shortage was around 76 lakhs during this period of ten years, amounting to an average increase of 7.60 lakh houses per year. Taking into account houses likely to have been affected by natural calamities, the figure of incremental shortage of 9 lakh houses per year has been adopted by the Ministry of Rural Development (Government of India, Working Group on Rural Housing for the Eleventh Five Year Plan, Ministry of Rural Development, New Delhi.).

2.1.2 Assessment by HUDCO

HUDCO in its publication 'Trend and Gaps in Housing and Basic Amenities, India 2001' has assessed the shortage of rural housing in India to be 240 lakhs (Table 2.1). This assessment is also based on the Census 2001 data and starts with the excess of rural households over rural houses and non-serviceable *kutcha* houses. In addition, obsolescence and congestion factors have also been included in the estimates. The obsolescence factor has been calculated

to be 4.14 per cent as per the 49th round of the National Sample Survey (NSS) results. Congestion has been calculated as 4.86 per cent of the acceptable housing stock—*pucca* and *semi-pucca*—which was also used by the Tenth Plan Working Group on Urban Housing (Government of India, Working Group on Rural Housing for the Eleventh Five Year Plan, Ministry of Rural Development, New Delhi.).



A Dilapidated Grain Store

⁴ See plan-wise and year-wise performance of IAY in Annexure II.

Table 2.1: Assessment of rural housing shortage by HUDCO

| Sl.No. | Components of housing shortage | Housing shortage as on 1.4.2001 (in lakhs) |
|--------|------------------------------------|--|
| 1 | Excess of households over houses | 32.2 |
| 2 | Unserviceable <i>kutcha</i> houses | 115 |
| 3 | Obsolescence | 43 |
| 4 | Congestion | 50 |
| | Total housing shortage | 240 |

2.1.3 Assessment by the National Housing Bank (NHB)

The rural housing shortage estimated by the National Housing Bank for the period 2002-07 and 2007-12 are 577 lakhs and 550 lakhs, respectively (Table 2.2). These estimates have been arrived at on the basis of the decennial growth rate of population, households and housing stock drawn from the census data of 1991 and 2001. According to these estimates, additional housing requirement during 2002-07 was 200 lakhs and during the period 2007-12 it is expected to be 220 lakhs (Government of India, Working Group on Rural Housing for the Eleventh Five Year Plan, Ministry of Rural Development, New Delhi.).

Table 2.2: Assessment of rural housing shortage by the National Housing Bank

| Sl. No. | Components of housing shortage | Housing shortage(in lakh) | |
|---------|---|---------------------------|---------|
| | | 2002-07 | 2007-12 |
| 1 | Excess of households over houses | 31.70 | 40 |
| 2 | Replacement of non-serviceable <i>kutcha</i> houses | 116.70 | 60 |
| 3 | Obsolescence | 15 | 15 |
| 4 | Congestion | 15 | 15 |
| 5 | Upgradation of existing <i>kutcha/pucca</i> houses | 198.90 | 200 |
| 6 | Additional housing requirements | 200 | 220 |
| 7 | Total housing shortage | 577 | 550 |

For making the assessment, data on households and residential housing stock including serviceable *kutcha* houses needing repair, upgradation and non-serviceable *kutcha* houses needing replacement have been taken from the Census 2001 data. The estimate of congestion is based upon the difference between the average household size at the national and rural levels multiplied by the number of rural households (1.38 million x 0.11). Estimates of obsolescence are based on the assumption of the average longevity of a house as 40 years. As there were 65.20 million dwelling units in the rural areas in 1961, obsolescence has been computed as 15 lakh units.

Apart from the factors taken into account by the RGI and the HUDCO, the NHB has also taken into account two other factors: serviceable *kutcha* (temporary) houses and additional requirement for housing, for arriving at the shortage of rural housing.

Additional requirement for housing has been calculated by taking the difference between the projected number of households at the end of the period and the number of houses at the beginning of the period.

The Working Group on Rural Housing for the Eleventh Five Year Plan has estimated the shortage of rural housing for the period 2007-12 to be 474.30 lakhs

2.1.4 Assessment by Working Group on Rural Housing for the Eleventh Five Year Plan

The Working Group on Rural Housing for the Eleventh Five Year Plan has estimated the shortage of rural housing for the period 2007-12 to be 474.30 lakhs (Government of India, Working Group on Rural Housing for the Eleventh Five Year Plan, Ministry of Rural Development, New Delhi.). For calculating the shortage of rural housing, the Working Group on Rural Housing followed the same methodology adopted by the Working Group on Urban Housing. The assessment first calculated the exponential growth rates for Households, Housing Stock, *Pucca* Houses and *Semi-Pucca* Houses using data from the censuses of 1991 and 2001, and then estimated the projected figures for the years 2007 onwards up to 2012 (Table 2.3).

Table 2.3: Figures used for assessing housing shortage during 2007 and 2012 (in millions)

| | 2007 | 2012 |
|-------------------------|--------|--------|
| Housing Stock | 153.03 | 169.79 |
| Households | 156.63 | 173.78 |
| <i>Pucca</i> House | 70.14 | 85.33 |
| <i>Semi-Pucca</i> House | 56.37 | 64.08 |

Further, the percentage of congestion, i.e. 6.50 per cent of households was estimated on the basis of the 2001 census data of number of couples not having a room to themselves. Also the obsolescence factor of 4.30 per cent of households was based on data of 58th round of the NSSO. Houses that were more than 80 years old and houses with a life span of 40 to 80 years that were of bad quality were considered obsolete.

Table 2.4 indicates the factors taken into account for estimating the rural housing shortage during 2007-12. The shortage of rural housing estimated by the Working Group worked out to be 474.30 lakh houses during the period 2007-12. It is also assumed by the working group that at least 90 per cent of this shortage pertains to BPL families. Thus the shortage of rural housing for BPL families is 426.90 lakh houses.

Table 2.4: Assessment of rural housing shortage

| S.No | Factors taken into account for assessing housing shortage | Calculation | Shortage in million |
|------|---|--|---------------------|
| 1 | No. of households not having houses in 2007 | No. of households – No. of housing stock (156.63 million – 153.03 million) | 3.60 |
| 2 | No. of temporary houses in 2007 | No. of housing stock – No. of permanent houses (<i>Pucca</i> + <i>Semi-Pucca</i>) 153.03 million – 126.51 million | 26.52 |

| | | | |
|---|--|--|--------------|
| 3 | Shortage due to congestion in 2007 | 6.5% x No. of households (6.5% x 156.63 million) | 10.18 |
| 4 | Shortage due to obsolescence in 2007 | 4.3% x No. of Household (4.3% x 156.63 million) | 6.74 |
| 5 | Additional housing shortage arising between 2007 to 2012 | No. of excess households projected for 2012 over 2007 – No. of excess housing stock projected for 2012 over 2007 = (17.15 - 16.76) | 0.39 |
| Total Rural Housing Shortage 2007-12 | | | 47.43 |
| 90% of Total Rural Housing Shortage for BPL Families 2007-12 | | | 42.69 |

2.2 Ownership of Homestead Land: NSSO Data

Access to and secure ownership rights over homestead land is the key to the ownership of a house. However, data on homestead land is not readily available. The data available on rural landholdings in India, in particular, on ownership holdings of land have been fraught with problems. Data from land and livestock surveys conducted decennially by the NSSO are the most important source of information on distribution of landholdings in rural India. Several scholars in the past have, however, questioned the reliability and accuracy of estimates of distribution of ownership holdings and the extent of landlessness as shown by these surveys (Ramakumar, 2000; Sharma and Dreze, 1998). It has been noted by many scholars, for example, that the NSS surveys underestimated the extent of landlessness, extent of tenancy, and inequality in ownership and operational holdings. According to the published estimates from the 59th round of the land and livestock surveys, only 10.04 per cent households in India and 7.60 per cent households in Bihar did not own any land including homestead. But primary data-based studies from most states report a much higher level of landlessness. Also, NSS surveys themselves report a much higher level of landlessness (of the order of about 40 per cent) in terms of operational holdings. Such a large level of discrepancy between landlessness in terms of ownership holdings and landlessness in terms of operational holdings cannot be explained by the extent of tenancy (Vikas Rawal, 2008).

Table 2.5 shows the extent of landlessness across different states by three different measures of landlessness. The estimates show that in 2003-04 about 41.60 per cent of households in rural India and 38.80 per cent households in rural Bihar did not own any land other than homestead, and 10.40 per cent in rural India and 7.60 per cent in rural Bihar did not own even homestead land. About 31.10 per cent of households in rural India and 31.01 per cent in rural Bihar did not own any land other than homestead and did not do any cultivation on their homestead (column 4). But it is difficult to believe that while the incidence of rural housing shortage, even according to the most conservative estimate of the Census

But it is difficult to believe that while the incidence of rural housing shortage, even according to the most conservative estimate of the Census of India 2001, is the highest in Bihar, the incidence of landlessness in rural Bihar is lower than the all-India average.

of India 2001, is the highest in Bihar, the incidence of landlessness in rural Bihar is lower than the all-India average.

Table 2.5: Proportion of households not owning land (2003-04, in percentage)

| State | Official Estimates (Households That Do Not Own Any Land Including Homestead) | Households that do not Own Any Land Other Than Homestead | Households That Neither Own Any Land other than homestead nor Cultivate on Owned Homestead Land |
|-------------------|---|--|---|
| 1 | 2 | 3 | 4 |
| Jammu and Kashmir | 3.29 | 10.97 | 7.29 |
| Himachal Pradesh | 15.00 | 22.68 | 21.87 |
| Punjab | 4.57 | 56.89 | 29.51 |
| Uttarakhand | 10.64 | 26.40 | 21.15 |
| Haryana | 9.21 | 49.49 | 25.96 |
| Uttar Pradesh | 3.82 | 26.20 | 16.31 |
| Rajasthan | 5.65 | 19.95 | 12.73 |
| Chhattisgarh | 12.09 | 27.31 | 20.8 |
| Madhya Pradesh | 12.05 | 31.81 | 22.76 |
| Gujarat | 13.60 | 44.11 | 35.37 |
| Maharashtra | 17.66 | 44.78 | 38.27 |
| Andhra Pradesh | 14.33 | 53.19 | 48.75 |
| Karnataka | 14.09 | 40.47 | 30.76 |
| Kerala | 4.80 | 68.36 | 36.74 |
| Tamil Nadu | 16.55 | 64.52 | 55.43 |
| Bihar | 7.60 | 38.80 | 31.01 |
| West Bengal | 6.15 | 46.52 | 34.69 |
| Jharkhand | 4.80 | 39.25 | 18.43 |
| Orissa | 9.56 | 38.48 | 31.07 |
| Sikkim | 30.67 | 44.40 | 37.96 |
| Arunachal Pradesh | 21.59 | 23.50 | 22.59 |
| Nagaland | 8.02 | 15.45 | 10.85 |
| Manipur | 2.68 | 30.3 | 13.53 |
| Mizoram | 2.34 | 14.1 | 6.67 |
| Tripura | 8.69 | 59.52 | 33.22 |
| Meghalaya | 6.70 | 29.01 | 19.93 |
| Assam | 8.05 | 40.30 | 23.00 |
| India | 10.04 | 41.63 | 31.12 |

Source: Vikas Rawal, 2008.

Socially disaggregated data indicates that the incidence of landlessness is much higher among Dalit households than among Adivasi households and non-Dalit/Adivasi households (Table 2.6). In Bihar, while 72.30 per cent Dalit households did not own any land other than homestead, only 35.30 per cent non-Dalit/Adivasi households did not own non-homestead

land. For India as a whole, 56.50 per cent Dalit households and 37.80 per cent non Dalit/Adivasi households did not own any land other than homestead. Thus the incidence of landlessness among Dalits in Bihar is much higher than the all-India average, whereas among non-Dalits/Adivasis in Bihar, it is slightly less than the all-India average. Furthermore, the data also indicates that within Bihar landlessness among Dalit is more than twice of that among non-Dalits/Adivasis. Thus, it can be said that lack of access to land including homestead land is a major problem faced by the landless labour households, particularly from Dalit communities in rural Bihar.

Table 2.6: Rural Households not owning any land other than homestead as a proportion of all households, by social group, India, 2003 in per cent

| States | Adivasi | Dalit | Non-Dalit/Adivasi | All |
|-------------------|---------|--------|-------------------|-------|
| Andhra Pradesh | 48.70 | 64.50 | 49.60 | 53.20 |
| Arunachal Pradesh | 4.50 | 53.60 | 93.80 | 23.50 |
| Assam | 27.60 | 49.80 | 40.90 | 40.30 |
| Bihar | 22.10 | 72.30 | 35.30 | 43.70 |
| Chattisgarh | 18.40 | 31.50 | 31.00 | 26.20 |
| Delhi | 100.0 | 99.70 | 97.30 | 98.10 |
| Goa | 0.00 | 0.00 | 59.00 | 57.10 |
| Gujarat | 34.30 | 67.00 | 43.10 | 44.10 |
| Haryana | 100.00 | 84.10 | 34.90 | 49.50 |
| Himachal Pradesh | 14.50 | 22.70 | 23.50 | 22.70 |
| Jammu & Kashmir | 44.10 | 21.80 | 8.90 | 11.00 |
| Jharkhand | 18.70 | 41.70 | 24.90 | 24.70 |
| Karnataka | 54.00 | 57.50 | 34.70 | 40.40 |
| Kerala | 66.10 | 85.40 | 66.10 | 68.30 |
| Madhya Pradesh | 41.10 | 35.60 | 30.80 | 34.00 |
| Maharashtra | 61.20 | 69.60 | 35.50 | 44.80 |
| Manipur | 11.00 | 41.60 | 45.60 | 30.20 |
| Meghalaya | 25.40 | 59.20 | 60.90 | 29.00 |
| Mizoram | 15.00 | 100.00 | 6.00 | 14.90 |
| Nagaland | 9.30 | | 100.00 | 15.50 |
| Orissa | 33.30 | 52.80 | 35.90 | 38.50 |
| Punjab | 98.90 | 88.90 | 36.50 | 56.90 |
| Rajasthan | 6.80 | 39.30 | 17.00 | 19.60 |
| Sikkim | 35.50 | 65.10 | 46.70 | 44.40 |
| Tamil Nadu | 66.70 | 78.70 | 59.50 | 64.50 |
| Tripura | 48.50 | 67.40 | 62.10 | 59.40 |
| Uttar Pradesh | 51.80 | 33.90 | 23.20 | 26.30 |
| Uttaranchal | 60.90 | 33.70 | 25.20 | 27.70 |
| West Bengal | 48.80 | 54.10 | 42.80 | 46.50 |
| India | 35.50 | 56.50 | 37.80 | 41.60 |

Source: Aparajita Bakshi, 'Social Inequality in Land Ownership in India: A Study with Particular Reference to West Bengal', Indian Statistical Institute, Calcutta.

It was hard to believe that Gaya district, which has a total population of approximately 3.50 million people with a Dalit population of approximately 1 million (Census of India, 2001) had only 346 households which did not have ownership rights over their homestead land.

A major problem with the NSS data, particularly with reference to homestead land, is that ownership means only de facto ownership-like possession, and does not take into account the de jure or actual legal ownership status (Rawal, 2009). Therefore, a large number of rural households that are shown in the data to have ownership of homestead land may not in fact have legal ownership of the same. As described in the next section, this was exactly the situation found by Deshkal Society in the villages of Gaya district in Bihar in the course of its efforts to facilitate the provision of legal entitlement to homestead land to Dalit households.

2.3 Ownership of Homestead Land in Rural Bihar: A Micro Field View⁵

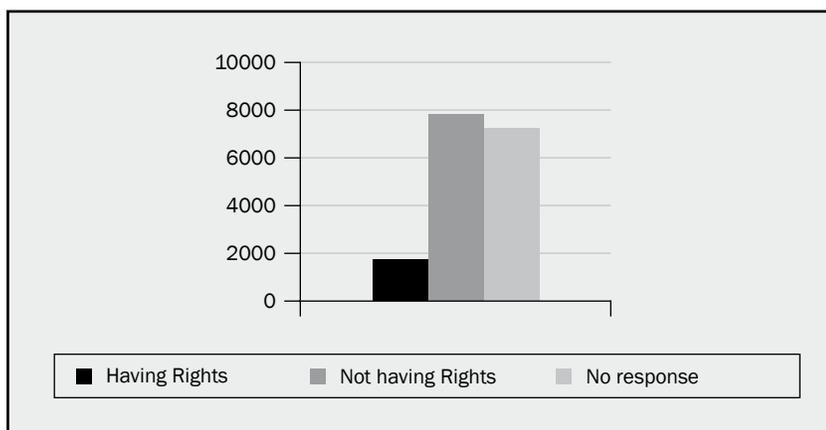
Deshkal Society conducted a programme in 361 villages of Gaya district of Bihar for facilitating the process of realizing the ownership right to homestead land for Dalit households. When Deshkal Society started its effort, it was, first of all, confronted with the problem of having information about households that do not possess ownership rights over the homestead land on which they have been residing. This was a basic requirement for proceeding further. However, there was complete lack of data and information on such households. There were two options: to find out from the land and revenue records of the government at Block and district levels, or to conduct a primary household survey in the target villages. When the Circle Officers of the Blocks were approached, they denied having any records or data of households not having legal entitlement to their homestead land. After making rounds of the district offices including the Collector's office we were told that in Gaya District as a whole only 346 households did not have legal entitlement to their homestead land. This was the latest data available with the government for the period up to March 2006.

It was hard to believe that Gaya district, which has a total population of approximately 3.50 million people with a Dalit population of approximately 1 million (Census of India, 2001) had only 346 households which did not have ownership rights over their homestead land. In our discussions with the then District Collector it came out that these 346 households were those which had actually submitted applications to the government for securing legal rights over their homestead land, and were awaiting action by the government in this regard. It was found that there was no mechanism to collect and compile data and records of the actual number of households which needed to be granted legal rights over homestead land as per the law.

5. This section is based on an action research conducted by Deshkal Society in partnership with GNK and LSSK in Gaya district of Bihar as part of its project Capacity Building and Advocacy for Development Change among the Musahar Community, under PACS 1 Programme of DFID, New Delhi, 2006.

Faced with the lack of data, a primary survey of households was conducted in 361 villages spread over 4 Blocks. It was revealed that only 14.34 per cent of the marginalized community households (2,736 out of 19,081 households) had legal ownership right over the homestead land they were residing on (Figure 2.2).

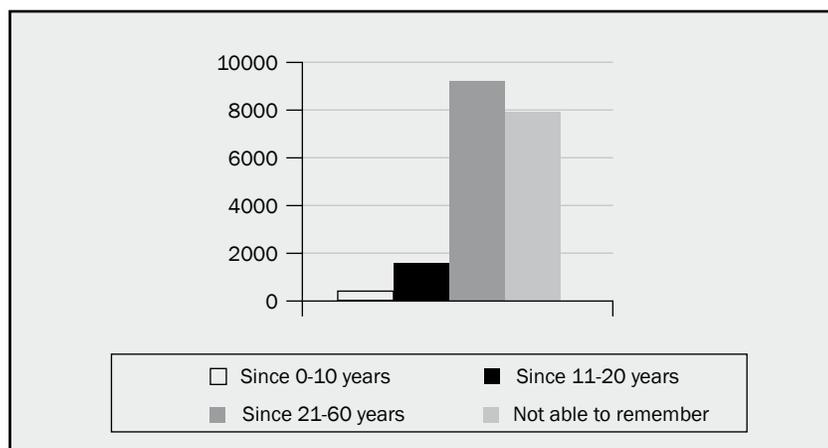
Figure 2.2: Households having ownership rights over homestead



Source: Deshkal Action Research, for the project Capacity Building and Advocacy for Development Change among the Musahar Community, under PACS 1 Programme of DFID, New Delhi, 2006.

The survey further revealed that a majority of the marginalized community households (17,224 out of 19,081 households) had been residing for more than 20 years on the homestead land over which they still did not possess legal ownership rights (Figure 2.3). Many of these households were unable to count the numbers of years as they had been residing on the land since many generations.

Figure 2.3: Households by period of residing on their homestead



Source: Deshkal Action Research, for the project Capacity Building and Advocacy for Development Change among the Musahar Community, under PACS 1 Programme of DFID, New Delhi, 2006.

These estimates do not seem to bring out the number of those households which have constructed their houses on land over which they do not have secure ownership rights.

