

TRIBAL LAND RIGHTS IN INDIA

C. Ashokvardhan



CENTRE FOR RURAL STUDIES
Lal Bahadur Shastri National Academy of Administration
Mussoorie - 248 179 (Uttaranchal)

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The Centre for Rural Studies (formerly Land Reforms Unit) of Lal Bahadur Shastri National Academy of Administration was set up in the year 1989 by the Ministry of Rural Development, Government of India, with a multifaceted agenda that included among others, the concurrent evaluation of the ever-unfolding ground realities pertaining to the implementation of the Land Reforms and Poverty Alleviation Programmes in India. Sensitizing the Officer Trainees of the Indian Administrative Service in the process of evaluating of land reforms and poverty alleviation programmes by exposing them to the ground realities; setting up a forum for regular exchange of views on land reforms and poverty alleviation between academicians, administrators, activists and concerned citizens and creating awareness amongst the public about the various programmes initiated by the government of India through non-governmental organizations are also important objectives of the Centre for Rural Studies. A large number of books, reports related to land reforms, poverty alleviation programmes, rural socio-economic problems, etc. published both externally and internally bear testimony to the excellent research quality of the Centre.

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Centre for Rural Studies

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Dr. C. Ashokvardhan
IAS



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2006

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Centre for Rural Studies
LBSNAA

Published by
Centre for Rural Studies

Lal Bahadur Shastri National Academy of Administration
Mussoorie – 248 179
Uttaranchal

Presented to Shri Ashok Kumar Choudhary, IAS, Chief
Secretary, Bihar.

FOREWORD

**RUDRA GANGADHARAN
IAS**

**Director
LBS National Academy of
Administration, Mussoorie**

“Tribal Land Rights in India” by Dr. C. Ashokvardhan presents an overview of the land rights of the scheduled tribe population in some of the fifth and the sixth schedule states as embodied in their respective laws. The work goes on to examine how and under what circumstances, these rights have been undermined and infringed and in what way the law-makers have postulated protective measures. There are state-specific and general recommendations which if acted upon, could empower the tribal vis-à-vis mighty forces of exploitation operating everywhere. All this tends to add to the value of the painstaking work, especially in the context of exposing the tribal land scenario to the administrative service officers in their training phase.

Today in a typical tribal village, while the natives and the formerly land owning tribals are struggling to eke out a living, the alien non-tribals and later settlers, who came in as merchants, moneylenders, liquor vendors and absentee landlords, have gained economic control of the area by unscrupulous means. A significant portion of the tribal land is lost due to distress sale. To a large extent, the land possessed by the tribals is of inferior grade, depending exclusively on the vicissitudes of weather. As a result, the productivity of this land is so low that it becomes too uneconomical to cultivate it. The difference is seen in lands belonging to non-tribal landowners having relatively stable irrigation facilities. The problem is particularly acute in the drought-prone areas like those of the Kalahandi district in Orissa. Under chronic drought conditions, the land is highly unproductive and agriculture highly labour intensive. The input-output ratio is highly unfavourable to the marginal and small farmers. There is hardly any incentive to the owner-cultivator who falls a prey to middlemen. The small cultivator prefers to dispose off his land and seek other avenues where he can put his labour to potentially more productive

use. Consequently, thousands of small cultivators from the Kalahandi region have sold off their lands and migrated to large towns and cities.

Tribal friendly legal procedures are the need of the hour. While formulating laws to help the tribal people, the procedures must be simplified taking into account the levels of awareness and the economic levels of the community.

Alienation or transfer for the purpose of this law should cover not only transfers by sale to a person not belonging to the scheduled tribes but all kinds of transfers including benami transfers, transfer to wives, ploughmen, servants, adopted sons or daughters, sons or daughters taken in adoption by non-tribals, transfer through marriage with tribal women, transfer through consent decree, declaratory suits, and deeds of surrender or abandonment of land executed by persons belonging to the scheduled tribes in favour of non-tribals must also be covered.

A comprehensive survey and settlement of the tribal sub-plan areas should be carried out using modern survey methods in minimum time period. In this endeavour, administrators as well as activists and voluntary agencies should be involved. As a part of the process the local situation of encroachment and occupation should be clearly investigated and administratively settled in favour of the eligible tribals.

The framework guiding the survey should be based upon the specific forms of property rights operative in tribal areas namely customary rights over forest, and land belonging to the local communities as well as individuals. In this process attention should be paid to the recognition of the rights over community property resources.

Several development projects have been launched involving the acquisition of the tribal land by the Government and tribal agencies. The process of acquisition should involve consultation with the affected tribal people through their institutions like panchayats and Gram Sabhas.

Displacement and rehabilitation programmes of tribals should be re-examined. Wherever displacement becomes inevitable, the tribal community should be re-settled as a village community, with adequate land in similar environment rather than mere monetary compensation given to individual families. A much

more pro-people rehabilitation policy, which assures tribals land for land and direct benefits from all development projects that displace them, should be an indispensable component of any package of measures to prevent tribal land alienation.

I compliment the author for presenting a rather terse subject matter dealing mainly with the statute book, in a rather lucid style, in the larger interest of the Officer Trainees in the Academy.

RUDRA GANGADHARAN

INTRODUCTION

T. K. MANOJ KUMAR
Coordinator

**Centre for Rural Studies
LBS National Academy of
Administration, Mussoorie**

The issue of tribal land alienation has to be seen as an issue of alienation of forests and agricultural lands accentuated by alien concepts of boundaries, ownership deeds and reliance on the written word. The tribal development policies failed to incorporate tribal values and the tribal people were expected to enter the mainstream on terms dictated by a highly non-tribal mind-set.

The primary resource base of the tribal people has been the land, but not so much the agricultural land as the forest land. The tribal society, its norms and its identity came from those forests. The people were forced to give up their traditional rights over the forests and remain content with agricultural lands. The practice of agriculture may not have been alien to them (as they had already been forced to work as agricultural labour), but the concept of land ownership was absent.

Unimaginative forest policies are responsible for not only making inroads into traditional forest rights but also into the very basis of the tribals' subsistence. Thus the symbiotic relationship between the tribal and the forests is getting disturbed. The traditional relationship of the tribals with the forests does not state about a new right. The Dhebar Commission also stated in its report that the forest rights had been reduced to mere concessions and afterwards these concessions also almost ceased to exist.

In the areas where shifting cultivation is an important agricultural activity, the tribals should be given ownership rights of the lands cultivated by them traditionally. The documents of ownership of such lands should be handed over to them. The cultural context of shifting cultivation should be borne in mind while attempting a transition from shifting cultivation to settled cultivation.

The customary rights of the tribals in land must be recognised. It is inevitable that many of the customary rights of the tribals would require change in course of time for the sake of adaptability in the larger national interest. However, it must be kept in mind that the tribal interests are not sacrificed.

The measures enforced to prevent tribal land alienation can succeed only if the oppressed people intended to benefit from these provisions are truly conscientized in the paulo friecian sense. They must firstly be made aware about the provisions of the law, and convinced about their legitimacy. There are several ways in which such legal literacy and mobilisation can be secured. One way is to intensively educate tribal youth in the large number of tribal high schools and tribal hostels that abound in the states, about the laws and motivate them to be activists in their village to educate and mobilise their elders to benefit from these provisions. Booklets in simple local language which demystify the law and legal processes would also be invaluable.

A well-designed awareness programme will include the harnessing and channelising the consciousness of the tribal masses into requisite pressure groups for the assertion of their rights. Such groups will provide the much-needed evidentiary support in court cases and keep the enforcement machinery on the alert and non-tribal transferees under check.

Special role would be assigned to the traditional tribal community organisations in the detection of cases of the alienation of tribal lands and their restoration. This role may include the following:

- (a) entertaining complaints of the alienation of tribal land;
- (b) making an enquiry into such cases.
- (c) authorising the community to direct the adversary party to move out of the land of the tribal if the tribal claim is found correct.
- (d) reporting the matter to appropriate revenue court/ authority in the event of the non-tribal refusing to accept the direction of this body.
- (e) giving evidence in a court of law about the authentic identity of tribal land, its owner and holder, the manner in which land has been alienated and the period for which alienation has persisted.
- (f) exerting pressure to ensure actual restoration on the spot.

(g) creating awareness among the members of the Scheduled Tribes about the legal provisions concerning alienation of tribal land and the manner in which relief against such alienation can be obtained.

Dr. C. Ashokvardhan, the author of the present volume, has served on numerous expert groups on tribal land issues formed by the Ministry of Rural Development, Government of India and the National Commission for the Scheduled Castes and Scheduled Tribes. While working with Shri P. S. Appu, he covered the entire North-East. He visited the Fifth Schedule States as a member of an expert group headed by Shri B. N. Yugandhar. It is one thing to make an expert commentary on the state of affairs, and quite another to present difficult themes and provisions, along with suggestions for improvement, in a simple manner. It is to be hoped that young civil servants will get necessary insights and an impetus to understand the themes covered under this title.

T. K. MANOJ KUMAR

ACKNOWLEDGEMENT

As SDO, Godda (Santal Parganas: Jharkhand) and Settlement Officer, Dhanbad (Jharkhand) I had got an exposure to the Santal Parganas (Supplementary Provisions) Act, 1949 and the Chota Nagpur Tenancy Act, 1908 respectively. I got a rare opportunity of understanding the nuances of the tribal tenancy law and its operation through field-work and court-work. My interactions with field staff and practitioners of law enabled me to comprehend the legal intricacies and develop a judicious view of the matter at hand, myself.

My association with an Expert Group on the Revitalisation of Land Revenue and Land Records Administration in India (Ministry of Rural Development, Government of India) gave to me the advantage of touring 14 states including the 7 states in the North-East, learning through interactions across the country and enabling me to develop a comparative perspective. The Expert Group, appointed as it was by the Ministry of Rural Development, Government of India, was headed by Shri P. S. Appu, who had been Director, LBSNAA, Mussoorie in 1980-81 when I was a probationer in the service.

I subsequently served as a member of an Expert Group set up by the National Commission for SCs and STs (GOI) to study issues pertaining to Land Rights.

Finally, I had an opportunity of covering a number of the Fifth Schedule States while working as a member of an Expert Group (headed by Shri B. N. Yugandhar) on Tribal Land Alienation and its Restoration, formed by the Ministry of Rural Development, Government of India.

Frequent interactions with Shri S. R. Sankaran, former Secretary, MoRD, GOI, enabled me ward off doubts and drift which are bound to occur while coming to grips with a rather tousel subject matter like this.

I am indebted to Shri Rudra Gangadharan, Director, LBSNAA, Mussoorie and Shri T. K. Manoj Kumar, Coordinator, Centre for Rural Studies, LBSNAA, Mussoorie for enabling me to take my own modest exposure to the tribal tenancy laws to the Officer Trainees in the Academy. They have consistently

evinced keen interest in the pursuit of this work to its conclusion and that leaves me obliged.

There had been the most positive and pro-active response from Shri Subhransu Tripathy, Assistant Professor, Centre for Rural Studies, LBSNAA, Mussoorie to the idea mooted out by me on preparing the present volume. He has promptly made over relevant database and also insights he had picked up himself during his stint in the CRS.

The neatness of the type-setting by Shri Samar Singh Kashyap, Centre for Rural Studies, LBSNAA, Mussoorie is for the reader to see for himself. I remain simply amazed at his speed and quality of output – rolled in one.

C. ASHOKVARDHAN

ABBREVIATIONS

AC	Additional Collector
AGP	Assistant Government Pleader
BoR	Board of Revenue
CO	Circle Officer
DCLR	Deputy Collector, Land Reforms
DoB	Date of Birth
DP	Draft Publication
FP	Final Publication
GP	Government Pleader
ITDP	Integrated Tribal Development Project
JB	Jamabandi
LC Case	Land Ceiling Case
LCR	Lower Court's Record
LH	Land Holder
MFP	Minor Forest Produce
SHG	Self Help Group
TAC	Tribes Advisory Council
TRC	Terraced Rice Cultivation
TSP	Tribal Sub Plan
U/S	Under Section
Vs	Versus
VOS	Vide Order Sheet

CONTENTS

Foreword

Introduction

Acknowledgement

Sl. No.	Chapter	Page No.
1.	Andhra Pradesh	1
2.	Assam	35
3.	Chhattisgarh	49
4.	Gujarat	67
5.	Himachal Pradesh	90
6.	Jharkhand	95
7.	Karnataka	126
8.	Kerala	135
9.	Madhya Pradesh	150
10.	Maharashtra	159
11.	Manipur	175
12.	Meghalaya	194
13.	Nagaland	208
14.	Orissa	226
15.	Rajasthan	245
16.	Tamil Nadu	260
17.	Tripura	279
18.	Tribal Land Legislation: An Executive Summary	288
	Bibliography	327

ANDHRA PRADESH

There are thirty-three major tribal communities in Andhra Pradesh today, residing mostly on hill tracts.

Geographical Distribution of Tribals

On the basis of geo-ethnic characteristics, the tribal areas of Andhra Pradesh have been divided into the following five geographical zones:

- i) The region of the Gonds which constitutes the tribals areas of Adilabad District in the extreme Gondwana region adjoining the districts of Maharashtra.

The Gond community is divided into six-tribes: (i) Raj gond or Gond (ii) Pradhan (iii) Toli (iv) Dadve (v) Gowari and (vi) Kolams. All these are endogamous in nature.

- ii) The Koya-konda Reddi region which includes areas along the Godavari gorges: tribal areas of Karimnagar, Warangal, Khammam, West Godavari and East Godavari districts.

The Koyas are found along the Godavari river from Karimnagar to the East and West Godavari Districts. The Konda Reddis inhabit either side of the Godavari banks from Bhadrachalam area of Khammam district to Devipatnam and Polavaram areas of East and West Godavari respectively. Although they are spread over a large area, a majority is concentrated in Maredumilli and Addatigala region of East Godavari District.

- (iii) The Khond-Savara region constitutes those tribal areas which are part of the Eastern Ghats spreading across forest and hill tracts of Srikakulam to Vizianagaram and Visakhapatnam district.

The origin of Savaras is traced to the ancient Sabaras who are migrants from the lower reaches of the Ganges. The Savaras consist of two classes: Kapu Savaras who dwell in the plains and Hill Savaras or Jati Savaras who consider themselves to be superior to their counterparts. The origin of the Khonds, however, is unclear. In the Visakhapatnam District Manual of 1869, they are recorded as owners and cultivators of the soil. They are divided into two groups namely Dondgria Khonds and Desys Khonds.

- (iv) The Chenchu region comprises the tribal areas of Mahaboobnagar, Nalgonda, Kurnool, Prakasam and Guntur districts. The traditional habitat of Chenchus is found in the contiguous forest tracts of Nallamalai hills. Most of the Chenchus of this area are more or less at the food gathering state of economy and they largely subsist on hunting and collection of roots, timber and honey. It is important to note, however, that although in the Census of 1971 more than 18,000 Chenchus were enumerated, only a few hundred still pursue their traditional life style as semi-nomadic forest dwellers.

- (v) Plain areas comprise Yanadis, Yerukulas and Lambadas. These three groups have been recognised as scheduled tribes in the Andhra region from 1956 and Telengana from as late as 1976. The Yanadis are concentrated in the Andhra region, the Yerukulas throughout the State and the Lambadas, mainly in the Telengana region.

The main source of livelihood of the Yanadis is fishing. The Yerukulas are now intermingled with non-tribal groups. In origin they are mainly pig rearers. The Lambadas were once a nomadic group but today many of them have settled down as prosperous cultivators and herdsman.

About two thirds of the tribals live in the hilly and Scheduled Areas of Srikakulam, Vizianagaram, East Godavari, West Godavari, Khammam, Warangal, and Adilabad districts. After the Constitution of India came into force, these regions came to be known as Scheduled Areas under a special order in 1953.

Tribes Position in the Scheduled Areas of Andhra Pradesh

Sl. No.	Name of the District	Scheduled Tribes
1.	Srikakulam	Savara, Jatapu, Gadaba, Konda Dora.
2.	Vizianagaram	-do-
3.	Visakhapatnam	Bagata, Gadaba, Kammara, Konda Dora, Kotia, Khond, Mali, Manne Dora, Mukha Dora, Reddi Dora, Porja Valmiki, Gond, Kulia
4.	East Godavari	Koya, Konda Reddi, Kammara, Koya Dora, Valmikis, Konda Kapus.
5.	West Godavari	Koya, Konda Reddi, Yerukula, Yanadi
6.	Khammam	Koya, Konda Reddi
7.	Warangal	Koya, Lambada
8.	Adilabad	Gond, Kolam, Pradhan, Thoti, Lambada, Naikpod, Andh
9.	Mahaboobnagar	Lambada, Chenchu

More specifically historical understanding of the land alienation process in Andhra Pradesh reveals the following trends.

The Godavari Region

As lands situated on either side of the Godavari are fertile, land alienation by non-tribals has been phenomenal. Even before the Rampa rebellion of 1879-80, traders and moneylenders were pushing into the hills and beginning to undermine the traditional economy. With the construction of metalled roads and tracks into inaccessible parts of the Rampa territory in the 1880's, large scale commercial exploitation of forests began.

Moreover, the Godavari river has facilitated the movement of the non-tribals from the widely populated plain areas of East and West Godavari to sparsely populated tribal areas by country craft, mechanized boats and launches.

In the East Godavari region, massive invasion of tribal land by outsiders occurred after 1947. The Forest Department, in order to meet the raw material requirements of the Andhra Paper Mills and the growing demand for firewood and timber in the markets of the coastal plains, began the extraction of bamboo and timber from the forests of the northern hills on a large scale starting in the early 1960s. Laying of roads in the hills to transport forest produce broke the isolation of many hill settlements, thereby facilitating increased alienation.

In 1986, a survey on the extent of alienation in East Godavari District has revealed that there were 6,781 non-tribals controlling 15,521-17-0 hectares (Government records, 1986).

In 1961, the state government leased the rights to the Sirpur Paper Mills to extract bamboo from the coups of Khammam District on a long-term basis. Similar rights over the coups of West Godavari district were provided to the Andhra Paper Mills. In 1974, the government abolished auctions of forest coups and since then the government has been extracting bamboo and timber through its logging division.

The problem of land alienation covering a period of eighty years is not an accidental one. It has arisen essentially because of the concerted efforts of the antagonistic class interests that are operating in these areas. The problem of land alienation thus is not just the result of the migration of the non-tribals into these places as is held by popular notions but there is a history behind this migration. And the State has actively lent its support to the migrant non-tribals to settle down in the tribal areas.

Adilabad Region

It appears that a major change in the tribals' position seems to have occurred only in the first years of the twentieth century with the improvement of communications between Nirmal and Adilabad on the Western side. Along these two lines the non-tribals' population flooded into the district from the south and the north, and occupied such land as became easily accessible.

Another major factor that led to displacement was the tribal system of cultivation. Although appropriate in the context of easy availability of cultivable land and forests, it contributed ultimately to the process of alienation because agricultural population of intruders from neighbouring areas occupied lands left fallow. These new settlers managed to obtain title deeds for these occupied lands.

There is a difference between the nature of alienation in the eastern and central areas of Adilabad. In the eastern area the structure of landlordism became entrenched while in the central highlands the Gonds and Kolams continued to be undisturbed. In the eastern plains a class of large landlords emerged when the Nizam Government decided to maximise land revenue in the area. This was done by a grant of land, known as 'watan' offered to anyone with political influence with the implicit understanding that they would undertake to extend cultivation and raise revenue. Upto now, much of this land was actually cultivated by the tribals. Due to this alienation many tribals left the plains areas and moved westward and northward into the hilly central zone. The main source of land alienation in the central zone was through smaller local landlords, with similar links with large landlords to corrupt government officials. These landlords moved into tribal villages and slowly took them over.

The tribal communities rebelled in 1941 due to alienation of land and the rules instituted by the state for forest reservation.

In 1944, the Nizam Government embarked on a policy of rehabilitation. By 1949, about 11,198 tribals have been assigned pattas despite opposition from the non-tribal vested interests. Finally, about 85 percent of the tribal householders of Adilabad district were in possession of cultivable land.

By 1960, the situation improved. However, after the construction of motorable road links between Utnuru Kerimeri-Asifabad, non-tribal immigrants filled the highlands. Many Gonds and Kolams who were provided with pattas in the 1940s were once again deprived of their land. Maximum dispossession occurred between 1965-75. This coincided with the widespread illegal felling of forests. Non-tribals occupied tribal land by use of force. No redress from officers of the

Government was forthcoming. Many of them colluded with the exploiters.

In the year following, some legal redress was initiated but it was far from satisfactory.

Srikakulam Region

The tribals of the agency area in this region are blessed with rich minor forest produce such as tamarind, honey, kendu leaves as well as wide varieties of timber. However, over a period of time they have become victims of oppression of outsiders such as Vysyas (business caste), Telaga (agriculture caste), Karanam (Oriya caste of village accountants) and Sundi (toddy tappers). They constituted the money lenders-cum-traders-cum-non-tribal land owners. Most of them resided in towns in the plains of Vizianagaram, Bobbili and Srikakulam.

The exploitative situation in this region lent itself to external intervention. The Naxalite revolt was centered mainly in Srikakulam district during 1968-70. Bhadragiri Panchayat Samithi in the western part of the district was the centre of tribal unrest which turned violent and spread to the entire district.

When the Naxalite movement was at its height many sahkars had fled from the area leaving their properties. It was considered a victory by the Naxalites and successful demonstration of their ideology. But after the movement was suppressed all the sahkars came back to the villages and they began to renew their contacts with the tribesmen and started their business in the old form. The tribesmen too were going to the sahkars for 'help'. The land that was restored to the tribals by the Naxalites slowly went back to the former sahkars and the tribals have again become agricultural

labourers, tenant cultivators and finally dependents on the forest for their food.

Legal Provisions

THE ANDHRA PRADESH SCHEDULED AREAS LAND TRANSFER REGULATION, 1959.

This Regulation was aimed at regulating the transfers of land in the Scheduled Areas of the East Godavari, West Godavari, Visakhapatnam, Srikakulam (Adilabad, Warangal, Khammam and Mahaboobnagar) districts of Andhra Pradesh.

In this Regulation, "Agency tracts" means the areas in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam and Mahaboobnagar districts of Andhra Pradesh.

In this Regulation, "Agency tracts" means the areas in the districts of East Godavari, West Godavari, Visakhapatnam, Srikakulam, Adilabad, Warangal, Khammam and Mahaboobnagar declared, from time to time as Scheduled Areas by the President under subparagraph of paragraph 6 of the Fifth Schedule to the Constitution. 'Scheduled Tribe' in the Regulation means any tribe or tribal community or part of group within any tribe or tribal community and specified as such in relation to the State of Andhra Pradesh by a public notification by the President under clause (1) of Article 342 of the Constitution.

"Transfer" in the Regulation means mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and included a charge on such property or a contract relating to such

property in respect of such mortgage, lease, sale, gift, exchange or other dealing.

Main Provisions of the Regulation

3. Transfer of immovable property by a member of a Scheduled Tribe – (1) (a) Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of a person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of the members of the Scheduled Tribes.
 - (b) Until the contrary is proved, any immovable property situated in the Agency tracts and in possession of a person who is not a member of the Scheduled Tribe, shall be presumed to have been acquired by the person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe.
 - (c) Where a person intending to sell his land is not able to effect such sale, by reason of the fact that no member of a Scheduled Tribe is willing to purchase the land or is willing to purchase the land on the terms offered by such person, then such person may apply to the Agent, the Agency Divisional Officer or any other prescribed officer for the acquisition of such land by the State Government, and the Agent,

Agency Divisional Officer or the prescribed officer, as the case may be, may by order, take over such land on payment of compensation in accordance with the principles specified in section 10 of the Andhra Pradesh Ceiling on Agricultural Holdings Act, 1961, (Act x of 1961), and such land shall thereupon vest in the State Government free from all encumbrances and shall be disposed of in favour of the members of the Scheduled Tribes or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) composed solely of members of the Scheduled Tribes or in such other manner and subject to such conditions as may be prescribed.

2. (a) Where a transfer of immovable property is made in contravention of sub-Section (1) the Agent, the Agency Divisional Officer or any other prescribed Officer may, on application by anyone interested, or on information given in writing by a public servant, or suo motu, decree ejection against any person in possession of the property claiming under the transfer, after due notice to him in the manner prescribed and may restore it to the transferor or his heirs.
 - (b) If the transferor or his heirs are not willing to take back the property or where their whereabouts are not known, the Agent, the Agency Divisional Officer or prescribed officer, as the case may be, may order the assignment or sale of the property to any other member of a Scheduled Tribe or a society registered or deemed to be registered under any law relating to Co-operative societies for the time being in force in

the State composed solely of members of the Scheduled Tribe or otherwise dispose of it, as if it was a property at the disposal of State Government.

(3) (a) Subject to such conditions as may be prescribed, an appeal against any decree or order under sub section (2), shall lie within such times as may be prescribed-

- (i) if the decree or order was passed by the Agent, to the State Government;
 - (ii) if the decree or order was passed by the Agency Divisional Officer, to the Agent; and
 - (iii) if the decree or order was passed by any other officer, to the Agency Divisional Officer or Agent, as may be prescribed.
- (b) The appellate authority may entertain an appeal on sufficient cause being shown after the expiry of the time limit prescribed therefor.
- (4) For the purposes of this section, the expression 'transfer' includes a sale in execution of a decree and also a transfer made by a member of a Scheduled Tribe benami for the benefit of a person who is not a member of a Scheduled Tribe; but does not include a partition or a devolution by succession.
- (1) any person, whether or not such person is member of a Schedule Tribe, may, subject, to the provisions of Clause (2) mortgage without possession, any immovable property situated in the Agency tracts, to any Co-operative Society including a land mortgage bank, or to any bank or other financial institution approved by the State Government:

Explanation:- For the purposes of this clause, 'a bank' means a banking company as explained in clause (c) of section 5 of the Banking Regulation Act, 1949 and includes the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding new bank as specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Agricultural Refinance and Development Corporation established under the Agricultural Refinance and Development Corporation Act, 1963, a Regional Rural Bank established under the Regional Rural Banks Act, 1976, and any other banking institution notified by the Central Government under Section 51 of the Banking Regulation Act, 1949;

- (2) In respect of every mortgage which was executed at any time either before or after the date of commencement of the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation 1971, in the event of the immovable property so mortgaged or any part thereof being brought to sale in default of payment of the mortgage money of the interest thereof or for any other purpose, the said property shall be sold only to a member of a scheduled tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1954 (Act 7 of 1954) which is composed solely of members of the Scheduled Tribes.

Explanation:- For the purpose of section 3-B and this section a Cooperative Society having as its members all or any of the following, namely-

- (a) the individual members of the Scheduled Tribes;

- (b) one or more Co-operative Societies which does not have among its members any person who is not a member of a Scheduled Tribe;
- (c) the Government shall be deemed to be a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of the members of the Scheduled Tribes.

3-B. Restriction on registration of documents- Notwithstanding anything contained in the Registration Act, 1908, no document relating to transfer of immovable property situated in the agency tracts shall be registered by any registering officer appointed under the said Act, unless the person presenting the document furnished a declaration by the transferee in the prescribed form which shall be subject to verification in the prescribed manner that the transferee is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 which is composed solely of members of the Scheduled Tribes.

- 4. Suits against a member of a Scheduled Tribe to be instituted in the Agency Courts- Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, every suit against a member of a Scheduled Tribe instituted after the commencement of this Regulation shall be instituted only in the Court having jurisdiction over the Agency tracts.
- 5. Attachment and sale of immovable property. No immovable property situated in the Agency tracts and owned by a member of a Scheduled Tribe shall be liable to be attached and sold in execution of a money decree against such member, except to the extent and the manner prescribed.

- 6. Revision:- The State Government may revise any decree or order passed by the Agent, the Agency Divisional Officer or any other prescribed officer under this Regulation:

Provided that this power shall be exercised only after due notice to the parties affected by the decree or order and after giving them a reasonable opportunity of being heard.

6-A. Penalty- (1) any person who, on or after the commencement of the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation, 1978,

- (a) acquires any immovable property in contravention of the provisions of this Regulation; or
- (b) continues in possession of such property after a decree for ejectment is passed; shall, on conviction, be punished with rigorous imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.
- (3) When a Court imposes a sentence of fine or a sentence of which fine forms a part, the Court may, when passing a judgement, order any part of the fine recovered to be paid to the member of a Scheduled Tribe who is a transferor, as compensation.

6-B. Offences under Regulation to be cognizable – Notwithstanding anything in the Code of Criminal Procedure, 1898, all offences under this Regulation shall be cognizable.

- 7. Provisions of Limitation Act to apply to proceedings under this Regulation—The provisions of the Indian Limitation Act, 1908 (Central Act IX of 1908), shall, in so far as they

are not inconsistent with the provisions of this Regulation or the rules made thereunder, apply to proceedings under this Regulation.

8. Power to make rules- (1) The State Government may, from time to time, make rules to carry out the purposes of this Regulation.
- (2) All rules made under this section shall be published in the Andhra Pradesh Gazette and on such publication shall have the same effect as if enacted in this Regulation.
9. Repeal- The Agency Tract Interest and Land Transfer Act, 1917 (Madras Act 1 of 1917) is repealed to the extent to which any of the provisions contained therein correspond or are repugnant, to any of the provisions contained in this Regulation.
10. Savings- (1) The provisions contained in this Regulation shall not affect-
 - (a) any transfer made or sale effected in execution of a decree before the commencement of the Agency Interest and Land Transfer Act, 1917 (Madras Act 1 of 1917); or
 - (b) any transfer made or sale effected in execution of a decree after the commencement of the said Act and before the commencement of this Regulation, if such transfer or sale was valid under the provisions of the said Act.
- (2) Nothing in this Regulation shall affect a land-holder's right to proceed against a ryot in accordance with the provisions of the Andhra Pradesh (Andhra Area) Estate Land Act, 1908

(Act 1 of 1908), or the first charge declared by section 5 of the Act or the provisions of that Act regarding relinquishment of the holding by a ryot or the provisions of the Central Provincial Tenancy Act, 1898 (Central Act IX of 1898).

Provided that no relinquishment of a holding by a ryot who is a member of a Scheduled Tribe shall be valid unless the previous sanction of the State Government, or subject to the rules made in this behalf, the previous consent in writing of the Agent or the prescribed officer, has been obtained thereto.

THE ANDHRA PRADESH SCHEDULED AREAS LAND TRANSFER RULES, 1969

Some of the important Rules are as follows:-

11. No party shall be entitled to be represented by a legal practitioner before any officer or authority in any proceeding under these rules without the previous permission in writing of the Agent, or the Agency Divisional Officer.
12. (1) The consent shall not be granted for sale of immovable property in execution of a money decree against any member of a Scheduled Tribe unless the Agent or the Agency Divisional Officer, as the case may be, is satisfied-
 - (a) that the member of the Scheduled Tribe will retain in his possession after such sale adequate land to support him and the members of his family.
 - (b) that the true value of the land does not exceed the amount realised at the sale;

(c) that the immovable property shall be sold only to a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964, which is composed solely of the members of the Scheduled Tribes.

(2) Subject to the provisions of sub-rule (I), attachment and sale of immovable property situate in the agency tracts and owned by a member of the Scheduled Tribe shall be made in accordance with the Agency Rules.

13. The consent shall not be granted under the proviso to sub-section (2) of section 10 of the Regulation for the relinquishment of a holding by a ryot who is a member of the Scheduled Tribes under the Andhra Pradesh (Andhra area) Estates Land Act, 1908 (Act 1 of 1908) unless the Agent or the Agency Divisional Officer is satisfied:

- (a) that such relinquishment is being made without duress;
- (b) that the relinquishment is being made in good faith and is not vitiated by fraud or collusion;
- (c) that, except where he intends to give up the profession of an agriculturist, the land retained in possession of the ryot after such relinquishment is adequate to support him and the members of his family, and
- (d) that the ryot is unable to sell the holding to any member of the Scheduled Tribe or to any Co-operative Society composed solely of members of the Scheduled Tribes.

14. (1) Any land taken over under rule 16 may be disposed of by assignment to a member of a Scheduled Tribe or to a Society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 composed solely

of members of the Scheduled Tribes subject to the following conditions namely:-

- (i) that the assignee shall not, without the previous permission in writing of the Agent or the Agency Divisional Officer, sell the land for a period of ten years from the date of assignment;
- (ii) that the assignee shall pay to the Government the cost of acquisition of land in such number of equal annual instalments not exceeding eight, as may be fixed by the Agent, the Agency Divisional Officer, or the Officer referred to in rule 14, as the case may be; and
- (iii) such other conditions as are normally applicable to the assignment of Government land from time to time.

In addition to the Agent (District Collector) and the Agency Divisional Officer, the Deputy Collector (Tribal Welfare) Elwinpeta (in respect of Vizianagaram and Srikakulam District), Special Deputy Collectors (Tribal Welfare) at Paderu (Visakhapatnam District), Rampachodavaram (East Godavari District), Kotaramachandrapuram (West Godavari District), Paloncha (Khammam District), Eturnagaram (Warangal District) Utnoor (Adilabad District) and Revenue Divisional Officers of all ITDs as in the districts of Srikakulam, Vizianagaram, Visakhapatnam, East Godavari, West Godavari, Khammam, Warangal and Adilabad are competent to decree ejection against any person in possession of the property situated in the Scheduled Areas claiming under transfer and restore it to the transferor or his heirs. The Special Deputy Collector (Tribal Welfare) assisted by his subordinate staff detects the cases of violation of Land Transfer Regulation through physical verification. He also acts on the receipt of application from any

one interested or on information in writing by a public servant or suo moto. He gives notice to any person in possession of the property, claiming under transfer to show cause within fifteen days from the date of its service why he should not be ejected and the property restored to the tribal transferor or his heirs. He shall take into consideration the representation, if any, received in reply to the notice and after conducting enquiry he may pass orders as he deems fit. In case he decides that the person in possession should be ejected he passes a decree of ejectment and restore it to the transferor. An appeal against any decree or order passed under Land Transfer Regulation by Special Deputy Collector (Tribal Welfare) lies with the Agents (District Collectors). The Agent after giving the parties concerned a reasonable opportunity of being heard may pass such orders as he thinks fit. The appeal against any decree or order passed by the Agent lies with the State Government.

If the transferor or his heirs are not willing to take back the property or their whereabouts are not known, the Agent, Agency Divisional Officer or the prescribed officer, as the case may be, order the assignment or sale of the property to any member of a Scheduled Tribe or a Society registered or deemed to be registered under any law relating to Cooperative Societies for the time being in force in the State composed solely of the members of the Scheduled Tribes or otherwise dispose it of as if it were a property at the disposal of the State Government.

As a result of effective implementation of the provisions of Land Transfer Regulation by the Special enforcement machinery a sizable extent of land has been restored to the tribals. The details of land restored under this Regulation till the end of June, 1991 are furnished hereunder:

1.	Total no. of non-tribal occupation as per adangal	55,972
2.	Extent of land covered under Col. No. 1	2,32,920.52 Acres
3.	No. of cases in which enquiries are initiated.	48836
4.	Extent of land covered under col. No. 3	217163.38 Acres
5.	No. of cases disposed off	43304
6.	Extent of land covered under col No. 5	190282.18 Acres
7.	No. of cases in which land was restored to the tribals	19060.00
8.	Extent of land restored to the tribals	88998.82 Acres
9.	No. of cases pending disposal	11,679
10.	Extent of land covered under col. No. 9	37720.90 Acres

However, the statistics furnished above do not reflect the actual position on ground. In reality several non-tribals are in occupation of land through various means like lease, tenancy, mortgage, sharecropping besides benami transactions including transfer of land in the name of tribal women, tribal farm servants and pseudo tribal certificates. Further, several non-tribals are in occupation of lands even after decree of ejectment is passed by the competent authority under the provisions of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959.

Most of the land in the Scheduled Areas in Andhra Pradesh was covered under the feudatory systems of land tenure like zamindari, jagirdari, muthadari and Mahaldari systems. Under these feudatory systems the land holders had right to evict a tenant if someone offered higher rent. The tribal tenant did not have security of

tenancy over the lands cultivated by him. With a view to confer patta rights to the tribal ryots over the lands cultivated by them and to create proper land records after due survey and settlement operations in these villages, the Governor of Andhra Pradesh made the following Regulations:

1. A.P. Mahals (Abolition and Conversion into Ryotwari) Regulation, 1969.
2. A.P. Muttas (Abolition and Conversion into Ryotwari) Regulation, 1969, and
3. A.P. Scheduled Areas Ryotwari Settlement Regulation, 1970.

A.P. Mahals (Abolition and Conversion into Ryotwari) Regulation, 1969 (Regulation 1 of 1969)

The Regulation 1 of 1969 provides for the abolition of Mahals in the Scheduled Areas of Nugur, Alabaka and Cheria in Khammam district and for their conversion into Ryotwari system. The Regulation provides for:

1. Appointment of settlement officers to conduct settlement operations in the erstwhile Mahals.
2. Every tribal ryot in lawful possession of the land continuously for a period of not less than 1 year immediately before the notified date shall be entitled to a ryotwari patta. If the tenant is a non-tribal, he is entitled to ryotwari patta only if he is in occupation of land for a continuous period of not less than eight years immediately before the notified date and such occupation is not violative of the provisions of the Land Transfer Regulation, 1959.

A.P. Muttas (Abolition and Conversion into Ryotwari) Regulation, 1969

The Regulation provides for the abolition of Muttas in certain Scheduled Areas of the State and conversion thereof into Ryotwari system. The settlement officer appointed under this Regulation has to carry out survey and settlement operations to facilitate introduction of ryotwari settlement.

Under this Regulation the tribal ryots in occupation of lands for a continuous period of not less than one year before the notified date shall be entitled to a ryotwari patta. No non-tribal ryot is entitled to ryotwari patta in respect of agricultural land unless he is in lawful possession of the said land for a continuous period of 8 years before the notified date and such possession was not hit by the provisions of the A.P. Scheduled Areas Land Transfer Regulation, 1959.

A.P. Scheduled Area Ryotwari Settlement Regulation, 1970 (Regulation 2 of 1970)

The Regulation 2 of 1970 provides for ryotwari settlement of certain lands in the Scheduled Areas in respect of which no ryotwari settlement is effected. The Regulation applies to the land other than those comprised within Muttas and Mahals governed by the Regulations providing for the abolition thereof. After the survey every ryot is entitled to ryotwari patta in respect of all cultivable lands which were properly included in his holding. If the land is situated in an estate taken over by the Government under the Estates Abolition Act, a person would be entitled to a ryotwari patta if he is in occupation of the said land for a continuous period of 8 years from the commencement of the said Regulation and the same is not void or illegal under the A.P. Scheduled Areas Land Transfer Regulation, 1959.

Section 7 of the Regulation deals with lands in which a ryot is entitled to a ryotwari patta. Section 7 is as follows:-

7. Lands in which ryot is entitled to ryotwari Patta:- (1) Every ryot in the Scheduled Areas to which this Regulation applies shall be entitled to a ryotwari patta in respect of all cultivable lands which were properly included or which ought to have been properly included in his holding and which are not lands in respect of which any other person is entitled to a ryotwari patta under any other law for the time being in force in the State relating to the grant of a ryotwari patta.

Provided that in the case of lands in the estates which have been taken over under the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 a person who would be entitled to a ryotwari patta under that Act shall be granted a patta, if the lands have been continuously in the occupation of that person from the notified date;

Provided further that in respect of lands other than those to which a person is entitled to a ryotwari patta under the first proviso, no ryot who is not a member of the Scheduled Tribes shall be entitled to a ryotwari patta in respect of cultivable land unless-

- (a) such a person had been in possession or in occupation of the land for a continuous period of not less than eight years immediately before the commencement of this Regulation;
- (b) such possession or occupation shall not be void or illegal under the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, or any other law for the time being in force.

Explanation:- In this sub-section, the expression “notified date” shall have the meaning assigned to it in clause (10) of section 2 of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948.

Under the A.P. Mahals (Abolition and Conversion into Ryotwari) Regulation, 1969, A.P. Muttas (Abolition and Conversion into Ryotwari) Regulation, 1969 and A.P. Scheduled Areas Ryotwari Settlement Regulation, 1970, thousands of non-tribals were granted ryotwari pattas. Further, the non-tribal landlords and sowcars managed to produce records as if the lands were under their occupation for more than 8 years at the time of survey and settlement operations. Once the non-tribals secure ryotwari pattas under the laws from the competent authority, they employed all dubious methods to prevent the concerned persons from preferring appeals against the orders of the settlement officers and ensure that the orders of the settlement officers became final. Once the orders of the settlement officer become final, the same cannot be reopened under the Land Transfer Regulation. Thus several thousands of acres of land in the Scheduled Areas escaped the purview of the provisions of Land Transfer Regulation.

Judicial Pronouncements on Land Transfer Regulation and Ryotwari Settlement Regulations.

The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 was amended in 1970 by Regulation 1 of 1970. The amended regulation prohibits transfer of immovable property to non-tribals in the Scheduled Areas irrespective of the fact whether the transferor is a tribal or a non-tribal. Further, a presumptive clause was incorporated according to which until the contrary is proved the immovable property situated in the Scheduled Areas and in

possession of a non-tribal shall be presumed to have been acquired by such non-tribal or his predecessor through a transfer made to him by a tribal. The Constitutional validity of the amendment made in 1970 was challenged in the Hon'ble High Court of Andhra Pradesh. The High Court of A.P. upheld the Constitutional validity of the amendment of the land transfer regulation made in 1970 but held that the provisions incorporated in 1970 are not retrospective in operation. Aggrieved by the above decision of the High Court, the non-tribals filed Civil Appeals Nos. 2299 and 2300 of 1970 in the Supreme Court. The Supreme Court also upheld the Constitutional validity of the Regulation 1 of 1970. The learned Judges in their judgement held that the community cannot shut its eyes to the fact that the competition between the tribals and the non-tribals partakes of the character of a race between a handicapped one-legged person and an able bodied two-legged person. This transfer by non-tribals to non-tribals would not diminish the pool. It would maintain status quo. But is it sufficient or fair enough to freeze the exploitative deprivation of the tribals and thereby legalize and perpetuate the past wrong instead of effacing the same? As a matter of fact it would be unjust, unfair and highly unreasonable merely to freeze the situation instead of reversing the injustice and restoring the status quo ante. The provisions merely command that if a landholder voluntarily and on his own volition is desirous of alienating the land he may do so only in favour of a tribal. It would be adding insult to injury to impose such a disability only on the tribals, the victims of oppression and exploitation themselves and discriminate against them in this regard whilst leaving the non-tribals to thrive on the fruits of their exploitation at the cost of the tribals. The non-tribal economic exploiters cannot be installed on the pedestal of immunity and accorded a privileged treatment by permitting them to transfer the lands and structures, if only raised on such lands, to non-tribals and made profits at the cost of the tribals. It would not only be tantamount to perpetuating the exploitation and injustice. It would

also tantamount to placing premium on the exploitation and injustice perpetrated by the non-tribals. Thus it would be the highest of unreasonableness to impose the disability only on the tribals whilst leaving out the non-tribals. The economically stronger non-tribals would, in course of time, devour all the available lands and wipe out the very identity of the tribals who cannot survive in the absence of the only source of livelihood they presently have.

The Hon'ble High Court of Andhra Pradesh in W.P. No. 5664/80 held that once a patta has been granted after due enquiry under section 3 of Muttas (Abolition and Conversion into Ryotwari) Regulation, 1969 and when such orders have become final, it shall not be open to the authorities under the Land Transfer Regulation, 1959 to ignore the said patta and take proceedings under Section 3 of the Regulation 1 of 1959 or to hold that such a person is liable to be evicted under the provisions of Regulation 1 of 1959.

In order to overcome these legal hurdles and to remove the persisting lacuna in the land laws, the following amendments are suggested to the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 to make its implementation more effective.

1. Retrospective effect to the provisions of the Land Transfer Regulation:

It is necessary to amend Section 1 (2) of Regulation 1 of 1959 to overcome the legal hurdle imposed by the decision of the Full bench of the Andhra Pradesh High Court in W.P. No. 4204/77 and, to give retrospective effect to the provisions of the Land Transfer Regulation with effect from 14.8.1917 in the Andhra Region including the Bhadrachalam division of Khammam district and 1.10.1949 in Telengana Region of the State.

Various ingenious methods of money-lending are in vogue in the Scheduled Areas of the state. These methods trap the tribals into an unending cycle of borrowing and repaying which ultimately leads to the alienation of tribal land to non-tribals. Unless these modes of circumvention are expressly included in the definition of transfer, the non-tribal transferor can manoeuvre to escape from the purview of the land transfer Regulation. Therefore, it is necessary to amend Section 2 (g) of the Land Transfer Regulation to include the local methods of hypothecation of crops, mortgage, lease like Kandagutha Namu, Payide, Thirmanam, Thirmanam Kaulu, Kaulu, Amarakam etc. under the definition of transfer to effectively curb the various modes of circumvention of the Land Transfer Regulation.

2. Amendment to Section 3 (1) (a) to incorporate a new clause to restrict transfer of land to a female member of the Scheduled Tribe who is married to or kept as a concubine by a non-tribal.

Many non-tribals are keeping tribal women as concubines or sometimes marrying them as second wives with the main intention of circumventing the provisions of the Land Transfer Regulation. The non-tribals acquire large extents of land in Scheduled Areas from the tribals and got the sale deeds executed in the names of their tribal concubines or wives. But the lands are ipso facto held and enjoyed by the non-tribals. These non-tribal landlords are also grabbing various schemes of development and financial assistance in the names of their concubines. The lands in the names of tribal women are escaping from the purview of land transfer regulation in the absence of express provision to declare such illegal transfers as void. It may, therefore, be necessary to incorporate a new clause to Section 3 (1) (a) to prohibit transfer of land to a female member of the Scheduled Tribe who is married to a non-tribal or kept as a concubine by a non-tribal.

