

A STUDY OF LAND REFORM LAWS IN THE STATE OF HIMACHAL PRADESH

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INTRODUCTION

“There is only one fundamental method of improving village life – namely, the introduction of a system of peasant proprietorship under which the tiller of the soil is himself the owner of it and pays revenues direct to the government without the intervention of any zamindar or talukdar.”

-Indian National Congress Resolution, 1935¹

Land in every society, is most important natural resource which is needed for creation of material wealth.² From it we get everything that we use or value, whether it be food, clothing, shelter, fuel, metal or precious stones. We live on land and die on land, even after death our ashes are committed to land. The availability of land is the key to human existence, and its distribution and use is of vital importance.³

The concept of land reforms did not arise in pre-agricultural times because at that time population was scarce and ample land was available. With the rise in population, pressure on land was also enhanced thereby leading to concentration of land in the hands of few persons which ultimately necessitated the urgency of land reforms.

India is an agricultural economy with great dearth, and an unequal distribution of resources including land, there is a large mass of rural population below the poverty line which ultimately leads to enthralling financial and political opinions for land reform. The main purpose of land reforms is efficient use of scarce land resource, redistributing agricultural land

¹Pradeep K. Bhawmik, *Land Reform & Rural Development in the State of West Bengal 1* (Modern Printers, Kolkata, 1st edn., 2001).

² L. B. Curzon, *Land Law 3* (The Chaucer Press Ltd., Great Britain, 1982).

³ Simpson S. Rowton, *Land Use and Registration 3* (Cambridge University Press, Cambridge, 1978).

in favour of the less privileged class in general and cultivating class in particular. Land reform can be explained as redistribution of land from the rich to the poor. Generally, it comprises of regulation of ownership, inheritance of land, operation, sales, leasing, maintenance of land records, etc. Indeed, the redistribution of land itself requires legal changes.

At the present juncture, every bit of land is to be utilised to meet the needs of ever increasing population which can be made possible only with the equitable distribution of land among the tillers i.e. poor peasants and landless agricultural labourers.⁴

HISTORICAL BACKGROUND OF LAND REFORM LAWS

The history of mankind suggests that certain fundamental aspects of life determine the fate of people and nations and that relationship between man and land is one of these.⁵ The study of land reforms can be conducted under two heads i.e. Pre Independence Era and Post Independence Era.

Pre Independence Era

Land Reform is an ancient institution owing its origin to Vedas. Rig-Veda mentions that *panchjana* (or five people) looked after civil affairs, settled disputes and adjudicated cases of succession and partition. The institution of *panchjana* is akin to present day panchayat. The village in vedic period was a complete self-sufficient unit in itself and had to look king in cases of external aggression only.⁶

Manu, the first Indian Lawmaker who lived in circa 500 B.C. wrote: “Sages pronounce cultivated land to be the property of him who cut away the wood or cleared, and tilled it.”⁷ In India, before colonial rule, the land used to be in the hands of the community as a whole.⁸ Numerous changes in the system of land taxation or revenue were introduced during the Mughal Period. One of the important change introduced by Mughals was introduction of *Mansabdari* in place of *Jagirdari* System which converted entire land to state land.⁹ Later on

⁴ N. K. De and N. C. Jana, *The Land Multifaceted Appraisal and Management* 286 (Sribhumi Publishing Co., Calcutta, 1997).

⁵ P. K. Agarwal, *Land Reforms in India: Constitutional and Legal Approach* 1 (M. D. Publications Pvt. Ltd., New Delhi, 1993).

⁶ Y. D. Sharma, *Civil Laws in Kautilya's Arthashastra* 115 (Standard Publishers, New Delhi, 2008).

⁷ Kanti Singh, *The Great Depression and Agrarian Economy* 68 (Mittal Publications, Delhi, 1987).

⁸ Land Tenure in Ancient India, Available at www.jstor.org (last visited on May 12th, 2016).

⁹ Mansabdari System as Introduced by Akbar, Available at www.historydiscussion.net (last visited on Sept 29th, 2016).

with the establishment of East India Company (EIC) in Seventeenth Century the agricultural structure underwent fundamental changes. Lord Cornwallis had introduced Permanent Land Settlement for Bengal, Bihar and Orissa in 1793; he introduced a new class of intermediaries who were called as *Jagirdar / zamindar*.¹⁰ Following the Land Settlement Act, 1793, the farmers used to purchase lands from the landlords and then give land on hiring basis to others for their agricultural use, these people who hired the land were called tenants. Tenant is a person who rents a house or land for his own use.¹¹ The increasing layers of intermediaries meant that there was considerable increase in rent which was extracted from the tillers and failure to pay this increased amount resulted in large-scale evictions, widespread disturbance, and declining agricultural production. The Bengal Rent Act of 1859 and the Bengal Tenancy Act, 1885 sought to protect long-standing tenants.¹² The Britishers in India were not at all keen in adopting progressive land reforms measures for the rural farmers but they had given the *Zamindars* and big landlords a golden opportunity to exploit the rural poor to a great extent. The Punjab Land Alienation Act, 1900, provided for prior consent of government for transferring land of the statutory agriculturists to non-agriculturists.¹³ At the time of independence, there existed many types of proprietary land tenures in the country. Some of them are discussed below:

- ***Ryotwari System***

It took birth in 1792 in Madras at the hands of Caption Read and Thomas Menro and was later extended to other states.¹⁴ In *Ryotwari* system cultivator is bound to pay land revenue to the Government and there was no intermediary between him and state. The cultivator is known as 'Ryot' entitled to full rights regarding sale, transfer and leasing of land and could not be evicted from the land as long as he pays the land revenue. Later *Ryotwari* system was extended to other states including Bombay Presidency and northern region of colonial India including today's state of Himachal Pradesh.

- ***Mahalwari System***

William Bentinck initiated *Mahalwari* System in Agra and Oudh and which later extended to Madhya Pradesh and Punjab. The village communities held the village lands

¹⁰ *Supra* note 1 at 6.

¹¹ *The New Webster's Pocket Dictionary* (2001).

¹² Amit Hazra, *Land Reforms Myths and Realities* 44 (Concept Publishing Co., New Delhi, 2006).

¹³ V. D. Mahajan, *Modern Indian History* 227 (S. Chand & Company Ltd., New Delhi, 17th edn., 2005).

¹⁴ Tenancy Reforms in India, Available at www.legalserviceindia.com (last visited on May 26th, 2016).

commonly and it was joint responsibility of these communities to make payments of the land revenue and thus land ownership is held as joint ownership with the village body and can be cultivated by tenants who can pay cash / kind / share.¹⁵

- ***Zamindari System***

In *Zamindari* System the land popularly referred as estate was held by the person known as 'landlord' free of charge from the government. He was responsible for the payment of land revenue. Landlords never cultivated themselves the land owned by them but rented it out to the cultivators. The *zamindari* system is known as 'absentee landlordism' where the whole village was under one landlord. The persons interested can work in the *zamindar's* land as tenant / labourer based on the agreement with the *zamindar*.¹⁶

- ***Jagirdari System***

It is similar to *zamindari* system. The *jagirdari* system was also in existence in northern region of the country which after independence turned out to be known as the state of Himachal Pradesh.¹⁷ The *jagirdar* is powered to control the unproductive masses of village by engaging them in agricultural activities; it is usually a family management.

Post Independence Era

At the time of independence there existed a class of poor peasants and landless labourers whereas substantial area of land was owned by a small percentage of rich peasants and landlords-cum-money lenders. This management lacked potential for growth and, therefore, both equity and growth demanded changes in the agrarian structure.¹⁸ During 1935 to 1955 various committees were appointed to evaluate the manner in which agricultural land holdings could be reorganized.¹⁹ After independence government of every state has enacted various legislations for land reforms and for the abolition of *zamindari* system in their States. The first Act to abolish intermediaries was passed in Madras in 1948.²⁰ Other landmark legislations were enacted subsequently including the Bihar Land Reforms Act, 1950, the Uttar Pradesh *Zamindari* Abolition and Land Reforms Act, 1950, the Bihar Displaced Persons Rehabilitation

¹⁵ G. R. Madan, *Indias, Developing Villages* 22 (Allied Publishers Ltd., New Delhi, 1990).

¹⁶ Deepashree, *Indian Economic Development* 1.2 (Saraswati House Pvt. Ltd., New Delhi, 2016).

¹⁷ District Gazetteer Kangra 237 (1995).

¹⁸ Vasudha Dhagamwar, "Problem of Implementing Agrarian Legislation in India", 23 *JILI* (1981).

¹⁹ A. R. Rajapurohit (ed.), *The Political Economy of Land Reforms in India* 76 (Ashish Publishing House, New Delhi, 1984).

²⁰ Brief Essay on Land Reforms in India, Available at www.yourarticlelibrary.com (last visited on July 18th, 2016).