The survey clearly revealed the magnitude of the problem. It was pathetic to know that such a large number of landless rural households in Bihar have been denied their legal right of ownership of homestead land although laws and policies in this regard (as described in chapter 3) have been existing since long. The survey also revealed that without taking into account the issue of legal ownership of homestead land, the assessments of rural housing shortage cannot accurately estimate the magnitude of the problem.

The assessments of rural housing shortage by different agencies as shown above widely vary in their estimates, from 148.33 lakh (Census 2001) to 577 lakhs (NHB, 2007). Even going by the most conservative estimate, the shortage is substantial and seems to be growing which means that the efforts at provision for housing have been slower than the scale of demand. Bihar ranks first among the states in terms of the magnitude of rural housing shortage, and, within Bihar, a majority of rural Dalit households lack access to and ownership rights over homestead land. Considering the huge gap between the shortage and the efforts at provision, even the commitment of the Government of India in its National Housing and Habitat Policy to construct 13 lakh additional houses in rural areas every year seems to be grossly inadequate to achieve the goal of right to shelter (Government of India, 1998). Moreover, these estimates do not seem to bring out the number of those households which have constructed their houses on land over which they do not have secure ownership rights, and, therefore, are always at the risk of eviction. As the survey by Deshkal Society in the villages of Gaya district shows, the number of such households, particularly among the Dalit communities, may be quite large. However, in the absence of any official data and records, it is difficult to estimate the number of such households for making accurate assessments of total rural housing shortage.

Right to Homestead Land: Laws and Policies in Bihar

Access to land and secure ownership rights over it are the key to ownership of a house in rural areas. And access to land for housing in rural areas essentially involves: i) granting the landless poor ownership rights over homestead land on which they have constructed their house, and ii) allotting homestead plots to those without any land. The existing laws, policies and regulations in Bihar, as described below, sufficiently provide for both these contingencies.

3.1 Central Government Policies and Programmes

Housing for the rural poor was virtually neglected by the Government of India in the first three decades after Independence. For the first time in the 1980s rural housing was included as a major activity in the National Rural Employment Programme (NREP) and the Rural Landless Employment Guarantee Programme (RLEGP). In 1985 specific proportions of rural employment funds under RLEGP were earmarked for construction of houses for the Scheduled Castes (SCs), Scheduled Tribes (STs) and freed bonded labourers. This scheme was known as the Indira Awaas Yojana (IAY) which continued as a sub-scheme of the Jawahar Rozgaar Yojna (JRY) from 1989 to 1995. In January 1996, IAY was delinked from JRY and made an independent scheme. Since then IAY is the major housing scheme of the Government of India being implemented all over the country for construction of houses for the rural poor, free of cost.

Housing for the rural poor was virtually neglected by the Government of India in the first three decades after Independence.

3.1.1 Indira Awaas Yojna (IAY)

Under IAY, financial assistance is provided for construction/upgrading of dwelling units to the BPL rural households belonging to the Scheduled Castes, Scheduled Tribes and freed bonded labourers. From the year 1993-94, the scope of the scheme was extended to cover non-Scheduled Caste and non-Scheduled Tribe rural BPL poor, subject to the condition that the benefits to non-SC/ST would not be more than 40 per cent of the total IAY allocation. The benefits of the scheme were extended to the families of ex-servicemen of the armed and paramilitary forces killed in action. Three per cent of the houses were also reserved for the rural BPL physically and mentally challenged persons. From 2006-07 onward, funds and physical targets under the IAY are also being earmarked for BPL minorities in each state.



Houses Built Under Indira Awas Yojana

Under the scheme, financial resources are shared between the Centre and the states on a 75 : 25 basis. Since reduction of shelterlessness is the primary objective, 75 per cent weightage is given to housing shortage and 25 per cent to the poverty ratios prescribed by the Planning Commission for state-level allocation of funds. For district-level allocation, 75 per cent weightage is given again to housing shortage and 25 per cent to SC/ST population of the concerned districts.

On the basis of allocations made and targets fixed, District Rural Development Agency (DRDAs)/Zilla Parishads (ZPs) decide Panchayat-wise the number of

houses to be constructed under IAY and intimate the same to the concerned Gram Panchayat. Thereafter, the Gram Sabha selects the beneficiaries, restricting its number to the target allotted, from the list of eligible households in the permanent IAY waitlist. No further approval of any higher authority is required.

The ceiling on grant-in-aid assistance under the IAY has been enhanced since 2008, from Rs 25,000 to Rs.35,000 per unit in the plain areas and from Rs.27,500 to Rs.38,500 in hilly/difficult areas. For upgradation of *kutch* house, the financial assistance has been enhanced from Rs.12,500 to Rs.15,000 per unit. The construction of the houses is the sole responsibility of the beneficiary. Engagement of contractors is strictly prohibited. The scheme also includes provisions for facilities such as sanitary latrines, smokeless *chullhas* and proper drainage for each of the houses constructed.

The dwelling units constructed under the scheme are allotted either in the name of a female member of the beneficiary household or, alternatively, in the name of both the husband and the wife. Only in case there is no eligible female member in the family is the house allotted in the name of an eligible male member.

3.1.2 Inclusion of Provisions for Homestead Sites in the IAY

A significant proportion of the rural poor, particularly from the SC and ST communities, find themselves ineligible for assistance under the IAY because they either do not have access to land for building a house or do not have legal ownership rights over the homestead land on which they have been residing since long. Due to this, the most needy among the rural poor are often unable to avail the benefits of the IAY scheme. With an aim to remedy this lacuna and provide shelter to the homeless in the light of the recommendations of the Eleventh Five Year Plan, the Central Government, in August 2009, approved a scheme to provide homestead sites to rural BPL households. As per the scheme, the beneficiaries will be selected from the permanent IAY waitlists as per their priority in the list. Only those BPL

households who have neither land nor house site will be eligible. The state governments will regularize the land as a homestead site if it is presently occupied by a BPL household and if regularization is permissible as per the existing acts and rules. In case regularization is not permissible, the state government will allot suitable government land as homestead site to the eligible BPL households. The state governments are supposed to purchase or acquire private land for homestead sites in case suitable government land is not available for the purpose. Financial assistance of Rs.10,000 per beneficiary or actual, whichever is less, will be provided for purchase/acquisition of a homestead site of an area around 100-250 sq. mt.

The IAY enjoys considerable support since it creates a visible and valuable asset for beneficiaries, which is likely to improved security and economic and social status. Unlike other schemes where beneficiaries have to work in return for assistance, the IAY provides grants with minimal requirements on the part of the beneficiaries. Thus, in contrast to other schemes, the IAY has not undergone major transformations or reincarnations since its inception almost two decades ago.

Nonetheless, several problems in its implementation have been pointed out by periodic evaluations of the scheme (Majumdar, 2005; Nair, 1999.). Favouritism, nepotism and role of bribe money is reported to play important role in the selection of beneficiaries, disregarding official guidelines. The lumpsum payment of the financial assistance is large enough to again attract substantial corruption. Local politicians, including Members of Parliament, Members of State Legislative Assemblies, and even village Panchayat heads view this as an important mechanism for patronizing supporters and a high proportion of benefits under the scheme are reported as being manipulated towards this end. The popularity of the IAY may be gauged from the fact that it has become a contentious issue between Members of Parliament (MPs) and Members of Legislative Assemblies with the former perceiving the latter to be gaining from a Centrally-sponsored scheme. These machinations may be a natural outcome of the context of the scheme, since the total allocation of grants-based IAY, although substantial, is miniscule relative to potential demand based on the number of BPL households without houses in the country.

3.1.3 The Eleventh Five Year Plan: Provision for Security of Homestead Rights

The Eleventh Five Year Plan, the major national policy and plan document of the Government of India, acknowledges for the first time that the right to a roof over one's head needs to be seen as a basic human right, along with the right to freedom from hunger and right to education (Government of India, 2008). Referring to the Supreme Court judgment in *UP Avas Evam Vikash Parishad vs, Friends Co-operative Housing Society* (List All India Reporter [AIR], 1997, Supreme Court [SC] 152), which held that right to shelter was a fundamental right, the plan document proposes that the following steps are needed to be undertaken to ensure the realization of this right.

In contrast to other schemes, the IAY has not undergone major transformations or reincarnations since its inception almost two decades ago.

- All landless families with no homestead land as well as those without regularized homestead should be allotted 10–15 cents of land each. Female-headed families should have priority.
- Some of the required resources can be arranged through the reallocation of resources from existing schemes, such as the IAY, NREGA, and so on. This must be completed during the Eleventh Five Year Plan.
- When regularizing the homesteads of families occupying irregular and insecure homesteads, the homesteads so regularized should be in the name of the wife.
- The beneficiaries should be given homestead land in a contiguous block, within 1 km or less of their existing village habitation, with proper roads and infrastructural connectivity. In such a consolidated block, essential facilities should also be provided, such as primary school, primary health centre, drinking water, etc.
- The beneficiaries of homestead-cum-garden plot should be assisted by Panchayats and line departments of government to develop plans and receive financial assistance for undertaking suitable economic activities, such as livestock rearing, fodder development, and planting of high-value trees if water is available.

3.2 Laws and Policies of the Government of Bihar

Bihar was probably the first state in the country to enact a separate law, namely the Bihar Privileged Persons Homestead Tenancy Act 1947, for providing security of tenure to landless rural households over their homestead land.

Bihar was probably the first state in the country to enact a separate law, namely the Bihar Privileged Persons Homestead Tenancy Act 1947, for providing security of tenure to landless rural households over their homestead land. The act received the assent of the Governor-General on the 17 January 1948, and the assent was first published in the Bihar Gazette of the 18 February, 1948. This act was meant to provide permanent tenurial rights over homestead to those landless rural households which have been residing on *raiyyati* lands. However, since then various other rules and regulations, which are described below, have also been framed by the state government to provide ownership rights to landless households over *gairmazarua khas* and *gairmazarua aam* lands, as well as to allot house sites to those without access to land.

3.2.1 Bihar Privileged Persons Homestead Tenancy Act 1947 (BPPHT Act 1947)⁶

According to the provisions of the Bihar Privileged Persons Homestead Tenancy Act 1947, a ‘privileged person’ who has built his house on private land given to him by a landowner for residential purposes and has been living on that land continuously for one year, has permanent right over his homestead land. The Act defines homestead as any land which

6. The text of Bihar Privileged Persons Homestead Tenancy Act 1947 (BPPHT Act, 1947) along with comments and case law is given in Annexure III.

is held by the privileged person for residential purposes including any building erected on the land together with *bari*, *sahan* and any vacant land used for residential purposes. A privileged person is defined as a person who besides his homestead holds no other land or holds any such land not exceeding one acre.

Lands falling under the ambit of the BPPHT Act originally belonged to a landowner who had allowed a person to reside upon it. Such lands are known as *raiyati* land. A landless person after completing a constant stay up to a period of one year becomes a privileged person under the BPPHT Act and thus becomes eligible to get a permanent entitlement *parcha* issued by the revenue authorities. The Circle Officer has been authorized as the competent authority to effect settlement of *raiyati* land under the Act.

3.2.2 Policy and Rules for Settlement of Gairmazarua Khas and Gairmaazrua Aam Land for Homestead

The provisions of the Bihar Privileged Persons Homestead Tenancy Act 1947 do not apply to either *gairmazarua khas* or *gairmazarua aam* lands. But keeping in view the fact that a large number of poor households have constructed houses on such land, the government made a policy that where a privileged person had his homestead on *gairmazarua khas* land, his possession should be recognized and normal settlement made with him (letter no. 5LR-232/71- 5805- R, dated 16 August 1971).⁷ In case of *gairmazarua aam* land, it was decided that if such land had lost its *aam* character and is no longer used for community purposes, such land should also be settled with the privileged persons. But before the settlement of *gairmazarua aam* land, the community has to be informed through a public notice, and if any objection is raised against the proposal, the settlement cannot be made. The policy also states that in settlement of these lands for homestead purposes, preference should be given to the following category of households:

- a) Scheduled Castes
- b) Scheduled Tribes
- c) Backward Classes (Annexure- I)
- d) Serving soldiers and family of martyred soldiers, and
- e) Refugees from East Pakistan and Burma who came to India on or after 2 January 1964.

While *gairmazarua malik* or *khas* land may be settled with eligible category of persons, *gairmazarua aam* land is reserved for public use unless the nature of such land has changed and the Gram Sabha has passed a resolution warranting its settlement with eligible persons. After the Gram Sabha has resolved to that effect, a case record is prepared which goes

While gairmazarua malik or khas land may be settled with eligible category of persons, gairmazarua aam land is reserved for public use unless the nature of such land has changed and the Gram Sabha has passed a resolution warranting its settlement with eligible persons.

⁷ The full text of the letter is given in Annexure IV.

If gairmazarua khas land or gairmazarua aam land is available immediately adjacent to the homestead for which parcha has already been given, settle requisite additional area with the privileged tenant.

to the government through the Circle Officer, SDO, District Collector and the Divisional Commissioner. The settlement can be permitted only after its approval by the Department of Revenue and Land Reforms of the Government of Bihar. In view of the fact that the routing of papers and records from the Gram Sabha to the Council of Ministers is time consuming, it is being proposed in the government to authorize the Divisional Commissioners to allow such settlement. As regards the *gairmazarua malik* or *khas* land, the Sub-divisional Officer is competent to settle the same for residential purposes with eligible persons.

3.2.3. Policy to Provide At Least 2 Decimal of Homestead Land and Include Bari and Sahan in the Homestead

The government, through letter no. 6780-LR dated 29 July 1970 (referred to in letter no. 5LR- 232/71- 5805- R, dated 16 August 1971), made it clear that the definition of homestead under the BPPHT Act 1947 included within it the area of *bari* and *sahan* also. Accordingly, the government directed that in all cases where *bari* and *sahan* had been left out while making settlement of homestead, these should be re-opened suo moto by the Circle Officer, and that steps should be taken to record these, in addition to the house and to distribute revised *parchas* to the privileged persons. It was also decided that no privileged person should have a homestead which is less in area than 2 decimals. In this regard the government issued directions that if the area of the homestead land for which *parcha* had been given to a privileged person is less than 2 decimals, the following steps should be undertaken by the competent authorities:

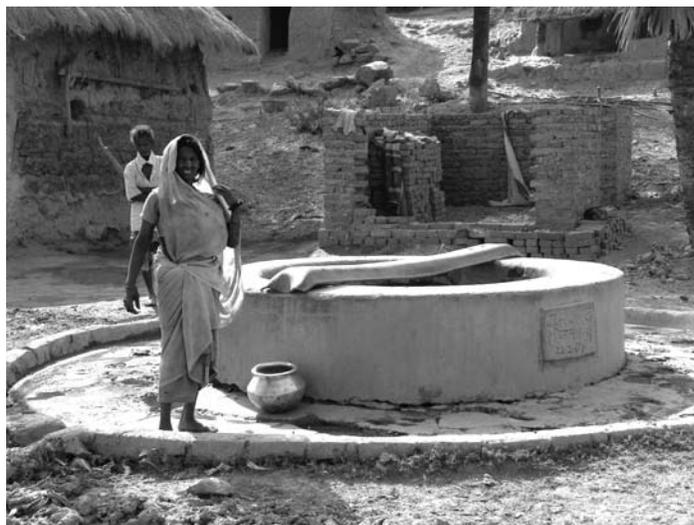
- a) Inclusion of the areas of *bari* and *sahan* in the *parcha* where such area had been left out.
- b) If *gairmazarua khas* land or *gairmazarua aam* land is available immediately adjacent to the homestead for which *parcha* has already been given, settle requisite additional area with the privileged tenant.
- c) Where neither *gairmazarua khas* nor *gairmazarua aam* land is available immediately adjacent to the homestead of the privileged tenant, necessary action to be taken to acquire the additional area.
- d) The minimum area to be settled or acquired under (b), (c) or (d) above should be one decimal. Similarly, action under (b), (c) or (d) should be taken if even after action under (a) the privileged person still continues to have an area of less than 2 decimals for his homestead.

The provision for the minimum area of homestead land for a privileged person was later revised by the government to be 3 decimals (Letter no. 11- LRD- 6/99- 749- R dated 20.9.1999.)⁸

⁸. See the full text of the letter in Annexure V.

3.2.4 Policy for Providing Homestead Land to Mahadalits⁹

The Mahadalit Commission set up by the Government of Bihar in 2007 has assigned to the Revenue and Land Reforms Department the responsibility to identify Mahadalit families without house-sites in the entire state and provide them access to homestead land. As part of this programme, a survey of 10,380 villages was conducted during a span of one and a half years.¹⁰ The survey focused on (a) identifying Mahadalit families without house-sites and with house-sites of their own, and (b) identifying suitable land, government or private *raiyyati* land, which could be allotted to house-site less Mahadalit families. About 17 per cent of the Mahadalit families surveyed were found to be without house-sites of their own. The outcome of survey is given in Table 3.1 below.



A Woman Collecting Water From Well Outside Her Hut

Table 3.1: Outcome of Mahadalit survey

| | | |
|-----|--|----------------|
| 1. | Total no. of villages surveyed | 10,380 |
| 2. | Total no. of Mahadalit families identified | 10,60,029 |
| 3. | Total no. of Mahadalit families with house sites | 8,81,133 |
| 4. | Total no. of house-site less Mahadalit families | 1,78,896 |
| 5. | Total area of <i>raiyyati</i> land identified which could be allotted as house-sites | 4,374.58 acres |
| 6. | Total no. of families to whom <i>raiyyati</i> land for house-site to be allotted | 1,06,674 |
| 7. | Per family average area to be covered by <i>raiyyati</i> land | 4.10 decimal |
| 8. | Approximate cost on acquisition of <i>raiyyati</i> lands (Rs. In lakh) | 75,705.39 |
| 9. | Total area of government land identified against which house-sites are to be allotted | 4,055.99 acres |
| 10. | Total number of families to whom government land is to be allotted for house-site | |
| 11. | Per family average area to be covered by the Government land | 5.61 decimals |
| 12. | Per family average area of total land identified (<i>raiyyati</i> land + Government land) | 5.58 decimals |

Source: Dr. C. Ashokvardhan, 'House-site Scheme for Mahadalit Families in Bihar', paper presented at the national seminar on Shelterlessness and Homestead Right, organized by the Council for Social Development, New Delhi, 5-6 November 2009.

⁹ 20 weakest caste groups out of the total 22 Scheduled Castes have been classified as Mahadalits by the Government of Bihar. See the full list of Mahadalit caste groups in Annexure VI.

¹⁰ The district-wise total number of villages covered along with the predominant Mahadalit habitations found in the villages of a given district is given in Annexure VII.

The survey of Mahadalit families found numerous cases among them who had not got *parcha* or *parwana* for their homestead land despite entitlement as per law.

After the survey the government decided to impose a ceiling of 3 decimals per family for allotment of house-sites in order to maximize the benefit with available land and financial resources. For acquiring land, it also shifted its policy from land acquisition to land purchase with regard to *raiyyati* land. Since land purchase from individual landowners has been envisaged as the major source for allocating house-sites, the government has also delineated the principles and modalities for acquiring land through purchase.¹¹

The survey of Mahadalit families found numerous cases among them who had not got *parcha* or *parwana* for their homestead land despite entitlement as per law. Hence, a drive was concurrently launched by the government to bring to surface such cases and grant settlement *parchas*, especially to Mahadalit families.

Till September 2009, 20,022 *parchas* for *raiyyati* land involving an area of 423.36 acres had been issued to Mahadalit families. It was also ensured that along with the distribution of *parcha* for homestead land, the beneficiaries were also issued the current rent receipt against the *jamabandi* opened in their name to save them from the trouble of running to the Anchal office in this regard. 725.314 acres of *gairmazarua malik* land has also been settled with 14,540 Mahadalit families during the same period.

3.2.5 Cluster Approach to Allotment of House-sites

The government has proposed to follow a cluster approach for allotment of house-sites to Mahadalit families. Accordingly the proposed house-sites have been classified into two categories—cluster house-sites and isolated house-sites. A cluster has been defined as a habitat with 30 or more number of families. The details of cluster formation that have come out from the survey are given in Table 3.2.

