

# **THE ANNUAL SURVEY OF STATE LAWS IN INDIA**

Edited by Amita Dhanda



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# BIHAR

VIVEK MUKHERJEE\*

## Introduction

The Bihar Legislative Assembly was in the headlines in 2023 for passing two Acts that increased reservation in government jobs and educational institutions from 50 percent to 65 percent. This was done on the basis of a caste census conducted by the Government of Bihar, raising important questions of federalism. The constitutionality of the census and the increased reservation is now in question as census falls in the union list and the Supreme Court had capped reservations to 50 per cent in *Indra Sawhney v. Union of India*.<sup>1</sup>

The caste census and reservation laws may be understood in a historical context. The political terrain of Bihar has been significantly shaped by caste dynamics since the era preceding independence. In 1937, with the establishment of the state's first government by the Indian National Congress, caste-based divisions, notably between groups led by Sri Krishna Sinha (aligning with Bhumihars) and Anugrah Narayan Sinha (aligning with Rajputs), were prominent in the struggle for control. Sri Krishna Sinha emerged as the first Chief Minister of the state.<sup>2</sup>

The Bihar Movement, spearheaded by Jayaprakash Narayan in the mid-1970s, was instrumental in the democratic restoration post-Emergency. The ascendancy of the Janata Party in 1977 marked a period where caste-based politics became increasingly pronounced. Overall, the political narrative of Bihar has been intricately woven with caste considerations, social reform movements, and challenges in governance, defining its complex socio-political fabric.

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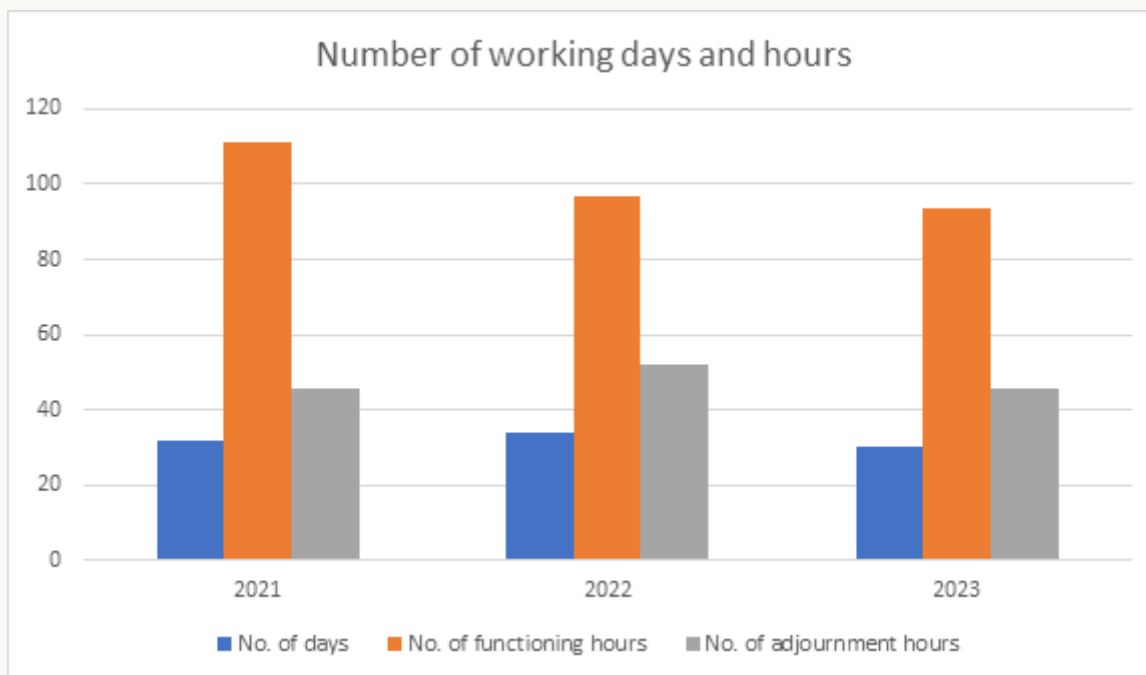
<sup>1</sup> *Indra Sawhney vs. Union of India*, AIR 1993 SC 477.

<sup>2</sup> Srivastava, S.S., 2014. Emergence of Backward Caste Politics in Bihar: Coalition, Alignment and Dominance. *THE INDIAN JOURNAL OF POLITICAL SCIENCE*, 75(4), pp.675-686.

2023 saw the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> session of the 17<sup>th</sup> Bihar Assembly under the 8<sup>th</sup> Nitish Kumar ministry. Kumar formed the government in 2022 by exiting the alliance with BJP's NDA and formed an alliance with RJD and Congress.

## Quantitative Overview

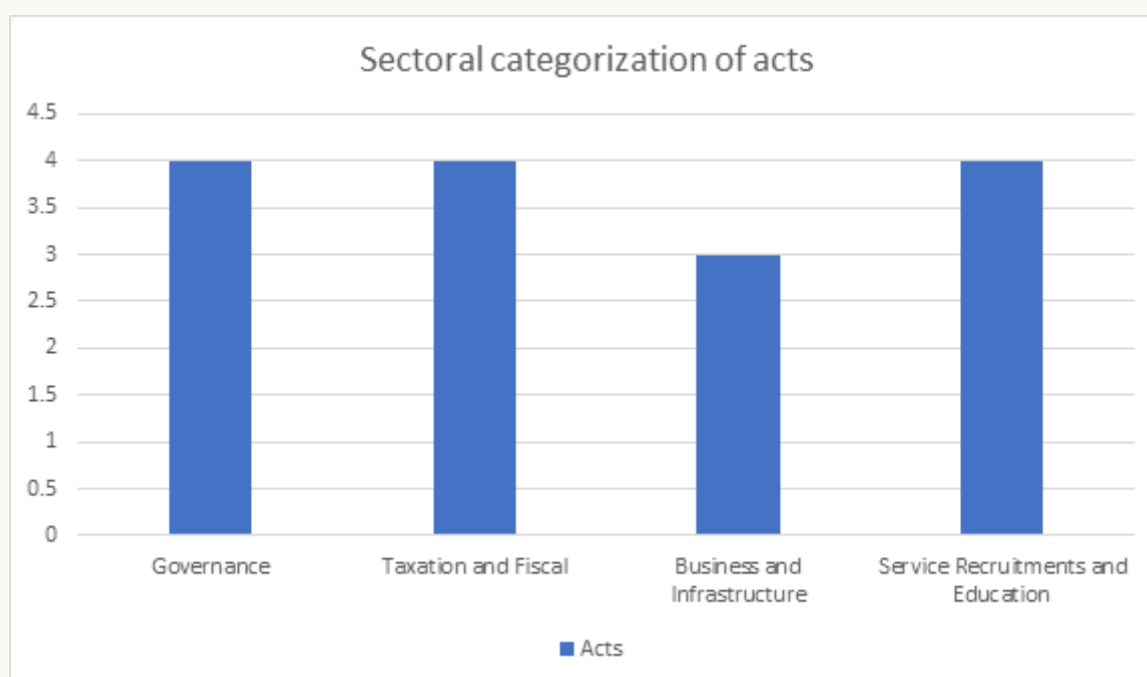
The Bihar assembly met for a total of 30 days during the year 2023. This marked a decline of 13% from the year 2022 and nearly 6.5% from the year 2021 during which the total number of functioning days observed by the assembly were 34 and 32 respectively.<sup>3</sup> The total number of functioning hours for Bihar assembly during 2023 was 93.7 hours. This resulted in a slight decline of 3.4% from 2022 and a considerable decline of 15.8% from 2021, during which the assembly sat for a total of 97 hours and 111.3 hours respectively. Further, the total number of adjournment hours during 2023 were 45.7 hours, as compared to 45.6 hours in 2022 and 52 hours in 2021.



