

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

**CONFIDENTIAL**

**Report of the Select Committee  
(Amendment)**

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

The Committee held its first meeting on 12th November 1937. The Committee decided to hear the evidence of the witnesses who were present and offered to give evidence. Babu Banbihari Palit (Secretary, Orissa Landholders' Association) Babu Uday Nath Rath and Babu Uday Nath Mahanty were accordingly examined by the Committee and their evidence was recorded. The Committee subsequently met on 13th and 20th November and 9th and 10th December 1937. We considered the evidence and the opinions placed before us and examined the provisions of the Bill, clause by clause. The Committee approved the Bill subject to the alterations made in it which are set out in the sub-joined notes with the reasons therefor.

*Short title.*—The year "1937" has been changed to "1938" as the Bill can be passed into law only in 1938.

*Clause 2.*—The change of "Raiyat" into "a Raiyat" is purely of a drafting nature.

*Clause 5.*—The new section 27-A confers on occupancy raiyats full rights in the trees on the lands in their holdings. The intention is that such enjoyment by planting, felling, etc., of the trees should not render them liable to ejection under section 29. We considered it desirable to make the position clear by the addition of an express provision to that effect in section 27-A.

*Clause 6.*—We thought it preferable to separate the provision relating to devolution of occupancy right on the death of a raiyat intestate from that regarding transferability by sale, exchange, gift or bequest. We have accordingly retained the existing section 30, which deals with heritability on death intestate, in entirety. We have added a new provision, section 30-A, to provide for transferability by sale, exchange, gift or bequest or by way of sub-lease or of mortgage. The cases of transfer of the occupancy holding

by sale, exchange, gift or bequest have been kept distinct from sub-leases or mortgages of holdings by occupancy raiyats. In regard to the former class of transfers, it is made clear that the transfer carries with it the occupancy right in the holding as well as all the rights appurtenant thereto. In both cases, the necessity for the landlord's consent has been dispensed with. Express declaration has also been made that there is no liability to pay any fee for the transfer of the occupancy holding by sale, exchange, gift or bequest.

*Clause 7.*—The requirement of a registered instrument should apply only to voluntary transfers by sale, exchange and gift and not to bequests or sales in execution of decrees or of certificates signed under the Bihar and Orissa Public Demands Recovery Act, 1914. We have clarified this position by suitable amendment in sub-section (1) of the new section 31. The fee paid for the services of notice on the landlord should be such as may be prescribed by the Provincial Government by notification in the Official Gazette. To avoid any possible confusion with other kinds of process fees, it is desirable not to designate it as "process" fee. We have accordingly omitted the description of the fee as "process" fee. In view of the provisions in the Act relating to agents and representatives of landlords, there is no need for specific mention of the landlord's common agent in the provision for service of notices. We have, therefore, omitted the reference to the landlord's common agent in regard to the service of notices wherever it occurred in this clause. The Collector has an efficient agency for effecting service of notices. It will also conduce to administrative convenience if notices are served through the Collector. We, therefore, thought it desirable to provide specifically that the notices to the landlords should be sent to the Collector for service instead of vaguely saying that the registering officer or the courts concerned should cause them to be served on the landlords in the prescribed manner. In sub-section (4) of section 31 dealing with the case of transfer by way of bequest, provision has been made for the transfer of the entire holding as well as of a portion or share thereof to bring it into accord with section 30-A.

*Clause 8.*—Sub-sections (1) and (2) of the new section 31-A have been amplified to make it clear that the trans-

fers dealt with therein cover all cases of sale, exchange, gift or bequest. To avoid obscurity, "the persons possessing interest" mentioned in sub-section (1) have been described as "the transferee and the persons possessing interest in the remainder". There is no reason to differentiate the landlord's application to the Collector for a just and equitable distribution of rent from that of any other person in regard to the starting point of the period limited for making the application. We have accordingly fixed the six months' period in both cases to commence from the same date. To ensure that the Collector's order as to distribution of rent should be passed after proper enquiry, we have provided that he should hold an enquiry in the prescribed manner.

In the case of transfers effected prior to the commencement of this Act, we considered it proper to protect the landlord's right to recover the fees lawfully payable to him. At the same time we wanted to make it clear that the transferee should not be liable to ejection on the ground that the transfer was without the landlord's consent and that the holding should not be liable to be sold in execution of a decree for arrears of rent to which the transferee was not impleaded as a party. We have, therefore, inserted a new section, section 31-B, on these lines, fixing a period of 3 years' limitation from the commencement of this Act for the recovery of such fees by the landlord.

*Clause 10.*—As interest is payable only on money rent and not on produce rent, the substitution of "rent" for "money rent" proposed in this clause is not necessary, and we have omitted it accordingly.

*Clause 11.*—It is necessary to provide that, on the transfer of an occupancy holding, the transferor and the transferee are jointly and severally liable to the landlord for arrears of rent and that such arrears constitute a first charge on the holding. We have, therefore, inserted a new section 83 in the place of the existing section 83 of the Act which was proposed to be omitted in the Bill.

*Clause 12.*—As "rent" for the purposes of section 81 has been defined in section 3 (16) as including money recoverable under any enactment for the time being in force as if it was rent, the proposed *explanation* making the levy of local cess in excess of the net amount prescribed by clause 2 of the scale prescribed by clause 3 of section 41

of the Cess Act of 1880, is unnecessary. We have, therefore, omitted the explanation appended to the proposed new section 84 in this clause.

*Clauses 13 and 14.*—The existing section 85 provides for the recovery of the amount of illegal exaction together with a penalty by suit at the instance of the tenant concerned. The new section 85-A, proposed in clause 14, provides for a remedy by summary proceedings taken by a Collector on the receipt of the requisite information from a court or officer dealing with proceedings under the Act or on complaint of the aggrieved tenant. As under the new section proceedings could be initiated by the Collector both on information received from another officer or court or on the complaint of the tenant, it was generally agreed that the remedy by way of suit by the tenant under the existing section 85 was unnecessary. Further it proved wholly ineffective and did not act as a deterrant against illegal exactions. Consequently, there is no reason for continuing it along with the new remedy proposed under section 85-A. We have, therefore, decided to abolish the remedy by way of suit and to omit section 85 altogether instead of amending it in any manner. Clause 13 has, therefore, been omitted. Clause 14 has been amended so as to substitute the proposed new section (section 85-A) as section 85 in the place of the existing section 85. Clause 14 has been renumbered as clause 13 and the numbering of subsequent clauses altered accordingly.

“Attempt to exact” is extremely vague and will ordinarily be difficult of proof and the penalising of it may expose parties to vexatious proceedings involving hardship and expense. We have, therefore, decided not to treat any such act or acts as penal and have accordingly excluded mere attempts to obtain illegal exactions from the scope of the new provision. We have made the necessary changes accordingly in the new section. We have inserted the words “as the case may be” to make it clear that the landlord or the agent will be visited with penalty only for any illegal exaction actually brought home to him and not for the illegal exaction of the other. The provision in sub-section (3) of the new section enabling any person “on the tenant’s behalf” to prefer a complaint will obviously open door to all kinds of abuses, and we have, therefore, deleted the words “or on his behalf” from this sub-section.