Table 3.2: Cluster formation for allotment of house-sites

| Sl. No. | Type of land | No. of clusters having less than 30 families | No. of clusters having 30-50 families | No. of clusters having 51-80 families | No. of clusters having 81-100 families | No. of clusters having more than 100 families | No. of clusters having 30 or more families | Total |
|---------|----------------------|--|---------------------------------------|---------------------------------------|--|---|--|-------|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 2+7 |
| 1. | Government land | 4404 | 478 | 224 | 44 | 48 | 794 | 5198 |
| 2. | <i>Raiyyati</i> land | 6450 | 439 | 231 | 34 | 58 | 762 | 7212 |
| | Total | 10854 | 917 | 455 | 78 | 106 | 1556 | 12410 |

Source: Dr. C. Ashokvardhan, 'House-site Scheme for Mahadalit Families in Bihar', paper presented at the national seminar Shelterlessness and Homestead Right organized by the Council for Social Development, New Delhi, 5-6 November 2009.

11. Description of the details of the principles and modalities for land purchase by the government is given in Annexure VIII.

Isolated house-sites are habitations comprising families numbering 1 to 30 which may be locationally scattered. No cluster could be formed due to non-availability of families in requisite numbers as well as non-availability or inadequate availability of government and private land.

In case of isolated house-sites, a maximum of 3 decimals of land is to be settled with a given house-siteless family. For habitations constituting a cluster, the average per family land size will be lesser than 3 decimals and the balance land sliced out will be pooled to provide common facilities and planting of nutritional fruit-bearing trees to be used by the cluster families as a group. The common facilities may include an Anganwadi centre, community centre or even a school, whichever is not pre-existing.

In case of isolated house-sites, a maximum of 3 decimals of land is to be settled with a given house-siteless family.



A Man Passing by a Rural Settlement

The discussion above shows that there are laws, policies and regulations already existing in Bihar which provide for granting legal rights to homestead land of various types as well as for acquisition/purchase and distribution of house-sites by the government to those without access to land. Moreover, the Eleventh Five Year Plan of the Government of India has also recommended implementation of similar provisions in order to realize the goal of ensuring right to housing in rural areas. The Government of India has accordingly proposed to include in its Indira Aawas Yojana scheme a provision for allotting house-sites to those without access to land. All this raises the hope that the problem of rural houselessness in Bihar can adequately be addressed if these already existing laws, policies and regulations are implemented effectively.

Securing Ownership of Homestead Land for the Rural Landless: A Field Experience from Bihar

Access to and secure ownership rights over homestead land in rural areas involves: (a) granting homestead rights to the landless, particularly to marginalized communities, on lands on which they have constructed their house, and (b) distributing house plots to the landless without any shelter. As discussed in chapter 3, laws, policies and regulations for providing these have already been in existence in Bihar since long. Despite this, the magnitude and severity of the problem of rural houseless-ness in Bihar, particularly among the Dalits, is the highest among all the states in the country. It is important, therefore, to identify and locate the factors responsible for this pitiable situation. In this context, the present chapter discusses and draws lessons from the experience and critical learnings that Deshkal Society had in Gaya district while making serious efforts to facilitate the realization of landless rural households' right to ownership over their homestead land.¹²

4.1 Types of Homestead Land

The processes for settlement of homestead land depend on the type of land on which a landless labour household resides.

The processes for settlement of homestead land depend on the type of land on which a landless labour household resides. There are three major types of homestead land in Bihar—*raiya*, *gairmazarua khas* or *malik* and *gairmazarua aam*—on which the landless poor in rural areas have built their houses.

Raiya homestead land originally belonged to a landowner, upon which a person was allowed to reside and construct his house. Usually small plots of land were provided to him/her by the employer landowners to settle down. This practice was an essential element of the traditional *kamiauti* system (Prakash, 1990) which evolved to fulfill the requirement of permanent availability of cheap labour for agriculture as well as maintenance of traditional tank irrigation in the Magadh region. When a *raiya* got a new *kamia* and he had to provide him with some land including a house plot. He did so with either his own land or asked the landlords for a house and some land for the purpose. In the former case the *kamia* was clearly a service *jagirdar* of the *raiya*. In the latter case the land was clearly not the *raiya's* and the *kamia*

¹² These experiences were gained by Deshkal Society in partnership with GNK and LSSK during the course of implementation of its project 'Capacity Building and Advocacy for Development Change among the Musahar Community', under PACS 1 Programme of DFID, New Delhi, 2006.

was treated in record as a non-agricultural tenant of the village and not given a separate khatian (record of right).

Gairmazarua Khas or *Malik* Lands are those that were under the possession of particular landowners under the *Zamindari* System, but after the abolition of *Zamindari* and enactment of land reforms have been vested with the government. Ceiling surplus lands are an example of this category of land. Although legally such lands are vested with the government, dominant landowners in the villages may still have control over it.

Gairmazarua Aam Lands are those that are reserved for common public uses, such as village pasture land. At present, this category of land is vested with the village Panchayats. The system of getting ownership right over *gairmazarua khas/malik* and *gairmazarua aam* land is called '*Bandobasti*' and the legal document of evidence is called the *parwana*.

The format of the application required various types of information regarding the land on which the applicant was residing, such as account number, plot number, rakba, chauhaddi.

4.2 Processes for Securing Ownership Rights

During the course of implementation of its project Capacity Building and Advocacy for Development Change among the Musahar Community, Deshkal Society had first conducted a survey of 19,081 households in 361 villages spread over 4 blocks of Gaya district in Bihar in the year 2006. After identifying the landless households that needed granting of homestead rights, Deshkal selected 2,500 households in a few villages for initiating the process for providing them legal entitlement to their homestead land. The first step was to submit applications in the Block office on behalf of those people who deserved legal entitlement as per the legal provisions. The format of the application required various types of information regarding the land on which the applicant was residing, such as account number, plot number, *rakba*, *chauhaddi* (area and topography of the land), etc. According to the provisions, this information could be cited in the application only on the basis of two legal records. One was the *khatihan* (legal document of land) and the other was the village map. Generally, in Bihar, the responsibility of maintenance of both these records lies with the *karmacharis* (local revenue officials). These *karmacharis* are in charge of approximately 30 villages spread over two or three Panchayats. When the *karmacharis* were contacted for the above mentioned records most of them denied having these. When they were asked as to which office/department could provide us with the records, we were told to contact the land revenue department of the government. Accordingly, we put up requisitions for the records of villages in the district land revenue department. We were dismayed when the official in charge of the land records told us that he did not have the village maps for most of the villages. We were instructed to contact the government press for the records. Interestingly, the Bihar government has only one printing press which prints maps of villages and that press is in Patna (the capital of Bihar). Moreover, the government maps from this press are not meant for private circulation. This was, indeed, a difficult situation as without these records it was not possible to fill up the application forms for homestead land.

At this stage there were two options: i) to confront the administration as it was their duty to make these records available, or ii) to somehow persuade the administrative officials



Household Members Outside Their Hut

for arranging for the village maps from the government press. If we followed the first option, it became clear that our focus would have shifted from implementation of legal entitlement to the availability of legal records. This could have put us off from our targeted goal. We, therefore, decided at this stage that it would be better to adopt the approach of persuading the concerned officials in the administration for arranging the records. Then followed an entire process of persuading officials from the level of the *karmacharis* to the officer in-charge at the district level. After much running around the records

were made available to us. But for getting all these records our organization had to spend a considerable amount of money which would not have been possible for the land less and marginalized community households to manage.

After getting hold of the required records, we started the process of filing the application forms. First of all, the applications were submitted to the *karmachari*, the primary government official at the ground level. His primary responsibility was to verify the applications and recommend them to the Circle Inspector. Now the challenge before us was to get the applications verified by the *karmacharis*. At this stage the *karmacharis* introduced us to one more actor, *amin*, saying that without him the measurement of land occupied by a family could not be verified. At the Block level the official responsibility of measurement of land lies with the *amin* (land measurement official). In a Block there are normally one or two *amins*. Thus, one *amin* has the responsibility of 150 villages in a Block. When approached for land measurement, it was very convenient for the *amin* to say that he did not have time as he had the responsibility for all the villages of the Block, not just for the villages where we were working. Neither the *karmachari* nor the *amin* had a fixed office. It was very difficult to contact them, more so to arrange a meeting between them. After repeated efforts, we were able to manage a meeting between them. In the process of verification of the applications, we came to know about the different types of land on which the landless labourers, particularly Dalit households resided: *raiyati*, *gair-mazarua aam*, *gair-mazarua khas*, forest and bhoodan land being the main types. At this stage itself the *karmacharis* rejected approximately 20 per cent of the applications related to the forest or bhoodan land saying that these lands were not under his jurisdiction. He further added that these 20 per cent people were residing illegally on those lands and could be evicted any time by the government. The applications, which the *karmachari* found to be correct in his verification, were divided into three categories on the basis of the types of land—*raiyati*, *gairmazarua aam*, and *gairmazarua khas*. Accordingly, he sent applications related to the *raiyati* land for further verification to the Circle Inspector, which were further recommended to the Circle

Officer. Thus, the various stages of the administrative machinery involved in the process of settlement of *raiya* homestead land are *Karmachari* and *Amin* > Circle Inspector > Circle Officer.

The applications related to the *gairmazarua aam* or *gairmazarua khas* land required the recommendation of the Gram Sabha and the *mukhia*, the elected Panchayat head, of the respective Panchayats. This was possible only with the initiative of the Panchayat head known as the *mukhia*. Now our task was to mobilize the *mukhia*. We found that it was easy to get the applications recommended by a Dalit *mukhia* because the applicants were primarily from Dalit communities. But this was not the case with the *mukhias* who were from the upper castes or the Other Backward Classes. The non-Dalit *mukhias* created several obstacles in the process of getting recommendation from the Gram Sabhas. For instance, they said that in order to recommend an application there was the need for holding an *sabha* (general assembly of the village), which was not possible without a time-frame of 2-3 months. They also objected to the verification done by the *amin* and the *karmachari*. They also said that it was important for them to get the consent of the landowners so that these allotments do not create any social tension in the village.

These experiences reflect the deep-rooted realities of a caste-divided society and the local power structures and relations. This also shows how the local power structures influence the local state agencies and the administrative/legal processes, put obstacles in the process of implementation of laws and rules meant for empowerment of the marginalized communities. Our immediate challenge was to negotiate with the non-Dalit *mukhias* on the issue of verification of the applications. At the level of dialogues we did not have much success in persuading them to do the needful. Amidst all this, we came to know that if the application has been verified by the *karmachari*, the Circle Officer could exert pressure on the *mukhia* for the speedy verification and recommendation of the application. When we spoke to the CO, he said that he being an outsider could not order a local *mukhia* to recommend the applications. He said that at best he could make a request. As a result the applications remained pending with the *mukhia* for verification.

In the primary phase itself, we had, thus, to negotiate and confront the officials at three levels for the verification of the applications. Meanwhile, there was a change in the Block administration. The Circle Officer was transferred in September 2007 and an Indian Administrative Services (IAS) probationer was posted in his place for training. But he could exercise all the powers given to a CO. Right at the start, this probationary officer created such an atmosphere that let alone the common people, even the well-off could not dare to access him. In this regard, the earlier CO was better as we could at least speak to him. We were at the juncture where the role of the CO was crucial.

Incidentally, we met the Commissioner in-charge of that area and he took an active interest in our programme. He instructed the newly appointed IAS officer to dispose of all the pending applications within a month. This instruction bore desirable consequences. The IAS officer instructed his subordinates to dispose of the applications within a fixed duration, failing which he warned them of suspension. Further, he instructed the non-Dalit *mukhias* to dispose of the submitted applications within a week, failing which he warned them of

We were dismayed when the official in charge of the land records told us that he did not have the village maps for most of the villages.

The kind and volume of information required for filling up various check-slips and proformas involved a very complex and tedious process.

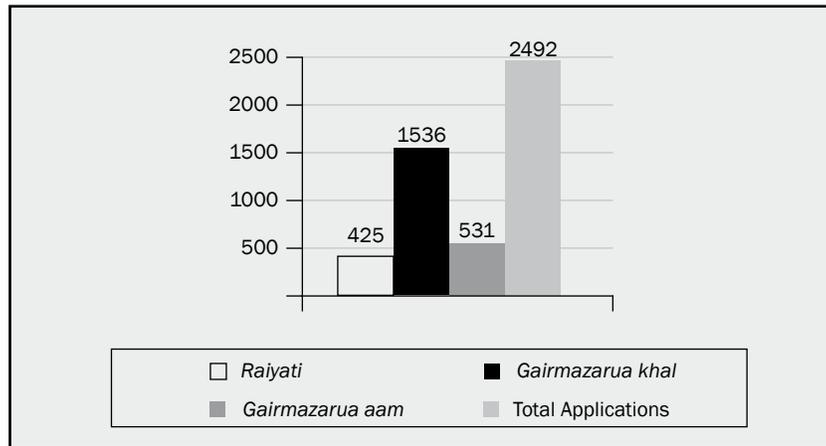
setting up an enquiry committee on the development projects given to them by the Blocks. We realized that the orders and instructions of the IAS officer had immense impact on the lower officials as well as the *mukhias*. The applications which were lying with the non-Dalit *mukhias* for more than a month were disposed of within ten days.

Now when there was a momentum, the Block did not have the required number of papers and proforma which were required to take the process further. It was not possible to get it printed from the district headquarters within a time limit, because it was outside the jurisdiction of the IAS officer. However the officer agreed that if Deshkal got the required papers and proformas printed, it would be possible to get the work completed within the prescribed time limit. Deshkal Society took this responsibility and provided the Block office with the required papers. Thereafter, the process which started at the Block level included preparing the proposal, filling up the two check-slips and the format of *parcha* and *parwana* and enclosing with it the recommendations of the *mukhia*, *karmachari*, and the Circle Inspector.

The kind and volume of information required for filling up various check-slips and proformas involved a very complex and tedious process. First of all, in the proposal format, apart from the application, ten such items of information are asked which are difficult to furnish. At the top of one of the check-slips is written 'Check-slip to accompany the proposal for settlement or alienation of government land'. This format has twelve headings and every heading requires 3-11 items of information. This check-slip has to be certified by the *karmachari*, Circle Inspector, Circle Officer, DCLR, SDO, Additional Collector and the Collector. The second check-slip related to the land settlement has 25 headings.¹³ It requires the certification of the revenue *karmachari*, Circle Inspector and the Circle Officer. In the case of *gairmazarua khas* land, the processing route for applications is *Mukhia* > *Karmachari* > Circle Inspector > Circle Officer > Sub-Divisional Officer > LRDC > District Collector. In cases of *gairmazarua aam* land the application is further recommended by the District Collector to the Divisional Commissioner who recommends it for approval to the Land and Revenue Department of the Government of Bihar. Finally, after fulfilling all the requirements, Deshkal was able to file 2,492 applications which included 425 applications were for *raiya* land, 1536 for *gairmazarua khas* land and 531 for *gairmazarua aam* land (Figure 4.1). Hereafter, regular follow up and monitoring of the applications had to be done. This involved numerous visits to various offices to find out the status of the applications, and sometimes providing clarifications on queries raised on items of information given in the applications. Since most of the officials generally did not have any commitment towards implementation of the laws and provisions, they had to be goaded many times into taking action and processing the applications at various stages. Obviously, it would not have been possible for the applicants from landless and marginalized communities to do this regular monitoring and follow up on their own, as even gaining access to the offices and officials is a difficult task for them. After continuous efforts made by Deshkal Society during a span of almost two years (2006-08), all the applicants for *raiya* and *gairmazarua khas* land were

¹³. See a copy of this check slip in Annexure IX.

Figure 4.1: Details of Applications filed by Deshkal Society



finally granted legal entitlement to their homestead land. However, the 531 applications for *gairmazarua aam* land are still pending for decision after moving up and down many times from the Block Office to the Office of the Revenue and Land Reforms Department of the Government of Bihar at Patna.

In the complex legal process described above, the lower officials have to prove at every stage that the information passed on to the upper officials is correct. The senior bureaucrats at the top of the administrative machinery don't have confidence in the officials at the ground level, who are directly involved in and are primarily responsible for the administration at the ground level. The process of sending recommendations to higher officials for their comments and approval together with the distrust that the latter have for the lower officials, leads to a pervasive sense of fear among the lower officials of rebuke and punishment from the higher officials. This fear curtails the space for the lower officials to share the problems they face in their day-to-day work with their seniors. As a result the officials at various levels avoid taking decisions and expediting the work. For example, although the laws and rules regarding settlement of *raiyyati* homestead land is very simple and can easily be settled under the provisions of the Bihar Privileged Persons Homestead Tenancy Act, 1947 at the level of the CO, the cumbersome procedures and lack of clear guidelines and directions are proving to be serious obstacles in their settlement. When a proposal is submitted to the CO, due to some reasons he does not want to take a decision and sends it to the SDO. The SDO likewise avoids taking a decision and sends it to the District Collector who sends the file back with some queries. In this way, the proposal keeps moving to various officials without any concrete decision being taken.

Administrative procedures and processes as well as the paper work required for acquiring right to homestead land are so complex and cumbersome that it is very difficult for the rural poor to pursue and acquire their legal right.

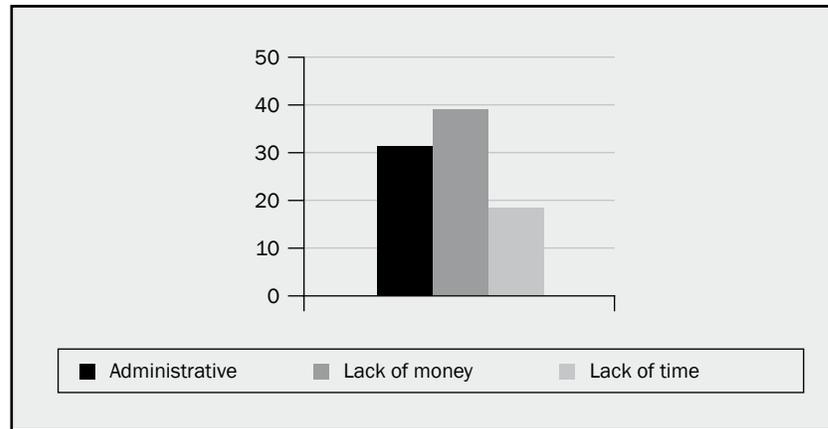
4.3 Identifying Administrative/Institutional Impediments

The experience described above shows that the administrative procedures and processes as well as the paper work required for acquiring right to homestead land are so complex

and cumbersome that it is very difficult for the rural poor to pursue and acquire their legal right.

The Deshkal survey of villages in Gaya District revealed that the major reasons as perceived by the landless households behind not being able to successfully acquire *parcha* and *parwana* were lack of money, lack of time (as the processes are time consuming and landless wage labourers are not able to spare much time from their daily grind of work) and the administrative hurdles (Figure 4.2).

Figure 4.2: Reasons for not having legal entitlement to homestead land



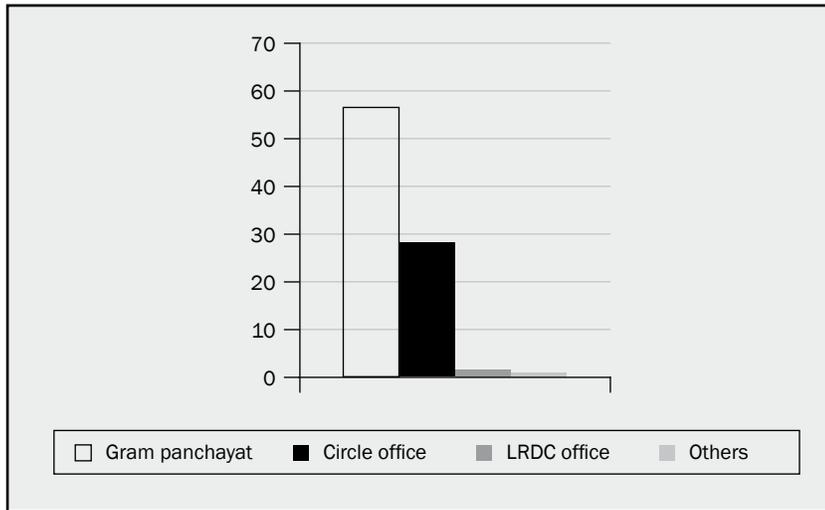
Source: Deshkal Study, for the project ‘Capacity Building and Advocacy for Development Change Among the Musahar Community’, under PACS 1 Programme of DFID, New Delhi, 2006.

Interestingly, the survey showed that the major administrative hurdles faced by the landless households in the process of acquiring *parcha* and *parwana* were located at the Gram Panchayat and the Block level itself (Figure 4.3). Almost 62 per cent of the households faced hurdles at the Gram Panchayat level and 33.27 per cent faced hurdles at the Block level.

