

## **Lands Act and Tenancy Rights**

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### **Situation before 2021 B.S.**

In Nepal, there were Birta land, Kipat, Trust, Ukhada and Raikar land before the implementation of Lands Act, 2021 BS. In that period, different laws and rules and different system were applied in different land. Similarly, there was no uniformity in the area measurement. The system varied from one place to other, such as: Hale, Kodale, Pate, Beu, Mato Muri, Ropani were used in hilly area and Bigha in Terai area. There was no fixed Governmental authority to maintain the land records like today. The records used to be with Thari, Dware, Mukhiya, Kipatiya and that of Brita with Birtawar in hilly area. A type of unclear record used to be with Jimdar Patwari in Terai. Towards the land revenue collection, they used to collect in their own area and submit in Revenue Office. It is used to name Thum in hills and maoja Tappa etc in Terai. They possessed the rights to give permission to cultivate the land which is barren land, to cancel the land registration etc. in their corresponding territory. They also played a role of mediator to obtain Beth Begar which was necessary to the country from the public. At that time, the tenant farmers who used to plough the field of the land owners were insecure. The owner used to collect maximum quantity of production from their corresponding tenant. On the contrary, these farmers had to pay lots of Beth Begar. Most of the ownerships of the land were limited to a certain individuals such as Birtawar, Guthiyar, Jamindar, Patwar, Thari etc. These individuals used to exploit the poor people. Even the land owned by these poor people also seized by them after giving them a loan with higher interest rate and in compound interest. So in those days, one could find the higher rate of trend of accumulating the land by these high class people. No capitalist seemed to divert towards the industrialization in the country. Although, ninety percent of the people depended upon the agriculture, there was no indication of production increment.

Although the agricultural sector could not get the priority before the political movement of 2007 B.S, we could feel the realization made by the government formed after 2007 B.S. towards the requirement of land reform, as it was experienced that the possibility of economic development could not be achieved without reforming the agricultural sector with aiming the economic development. Though it is aware that capital and labour should be obtained from the agricultural sector for economic development, timely land reform programme could not launched due to various reasons till 2021 B.S.

The major steps taken to fulfil the promise of the land reform before 2021 BS are as follows:

1. On 2008 BS, we could find that a land commission was deputed with the objective to stop the disputes between the owners and tenant farmers in Kailali, Kanchanpur, Butwal, Khajahani, Syuraj and Surkhet. The commission recommended a few measures towards the security of the tenants but it could not be implemented.

2. On 2009 BS, in the royal declaration of His Majesty the King Tribhuwan and interim constitution, it was mentioned to terminate the Samanti Pratha and to eradicate the Birta Pratha of agricultural sector.

3. On 2009 BS, a 14 member Royal Land Reform Commission was constituted under the chairmanship of Mr Naradmuni Thulung. This commission recommended the fruitful suggestions concerning land limits, tenancy, agriculture loan. Etc, however it could not be implemented as well.

4. On 2009 BS, an Act was published by Ministry of Food and Land Revenue with the objective to secure tenants of the valley. But this could not be effectively implemented due to lack of proper statistics and necessary implementing mechanism.

5. On Bhadra 17, 2012 BS, thirteen point declaration was made to resolve the problems faced by the farmers. But due to the lack of legislation it could not function.

6. On 2013 BS, an Act 2013 was passed to establish records of land and land tenants. We could find the realization made for utmost importance of the records of the tenants.

7. On 2014 BS, a land Act was published in which the following provision was made:

- a. The farmers should not pay more than half of the production.
- b. The tenants should not be expelled.
- c. Termination of Beth Begar.
- d. Collection of interest should not exceed 10%.

etc

But due to the lack of administration mechanism, this act could not apply effectively.

8. On 2016 BS, Birta Eradication Act was passed and the Birta lands were divided into ka and kha class and it was attempted to levy government tax as equivalent to Raikar.

9. On 2017 BS, Royal Land Reform Commission under the chairmanship of Mr Tanka P Acharya was constituted in order to present a report on the steps to be taken for land problems.

In this way, special attention was paid for land reform programme in the period of 2007-2017, however, no solid achievement was made towards the upliftment of the life standard of the farmer by eliminating unequalization. The reasons for the failure could be the following:

- a. Lack of Survey and lack of records and related data of land.
- b. Lack of political commitments.
- c. Lack of Human Resources mobilization and their direct involvement.

