

Report of the select Committee
on the Bihar Tenancy (Amendment)
Bill 1937

Report of the Select Committee on the (Amendment) Bill, 1937.

We, the undersigned members of the Select Committee, to which the Bihar Tenancy (Amendment) Bill, 1937, was referred, have considered the Bill and have the honour to submit this our report, with a copy of the Bill, as amended by us, annexed.

The more important changes made by us are explained below :—

Clause 3 (old clause 14).—The new section 25-A proposed to be inserted by this clause incorporates the substance of the original section 87A proposed to be inserted by clause 14 of the Bill, in so far as that clause relates to partition. We considered that it would be more convenient to provide separately for the re-distribution of rent on a partition and on a sale by the Court. The new section 25A deals with the re-distribution of rent on a partition while the distribution of rent on a sale by the Court has been included in clause 28 (as re-numbered) as new section 163B. We have amplified both these provisions so as to define the procedure more clearly.

Clauses 4 and 6 of the original Bill.—The intention of clause 6 of the Bill as introduced is to abolish the existing systems of payment of rent in kind and to convert the varying liability of the tenant regarding the share of the produce which he is required to pay to the landlord under these different systems into a liability to pay not more than nine-twentieths of the produce to the landlord.

Clause 6 of the Bill (as re-numbered) (old clause 4), however, retains the right to apply for commutation of such rents while under the new section 112A provision is made for commutation in cases when the Governor may issue a special notification.

As the system of payment of rent in kind in some form or the other is widely prevalent in some parts of the province and its entire abolition is a matter of considerable importance to both landlords and raiyats, we carefully considered the effect of these clauses.

In the first place, we agreed that the system of payment of rent in kind commonly known as *danabandi* was peculiarly liable to abuse and should be abolished.

As regards the system of payment of rent in kind, commonly known as *batai*, we agreed, after considerable discussion that it would be better to retain this system subject to the provision in new section 47B regarding the proportion in which the produce should be divided between the tenant and the landlord.

While, however, retaining the existing right of both the landlord and the tenant to apply for commutation, we decided that, as the raiyat was

the person primarily affected, he should have the option of deciding whether commutation should be granted or not.

We next considered whether clauses 4 and 6 of the original Bill should apply to all raiyats or only to occupancy raiyats. The right to apply for commutation under the existing section 40 is confined to occupancy raiyats, and we agreed that there was no strong justification for extending the scope of these clauses to other raiyats.

As regards the form of clause 6, we considered that, following the general scheme of the existing Act, it was desirable that these provisions should conform as closely as possible to the form of section 178 of the Act, and we have, therefore, included the substance of the new provisions proposed to be inserted by clause 6 of the Bill in clause 37 (as re-numbered) in the form of new sections 178A and 178B.

Clause 14 (old clause 13).—It was generally agreed that the provisions of the existing section 75 had not proved to be a sufficiently powerful deterrent against illegal exactions and that a prosecution would be far more effective. We agreed, however, that it was unnecessary to visit the offender with the penalty of rigorous imprisonment, and, further, that there was no strong reason for making the offence cognizable.

We have amended clause 14 (as re-numbered) accordingly.

Clause 17.—We carefully considered the provisions of the new section 112A conferring as it does very comprehensive and speedy powers for effecting a revision of rents.

Old sub-clause (a).—We agreed that as the right to apply for commutation was retained in the amended section 40, it was unnecessary to provide a similar right as is done in clause (a) of the new section 112A (1). We considered, however, that in certain cases it might be necessary to issue special directions for such commutation. In such cases it would be unnecessary to retain the right of the raiyat to object to commutation, as commutation would only be ordered where it was considered necessary that it should take place in any particular area or in regard to any class of holding situated in such area. We have accordingly inserted a new sub-section (3) of section 112A, providing that on the issue of a notification commutation should take place either on the application of the raiyat or his landlord or on the initiative of the Collector.

Old sub-clause (b).—We agreed that the scope of this clause should be confined to enhancements made under sections 29 and 30 of the Act. It was objected, however, on behalf of the landlords, that it would be inequitable to reduce rents which had been enhanced under clause (c) of section 30 which provides for enhancements only in cases where the productive powers of the land have been increased by an improvement effected by or at the expense of the landlord. We were impressed by the force of this objection, and agreed that enhancements made under

clause (c) of section 30 should not be amended
have amended the clause accordingly.

Old sub-clause (c).—We agreed that the provisions of clause (c) of section 30 should apply to cases in which the rent was commuted by agreement, but in cases in which rent was commuted under section 40 we were agreed that any reduction made in such rents should be proportionate to the fall in prices. We have added a new sub-clause (c) giving effect to this decision.

Sub-clause (d).—We considered that it was necessary to distinguish between permanent and temporary deterioration of the land and to provide further that where a reduction was ordered owing to a temporary deterioration, power should be given to the Collector to revise the order, if it could be shown that it had again become fit for cultivation.

We considered that it would be inadvisable to retain the latter portion of sub-clause (ii) of clause (e) of the new section 112A as there are many cases in which rents have been paid for a very long period, and it would be a difficult matter to ascertain the arrangements made at the date on which rents were settled or became payable. We considered that it would be sufficient to refer to the arrangements regarding irrigation which the landlord was bound to maintain.

Old clause 20.—We carefully considered the provisions of new section 148B proposed to be inserted by the original clause 20 of the Bill. We agreed that it was unnecessary to make provision for collective suits and have accordingly omitted the original clause 20 of the Bill.