Considering the tedious and complex processes involved in acquiring homestead rights, it was not surprising to find during the survey that only 14 per cent of the surveyed households had received either *parcha* or *parwana* (legal documents of ownership) for their homestead land. Almost 89 per cent of the households had not even thought of trying to obtain *parcha* or *parwana*. Many of the households (38 per cent) were not even aware of the existence of the Bihar Privileged Persons Homestead Tenancy Act, 1947 or other rules and regulations for regularization of their homesteads on *gairmazarua khas* and *gairmazarua aam* lands.

Besides the cumbersome and complex processes and tedious paper work described above, the other major administrative impediments that can be identified from the experience are described below.

Figure 4.3: Hurdles in the process of legal entitlement to homestead land



Source: Deshkal Study, for the project ‘Capacity Building and Advocacy for Development Change among the Musahar Community’, under PACS 1 Programme of DFID, New Delhi, 2006.

4.3.1 Lack of Up-to-Date Land Records

In Bihar, land records have not been updated since long. Finding required land records and cadastral maps of villages is a monumental task. The government departments simply do not care to keep these records updated. Even old records are very difficult to find. Obviously, for a poor landless labour household it is a monumental task to arrange for these records.

4.3.2 Lack of Knowledge and Information among Officials about Laws and Policies

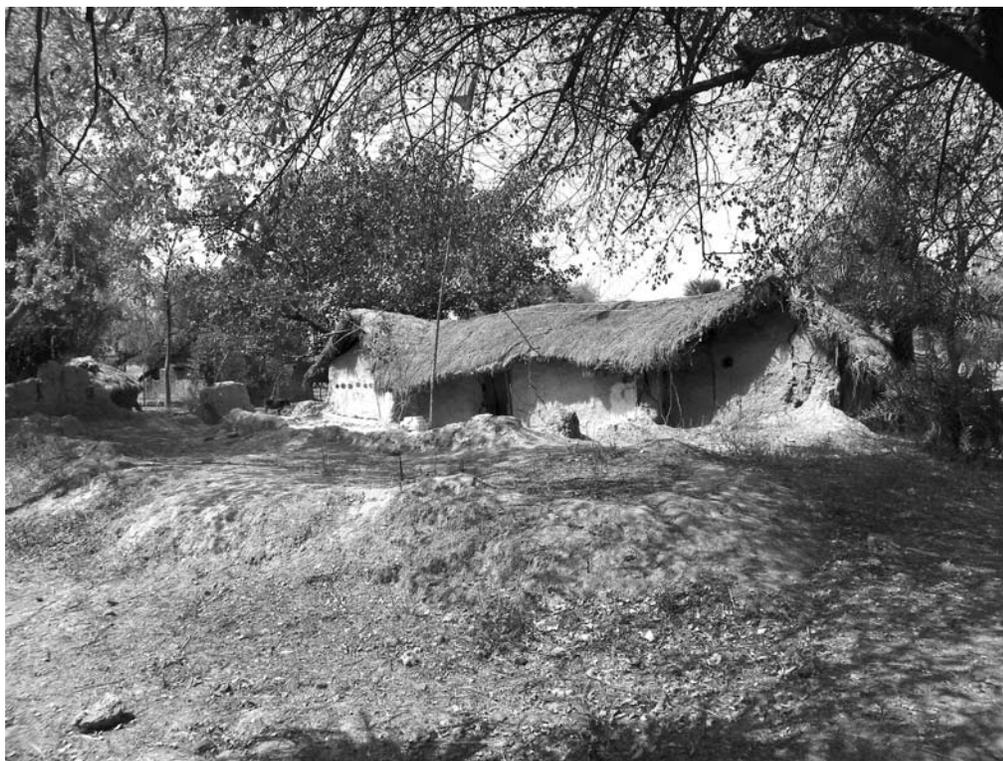
There is no attempt by the government to collect data and information about the number of households that do not have legal ownership right (*parcha/parwana*) of their homestead land. Copies of government circulars and policy guidelines are not available in the Block, Sub-division or District offices, including even the District Collectorate. Due to unavailability of circulars and guidelines, and ignorance about them, different officials are prone to interpret the rules and laws differently. The government has not prepared any official manual which can provide guidelines to officials at various levels for taking appropriate action for implementation of the laws, rules and policies regarding homestead land. The officials, therefore, do not know what they ought to do when somebody submits an application for grant of ownership right (*parcha/parwana*). Besides, since land revenue is no longer an important source of revenue earning for the government, there is also no training of officers these days to familiarize them with the system of land revenue administration, laws and

Copies of government circulars and policy guidelines are not available in the Block, Sub-division or District offices, including even the District Collectorate.

rules. As a result when officers are confronted with issues such as legal ownership of homestead land, they do not know how to take appropriate action to implement the relevant laws and rules.

4.3.3 Shortage of Lower-level Revenue Functionaries

The worst effect of the government drive to reduce the size of its administrative structure has been on the revenue administration, especially at the lower levels. The Bihar government has recently taken the step to merge the offices of the Block Development Officer (BDO) and the Circle Officer (CO). Therefore, though technically there is a CO for every revenue circle, in substance they do not exist (Report of the Bihar Land Reforms Commission, 2006-2008, Volume I, April 2008.). The reason is very simple. The functions of the BDO and CO are quite dissimilar. The BDO as of now is overburdened with numerous activities relating to various Centrally-sponsored rural development programmes. Each BDO has to disburse, supervise and keep account of crores of rupees, and land revenue now being a miniscule part of government's overall revenue earning, he neither has the time nor the interest to look after the functions of the revenue department. Thus, there is a vacuum at the Block level of a senior revenue officer. The supervisory structure at the Block/ revenue circle level is also very thin and fragile. Below the BDO/CO there is only one Circle Inspector (CI) for a revenue circle consisting roughly of 100 villages. Obviously a single CI cannot properly supervise an area of 100 villages. Even if he does its quality can be anybody's guess.



An Empty House After Members Leaving For Work

The most unfortunate aspect of the revenue administration in Bihar is that the government has stopped fresh recruitment of the lowest ground-level revenue functionaries called *karmacharis*. As a result a large number of the posts of *karmacharis* are lying vacant, and the existing *karmacharis* have to cover a large number of villages and bear a heavy burden of work. Moreover these *karmacharis* have no fixed office. No one knows where they stay. One can't approach them at any fixed place, at any fixed hour on any working day. If someone wants to submit an application for settlement of his homestead land, it becomes very difficult to locate and approach the *karmachari* for measuring and preparing the map of the land and verify other records.

The most unfortunate aspect of the revenue administration in Bihar is that the government has stopped fresh recruitment of the lowest ground-level revenue functionaries called karmacharis.

The experience discussed above indicates that the complex and cumbersome administrative procedures along with tedious paperwork involved in the process for acquiring legal entitlement to homestead land together with lack of interest and commitment among government officials for implementing the laws, rules and regulations has resulted in a large number of eligible landless households being denied their right to homestead land. In order to ensure the implementation of its laws, rules and regulations, and realization of the right to housing and homestead land for the landless rural poor, the Government of Bihar needs to show political will and effectively address the administrative and procedural issues identified above.

Processes of Displacement/Settlement of Rural Landless and Marginalised Communities in Bihar

The majority of the landless rural labour households in Bihar were traditionally settled mainly on *raiya* land given to them by their landowning employers during the *Zamindari* System.¹⁴ However, it seems that during the last 20-25 years the new settlements of landless labourers have come up mainly on various types of government or public land. The number of landless families residing today on *raiya* land is comparatively much less than those residing on *gairmazarua malik* and *gairmazarua aam* land or land owned by other public agencies. This was clearly brought out by a survey, referred to earlier, of 19,081 households carried out by Deshkal Society in 361 villages spread over 4 Blocks in Gaya district. The survey revealed that the number of landless households residing on either *gairmazarua khas* or *gairmazarua aam* land is nearly twice of those residing on *raiya* land (Figure 5.1).



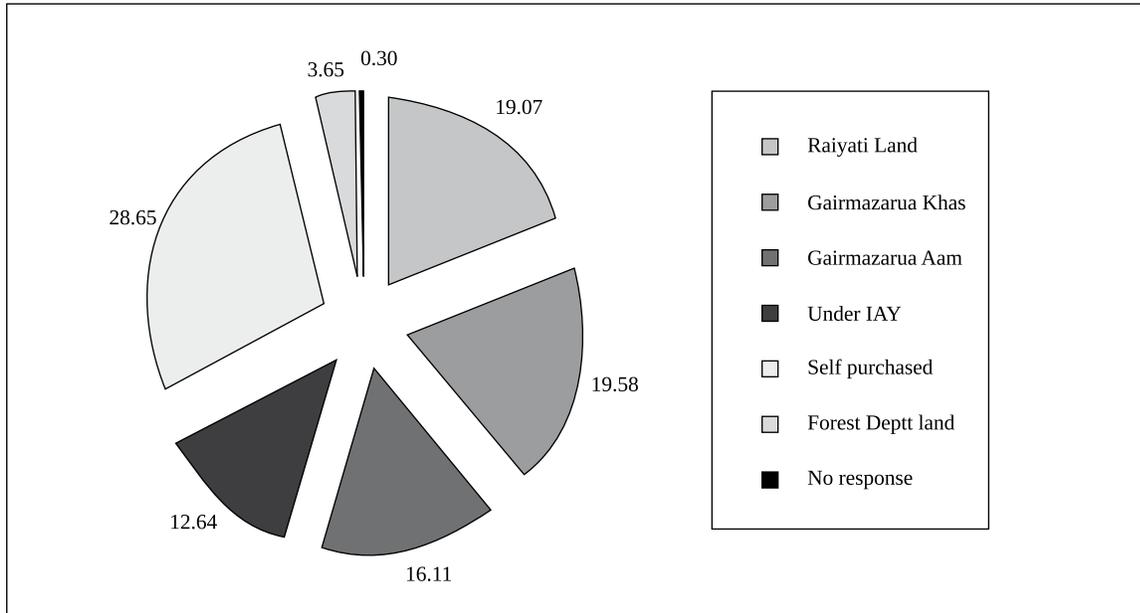
A Displaced Settlement

Besides these three categories of land, the other categories, as found by the survey, on which they have settled are privately purchased land land provided under the IAY, and land under the Department of Forest. Interestingly, a large number of landless households (28.65 per cent) have also managed to purchase house plots privately.

The major reasons that can be identified for displacement/shifting of rural landless from *raiya* land are: (i) growth in the number of family members and disappearance of the old traditional practice of giving house plots to labourers by the landowners due to various reasons;

¹⁴. This was an essential part of the traditional bonded labour system in agriculture in rural India. It has been discussed and explained by many scholars who have worked on different regions of the country. See for example, Berman, 1974; Prakash, 1990.

Figure 5.1: Landless households settled on various types of land



Source: Deshkal Study, for the project ‘Capacity Building and Advocacy for Development Change Among the Musahar Community’, under PACS 1 Programme of DFID, New Delhi, 2006.

(ii) social conflict between the landless and the landowners, especially because labourers started asserting against oppression and subordination; and (iii) loss of habitat due to regular floods.

5.1 Displacement Due to Demographic Factors

After Independence, the expansion of capitalist agrarian relations and continuing population pressure have led to the gradual decline of the traditional patron-client bondage that characterized the landowner-agricultural labourer relationship in the past. (Das, 1981; Breman, 1974). Various developments such as the introduction of motor-driven tubewells, tractors and motor-driven threshers, combined with smaller landholdings and increased participation of landowners in production have contributed towards a decline in the need for agricultural labourers for farm operations. On the other hand, the population of landless labourers witnessed manifold growth and their small plot of *raiya* homestead land could not sustain their extending families. In the absence of any avenues available to them for access to land for housing they were pushed to build houses and settle on *gairmazarua khas/malik* and *gairmazarua aam* land.

The expansion of capitalist agrarian relations and continuing population pressure have led to the gradual decline of the traditional patron-client bondage that characterized the landowner-agricultural labourer relationship in the past.



Landless Households Trying to Settle on Public Land

5.2 Displacement Due to Social Conflicts Between Landless Labourers and Landowners

The abolition of *Zamindari* and the subsequent land and tenancy reforms measures did not benefit the landless poor belonging to marginalized communities such as the SCs and STs in any significant manner in terms of accrual of land to them. (Das, 2000; Government of Bihar, 2008). As a result of increasing population pressure together with growing landlessness among the rural poor, Bihar was confronted in the second half of the 1960s with heightened social tension and violent conflicts between the landed class and landless labour households (Das, 1981). Under these circumstances the landless labour households settled on *raiya* lands started leaving their habitats and settling on various government or public land in order to escape increased oppression and subordination by the landowners. Azad Bigha, Antu Bigha and Shanti Nagar, some 15 km from the district headquarter of Gaya form three such settlement sites that came into being as a result of the collective flight of *kamias* from their parent village Bandhua in the mid-1960s due to violent clashes with upper caste landlords. Taking a break from his daily job of stone-cutting, Phulu Manjhi of Azad Bigha, pointing towards the barren hills, poignantly says:

These hills have given us freedom. Freedom from exploitation and suffering at the hands of the upper-caste *maliks* in our parental village of Bandhua. I was some 15 years old when we came here. My father was the *kamiya* of a Rajput *malik* ...some of us even

had lands there. We had to not only bear verbal abuse but sometimes even physical torture... it was quite suffocating there. There was no space for us... sometimes our domestic animals used to enter the *maliks'* fields which was a constant source of quarrel... Enough is enough... once some *kamias* had an altercation in the field with an upper-caste *malik*, All the *kamias* present in the field regrouped and beat him black and blue. My father who was instrumental in this called a meeting of the *Bhuinyas* of Bandhua. Looking at the grave consequences of the incident all of us decided to leave Bandhua and seek refuge in these foothills. My father Aklu Manjhi named our village Azad Bigha since it gave us freedom from the bondage that we had experienced in our parental village of Bandhua (Ahmed, 2004).

These hills have given us freedom. Freedom from exploitation and suffering at the hands of the upper-caste maliks in our parental village of Bandhua.

Like Azad Bigha, the neighbouring settlement sites of Antu Bigha and Shanti Nagar share the same history of displacement of *Bhuinyas* from Bandhua. Raja Manjhi of Shanti Nagar ruefully remembering the days says:

We had to brave 48 hours of incessant rains standing in the foothills when we came here after a dispute with upper-caste *maliks* of Bandhua... employees of the forest and railway department lodged legal complaints against us. Many a times our houses erected were razed. The upper-caste *maliks* of Bandhua together with the government officials tried their best. Though we did not have money we pooled our resources to fight the case in court and at last we won. But we still live in the fear of eviction (Ahmed, 2004).

However, it seems today that the landowning farmers generally do not want labourers to be displaced from their settlements because they need their labour. They even want them to continue residing on the land given to them by their forefathers (*raiyati* land). This is because as long as the labourers reside on the *raiyati* land, the landowners can hope to exercise control over them. But the landowners are opposed to giving legal entitlement of these homestead lands to the labourers since it will give the latter independence and freedom to work wherever they want and no longer listen to their landlords' diktats. For example, 10-12 landless labourers are settled on *raiyati* land in Pale village in Wazirganj Block.¹⁵ When the issue of giving them *parcha* came up there was opposition from the landowner. Due to this opposition the CO did not proceed to take any action to settle the labourers on the land and provide them *parcha*, on the pretext that doing so would create social tension in the village.

There is a saying among the landowners in Gaya district that landless labourers should neither die nor become fat (*na mare na mutaye*) (Singh, 2009). The meaning is that the landowners want the labourers to survive so they can avail their cheap labour, but they also do not want to see their labourers becoming prosperous because in that case they will no longer work in their fields.

The landless poor themselves prefer to reside on government or public land because it gives them independence and freedom from subordination and oppression of landowners. However, instances have been found of the dominant landowning groups harassing and evicting

¹⁵ The incident was narrated by Shri Upendra Singh in a Seminar on Right to Homestead land: Public Action, Issues and Challenges, organized by Deshkal Society in collaboration with Frederick Ebert Foundation, New Delhi, 24-25 October, 2009.



Houses Deserted After Displacement

people settled on even *gairmazarua* land. In one such case in Goreya village, when some landless families constructed their houses on *gairmazarua* land, the dominant landowners of the village destroyed them.¹⁶ This happened thrice. It stopped only when some social activists of the area intervened and threatened to take legal action against the landowners.

5.3 Displacement Due to Floods

Around 75 per cent area of north Bihar is affected by the severe flooding of rivers such as Kosi, Gandak and Bagmati. Erosion by rivers and regular floods has

left scores of people in this area permanently displaced from their settlements and shelterless. There are two categories of people affected by floods. The first category consists of people who have been permanently displaced due to erosion by the rivers. The second category of people is those who are displaced due to regular floods because their villages are located inside the embankments of the rivers. Thousands of these displaced people can be found living on the river embankments or by the side of the roads, many of them living there for as long as 30 to 40 years. However, the Government of Bihar does not seem to have any definite policy for the resettlement of these shelterless people. When the Kosi project was being formulated the issue of resettlement of people had come up and this issue had been included in the Detail Project Report (DPR). But there was stiff opposition from various quarters and the issue was neglected. Instead, the then irrigation minister issued a statement that people from 304 villages which were at that time falling inside the embankment area would be resettled outside the embankment. Apart from this statement there was no other commitment by the government for the resettlement of these people. For the first time, in 1991 the Relief and Rehabilitation Department of the Government of Bihar issued a circular that the people permanently displaced by erosion and floods will be allotted 4 decimal land for their resettlement. The District Collectors and Divisional Commissioners were authorized to purchase land at the rates decided by the government. In November 2008, the government brought out another policy document, specifically on rehabilitation of people displaced by the Kosi river, which clearly states that land shall be acquired to settle the families of SC/ST having no homestead land (Madan, 2009.).

Although policies for resettlement of people displaced by floods exist, the government has so far not taken any significant effort for resettlement of these people. The initiatives taken by the government have been very lackluster, lacking vision and planning, and have

¹⁶. Incident narrated by Shri Upendra Singh in the seminar 'Right to Homestead Land: Public Action, Issues and Challenges', organized by Deshkal Society in collaboration with Frederick Ebert Foundation, New Delhi, 24-25 October 2009.



A Hut on the Embankment of the Kosi River

not benefited the people in any significant manner. In the beginning of the Kosi Project, the affected people inside the embankment area had been promised land outside the embankment. Many people were even given *parcha/parwana* for the same.¹⁷ But most of these people did not go to settle on those lands, a major reason being that these lands were located around 10 km away from their original villages. It was, therefore, not practically feasible for the villagers to settle on these lands and carry out farming on land in their original villages. Another reason was that the lands which were outside the embankment but adjacent to it became perennially waterlogged and unfit for settlement. As a result most of the people displaced by the regular floods still do not have a secure permanent settlement and continue to reside on the embankment or other such uplands.

Similarly, in Champaran, a large number of people have lost their shelter due to erosion by the Gandak river. Many of them have again received *parcha* for land to settle on, but a majority of them have still not been able to take possession of those lands. For instance, in Parjeeva village 573 people have received *parcha* for land; in Uttar Patjirva, Dakshin Patjirva, and Yogapatti villages 573, 200 and 500 people, respectively, have been given *parcha* for homestead land but none of them have been able to take possession of their plots. All these people continue to reside on the embankments or at the roadsides.

Most of the people displaced by the regular floods still do not have a secure permanent settlement and continue to reside on the embankment or other such uplands.

¹⁷. Description of displacement of people in flood-affected areas is based on the presentation of Satya Narayan Madan in the seminar 'Right to Homestead Land: Public Action, Issues and Challenges', organized by Deshkal Society in collaboration with Frederick Ebert Foundation, New Delhi, 24-25 October 2009.

The discussion above shows that since Independence the landless poor in rural Bihar have gradually been forced by circumstances to build their settlements increasingly on various types of government and public land, on foothills, or on the banks and dried up *beds of aahars* (village irrigation tanks) or *pains* (traditional village irrigation channels), or on flood control embankments and roadsides. The major factors contributing towards this trend have been population pressure; modernization of agriculture, development of capitalist agrarian relations and disappearance of the traditional patron-client based labour relations; failure of land reforms measures to benefit the landless; and loss of habitat due to regular flood and erosion by rivers, especially in north Bihar. Since a majority of the landless rural households, particularly from marginalised communities, are today settled on government or public land, granting them ownership rights to homestead would essentially mean, besides granting ownership rights to those settled on *raiya* land, regularizing their homestead plots and distributing homestead plots in cases where regularization is not possible.