(Acquisition of Land) Act, 1950, the Punjab Security of Land Tenures Act, 1953, the Kerala Land Reforms Act, 1963, the Punjab Land Reforms Act, 1972 etc. Recently very important legislation enacted with twin aim of farmer welfare and to meet strategic and developmental needs of the country has been enacted and named as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.²¹ The sum total of land reform laws enacted in India since 1947 constitutes, I believe, the largest body of agrarian legislation to have been passed in so brief span of years in any country whose history has been recorded.²²

Land Reforms in the State of Himachal Pradesh

The birth of the state of Himachal Pradesh is of recent origin. Himachal Pradesh was formed on 15th April, 1948 as Part C State by the merger of 30 princely states. On 25th Jan., 1971 Statehood was granted to Himachal Pradesh under the Himachal Pradesh State Act, 1970 (Act No. 53 of 1970) with 55,673sq² km area and became 18th state of India.²³ According to Census 2011, Himachal Pradesh has 6,864,602 populations out of which around 89.97 percent live in villages of rural areas.²⁴ Himachal Pradesh is one of the eleven Special Category States. This status is granted to it due to its hilly and difficult terrain, low population density, non-viable nature of state finances etc.

The nature of land tenure of the princely states of Himachal Pradesh may broadly be categorised as semi-feudalistic coupled with Begar and Beth. Under the land revenue settlements made by the Britishers, the ruler was recorded as the *malik-i-ala* (superior owner of the land) and the actual tillers as *malik-i-adna* (inferior owner of the land). The ruler further asserted his rights of over lordship as *malik-i-ala* by extracting forced labour called begar from the peasants. 'Begar' is a Persian word and in its broadest sense means the unpaid exploitation of labour.²⁵ In lieu of these services the *bethu* (person providing free services) was given a

²¹ Law Commission of India, 10th Report on Law of Acquisition and Requisitioning of Land (September 1958).

²² Daniel Thorner, *The Agrarian Prospects in India* 18 (Allied Publishers Ltd., New Delhi, 2nd edn., 1976).

²³ Jag Mohan Balokhra, *The Wonderland Himachal Pradesh* (H. G. Publications, New Delhi, 4th edn., 1999).

²⁴ Government of India, 15th Census of India (Ministry of Home Affairs, 2011).

²⁵ A.Merriam, *Webster's Third New International Dictionary*, 1968.

piece of land free of obligations in rent or revenue.²⁶ Under the princely states, the agrarian structure, by and large, was dominated by different types of land systems viz.

- ***Bhaichara Tenure***

In major part of the state, *bhaichara* tenure prevailed. In such a system land was held in severalty in which one's customary share once existed, but had now disappeared. The total revenue which a land holder paid became the sole measure of the right and liability.²⁷

- ***Pattadari Tenure***

Contrary to *bhaichara*, in *pattadari* tenure, land was divided and held in severalty by the different proprietors, according to ancestral or other customary shares of the revenue while all were jointly responsible in the vent of any one shareholder being unable to fulfill his obligations to the Government. In *pattadari* tenure, the share regulated the revenue payable, whereas in *bhaichara* tenure the revenue payable regulated the share.²⁸

- ***Bethu System***

The *Bethu* System of serfdom was prevalent in most of the erstwhile Shimla Hill States. *Bethu* was the hereditary tiller of the state's land from times immemorial; he cultivated a portion for his subsistence and the remaining portion he cultivated on behalf of the raja who received the profits. In addition he had some additional responsibilities for carrying loads.²⁹

- ***Zamindari System***

Before implementation of land reforms in Kangra district the harsh truth was that there were 701 *zamindari*³⁰ estates, 2900 *pattadari* and remaining land was under *bhaichara* tenure.³¹

In keeping pace with the recommendations of the First Five-Year Plan, Himachal Pradesh government, like in other states of India, enacted a number of legislations at different times to give effect to land reforms. In order to bring about uniformity in tenancy laws in the state and to check the arbitrary ejection of tenants the Punjab Tenancy Act, 1887 was made

²⁶ Jaideep Negi, *Begar & Beth System in Himachal Pradesh* 10 (Reliance Publishing House, New Delhi, 1995).

²⁷ Man Singh, *Parameters of Exercising Administrative Discretion under The Himachal Pradesh Tenancy and Land Reforms Act, 1972: A Critical Review* (2009) (Unpublished Ph.D. Thesis, Himachal Pradesh University, Shimla).

²⁸ *Ibid.*

²⁹ *Supra* note 25.

³⁰ *Supra* note 16.

³¹ Government of India, All India Report on Agricultural Census 1970-1971 (Ministry of Agriculture & Irrigation, 1971).

applicable to the state by Himachal Pradesh (Application of Laws) Order, 1948. Later in 1951, the Punjab Tenants Security of Tenure Act, 1950 was extended to Himachal Pradesh. These two legislations proved ineffective in checking the ejection of tenants and to provide security of tenure to the tenants. Another problem was that after the merger of new areas in Himachal Pradesh, there was no uniformity in the land ceiling laws. In fact at the time of re-organization, the following three enactments pertaining to ceiling were applicable in the state:

- i. The Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953,
- ii. The Patiala East Punjab States Union (PEPSU) Tenancy and Agricultural Act, 1955,
- iii. The Punjab Security of Land Tenure Act, 1953.