The state assembly passed a total of fifteen acts during the year 2023. Of these, only four bills were introduced and subsequently passed in 2023. Out of the remaining eleven acts, nine were introduced in the year 2022 and passed at a later point in 2023. The remaining two acts were appropriation acts.

<sup>3</sup> PRS Legislative Research, *17th Bihar Legislative Assembly (2020-Present)*, available at: 17th Bihar Assembly (2020-Present) (last accessed on 6th February, 2024).

Upon further analysis, the acts passed could be categorized into four major sectors—governance, taxation and fiscal, business and infrastructure, and service recruitments and education. Of these four sectors, under the sector of business and infrastructure, three acts, whereas the remaining three sectors included the passing of four acts each. If compared to the previous year of 2022 during which only two acts, Bihar Taxation Laws (Relaxation of Period of Limitation Provisions) Act, 2022<sup>4</sup> and the Appropriation Act were passed, 2023 marked a substantial increase with the passing of fifteen Acts. It must be noted that during 2022 a total of seventeen bills were introduced out of which only one was passed the same year. Of the remaining sixteen bills, nine were passed as Acts in 2023, and seven remain pending.



On an average in 2023, each bill was passed after 57.5 days. This includes nine bills that were passed in less than twenty days. This may demonstrate the efficiency of the state legislature in passing laws. However, it also raises questions about the time allotted for legislative debate.

The Bihar Sugarcane (Regulation of Supply and Purchase) (Amendment) Act, 2023<sup>5</sup> took the maximum time of 525 days, whereas The Bihar Panchayat Raj (Amendment) Act, 2023,<sup>6</sup>

<sup>4</sup> Govt. of Bihar, Department of Taxation, No. LG-01-03/2022-2832 (April 2, 2022)

<sup>5</sup> Govt. of Bihar, Department of Law, No. LG—01-07/2023/7069 (September 4, 2023)

<sup>6</sup> Govt. of Bihar, Department of Law, No. LG—1-09/2023/8954 (November 17, 2023)

The Bihar Goods and Services Tax (Second Amendment) Act, 2023,<sup>7</sup> and The Bihar Secretariat Service (Amendment) Act, 2023<sup>8</sup> were passed swiftly within 7 days.

Act	Date of Bill Introduction	Date of Bill Passing	No. of Intervening Days
The Bihar Sugarcane (Regulation of Supply and Purchase) (Amendment) Act, 2023 <sup>9</sup>	29 March, 2022	4 September, 2023	525 days
The Bihar Special Court (Amendment) Act, 2022 <sup>10</sup>	14 December, 2022	5 June, 2023	173 days
The Bihar Municipal (Amendment) Act, 2022 <sup>11</sup>	15 December, 2022	13 January, 2023	29 days
Bihar Appropriation Act, 2023	6 March, 2023	6 March, 2023	-
The Bihar Ferryghat Settlement and Management Act, 2023 <sup>12</sup>	28 March, 2023	12 April, 2023	15 days
The Bihar State Infrastructure Development Enabling (Amendment) Act, 2023 <sup>13</sup>	3 April, 2023	19 April, 2023	16 days
The Bihar Goods and Services Tax (Amendment) Act, 2023 <sup>14</sup>	11 July, 2023	25 July, 2023	14 days
Bihar Appropriation Act, 2023	9 November, 2023	9 November, 2023	-
The Bihar Panchayat Raj (Amendment) Act, 2023 <sup>15</sup>	10 November, 2023	17 November, 2023	7 days
The Bihar Goods and Services Tax (Second Amendment) Act, 2023 <sup>16</sup>	10 November, 2023	17 November, 2023	7 days
The Bihar Secretariat Service (Amendment) Act, 2023 <sup>17</sup>	10 November, 2023	17 November, 2023	7 days
The Bihar (in admission in Educational Institutions) Reservation (Amendment) Act, 2023 <sup>18</sup>	10 November, 2023	21 November, 2023	11 days
The Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes	10 November, 2023	21 November, 2023	11 days

<sup>7</sup> Govt. of Bihar, Department of Law, No. LG—1-07/2023/8957 (November 17, 2023)

<sup>8</sup> Govt. of Bihar, Department of Law, No. LG—1-08/2023/8951 (November 17, 2023)

<sup>9</sup> Govt. of Bihar, Department of Law, No. LG—01-07/2023-7069 (September 4, 2023)

<sup>10</sup> Govt. of Bihar, Department of Law, No. LG—01-18/2022-4211 (June 5, 2023)

<sup>11</sup> Govt. of Bihar, Department of Law, No. LG—01-01/2022-2829 (January 13, 2023)

<sup>12</sup> Govt. of Bihar, Department of Law, No. LG—01-03/2023-2742 (April 12, 2023)

<sup>13</sup> Govt. of Bihar, Department of Law, No. LG—01-04/2023-2896 (April 19, 2023)

<sup>14</sup> Govt. of Bihar, Department of Law, No. LG—01-05/2023-5502 (July 25, 2023)

<sup>15</sup> Govt. of Bihar, Department of Law, No. LG—01-09/2023/8954 (November 17, 2023)

<sup>16</sup> Govt. of Bihar, Department of Law, No. LG—01-07/2023-8957 (November 17, 2023)

<sup>17</sup> Govt. of Bihar, Department of Law, No. LG—01-08/2023-8951 (November 17, 2023)

<sup>18</sup> Govt. of Bihar, Department of Law, No. LG—01-11/2023-8971 (November 21, 2023)

and other Backward Classes) (Amendment) Act, 2023 <sup>19</sup>			
The Bihar Lokayukta (Amendment) Act, 2022 <sup>20</sup>	14 December, 2022	2 January, 2023	19 days
The Bihar Technical Service Commission (Amendment) Act, 2022 <sup>21</sup>	15 December, 2022	13 January, 2023	29 days

The 8th session of the assembly (budget session) lasted for 38 days, the 9th and 10th session for 5 days.<sup>22</sup> 2023 saw a total of 30 sitting days. The 8th session (budget session) spanned 38 calendar days but held only 20 sittings. This concentration of sittings impacts the time available for members to discuss bills. Having said that, 30 sittings in a year is higher than the average sittings (25) of all state legislatures in 2022. The average sitting during 2021 was 21 and during 2020 was 18. Most sittings and functioning days are concentrated in the budget session, in line with the trend from previous years in Bihar.<sup>23</sup> Data on the duration of each sitting, time allocated for questioning, and the functioning of committees are unavailable.

The Bihar Legislative Assembly promulgated only one ordinance, The Bihar Goods and Services Tax (Amendment) Ordinance, 2023. This marks a notable change from past perceptions of the state's reliance on ordinances.<sup>24</sup> However, executive instruments like rules, regulations, policies etc. have replaced ordinances in Bihar. It has passed 3 policies, 3 orders, 5 regulations and 46 rules.

## Executive Instruments

Bihar passed a total of 46 rules in 2023, out of which 26 were amendments to existing rules. Some of these rules have controversial antecedents. The Bihar Area Advertisement Rules, 2023<sup>25</sup> is a case in point. The intention behind the rule is to provide a comprehensive framework for the management of advertisements in urban areas of Bihar. The regulations cover aspects such as zoning of areas for advertisements, registration and advertising fees,

<sup>19</sup> Govt. of Bihar, Department of Law, No. LG—01-11/2023-8974 (November 21, 2023)

<sup>20</sup> Govt. of Bihar, Department of Law, No. LG—01-16/2022-32 (January 2, 2023)

<sup>21</sup> Govt. of Bihar, Department of Law, No. LG—01-19/2022-372 (January 13, 2023)

<sup>22</sup> There is a discrepancy between the PRS data and official assembly website on the functioning days for the 8<sup>th</sup> session. PRS shows 20 functioning days whereas the assembly website has reported 38 days. I have used the official assembly data.