Conclusions and Recommendations

6.1 Conclusions

Right to housing has been enshrined as a basic human right in various international human rights instruments and treaties such as the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1976), the Istanbul Declaration and the Habitat Agenda as well as in the Constitution of India as interpreted by the Supreme Court in many of its judgements. Right to housing has been seen in relation to other human rights and is considered an essential component of the right to adequate standard of living. The meaning of adequate housing has also been gradually enlarged whereby it refers to not only a physical dwelling unit but also includes provisions for basic services like safe drinking water, sanitation, drainage, clean and healthy surroundings and environment, etc., which are essential for decent living.

In recent years the socio-political and economic benefits of housing have also begun to be emphasized. Ownership of even a small plot of homestead land has been found to increase the status and self-image of rural households and their ability to participate in the socio-political affairs of the village. It can provide landless labour households freedom of choice with regard to their employer and increase their bargaining power for higher wages and better working terms and conditions. Ownership of homestead land has also been found to confer other important benefits to rural households in terms of income, food and economic security, particularly when the plots are large enough to include a kitchen garden and space for rearing a few animals. Homestead plots provide an important safety net through their value as a source of food, income and capital for families in times of drought, unemployment, or other hardships. Such plots also increase a family's ability to access formal and informal sources of credit for investment purposes or in times of distress.

While right to housing and homestead land has important implications for the overall well-being and empowerment of the rural landless and marginalised communities, the analysis of the issue in its various dimensions indicates a dismal picture, particularly in Bihar. After an in-depth analysis of the magnitude of rural housing shortage, the provisions of the existing laws, rules and regulations in Bihar and the practices and processes of their implementation, and the ground realities prevailing with regard to access to and ownership over homestead land, the following conclusions can be drawn:

- i) Though the assessments of rural housing shortage by different agencies widely vary in their estimates, from 148.33 lakhs (Census 2001) to 577 lakhs (NHB, 2007), even going by the most conservative estimate, the shortage is substantial and seems to be

growing, which means that provisioning of housing has been slower than the scale of demand. Bihar ranks first among the states in terms of the magnitude of rural housing shortage, and, within Bihar, a majority of rural Dalit households lack access to and ownership rights over homestead land. Moreover, these official estimates do not seem to bring out the number of households which have constructed their houses on land over which they do not have secure ownership rights, and, therefore, are always at the risk of eviction. As the Deshkal study in the villages of Gaya district shows, the number of such households, particularly among the Dalit communities, may be quite large. However, in absence of any official data and records, it is difficult to estimate the number of such households for making accurate assessments of total rural housing shortage.

- ii) It is a pity to find such a high proportion of rural housing shortage in Bihar despite the fact that there are laws, policies and regulations already existing which provide for granting legal rights to homestead land of various types such as *raiyati*, *gairmazarua khas* and *gairmazarua aam* land as well as for acquisition/ purchase and distribution of house-sites by the government to those without access to land. Even the Eleventh Five Year Plan of the Government of India has recommended implementation of such provisions in order to realize the goal of ensuring right to housing in rural areas. The Government of India has accordingly proposed to include in its Indira Aawas Yojana scheme a provision for allotting house-sites to those without access to land. The problem of rural houselessness in Bihar can adequately be addressed if these already existing laws, policies and regulations are implemented effectively.
- iii) The administrative procedures and processes as well as the paper work required for acquiring right to homestead land are so complex and cumbersome that it is very difficult for the rural landless and marginalized communities to negotiate the processes and pursue and acquire their legal right. The specific issues that need to be addressed in this regard are as under:
 - There is no attempt by the government to collect data and information about the number of households that do not have access to and legal ownership right (*parcha/parwana*) over homestead land.
 - In Bihar, land records have not been updated since long. Finding required land records and cadastral maps of villages is a monumental task. The government departments simply do not care to keep these records updated. Even old records are very difficult to find. Obviously, for a poor landless labour household it is a monumental task to arrange for these records.
 - Copies of government circulars and policy guidelines are not available in the Block, Sub-division or District offices, including the District Collectorate. Due to unavailability of circulars and guidelines, and ignorance about them, different officials interpret the rules and laws differently. The officials, therefore, do not know what they ought to do when somebody submits an application for grant of ownership right (*parcha/parwana*).

- Since land revenue is no longer an important source of revenue earning, the revenue administration is neglected by the government. The worst effect of the government's drive to reduce the size of its administrative structure has been on the revenue administration, especially at the lower levels. The Bihar government has recently taken steps to merge the offices of the Block Development Officer (BDO) and the Circle Officer (CO) into one. Therefore, though technically there is a CO for every revenue circle, in reality they do not exist. Each BDO has to disburse, supervise and keep account of crores of rupees, and land revenue now being a miniscule part of government's overall revenue earning, he neither has the time nor the interest to look after the functions of the revenue department. Below the BDO/CO also there is only one Circle Inspector (CI) for a revenue circle which consists roughly of 100 villages. Obviously a single CI cannot properly supervise an area of 100 villages. Even if he does the quality of work can be anybody's guess.
 - The most unfortunate aspect of the revenue administration in Bihar is that the government has stopped fresh recruitment of the lowest ground-level revenue functionaries called *karmacharis*. As a result a large number of posts are lying vacant, and the existing *karmacharis* have to cover a large number of villages and bear a heavy burden of work. Moreover a *karmachari* has no fixed office. It's difficult to approach him as he has no fixed working hours.
 - There is also no training given to officers to familiarize them with the system of land revenue administration, laws and rules. As a result when officers are confronted with issues such as legal ownership of homestead land, they do not know how to take appropriate action to implement the relevant laws and rules.
- iv) An analysis of the pattern and trend of settlement of rural landless households in Bihar shows that whereas during *Zamindari* System they were settled mainly on *raiya* land provided by landowning employers, the settlements since Independence have come up mainly on various types of government or public land. The number of landless families residing today on *raiya* land is comparatively much less than those residing on *gairmazarua malik* land, *gairmazarua aam* land or land owned by other public agencies. The major reasons that can be identified for displacement/shifting of rural landless from *raiya* land are population pressure; modernization of agriculture, development of capitalist agrarian relations and disappearance of the traditional patron-client based labour relations; failure of land reforms measures to benefit the landless; and loss of habitat due to regular floods and erosion by rivers in north Bihar.
- v) Due to regular floods and erosion by rivers such as Kosi, Gandak and Bagmati thousands of people in north Bihar have been permanently displaced from their settlements and have become shelterless. These displaced people for the past many years have been living on river embankments or on roadsides, many of them for as long as 30 to 40 years. However, the Government of Bihar does not seem to have taken initiatives for resettlement of these shelterless people.

- vi) The existing availability of houses under the provisions of the IAY is grossly inadequate to meet the growing demand. If the conservative estimate of housing shortage of 148.33 lakhs made by RGI and the incremental shortage of 9 lakhs per annum estimated by MoRD are taken into account, the problem of shelterlessness cannot be tackled even in the next 20 years at the current level of coverage of only 15 lakh IAY houses per annum.
- vii) Laws, policies, rules and regulations for granting homestead rights on *raiya*, government and other public land as well as for distributing homestead plots to those without access to land already exist in Bihar. However, lack of effective implementation of these laws as well as the cumbersome and complex administrative processes have been responsible for a large number of eligible rural landless households not being able to avail their rights.

6.2 Recommendations

In the light of the situation discussed and the problems identified above, the following measures are recommended to be taken up for effective implementation of the existing laws and policies and for ensuring the realization of the right to housing and homestead land for the rural landless in Bihar.

- i) The administrative procedures and processes involved in implementation of the laws, policies and provisions need to be streamlined and simplified. The government needs to adopt a bottom up proactive approach to identify record and process for settlement all the eligible cases of landless households that need to be granted homestead rights. Collecting various types of information required for filing of application for legal rights over homestead land is a tedious task, and certainly an insurmountable task for the landless poor. Instead of filing of individual applications, it should be the responsibility of the Block level revenue officials to record the eligible cases of households for granting of homestead rights. This can be done in a mission mode through organizing village camps and recording all the eligible cases with the help of Village Panchayat and Gram Sabha.
- ii) While *raiya* land can be settled by the Circle Officer and *gairmazarua khas* land by the District Collector, in case of *gairmazarua aam* land the process goes upto the Department of Revenue and Land Reforms after it is recommended by the Divisional Commissioner. The process of settlement of *gairmazarua aam* land can be further simplified by giving authority to the District Collector to settle such land. However, it should be kept in mind that a lot of *gairmazarua aam* land has been encroached upon by the powerful landed interests. There should be proper checks and balances to ensure that non-eligible persons do not take undue advantage of the simplification of the processes to regularize their illegal encroachments.
- iii) The provision of the maximum area currently fixed by the government for allotment of house sites needs to be revised and enhanced. Earlier, the maximum area had been fixed at

2 decimals which were later increased to 3 decimals. In the light of the observations and recommendations of the Eleventh Five Year Plan, the Government of Bihar should also increase the minimum area of homestead land to be allotted to the landless households to 10 decimals so that along with shelter it provides space for some supplementary sources of livelihood such as livestock rearing, fodder development and planting fruit trees or vegetables growing etc, to the rural landless and marginalized communities. Studies have shown that house plots of this size can make significant contributions to improvement in food, nutrition and livelihood security of the households.

- iv) There is a need for streamlining the revenue administration at various levels. The lowest-official, the *karmachari*, should be provided with a permanent office space with necessary facilities for due discharge of duties. The existing *karmacharis* should also be given appropriate training to upgrade their knowledge and skill to function effectively. There should be at least one Circle Inspector for 25-30 revenue villages. Each Circle Inspector should be assisted by one trained *amin*. The Circle Officer and the Sub-Divisional Officer should ensure that *parchas/parwanas* are assigned to the right people and those with *parcha/parwana* get physical possession of the land.
- v) The Government should update the land records and revenue maps of villages. These records should be properly maintained and should be made available to the public on demand.
- vi) The Government should compile copies of laws, circulars and policy guidelines as well as prepare an official manual which can provide guidelines to officials at various levels for taking appropriate action. These should be made available at all the Block and District Offices. The Government should also organize periodic training programmes for revenue officials to familiarize them with the system of land revenue administration, laws and policies.
- vii) Since there are no data and information available on ownership of rural homestead land, a village survey needs to be conducted in Bihar to identify the households that do not have legal ownership rights over their homestead land as well as those that do not have access to land for house-site. Such a survey is already being conducted by the government for Mahadalit households. This should be extended to cover landless poor households from all the communities in all the villages in the state.

The village Panchayats can be roped in for this exercise and can be given the responsibility of collecting, maintaining and displaying the complete list of all the landless and house-site less households that need either granting of legal rights over their existing homestead plots or allocation of house-sites.

- viii) The village Panchayats, with cooperation from the Block officials and approval of the Gram Sabha, should also record and maintain an inventory of areas of land and locations under private ownership, public use and common property (grazing and fallow

lands), as well as land that can be made available for allocation to landless households for house-sites. These records should be available at the village level for easy access by all.

- ix) The state government should develop an aggregated database of available land collected at the district and Gram Panchayat levels. The government should also take initiative to seize *gairmazarua* land, put a ceiling on surplus land, community common land and other type of public land held by big landowners. This would help in reallocation of land suitably to accommodate the demand for homestead lands.
- x) It is necessary to significantly step up the quantum of rural housing being added every year under the IAY scheme. The Government of Bihar can also initiate suitable schemes for meeting the housing needs of the BPL families that remain left out under the IAY scheme.
- xi) Habitat development and improvement is currently not linked with the schemes for allotment of house-sites to the landless poor. Along with allotment of house-sites, assistance for house construction under the IAY and provision of facilities like safe drinking water, sanitation, etc., can be done by the department of Rural Development under its various schemes. There is a need for coordination and convergence of these various schemes under the Department of Rural Development.

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Annexures

Annexure I

Statewise Housing Shortage in Rural Areas as per 2001 Census Report

Unit in Nos.

| Sl. No. | Name of the States/UT s | Housing Shortage in Rural Areas |
|---------|---------------------------|---------------------------------|
| 1 | ANDHRA PRADESH | 1350282 |
| 2 | ARUNACHAL PRADESH | 105728 |
| 3 | ASSAM | 2241230 |
| 4 | BIHAR | 4210293 |
| 5 | CHANDI GARH | 1232 |
| 6 | CHHATTIS GARH | 115528 |
| 7 | DELHI | 7200 |
| 8 | GOA | 6422 |
| 9 | GUJARAT | 674354 |
| 10 | HARYANA | 55572 |
| 11 | HIMACHAL PRADESH | 15928 |
| 12 | JAMMU AND KASHMIR | 92923 |
| 13 | JHARKHAND | 105867 |
| 14 | KARNATAKA | 436638 |
| 15 | KERALA | 261347 |
| 16 | MADHYA PRADESH | 207744 |
| 17 | MAHARASHTRA | 612441 |
| 18 | MANIPUR | 69062 |
| 19 | MEGHALAYA | 148657 |
| 20 | MIZORAM | 30250 |
| 21 | NAGALAND | 97157 |
| 22 | ORISSA | 655617 |
| 23 | PUNJAB | 75374 |
| 24 | RAJASTHAN | 258634 |
| 25 | SIKKIM | 11944 |
| 26 | TAMIL NADU | 431010 |
| 27 | TRIPURA | 174835 |
| 28 | UTTAR PRADESH | 1324028 |
| 29 | UTTARANCHAL | 53521 |
| 30 | WEST BENGAL | 974479 |
| 31 | ANDAMAN & NICOBAR ISLANDS | 17890 |
| 32 | DADAR & NAGAR HAVELI | 1926 |
| 33 | DAMAN AND DIU | 787 |
| 34 | LAKSHADWEEP | 190 |
| 35 | PONDICHERRY | 7778 |
| | TOTAL | 14833868 |

Source: Government of India, *Report of the Working Group on Rural Housing for the 11th Five Year Plan*, Ministry of Rural Development, New Delhi.

Annexure II

IAY: Plan-wise/Year-wise Physical and Financial Progress since inception

| Year | Allocation | | | Releases | | | Utilisation | Nos of Houses | |
|--|------------|----------------------|------------|------------|----------------------|------------|-------------|---------------|------------------------|
| | Central | State Matching Share | Total | Central | State Matching Share | Total | | Targetted | Constructed / Upgraded |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 1- SEVENTH FIVE YEAR PLAN (1985-86 TO 1989-90) | | | | | | | | | |
| 1985-1986 | 10553.84 | 2632.58 | 13186.42 | 10553.84 | 2632.58 | 13186.42 | 5793.29 | 144080 | 51252 |
| 1986-1987 | 13214.80 | 3296.18 | 16510.98 | 13214.80 | 3296.18 | 16510.98 | 14918.30 | 158270 | 160197 |
| 1987-1988 | 13216.40 | 3296.58 | 16512.98 | 13216.40 | 3296.58 | 16512.98 | 23536.90 | 158270 | 169302 |
| 1988-1989 | 11178.02 | 2788.17 | 13966.19 | 11178.02 | 2788.17 | 13966.19 | 14964.86 | 134705 | 139192 |
| 1989-1990 | 12579.82 | 3138.51 | 15718.33 | 12579.82 | 3138.51 | 15718.33 | 18849.49 | 151323 | 186023 |
| TOTAL | 60742.88 | 15152.02 | 75894.90 | 60742.88 | 15152.02 | 75894.90 | 78062.84 | 746648 | 705966 |
| 2- ANNUAL PLAN (1990-91 AND 1991-92) | | | | | | | | | |
| 1990-1991 | 12582.29 | 3141.80 | 15724.09 | 12582.29 | 3141.80 | 15724.09 | 21307.45 | 122016 | 181800 |
| 1991-1992 | 12582.29 | 3141.80 | 15724.09 | 12582.29 | 3141.80 | 15724.09 | 26300.80 | 120542 | 207299 |
| TOTAL | 25164.58 | 6283.60 | 31448.18 | 25164.58 | 6283.60 | 31448.18 | 47608.25 | 242558 | 389099 |
| 3- EIGHTH FIVE YEAR PLAN (1992-93 TO 1996-97) | | | | | | | | | |
| 1992-1993 | 17921.10 | 4475.19 | 22396.29 | 17921.10 | 4475.19 | 22396.29 | 23883.51 | 117133 | 192585 |
| 1993-1994 | 25460.00 | 6352.30 | 31812.30 | 25460.00 | 6352.30 | 31812.30 | 48099.95 | 280363 | 372535 |
| 1994-1995 | 35025.66 | 8743.73 | 43769.39 | 35025.66 | 8743.73 | 43769.39 | 50038.38 | 353353 | 390482 |
| 1995-1996 | 109499.00 | 27335.33 | 136834.33 | 117077.76 | 29225.01 | 146302.77 | 116636.44 | 1147489 | 863889 |
| 1996-1997 | 114000.00 | 28460.61 | 142460.61 | 117936.22 | 29439.41 | 147375.63 | 138592.42 | 1123560 | 806290 |
| TOTAL | 301905.76 | 75367.16 | 377272.92 | 313420.74 | 78235.64 | 391656.38 | 377250.70 | 3021898 | 2625781 |
| 4- NINTH FIVE YEAR PLAN (1997-98 TO 2001-2002) | | | | | | | | | |
| 1997-1998 | 115300.00 | 28785.26 | 144085.26 | 111711.14 | 27887.75 | 139598.89 | 159147.85 | 718326 | 770936 |
| 1998-1999 | 148400.00 | 37062.48 | 185462.48 | 147794.72 | 36925.02 | 184719.74 | 180388.45 | 987470 | 835770 |
| 1999-2000 | 160000.00 | 53235.00 | 213235.00 | 143838.56 | 47923.04 | 191761.60 | 190763.87 | 1271619 | 925679 |
| 2000-2001 | 161369.00 | 53691.34 | 215060.34 | 152193.66 | 50672.34 | 202866.00 | 218580.59 | 1244320 | 1170926 |
| 2001-2002 | 161800.00 | 53825.47 | 215625.47 | 186974.40 | 62237.56 | 249211.96 | 214955.51 | 1293753 | 1171081 |
| TOTAL | 746869.00 | 226599.55 | 973468.55 | 742512.48 | 225645.71 | 968158.19 | 963836.27 | 5515488 | 4874392 |
| 5-TENTH FIVE YEAR PLAN (2002-2003 TO 2006-2007) | | | | | | | | | |
| 2002-2003 | 165640.00 | 55102.93 | 220742.93 | 162852.86 | 54245.15 | 217098.01 | 279496.46 | 1314431 | 1548641 |
| 2003-2004 | 187050.00 | 62225.02 | 249275.02 | 187107.78 | 62306.61 | 249414.39 | 258009.69 | 1484554 | 1361230 |
| 2004-2005 | 246067.00 | 81857.92 | 327924.92 | 288310.02 | 95941.83 | 384251.85 | 326208.64 | 1562356 | 1521305 |
| 2005-2006 | 273240.00 | 90893.91 | 364133.91 | 273822.58 | 91254.72 | 365077.30 | 365399.93 | 1441241 | 1551703 |
| 2006-2007 | 290753.00 | 96719.83 | 387472.83 | 143114.27 | 47685.19 | 190799.46 | 57863.47 | 1533498 | 255485 |
| TOTAL | 1162750.00 | 386799.61 | 1549549.61 | 1055207.51 | 351433.50 | 1406641.01 | 1286978.19 | 7336080 | 6238364 |
| GRAND TOTAL | 2297432.22 | 710201.94 | 3007634.16 | 2197048.19 | 676750.47 | 2873798.66 | 2753736.25 | 16862672 | 14833602 |

Source: Government of India, Report of the Working Group on Rural Housing for the 11th Five Year Plan, Ministry of Rural Development, New Delhi.

**The Bihar Privileged Persons
Homestead Tenancy Act, 1947
[BIHAR ACT IV OF 1948]¹⁸**

[This Act received the assent of the Governor-General on the 17th January, 1948, and the assent was first published in the Bihar Gazette of the 18th February, 1948]

ACT AN

To make better provisions on certain subjects relating to the law of landlord and tenant in respect of homestead held by certain classes of persons in rural areas of the State of Bihar.

Whereas it is expedient to make better provisions on certain subjects relating to the law of landlord and tenant in respect of homestead held by certain classes of persons in rural areas of the State of Bihar.