Clause (c) of sub-section (3) of the new section does not serve any useful purpose and has, therefore, been omitted. The other changes made are purely of a drafting nature.

*Clause 17.*—The proposed substitution of “rent” for “money rent” in clause (h) of sub-section (3) of section 232 has been omitted for the reasons mentioned against clause 10, namely, that under the existing law interest is payable only on money rent and not on any other kind of rent such as produce rent. The rights conferred on the tenant under the new section 27-A should also be protected from variation or modification by contract between him and the landlord along with the rights under the existing section 27. The clause has, therefore, been amended by the inclusion of section 27-A in clause (b) of sub-section (3) of section 232.

The Bill was published in the *Orissa Gazette Extraordinary*, dated 14th September 1937, and we do not consider its republication necessary.

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

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**Note of Dissent by Babu Birabar Narayan Chandra Dair  
Narendra, M.L.A.**

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I sign this report subject to my note of dissent which is submitted herewith.

To me the Bill does not appear to be a properly conceived measure. The author of the Bill in framing it has neither taken into account the nature of various tenures in Orissa, nor has he considered the far-reaching consequences which some of the provisions will entail upon the economic condition of an agricultural population.

2. Leaving out of account for the present the sub-proprietary tenures that are existing in Orissa the land tenure may be broadly divided into 2 classes, namely (1) permanently and (2) temporarily-settled estates. It is not the place to go into the historical origin of zamindari prior to the British rule in Orissa; but a short reference to them during the subsequent period will not be out of place.

3. In 1803 Orissa passed under the British rule. Soon after the British occupation of Orissa, Revenue Settlement of the Province was undertaken by Commissioners appointed by the Hon'ble East India Company. Regulation XII of 1805 was passed. Paragraph 2 of its preamble is as follows:—

“On taking possession of the country the Commissioners deemed it to be necessary to adopt surest means of *preserving unimpaired* the rights of different landholders in the territory called Mogalbandi, being that part of the zila of Cuttack in which according to established usage as in Bengal, the land itself is responsible for the payment of the public revenue and in which every landholder holds his lands subject to condition of that usage.”

4. The words underlined in the above extract clearly indicate the respect which the new Government had for existing rights. Rules were laid down how to carry on the settlement. It appears from section 33 of that Regulation that Sanads had been granted to the zamindars of Darpan, Sukirda and Madhupur, fixing in perpetuity the Jema payable to the Government. Those Sanads were confirmed by the Commissioners. So also by section 35, the Settlement of Land Revenue concluded with Aul, Kujang, etc., by the Board of Commissioners was confirmed. The Bengal Regulations were made applicable to Orissa excluding certain jungles and hill zamindaris and elaborate procedure was laid down for the settlement of the rest of the territory known as Mogalbandi. The latter portion has since been subjected to periodical settlements and is known as temporarily-settled area. On reading the Settlement Regulations there can be no doubt that the zamindars of both

the permanently-settled estates and temporarily-settled estates were proprietors of the soil. In course of time the proprietary rights of the temporary-settled area has to some extent been undermined so far as mineral rights are concerned ; but the rights of the proprietors of permanently-settled estates are intact. This is perhaps due to the recognition of the fact that the holders of permanently-settled estates of Orissa belonged to a feudal organisation under the ancient Hindu kings and their status was quite different from that of zamindars who were collecting revenue for the Marhatta Government, immediately before the British occupation of Orissa. It may be mentioned here that there was a good deal of discussion over the status of zamindars in Bengal while periodical settlements were going on and as a result of such discussions it was clearly declared in the Permanent Settlement Regulation that they were proprietors of the soil. In Orissa no dispute ever arose regarding the status of ancient zamindars. The military commander of the Hon'ble East India Company, shortly after the occupation of the province, recognised the existing proprietary rights of the holders of ancient zamindaris and entered into engagements with them fixing the Government demand in perpetuity.

5. It is of course the duty of the sovereign power to look to the welfare of the people in general and therefore it is, that in enacting Regulation I of 1793, the Governor General in Council by section 8 reserved the right to enact such regulations as may be considered necessary for the protection and welfare of the dependent talukdars, raiyats and other cultivators of the soil. Consequently by section 52 of Regulation VIII of 1793 all sums recovered by zamindars or other actual proprietors of land over and above rent were forbidden on the penalty of paying double the amount realised. Such provision was also made in section 10 of Act X of 1859 and subsequent provisions of law relating to this have been made more stringent against landlord. If the tenants have failed to avail of the existing provisions which law has made for their protection, it was their ignorance. Now they are keenly alive to their rights the existing law will sufficiently afford them protection. No new provision is necessary.

6. Regarding the right of occupancy it may generally be said that when vast areas were available for reclamation, tenants were induced by landlords to take settlement of lands and were granted many privileges. With the growth of population pressure on land increased and landlords were tempted to dispossess tenants arbitrarily. But this was stopped by the enactment of Act X of 1859. Section 6 of that Act conferred the right of occupancy upon every raiyat who cultivated or held land for a period of twelve years.

7. From a survey of the tenancy law it will be found that raiyats were protected against arbitrary ejections by landlords



and also against illegal exactions. Now where they were given the right to soil. With the above observations I take up the provision in the Bill. First I take the case of trees.

8. So long the right to trees on the holding of an occupant riyat was not uniform everywhere. In the last settlement, in some villages riyats have been recorded as having absolute right to trees. In others the riyat has been recorded as being entitled to the fruits and the landlord to the timber when a tree dies. In some others landlord and tenant have been recorded as being entitled to trees half and half. It is not easy to determine how such differences have arisen but it is a fact that in temporarily settled estates the income of landlords, where they are entitled to trees either wholly or partly, has been taken into account in calculating the assets of the Mahal on which a certain per cent has been fixed as Government Revenue. For the improvement of tenants' condition it is desirable that they should have an absolute right to such trees as they grow on their lands; but to give them right to the existing trees on which a Sairat Jama has been fixed and to deprive the landlord of some property without paying any compensation would be unjust. In new reclamation we often find big trees standing which existed before the landlord granted the land to the tenants. In such cases and in those cases where a landlord is recorded to have right to trees the just and proper course would be to pay compensation to the landlord if a tenant wants to acquire absolute right to the existing trees. Not to pay any compensation would be unjust.

9. Then there are the Lakhrajars, Bajrastidar tenure holders, Tankidars and others who will be seriously affected by the proposed amendment. Anyone having any knowledge about the tenures in the puri district must be aware that there are numerous cases in which tenants have been inducted on the land with the express reservation that valuable fruit bearing trees on their holdings will belong to the landlord and in many cases the trees are the main source of income of the Tankidars, etc., for maintaining their family. The author of the Bill seems to have ignored them altogether and centred his thoughts only upon the zamindars. In their cases the amendment will be purely expropriatory and altogether ruinous for which there can be no justification, and will be something like confiscation which no civilised Government would countenance. We find from regulations that Government had been very careful to pay compensation even in those cases where Sairs were abolished and on this point reference may be made to section 31 of Regulation XII of 1805. In my opinion, giving absolute rights to the tenants over the existing trees would be of an expropriatory nature.