Clauses 22—34.—The new section 158C proposed to be inserted by the original clause 22 of the Bill was intended to apply to provisions of Chapter XIV in a general way to sales of part of a holding. We considered that a general provision of this nature might lead to difficulties in interpretation and that it would be more satisfactory to make textual amendments in the relevant provisions of Chapter XIV. These amendments are included in clauses 22 to 34 (as re-numbered).

Clause 35.—The provisions of the new section 177A are intended to save the raiyat from the loss of his holding while at the same time providing the landlord with an effective method of recovering his arrears of rent. We therefore agreed that the application of this provision to holdings which were subject to incumbrances would be of very little advantage to the landlord, as the satisfaction of the amount due in respect of the incumbrances would leave very little to the landlord for the realization of his rent. We further considered that it was undesirable to fix any maximum period and that it would be more satisfactory to leave it to the Court to determine the period. We have further made specific reference to all dues to the landlord accruing in respect of interest and costs and any arrears of rent accruing up to the date on which the landlord was placed in possession.

(*New section 177B*).—The new section 177B proposed to be inserted by clause 29 (as re-numbered) incorporates partly the provisions of old clause 19 (new section 143A) with amplifications, and partly the provisions of old clause 26 relating to the sale of homestead lands. We agreed that while dwelling houses and other buildings of the raiyat should be exempted from sale in execution of a decree for arrears of rent of the holding, such dwelling houses and buildings should not be exempted if they or the sites on which they stand are separately assessed to rent and such rent was in arrear.

The Bill was published in the *Bihar Gazette*, Extraordinary, dated the 20th September 1937, and we do not consider its republication necessary.

We recommend that the Bill, as amended by us, be passed.

SRIKRISHNA SINHA.

ANUGRAH NARAYAN SINHA.

KRISHNA BALLABH SAHAY.

JAGJIWAN RAM.

RAMCHARITRA SINGH.

JAMUNA KARJEE.

HARINANDAN SINGH.

BIRENDRA BAHADUR SINHA.

ABDUL BARI.

SHYAM NANDAN SINHA.

SHYAM NARAYAN SINGH.

JAMUNA PRASAD SINHA.

VINDHEYSHVARI PRASAD VARMA.

PRABHUNATH SINHA.

HARIKISHORE PRASHAD.

* CHANDRESHVAR PRASHAD NARAYAN SINHA.

* SURJA MOHAN THAKUR.

RAJKISHORE NATH SHAH DEO.

* SAIYID ALI MANZAR.

GOBINDPATI TIWARI.

* ZAINUDDIN HOSAIN MEERZA.

* MUHAMMAD ABDUL MAJEED.

MUHAMMAD YAKUB.

* MUHAMMAD TAHIR.

SAGHIRUL HAQQ.

Subject to the note of dissent annexed.

Note of Dissent by Mr. Muhammad Tahir, M.L.A.

The following is the reason which will show the cause of my dissent to the Select Committee report.

Taking the amendment as a whole it is evident that a partial relief has been given to the people of the province and in part. Cultivators have been divided in different classes and their reliefs accordingly are different. This sort of legislation will bring greater hardship and discontent on the people of the country than exist at present. When we are going to have fresh legislations as well as amendments in respect of tenancy laws it is our duty to consider the interests of all the parties concerned as a whole. Our laws should really be the law of the land and beneficial to all parts of the province. The present amendment Act as will appear from the report of the Select Committee is a clear show of partiality and selfishness, when it does not intend to give relief to the tenants of all classes and of all parts of the province. In view of the above facts my amendments in respect of the report and respective clauses of the Bill will follow hereafter. To sum up the whole thing I contend that the *kisans* or the cultivators have not been given their right dues in the amendment of the Tenancy Act.

**Note of Dissent by Mr. Chandreshvar Prashad Narayan
Sinha, C.I.E., M.L.A.**

The Statement of Objects and Reasons given at the end of the Bihar Tenancy (Amendment) Bill, 1937, indicated the lines on which the present Act was proposed to be amended. I have throughout the discussion or the decisions regarding this Bill kept two main objects before me with which I am sure no one will differ, viz., provision of such relief as the present time requires to be made for the tenants and secondly ensurance of speedy realization of rent for the landlords. I regret that so far the latter object is concerned this Bill has not only failed to provide for the speedy realization of rent but has rendered it much more difficult. The first object has been achieved to a considerable extent. The Note of Dissent that I am giving below has kept these considerations in view. I have also differed where I considered the Bill to have exceeded the limits of the purpose indicated in the Statements of Objects and Reasons :—

Clause 5.—The substitution of section 38 by a new section 112A, clauses (d) and (e) transfers the jurisdiction for entertaining such suits from the Civil Court to the Revenue Court. It would be proper to retain the jurisdiction of the Civil Court in such cases which require a decision of title.

It is settled law at present according to the decision of the High Court that a tenant can obtain reduction on the grounds mentioned in section 38 by a plea in a rent suit (vide Sukhraj Rai *versus* Ganga Dayal 6 P.L.J., 665-2 P.L.T. 569, 1922, Pat. 169).

If the jurisdiction is transferred to the Revenue Court, there is likely to be a clash between the judgments and decisions of the Civil Court and of the Revenue Court.

Secondly the mere fact of the failure of the landlord to maintain irrigation works irrespective of the effect on the holding should not be considered sufficient. It has been held in several cases by the Patna High Court that the tenant must prove that the land has deteriorated on account of the landlord's neglect and the extent of the reduction will be in proportion to the deterioration. The clause as it is, is vague.

I would therefore propose that the following sentence " that the soil of the holding has thereby deteriorated " may be added at the end.