The Himachal Pradesh Abolition of the Big Landed Estates and Land Reforms Act, 1953 was passed on 17th June, 1953 under the title (in Hindi) *Bari Zamindari Unmoolan Thata Bhoomi Vyavastha Adhiniyam*, 1953. Later on in 1952, the Punjab Tenancy (Himachal Pradesh) Amendment Act, 1952 and The Himachal Pradesh Tenants (Rights and Restoration) Acts were enacted. The main objective of these Acts was to provide relief to peasants in general and Scheduled Castes and Scheduled Tribes, (who formed 26 per cent of total population) in particular. The recommendations of the Land Reforms Committees of 1949 and 1969 set up by the Congress formed the basis of the two laws enacted in 1953 and 1972. Indian National Congress appointed Agrarian Reform's Committee under chairmanship of J.C. Kumarappa which submitted its report in July, 1949 and recommended for abolition of intermediaries, tenancy reforms, imposing ceiling on agricultural land, consolidation of holdings and updating land records.³² Therefore, as a first step to protect the interest of the tenants in these areas, the *Vidhan Sabha* passed the Himachal Pradesh (Transferred Territory) Tenants (Protection of Rights) Act, 1968. The Act remained in force till 1971, when the Himachal Pradesh (Transferred Territory) Tenants (Protection of Rights) Act, 1971 was passed which put total ban on ejection of the tenant till the Himachal Pradesh Tenancy and Land Reforms Act, 1972 was passed by the *Vidhan Sabha*. By 1959, it was realised that agrarian legislation, to cover restrictions on the size of land holdings, needed to be passed in the states, thus came up Himachal Pradesh Ceiling on Land Holdings Act, 1972 and Himachal Pradesh Village Common Land Utilization Act, 1974.

³² Sweta Misra, "Land Reforms and Empowerment of Women", Kurukshetra, 112 (1995).

MEANING OF LAND REFORMS

Generally, Land means an immovable and indestructible three dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on as permanently affixed to it.³³ Reform refers to amendment of what is defective, vicious, corrupt or depraved, rectification or correction, to put into a new and improved form or condition, to restore to a former good state, or bring from bad to good, to change from worse to better, to amend, to correct. Reform seeks to improve the system as it stands, never to overthrow it wholesale.³⁴

According to the definition given by the 'World Land Conference (1996)' land reform is "a hotch potch of measures designed to eliminate obstacles to economic and political development arising out of the defects in the agrarian structure."³⁵

According to Encyclopaedia Britannica, "Land reform is a specific integrated action programme to bring about more effective control and use of land for the direct benefit of the community as a whole".³⁶

According to New Encyclopaedia Britannica, "Land Reform means a purposive change in the way in which agricultural land is held or owned, the methods of cultivation that are employed, or the relation of agriculture to the rest of the economy. Reforms such as these may be proclaimed by a government, by interested groups, or by revolution."³⁷

'Land Reforms' is abolishing the existing defective structure of land holdings by introducing a rationalized structure in order to increase the agricultural productivity. Land Reforms refer to all kinds of policy induced, changes relating to the ownership, tenancy and management of land. In simple words, it refers to such institutional changes that make property relations favourable to tiller of the soil and which raise the size of the units of cultivation to make them operationally viable.³⁸

AIM OF LAND REFORMS

³³ Bryan A. Garner (ed.), VII *Black's Law Dictionary*, 1999.

³⁴ The Ryotwari System in Madras, Available at www.books.googleco.in (last visited on June 10th, 2016).

³⁵ *Supra* note 4.

³⁶ *Supra* note 12 at 8.

³⁷ Jacob E. Safra, VII *The New Encyclopaedia Britannica* (Encyclopaedia Britannica Inc., Chicago, 2002).

³⁸ I. S. Chandel, *Commentary on The Himachal Pradesh Tenancy and Land reforms Act, 1972* 167 (Nirmal Chandel Publishers, Shimla, 2015).