<sup>23</sup> Statement showing dates, duration and number of sitting of the Bihar Legislative Assembly from 1952 to 2020, available at

<https://www.vidhansabha.bih.nic.in/pdf/Sitting%20of%20bihar%20legislative%20assembly.pdf>

<sup>24</sup> Amita Dhanda, Faizan Mustafa, THE ANNUAL SURVEY OF STATE LAWS IN INDIA, 1 ASSL (2022), at 23- 34.

<sup>25</sup> Govt. of Bihar, Urban Development and Housing Dept. No.05/na.vi.vividh-81/2018-154-ud&hd- (January 9, 2023).The rule was notified in exercise of powers conferred under Section 419 of the Bihar Municipal Act, 2007. The Bihar Area Advertisement Rules, 2023 was passed under the Bihar Municipal Act, 2007.

the bidding process, approval of advertisements, and specific conditions for different categories of advertising devices. The regulations also aim to provide a process for obtaining permission, the responsibilities of advertisers, and the criteria for the display of different types of advertisements. The hoarding policy was attempted through an ordinance approved by the cabinet but challenged in the Patna High Court on the ground that it did not have legislative sanction. The court ordered that the draft policy must be opened for public opinion. The rule prima facie seeks to retain the aesthetic sense of roads and help local bodies to generate revenue from advertisements. Bihar has seen a war of hoardings/posters since 2015, and this peaked in the 2020 election.<sup>26</sup> Such matters have often been litigated before the Patna High Court.<sup>27</sup>

The Bihar Banning of Unregulated Deposit Schemes Rules, 2023<sup>28</sup> was passed to regulate chit-fund companies. The policy has been introduced to allow the state to investigate and act against Chit-Fund companies that collect money from the public through illegal deposit schemes acting in Bihar. Under this policy, the state government has got the right to investigate and take action against Chit-fund companies operating in Bihar. The state government has become the competent authority to take action against such companies for depositing money through illegal deposit schemes from the general public and depositors of the state government lawyers working in different levels of courts will now be selected by a state-level selection committee. This committee will be formed under the chairmanship

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<sup>26</sup> The Economic Times, *Bihar Polls: In the War of Hoardings, PM Narendra Modi Lags behind Nitish Kumar*, October 18, 2015, available at <https://economictimes.indiatimes.com/news/politics-and-nation/bihar-polls-in-the-war-of-hoardings-pm-narendra-modi-lags-behind-nitish-kumar/articleshow/49444136.cms?from=mdr> (Last visited on February 12, 2024). See also The Economic Times, *Bihar Elections: In Hoarding War, Parties Junk Caste, Focus on Vikas*, October 24, 2015, <https://economictimes.indiatimes.com/news/politics-and-nation/bihar-elections-in-hoarding-war-parties-junk-caste-focus-on-vikas/articleshow/49514034.cms?from=mdr> (Last visited on February 14, 2024); Deccan Herald, *Poster Wars Reach a Crescendo in Patna ahead of Polls*, October 25, 2015, available at [www.deccanherald.com/india/poster-wars-reach-crescendo-patna-2157650](http://www.deccanherald.com/india/poster-wars-reach-crescendo-patna-2157650) (last visited on February 14, 2024); Times of India, *Unauthorised hoardings to be removed in Patna*, November 27, 2019, available at <https://timesofindia.indiatimes.com/city/patna/Unauthorised-hoardings-to-be-removed-in-Patna/articleshow/48600034.cms> (last visited on February 14, 2024); The Wire, *Bihar Elections: A Poster War in Patna Reflects the BJP Vs RJD Battle*, October 29, 2020, available at <https://thewire.in/politics/bihar-elections-a-poster-war-in-patna-reflects-the-bjp-vs-rjd-battle> (last visited on February 14, 2024); News laundry, *Perception game: NDA leads the political advertising race in Bihar*, November 6, 2020, available at <https://www.newslaundry.com/2020/11/06/perception-game-nda-leads-the-political-advertising-race-in-bihar> (last visited on February 11, 2024).

<sup>27</sup> Live Law, [Bihar Election] *Political Parties Can Put up Hoardings at Private Properties with Owner's Consent: Patna High Court*, October 23, 2020, available at [www.livelaw.in/news-updates/bihar-election-political-parties-can-put-up-hoardings-at-private-properties-with-owners-consent-patna-high-court-164856](http://www.livelaw.in/news-updates/bihar-election-political-parties-can-put-up-hoardings-at-private-properties-with-owners-consent-patna-high-court-164856). (last visited on February 11, 2024).

<sup>28</sup> Govt. of Bihar, Dept. of Finance, No.08/NBFC-12/2019&901/F (July 7, 2023).

of the Advocate General. It will have a law secretary, special secretary of the law department or joint secretary as members. It is worth noting that chit-fund companies are registered by state governments under a central Act- the Chit Fund Act, 1982. The 1982 Act is administered by the Ministry of Finance but the responsibility of implementation lies with the State governments. This policy specifically targets illegal deposit schemes that are not regulated under any existing financial regulation laws, including the Chit Funds Act. The rules provide a framework to prevent, investigate, and penalize the operators of such schemes that exploit public savings without authorization. The new rules empower the state government to act directly against these illicit operations, ensuring greater protection for depositors and maintaining financial order. The rules complement rather than conflict with the central legislation.

Another rule passed by the Bihar government is the Bihar Law Officers Engagement Rules, 2023.<sup>29</sup> The new rules provide for discretionary power to the Advocate General to decide on the appointment of special counsels and research counsels. Right after the rules were passed, the Patna High Court had pulled up the department of education in Bihar to explain as to how it engaged a special counsel from outside the state without prior consent of the advocate general.<sup>30</sup>

The Bihar State Backward Classes and Extremely Backward Classes Girls Residential +2 High School Teachers (Appointment, Promotion, Disciplinary Action and Service Conditions) Rules, 2023<sup>31</sup> lays down rules for appointment of positions in Backward Classes and Extremely Backward Classes Girls Residential +2 High School.<sup>32</sup> All Primary Teacher (Trained) positions in Other Backward Classes Girls Residential +2 High Schools are to be filled by direct appointment, with subject-wise allocations. Qualifications include various educational backgrounds and Teacher Eligibility Test clearance. For Secondary Teacher (Graduate Trained) (TGT), 80% of positions are filled directly, while 20% are filled by promotion, with specific educational requirements. Librarian and Higher Secondary Teacher (10 + 2) (Post Graduate Trained)( PGT) positions follow similar direct appointment and promotion schemes, each with distinct educational criteria and age limits. This is a step to address the concerns of protesting students of the OBC Government High School who had

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<sup>29</sup> Govt. of Bihar, Law Department, No. C/EH-08/2023-4960/J (July 4, 2023).

<sup>30</sup> Hindustan Times, *Reply over Engaging Lawyer without AG Nod: HC to Bihar Edu Dept*, July 23, 2023, [www.hindustantimes.com/cities/patna-news/patna-high-court-questions-education-department-s-engagement-of-special-counsel-without-advocate-general-s-consent-101690135203398.html](http://www.hindustantimes.com/cities/patna-news/patna-high-court-questions-education-department-s-engagement-of-special-counsel-without-advocate-general-s-consent-101690135203398.html). (last visited on February 11, 2024).