Clause 6.—Under clause (a) of sub-section (3) of section 40 it is provided that the landlord's application if objected to by the raiyat shall be rejected. When a landlord makes an application and gives sufficient grounds for commutation of rent into Nakdi, the discretion

should be given to the Court to accept or reject the application, and it is inequitable that the option to reject such an application should be given to the raiyat.

Clause 8.—I object to the amendment proposed in section 65 of the Act authorising the sale of a part of a holding or a tenure on principle, for the simple reason that the rent is a charge upon the whole holding. The arrangement contemplated is unworkable and unwise for more than one reason.

Clause 14.—I object to the provision which makes the landlord or his agent liable to imprisonment for levying any sum of money or anything in kind in excess of the rent in force. A fine is quite sufficient for the offence involved. The penalty of imprisonment is not commensurate with the offence.

Clause 17.—In so far as the clauses (a) and (b) are concerned, cancellation of enhancements and the reduction of rent are proposed on account of the fall in prices during the period of depression. The list of prices for the years 1911—1936 indicate that the effect of high prices began from 1919 and not from 1911. So the period of operation should be changed to 1919.

Sub-clause (f).—I cannot accept this clause which places very wide and wild powers in the hands of the Government especially in view of the fact that all possible contingencies have already been embodied in the preceding clauses.

Section 112B.—The nature of the “ appeal ” and “ the authority ” should be clearly indicated.

Clause 20.—The provisions contained in this section is wholly repugnant to the established principle underlying the right of a landlord to receive his rent, a right which should be superior to any other consideration. The main objection to this clause is that no remedy has been provided for the realisation of arrears of rent which may accrue while the temporary tenant is in possession.

Clause 28.—The provisions of this clause are repugnant to all established principles of law. It is highly objectionable, because nowhere in the world is there any law compelling a buyer to buy any commodity against his will at a price fixed by a third party.

Clause 38.—With regard to the new sub-clause (m) of clause (5) of section 189 of the Act, there is no necessity for leaving the provision for appeal to be prescribed. It should be clearly mentioned in the Act itself.

THE BIHAR TENANCY (AMENDMENT) BILL, 1937.

(As amended by the Select Committee.)

NOTE.—Matter omitted is shown in italics within square brackets. New matter is underlined.

A

BILL

TO AMEND THE BIHAR TENANCY ACT, 1885.

WHEREAS it is expedient to amend the Bihar Tenancy Act, 1885, in the manner ^{VIII of 1885.} hereinafter appearing ;

It is hereby enacted as follows :—

Short title and commencement.

1. (1) This Act may be called the Bihar Tenancy (Amendment) Act, 1937.

(2) It shall come into force on such date as the Governor may, by notification, appoint.

Amendment of section 3 of Act VIII of 1885.

2. In clause (5) of section 3 of the Bihar Tenancy Act, 1885, (hereinafter referred to as the said Act), for the figures ^{VIII of 1885.} " 68 ", the figures " 67 " shall be substituted.

Insertion of new section 25A in Act VIII of 1885.

3. After section 25 of the said Act, the following section shall be inserted, namely :—

Division of holding by partition and distribution of rent thereon.

" 25A. (1) When an occupancy holding has been the subject of a partition by an order of a Court—

(a) the division of the said holding made in pursuance of such order shall be binding on the landlord ;

(b) if the rent of the holding is distributed by agreement between the parties to the partition, and the landlord does not

accept this distribution, the landlord or any of the parties to the partition may make an application to the Collector to distribute the rent of the holding.

(c) If the parties to the partition are unable to distribute the rent of the holding by agreement, any of them may apply to the Collector to distribute the rent of the holding.

(2) When an occupancy holding has been the subject of partition otherwise than by an order of a Court—

(a) the division of the said holding made in accordance with such partition shall be binding on the landlord ;

(b) if notice in writing of the partition and the distribution of the rent has been served on the landlord in the prescribed form and in the prescribed manner, such distribution of the rent shall be binding on the landlord :

Provided that the landlord may, if he objects to such distribution, make an application to the Collector for the distribution of the rent of the holding.

(3) (a) On receipt of an application under clause (b) of sub-section (1) or the proviso to clause (b) of sub-section (2), the Collector shall serve on the other party a notice of the date on which he intends to hear the application.

(b) On receipt of an application under clause (c) of sub-section (1), the Collector shall serve on the parties to the partition, other than the applicant, and on the landlord a notice of the date on which he intends to hear the application.

(c) After serving the notice required by clause (a) or clause (b) and hearing the parties and holding such enquiry as he thinks fit, the Collector shall distribute the rent of the holding in such manner as he considers fair and equitable, and his decision shall be final.

(4) The order of the Collector under sub-section (3) shall take effect on an application under clause (b) of sub-section (1) or the proviso to clause (b) of sub-section (2), from the date of the partition and, on an application under clause (c) of sub-section (1), from such date as the Collector, may specify in his order."

Repeal of section 38 of Act VIII of 1885.

4. [3.] Section 38 of the said Act shall be omitted.

Amendment of section 39 of Act VIII of 1885.

5. In sub-section (6) of section 39 of the said Act, after the word "Chapter" the words, figures and letter "or under section 112A" shall be inserted.

Amendment of section 40 of Act VIII of 1885.

6. [4.] In section 40 of the said Act—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where [a *raiyat*] an occupancy *raiyat* pays for his holding [rent under section 47B] rent in kind or rent at rates varying with the crop or partly in one of those ways and partly in another, or partly in one of those ways and partly in cash, either the *raiyat* or his landlord may apply to have the rent commuted to money rent.”