Land reforms in the post independence period was basically introduced to restrict the exploiting measures taken by the intermediaries and to transfer the ownership of land to the cultivators i.e. to bring cultivator in direct contact with the state.³⁹ It also aims at providing security of Tenure and fixation of rents. Land Reform measures are aimed at alleviating rural poverty by taking possession of surplus land from the large land holders and distributing among the landless, and by facilitating them with the security of tenure and ownership rights to tenants and sharecroppers.⁴⁰ The land reforms policies over the successive five year plans aims to eliminate exploitation and social injustice within the agrarian system so as to ensure equality of tenure, status and opportunity to all. The social status of peasants is often a concern of land reform policy. Economic objectives of land reform may include encouraging more intensive cultivation and coordinating agricultural production with the rest of economy, particularly with an eye to supporting an industrialization program. Broad objectives of land reform measures under implementation and formulation may be explained as follows-

- Providing Land to the tiller.
- Improvement in the position of agricultural workers.
- Applying better system of land management to enhance production of the land.
- Reduction of inequalities in opportunities and income by making redistribution of land to make a socialistic pattern of society. Such an effort will reduce the inequalities in ownership of land.
- Land Reforms will ensure land ceiling and taking away of the surplus land to be distributed among the small and marginal farmers.
- Legitimise tenancy within ceiling limit and establish relation between tenancy and ceiling.
- Protection of interest of tribals by preventing non-tribals to encroach upon the land of tribals.
- Empowerment of women in the traditionally male driven society.
- To register all the tenancy with the village Panchayats.
- And see that everyone can have a right on a piece of land.
- In general, the raising of living standards in rural areas and removing rural poverty.

³⁹ Daniel & Alice Thorner, *Land and Labour in India* 7 (Asia Publishing House, Bombay, 1962).

⁴⁰ Law Reforms and Duty of State, Available at www.legalserviceindia.com (last visited on March 7th, 2016).

MAIN ELEMENTS OF LAND REFORMS

According to the Planning Commission, land is the primary resource on which agriculture is based. The pattern of ownership of this asset has to be just and rational if we are to secure growth with social justice.⁴¹ The main elements of the land reforms policy have been fivefold, viz:

- Elimination of intermediaries.⁴²
- Tenancy reforms comprising of following :
 - a) Regulation of rent,
 - b) Security of tenures, and
 - c) Conferment of ownership rights on tenants.⁴³
- Ceiling on land holdings and distribution of surplus land.
- Consolidation⁴⁴ of holdings.
- Compilation and updating of land records.

CONSTITUTIONAL FRAMEWORK

The Constitution of India is the Supreme Law of India. It is an organic document which represents the aspirations and vibration of its people. Land Rights and agriculture are constitutionally under the domain of the state.⁴⁵ The Agrarian law was developed through the auspices of this great dynamic document as agrarian law is intimately related to the Right to Property, as major portion of property is landed property. The provisions related to land and rights over the land are included in the Entry 18⁴⁶ of State List in seventh schedule.⁴⁷ The Entry 20 in the concurrent list also mandates the Central Government to fulfill its role in Social and Economic Planning.

⁴¹ Durga Das Basu, *Shorter Constitution of India* 3 (Wadhwa and Company Law Publishers, Delhi, 2011).

⁴² Land Reform Legislations in India, Available at www.jstor.org (last visited on May 25th, 2016).

⁴³ "Agrarian Reforms", *Pratiyogita Darpan* 153 (Upkar Prakashan, Agra, 2009).

⁴⁴ According to Section 2(4) of The Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 'consolidation' means the redistribution of all or any of the lands in any area between the several tenure holders entitled thereto in such a way as would make the areas for the time being held as such more compact.

⁴⁵ Implementation of Land Reform Legislations in India-A Study of Two Villages in Punjab, Available at www.jstor.org (last visited on May 25th, 2016).

⁴⁶ The Constitution of India, Schedule VII, List II, Entry 18- Land provides for rights in and over land and tenures including the relations of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvements and agricultural loans; colonization.

⁴⁷ T. B. Lahari, "Problem of Sustaining Gains derived from Land Reforms" 37 Yojna, 8 (1993).

Preamble Message

The Preamble of our Constitution aims at securing equality of status and of opportunity to every citizen. In a country like India where sixty nine percent of total population still lives in rural areas,⁴⁸ it becomes important to conduct land reforms seriously because fifty eight percent of rural population is dependant on agriculture.⁴⁹ The land reforms also aims at equal status and opportunity to all, as well as it also prompt towards socialistic pattern of society to attain motto of a welfare state. It propagates that the real path of progress in our country lies in rearranging the agriculture sector so as to cherish the goal of socio-economic democracy where justice will be redone to all.⁵⁰

Fundamental Rights

One of the most important feature of the Constitution is Fundamental Rights. Article 14 dealing with equality is the soul of land reform measures.⁵¹ Article 23 under fundamental rights abolished Begar or forced unpaid labour in India.⁵²

Directive Principles of State Policy

Part IV of the Constitutional law of India also indirectly mandates the government to take measures for land reforms to achieve an egalitarian society.⁵³ The state can be directed to work for equitable distribution of the material resources of the community for common good.⁵⁴ Article 39 talks about certain principles of policy to be followed by the state for securing economic justice.⁵⁵ Article 48 directed the state to organize agriculture and animal husbandry on modern-scientific lines. The fundamental right to property was much debated in the

⁴⁸ *Supra* note 23.