3. To incorporate a section casting the burden of proof on the transferee:

Under Section 3 (1) (b) of the Land Transfer Regulation, the non-tribal in possession of immovable property in Scheduled Areas is required to prove that he acquired that immovable property validly and it is not void under the Land Transfer Regulation. In most cases where the tribals institute cases against the non-tribal transferees the onus of proving that the transfer of immovable property is in violation of land Transfer Regulation is cast on the tribal transferor. The tribal being poor and illiterate is unable to prove his case effectively. It is, therefore, necessary to incorporate a new section casting the entire burden of proof on the non-tribal transferee.

4. To incorporate a new provision in the land transfer Regulation to empower the Government to remove difficulties in the implementation of the land transfer Regulation.

The Land Transfer Regulation has no provision to empower the Government to remove any difficulty arising in the implementation of its provisions. As a result, many problems are hampering its implementation. If a provision to this effect is incorporated in the said Regulation empowering the Government to remove its difficulties in its implementation, this will facilitate the removal of hurdles without resorting to amendments to the Regulation.

5. To incorporate a new provision to review the old cases.

It is noticed that a large number of cases under this Regulation were dropped for various reasons. The decisions became final as there is no provision in the existing law to review such cases. It is,

therefore, necessary to incorporate a provision in the Land Transfer Regulation to empower the Agent or the State Government to review any case decided by the Special Deputy Collector (Tribal Welfare) or Agency Divisional Officer.

6. To amend Section 3 (1) (c) to enhance the compensation for the lands taken over by the Government.

At present when land is acquired or taken over from any person by the Government the compensation payable is very meagre. It is, therefore, necessary to suitably enhance the compensation amount for the lands taken over by the Government under Section 3 (1) (c) of the Land Transfer Regulation to enable the non-tribals to sell away their property in the Scheduled Areas validly held by them so that the same can be taken over by the Government and allot the same to the tribals

7. To incorporate a new clause in Section 3 (2) to give over-riding effect to the Land Transfer Regulation.

Section 15 of the A.P. Scheduled Areas Ryotwari Settlement Regulation, 1970 confers over-riding effect to the provisions of the said Regulation on all other laws in the Scheduled Areas. This enables many non-tribals living in the erstwhile estate villages to acquire patta rights notwithstanding the provisions of the Land Transfer Regulation by inserting a new clause in Section 3 of the Land Transfer Regulation to confer over-riding effect on the decrees or orders passed by the competent authorities under Land Transfer Regulation over any order passed by the authorities specified in the A.P. Mahals (Abolition and Conversion into Ryotwari) Regulation 1969, the A.P. Muttas (Abolition and Conversion into Ryotwari)

Regulation, 1969 and the A.P. Scheduled Areas Ryotwari Settlement Regulation, 1970.

8. To amend Section 3 (1) (a) of the Land Transfer Regulation to incorporate a new provision to restrict the transfer of land from one member of the Scheduled Tribe to another member of the Scheduled Tribe.

There are perceptible differences in the levels of socio-economic conditions and the development of various Scheduled Tribe communities within the Andhra Pradesh State. Even among the single tribal group there are economic disparities. There is every likelihood of relatively advanced groups taking advantage of the ignorance and helplessness of backward and primitive sections among various tribal communities. Therefore, it is necessary to amend Section 3 (1) to place a restriction on the transfer of immovable property by a member of the Scheduled Tribe to another member of the Scheduled Tribe without the consent of the District Collector/ Agent to the Government.

9. Ban on assignment of lands to the non-tribals in the Scheduled Areas.

There is very limited cultivable land in the Scheduled Areas due to forests and hills. The dependence of the tribals on land is more due to low level of literacy and lack of skills to take up a new occupation. The pressure on land in the Scheduled Areas is mounting with the increase in the tribal population and immigration of non-tribals. But in the past the non-tribals were also assigned lands in the Scheduled Areas. It is necessary to reserve the lands in the Scheduled Areas for assignment to the tribals in view of the increasing pressure on the land.

Recommendations

A Workshop sponsored by the Land Reforms Unit of the LBS National Academy of Administration, Mussoorie at Hyderabad (15th to 17th May, 1992), made the following recommendations with regard to the protection of tribal land and forest rights in Andhra Pradesh:

1. It was felt in the Workshop that the lands which are under the cultivation of the members of the local Scheduled Tribes be provided with the appropriate legal status and be conferred with title deeds.
2. Resurvey of all Government lands and all other kinds of lands in the Scheduled Areas and updating of the land records should be taken on a war-footing and it should be completed within three years from June 1992. Tribals who are in adverse possession of lands over which the non-tribals have title deed rights in the Scheduled Areas, should be given ownership rights.
3. The disputes of Forest-Revenue land boundary should be resolved within a time frame of one year.
4. All the information related to the Actual Possession Column in the Pahani of the village should be recorded.
5. The rationalization of the Scheduled Areas by the inclusion of tribal-majority villages which was initiated during 1976 should be completed urgently. This data should act as the authoritative source of reference for all purposes of any future legal, administrative decisions.
6. The Revenue Administrative Boundaries may be so drawn that they become conterminous with the Scheduled Areas.
7. The newly declared Scheduled Tribes in the year 1977 should be given only economic benefits and should not be

assigned government lands and they should not be allowed to purchase the land from the tribes notified prior to 1977 in the Scheduled Areas.

8. The right of the tribal people over natural resources like land, water, mines and forest including commercial forest areas on which they have been traditionally dependent for their living should be recognized and a government order be issued. These resources shall not be put to any other use unless the consent of the people depending on the same has been obtained and an alternative measure of living, acceptable to the people is provided through the Village Tribal Committee (VTC). The VTC has to be provided with a statutory status. A separate full-time working group should be formed for further working on the formation of the village tribal council applicable to all the Scheduled Areas of the State.
9. In view of the long pending land dispute cases under litigations, special attempts are to be made to elicit the local information for speedy processing and specific time fixation is to be made for the disposal of the cases. Any financial help required to the tribal for approaching courts should be rendered by the Government.
10. The G.C.C. which is the procuring agency in the tribal areas should pay remunerative prices to the MFP collected by the Scheduled Tribes.
11. The sanction of the land grants, private forest contracts in the Scheduled Areas should be totally cancelled.
12. In the cases of land disputes involving tribals, it was recommended that Tribal/ Voluntary Organizations are to be encouraged to be impleaded in the court on behalf of the tribals and a statutory provision could be incorporated to this effect.
13. The Workshop urged for giving retrospective effect to the provisions of the land transfer regulation. It is necessary to

- amend Section 1 (2) of Regulation 1 of 1959 to overcome the legal hurdle imposed by the decision of the Full Bench of the Andhra Pradesh High Court in W.P. No. 4204/77 to give retrospective effect to the provisions of the land transfer regulation with effect from 14.8.1917 in the Andhra Region including the Bhadrachalam Division of Khammam District and from 1.10.1949 in Telengana Region of the State.
14. The Workshop emphasized the need for amendment in Section 3-(1) (a) to incorporate a new clause to restrict transfer of land to a female member of the Scheduled Tribe who is married to, or is kept as a concubine by, a non-tribal.
 15. The Government should reiterate the provision of Section 3 (1) (b) of AP (SA) LTR 1959 which cast the burden of proof on the non-tribal.
 16. The Workshop recommended the incorporation of a new provision to review all the old cases by the primary court decided/ disposed off earlier not in favour of the members of the Scheduled Tribes under AP (SA) LTR, 1959.
 17. The Workshop suggested the incorporation of a new clause in section 3 (2) to give overriding effect to the Land Transfer Regulation over all other laws/ regulations/ rules/ Acts in the Scheduled Areas.
 18. Specific provision may be included in the settlement regulations 1/69, 2/69 and 2/70 that settlement pattas granted under these regulations are subject to action under AP (SA) LTR, 1959.
 19. The Workshop suggested an amendment to Section 3 (1) (a) of the Land Transfer Regulation to incorporate a new provision for restricting transfer of land from one community of the Scheduled Tribe to another community of the Scheduled Tribe.

20. It was strongly recommended that the Government reiterated the ban on the assignment of lands to the non-tribals in the Scheduled Areas.
21. The provisions of AP (SA) LTR should be extended to the Tribes living in the plain areas.
22. The AP (SA) LTR does not prescribe any time limit for the competent authority for the disposal of cases and implementation of the orders and hence time limits should be specified.
23. In case a tribal land has to be acquired by the Government for irrigation projects in villages where tribals are living they should be given compensatory lands.

ASSAM

The history of land reforms in Assam can be traced back to 1929 during the colonial rule. There was the Goalpara Tenancy Act, 1929, an Act extended to the Goalpara district alone, but which marked an important milestone in the history of land reforms in Assam. The Act was governing the relations between the landlord and the tenant in the permanently settled areas of the erstwhile Goalpara district. It aimed at improving the conditions of the tenant class by conferring upon the occupancy raiyats permanent, heritable and transferable rights. Further, to sub-tenants and under tenants it conferred the right of use and occupancy. Under this Act, protection was accorded to the tenants against illegal ejection and enhancement of land rent. This Act was in force even after the abolition of the Zamindari system in 1956-57 and was amended in 1970 to include provisions of the Adhjar Tenant Protection Act 1948. The Goalpara Tenancy Act was finally repealed in 1974 when the Assam (Temporarily Settled Areas) Tenancy Act, 1971 was extended to the hitherto permanently settled areas of the Goalpara district. In 1935 came the Assam (Temporarily Settled District) Tenancy Act which recognised 4 classes of tenants – privileged raiyat, occupancy raiyat, non-occupancy and under-raiyat. This Act was amended in 1953 giving permanent, heritable and transferable rights to the first two classes of tenants, i.e. privileged raiyat and occupancy raiyat while conferring subordinate rights of use and occupancy with suitable protection against illegal ejection upon the last two classes of tenants, i.e. non-occupancy and under raiyat.

In 1948, the Assam Adhjar Protection and Regulation Act was passed to regulate the share of crop rent payable by a cultivator to the landlord and to give him protection against indiscriminate

eviction. Under this Act the cultivator was entitled to get three-fourth ($3/4^{\text{th}}$) of the crop if the landlord supplied plough cattle or else four-fifths. The provisions of this Act were incorporated in the Goalpara Tenancy Act, 1929 when it was amended in 1970.

In 1971, the Assam (Temporary Settled Areas) Tenancy Act was passed. The broad features of the Act are as follows:

- (i) Sharecroppers will be treated as tenants.
- (ii) Rights of occupancy will accrue on occupation for 3 years as against 12 years prescribed in the earlier Act (1935).
- (iii) The number of classes of tenants has been reduced from four of the 1935 Act to two by merging the class of privileged raiyat with that of the occupancy tenancy and abolishing the class of under-tenant. Thus, we now have only two classes of tenants – occupancy tenant and non-occupancy tenant.
- (iv) The Government has been given the power to acquire the right of ownership and the intermediary rights in favour of occupancy tenants. Till the Government does so, an enabling right has been given to the tenants cultivating their own lands to acquire such right by depositing the compensation.
- (v) Illegally ejected tenants will be restored possession through Revenue Officers.
- (vi) A limited right to mortgage has been given to the non-occupancy tenants to obtain credit from the recognised financial institutions for agriculture, whereas the occupancy tenant has been given permanent, heritable and transferable right of use and occupancy in the land of his holding.

Besides tenancy reforms, the State Government has enacted several other legislations the aims of which are to confer virtual ownership of the agricultural land on the cultivators and reduce the vast

holdings of owners. The most important Act in this regard was the Assam State Acquisition of Zamindari Act, 1951 which aimed at the abolition of Zamindaris on payment of compensation to the owners.

There are two hill districts in Assam viz. North Cachar Hills and Karbi Anglong. The general land laws of ALRR, 1886 do not apply to these districts, excepting Chapter X which also protects the interest of land of the plains tribes (rest of Assam), Santhals, Tea Garden Tribes, Rajbanshis and the Scheduled Castes.

Chapter X was added to the Assam Land and Land Revenue Regulation 1886, by the Amendment Act (Act XV) of 1947. Section 160 of Chapter X authorises the Government to adopt necessary protective measures and to notify the classes to be so protected.

As regards protective measures, according to Section 191, these may include the constitution of compact areas, in regions predominantly inhabited by the protected classes, into belts or blocks. Under this provision the state government has formed 38 belts/ blocks. The total area covered by these belts and blocks in the whole state is 3698378 acres. The number of villages included in these areas is 2795. Special provisions for the protection of the notified classes relate chiefly to the (i) settlement of government land, (ii) transfer of land, and (iii) ejection of unauthorised occupants.

The first and foremost legislation which is concerned with the prevention of alienation of tribal lands in areas demarcated as a tribal belt or block is Chapter X of the ALRR. According to this Chapter, the state government by notification, may specify the classes of persons whom it considers entitled to protection by measures relating to the provision of sufficient land for their maintenance. The notified classes are (1) Plain Tribals (2) Hill Tribals (3) Tea Garden Tribals (4) Santhals and (5) Scheduled

Castes. In these tribal belts special legal provisions are applied with regard to the (a) settlement of wastelands (b) nature, extent and termination of rights under annual or periodic lease (c) ejection of unauthorised occupants (d) management or letting out of land by the DC in certain circumstances and (e) other allied matters.

The basic impact of these policies is that only those people belonging to notified classes and residing in the belt/ block since its creation are eligible for the settlement of wastelands in the normal way. Others are not eligible or if there is surplus land even then prior permission of the government is required.

As far as transfer of land goes, no land holder no matter of which class, can transfer land to people other than the notified classes or to permanent residents of the block and for the latter, previous permission of the DC is required. Further, the rights of a settlement holder and land holder have also similarly been curtailed. Further, persons occupying unsettled land in the area can be ejected forthwith.

Although at one level the impact of this provision has not been much, yet at another level the impact has been tremendous. As far as the ejection proceedings are concerned the impact has been marginal at best. The total amount of land involved in illegal mutation cases in Kokrajhar till date was approximately 3300 acres. The case of outsiders buying agricultural land or the alienation of the tribal land by non-tribals has been reduced drastically.

LAND SYSTEM IN AUTONOMOUS HILL DISTRICTS OF ASSAM

North Cachar Hills

After Independence, the North Cachar Hills sub-division was excluded from Cachar and joined with the Mikir Hills to form one

administrative district called the United District of Mikir and North Cachar Hills but each unit having a separate district council set up under the 6th Schedule of the Constitution. Later on this united district was split into two separate administrative districts, one called the North Cachar Hills District and the other the Karbi Anglong District.

Under the Kachari Rules, all lands belonged to the king and the occupants held them at his pleasure so far as the plains of Cachar (which also formed a part of the Kachari Kingdom) are concerned. So far as the Hills are concerned, there was not much permanent cultivation, except in Maibong Valley and Jatinga Valley where the occupants of lands seemed to have heritable and transferable right subject to the over-riding power of the King. In other areas jhum cultivation prevailed on a large scale, and is still prevailing.

The British Government assessed the wet rice cultivation lands at ordinary rates of revenue prevailing in the plains of Cachar but realized house tax from other lands at Rs. 3/- per house. Periodic leases were issued for lands under permanent cultivation and annual leases for fluctuating cultivation.

Since the formation of a District Council under the 6th Schedule of the Constitution, the land administration, as per Rule 3 of the 6th Schedule is being carried on by the Council.

The District Council took over the administration of land in 1952. There was, till then, no law for the administration of land in N.C. Hills except a few sections of the Assam Land and Revenue Regulation, 1886, namely, Section 1, 2, 69, 94 and 144A, which were made applicable to these Hills by notification No. 1997R, dated 28th April, 1930.

In 1953, the District Council enacted “The North Cachar Hills Land and Revenue (Adoption of Assam Land and Revenue Regulation) Act, 1953” by which it was provided that:

“Such sections of the Assam Land and Revenue Regulation, 1886 and such of the rules framed thereunder, as were applicable in, and relevant to, the North Cachar Hills immediately before the commencement of this Act shall, as from the appointed day, be applied in respect of the assessment and collection of land-revenue in the North Cachar Hills Autonomous District”.

This was merely a reiteration of the applicability of the old sections 1, 2, 69, 94 and 144A of the ALRR and the problem remained exactly as and where it had been. These few sections provided only for recovery of arrears of land revenue and other Government dues by attachment and sale of movable property, and nothing more. So, in October 1954, under the proviso to section 3 of the above mentioned Adoption Act of 1953, which authorised the Executive Committee of the District Council to apply to the District any other sections of the ALRR a further notification was issued making the whole Chapter V of ALRR applicable to the District. On 31st July, 1964 another notification was issued by which sections 3-5, 10-16, 17-45, 47-49, 63-68, 69A-122, 125-171 of the ALRR were also made applicable to the District. The vital sections 6, 7, 8, 9 and the Chapter on Registration have been left out.

From the above it will be seen that most of the matter dealt with in ALRR are now applicable to the district except the procedure formulation and the declaration of the rights of the landholder. As the entire structure of the ALRR is based on the rights of the

landholder, it is not understood why the important sections 8 and 9 have been omitted.

There still remains a gap in another sphere namely jhumland. Jhumland, by its very nature, needs a separate treatment. The Assam Land and Revenue Regulation left this matter to be dealt with by framing rules. But no jhumland rules were framed under the Assam Land and Revenue Regulation. There are jhumland regulations in Karbi Anglong, Nagaland and Arunachal. These may be of some help in framing rules in N.C. Hills, too. Till such rules are framed the jhumland will continue to be governed by customary practices.

The Government and the District Council have made commendable efforts to help the jhumiyas to resort to permanent cultivation and work in various plantation projects, specially coffee plantation. The Soil Conservation Department has a total area of 2744 hectares under plantation and the Assam Plantation Crop Development Corporation has 375 hectares. In addition to these projects several composite schemes of Agriculture, Soil Conservation and Irrigation Department are said to be launched in order to rehabilitate jhumiya families in permanent settlement, but 30% of such persons are said to have gone back to jhum land.

Both Dimasa Kacharis as well as Zemi Nagas keep lands separately reserved for grazing fuel. Dimasa Kacharis even fence their grazing reserves. After 4 or 5 years, however, the animals are shifted to a new place fenced like the old one, and the abandoned grazing reserve is used for jhum cultivation. The Zemi Nagas do not fence or rotate grazing reserves.

From the fuel reserves, the villagers collect not only firewood but also timber for household purposes. Outsiders are not allowed to collect timber or firewood from them.

The District Council has done another commendable job by launching an operation to prepare the record of rights. When a large area is under permanent cultivation there is absolutely no difficulty in survey and preparation of maps and record of rights. Even the jhum lands of Zemi Nagas can be easily mapped, as their jhum plots are permanently demarcated by identifiable boundary marks.

The periodic lease, as in the plain districts of Assam confers permanent, heritable and transferable right of use and occupancy, but prior permission of the District Council has got to be obtained before making any transfer. This restriction has been imposed by executive instructions, but no specific Act or rules have yet been enacted. Since the inception of the District Council till 1978, permission had been sought for land transfer in 88 cases, out of which 47 were granted and 41 rejected. The chief reasons for refusal were that (i) the proposed transferees were not permanent residents or likely to be so in the near future in the district, or (ii) they had already owned enough of land.

The District Council has imposed the restriction on transfer so that the first option for purchasing land proposed to be sold may be given to indigenous tribal people. The second option goes to the permanent, non-tribal local residents. Another objective of the restriction is to stop speculation in land alienation and to ensure that land does not go into the hands of persons who have no genuine need for it.

KARBI ANGLONG

When the British annexed Assam, the Mikir Hills region was included in the district of Nowgong. In 1881, under the Assam

Frontier Tract Regulation, a 'Mikir Hills Tract' was formally constituted. In 1893, a part of the area was included within the district of Sibsagar, without, however, breaking up the integrity of Tract itself. The Tract therefore, fell partly in Nowgong and partly in Sibsagar, under the Government of India Act, 1935, the Tract was administered as a partially excluded area.

After the Constitution of India came into force, the Boundary Commission, appointed in 1951, delimited the boundaries of a proposed, new Autonomous District to be called the Mikir Hills District. A small part of the Jaintia Hills was now included in the new District. The new Autonomous District formed under the provisions of the 6th Schedule of the Constitution was a unit of the larger Administrative District called the United Mikir and North Cachar Hills District. Later on each of the two units became a separate Administrative District. The separated Mikir Hills District was called Karbi-Anglong District while the North Cachar Hills District continued to bear the old name.

Under the provisions of the 6th Schedule of the Constitution, the administration of land vests in the District Council. In 1953, it adopted the Assam Land Revenue Regulation, 1886 in toto, by enacting the Mikir Hills (Land and Revenue) Act, 1953. This appears to be better than what has been done by the North Cachar Hills, which adopted the Resolution omitting certain sections.

The Mikir Hills District (Transfer of Land) Act, 1958: Subsequently, the District Council passed an Act called the Mikir Hills District (Transfer of Land) Act, 1959 with a view to control the transfer of land from tribal to non-tribal and from non-tribal to another non-tribal.

Section 3 of this Act of 1959 runs as follows:

“No land under the District Council shall be sold, mortgaged, leased, bartered, gifted or otherwise, transferred by a tribal to a non-tribal or by a non-tribal to another non-tribal, except with the previous permission of the Executive Committee”.

The validity of such provisions was challenged and the matter ultimately went to the Supreme Court, which held that the District Council had no power to make laws with respect to “transfer” of land, and that its legislative power was confined only to ‘allotment, occupation, use, or setting apart of land’. The meaning of these words could not be stretched to include ‘transfer of land’ within their fold (AIR 1972 S.C. 787).

In the light of this decision of the Supreme Court, it appears that the Mikir Hills District (Transfer of Land) Act, 1959 is also not in conformity with the provisions of clause 3 of the 6th Schedule of Constitution which does not empower it to make laws in respect of transfer of land but only in respect of “allotment, occupation, use or setting apart of land”.

Periodic leases are common. There is no permanently settled estate nor Lakhiraj, Nistkhiraj and special estates. The land system is, therefore, purely ryotwari in form.

There are 18 tea gardens holding land (32896 bighas in all) under periodic lease for special cultivation.

Use of land under the Adhi system by a person other than the settlement holder shall be allowed and shall be guided by the following conditions:

Permanent cultivation facilities, fixity of tenure, and, as already indicated, periodic leases, annual leases, and tea-garden leases are in force in considerable number. These leases confer permanent, heritable and transferable right of use and occupation to the cultivator, with certain restrictions imposed by the two Acts on transfer and mortgages as already mentioned.

Jhum cultivation is practiced on a large scale in Hamren Sub-division which is mostly hilly, and to a lesser extent in Diphu Sub-division of the District. In Hamren Sub-division it covers about 3748.32 hectares in 179 villages, and in Diphu Sub-division about 883.53 hectares in 144 villages. As against this, permanent cultivation prevails in at least 67853.27 hectares. Jhum cultivation, therefore, is not a major mode of cultivation, as it is in Arunachal and some other hilly regions.

From the figures above, supplied by the settlement officers, it appears that only 6.5% of the total cultivated area is under jhum and the rest is under permanent cultivation. It is mostly resorted to as a subsidiary cultivation in Diphu Sub-division. Only in absolutely hilly areas of Hamren is it resorted to as an only mode or major mode of cultivation.

Karbis in Diphu Sub-division do their shifting cultivation individually. Though selection of the hill-sites, where jhuming is to be done, is made by the Gaobura in consultation with the villagers. There the collective activity ends. After selection of the broad region, the Karbi cultivator chooses his own particular site; often far away from others, so that shifting cultivation plots are not adjacent to each other.

Cultivation in the same plot is continued for 2-3 years, and then the jhumia shifts to another site. He does not generally return to his old

plot, but even if he does, it is not as a matter of right. Anyone else may occupy it meanwhile and he cannot have any objection to it. The position, therefore, is that no trace of right of use and occupancy is acquired in Diphu Sub-division in any jhum plot. One of the peculiarities of the Karbi jhuming is that sometimes the whole village shifts its homesteads to a different place, to pursue the shifting cultivation. The old village disappears completely. All this was possible in the past without much difficulty because land was in plenty and the population was sparse. But with the increase of population, shifting anywhere and everywhere without any restriction has been destructive of natural vegetation. The jhum cycle is also becoming shorter and shorter than before.

In Hamren Sub-division of the District jhuming is in plenty but has been a little more systematic. Lalung tribe, which practices it most, undergoes some stages of the cultivation process together landwise. The jhum cycle appears to be shorter, and in some instances, the land taken up in one cycle is re-occupied by the same jhumia to the exclusion of others. He claims some sort of a right of occupancy in the plot, and sometimes allows another person to occupy it on payment of a crop share. Obviously, jhum plots are not heritable except during the period of actual cultivation.

Jhum Control Mikir Hills District (Jhuming) Regulation, 1954: Realising that jhuming is a wasteful method, the District Council, as early as 1954, passed the Mikir District (Jhuming) Regulation, 1954. According to clauses 4 to 6 of the Regulation:

“No village within the District shall be shifted from its existing site without the previous permission of the executive committee” (Cl. 4).

“No person shall jhum or cut forest within a radius of half a mile from the village site” (Cl. 5).

“The rotation and period of jhuming in certain parts of the village land as well as the areas to be jhumed by an individual cultivator may be fixed by the Committee” (Cl. 6).

In 1966, the Regulation was amended so as to make the control more effective. According to this amendment, jhuming shall be gregarious and restricted to one particular area for one village. Individual plots within the selected area may be selected by the people themselves. Jhuming within two chains of a perennial and one chain of a PWD or a District Council Road has been prohibited, as also an area covered by Sal or other valuable trees.

Though apparently jhum-cultivation in Karbi Anglong is not on a large scale, it is commendable that the Soil Conservation Department of Assam has started many schemes to persuade the jhumias to resort to permanent cultivation and, for that purpose, has given them suitable lands and ample funds. The Department provides subsidy for terracing and reclamation of land to be converted to permanent cultivation.

In the jhum plots, many crops are grown such as hill paddy, maize, arum, pumpkin, cotton, chillies, etc. Among the Karbis, in a large number of cases, jhuming is a subsidiary cultivation. Lalungs depend more on jhuming, but grow many crops in their jhum fields.

No land revenue is payable for jhum land, but a flat rate of Rs. 4/- per household is imposed on jhumias.

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CHHATTISGARH

The creation of Chhattisgarh on November 01, 2000 fulfilled the demand for separate statehood that was originally raised in 1925 and subsequently rejected in the post Independence era by the State Reorganisation Commission set up in 1954. The 'Madhya Pradesh Reorganisation Act, 2000' was eventually passed by both the houses of the Parliament and approved by the President of India on August 25, 2000. This paved the way for the creation of the 26th State of India on November 01, 2000.

The creation of the new State of Chhattisgarh has succeeded in granting a sense of identity to its people and has provided them with the unique opportunity to chart their own destiny.

Chhattisgarh has been carved out of the sixteen south-eastern districts of undivided Madhya Pradesh. It is bound in the North by Uttar Pradesh and Jharkhand, in the East by Orissa, in the South by Andhra Pradesh and in the West by Madhya Pradesh and Maharashtra.

Chhattisgarh is the ninth largest State in India with an area of approximately 135000 sq.kms. In terms of population, however, the State ranks 17th. Although the state has a fairly low population density coupled with rich natural resources, the per capita NSDP of approximately Rs. 8000 (1997-98 current prices) is well below the national average and ranks 11th in India.

These statistics are clearly reflective of the development challenges that lie ahead and the urgent need for focussed attention and strategies to improve the overall quality of the life of the people of Chhattisgarh.

Tribal Land Scenario

The State Government has taken adequate and comprehensive legal and administrative measures to protect the interests of the persons belonging to the Scheduled Castes and Scheduled Tribes on their lands.

Legal Measures

In the State of Chhattisgarh the management of all land is provided for under the Madhya Pradesh Land Revenue Code (State Act No. 20 of 1959). Legal safeguards for protecting the interests of the members of Scheduled Tribes are provided in Sections 165, 170, 170-A, 170-B, 170-C, 170-D and 257-A of the MPLRC

Protection of interests of Scheduled Tribes on lands in the Scheduled Areas- Section 165 (6) (I) provides that in the Scheduled Areas, the land belonging to the tribal shall not be transferred to any non-tribal person.

Non-Scheduled Areas- Section 165 (6) (2) provides that in the non-Scheduled Area also the land of tribals shall not be transferred to any non-tribal person without the permission of the District Collector.

Diversion of land in the Scheduled Areas- Section 165 (6-EE) provides that land belonging to the non-tribals in Scheduled areas, shall not be diverted for any other purposes before the expiry of period of 10 years from the date of transfer of such land to any non-tribal person.

Acceptance of Registration document – Section 165 (10) provides that no document shall be accepted for registration if it is in contravention of any of the provisions of the MPLRC.

Certain transfers to be set-aside- Section 170-A provides that the SDO (Revenue) on his own motion or on an application made by the tribal shall restore tribal land if he is satisfied that the transfer of such land to the non-tribal was not bonafide.

Restoration of land transferred by fraud- Section 170-B provides that every person, who was in possession of agricultural land which belonged to a tribal on 2-10-59, if he fails to notify to the SDO as to how he came in possession of that land, it shall be presumed that such person had no lawful authority ever on that land and the land shall be restored to the concerned tribal person. Thus, this Section puts onus of proof on the non-tribal to prove that the land legitimately belongs to him.

Authority of Gram Sabha- By an amendment vide Act No. 1 of 1998, a new sub-section 2-A) was inserted in Section 170-B of the MPLRC. It provides that the Gram Sabhas shall have the power of restoring the possession of land belonging to the Scheduled Areas. It further provides that in case the Gram Sabha fails to restore such land it shall refer the case to the SDO who shall restore the possession within three months from the date of reference.

Second Appeal and Revision Barred- Section 170-C provides that no second appeal shall lie against the orders passed under section 170-A & 170-B. Section 50 provides that no revision shall be entertained by the Commissioner or Settlement Commissioner against the orders passed under section 170-B and no suo-moto revision shall be taken up by the Board of Revenue in these cases.

Action against persons found in possession of the land of tribals- Section 250 (1-A) makes adequate provision for taking effective action against persons found in possession of the land of tribals. Section 250-A provides for civil jail and Section 250 (B) provides

for 3 years of imprisonment & fine, if the land is not vacated in favour of tribals. The offences are non-bailable and cognizable.

Recovery of dues- Section 154-A was added to the MPLRC in January 1998. It provides that in cases of recovery of dues, the land of a tribal shall be given only to a tribal person by auction for a period of 10 years and only on lease. If after a period of 10 years the recovery is not fully realised, the land can be finally sold, only to a person belonging to the Scheduled Tribes.

Administrative Measures

Acquisition of land of a tribal- Instructions have been issued on 2-12-1997 that acquisition of land of a tribal shall be taken up only after prior consultation with the Gram Sabha.

Adhikar Abhiyan- In the year 1999, the State Government of Madhya Pradesh conducted a very intensive campaign to restore land to the Patta holders of SCs/STs. As a result of this campaign, barring a few cases, in which litigations were pending with the civil courts, in almost all the cases, lands were restored to the concerned Patta holders.

Verification of the Possession of Land Allotted in favour of SCs/STs by Patta – As an extension of the Adhikar Abhiyan, the State Government decided to verify the possession of the land of SC/ST patta holders during GIRDAVARI (when the crops are standing) conducted twice in a year (i.e. in April-May and Sept.– Oct. respectively).

Under the 11-point programme for monitoring the basic services in every village, the verification of the possession of the land of SC/ST is done every month by a nodal officer.

Monitoring of these two programmes is done at the highest level in the State Government regularly.

Allotment of Agricultural land to landless persons of SCs/STs — Amendment has been made in Section 237 (3) of the MPLRC for reducing the area of grazing land of a village upto the limit of 2%. The agricultural land becoming so available is being allotted only to the landless persons of SCs & STs.

Exemption of Court Fee in favour of the STs- Tribals do not have to pay any Court Fee.

Powers of finalisation of un-disputed mutations, undisputed partitions and demarcations, have been delegated to the Gram Sabhas. This has resulted in the disposal of such cases within the limit of 3 months as prescribed in the Citizens' Charter.

Patta Pass Books - Patta Pass Books (Bhu Adhikar Pustikas), copies of Survey Numbers (Khasra) and Maps of land are being provided free of cost to the SC/ST persons.

Achievement under Restoration of alienated Tribal Land – The position of the disposal of litigations under section 170-A & 170-B upto the year 2000 was as under-

Section of M.P. Land Revenue Code under which the cases were registered	Number of cases registered	Number of cases decided in favour of members of S.T.	Land restored to members of S.T. (in. ha)
170-A	13938	13774	5116.436
170-B	55676	41946	34584.945

Note: These figures are of undivided Madhya Pradesh.

SCHEDULED AREAS IN CHHATTISGARH

Division	District	Scheduled Areas
Raipur	1. Raipur	Gariyaband Mainpur Chhura
	2. Durg	Daundi
	3. Rajnandgaon	Manpur Mohala Chowki
	4. Kawardha	
	5. Mahasamund	
	6. Dhamtari	Nagari
Bilaspur	1. Bilaspur	Marwahi Gaurela-1 Gaurela-2 R. N. Mandal Kota
	2. Janjgir-Champa	
	3. Korba	Korba Katghora Paudi-Uproda Pali Kantola
	4. Raigarh	Kharsia Gharghor Tamnar Lai Lunga Dharamjaigarh
	5. Jashpur	Jashpur Manora Kunkuri

		Duldvla Farsabahr (Tapkara) Bagicha Kansabel Paththalgaon
	6. Sarguja	Ambikapur Batoli Udaipur Lakhanpur Sitapur Mainpat Rajpur Surajpur Bhaiyathan Premnagar Ramanujnagar Oragi Pratap Pur Lundra Ramchandrapur Balrampur Wadfanagar Kusmi Shankargarh
	7. Korla	Bharatpur Baikunthpur Sonhat Manendragarh Kharagwa
Bastar	1. Jagdalpur	Jagdalpur Lohandigura Darbha Tekapal

		Bastanar Bastar Bakawand Kondagaon Farasgaon Keshkal Makari Barerajpur Narayanpur Orchha
	2. Kanker	Kanker Charama Saron Bhanupratap Pur Durg Kondal Antagar Koyalibeda
	3. Dantewada	Dantewada Bhopal Patnam Usoor Bijapur Bhadragarh Kuakonda Gidam Katekalyan Konta Sukuma Chhindgarh

The following is a gist of the permissions accorded under section 165 (6) of the M. P. Land Revenue Code, 1959 regarding the sale of tribal lands in favour on non-S.T.s during the last 3 years.

Sl. No.	District	No. of cases permitted	Area involved in Ha.
1.	Raipur	111	69.769
2.	Durg	97	61.440
3.	Rajnandgaon	7	4.970
4.	Kawardha	106	96.420
5.	Mahasamund	69	66.380
6.	Dhamtari	-	-
7.	Bilaspur	33	21.570
8.	Janjgir Chaupa	80	41.360
9.	Korba	-	-
10.	Raigarh	30	23.226
11.	Jaspur	-	-
12.	Sarguja	-	-
13.	Koria	-	-
14.	Bastar	-	-
15.	Kanker	-	-
16.	Dantewada	-	-
Total:		533	385.135

The following is a gist of alienation cases under section 170 (b) of the M. P. Land Revenue Code 1959 disposed off during the last 3 years (prior to 2001-02) in the State:

Sl. No.	District	No. of cases permitted
1.	Total Cases Instituted	4324
2.	Cases Disposed off	3742
3.	Balance to be disposed off	582
4.	Cases disposed off in favour of the tribals	2224
5.	Area of land restored to the tribals (Ha.)	1373.367

DISTRICT WISE BREAK-UP OF CASES UNDER SECTION 170 (B)

Sl. No.	District	Cases Instituted	Disposed off	Balance	Disposed off in favour of tribals	Area Restored (Ha.)
1.	Raipur	208	200	8	160	106.778
2.	Durg	24	17	7	11	6.460
3.	Rajnandgaon	49	45	4	28	24.700
4.	Kawardha	298	295	3	47	67.238
5.	Mahasamund	68	58	10	38	25.830
6.	Dhamtari	16	13	3	3	2.753
7.	Bilaspur	287	268	19	155	63.220
8.	Janjgir Champa	183	183	0	42	16.710
9.	Korba	231	222	9	66	40.086
10.	Raigarh	312	274	38	114	94.329
11.	Jaspur	155	140	15	129	20.699
12.	Sarguja	2235	1792	443	1249	759.123
13.	Koria	142	142	0	121	51.620
14.	Bastar	51	33	18	10	15.582
15.	Kanker	62	57	5	48	75.980
16.	Dantewada	3	3	0	3	2.259
Total:		4324	3742	582	2224	1373.367

DETAILS OF TRIBAL LAND ACQUIRED FOR INDUSTRIAL PURPOSE

District	Sl. No.	Public Undertaking	Land Acquired	
			No. of STs Affected	Area (Ha.)
Korba	1.	National Thermal Power Corporation	225	21.217
	2.	Bharat Aluminium Company	173	82.170
	3.	South Eastern Coal Fields Ltd.	3322	4058.166
	4.	Indo-Burma Petroleum Company	16	6.278

	5.	Chhattisgarh Electrical Corporation	243	185.413
Raigarh	1.	South Eastern Coal Fields Ltd.	-	1072.220
Sarguja	1.	Bharat Aluminium Company Ltd.	75	179.075
	2.	South Eastern Coal Fields Ltd. Vishrampur	1741	952.501
	3.	South Eastern Coal Fields Ltd.	397	218.287
Koria	1.	South Eastern Coal Fields Ltd.	296	184.206
Grand Total:			6488	6959.533

The Law and Ground Realities

The law regulating tribal land alienation and restoration in Chhattisgarh does not suffer from any deficiency. Advocates are barred and there is a presumption too regarding alienation. The administration too is sensitive enough to chalk out plans for the empowerment and development of the tribal peasants especially, the 'shuddha bhumiin' (purely landless) ones. Alienation is not a major, manifest problem, but it is there, in some or the other form. Alienation connotes, basically, a distress situation and distress tends to appear and reappear. Despite restoration a helpless, poor tribal is not able to hold the land long, as new necessities and contingencies crop up and the land is alienated again in lieu of monetary gains. He has nothing but his land to sell or mortgage, and since land is non transferable in the Scheduled Areas, clandestine transactions on mutual understanding take place. But the period of the usufructary mortgage or transfer and the quantum of usufruct far outweighs the original consideration on which the transfer had taken place.

The sensitivity of the administration has to be supplemented by all out efforts to survey and record transfers and to keep watch on successive alienations. Much remains to be desired on this score. The difficulty in such survey is worse confounded on account of the collusiveness of transfers. According to section 170-A of the M.P.

Land Revenue Code, 1959, the Sub-Divisional Officer may hold an enquiry into an alienation case on his own motion or on an application made by a transferor of agricultural land belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165 on or before 31-12-1978.

As is true to some other states, the administration in Chhattisgarh too is yet to gear itself up to put up identification of alienation cases even at the tail end of its agenda. There are myriad engagements otherwise demanding. The tribal, on the other hand, never approaches the SDO for a redressal of a grievance, which was a palliative to his own short-term needs.

In the circumstances, while transfers continue to take place, there is no recording to that effect. While suo-moto initiative lacks, applications are not preferred, poverty-debt- poverty trap continues unabated. For want of substantive information, no administrative intervention is being made in specific cases to save the tribals from the clutches of extortionist and unscrupulous elements. Even in cases where a tribal land is purchased by a tribal person only, good prices are not fetched. There has even been a demand to remove restrictions at least in urban areas where competitive prices could be fetched even from non-tribal purchasers. In the Girdawari (held twice in a year) Column 12 is not filled up. Hence the factum possession remains unrecorded. Nor is there any special campaign to ascertain the extent of alienation. Under section 170-B of the M.P. Land Revenue Code, the Gram Sabhas have been given restoration powers to some extent. The Gram Sabha would have played a vital role in the identification of land alienation cases. Nonetheless, in view of the fact that even tribal villages are fictionally and politically divided, the efficacy of the Gram Sabhas is doubtful.

Trees on Tribal Lands

Felling and selling of trees standing on the holding of a Bhumiswami belonging to an aboriginal tribe (as defined under sub section 6 of section 165 of M.P. Land Revenue Code, 1959), is governed by the Madhya Pradesh Adim Jan Jatiyon ka Sanrakshan (Vrikshon Me Hit) Adhiniyam, 1999. Under the Act, permission for felling of trees is given by the Collector. Divisional Forest Officer is responsible for the cutting, stacking, transport and sale of the trees. The D.F.O. is also responsible for the remittance of the value of the trees in the joint account of the Bhumiswami and the Collector.

Any Bhumiswami belonging to an Aboriginal Tribe, who intends to cut any specified tree on his holding shall apply for permission to the Collector in the prescribed form, giving full and complete reasons thereof, in such manner as may be prescribed.

The Collector shall have the application enquired into in accordance with such rules as may be prescribed and shall not grant or reject the application without considering the report from Tahsildar, the Sub-Divisional Officer (Revenue) and the Divisional Forest Officer, having territorial jurisdiction.

Provided that no such permission shall be granted in a case where a period of five years has not elapsed after the date of the acquisition of title in the land in any manner, except by succession.

Explanation:- The date of the acquisition of title shall be the date of certification of mutation under the Code.

The permission to cut the trees in a year shall be restricted only to such number of specified trees as may fetch the Bhumiswami such amount of money, not exceeding rupees fifty thousand in a year as

is considered by the Collector to be adequate to meet the purpose specified in the application.

Provided that under special circumstances, the Collector may, after due consideration, grant permission in a year for a value not exceeding rupees one lakh or the value of one tree, whichever is higher.

The valuation of the specified trees permitted to be cut shall be based on the report of the Divisional Forest Officer prepared in such manner as may be prescribed.

The Collector shall endorse a copy of the permission granted under Section 4 to the Divisional Forest Officer who shall be responsible for cutting, stacking, transport and sale of the trees and shall remit consideration thereof to the joint account of the Bhumiswami and the Collector, in the prescribed manner.

The amount of consideration payable to the Bhumiswami shall be deposited in any branch of a Nationalised Bank or the Central Co-operative Bank of the district in the joint account of the Collector and the Bhumiswami to be operated jointly by both of them.

The Collector shall exercise utmost caution and care in withdrawals from the joint account ensuring that the same is done in the best interest of the Bhumiswami and for the sole purpose of meeting his bonafide and genuine requirement.

REGULARISATION OF PRE-1980 FOREST LAND ENCROACHMENTS

The Ministry of Forest & Environment GOI vide its letter dated 28.5.2001, has classified the regularisation proposals of the state government in 3 categories, while according its approval;

Category – 1

Category-1 includes encroachments in the following areas-

(a) Forest Villages	12040.951 Ha. area encroached.	7041 encroachers
(b) Revenue Forest	6442.936 Ha. area encroached.	9442 encroachers
(c) Sanctuaries	429.383 Ha. area encroached	300 encroachers

The GOI insists on the fulfilment of the following conditions by the State Government prior to the issuance of pattas:

- (i) Regularisation will not entail any change in the legal status of the forest land.
- (ii) Encroachers living inside the forest area of national parks and sanctuaries will be settled along the forest borderline.
- (iii) Alternative afforestation commensurate to the encroachment regulation as per the Hon'ble Supreme Court's order dated 22.9.2000 will be essential.

The Chhattisgarh Government has made a budget provision of Rs. 6.80 crores in 2001-2002 for compensatory afforestation.

Category – 2

The Government of India has kept its decision pending with regard to encroachments between 1.1.77 and 6.3.79 till the receipt of additional information and revised proposal from the State Government. In case the status of encroachment is assessed against

the cut-off date of 6.3.79 instead of 1995, 75% of the encroachers will be disqualified for regularisation.

Category – 3

The proposals sent by the State Government have been turned down by the Government of India since the cut-off date had been kept beyond 6.3.1979 and 24.10.1980. The State Government had fixed 25.10.1980 as the cut-off date, viz. the date on which the Forest Conservation Act came into effect.

STATUS REPORT ON ENCROACHMENT SETTLEMENT IN RAJNANDGAON DISTRICT, CHHATTISGARH

In Rajnandgaon district, encroachers on forest land upto December 1976 were given pattas in the year 1979 after following due procedure as under:

1. Number of families given pattas 1997
2. Area for which pattas distributed 2239.228 Ha.

Thereafter, the State Government after wide publicity collected applications for Forest Land Settlement through the revenue department. These applications were verified from the Government records and through joint spot inspection by Forest and Revenue department officials alongwith the local Panchayat. In cases of doubt of dates benefit was given to the applicants.

Proposals to settle encroachment upto 31.12.80 were submitted to the Government of India. But the Government of India has given conditional approval for settlement of encroachments upto 24.10.80.

The State Government has to afforest equal degraded forest before distributing the pattas. The encroachers who are eligible are permitted by the Forest Department to be in possession of land. The pattas to eligible encroachers will be issued after completing the formalities.