It is hereby enacted as follows—

Comments and Case-law

[The Act was enforced to improve the lot of the weaker sections of the society, such as labourers and artisans. Who live either in houses built by themselves on lands given to them by the landlords or the houses built by the landlords and to provide them with greater security in the matter of their houses and occupation of such homesteads. Provisions have also been made for fixation of fair and equitable rents payable by such landless labourers for their security against their illegal and unreasonable ejection from the lands. *Bishwanath Singh Vs. State of Bihar*, 1981 BBCJ 199.

The idea behind the Act is to secure a piece of land for residential purposes. If he has already a piece of land or homestead then there is no meaning in further securing for him permanent tenancy in some land on which he might actually be living. *Nagina Sah Vs. Rajpati Devi*, 1979 BLJ 236 :1979 BBCJ 345.]

1. Short title, extent and commencement—This Act may be called the Bihar Privileged Persons Homestead Tenancy Act, 1947.

(2) It extends to the whole of the State of Bihar.

(3) It shall come into force on such date¹⁹ as the State Government may, by notification, appoint.

¹⁸. Published in Bihar Gazette dated February 18, 1948(18.2.1948).

¹⁹. Act came into force on 25 February, 1948 vide notification no 1591-III-II-48, dated 21-2-1948

2. Definitions—In this Act, unless there is anything repugnant in the subject or context—

- (a) “Building” includes a house, shed, hut and any other structure whether of masonry bricks, wood, mud, metal, bamboo, *khar* or any other material but does not include the land on which it stands;
- (b) “Collector” includes any officer appointed by the State Government to discharge all or any of the functions of a Collector under this Act;
- (c) “Holding” means a parcel of homestead held by a privileged tenant and forming the subject of a separate tenancy;
- (d) “Homestead” means any land which is held on lease or used with the consent, express or implied, of the landlord for residential purposes and includes any building erected thereon, together with any *Sahan* and *Bari* appurtenant thereto;
- (e) “Industrial establishment” means—
 - (i) an industrial establishment as defined in clause (ii) of Section 2 of the Payment of Wages Act, 1936 (IV of 1936), or
 - (ii) a factory as defined in clause (i) of Section 2 of the Factories Act, 1934 (XXV of 1934)²⁰ or
 - (iii) a railway as defined in clause (4) of Section 2 of the Indian Railways Act, 1890 (IX of 1890);
- (f) “mahajan” means a person whose business is money lending;
- (g) “permanent tenancy” means a tenancy which is heritable in the same manner as any other immovable property and which is transferable subject to the provisions of this Act;
- (h) “prescribed” means prescribed by rules made under this Act;²¹ [(i) “privileged persons” means a person—
 - (a) who is not a proprietor, tenure-holder, under tenure-holder or Mahajan; and
 - (b) who, besides his homestead, holds no other land or holds any such land not exceeding one acre;but does not include any person who has come into possession of the homestead land in contravention of the provisions of Sec. 20 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act XIV of 1949) or Section 46 of the Chotanagpur Tenancy Act, 1908 (Bengal Act VI of 1908) or Section 49-C of the Bihar Tenancy Act, 1885 (Act VIII of 1885.)]
- (j) “privileged tenant” means a privileged person who holds homestead under another person and is or but for a special contract would be, liable to pay rent for such homestead to such person;

²⁰.Now see Factories Act, 1948

²¹.Subs. By Amdt, Act 11 of 1989.

- (k) “rent” means whatever is lawfully payable or deliverable in money or in any other form by a privileged tenant to his landlord on account of the use or occupation of the homestead held by such tenancy; and
- (l) all words and expressions used but not defined in this Act and used in the Bihar Tenancy Act, 1885 (VIII of 1885) or in the Chotanagpur Tenancy Act, 1908 (Bengal Act VI of 1906), shall, in respect of the areas to which the Chotanagpur Tenancy Act, 1908 (Bengal Act VI of 1908) applies, have the meanings assigned to them in that Act and, in respect of the other areas, the meaning assigned to them in the first mentioned Act.

Comments and Case-law

[From the definitions of the expressions “homestead” “privileged tenant” and “rent” as defined in clauses (d), (j) and (k) it appears that two conditions are contemplated which must exist as a condition precedent before a person can be called a “privileged tenant” within the meaning of the Act. Where the relationship of landlord and tenant exist without any arrangement for payment of rent as such, for example in cases where the person happens to be an artisan like a carpenter, potter, etc. and is allowed to occupy a house on consideration of his rendering service to the raiyat of the landlord concerned, there being always an implied contract on the part of the tenants to compensate the landlord for the use and occupation of the land. This implied contract postulates a promise by the occupier to pay the landlord a reasonable amount for the use and occupation. Therefore, a person who has entered upon somebody else’s land, and although might be a privileged person in the sense that he does not possess any other land, without the consent of the *raiyat* or the landlord, does not acquire the right of a privileged tenant. In other words, a trespasser or a squatter cannot acquire the right of a privileged tenant and earn the protections and privileges conferred upon a privileged tenant under the statute. *Bishwanath Singh Vs. State of Bihar*, 1981 BBCJ 199: AIR 1981 Pat. 145: 1981 BLJ 19.

The word “landlord” has been used here in a wide sense, so as to include even a person who is not a proprietor or the like, but is himself a tenant under whom there is another person, who is holding some land as a tenant. A tenancy can be created by establishing relationship of landlord and tenant. This relationship may be expressed, implied or gathered from conduct of circumstances of the parties concerned. Where the opposite party was in possession of the house with the implied consent of the petitioner, the petitioner would be the landlords of the opposite party within the meaning of Sec. 3(4) of the B.T. Act, read with Sec. 2(1) of the Act *Ragho Singh Vs. State of Bihar*, 1957 BLJR 445 : AIR 1957 Pat. 163: ILR 35 Pat. 1040.

From the depositions as given in this Act, it is plain that in order to bring a person within the definition of “privileged person” it must be established, besides, what is mentioned in Sec. 2 (i) (1), that besides his homestead he held no other land or holds such other land not exceeding one acre *Bijli Sahu Vs. Bahadur Mahton*, 1968 BLJR 281.

A privileged person is a person who, besides him homestead holds no other land or holds any such land not exceeding one acre. Therefore, to be a privileged person the first requirement under clause (1) Sec. 2 is that the person has a homestead. *Nagina Sah Vs. Rajpati Devi*, 1979 BLJ 236: 1979 BLJR 53: 1979 BBCJ 245.

Where it appears that the “*parcha*” in Form No. 26 appears to have been issued malafidely without following mandatory procedure laid down under the Act and the Rules framed thereunder, the entire proceeding is vitiated and liable to be quashed. *Soman Sahu Vs. State of Bihar*, 1992 (1) PLJR 477.

Revenue Authority which granting “*Parcha*” in respect of “homestead” land under the Act, must first record a finding that the person to whom “*Parcha*” was being granted was a “privileged person” within the meaning of Section 2(1).

The concerned landowner must also be served a notice as envisaged under the mandatory provisions of Rule 5 of 1948 Rules. *Maya Rani Chatterjee Vs. State of Bihar*, 1993 (1) PLJR 612.

Sections 2(d), (j) & K—Petitioner, a squatter or a trespasser over a piece of land, cannot acquire the protection of a privileged person since there is no relationship of landlord and tenant between him and the landlord of that land—any subsequent willingness on the part of the petitioner, will not convert him into a privileged person—the fact that the petitioner was possessed of more than one acre of land, a fact not controverted by the petitioner will also deprive him of the status. *Bishwa Nath Singh Vs. State of Bihar*, 1980 PLJR 533.

Sections 2(i), (j)—competing claims—*Anchal Adhikari* is required to adjudicate where both sides claim status of privileged tenant and deny the status of landlord—once it is found that the person alleged to be a landlord is really in the same position as the person who claims to be the privileged tenant, then the benefit of the Act is not available to the privileged tenant. *Gopal Pandit Vs. State of Bihar*, 2000 (3) PLJR 324.

Sections 2(i), 2(j) and 4—Permanent tenancy in the homestead to the privileged tenant—requirements for—duty of authorities before making such a declaration u/s 4— it is necessary for the privileged tenant claiming permanent tenancy in the homestead to prove that he is a privileged person within the meaning of Section 2(i) and that besides his homestead does not hold any other land or holds any such land not exceeding one acre—authorities have to give a finding to this effect before passing any order giving a permanent tenancy in the homestead to the privileged tenant—where no such finding is given by the authority concerned the order not being in accordance with law has to be quashed. *Sk. Wajuddin Vs. State of Bihar*, 1985 PLJR (NOC) 14.

Sections 2(i) and 2(j) and Bihar Privileged Persons Homestead Tenancy Rules 1948, Rule 5—Provisions contained in the Act and the Rules being mandatory, Collector’s order declaring a person as a privileged person in violation of such provisions, must be quashed. *Hira Lal Vishwakarma Vs. Vishwanath Sah*, 1978 PLJR 398.

Sections 2 (j), 4 and 8—Collector passing vague order without proper enquiry and without issuing valid notice to landholder in proceeding initiated on application praying for grant of “*Basgit Parcha*”—Collector before granting *parcha* has to come to a finding that the applicant is in fact a “privileged person” and “privileged tenant” as defined under the Act—in absence of any such finding being recorded as mandatorily required by law, the order granting *parcha* has to be declared illegal and without jurisdiction—title of the landlord if based on purchase of the land in a Money Decree passed by Civil Court may not be open to doubt, if claim of land holder is found correct—all orders passed in respect of grant of *parcha* and action taken under Section 8 quashed and Arlchal Adhikarl directed to dispose of matter afresh. *Surya Narain Mishra Vs. State of Bihar*, 1998(1) PLJR 561.

Section 2(j)—a trespasser or squatter can not become a privileged tenant. *Deoraj Thakur Vs. State of Bihar*, 1993(2) PLJR 598.

Section 2 read with Rule 5 of the Rules framed under the Act—belated prayer by writ petitioner for quashing order of Revenue Authority by which “*Parcha*” under the 1947 Act was granted to respondent no. 3—order passed for granting “*parcha*” by Revenue Authority without recording a finding that the person to whom it was being granted was a “privileged-person”—order not sustainable—case remanded for disposal, with liberty to parties to make fresh submissions. *Maya Rani Chatterjee Vs. State of Bihar*, 1993(1) PLJR 612.

Sections 2,2A and 15—the entries in statement prepared in Form No. 26 is to the guidance of the authorities under the Act—does not confer any right, title or interest in favour of the person mentioned therein—any such statement prepared without taking resort to the statutory provisions under the Act is liable to be quashed. *Soman Sahu Vs. State of Bihar*, 1992(1) PLJR 477.

Section 2 r/w Section 4 (4) of Bihar Land Reforms. Act, 1950—defendant (no. 2) having six shops in the market and alleged to have encroached upon the suit land while reconstructing his old house—as such, he cannot be treated as a privileged person and therefore not entitled to receive *parwana* from the State—when the *Parwana* issued in favour of defendant (no, 2) was found to be of doubtful character and the suit having been filed within a period of twelve years after the issuance of *Parwana*, the appellate court had to hold that he had no authority to continue in possession of the land—order passed by D.C.L.R. also indicating that plaintiff—appellant—were assessed to rent and it would imply that settlement in favour of plaintiff appellants was not cancelled by Collector u/s 4(b). *Shyam Bihar Prasad Vs. Most. Kalawati Devi*, 2002(3) PLJR 197.]

²²[2A. Act to apply notwithstanding contrary to provisions in other enactments—The provisions of this Act shall have effect, notwithstanding anything contained to the contrary in any law for the time being in force.]

Comments and Case-law

[It makes this Act self contained and can be compared by the reasonings given in AIR 1951 SC 115.]

3. Act not to apply to certain lands, buildings or areas—This Act shall not apply to—

- (a) any land or building, residential or otherwise—
 - (i) appertaining to an industrial establishment;
 - (ii) vested in the Government or a local authority; and
- (b) any land situated within—

(i) any area which has been, or may hereafter be, constituted a municipality or notified area under the provisions of the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922) or a Union Committee constituted under Section 38 of the Bihar and Orissa Local Self-Government Act of 1885 (Bengal Act III of 1885);

²³[(ii) vested in the Government except homestead deemed to have been acquired by the State Government under sub-section (2) of Section 17A, or a local authority;

²². Ins. by Act 42 of 1951

²³. Subs. by Act 9 of 1970

(iii) any other area which is declared by the State Government by notification issued in this behalf to be a place of business or fair;

²⁴[Provided that if any area in which a privileged person or a privileged tenant has acquired any right in his homestead under this Act, is subsequently converted into an area mentioned in sub-clause (1) of clause (b), the privileged person or the privileged tenant, as the case may be, shall not be divested or deprived of his right in the homestead.]

Comments and Case-law

[Land falling within the municipal or notified area the Act has no application. *Shyam Lal Sahu Vs. State of Bihar*, 1984 PLJR (NOC) 74 : 1984 BCCJ 748 : AIR 1985 Pat. 76.

Where claimant alleging to be a privileged tenant was inducted over disputed land for purpose of establishing wood business—Act would not be applicable. *Bishwanath Singh Vs. State of Bihar*, 1980 PLJR 533: AIR 1981 Pat. 145.

Section 3(b) (i)—Act does not apply to any area of land which is situated within a Municipality or a Notified Area Committee—respondent authorities could not take recourse to the provisions of the Act for granting *parcha*—order granting *parcha* under the Act for lands within such areas is bad and fit to be set aside. *Shyam Lal Sahu Vs. State of Bihar*, 1984 PLJR (NOC) 75.

Section 3—provisions of the Act do not permit grant of *parcha* to a person who has several houses. *Nawal Kishore Sah Vs. State of Bihar*, 2002(2) PLJR 275.

Section 3—basically, the concession which has been granted under the Act is literally for the under-privileged—the Act is in the shape of a social reform to take care of persons who were virtually “Bhumihin”—petitioner being a rich businessman and a money lender, has no status to come within the meaning of privileged persons to see an allotment of agricultural holding under the Act—appellant to be proceeded u/s 340, Cr. P.C. for filing false statements. *Nawal Kishore Sah Vs. State of Bihar*, 2002(2) PLJR 713.]

4. Privileged tenant to have permanent tenancy in his holding—Subject to (the payment of such rent as may be agreed upon between a privileged tenant and his landlord, or where there is no contract or no valid contract in respect of rent or where the rent contracted is alleged to be unfair or inequitable, such rent as may be fixed by the Collector under the ²⁵[proviso to Sub-section (3) of section 17-A], a privileged tenant shall have a permanent tenancy in the homestead held by him at any time continuously for a period of one year.

Comments and Case-law

[Permanency is acquired under this Act by length of continuous residence in the homestead for a period of one year at any time under this section or by fiction of law under section 5 of the Act. This right is very important in the sense that if there is no permanency, tenant at will can be ousted at the pleasure of the landlord under the provisions of the T.P. Act as explained in AIR 1961 Pat 350.

Parcha ordered to be granted to a person who is neither a privileged person nor a privileged tenant without conducting an enquiry is illegal. *Rajeshwari Prasad Vs. State of Bihar*, 1990(1)BLJ 112: 1990 (1) PLJR 35 : 1989 (1) BLJR 448.

²⁴. Ins. by Act 13 of 1973

²⁵. Subs. by Amdt. Act 11 of 1989

Restoration order cannot be validly passed without following the mandatory procedure laid down under Rule 5 of Bihar P.P.H.T. Rules 1948. A bare perusal of Rules 5(2) makes it clear that notice in “Form F” has to be mandatorily issued to all the parties intimating them the date on which the proposed Enquiry is going to be made and further directing them to produce all their evidence in support of or against the application. *Rajeshwar Prasad Vs. State of Bihar*, AIR 1990 Pat 140.

Order for restoration of possession of homestead cannot be validly passed in the absence of any finding of fact in the order to the effect that the Applicants in whose favour the order of restoration was being passed were “privileged tenants” within the meaning of Section 2 (j) of the Act. *ibid.*]

5. Privileged tenant ejected from homestead within one year before the date of commencement of the Bihar Privileged Persons Homestead Tenancy (Amdt.) Act, 1952 to be deemed to have held it on such date continuously for a period of one year—(1) if any privileged tenant has been ejected by his landlord from his homestead or any part thereof, within one year before the date of the ²⁶[commencement of the Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1952 (Bihar Act XXIII of 1952)] otherwise than in due course of law, such tenant shall, for the purposes of Section 4, be deemed to have held such homestead or part thereof, as the case may be, continuously for a period of one year before the [commencement of the Bihar Privileged Persons Homestead Tenancy (Amdt.) Act, 1952] and he may apply to the Collector for the restoration of his possession over the homestead or part thereof from which he has been so ejected.

²⁷[(2) The Collector may, on receipt of an application under sub-section (1) or on his own motion, after making such enquiry as he deems fit, order that the Privileged tenant shall be put in possession of the homestead or part thereof, from which he has been so ejected.

Comments and Case-law

[The section applies only in cases where a privileged tenant has been ejected by his landlord from his homestead or any part thereof within one year before the commencement of the Act—Section 5(1)/will, therefore, be applicable only in a case where the ejection was one year prior to 7-12-1952—application u/s 5 (1) cannot be entertained in cases of ejection after 7-12-1952. *Thakur Girja Nandan Sinha Vs. State of Bihar*, 1985 PLJR 415.

Order passed under Section 6 by the Circle Officer (Collector under the Act) is final and not subject to appeal—order of Addl. Collector acting as appellate authority in this case is without jurisdiction. *Adarsh Rajkiya Madhya Vidyalay Vs. State of Bihar*, 1992(2) PLJR 242.]

6. ²⁸[X X X]

7. ²⁹[X X X]

²⁶. Subs. by Act 23 of 1952 for commencement of this Act

²⁷. Subs. by Act 33 of 1954

²⁸. Deleted by Amdt. Act 11 of 1989

²⁹. Deleted by Amdt. Act 11 of 1989

8. Grounds on which a privileged tenant may be ejected—(1) A privileged tenant shall be liable to ejection on the following grounds and not otherwise, namely—

(a) on the ground that he has used the holding or any part thereof in a manner which renders the holding unit for the purposes of the tenancy.

(b) on the ground that he has failed to pay the rent of the holding for two years: Provided

firstly, that no privileged tenant shall be so ejected except in execution of an order for ejection passed by the Collector ³⁰[X X X]

secondly, that no such order passed on the ground referred to in clause (b) shall be executed, if the full amount of the arrears of rent together with interest, if any; or where there has been a decree for such arrears, the amount payable under such decree is deposited with the Collector within three months from the date on which the order was signed;

thirdly, that before executing an order for ejection, the Collector shall grant such time as he may consider reasonable to the privileged tenant for removing the materials of the building, if any, erected by the Privileged tenant on such holding or any part thereof;

³¹*fourthly*, that no privileged tenant shall be ejected unless he holds at least one-tenth of an acre, being land in the village in which his homestead is situated, which is, in the opinion of the Collector suitable for erecting a building for residential purposes.

(2) The following shall not be deemed to render any holding unfit for the purposes of the tenancy, namely—

(a) the planting of trees and bamboos and growing of crops on a portion of the holding;

(b) the manufacture of bricks and tiles for domestic purposes of the privileged tenant and his family; and

(c) the digging of wells intended to provide supply of water for drinking or for domestic purposes of the privileged tenant and his family.

(3)&(4) ³²[X XXX]

(5) If a privileged tenant has been ejected by his landlord ³³[or any other person] from his homestead or any part thereof, otherwise than in accordance with the provision contained in sub-section (1), then the tenant may apply to the Collector for restoration of his possession over the homestead or part thereof from which he has been so ejected.

³⁴(6) The Collector may on receipt of an application under sub-section (5), or on his own motion, after making such enquiry as he deems fit, order that privileged tenant shall be put in possession of the homestead or part thereof from which he has been so ejected.

³⁵(7) If a privileged tenant is threatened with unlawful ejection from his tenancy or any portion thereof by his landlord, the collector, of his own motion or on application made in this behalf by the privileged tenant initiate a proceeding for preventing the landlord

³⁰. Deleted by Amdt. Act 11 of 1989

³¹. Ins. by Act 23 of 1951

³². Deleted by Amdt. Act 11 of 1989

³³. Ins. by Amdt. Act 11 of 1989

³⁴. Ins. by Act 42 of 1951

³⁵. Ins. by Act 13 of 1973

from ejecting the privileged tenant, and may, after hearing the parties, for which due notice shall have been given to them or even after ex-parte hearing in cases of emergency, by an order, giving reasons therefore in writing, restrain the landlord from ejecting the privileged tenant.