<sup>31</sup> Govt. of Bihar, Department of Education, No. 11/Regulation 01-02/2023-743 (April 10, 2023)

<sup>32</sup> Govt. of Bihar, BC & EBC Welfare Department, No. Pi.Va.Aav.Vi-80-102/2010-2052 (September 20, 2023)

blocked roads in Patna to draw attention to their issues relating to shortage of teachers, poor teaching standards, absconding and unqualified teachers and poor infrastructure.<sup>33</sup>

The Bihar State Migrant Labour Accident Grant Scheme (Amendment) Rule, 2023<sup>34</sup> increases the compensation for victims of accidents substantially. To be eligible, a migrant labourer should be aged between 18 and 65. However, reports suggest that the scheme has not been publicised properly.<sup>35</sup> The state government also does not do enough to collect data of migrant labourers, leading to difficulties in spreading awareness about the scheme. Some stakeholders from Bihar have also questioned the intention of the government to publicise the scheme as it would lead to a strained exchequer.<sup>36</sup>

The Centre for Monitoring Indian Economy's statistics indicate that in March 2022, while the overall unemployment rate in India was 7.60%, Bihar experienced a significantly higher rate of 14.40%.<sup>37</sup> This disparity has led to a situation where labourers from Bihar are spreading out across the nation in pursuit of job opportunities. Migrant labourers are vulnerable as their safety is not prioritised by the government. Migrant labourers working outdoors are at risk of train or road accidents, electric shock, snake bite, drowning, fire, falling from a tree or building, attack by wild animals and terrorist, and criminal attacks, all of which are covered under the Bihar State Migrant Labour Accident Grant Scheme.

Contractors do not provide for any insurance and victims are helpless if they meet an accident as they are unskilled labour who are not employed if they are found unfit for manual labour. Labour Resources Department data included in the Economic Survey 2022-23 show that a total of 76 migrant labourers died in 2021-22 and 110 in 2020-21. Newspaper headlines from 2022-23 indicate that there have been 32 deaths during that time.

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<sup>33</sup> Times of India, *Govt school students protest against teacher crunch*, Feb 22, 2023, <https://timesofindia.indiatimes.com/city/patna/govt-school-students-protest-against-teacher-crunch/articleshow/98137604.cms> (last visited on February 11, 2024).

<sup>34</sup> Govt. of Bihar, Labour Resources Department, S.O. 230, dated August 14, 2023 (August 11, 2023).

<sup>35</sup> NewsClick, *Bihar: An Accident Grant Scheme for Migrant Labourers That Beneficiaries Have No Idea About*, January 22, 2024, [www.newsclick.in/bihar-accident-grant-scheme-migrant-labourers-beneficiaries-have-no-idea-about](http://www.newsclick.in/bihar-accident-grant-scheme-migrant-labourers-beneficiaries-have-no-idea-about). (last visited on February 10, 2024).

See also The Economic Times, *An Accident Grant Scheme for Migrant Labourers in Bihar That Beneficiaries Have No Idea about*, January 23, 2024, available at <https://hr.economictimes.indiatimes.com/news/industry/an-accident-grant-scheme-for-migrant-labourers-in-bihar-that-beneficiaries-have-no-idea-about/107069733> (last visited on February 11, 2024).

<sup>36</sup> NewsClick, *Bihar: An Accident Grant Scheme for Migrant Labourers That Beneficiaries Have No Idea About*, January 22, 2024, [www.newsclick.in/bihar-accident-grant-scheme-migrant-labourers-beneficiaries-have-no-idea-about](http://www.newsclick.in/bihar-accident-grant-scheme-migrant-labourers-beneficiaries-have-no-idea-about). (last visited on February 10, 2024).

<sup>37</sup> Mahesh Vyas, *The Employment Rates Falls, From Grace*, Centre for Monitoring Indian Economy, available at <https://www.cmie.com/kommon/bin/sr.php?kall=warticle&dt=20220411125651&msec=416>

The Bihar State School Teacher (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2023,<sup>38</sup> delineate the criteria for qualification, reservation, among other aspects. Those who have been appointed since the year 2006, inclusive of personnel from Panchayati Raj Institutions (PRIs), are afforded the opportunity to enter this cadre. However, this is contingent upon their participation and success in certain examinations, which has emerged as a principal point of debate. Nearly four lakh working teachers had decided not to associate with the process, demanding that they should be given the status of government employees without any exam. In 2019, contractual teachers had also demanded equal pay for equal work to be on par with regularized teachers. The Patna High Court had ordered the Bihar government to regularise their jobs but in an appeal by the government in the Supreme Court, this decision was reversed.<sup>39</sup> Additionally, the government's resolution to eliminate the preference for candidates with a domicile quota in job advertisements has encountered opposition.

Protests erupted the day the rules were notified, causing the government to warn teachers appointed through Panchayati Raj Institutions (PRIs) of disciplinary action if they organise or participate in any protest against the new rules for recruitment in government-run schools. Appointment of school teachers has been a contested issue since long, previously, job vacancies were exclusively reserved for permanent residents of Bihar, a policy that was subsequently contested in the Patna High Court.<sup>40</sup> The new rules allow candidates from all states to apply,<sup>41</sup> upsetting domicile candidates from Bihar. The new rules stipulate that young individuals from states other than Bihar are eligible to apply for only 40% of the unreserved positions, as they do not qualify for the 60% of posts that are reserved. This provision has led to increased dissatisfaction among the state's upper-caste applicants.<sup>42</sup> If this is contested in court and put under the scrutiny of Article 16, then it may throw up issues related to equality of opportunity (in matters relating to employment or appointment to any office under the State), reasonable classification, public interest etc. The court may consider

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<sup>38</sup> Bihar State School Teacher (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2023

<sup>39</sup> Early Times, *Supreme Court Refuses to Regularise Bihar Contractual Teachers Jobs*, October 5, 2019, available at [www.earlytimes.in/newsdet.aspx?q=262610](http://www.earlytimes.in/newsdet.aspx?q=262610). (last visited on February 12, 2024).

<sup>40</sup> The Indian Express, *The Domicile Clause in Bihar Teachers' Appointment: Why Applicants Are Protesting Govt's Latest Decision*, July 4, 2023, available at [indianexpress.com/article/explained/domicile-clause-bihar-teachers-appointment-removed-protests-explained-8718184/](https://indianexpress.com/article/explained/domicile-clause-bihar-teachers-appointment-removed-protests-explained-8718184/). (last visited on February 12, 2024).

<sup>41</sup> Bihar State School Teacher (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2023, R. 5(i)

<sup>42</sup> The Times of India, *Teacher aspirants up in arms against govt decision to drop domicile clause*, June 29, 2023, available at <https://timesofindia.indiatimes.com/city/patna/teacher-aspirants-up-in-arms-against-govt-decision-to-drop-domicile-clause/articleshow/101353931.cms> (last visited on June 6, 2024)

precedents like *Dr. Pradeep Jain v. Union of India (1984)*<sup>43</sup> in which the Supreme Court held that residence-based reservations could be valid if they are reasonable and have a rational nexus to the objective of achieving balanced local development.

The Bihar Epidemic Diseases, COVID-19 Regulation 2023 incorporates directives from the Government of India and empowers district authorities for localized containment measures, highlighting a comprehensive and proactive approach to pandemic management. Penalty clause is similar to 2020 regulation, wherein the District Magistrates may compound the offences if necessary.