Details of Area proposed for regularization

- | | | | |
|----|-----------------------------|---|--------------|
| 1. | No. of eligible encroachers | - | 1199 |
| 2. | Area | - | 1235.733 Ha. |

Administrative Measures

The State Government issues instructions from time to time on matters relating to tribal land. For example, the instructions relating to intense action under Section 170 (a) and 170 (b) of MPLRC were issued on 17.11.97 and 14.1.98. In 1999, the State Government got conducted a very intense campaign to restore land to the Scheduled Castes and Scheduled Tribes. This campaign was called “Adhikar Abhiyan”. It is also worth mentioning that the State Government collected information regarding action taken in the field under sections 170 (a) and 170 (B). As per information upto 31.3.99, 13938 cases affecting 14,883 persons for land measuring 18,402.894 hectares were registered. Against this 13,771 cases were disposed off affecting 11,720 persons and land measuring 18215.611 hectares. In the period upto 31.3.99, under Section 170 (B) 55,615 cases were registered affecting 57,813 persons and covering an area of 57183.276 hectares. The State has an Adiwasi Mantrana Parishad, presided over by the Chief Minister. This Parishad reviews all the policies and actions taken in favour of the tribals from time to time.

At the time of Girdawari which is done twice a year just before the Rabi and Kharif crops are harvested, the entries in the land records and actual possession of land are verified.

Acquisition of Tribal Land

It is stated that while the Revenue Department takes action for the acquisition of land, the proposals for such acquisition are prepared by the concerned Departments/ Agencies. In December 1997 as a follow up of “Panchayat Up-Bandh (Anusoochit Kshetron Par Vistar) Adhiniyam, 1996, instructions have been issued to consult the Gram Sabha before the land acquisition is taken up.

Self Help Groups

A definite thrust has been made in Chhattisgarh on woman empowerment through Self Help Groups. The woman members of these groups pool up funds through small contributions and lend @ 5% per month interest to outsiders and @ 3% per month to the group members within. The members are meeting frequently, maintain minute books and take up cudgels against evils like drinking. In village Arjuni in the Rajnandgaon district the opening of liquor shops/ illicit distilleries was stalled by a SHG called Sharda Ma Bamleshwari Group. Yet another SHG (Pragya Swayam Sahayata Ma Bamleshwari group) distributes books among indigent children and lends assistance during deaths and marriages. Care of the sick, health and sanitation, hand pump maintenance, water conservation, afforestation are to cite some of the activities of the SHGs in Chhattisgarh, the emergence of SHGs augurs well for the overall development of rural women as well as men.

GUJARAT

In the Gujarat State, 29 tribal groups have been recorded in the list of scheduled tribes. The Bhils have been the largest tribal community. They are found in all the tribal areas in the eastern belt as well as in other pockets. Apart from the Bhils, there are several other important tribes in the State most of which have retained their language and native culture. Altogether 14 tribes are considered as major ones on the basis of their linguistic, cultural and demographic characteristics. These 14 major tribes account for 97 percent of the total tribal population in the State.

The following is a list of major tribes in the State:

Sl. No.	Name of the tribe.
1.	Bhils (including Dungri Garasias, Bhil Garasias, Vasava, etc.).
2.	Dublas
3.	Dhodias
4.	Gamits
5.	Naika, Naikdas
6.	Rathwas
7.	Choudharys
8.	Koknas
9.	Dhanka
10.	Warlis
11.	Patelias
12.	Kumbis
13.	Kolis
14.	Kotwalias
15.	Others

The highest concentration of the tribal population is in the southern zone of the tribal belt, comprising of Bharuch, Surat, Valsad and Dang districts.

Among the minor tribes, some of them have been recognized as primitive tribal groups in the State because of their extremely poor and shocking economic existence. These are Kolgha, Siddi, Kathodi, and Padhar. From amongst the major tribes, Kotwalia has been also included in the list of primitive tribal groups. In the case of these small tribal groups which have been given the status of primitive communities in the State, special development programmes, have been or are being devised.

Apart from these primitive tribal groups there are some little known tribal groups. They are: (I) Rabari, (ii) Vaghri, (iii) Pardhi of Kutch (iv) Phanse, Pardhi (v) Bavcha, Bamcha, (vi) Charan, (vii) Bhils of Kutch, (viii) Bharwad, (ix) Gonds, Raj Gonds, (x) Pomla and (xi) Barda. Some of these are so unknown that sometimes it becomes even difficult to know their exact location and distribution in the State.

The Scheduled Areas in Gujarat are as follows:-

1. Uchchal, Vyara, Mahuwa, Mandvi, Nizar, Songadh, Valod, Mangrol and Bardoli talukas in Surat district.
2. Dediapada, Sagbara, Valia, Nandod and Jhagadia talukas in Bharuch district.
3. Dang district and taluka
4. Bansda, Dharampur, Chikhil, Pardi and Umbergaon Talukas in Valsad district.
5. Jhalod, Dahod, Santrampur, Limkheda and Deogar Baria talukas in Panchmahal district.

6. Chhotaudepur and Naswadi talukas and Tilakwada Mahal in Vadodara district.
7. Khedbrahma, Bhiloda and Meghraj talukas, and Vijaynagar Mahal in Sabarkantha district.

The Bombay Land Revenue Code, 1879

The matter of tribal land alienation and restoration is covered under the following provisions of the Bombay Land Revenue Code, 1879:

73A. (1) Notwithstanding anything in the foregoing section in any tract or village to which the State Government may, by notification, publish before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, occupancies shall not, after the date of such notification, be transferable without the previous sanction of the Collector.

73.A.A. (1) Notwithstanding anything contained in section 73, an occupancy of a person belonging to any of the Scheduled Tribes hereafter in this section and in section 73AB referred to as “the tribal” shall not be transferred to any person without the previous sanction of the Collector.

- (2) The previous sanction of the Collector under sub-section (1) may be given in such circumstances and subject to such conditions as may be prescribed.
- (3) (a) Where tribal transfers the possession of his occupancy to another tribal in contravention of sub section (1), the tribal transferor or his successor in interest may, within two years of such transfer, apply to the Collector that the possession of such occupancy may be restored to him and thereupon the Collector shall, after issuing a notice to the transferee or his

successor-in-interest, as the case may be, in the prescribed form to show cause why he should not be disentitled to retain possession of the occupancy and after holding such inquiry as he deems fit, declare that the transferee or his successor in interest shall not be entitled to retain possession of the occupancy and that the occupancy shall be restored to the tribal transferor or his successor-in-interest, as the case may be, on the same terms and conditions on which the transferor held it immediately before the transfer and subject to his acceptance of the liability for payment of arrears of land revenue in respect of such occupancy in accordance with the rules made by the State Government and that the transferee or his successor-in-interest as the case may be, shall be deemed to be unauthorisedly occupying the occupancy.

Provided that such declaration shall stand revoked if the tribal transferor, or, as the case may be, his successor in interest fails or refuses in writing to accept the restoration of the possession of such occupancy within the prescribed period.

(b) Where-

- (i) a tribal in contravention of sub-section (1) of section 73-A or of any other law for the time being in force has transferred his occupancy to another tribal at any time during the period commencing on the 4th April, 1961 and ending on the day immediately before the date of commencement of the Bombay Land Revenue (Gujarat Second Amendment) Act, 1980, and
- (ii) the tribal transferee or his successor-in-interest has not been evicted from such occupancy under section 79 A.

the transfer of occupancy shall be valid, as if it were made with the previous sanction of the Collector under section 73 A.

- (4) Where a tribal—
- (a) in contravention of sub-section (1) of this section, or of sub-section (1) of section 73 A or any other law for the time being in force, transfers his occupancy to any person other than a tribal (hereafter in this section and in section 73 AB referred to as “the non-tribal”) at any time on or after the date of commencement of the Bombay Land Revenue (Gujarat Second Amendment) Act, 1980 (hereinafter in this section referred to as “the said date”) ;
or
- (b) in contravention of sub-section (1) of section 73 A or of any other law for the time being in force has transferred his occupancy to a non-tribal at any time before the said date.

The Collector shall, notwithstanding anything contained in any law for the time being in force, either suo-motu at any time, or on an application made by tribal transferor or his successor-interest at any time within three years from the said date or the date of such transfer, whichever is later, after issuing a notice to the transferee or his successor in-interest as the case may be, to show cause why the transfer should not be declared void and after making such inquiry as he thinks fit, declare the transfer of such occupancy to be void and thereupon the occupancy together with standing crops thereon, if any, shall vest in the State Government free from all encumbrances.

- (5) Where an occupancy is vested in the State Government under sub-section (4) and such occupancy was assessed or

held for the purposes of agriculture immediately before its transfer by the tribal transferor, the Collector shall, after taking necessary action under sections 79 A and 202, give notice to the tribal transferor or his successor in interest, as the case may be, requiring him to state in writing within ninety days from the date of receipt of such notice whether he is willing to purchase the occupancy and cultivate it personally, and if such tribal transferor or his successor-in-interest agrees to purchase the occupancy and undertakes to cultivate it personally, it may be granted to him on payment of the prescribed occupancy price.

- (6) If within the said period of ninety days the transferor or his successor-in-interest does not intimate his willingness to purchase the occupancy and to cultivate it personally, or fails to pay the occupancy price within such period as may be specified by the Collector, the occupancy shall be granted to any other tribal residing in the same village or in any other village situated within such distance from the village as may be prescribed, on the same conditions, including the payment of the occupancy price, as are specified in sub-section (I), and if he is not so willing, it shall be granted to other classes of persons in such order or priority at such occupancy price and subject to such conditions as may be prescribed.
- (7) Where any occupancy is transferred to a non-tribal in contravention of sub-section (1) such non-tribal shall, without prejudice to any other liability to which he may be subject, be liable to pay to the State Government, a penalty not exceeding three times the value of the occupancy, such penalty and value to be determined by the Collector, and such determination shall be, final:

Provided that before imposing any such penalty, the non-tribal shall be given a reasonable opportunity of being heard.

- (8) The penalty payable under sub-section (7) shall, if it is not paid within the time specified by the Collector, be recoverable as an arrear of land revenue.

Explanation- for the purposes of this section-

- (i) "prescribed" means prescribed by rules under section 214;
- (ii) "Scheduled Tribes" means such tribes or tribal communities or parts of groups within such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the State of Gujarat under article 342 of the Constitution.
- (iii) "to cultivate personally" shall have the meaning assigned to it in clause (6) of section 2 of the Bombay Tenancy and Agricultural Land Act, 1948.

73 AB. Notwithstanding anything contained in section 73 or in sub-section (1) of section 3 AA or in any condition lawfully annexed to the tenure, but subject to the provision contained in section 35, it shall be lawful for an occupant to mortgage, or create a charge on his interest, in his occupancy in favour of the State Government in consideration of a loan advanced to him by the state Government under the Land Improvement Loans Act, 1883, the Agriculturists' Loan Act, 1883 or the Bombay Non-Agriculturists' Loans Act, 1928 as in force in the State of Gujarat or in favour of a bank or cooperative society, and without prejudice to any other remedy open to the State Government, bank or cooperative society, as the case may be, in the event of his making default in the payment of such loan in accordance with the terms on which such loan was granted, it shall be lawful for the State Government, bank or Co-operative Society as the case may be to cause his interest in the occupancy

to be attached and sold and the proceeds to be applied in payment of such loan:

Provided that if such occupant is a tribal his interest in the occupancy shall not be sold to a non-tribal without the previous sanction of the Collector.

Explanation- For the purposes of this section "bank" means-

- (i) the State Bank of India constituted under the State Bank of India Act, 1955;
- (ii) any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959.
- (iii) any corresponding new bank as defined in clause (d) of section 2 of the Banking companies (Acquisition and Transfer of Undertakings) Act, 1970;
- (iv) the Agricultural Refinance and Development Corporation established under the Agricultural Refinance and Development Corporation Act, 1963.

73AC (1) No civil court shall have jurisdiction to settle, decide or deal with any question which is by or under section 73-A or section 73 AA or section 73 AB required to be settled, decided or dealt with by the Collector nor shall the civil court have jurisdiction to entertain any suit or application for grant of injunction (whether temporary or permanent) in relation to such question.

- (2) No order of the Collector made under section 73-A or section 73 AA or section 73 AB shall be called in question in any civil or criminal court.

Explanation- For the purposes of this section, a civil court shall include a Mamlatdar's court under the Mamlatdars' Court Act, 1960.

73 AD (1) Notwithstanding anything contained in the Registration Act, 1908-

- (a) No document relating to transfer (not being a mortgage or creation of charge falling under section 73AB) of an occupancy of a person belonging to any of the Scheduled Tribes shall be registered on or after the date of the commencement of the Bombay Land Revenue (Gujarat Second Amendment) Act, 1980 (hereinafter in this section, referred to as “the said date”), by any registering officer appointed under the Registration Act, 1908 unless the person presenting the document furnishes a declaration by the transferor in the prescribed form which shall be subject to verification in the prescribed manner, that the transfer of occupancy is made with the previous sanction of the Collector under section 73-A or section 73-AA.
- (b) A document relating to the transfer of an occupancy belonging to any of the Scheduled Tribes, referred to in clause (a) which is registered on or after the said date shall take effect and operate only from the time of such registration.
- (2) Nothing in sub-section (1) shall apply to the documents of transfers of occupancies of persons belonging to any of the Scheduled Tribes made before the said date, but presented for registration after the said date.

Explanation- In this section, the expressions “prescribed” and “Scheduled Tribes” shall have the same meanings as the said expressions have in clauses (i) and (ii) respectively of the Explanation to section 73- AA.

73 B. Where any occupancy, by virtue of any conditions annexed to the tenure by or under this Act, is not transferable or partible without the previous sanction of the State Government, the Collector or any other officer authorised by the State Government, such sanction shall not be given except on payment to the State Government of such sum as the state Government may by general or special order determine.

The Gujarat government introduced a significant change from 1st February, 1981 whereby land transfer from any “tribal” living anywhere in the state of Gujarat was prohibited without the permission of the Collector. These amendments are incorporated in sections 73 AA, 73 AB, 73 AC and 73 AD of the Bombay Land Revenue Code, 1879.

The Tenancy Situation

The following two amendments were made by the Gujarat State in the Bombay Tenancy and Agricultural Land Act, 1948. It is hereinafter referred to as the Gujarat Tenancy Act V of 1973 which came into force with effect from 9 March, 1973:

- (a) In no case shall a tenancy be terminated for personal cultivation and non-agricultural use by the landlord, if the tenant is a member of the Scheduled Caste or Scheduled Tribe (Section 31 B (4)).
- (b) Surrender of tenancy rights in favour of landlord has been barred. All surrenders can be made only in favour of the State Government and such land will vest in the State Government free from all encumbrances for disposal according to the provisions of the Act in accordance with the priority list.

Before the above amendments came into force the landlords had the right to terminate the tenancy of the tribal tenants on the ground of personal cultivation or non-agricultural use of land upto a specified period. Similarly, landlords were also able to get the land voluntarily surrendered by a tribal tenant upto a specified period. During this period, tactful, and intelligent landlords of the tribal tenants availed of the legal provisions in getting back the land from the tribal tenants on the ground of personal cultivation or by voluntary surrender. The tribal tenants who made voluntary surrender have done so on account of poverty, illiteracy, indebtedness and influence of landlords. Some of these surrenders might be fictitious and fake.

Suggestions to improve the tenancy law

- (1) A provision should be made for the restoration of lands from the non-tribals who get back the lands from the tribals on the above two counts by relaxing the period of time limitation. When this is done, the tribals can be made deemed purchasers and conferred occupancy rights when the lands are restored to them as tenants.
- (2) There is a provision in section 70 (b) of the Tenancy Act, allowing a person to apply to the Mamlatdar whether he is or was a tenant. This requirement of obtaining the decision of the Mamlatdar that a tribal is or was not a tenant of his land, has been taken advantage of by intelligent and tactful landlords using fair and foul means in getting possession of the tribal lands. Also, there have been cases in which mutation entries in village forms have been effected indicating that a tribal was not a tenant on the land and thereby his name as a tenant was deleted with the result that a tribal could not become a deemed purchaser.

- (3) One of the hurdles in the restoration of the tribal land is that the names of non-tribals, probably those from whom the tribals have borrowed money, are entered as tenants in the village records and subsequently they (non-tribals) become occupants of the land as deemed purchasers. Under the existing law, it is not possible to restore possession of such lands to the tribals in tribal areas which are treated as surveyed and settled, and where section 73A of the Land Revenue Code is not applicable. The state may consider making some suitable enactment to cover such cases.
- (4) There are some tribals who have become occupants as deemed purchasers under the tenancy law, but they have not as yet been able to pay the instalments of purchase price to their previous landlords.

The Maharashtra government had made a scheme in 1977 under the TSP for granting to the tribal areas, subsidy and interest-free loans to enable them to pay the purchase price in respect of their lands. Under this scheme, the financial assistance is sanctioned as follows: (a) subsidy equal to purchase price minus six times the assessment; and (b) interest free loan recoverable in 12 annual instalments equal to remaining amount of purchase price, i.e. equal to six times the assessment. The amount of financial assistance is sanctioned to cover purchase price of the land upto five acres.

The Gujarat government may also consider the introduction of such a scheme under the TSP in the concerned areas.

Gujarat has witnessed tribal land alienation since its formation in 1960. A cursory glance at the decreasing numbers of tribal cultivators and rising numbers of tribal agricultural labourers to the

total population over two decades, i.e. 1961 to 1981, shows that the tribals are steadily being alienated from their land.

The alienation of the tribals from their land is confirmed by the decline in the number of cultivators, increase in their out-migration and change in their economic status from cultivators to agricultural labourers or labourers in the unorganized sectors.

As a result of the commercial orientation of agriculture, industrial development in the tribal areas and various multipurpose and major irrigation projects in the “Scheduled” areas, tribals have been losing ownership rights over their land. Land and forest are two important sources of livelihood for the tribals. After Independence, the tribal land continues to pass into the hands of non-tribals on a large scale. The process of land alienation has victimised the tribals in the following ways:

- Money lenders and rich tribals take over possession of land of poor tribals for recovery of debts:
- Tribal land is auctioned legally by the credit Co-operative Societies and banks to recover dues. The auctioned land is purchased by the non-tribals as well as by the rich tribals:
- Apart from alienation of land to private persons, the Government has acquired substantial tribal land for various development projects.

Mainly three practices are observed through which the land of the tribals is alienated. They are-

1. Use of power of attorney and/ or lease or rent
2. Changing the purpose of the land from agriculture to non-agriculture
3. Non-implementation of the Tenancy Act, 1956.

1. Use of power of attorney and/ or lease, rent

The power of attorney is known as Kulmukhtyarnamu in the local language. The use of power of attorney prevails throughout the tribal belt. The seller gives the power of attorney to the buyer for a decided period. Sometimes the power of attorney is renewed after the said period.

This practice is mainly between the seller and the buyer and no other agency comes in between to control or supervise the dealing.

In some instances, the tribal gives the land on rent for a year or two to the tribal or non-tribal cultivator. It is observed that some advances are taken by the tribal landowner in exchange of his land on rent. This is again a deal between two persons or parties like the use of power of attorney. As a result of this deal, the tribal loses the right to cultivate over the time, and mostly the land is transferred to the non-tribal or the influential tribal cultivator.

While giving the land on lease or on rent, the immediate need of the tribal family is satisfied. This is, in fact, an entry point for the non-tribal to take over the land as the cycle of indebtedness continues in some fashion. In such cases, it is difficult for the original landowner, to prove his ownership in the court. Mainly because of the lack of documentation of the deals taken place during this time, he ends up fighting the legal battle and mostly loses. The original tribal owner thus gets into a trap of indebtedness, besides losing his land.

2. Changing the purpose from agriculture to non-agriculture

It is obligatory to get permission from the Collector for changing the purpose, specifically, for setting up an industry on an agricultural

land. The prescribed procedures which should actually act as deterrents are so weak that they are easily used by the industrial lobby to further their self interest. There is nothing in the procedures which protects the tribal's interest.

Once the land is taken on rent or lease, the original landowner has no check on its use. There is no stringent procedure or rule of the Government which acts as a check on the use of the land which has been transferred from the tribal to the non-tribal or the influential tribal.

The Collectorate has to prepare a report of land transfer under sections 73 A, 73 AA of BLR, 1879 every six months as prescribed in the Act, and this report has to be presented to the Government of Gujarat (according to the Government Circular dated 23.3.1982). Yet, no report is being submitted to the Revenue Department. It seems that the Collector is not accountable for not reporting about the transfer of the tribal land for industrial purpose. However, the information is, by and large, available about the transfer of tribal land cases registered under sections 73 A, 73 AA of BLR, 1879.

3. Non- implementation of the Tenancy Act, 1956

It is observed specifically in Valsad and Surat districts that the provision of land to the tiller has not been implemented. The land has not been given back to the tribal cultivators and remains with the local land holding upper caste families.

Where the land has been given back to the tribal cultivators on government record, in reality, it is given on lease for 99 years for non-agricultural purposes.

The socio-economic situation of the family plays a major role in land alienation. Moreover, external factors, such as, urbanization

and industrialization on a large scale, and capitalist farming in Gujarat is instrumental in intensifying the process of tribal land alienation. Over and above this, 17,000 square kilometers of area has been declared as Sanctuaries and National Parks in Gujarat.

The gradual deforestation, decreasing access to forest land and its produce and reduction in the number of cultivators have created serious problems for the livelihood of tribals who are traditionally dependent on these two resources. Rapid urbanization has further aggravated the hardship of the tribals for livelihood.

There are other income generation activities over and above agriculture such as a job in the government and in the private sector, animal husbandry, small business and other allied activities.

It is also observed that the tribals who have service in the private or the government offices, specially teachers, are now affluent enough to invest their money in land. These neo-rich are instrumental in promoting the process of land alienation among the poor tribals and the commercialization of the land.

Implementing agency- the Procedure for Transfer of Land

For any kind of deal regarding land, the seller has to give an application to the District Collector. The Collector examines the case and forwards it to the mamlatdar through the 'prant office' (district level revenue office). The mamlatdar examines the documents, verifies them and sends them back to the Collector for the final approval. The Collector informs the State Revenue Department. Simultaneously, the Collector informs his/ her final decision to the mamlatdar. The mamlatdar sends the message of approval or rejection through his/ her deputies to the village officials. The time limit for the whole procedure is 90 days.

The Collector is the final authority for the transaction. After the permission is given by the Collector, the application goes back to the revenue department and then to the village level officials. The talathi makes an entry (form no. 6) for the land transaction in the register. The entry includes the detail about the size of the land, its price, the date of transaction and names of the seller and the buyer. This is how the deal is complete.

For changing the purpose of the land from agriculture to industrial purpose the permission of the Collector is obligatory under Section 734 C of BLRC, 1879. The Collector has to ensure the following-

1. To ensure that the tribal landowner gets the market price for the sale.
2. To check the information from the interested industrial unit-
 - (a) For the establishment of Small Scale Industry (SSI), the registration of the unit under the District Industrial Directorate has to be done.
 - (b) For the establishment of Middle Scale Industry (MSI), the registration of the unit from the Director General of Technical Development has to be done.
 - (c) For the establishment of Big Scale Industry (BSI), the Letter of Intent/ Industrial license from the Government of India are required.
3. To maintain and update a register of the cases of land transfer for industrial purposes under the Sections 73A, 73 AA of BLR, 1879. The half-yearly report should be submitted to the Government of Gujarat before 10th July, every-year.

Suggestions

I. Restricting the power of the Collector

As per the Act, for the transfer of tribal land to the non-tribal or to the tribal, the permission of the Collector is obligatory. The Collector of the respective district has to grant such permission after examining certain aspects. Thus, an unlimited power is concentrated in a single authority, namely, the District Collector. The Collector need not give any reason for the permission in favour or against the tribal, for the transfer of the land in question. In case the reasons are given for the aforesaid, they are not documented.

It is necessary to build up alternative structures, forge larger co-ordination among various concerned departments and effect changes required in the prescribed procedures for positive impact on the process.

a) Alternative Structure- Regarding alternative structure, the suggestion is to set up a two-tier system at the district level and at the state level. At the district level, a committee should be set up. The committee comprising the District Collector, President of the District Panchayat and President of the Social Justice Committee should jointly decide the matter. At the state level, a tribunal should be set up. The role of the tribunal will mainly be to settle the disputed cases at the district level. Revenue Secretary, Industry Secretary, Secretary in-charge of Tribal Welfare and Director of Tribal Sub-plan should be the members of the said tribunal.

The committee and the tribunal should examine the following matters before finalising the transfer of land:

- Whether the tribal has any other alternative for the livelihood or not. In case, he/ she does not have any source of livelihood, the permission should not be granted.
 - Permission should be taken from the spouse and other adult family members before the transfer of land.
- a) **Co-ordination among various agencies:-** There are various agencies for the betterment of the tribals in the state. Despite these agencies, the fact is that the trend of land alienation has continued.

In this light, greater and regular co-ordination is required between these various agencies. For example, if a tribal family is in debt and forced to sell out the land, the office of the tribal sub-plan or the department must try to assist the family, to prevent it from selling or mortgaging land.

II. Changes required in procedure

- The authorities do not restore the land to the tribals according to the time prescribed in the law. Many orders thus remain unexecuted for a long time and hence the purpose is not fulfilled. The responsibility for the execution of such orders should be specifically assigned to the Collectors for effective implementation.
- In many cases, the land of the tribals is grabbed through the “Power of Attorney” technique. Such practices should be stopped effectively.
- As per the present provision for change in the purpose of land, for example, from agricultural to industrial, the papers required for the permission from the Collector, are mainly in the form of certificates. Most of such certificates are easily acquired by the respective industry. Neither the owner of the land nor the

Company/ Industry is directly accountable in these cases. Safeguards should be provided in these procedures.

- According to the circular of the Revenue Department, the Collector has to provide the information periodically to the various departments of the State Government about the transfer cases of tribal land for industrial purposes. No such information has been provided since 1981 to any of the concerned departments. Necessary steps should be taken for updating the records of the land transfer.
- A provision should be made for the collection and updating of data related to land alienation among the tribals under section 73AA of BLRC, 1879. Periodic review of the procedures and provisions should take place in order to protect the tribal lands.
- The status report of land alienation among the tribals should be published and made accessible to the public.

III. For spreading awareness

It is suggested that the government officials who are in-charge of this issue at the taluka and district levels should be sensitized and equipped with the required information. Similarly, conscious efforts should be made to create more awareness among the tribals for their rights.

Some more recommendations are listed below:

1. Alienation should be strictly prohibited for all tribal lands wherever situated in the state, i.e. whether the areas are surveyed and settled or not, whether the areas are scheduled ones or not, and whether the lands are in the tribal talukas/ pockets or not. The necessity of issuing a government notification should be dispensed with.

2. Alienation of tribal lands may be allowed only for genuine public purposes like the construction of school buildings, libraries, hospitals, dispensaries, etc.
3. Provision should be made for the restoration of tribal lands irrespective of the period during which they were alienated by removing the bar of limitation keeping in view the provisions made by other State Governments in their respective Acts.
4. Besides the application by the concerned tribal for the restoration of his lands, there should be provision in law for suo-moto action by the competent authority, so that the cases of alienation by poor and ignorant tribals may not go unnoticed.
5. The jurisdiction of the civil court in respect of the cases of alienation and restoration of tribal lands should be barred.
6. Provision is required to be made for treating the admission of the tribals against their own interest as inadmissible evidence in any proceedings regarding the tribal lands.
7. In proceedings relating to the tribal lands, provision should be made for an officer of the rank not below that of the Mamlatdar to be joined as a party so that the rights of the tribals can be safeguarded.
8. Provision for imposing penalty on the non-tribal by way of imprisonment and fine may be made if the non-tribal gets occupation of the tribal land in contravention of the legal provisions made in this behalf.
9. In the case of the tribal lands alienated to the non-tribals, if the transferee has constructed a substantial structure on the land before the enactment, provisions may be made to validate the transfer if the transferee either makes available to the transferor an alternative holding of the equivalent value in the vicinity, or pays adequate compensation for the rehabilitation of the transferor.

10. In proceedings regarding the restoration of possession of tribal lands instituted by a tribal, provision may be made to the effect that no magistrate shall have jurisdiction under Criminal Procedure Code, 1973 in respect of a dispute between that person and any other person claiming to be in possession or enjoyment in respect of the said land.
11. Provision may be made for prohibiting the attachment and sale of tribal lands in execution of the money-decree against a member of the Scheduled Tribe.
12. If the tribal does not agree to take back possession of the tribal land for any reason whatsoever (influence and pressure by others etc.), provision may be made that such land should be vested in the State Government and subsequently may be allotted to a landless tribal with marginal landholding.
13. Any document regarding transfer of tribal land should not be accepted for registration by the Registrar/ Sub-Registrar except in cases in which specific permission is given by the State Government or authority created by the State Government.
14. In the tribal areas covered by tribal talukas/ pockets, if a non-tribal wants to sell his land, it can be sold only to a landless tribal or a tribal having marginal holding.
15. Likewise, for areas covered by the tribal talukas/ pockets, provision should be made that unless the contrary is proved, if a non-tribal is found in possession of a tribal land, it should be restored to the tribals under the presumption that he or his predecessor had acquired that land through transfer from tribal landholders. Such provision will be helpful in detecting concealed cases of transactions.
16. Provision may be made that for the transfer of tribal land which has become invalid after the coming into force of the enactment prohibiting alienation of tribal land, the

consideration money paid by the non-tribal transferee to the tribal transferor should not be refunded.

17. Provision may be made for the alienation of the tribal lands from tribal to tribal in some special circumstances and such permission may be given only by the State Government. The special circumstances, other than cases of transfer due to heirship and partition, in general, may be: (i) In case the tribal family wants to give up forever agricultural occupation and desires to settle elsewhere for non-agricultural occupation including trade, service etc. (ii) In case there is no direct heir to the tribal who desires to transfer his land by sale, gift etc. (iii) In case the tribal is old, infirm and unable to pursue agriculture and there is none in his family who can look after his land (iv) The tribal purchaser should not be rich and well-to-do, and must be personally engaged in agricultural occupation or agricultural labour. Moreover, a holding after the said transfer should not exceed the holding prescribed for a small farmer.

HIMACHAL PRADESH

Tribal land alienation and restoration in Himachal Pradesh is governed by the provisions of the Himachal Pradesh Transfer of Land (Regulation) Act, 1968. The Act is extended to the following areas under the Himachal Pradesh Transfer of Land (Regulation) Act, 1968.

Sl. No.	Name of the District	Area/Areas to which the Act ibid is extended
1.	District Lohaul and Spiti	Whole
2.	District Kinnaur	Whole
3.	District Chamba	Pangi Sub-Tehsil, Bharmour Sub-Tehsil

The main provisions of the Himachal Pradesh Transfer of Land (Regulation) Act, 1968 are as follows:

3. Regulation of transfer of land- (1) No person belonging to a Scheduled Tribe shall transfer his interest in any land by way of sale, mortgage, lease, gift or otherwise to any person not belonging to such tribe except with the previous permission, in writing, of the Deputy Commissioner:

Provided that nothing in this sub-section shall apply to any transfer-

- (a) by way of lease of a building on rent,
- (b) by way of mortgage, for securing loan, to any Co-operative Land Mortgage Bank or to any Co-operative Society or a majority of the members of which are persons belonging to any Scheduled Tribe;

- (c) by acquisition by the State Government under the Land Acquisition Act, 1894 (1 of 1894).
- (2) Every transfer of interest in land made in contravention of the provisions of sub-section (1) shall be void.
- 4. Application for permission for transfer of land- (1) Any person belonging to any Scheduled Tribe who desires to make transfer of his interest of any land to a person not belonging to such tribe, may make an application to the Deputy Commissioner for the grant of permission for such transfer.
- (2) Every application under sub-section (1) shall be made in the prescribed form and shall contain the prescribed particulars and shall be accompanied by such fees as may be prescribed.
- (3) On receipt of any such application for the grant of permission, the Deputy Commissioner may, after making such inquiry as he thinks fit, either grant or refuse permission to transfer the land.

Provided that where permission is refused the Deputy Commissioner shall record in writing the reasons for such refusal.

- (4) Before granting or refusing permission under this section, the Deputy Commissioner shall have regard to the following matters, namely:
 - (a) the financial position of the applicant;
 - (b) the age and physical condition of the applicant;
 - (c) the purpose for which the transfer is proposed to be made, and

- (d) such other relevant matters as the Deputy Commissioner may think fit in the circumstances of the case.
- 5. Ejectment- (1) If, as a result of transfer of any land in contravention of the provisions of section 3, any person, other than person belonging to any Scheduled Tribe, is found to be in possession of that land, the Deputy Commissioner or any other officer authorised in writing by the state government in this behalf, may, without prejudice to the provisions of section 9 send notice upon such person requiring him to vacate the land within ninety days from the date of the notice and to remove any building, fence or any other structure which may have been raised on such land.

Provided that if there are any crops actually growing on the land at the time of such requisition, such persons shall be entitled to retain possession of the land until such crops are harvested.

- (2) Every person to whom a requisition is made under sub-section (1) shall be bound to comply with such requisition.
- 6. Appeal- (1) any person aggrieved by an order made under section 4 or section 5 may, within thirty days from the date of the communication of the order prefer an appeal to the Commissioner.

Provided that if there be no Commissioner such appeal shall lie to the Financial Commissioner.

Provided further that the Commissioner, or as the case may be, the Financial Commissioner, may entertain the appeal on the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing appeal in time.

- (2) On receipt of an appeal under sub-section (1), the Commissioner, as the case may be, shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.
7. Finality of orders- The order made in appeal by the Commissioner or the Financial Commissioner, as the case may be, under section 6 and subject only to such order, the order made by the Deputy Commissioner under section 4 or section 6 be final.
8. (1) Right, title or interest held by persons belonging to scheduled tribes in land not to be attached – No right, title interest held by a person belonging to a Scheduled Tribe in any land shall be liable to be attached or sold in execution of decree or order, in favour of any person not belonging to a Scheduled Tribe, of any court except when the amount due by such decree or order is due to the State government or to any Co-operative Land Mortgage Bank or Co-operative society.
- (2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure or any other law for the time being force, any court, vested with the appellate or revisional jurisdiction may either on its own motion or on an application made to it by any person belonging to a Scheduled Tribe, set aside any sale of his property in execution of a decree in favour of a person not belonging to a Scheduled Tribe.

Explanation - For the removal of doubts, it is, hereby declared that the court shall not refuse to take cognizance of an application or refuse to exercise the power conferred upon it, under this sub-section, simply for the reason that the applicant or the person to whom the property in question belonged failed to raise the objection

to that extent before the court which either passed the decree or passed any order in execution proceedings thereof.

8. A- Amendment of the Limitation Act, 1963 in its application to proceedings under section 8 in the Schedule, after the words 'Twelve years' accruing in the second column against article 65, the words in brackets and figures but thirty years in case of immovable property belonging to a member of a Scheduled Tribe specified in relation to the state of Himachal Pradesh in the Constitution (Scheduled Tribes) Order, 1950 shall be inserted.

9. Penalty- if any person contravenes or attempts to contravene or abets the contravention of any of the provisions of Section 3 or section 5, he shall be punishable with fine which may extend to two hundred rupees and in the case of a continuing contravention, with an additional fine if such contravention continues after conviction for the first such contravention.

10. Power to make rules- (1) The State Government may make rules for the purpose of carrying out the provisions of this Act.

2. Without prejudice to the generality of the foregoing power, such rules may provide for-

- a) the form of application for the grant of permission under section 4, the particulars it may contain, the fees which should accompany it and the manner of depositing such fees, and
- b) any other matter which has to be or may be prescribed under this Act.

JHARKHAND

PROVISIONS RELATING TO TRANSFER IN THE CHOTA NAGPUR TENANCY ACT, 1908.

A new Act (The Chota Nagpur Tenancy Act, Act VI of 1908) was framed to include all provisions affirming local customary rights and usages, which the investigations of the Settlement Officers have shown to be necessary, and several provisions of law and procedures, borrowed from the Bengal Tenancy Act, which were in no way inconsistent with local usages and customs and which the experience of the Civil Courts had shown to be essential for the proper administration of the rent law in Bengal.

Section 46

This section is to be studied in the following three parts:

- a) Restrictions on the transfer of Scheduled Tribe/ Backward Class/ Scheduled Caste lands.
- b) Restoration of land that has been illegally and fraudulently transferred.
- c) Explanations regarding certain terms used in the Section.

No transfer by a raiyat in his holding or any part thereof:

- a) by mortgage or lease for any period exceeding five years.
- b) by sale, gift or any other contract or agreement, shall be valid to any extent (Sub-section 1).

The raiyat may, however, enter into a bhugut bandha mortgage of his holding or any portion thereof for a period not exceeding 7 years or if the mortgagee is a society registered under the Bihar & Orissa

Cooperative Societies Act (B & O Act VI of 1935) for a period not exceeding fifteen years (proviso to Sub-section 1).

Section 46 enables an occupancy raiyat belonging to the Scheduled Tribes to transfer his lands, with the previous sanction of the Deputy Commissioner, to another member of the Scheduled Tribes who resides within the police station limits where the land is situated. Occupancy raiyats of the Scheduled Castes and the Backward Classes are also similarly authorised to make transfers to other members of SC/ BCs respectively who are resident in the district where the holding is situated. The Section also authorises transfer of the rights of any occupancy raiyat in his holding or any portion thereof to a society or a bank or to a company or a corporation having stated qualifications, with a view to procuring agricultural credit. Other occupancy raiyats, who are not a member of the Scheduled Tribes, Scheduled Castes or Backward Classes, may transfer their rights in their holdings or any portion thereof by sale, exchange, gift, will, mortgage or otherwise to any other person (Provisos a, b, c and d to Sub-section 1).

The section implies that restrictions on mortgage or lease (not to exceed 5 years) and no transfer by any mode are meant only for occupancy raiyats belonging to the Scheduled Tribes, Scheduled Castes and Backward Classes. They can, indeed, transfer land rights, but with the previous sanction of the Deputy Commissioner and to the members of like castes/ classes alone. There are no fetters on transfer rights of other classes of occupancy raiyats, who do not belong to the castes/ classes noted above. Any transfer in contravention of Sub-section (1) shall not be registered or recognised by any Court.

The Deputy Commissioner shall be a necessary party in all civil suits in which one of the parties is a member of the Scheduled Tribes, and the other is not. The Deputy Commissioner is also

ordained to put back the transferor under Sub-section (1) into possession, on the latter's application within 3 years after the expiry of the period enshrined in the transfer.

Provisions of Transfer from S.T. to Non-S.T.

The Deputy Commissioner can proceed suo moto on an application by the S.T. transferor, provided the same is not time-barred by 12 years. He will hear both the parties and if he concludes that Clause (a) of the second proviso to Sub-section (1), which authorises transfer of S.T. lands only to eligible S.T. raiyats, has been violated, he will eject the transferee and put the transferor back into possession.

There are two provisos to the ejectment provision:

- i) If the transferee has constructed any building or structure on such holding or any portion thereof, the Deputy Commissioner shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period of six months from the date of the order, or within such extended time not exceeding two years from the date of the order as the Deputy Commissioner may allow failing which the Deputy Commissioner may get such building or structure removed.
- ii) Where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or a portion thereof before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1969 he may validate such a transfer, if the transferee either makes available to the transferor an alternative holding or portion of a holding of equivalent value, in the vicinity or pays adequate compensation to be determined by

the Deputy Commissioner for the rehabilitation of the transferor.

As stated already, the time bar for ejectment under Section 46 is 12 years, meaning thereby that at the expiry of 12 years the transferee will perfect his title over the transfer land by adverse possession.

The restrictions on the transfer of raiyati holdings were first introduced in the amending Act of 1903, the object being to stop the sale of holdings by improvident raiyats, and to restrict all forms of mortgage and thereby to save the population from becoming serfs to the money-lender. The terms of the law, as embodied in the 1908 Act, are very emphatic. A mortgage or lease for any period expressed or implied, which exceeds or might, in any possible extent, exceed five years, is invalid. A mortgage, therefore, which purports to be for a period of five years, but which contains a proviso that the lease may run until the consideration money is repaid by the mortgagor, or which contains or implies any other alternative is void abinitio and cannot be registered. Nor is a transfer by sale, gift or any other contract or agreement valid.

Registration Officers are bound to examine all documents, which purport to be leases or mortgages of the raiyati holdings or Bhuinhari tenures, in order to see that the limitations on transfer contained in the law are not contravened. If the conditions contravene law, the Registration Officer must refuse to register the document.

If a transfer is effected in violation of section 46 or any other law, the transferee would be deemed to be in adverse possession ever since the date of the transfer (Khami Mahatuni vs. Charan Napit AIR 1953 at. 365). Under Section 46, a lease for a period exceeding five years is prohibited, and the raiyat leasing out his holding under

an invalid lease is entitled to sue to recover possession of his holding. He has to bring his suit within the period of Limitation otherwise he cannot recover possession and the alienee may acquire the land by adverse possession (Maharaj Singh vs. Budhu Chamar, 1952 Pat. 46).

The term 'lease' used in Section 46 of the Act is not used in the same sense as understood under the Transfer of Property Act. Under the CNT Act, a lease means a document, which creates the right of a tenant. Section 44 provides that every raiyat shall be entitled to receive from his landlord a lease containing the particulars specified in the section. Thus, under the Act, a lease clearly means a document containing the terms and conditions of the settlement made in favour of the raiyat by his landlord. The word 'Leases' in section 46 is used in the same sense as in Section 44 of the Act. Both these sections find place in Chapter VIII of the Act which relate to lease and transfer of holdings and tenures (Haripada Mahato and another vs. State of Bihar and others, 1988 BLT (Rep.) 258). Induction of an under-raiyat in an agricultural holding by a raiyat is certainly a transfer within the meaning of Section 46 of the CNT Act (Amin Mahto vs. Commissioner, South Chota Nagpur Division, Ranchi and others, 1987 BLT (Rep.) 297).

Under Section 46 (4), the remedy of the plaintiff is by way of an application within three years after the expiration of the period for which, power was granted to the Deputy Commissioner, to put the plaintiff in possession. No suit for ejectment is maintainable in the Civil Court.

Section 48

The provision of Section 46, regarding restrictions on transfer are now made applicable to Bhuinhari tenures surveyed under Act II of

1869, as if they were raiyati holdings. The rights of the landlord to transfer his manjihahas or bethkhata lands are not affected. Bhuinhari tenures which are not of a service character, were, by custom, transferable by sale, without the consent of the landlord. The provisions of Section 46, Sub-section (2) were, for that reason, not made applicable to Section 48, and, a temporary transfer of his right by a Bhuinhar could, therefore, appear to be binding on his immediate landlord. As a matter of custom the official service tenures held by the Pahan, the Mahato and other village officials cannot be transferred by lease or mortgage even for short periods, though this custom is being broken down, and these tenures have been, in some cases, sold by the Courts, in execution of decrees for debts due on the village officials, and have thus been lost permanently to the village community.

Section 71-A

Power to restore possession to members of the Scheduled Tribes over land unlawfully transferred – If at any time it comes to the notice of the Deputy Commissioner that transfer of a land belonging to a raiyat or a Mundari Khunt Kattidar or a Bhuinhar who is a member of the Scheduled Tribes has taken place in contravention of Section 46 or Section 48 or Section 240 or any other provisions of this Act or by any fraudulent method, including decrees obtained in suit by fraud and collusion he may, after giving reasonable opportunity to the transferee who is proposed to be evicted, to show cause and after making necessary enquiry in the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir, or in case the transferor or his heir is not available or is not willing to agree to such restoration, resettle it with another raiyat belonging to the Scheduled Tribes according to the village custom for the disposal of an abandoned holding.

Provided that if the transferee has, within 30 years from the date of transfer, constructed any building or structure on such holding or portion thereof, the Deputy Commissioner shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period of six months from the date of the order, or within such extended time not exceeding two years from the date of the order, as the Deputy Commissioner may allow, failing which the Deputy Commissioner may get such building or structure removed.

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before coming into force of the Bihar Scheduled Areas Regulation, 1969, he may, notwithstanding any other provisions of the Act, validate such transfer where the transferee either makes available to the transferor an alternative holding or portion thereof as the case may be, of the equivalent value in the vicinity or pays adequate compensation to be determined by the Deputy Commissioner for rehabilitation of the transferor.

Provided also that if after an enquiry the Deputy Commissioner is satisfied that the transferee has acquired a title by adverse possession and that the transferred land should be restored or resettled, he shall require the transferor or his heir or another raiyat, as the case may be, to deposit with the Deputy Commissioner such sum of money as may be determined by the Deputy Commissioner having regard to the amount for which the land was transferred or the market value of the land, as the case may be and the amount of any compensation for improvements effected to the land which the Deputy Commissioner may deem fair and equitable.

Explanation- I: In this section ‘substantial structure or building’ means ‘structure or building’ the value of which on the day of

initiation of enquiry, was determined by the Deputy Commissioner to exceed Rs.10, 000/- but does not include structure or building of any value, the material of which can be removed without substantially impairing the value thereof.

The Deputy Commissioner has been given the power to restore the raiyati land of a member of the Scheduled Tribes if a transfer has taken place:

- (i) In contravention of Section 46;
- (ii) In contravention of any other provision of the Act;
- (iii) By fraudulent method including decrees obtained in suit by fraud and collusion.

The first proviso to Section 71-A confers power on the Deputy Commissioner to direct the transferee, who has constructed a building or a structure on the holding within 30 years from the date of transfer to remove the same failing which the same would be removed.

The second proviso refers to a situation in which the transferee has constructed a substantial structure before coming into force of section 71-A. the Deputy Commissioner can validate such a transfer, if the transferee either makes available to the transferor an alternative holding or portion thereof of equivalent value in the vicinity or pays adequate compensation. By implication, if the transferee does not fulfil the conditions, the transfer can be invalidated and land restored to the transferor.

Through the third proviso, if the transferee has acquired title by adverse possession, the Deputy Commissioner is enjoined to require the transferor or his heir to deposit market value of the land alienated as well as compensation for improvements made, as a condition precedent to restoration.