10. Next I come to transfer of occupancy rights. Transfer of occupancy right is of recent growth. The right of a tenant was a

mere surface right as long as he was cultivating the land and paying rent. When he did this for 12 years law invested him with a right of occupancy, and the landlord had no right to eject him unless he could do it under some provision of the Tenancy Law. This right he got by Act X of 1859.

11. The right of occupancy created in favour of the raiyat under section 6 of Act X protected him against illegal eviction and section 10 of the Act protected him against illegal exactions.

12. From 1859 up to the year 1897, when provincial settlement of Puri, Cuttack and Balasore was completed, the question of transfer of occupancy holdings and realisation of any fee for mutation did not arise and occupancy holdings had not much marketable value. After the preparation of record-of-rights in 1897 the number of transfers in occupancy holdings increased by leaps and bounds. Such right was not transferable; but when the transfers were made landlords' consent was obtained on payment of a price which was ordinarily one-fourth of the consideration paid by the transferee. The transaction amounted to something like fresh settlement with the transferee. Although such transfers opened a new source of income for the landlords yet they had the option of withholding their consent in suitable cases some of which are mentioned under "Explanation" to section 31 of the Orissa Tenancy Act. It might be that some zamindars exercised their right to the inconvenience of the parties. But there are numerous instances where landlords by exercising this power of giving consent have prevented transfers made by females and by guardian of minors and have also prevented extortionate money-lenders from taking undue advantage over agriculturist debtors. To recognise or not to recognise any particular person as tenant is a proprietary right which is proposed to be taken away by the amendment. The right to give consent has of course brought some pecuniary advantages to the landlords by changed circumstances but such advantages were never foreseen from the beginning.

13. Now the question of abolishing mutation fee is not of much concern to the landlords. It may be reduced but to make occupancy holdings freely transferable without the consent of the landlord will be an interference with the proprietary right of the zamindar which he had since the advent of British Government up to this time. If transfer of occupancy rights be effected without the consent of the landlord, undesirable tenants may be forced upon him against his will which may interfere with the peaceful enjoyment and management of the property. So much from the landlords standpoint.

14. Let us examine the question from the standpoint of the raiyat. Soon after the settlement of 1897 the price of agricultural

produce gradually increased. With the increase in price of agricultural produce the value of land increased as people having money considered investment in land as profitable, and in the case of the landlord, the amount of mutation fee was too tempting for withholding consent. Since 1930 circumstances have changed. With the fall in prices of agricultural produce the value of land has rapidly fallen. People having money have realised that investment in land is not a safe investment. So it cannot be expected that raiyats will get so much value for their lands as they used to get before the economic depression. Consequently the provision for free transfer will not improve their pecuniary condition. On the contrary what we know of the characteristics of the peasant population they are not thrifty. In social and ceremonial occasions the peasant always goes beyond his means. Difficulty in the transfer of raiyati holdings used to work as a check against their extravagant propensities as persons having money would not readily advance them loans when they know that ultimately they would have to depend on the discretion of the landlord. When no loan would be available, the raiyat would under necessity live within his means. If on the other hand raiyati lands are made freely transferable he will be ready to sell it whenever he will be in want of money and within a dozen of years we will find large quantities of land in the hands of non-agricultural people, increasing thereby the number of landless class. Unless some employment be found for them they will be a menace to the peace of society.

15. Some say that the evil of accumulation of land in the hands of non-agriculturists can be mitigated if occupancy rights be created in favour of under-raiyat to whom lands will be let out by the non-agriculturists. If this be done no moneyed man will care to purchase land more than what he can himself cultivate. The consequence will be to reduce the value of the land still lower for want of willing purchasers, and this will ultimately affect the condition of the cultivating raiyats, if the proposed amendment be carried into law.

16. As I am examining the question on certain principles I refrain from making any comments on the rules laid down in clause 7 of the Bill for giving effect to the transfers, although I should say that for working them out with efficiency separate officers with separate staffs will be necessary.

17. I want to view the matter from another standpoint. The tenor of the Bill seems to be not to protect their existing rights and to protect them against illegal exaction but to take away some of the proprietary right of landlords and to confer them upon tenants.

18. The rights of landlords have been secured to them by contract, either by permanent or by temporary settlement. In the

case of permanently-settled estates, engagements were entered into with the Hon'ble East India Company from whom sovereignty was taken over by the British Crown. In the case of temporarily-settled estates, Kabuliyats have been taken from zamindars in which their rights and obligations have been defined. Legislatures created by the Government of India's Act derive their authority from British Crown and Parliament. Sanctity of contract is respected by all civilized countries. So in going to make laws affecting landlords and tenants we should be particularly careful that we do not violate that terms of engagements entered into by Government. In the present Bill the author appears to me to have overlooked this fact. It will be a palpable wrong to tamper with the terms of engagements in order to benefit the raiyats.

With these observations I append hereto my suggestion regarding the various clauses of the Bill.

### Suggestions.

*Clause 4.*—The omission suggested in clause 4 is rather ambiguous and will go against the entries in the record-of-rights where the right to trees has been specifically recorded in favour of the landlords and the income derived therefrom has been taken into account in fixing the Government revenue. In case absolute right to trees is given to tenants, it will be necessary to revise the land revenue in the assessment of which profits from trees have been taken into account as Sairat Jama. Besides there were numerous cases in which lands containing trees have been leased out to tenants and at the time of giving lease the landlord reserved his right to trees. To give right to such trees would amount to confiscation of private property without giving compensation. It will be just and fair if tenants be granted absolute right to those trees that are planted by them. So I would suggest that clause 4 of the Bill should be deleted and the words "planted by him" should be inserted between "any tree" and "on such land, etc."

*Clauses 6, 7, 8 and 9.*—I am opposed to the principle of free and unrestricted transfer inasmuch as such transfer will in course of time result in the extinction of actual tillers of the soil who will be reduced to landless labourers. The extent to which migration of Oriya tenants to the industrial centres has proceeded should open our eyes. In social and ceremonial occasions the Oriya tenants are ordinarily extravagant and if they are allowed free and unrestricted transfer of raiyati holdings their holdings will pass into the hands of moneyed men who are not tillers of the soil, the agriculturists will be reduced to landless labourers without any means of livelihood and unless employment is found for them they will endanger the peace of society.

Further, by free and unrestricted transfer, lands will pass into the hands of absentees from whom it will be difficult for the landlords to collect rent in time, and this will affect payment of land revenue according to kists.

The proposed change will also increase litigation. Often one of the members of a family is recorded in settlement khatian. He may defraud his co-sharers by selling the entire holding which is not possible for him if landlord's consent be necessary. Several other complications will also arise.

Moreover the landlord will be deprived of realising the arrears which he does at the time of consenting to the transfer.

There is also no provision for preventing the creation of unreasonably small holdings and introduction of undesirable tenants.

The procedure suggested for service of notice on the landlord and the procedure provided for objecting to the distribution of rent is defective. I would suggest that these clauses should be deleted.

*Clause 10.*—(a) The rate of interest should be 9 per cent.

(b) The rate of interest realised by suit from habitual defaulter shall be 9 per cent.