(b) [in sub-section (3), for the word “may” in both places in which it occurs, the word “shall” shall be substituted; and]

For sub-section (3) the following sub-section shall be substituted, namely :—

“ 3. (a) If the landlord has applied under sub-section (1) and the raiyat objects to the commutation of his rent to money rent, the application shall be rejected.

(b) If the landlord has applied under sub-section (1) and the raiyat agrees to the commutation of his rent to a money rent, or if the raiyat has applied under sub-section (1), the officer shall determine the sum to be paid as money rent, and shall order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.”; and

(c) sub-section (6) shall be omitted.

Amendment of section 40A of Act VIII of 1885.

7. [5.] In sub-section (1) of section 40A of the said Act, for the words, figures, letter and brackets “ clause (a) of sub-section (1) of section 38 ” the words, figures, and letter “ or under section 112A ” shall be substituted.

Insertion of new Chapter VIA in Act VIII of 1885.

[6. After Chapter VI of the said Act, the following Chapter shall be inserted, namely :—

“ CHAPTER VIA.

ABOLITION OF PAYMENT OF RENT IN KIND OR ON THE ESTIMATED VALUE OF THE WHOLE OR A PORTION OF THE CROP OR ON THE ESTIMATED PRODUCE OF THE WHOLE OR A PORTION OF THE HOLDING.

47A. Notwithstanding anything to the contrary contained in this Act or in any other law, an agreement entered into by a raiyat whether before or after the commencement of the Bihar Agreements to pay rent in kind or on estimated value of crop or on estimated produce of holding void.

Tenancy (Amendment) Act, 1937, to pay for his holding rent in kind, or on the estimated value of the whole or a portion of the crop, or on the estimated produce of whole or a portion of the holding shall be void.

47B. Where a raiyat was, before the date of the commencement of the Bihar Tenancy (Amendment) Act, 1937, liable to pay for his holding rent in kind, or on the estimated value of the whole or a portion of the crop, or on the estimated produce of the whole or a portion of the holding, he shall, from and after the said date and until a fair money rent is settled for such holding, under clause (a) of sub-section (1) of section 112A, be liable to pay to the landlord as rent for the said holding 18 parts and to retain 22 parts, of each maund of the produce of the said holding.”]

Amendment of section 58 of Act VIII of 1885.

[7. In sub-section (4) of section 58 of the said Act, for the words “ from a Revenue-officer ” the words “ from any person ” shall be substituted.]

Amendment of section 65 of Act VIII of 1885.

8. In section 65 of the said Act—

(a) after the words “ or holding ” the words “ or part of his holding ” shall be inserted;

(b) for the word “ thereof ” the words “ of the tenure or holding ” shall be substituted; and

(c) for the word “ thereon ” the words “ on the tenure or holding ” shall be substituted.

Substitution of new section for section 67 of Act VIII of 1885.

9. [8]. In section 67 of the said Act, for the words “ twelve and a half ” the word “ six ” shall be substituted.]

For section 67 of the said Act, the following section shall be substituted, namely :—

Interest on arrears. “ 67(1) An arrear of rent shall bear simple interest at the rate of six and a quarter per centum per annum.

(2) Such interest shall be payable, in the case of a money rent, from the expiry of that quarter of the agricultural year in which the instalment falls due, and, in the case of a rent payable in kind, from the end of the agricultural year in which the payment falls due, and shall in either case be payable up to the date of payment or of the institution of the suit, whichever date is earlier.”

Repeal of section 68 of Act VIII of 1885. 10. [9.] Section 68 of the said Act shall be omitted.

Amendment of section 69 of Act VIII of 1885. 11. [10.] In section 69 of the said Act—

(a) the words “ appraisement or ” and the words “ appraise or ”, wherever they occur, shall be omitted ; and

(b) in clause (b) of sub-section (1), the words “ quantity, value or ” shall be omitted.

Amendment of section 70 of Act VIII of 1885. 12. [11.] In section 70 of the said Act—

(a) in sub-sections (1) and (3), the words “ appraisement or ” shall be omitted ;

(b) in sub-section (2), for the words “ an appraisement or division ”, the words “ a division ” shall be substituted, and the words “ appraisement or ” where they occur for the second time, shall be omitted ;

(c) after sub-section (4), the following sub-section shall be inserted, namely :—

“(5) (a) If the Collector is satisfied that an application made under section 69 by either party was rendered necessary by the negligence, delay, obstruction, or other unlawful conduct of the other party, he may make an order directing that the amount deposited for expenses under sub-section (1) of the said section, shall be returned to the applicant and shall be paid by the other party, and may, in addition, require the other party to pay to the applicant such compensation as he thinks fit.

(b) If the Collector is satisfied that an application made by either party under section 69 was made without adequate and sufficient reasons, he may make an order directing that the applicant shall pay to the other party such compensation as he thinks fit.”;

(d) sub-section (5) shall be renumbered (6); and

(e) sub-section (6) shall be omitted.

Amendment of
section 71 of Act
VIII of 1885.

13. [12.] In section 71 of the said Act—

(a) sub-section (1) shall be omitted;

(b) sub-sections (2), (3) and (4) shall be renumbered (1), (2) and (3) respectively;

(c) in sub-section (2), as so renumbered, for the words “In either case” the words “Where rent is taken by division of the produce,” shall be substituted; and

(d) in sub-section (3), as so renumbered, the words "appraisement or" shall be omitted, and for the word 'appraised' the word "divided" shall be substituted.

Substitution of a new section for section 75 of Act VIII of 1886.