## Sectoral Analysis

### Governance

The Bihar Legislative Assembly passed the Bihar Lokayukta (amendment) Act, 2022,<sup>44</sup> the Bihar Municipal (Amendment) Act, 2022<sup>45</sup> and the Bihar Panchayat Raj (Amendment) Act, 2022<sup>46</sup>. The Bihar Lokayukta (Amendment) Act, 2022, made a technical correction to the text, substituting the phrase 'Immediate surviving outgoing Lokayukta' with 'Immediately preceding Surviving Chairperson.' Further, the Bihar Panchayat Raj (Amendment) Act, 2023 amends Section 60 of the Bihar Panchayat Raj Act, 2006. Sub-section (1) of Section 60 of the said Act shall be substituted by the following:- "(1) the Government to appoint the Block Development Officer as Executive Officer of the Panchayat Samiti."

The Bihar Municipal (Amendment) Act, 2022<sup>47</sup> was passed with the intention of shifting the power to demolish structures deemed to be encroachments from the district administration's jurisdiction to the local body (Municipal Corporation). It provides for a fifteen days' notice for the removal of permanent encroachment and obstruction. Some Municipal Corporations insist that unauthorised construction may be demolished without prior notice.<sup>48</sup> Municipal Corporations in India are infamous for acting above the law, evident from the illegal demolitions that were used as a weapon against minorities in UP after the CAA protests, in

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<sup>43</sup> Dr. Pradeep Jain v. Union of India, 1984 AIR 1420.

<sup>44</sup> Govt. of Bihar, Department of Law, No. LG—01-16/2022-32 (January 2, 2023)

<sup>45</sup> Govt. of Bihar, Department of Law, No. LG—01-01/2022-2829 (January 13, 2023)

<sup>46</sup> Govt. of Bihar, Department of Law, No. LG—01-09/2023/8954 (November 17, 2023)

<sup>47</sup> Govt. of Bihar, Department of Law, No. LG—01-01/2022-2829 (January 13, 2023)

<sup>48</sup> Press release, National Human rights commission, January 23, 2014, available at <https://nhrc.nic.in/press-release/nhrc-holds-demolition-building-without-prior-notice-south-mcd-against-law-asks-delhi> (last visited on February 11, 2024). See also India Today, *No Need to Give Notice for Anti-Encroachment Drive on Govt Land, Says North Delhi Civic Body*, April 22, 2022, available at [www.indiatoday.in/cities/delhi/story/no-notice-needed-anti-encroachment-drive-govt-land-says-north-delhi-civic-body-1939743-2022-04-20](http://www.indiatoday.in/cities/delhi/story/no-notice-needed-anti-encroachment-drive-govt-land-says-north-delhi-civic-body-1939743-2022-04-20) (last visited on February 12, 2024).

MP and Gujrat, and recently in Delhi's Jahangirpuri overlooking Supreme Court orders in 2022<sup>49</sup>, and in Haryana's Nuh district in 2023.<sup>50</sup> Such demolitions are often rife with administrative mala fides<sup>51</sup> and colourable exercise of administrative power. The court in *Municipal Corporation, Ludhiana v. Inderjit Singh & Anr* (2008)<sup>52</sup> if the requirement of giving notice is provided under a municipal legislation, then this requirement must be necessarily complied with. In *Olga Tellis v. Bombay Municipal Corporation* (1985), the Supreme Court observed that the Right to Life under Article 21 includes the right to livelihood, which can be threatened by demolition. Even with procedural safeguards, the victims of demolition have very few safeguards in terms of rehabilitation and relocation. Patna alone has more than 100 *bastis* (slums). Approximately, 88 percent of those who reside in these *bastis* belong to Scheduled Caste and Other Backward Castes. Most evictions have led to the households becoming homeless without any alternative arrangement and forced to live in the open.<sup>53</sup> Access to essential services such as water, electricity, food, education, and sanitation facilities is now at risk for many individuals. Previously, families could count on having shelter, albeit simple and made of thatch. Now, their feeling of safety has been significantly compromised.<sup>54</sup>

Moreover, the court's jurisprudence has shifted drastically since *Olga Tellis*<sup>55</sup>, from protecting the rights of slum dwellers to "slums are illegal" and "slums are nuisance" jurisprudence.<sup>56</sup> Demolition has often been used as a tool of collective punishment worldwide, especially to target minority communities.<sup>57</sup> Even when the court emphasises

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<sup>49</sup> The Economic Times, *Delhi: Municipal Corporation Overlooks SC, Demolishes Jahangirpuri "Encroachments"*, April 21 2022, available at [economictimes.indiatimes.com/news/politics-and-nation/delhi-municipal-corporation-overlooks-sc-demolishes-jahangirpuri-encroachments/articleshow/90965894.cms?from=mdr](https://economictimes.indiatimes.com/news/politics-and-nation/delhi-municipal-corporation-overlooks-sc-demolishes-jahangirpuri-encroachments/articleshow/90965894.cms?from=mdr) (last visited on February 11, 2024).

<sup>50</sup> Chouhan, Sukriti Vats & Priyansha, *How the Demolition Drive in Nuh Went against Court Orders and Due Procedures*, Frontline, August 25 2023.

<sup>51</sup> Lavam Tyagi and Udaiveer Ahlawat, *Recent Demolition Drives across India Smack of Administrative Mala Fides*, the Leaflet, June 21, 2022.

<sup>52</sup> *Municipal Corporation, Ludhiana vs Inderjit Singh & Anr*, 2008 AIR SCW 7127.

<sup>53</sup> Krishna, A., Kumar, S. and Rains, E., 2023, "A range of informality across cities and slums: Understanding precarity in Patna's slums before and during the COVID-19 pandemic," *Journal of South Asian Development*, 18(2), pp.244-264.

<sup>54</sup> Yuvaonline, *The dark side of development*, Medium, April 16, 2019.

<sup>55</sup> *Olga Tellis, Thirty years after a landmark Supreme Court verdict, slum dwellers' rights are still ignored*, Scroll, December 21, 2015.

<sup>56</sup> Ghertner D. Asher, *Analysis of New Legal Discourse behind Delhi's Slum Demolitions*, ECONOMIC AND POLITICAL WEEKLY, 57-66.

<sup>57</sup> Amrasha Singh and Amit Kumar, *Demolitions as Tools of "Collective Punishment": Examining Instances in India and Israel*, The Wire, September 1, 2023.

due process or rule of law<sup>58</sup> in demolition, (like prior notice before demolition) municipal corporations often overlook such orders.<sup>59</sup>

## Taxation and Fiscal

The Bihar Goods and Services Tax (Amendment) Act, 2023<sup>60</sup> enacted on 25th July made a total of twenty-two amendments. The first amendment was introduced to Section 10 through omission of the phrase “goods or” from the earlier phrase “goods or services.” This could be in furtherance of maintaining clarity of the applicability of provisions. Further, amendment to Section 17 made substitutions that were aimed at rendering greater clarity to exceptions by putting emphasis on the value of activities and nature of transactions such as those related to corporate social responsibility. Amendments to Section 23 vested the government with more power to create exceptions and exempt certain parties from registering under the act. Amendment to Section 30 brings more flexibility by deleting the earlier mentioned strict period of 30 days within which the party whose registration had been cancelled would have to request for its revocation. Amendment to Section 37 restricts parties registered from furnishing details of outward supply after completion of three years from the due date, but an exception to the deadline may be considered upon the recommendation of the government. Further amendments to sections 39, 44, 52, 54, 56, and 62 mostly curtail time periods for furnishing documents relating to returns and statements. Section 109 undergoes the change in title to streamline the adjudication process by designating the Goods and Services Tax Tribunal as the Appellate Tribunal. Sections 110 and 114, both relating to the discussion of the constitution of the Appellate Tribunal are subsequently deleted. Clauses relating to penalties and offences were revised in Section 122. Amendments to Section 138 mention changes in the categories and conditions for compounding offences. A new Section 158A was inserted to allow consent-based sharing of information furnished by taxable persons. Lastly, retrospective exemption was introduced in Schedule III in certain activities and transactions.