As is held by the Full Bench of the Patna High Court (Ranchi Bench) in CWJC No. 120 of 1979 (R) (Amarendra Nath Dutta and Others and the State of Bihar and Others):

“Under Section 71-A of the Act, the jurisdiction of the Deputy Commissioner is to determine whether the transfers were made in contravention of section 46 or any other provision of the Act or by any fraudulent method and not transfers in contravention of the Bihar Scheduled Areas Regulation, 1969. And, therefore, even without being retrospective in operation, Section 71-A can include within its ambit transfers made prior to the coming into force of that section, if they were in contravention of Section 46 or any other provisions of the Act or by any fraudulent method” (1983 (31) (H. C. F.B.R.B. 609).

Section 72

Surrender of land by Raiyat- (1) A Raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year surrender his holding with the previous sanction of the Deputy Commissioner in writing.

- (2) But notwithstanding the surrender, the Raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least four months before he surrenders, notice of his intention to surrender.
- (3) The Raiyat may, if he thinks fit, cause the notice to be served through the court of the Deputy Commissioner within whose jurisdiction the holding or any portion of it is situate.

- (4) When a Raiyat has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.
- (5) Nothing in this section shall affect any arrangement by which a Raiyat and his landlord may arrange for a surrender of the whole or a part of the holding with the previous sanction of the Deputy Commissioner in writing.

By virtue of the amending Act of 1947 the surrender of a land by a raiyat can only be made with the previous sanction of the Deputy Commissioner in writing.

Surrender & Settlement

On the larger purpose of the statute and the language of Section 71-A, a surrender by a Scheduled Tribe raiyat of his statutory right to hold land would amount to transfer within the meaning of the said Section of the Act. A surrender coupled with a settlement, which in essence, is one transaction, would amount to a transfer within the ambit of Section 46 or 71-A if the surrender and settlement form the same transaction or otherwise, then it would be transfer even in an extreme case when the settlement takes place nearly three years after the original surrender.

Section 240

Restrictions on transfer of Mundari Khunt-Kattidari tenancies. (1) No Mundari Khunt-Kattidari tenancy or portion thereof shall be transferable by sale, whether in execution decree or order of a court or otherwise.

Provided that, when a decree or order has been made by any Court for the sale of any such tenancy or portion thereof in satisfaction of

a debt due under a mortgage (other than a usufructuary mortgage) which was registered before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903 (Bengal Act 5 of 1903), the sale may be made with the previous sanction of the Deputy Commissioner.

- (2) If the Deputy Commissioner refuses to sanction the sale of any such tenancy or portion thereof under the proviso to sub-section (1), he shall attach the land and make such arrangements, as he may consider suitable for liquidating the debt.
- (3) No mortgage of a Mundari Khunt-kattidari tenancy or any portion thereof shall be valid, except a bhugut bandha mortgage for a period, expressed or implied, which does not exceed or cannot in any possible event exceed seven years.

Provided that a Mundari Khunt kattidar tenant may transfer by simple mortgage his right in his tenancy or any portion thereof with a view to raising loan for agricultural purpose to a society or bank registered or deemed to be registered under the Bihar and Orissa Cooperative Societies Act 1935 (Bihar and Orissa Act VI of 1935) or a company or Corporation owned by or in which not less than fifty- one per cent of the share capital is held by the State Government or the Central government or partly by the State Government and partly by the Central Government and which has been set up with a view to providing agricultural credit to cultivators.

- (4) No lease of a 'Mundari Khunt Kattidari' tenancy or any portion thereof shall be valid, except a lease of one or other of the following kinds, namely:

- (a) 'Mukarrari lease' of uncultivated land, when granted to a Mundari or a group of Mundaris for the purpose of enabling the lessees or the male members of their families to bring suitable portions of the land under cultivation.
 - (b) Lease of uncultivated land, when granted to a Mundari cultivator to enable him to cultivate the land as a Raiyat.
- (5) Where a 'Mundari Khunt-kattidari' tenancy is held by a group of 'Mundari Khunt-kattidars' no bhugut bandha mortgage or 'mukarrari' lease of the tenancy or any portion thereof shall be valid, unless it is made with the consent of all the 'Mundari Khunt-kattidars'.
 - (6) No transfer of a 'Mundari Khunt-kattidari' tenancy or any portion thereof, by any contract or agreement made otherwise than as provided in the foregoing sub-section, shall be valid; and no such contract or agreement shall be registered.
 - (7) Nothing in the foregoing sub-section shall affect any sale or, except as declared in the proviso to sub-section (1), any mortgage or any lease made before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1903 (Bengal Act 5 of 1903).

If any person obtains possession of a 'Mundari Khunt-kattidari' tenancy or any portion thereof in contravention of the provisions of Section 240, the Deputy Commissioner may eject him therefrom, and if the tenancy was, before such possession was obtained, entered as a 'Mundari Khunt-kattidari' tenancy in a record or rights finally published under the Act or under any law in force before the commencement of the 1908 Act, no suit shall be maintainable in

any Court in respect of such ejectment; but an appeal shall lie as provided in Chapter- XVI of the Act (Section 242).

LOOPHOLES & AREAS OF IMPROVEMENT IN THE CNT ACT, 1908.

1. If the Government is desirous of pursuing a genuinely restrictive policy, the Law of Limitation should be made inapplicable in every nook and corner of Chota Nagpur, irrespective of the distinction between the Scheduled and the non-Scheduled Areas. Since the transferee possession is a continuing wrong, the Law of Limitation would not apply. Neither the provisions of the Limitation Act nor the limitation as provided under Section 231 of this Act will apply to a transfer of general Scheduled Tribes land or of 'Mundari Khunt-kattidari' land, when it is established that the transfer was in contravention of Section 46 or any other provisions (including Section 240) of this Act. Since there is a statutory bar on such transfer of land, the transfer must be held to be a continuous wrong and the Limitation Act will not cure such an illegal transfer (Phagu Mahto and Others vs. Commissioner, South Chota Nagpur Division and others, 1986 BLT (Rep) 173 at P. 175).

If this recommendation is accepted, Section 231 of the 1908 Act will have to incorporate Sections 46, 48 71-A and 240 as no-limitation sections and whatever limitation periods are enshrined in these Sections, should be deleted forthwith.

2. Section 49 of the CNT Act empowered the Deputy Commissioner to authorise transfers for reasonable and sufficient purpose. Due to an apparent misuse of this power and evincing a lurking distrust with the Deputy

Commissioners, the said power has recently been drastically cut down allowing transfers only for industrial and mining purposes.

Both in Section 46 and 71-A there are provisions for validating a pre-1969 Regulation transfer on the transferee providing a land of equivalent value in vicinity or on paying adequate compensation, to be determined by the Deputy Commissioner. The validation provisions are apt to be misused, on ulterior considerations, in two ways:

- (a) The transferee leaves no stone unturned in getting the transfer held to have taken place prior to the promulgation of the 1969 Regulation.
- (b) Once he succeeds in his bid, he moves on in his endeavour to get the compensation fixed at a low rate.

Since, the determination of the date of the transfer and the amount of compensation are both purely discretionary, appellate provisions, notwithstanding, the transferor's fate is more or less sealed in a lower court itself, with the balance of judgement tilting in favour of the transferee.

There is yet another hazard involved. More often than not, the transferee wins over the transferor at the very outset, gets a case instituted seeking restoration, and comes out gleefully after getting the transfer validated by a court of law. This is nothing but a fraud on law and a collusive adjudication.

There is no justification, whatsoever, to allow a long rope to the subordinate courts to declare a transfer as a pre-1969 one and to determine compensation almost arbitrarily, without any reference to objective market conditions, thereby jeopardizing the interests of the tribals.

It is common knowledge that a sale deed does not reflect the actual amount of money rolled in the transaction. What if the value of the tribal land instead of being determined realistically is quoted much below the cosmetic prices mentioned in a sale deed even.

3. Deputy Commissioners, while allowing the transfer of a tribal holding to tribal transferees, are apt to determine a rather low price. No objective yardsticks are followed. Current prices reigning actually in the locality are seldom looked into. They tend to ignore the ground truth that the purchaser, although a tribal, must definitely be on a much more sound footing than the seller. No conscious exercise is undertaken to give maximum advantage to the one who sells.
4. Housing Cooperative Societies, manned by the non-tribals have come up on the tribal lands, duly allowed by Deputy Commissioners in gross violation of Section 49. The same have been deemed to serve a 'public purpose' which is not the case, with respect to this Act. The Government may like to collect details of such permissions, nullify the same and remove the time bar of 12 years from Section 49 forthwith. The power to sit over the Deputy Commissioners should be vested in the Divisional Commissioners (instead of in the Government, as of now), as that will involve quicker and cheaper justice.
5. A similar probe and removal of 12 years bar is called for with respect to Section 46 (Sub-section 1: clause (a) of Second Proviso) also. The Government may like to ascertain as to what price the well-to-do tribal purchaser actually paid to the poor seller. As also, whether any one of the tribal

cooperative societies allotted a developed plot or a constructed flat/ shop to any one of the tribal sellers.

Needless to say that the neo-elite among the tribals are nowhere far behind in the race to keep the poor tribals of Chota Nagpur in the mire of poverty and to take advantage of their ignorance and other shortcomings.

6. In deciding whether a transfer dates back to the pre-1969 period or not, the courts must rely only on documentary evidence. Credence to physical verification/ oral evidence can be given to cases in rural areas alone where it was not necessary to have a map passed or take a ration card or power line.
7. Most unfortunate of all is that even if a restoration order is passed it is seldom executed. The buck is passed on to the lower administrative units and the restoration courts exercise authority over such units. As and when a restoration information comes it is simply tagged to the restoration records. The Courts do not feel obliged to monitor follow-up nor is ever such exercise carried out seriously in the higher echelons of the administration. In the Hindpirhi area of Ranchi town, where a certain community is in illegal possession of tribal land on a large scale, disturbances are apprehended if evictions are carried out. The point to be considered is if there is to be conscious and wilful discrimination in the execution of the processes of law in different situations; or every one is to be treated equal in the eyes of law. The point before us is if it suffices that orders remain on paper only, paying lip service to law, or the same have to be carried out with the force of the State behind them. Whether it is a decision not to restore or keep the restoration orders in the cold storage, the sufferer is an

individual who, despite some self-styled middle-men, continues to remain overawed and speechless as juxtaposed to the transferee who wields power, authority and influence.

8. Transfer from S.T. to S.T. should be banned, unless it is through the Government and unless the person who takes the plot is a bonafide tribal J.B. raiyat of the same or adjacent village.
9. The Government may like to examine the present extent of the Scheduled Area. On verification of the existence of the tribal pockets, the area can be extended to the uncovered areas as well. Population should not be the criterion. The Government perception should be the criterion.
10. The CJM should be empowered to decide on the penal provisions under Section 71-B.

PROVISIONS RELATING TO TRANSFER IN THE SANTAL PARGANAS TENANCY (SUPPLEMENTARY PROVISIONS) ACT, 1949.

20. Transfer of raiyat's rights:- (1) No transfer by a raiyat of his right in his holding or any portion thereof, by sale, gift, mortgage, will, lease or any other contract or agreement, express or implied, shall be valid unless the right to transfer has been recorded in the record-of-rights, and then only to the extent to which such right is so recorded.

Provided that a lease of raiyati land in any subdivision for the purpose of the establishment or continuance of an excise shop thereon may be validly granted or renewed by a raiyat for a period not exceeding one year, with the previous written permission of the Deputy Commissioner:

Provided further that where gifts by a recorded Santhal raiyat to a sister and daughter are permissible under the Santhal Law, such a

raiyat may, with the previous written permission of the Deputy Commissioner, validly make such a gift.

Provided also that an aboriginal raiyat may, with the previous written permission of the Deputy Commissioner, make a grant in respect of his lands not exceeding one half of the area of his holding to his widowed mother or to his wife for her maintenance after his death.

- (2) Notwithstanding anything to the contrary contained in the record-of-rights, no right of an aboriginal raiyat in his holding or any portion thereof which is transferable shall be transferred in any manner to any one but a bonafide cultivating aboriginal raiyat of the pargana or taluk or tappa in which the holding is situated.

Provided that nothing in this sub-section shall apply to a transfer made by an aboriginal raiyat of his right in his holding or portion thereof in favour of his gardi jamai or ghar jamai.

{Provided further that a raiyat who is a member of aboriginal tribes or aboriginal castes may, with the previous sanction of the Deputy Commissioner and a raiyat, who is not a member of the aboriginal tribes or aboriginal castes may without such previous sanction, enter into a simple mortgage in respect of his holding or a portion thereof with any Scheduled Bank within the meaning of the Reserve Bank of India Act, 1934, or a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or a financial institution or with a Company or a Corporation owned by or in which not less than fifty one percent of share capital is held by the State Government, or the Central Government, or partly by the Central Government and which has been set up with a view to provide agricultural credit to cultivators}.

- (3) No transfer in contravention of sub-section (1) or (2) shall be registered, or shall be in any way recognised as valid by any Court, whether in exercise of civil, criminal or revenue jurisdiction.
- (4) No decree or order shall be passed by any Court or officer for the sale of the right of a raiyat in his holding or any portion thereof, nor shall any such right be sold in execution of any decree or order, unless the right of the raiyat to transfer has been recorded in the record-of-rights or provided in this Act and then only to the extent to which such right is so recorded or provided.

Provided that a holding or a portion thereof of an occupancy raiyat may be sold in accordance with the procedure laid down in Bihar and Orissa Public Demands Recovery Act, 1914 (B& O. Act 4 of 1914) for the realisation of loans taken from any scheduled bank within the meaning of the Reserve Bank of India Act, 1934, or a society or bank registered or deemed to be registered under the Bihar & Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or financial institution, or a Company or a corporation owned by or in which not less than fifty-one per cent of share capital is held by the State Government or the Central Government or partly by the State Government and partly by the Central Government and which has been set up with a view to provide agricultural credit to cultivators, but if the holding or a portion thereof belongs to a raiyat who is member of aboriginal tribes or aboriginal castes, it shall not be sold to any person who is not a member of the aboriginal tribes or aboriginal castes.

If at any time it comes to the notice of the Deputy Commissioner that a transfer of land belonging to a raiyat who is a member of the Scheduled Tribes as specified in part III of the Schedule to the

Constitution (Scheduled Tribes) Order, 1950, has taken place in contravention of Sub-section (1) or (2) or by any fraudulent method (including decrees obtained in suits by fraud or collusion), he may, after giving reasonable opportunity to the transferees, who is proposed to be evicted, to show cause and after making necessary enquiry in the matter evict the transferee from such land without payment of compensation and restore it to the transferor or his heir, or in the case the transferor or heir is not available or is not willing to agree to such restoration, re-settle it with another raiyat belonging to the Scheduled Tribes according to the village custom for the disposal of an abandoned holding.

Provided that if the transferee has, within 30 years from the date of transfer, constructed any building or structure on such holding or portion thereof, the Deputy Commissioner, shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period of six months from the date of order or within such extended time not exceeding two years from the date of the order as the Deputy Commissioner may allow, failing which the Deputy Commissioner may get such building or structure removed:

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before coming into force of the Bihar Scheduled Areas Regulation, 1969, he may, notwithstanding any other provisions of the Act, validate such a transfer where the transferee either makes available to the transferor an alternative holding or portion thereof, as the case may be, of the equivalent value in the vicinity or pays adequate compensation to be determined by the Deputy Commissioner for rehabilitation of the transferor:

Provided also that if after an enquiry the Deputy Commissioner is satisfied that the transferee has acquired a title by adverse possession and that the transferred land should be restored or re-settled, he shall require the transferor or his heir or another raiyat, as the case may be, to deposit with the Deputy Commissioner such sum of money as may be determined by the Deputy Commissioner having regard to the amount for which the land was transferred or the market value of the land, as the case may be and the amount of any compensation for improvements effected to land which the Deputy Commissioner may deem fair and equitable.

Explanation- For the purpose of this section a financial institution means-

- i a banking company as defined in the Banking Regulation Act, 1949;
- ii. the State Bank of India constituted under the State Bank of India Act, 1955;
- iii. a subsidiary Bank as defined in the State Bank of India (Subsidiary Bank) Act, 1959;
- iv. a corresponding new bank constituted under the Bank Companies (Acquisition and Transfer of Undertakings) Act, 1970;
- v. Agricultural Refinance Corporation constituted under the Agricultural Refinance Corporation Act, 1963;
- vi. The Agro-Industries Corporation;
- vii. The Agricultural Finance Corporation Ltd. a company incorporated under the Companies Act, 1956; and
- viii. Any other institution as may be notified in this behalf as a financial institution by the State Government in the Official Gazette.

21. Transfer of raiyati land by bhugut-bandha or complete usufructuary mortgage by a non-aboriginal raiyat and its limits- (a) Notwithstanding anything contained in section 20, the (State) Government may, by notification in this behalf published in the official Gazette, permit non-aboriginal raiyats, either of the whole of the Santal Parganas or such portion of it as may be considered desirable, to transfer with effect from such date as may be notified, their rights in their holdings up to the extent of one fourth of their paddy and first class bari lands by bhugut-bandha or complete usufructuary mortgage to-

- i. a land mortgage bank duly established by the (State) Government, or
- ii. a grain gola recognised by the Deputy Commissioner, or
- iii. a society registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935), or
- iv. a raiyat of the Santal Parganas:

Provided that:

- a) no such transfer shall be recognised as valid unless it has been made by means of a registered deed and reported in the prescribed manner by the transferor and transferee to the Deputy Commissioner and to the landlord within one month of the registration of the deed:
- b) no such transfer shall be made for a period exceeding six years and, on the expiry of the period of transfer, no further transfer of any of the lands of the transferor raiyat shall be permissible for a period of six years.

2. At the time of reporting the transfer to the Deputy Commissioner as required under clause (a) of the proviso to sub-section (1), the transferee shall deposit a fee of five rupees together with a written notice in the prescribed form in the office of the Deputy Commissioner to cover the cost of processes and of re-delivery of possession to the transferor raiyat or his heir on the expiry of the period for which he has transferred his land in accordance with the provisions of sub-section (1) and no such transfer shall be deemed to be valid unless such fee has been deposited within one month of the registration of the deed.
3. The transferee shall be liable to pay the rent of the land and shall be liable to immediate eviction and the cancellation of his mortgage on failure to do so. The rent to be paid by the transferee shall be at the settlement rate for the area and class of land transferred.
4. On expiry of the period of mortgage, the Deputy Commissioner shall of his own motion cause a notice to be served on the parties to the transaction that the period of the mortgage has terminated and shall proceed to evict the transferee and deliver possession to the transferor raiyat.
5. Any transfer of land made otherwise than under the provisions of the foregoing sub-sections shall be deemed to be a transfer made in contravention of sub-section (1) of section 20.
6. Any mortgagee found in possession of any land belonging to a raiyat after the expiry of the period of such mortgage shall be punished with imprisonment for a term which may extend to three months and shall also be liable to fine which may extend to five hundred rupees and in the case of a continuing offence, to a further fine not exceeding ten rupees for each day during which the offence continues.

23. **Exchange of raiyati land:** (1) Raiyats desiring to exchange their lands may apply in writing to the Deputy Commissioner who may in his discretion permit such an exchange to be made:-

Provided that the Deputy Commissioner shall not permit an exchange to be made unless he is satisfied that:-

- (a) the parties to the exchange are both jamabandi raiyats with respect to the lands proposed to be exchanged;
- (b) the lands proposed to be exchanged are situated in the same village or in a contiguous village;
- (c) the transaction is not a concealed sale but is a bonafide exchange sought to be made for the mutual convenience of the parties; and
- (d) the lands proposed to be exchanged are of the same value.

(2) Any exchange of lands made otherwise than under the provisions of sub-section (1) and without the previous permission in writing of the Deputy Commissioner shall be deemed to be a transfer made in contravention of section 20.

42. Ejectment of a person in unauthorised possession of agricultural land: The Deputy Commissioner may, at any time, either of his own motion or on an application made to him pass an order for ejectment of any person who has encroached upon, reclaimed, acquired or come into possession of agricultural land in contravention of the provisions of this Act or any law or anything having the force of law in the Santal Parganas.

64. General rule of limitation: All applications made under this Act, for which no period of limitation is provided elsewhere in this Act, shall be made within one year from the date of the accruing of the cause of action:

Provided that there shall be no period of limitation for an application under section 4.

69. Bar to acquisition of right over certain lands: Notwithstanding anything contained in any law or anything having the force of law in the Santal Parganas, no right shall accrue to any person in:

- (a) land held or acquired in contravention of the provisions of section 20.

LOOPHOLES & AREAS OF IMPROVEMENT IN THE SPT (SUPPLEMENTARY PROVISIONS) ACT, 1949.

Title by Adverse Possession

Title by adverse possession could not be acquired under the 1949 Act by a transferee, in view of the clear bar to acquisition of any such title under section 69 of the Act. Therefore, restoring back the property from the unlawful possession of a transferee, who would not acquire any title from such an invalid transfer, in spite of his long possession, to the transferor, whose title; at no point of time extinguished, will not come under the mischief of Article 31 of the Constitution (1972 PLJR 415).

There was no incidence of transferability of raiyati holdings in Santal Parganas on the date of the commencement of the Constitution, either because there was no right of transferability at any point of time in Santal Parganas, or even alternatively because Section 7 of Regulation III of 1872 had made them non-transferable, which section was replaced by Section 20 of the Act in 1949.

Section 42 of the 1949 Act is a legislation in respect of Entry 21 of List-II – State List of the Seventh Schedule to the Constitution, and is not violative of or repugnant to the provisions of the Limitation Act, a Central Legislation, dealing with acquisition of right by adverse possession. It is a valid piece of legislation.

The Limitation Act is operative in Santal Parganas, but its application, in so far as the acquisition of title by adverse possession is concerned, has been abrogated to the acquisition of title in regard to the raiyati lands and some other kinds of lands as mentioned in Section 69 of the 1949 Act which the Bihar Legislature was competent to enact under the State List-II, while making law in respect to ‘land’ and ‘right’ in or over land.

Pre-dated cooked up documents are often presented in the Courts by persons belonging to the non-Scheduled Tribes to stake title claims by 12 years or more of adverse possessions prior to 1.11.1949. These documents are not registered. Documents, which are compulsorily registrable, if not registered, should not be given any legal cognizance. Kurfa, being one such commonly adduced document, should not be taken as a document in evidence.

Apparent incongruence between Section 42 and 69 of the 1949 Act on the one hand and the three provisos to Sub-section 5 to Section 20 on the other, should be removed without any further delay.

If the Government of Jharkhand intends to continue with a restrictive policy wherein no rights will accrue out of adverse possession after the promulgation of the 1949 Act, the three provisos added to the main Act by the Scheduled Areas Regulation, 1969 (Bihar Regulation I of 1969) should be deleted forthwith.

There is yet another cogent reason why the three provisos should be deleted. Provisos 1 & 2 talk about compensation/ re-purchase money/ adequate value and the like. In a way, land is rendered transferable or a transfer is sought to be regularised. This militates against Sub-section (1) and (2) of Section 20 whereby transfer is prohibited.

The said three provisos, which also appear in the Chota Nagpur Tenancy Act (Section 71-A) are compatible to other provisions in that Act as there are no provisions in that Act corresponding to sub-section (1) and (2) of Section 20, Sub-section 42 and 69 of the SPT Act.

However, it will be more in the fitness of things if all classes of raiyats are covered in the post- 1969 Regulation Sub- section (5) as well to correspond in a more apparent and fitting way to Section 42.

Lacuna in Section 21

There is a major anomaly in law hindering tribal development in Santal Parganas. Provisions under section of the SPT Act regarding bank loan/ bhugut bandha (Mortgage) are meant only for non-tribals, that too, for agricultural improvement alone.

This Section must be opened for tribal raiyats also.

It is worth noting that banks etc. usually advance credit against a mortgage of such lands only, which are transferable.

Homestead Tenancies

Basauri tenancies are transferable. The R.O.R. (Records of Rights) makes provisions to this effect. No such explicit provisions exist in the SPT Act. As a result, the protective cover which is available to other raiyats is not available for Basauri raiyats. This lacuna needs to be removed.

Tribal to Tribal Transfers

As per section 20 (2) a tribal raiyat can transfer lands recorded as transferable in the ROR to another tribal raiyat.

Since literate and prosperous tribal elements are apt to exploit the lesser- developed tribal, this provision may be deleted.

Execution of Eviction Order

There should be a provision in law that eviction orders should be implemented within one year from the date of the order, subject to extension for reasons to be recorded in writing. As of now, there is no time limit for effecting restoration, which drags on ad infinitum.

Rules should be framed with regard to the execution of eviction order under Section 42 on the pattern of Order I of the CPC. True, where the law is silent, the CPC will apply. However, there is no harm if specific Rules are framed.

D. C. as Necessary Party

Regarding civil suits (in between tribals or between tribals and non-tribals), it should be made imperative through an amendment in the S.P.T. Act to implead the Deputy Commissioner as a necessary party.

Lawyers

If a tribal has no lawyer, no lawyer should be allowed to the rival party. The earlier Santal Civil Rules carried a provision to that effect.

Cognizance

Section 67 of the SPT Act provides for penalties. But it is silent as to who will take cognizance. A provision should be made that cognizance will be taken as per the provisions of the Cr. P.C.

Secondly, the authority whose orders are violated should file OCR (Official Complaint Report) with the CJM. The CJM may decide on fine or imprisonment. In the case of fine, the CJM may write to the Deputy Commissioner to initiate proceedings under the Public Demands Recovery Act.

Demurrage

There should be provision for recovering demurrage for the unauthorised use of the tribal land.

Restoration in Original Condition

The transferee should be obliged to restore land in its original condition within a certain period failing which the authorities shall get the same restored to its original condition and recover costs thereof by instituting a certificate case.

Transfer to Family Members

As per the SPT Act, a tribal land can be transferred to the tribal's daughter, sister or widowed mother and the widow. There are provisions for Ghar Jamai also. Law is silent with regard to non-S.T. lands. The non-S.T. lands too must be made transferable to family members likewise.

Lease

No lease provisions exist on tribal lands. Section 20 (proviso-1) provides for a 1-year lease only for liquor shops. Lease facilities for specific periods may be provided in law.

As of now, lands for stone quarrying in Pakaur areas are being leased out against affidavits, which are extra-legal. There should be provisions for mining leases for specified periods.

The Role of the Pradhan

The village headman (Pradhan) is indulging in all sorts of malpractices. Even now he is creating old papers and playing nefarious role in concealed transfers. It is high time this post is abolished.

Ghar Jamai/ Gharde Jamai: Section 20 (2)

Transfer restrictions do not apply to such classes. Non-tribals having married tribal women or claiming to be descendants from such marriages long ago, have usurped tribal lands. How to find out genuine descendants is a real problem.

Transfer through Exchange

Exchange between raiyats is allowed under section 23. Raiyats (tribal or non-tribals) of the same or contiguous village can enter into exchanges pertaining to equivalent value of lands. The question remains, why exchange at all if value and village are the same. It is actually a concealed sale, duly legitimized by the SDO. The non-tribal takes paddy land from the tribal in exchange for his barren land and some money. Practically, the

non-tribal is on both the plots under exchange. Most of exchange is sale with an understanding that the tribal will never get back the land.

The law should allow an exchange between tribals only belonging to the same village.

KARNATAKA

The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 is an Act to provide for the prohibition of the transfer of certain lands granted by the Government to persons belonging to the Scheduled Castes and Scheduled Tribes in the State. The provisions of this Act aim at giving effect to the policy of the State towards securing the principles laid down in Article 46 of the Constitution.

“Granted Land” in the Act mentioned above means any land granted by the Government to a person belonging to any of the Scheduled Castes or the Scheduled Tribes and includes land allotted or granted to such persons under the relevant law for the time being in force relating to agrarian reforms or land ceilings or abolition of inams, ‘other than’ that relating to hereditary offices or rights and the word “granted” shall be construed accordingly.

The word “Transfer” in the said Act means a sale, gift, exchange, mortgage (with or without possession), lease or any other transaction not being a partition among members of a family or a testamentary disposition and includes the creation of a charge or an agreement to sell, exchange, mortgage or lease or enter into any other transaction.

The main provisions of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 are as follows:

Section 4. Prohibition of Transfer of Granted Lands:

- (1) Notwithstanding anything in any law, agreement, contract or instrument, any transfer of granted land made either before or after the commencement of this Act, in contravention of the

terms of the grant of such land or the law providing for such grant, or sub-section (2) shall be null and void and no right, title or interest in such land shall be conveyed nor be deemed ever to have conveyed by such transfer.

- (2) No person shall, after the commencement of this Act, transfer or acquire by transfer any granted land without the previous permission of the Government.
- (3) The provisions of sub-sections (1) and (2) shall apply also to the sale of any land in execution of a decree or order of a civil court or of any award or order of any other authority.

Section 5. Resumption and Restitution of Granted Lands:

- (1) Where, on application by any interested person or on information given in writing by any person or suo motu, and after such enquiry as he deems necessary, the Assistant Commissioner is satisfied that the transfer of any granted land is null and void under sub-section (1) of section 4, he may,
 - (a) by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard;

- (b) restore such land to the original grantee or his legal heir, where it is not reasonably practicable to restore the land to such grantee or legal heir, such land shall be deemed to have vested in the Government free from all encumbrances. The Government may grant such land to a person belonging to

any of the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to grant of land.

- (2) Any order passed under sub-section (1) shall be final and shall not be questioned in any court of law and no injunction shall be granted by any court in respect of any proceeding taken or about to be taken by the Assistant Commissioner in pursuance of any power conferred by or under this Act.
- (3) For the purposes of this section, where any granted land is in the possession of a person, other than the original grantee or his legal heir, it shall be presumed, until the contrary is proved, that such person has acquired the land by a transfer which is null and void under the provisions of sub-section (1) of section 4.

Section 6. Prohibition of Registration of Transfer of Granted Lands:

Notwithstanding anything in the Registration Act, 1908, on or after the commencement of this Act, no registering officer shall accept for registration any document relating to the transfer of, or to the creation of any interest in, any granted land included in a list of granted lands furnished to the registering officer except where such transfer is in accordance with this Act or the terms of the grant of such land or the law providing for such grant.

Section 11. Act to override other laws:

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom, usage or contract or any decree or order of a court, tribunal or other authority.

A reference may be drawn here to the Revenue Department, Government of Karnataka Circular No. RD 187 LGP 75 (P), Bangalore, dated 3rd May, 1979. The Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) Act, 1978 and Rules called “Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of transfer of certain lands) Rules-1979” have been framed with a view to achieving the following objectives which constitute one of the major programmes of social welfare undertaken by the Government of Karnataka:

- (1) Prohibition of alienation of lands granted to the Scheduled Castes and Scheduled Tribes under Dharkast Rules.
 - (2) Restoration of lands granted under the Dharkast rules to the Scheduled Castes and Scheduled Tribes.
- (2) These Rules were published in the Karnataka Gazette (Extraordinary) dated 26th February 1979. Copies of the Act and the Rules were sent to all the Divisional Commissioners, Deputy Commissioners, Special Deputy Commissioners, Assistant Commissioners of all Divisions and Tahsildars vide Government letter No. RD 187 LGP 75 dated 17th March 1979 with a request to take immediate action as contemplated in the Act and the Rules.
- (3) Section 4 of the Act prescribes that notwithstanding anything in law, agreement, contract, instrument, any transfer of granted land made either before or after the commencement of the Act, in contravention of the terms of the grant of such land or the law providing for such grant or sub-section (2), shall be null and void and no right, title or interest in such land shall be conveyed or be deemed ever to have conveyed by such transfer. Sub-section (2) of the said section states that no person shall, after the commencement of the Act, transfer, or acquire by transfer

any granted land without the previous permission of the Government. Section 5 envisages the resumption and restitution of the granted lands in favour of the original grantees or to their heirs and where it is not reasonably practicable to restore the land to such grantees or legal heirs, such land shall be deemed to have vested in the Government free from all encumbrances. The Assistant Commissioner of the Sub-Division concerned is the prescribed authority under the Act to hold enquiry either on the application made to him by the person or persons interested or suo motu and he has to pass an appropriate order after hearing the objections of the parties, if any. The procedure for holding enquiries in this regard have been enumerated in the Rules.

- (4) In order to give effect to the provisions of the Act and the Rules, it is absolutely necessary mainly to take steps to identify the lands granted by the Government and revenue officers in favour of the persons belonging to the Scheduled Castes and Scheduled Tribes before the commencement of the Act as there would be hardly any such cases occurring after the commencement of the Act. The object of enacting the legislation is likely to be defeated and no relief as contemplated in the Act will be available to these unfortunate sections of the society, if the concerned authorities wait for the affected persons to apply for the relief.
- (5) The Divisional Commissioners of the Divisions and Deputy Commissioners of the Districts have been requested to direct the Tahsildars of the taluks under their jurisdiction to identify the cases of land grants made in favour of persons belonging to the Scheduled Castes and Scheduled Tribes before and after the commencement of the Act with reference to the land grant registers and other revenue records maintained in their offices and to prepare a list of lands granted in favour of the Scheduled

Castes and Scheduled Tribes in the past and to investigate every case to find out whether there have been violations of the non-alienation condition prescribed by the relevant rules governing the grants made under the following rules/ schemes:

1. Rules framed under the Mysore Land Revenue Code, 1888.
 2. Lands granted under the Grow More Food Scheme.
 3. Lands granted under the Depressed Class Concession Rules.
 4. Lands granted under the Mysore Land Revenue (Amendment) Rules, 1960.
 5. The Mysore Land Grant Rules, 1968.
 6. The Karnataka Land Grant Rules, 1969.
 7. Rules framed under the Bombay Land Revenue Code, 1879 and;
 8. Grants made under the rules then in force in Coorg District, the Hyderabad-Karnataka area and the composite Madras State.
- (6) All cases of violations detected should be entered in the Register to be opened for this purpose and kept village-wise in the proforma as enclosed and then reported to the Assistant Commissioners concerned for initiating proceedings for restoration and resumption under this Act and the Rules. The work of identification should be taken up forthwith and should be completed within a period of 3 months from now (31st July, 1979). The Government expected that actions initiated by the Assistant Commissioners will be completed in all cases within one year from the date of this Circular. The progress of the disposal was to be reviewed by the Deputy Commissioners/ Divisional Commissioners during the periodical Revenue Officers' meeting held by them.

There are nearly 40 tribal communities in Karnataka scattered across all its 20 districts. During the interregnum of the 1971 and 1981 Census, there has been an addition of several new communities to the

ST category by the State. There are a few characteristic features that set the tribals apart from the mainstream civilization. They carry on a variety of occupations suited to their surroundings, such as hunting, shifting cultivation, herding, fishing, etc.

The tribals have a distinct way of organizing their own society and have collective structure governing the behaviour of the individual in every aspect of life. A common language, culture and system of religious beliefs bind them together into a tribal group. The tribals live in groups. Each of their settlements comprises 10-15 hutments. Each settlement is a distinct political, economic and religious unit and they all come together only when there is a threat to their community property.

Ownership of land is communal. All the members of the group, or clan have a right of access to and use of its resources. The tribals identify their social, religious and cultural life with their land and its resources. There are portions of forests which are actually dedicated to gods and goddesses. They are known as devara kado (God's forests). Deities, in their belief, reside in certain trees, bushes or mountains. They find it difficult to establish their traditional rights over the land, forests and their resources, in consonance with the State laws. The State has invariably treated such properties as being unoccupied as belonging to the State alone. The State is apt to accord importance to revenue generation and to view forests as rich material for exploitation to suit the society's industrial orientation. This model of development, as professed and practised, has created a serious dent in the tribal rights over forests. No authentic documents exist and the size of the holding and its precise location are not properly recorded. Hence, the State utilizes the land for any purpose it sees fit, and not necessarily for the benefit of the tribals. There is a need for the modification of the relevant revenue laws and changes in the forest

laws to accommodate the tribal's community ownership right to property.

Every major development project, including forest conservation (such as Project Tiger), has invariably resulted in the displacement and destitution of the tribals. When such projects are indispensable, care should be taken to ensure that the displaced tribals are compensated and rehabilitated properly.

The tree-patta scheme of the forest department is perhaps the best effort in providing employment and livelihood to the tribals. Since the scheme involves restoration of tribals to their original life-style, helps to increase the green cover, and provides sustenance to the tribals, it needs all support and encouragement.

Large-scale Multi-purpose Cooperative Societies (LAMPS), formed for the benefit of the forest tribals to market forest produce and distribute consumer goods and agricultural inputs, is another government initiative that is a marked departure from the past practice of permitting private forest contractors to commercially exploit the forest produce. These Integrated Credit-cum-Marketing Cooperative Societies promise to give a fair deal to the forest dwellers. But even now the contractors hold the right for minor forest produce in some places and it is also observed that the lease amounts fixed by the forest department are higher than that which were earlier being realized from private contractors, and the LAMPS are financially too weak to compete with private contractors. It is, therefore, suggested that the Karnataka Government subsidize the lease amounts payable by LAMPS on MFP and that they be given monopoly rights on purchase and sale and emulate the example of the AP Government making the concessions available to the Girijan Development Cooperative Corporation.

The Project Tiger, Elephant Project, National Park in and around Nagarhole, Kakanakote, Bandipur, and Biligirirangana Betta forests are, undoubtedly, very good schemes for the expansion of forests and protection of wild animals. These are, however, going to adversely affect the interests of thousands of tribal families living amidst them. These people have to face the hazards of wild animals, harassment of security guards, loss of their cultivated land, and face severe restrictions on their movement when collecting MFP etc. There is a dire need for the authorities concerned to reconsider the schemes and ensure protection of the interests of the tribals in the process of furthering the proposed schemes.

The Integrated Tribal Development Projects (ITDPs) launched by the Government of Karnataka in the districts of Mysore, Kodagu, Dakshina Kannada, and Chikmangalur, has as its objectives, the development of agriculture and allied sectors, in particular, animal husbandry, promotion of literacy and educational standards, improvement in housing, health, and the nutritional standards of the tribals. Generating self-employment opportunities for the landless by settling them in agricultural colonies, supplying them with livestock, training them in new skills and trades, and assisting them through the promotion of forest-based industries are also envisaged in the ITDPs. Since the funds made available under these projects are distributed to various government departments, coordination and monitoring the functioning of the various departments in this context is a difficult task. It is suggested that a single agency be entrusted with this function for proper and meaningful utilization of these funds in order to realize the objectives set out.

KERALA

In April 1975, the State Assembly unanimously adopted the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, which sought to prevent the lands of the tribal people from falling into the hands of the non-tribal people. The Act also sought to restore to the tribal people their previously alienated lands.

When the 1975 Act got the Presidential assent in November that year and was subsequently included in the Ninth Schedule of the Constitution which ensured that the Act would not be challenged in any court of law), it seemed a dream come true for the Adivasis. But it was not to be so. Successive governments allowed more than a decade to pass (during which the encroachments continued, especially in the tribal areas of Palakkad and Wayanad districts) before framing the rules to implement the Act. When the State government finally formulated the rules in 1986, it specified that the Act would come into effect retrospectively from January 1, 1982.

The Rules made all transfer of property “possessed, enjoyed or owned” by Adivasis to non-tribal people between January 1, 1960 and January 1, 1982 “invalid” and directed that the “possession or enjoyment” of property so transferred be restored to the adivasis concerned. However, the Act required that the Adivasis returned the amount, if any, they had received during the original transaction and paid compensation for any improvements made on the land by the non-tribal occupants. The government was to advance this amount to the tribal people as loans and recover it from them in 20 years. Only about 8,500 applications seeking restoration were received from the tribal people, because most of them were either unaware of the new law or afraid to accept the offer of loans or were cheated by

the corrupt encroacher-official nexus. Hence, even after the framing of the Rules, the general atmosphere helped only to encourage the encroachers to continue to occupy tribal land and successive governments took no action to implement fully the 1975 Act.

This triggered the second important phase of the Adivasi struggle. In 1986, Dr. Nalla Thampi Thera, a non-tribal person from Wayanad district, approached the Kerala High Court seeking a direction to the State government to implement the 1975 Act. In October 1993, the court ordered the government to implement the Act within six months. Yet the case dragged on for two and a half years with the government continuing to seek extensions of the deadline to implement the Act.

Finally, in 1996, the court fixed a final deadline of September 30, 1996 to evict the non-tribal occupants, if necessary, with the help of the police, and threatened the officials concerned with contempt of court proceedings if they failed to implement the court directive. However, the government responded with yet another controversial decision of amending the 1975 Act.

Meanwhile, with the non-tribal settlers here getting entrenched in the alienated land of the tribal people, the tribal people themselves were getting increasingly disillusioned with the ability of the government and the courts to find a remedy for their plight. Hence, although government programmes had helped improve the lot of many tribal people, the majority of them continued to be landless, had no means of livelihood, and had become more dependent on the non-tribal settlers for work and wages.

As a large section of the landless tribal people had not filed applications and were hence outside the purview of the 1975 Act, they were ineligible for a piece of land even if the Act was

implemented in toto. By the early 1990s, the first signs of discontent were already becoming evident in the Adivasi inhabited areas, especially in Wayanad district, where some extremist groups had been active for a long time.

On the other hand, most of the land from which the settlers were to be evicted under the 1975 Act had, by the 1990s, been in their possession for 15 to 30 years. They were cultivating the land and had constructed buildings and other structures on them. In several cases, the next generation of the original encroachers were in possession of the lands. When the State government could get no more extensions of the deadline from the High Court, the politically and economically powerful settler-farmers activated their organizations and raised the demand to amend the “impractical provisions” of the 1975 Act.

To the consternation of the tribal people, successive governments started to give in to the demands of the settlers. Two ordinances seeking to amend the 1975 Act, introduced by the United Democratic Front government during early 1996 and later by the Left Democratic Front government, which came to power in May 1996, did not get the Governor’s approval. As pressure from the court mounted on the government to evict encroachers by September 30, 1996, the government hastily introduced an amendment Bill in the State Assembly.

Whatever may have been the justification for it, the impracticality of the provisions of the 1975 Act perhaps being the most important one- it must have been an eye-opener for the mushrooming tribal organizations in Kerala to see the 140- member State Assembly pass the Kerala Scheduled Tribes (Restriction on Transfer of Land and Restoration of Alienated Lands) Amendment Bill, 1996 almost unanimously (there was only one dissenting vote).

The 1996 Amendment Bill dashed all hopes of the Adivasis. Most important, it made legal all transactions of tribal land up to January 24, 1986. In other words, the government made the need for the restoration of alienated land (as per the 1975 Act) unnecessary. According to the government, it was the only practical alternative, given the turmoil and the political repercussions that would have been created had it tried to evict the non-tribal settlers. However, the tribal people felt that the government was trying to give legal sanctity to the alienation of their land.

Later, the President refused to give assent to the 1996 Amendment Bill passed by the State Assembly on the ground that the 1975 Act had been included in the Ninth Schedule of the Constitution.

However, to bypass this difficulty, yet another Bill was passed unanimously by the State Assembly in 1999. The Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Bill, 1999, defined “land” as “agricultural land” (a state subject) in order to try and get over the need to send it for Presidential assent. The new Bill also had a controversial provision to repeal the 1975 Act.

As per the 1999 Act, only alienated land in excess of two hectares possessed by encroachers would be restored, while alternative land, in lieu of the alienated land not exceeding two hectares, would be given elsewhere. The thinking was that the number of applicants claiming land in excess of two hectares would be negligible, making restoration unnecessary. The new Bill also had a provision to provide up to 40 acres (16 hectares) to other landless tribal people – a new set of beneficiaries – within two years. The government said that it estimated that there were about 11,000 such families in the State.

However, the High Court rejected both the 1996 and 1999 Amendment Bills and declared the provisions under them illegal. The State government, in turn, went in appeal to the Supreme Court and obtained stay orders.

Yet, for the present, the most significant factor is the shifting focus of the demands raised by the Adivasi leaders who are in the limelight. They are no longer asking for the alienated land, at least not as emphatically as they used to ask in the past. Instead, they demand mainly five acres of other land each for all landless tribal families. Another demand is the inclusion of the tribal areas in the Sixth Schedule of the Constitution in order to make them autonomous regions.

The unanimous position of both the LDF and UDF was that the 1975 Act was unjust to the non-advasi migrant settlers who had, through deceit and cunning, grabbed the lands of the adivasis. A sub-committee constituted by the Kerala state assembly in 1976 visited Wayanad district which has the largest Adivasi population in the state. It conducted a rapid survey on land alienation. Of the 298 cases presented to it, it was found that 71 (24 per cent) were grabbed by force, 67 were grabbed for measly sums while the rest for a small amount. There were 14 cases where signatures were obtained on blank papers without any money being paid, five did not receive the stipulated amount and two had their money taken away. An official ITDP survey of February 15, 1977 reveals that in Attapady of Palakkad district, another major Adivasi belt, 10,106.19 acres of advasi lands were alienated.

As early as 1960, the Dhebar Commission recommended that all tribal land alienated since January 26, 1950- the day the Constitution came into force – should be returned to the original

Adivasi owners. A meeting of the state ministers on April 1, 1975, passed a resolution:

“Legislation for prevention of land alienation should be undertaken immediately. This work should be done within six months. More important is the legislative measures for prevention of land alienation and restoration of alienated land. A crash programme for effectively implementing these laws within two years may be prepared in each state setting targets for each year which should be periodically reviewed.”

The 1975 Act was enacted unanimously by the late Achutha Menon Government as Act 31 of 1975. It was published in the Kerala Gazette extraordinary No. 673 on November 11, 1975 after the mandatory assent of the President of India on November 11, 1975. This Act was further included in the ninth schedule of the Constitution to ensure that the Act itself is not challenged in any court of law. However, the rule operationalising this Act was formulated a full decade later in 1986 with retrospective effect from January 1, 1982. After all, the adivasis with a population of about 3.21 lakhs constitute just 1.10 per cent of the total population of the state. Moreover, the settlers dominate the political parties even in the Adivasi belts.