14. [13.] For section 75 of the said Act, the following section shall be substituted, namely:—

"75. [(1)] If a landlord or his agent [*realises,*] levies, except Penalty for illegal exactions by landlord or agent of landlord. under any special enactment for the time being in force, from a tenant of such landlord any sum of money or anything in kind in excess of the rent or local cess lawfully payable by such tenant and the interest payable on an arrear of such rent or cess, such landlord or agent, as the case may be, shall be punishable with simple imprisonment [*of either description*] for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

[(2) *An offence under sub-section (1) shall be cognizable and bailable.*"]

Insertion of new section 87A in Act VIII of 1886.

14. After section 87 of the said Act, the following section shall be inserted, namely:—

"87A. (1) Where a holding has been the subject of a partition whether by agreement between the parties or by order of a Court, or where a portion of a holding has been sold in execution of a decree for arrears of rent, the division of the said holding made in accordance with such partition or sale shall be binding on the landlord, but any distribution of the rent of the holding made between the parties to the partition or between

the purchaser of the said portion of the holding and the original tenant of the holding, as the case may be, shall not be binding on the landlord unless he has given his consent in writing thereto.

(2) If the landlord does not consent to any distribution of the rent of a holding mentioned in sub-section (1), he may apply to the Collector to distribute the rent of the holding, and, on receipt of such application, the Collector shall, after hearing the parties and making such enquiry as he thinks fit, distribute the rent of the holding in such manner as he considers fair and equitable and his decision shall be final.

(3) The order of the Collector under sub-section (2) shall take effect from the date of the partition or of the sale, as the case may be.’]

Amendment of section 88 of Act VIII of 1885.

15. In section 88 of the said Act, for the figures and letter “26B”, the figures and letters “25A, 26B” shall be substituted, and for the word, figures and letter “and 260” the word, figures and letters “260 and 163B [and 87A]” shall be substituted.

Amendment of section 104-A of Act VIII of 1885.

16. In the proviso to sub-section (1) of section 104A of the said Act, the figures “38” shall be omitted and after the words, figures and brackets “52 (both inclusive)” the words, figures, letters and brackets “sub-clause (i) of clause (d) and clause (e) of sub-section (1) of section 112A,” shall be inserted.

Insertion of new sections 112A and 112B in Act VIII of 1885.

17. After section 112 of the said Act, the following sections shall be inserted, namely :—

“112A. (1) The Collector may, on the application of [*a raiyat*] an occupancy raiyat or a landlord
 Power to settle money rent of certain holdings.

made in the prescribed form, or, if the Governor by notification directs that a settlement of the rents of the occupancy holdings situated in any area or of any class or classes of occupancy holdings situated in any area shall be made under this section, on an application made as aforesaid or on his own motion ;

[(a) settle a fair money rent for any holding the rent of which was, before the commencement of the Bihar Tenancy (Amendment) Act, 1937, lawfully payable by the raiyat in kind or on the estimated value of the whole or a portion of the crop or on the estimated produce of the whole or a portion of the holding;]

(a) [(b)] cancel all enhancements of the rents of occupancy holdings made under section 29 or under clauses (a), (b) or (d) of section 30 between the first day of January, 1911, and the thirty-first day of December, 1936, [*whether such enhancements were made by an order of a Court or otherwise*] ;

(b) [(c)] reduce to such amount as he considers fair and equitable the rent of any occupancy holding, the rent of which was commuted between the first day of January, 1911, and the thirty-first day of December, 1936, [*whether under section 40 or*] by agreement between the tenant and the landlord of such holding ;

(c) reduce the rent of any occupancy holding, the rent of which was commuted between the first day of January, 1911, and the 31st day of December, 1936, to such an extent that the reduced rent shall bear to the previous rent the same proportion as the current prices bear to the prices at the time when the rent was commuted.

(d) order the partial or entire remission, for such period as he considers reasonable in the circumstances, of the rent of an occupancy holding—

- (i) if the soil of a portion or the whole of such holding has without the fault of the raiyat become temporarily or permanently deteriorated [been rendered unfit for cultivation] by a deposit of sand, by submersion under water or by any other specific cause, sudden or gradual :

Provided that the Collector may at any time before the expiry of the said period revise the said order, if he is satisfied that the soil of the holding has become fit for cultivation ;

- (ii) if the landlord of such holding has failed to carry out the arrangements, expressed or implied, in respect of irrigation which he is bound to maintain [or the maintenance of embankments which were in force at the time when the rent of the holding was settled or became payable] ;

(e) reduce the rent of any occupancy holding, if there has been a fall not due to a temporary cause in the average local prices of staple food crops during the currency of the present rent ;

(f) settle a fair rent in such cases, or class of cases as may be specified in a notification issued by the Governor in this behalf [other than the cases mentioned in clause (a), (b), (c) or (d), as the Governor may, by notification, direct.]

(2) No application shall be entertained under clauses (a) (b) or (c) of sub-section (1) unless it is filed within a period of one year from the date on which the Bihar Tenancy (Amendment) Act, 1937, comes into force.

“(3) If the Governor by notification directs that there shall be commutation of rents of the occupancy holdings or any class of occupancy holdings situated in any area, the rent of which is paid in kind or at rates varying with the crop, or partly in one of those ways and partly in another or partly in one of those ways and partly in cash, the Collector may, on the application of the raiyat or landlord of any such holding, or on his own motion, determine the sum to be paid as money rent for such holding, and may order that the raiyat shall in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.”

(4) [3] An order of the Collector under this section shall take effect from such date as may be specified in the order.