On the basis of the report presented by the Land Reform Commission constituted under the chairmanship of Mr Tanka Prasad Acharya, and Act 2019 for agricultural management was published to implement the Land Reform Programme in commercial way.

In order to implement Land Reform based on this Act, it was applied on trial basis in three regions Jhapa as Terai, Palpa as hilly area and Chitwan as Inner Terai to represent the various geographical regions of the country. On the basis of this experience it was implemented in all the 75 districts within 3 years of period after the publication of Land Reform Act 2021 in order to establish exploitation free society on the basis of racial co-ordination after elimination of Samantha system which was applying traditionally.

The basic objectives of Land Reform Act 2021 B.S. are identified as follows:

- a. To provide immense speed for development activities by terminating the slackness in the economic development of the country.
- b. To mobilize the capital in other sectors of economic management which was lying ineffectively in land and by removing the load of the population.
- c. To distribute the land in unbiased way by avoiding the holding of arable land with single landowner.
- d. To reform the life standard of real farmers by providing knowledge, skill and equipment for the agriculture aspects in easy access.
- e. To encourage to increase agricultural products and to terminate the traditional system of land.

The lands Act 2021 has basically the following management to establish an exploitation free society to increase economic standards of real farmers by increasing the production in relation to land management.

- a. To ascertain the land limits and to sell and distribute the land beyond the limit to tenants and landless people after acquiring it.
- b. To secure the tenancy and fixation of the rent.
- c. Loan fixation.
- d. Compulsory savings.

## 1. **Limits and Sale.**

It was observed from the above information that the programme which was attempted to imply the land reform, failed due to lack of survey and land related statistics. So, due to unavailability of records of amount of land held by the landowners in governmental organisation, the arrangement was made to obtain such records and to apply the limits in the land exceeding the limit in Land Reform Act 2021, clause 7 subclause 1. According to this clause, an individual or his family could hold the land not exceeding 25 bighas in the following region and the following limit as a landholder. An arrangement was made to obtain record No 7 in which the information exceeding limit to be submitted in related Land Reform Office and that of lower limit in related Village Development Committee/Municipality. The land ceiling of Land Act 2021 was amended in 2058. According to the new amendment the limits are as follows:

- a. 10 Bighas in all Terai including Inner Terai.
- b. 25 Ropanis in Kathmandu Valley.
- c. 70 Ropanis in all mountain area except Kathmandu Valley.

In sub clause 2 of the same Act, the following additional arrangement was introduced for the house fields:

- a. 1 Bigha in all Terai including Inner Terai.
- b. 5 Ropanis in Kathmandu valley.
- c. 5 Ropanis in all mountains except Kathmandy Valley.

To check the fake registration or incomplete registration Land Reform Act 2021, clause 9, sub-clause 1 clearly states that if anybody relinquishes his legal right over the land by registering or by any other means but still holds the land such kind of land are also regarded as included to the previous records and clause 7 will be effective to such cases. This arrangement has tried to make the land ceiling limitation more effectively. And legal arrangement was made so that such extra lands above the ceiling are sold to the tenants in the first priority and to the landless people in the second priority. The farmers who received the land in this way could pay the amount for the compensation in instalment basis instead of paying total amount at once. The arrangement of this facility in clause 22, sub-clause 1 of the Act provides special encouragement to the farmers who really plough the field.

## 2. **Securing of tenancy right and provision of the rate of payment.**

With the realization that without legal protection to tenancy right of the actual cultivators and without granting the opportunity of enjoying the larger portion of their labour the production growth cannot be achieved, Land Reform Act 2021 has accorded the opportunity to the farmers to involved in agricultural works by guaranteeing them the tenure right and fixation of rent, Land Reform Act clause 2 sub-clause 2 has defined the tenants as those farmers who till the land of owners on

his own or by his family on the basis of some conditions agreed bilaterally. Tenancy right certificates were issued to protect the security of the tenancy right to those tenants who filled the No form Tenancy Record at the time of the enactment of Land Reform Programme. Onwards on the basis of the receipt of the payment and bond between the owner and tenant, the tenancy right is preserved as according to the clause 34 of the same Act. With the objective not to separate the tenancy right from the land which was obtained by the land owner from the illiterate tenants by disguising and threatening, the provision is made in the clause 26 sub-clause 1 (a) of the same Act that the separation of the tenant is accepted only if tenants receive the message after a specified official inquires and checks from related Village Development Committee and the correction is made in the registered book.