Under this Act, all transactions of Adivasi lands during the period 1960 to 1982 become invalid and are to be restored to the original owners. It is estimated that 8,553 applications for the restoration of lands totaling some 10,177 hectares were filed till the last date of the receipt of applications. The number has since risen to 8,879. The Adivasi beneficiaries have to pay a sum which is the total of the amount received, if any, as consideration for the transaction and the amount spent for improvements on the land before the commencement of the Act, as compensation for the restoration of

“other” lands. This amount will be determined by the revenue divisional officer (RDO) of the concerned district. Taking into consideration the incapacity of the adivasis to pay this amount, the Act also generously provides for loans to them which are to be paid back in 20 years. The Act is silent on the loss incurred by the adivasis whose lands were grabbed by the settlers. Naturally, this clause acts as an outright disincentive to the adivasis to apply for restoration. Where compensations are payable, the beneficiaries, if they avail of the loan, would irrevocably be pushed to debt bondage defeating the very purpose of rectifying the past injustice. The government has admitted that, “for example, in the case of revenue divisional office, Ottapalam, compensation has to be paid in as many as 974 cases involving an amount of Rs. 317 lakhs, but so far no tribal has even applied for a loan”.

The Act also stipulates that all transfer of the Adivasi lands to the non-adivasis are restricted from 1982 without the prior consent of the authorities. Despite this restriction, in blatant violation of the Act, transfer of lands continued unabated. Despite the 1986 Rules operationalising the Act, the government made no real attempt to implement the Act. The government had to act when the High Court passed an order on October 15, 1993 on a petition filed in 1988 by Nalla Thampi Thera, a non-adivasi resident of Wayanad, directing the government to “dispose of the applications pending before them within six months.” It was also the year when the young C.K. Janu, a brave Adiya woman from Wayanad, declared that they would forcibly occupy lands that were rightfully theirs.

The RDOs, the authority under the Act, had to process over 8,000 applications. The applicants were to prove prior ownership of the lands applied for. The RDOs are empowered under the Act to summarily determine the validity of the applications. Naturally, the fact that adivasis, by virtue of their ignorance of the complex laws

and procedures, invariably could not get their land rights recorded, were largely ignored by the RDOs. The non-recording of the land rights of adivasis by the unscrupulous revenue department officials as well as the rampant manipulation of land records were historical facts that were best kept under wraps. What remained was just 4,524 valid applications for some paltry 7,640 acres. By administrative sleight of hand, about half the claims were rejected out-right. Even this, the government was unwilling to restore.

Ultimately, as most of the applications were disposed off, a number of orders for restoration were issued. Stray and insignificant actual restoration did take place. Encouraged with political and official patronage and protection, in some places, the settlers attacked some upright officials who actually attempted to physically restore the lands as in Attapady and elsewhere.

The non-availing of loans by adivasis for payment of compensation to the occupant of the Adivasi land was another excuse raised by the state. The court turned around and asked why lands in which no compensation is payable and for which appeals are not pending have not been restored. The state had no answer.

The government then held that the lands cannot be restored ‘overnight’. The court reminded that the Act was passed in 1975, the judgment was passed in 1993 and it was then the year 1996. The court declared that the government has “no will to implement the legislation”.

Left with no other plausible argument and faced with possible contempt of court, the amendment was passed in the Kerala assembly, once again unanimously, on September 23, 1996, with only Gowriamma (the suspended CPM veteran) abstaining from voting. The passing of the amendment, which in effect denies the

restoration of alienated lands with vague promises of alternate land only helped in further alienating the adivasis whose frustration and anger rose as at no other time in the state's history. The adivasis instead took the morally and socially just and valid position that their lands be returned to them and the settlers be provided adequate compensation by the state. In this, they were willing to forgo the funds allocated for the welfare of the STs which could be diverted for compensation to the settlers.

The returning of the amendment by the President, who has the special Constitutional obligation to protect the adivasis, withholding his assent, once again shifted the drama to the High Court.

The government then put up an Act that does not have to wind its way through the Rashtrapati Bhawan. This can be achieved only if the bill is formulated under one of the state subjects. The Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Bill, 1999 was enacted on February 23, 1999, once again to deny the restoration of the adivasi lands.

As per the 1999 Act, only land in excess of 2 hectares will be restored, while alternative land would be given elsewhere in lieu of alienated land upto 2 hectares. The number of applicants claiming land in excess of 2 hectares would be negligible, largely negating the very title of the Act itself, making a farce of restoration. This is applicable to lands alienated between January 1, 1960 and January 24, 1986. The 1975 Act exempts lands alienated between 1982-86 upto 2 hectares.

The 1999 Act also, in addition, has brought into its ambit the provision to provide land of upto 40 acres (or 10 hectares) to the landless adivasis in the district they reside in, within a period of two years. The government estimates that there are about 11,000 such families. In essence, by bringing in a new set of beneficiaries, the

government hopes to divide the adivasis between the beneficiaries of the 1975 Act and the new set of beneficiaries, to further complicate the matter.

To make the 1999 Act further attractive, the Act also creates a fund called "The STs' Rehabilitation and Welfare Fund". This is to provide funds for the adivasis as loan to be paid as compensation to the settlers wherever necessary as well as for the construction of houses and other welfare measures.

By enacting the law under "agricultural lands" which is a state subject, the government need not refer the 1999 Act to the President of India. The repeal of the 1975 Act, which is included in the ninth schedule, by this Act, has met with criticism. Moreover, rules and regulations have to be framed to operationalise this new Act which, from past experience, is going to take another long wait. Even if all these are carried out, there is the question whether the government would finally implement even this new Act, as it lacks the will which was also pointed out by the High Court earlier. Meanwhile, the legality of this new Act may also be questioned.

All these pretensions would mean that restoration of alienated lands, or alternate lands as the case may be, would continue to remain in the statute book and the courts while the crisis of survival intensifies. Kerala has by far the highest incidence of land alienation by the adivasis in the country.

In 1994, the Government of India appointed a 22 member – committee to recommend guidelines for the law to extend the Panchayat Raj to the Schedule V areas. The committee submitted its report in 1995. Finally, after a long delay, the Panchayats (Extension to the Scheduled Areas) Bill, 1996 was enacted on December 24, 1996.

Section 4 (d) of this Act provides that “notwithstanding anything contained under Part IX of the Constitution, every gram sabha shall be competent to safe-guard and preserve ... community resources” and under Clause m (iii), provides the power to prevent alienation of land in the scheduled areas and to take appropriate action to restore any unlawful alienation of land of a member of ST. This provision makes a significant departure in that the power regarding prevention of alienation of lands and restoration of illegally alienated lands is vested in the gram sabha.

Lessons from Kerala

The lessons from Kerala are that: (1) The present arrangement for the protection of the interests of adivasis in the state has clearly failed in carrying out its responsibility meaningfully; (2) nor has the present arrangement in the state the inherent capacity to carry out its Constitutional obligations; (3) the judicial response is inadequate; and (4) paternalism and sympathy for the plight of adivasis, including their land problem, pretended or genuine, are insufficient by themselves to provide the necessary impetus or the will to implement the Acts that protect the adivasis.

It thereby means that Constitutionally, the current arrangement in Kerala has failed. And the only other Constitutional arrangement that is available is the arrangement of declaring adivasi majority areas as “Scheduled Area” under Schedule V. The provisions for the Panchayat Raj (Extension to Scheduled Areas) Act, 1996 then become automatically applicable to the area which also provides for the incorporation of Schedule VI in it. Adivasi majority areas (beginning with the level of hamlets) can be declared as Scheduled Area by the President with the state government and the Governor being politically forced to accept this demand. Besides, the Bhuria Committee set up by

the Central Government, which recommends for the extension of Panchayat Raj, states in 7 (2):

“The process of scheduling was commenced in the fifties and was resumed in the seventies as a part of making the tribal sub-plan and scheduled areas co-terminus. But somehow it has remained incomplete. It is necessary that the remaining tribal sub-plan and MADA areas as well as similar pockets in West Bengal, Tamil Nadu, Kerala and Karnataka should be covered by scheduled areas notification.” And in 21(3) it says “Many of the present day administrative boundaries were determined during colonial times based on colonial compulsions. By and large, the earlier boundaries have stayed, with the resulting situation that tribal people are located, be it state, district or block, marginalizing them in every way and fragmenting larger communities and areas, states should consider, say within a period of two years, reorganization of the boundaries based on ethnic, demographic and geographic consideration.”

In this new scheme of the Constitution, the onus of implementing the restriction on transfer of lands and restoration of illegally alienated lands is shifted from the state/district bureaucracy to the gram sabhas and structures above it which are subject to the local needs, realities, compulsions and sense of justice. Constitutionally, therefore, the adivasis of Kerala have not much use of legislations as the 1975 Act or the 1999 Act that pretend to rectify some part of the injustice historically perpetrated on them without the aid of the “Scheduled Area” provisions to go by. This remains the only Constitutional option available for ensuring that the legislations serve the interests of adivasis and that they are implemented for ensuring the very survival of adivasis as communities in the future. This, of course, has to be politically enforced.

On October 16, 2001, there was a seven-point agreement between the State government and the Adivasi Dalit Action Council. There was jubilation in the streets, and praise for C.K. Janu, chairperson of the Action Council, who led the agitation.

This is what the Adivasi agitation has seemingly achieved for the 3.2 lakh tribal people:

- “Wherever possible”, the government is to provide five acres (two hectares) of land to each landless Adivasi family, at other places, the offer is a minimum of one acre, which can go up to five acres, “depending on the availability of land”;
- A five-year livelihood programme is to be implemented in the land thus provided until it becomes fully productive for the Adivasis to sustain themselves;
- The State is to enact a law to ensure that the land provided to the Adivasis is not alienated as had happened in the past;
- The State Cabinet is soon to pass a resolution asking the Union government to declare the Adivasi areas in the State as scheduled areas, bringing them under Schedule V of the Constitution;
- The government also gave a commitment that it will abide by whatever decision the Supreme Court takes on its appeal against the Kerala High Court order quashing the unpopular law (the Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Bill, 1999) passed by the State Assembly in 1999.
- The government is to implement a master plan for tribal development and the plan is to be prepared with the participation of Adivasis;

- The maximum possible extent of land will be found and distributed in Wayanad district, at least 10,000 acres, where there is the largest concentration of the landless Adivasis.

The agitators’ demand that all the landless Adivasi families must be given five acres each, has not been conceded. The Government of Kerala held that it was impossible for any government to agree to such a demand in a State where there was so much pressure on land. But the government had readily agreed to provide at least one acre.

For the first time, landless Adivasis in Kerala have got a firm commitment from the government on at least one acre of land. They are also to get the protection of a new law preventing any further alienation of their land. In C.K. Janu’s own Wayanad district, the government is to make an extra effort to find more land for the Adivasis.

Perhaps the most important fallout is that both the government and the Action Council leaders have succeeded in shifting the focus of the nearly 50 year old tribal struggle in Kerala from the issue of “restoration of alienated land” to one of “land for the landless tribal people”.

Kerala cannot increase its land surface. But the irony is stark. When it came to dividing up the land more equally among its people, who got left out? The people, who had lived on the land longest and had the greatest physical and spiritual need for it.

That is the immensely sad and shameful story of indigenous people the world over. And it is a story that can be re-written by indigenous people in their own organizations with the support of others prepared to open their eyes, hearts and minds.

Acknowledgement

1. C.R. Bijoy, “Adivasis Betrayed: Adivasi Land Rights in Kerala”, Economic and Political Weekly, May 29, 1999.
2. R. Krishna Kumar, “Promise of Land”, Frontline, November 9, 2001.
3. Gaelle Roux/Vanessa Baird, “Kerala: India’s Radical Success – Hills of Shame”, New Internationalist: Issue 241-March 1993.

MADHYA PRADESH

The tribal sub plan area of undivided Madhya Pradesh could be divided in five regions based on cultural and economic homogeneity.

- (1) Eastern region- which comprises the districts of Raigarh, Sarguja and Bilaspur. The important tribal communities living in this region include the Oraons, Gonds, Kanwars, Nageshias, Kherwars, Korwas and Pandos.
- (2) Western region- which comprises the districts of Jhabua, Khargone, Dhar, Khandwa and Ratlam. The important tribal communities living in this region include the Bhils, Bhilalas, Barelas and Patiyalas.
- (3) Central region- which comprises the districts of Betul, Seoni, Shahdol, Chhindwara, Mandla and Balaghat. The important tribal communities living in this region include Gonds, Kols, Korkus and Baigas.
- (4) Southern region- which comprises the districts of Bastar, Raipur, Durg and Rajnandgaon. The important tribal communities living in this region include Maria Gonds, Muria Gonds, Halbas, Bhatras, Dorlas and Abujmarias.
- (5) North-Eastern region- which comprises the districts of Sidhi, Rewa, Satna and Panna. The important tribal communities living in this region include Kols and Gonds.

Legal Provisions

An effort to plug the legal loopholes was made in Madhya Pradesh by inserting Sections 170 (A) and 170 (B) in the Madhya Pradesh Land Revenue Code, 1959 by amendments in 1976 and 1980 respectively.

Section 170 (A) provides that:

(1) Notwithstanding anything contained in the Limitation Act, 1963 (No. 36 of 1963), the Sub-Divisional Officer may, on his own motion or on an application made by a transferor of agricultural land belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165 on or before the 31st. December 1978, enquire into a transfer effected by way of sale, or in pursuance of a decree of a court of such land to a person not belonging to such tribe or transfer effected by way of accrual of right of occupancy tenant under section 169 or of Bhumiswami under sub-section (2-A) of section 190 at any time during the period commencing on the 2nd October, 1959, and ending on the date of the commencement of the Madhya Pradesh Land Revenue Code (Third Amendment) Act, 1976, to satisfy himself as to the bonafide nature of such transfer.

(2) If the Sub-Divisional Officer on an enquiry and after giving a reasonable opportunity to the persons owning any interest in such land, is satisfied that such transfer was not bonafide, he may, notwithstanding anything contained in this code or any other enactment for the time being in force-

- a. Subject to the provisions of clause (b), set aside such transfer if made by a holder belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165 and restore the land to the transferor by putting him in possession of the land forthwith; or
- b. Where such land has been diverted for non-agricultural purposes, he shall fix the price of such land which it would have fetched at the time of transfer and order the transferee

to pay the difference, if any, between the price so fixed and the price actually paid to the transferor within a period of six months.

The greatest significance of this section is that for the first time, it empowers a Revenue Officer to take action suo-moto or on the application of the tribal or on any suo-moto action by the Sub-Divisional Officer (SDO).

Section 170 (B) in many ways goes even further than section 170 (A).

It provides that:

1. Every person who on the date of commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165 between the period commencing on the 2nd October, 1959, and ending on the date of the commencement of Amendment Act of 1980 shall, within (two years) of such commencement notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.

2. On receipt of the information under sub-section (1) the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void, and -

a. Where no building or structure has been erected on the agricultural land prior to such finding pass an order reverting the agricultural land in the transferor and if he be dead, in his legal heirs;

b. Where any building or structure has been erected on the agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of the price of land in the Land Acquisition Act, 1984 (no. 1 of 1984) and order the person referred to in sub-section (1) to pay to the transferor the difference, if any, between the price so fixed and the price actually paid to the transferor.

Provided that where the building or structure has been erected after the 1st day of January, 1984 the provisions of clause (b) above shall not apply.

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of the registration of the case before the Sub-Divisional Officer.

It would be clear that section 170 (B) does not merely empower the SDO to enquire into the bonafides of a transaction of agricultural land from a tribal to a non-tribal. It goes much further by placing a mandatory obligation on the SDO to enquire into the bonafides of all transactions in which agricultural land on 2.10.59 was owned by a person declared to be an aboriginal tribal, and which on 24.10.80 was in possession of a non-tribal. It further requires a person in possession of agricultural land purchased from a person who was not a member of the notified aboriginal tribe to give information regarding transfer in the form prescribed to the Sub-Divisional Officer within two years of the 24th October 1980, that is up to 23rd October, 1982.

If the person in possession of the type of land described in sub-section (1) fails to notify in the prescribed form upto 23rd October, 1982, it shall be deemed that such person was holding the land without lawful authority and the land shall revert to the person to whom it originally belonged, and in case he or she is dead, the land shall revert to the heir. The revision is automatic.

It is significant that all transfers come under the purview of these sections, in all cases in which the transfer is made by a member of an aboriginal tribe, so declared, of his or her agricultural land, in favour of a person not belonging to such tribe. Such transfers may be (i) by way of sale; or (ii) in pursuance of a decree of a Court; or (iii) effected by way of accrual of right of occupancy tenant under section 169; or (iv) effected by way of accrual of right of Bhumiswami under sub-section (2-A) of section 190. Even if possession was given under a transfer falling within the protection granted by section 53 of the Transfer of Property Act, or by a decree or order of a civil court, the Sub-Divisional Officer has the power and jurisdiction to make an enquiry in respect of the nature of such possession (Pannalal vs. Bherulal, 1984 RN 287).

To declare a transfer null and void, after information is given in the prescribed form under section 170 (B), an enquiry into the bonafides of the transaction is mandatory. This is similarly prescribed under section 170 (A), which specifically lays down that any and every person with any interest in land in dispute should be given a reasonable opportunity of being heard. The questions that should be enquired into would include (i) whether prior permission of the Collector was duly received, with reasons in writing, before the transaction was executed; (ii) whether the Collector calculated the appropriate price of the land in the light of current local sale deeds; (iii) whether the Collector ensured that this money actually was paid

to the tribal land owner, or simply adjusted against debts or extortion; and (iv) whether the land was transferred in the name of a tribal but is in actual 'benami' illegal possession of a non-tribal.

After enquiry, if the SDO finds that the transfer is bonafide and was not made to defraud a member of the aboriginal tribe, and full price was paid, the matter ends. If the SDO comes to the conclusion that the transfer was not bonafide, he or she has no discretion except to restore possession of the agricultural land to the original owner. (The only exceptions are in case of diverted land or building construction, but even here compensation is to be paid to the original landowner).

These sections are further strengthened by the provisions regarding the burden of proof. The normal rule under the Evidence Act, 1872, is that the burden of proof lies on the holdings of agricultural land, which on 2.10.59 were owned by notified aboriginal tribals, and which on 24.10.80 were in the possession of the non-tribals. This requires first, a thorough comparison of the record of rights for the years 1959 and 1980, and second, a survey of holdings which are in the name of tribals but are actually in the 'benami' possession of non-tribals.

The situation is even more dismal with regard to the 'benami' transactions, in which land nominally owned by the tribal bhumiswamis are in practice cultivated by the non-tribals. Whereas such cases are common knowledge in any village, they are rarely reported by the patwaris and other local revenue officers or by the non-official committees which were set up for such local investigation by the state government.

Disposal of cases tends to be slow, and the large majority of cases tend to be decided mechanically in favour of the non-tribals.

A close scrutiny of many of the cases decided in favour of the non-tribals show that disposal has been frequently in contravention of the law. Permission to sell by the Collector is usually taken as final evidence of a bonafide transaction, without examining whether the fair price of the land holding was enquired into, and whether the due price was actually paid to the tribal land owner.

Implementation is weakest at the stage of restoring possession to the original tribal landowners.

Sections 170 (A) and 170 (B) of the Code apply only to the transfer of agricultural land. The protection and remedies extended by it do not extend to the transfer of non-agricultural lands, including those located in urban areas. This is a major lacuna, because the tribal landowners of the non-agricultural land are equally, if not more, vulnerable to exploitation.

One fundamental cause of the tribal land alienation is chronic indebtedness. No law to protect the tribals can be successful unless it is supplemented by measures to meet their genuine credit needs, including one for consumption, and to protect them from usury.

In the last analysis, any measure for social justice can succeed only if the intended beneficiary group is aware of its provisions, concerned about the legitimacy of the protective legislation, and mobilised and organised both to use its provisions and to enforce its effective implementation.

RECOMMENDATIONS

1. In the first place it is proposed that within a clearly defined time period a compliance report be sought from every Collector that cases under section 170-B have been registered suo-moto with

regard to every transaction of land which was belonging to a tribal on 2.10.59 and which was in possession of a non-tribal on 24.10.80.

2. The Collectors would next be required to certify that they have re-examined all orders passed in favour of the non-tribals and that all cases in which orders have been illegally passed in favour of the non-tribals have been re-opened. Illegal orders would include those in which the non-tribals did not notify in the prescribed form before 23.10.82, because in such cases the land invariably and automatically reverts to the tribals (in most places, orders have, however, illegally been passed in favour of the non-tribals). Illegal orders would also include those in which the non-tribal has notified before the due date, but has failed to prove that the transaction was bonafide in so far as he or she took the Collector's permission, the Collector had calculated a fair price of the land and that this full amount was actually paid to the tribal and not just adjusted against an old loan or occupied by force. The Collector also would have to ensure that all benami transactions in which land is fraudulently held in the name of the tribals by the non-tribals are also enquired into.

3. Section 170-B of the Code provides for only a single appeal to the Collector. This is an extremely important measure to control extended litigation which would always impoverish the pauperized tribal. However, no mention has been made in the Code barring revisions. It is proposed that revisions may also be barred, along with second appeals.

4. It is also found that even in the cases of orders passed in favour of tribals, non-tribals are able to utilise the extended litigation to retain possession over their land. It is, therefore, proposed that it should be laid down in the Code that even the first appeal to the Collector would be admitted only after the order of the SDO, if it is in favour of the tribals, is implemented, or in other words, only after the

possession of the land has been restored to the tribals. This amendment would greatly strengthen the hands of the tribals.

5. A comprehensive Act, should be enacted in order to provide more teeth to the legislation.

6. Apart from legislating against usury, it is important that cooperative and rural banks provide easy and assured access to cheap consumption credit to tribals in their times of need. Their vulnerability would also be greatly reduced if it is possible to implement guarantee scheme with a 'food-for-work' component in the tribal areas, as an assured social security measure. Other measures would include ownership rights for tribal co-operatives over non-tribal forest produce (as has been achieved with considerable success by the Madhya Pradesh Government for Tendu-patta), effective marketing for tribal produce, and watershed development and improvements in dry-land agriculture.

7. Awareness and Mobilisation: Progressive legislation enforced to prevent tribal land alienation can succeed only if the oppressed people intended to benefit from these provisions are truly 'conscientised' in the Paulo Friecian sense. They must firstly be made aware about the provisions of the law, and convinced about their legitimacy. There are several ways in which such legal literacy and mobilisation can be secured. One way is to intensively educate the tribal youth in the large number of tribal high schools and tribal hostels that abound in the state about the laws and motivate them to be activists in their village to educate and mobilise their elders to benefit from their provisions. Booklets in simple local language which demystify the law and legal processes would also be invaluable.

MAHARASHTRA

The Maharashtra Restoration of Land to Scheduled Tribes Act, 1974 deals with the alienation and restoration of tribal lands. The Government of Maharashtra had appointed a Committee to inquire into and report to the State Government on how far the provisions of the Maharashtra Land Revenue Code, 1966 and the relevant tenancy laws have been effective in giving protection to persons belonging to the Schedule Tribes, and to suggest suitable amendments therein, if any of the existing provisions are found to be inadequate. The Committee submitted its report to the Government on 7.4.1972. The Committee recommended that provisions should be made for restoring to persons belonging to the Scheduled Tribes the lands which have been transferred to other persons. The Act of 1974 came in the aftermath of the Committee's report.

The expression relevant tenancy law means-

- (i) in relation to the Vidarbha region of the State, the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958,
- (ii) in relation to the Hyderabad area of the State, the Hyderabad Tenancy and Agricultural Lands Act, 1950, and
- (iii) in relation to the rest of the State, the Bombay Tenancy and Agricultural Lands Act, 1948.

“Transfer” in relation to land means the transfer of land belonging to a tribal made in favour of a non-tribal during the period commencing on the 1st day of April, 1957 and ending on the 6th day of July, 1974, either-

- (a) by act of parties, whether by way of sale, gift, exchange, mortgage or lease or any other disposition made inter-vivos, or
- (b) under a decree or order of a court, or
- (c) for recovering any amount of land revenue due from such Tribal, or for recovering any other amount due from him as an arrear of land revenue or otherwise under the Maharashtra Co-operative Societies Act, 1960 or any other law for the time being in force but does not include a transfer of land falling under the proviso to sub-section (3) of section 36 of the Code; and the expressions, “Tribal transferor” and “non-tribal-transferee” shall be constructed accordingly.

“Tribal” means a person belonging to a Scheduled Tribe within the meaning of the Explanation to section 36 of the Code, and includes his successor-in-interest.

“Tribal-transferor” includes his successor-in-interest;

“Non-Tribal-transferee” includes his successor-in-interest; and if he or his successor has, on or after the 15th day of March 1971, transferred land in favour of any person, whether a Tribal or non-Tribal, includes also such persons.

The following are the main provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974:

- 3. (1) Where due to transfer-
 - (a) the land of a Tribal-transferor is held by a non-Tribal-transferee, or

- (b) the land acquired in exchange by a tribal-transferor is less in value than the value of the land given in exchange,

and the land so transferred is in possession of the non-Tribal-transferee, and has not been put to any non-agricultural use on or before the 6th day of July 1974, then, notwithstanding anything contained in any other law for the time being in force, or any judgement, decree or order of any Court, Tribunal or authority, the Collector either suo-motu at any time, or on the application of a Tribal-transferor made, within thirty years from the commencement of this Act shall, after making such inquiry as he thinks fit, direct that-

- (i) the lands of the Tribal-transferor and non-Tribal-transferee so exchanged shall be restored to each other and the Tribal-transferor, or as the case may be, the non-Tribal – transferee shall pay the difference in value of improvements as determined under clause (a) of sub-section (4), or
- (ii) the land transferred otherwise than by exchange be taken from the possession of the non-Tribal-transferee, and restored to the Tribal-transferor, free from all encumbrances and the Tribal-transferor shall pay such transferee and other persons claiming encumbrances, the amount determined under clause (b) of sub-section (4):

Provided that, where land is transferred by a Tribal-transferor in favour of non-Tribal transferee before the 6th day of July 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so transferred shall be restored to the Tribal-transferor.

Explanation – Where the lands of a Tribal and non-Tribal are purported to have been transferred to each other, otherwise than by exchange, but the date on which the instruments for such transfers are registered is the same or, where such instruments are registered on different dates, but the interval between the dates of registration is thirty days or less, then, notwithstanding anything contained in such instruments, for the purposes of this section, such transfers shall be deemed to be by way of exchange.

(1A) Where any proceedings are taken under clause (ii) of sub-section (I) before the date of commencement of the Maharashtra Restoration of Lands to Scheduled Tribes (Amendment) Act, 1977 (hereinafter in this section referred to as “the commencement date”), in respect of any land purported to have been transferred by a Tribal-transferor to a non-Tribal transferee, otherwise than by exchange, and

(a) Such proceedings are pending before the Collector or any appellate or revisional authority on the commencement date or such authority is satisfied, after giving a reasonable opportunity of being heard to both the parties, that there were transfers of lands by way of exchange between the parties within the meaning of the Explanation to sub-section (I), then-

- (i) if such proceedings are pending before the Collector, the Collector shall hold a fresh inquiry under clause (I) of sub-section (I) in respect of the lands deemed to be exchanged;
- (ii) if such proceedings are pending before the appellate or revisional authority, such authority shall set aside the order of the Collector and direct the Collector to hold a fresh inquiry under clause (i) of sub-section (I) in respect of the lands deemed to be exchanged;

- (b) such proceedings have been completed by the Collector or by any such authority, but the Collector, within a period of six months from the commencement date, is on an application made by any of the parties to the exchange, or suo-motu, satisfied after giving a reasonable opportunity of being heard to both the parties, that there were transfers of lands by way of exchange between the parties within the meaning of the Explanation to sub-section (I), the Collector shall forthwith pass necessary orders to restore the status quo and then hold a fresh inquiry under clause (i) of sub-section (I) in respect of the lands deemed to be exchanged.
- (2) Where any land restored under clause (i) of sub-section (I) to a Tribal or a non-Tribal is burdened with encumbrances, then such encumbrances shall be transferred therefrom and attach themselves to the land restored to the non-Tribal or the Tribal, as the case may be.
- (3) The Tribal-transferor shall, notwithstanding anything contained in any law for the time being in force in the State, be entitled to restoration of land under this section only if he undertakes to cultivate the land personally and to pay such amount to the non-Tribal-transferee as the Collector may, under the provisions of sub-section (4), determine:

Provided that, in the case of a minor, the undertaking may be given by his guardian, and in the case of any other person under disability, by his authorised agent.

(4) (a) Where lands are restored under clause (i) of sub-section (I), the Collector shall, in the prescribed manner determine the value of the improvements, if any, made thereon after such exchange by the Tribal transferor or the non-Tribal-transferee. If the value of the improvements, if any, made by a Tribal-transferor is found to be

more, the difference shall be payable by the non-Tribal-transferee to the Tribal-transferor; and if the value of the improvements if any, made by the non-Tribal-transferee is found to be more, the difference shall be payable by the Tribal-transferor to the non-Tribal-transferee.

- (b) The amount payable by the Tribal-transferor for the land restored to him under clause (ii) of sub-section (I) shall consist of an amount equal to 48 times the assessment of the land or the amount of consideration paid by the non-Tribal-transferee for acquisition of the land whichever is less plus the value of the improvements if any, made by the non-Tribal-transferee therein to be determined by the Collector in the prescribed manner.

Explanation - In determining the value of any improvement under clause (a) or clause (b), the Collector shall have regard to-

- (i) the labour and capital provided or spent on improvements;
- (ii) the present condition of the improvements;
- (iii) the extent to which the improvement is likely to benefit the land during the period of ten years next following the year in which such determination is made; and
- (iv) such other factors as may be prescribed.
- (c) The Tribal-transferor or, as the case may be, the non-Tribal-transferee who is found liable to pay the amount representing the difference in the value of improvements as determined by the Collector under clause (a) shall pay the said amount to the non-Tribal-transferee, or as the case may be, to the Tribal-transferor, either in lump sum or in such annual instalments not exceeding twelve (with simple

interest at 4½ per cent per annum) as the Collector may direct.

- (d) The Tribal-transferor to whom land is restored under clause (ii) of sub-section (I) of this section shall pay to the non-Tribal-transferee and other persons claiming encumbrances the amount determined under this sub-section, either in lump sum or in such annual instalments not exceeding twelve (with simple interest at 4 ½ per cent per annum) as the Collector may direct.
- (e) The apportionment of the amount determined under clause (b) amongst the transferee and the persons claiming encumbrances shall be determined by the Collector in the following manner, that is to say:-
 - (i) if the total value of encumbrances on the land is less than the amount determined under clause (b), the value of encumbrances shall be paid to the holders thereof in full;
 - (ii) if the total value of encumbrances on the land exceeds the amount determined under clause (b), the amount shall be distributed amongst the holders of encumbrances in the order of priority:

Provided that nothing in clause (d) and (e) shall affect the right of holder of any encumbrances to proceed to enforce against the non-Tribal-Transferee his right in any other manner or any other law for the time being in force.

- (f) During any period for which payment of rent is suspended or remitted under the relevant tenancy law, the Tribal-transferor or as the case may be, non-Tribal-transferee shall

not be bound to pay the amount in lump sum or the amount of any instalment fixed under this section or interest thereon, if any.

- (g) If the Tribal-transferor or as the case may be, non-Tribal-transferee fails to pay the amount in lump sum or remains in arrears of two or more instalments, the amount so remaining unpaid (with interest thereon at 4 ½ per cent per annum) shall be recoverable by the Collector as an arrear of land revenue. The amount so recovered shall be paid by the Collector to the non-Tribal-transferee and persons claiming encumbrances, if any, or as the case may be, the Tribal-transferor.

- 4. Where any land of a Tribal is, at any time on or after the 1st day of April 1957 and before the 6th day of July 1974, purchased or deemed to have been purchased or acquired under or in accordance with the provisions of the relevant tenancy law by a non-Tribal-transferee or where any acquisition has been regularised on payment under such law and such land is in possession of a non-Tribal-transferee and has not been put to any non-agricultural use on or before the 6th of July 1974, then the Collector shall, notwithstanding anything contained in any law for the time being in force, either suo-motu at any time or on an application by the Tribal made within thirty years from the commencement of this Act and after making such inquiry as he thinks fit, direct that the land shall, subject to the provisions of sub-section (4) of section 3, be restored to the Tribal free from all encumbrances and that the amount of purchase price or a proportionate part, thereof, if any, paid by such non-Tribal-transferee in respect of such lands in accordance with the relevant tenancy law shall be refunded to such non-Tribal-transferee either in lump sum or in such annual instalments

not exceeding twelve (with simple interest at 4 ½ per cent, per annum) as the Collector may direct. The provisions of clauses (d), (e), (f) and (g) of sub-section (4) of section 3 shall, so far as may be, apply in relation to the recovery of the amount from the Tribal and payment thereof to the non-Tribal-transferee and the persons claiming encumbrances, if any:

Provided that, where land is purchased or acquired by a non-Tribal-transferee before the 6th day of July 1974, after such transferee was rendered landless by reason of acquisition of his land for a public purpose, then only half the land so purchased or acquired shall be restored to the Tribal-transferor.

5. (1) A non-Tribal-transferee who after the land is ordered to be restored under clause (ii) of sub-section (I) of section 3 or under section 4 or after the land is vested in the State Government under sub-section (I) of section 5 A, continues to be in possession of the land, then the non-Tribal-Transferee shall pay to the Tribal in the former case and to the State government in the latter case for the period (from the year following the year in which the land is ordered to be restored to the Tribal) till possession of the land is given to the Tribal or, as the case may be, to the State Government, such amount for the use and occupation of the land as the Collector may fix in the prescribed manner.

(2) If the non-Tribal-transferee fails to pay the amount fixed by the Collector under sub-section (I), it shall be recoverable by the Collector as an arrear of land revenue.

5 A. (1) Where any land (not being land acquired in exchange), which is liable to be restored to a Tribal- transferor under

sub-section (I) of section 3 cannot be so restored either on account of the failure of the Tribal-transferor to give an undertaking referred to in sub-section (3) of section 3 or for any reason whatsoever or where any land referred to in section 4 cannot be restored to the Tribal by reason of such Tribal expressing, during the inquiry held by the Collector, his unwillingness to refund the purchase price or proportionate part thereof to the non-Tribal-transferee as required by the said section 4, or for any other reason, then, the Collector may, subject to rules, if any, made in that behalf, by order in writing direct that the land shall, with effect from the date of the order, be deemed to have been acquired and vest in the State Government free from all encumbrances.

(2) On such vesting of the land, the non-Tribal-transferee shall be entitled to receive from the State Government an amount equal to 48 times the assessment of the land, plus the value of the improvements, if any, made by the non-tribal transferee and the persons claiming encumbrances on the land.

(3) The land also vested in the State Government under sub-section (I) shall, subject to any general or special orders of the State Government in that behalf, be granted by the Collector to any other Tribal residing in the village in which the land is situate or within five kilometers thereof and who is willing to accept the land in accordance with the provisions of the Code, and the rules and orders made thereunder and to undertake to cultivate the land personally; so, however, that total land held by such Tribal whether as owner or tenant does not exceed an economic holding within the meaning of sub-section (6) of section 36 A of the Code.

- (4) The person to whom land is granted under sub-section (3), shall pay to the State Government the amount referred to in sub-section (2), either in lump sum or in such annual instalments not exceeding twelve (with simple interest at 4 ½ per cent per annum) as the Collector may direct and shall hold the land subject to such terms and conditions as may be prescribed.
- (5) Without the previous sanction of the Collector, no land granted under sub-section (3) shall be transferred, whether by way of sale (including sale in execution of a decree of a Civil Court or of an award or order of a competent authority) or by way of gift, mortgage, exchange, lease or otherwise. Such sanction shall not be given otherwise than in such circumstances and on such conditions including condition regarding payment of premium or nazarana to the State Government, as may be prescribed:

Provided that, no such sanction shall be necessary where the land is to be leased by a serving member of the armed forces or where the land is to be mortgaged as provided in sub-section (4) of section 36 of the Code for raising a loan for effecting any improvement on such land.

- (6) If sanction is given by the Collector to any transfer under sub-section (5), subsequent transfer of the land shall also be subject to the provisions of sub-section (5).
- (7) Any transfer of land, and any acquisition thereof, in contravention of sub-section (5) or (6), shall be invalid; and as a penalty therefor, any right, title or interest of the transferee in or in relation to such land shall, after giving

him an opportunity to show cause be forfeited by the Collector; and the land together with the standing crops thereon, if any, shall without further assurance vest in the State Government and shall be disposed off in such manner as the State Government may, from time to time direct.

6. (1) An appeal against any decision or order passed by the Collector may, notwithstanding anything contained in the Code, be made to the Maharashtra Revenue Tribunal constituted under the Code.

(2) Every such appeal shall be made within a period of sixty days from the date of receipt of the decision or order of the Collector. The provisions of section 4, 5, 12 and 14 of the Limitation Act, 1963, shall apply to the filing of such appeal.

9. Every decision or order passed by the Collector under this Act, subject to an appeal to the Maharashtra Revenue Tribunal under section 6, and the decision of the Maharashtra Revenue Tribunal in appeal shall be final and conclusive and shall not be questioned in any suit or proceeding in any court.

- 9A. Notwithstanding anything contained in this Act or any law for the time being in force, no pleader shall be entitled to appear on behalf of any party in any proceedings under this Act before the Collector, the Commissioner or the Maharashtra Revenue Tribunal:

Provided that, where a party is a minor or lunatic, his guardian may appear, and in the case of any other person under disability, his authorised agent may appear, in such proceedings.

Explanation- For the purpose of this section, the expression 'pleader' includes an advocate, vakil or any other legal practitioner.

10. No civil court shall have jurisdiction to settle, decide or deal with any question which under this Act is required to be decided or dealt with by the Collector, the Commissioner, the Maharashtra Revenue Tribunal or the State Government.
- 10 A. Notwithstanding anything contained in section 5 or any other provision of this Act or in any other law for the time being in force, where possession of any land is to be restored to any Tribal-transferor or non-Tribal-transferee under any provision of this Act, it shall always be lawful for the Collector to evict any person not entitled to possession of the land, or any person wrongfully in possession thereof, at any time, in the manner provided in section 242 of the Code.

RECOMMENDATIONS

1. Re-examine all Mutations prior to 1.4.57

In the intervening period between the promulgation of the Bombay Tenancy Act, 1948 and the declaration of Tenants as owners in 1957, a considerable number of tenants were removed from the records through 'voluntary surrender' of their lands to the landlord. Further, a protected tenant cannot be removed from his lands, post-1939 (or whenever). Though the provision of law required that the Tehsildars conduct a regular inquiry in all such matters and verify the 'correctness' of the tenants, surrender of the land to the landlord, most mutations under this provision were perfunctorily made. The mutation entries may make a mention of an order passed by the Tahsildar vide a Work Sheet (W.S.) but copies of such W.S. are never available for scrutiny. The landlords resumed possession of

easily accessible and marketable lands. But, in a large number of cases, particularly in more remote villages, the tenants' name was removed from the records, even while they retained possession and use of the land. As these lands in interior villages became accessible and marketable with the building of roads, landlords sold these lands to third parties on the basis of the position in the records. The tenants are then evicted by the new owners and the tenants have a very weak legal case to recover these lands as they are not in the records as tenants in possession of land on 1/4/1957. In many cases, the alienated land is given the status of non-agricultural land, without proper inquiry, making the restoration of the same almost impossible. Further, if the lands are still in possession of the tribal tenants, Act, 14/75 is not applicable.

2. Ban sale of land by non-tribals to non-tribals in Scheduled Areas.

In Maharashtra, though the sale of tribals' land to the non-tribals is not permissible, the sale of land by the non-tribals within the Scheduled Areas is permitted. Till quite recently, prior to the penetration of the non-tribals into the Scheduled Areas, 100% of the land in the Scheduled Areas was owned by the tribals. The logic of the Restoration Acts, is that lands alienated from the tribals must revert to them. If a ban on the sale of land by the non-tribals to other non-tribals is introduced in the Scheduled Areas, then the lands alienated from the tribals, will revert if not to the particular individual, at least to the tribal community. Such a ban is in existence in Andhra Pradesh (Regulation 1/70).

In the Scheduled Areas, the non-tribals be permitted to sell lands only to the tribals.

3. Special provisions permitting sale of tribal land in urban areas/ MIDC Areas.

In urban areas/ MIDC areas, there are pockets of land that are owned by tribals. These lands have become “prime property” but cannot legally be sold. Such lands are often hemmed in by tall skyscrapers, blocking their access. Often the adjacent structures conveniently utilise these lands for drainage and as dumping grounds. As these lands are eyed by the builders, but cannot be legally acquired, the tribals are often forcibly evicted. Even if the land is restored, it is not physically possible to cultivate in the given environment. In reality, the poor tribal would be better off if he were permitted to sell the land at market rates. Of course, if all restrictions were lifted, then it is likely that the land will be acquired at throwaway prices by unscrupulous builders. Therefore, there is the need to provide some protection, in order that the tribal receives a good price for the land if he wishes to sell it.

In urban areas/ MIDC areas, the State should be permitted to purchase adivasi lands at market rates, creating a Land Pool. The State may then utilise the land for any purpose.

4. Unrecorded Tenancies

In almost every village in the tribal areas there are unrecorded tenancies (pre-1957) which continue till date. In considerable tracts in many cases, the name of the tenant was entered only on “kharif lands”, but not for “varkas” lands on which he cultivated highland paddy, millets (nagli, vari) and pulses, or on which he prepared the “rab” or seeding bed. On some of these lands he carefully protected trees, the parts of which are utilised for the preparation of “rab”, which forms an integral part of the traditional organic agricultural practice. Although the law requires that actual possession and the

cultivation of the land should be verified and entered in the land records every year, such verification is either not done or perfunctorily made. The landlord’s name is on the records, even while the tenant retains possession and use of the land. As these lands in interior villages become accessible and marketable with the building of roads, landlords sell these lands to third parties on the basis of the position in the records. The tenants are then evicted by the new owners and the tenants have a very weak legal case to recover these lands as their names are not in the records as tenants in possession of land.

In the year 2000, the Maharashtra Government has passed an Act whereby the names of the unrecorded tenants can be entered in the records on the basis of oral evidence. However, this Act is applicable only to the districts of Ratnagiri and Sindhudurg. This Act needs to be made applicable to the entire State especially to tribal areas, albeit with a few changes.

MANIPUR

The land tenure system among the tribals of Manipur is complicated due to the present system of land ownership and changes observed in it in the previous few decades. And hence, it could be understood properly only by analysing the present system and the modifications of the previous system, chronologically. Further, there is a distinct structural trichotomy in the land relationship of the tribals here existing in the form of:

- a. Individual or Private Land
- b. Clan Land
- c. Village Community Land

In the hill areas of Manipur, where shifting cultivation (Jhumming) still remains the main occupation of the majority of the people, there are two types of land ownerships depending upon the ethnic groups and the system of chieftainship prevalent among them. Broadly speaking, there are two major ethnic groups of tribals in Manipur-Nagas and Non-Nagas (Kuki-Chin-Mizo). The system of land ownership and chieftainship is quite different in these two ethnic groups. Chieftainship among the Naga tribals is usually non-hereditary whereas it is hereditary in non-Naga tribals (the latter also called as "Zoumi" tribals comprising of the so called Kuki-Chin-Mizo tribals, as per the current trend of their nomenclature). In a Naga Village there are three types of land ownership systems viz. individual land, clan land and community land whereas in a Zoumi village all the land belongs to the village chief who allots a piece of land for jhumming to every household every year.

Originally, the land and forest in the hill areas of Churachandpur district of Manipur, Mizoram and Chin hills of Burma (all inhabited

by the Kuki-Chin-Mizo tribals) belonged to the village chiefs who owned the entire village land and to this effect they possessed village boundary papers issued by the British Officers i.e. by the Political Agents of Manipur (redesignated as President, Manipur Darbar), Superintendent of Lushai hills in Mizoram and Political Officer of Chin Hills in Burma who were stationed at Imphal, Aizawl and Tiddim respectively.

The British officers administered through the Chin Hill People's Regulation, 1896 and the Hill (tribal) people had been taxed Rs. 3/- per head per household as Hill House Tax (HHT). At Independence, the boundaries between India and Burma were demarcated by the Boundary Commission in 1947 and the Chin Hills People's Regulation, 1896 was replaced by the Manipur Hill People's Regulation, 1947. Till then the village administration was governed by the village chief and the Upa's (Elders) nominated by him. However, a significant change was made in the village administration by the introduction of the Manipur (Village in Hill Areas) Authorities Act, 1956. Since then, in a Village Authority (VA) the chief is the ex-officio Chairman and the members are elected at regular intervals and nominated by the chief himself.

Till 1967, the village chiefs were paid 3-5 tins (kerosene tins of 5 kg. capacity) of paddy from every household of the village as their customary rights (called BUHSAN). However, in this year the Manipur Assembly though adopted the Acquisition (Abolition) of Chief's Rights (in the Hill Areas of Manipur) Act, 1967, it failed to introduce it later as the village chiefs seriously objected to this Act on the ground that the chieftainship is connected with rites, rituals, customs and land system. They did not agree to part with the village land by abolishing the power of the chiefs. They claimed that the village land belonged to them and the villagers also agreed to their claims. However, thereafter, the villagers no longer gave animal

meat (thigh leg of the animal killed by the villagers in hunting used to be given to the village chiefs as per the customary laws) and the annual payment of paddy. But for this, in fact, even today there has not been any significant change in the position of the village chiefs vis-à-vis the village land and the villagers.