The Bihar Goods and Services Tax (Second Amendment) Act, 2023<sup>61</sup> enacted on 17th November introduced a total of five major amendments. The first set of amendments were

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<sup>58</sup> Devadatt Kamat, As bulldozer threats rise, what the Rule of Law says on demolitions, Deccan Herald, April 24, 2022.

<sup>59</sup> The Economic Times, *Delhi: Municipal Corporation Overlooks SC, Demolishes Jahangirpuri “Encroachments”*, April 21 2022, available at [economictimes.indiatimes.com/news/politics-and-nation/delhi-municipal-corporation-overlooks-sc-demolishes-jahangirpuri-encroachments/articleshow/90965894.cms?from=mdr](https://economictimes.indiatimes.com/news/politics-and-nation/delhi-municipal-corporation-overlooks-sc-demolishes-jahangirpuri-encroachments/articleshow/90965894.cms?from=mdr) (last visited on February 11, 2024).

<sup>60</sup> Govt. of Bihar, Department of Law, No. LG—01-05/2023-5502 (July 25, 2023)

<sup>61</sup> Govt. of Bihar, Department of Law, No. LG—01-07/2023-8957 (November 17, 2023)

introduced to Section 2. These amendments included clarifying the meaning of “online gaming” to include specifically also “online money gaming.” It also clarifies the domain of “specified actionable claim” involved with online money gaming inter alia betting, casinos, gambling, horse- racing, and lottery. Amendment to this section also discusses the role, responsibilities, and obligations of the supplier. Amendment to Section 24 discusses the compulsory registration of suppliers of online money gaming from outside India supplying it to someone in India. Amendment to Schedule III introduces one of the most significant changes by replacing “lottery, betting, and gambling” with “specified actionable claims” which is a broader category that also includes horse-racing, casinos, and online- gaming. This was also in compliance with the revision introduced by the GST Council at the central level to increase the taxation on online gaming from the earlier 18% to 28%.<sup>62</sup>

Apart from these two acts, there were two appropriation acts that were passed in the months of March and November respectively. The Bihar Appropriation Act, 2023 enacted in March authorized the payment and appropriation of a total sum of Rs. 10321.05 crore. The Bihar Appropriation (No.- 4) Act, 2023 enacted in November authorized the usage of a total fund of Rs. 26086.35 crores.

## **Business and Infrastructure**

The Bihar State Infrastructure Development Enabling (Amendment) Act, 2023<sup>63</sup> was enacted to amend the Bihar State Infrastructure Development Enabling Act, 2006. It amends Schedule-V (ii) (a) of the Bihar State Infrastructure Development Enabling Act, 2006 shall be substituted by the following "Government owned land would be provided at concessional lease charges for projects where ownership would revert to the Government, within the period fixed by Infrastructure Development Authority from the date of grant of land."

The Amendment omits Section 49 of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981. The introduction of GST in 2016 resulted in states losing power to collect taxes on the entry of goods into states. This was made possible through the 101st Amendment to the Indian Constitution that deleted entry 52 from the state list. Entry 52 read: Taxes on the entry of goods into a local area for consumption, use or sale therein. The logic behind this move was the following: “Any kind of entry tax will restrict the free flow of goods and services and defeat the purpose of making India a common market. It is a cause

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<sup>62</sup> Deccan Herald, *Bihar govt tables bill to replace ordinance to levy 28% GST on online gaming*, November 6, 2023, available at <https://www.deccanherald.com/india/bihar/bihar-govt-tables-bill-to-replace-ordinance-to-levy-28-gst-on-online-gaming-2758800> (last visited February 12, 2024).

<sup>63</sup> Govt. of Bihar, Department of Law, No. LG—01-04/2023-2896 (April 19, 2023)

for protracted litigation”.<sup>64</sup> Originally introduced as a substitute for octroi, entry tax eventually became a tool for states to safeguard local businesses and industries from the unrestricted import of goods from other states, effectively mitigating the negative effects of competitive tax rate reductions among states. In the context of the GST system, where entry tax will not be applicable, it is crucial to maintain consistent GST rates to prevent the uncontrolled entry of goods into a state and avoid the redirection of trade.<sup>65</sup> As a result of this amendment, Bihar cannot collect entry taxes on sugarcane any longer.

Bihar’s Sugarcane industry contributed to 40 percent of the sugar production in India in the 1980’s but has collapsed to less than 4 percent due to the apathy of the government to revive the industry after a bad season in 1996-97.<sup>66</sup> The union government’s integration of all types of entry taxes into the proposed Goods & Services Tax (GST), including those designated for local authorities, delivers a further setback to the already declining sugarcane sector in Bihar. On an average, entry taxes account for 14 per cent of states’ total tax collection. By folding these taxes into GST, an effort to streamline the tax system and promote a seamless market nationwide, Bihar’s government loses a vital source of revenue previously generated from the sector. With entry taxes on various commodities, including sugarcane, being a key financial contributor at rates from 2% to 16%, the new GST framework’s exclusion of these taxes signals a loss of revenue for the state. Consequently, this shift not only reduces the state’s fiscal benefit from the sugarcane industry but also intensifies the strain on an industry facing downturns, potentially pushing it towards an economically more precarious situation.<sup>67</sup>

The introduction of GST has also affected small-scale sugar mills, especially those situated in rural regions, which often lack the means or expertise to adapt to the new tax framework. The rise in both compliance and transportation expenses has heightened the challenge for these smaller entities to remain competitive against their larger counterparts. Consequently, numerous small-scale sugar mills have either ceased operations or have consolidated with

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<sup>64</sup> Business Standard, GST may subsume all entry taxes, November 24, 2014, available at [https://www.business-standard.com/article/economy-policy/gst-may-subsume-all-entry-taxes-114112400012\\_1.html](https://www.business-standard.com/article/economy-policy/gst-may-subsume-all-entry-taxes-114112400012_1.html) (last visited February 12, 2024).

<sup>65</sup> Gopakumar, K. “MULTIPLICITY OF TAXES AND EXCLUSION OF REVENUE-POTENTIAL COMMODITIES: HIGHLIGHTING TWO CRUCIAL ISSUES OF GST IN INDIA.” *Journal of the Indian Law Institute*, vol. 58, no. 4, 2016, pp. 393–420.

<sup>66</sup> Newslick, *Bihar Sugar Industry: Long Tale of Sweet Memories, Bitter Truth*, August 26, 2020, available at <https://www.newslick.in/Bihar%27s-Sugar-Industry-Long-Tale-of-Sweet-Memories-Bitter-Truth> (last visited on February 12, 2024).

<sup>67</sup> *id* 23.

bigger mills.<sup>68</sup> A decrease in the sugar tax rate has led to lower sugarcane prices, impacting the earnings of farmers facing the dual challenge of depressed prices and elevated production expenses. Conversely, the introduction of input tax credits under GST has decreased the cost of inputs for these farmers, offering some financial relief.<sup>69</sup>

The Bihar Ferryghat Settlement and Management Act, 2023<sup>70</sup> was enacted for settlement and management of the public ferry ghats in the State of Bihar to ensure the devolution and delegation of powers to the authorities of rural and urban local bodies as vested in the local self-government institutions established under the Constitution as well as to streamline and regulate the public ferry-ghats.