Defaulters of rent in respect of Khasmahal are liable to ejection when they default rents for 3 consecutive kists. There is no reason why the same provision should not be extended to zamindari areas.

(c) The rate of interest must bear proportion to prevailing market rate of interest when the landlords are compelled to borrow money for payment of revenue on account of non-payment of rents in time.

(d) Unless provisions for speedy realisation of rent are made no reduction in interest be allowed. The reduction of interest will encourage the tenants not to pay rents in time.

*Clauses 12, 13 and 14.*—The amendments proposed under these clauses of the Bill be deleted. They are unnecessary and would provide a dangerous weapon to recusant and litigious tenants who are habitual defaulters. In the present mentality of tenants false and frivolous cases may be set up against the landlords and agents and when tenants combine it will be difficult to prove their cases. Experience has shown that in very few cases the tenants have availed of the existing provisions of law, no case has been made out why the provision should be made stringent against the landlords. If such provisions are made then they should be equally stringent to the tenants who may bring false and frivolous cases.

*Clause 15.*—Omission of section 95 will result in the creation of landless middle-men without benefitting the cultivator in the least.

*Clause 16.*—Omission of section 96 will benefit the money-lender who will be the middle-man and convert the real agriculturists into day-labourers.

*Clauses 17 and 18.*—Should be deleted as unnecessary.

In conclusion I would urge that provisions which will have far-reaching consequences should not be rushed through the Assembly (and sufficient time should be given to the public and experienced Revenue Officer to express their opinion on proposed changes).

**Note of Dissent by Sriman M. G. Patnaik, M.L.A.**

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1. The provision made in the Bill in regard to right to trees is clearly expropriatory inasmuch as it does not protect existing rights. The Select Committee agreed by a majority to reserve existing rights in trees but the several amendments calculated to preserve such rights were turned down and clause 5 as it stood in the original Bill was adopted.

2. (a) In clause 7 compulsory registration is provided for contrary to the provisions of the Indian Transfer of Property Act and the Registration Act. The provision would cause undue hardship in regard to transactions relating to property of small value and the abolition of mutation fee in such cases would practically confer no benefit.

Moreover in Khasmahal areas the provision would throw additional burden as no mutation fee is leviable in such areas under the existing law.

(b) The provision requiring the statement in the instrument of transfer as to the rent of each holding or a portion or share thereof as a condition precedent to the instrument being accepted for registration is unnecessary, useless and might cause hardship in some cases.

Where the entire holding is transferred and that to the landlord such a statement is unnecessary.

Where a portion or a share of the holding is transferred and only the rent on the entire holding is stated to satisfy the requirement of the law the statement is useless.

It might cause hardship in cases where the transferor and the transferee do not know the rent payable and to satisfy the requirement of the law make a random statement.

All that is intended is that in order to effect an apportionment of rent on the land retained and on that transferred the information has to be given. In such a case subdivision of the holding may also be necessary so the information by itself is of no use. So it must be left to the option of people who want apportionment of rent and separate registry not only to state what the proportionate rent is but also to furnish evidence as to subdivision of the holding.

Clause 8 provides that the transferee will be registered as a joint tenant unless the holding is subdivided by metes and bounds. So the requirement in clause 7 (2) is useless.

3. With regard to involuntary transfers and bequests the provision made is likely to create confusion as an order or decree passed by one court may be set aside on appeal or revision or review. In such a case there is no provision for intimation being given to the landlord that the original order or decree on the basis of which notice was issued is cancelled. All this confusion can be avoided by leaving the parties jointly or severally to apply to the landlord and an officer authorised to hear such applications when the order or decree of the court becomes final. The ex parte proceedings contemplated in regard to involuntary transfers or bequests are not satisfactory for the reasons above stated.

4. The limitation of six months in clause 8 (2) for applying to the Collector will cause great hardship. There should be no limitation in a matter like this. There is no reason why either the landlord or raiyat should suffer forever because he was negligent for a period of six months. There is absolutely no reason why they should have no opportunity subsequently to take steps to rectify a mistake or to seek redress of a grievance.

5. No provision is made for registry of subdivisions of holdings on partition effected voluntarily or involuntarily; such provision ought to be made.

6. The repeal of original section 85 is a retrograde step. Backwardness of raiyats is the reason why it was not availed of formerly. If they are as backward as before the present remedy too will be of no use and will only help to embitter the feelings between landlords and raiyats.

7. I dissent therefore from the report of the Select Committee in regard to the matters stated above.



**Joint Note of Dissent by Raja Krishna Chandra Mansingh  
Harichandan Mardaraj Bhramarbar Rai, M.L.A., and  
Maulavi Muhammad Latifur Rahman, M.L.A.**

The Bill as has been amended cannot have our whole-hearted support. Looking to the history of Orissa with reference to the Revenue Laws we are convinced that lands should be transferable with great reservation.

Before 1897 occupancy holding was no transferable. Produce was the credit and not the land. Under such circumstances the peasantry and the real tillers of the soil were safe and could be preserved because the advantages were, creditors, outsiders and non-bona fide agriculturists were not able to exploit the real tillers of the soil. This state of affairs received set back by subsequent legislation which enacted a provision that occupancy rights could not be transferred without the landlords' consent in temporarily-settled estates and in the permanently-settled estates the matter was left to local custom and usage.

The landlords' consent was meant to be a warn to tenant class, the purpose being to preserve the actual tillers of the soil. But after the Revisional Settlement the landlords misused the power granted to them to protect the tenantry and considered the privilege as a great source of lucrative business. The permanently-settled estates also caught contagion. This was the origin of the present unhappy state of affairs for the peasantry.

In our view the principle of non-transferability should be adopted. We shall now deal with the comparative advantages and disadvantages from this course. The peasantry would be saved from exploitation from the landlords creditors and non-bona fide agriculturists.

As an instance we quote the following statistics of sale of lands from the Settlement Report, Orissa :--

*For the years 1913 to 1925.*

			Acres.
Puri	...	...	33-890
Cuttack	...	...	71-331
Balasore	...	...	89-637
			<hr/>
	Total	...	144-858
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Just imagine what amount of mutation fees must have been given to the landlords, what amount of registration fees must have been paid to the Government, what amount must have been given

to the legal profession and what miscellaneous expenses made in the shape of fooding and conveyances, etc. All these amounts must have come from the pocket of the peasantry. Human nature is so weak that when there are opportunities, it takes advantage of it and works out his own ruin. So the best course to save the peasantry is to restrict his hand so that he may not do away with his land. If you do not do that and on the other hand if you do not put restriction, the effect will be, your peasantry will be exploited, a sort of serfs have already been created and will be created, the real peasantry will be totally extinct. In an agricultural country like this, restraint is necessary because on the one hand, tenants will learn to live economically, in view of the fact the modern civilization has opened out avenues of expenditure. The idea that his property will fetch value encourages a tenant to live lavishly and spend lavishly not being able to check temptation to fall a prey to spend-thrift habits. As soon as the idea comes that he has no power to do away with his properties, he will have to live economically and try to improve his income by improved methods of agriculture. Notwithstanding if he falls in want, he will have the credit of his produce to repay his creditor till his loan is paid up. He will try his utmost to maintain himself by taking to some other profession during the period his property is temporarily in the hands of the creditor, on the other hand the moneyed class shall have no lust for the properties and will better utilise his money in business or industry which ever pays him. In both the cases, incentive to better utilise his properties or money will be created. There will be less litigation regarding lands.