The Nagas are land owning people at three levels viz. as individuals, as members of a particular clan and as members of the village.

Individual lands are well demarcated and mostly used for homestead and terraced cultivation.

Each clan in a village has a separate area of land set aside as common property of the clan. Members of the clan share the produce of that land, if at all there is any. A clan member can farm on part of that land but cannot permanently retain it. It also provides for any new member of that clan who may come to settle down in that village.

Community land is open to all the villagers under the supervision of the village authority. Usually it consists of a forest area, land on which schools, community halls, playgrounds etc. are built. Proceeds of any sales of community land are used for community development purposes and is shared by the village.

The Manipur valley is most densely populated compared to that of the hills. The Meiteis, Muslims and the Scheduled Caste population mostly live in the valley region, whereas the hills are predominantly inhabited by the Scheduled Tribe population.

There are two broad groups of tribes in Manipur, namely, the Nagas and the Kukis. The former include Tangkhul, Mao, Kabui, Kacha Naga, Maring and Maram, while the latter include Thadou, Paite, Hmar, Vaiphei, Zou, Mizo, Anal, Simte, Kom and Gangte. The Naga

tribes inhabit the hills in the northern, western and eastern parts of Manipur and Kuki tribes are mostly found in the southern parts.

Manipur was divided into six districts previously, five in the hills and one in the plains, which has later been divided into three districts. Some names have also been changed in the hill districts. The following table shows the area, distribution of population etc. at a glance. First three districts belong to the plains:

Sl. No.	Name of the district (Old name in brackets)	Area sq.km.
1.	Imphal (Manipur Central)	1295
2.	Bishnupur (Manipur Central)	530
3.	Thoubal (Manipur Central)	405
4.	Senapati (Manipur North)	3417
5.	Tamenglong (Manipur West)	4344
6.	Churachandpur (Manipur South)	4581
7.	Ukhrul (Manipur East)	4409
8.	Chandel	3375

The earlier records reveal that the Raja of Manipur claimed absolute ownership of all lands within his territory. He used to grant lands to the Brahmins and other service castes. The remaining parts were cultivated by own tenants. There were some revenue free lands also. All others used to pay some rent (tribute) in the form of kind. After 1891, the British Government started intervening in the internal administration of the state regarding matters of land. The Assam Land and Revenue Regulation, 1886 was applied to Manipur immediately after the Independence.

There have not been many cases of apparent land alienation from the tribals by the non-tribals in Manipur. The only major instance which can be described as land alienation, if at all one has to

classify it under this heading, is the acquisition of substantial amount of land by the Nepalese in the Kangpokpi Sub-division of the Senapati district where the Nepalese (Gurkhas) have managed to buy the land from the Kuki village chief under suspect terms. The Nepalese population here is high and but for an assembly election (when the Nepalese votes had been divided between four Nepali candidates), invariably, in the previous few elections the constituency returned a Nepali Candidate only.

There are hardly any loopholes in the MLR & LR Act, 1960 especially regarding the prevention of land alienation of the tribals. However, there are certain ambiguous points/ lacunae which allow distortion of the Act and hence, land alienation.

One can hardly brand anyone as a non-tribal exploiter who is alienating the lands of the tribals. The common ways of alienations are by leasing in land for sharecropping (Gurkhas/Meiteis) and by acquiring land for public purposes under the Land Acquisition Act and in both these cases, the tribals are duly compensated for. In case of sharecroppers, in fact, at times, it is the non-tribals who are being exploited and extorted by the village chief. The village chief is so strong in Zoumi villages that he can kick out anyone from the village without giving prior notice. There are, however, cases where the tribal land has been alienated by some cunning traders, contractors, but these cases are very rare and exceptional.

A special mention of Section 158 of the MLR & LR Act, 1960 may be made here-

Section-158 Special provision regarding scheduled tribes – No transfer of land by a person who is a member of scheduled tribes shall be valid unless-

- a. the transfer is to another member of the scheduled tribes, or;
- b. where the transfer is to a person who is not a member of any such tribe, if it is made with the permission in writing of the Deputy Commissioner (provided that the Deputy Commissioner shall not give such permission unless he has first secured the consent thereto of the District Council within whose jurisdiction the land lies). (This section was inserted vide Manipur Act No. 10 of 1970); or
- c. the transfer is by way of mortgage to a co-operative society.

Section-158 of the Act which has special provisions for the scheduled tribes provides enough safeguards to the tribals. Still it suffers from some deficiencies. Under the provisions of Section-158 (C) some of the non-tribals have succeeded in alienating the lands from the tribals by forming a registered co-operative society and then persuading the interested tribal to mortgage his land to the society for a period of 3-6 months and after the expiry of the fixed time applying for the transfer of the mortgaged land to the society. Once the land is transferred to any co-operative society, the society has a right to transfer that piece of land to any individual including non-tribals.

The State Government of Manipur has already surveyed and prepared land records in respect of 16,936 hectares in four hill districts (Chandel, Churachandpur, Senapati and Tamenglong) during 1960-84. Another area of 7,797 hectares has been surveyed in all the five hill districts (including Ukhrul) with the consent of the Village Authorities/ Headmen but without the extension of the provisions of MLR & LR Act, 1960. The tribals are opposed to the idea of bringing their land under the purview of this Act simply due to the fear of alienation by the non-tribals. Therefore, so far, land records have not been prepared for these lands.

The MLR &LR Act, 1960 does not apply to the hill areas of the state.

The State Government may extend the whole or any part of any section of the Act to any of the hill areas of Manipur. The hill districts do not automatically become the "hill-areas", which term, under the MLR &LR Act, 1960, has been assigned a specific meaning. According to section 2(j) of the MLR &LR Act 1960, the term "hill areas" means such areas in the hill-tracts of the state of Manipur as the State Government may, by notification in the official Gazette, declare to be hill areas.

The MLR & LR Act, 1960 was extended under the Government notification No. 142/12/60-R dated 22.2.62 to 92 villages which are included in the plain portion of Imphal district.

The Act was extended in 1962 to 89 villages of Churachandpur vide notification No. 142/12/60-M dated 22.2.62.

1. Jiribam Sub-division (mainly plains). Hill Areas only in 24 villages
2. Tengnoupal Sub-division-190 villages-Hill Areas
3. Tamenglong-Sub-division-196 village-Hill Areas
4. Ukhrul Sub-division-244 Villages-Hill Areas
5. Mao & Maram Sub-divisions-312 villages-Hill Areas
6. Churachandpur Sub-division-225 village- Hill Areas.

In the above named "hill areas", the MLR & LR Act, 1960 does not apply.

The Deputy Commissioners of the hill districts seem to be of the opinion that due to the non-extension of the Act in the hill-areas, they are unable to take up further survey work in those areas since

there is resistance, especially from the village chiefs. The Government, however, holds the view that extension should be done gradually, in a planned manner and in selected pockets only.

In pursuance of this cautious policy of gradual extension of the Act to the hill-areas, the MLR & LR Act, 1960 has not been extended to the hill districts except the following more or less plain areas situated within the boundaries of the respective hill-districts-

- i. 89 villages of Churachandpur District, vide Govt. notification No. 142/12/60-m dated 22.2.62.
- ii. Makhaw Tampak village of Churachandpur, vide notification No. 140/12/60-M (A) dated 20.11.69.
- iii. 14 villages of Mao Sub-division, situated in the Sadar Hills Circles, vide notification No. 138/4/64-M dated 26.2.65.
- iv. 809 hectares of land in Khonpum Valley of Tamenglong district, vide Govt. notification No. 3/12/83-LRC dated 14.11.1978.

To sum up, the MLR & LR Act 1960 applies to about 665 villages out of which 550 villages are situated in the three plain districts and the rest (105) in the plain areas of the hill-districts. Most of the latter villages lie in the Churachandpur district and some in the Senapati district. The total number of villages in the State of Manipur being 2109, the territorial jurisdiction of the MLR & LR Act 1960 extends to about 31% of the total number of villages of the State, which is not a very impressive proportion. But as regards population, it extends over about 71% of the total population of the State, and from that view-point, it is impressive and important.

Section 158 of the M.L.R of L.R. Act 1960 deals with special provisions regarding Scheduled Tribes which says-No transfer of

land by a person who is a member of the Scheduled Tribes shall be valid unless:

- a. The transfer is to another member of the Scheduled Tribes; or
- b. Where the transfer is to a person who is not a member of any such tribe, if it is made with the previous permission in writing of the Deputy Commissioner (provided that the Deputy Commissioner shall not give such permission unless he has first secured the consent thereto of the District Council within whose jurisdiction the land lies); or
- c. the transfer is by way of mortgage to a co-operative society.

There are certain points to be mentioned here about the Section 1 and Section 158 of the M.L.R. & L.R. Act 1960: (a) Sub-section (ii) of Section 1 of the said Act provides immunity to the hill areas of Manipur from its extension. Of late, the Government of Manipur is trying to extend it to the hill areas and, therefore, to delete the words- "EXCEPT THE HILL AREAS THEREOF" from the sub-section (ii) on the ground that the provisions of Sub-section (ii) of Section 1 can be suitably applied for extension of the provisions of the Act to any area in the state including the hill areas. But due to serious objections raised by the tribals the proposed amendment could not be carried out. However, the State Government has already surveyed and prepared land records for a considerable area in four hill districts of Chandel, Churachandpur, Senapati and Tamenglong under the provisions of the said Act during 1960-84. Some more areas have been surveyed in all the five hill districts (including Ukhrul) with the consent of the village Authorities/ Headmen, but without the extension of the provisions of the MLR & LR Act, 1960. The tribals have opposed the idea of bringing their land under the purview of this Act simply due to the fear of alienation by non-tribals. This survey was mainly confined to wet cultivable areas in accordance with the reports of the respective

Deputy Commissioners on the availability of such areas where the concerned chiefs/ headmen had given their consent.

Tribals have a symbiotic relationship with land and forests. They not only live in the forests and make use of the forest produce for their survival, but also help in forest management as per their experience gained over a period of time. However, it is also true that due to lack of scientific skills of forest management and due to an ever-increasing pressure of growing population over the limited forest resources, the tribals sometimes become instrumental in causing degradation of forest resources along with other people.

There is a growing effort from the side of the Government to protect the rights of the tribals and also to encourage them to abandon jhumming and to replace it by terrace settled cultivation so that the forests are conserved. There is also an emphasis on promoting afforestation, enhancing productivity and horticultural production.

There are no records available to give a clear picture on the early history of the forests during the period before the British rule. In those days forest areas were very extensive and there was the idea of taking the forests as unclaimed property. The tribal people used to cut trees at random for settlement and jhum cultivation. However, it was reported that during the early part of the 19th century the Maharajas of Manipur used to exercise absolute control over these forests. Some records say that they used to give large tracts of forest areas in the hills to the local tribal chiefs for settlement and jhum cultivation.

It was in the beginning of the 20th century that the government had started giving attention towards defining the legal status of forests of Manipur with a view to introducing scientific method of

management. A separate department of forest was constituted in 1931. With the creation of the Hill Office during the early part of 1930, steps were taken to collect revenue by putting certain areas to auction by constituting Mahals of virgin forest for firewood. Later, the right to collect forest revenue was sold by public auction to contractors by opening toll stations.

The area was classified into four types:

- a. Hill Village Reserve
- b. Valley Village Reserve
- c. State Reserve
- d. Open Reserve

People were given certain rights, while putting some cost on the produce taken out of Open Reserves.

With the re-organization of the Manipur Forest Department in 1967 into Eastern & Western Divisions, steps were taken up with greater enthusiasm to declare more areas as protected forest under the Indian Forest Act, 1927. But the progress was slow.

The Colonizers of the country successively brought Acts and legislations to regulate the people's rights over forest land and forest produce. The gist of the Indian Forest Act, 1927 is as follows:

This Act made elaborate provisions to extend state's control over the forest. Several offences and punishments were defined in the Act. To emphasise, some of the sections are quoted here;

Section 64 of Indian Forest Act states that any Forest Officer without a warrant can arrest any person against whom a reasonable

suspicion exists of having committed a forest offence punishable with imprisonment for one month onwards.

Section 68 deals with powers to compound the offences committed under the Indian Forest Act.

Section 70 says that the Cattle Trespass Act, 1871 is to apply and gives the powers to seize and compound the cattle.

The Manipur Forest Rules were made under Section 32 of Indian Forest Act, 1927.

The salient features of these Rules are mentioned below:

- i. Certain acts such as hunting and shooting prohibited in the reserved and protected forests.
- ii. Prohibition of pasturing of cattle in forests except in areas specially assigned and except under permit.
- iii. Subject to certain conditions the exploitation of protected forests can be done.
- iv. Bonafide villagers of the villages notified to be within the protected forest may remove forest produce from the protected forests.
- v. Cutting of trees is prohibited subject to certain relaxation.
- vi. Some royalty would be levied for forest produce removal.
- vii. Certain privileges admitted to the bonafide villagers within the protected forests such as grazing rights, wood rights (not for sale but for their household use only), hunting rights subject to the rules for the preservation of wild life and cultivation right i.e. wet-rice cultivation of the villages within the protected area. But they will have no jhumming rights in general terms but may have jhumming for certain

- crops at suitable places subject to the control and supervision of the forest department.
- viii. Issue of permits and certificates by the forest officials for transporting timber etc. to some other commercial places.
 - ix. Power to evict the encroacher from reserved/protected forests.

These rules made elaborate clauses for regulating practically everything relating to forest. It provided an elaborate list of do's and don'ts for both protected as well as reserved forests. For example, section 21 prohibits pasturing of cattle in forest except in areas specially assigned and except under permit. Section 23 lays down conditions for the exploitation of protected forest, while Section 27 gives the powers to the Chief Forest Officer to decide rate of royalty payable for each kind of forest produce removed from the protected forest.

Most of the protected forests are overlapping the private lands of the chiefs which happen to be jhum lands also.

Over the years the forests in the country have suffered serious depletion. The situation has been reviewed. In order to provide protection to and the development of the forests, the old forest policy has been revised in 1988. The new forest policy which was adopted on December 7, 1988, takes into account the symbiotic relationship between the tribal people and the forests. It envisages that all the agencies responsible for forest management including the Forest Development Corporations, should associate the tribal people closely in the protection, regeneration and development of forests as well as in providing gainful employment to the people in an around the forests. The policy also concedes that the life of the tribals and other poor people living within and near the forest

revolves around the forest. The rights and concessions enjoyed by them should be fully protected.

A brochure brought out by the Land Reforms Unit of the LBS National Academy of Administration in 1994, gives the details of a survey done by eight Probationers in 13 villages covering four hill districts, namely Ukhrul, Chandel, Senapati and Churachandpur, in Manipur.

The districts, villages and people studied

Sl. No	Village	District	Major Groups
1.	Shirui	Ukhrul	Tangkhul Naga
2.	Hundung		Tangkhul Naga
3.	Choither		Tangkhul Naga
4.	Chandel Christian	Chandel	Anal Naga
5.	Purum Tampak		Tangkhul Naga
6.	Purum Khullen		Tangkhul Naga
7.	Thamlapokpi		Thadou Kuki
8.	Tungjoy	Senapati	Paomai Naga(Mao)
9.	Panglian	Churachandpur	Thadou Kuki
10.	Bungpilon		Thadou Kuki
11.	Sumchinlum		Zou, Thadou Simte (Kuki)
12.	Belpuan		Zou, Thadou Simte (Kuki)
13.	Geljang		Simte (Kuki)

Various tribal groups which were studied belong mainly to two broad categories viz. the Naga and the Kuki groups of people. Among the Nagas mainly Tangkhul, Mao and Anal have been studied, whereas among the Kuki mainly the Thadou have been studied. The former is distinguished for its having a democratic village structure where the chief plays only a perfunctory role. The basic land holding pattern is marked by the community control over the village land and forest. The village council plays a very important role regarding the management of land and forest. Of late, this control has been further formalized through the Village Authority where the chief of the traditional Village Council is the Ex-officio Chairman. In case of the Kuki group the hereditary village chief exercises indisputable authority over the village land and forest. In fact, the entire land belongs to the chief who distributes patches of land to the individual households for cultivation. Among the Nagas, Jhum cultivation continues alongwith the increasing trend for terrace cultivation. Among the Kukis, the emergent settled cultivation is in progress alongwith the more dominant practice of shifting cultivation. The right over land among the Nagas is acquired through inheritance, transfer and reclamation of the jungle. This right normally descends through the male line by the law of primogeniture, that is, the right goes to the eldest son of the family. Among the Kabui, another dominant Naga group, the right is assumed through the law of ultimogeniture, that is, the youngest son inherits the father's property. This group has a group of intermediaries called Rampaos who own all the lands of a village. The cultivators can work as tenants called Laopaos. They pay rents to the Rampaos. Among the Kukis, inheritance goes by the male line through the law of patrilineal primogeniture. In the absence of a male member in any family the landed property is passed on to the nearest male relative.

Notwithstanding the prevalence of the customary laws there are certain emerging factors regulating the management of land and forest. Due to the exposure of the tribal villages with the outer market forces a growing trend is perceptible in the gradual privatization of the land and forest resource under the cover of community ownership. Even the chiefship over holding is being manipulated in a manner of immediate private interest. A dilemma seems hanging on the shoulders of the planners as well as the administrators as to the adoption of an option whether privatization of land holding should be expedited or the community holding should be encouraged for a better management of the greatest resource base of land and forest in the hill states of North East India.

The following general recommendations emerge for future consideration:

RECOMMENDATIONS

1. The system of hereditary chiefship which creates a situation of permanent landlessness should either be abolished by paying adequate compensation to the chief as it has been done in Mizoram and Burma or by the Adi type of land ownership system of Arunachal Pradesh where every family shall retain the plot of Jhum land cultivating every year within a jhum cycle. This plot of land allotted to the family will become the permanent property for which the ownership should be recognised by the State Government with or without extending MLR &LR Act, 1960. After few jhum cycles the jhumiyas will have enough land to do shifting cultivation and for which they do not have to depend on the mercy of the village chief.

2. The system of land ownership on the contrary, is quite reasonable in the Naga Villages where every individual cultivator is the owner of his land. And hence, the system does not need any change.
3. Proper steps are to be taken to check land alienation effected by unscrupulous methods.
4. Misusing the forest for commercial purposes should be checked very strictly. Sale of minor forest produce may be organised for the benefit of the tribal people.
5. Selling of timber to contractors by all powerful chiefs should be curtailed.
6. Efforts should be made to convince the tribal people about the good effect of land survey and land revenue.
7. Tribal community participation should be encouraged for any forest development programme. Their knowledge of adaptive strategy for the conservation of forest should be thoroughly studied.
8. Jhumming may be continued with more practical and scientific approach with subsidiary horticulture, animal husbandry and plantation of tea, coffee, cardamom, and tropical fruits.
9. Co-operative farming may be experimented in tune with the community structure of the people.
10. The market network, transport development and effective institutional finance should be made.
11. The practice of ineffective subsidy should be discouraged for any development programme.
12. For the promotion of afforestation, soil conservation, horticulture, settled cultivation, terrace cultivation, etc. a co-ordinated effort is needed from different departments. Due to lack of permanent ownership the jhumiyas are not at all bothered to develop terrace field and for that reason horticulture, etc. Until or unless the system of chieftainship is done away with or the Adi system of land ownership is adopted these cannot be developed. Here again one realises the value of land records and individual ownership. Suitable steps should be taken in this direction.
13. Section-158 (c) of MLR & LR Act, 1960 does provide a little scope for alienation of land by non-tribals and needs to be modified accordingly viz.".....that the co-operatives to which the land is mortgaged should in no condition transfer the land to any non-tribal person."
14. Section-1 (ii) of the MLR &LR Act, 1960 should be amended to the effect that it can be extended to the tribal areas but after clearly mentioning that this is meant only for the land management and in no case land from a tribal can be acquired by a non-tribal. This would help in making suitable land records and relieving the tribals from the fear of land alienation by way of extension of the provisions of MLR & LR Act, 1960.

15. A control over the activities of the saw mill owners is immediately required to check the damage caused to the forests by unscrupulous tree felling. Similarly, any major investment for development which immediately causes injury to the eco-system as well as to the living conditions of the hill dwellers should be very thoroughly studied before the initiation of the project.

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MEGHALAYA

LAND TENURE IN THE KHASI HILLS: TRADITIONAL PATTERNS AND EMERGING CHANGES

Although there is little variation in the general principles which governed land and forest rights in the Khasi, Jaintia and Garo hills, the actual pattern of land tenure differs due to the difference in their social organisation and historical development. In the Khasi and Jaintia hills, the land tenure system is closely tied up with their political organisation. Although land is considered to belong to the community, the holding of public office carries certain privileges for the family or clan of the incumbent in relation to land. Hence ruling families like the Syiem, Lyngdoh, Myntri and Daloi are awarded certain categories of land for their maintenance.

According to the Land Reforms Commission two categories of land can be identified in the Khasi-hills – Ri Raid (communal land) and Ri Kynti (private land). Ri Raid are lands which are set aside for the use of the community over which members have rights of use and occupancy but no proprietary rights. As such Ri Raid land cannot be transferred to an heir nor leased or sold off as property.

In contrast to Ri Raid lands, Ri Kynti or private lands are under the direct control of the owners over whom are bestowed proprietary, heritable and transferable rights over such lands. This includes any part of Ri Raid land which was acquired by the original settlers through jungle clearing and permanent improvements or that which was bestowed upon a family or clan for rendering important services to the community.

Ri Kynti may belong to an individual or the clan in which case the power of control over it varies. In the case of the former, the proprietary, heritable and transferable right lies with the individual owner, in the case of the latter, this right is shared by the members of the clan though the power of decision making rests with the clan durbar.

In the Khasi hills, land belongs to the people and not to the rulers or the State. The Khasi customary law prescribes that each member of the 'village', 'raid' or 'elaka' has the right of use and occupancy of the communal land without payment of rent for the land itself. However, a member could not claim more land than what he could occupy or actively make use of. The occupancy right itself is confined to the period of the use of the land. Were the occupant to abandon the land for a sufficiently long period the same reverts to the community and the right of occupation over it becomes open to the other members. The management and control of the land lie wholly with the community which may be 'village', 'raid' or elaka.

With the increasing pressure on land, occupancy rights are gradually giving way to ownership rights. However, it would be misleading to say that the traditional Khasi society was alien to privatisation. Ri Raid land gradually evolved into Ri Kynti land. By allowing permanent improvements on land to accrue occupancy rights the same slowly transformed into ownership rights. A significant outcome of this process is that those with better resources could, through the application of labour and capital, establish durable assets on Ri Raid land and claim the same as their personal possession. This process has led to a gradual shrinking of Ri Raid land as large parts of it are being siphoned off by the rich. The economic implication of this process is clear. While the well-to-do could increase the size of their holdings, the poor gradually lost command over their productive resources. A close look at the

present trend of land distribution shows that while communal land comprised largely forested tracts, barren and undeveloped land, the plain fertile grounds are privately owned.

This process suggests that in the beginning all lands were communal land. Heritable and transferable rights accrued when through the application of labour and technology permanent improvements were effected.

It is difficult to reconstruct the time frame within which Ri Raid land evolved into Ri Kynti land. But evidently this process could not have been possible without the sanction of the village, raid or state durbar in whom management rights over land are vested.

The hierarchical character of the Khasi polity and the differential access to land show that the seed of stratification is embedded in the system. However, so long as the society was insulated from exogenous forces the traditional pattern continued without causing any visible tension to the system. This was so because the high land-person ratio and the subsistence economy of the tribe posed no real strain to the agrarian structure. But with the impact of social change and the flow of exogenous influences the social differentiation salient to the system emerged sharply to give a new dimension to land and land-based relations in the society.

Today significant changes have appeared in the land tenure system. For example, the emergence of the patta system, the levy of land tax and the role of the Syiem as the landowner have all posed a serious challenge to the traditional customary laws.

LAND TENURE IN THE GARO HILLS

In the Garo hills, the land tenure system differs to some extent from that which prevails in the Khasi hills. Although land is considered to

belong to the community the underlying principles which governed their pattern of rights and access to it are rooted in the institution of the family.

Traditionally, two broad types of land are found among the Garos-Aking land and Amillam land. Aking land belongs to a particular clan (Machong) which enjoys ownership and heritable rights over it. Within the village the Aking land belongs to the owning Mahari (localized clan). The area of an Aking land may be confined to a single village or it may be so large as to embrace several villages. An interesting feature of an Aking land is its close association with the family organisation. Although the ownership of an Aking land may be held by a particular clan, in reality rights over it are jointly held by two affinal clans through successive generations. By distinguishing managerial rights from ownership rights and locating them respectively in the husband and the wife, the Garo customary law indirectly emphasises the importance of affinity. Rooted in the law of Akim this arrangement facilitates the structural continuity of the family and the retention of rights over land within the two intermarrying Maharis.

Indeed, the concept of the Aking land is inseparable from the institution of marriage. This is so because, as indicated above, the continuity of the rights over the Aking land within the two affinal Maharis is possible only through the perpetuation of the marriage tie between them. The Garos conceptualised this practice as the law of Akim. According to it, marriage is not simply a relationship between two individuals which comes to an end with the death of the partners but an enduring bond continues between two Maharis through successive generations.

In contrast to the Aking land which is basically clan land, Amillam lands are considered to be no man's land and are not attached to any

family or clan. Here all members of the community have common right for the collection of firewood, grazing or hunting but they are debarred from committing acts which may desecrate or diminish the natural wealth present in the land such as trees, plants etc. Besides, in each village there are machong kosi lands which are sacred groves specially set aside, for rituals and worship. Considered to be the abode of their gods and deities secular activities are forbidden on these lands.

Implicit in the concept of Amillam land is the indigenous method of conservation. In order to conserve the natural resources which are vital for sustaining the needs of the community certain categories of land are set aside as no man's land. By placing such land apart from the family and clan the community ensures that no single person could monopolise or indiscriminately exploit the natural resources which are essential for the life of the collectivity.

From the above, it becomes clear that in the conception of the Garos, land is a productive resource which belongs to the community. As a common resource, the modes of its utilization, the rules governing access to it and the system of its management must be laid down by the community. Thus irrespective of the particular class of land found in the society the same cannot be delinked from the norms which governed their family institution and village organisation.

However, even in the hills significant changes are emerging in the manner of land utilization. In the past the Aking lands were mostly used for shifting cultivation (jhum). Members of the clan obtained their respective plot from the Aking Nokma who managed the land on behalf of his wife. Each member received enough land to meet his needs. No family demanded more than what it could use because when land is left fallow the same automatically reverts to the community. But in recent years with the adoption of settled

cultivation the possessory rights enjoyed by a family over jhum lands remained under their constant occupation. This has not only increased the pressure on Aking land, more importantly, it has also raised serious questions on the nature of rights which the members have over land. According to tradition, a family has possessory rights over land which are largely confined to the period of use. If the land is left fallow it goes back to the community. But with the adoption of settled cultivation a family could reclaim the land and hold it in constant occupation thus depriving the jhumias and other disadvantaged families from gaining access to it. The present situation is rather hazy as the Garo customary law provides no clear guidelines to deal with such cases nor is the Nokma equipped with powers to confer permanency rights on individual families over the Aking land, or to deny them rights of access to it.

ROLE OF THE DISTRICT COUNCIL IN THE ADMINISTRATION OF LAND

Under Section 3 of the Sixth Schedule to the Constitution of India, the District Councils are empowered to make laws with respect to:

1. the allotment, occupation or use, or the setting apart of land other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other purposes likely to promote the interests of the inhabitants of any village or town;
2. the management of any forest not being a reserved forest;
3. the use of any canal or water-course for the purpose of agriculture;
4. the regulation of the practice of jhum or other forms of shifting cultivation;

Apart from these powers which are directly related to land, the District Councils have other legislative powers in relation to the establishment of towns or village committees, village and town administration, the appointment and succession of chiefs and headmen, the inheritance of property, marriage and divorce and social customs.

Yet, notwithstanding these Constitutional powers the District Councils have done little to protect the rights of the people to land. While the three District Councils in the State, the Khasi Hills, the Jaintia Hills and the Garo Hills Autonomous District Councils have passed some laws to prevent the transfer of land from the tribal to the non-tribal. None of them has taken steps to check the discrepancy in the land holding pattern within the community.

No District Council appeared to have felt the need for initiating land reform measures with specific reference to the (a) abolition of intermediary rights, (b) fixing of ceiling and (c) tenancy reforms.

For present, however, this observation remains theoretical. Since there are no proper land records existing in the state the appropriateness of such legislation may be called into question. But what we should not fail to note is the constraints which afflict the District Council in the execution of its functions. Although the District Council was evolved with the objective to protect the rights and interests of tribes, its powers are greatly circumscribed by the state government. A serious weakness of the Sixth Schedule is that it does not clearly spell out the co-ordination between the functions of the District Council as distinct from the state government. The overlap in their functions often gives rise to tension between them. Although the District Council possesses its own legislative, executive and judicial powers, it lacks functional autonomy. Both in matters of finance and administration the District Council is

dependent upon the State Government. Evidence suggests that right from the very beginning the relationship between the District Council and the state government was never a happy one. The enactment of the Assam Reorganization Act, 1969 and the North Eastern Areas Reorganization Act, 1971 gave a serious blow to the District Council, after Meghalaya came into being. Paragraph 12-A was incorporated in the Sixth Schedule which removed the supremacy of the District Council and rendered the laws passed by it subservient to those passed by the State legislature.

An important consequence of this development is that both the District Council and the State Legislature are extremely suspicious of each other. This has not only affected relations between the two. It has also added constraints to their functioning especially in matters which affect the rights and interests of the people.

One of the earliest functions of the government of Meghalaya after its inception was to adopt the extension and application of the Assam Land and Revenue Regulation Act, 1886 in the state vide the Meghalaya Land Revenue Regulation (Application and Amendment) Act, 1972.

The government of Meghalaya passed a series of legislations on land and forests. In particular, the Meghalaya Transfer of Land (Regulation) Act, 1971 is noteworthy not only because the state prohibits the transfer of land from a tribal to a non-tribal or from one non-tribal to another non-tribal but also because when such land cannot be disposed to a tribal the state reserves the right to acquire the same on payment of compensation in accordance with the principles specified in the Land Acquisition Act, 1894 (Vide Section 3 and 4 A of the Act). That a state which comes under the purview of the Sixth Schedule to the Indian Constitution should rely on such a draconian law as the colonial Act of 1894, speaks of the

ambivalence and ambiguity of the tribal policy even in a tribal state. The Land Acquisition Act of 1894 was a central Act and adopting it as the basis for the assessment and payments of compensation in the acquisition of land by the government reflects the insensitivity of the tribal leaders to the rights of the community.

Doubtless, Meghalaya was not the first to apply this law in the State. Shortly after Independence, the Assam Government had suitably amended the Act in the Assam Autonomous Districts (Land Acquisition) Regulation 1951, to facilitate its application to the Autonomous districts of Assam which included the erstwhile districts of Lushai Hills and the United Khasi and Jaintia Hills. In 1964, a new law called the Assam Land (Requisition and Acquisition) Act, 1964 was passed and its provisions extended to the entire state.

The wide scope of the Act confirms the link which exists between government activity on the one hand and the resultant loss of land for the community on the other. Apart from the loss of land to the government the establishment of a development project itself invites hordes of skilled and semi skilled workers, moneylenders and land grabbers into the tribal area who collectively assaulted on the land rights of the people. In the process, agricultural land and forests which provided the mainstay of tribes are being expropriated by the macro-development forces while their village sites and open fields are misappropriated by land hungry outsiders.

The overriding power assumed by the state has also rendered the Sixth Schedule ineffective in protecting the rights and interests of tribes. While the District Council has been evolved with a view to safeguard the interests of the community it has not been able to do so in the four decades of its existence. On the other hand, the

District Council itself often violates the rights of the people by joining hands with the exploitative class.

The passing of the Meghalaya Land Transfer (Regulation) Act put a check on the purchase of land by the non-tribals. But this does not prevent them from occupying land. Many of them do so by leasing land from the tribals. While this has enriched the landed tribals it does so at the cost of the poor who now have to compete with the non-tribals who are often better equipped both in terms of agricultural skill and finance in gaining access to land. That this phenomenon is most conspicuous in areas, where shifting cultivation is the dominant mode of agriculture, is a matter of concern because many jhumias in their inability to acquire land either have to turn to settled agriculture for which they are ill equipped or end up as landless wage labourers.

Many tribals have complained of the adverse effect which the presence of the non-tribal migrants have on their livelihood. Many of them reported that they had to turn away from shifting cultivation because of the lack of land to operate. As shifting cultivation involves the rotation of fields, slash and burn operations of the vegetal species and keeping the land fallow between periods of cultivation for the regeneration of forests the pressure of immigrants with their large herds of cattle and buffaloes made it difficult for them to maintain the fallow cycle which they did in the past. The high pressure on land caused by the increasing population has led to the narrowing of fallow time between cultivation. Besides the depletion of forest cover caused by the indiscriminate felling of vegetable species as the migrants scoured the neighbouring areas for fuel and fodder has added to the travails of the shifting cultivator.

Shifting cultivators constitute the most vulnerable section of the tribal population. Hence, every possible effort should be made to help them. And while shifting cultivation per se may not be

environmentally hazardous, the effect of population density may not always guarantee its safety. What the government should do is to assist the shifting cultivators in the management of their land while at the same time provide them with suitable alternatives in their villages, so as to absorb them in better paid occupations without having to relocate them from their own natural surroundings.

Several factors appear to work against the introduction of reforms. These are:

1. The conflict between the traditional political institutions and the modern political system.
2. The reticence of men to relinquish their traditional position of authority.
3. The fear of the influx of outsiders and loss of land to them.

At the political level the main impediment to land reforms is the conflict between the traditional and the modern political institutions. While the traditional political institutions such as the village councils have a vested interest in continuing with the traditional tenurial system as a means to retain their control over land, the state government and the District Councils on their part are caught in a web of overlapping.

The following recommendations have been made by Tiplut Nongbri in his paper entitled Tribal Land and Forest Rights in Meghalaya published by the Land Reforms Unit (LBSNAA, Mussoorie) in 1993.

1. As a prerequisite to land reforms cadastral survey of land ought to be carried out and completed within the shortest possible period. To carry out this operation, the government officials need to work in close collaboration with the local people so that land can be clearly categorised into:

- (a) Public, private and government lands.
 - (b) Agricultural and non-agricultural lands.
2. The land survey should be accompanied by a household survey to identify the people's and household's occupation and the nature and amount of land in their possession.
 3. All private landowners in the village/town will have to be identified on the basis of their occupation, place of residence and amount of land in their possession (both within and outside the village/town).
 4. All persons/ households occupying public land will have to be identified and checked whether they also own private land.
 5. The findings of the survey will have to be made public so that people can examine and understand its implications.
 6. Existing legislative measures like the Meghalaya Land Transfer Regulation Act and the Meghalaya Benami (Regulation) Act will have to be stringently enforced-violators of these Acts should be detected and severely punished.
 7. Intra-transfer of land should also be restricted. For example:
 - (a) transfer of public land by the occupant to other persons either by sale, gift or lease should be disallowed by law.
 - (b) even in the case of private land transfer of land from small and marginal holders to the well-to-do should be restricted.

8. Tenancy laws must be introduced to protect the poor and the landless from exploitation by rich landlords.
9. A ceiling on land will have to be imposed so that the surplus can be redistributed among the poor and landless persons. The modality of redistribution, however, will have to be carefully worked out to preserve the egalitarian and cooperative spirit among the triabls.

To facilitate the successful implementation of these measures the state on its part will have to improve its own credibility in the eyes of the people. In this regard:

1. Acquisition of land by the government for developmental or public purpose will have to be reduced to the minimum.
2. Development programmes need to be reoriented to check the growth of the intermediary class which siphoned off the benefits from the poor and the unprivileged.
3. Poverty alleviation programmes will have to be combined with development to equip the poor with better skills and income.
4. Whenever possible the government should work with and through the people by utilizing the indigenous traditional institutions at the village and social levels.
5. Last but not the least, a well designed awareness programme needs to be formulated to educate people and make them conscious of their rights.

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NAGALAND

Ten years after the achievement of statehood in 1973, the districts of Nagaland were reorganised. Two new districts, viz. Zunheboto and Wokha were carved out of Mokokchung. Kohima was divided into two districts viz. Kohima and Phek. Mon was created as a new district from Tuensang. Thus the number of districts in the state has gone up to seven. All the district headquarters are declared as urban centres. Apart from these administrative urban centres, Dimapur in Kohima has grown as the most important urban centre in the state because of its location and developed communication network. Apart from Dimapur, Chumukedima in Kohima district is also declared as census town. Thus there are 9 urban centres in the state.

POPULATION

According to the 1991 Census, the total population of the state is 12,15,573 persons. Of them, 643,273 are males and 572,300 are females. The sex ratio is 890. The density of population in the state is 73 persons per sq. kms. The decennial growth rate during 1971-81 was 50.05 per cent which has gone up to 56.86 per cent during 1981-91. The population growth in the state is more than double than the national average of 23.50 per cent. The urban population forms 17.28 per cent of the total in the state. The lion's share of the urban population is concentrated in Kohima district where the state capital is situated.

The indigenous people of Nagaland are commonly known as "Nagas". There are 16 different Naga tribes in the state. They are: Aos, Konyaks, Semas, Angamis, Chakhesangs, Lothas, Sangtams, Phoms, Changs, Kheinmungans, Yimchungers, Zeliangs, Renganas,

Tikhirs, Makwares, and Chirrs. Of them, Aos are the most numerous and the Chirrs are the smallest group.

The southern portion of the state which falls under Kohima district is the homeland of the Angamis, Zeliangs and Rengmas, whereas the southern part under Phek district is peopled by the Chakhesangs. Angamis are found mainly concentrated in Chiephobozou, Jakhama and Zubza circles, whereas Zeliangs in Pedi circle. Mokokchung district and Wokha district which are in the midwestern part of the state are the territories of the Aos and Lothas respectively. The Central part of Nagaland falling under Zunheboto district is the heartland of the Semas. However, a section of the Semas is also found inhabiting the western part, particularly the Nihokhu area of the state. Mon district that covers up the north-eastern part of the state is the territory of the Konyaks while Tuensang district is the homeland of several tribal groups. Kheinmungans occupy the eastern part of the district bordering on Burma, whereas the tribes like Tikhir, Makware and Chirr inhabit the southern part of the district. Other tribal groups which inhabit the Tuensang district are Chang, Sangtam, Yimchunger and Phom. Chang and Yimchungers occupy the central part of the district while the north-eastern part of the district adjoining the Ao inhabited area in Mokokchung district is the abode of the Sangtams.

Apart from land, forest is the most important resource in Nagaland. The variations in altitude, climatic conditions and soils have a stimulating effect on the luxuriant growth of a wide variety of vegetation in the state. Five forest types found in the state are:

(i) Sub-tropical moist deciduous forest, (ii) Sub-tropical evergreen rain forest (iii) Temperate evergreen highland forest, (iv) Coniferous forest, and (v) Degraded forest (on Jhumland). The first category of forest is mainly found in the western part all along the Assam

border where the altitude is lower than the rest of the state. The second category of forest is chiefly concentrated in the north-western part around Tizit area. The third category is found in the eastern part of the state along the international boundary. This forest is found mainly in the areas of colder and higher altitude in the south-eastern part of the state. The fifth category is the most widespread and it covers about 40 per cent of the total land surface of the State.

The emergence of property rights among the tribal communities in general has long been a stimulating area of enquiry for the social scientists. For the tribes of north-east India, no comprehensive attempt has yet been made in order to comprehend the process of the emergence of property rights and their transformation in relation to the internal dynamics of development of the different tribal societies per se. However, the ethnographic monographs of the different tribal communities which had been prepared by the British administrators in their venture to rule these people contain some valuable information about the customary property rights of the tribes of the north-eastern region including the Nagas.

CUSTOMARY LAND RIGHTS OF THE AOS

The Aos are the most numerous tribe in Nagaland. According to the 1971 Census, the total Ao population was 7,016, which was 16.17 per cent of the total tribal population in the state. The district of Mokokchung has been the traditional habitat of the Aos.

In terms of customary ownership right, four categories of land, viz. (1) Private land, (ii) Clan land, (iii) Morung land, and (iv) Common village land had been found among the Aos by Mills during the early years of this century. Mills noted: When a village was founded each clan took a portion of the land and held it as common clan

land. Men cultivating a particular piece would acquire a prescriptive right in it....The result is that nowadays there is no cultivable land which is permanently clan land.

Mills further observed that if a man dies leaving no heirs his land becomes clan land, but probably only for a month or two, till the oldest man of the clan divides it up and it becomes private property again.

Thus among the Aos a kind of individual/private ownership had emerged in land within a broad framework of clan land. In a mono-clan village the distinction between clan land and village land obviously overlapped each other and the four-fold categorization of land is reduced to three for all practical purposes. Of course, villages having more than one clan follow this four-fold classification of land ownership.

Mills described the 'Morung' land as the land near the village on which timber and bamboos are grown for repairing the building.

The common village land usually consists of jungle unsuitable for cultivation falling within the village boundary. Any member of the village can use part of this village land against a contribution to the common village fund.

Mills hardly found any common rice land among the Aos. Communal ownership of rice land is not a rule but an exception. He noted that the Chungtias possess a big piece of land given by Changki for assistance in war which was held in common. When the time comes round to cultivate that block, anyone who wishes to do so clears a portion, paying as rent two loads of rice to the village fund.

Like other tribal communities of the region, private ownership right first appeared in movable properties which was then extended to immovables like land in the Ao society. Mills has noted that cattle, weapons, utensils and other movable property are privately owned by the Aos. Thus while private ownership has matured fully in movables, the same in case of immovables was under transition.

In the Ao society, inheritance follows the male line. Though a woman can possess property she cannot inherit it. Aos do not follow the law of primogeniture. All sons of a father inherit their paternal property equally.

CUSTOMARY LAND RIGHTS OF THE ANGAMIS

The Angamis belonged to the Tibeto-Burman sub-family and are believed to have immigrated into the Angami Hills from South-East Asia. According to the 1971 Census, they had a population of 43,994 persons which was 9.61 per cent of the total tribal population of Nagaland. Along with Zeliangs and Rengmas, the Angamis are living in the Kohima district.

About the customary land rights of the Angamis, Hutton observed, in 1921, that a series of cultivation by the same man in the same place appears to set up a private right in the particular plot, and it is no doubt in this way that private rights in land have arisen. In fact, two types of customary land ownership had been found among the Angamis, viz. private land and clan or village land. The second category of land ownership implicitly assumes that Angami villages are organised along clan lines. Of course, in case of poly clan villages, clan land would not be co-terminal with the village land and in such cases three-fold classification of land would be more meaningful instead of two.

Private land consists of terraced fields, wood plantations, gardens, building sites, and a greater part of jhum land. Hutton observed that these individual properties are 'subject to life interest mortgages' and 'may be sold or otherwise disposed of at the will of the owner'.

Like land reserved for thatching grass or for the preservation of cane, in several Angami villages certain amount of the jhum land is also treated as the common property of a clan or of the whole village. Hutton noted that the cultivation of land of this sort is settled either by a system of general consent, arrived at after much discussion and much searching of the heart, or by a system of grab under which the man who wishes to cultivate goes and sets a mark on the land of his choice, and provided no one else has been there before and that he has not attempted to get so much land as to deprive the other members of the clan of an opportunity to obtain a similar amount, his claim to cultivation that year and the following year is admitted.

Thus while the individual ownership right in terrace fields, house-sites, gardens and nearby wood plantations had matured fully, in case of jhum land it was under transition. In fact, jhuming is done collectively because it saves a vast deal of labour in felling trees, clearing shrubs, fencing and scaring birds. Indeed, a solitary patch jhumed by one household in the midst of a surrounding jungle would stand a poor chance of surviving the depredations of birds and beasts. Jhum land that has not yet the clan owning it, though with its consent it might be possible for a man to sell his share in the common rights.

Among the Aos a man could not bequeath his property to any person outside his clan. In normal circumstances, only the sons could inherit the property of the father and customs do not allow women to inherit family property. It is customary for a man to divide the bulk of his property during his lifetime. When the sons married and set up separate households, each received his portion of

the father's property and the youngest son usually inherited the remainder of the father's property including the house.

The above discussion may be considered as a general outline of the customary land rights of the Aos and Angamis in Nagaland. In fact, the customary rights of a particular tribe may vary from village to village. Apart from spatial variations, different sub-tribes have their own specificities regarding the use, occupancy and ownership of land. Setting aside the minor details, the broad framework of the customary land rights fits with the generalised outline sketched above.

LEGAL STATUS OF CUSTOMARY RIGHTS ON JHUMLAND

Before 1946, the land tenure system in the Naga hills (like other autonomous hill districts of Assam) was guided by Regulation V of the Chin Hill Regulation, 1896. Under this regulation, the rights of the village communities as well as of the individuals over their respective territories had been recognised. In 1946, a separate land regulation, viz. the Naga Hills Jhum Land Regulation, was made by the Governor of Assam which had been the first comprehensive land Act for the Naga hills. Till 1970, the land tenure system in Nagaland (consisting of the then Kohima and Mokokchung districts) was guided by the 1946 regulation, while the same for Tuensang area (which was a part of the then North East Frontier Agency till 1957) was guided by the Balipara/Tirap/Sadiya Frontier Tract Jhum Land Regulation, 1947. After the achievement of statehood in 1963, the Government of Nagaland had passed the Nagaland Jhumland Act, 1970, which brought the land in entire Nagaland under a single uniform regulation. In fact, the 1970 Act was primarily drawn from the 1946 Regulation.