The Act replaced the 138 years old Bengal Ferries Act, 1885 enabled District Magistrates, with the involvement of Circle Officers, to allocate ferry-ghats to private parties for revenue collection under the supervision of the state's revenue and land reforms department. It addresses the settlement and control of public ferry-ghats, granting powers to the District Collector. The Act encompasses toll collection, management responsibilities, and penalties for violations. It emphasizes local body involvement, toll imposition, and regulatory measures for ensuring public safety and order. Appeals and remission provisions are also included, reinforcing governance and addressing concerns related to natural calamities or rule breaches.

The Act represents a move towards decentralisation. It aligns with the constitutional amendments 73 and 74, which strengthen the governance capabilities of local bodies including panchayati raj institutions and urban local bodies. This decentralization extends to revenue generation and collection under guidelines established by the government. Furthermore, the act mandates the registration of boats engaged in the ferry service, specifying their carrying capacity and operational schedules, and requires the presence of safety equipment on both the ghats and boats to ensure passenger safety. This legislation grants local government bodies, including panchayats and urban municipalities, the authority to oversee, organize, and administer the operation of ferry-ghats along rivers and waterways, in addition to allowing these bodies to form partnerships with private entities for the same purpose.

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<sup>68</sup> MARG ERP, *Understanding the Impact of GST on Sugar Industry in India*, March 4, 2023, available at [margcompusoft.com/m/gst-on-sugar-industry/](https://margcompusoft.com/m/gst-on-sugar-industry/) (Last visited on February 12, 2024).

<sup>69</sup> MARG ERP, *Understanding the Impact of GST on Sugar Industry in India*, March 4, 2023, available at [margcompusoft.com/m/gst-on-sugar-industry/](https://margcompusoft.com/m/gst-on-sugar-industry/) (Last visited on February 12, 2024).

<sup>70</sup> Govt. of Bihar, Department of Law, No. LG—01-03/2023-2742 (April 12, 2023)

## Service Recruitments and Education

The Bihar Secretariat Service (Amendment) Act, 2023<sup>71</sup> changes the nomenclature of Assistant in Bihar Secretariat Service from 'Assistant' to 'Assistant Section Officer'. The Bihar Technical Service Commission (amendment) Act, 2022<sup>72</sup> provides that the Bihar Technical Staff Selection Commission may select and recommend for appointment to all posts of specialist medical officers of Bihar Health Service Cadre and Bihar Medical Education Service Cadre.

The legislative assembly also passed the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Amendment Act-2023<sup>73</sup> and the Bihar (in admission in educational institutions) Reservation Amendment Act, 2023<sup>74</sup>. After the passing of the Act, the state has set a record for the highest reservation rate among the major states in India, totalling 75%. This includes 10% reservation to the economically weaker sections within the unreserved castes. As per the details shared in the gazette notice, the updated reservation percentages are allocated as follows: 20% for scheduled castes, 2% for scheduled tribes, 18% for backward classes, 25% for the most backward classes, alongside a maintained 10% quota for the EWS within the state. These modifications mark an uplift in the reservation for scheduled castes from 16% to 20%, for scheduled tribes from 1% to 2%, for the most backward classes from 18% to 25%, and for backward classes from 15% to 18%.

A direct correlation between social and economic indicators was made in the caste census report. It indicates that approximately 34.13% (nearly 95 lakh) of all families in the state live in poverty, with a monthly income of just Rs 6,000. Most of these families belong to Dalits, Adivasis, OBCs, and EBCs. As per the data, 42.93% of SC and 42.70% of ST families live in poverty, whereas 33.16% of OBC and 33.58% of EBC families also face poverty. Among the SCs, the Musahar community, considered one of India's most marginalized in the caste hierarchy, has the highest poverty rate, with approximately 54% of Musahar families struggling with poverty, followed by 53% Bhuiyans and 42% Chamars or Mochis. Within the OBCs, 35.87% of Yadav families face poverty, followed by 34.32% Kushwahas and 29.9% Kurmis. Conversely, only 25.09% of General Category (Upper Castes) families live in

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<sup>71</sup> Govt. of Bihar, Department of Law, No. LG—01-08/2023-8951 (November 17, 2023)

<sup>72</sup> Govt. of Bihar, Department of Law, No. LG—01-19/2022-372 (January 13, 2023)

<sup>73</sup> Govt. of Bihar, Department of Law, No. LG—01-11/2023-8974 (November 21, 2023)

<sup>74</sup> Govt. of Bihar, Department of Law, No. LG—01-11/2023-8971 (November 21, 2023)

poverty, significantly lower compared to others. Among the upper castes, poverty is most prevalent among Bhumihars at 27.58%, followed by Brahmins.<sup>7576</sup>

The state administration has also appealed to the central government to incorporate the increase in reservation quotas for public sector employment and educational institutions into the Constitution's 9th Schedule to protect it from judicial examination. The Ninth Schedule of the Constitution includes a list of Central and state laws that cannot be challenged in courts.

The BJP in Bihar has supported the caste census, despite the union government arguing against it in court by saying that such a caste census is administratively not feasible. The BJP led government in UP is under tremendous pressure from its OBC allies to conduct a caste survey which led to a report, the findings of which were never executed. Many OBC allies severed ties with the BJP in UP due to this decision.<sup>77</sup> All of these developments need to be viewed in the context of the union government not releasing the caste census that was held in 2011.<sup>78</sup> The Bihar caste census has not been without challenge. Shortly after initiating its second phase on April 15, the Patna High Court temporarily halted the survey in May, stating that the state lacked the authority to carry out the caste census. Approximately three months following this decision, the court reversed its stance, declaring the survey to be “completely legitimate.”

The caste survey was challenged under two significant grounds: that it violated a citizen's fundamental right to privacy (due to the queries concerning their religion, caste, and monthly income) and that the state had no power to carry out such a survey. Responding to the privacy challenge, the court referenced the three-pronged criteria established in the 2017 *Justice KS Puttaswamy v. Union of India* case, emphasizing that limitations on fundamental rights are acceptable if they serve the state's legitimate interests and are both proportional and justified. Addressing the security worries mentioned in the temporary order (which had paused the survey), the court acknowledged the Bihar government's detailed response, affirming that the survey employs a secure system, eliminating the risk of data breaches.

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<sup>75</sup> Newsclick, *Bihar Governor at Last Gives nod to Bills Hiking Reservation*, November 21, 2023, available at <https://www.newsclick.in/bihar-governor-last-gives-nod-bills-hiking-reservation> (last visited on February 12, 2024).

<sup>76</sup> See also, Ajoy Ashirwad Mahaprashasta, *Bihar's Caste Census Is a Bold Move Sure to Have Implications Beyond the State*, *The Wire*, January 10, 2023. (RJD's Rajya Sabha MP Manoj Kumar Jha justifying the breach of ceiling set by the Supreme Court).

<sup>77</sup> Mayank Kumar, *BJP's allies in U.P. join the Opposition in demanding caste census*, *The Hindu*, October 4, 2023.

<sup>78</sup> Ajoy Ashirwad Mahaprashasta, *Bihar's Caste Census Is a Bold Move Sure to Have Implications Beyond the State*, *The Wire*, January 10, 2023, available at <https://thewire.in/caste/bihars-caste-census-nitish>.