(5) [4] The powers conferred on the Collector by this section shall be exercised in accordance with the prescribed procedure.

“112B. (1) An appeal shall lie from an order of the Appeal. Collector passed under section 112A to the prescribed authority, and the decision of the prescribed authority on any such appeal shall be final.

(2) Appeals under this section shall be heard and disposed of in accordance with the prescribed procedure.”

Amendment of
section 113 of
Act VIII of
1885.

18. In sub-section (1) of section 113 of the said Act, after the words "is settled" the words "or reduced" shall be inserted and for the words, figures, brackets and letter "section 38, clause (a)" the words, figures, brackets and letters "sub-clause (i) of clause (d) of sub-section (1) of section 112A" shall be substituted.

Insertion of new
sections 148-B and
148-C in Act VIII
of 1885.

[20. After section 148-A of the said Act, the following sections shall be inserted, namely:—

"148-B. A suit may be instituted in the Civil Court collectively by or against any number of tenants holding land in the same village, and an allegation that such tenants are wrongly joined shall be no ground for dismissing the suit, but no order shall be passed in any such collective suit unless the Court making the same is satisfied that all parties have had an opportunity to appear and make objection to any claims preferred against them, and if, at any time, it appears to the Court that the question between any two of the parties of whom one is so joined with others cannot conveniently be jointly tried or heard, the Court may order a separate trial or hearing."

"148-C. Every decree passed in any case which is tried or heard jointly under section 148-B, shall specify the extent to which each of the tenants named in the decree shall be affected thereby."]

Amendment of
section 116 of
Act VIII of 1885.

19. In section 116 of the said Act, after the words "from year to year," the words, figures and letters "or lands of which a landlord may be placed in possession under section 158A or section 177A" shall be inserted.

Amendment of
section 158-A of
Act VIII of 1885.

20. [21.] After sub-section (10) of section 158-A of the said Act, the following sub-sections shall be added, namely :—

“(11) Notwithstanding anything contained in this section or in the Bihar^{B. & O. Act} and Orissa Public Demands Recovery^{IV of 1914.} Act, 1914, where the Revenue-officer signs a certificate under sub-section (5), stating that any arrears of rent are due in respect of an occupancy holding, he may, on the application of the certificate-debtor, place the certificate-holder in possession of the said holding for a period during which he considers that the profits of the said holding will be sufficient to satisfy—

(a) the amount due under the decree and any interest due thereon and the cost of the execution of the decree;

(b) any arrears of rent accruing after the period for the arrears of which the suit was instituted and up to the date on which the landlord is placed in possession; and

(c) rent accruing due during the period for which the landlord is placed in possession [not exceeding seven years].

(12) If the Revenue-officer places the certificate-holder in possession of a holding under sub-section (11), the certificate shall, at the end of the period for which the certificate-holder has been so placed in possession, be deemed to have been satisfied in full, and the Revenue-officer shall at the expiration of the said period restore the holding to the said certificate-debtor or his heirs. ”

Substitution of new heading for the heading to Chapter XIV of, and insertion of new section 158AA in Act VIII of 1885.

21. [19.] For the heading to Chapter XIV of the said Act, the heading "**EXECUTION OF DECREES FOR ARREARS OF RENT**" shall be substituted, and after [section 143 of the said Act] the said heading, as so amended, the following section shall be inserted, namely :—

" [143A.]. 158AA. A decree for ^{Execution of decrees for} arrears of rent ^{arrears of rent.} may be executed by the attachment and sale of the property of the judgment-debtor, both movable and immovable [*but no such decree shall be executed by the detention in the civil prison of the judgment-debtor*];

Provided that the movable property of the judgment-debtor shall not without his consent in writing be so attached or sold unless the decree cannot be satisfied by the attachment and sale of the holding for the arrears of the rent of which the decree was passed."

Amendment of section 158B of Act VIII of 1885.

22. In section 158B of the said Act—
(a) in sub-section (1) after the word "holding" where it occurs for the first and second times the words "or part of a holding" shall be inserted; and

(b) for sub-section (2) the following sub-section shall be substituted, namely :—

"(2) When an application is made for execution of a decree for arrears of rent due in respect of a tenure or holding, the Court executing the decree shall, before proceeding to sell the tenure or the holding or a part of the holding, give to the parties to the decree notice of the application for execution and of the date

on which the sale proclamation shall be drawn up, and may, notwithstanding anything contained in the Code of Civil Procedure, 1908 simultaneously issue attachment."

Insertion of new section 158C in Act VIII of 1885.

[22. After section 158B of the said Act, the following section shall be inserted, namely :—

" 158C. If the Court directs the sale Application of Chapter of a portion of a XIV to sale of a portion holding, the provisions of this Chapter relating to the sale of a holding shall, as far as may be, apply to the sale of such portion."]

Substitution of a new section for section 159 of Act VIII of 1885.

Execution of decrees for arrears of rent.

23. For section 159 of the said Act the following shall be substituted, namely :—

" 159. (1) Where a tenure or holding or part of a holding is sold in execution of a decree for arrears due in respect of the tenure or holding, the purchaser shall take subject to the interests defined in this Chapter as " protected interests " .

(2) When a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall have power to annul the interests defined in this Chapter as " incumbrances " :

Provided as follows :—

(a) a registered and notified incumbrance within the meaning of this Chapter shall not be so annulled except in the case hereinafter mentioned in that behalf ;

(b) the power to annul shall be exercisable only in the manner by this Chapter directed."

Amendment of
section 160 of
Act VIII of 1885.