Provided that where an *ex-parte* order has been made, the Collector shall, as soon thereafter as possible, hear, the parties after giving due notice To them and may, for reasons to be recorded in writing confirm the order but, if after such hearing he finds that there is no reasonable grounds for such an order he will set aside the same and reject the prayer.

(8) If the person against whom an order has been made under sub-section (6) fails to carry out the order of the Collector within such time, if any, as may be specified in the order: or if the person against whom an order has been made under sub-section (7) disobeys that order, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(9) An offence under sub-section (8) shall be cognizable for which any Police office may arrest without warrant.

(10) No court shall take cognizance of an offence punishable under subsection (8) except with the previous sanction of the Collector.

Explanation—For the purpose of sub-sections (5) and (7) ‘landlord’ includes the person under whom the privileged tenant held his homestead prior to its acquisition by the State Government under sub-section (2) of Section 17A.

Comments and Case-law

Once a person has been adjudged a privileged tenant, his dispossession by the landlord or any one is illegal—on dispossession the Collector can make an enquiry suo motu or on application—rules do not provide for an enquiry. *Sone Lal Sahni Vs. State of Bihar*, 1985 BBCJ Pat. 488.

Procedures laid down under the Act and the 1948 Rules framed thereunder, particularly that of Rules 5 are required to be followed, before a “Basgit *Parcha*” is granted to the applicant *Deoraj Thakur Vs. State of Bihar* 1993 (2) PLJR 598 : 1993 (2) BLJR 976 : 1993 (2) BLJ 298.

Basgit Parcha—The conditions precedent prescribed for grant of “*Basgit Parcha*” have to be fulfilled before any *Basgit Parcha* is granted. The grant takes away a valuable right of the concerned landlord. The procedure laid down under the Act and the 1948 Rules, framed there under are required to be followed. Order of Collector granting “*Basgit Parcha*” to a lady claimant without notice to concerned landlord or conducting an inquiry cannot be sustained. *Deoraj Thakur Vs. State of Bihar*, 1993 (2) PLJR 596 : 1993 (2) BLJR 976:1993 (2) BLJ 298.

Section 8 read with Rules 3 and 5 of Bihar Privileged Persons Homestead Tenancy Rules 1948—*Basgit Parcha*—prayer for issuance of “*Basgit Parcha*” allowed by Circle Officer without considering objections of landowner merely on basis of local inspection held without issuing proper notice to parties—facts alleged in writ petition challenging impugned order not controverted by Respondents—Circle Officer also not recording any finding in regard to claim of being a “Privileged Person”—order of Circle Officer not sustainable. *Deo Nandan Kishore Vs. State of Bihar*, 1994(2) PLJR 631.

Section 8 read with Rule 5 of Bihar Privileged Persons Homestead Tenancy Rules 1948—grant of “Basgit *Parcha*” made without Collector either conducting an enquiry or calling for any recommendation—notice also not served upon concerned landlord—by reason of grant of “Basgit *Parcha*” valuable right of landlord is lost—not only the condition precedent prescribed for grant of “Basgit *Parcha*” have to be fulfilled but procedures laid down under the Act and the Rules framed thereunder have to be followed—grant of “Basgit *Parcha*” not being in terms of Rule 5 of the 1948 Rules is set aside. *Deoraj Thakur Vs. State of Bihar*, 1993(2) PLJR 598.

Section 8 read with rules 3 and 5 of Bihar Privileged Persons Homestead Tenancy Rules, 1948—District Magistrate’s direction to subordinate officer for giving vacant possession of homestead plot to persons to whom “*Parchas*”, under this Act had been issued earlier—validity—since “*parcha*” is granted under the Act after due enquiry and notice to the parties concerned, no further enquiry is mandatory after a privileged tenant has been dispossessed by someone—the Rules laid down regarding enquiry and notices make no mention of applications made under Sections 8(5) and 8(6). *Sonelal Sahni Vs. State of Bihar*, 1986 PLJR 46.

Section 8—impugned order passed on 28-5-2001—writ filed against the order on 11-7-2002—writ petition suffers from unexplained delay. *Md. Sabir Hussain Vs. State of Bihar*, 2002(4) PLJR 309.

Section 8—Basgit *parcha* issued after due notice to landlord in the year 1991—order never challenged and it became final—vendees (petitioners) purchased the land in 1999 and the present dispute arose—vendees have stepped into the shoes of their vendor and have purchased the property with all rights, liabilities and encumbrances—the vendor cannot pass on a higher title than what he himself had—the vendees have acquired title to the property along with encumbrances created by the effect and force of the order in the year 1991—alienation in favour of the vendees is a mala fide act to nullify the effect of the order passed in the year 1991. *M. Sabir Hussain Vs. State of Bihar*, 2002 (4) PLJR 309.

9. Restriction on transfer of privileged tenant’s right—No transfer made by a privileged tenant of his right in his holding or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement shall be valid to any extent except as provided in Sections 10 to 17.

10. Subletting by privileged tenant—A privileged tenant may sublet his holding or any portion thereof to any privileged person to use it for residential purposes.

Comments and Case-law

[Subletting of the holding or any part of it can not be permitted for the purpose of business.]

11. Usufructuary mortgage by privileged tenant—(1) A privileged tenant may enter with any privileged person into a complete usufructuary mortgage in respect of his holding or any part thereof for any period not exceeding seven years;

Provided that the mortgage so entered into shall be registered under the Indian Registration Act, 1908 (XVI of 1908).

(2) A privileged tenant’s power to mortgage, his holding or any part thereof shall be restricted only to one form of mortgage, namely, a complete usufructuary mortgage.

(3) In this section the expression complete usufructuary mortgage means a transfer by a privileged tenant of the right of possession in his holding or any part thereof and in any building erected by him thereon, for the purpose of securing the payment of money or the return of gains advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage.

12. Transfer by way of private sale, gift or will to be made with permission of Collector—A privileged tenant may with the written permission of the Collector transfer his holding or any portion thereof by way of private sale, gift or will to any privileged person to use it for residential purposes.

13. Power of Collector to eject mortgagee for wilful neglect to pay rent of mortgaged land—(1) If the mortgagee of a holding or any part thereof under Section 11 is legally liable to pay the rent of mortgaged property to the landlord and fails to do so, the mortgagor may deposit it with the Collector the arrears of rent together with the costs necessary for the transmission of the same to the landlord and may apply to the Collector for the ejectment of the mortgagee and the restoration of the mortgaged property to the mortgagor.

(2) On receipt of such an application the Collector, after making such enquiry as he thinks fit, may, if he is of the opinion that the mortgagee has wilfully neglected to pay the amount of rent in arrears, eject the mortgagee and restore the mortgaged property to the mortgagor, and the mortgage shall thereupon be deemed to have terminated.

(3) The Collector shall cause to be transmitted to the landlord any sum deposited under sub-section (1).

Comments and Case-law

[Limitation has not been prescribed under this section to apply for ejectment.]

14. Transfer in contravention of Section 9 not to be recognised by Courts—No transfer by a privileged tenant in contravention of the provisions of Section 9 shall be registered or in any way recognised as valid by any Court, Civil, Criminal or Revenue.

15. Powers of Collector to set aside improper transfers—(1) If a transfer of his holding or any portion thereof is made by a privileged tenant in contravention of the provisions of Sec. 9 and if a transferee takes possession of the holding or any portion thereof in pursuance of such transfer, the Collector may, of his own motion or on an application made in that behalf, after recording an order in writing, eject the transferee from the transferred property.

Provided that the transferee whom it is proposed to eject is given an opportunity of showing cause against the order of ejectment.

(2) (a) When the Collector has passed an order under sub-section (1), he shall pass a further order restoring the transferred property to the transferor or to his heir or legal representative.

(b) If the transferor or his heir or legal representative cannot be found within six months from the date of the order of restoration passed under clause (a) or is unwilling to take possession of the transferred property, the Collector may declare, the right of settlement of such property to be vested in the landlord.

Provided that before making such a declaration, the Collector shall grant such time as he considers reasonable to such transferor or his/her legal representative, as the case may be for removing the materials of the building, if any, erected by him on such property.

Comments and Case-law

[The Collector can on his own motion or on a petition call for the records and can re-open the matter and cancel a *parcha* obtained through fraudulent means and material suppression. The Act is intended to improve the lot of weaker sections of the society and provide them land so that they can have their own dwellings— instantly, the original *parcha* holder was not a landless person and the *parcha* standing in his name was rightly cancelled by the Collector, after hearing his heirs who had appeared before him as a rightful owner. *Mosst. Shila Devi Vs. State of Bihar*, 2002(1) PLJR 638.]

16. Restrictions on the sale of privileged tenant's right in his holding under order of Court—Notwithstanding anything contained in this Act, no decree or order shall be passed by any Court for the: sale of the right of a privileged tenant in his holding or in any portion thereof shall any such right be sold in execution of any decree or order except a decree for an arrear of rent which has accrued in respect of the holding.

Comments and Case-law

[Privileged tenant u/s. (2) (j) means a privileged person, who holds homestead land under another person, and is or but for a special contract would be liable to pay rent to that person and a privileged person as contemplated by the Act is one who is not a proprietor tenure-holder, under tenure-holder or a mahajan. Where any of these two ingredients are missing the judgement-debtor claimant would not be entitled to the benefit of Sec. 16. *Kumar Choudhary Vs Jiut Kandu*, 1963 BLJR 168.

The first prohibition is a direction to the Court not to pass a decree or order for sale of a particular right of a particular class of people and this prohibition has got to be given effect to by the Court if the provisions are in force on the date, when such a decree or order is going to be passed. There is no question of applying the prohibitory provisions with retrospective effect. It was held, that the right of the mortgagee to get such a decree on the basis of his mortgage is expressly curtailed to this effect. *Shrimati Ram Peyari Devi Vs. Most. Parekha Kuer*, 1963 BLJR 40.

In *Smt. Ram Peyari Devi Vs. Most Parekha Kuer*, 1963 BLJR 40, it has been held that the right of the privileged tenant in homestead land cannot be sold in execution of decree based on mortgage executed before coming into force of this Act on a plea that the party was not a privileged tenant on the date of suit and as such bar of Section 16 was not available.]

17. Stay of execution of decree—If an application for the sale of privileged tenant's right in his holding is made in execution of a decree against such a privileged tenant in respect of the rent of such holding, the Court executing the decree shall allow the privileged tenant reasonable time in which to pay the amount due, and if an application is made to the Collector under sub-section (1) of Section 13 before the execution of the decree, the Collector shall inform the Court that such an application has been made, and the decree shall not be executed until the Collector has disposed of the application.

³⁶[17 (A). Privileged tenant having permanent tenancy in his homestead to hold it under the State Government—(1) Subject to the other provisions contained in this Act, a

³⁶ Ins. by Act 9 of 1970

privileged tenant having permanent tenancy in homestead under Section 4 shall hold the homestead under the State Government and the amount of rent payable to the landlord by the privileged tenant in respect of the homestead shall be payable by the privileged tenant to the State Government.

(2) The homestead which a privileged tenant holds under the State Government under sub-section (1) shall, for the purpose of payment of compensation to the landlord under whom he held it, be deemed to have been acquired by the State Government under this Act.

(3) The amount of compensation payable to the landlord by the State Government under sub-section (2) shall be ten times of the rent payable to the landlord by the privileged tenant in respect of the homestead which shall be paid to the landlord by the State Government in cash in one installment.

Provided that where there is no contract or no valid contract between the landlord and his privileged tenant as to the rent payable for the homestead or where the rent contracted is, in the opinion of the Collector unfair or inequitable, the Collector shall settle fair and equitable rent of the homestead after making such enquiry as he may deem fit and after taking into consideration the importance of the area where such a homestead is situated and the rent, if any, prevailing in that area for other similar homesteads, before the amount of compensation payable to the landlord by the State Government is assessed.

³⁷(4) The rent settled by the Collector under the proviso to sub-section (3) shall always be in cash and take effect from such date as the Collector may fix.

(5) The rent which was payable to the State Government by the privileged tenant under sub-section (1) or the rent settled by the Collector under the proviso to sub-section (3) shall be the rent fixed in perpetuity.

(6) The Collector on his own motion, or on any information received by him that the rent fixed by the Circle Officer is not proper, may review the orders passed by the Circle Officer regarding the fixation of such rent and may pass such orders redetermining the rent, as he deems fit.

³⁸18. Orders under this Act to be final—The orders passed under this Act shall be final. Subject to the provisions of Section 21, all orders passed by the Collector in any proceeding under this Act shall be final, and no suit shall lie in any Civil Court to vary or set aside any such order except on the ground of fraud or want of jurisdiction.

Comments and Case-law

[Section 18 read with Rule 3 of the Board's Miscellaneous Rules—Deputy Commissioner, has no jurisdiction either to review or to revise the order passed by a Circle Officer while exercising the powers of a Collector. *Ganga Ram Bhagat Vs. Deputy Commissioner*, 1977 PLJR 246.

Sections 18 and 19—cancellation of *parcha* of petitioner without notice at the instance of respondent—not valid. *Rajendra Prasad Choudhary Vs. State of Bihar*, 1985 PLJR 163.

Section 18 r/w Section 34 of the Specific Relief Act, 1963—Plaintiff claiming possession of the suit land and denying allegations of the defendant regarding his forcible ouster—plaintiff

³⁷. Ins. by Amdt. Act 11 of 1989

³⁸. Subs. by Amdt. Act 11 of 1989

simply seeking relief that the *parcha* issued in the name of the defendant was fraudulent and inoperative—if a declaratory suit involves any consequential relief, the plaintiff must seek this consequential relief, otherwise the suit would be barred—the declaration that the *parcha* was fraudulent and issued without jurisdiction by the State authority amounted to its cancellation— neither the *parcha* was filed before the lower court nor was it proved by any documentary/oral evidence that the *parcha* was ever issued after proper enquiry regarding possession of the suit house by the defendant—appellate court justified in its opinion that suit not barred. *Ramswaroop Tanti Vs. Sadanand*, 2001(3)PLJR 713.

The order passed by the Collector under the Act under Section 6 is final and as laid down under Section 18, not subject to appeal. Any order passed in respect of that proceeding by the Additional Collector in purported exercise of power as Appellate Authority will be without jurisdiction and void. *Adarsha Rajkiya Madhya Vidyalaya Vs. State of Bihar*, 1992 (2) PLJR 242.]

19. Provisions to have effect notwithstanding any other law—The provisions of this Act shall have effect notwithstanding anything contained in any other law or anything having the force of law; and anything in any such law or anything having the force of law which is inconsistent with any of the provisions of this Act, shall, to the extent of inconsistency, be deemed to have been repealed.

20. Power of the State Government to make rules—(1) The State Government may make rules not inconsistent with this Act for carrying out the purposes of the Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules with respect to the following matters—

- (a) the form of applications under sub-section (1) of Section 5, sub-Section (1) of Section 6, first proviso to sub-section (1) of Section 8, sub-section (1) of Section 13 and sub-section (1) of section 15, and the particulars to be contained in such applications; .
- (b) the procedure to be followed in dealing with applications referred to in clause (a) and in inquiries about matters arising out of such applications.

Comments and Case-law

[Being piece of delegated legislation is valid. *Hamdard Dawakhana vs. Union of India*, AIR 1960 SC 554.]

³⁹[21. Power of the Collector of the District to call for and examine records— Notwithstanding anything to the contrary contained in any judgement, decree or order of any Court or authority; the Collector of the district may on his own motion or on the application of any party, or on reference being made by any subordinate authority, call for and examine record of any case decided or proceeding taken by the Collector under the Act for satisfying himself as to the regularity of the proceeding or to the correctness, legality or propriety of an order passed by the Collector under the Act in the case or proceeding, and may after, allowing the parties concerned the opportunity of being heard, direct that the case or the proceeding be reopened and disposed of afresh in accordance with the provisions of this Act.

³⁹. Ins. by Amdt. Act 11 of 1989

22. Power of the State Government to give directions—The State Government may, from time to time, give to the Collector of the district such directions of general or special nature as the State Government may deem fit.

Comments and Case-law

[The Board of Revenue is vested with powers of superintendence over all Revenue Courts. This power is invocable as to both judicial and administrative functions of subordinate Revenue Courts. Surendra Pal Singh Vs. Board to Revenue, AIR 1994 SC 1439.)

Source: *Bihar Privileged Persons Homestead Tenancy Manual*, Eastern Book Agency, 305, Budha Plaza, Budh Marg, Patna, 2006.

Annexure IV

Circular issued by the Government of Bihar Letter No. 5LR-232/ 71— 5805—R, dated 16-8-1.971

Subject—Providing a minimum area of 2 decimals of homestead to privileged persons.

I am directed to refer to this Department letter no. 6561 -LR, dated the 24th July, 1970 in which it was clarified that the provisions of the Bihar Privileged Persons Homestead Tenancy Act, 1947 did not apply to either Gairmazrua *Khas* or Gairmazrua *Aam* lands. It was explained that where a privileged person had his homestead on Gairmazrua *Khas* land, his possession should be recognised and normal settlement made by the competent authority. In case of Gairmazrua *Aam* land, if such land has lost its *Aam* character and it is not used for community purposes, it had been explained that proposals for settlement of land with the privileged persons should be forwarded to Government.

2. In this Department letter no. 6780-LR, dated the 29th July 1970, attention was drawn to the definition of “Homestead” given in clause (d) of Section 2 of the B.P.P.H.T. Act, 1947. The direction given in that letter was that in all cases where *Sahan* and *Bari* have been left out, these should be re-opened suo moto by the *Anchal Adhikari*, on application, and that steps should be taken for recording *San* and *Sahan*, in addition to the house and to distribute revised *parchas* to the privileged tenants.

3. Government regret to say that neither proposals for settlement of Gairmazrua *Khas* land for homestead purposes with privileged persons who do not belong to Scheduled Castes, Scheduled Tribes and the Backward Classes (Annexure I) nor for settling Gairmazrua *Aam* land with privileged persons have been received for their orders. Though action has been taken by s to record *Bari* and *Sahan* yet the progress made in this direction is also inadequate.

4. Government are of the view that no privileged persons should have a homestead which is less in area than 2 decimals. Where the area at present shown on the *parcha* given to the privileged tenant is less than 2 decimals, Government desire that the following steps should be taken—

- (a) Inclusion of the areas of *Bari* and *Sahan* in the *parcha* where such area had been left out;
- (b) If Gairmazrua *Khas* land is available immediately adjacent to the homestead, settlement of requisite additional area with the privileged tenant. In case of Scheduled Castes, Scheduled Tribes, Backward Classes (Annexure I) and other entitled categories, such settlement will be made by the competent authority. In the case of others proposals

will have to be forwarded with necessary details to Government for sanctioning the settlement.

- (c) Where Gairmazrua *Aam* land is available immediately adjacent to the homestead for which the *parcha* had already been given, settlement of requisite additional area with the privileged tenant. It is, however, emphasised that such settlement will be made only if the land has lost its *Aam* character and is no more used for community purposes and that proposals for settlement will have to be sent to Government for approval;
- (d) Where neither Gairmazrua *Khas* nor Gairmazrua *Aam* land is available immediately adjacent to the homestead of the privileged tenant, action will be necessary to acquire the additional area. It may, however, be emphasised that the minimum area to be settled or acquired under (b), (c) or (d) above will be one decimal. Similarly action under (b), (c) or (d) will be taken if even after action under (a), the privileged tenants still continues to have an area of less than 2 decimals for his homestead.

5. In order to enable the *Anchal Adhikaris* to ascertain the cases in which action under the previous paragraph will be necessary, they will have to scrutinise all the records relating to the distribution of *parchas* to privileged tenants in their office and sort out those cases in which the area shown in the *parcha* is less than 2 decimals. Thereafter local inspection will have to be made and action under (a) of the previous paragraph should be completed. Details of proposals for action under (b), (c) or (d) of the previous paragraph will then be submitted to the Additional Collectors through the Subdivisional Officers.

6. Action may be initiated immediately for the scrutiny of the records to ascertain the cases where the homesteads at present recorded have an area less than 2 decimals. The services of the Halka *Karamcharis* could be utilised for this purpose. It is anticipated that the average number of privileged tenants in a Halka will be around hundred and hence it should be possible for the *Karamcharis* to scrutinise the records and pick out the names of the privileged tenants with homesteads less than 2 decimals in area, within two days. *Anchal Adhikaris* should chalk out a programme for field inquiries by the *Karamcharis* taking into account the number of villages to be visited by the *Karamcharis* in their Halkas.