Raising questions of federalism and right to privacy, Akhilesh Kumar and Vishnu Gupta, National President of Hindu Sena (separate PIL), approached the Supreme Court arguing that the authority to conduct a “census” resides solely with the federal government. The distribution of legislative and executive powers between the Centre and the states is outlined in the Seventh Schedule of the Constitution, where Entry 69 of the Union List grants the central government exclusive rights to carry out a “census”, as highlighted by the petitioners. They also cited Article 246, which specifies the Parliament's exclusive jurisdiction to legislate on items listed in List I of the Seventh Schedule. Furthermore, they noted that Entry 45 of the Concurrent List, which allows both the Centre and states to legislate, mirrors Entry 94 of the Union List. Both entries authorize the collection of statistics to support the verification of information necessary for the economic and social planning objectives outlined in Entry 20 of the Concurrent List. It was also contended that the Census Act of 1948 does not contemplate the caste-based census.

The Supreme Court refused to entertain the petition and directed the petitioners to approach the Patna High Court. In April, 2023, Youth for Equality, an organisation that campaigns against caste-based reservation, approached the Supreme Court seeking an early hearing in the Patna High Court, while the second phase of the census had started. This request was allowed by a two-judge bench of the Supreme Court. After hearing, the Patna High Court stayed the census followed by a Special Leave Petition by the Bihar Government challenging the stay. They contended that the states have the power to carry out a survey under various entries of the Concurrent List, Fundamental Rights and the Directive Principles of State Policy.

In May 2023, a two-judge bench of the Supreme Court decided not to intervene in the matter as it was pending before the Patna High Court. In August, 2023 the Patna High Court upheld the validity of the survey. The High Court relied on *Indra Sawhney v Union of India*<sup>79</sup>, which recognised that there can be a reasonable method and procedure for the identification of backwardness in society. The judgement had confirmed that these methods could be based on caste. The Patna High Court underscored that the state government cannot wait on their “haunches” while waiting for the Union government’s census to implement proactive measures in its services, in accordance with Articles 15 and 16. Those articles, which prevent discrimination based on religion, race, caste, sex, or place of birth, and ensure equal opportunities in public employment, inherently include provisions for advantageous programs benefiting socially and educationally disadvantaged groups. On 3 August 2023, the Patna High Court decision was challenged in the Supreme Court by multiple petitioners

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<sup>79</sup> *Indra Sawhney v Union of India*, AIR 1993 SC 477

including Youth for Equality, Ek Soch Ek Prayas and Akhilesh Kumar. The petitions claimed that the survey was an attempt by the Bihar government to “usurp” the powers of the Union government. The Supreme Court listed the case for final hearing in April 2024.<sup>80</sup>

The petition claimed that the state's caste survey lacked integrity due to the absence of vital information on agricultural and land ownership making it arbitrary. It contended that such an approach by the Bihar government violated the Supreme Court's established standards, which emphasize the importance of thorough and impartial data before making policy decisions related to quotas. Moreover, the petition challenged the justification of expanding quotas for OBC/EBC/SC/ST beyond 50% on the basis of introducing a 10% reservation for the Economically Weaker Section (EWS).<sup>81</sup> The challengers also argue that the Constitution, specifically through Article 16(4), mandates that quotas should be allocated based on the insufficient representation of socially and educationally disadvantaged groups, rather than mirroring these groups' proportionate presence within the state.<sup>82</sup>

Affirming the validity of the caste census, the Patna High Court has observed that “We find the action of the State to be perfectly valid, initiated with due competence, with the legitimate aim of providing ‘Development with Justice’; as proclaimed in the address to both Houses and the actual survey to have neither exercised nor contemplated any coercion to divulge the details and having passed the test of proportionality, thus not having violated the rights of privacy of the individual especially since it is in furtherance of a ‘compelling public interest’ which in effect is the ‘legitimate State interest’”.<sup>83</sup>

## Conclusion

Statistically, Bihar’s legislative output increased in 2023. Compared to 2022, during which merely two bills were passed, a total of 15 bills were passed in 2023. These bills could be

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<sup>80</sup> Supreme Court Observer, *Validity of the Bihar Caste “Census.”*, available at [www.scobserver.in/cases/validity-of-the-bihar-caste-census/#:~:text=On%203%20August%202023%2C%20the](http://www.scobserver.in/cases/validity-of-the-bihar-caste-census/#:~:text=On%203%20August%202023%2C%20the) (last visited on February 12, 2024).

<sup>81</sup> India Today, *Plea at Patna High Court challenges increase of caste quota to 65% in Bihar*, November 27, 2023, available at <https://www.indiatoday.in/law/story/plea-at-patna-high-court-challenges-increase-of-caste-quota-in-bihar-2468156-2023-11-27> (last visited February 12, 2024).

<sup>82</sup> The Indian Express, *PIL in Patna HC challenged Bihar law increasing reservation to 65 per cent*, November 27, 2023, available at <https://www.newindianexpress.com/nation/2023/Nov/27/pil-in-patna-hc-challenged-bihar-law-increasing-reservation-to-65-per-cent-2636640.html#:~:text=PATNA%3A%20A%20Public%20Interest%20Litigation,cent%20to%2065%20per%20cent>, (last visited February 12, 2024).

<sup>83</sup> The Indian Express, *Bihar caste survey data out: Why it was legally challenged — and why the court found it ‘perfectly valid’*, October 3, 2023, available at <https://indianexpress.com/article/explained/explained-law/bihar-caste-survey-legal-challenged-8965424/> (last visited February 12, 2024).

categorized into four broader categories of governance, taxation and fiscal, business and infrastructure, and service recruitments and education. Notably, the earlier occurring categories of land and labour under which frequent legislation would be passed, were attended to in this year. The state focused attention away from issues relating to those categories. Further, it may also be noted that despite the fact that each bill was discussed for nearly 57.5 days on average, as many as nine out of fifteen bills were passed after less than twenty days of discussion.

A significant observation here is that most of the bills from the taxation, fiscal, business and infrastructure categories involved routine changes aimed at making the procedure and ambit of those laws clear and updated. Apart from this, there were changes in laws that had to be made in accordance with the provisions of law at the level of the union government. The changes made to Bihar Goods and Services Tax Act serve as examples. There were also substantial legislations introduced to other laws only to reflect the union provisions of the GST laws. For instance, changes made to Bihar Sugarcane Act, 1981 were enacted to maintain compliance with the union GST laws.

Of the bills passed under the category of governance, The Bihar Municipal (Amendment) Act, 2022<sup>84</sup> was significant since it shifted the responsibility of demolishing encroached structures from the jurisdiction of the district administration to the local body of the municipality. This legislative change has drawn scrutiny, as it transfers significant power to municipal bodies, whose enforcement methods are sometimes perceived by civil rights groups to have less procedural oversight than those of the district administration. The timing of this amendment has raised concerns among legal observers, who note that similar municipal powers in adjoining states have led to controversial demolition drives, prompting legal challenges,

In the service recruitment and education category, the state made some changes by surpassing the upper ceiling of reservation upheld by the Supreme Court. With the changes introduced in these acts, the state has now made provisions for implementing 75% reservation in total, which includes 20% SC, 2% ST, 18% BC, 25% for MBC, and 10% EWS reservations. The increase in reservation provisions was argued to be due to the introduction of EWS reservation which would benefit the already privileged castes. The state's decision to increase caste-based reservations can be viewed in the political context of balancing the 10% EWS reservation, which was introduced for economically weaker sections within the general category. Another reason cited was the absence of accurate caste data by the centre. Access to caste data may help states make amendments to reservation provisions

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<sup>84</sup> Govt. of Bihar, Department of Law, No. LG—01-01/2022-2829 (January 13, 2023)

proportionately. These changes should also be read in the light of the caste census data that was released by Bihar, making it the first state to release such data and thereby questioning the exclusive power of the union to conduct a census.