Hence I am of opinion that this Bill will not serve the purpose to save the peasantry.

As for the Bill itself I will do better by quoting the opinion of the persons in authority whose opinion should count:—

- (a) Revenue Commissioner's view.
- (b) Extracts from the High Court Registrar's opinion.
- (c) Extracts from District Judge's opinion.

The effect of the Bill will be a class war between the landlords and the tenants. The small landlords who are heavily indebted will suffer most. Out of spirit of revenge the tenants shall be harassed by constant rent suits, the landlords will dispense with their establishment as a measure of economy and sit at their headquarters. If the tenants do not pay rent out of their own accord, they will start rent suits.

From a study of the Bill we are of opinion that the Bill is expropriatory. The legislation is piecemeal. The Bill amends

the Orissa Tenancy Act, 1913, but it does not amend Act II of 1929 (The Orissa Tenancy Amendment Act, 1929). There could have been no harm, if a comprehensive amendment of the Tenancy Law would have undertaken to satisfy the electorate. Tenancy legislation should be in the nature of equitable adjustment of rights and liabilities of the landlords and the tenants. The one of the effects of the right of free transfer will be the creation of very small holdings. It will also affect the realisation of rent. The tenants owning small holdings will have to pay much in the shape of costs in case of rent suits.

One of the effects of section 5 of the Bill would be this. Suppose a landlord has got a decree and the tenant is unable to pay rent and his holding contains valuable trees, he will cut down and dispose of the trees and vacate the holding in a barren state. Can he be said not to have impaired the value of the holding?

The addition of the last paragraph in section 8 of the Bill is highly objectionable inasmuch as the landlord for the period before the new law is entitled to demand of ejection in equity has been taken away. I do not understand the logic of it. It does not benefit the vendor because he had already parted with his lands. It will benefit the creditor purchaser who was well able to pay mutation fees. If he had not paid the fees he should suffer the consequence. The landlord who is going to lose his fees should not have been restricted to make use of his right which is legally his.

This Bill is a first step of attack on the propertied class which is the aim of the Socialist group of the Congress.

Under the above circumstances we submit our note of dissent to the Bill.

(a) *Extracts from the Opinion of the Revenue Commissioner.*


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1. The time allowed for examination of a measure so far reaching in importance is too short. I have spent many hours in studying the Bill and in discussing it with experienced revenue officers. The result of this examination and these discussions has been to make more clear than before the fact that the amendments contemplated in this Bill have implications and repercussions far beyond the limit of their immediate purpose. It is difficult to believe that all these implications and repercussions have been foreseen by those who are promoting the Bill. It seems to me to be my duty as the chief controlling revenue authority in the province to express to Government my earnest conviction that it is highly dangerous to attempt to amend the Tenancy Law, which affects directly 90 per cent of the population, without giving adequate time to those who have had experience of revenue systems and to the general public to consider and give their opinion upon the measure. It will affect every landlord though in the case of the big landlords of permanently-settled estates it will probably cause them no greater loss than they are well able to bear. The persons who will be very seriously affected are the thousands of small landlords and in their case the loss may be disastrous.

2. *Rights in trees.*—The amendment to section 27 and the addition of section 27-A give the tenant a complete right in trees whether planted by himself or already standing on his holding. He can plant the trees, enjoy the fruit of them, fell them and dispose of them and in so doing he is entitled to impair the value of his holding as agricultural land.

3. The first objection to this measure is that we have no complete information at present about the customary rights in trees. It is probable that over a large part of the coastal districts trees are neither very valuable nor important, though the case is different in Puri where the cocoanut trees are of special value and by custom generally belong to the landlord especially where they grow in homestead lands. Small landlords will be very seriously affected and certain baziaftidars and tankibahaldars may be ruined by the transfer of the rights in cocoanut trees from them to their tenants. The rights of Government in the Khurda Government estate will also be seriously affected; in that estate the tenant has a right in trees but by custom if he cuts down one he plants another in its place. It is possible that the wanton cutting of trees will be encouraged by this measure and in any case before this provision is added to the law there should be a careful inquiry as to its probable results in practice. There may have been cases where a landlord

has parted with his right in trees to third parties. The Settlement Department unfortunately did not anticipate this change in the law and did not make as complete a record of all the rights in trees as they would have made if they had foreseen these proposals.

4. A further point is that we are giving the tenant the right to plant and cut trees even though it may impair the value of his holding. Bengal has not done this. In the Bengal Act the right to plant and cut trees is subject to the provisions of section 23 of that Act. Practically it seems improbable that the planting of trees will impair the value of a holding but from a technical stand point this provision of the law is a new departure and it may be held to affect the character of the Permanent Settlement. This and other provisions of the Bill will also make a radical change in the conditions under which the temporarily-settled landlord entered into his engagement for the revenue. The enactment of this law may possibly put the landlord in a position to repudiate his engagement with Government. I cannot discuss this point as it may come before me judicially; I can merely suggest that it is a point to be considered.

5. It would appear that this provision about trees applies equally to cash-rented and produce-rented holdings. It is difficult to see how it will work in the latter case. If a holding consists of one acre of arable land and one acre of mango garden of which the raiyat gives half of the produce to his landlord, is the raiyat to be exempted in future from payment of rent for the mango garden? If the raiyat converts the one acre of arable land into mango garden, does the landlord receive no rent at all?

6. I see no strong objection to the disappearance of the transfer fee except that in case of the smaller landlords it will make a considerable difference to their income and as mentioned above in these changed conditions there is certainly some doubt whether the engagements for the revenue will still be binding. Mutation fees were not included in the calculation of assets for purpose of revenue, but they formed part of the lawful income from land when the percentage which Government ought to take as revenue was fixed. The mutation fee is to a great extent a new importation. It no doubt existed in some estates in Orissa, where a big transfer fee was taken, but in others the fee was small while in some estates lands were freely transferred. The intention of section 31 was to put a maximum limit on transfer fees where they existed but its practical result has been to raise fees generally up to the very high limit imposed and to lead to the introduction of a transfer fee in places where it did not previously exist. To the proposal to abolish it entirely no reasonable exception can be taken beyond the one already suggested. The strong objection to

this new proposal is that it takes away from the landlord all right to object to a transfer and to choose his own tenant. Such a state of affairs has never before existed in Orissa and it is extremely rash to remove all restrictions on transfer without a full and careful study of the possible results. This investigation will be long and difficult and we can only apply the experience of what has happened elsewhere. A probable result is the concentration of land in the hands of the larger raiyats and money-lenders and a large increase in the population of landless labourers. An equally probable result is that the poorer class of cultivator will make over his land to a richer neighbour for less than its market value on condition that he may continue to cultivate on a produce rent, and a class of serfs will come into existence. Concurrently the parasitic class of rent receiver will be growing and the yeoman class will disappear. The Statement of Objects and Reasons refers to free transfer in the ex-Madras area and assumes that it is beneficial there and therefore will be beneficial in North Orissa. This argument needs demonstration. It would have to be shown that conditions are the same in the two areas and that free transfer has in fact been beneficial in the ex-Madras areas. It has been suggested that with the right of free transfer the value of land will increase. This is true only to the extent that the portion of the purchase price that formerly went to the landlord will now be retained by the vendor. The price of land is not subject to the laws which regulate the price of ordinary articles of commerce. A man does not sell his land until he is forced to do so. The price entered in the kawala may be greater now that no transfer fee is charged on it but it does not follow that the transferor will necessarily get more for his land. He will be at the same disadvantage as in the past and, whatever price may appear in the kawala it is usually the case that lands are transferred in satisfaction of existing debt and the money entered in the kawala, whatever the amount may be, is fictitious. To deprive a landlord of his right to object to a tenant is to deprive him of a very large part of his proprietary rights and to reduce him to the position of a mere assignee of the rent received from his estate.