⁴⁹ NSSO, 70th Round of National Sample Survey Office Report (Dec. 2015).

⁵⁰ P. L. Mehta and M. G. Chitkara, "Impact of Tenancy and Land Reforms in Himachal Pradesh" XIV *CULJ* 234 (1990).

⁵¹ Article 14 "Right to equality includes equality before law, prohibition of discrimination on grounds of religion, race, caste, gender or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles."

⁵² Article 23(1) "Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.s

⁵³ Article 38(2) "The state shall, in particular, strive to minimize inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

⁵⁴ Article 39 "The state shall in particular, direct its policy towards securing-

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of economic system does not result in the concentration of wealth and means of production to the common detriment.

⁵⁵ J. N. Pandey, *Constitutional Law of India* 371(Central Law Agency, Allahabad, 2005).

Constituent Assembly⁵⁶ and remained as part of these rights till 1978. Within the couple of years of independence, for the abolition of *zamindari* system, Land Tenure and Land Reforms Bills were introduced in a number of provinces. The main object of these Land Reforms Bills was to impose ceiling limits on the land holdings and the vesting of surplus area to the government, but at that time it was clear sign of violation of the fundamental right to property granted under the Indian Constitution. It was, however, widespread apprehension among the top Congress leadership deeply committed to abolish the *zamindari* system, that the *zamindars* could thwart the object by moving to the courts by raising issues like violation of the right to property.⁵⁷

Consequently, *Zamindars* moved to the Bihar High Court in *Kameshwar Singh v. State of Bihar*⁵⁸ and to the Supreme Court in *State of West Bengal v. Bela Banerjee*⁵⁹ where they succeed to put the clog in the implementation of the land reforms legislations on the ground of violation of fundamental right to property⁶⁰ or unjustness of compensation respectively. Then in the same year, the Central government brought the very first Constitutional Amendment in 1951 and the fourth Constitutional Amendment in 1955 strengthening the hands of State legislature for implementation of the *zamindari* abolition measures by taking out of the power of Judicial Review⁶¹ of Judiciary by inserting the Ninth Schedule to the Indian Constitution. By the First Constitutional Amendment two new Articles 31A and 31B were inserted in the Constitution. Article 31A was aimed to save the laws that were providing for the acquisition of the estates. On the other hand, the Article 31B is a provision by which a law can be protected from judicial review by putting them into the ninth schedule. The Forty Fourth Constitutional Amendment has finally taken away the right to property from the chapter on fundamental rights by converting it into a Legal Right under Article 300-A.⁶²

LAND REFORMS IN THE STATE OF HIMACHAL PRADESH

In India adoption of land reform measure is being considered as one of the major policies of rural development since the inception of the planning process. In the First Five Year

⁵⁶Constituent Assembly Debates, (Vol. X) 1193 (1949).

⁵⁷ Bipan Chandra, *India Since Independence* 524 (Penguin Books India, New Delhi, 2008).

⁵⁸ AIR 1951 Pat. 91.

⁵⁹ AIR 1954 SC 170.

⁶⁰ The Constitution of India, arts. 19(f) , 31.

⁶¹ The Constitution of India, 1950, art. 13.

⁶² Article 300A provides that “No person shall be deprived of his property save by authority of law.”

Plan (1951), the government of India issued guidelines to all the states to introduce land reform measures. The State Government of Himachal Pradesh did not lagged behind in introducing land reforms and enacted following land laws and rules which were major steps on the path of Land Reforms -

The Himachal Pradesh Nautor Land Rules, 1968

'Nautor Land' means the right to utilize, with the sanction of the competent authority waste land owned by the government outside the towns, reserved and demarcated protected forests and outside such other areas as may be notified from time to time by the state government.⁶³ Under these rules procedure is provided for grant of land to needy section of society.⁶⁴ Nautor lands are granted out of Government waste land upto twenty bighas to the applicants subject to the fulfillment of the conditions laid down under the rules.⁶⁵ The object of granting nautor land under the rules is to help poor and unprovided residents of Himachal Pradesh.⁶⁶

There is a special scheme called the Himachal Pradesh Grant of Nautor Land to Landless Persons and Other Eligible Persons Scheme, 1975 under which nautor lands upto five bighas are granted to the landless and other eligible persons. Under this scheme the powers have been delegated to the Tehsildars to sanction nautor lands in order to avoid delay.

The Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971

The Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 provides that wherever consolidation is feasible, it should be carried on to consolidate fragmented holdings in Himachal Pradesh under this Act. Compact blocks were created during consolidation which further aimed at raising the economic standard of rural poor and agricultural production.⁶⁷

The Himachal Pradesh Tenancy and Land Reforms Act, 1972

By enacting the Himachal Pradesh Tenancy and Land Reforms Act, 1972 a new era marking abolition of intermediaries on land has ushered in the State. The Act inter-alia

⁶³ The Himachal Pradesh Nautor Land Rules, 1968, s. 3(a).

⁶⁴ The Himachal Pradesh Nautor Land Rules, 1968, ss. 7, 27B.

⁶⁵ The Himachal Pradesh Nautor Land Rules, 1968, s. 6.

⁶⁶ AIR 1991 SC 433.

⁶⁷ The Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 (Act 20 of 1971), s. 22.

examines the relationship between the landlord and his tenant vis-a-vis the land. From the date of commencement of this Act, all the occupancy tenants in the old areas have become owners of their tenancy land. The small landowners are entitled to reserve land for personal cultivation up to one and a half acres irrigated and three acres un-irrigated land. The non-occupancy tenants in such affected holdings will simultaneously become owners of the remaining tenancy land. The rest of the non-occupancy tenants (including sub-tenants) will become owners of their tenancy land on payment of nominal compensation. The Act tends to protect rights in land of certain weaker sections of the society including widows, un-married woman or if married divorced or separated from husband, a minor, a person with permanent physical or mental disability etc. because of which he cannot cultivate the land himself and also a person under detention or imprisonment shall not be liable for the ejection. Besides, there were also 4,22,145 non-occupancy tenants in the State, out of which 3,79,676 became owners by virtue of conferment of proprietary rights upon them. The remaining non-occupancy tenants could not benefit from the provisions of the Act as they happened to belong to the protected categories such as serving soldiers, minors, widows etc.⁶⁸

Another important change in tenancy law is that in case if a dispute arises between the landowner and the tenants regarding the existence or non-existence of the tenancy, the owner has to prove that the tenancy does not exist.

Restriction on Purchase of Agricultural Land

Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 imposes patent restrictions on transfer of land in favour of those non-agriculturists who do not cultivate land personally in an estate situated in Himachal Pradesh.⁶⁹ The Act interdicts non-agriculturalists from procuring/ purchasing any agricultural land in the state so as to discourage speculations in agricultural land.⁷⁰

The Himachal Pradesh Ceiling on Land Holdings Act, 1972

Immediately, on merger of areas from the Punjab after 1st November 1966, the pursuance of land reforms necessitated the codification of a uniform tenancy law for both old and merged areas. In the meantime, at national level the Government of India appointed Central Land Reforms Committee. Thereafter the Government of India issued guidelines for imposing

⁶⁸ Land Reform Legislations, Available at www.himachal.nic.in (last visited on May 6th, 2016).

⁶⁹ The Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act 8 of 1974), s. 118.

⁷⁰ ILR (1978) 7 Him. 355.

ceiling on land and exemption thereof. The Himachal Pradesh Ceiling on Land Holdings Act, 1972 envisages a ceiling on land holdings with a view to controlling concentration of land in a few hands, and to subsequently distribute surplus land among the landless. The Act provides ceiling on land holdings beyond permissible area and bars future acquisitions beyond the limit prescribed under the Act. The ceiling is for a family of husband, wife and three minor children. The surplus area above the ceiling was vested in the state government, which was distributed among the landless agricultural laborers and eligible persons i.e. to those persons whose holdings do not exceed one acre.⁷¹

The Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974

This Act, namely, The Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 sought to stream line the utilization of village common lands popularly known as 'Shamlat' Land. The common lands of the villages were vested in the state government subject to exceptions laid down in the Act. The land vested in the state Government was used for the distribution among the landless and eligible persons as well as for the development purposes of the state.⁷²

JUDICIAL ATTITUDE TOWARDS LAND REFORMS

The Constitution of India set forth certain directives at its commencement, which the States were anxious to follow and tend to grow in such a new democratic social order. In independent India, no Fundamental Right has caused so much trouble and litigation between the government and the citizen, as the right to property. The reason behind it is that the Central and State Governments have enacted massive legislations to regulate property rights. From time to time the question of constitutional validity of those legislations came before courts. The basic principle for which the Land Reforms laws have been introduced in India is to enforce the twin aim of Equality among the citizens of India and social justice which the Preamble of the Constitution envisages to promote. The legislature while enacting laws may sometimes violate rights of people and if the rights tend to be fundamental in nature it seems to destroy the basic structure of the Constitution of India. In such situations judiciary came forward to Act as guardian of Constitution and rights of people as well as interpreter of the

⁷¹ The Himachal Pradesh Ceiling on Land Holdings Act, 1972 (Act 19 of 1973), ss. 4, 6.