24. In clause (g) of section 160 of the said Act after the word "holding" the words "or part of the holding" shall be inserted.

Amendment of
section 161 of
Act VIII of 1885.

25. In clause (c) of section 161 of the said Act the words "or damages awarded in lieu of interest under sub-section (1) of section 68" shall be omitted.

Insertion of new
section 162A in Act
VIII of 1885.

26. After section 162 of the said Act, the following section shall be inserted, namely :—

Sale of a portion
of holding.

"162-A. When the decree-holder makes the application mentioned in section 162, the Court executing the decree may order that the holding liable to sale, or such portion thereof as may seem necessary to satisfy the decree shall be sold and that the proceeds of such sale or a sufficient portion thereof shall be paid to the party entitled under the decree to receive the same :

Provided that the Court shall not order a part of a holding to be sold if there is any incumbrance on such part".

Amendment of
section 163 of Act
VIII of 1885.

[**23.** In section 163 of the said Act—

(a) to sub-section (1), the following proviso shall be added, namely :—

"Provided that in the case of an occupancy holding the property to be sold, as shown in the said proclamation, shall include only so much of the holding the proceeds of the sale of which will be sufficient to satisfy the amount due under the decree and such property shall not be sold at a price lower than the price specified in the said proclamation ;

(b) after sub-section (1), the following sub-section shall be inserted, namely :—

“(1a) The Court executing the decree shall estimate the value of the whole holding and that portion of the holding, the proceeds of the sale of which it considers will be sufficient to satisfy the decree.”; and

(c) in sub-section (2),

(i) the word “and” where it occurs after the end of clause (a) shall be omitted ;

(ii) after the end of clause (b) the word “and” shall be inserted ; and

(iii) after clause (b), as so amended, the following clause shall be added, namely :—

“(c) in the case of a portion of an occupancy holding, the price of such portion.”]

27. In section 163 of the said Act—

Amendment of
section 163 of Act
VIII of 1886.

(a) for sub-section (1) the following sub-section shall be substituted, namely :—

“(1) When a tenure or a holding or a part of a holding is ordered to be sold in execution of a decree for the arrears of the rent of such tenure or holding, the Court shall cause a proclamation of the intended sale to be made.”;

(b) after sub-section (1) the following sub-section shall be inserted, namely :—

“(2) Such proclamation shall state the time and place of sale and specify as fairly and as accurately as possible—

(a) the property to be sold ;

(b) the value of the tenure or the holding or, if the property to be sold is a portion of a holding, the value of such portion as determined by the Court in the manner specified hereafter ;

(c) the amount for the recovery of which the sale is ordered.”;

(c) sub-section (2) shall be re-numbered sub-section (3);

(d) in sub-section (3) as so re-numbered, for the words and figures “ section 287 of the said Code ” the word, figure and brackets “ sub-section (2) ” shall be substituted ;

(e) sub-section (3) shall be re-numbered as sub-section (4);

(f) after sub-section (4), as so re-numbered, the following sub-sections shall be inserted, namely :—

“(5) Before issuing the sale proclamation the Court executing the decree shall hear the parties and estimate the value of the holding or of that portion of the holding the proceeds of the sale of which it considers will be sufficient to satisfy the decree.

(6) Any person aggrieved by an order passed under sub-section (5) may appeal to the Court to which appeals from the Court executing the decree ordinarily lie.”;
and

(g) sub-section (4) shall be renumbered sub-section (7).

Insertion of new sections 163A and 163B in Act VIII of 1885.

28. After section 163 of the said Act, the following sections shall be inserted, namely :—

Holding or portion not to be sold for price lower than that specified in proclamation of sale.

“163A. Notwithstanding anything contained in the Code of Civil Procedure, v of 1908, 1908, a holding or portion of a holding advertised for sale shall not be sold for a price lower than that specified in the sale proclamation.

Distribution of rent of holding a portion of which is sold in execution of decree for arrears of rent.

163B. (1) Where a portion of an occupancy holding has been sold in execution of a decree for arrears of rent due in respect of such holding, the division of the said holding consequent upon the sale, shall be binding on the landlord, but any distribution of the rent of the holding made between the purchaser of the said portion and the tenant of such holding shall not be binding on the landlord unless it is made with his express consent in writing or with that of his agent duly authorised in that behalf.

(2) If the landlord does not consent to the distribution of the rent of the holding referred to in sub-section (1), any of the parties to the sale may apply to the Collector to distribute the rent of the holding.

(3) On receipt of such application the Collector shall serve on the other party and on the landlord a notice of the date on which he intends to hear the application and after hearing the parties and holding such enquiry as he thinks fit, distribute the rent of the holding in such manner as he considers fair and equitable and his decision shall be final.

(4) The order of the Collector under sub-section (3) shall take effect from the date of the sale."

Substitution of a new section for section 166 of Act VIII of 1885.

29. For section 166 of the said Act, the following shall be substituted, namely:—

Sale of occupancy holding with power to avoid all incumbrances and effect thereof.

" 166 (1) When an occupancy holding or portion of an occupancy holding has been advertised for sale under section 163, it shall be put up to auction and sold.

(2) An occupancy holding shall be sold with power to avoid all incumbrances and the purchaser may in the manner provided by section 167, and not otherwise, annul any incumbrance on the holding."

Amendment of section 167 of Act VIII of 1885.

30. In sub-section (4) of section 167 of the said Act, after the words ' or holding ' the words ' or portion of a holding ' shall be inserted.

Amendment of section 170 of Act VIII of 1885.