7. In consequence of the amendment to section 30, sections 95 and 96 of the Act are to be omitted according to clauses 15 and 16 of the Bill. The result of this amendment will be that the restrictions imposed on subletting and mortgages with possession will be completely removed.

Regarding mortgages there is little to be said. A mortgage is a transfer just short of a final sale and it is correct to treat it as a sale. But subletting stands on a different footing. By the removal of restrictions, the practice of subletting will rapidly increase, and richer raiyats and money-lenders who will purchase lands will sublet them in most cases to the transferors, and as subletting become

more common, the permanent registered sub-lease may become the usual form. We have to face the possibility that one result of this Bill will be the growth of the permanent under-raiyat. If so, it will be necessary to legislate for them, they also will want the right of transfer and a right to apply for commutation. It may be argued that we need not look so far ahead at present. But at least we should consider the right of the permanent under-raiyat as sale of the raiyat's interest. The private purchaser must look out for himself; he has no redress. If there are under-raiyats he must recognize them. In the case of a sale for arrears of rent, where the defaulter is an occupancy raiyat, any sub-lease created by him will be voidable. The sub-lease is neither a "protected interest" if made without the consent of the landlord, nor apparently can it be registered and notified as an encumbrance. If it is intended to give an unrestricted right of sub-leasing to occupancy raiyats, it will be necessary to overhaul the law relating to under-raiyats, not only as regards their position when the superior interest is sold for arrears of rent, but also when the holding is surrendered or abandoned by the occupancy raiyat. Consequential amendments, for instance, appear to be needed at once in sections 97(6) and 98(4). Here again, there has not been time to go fully into the matter, it can only be said that the points require attention.

8. The detailed provisions of the Bill seem to have been designed as far as possible to prevent personal contact between the landlord and tenant. Whether this is desirable in the country where the landlords for the most part are villagers living among the people themselves, remains to be seen.

9. One of the more important features of these new provisions of the law is their interaction with the process for the recovery of rent. This does not appear to have been considered at all but it seems to me that the first effect of this free transfer with nothing but a notice to the landlord will be to make the recovery of rent so difficult as to jeopardise the realization of the revenue. There may be arrears of rent due on the holding at the moment when the holding or a part of it is transferred and these arrears may be due for a period before the date of the transfer. If there is a rent decree in existence the holding will be saleable under that decree and the sale will avoid the rights of the transferee whether he be a purchaser, mortgagee or merely a lessee. In the case where there is no decree but a rent suit is pending the position is more difficult. The transferor is liable for the rent up to the date of the transfer and the landlord can obtain a decree for it and sell up the holding thus affecting the transferee. Legal advice however is necessary as to whether the transferee will have to be made a party to the suit. If this is necessary there will be great practical difficulties and as regards this it is only necessary to point out that there are something like eight, thousand rent suits a year in the

coastal districts of Orissa. Equally difficult is the position if there is no pending rent suit but arrears are actually due. Under the existing system such difficulties never arose as the landlord could reasonably withhold his assent to the transfer until the arrears were paid. Under the provisions of the Bill he cannot do this. It would be most unjust as well as impolitic to impose greater difficulties in this respect upon the small landlord than those which he has to face at present. It is possible that the sections dealing with judicial procedure may have largely to be recast as a result of the free right of transfer and subletting. The time has not been sufficient to examine this thing in detail. It has merely occurred to me while considering the provisions of the Bill and is just an instance of the many points which would have probably emerged if this measure had been adequately considered and examined before being introduced.

10. Doubtless there is much to be said for the proposals contained in the Bill. It may even be that their advantages will outweigh their disadvantages. The point which I wish to establish is that the proposals have not been sufficiently considered either in their wider aspects or in their immediate relation to the existing law and revenue practice. The Bill is a leap in the dark, and where the welfare of so many is affected, more circumspection is required.



*(b) Extracts from the Registrar's note.*

"Section 7 of the Bill entirely recasts section 31 of the Act. It appears that the position that will be created by the present amendment will be as follows: Under sections 12 to 16 of the existing Act, tenure holders have the right to transfer their tenures subject to the payment of a fee to the landlord. This fee varies in different cases. Generally, if the transfer is made by sale, gift or exchange, then 25 per cent of the consideration money or six times the annual rental of the tenure or portion thereof is to be paid to the landlord as landlord's fee. Similarly, under section 21 of the existing Act a raiyat holding at a fixed rate can also transfer his holding, subject to the payment of landlord's fee. These sections of the existing Act are not sought to be amended. Section 31 of the existing Act which relates to the transfer of occupancy holdings by private sale and which also imposes payment of a landlord's fee equal to 25 per cent of the consideration money or six times of the annual rental of the holdings or portion thereof, whichever is greater, is now sought to be entirely recast. Section 7 of the Bill shows section 31 as proposed to be amended. Under this amended section the occupancy raiyat has to pay no landlord's fee for transfer. He has merely to pay a process fee for service of notice on the landlord intimating the fact of the transfer. The position, therefore, comes to this: tenure-holders, bajiaftidars and raiyats holding at fixed rates cannot effect any transfer without paying landlord's fees, whereas occupancy raiyats need not pay any fee to the landlord for effecting a transfer. This seems to me to be anomalous. As a matter of fact, under the existing Act, the right of tenure-holders, bajiaftidars and raiyats holding at fixed rates is superior to that of occupancy raiyats. The amendment seeks to reverse the position. If the principle be to allow unrestricted transfers without payment of any fees to the landlord, then that principle should be applied to all classes. What reason can there be for distinguishing between raiyats holding at fixed rates and occupancy raiyats in this matter?