As per the Nagaland Jhumland Act, 1970, which received the assent of the President of India on April 9, 1974 a customary right in Jhumland shall be deemed to be established in favour of an individual cultivator :

- a. if he has inherited the Jhumland in accordance with the local customs; or
- b. if he has purchased the land at any date before the commencement of this Act, and such purchase was not contrary to local custom; or
- c. if being a resident of a permanent village established with the prior approval of the Government he has brought the land under cultivation and the land had not been cultivated at anytime within thirty years preceding his bringing the same into cultivation.

The Act had recognised the individual right to transfer his jhumland to that extent where such transfers take place within the village as well as the community boundaries. For any transfer of the individual jhumland across the village or the community, prior permission from the village (as well as the District) authority is needed.

The Act recognised the right to lease to that extent where the lessor is, by reasons of age or infirmity, unable to cultivate or utilise it and the lessee is a member of the same village or community as the lessor.

Any unlawful transfer of jhumland by sale or lease shall be deemed to have been forfeited the land and in such case the land will revert back to the village council to which the transferor or lessor belongs.

The Act also empowered the Government to acquire any jhumland either for the purpose of public use or for the prevention of erosion and

protection of forests. In such cases prior show cause notice is to be issued and reasonable compensation is to be paid for the land acquired.

Thus, the Act, on the one hand, has recognised the customary tribal rights on land which have evolved through a long practice, and on the other, has established the authority of the Government over land besides the traditional village authority. It also recognised the right to develop terrace cultivation by the individuals on their jhumland. Once a terrace plot is developed, it does not come under the purview of the Act anymore. Individuals enjoy wider rights in terraced land than its jhum counterparts.

Besides the individual and clan forests, the existence of another category of forest land, known as the village forest, generally lying in the outskirts of a village, is also noticed. All the members of a village irrespective of their clan identity have equal rights on such village forest. Individuals could collect and extract minor forest products exclusively meant for domestic purposes. Without the consent of the village council forests are seldom exploited for commercial purposes.

Though there is a legal provision in the Nagaland Forest Act, 1968, for the creation of Village Forests none of the community forest is found to have been given any legal status. Moreover, even the state level breakup of unclassified forests into the village/community forest and individual forest is not available.

However, the 1968 Forest Act has recognised the customary tribal rights of pasture as well as the right to minor forest produce in the State Reserved Forest.

Forests are being exploited for both the purposes: commercial as well as household consumption. The extraction of timber for sale is

the main form of commercial use. On the contrary, extraction of bamboos for house-making and repairing, collection of minor forest products like edible roots, tubers, leaves, and wood for fuel are the main forms of household consumption.

Villagers are completely dependent on local forests for their fuel requirement. Throughout the year, they collect firewood from the nearby forests. Both males and females use to collect the minor forest products.

With the opening up of the territory and improvement in road communication, timber trade has become a lucrative business in Nagaland. Large scale felling of timber is noticed in the individually owned forests in the villages. It is learnt that the area under village or clan forest is decreasing day-by-day while the same for the individually owned forests is on the rise. This shows grabbing of the communal land by the individuals and fast change in the man-society relationship among the traditional tribal societies of Nagaland.

Conflicting perception of the ownership of land and forest in the state exists between the traditional tribal authority structure and the modern state structure. From the traditional point of view, people believe that the village council is the ultimate authority of all land and forest within the village. Since the traditional boundaries of different villages are mutually exhaustive, there is hardly any 'no-man's land' in between the villages. The area lying on the outskirts of a village, which apparently seem to be unoccupied, are actually a part of the village. Hence, the government cannot declare such unoccupied, mostly hilly, forest land as the property of the state.

In contrast to this traditional perception, the State's law categorically defined that the land at the disposal of the Government means land in respect of which no person has acquired:

- a. a permanent, heritable and transferable right of use and occupancy under any law for the time being in force, or
- b. any right created by the grant or lease made or continued by, or on behalf of, the Government not being vested in the Government for the purposes of the Central Government (The Nagaland Forest Act, 1968, Chapter I, Section 2). As per this definition of the Government Land, the unoccupied land and forest lying on the outskirts of a village, on which the Village Council claims to have its customary right may be treated as the property of the state.

This traditional perception of the ownership of land and forest among the local people has been the main obstacle which stands against any kind of cadastral survey or land records. Many of the educated households feel the necessity of having land records which, they think, will be beneficial for the people particularly in getting financial assistance from the banking institutions. But it appears that those who enjoy traditional authority in villages are reluctant in this regard for fear of losing mass of land which they claim is a part of the village for which no actual claimant is there. Thus, unless this contradiction is solved amicably, the much needed land records and cadastral survey cannot be undertaken in the villages of Nagaland.

Though the Government of Nagaland has passed three important Acts, viz. the Nagaland Land (Requisition and Acquisition) Act, 1965, the Nagaland Forest Act, 1968; the Nagaland Jhumland Act, 1970; and has adopted the Assam Land and Land Revenue Regulation, 1886, but till now, there is no land survey Act in the state which is essential for undertaking survey works in order to

prepare land records. Moreover, the Government of Nagaland has utterly failed to respond to the centrally sponsored scheme of the strengthening of revenue administration and updating of land records. While the scheme was introduced in 1986, it has been started in Nagaland during 1990-91. Since 1990-91, a total of Rs.31.70 lakhs came from the Centre in the form of grants-in-aid for the implementation of the scheme, but the Government of Nagaland could not utilise the fund. Only 20.72 lakhs, i.e., 65 per cent of the centrally released amount, was spent on the scheme. In its status paper, the Government of Nagaland has admitted that the response of the state towards land records and survey is very poor. The development role of the revenue administration and the land records system as a support for developmental activities are not recognised. So far about 3 per cent of the total area of the state has been surveyed and land records prepared.

The legal status of land has stood in the way of implementing the centrally sponsored developmental plans and resource utilisation by the different developmental organisations in the state. The Oil and Natural Gas Commission (ONGC) has identified a large tract of land near Dimapur where there is high possibility of the occurrence of mineral oils. The process of exploitation of oils from this place is disturbed while the local people opposed the acquisition of land by the ONGC. According to the Article 371(A) (Section (a) (iv) of the Constitution of India, no Act of Parliament in respect of ownership and transfer of land and its resources, shall apply to the state of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides. People have raised this issue in order to prevent the land acquisition for the exploitation of mineral oils by the ONGC. In spite of the Nagaland Land (Requisition and Acquisition) Act, 1965, which empowers the State Government to acquire land for this purpose, the resistance against such acquisition is gaining ground. For

the same reason, the work of the Doyang Hydro Electric Project in the Wokha district could not be started on time.

In Mokokchung district the government has established one coffee plantation farm where land has been acquired from the villagers. The villagers have leased out their land on profitable terms. In most cases, villagers have been provided with jobs in the farm against their contribution of land. As a result, no conflict has arisen in running the farm.

While the forest areas under Zeliang Range Council has been declared as Reserve Forest, the government entered into an agreement with the Council. According to the agreement, the Forest Department would only deduct the management cost of the Reserve Forest and the remaining part of the revenue would go to the account of the council.

Thus through a symbiotic process, which ensures the interests of both the traditional authority and the state, developmental programmes are being launched in Nagaland. This has substantially minimized the conflict between the two authorities.

The land tenure system in Nagaland is distinct from that in the rest of the country. This is because the ownership of land vests not in the state but in the people themselves. This has come about because of the historical factors that led to the formation of the state of Nagaland. As a response to the violent movement for self-determination by the Nagas, the Government of India has provided special Constitutional safeguards to protect the traditional rights and ways of life of the Nagas. This includes the right to ownership of land and its resources.

This legal safeguard alone may not be responsible for the absence of any alienation of tribal land, since in other parts of the country, the tribals have lost their land in spite of various protective legislations. The answer lies somewhere in the peculiar relationship between the Naga tribal and the non-tribal in Nagaland, in the given socio-economic environment of the state. In any conflict between a Naga and a non-tribal in Nagaland, the tribal stands at an advantage because of his numerical superiority, awareness of his rights and the accepted superiority of the tribal customary law over the statutory law.

This, and the Naga's attachment to his land as the only means of security are the reasons why, even in a situation as in the Jalukie valley, where non-tribals have been cultivating for the last three decades, there has been no alienation.

Yet there is a cause of alarm. The influx of the non-tribals into the agriculture sector, coupled with the inability of the tribes to manage on their own the modern trade and business does not augur well for the tribals' future. The tribals will not only have to diversify more rapidly than now into the non-agricultural sectors, they also have to take a long, hard look at the future of the agricultural economy.

The majority of the Nagas are dependent on the jhumming pattern of agriculture. Due to the rise in population and the consequent fall in the jhum cycle, the productivity of land has been falling. At the same time, it must be realised that it may not be possible nor even desirable to turn entirely towards terraced cultivation. It is, therefore, very important to explore means of improving the efficiency of jhumming by introducing new crops to increase the farmer's incomes and diverting the pressure on land to other productive employment.

Finally, a word about the Naga tribal leadership style. It is this leadership which can be depended upon for being far-sighted, community minded, economically and environmentally sound, and it is this leadership and the principles upon which it works that can ensure the progressive and productive utilization of the most important resource of the Nagas, viz. land.

In Nagaland, the land tenure system is distinct from the rest of the country in that the rights to land rest entirely with the people and not with the State. This has come about as a result of the historical factors leading to the formation of the State of Nagaland. As a response to the violent movement for self-determination by the Nagas, the Government of India provided special Constitutional guarantees to safeguard and protect the rights of the tribals, which included the right to ownership of land according to the traditional tribal customs.

RECOMMENDATIONS

The dispute between the traditional tribal authority and the state over land and forest need to be settled amicably for any meaningful and effective developmental planning in Nagaland. As the traditional tribal rights and sentiments are very strongly associated with the land and forests, the programmes of cadastral survey and the preparation of land records need to be launched without delay after paying adequate attention to the local sentiments.

In view of the fact that apart from legal shortcomings, a number of socio-economic, political, and ethnic factors are operating in an interlocking way behind the psychological barriers against land records a thorough study is needed in order to reveal these multifaceted factors and their inter-relations before chalking out any specific measures for land records in the state. As the issue of land

in Nagaland is very sensitive and as there is every possibility that any short-sighted measure may give birth to further hostility a well planned programme should be launched in order to convince the local people that land records are important for their own development.

The State Government should immediately come with a land survey Act in order to facilitate the future survey works in the state.

The Department of Land Records in the State should be strengthened with equipments and adequate staff both at the state as well as district levels. The programmes of survey and preparation of records should first be undertaken in the urban areas so that in case of any urgency the administrative officers can readily move to the spot in order to assist the survey team. Once it is done in urban areas, it will be easier, then, to launch the programme in rural areas.

For the success of the programmes undertaken in order to wean the jhumias in favour of TRC, horticulture etc. a huge investment is needed in the agricultural sector of the state. But due to the contradiction between the asset structure of tribal communities and security structure of the financial institutions, the much needed flow of finance could not be channelised to this end. Hence, efforts should be made to change the traditional asset structure in a way so as to match the security requirements of the financial institutions and facilitate the flow of finance to the agriculture sector.

In the hills of Nagaland, the development of horticulture is viewed as an alternative to the ecologically disastrous shifting cultivation. As the state has congenial climatic conditions for the development of horticulture, in many areas local people have spontaneously responded to this programme. But lack of marketing facilities is frustrating the growth of horticulture in many areas. Immediate

measures should be taken up for the establishment of a few more processing units in order to boost up the demand and ensure remunerative price of horticultural products.

Although there is legal provision in the Nagaland Forest Act, 1968, for the creation of Village Forest, little attempts have been made in this respect. The customary community forests may be given legal status by converting them into Village Forests as per the Forest Act. Once this is done, the Village Forests under the management of village bodies will prevent the deforestation as well as unlawful encroachment. The programmes of afforestation may also be launched in association with the village bodies.

The Forest Department should attempt to bring more forest areas under its active supervision in such a way that it also yields direct benefits to the local people as well. The example of the conversion of forest areas under the Zeliang Council into Reserve Forest may be followed wherever possible within the state. Since such programmes protect both man and environment simultaneously, and do not suffer from illusions of "environmental idealism," it is less likely that if pursued with proper care they will be resented by the local people.

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ORISSA

Land alienation in the Scheduled Areas of Orissa is controlled by Regulation II/1956 and the Amendment Act, 1975. Prior to the enactment of Regulation II/56, the agency areas of Koraput and Ganjam districts were covered by the Agency Tracts Interests and Land Transfer Act (Act 1 of 1977). An Amendment was introduced in 1973 and to remove further ambiguities the Orissa Land Reforms Act, 1974 was enacted.

A significant proportion of the land is lost due to distress sale. This factor is further compounded by yet another equally important component, namely productivity. To a large extent, the land possessed by the tribals is either of the 'C' or 'D' grade, depending exclusively on the vicissitudes of the weather. As a result, the productivity of this land is so low that it becomes too uneconomical to cultivate it. The problem is particularly acute in the drought prone areas like those of Kalahandi district. Several blocks in this district, such as Khariar, Boden, etc. are under chronic drought conditions. Under these conditions, the land is highly unproductive and agriculture highly labour intensive. Given these drought conditions and the usual unpredictability of the rains, the input-output ratio is most unfavourable to the marginal and small farmers. There is hardly any incentive to the owner-cultivator who sees no way out but to fall a prey to the parasitic nature of the middlemen. This has a demoralising effect on the small cultivator who then prefers to dispose off his land and seek other avenues where he can put his labour to potentially more productive use. Consequently, thousands of small cultivators from this region have sold off their lands and migrated to nearby towns and cities. Distress sale is also resorted to for the purposes of meeting court fees and other expenses incurred in following up legal action.

A large proportion of the tribal land is lost to non-tribal moneylenders, who use the mechanism of land mortgage to grab their land. The tribals on the other hand, given the bureaucratic processes involved in obtaining loans from government financial institutions, prefer to approach the moneylender or other private and unofficial credit sources. His easy accessibility and promptness in giving credit are the two important factors that make the moneylender more attractive than any government financial institution. He is the one who in the final analysis is perceived as the "rescuer" ready to come to their aid at the most crucial times and in moments of emergencies. Given the utter lack of infrastructure even for the most basic amenities, such occurrences are a rather common phenomenon in the remote villages of India.

The situation is further aggravated by the policies of the financial institutions which restrict the credit disbursement to only agricultural and other productive investment.

Rarely if ever, any mortgaged land goes back to its legal owner even after the expiry of the prescribed loan period either because of the inability of the debtor to repay or because he goes in for another loan, a situation into which he is forced because of his being dispossessed of his land, his only source of survival, as a result of his previous loan. So the chain of loans continues and while the debtor is unable to extricate himself from this vicious circle, the creditor retains the actual possession of his land.

The situation of tribal land alienation seems to be at least as severe in Orissa as in other States, and in some cases more so, though the process itself started much later than elsewhere. In Rajasthan, it began already in the 16th century under the Hindu kings long before the arrival of the British in Chotanagpur with the permanent

settlement and in Andhra in the 1830s. In Orissa, it seems to have begun only marginally in the 19th century, or for that matter before Independence, as part of the process in Andhra affecting the neighbouring districts of Koraput and Berahampur. The major problem began only after Independence.

All the processes concerning tribal land alienation are present also in Orissa. However, in most of tribal Orissa it begins with external control over their resources like forests and not direct landlordism as in the British age. The reason is precisely because the process began much later than in Chotanagpur and Andhra where tribal land alienation was the direct consequence of the Permanent Settlement of 1793 or the ryotwari system. As such in Orissa tribal land takeover was through the control of resources for national development and not for taxes and raw materials for the Industrial Revolution in Britain. But the basic process is the same because in both the cases the territory they inhabit is used as an extraction zone for the development of groups outside the region. In some cases, the process is set in motion by deforestation and in others by displacement by development projects. Over and above these, one also sees collusion between the locally powerful persons and the officials, encroachment by exploiting the powerlessness and illiteracy of the tribals.

ORISSA REGULATION NO. 2 OF 1956

The Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956.

The object of the Regulation is to control and check the transfers of immovable property in the Scheduled Areas of the State of Orissa by the Scheduled Tribes.

"Scheduled Areas" and "Scheduled Tribes" shall, respectively mean the Scheduled Areas specified in respect of the State of Orissa in the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 and the "Scheduled Tribes" specified in respect of the State of Orissa in the Constitution (Scheduled Tribes) Order, 1950, as modified from time-to-time.

"Transfer of Immovable Property" means mortgage with or without possession, lease, sale, gift, exchange or any other dealings with such property not being a testamentary disposition and includes a charge or contract relating to such property.

MAIN PROVISIONS OF THE REGULATION

3 (1) Notwithstanding anything contained in any law for the time being in force, any transfer of immovable property situated within a Scheduled Area, by a member of a Scheduled Tribe shall be absolutely null and void and of no force or effect whatsoever unless made in favour of another member of a Scheduled tribe or with the previous consent in writing of the competent authority.

Provided that nothing in this sub-section shall apply to any transfer by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for any agricultural purpose.

Provided further that in execution of any decree for the realisation of the mortgage money no property mortgaged as aforesaid shall be sold in favour of any person not being a member of the Scheduled Tribes without the previous consent in writing of the competent authority.

Explanation- For the purposes of this sub-section, a transfer of immovable property in favour of female member of a Scheduled Tribe who is married to a person who does not belong to any Scheduled Tribe, shall be deemed to be a transfer made in favour of a person not belonging to a Scheduled Tribe.

(2) Where a transfer of immovable property is made in contravention of sub-section (1) the competent authority may, either on application by any one interested therein or on his own motion and after giving the parties an opportunity of being heard order ejectment against any person in possession of the property claiming under the transfer and shall cause restoration of possession of such property to the transferor or his heirs. In causing such restoration of possession the competent authority may take such steps as may be necessary for securing compliance with the said order or preventing any breach of peace.

Provided that if the competent authority is of the opinion that the restoration of possession of immovable property to the transferor or his heirs is not reasonable or practicable he shall record his reasons therefor and shall, subject to the control of State Government, settle the said property with another member of a Scheduled Tribe or in the absence of any such member, with any other person in accordance with the provisions contained in the Orissa Government Land Settlement Act, 1962.

Explanation- Restoration of possession means actual delivery of possession by the competent authority to the transferor or his heir.

(3) Subject to such conditions as may be prescribed an appeal if preferred within thirty days of the date of the order under sub-section (2) shall, if made by the Collector lie to the Board of Revenue and if made by any other competent authority to the

Collector or any other officer specially empowered by the State Government in this behalf.

(4) Subject to the provisions of sub-section (3) the decision of the competent authority under sub-section (2) shall be final and shall not be challenged in a court of law.

3-A (1) Where a person is found to be in unauthorised occupation of any immovable property of a member of the Scheduled Tribes by way of trespass or otherwise, the competent authority may, either on application by the owner or any person interested therein, or on his own motion, and after giving the parties concerned an opportunity of being heard, order ejection of the person so found to be in unauthorised occupation and shall cause restoration of possession of such property to the said member of the Scheduled Tribes or to his heirs.

(2) The provisions contained in sub-sections (2), (3) and (4) of section 3 shall, mutatis mutandis, apply to the proceedings instituted or initiated under sub-section (1).

4. Notwithstanding anything contained in the Indian Registration Act, 1908 no deed of transfer of any immovable property executed in contravention of the provisions of this Regulation shall be accepted for Registration.

5. (1) No surrender or relinquishment of any holding or a part of a holding by a tenant to a landlord under any law for the time being in force and applicable to such tenancy, such tenant being a member of a Scheduled Tribe, shall be valid unless after such surrender or relinquishment the landlord thereof by whatever name called either settles the said holding or part of the holding as the case may be, with another member of a Scheduled Tribe or else retains it in his

possession or settles it with any other person with the approval of the competent authority when such member of a Scheduled Tribe is not available.

(2) Any surrender or relinquishment shall be deemed to be a transfer of immovable property within the meaning of this Regulation and except as otherwise provided in sub-section (1) the other provisions of this Regulation shall, so far as may be, applied.

(3) Nothing in this section shall apply to any tenant holding immediately under the State Government.

6. In execution of a money-decree against a member of a Scheduled Tribe, no right, title or interests held by him in any immovable property within any Scheduled Area shall be liable to be attached and sold except as prescribed.

(1) If, after the commencement of this Regulation, any person, who is not a member of a Scheduled Tribe is found to be in possession of any immovable property in contravention of the provisions of this Regulation, such person shall, without prejudice to his liability to ejection under sub-section (2) of section 3, be also liable to a penalty of an amount not exceeding two hundred rupees per acre of such immovable property for each year or any part thereof during which his unlawful possession continues.

(2) Such penalty may be imposed by the competent authority ordering ejection under sub-section (2) of section 3 and shall be recoverable as an arrear of land revenue and such portion of the penalty as the competent authority may order, shall be paid to the transferor or his heir.

7A. Whoever, after having been evicted under any provision of this Regulation from any immovable property of a member of any Scheduled Tribes, reoccupies the same without a valid transfer made in his favour, shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees, or with both.

7B. Notwithstanding anything contained in any law for the time being in force, where a transfer of immovable property is found to have been made in contravention of the provisions of section 3 and the transferee or any other person in possession of the property has been evicted therefrom under the said section, the transferee shall not be entitled to the refund of any amount paid by him to the transferor by way of consideration for the transfer.

7C. Notwithstanding anything contained in any other law for the time being in force-

- (a) if in any proceedings under this regulation the validity of the transfer or relinquishment of any immovable property is called in question or if such proceedings are for the recovery of possession of immovable property, the burden of proving that the transfer or relinquishment was valid shall lie on the transferee,
- (b) the Court shall, in any suit or proceeding relating to the transfer of immovable property of a member of the Scheduled Tribes, have power to require any fact expressly or impliedly admitted by such member to be proved otherwise than by mere admission.

7D. In the Limitation Act, 1963 in its application to Scheduled Areas in the Schedule, after the words "twelve years" occurring in the second column against article 65, the words, brackets and figure

"but thirty years in relation to immovable property belonging to a member of a Scheduled Tribe specified in respect of the State of Orissa in the Constitution (Scheduled Tribes) Order, 1950" as modified from time to time shall be added.

8. (1) The State Government may, from time to time, make rules consistent with the provisions of this Regulation to carry out the purposes thereof.

(2) All rules made under this section shall be published in the Gazette and on such publication shall have the effect as if enacted under this Regulation.

On and from the date of the commencement of this Regulation the Agency Tracts Interest and Land Transfer Act, 1917 stood repealed.

The Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Rules, 1959 came as a sequel to the Regulation of 1956.

Other related legislative measures include-

1. The Orissa (Scheduled Areas) Debt Relief Regulation, 1958.
2. The Orissa Scheduled Areas Exercise of Criminal Powers Validation Regulation, 1963.
3. The Orissa (Scheduled Areas) Money Lenders Regulation, 1967.
4. The Orissa (Scheduled Areas) Money Lenders Rules, 1970

THE ORISSA LAND REFORMS ACT, 1960

22. Restriction on alienation of land by Scheduled Tribes- (1) Any transfer of holding or part thereof by a raiyat, belonging to a Scheduled Tribe shall be void except where it is in favour of-

- (a) a person belonging to a Scheduled Tribe; or
- (b) a person not belonging to a Scheduled Tribe when such transfer is made with the previous permission in writing of the Revenue Officer;

Provided that in case of a transfer by sale, the Revenue Officer shall not grant such permission unless he is satisfied that a purchaser belonging to a Scheduled Tribe willing to pay the market price for the land is not available, and in case of gift unless he is satisfied about the bonafides thereof.

(2) The State Government may, having regard to the law and custom applicable to any area prior to the date of commencement of this Act by notification, direct that the restrictions provided in sub-section (1) shall not apply to lands situated in such areas or belonging to any particular tribe throughout the State or in any part of it.

(3) Except with the written permission of the Revenue Officer, no such holding shall be sold in execution of a decree to any person not belonging to a Scheduled Tribe.

(4) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of Clause (a) to Clause (e) of Sub-section (1) of Section 17 of the Registration Act, 1908 (16 to 1908) purports to effect transfer of a holding or part thereof by a raiyat belonging to a Scheduled Tribe, no Registering Officer appointed under that Act shall register any such documents, unless such document is accompanied by the written permission of the Revenue Officer for such transfer.

22-A. Surrender or abandonment by raiyat or tenant- (1) No surrender to the landlord or abandonment of any holding of any part thereof by a raiyat or a tenant shall be valid unless such surrender or abandonment has been previously approved by the Revenue Officer.

(2) Any raiyat or tenant desiring to surrender or abandon his holding or any part thereof may furnish information thereof in writing to the Revenue Officer.

(3) On receipt of information under Sub-section (2), the Revenue Officer may, after making or causing to be made such inquiry and in such manner, as may be prescribed, either approve or disapprove the proposed surrender or abandonment.

Provided that no surrender or abandonment shall be disapproved unless the raiyat or tenant, as the case may be, has been given a reasonable opportunity of being heard in the matter.

(4) Where the surrender or abandonment of any holding or part thereof is approved by the Revenue Officer under this Section the holding or part thereof so surrendered or abandoned shall be settled by the Government.

(i) where such surrender or abandonment was made by a person belonging to a Scheduled Tribe, with another person belonging to the Scheduled Tribe: or

(ii) in a case where no person belonging to a Scheduled Tribe is available or willing to take settlement under Clause (I) or in any other case, with any other person in accordance with the priorities specified in Sub-section (2) of Section 51.

(5) Where any raiyat or tenant surrenders or abandons his holding or any part thereof without the previous approval of the Revenue Officer and the holding or part thereof so surrendered or abandoned is taken possession of by the landlord, then, it shall be competent for the Revenue Officer (after giving to the landlord an opportunity of being heard) to impose on the landlord a penalty of an amount not exceeding two hundred rupees per acre of the land so surrendered or abandoned for each year, or any part thereof, during which the possession is contained.

23. Effect of transfer in contravention of Section 22-(1) In the case of any transfer in contravention of the provisions of Sub-section (1) of Section 22 the Revenue Officer on his own information, or on the application of any person interested in the land may issue notice in the prescribed manner calling upon the transferor and transferee to show cause why the transfer should not be declared invalid.

(2) After holding such enquiry as the Revenue Officer deems fit and after hearing the persons interested, he may declare such transfer to be invalid and impose on the transferee penalty of an amount not exceeding two hundred rupees per acre of the land so transferred for each year or any part thereof during which, the possession is continued in pursuance of the transfer which has been declared to be invalid and may also order such portion of the penalty as he deems fit, to be paid to the transferor or his heir.

(3) On a declaration being made under Sub-section (2) the Revenue Officer suo-motu or on the application of any person interested cause restoration of the property to the transferor or his heirs and for the purpose may take such steps as may be necessary for compliance with the said order of preventing any breach of peace.

Provided that if the Revenue Officer is of the holding that the restoration of the property is not reasonably practicable, he shall record his reasons therefor and shall, subject to the control of Government settle the said property with another member of a Scheduled Tribe or in the absence of any such member, with any other person in accordance with the provisions contained in the Orissa Government Land Settlement Act, 1962 (33 of 1962).

Explanation- Restoration of the property means actual delivery of possession of the property to the transferor or his heir.

(4) Where any transfer is declared under this section to be invalid and the transferee or any other person in possession of the property has been evicted therefrom the transferee shall not be entitled to the refund of any amount paid by him to the transferor by way of consideration for the transfer.

23-A. Eviction of person in unauthorised occupation of property- Where any person is found to be in unauthorised occupation of the whole or part of a holding of a raiyat belonging to a Scheduled Caste or of a raiyat belonging to a Scheduled Tribe within any part of the state other than a Scheduled Area, by way of trespass or otherwise, the Revenue Officer may either on application by the owner or any person interested therein, or on his own motion and after giving the parties concerned an opportunity of being heard, order eviction of the person so found to be in unauthorised occupation and shall cause restoration of the property to the said raiyat or to his heirs in accordance with the provisions of sub-section (3) of Section 23.

23-B. Burden of proof and amendment of Limitation Act, 1963 in its application to proceedings under Section 23-(1) If under any proceedings under Section 23, the validity of the transfer of any

holding or any part thereof, is called in question, or if such proceedings are for the recovery of possession of such holding, or part thereof, the burden of proving that the transfer was valid shall, notwithstanding anything contained in any other law for the time being in force, lie on the transferee.

(2) In the Limitation Act, 1963 in its application to proceeding under Section 23-B, and under Section 23-A in the Schedule, after the words "twelve years" occurring in the Second Column against Article 65 the words, brackets and figures "but thirty years in the case of immovable property belonging to a member of a Scheduled Tribe or a Scheduled Caste, specified in relation to the State of Orissa in the Constitution (Scheduled Tribes) Order, 1950 or the Constitution (Scheduled Castes) Order, 1950 as the case may be, " shall be inserted.

RECOMMENDATIONS

The following recommendations on tribal land and forest rights were made at a workshop held at the Gopabandhu Academy of Administration, Bhubaneswar from February 4 to 6, 1993:

1. A comprehensive set of measures should be undertaken involving legislative, administrative and public education measures to ensure the rights of the tribals over land, forest and water and minor mineral resources. These rights should be conserved under Article 21 of the Constitution of India along with its interpretation by the Supreme Court which includes essential conditions for life with human dignity.
 - a. The Forest Conservation Act, 1980 should be suitably amended to enable the administration to allot actual non-

forest areas which were recorded as forest of the tribals during the settlement.

- b. The existing laws should be suitably amended to facilitate the utilization of minor forest produce by the tribals by giving them full rights over minor forest produce (in recent years several schemes have been launched which have actually restricted the access of the tribals to utilize minor forest produce).
 - c. Steps should be taken to strengthen regulation through the land alienation laws of the tribals. Besides, appropriate steps should be taken to eliminate the causes of land alienation. The causes relate to poverty, indebtedness, family ritual, marriage and manipulation by powerful interests. Relevant Acts such as Land Reforms Act and the Central Land Acquisition Act should be suitably amended.
 - d. Legal literacy programmes to popularise the rights of tribals under law should be launched. Legal aid cells should be set up at the district, sub-division and block and the panchayat levels in order to make the tribals aware of their rights. The legal rights should be interpreted keeping in view the framework of customary rights of the tribals. The educational campaign in this context should be carried out in the local tribal languages, so that the tribals are able to appreciate.
2. Administrative measures should aim at collecting accurate information on the existing situation, plugging the loopholes in the administrative process and responding to the tribal people's needs through the process of implementation.

- a. A comprehensive survey and settlement of the tribal sub-plan areas should be carried out using modern survey methods in minimum time period. In this effort, administrators as well as scholars and voluntary agencies should be involved. As a part of the process the local situation of encroachment/occupation should be clearly investigated and administratively settled in favour of the eligible tribals. The pre-settlement leases should be regularised by authorising the Tehsildar to make corrections in the record of rights as per the Orissa Mutation Manual.
- b. The framework guiding the survey should be based upon the specific forms of property rights operative in the tribal areas namely, customary rights over forest and land belonging to the local communities as well as individual. In this process, attention should be paid to the recognition of the rights over community property resources.
- c. Several development projects have been launched involving the acquisition of tribal land by the Government and private agencies. The process of acquisition should involve consultation with the affected tribal people through their institutions like the Panchayat and the Gram Sabha.
- d. Displacement and rehabilitation programmes of tribals should be re-examined; where displacement becomes inevitable, the tribal community should be re-settled as a village community, with adequate land in similar environment rather than mere monetary compensation given to the individual families.
- e. The construction of big dams and other mega projects should be reviewed keeping in view the social, economic and cultural consequences for the tribals. The development

- strategy should be re-oriented to restore the rights of the tribals over natural resources especially their rights to land and forest enabling them to manage the land and forest resources available.
- f. The discretionary power given to the Governor with reference to the scheduled areas in order to protect the rights of the tribals in the face of the contrary implications of certain legal provisions, should be exercised as and when necessary.
- g. For administrative convenience and effective implementation of the land reforms programmes, the boundary of the Block should be conterminous with that of the Tehsil.
- h. In order to integrate the land reforms programmes with the tribal development programmes, there should be an umbrella agency at the Sub-Divisional level combining revenue and developmental agencies.
- i. In order to utilize the expertise of scholars and social workers, there should be regular consultation between the administrators and researchers and social activists at the Sub-Divisional, District and State levels through seminars, research projects, and evaluation studies.
- j. Women should be given ownership pattas in the tribal areas.
- k. In the areas where shifting cultivation is an important agricultural activity, the tribals should be given ownership rights of the lands cultivated by them traditionally. The documents of the ownership of such lands should be handed over to them.

3. There should be increase an in awareness programmes and political mobilization of the tribal people.
 - a. A public education campaign with printed literature in popular language and village level campaigns should be launched.
 - b. The Panchayats and Gram Sabhas should be activated to make tribals aware of their legal rights and assess the progress of various land reforms and tribal development programmes. Their recommendations should be respected by the appropriate authorities.
4. The scholars in the universities and the research institutions should be closely associated with the studies on tribal land alienation and protection of the forest rights of the tribals and other developmental issues.
 - a. The existing research and data base on land situation in Orissa especially in the tribal areas is grossly inadequate. Hence, the research input into policy making has been extremely meagre. A comprehensive research and database building programme should be prepared with a view to promoting tribal rights and tribal development.
 - b. There should be critical evaluation of the existing programme of experiments on transition from shifting cultivation to settled cultivation. The areas with success stories may be evaluated to examine the replicability in other areas where shifting cultivation is predominant. The cultural context of shifting cultivation should be borne in mind while attempting a transition from shifting cultivation to settled cultivation.
- c. Survey of land, forests and other economic activities should be undertaken using rigorous social science methods.
- d. Integrated social science perspective involving anthropological, economic, legal and political dimensions should be undertaken to prepare complete profile of the tribal areas.
- e. Special studies on evaluation of specific policies relating to forest, distribution of Government lands, rehabilitation and such other significant dimensions should be undertaken.
- f. A documentation and data base programme with facilities for constant updating with All India comparative information on tribal land, forest and development issues should be built up and made accessible to administrators, scholars and social workers.

RAJASTHAN

The social structures in Rajasthan have been extremely feudal. The erstwhile states of Rajputana, dominated by the Jagirdari and Zamindari systems, witnessed exploitation through rack-renting and illegal eviction. As V. Srinivas explains in his “ Tribal Land Alienation in Rajasthan” (Land Reforms in India- Rajasthan: Feudalism and Change-LBSNAA, Mussoorie: 1995), the forest-based hill-borne economies of the tribals underwent massive changes with their migration to the plains and encapsulation by the upper caste Hindus. Despite the fact that some of the tribals like Bhils and Meenas were accorded Jagirdari status, the exploitation of the tribal peasantry continued. This period witnessed antiquated practices of agriculture like multiple sub-leases and usufructuary mortgages, and a totally non-monetized wage employment and a master-serf relationship oriented attitude towards agriculture existed.

As per the Rajasthan Tenancy Act, 1955, no peasant can acquire permanent ownership rights over the land. The entire land under Section 7 is vested in the tehsildar as landholder with only tenancy (Khatadari) rights being devolved.

The Rajasthan Tenancy Act through its Section 42 tried to protect the lands of the tribals and the scheduled caste persons from falling into the hands of the non-SCs and non-STs. However, as Srilata Swaminathan and M. Chaudhary point out in “ Some Problems of Land Reforms in Tribal Areas of Rajasthan” (in Land Reforms in India- Rajasthan: Feudalism and Change- LBSNAA, Mussoorie: 1995), it was like shutting the stable door after the horse had been stolen. With the active connivance of the revenue officials the section has been easily infringed even after 1955 by (a) getting false

registrations done on stamp paper, dating them before 1955; and (b) getting the land transferred into the name of another tribal who was either fictitious, dead or acting for a non-tribal. Much of the best and most fertile lands belonging to the tribals have been lost this way.

More than half of the lands were jagirdari lands and the names of tenants and sub-tenants were never recorded. The tribal cultivators have great trouble obtaining tenancy right over their lands even though they might have cultivated it for generations. There was also the constraint of lands being held by tribal families according to their physical strength. All the lands were never cultivated and much was left as forest, scrub and pasture while the lands were ploughed rotationally so that there were always lands lying fallow. Land owned by tribals have never been properly recorded. The poor state of records and maps increases the hardship of the poor peasant.

Since about 1975, the maintenance of Kast Girdavari records by the tehsil officials has been altogether stopped. These records used to show who the actual tiller of every cultivated plot was. It was on the basis of these records that Operation Barga was carried out in West Bengal. In Rajasthan, many poor tribal cultivators could prove that they were the actual tillers of the land even though these records were not very well maintained and were open to manipulation like all other records. Technically, once a tribal could prove that he had been continuously cultivating a plot for 10 years then he could get legal possession of it even if it was in the name of someone else. After the stoppage of the maintenance of Kast-Girdavari, the non-cultivating owners of land and the absentee landlords would not face the threat of losing their lands.

The following is a gist of the relevant provisions with regard to the transfer of tenancy rights, ejection for illegal transfer or sub-letting and ejection of certain trespassers as per the Rajasthan Tenancy Act, 1955-

42. **General restrictions on sale, gift, bequest-** The sale, gift or bequest by a Khatedar tenant of his interest in the whole or part of his holding shall be void if-

- (a) Deleted.
- (b) Such sale, gift or bequest is by a member of Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of a Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe.
- (bb) Such sale, gift or bequest, notwithstanding anything contained in clause (b), is by a member of the Saharia Scheduled Tribe in favour of a person who is not a member of the said Saharia Tribe.

In a case law (Bhorilal vs. Ram Niwas, 1993 RRD 94) it was held that sale by a member of the Scheduled Tribe to a member of the Scheduled Castes was void ab initio as per section 42 (b) of the Rajasthan Tenancy Act.

In the event of the sale being against the provisions of section 42 of the Act, it is the land holder who can initiate proceedings under section 175 of the Act against both the transferor and the transferee and both are liable to be ejected if the application under S. 175 is granted.

It is important to appreciate the intention of the legislature while legislating this provision. In the social milieu, it was a common practice that the members of the scheduled castes who were also socially down-trodden, were, either through coercion or intimidation, made to “sell” land to more powerful upper caste members of the society. Such sale was in real terms a “distress sale”. Therefore, to protect the interests of these weaker sections, whenever it has been proved that the members of the scheduled castes willingly and without coercion transferred the land, the land had been resumed by the State Government and re-allotted to the members of the scheduled castes. This stringent provision has been laid down in the Act because it is very difficult to distinguish between forced sale and the sale of free will (Ramswaroop vs. Gopichand & anr., 1995 RRD 396, at P. 399).

It cannot be a compromise between the member of the Scheduled Caste and the member of non-Scheduled Caste that the land of the plaintiff should be recorded in the name of the defendants who do not belong to that caste. On that count such compromise will be hit by the provisions of section 42 of the Act and even on the basis of such a compromise no khatedari rights can be conferred on the defendant who is not a member of the Scheduled Castes. In a certain case, not only the khatedari rights were conferred on the defendants against compromise made between the parties but a decree was also passed declaring the defendant as khatedars against the compromise and the law (Biassa vs. Mst. Bisso & ors. 1994 RRD 715, at pp. 716-717).

Under section 42 of the Rajasthan Tenancy Act, the lands of a member of the Scheduled Castes cannot be transferred to the members of the non-scheduled castes. Even the transfers through collusive decrees are void ab initio (Hanjaram & ors. vs. Ganpatlal & ors., 1995 RRD 485, at p. 487).

Any order against the provisions of section 42 is ab initio void and it can be set aside at any time. There is no time limit for setting aside the order (State of Raj. vs. Neenua & ors. 1995 RRD 372, at p. 374).

In a certain case the plaintiff is alleged to have sold the land in parts to 17 different persons and now he wants to invoke the provisions of section 42 of the Rajasthan Tenancy Act. If a transfer is made violating the provisions of Section 42, the proper remedy is for the state to proceed u/s 175 and resume the land after necessary legal proceedings. A person who has sold the property cannot turn down and take the benefits of Section 42 after receiving the money and handing over the possession to the purchaser. The purchaser has a right to protect his possession u/s 53-A of the Transfer of Property Act because he has been delivered with the possession under a document which is not a complete transfer deed (Kalyanmal vs. Surendra Kumar Jain, 1995 RRD 254 at pp. 254, 255).

- (1) A Khatedar tenant, or with the general or special permission of the State Government or any officer authorised by it in this behalf, a Ghair Khatedar tenant, may hypothecate or mortgage his interest in the whole or part of his holding for the purpose of obtaining loan from the State Government or Land Development Bank as defined in the Rajasthan Co-operative Societies Act, 1965 Act 13 of 1965 or a cooperative society registered or deemed to be registered as such under the said Act or any Scheduled Bank or any other institution notified by the State Government in that behalf.
- (2) A Khatedar tenant may transfer his interest in the whole or part of his holding in the form of usufructuary mortgage to any person but such mortgage must provide that the

mortgage amount shall be deemed to be paid off by the usufruct of the property within a specified time not exceeding five years, and in the absence of such period being specified such mortgage shall be deemed to be for five years.

Provided that on or after the publication of the Rajasthan Tenancy (Amendment) Act, 1970 in the Official Gazette, no Khatedar Tenant being a member of a Scheduled Caste or Scheduled Tribe shall so transfer his rights in the whole or a part of his holding to any person who is not a member of a Schedule Caste or a Scheduled Tribe.

88- Suits for declaration of right- (1) any person claiming to be a tenant or a co-tenant may sue for a declaration that he is a tenant or for a declaration of his share in such joint tenancy.

- (2) A tenant of Khudkasht may sue for a declaration that he is such a tenant.
- (3) A sub-tenant may sue the person from whom he holds for declaration that he is sub-tenant.
- (4) A landholder other than the State Government may sue a person claiming to be a tenant or co-tenant of a holding or a tenant of Khudkasht or a sub-tenant for a declaration of the right of such person.

175. Ejectment for illegal transfer or sub-letting- (1) If a tenant transfers or sub-lets, or executes an instrument purporting to transfer or sub-let, the whole or any part of his holding otherwise than in accordance with the provisions of this Act and the transferee or sub-lessees or the purported transferee or sub-lessee has entered upon or is in possession of the holding or any part of the holding, shall, on the application of the land holder, be liable to ejectment from the

area so transferred or sub-let or purported to be transferred or sub-let.

(4) If appearance is made within the time specified in the notice and the liability to ejectment is contested the court shall, on payment of the proper court fees, treat the application to be a suit and proceed with the case as a suit:

provided that in the event of the application having been made by a Tehsildar in respect of land held directly from the State Government no court-fee shall be payable.

4 (A) Notwithstanding anything to the contrary contained in sub-section (4), if the application is in respect of contravention of the provisions contained in section 42 or the proviso to sub-section (2) of section 43 of section 49A, the court shall, after giving reasonable opportunity to the parties of being heard conclude the inquiry in a summary manner and pass order, as far may be practicable, within a period of three months from the date of the appearance of the non-applicants from the area transferred or sub-let in contravention of the said provisions.

(5) If no such appearance is made or if appearance is made but the liability to ejectment is not contested the court shall pass such order on the application as it may deem proper.

176. Decree or order under section 175- A decree or order under section 175 may direct the ejectment of a tenant and his transferee or sub-lessee or purported transferee of sub-lessee from the area transferred or sub-let or purported to be transferred or sub-let otherwise than in accordance with the provisions of this Act.

183-A. Summary eviction of mortgagee on non-delivery of possession of land after the expiry of the period of mortgage- (1)

If the mortgagee does not deliver possession of the land as provided in sub sections (3), (4) or (4A) of section 43, the mortgagor may make an application within twelve years from the date of the expiry of the period of mortgage, and where such period is deemed to have expired under sub-section (4A) of section 43 before the commencement of the Rajasthan Tenancy (Amendment) Ordinance, 1978 within twelve years of such commencement, to the Assistant Collector within whose jurisdiction the land or major portion thereof is situate, and the Assistant Collector shall, after giving a reasonable opportunity to the parties of being heard, conclude the inquiry in a summary manner as far as may be practicable within a period of three months from the date of the appearance of the parties before it and after being satisfied that the mortgagor is entitled to recover possession of the land, pass an order of delivery of possession of the mortgagor.

(2) While passing the order under sub-section (1), the Assistant Collector may also determine the amount of mesne profits payable by the mortgagee to the mortgagor for the period the mortgagee has remained in possession of the land beyond the period specified in sub-sections (4) or (4-D) of Section 43 and the rate at which the mesne profit shall be payable in future till the mortgagee delivers possession of the land and order for the payment of the same.

183 B. Summary ejectment of trespassers of the land held by a member of a Scheduled Caste or a Scheduled Tribe - (1)

Notwithstanding contrary contained in any provision of this Act, a trespasser who has taken or retained possession without lawful authority of land held by a tenant belonging to the Scheduled Caste or Scheduled Tribe shall be liable to ejectment on an application of the persons or persons entitled to evict him or on the application, in

the prescribed manner, of a public servant authorised by the State Government in this behalf and shall be further liable to pay as penalty for each agricultural year during the whole or any part whereof he has been in such possession , a sum which may extend to fifty times the annual rent.

(2) The inquiry on an application under sub section (1) shall be made in a summary manner and shall be concluded, as far as practicable, within the prescribed period and after affording a reasonable opportunity of being heard to the person alleged to be trespasser.

185. Mode of execution of decree or order (1)- Except as otherwise provided in section 184, every decree or order of ejectment shall be enforced in accordance with provisions of the Code of Civil Procedure, 1908 (Central Act. of 1908), relating to the execution of decree for delivery of immovable property.