Circle Inspectors should frame tour programmes, to synchronise with those of the Halka *Karamcharis* and should collect from them particulars of cases where *Bari* or *Sahan* has not been recorded. These should be verified by the circle inspectors who should cover every halka under their charge in a cycle of 7 to 10 days and bring all these cases to the headquarters, where the *Anchal Adhikaris* will record orders for inclusion of the area of *Bari* or *Sahan* in the *parchas* already issued to the homestead tenants.

7. Where settlement of either Gairmazrua *Khas* or Gairmazrua *Aam* land has to be made, the procedure for inquiry and further action will be as communicated by the Revenue Department in their circulars issued on the subject from time to time. Cases requiring Government sanction should not, however, be sent piecemeal but should be forwarded to the Revenue Department so as to cover, in one proposal, all the privileged tenants in an *Anchal*.

8. Cases where acquisition of land is necessary will have to be personally inquired into by the *Anchal Adhikaris* who may get necessary maps prepared for acquisition, with the help

of the Anchal *Amin*. Proposals for land acquisition will have to be sent to this Department with an estimate regarding the likely cost of acquisition. The proposals should not involve the acquisition of land of the categories, the acquisition of which is not permitted normally by the Government.

9. Copies of this letter are being forwarded to Subdivisional Officers, *Anchal Adhikaris*, etc. The receipt of this letter may kindly be acknowledged and a copy of the instructions issued by you on this subject to your subordinate officers may also kindly be sent to Government for information. [‘Letter No. 5LR-232/ 71— 5805—R, dated 16-8-1971]

Source: *Bihar Privileged Persons Homestead Tenancy Manual*, Eastern Book Agency, 305, Budha Plaza, Budh Marg, Patna, 2006

**Circular issued by the Government of Bihar
Letter No. 11- LRD- 6/99- 749- R dated 20.9.1999**

Subject: Distribution of Land for Homestead Purposes

As per instructions, your attention is being attracted to the above subject. Previously, the privileged Persons Homestead Tenancy Act had the provision of giving “*Parcha*” of homestead land to the persons or families settled on the Rayyati land, so that the homestead could have a home of their own. Power is vested in the S.D.O. for settling persons and families of suitable background on government land (gair majrua land) for building homes free of cost. The S.D.O. can settle 12.5 decimal land maximum to each person/family.

(2) The government feels now that most of the village poor and persons of suitable families are still without homes and are homeless. The Condition of the homeless worries the government. Government firmly believes that if the land reform programmes are implemented by subordinate officers with proper dedication and within a stipulated time than the task of providing poor and suitable persons, homes can progress with unimaginable speed.

(3) Therefore government in the public interest has taken the following decision for providing homestead facilities to the poor and suitable, which may be immediately implemented.

1) If in the village area, a homeless person has already erected a home then “Bihar Visheshadhikar Prashray Prapt Vaasbhumi Kashtkari Adhimiyam’s” provisions may be brought into force and immediately, the next step be taken.

2) The Gair Majrua lands in the village (including Gair Majrua *Aam*) may immediately be identified and at least four decimals of land be distributed in favour of all homeless families. If the nature of the Gair Majruah land has changed, then a settlement proposal may properly be forwarded to the government through “Pramandaliya Ayukt.”

3) If the Gair Majrua land available does not suffice for all the suitable and homeless families, them kindly get a survey done by the subordinate officer to ascertain how many homeless families live in the village. For their homestead purposes, at least 4 decimals of Rayyati land may be proposed to be acquired and the expected cost of such an acquisition may be sent with a formal proposal, so that funds may be arranged, land may be acquired and the poor and suitable families may be provided with homestead land.

4) Please give the top priority. The government may be made aware of the action takne in the shape of a complete proposal at your earliest.

Source: *Bihar Ke Bhumiheenon evam Begharon Ke Hak Ke Kanunee Mudde*,Deshkal Society, Delhi, 2006.

Annexure VI

List of Scheduled Castes identified as Mahadalits by the Department of Personnel & Administrative Reforms, Government of Bihar vide Notification No. 3267 dated 03.06.2008.

1. Bantar
2. Bauri
3. Bhogta
4. Bhuiyan or Bhumjij
5. Chaupal
6. Dhobi
7. Dom or Dhangar
8. Ghasi
9. Halalkhor
10. Hari, Mehtar or Bhangj
11. Kanjar
12. Kuriar
13. Lalbegi
14. Dabgar,
15. Musahar
16. Nat
17. Pan or Sawasi
18. Pasi
19. Rajwar
20. Turi.

Source: Ashokvardhan, Dr. C., 2009, House-site scheme for Mahadalit Families in Bihar, paper presented at a National Seminar on *Shelterlessness and Homestead Right* organized by Council for Social Development, New Delhi, November 5-6, 2009.

Annexure VII

District-wise Number of Villages Surveyed by the Government of Bihar for Identification of Mahadalit Families without House-sites

| S.No. | Name of the District | No. of Surveyed Villages | Caste-Wise Status of the Surveyed Families | Remarks |
|-------|----------------------|--------------------------|--|---------|
| 1 | 2 | 3 | 4 | 5 |
| 1. | Patna | 648 | Musahar, Dhobi, Pasi, Mehtar, Nat, Dom, Halkhor | |
| 2. | Nalanda | 952 | Dom, Musahar, Nat, Tudi, Pasi, Dhobi, Halkhar, Rajwar, Dhadhi, Bakho | |
| 3. | Bhojpur | 414 | Mushar, Dom, Dhobi, Mehtar, Pasi, Rajwar, Davgar, Nat, Netaji | |
| 4. | Buxar | 328 | Dhobi, Dom, Mehtar, Pasi, Nat, Lathor, VanshKhor, Musahar, Bhuiyan, Davgar, Kanjar | |
| 5. | Rohtas | 946 | Pasi, Dhobi, Rajwar, Musahar, Nat, Dom, Bhuiyan, Mehtar, Ghasi, Dowgar | |
| 6. | Kaimur (Bhabhua) | 162 | Musahar, Dom, Dhobi, Pasi, Turiya, Nat | |
| 7. | Gaya | 23 | Bhuiyan, Davgar, Pasi, Bhokta, Dhobi, Dom, Nat, Musahar, Mehtar, Halkhor, Rajwar, Vanskhor | |
| 8. | Jehanabad | 88 | Musahar, Dom, Pasi | |
| 9. | Arwal | 208 | Rajwar, Dhobi, Pasi, Musahar, Halalkhor, Dom, Naat, Mehtar | |
| 10. | Aurangabad | 856 | Musahar, Bhuiyan, Dom, Mehtar, Nat, Rajwar, Bhokta, Halalkhor, Davgar, Pasi, Dhobi | |
| 11. | Nawada | 496 | Musahar, Rajwar, Pasi, Bhuiyan, Halkhor, Dhobi, Turi, Dom ,Bhokta, Nut, Devgar | |
| 12. | Muzaffarpur | 90 | Musahar, Pasi, Dom, Mehtar, Dhobi, Nat, Halkhor, Kanjar, Dhanuki | |
| 13. | Sitamarhi | 146 | Dom, Musahar, Mehtar, Dhobi, Pasi, Halkhor, Dhamsar, Kanjar | |
| 14. | Vaishali | 46 | Bantar, Bhokta, Bhuiyan, Dom, Mangar, Halkhor, Hadi, Mehtar, Bhangi, Kureri, Musahar, Nat, Pan-Swasi, Juni, Dhabhi, Pasi | |
| 15. | East Champaran | 393 | Dhobi, Musahar, Dom, Mehtar, Dhagar, Pasi, Nat, Halkhor, Bardo | |
| 16. | West Champaran | 66 | Musahar, Dhobi, Mestar, Dhangar, Mehtar, Pasi | |

| | | | | |
|---------------|------------|-----|---|--|
| 17. | Shiuhar | 38 | Dhobi, Pasi Mushar, Dom, Halkhor, Mehtar, Bhuiyan | |
| 18. | Saran | 23 | Dom, Musahar, Nat, Pasi, Mehtar, Kanjar, Halkhor | |
| 19. | Siwan | 63 | Nat, Dom, Dhobi, Halkhor, Mehtar, Pasi, Musahar. | |
| 20. | Gopalganj | 88 | Musahar, Dom, Pasi, Halkhor, Mehtar | |
| 21. | Bhagalpur | 285 | Musahar, Dom, Pasi, Dhobi, Mehtar, Dhangar. Hari, Turi, Kejar, Nat, Rajwar | |
| 22. | Banka | 499 | Dom, Mehtar, Musahar, Dhobi, Pasi, Nat, Mahauli, Bhuiyan | |
| 23. | Monghyr | 259 | Musahar, Dom, Dhobi, Pasi, Nat, Turi, Mehtar | |
| 24. | Begusarai | 84 | Musahar, Dom, Dhobi, Pasi, Nat, Mehtar, Rajwar, Dom | |
| 25. | Khagadia | 209 | Musahar, Dhobi, Pasi, Nat, Mehtar, Rajwar, Dom | |
| 26. | Lakhisarai | 253 | Musahar, Dom, Dhobi, Pasi, Mehtar, Nat, Turi | |
| 27. | Sheikhpura | 240 | Musahar, Pasi, Dhobi, Dom, Nat, Halkhor | |
| 28. | Jamui | 123 | Musahar, Mehtar, Dhobi, Turi, Pasi, Dom, Banskhor | |
| 29. | Darbhanga | 100 | Musahar, Dom, Karori, Pasi | |
| 30. | Madhubani | 366 | Musahar, Dom, Dhobi, Pasi, Nat, Bator, Halakhor, Mehtar, Karouri. | |
| 31. | Samastipur | 497 | Musahar, Dom, Mehtar, Bhangi, Halkhor, Tureri, Nat, Turi, Batar, Dhobi, Pasi | |
| | | | | |
| 32. | Saharsa | 210 | Dom, Mehtar, Dhobi, Pasi, Musahar, Handi | |
| 33. | Madhepura | 240 | Musahar, Dom, Dhobi, Mehtar, Pasi, Sardar | |
| 34. | Supaul | 556 | Musahar, Dom, Mehtar, Bantar, Sardar, Rishi Deo. Pasi, Dhobi | |
| 35. | Purnea | 215 | Dharkar, Rajwar, Musahar, Nat, Hadi, Dom, Chaupal, Dhaugar, Dhobi, Turi, Pasi | |
| 36. | Kishenganj | 40 | Hari, Dom, Musahar, Dhobi | |
| 37. | Katihar | 319 | Dom, Dhobi, Pasi, Musahar, Hari, Tori, Bhuiyan, Chaupal | |
| 38. | Araria | 607 | Musahar, Dhobi, Dom, Dhaskar, Hari, Mehtar, Nat, Pasi | |
| Total : 11176 | | | | |

Source: Ashokvardhan, Dr. C., 2009, House-site scheme for Mahadalit Families in Bihar, paper presented at a National Seminar on *Shelterlessness and Homestead Right* organized by Council for Social Development, New Delhi, November 5-6, 2009.

Principles and Modalities of Land Purchase Formulated by the Government of Bihar for Allotment of House-sites to Mahadalit Families

Objectives

1. The beneficiary or group of beneficiaries would select land as per their choice, convenience, interest and requirements and the willingness and consent of both the vendor and the vendee will be ensured.
2. Land transfer from the vendor to the vendee will be expedited.
3. Cluster formation and cluster development will be facilitated in case 30 and more Mahadalit families combine and identify such land bloc for purchase.
4. Delivery of possession to the vendee will be rather smooth in case the sale-purchase are done by mutual consent.

Legally speaking as per Rule 2 (2) of the Bihar *Khas Mahal Manual* 1953, estates may be acquired by the Government by purchase or by contract.

Principles Underlying Land Purchase

1. The minimum estimated market value of the land as determined by the Registration Department will be the base value to which its 50% will be added, to arrive at the Market Value of the land concerned.
2. The funds will be placed at the disposal of the District Collector who will keep it in his Personal Deposit Account. After the completion of all land purchase preliminary work, he will take requisitions from Circle Officer (Anchal Adhikari) and sub-allot the required amount to the Circle Officer (Anchal Adhikari) by cheque.
3. The amount so sub-allotted will be kept by the Anchal Adhikari in his Account in a Nationalised Bank or Gramin Bank.
4. The Circle Officer (Anchal Adhikari) will make available the Market Value of the land to the vendors by Bank Cheques.
5. The following expenses shall be borne on the funds made available to the Department of Revenue and Land Reforms-
 - (i) Payment of market value determined as above.

- (ii) Payment of sale deed writers' fees as determined from time to time by the Registration Department;
 - (iii) Payment of *Amin's* charges deployed by the Anchal Adhikari.
 - (iv) Payment of Land Lord's fees as per the Bihar Tenancy Act.
6. Exemptions may be made in the payment of stamp duties etc. as per the relevant provisions in the Bihar Stamp Rules, 1954 and service charge payable to district SCORE under computerised Registration System.
 7. The average land size per Mahadalit family will be 3 decimals.
 8. The land must fall in a rural area.
 9. Standard sale deed will be evolved for this purpose involving the Circle Officer on behalf of the Government, the vendor and the vendee.
 10. The beneficiary must be living in the Mauza (or adjacent Mauza) where the land concerned is located.
 11. Cent per cent of the land purchased under this scheme will be settled with women in the Mahadalit families concerned. It may be settled with a male member only when there is no female member in the family.
 12. The land purchased will be inalienable but heritable.
 13. The land purchased will be used only for residential purposes.
 14. The Circle Officer will maintain records/informations/accounts in this regard in his office.

Circle Officer as Facilitator

The Anchal Adhikari (Circle Officer) will act as a facilitator in the identification of land for the Mahadalit families in the following manner:

1. The Circle Officer will facilitate the identification of 3 decimals of land for the beneficiary.
2. The Circle Officer will intimate the surveyed beneficiaries that they would be getting *raiya* land @ 3 decimals of land for residential purposes per family at Government's expense and the value of the land will be 150% of the stamp rate prescribed in the Registration office. Hence they will be advised to contact prospective sellers, finalize the sellers and the land and also advise them to furnish land and sellers' details to a special cell constituted for this purpose in the Anchal Office.
3. The Circle Officer will also facilitate the purchase of land in a cluster bloc so that common facilities could be created therein. After a cluster is finalised, the cluster details will be furnished to the concerned Government Departments so that common facilities could be brought on the ground.

4. In land purchase, the *raiya* lands identified earlier in the village survey will be kept in mind. If the beneficiary or the landowner are not agreeable on the same, alternative land as agreed upon by the beneficiary and vendor will be purchased.
5. On getting a petition from the beneficiary the Circle Officer will verify the right and title of the vendor from the revenue records maintained in his office as also the fact of the vendor's possession over the land. After due verification, all transactions will be registered in the campus of the sub-registration/registration office in a camp. The intimation regarding the camp will be communicated by the Circle Officer to all concerned including registration office and banks concerned.
6. The Circle Officer will issue a certificate indicating the revenue records in the light of which the vendor's right to sell has been established. There will be a possession column as well indicating the vendor's possession, if found. The Circle Officer will also state that the certificate is being issued under the Mahadalit Development Scheme. The certificate will be issued without prejudice.
7. The Circle Officer, Circle Inspector and Halka *Karmachari* will remain present with necessary documents in the aforementioned camp organised for sale and purchase.
8. The Circle Officer will locally engage and deploy *Amins* for the measurement, demarcation of boundary and preparation of sketch map of the land (which will be annexed to the sale deed). Every *Amin* will get an honorarium of Rs. 200/- per plot.
9. The Circle Officer will obtain an affidavit from the vendor concerned to the effect that the latter has a right to sell and that the land concerned is encumbrance free.
10. The Circle Officer will also obtain a non-encumbrance certificate from the registration office.
11. On the day the registration camp is organised, the ward members of the Panchayat and Panches of the Gram Pachayat concerned will remain present to identify the vendor and the vendee. If none is present, any other resident of the village will do the identification. The fact of identification will be entered in the concerning records.
12. The Circle Officer will make over the market value of the land as determined a prescribed manner through a post-dated cheque to the vendor in the camp itself and in the interregnum, mutation and delivery of possession will be effected.

Monitoring, Supervision and Evaluation

Since the land purchase policy will be implemented on a vast scale, it will be essential to put a mechanism in place for effective monitoring, supervision and concurrent and post-work evaluation. Committees will be formed for this purpose and necessary instructions will be issued in this regard. The Committees will be set up at the following levels-

Responsibility to form the Committee and Chairperson

| | | |
|---|--------------|-------------------------|
| 1 | Division | Divisional Commissioner |
| 2 | District | District Collector Sub- |
| 3 | Sub-division | divisional Officer |

The Committees as above, will also examine problems and bottlenecks, if any, at the grass-root level, and endeavour to remove the same.

In addition, reputed and registered NGOs will be engaged in social audit, concurrent evaluation and facilitation in the processes of land purchase. The District Collectors will receive representations from the NGOs and select and engage them.

Source: Ashokvardhan, Dr. C., 2009, House-site scheme for Mahadalit Families in Bihar, paper presented at a National Seminar on *Shelterlessness and Homestead Right* organized by Council for Social Development, New Delhi, November 5-6, 2009.

(22) On which date has the Revenue *Karmachari* done the inspection?

(23) On which date has the Aanchal Nirikshak done the inspection?

(24) On which date has the Aanchal Adhikari done the inspection/

(25) Which caste does the applicant belong to?

The above description is true and based on inspection and documents.

Revenue *Karmachari*

Aanchal Nirikshak

Circle Officer

Source: Collected during the action research conducted by Deshkal Society in partnership with GNK and LSSK for the project on Capacity Building and Advocacy for Development Change among the Musahar Community, under PACS 1 Programme of DFID India, 2006

Deshkal Society

Deshkal Society was founded by educationists, social activists, young researchers and journalists one and half decade ago. Presently, Deshkal Society is involved in the issues of land rights, culture and sustainable livelihoods and primary education by means of action research, documentation, capacity building and advocacy for marginalized and oppressed communities at local, national and international level. To meet these ends, we have developed our strategy in such a manner so that we can link the micro processes with the considered initiatives by government institutions, developmental agencies and media at the macro level. This process has been a two-way dialogue between national and local levels in which both can raise queries and issues on an equal footing.



Access to housing and homestead land with secure tenurial rights is the basic need of every individual. It provides an identity and a sense of belonging. It is therefore, the very basis of citizenship. India's Eleventh Five Year Plan rightly points out that the right to a roof over one's head needs to be seen as a basic human right, along with the right to freedom from hunger and the right to education. The Plan mentions that 'all landless families with no homestead land as well as those without regularized homesteads should be allotted 10-15 cents of land each'. The aim is to provide shelter along with some supplementary sources of livelihood such as livestock rearing, fodder development and so on, to the rural landless and marginalized communities.

Bihar was one of the first states in India to enact a law, the Bihar Privileged Persons Homestead Tenancy Act, 1947, to grant permanent homestead rights to the rural landless and marginalized communities to settle on raiyati land. Since then, various other policies and provisions were made by the Government of Bihar to grant homestead rights over gairmazarua khas/malik and gairmazarua aam land as well as to allot housing sites to those without access to land. Though these laws, policies and provisions are simple and clear, it is unfortunate that Bihar today ranks first among the Indian states in terms of shortage of rural housing.

A study carried out by Deshkal Society has resulted in this report Right to Housing and Homestead Land in Rural Bihar: Status, Issues and Challenges. It reveals that the major reasons behind the glaring gap between law and social reality is located in the cumbersome and complex processes and procedures along with the tedious paperwork involved in claiming homestead rights. This makes it virtually difficult for the landless rural poor and marginalized communities to avail of their rights.

The report suggests that the government urgently needs to adopt a multi-pronged approach to streamline administrative processes and procedures. All landless households and those who do not have access to and ownership rights over homestead land need to be identified and village and tola-based data need to be compiled. The Village Panchayats, and Block and District level officials must be galvanized to adopt a proactive approach, to reach out to those who need to be granted the right to housing and homestead land.

The recent initiatives of the Government of Bihar to grant homestead rights to the rural landless and marginalized communities provides a ray of hope, and if the government makes a sincere effort to effectively implement its laws and provisions, it will not be difficult to realize the goal of ensuring their right to housing and homestead land.

The report is available on our website www.deshkalindia.com



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