There is another point in connection with this matter. Under the proposed section 31 of the Act (section 7 of the Bill) a notice is to be given to the landlords when transfers are effected by court sales. The difficulties of serving notices in cases where there are many co-sharer landlords or where there are minor landlords without a certificated guardian were emphasised in connection with the Bihar Tenancy Amendment Acts of 1934 and 1935. The same difficulties will arise in connection with proposed section 31. Then, there will be another difficulty. Under section 5 of proposed section 31, the purchaser is to deposit the process fee and to file a notice giving particulars of the transfer in the prescribed form. It appears that the sale will not be confirmed before such deposit is

made and before such notice is filed. If, however, the purchaser for any reason does not choose to make the deposit or file the notice, what will be the position then with regard to the sale? Will the sale be set aside or will it remain unconfirmed till the deposit is made? Similar difficulty with regard to the Bihar Tenancy Amendment Act of 1935 was brought to the notice of the Government of Bihar and Orissa. I think the proposed section ought to contain some provision for setting aside the sale, if the purchaser does not make the deposit and file the notice within a reasonable period of time. Otherwise, the position with regard to the sale will remain uncertain. It will neither be confirmed nor set aside. There will be similar difficulty with regard to clause (6) of proposed section 31. The final decree for foreclosure may be held up indefinitely if the deposit is not made.

(c) *Extracts from the Opinion of the District Judge, Cuttack.*

*Sections 6, 7 and 8 of the Bill.*—These amendments propose to make all rights of occupancy, both heritable and transferable, and to abolish the payment of registration fee.

Occupancy raiyats will, not doubt, be greatly benefited by these amendments and the value of their holdings will increase appreciably, but there is another aspect of the question which should not be overlooked. One of the reasons behind the numerous restraints put upon free transfers of occupancy rights by raiyats was to prevent money-lenders and other persons who are not bona fide agriculturists from grabbing the lands of genuine cultivators. This protection will be completely lost to them by the proposed amendment.

The abolition of the fee payable for registration of transfers will also affect seriously the already precarious position of zamindars and tenure-holders. I am therefore not in favour of total abolition of the registration fee although I do consider it necessary to reduce the present prescribed rate which is evidently high and bring it down to five per cent of the consideration money.

The most objectionable portion of the proposed amendment is that it would make even part transfers of occupancy holdings binding on the landlord. This will have the effect of creating innumerable small holdings and will considerably increase the cost of collection either by suit or otherwise. If it be considered desirable to make even part transfers valid and binding upon the landlord, the transferees should, in my opinion, be made "Join Tenants" irrespective of the question as to whether the portion transferred has been described by "metes and bounds" or not.

L. A. Bill no. of 1937.

(As amended by the Select Committee).

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

AN ACT TO AMEND THE ORISSA  
TENANCY ACT.

Preamble.

**W**HEREAS it is expedient to amend the Orissa Tenancy Act, 1913, in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Orissa Tenancy (Amendment) Act, [1937.] 1938.

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

Amendment of section 6, Bihar and Orissa Act II of 1918.

2. In clause (ii) of section 6 of the Orissa Tenancy Act, 1913 (hereinafter referred to as the said Act), for the words and figures "a tenure-holder for the purposes of sections 14 to 20 and 99, and a raiyat for the purposes of all other sections of this Act" the words "a raiyat for the purposes of this Act" shall be substituted.

Amendment of sections 19 and 20, Bihar and Orissa Act II of 1918.

3. In sections 19 and 20 of the said Act the figures, word and letter " (31 or 31-A.) " shall be omitted, and before the figure " 16 " the word " or " shall be inserted.

Amendment of section 27, Bihar and Orissa Act II of 1918.

4. In section 27 of the said Act, the words "but sha'll not be entitled to cut down trees in contravention of any local custom" shall be omitted.

Insertion of section  
27-A in Bihar and  
Orissa Act II of  
1918.

5. After section 27 of the said Act the following section shall be inserted:—

“27-A. Notwithstanding anything contained in section 27 when a raiyat has a right of occupancy in respect of any land, he shall be entitled—

“ (i) to plant,

“ (ii) to enjoy the flowers, fruits and other products of,

“ (iii) to fell and

“ (iv) to utilise or dispose of the timber of

any tree on such land and any such act shall not render him liable to ejection under section 29 of this Act.

Insertion of section  
30 A in Bihar and  
Orissa Act II of  
1918.

6. *[For the first paragraph of section 30 of the said Act the following shall be substituted, namely:—*

*“ All rights of occupancy shall be heritable and shall be transferable by sale, gift or otherwise, subject to the provisions in sections 97, 99 and 220.” ]*

After section 30 of the said Act the following new section shall be inserted, namely:—

“30-A. (1) The occupancy holding of a raiyat, or a portion or share thereof shall be transferable by sale, exchange, gift or bequest, without the landlord’s consent and without payment of any fee to him. Such transfer shall carry with it the occupancy right in the holding and all the rights appurtenant thereto.

“(2) An occupancy raiyat may sub-let or mortgage his holding or a portion or share thereof without his landlord’s consent.”

Substitution of  
new section for  
section 31, Bihar  
and Orissa Act II  
of 1913.

7. For section 31 of the said Act the following shall be substituted, namely:—

“31. (1) Every transfer of an occupancy holding or a portion or share thereof <sup>Manner of transfer and notice to landlord.</sup> whether by sale, exchange or gift shall be made by registered instrument except in the case of [*a bequest or*] a sale in execution of a decree or of a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914.

“(2) A registering officer shall not accept for registration any such instrument unless the rent of each holding or a portion or share thereof, is stated separately in the instrument and unless it is accompanied by a notice signed by the transferor and the transferee giving particulars of the transfer in the prescribed form and the [*process*] fee prescribed for the service of such notice on the landlord [*or his common agent, if any.*]

“(3) When any such instrument is admitted to registration, the registering officer shall [*cause the notice*] transmit the notice to the Collector who shall cause it to be served on the landlord named in the notice [*or his common agent, if any,*] in the prescribed manner :

“Provided [*also*] that when a sole landlord purchases a holding or a portion or share thereof no notice need be served.

“(4) In the case of a transfer of an occupancy holding or a portion or share thereof by bequest, the court shall before granting probate or letters of administration, require the applicant to file a notice giving particulars of the transfer in the prescribed form accompanied with the prescribed [*process*] fee for the service of

the notice on the landlord [*or his common agent, if any*] When probate or letters of administration have been granted, the court shall [*cause the notice*] transfer the notice to the Collector who shall cause it to be served on the landlord named in the notice [*or his common agent, if any,*] in the prescribed manner.

“(5) When the holding of an occupancy raiyat or a portion or share thereof is sold in execution of a decree or of a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914, other than a decree or certificate for arrears of rent due in respect of the holding or dues recoverable as such, and neither the purchaser nor the decreeholder is the sole landlord, the court or the revenue officer, as the case may be, shall, before confirming the sale, require the purchaser to file a notice giving particulars of the transfer in the prescribed form and to deposit a [*process*] fee of the prescribed amount for the service of it. When the sale has been confirmed, the court or the revenue officer shall [*cause the notice*] transmit the notice to the Collector who shall cause it to be served on the landlord [*or his common agent, if any*] in the prescribed manner.

“(6) When a mortgage of a holding of an occupancy raiyat or of a portion or share thereof is foreclosed and the decreeholder is not himself the sole landlord, the court shall, before making a decree or order absolute for the foreclosure, require the mortgagee to file a notice giving particulars of the transfer in the prescribed form and to deposit [*process*] fee of the prescribed amount for the service of it. When the decree or order for foreclosure has been made absolute,

the court shall [*cause the notice*] transmit the notice to the Collector who shall cause it to be served on the landlord [or his common agent, if any,] in the prescribed manner.