It was attempted to provide the ownership to some extent to the tenant in the clause 26 (a) of the Act that if the tenant is occupying from ancient time and if the permanent house was build with the permission of land owner, in such cases the rights could be separated by some means or to sell the house or housefield. And in the same Act, arrangement was made so that one could not take tenancy right from the sale or in the form of charity or by separating right through any information and it could not be sold in auction in penalty or in non-governmental deposit. According to the clause 27 of the same Act, if a land owner needs a house plot, a piece of land up-to the area specified in the Act by Village Development Committee/Municipality after giving one fourth to the tenant as per the current rate could be taken out. If the land releases with the provision is not used for the specified purpose within 2 years of period, the tenancy right could be re-established and the lent sum need not be returned, such arrangement was made to secure the right in the same Act. The tenancy right after him will go to his wife or his son whoever is believed by the landowner and arrangement is made for name transfer in clause 26 (a) sub-clause 1 of the same Act. Furthermore, arrangement was also made to cancel the tenancy after complaining in Land Reform Office by the land owner if the land is going to be barren due to the missing of the tenant who already left to plough the field.

With the objectives to get maximum benefits by the farmers who really shed the blood in land as well as to support them to increase in the agricultural production and to uplift the life standard of the farmers and keeping in view the community coordination it was arranged in Land Reform Act 2021 that the production cannot be shared which will be more than the half of the main annual production. And in the clause 33 of the same Act, it was arranged that the rent could be fixed in the specified area by His Majesty Government as per the requirement. Accordingly, it was tried to secure the tenant by fixing the rent in class I paddy field by 15 Man per bigha in Terai and Inner Terai. The arrangement was made in clause 29, sub-clause 1, if the tenant did not submit the rent in time the land owner could apply to expel the tenant after getting the rent. In this way the right of land owner is secured. In Land Reform Act 2021, the land owner could get only the specified rent even if the tenant produce the excessive amount so the landowner is discouraged to provide incentive to increase the production in the land. Although the tenant could earn more if the production is increased, there is a legal restriction that the tenant could not get the loan by mortgaging the land because the tenant is a poor fellow and he does not posses anything except the land. Due to this reason the land with a tenant is like an infant and consequently the production is reduced instead of increment. So, fourth amendment in Land Reform Act 2021 is taken place by realising to increase the

production from the land with dual ownership and to transfer the tenant to land owner. In this amendment, it was arranged to divide the land having tenant by fifty/fifty between the tenant and the landowner after abolishing the arrangement of the tenant.

### 3. **Loan Fixation**

To create the exploitation free society by relieving the poor farmers from exploitations and to abolish the land lordism, Land Reform Act 2021 B.S. clause 45 has made provision of Agricultural loan and clause 50 has provided Non-agricultural loan. According to this provision, if the interest on any sum exceeded above ten percent, such interest are deducted from the loan amount. In this way many poor farmers are relieved from the debt and land is returned from the money lender and exploitation free society is thus created.

### 4. **Compulsory savings.**

Before 2021 B.S. there were no institutions which lend money for agriculture purpose. At that time landlords themselves provide loan to the farmers at higher interest rate. After the enactment of Land Reform Act interest rate was fixed and the quantity of rent to be given to the land owner by land tiller was also fixed ensuring the tenants right. Also, loan from land lords was discouraged and created a concept of compulsory savings in clause 40 of land reform act fund, with the cooperation of land owner and land tiller, which was deposited at ward committee. The deposited saving, accumulated to Rs 14,00,60,534.32 in 4 years, was aimed to give interest rate at 5 percent and to return to depositor at every fifth years. Though deposit amount was not returned at fifth year from 2045 B.S. Srawan, Land Reform Department has so far returned Rs 14,98,14,912.

Similarly with a view to promote the national production, Land Reform Act 2021 clause 59 states that HMG can enforce the guidance to follow the particular method in planting particular crops in specified place provided with required facilities and concerned land owner & tenant are accountable to follow this instruction. This provision has brought a great jolt in the old traditional method of agriculture.

Thus a cursory glance at Land Reform Act 2021 envisage that it has not only tried to minimize the tendency of holding unproductive land by fixing the ceiling of land holding per family but also tried to divert investment to other facets of economy.

Tenant's right protection and the quantity of rent to be taken from the land tiller was fixed with the concept that the production could be increased only if the farmers, who shed their blood in land, are protected.