31. In section 170 of the said Act

(a) in sub-section (1)

(i) after the words ' or holding ' the words ' or portion of a holding ' shall be inserted; and

(ii) for the word ' thereon ' the words ' in respect of the tenure or holding ' shall be substituted.

(b) In sub-section (2) after the words ' or holding ' where they occur for the first time, the words ' or portion of a holding ' shall be inserted, and after the words ' or holding ' where they occur for the second time the words ' or portion of the holding ' shall be inserted;

Amendment of section 172 of Act VIII of 1885. **32.** In section 172 of the said Act, after the words 'or holding' the words 'or a portion of a holding' shall be inserted.

Amendment of section 173 of Act VIII of 1885. **33.** In section 173 of the said Act
 (a) in sub-section (1) after the words 'or holding' where they occur for the first time, the words 'or portion of a holding' shall be inserted, and after the words 'or holding' where they occur for the second time the words 'or portion of the holding' shall be inserted;

(b) in sub-section (2) after the words 'or holding' the words 'or portion of a holding' shall be inserted; and

(c) in sub-section (3), after the words 'or holding' the words 'or portion of a holding' shall be inserted.

Amendment of section 174 of Act VIII of 1885. **34.** In sub-section (1) of section 174 of the said Act:

(a) after the words 'or holding' the words 'or portion of a holding' shall be inserted; and

(b) for the word 'thereon' the words 'in respect of the tenure or holding' shall be substituted.

Insertion of new section 177A in Act VIII of 1885. **35.** [24] After section 177 of the said Act, the following sections shall be inserted, namely:—

"177A. (1) Notwithstanding anything Execution of decrees for arrears of rent. to the contrary contained in this Act or in any other law, the Court executing a decree for arrears of rent due in respect of an occupancy holding which is not subject to any incumbrance may, on the application of the judgment-debtor, place

the landlord in possession of the said holding for a period during which it considers that the profits of the said holding will be sufficient to satisfy—

- (a) the amount due under the decree and any interest due thereon and the cost of the execution of the decree;
- (b) any arrears of rent accruing after the period for the arrears of which the suit was instituted and up to the date on which the landlord is placed in possession; and
- (c) rent accruing due during the period for which the landlord is placed in possession [not exceeding seven years].

(2) If the Court places the landlord in possession of a holding under subsection (1), the decree shall, at the end of the period for which the landlord is so placed in possession, be deemed to have been satisfied in full, and the Court shall then restore the holding to the said judgment-debtor or his heirs. ”

Exemptions.

“177B. Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, a decree for arrears ^{v of 1908.} of rent obtained against a *raiyat* or an under-*raiyat* shall not be executed—

(a) by the detention in the civil prison of the judgment-debtor, or

(b) by the sale of houses and other buildings with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their

enjoyment, belonging to the *raiyat* or under *raiyat* and occupied by him :

Provided that any such house or building and the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment may be sold in execution of a decree for arrears of rent due in respect of the site of such house or building."

Amendment of
section 178 of
Act VIII of 1885.

36. [25.] In clause (f) of sub-section (3) of section 178 of the said Act, for the words and figures "section 38 or" [shall be omitted] the words, figures, letters and brackets "sub-clause (i) of clause (d) or clause (e) of sub-section (1) of section 112-A or under" shall be substituted.

Insertion of
new sections 178-A
and 178-B in Act
VIII of 1885.

Restriction on
payment of certain
kind of rent by
agreement.

37. After section 178 of the said Act, the following sections shall be inserted, namely :—

"178-A. (1) Nothing in any contract, express or implied, between a landlord and a *raiyat* made before or after the commencement of the Bihar Tenancy (Amendment), Act 1937, shall entitle the landlord to rent on the estimated value of the whole or a portion of the crop or on the estimated produce of the whole or a portion of the holding of the *raiyat*.

(2) Where a *raiyat* was, before the date of the commencement of the Bihar Tenancy (Amendment) Act, 1937, liable to pay for his holding rent on the estimated value of the whole or a portion of the crop or on the estimated produce of the whole or a portion of the holding, he shall from and after the said date be liable to pay to the landlord rent in kind by division of the produce of the holding.

Restriction on share of produce rent payable to landlord by agreement. “ 178-B. Nothing in any contract, express or implied, between a landlord and a raiyat made before or after the commencement of the Bihar Tenancy (Amendment) Act, 1937, shall entitle the landlord to more than nine-twentieths of the produce as rent in respect of an occupancy holding if rent is payable in kind by division of the produce.”

Insertion of new section 182A in VIII of 1885. of section Act namely :— [26. After section 182 of the said Act, the following section shall be inserted,

“ 182-A. Notwithstanding anything Homesteads. to the contrary contained in this Act, or in any other law, and notwithstanding any local custom or usage to the contrary, a raiyat shall not be ejected in execution of a decree for arrears of rent from his homestead land whether he holds such homestead land as a part of his holding or otherwise.”]

Amendment of section 189 of Act VIII of 1885. 39. [27.] In section 189 of the said Act,

(i) after clause (4), the following clause shall be added, namely :—

“ (4a) to prescribe the form of notice to be given under sub-section (2) of section 25A and the manner in which such notice shall be served” ; and

(ii) after sub-clause (j) of clause (5), the following sub-clauses shall be added namely :—

“ (k) to prescribe the form of applications under sub-section (1) of section 112A ;

- (l) to prescribe the procedure to be followed by the Collector in the exercise of the powers conferred on him by section 112A ; and
- (m) to prescribe the authority to whom appeals shall lie under sub-section (1) of section 112B and the procedure to be followed by the said authority in hearing and disposing of such appeals. "