[“(7) *Where owing to the number of co-sharer landlords and to a bona fide doubt as to who constitute the entire body of the landlords the notice cannot conveniently be served on all, the said notice shall be published in any manner prescribed.*

“(8) *The provisions in this section in so far as they relate to the service of the notice on the landlord shall apply to all transfers of holdings, portions or shares thereof, in which the right of occupancy passes completely but do not apply to such transfers as liens, mortgages, leases created by the occupancy raiyat in limitation of his right.*]

“[(9)] (8) Nothing in this section shall bar any suit in a civil court for establishing or setting aside a transfer.”

Substitution of new sections for section 31-A, Bihar and Orissa Act II of 1913.

8. For section 31-A. of the said Act the following new sections shall be substituted, namely :—

“ [Section] 31-A.—(1) In the case of a <sup>Distribution of rent on transfer</sup> transfer of a portion [*a share or*] or share of <sup>[sale] of portion of occupancy holding.</sup> an occupancy holding, by sale, exchange, gift or bequest which is not defined by metes and bounds, the [*persons possessing interest in*] the transferee and the persons possessing interest in the remainder of the holding shall be considered as joint tenants by the landlord.

“(2) In case the transfer is by sale, exchange, gift or bequest and is of a portion of an occupancy holding and the portion is defined by metes and bounds,



the landlord shall be deemed to agree to the division of land and the distribution of rent as set forth in the notice referred to in section 31 unless, within six months of the date of service of notice, an application is filed by him to the Collector for a just and equitable distribution of rent. The Collector shall, on such application [*being made*] by the landlord [*and on application being made*] or by any other person [*concerned within six months of the date of transfer,*] within such period, hold an enquiry in the prescribed manner and order a distribution of rent which is fair and equitable.

“31-B.—Notwithstanding anything contained in this Act, any transferee, who obtained transfer of an occupancy holding or a portion or share thereof, before the commencement of the Orissa Tenancy (Amendment) Act, 1938, shall be liable to pay the fees lawfully payable by him at the time of the transfer, within three years from the coming into force of that Act but he shall not be liable to ejection on the ground that the landlord had not given his consent to the transfer and the holding shall not be liable to be sold in execution of a decree for arrears of rent to which the said transferee is not made a party.”

Amendment of section 70, Bihar and Orissa Act II of 1918.

9. In sub-section (3) of section 70 of the said Act, the figures, word and letter “[31 or 31-A]” shall be omitted and before the figure “16” the word “or” shall be inserted.

Amendment of section 76, Bihar and Orissa Act II of 1918.

10. In section 76 of the said Act, [*for the words “money rent” the word “rent” and*] for the words “twelve and a half” the word “six” shall be substituted.

Substitution of a new section for section 83, Bihar and Orissa Act II of 1918.

11. [*Section 83 of the said Act shall be omitted*]. For section 83 of the said Act the following shall be substituted, namely:—

“83. When an occupancy holding or a portion or share thereof is transferred and arrears of rent have accrued thereon prior to the date of the transfer, the transferor and the transferee shall be jointly and severally liable to the landlord for such arrears of rent which shall be a first charge on the holding.”

Substitution of new section for section 84, Bihar and Orissa Act II of 1918.

12. For section 84, of the said Act the following shall be substituted, namely:—

“84. All impositions upon a tenant, in addition to or in excess of the rent lawfully payable shall be illegal and all stipulations and reservations for the payment thereof shall be void. <sup>Illegal exactions.</sup>

[“*Explanation: Any levy of local cess from a tenant—*

“(a) *in excess of the net amount prescribed by clause (2) of section 41 of the Cess Act, 1880; or*

“(b) *on any scale in excess of that prescribed by clause (3) of that section;*

*shall be deemed to be an imposition in excess of his rent.”]*

[Amendment of section 85, Bihar and Orissa Act II of 1913.]

[13. In section 85 of the said Act, after the words “in excess of the rent”, the words “local cess” shall be inserted.]

Substitution of a new section for section 85, Bihar and Orissa Act II of 1913.

[14. After] 13. For section 85 of the said Act, the following section shall be [inserted] substituted, namely:—

“85 [A.] (1) If any landlord or his agent exacts [or attempts to exact] from a tenant anything in money or kind in <sup>Summary proceedings by Collector to deal with illegal exactions.</sup>

addition to or in excess of the rent [*or local cess*] or interest lawfully payable, the Collector of the district or any Deputy Collector who may be specially empowered by the Provincial Government in this behalf may, in summary proceedings, if he is so satisfied, by order impose on the landlord or on his agent or on both, [*as penalty such sum*] as the case may be, such penalty as such officer thinks fit, not exceeding five hundred rupees, or when double the amount or value of what is so exacted [*or attempted to be exacted*], exceeds five hundred rupees, not exceeding double that amount or value.

“ Such officer may proceed against the landlord and his agent in the same proceeding or in separate proceedings, and shall award to the tenant, by way of compensation and cost, such portion of the penalty as he thinks fit.

“ (2) If in any suit, application or proceeding under this Act or any other law, the court or presiding officer has grounds for believing that any landlord is liable to a penalty under this section, such court or officer shall inform the Collector.

“ (3) A proceeding under sub-section (1) [*may*] shall be instituted—

“ (a) [*at any time*] upon complaint made by a tenant [*or on his behalf*] within six months from the date of the exaction, [*or of the attempt to exact, as the case may be;*] or

(b) within three months of the receipt by the Collector of information under sub-section (2) or of the termination of any suit, application or proceedings under this Act or any other law, in the course of which the Collector

has grounds for believing that the landlord is liable to a penalty under this section ;

(c) *in any other case within one year of the exaction or of the attempt to exact in respect of which the landlord is liable to a penalty under this section.]*

“(4) If in any proceeding instituted under [section 85 or] this section, the Collector discharges any landlord or his agent, and is satisfied that the complaint or allegation of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion by his order of discharge, direct the tenant to pay to the landlord such compensation not exceeding one hundred rupees as the Collector may think fit.

“Any [*fine*] penalty imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.”

[15.] 14. Section 95 of the said Act shall be omitted.

[16.] 15. Section 96 of the said Act shall be omitted:

[17.] 16. In clause [(h)] (b) of subsection (3) of section 232 of the said Act for the word [“*money rent*” the word “*rent*”] and figure “section 27” the words and figures “sections 27 and 27-A.” shall be substituted.

[18.] 17. Illustration (2) in section 237 of the said Act shall be omitted, and illustration (3) shall be re-numbered as “(2)”.

[19.] 18. In clause (e) of section 250 of the said Act, the figures, word and letter “31 and 31-A.” shall be omitted and before the figure “16” the word “or” shall be inserted.

Repeal of section 95, Bihar and Orissa Act II of 1918.

Repeal of section 96, Bihar and Orissa Act II of 1918.

Amendment of section 232, Bihar and Orissa Act II of 1918.

Amendment of section 237, Bihar and Orissa Act II of 1918.

Amendment of clause (e) of section 250, Bihar and Orissa Act II of 1918.