⁷² The Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 (Act 18 of 1974), s. 8 - A.

laws thereby interpreting law of the land and other legislations harmoniously to benefit society at large.

During early years of independence property owners in *Sankari Prasad v. Union of India*⁷³ and *Sajjan Singh v. State of Rajasthan*⁷⁴ before the Supreme Court challenged the constitutional amendments which placed land reforms laws in the Ninth Schedule saying that they violated Article 13 (2) of the Constitution which provides for the protection of the fundamental rights of the citizen. Supreme Court rejected this argument and upheld the power of Parliament to amend any part of the Constitution including that which affects the fundamental rights of citizens. Similarly in *Kameshwar Singh v. State of Bihar*⁷⁵ the Patna High Court struck off constitutionality of the Bihar Land Reforms Act, 1950 which aimed to abolish the zamindari system. After this case the Central government brought drastic changes in the Constitution of India by the first Constitutional Amendment thereby inserting a new schedule (ninth schedule) and two new Articles 31-A and 31-B in the Constitution in order to validate certain Land Reform Laws (Zamindari Abolition Law).

In 1973 a landmark judgment was given by Supreme Court of India in *His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala*⁷⁶ The judgment defined the extent to which Parliament could restrict the right to property, in pursuit of land reforms and the redistribution of large landholdings to cultivators, over-ruling previous decisions and suggested that the right to property could not be restricted. The case was a culmination of a series of cases relating to limitations to the power to amend the Indian constitution this was the case in which the concept of basic structure evolved.

The Himachal Pradesh High Court in *Chuhniya Devi v. Jindhu Ram*⁷⁷ held that the Himachal Pradesh Tenancy and Land Reforms Act, 1972 aims at bringing about measures of land reforms, apart from consolidating law relating to tenancies. It is one of the Acts included in the ninth schedule. In *Kala Devi and Ors. v. Satpal and Ors.*⁷⁸ high court held that long standing enteries in favour of plaintiff showing himself in possession over suit land as tenant,

⁷³ AIR 1951 SC 458.

⁷⁴ AIR 1965 SC 845.

⁷⁵ *Supra* note 58.

⁷⁶ AIR 1973 SC 1461.

⁷⁷ 1991 (1) Shim. L.C. 223.

⁷⁸ 2011 (1) Shim. L.C. 336.

makes him owner of land by operation of law under Section 104 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972.

In case of *Pankaj Kumar v. Jeetender Kumar & Ors.*⁷⁹ grant of nautor land was set aside due non fulfillment proper procedure i.e. NOC from forests and P.W.D have not been obtained as provided under Rule 14 and 15 of the Himachal Pradesh Nautor Land Rules, 1968.

Another important judgment came in *Tarsem Lal & Ors. v. Ram Swarup & Ors.*⁸⁰ where honorable high court recognized right to water of tenant which cannot be terminated by landlord.

In *Bahadur v. Bratiya & Others*⁸¹ honorable Himachal Pradesh High Court held that daughters in the tribal areas in the State of Himachal Pradesh shall inherit the property in accordance with the Hindu Law and principle of equality as enshrined in Preamble and Article 14 of the Constitution be achieved. This judgment is also noted for its extensive reliance on the mandate of International Declarations and Conventions, most notably the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) and the Universal Declaration of Human Rights that call for gender just legal systems and equal rights for women.

CONCLUSION

To summarize, Land reform is the major step taken by government to assist people living under adverse conditions. It is basically redistribution of land from those who have excess of land to those who do not possess, with the objective of increasing the income and bargaining power of the rural poor. Though land reforms in Himachal Pradesh have not brought about any revolutionary changes in the agrarian structure yet it shall not be fair to term these as insignificant and a futile exercise. The near absence of landlessness in the state could be attributed to the positive effect of the land reforms despite the fact that the disparities in the ownership continue to persist. The composite effect of the land reform legislations, distribution of cultivable waste land among the poor peasants and the landless during 1970 under the Himachal Pradesh Nautor Land Rules, 1968 and some rural development programs like 20 point programes, Small Farmers Development Agency (SFDA) and Marginal Farmers and Agricultural Labourers (MFAL) scheme and other rural development programs contributed to

⁷⁹ 2010 (3) Shim. L.C. 562.

⁸⁰ 2015 (1) Shim. L.C. 237.

⁸¹ILR 2015(III) HP 1259.

the agricultural growth and socio-economic improvement of the people particularly the small and marginal farmers and those belonging to the Scheduled Castes and Scheduled Tribes.