(2) Every sub-lessee or transferee whose interest is extinguished on the ejectment of his land holder or transferor shall, for the purpose of the execution of the decree or order for ejectment, be deemed to be a judgment debtor, but unless he offers resistance or obstruction to delivery of possession, he shall not be liable for costs.

Loopholes

A common method to circumvent law is to obtain a declaration of right under section 88 of the Rajasthan Tenancy Act. A person other than a tribal files a suit to the effect that he is in continuous possession of the land and the land had been entered in the name of the member of the scheduled castes/ tribes by mistake. The respondent gives his consent to the plaintiff and the declaration is made in favour of the person other than the scheduled caste/ tribe.

In most cases, actual possession of land of tribal by a non-tribal is regularized by circumventing the law in this manner. It has been found that such statements are totally against the entries in Khasra Girdawari. It may be mentioned that the name of the sub-tenant or the person in cultivating possession was duly entered in Girdawari upto the year 1961 and the name of the non-tribal is not there.

There is already a ban on sub-letting of land belonging to the tribal to others. As a necessary corollary it follows that such possession by a person other than scheduled caste/tribe should not be recognized. It can be provided in section 88 of the Rajasthan Tenancy Act that possession of land belonging to a member of the scheduled tribe by others shall not form the basis for a declaration under section 88 of the Rajasthan Tenancy Act.

Under the provisions of section 175 of the Rajasthan Tenancy Act, the tribal is liable to ejectment for transfer or sub-letting of land in violation of the statutory provision. This provision of ejectment should be made applicable to other persons only in the first instance and land should be restored to the tribal. The period of limitation for ejectment may also be suitably revised.

There are cases in which the purchases by non-tribals are made in the name of the members of a scheduled tribe. Such benami transfers should be prohibited by proper legislation.

The restoration of the land of a tribal from occupation by others is quite significant. A mechanism may be devised by which such cases of illegal occupation can be identified. Basically, it is the responsibility of the revenue staff to initiate action in such cases.

Section 183 (B) provides a summary remedy for the ejectment of trespassers who have trespassed on the land belonging to a member of

the scheduled tribes. Under the old enactment it was not possible for a member of the scheduled tribe to file a case against a trespasser as he had no power to admit him as a tenant. An amendment was brought in 1970 but the latest amendment has proved very helpful. In this context, it is suggested that all the proceedings in which the members of the scheduled tribes are involved, should be tried in a summary manner and time limit should be fixed.

Recommendations

1) The Revenue Department needs to issue strict instructions for recording possession during Girdawari operations in Jamabandi columns 16,24, 32, 40. Possession of tribal sub-tenant and other weaker sections should also be safeguarded along with preventive action against the alienation of lands held by tribals.

2) A register in proforma No. P-47 should be prescribed for fresh consolidated entries of the non-tribals in actual physical possession of lands owned by the tribal Khatedars as per Jamabandi. The Collectors may get village-wise list of such illegal possessions and take necessary action.

(3) A regular and systematic time-bound programme should be given to the existing revenue staff with the additional staff to be posted in the TSP districts for the detection of the cases of land alienation. It has been found that mutations of tribal Khatedari lands have been attested in favour of non-tribals till recently on the basis of pre-1966 sales of such lands for alleged value of less than Rs.100/- recorded in private bahi's (book) since any land valuing more than Rs. 100/- needs registration. The Collectors through Tehsildars may initiate action under section 175 of the Rajasthan Tenancy Act and sort out cases to be referred under section 232 to the Board of Revenue. The position of Girdawari (1956 to 1962)

and the list of persons depositing rent during these five years should be appended with the applications referred to as above.

(4) The sub-divisional officers have still been decreeing suits in favour of the non-tribals under section 88 of the Rajasthan Tenancy Act even though a tribal Khatedar was recorded as such during the last settlement and recorded in possession during Vikram Samvat 2012 to 2019 when Girdawari recorded the name of the actual person in possession of land or depositing rent himself. Tribal respondents, in case they do not contest the suits, should be presumed to be in collusion and the suit should be abandoned and possession reverted to the landholder. Since the lands are recorded as Khatedari of the tribals, any decree passing possession in favour of the non-tribal is collusive and ab-initio void under section 42 of the State Tenancy Act. Necessary amendment in section 88 regarding vesting of such lands in the government by the sub-divisional officer may also be incorporated. The Collectors may get lists prepared through them indicating the name of the village, the name of the original Khatedar, the name of the non-tribal transferee in whose favour a decree was passed under section 88 of the Tenancy Act, khasra number, area, and the name of the presiding officer alongwith the date of the decree. A similar list may also be prepared by every Tehsildar with the help of the Kanungo and Patwaris on the basis of the mutation registers or decree files in the respective tehsil.

(5) The Collectors of the districts in the Tribal Sub-Plan Area should be empowered to cancel wrong mutations and illegal decrees passed which are ab-initio void under section 42 of Tenancy Act.

(6) The Collectors of the districts in the TSP should be empowered to cancel wrong mutations and illegal decrees passed which ab-initio are void being in violation of section 42 of Tenancy Act, irrespective of the period of limitation in case they are done

after the Amendment Act 18 of 1965. Such lands may be vested in the state and allotted to the landless tribals. In case amendments regarding delegation of powers to Collectors is not possible, the powers of the Board of Revenue regarding deciding reference under section 232 of Revenue Act should be conferred on the Commissioner, Tribal Area Development, Udaipur, for the TSP areas.

(7) Limitation period of one year should be provided in item 5 of the schedule of suits appended to the Rajasthan Tenancy Act. At present, there is no limitation for declaration under section 88 of the Tenancy Act.

(8) The period of three months for deciding cases by the sub-divisional officers under section 175 of the Rajasthan Tenancy Act should be strictly adhered to. In case the party does not appear during three months, the sub-divisional officers must decide the case during the next three months by resorting to substituted service or spot decisions. Cases under section 175 should be kept for day to day hearing for expeditious disposal within the prescribed limit. Disciplinary action should be taken for the non-compliance of provisions of section 175. Collectors may get the list of such cases prepared along with the date of appearance of the respondent and the date of decision.

(9) Normally, there is no appeal against the order of the sub-divisional officer's rejection of applications of Tehsildars filed under section 175. Collectors may suo-moto call for rejected applications for review and make reference in suitable cases. Commissioner, Tribal Area Development may be vested with the powers of the Member, Board of Revenue, to decide such references made from the TSP Areas.

(10) Section 175 of the Rajasthan Tenancy Act should provide for the restoration of land originally held by the tribals to tribals on the pattern of the Maharashtra legislation. It provides for the restoration on payment of 48 times the land revenue in case the land had been sold for consolidation and free of cost in other cases.

(11) Section 42 must provide for six months' civil imprisonment and a fine of Rs.2,000 or both in case the land of the tribals is found in possession of the non-tribals in violation of the provisions of the Rajasthan Tenancy Act. The power should be exercisable by the sub-divisional officers. Simple reversion of land to the state under section 175 is in no way a deterrent in view of the fruits reaped during the intervening period by the person in possession. Moreover, only the fear of imprisonment will be a real deterrent for wealthy landlords or Sahukars.

Mortgage of the land of the tribals in favour of the non-tribal is also ab-initio void under section 43 of the Rajasthan Tenancy Act. Most of the mortgages are unwritten. Some sales are also benami. Hence, the fear of civil imprisonment regarding illegal possession should also be provided for.

CONCLUDING OBSERVATIONS

The Rajasthan Tenancy Act, like any other Act, is not without its loopholes. The revenue officials who implement the Act are said to have a partisan approach. The government lacks the 'will' to seriously implement the Act. The political parties adopt advantage perspective of considering the mortgagee- the landed class- as its clientele and the vote bank. Expenses and time involved in land litigation are huge. Inter-departmental claims and counter-claims regarding land are several. The whole issue of land restoration gets cloudy.

TAMIL NADU

The tribal's unwillingness or willy-nilly attitude towards getting the mortgaged land back or declaring the deal void is the worst bottleneck in the drive for land protection. However, there is the need to give a shake up to the whole Tenancy Act in the light of the feedback given by empirical researches and investigations.

There is no Act or legislation for dealing with tribal land alienation/ restoration in Tamil Nadu. Government Orders and the proceedings of the erstwhile Board of Revenue form the relevant instructions which are being followed on this subject. Extracts of the Board's standing Orders (now called Revenue Standing Orders) pertaining to the assignment of lands to Hill Tribes are as follows:

Hill Tribes – Conditional assignment – In the following cases, the assignment of land to Malayalis or Sholagas, as the case may be, shall be subject to the conditions that the land shall not be transferred by the assignees to any person outside the class to which they belong without the express sanction of the Divisional Officer, and that, if the land is transferred without such sanction or is attached and sold by any legal process, it shall be liable to resumption by the Divisional Officer without payment of any compensation whatever:

G.O.1197, dt. 25.5.20 G.O.Ms.Rev. 507, dt. 23.3.30
B.P.57, dt. 7.7.20 B.P. Mis. 29, dt. 3.4.30
G.O.Mis. 3316, Rev. dt. 5.9.50

Village green assigned to Malayalis on the Shevaroy's G.O.714, Rev. dt. 7.3.10 G.O.Ms. 3316, Rev dt. 5.9.58

Land assigned to Malayalis – (1) the Tenmalai hills in the Thiruvammanalai District.

(2) the Jarugumalai hills in the Salem taluk, Salem district;

- (3) the Chitteri hills in the Uttangarai Taluk, Dharmapuri District, excluding the villages of Ammapalayam and Kullampatti;
- (4) the Arunuttumalai hills in the Salem taluk and Bodamalai hills in Salem and Rasipuram taluk, Namakkal District.
- (5) the village Kil Avarai on the Peria Kalrayans in the Attur taluk, Salem district G.O.2082, Rev. dt. 29.5.18
- (6) the undermentioned villages on and near the Pachamalais and the Kollimalais in the Attur taluk, Salem District.

I. Pachamalai Hills

1. Pachamalai tarat
2. The surveyed hamlets of Valasaikallipatti and Vippantattai in the Krishnapuram tarat.
3. The surveyed hamlets of Velur (known as Karattur) and Manmalai (second bit) in the Gudamalai tarat.
4. Manmalai (first bit) tarat excluding Modukkupatti village.

II. Kollimalai Hills

5. Hamlets of Pilliarmathi, Saradimoolai and Kallipatti in Valacombai tarat.
G.O.Ms. 1703, Rev. dt. 2.6.1965 B.P. Press, 21(B) dt. 2.2.1965
B.P. Press, 25, dt. 12.10.50
6. Palattur tarat
B.P. Mis.1617, dt. 26.4.35 G.O.1749, Rev. dt. 16.6.17
G.O. Mis. 1858, Rev. dt. 7.8.59 B.P. Mis. 2839, dt. 1.12.22
G.O. Ms. 1455 Rev. dt. 30.7.30 B.P.Mis. 2515, dt. 25.8.30

7. The villages of Kombai, Tembaranadu and Vennadu on the Pachamalais in the Musiri taluk, Tiruchirapalli district; and.
8. The under mentioned nads and villages on the Kollimalais in the Namakkal and Rasipuram taluks, Namakkal District:

I. Namakkal taluk

1. Valavandi Nad
2. Valapur Nad
3. Gundur Nad
4. Tinnanur Nad
5. Arivur Nad
6. Devanur Nad
7. Selur Nad
8. Kunduni Nadu tarat
9. Alattur Nadu tarat
10. Tirupulli Nadu tarat
11. Edapalli Nadu tarat
12. Sittur Nadu tarat
13. Pirakarai Nadu tarat
14. Bail Nadu tarat
15. Unantangal tarat
16. The hamlets of Malayalapatti and Kappalutu of Karukudalpatty tarat.
17. The independently surveyed village Peruppan Solai and hamlets of Periakombai and Pudur Palapatti of Peruppan Solai tarat.
18. The independently surveyed hamlets of Mulaikurichi and Periyakurichi of the Mullukurichi tarat.
G.O. 1749, Rev. dt. 16.6.17 B.P. 129 dt. 20.6.18
G.O. 8858, Rev. dt. 7.8.19 B.P. Mis. 2839, dt. 1.12.22
B.P. Mis. 1617, dt. 26.4.35 G.O. Ms. 3316, Rev. dt. 5.9.58

II. Land assigned to the Sholagas in the Coimbatore District:

Note: (i) The assignments in the tracts mentioned above except in the cases coming under items (i) and (iii) will be restricted to the hill tribes (i.e. Malayalis living in those tracts). Lands in Pattur may, however, be assigned to the scheduled castes also subject to the conditions as regards inalienability referred.

(ii) the assignment to the Malaivasis of Elagiri and Javadu Hills in North Arcot District shall be subject to the special conditions that the lands shall not be transferred or alienated to any outsider. No relaxation of this condition shall be given by the assigning authority.

In the case of land assigned to Irulas, Kurumbars and Kotas in the Nilgiris district and to Paniars and Shola Nayakans, in Gudalur taluk of the same district, the assignment shall be subject to the following conditions:

1. The lands should be brought under cultivation within a period to be fixed by the Collector.
2. The lands should not be alienated within a period of two years.
3. The lands should not at any time be alienated to any person outside the class to which the assignees belong; and
4. If the land is alienated or is attached and sold by any legal process, it shall be liable to resumption by the Divisional Officer without payment of any compensation whatsoever.
G.O. Ms. 606, Rev. dt. 20.3.28 Boards' Re.B.7147-27-4, dt. 4.4.28 in B.P. Mis. 4046, dt. 30.11.28

Note: Assignments in Kallampalaiyam and Hallimoyar villages in the Nilgiris district will be made only to Irulas.

B.P. Press, 49, dt. 9.4.34 G.O. Ms. 613, Rev. dt. 24.3.34
G.O. Ms. 3316, Rev. dt. 5.9.58

Assignment of Lands to the Scheduled Tribes: In the matter of lands for cultivation purposes the concessions enjoyed by the Scheduled Castes as enumerated in R.S.O. No. 15-41, are extended to Scheduled Tribes also, subject to the modification that the maximum extent of land to be assigned to the Scheduled Tribes, will be 1.21.5 hectare of dry land, and 60.5 acres of wet land in hilly tracts, if sufficient lands are available. Any limitations imposed on the Scheduled Castes, along with the concessions, are applicable to the Scheduled Tribes also. The form of order of assignment to be used, is the same as for the Scheduled Castes, mentioned in clause (iii) above, which should be adopted with suitable modification, wherever necessary.

G.O. Ms. No. 4027, Rev. dt. 29.10.1956 B.P. Press No. 1, dt. 17.1.1959.

In a case of assignment made under these provisions, the land was sold after some years, to one who belonged to a community other than Adi Dravidar. The Tahsildar cancelled the assignment. The purchaser filed a writ petition No. 2928/81, which was dismissed by the High Court. A writ appeal in No. 6624/81, which was dismissed, the High Court held that in view of the settlement of law by the Supreme Court, and reiterated in Lingappa Pochanna Vs. the State of Maharashtra (A.I.R. 1985 S.C. 389), the restrictions imposed in Clause 9 of the special form D is Constitutionally valid.

W.A.624/88, Dated 22.1.1991 CLA's No. GI. 4868/90 dt. 15.7.1991.

Disposal of land in Hill and planting areas: (i) The disposal of land in certain hill and planting areas is governed by the following rules:-

A. Shevaroys, Nilgiri- Wynaad (Gudalur taluk), Masinigudi village, Ootacamund taluk and Arkode, Kadimamala, Nandipuram, Hallimayar, Kattampalayam villages.

Coonoor taluk: (i) Restriction on the assignment of certain kinds of lands in Salem district. No land of a steeper slope than 1 in 4 should be assigned in the hill areas of the Salem district.

(ii) Transfer of lands from poramboke to ayam:- The Collector is empowered to transfer poramboke lands to ayam upto 2.2.5 Hectares in each case without the special sanction of the Commissioner of Land Administration.

(iii) Disposal of application: The disposal of land in these areas is governed by the rules in these Standing Orders with the following modifications:-

(a) Who should dispose of applications: Applications for land should be disposed off by the Divisional Officer or the Collector. Where the prescribed limit is exceeding, the sanction of the Commissioner of Land Administration should be obtained.

(b) Notification of applications: Applications should not only be notified as provided by the rules in this Standing Order, but notice of applications should also be sent by registered post to owners or managers of estates adjoining or in the

immediate neighbourhood of the land applied for.

(c) Land value: The assignment in this area will be subject to the collection of current market value of the land and also the current market value of the trees if there are trees. In deserving cases, the Government may waive the whole or a portion of the land value or tree value.

(d) Rate of assessment:- The rate of assessment shall be the taram rate of the land or the special rate applicable to developed estate land, according to the method of assessing estates, which obtains in the area in question.

(e) Special concession: (i) Hill tribes-Assignment of land to Kotas, Irulas, Kurambars, Paniars and Shola Nayakans in the Gudalur taluk of the Nilgiris district and to the Paliyars and Pulayars of the Palani Hills in the Madurai district, will be free of initial payment. The same concession may also be granted to indigent persons of other classes at the discretion of the Collectors.

G.O. Ms. 1390, Rev. dt. 4.9.31 B.P. 79, dt. 11.9.31
G.O. Ms. Rev. dt. 5.9. 58

(2) Special Crops: In the Shevaroys, the assessment on land newly cultivated with rubber or tree cotton will be remitted for three complete years. This concession will not be applicable to a mixed crop, a part of which is in bearing. In the Shevaroys, the Nilgiris Wynaad and the Malabar Wynaad, the assignment on land newly cultivated again will be remitted for five complete years. The concessions referred to above apply to all lands in the tracts in question, on whatever tenure they may be held.

STUDY UNDERTAKEN BY “ACCORD”

This section is based on a report on tribal land alienation in Tamil Nadu prepared in December 1998 by ACCORD (Action for Community Organisation, Rehabilitation and Development) and Adivasi Munnetra Sangam (a tribal people’s organisation). The Indian Social Institute, New Delhi undertook a study on Tribal Land Alienation in various states of the country. This study was meant to be an input for policies on tribal land. The main areas of the study were the extent and the process of land alienation in the States, the laws in the States concerning tribal lands and their role in according protection to the tribals. This study being coordinated by the Indian Social Institute at the national level was done with the financial assistance of the Ministry of Rural Development, Government of India. Non Governmental Organisations working among the tribals in different parts of the country undertook this study in their respective states. ACCORD, an NGO working among the tribals of the Gudalur taluk in the Nilgiris district of Tamil Nadu coordinated this study in the state of Tamil Nadu.

The main objectives of the study are as follows:-

- a) To present a picture of the extent of tribal land alienation in the State of Tamil Nadu and to document the causes and processes of land alienation.
- b) To review the existing land laws and their effectiveness and to propose changes wherever required.
- c) To discuss and come up with viable processes to retrieve and restore the alienated land and to ensure that further alienation is stopped.
- d) To present suggestions for a National Policy on tribal land alienation.

The following table presents statistics on the tribal population in Tamil Nadu.

Tribal Population in Tamil Nadu

Name of the District	Population (1991)		
	Total	Tribal	% age
Madras	3841396	8067	0.21
Chengalpattu	4653593	57705	1.24
North Arcot	3026432	49936	1.65
Dharmapuri	2428596	47600	1.96
Thiruvannamalai	2042979	62924	3.04
South Arcot	4878433	58053	1.19
Salem	3896382	135984	3.49
Erode	2320263	19258	0.83
Nilgiri	710214	25071	3.53
Coimbatore	3508374	26313	0.75
Dindigul	1760601	9507	0.54
Tiruchirapalli	4138048	28139	0.68
Thanjavur	4531457	9969	0.22
Pudukottai	1327148	796	0.06
P M Thevar	1078190	1186	0.11
Madurai	3449662	12764	0.37
Virudhunagar	1565037	2974	0.19
Ramnathapuram	1144040	1602	0.14
Tuticorin	145520	3203	0.22
Tirunelveli	2501832	9007	0.26
Kanyakumari	1600349	5281	0.33
Total	54548546	575338	1.05

Source: Census of India, 1991

The Physical Setting

The tribal areas of Tamil Nadu can be broadly divided into two major geographical divisions viz. (1) The Eastern coast line (2) The mountainous region of the North and the West.

The ranges of the Western ghats, the Sahyadri hills, run southward along the western border of Tamil Nadu to end at the Cape Comorin, the southern most tip of the state. The Eastern ghats, originating in Orissa and passing through Andhra Pradesh, enter the state of Tamil Nadu and pass through the district of North Arcot, Salem and Coimbatore. They finally join the Western ghats to form the Nilgiris plateau.

The average elevation of the Eastern ghats is 2000 ft. and the highest peak is 6000 ft. This range is not continuous in Tamil Nadu. It ends with the Billy Rangan hills in Coimbatore before joining the Western ghats. No major rivers originate from these ranges.

The important hill ranges of Tamil Nadu are the Jawadhi hills and Yelagiri hills of North Arcot district, the Kalrayan hills of South Arcot, the Pachamalai, Kollimalai and Yercaus ranges of Salem, the Annamalai of Coimbatore, the Sitteri hills of Dharmapuri and the Palani hills of Madurai.

Tribes of Tamil Nadu

Name of the District	Name of the Tribe
Nilgiris	Kurumbas, Bettakurumbas, Mullukurumbas, Palkurumbas, Irula, Paniyas, Kattunaickens Kothas, Thodas.
Coimbatore	Sholagas, Irula
Erode	Sholagas, Uralis

Salem	Malayalis, Irulas, Kurumans
Dharmapuri	Malayalis
North Arcot	Malayalis, Irula
Thiruvannamalai	Malayalis
South Arcot	Malayalis
Tiruchirapalli	Malayalis
Pudukottai	Malayalis
Chenglepet	Polayar, Moopar, Muthuvas, Pallayat Irula, Paliyar, Kurumbas
Madurai	Pallayar, Paliyar, Pallar Kurumbar, Irular
Virudunagar	Paliyar
Tirunelveli	Kanikaran, Kanikkar
Kanyakumari	Kanikkar

Source: Census of India, 1991

The chief tribes of the Jawadhi and Yelagir hills are the Malayalis, Irulas and Kurumans.

The Shevaroy hills are divided by the Vanniar stream hills in Yercaud taluk and the Pachamalai of the Perambalur taluk of the then Tiruchirappalli district. This hilly area is contiguous with the Kolli hills. The major tribes found here are the Malayali, Irula and Kurumans.

Coimbatore district is bound on the North by the Billy Rangan hills and the Hassanur hills, Burgur hills of the Vellingiri and Bolumpatti hills again of the Western ghats. On the South lie the Annamalai hills in Madurai district. Tribes found here are the Irula, Sholagas and Malasars.

Paliyar, Pulayar and Muduvan tribes are found in the Palani hills.

The Setteri hills of Dharmapuri district are inhabited by Malayalis, Irulas and Kurumans.

The Nilgiri hills are formed at the junction of the ranges of the Eastern and Western ghats. It consists of the great plateau spread over an area of 35 miles length and 20 miles width at an altitude of 6500 ft. and three other tracts viz. (1) a strip of forest at the northern foot of the plateau (2) the Ouchterlony Valley on the west. (3) the South East Wynad. Tribes found in the district are Todas, Kurumbas, Paniyas, Kotas and Irulas.

The study undertaken by ACCORD and the Adivasi Munnetra Sangam covered the following areas:-

Details of the Surveyed Areas

Name of the District	Revenue Village	Tribes Surveyed	Total No. of Families Surveyed
Nilgiris	Erumad Munnanad Thennad	Bettakurumbas, Kattunaickens Mullukurumbas, Paniyas Irulas	633
Coimbatore	Veerapandi Karamadai Thinnanoorunadu	Irula	744
Erode	Kermalam Kuthialathur	Sholagas, Uralis	271
Salem	Danishpettai Kanavaipudhur Assanur	Malayalis, Kurumans	470

Dharmapuri	Pothakadu	Malayalis	112
Namakkal	Vazhaipurnadu Solurnadu	Malayalis, Kurumans	106
Chenglepet	Thiruvallur Kanjiapuram	Irula	234
North Arcot	Vellore	Irula	
Vizhupuram	Mandiyur Kandikal	Malayalis	631

Processes of Alienation: The various processes of alienation have been classified as: by way of sale, by mortgage/ lease, by cheating and by acquiring land.

- i) **Sale:** These cases were registered as sales, only because some money has been exchanged in the land transfer, but in no way can these sales be fair and not one case of a fair price being given for tribal land has come to notice.
- ii) **Cheatings:** Cases of alienation by fraudulent methods have been enumerated in this category. The methods include making tribal people sign on blank sheets of paper, forcible encroachments, threatening the tribal people to desert their landholdings, not returning patta papers which were left with the non-tribals for safekeeping etc.
- iii) **Mortgage/ Leases:-** The tribal lands are mortgaged or leased out to a non-tribal for a paltry sum and the non-tribal does not return the land even after the lease period is over.
- iv) **Acquiring of Land:-** Cases where Government departments like the Forest Department, have taken over tribal lands and planted forest species on them have been enumerated here. When loans taken by the tribal people have not been repaid their lands were taken over by the non-tribal. Such cases have also been registered under this head.

Causes of Alienation: The tribal people usually have non-tribal neighbours who are always ready to give them loans, knowing for sure that the tribal will never be able to repay it and a few strong arm tactics will ensure that the tribal land will be theirs. The need for money usually had been for the home needs, medical expenses, festivals, repaying the bank loans, clearing other debts and alcohol

Action taken:- Under this head, the respondents were asked questions on the nature of efforts taken by them to recover their alienated lands. The cases of restoration by organised and individual efforts have been low, since the legislation in Tamil Nadu does not give any special protection to the Adivasi lands.

Agents of Alienation: Non-tribals, government agencies and other tribals were the main agents who facilitated alienation of tribal lands.

Special Notes

- Even as late as in 1984, there was a case of 75 cents of lands being sold to a non-tribal for a mere Rs.200/-
- Though many said they had debts to repay, how they got into the debt was not reported initially. It was only on more questioning that alcohol was stated as being the reason.
- People have sold off their lands in pieces as and when money was required.
- There was a case of a non-tribal giving his cow to a tribal for taking care. The cow died and the tribal had to part with his land as fine.
- Most often the non-tribal neighbours move their fences inch by inch and finally the tribal finds a sizable portion of his land missing.

- Another common method of alienation was by giving their patta papers to the Chetty landlords for safe-keeping. And, they trust him not to damage or distort it.
- Finally, there were many cases of non-tribals coming and asking the tribal people for a “little land to build a small house”. The tribal people tend to take pity on their less fortunate non-tribal neighbours. A couple of years down the line, the tribal will surely find himself landless.

While the majority of the families surveyed had some land, almost 1/3rd was reported to be landless. Many of them may have been rendered landless owing to the alienation process.

Fragmentation of the landholdings has led to families being in possession of small plots which are not viable. Forced to move out to the urban areas, with no skills, they are absorbed into the unskilled labour sector. Many of the tribal families living on the urban fringes like the Chengelpattu and North Arcot districts are landless and the little land they possess can be taken over at anytime by the authorities for development projects.

In many of the districts, most of the tribal families were reported to have lands of very low quality. The majority of them are dependent on rainfed agriculture. There are families which have more than 7 acres of land but do not know what to do with the land. Productivity of the land, therefore, is a key issue. Any remedial measure aimed at solving the land alienation problems of the tribal people cannot do so without providing any measure for increasing the productivity of the tribal lands.

The degrees of alienation varied in districts but almost always the patta lands were favored over the non patta lands. If patta lands have to be transferred, it cannot be without the help of the administration.

This study has clearly brought out this fact. Almost all the districts surveyed, had instances to report about the village administration being party to the alienation process.

While the administration in some districts may be credited for facilitating the alienation process, the agents of alienation have been the non-tribal neighbours. Very often the tribal people are not aware of their rights, they have no boundaries for the lands they possess. They need quick loans. These are the situations which the non-tribal can use to his advantage. The non-tribal people get away with using firearms (as reported in the Erode District case analysis) to make people sign on blank papers (a method even the Forest Department has used in some of the districts viz. Erode, Vellore) in order to get the pattas transferred to their names. There have been many cases when the tribal people are not aware that they are required to pay land tax and such pattas get cancelled. The Village Administrative Officer informs the non-tribal party that this particular patta is available. The patta is transferred to his name and the tribal can be evicted easily.

The tribal lands are eagerly bought by the non-tribals and as mentioned above transferred by the administration. Very often the non-tribals acquire the land, because the tribal has not been able to repay the loan that he took. Government Departments have also acquired land from the adivasis with no prior notices.

The tribal people are very often in need of money for their daily needs. They have no assets to fall back on, except their land. This is mortgaged or leased out to non-tribals. The lease period over, the land is never returned. The need for money sees them getting into debts which can never be repaid. The money lenders are always willing to give to the tribal people loans, especially to those who have land.

The figures of alienation in each district show a definite rise in the total number of cases over the past 6 decades. This is mainly because all the above mentioned causes of alienation have remained unchecked.

Recommendations

1. The state should pass a special law for providing relief and redemption from debts for the Scheduled Tribes.
2. Legislation for tribal land alienation must have some special provisions for punishing usurpers of tribal lands, so that the problem of tribal land alienation can be effectively stopped in the beginning itself.
3. Specially trained officers have to be entrusted with the detection and restoration of alienated lands. These officers must be trained in the legal procedures and be familiar with the legal provisions.
4. The competent authorities instituted for this purpose must ensure the restoration of the land within a specified time from the issue of the order.
5. This machinery must have the necessary power to come down heavily on trespassers and non-tribals in possession of the tribal lands despite issue of orders to the contrary.
6. Any registration of tribal lands that may be done by the Registrar's office must get an approval from the competent authorities.
7. A special court can be constituted at every taluk which has at least one tribal village for taking up the cases of tribal land alienation on fixed days of every month. This system, alongwith land rights awareness campaigns and free legal aid for the tribals, can effectively prevent alienation and restore the tribal lands.

8. A special tribunal be appointed to settle land issues in the Gudalur area and the Kalrayan Hills areas, that have been pending for more than three decades.
9. A complete resurvey of tribal landholdings needs to be done. This survey must consider both the assigned and privately owned lands of the tribal people. Such a survey should culminate in the conferment of documentary proof of the land-ownership rights.
10. The revenue officials at the taluk level may be asked to give a half-yearly or annual statement, verifying the status of ownership of every plot of tribal land in their taluk. These records may be sent to the Registrar's Office regularly to ensure that the Registrar is not a party to the transfers of tribal holdings.
11. The Resurvey exercise will have to be creative so as to involve the community concerned and to give due importance to the oral evidence given by elders or other members of the community. This process will go a long way in creating transparency in the village records which is lacking as things stand.
12. Until this resurvey is completed, the courts may treat the oral evidence given by the tribals as ownership proof.
13. When lands are being surveyed and assigned to the tribals, even though the extent of land assigned to every individual can be mentioned, the pattas may be issued in the name of the community and not in the name of individuals. If the individual wishes to transfer or sell his property, he can do so only with the consent of the community and always to another tribal.
14. The Gram Sabhas in these tribal villages may be sanctioned a special fund using which they can purchase such lands, if there is no other tribal buyer.

15. A campaign has to be launched to generate awareness among the tribal people on the land rights and methods of legal redressal.
16. The language of the laws is difficult even for the literate person. The simplification of these laws and dissemination of this information to the people can be carried out with voluntary agencies/ panchayats/ tribal councils working with the aid of the government. There is a need to set up a National Land Rights Awareness Mission to take up this responsibility.
17. While formulating bills to help the tribal people, the procedures must be simplified taking into account the levels of awareness and the economic levels of the community.
18. Given the existing levels of awareness, all the tribal people cannot be expected to approach the authorities to report alienation cases. In such situations, tribal councils/ panchayats/ voluntary agencies can be given the legal recognition to detect alienation cases and start the legal process.
19. Jurisdiction of civil courts should be barred completely in all the land related cases involving a tribal versus a non-tribal and should be tried by a special administrative and judicial machinery.

TRIPURA

Tripura presents an example where the native population has been reduced to a minority. The long international border with Bangladesh contributed to a phenomenal growth of population over the years in a small geographical area of 104000 km. This growth in population has been mainly due to continuous inflow of non-tribal Bengalis, which changed the demographic composition of the state.

West Tripura District, the most populated district accounts for 48% of the total population of Tripura. The topography of the district, which is relatively plain and the concentration of secondary and tertiary sector activities, made it a natural habitat for immigrant non-tribal population. At present, the non-tribals account for 75% of the district's population and it has been increasing at a rapid rate as revealed by the census data.

A quick glance at the census data of 1961, 1971, 1981, 1991 reveals the fast changing demographic scenario of the state. The tribals who accounted for 32% of population in 1961, have been reduced to 27% of the 27 lakh population of the state in 1991. This change in the demographic composition and associated economic imbalance gave birth to separatist movements and serious tribal and non-tribal clashes, in the past. Among the total 19 tribes in the state, the Tripuris account for 60% of the tribal population.

The major tribes of Tripura are the Tripuris, Reangs, Noutias, Helam, Chakma, Jamatia, Mog Lushai and Kuki. Other non-indigenous tribes are Garos, Mundas, Khasis, Santals and Bhutias.

The Tripuris and Reangs are believed to be the earliest inhabitants of the state. Others are supposed to be the later migrants. The Garos, Khasis, Mundas, Oraons and Santals are the non-indigenous communities who came to Tripura later as the plantation labourers. Numerically, the Tripuris are the largest tribe belonging to the Bodo group of Indo-Mongoloid origin. The Bodos spread over the whole of the Brahmaputra valley and North Bengal form the main basis of the present day population of the state. The Reangs, the second largest tribe is considered to be of Kuki origin. They originally came from Burma and entered Tripura. The Helams belong to the Kuki Chin group of the Tibeto-Chinese family.

Tripura was a native state before the Independence of India. Land tenure system, evolved in the state prior to the integration in the Indian Union in 1949, can be treated as different types of settlements made from time to time by the Raja for the purpose of revenue collection or getting free service to the state. The King made grants of his lands to three classes of intermediaries (talukdars), and sometimes to actual tillers of soil (rai-yats). The three classes of intermediaries were the owners of (i) perennial settlement with revenue fixed in perpetuity, (ii) the land granted mainly for special purposes, viz. Plantation, etc. and (iii) revenue free estates granted to brahmins, priests, learned persons and temples. All these grants were permanent, heritable and transferable.

The talukdars leased out their lands to the actual tillers of soil or sometimes sub-leased their lands to actual tillers. The rai-yats often sublet a part or whole of their holdings to an under-raiyat called 'korfadar' or 'bargadar'.

In the hilly areas, where shifting cultivation was under practice, no regular land tenure system could be introduced. The former rulers

constituted a tribal reserve area covering about 42% of the total area of the state vide Tribal Reserve Order of 1931 and 1943 for the settlement of certain specified classes of tribals, namely Puran Tripura, Notaiajamatia, Riang and Helam.

Taking the advantage of irregularities and the defects in the system of settlement made without proper survey, the jotedars as well as talukdars possessed vast areas of the Government khas lands as their settled lands without paying any land revenue for those excess areas. They succeeded in exacting a very high rate of rent from the landless agriculturists and cultivators of small uneconomic holdings, who were competing with each other for leasing in land as bargadars. Further, in the absence of well defined boundaries of the tribal reserve areas, free transfer of land between specific tribal groups and others took place. As a result, a large number of economically backward tribal households became either landless or holders of tiny plots of land.

After Independence, the land administration continued on the basis of old laws and customs till 1960 when a comprehensive legislation called the Tripura Land Revenue and Land Reforms Act, 1960 was passed. By this Act, all the old laws were abolished, and even the tribal reserve was done away with. The Act provided for the acquisition of all estates and all rights/ titles and interest of intermediaries in such estates free from all encumbrances. When the old talukdars' tenures were abolished, they were paid compensation. With the abolition of intermediary rights, more than 70000 tenants became the raiyats under the direct control of the Government. Similarly, more than 12000 under-raiyats who were holding lands at the mercy of landowners, enjoyed the status of raiyats for their respective lands. The raiyats were conferred permanent, heritable and transferable rights.

The Act provides for the safeguards to protect the interests of the tribals over land. The sale of land by the tribals to the non-tribals is prohibited, except in some special cases for which the permission of the Government/ Collector is required. The Act also provides that the lands alienated by the tribals on or after 1.1.1969 have to be restored back to them.

The Tripura Land Revenue and Land Reforms Act, 1960

The Tripura Land Revenue and Land Reforms Act, 1960 (TLR & LR Act), a comprehensive legislation related to land was passed in 1960 to codify the then existing laws and to regulate the procedures related to land. It covers all land related aspects like land revenue, survey and settlement operations, land records, rights of under- raiyats, acquisition of estates and rights of intermediaries, ceiling on land alienation. The basic objective of the Act was to consolidate and amend the laws relating to land revenue in Tripura and to provide for the acquisition of estates and for certain other measures of land reforms.

The Rules were framed, entitled the Tripura Land Revenue and Land Reforms Rules, 1962 to implement the provisions of the Act. Subsequently, various amendments were made to the Act and Rules from time to time.

Special provisions regarding scheduled tribes

Section 187 of the TLR & LR Act, 1960 deals with special provisions regarding scheduled tribes with specific emphasis on the alienation of land.

Section 187 (1) says that no transfer of land by a person who is a member of the scheduled tribes shall be valid unless:

- (a) The transfer is to another member of the scheduled tribe or
- (b) Where the transfer is to a person who is not a member of any such tribe, it is made with the previous permission of the Collector in writing in the manner prescribed; or
- (c) The transfer is by way of mortgage to a Cooperative Society or to a Bank or to the Central or State Government.

Section 287 (2) stipulates that no transfer of land by a tribal shall be valid unless made by a registered instrument.

The Act was amended by the Second Amendment Act, 1974 to incorporate an important provision relating to the restoration of tribal lands. The amended section 187 (3) says that:

- (a) If a transfer of land belonging to a tribal is made on or after 1.1.1969 in contravention of the provision of section 187 (1), any revenue officer appointed by the state Government for this purpose, may, of his own motion or on an application made in that behalf, and after giving the transferee an opportunity of being heard, by an order in writing eject the transferee or any person claiming under him, from such land or part thereof.
- (b) When the Revenue Officer has passed any order under clause (a) he shall restore the transferred land to the transferee or his successor-in-interest.

Section 187 (4) prohibits the courts from passing the decrees or orders for the sale of tribal land.

Section 187 (5) prescribes that when a tribal land needs to be sold in execution of a certificate for recovery or arrear of land revenue, it should be sold to another tribal preferably.

The Tripura Tribal Areas Autonomous District Council (TTAADC) Act

The Tripura Tribal Areas Autonomous District Council (ADC) was established under the Sixth Schedule of the Constitution, by enacting a legislation called the Tripura Tribal Areas Autonomous District Council Act in 1985. The Act provides guidelines for the Government of the Council, the subjects to be dealt by the Council, the sources of finance and other related matters. The basic objective of the Act is to protect tribal interests and to provide a self-government institution.

It can be concluded that the tribal society of Tripura is in a transition. This transition can be seen in all spheres of economic activity.

The following generalizations can be made in this regard:

- (a) The demographic structure of the state is undergoing a phenomenal change. The aboriginals have become minority in their own homeland.
- (b) The land use classification shows that the area available for cultivation is less, which results in high population pressure on land as the population growth rate has been very high.
- (c) Though the cropping pattern and agricultural practices show a shift towards modern methods, the economy continues to be paddy based and subsistence in nature. In the absence of any industrial base, high population pressure on land alongwith subsistence nature of agricultural economy leads to social

conflict, especially in the background of the changing demographic structure.

- (d) Land holding pattern reveals that almost all the farmers fall into the category of small and marginal. The number of 'Korfadars and Bargadars' is negligible. Effective implementation of the TLR & LR Act is one of the reasons for this pattern.
- (e) The number of tribals dependent on jhum cultivation and the area under it have been declining over time. A large number of jhumias have been settled through the government sponsored jhumia resettlement scheme. However, in the areas where jhum is being practiced, the duration of jhum cycle has come down leading to deforestation and lower productivity. A significant portion of the tribal population, especially primitive tribal groups, continues to practice jhum.
- (f) The TLR & LR Act provides certain safeguards to prevent the tribal land alienation. All lands that were alienated after 1.1.1969 are to be restored back to the tribals. Analysis shows that as many as seventy per cent of the applications received for restoration have been rejected on the ground that they were made after 1.1.1969. In many cases tribals do not have valid documents to show that alienation took place after 1.1.1969. The area alienated in each case is less than an acre on average. Also, most of the non-tribals from whom the lands were taken back have become landless.
- (g) There is no community ownership of forests. There are no special rights of the tribals over forest produce for their own consumption.

- (h) The dependence on government is very high. In general, people are politically conscious and are polarised along political lines. The government sponsored employment programmes are a major source for livelihood in lean season.
- (i) Though tribal and non-tribal conflict is not openly manifested, under-currents of that tension could be seen.

One of the major reasons for the problems being faced by the rural society of Tripura is lack of diversification and limited agricultural base. This economic diversification has to be done at two levels:

Firstly, there has to be a shift from the traditional crops to commercial crops. The tilla lands are very suitable for rubber cultivation and horticultural plantations. Secondly, rural industrialization based on locally available resources has to be taken up. Unless the economy is diversified, social conflict is bound to be more acute as per capita availability of land has been declining.

Rubber cultivation with its ecological and economic characteristics, is suitable to unproductive tilla lands; it can arrest deforestation and increase the income levels of the farmers. Rubber cultivation coupled with horticultural plantation, if adopted properly, promises a solution to the stagnated economy of the state. It could as well become an effective instrument for ecological conservation.

A suitable scheme is utmost necessary to involve the tribals in the afforestation process. Unless popular participation is ensured, the government alone cannot shoulder the responsibility of regenerating degraded forests.

There is the need to make improvement in the jhumia settlement scheme so as to attract the jhumias to settled cultivation. A well

formulated strategy of jhumia resettlement along with popular participation in the afforestation programmes will go a long way to put a stop to ongoing deforestation.

The government and its agencies should play a substantive role in transforming the subsistence tribal economy into a modern one as the natural potential to do so exists.

TRIBAL LAND LEGISLATION: AN EXECUTIVE SUMMARY

Elaborate arrangements have been made through the Fifth Schedule to the Constitution of India for regulating the affairs of the Scheduled Areas. In fact, the Governor of a Fifth Schedule State is required to annually submit a report to the President of India regarding the administration of the scheduled area in the State. The Central Government can issue directions to the State as to the administration of the said areas. In each State having scheduled areas, Tribes Advisory Council has to be set up. Such a Council has to be set up in such a State as well which has scheduled tribes but not Scheduled Areas. The Council is to be composed of not more than twenty members of whom, as nearly as may be, three fourths shall be the representatives of the scheduled tribes in the Legislative Assembly of that State.

The Tribes Advisory Council is required to advise on such matters pertaining to the welfare and advancement of the scheduled tribes in the State as may be referred to it by the Governor.

The Fifth Schedule is quite clear in the law applicable to the Scheduled Areas and the special role to be played by the Governor. It will be in the fitness of things to reproduce the stipulations of the Fifth Schedule in this regard.

“5. Law Applicable to Scheduled Areas:- (1) Notwithstanding anything in this Constitution the Governor may, by public notification, direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and

modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

- (2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.
In particular and without prejudice to the generality of the foregoing power, such regulations may-
 - (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area.
 - (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
 - (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.
- (3) In making such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.
- (4) All regulations made under the paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.
- (5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.”

The stipulations made above over-ride any other provisions of the Constitution in a rather particular sense, in as much as it is the

Governor who is required to issue public notifications and not the Council of Ministers. The accepted tenets of parliamentary democracy seem to subserve this dispensation primarily because the general functioning of the Government, even the majority verdict on the floor of the lower House may be modulated by the obligations of an elected legislature. The Governor is supposed to be above party politics and its exigencies. At least he has no electorate to fall back upon. Such is the vigour and force in the special framework of the Fifth Schedule that there is a detour even from the “basic structure of the Constitution” (notwithstanding anything in this Constitution) in respect of the “welfare and advancement of the scheduled tribes in the State”.

The Governor is empowered to stop the operation of a Central or State law in a scheduled area, wholly or partly as also to specify necessary exceptions and modifications (in such laws). He may also give a retrospective twist to the application of such laws. Through regulations, the Governor may prohibit or restrict the transfer of land by or among members of the scheduled tribes in such areas. Hence, there is a scope not only to protect tribal lands from going into the hands of the non-tribals, but also to ban intra-tribal land transfers. A rationale could be seen in the steady impoverishment of the poorer segments of the tribal mass at the hands of the neo-rich among the tribals. A persistent exploitation of the misery and deprivation of a poor tribal is hardly the exclusive preserve of a non-tribal alone. Exploitation can come from within as well.

The Governor’s powers through the said Regulations are made really effective through the following powers of the Governor with regard to other prevalent laws-Central or State:

- As mentioned above, **the Governor may notify the applicability or non-applicability of a Central or State law in the totality of a scheduled area, or a part thereof.**

- Further, in making a Regulation, **the Governor may repeal or amend any Central or State law** or any existing law which is applicable to the area in question at the time of making the Regulation.

The powers of the Governor, in a word, are beyond imagination. He is obliged to **consult the Tribes Advisory Council** (where existing) but there is no clause to suggest that the advice tendered by the Council will be obligatory. The regulations **after being made**, are to be submitted to the President and until assented to by him shall have no effect. This, perhaps, constitutes the lone control over the Governor's otherwise unfettered authority. Neither the Parliament nor the State Legislature (nor the State Council of Ministers) have been given any control over the discretionary jurisdiction of the Governor. Rather their laws are made subject to a scrutiny by the Governor himself to decide on their applicability, repeal or amendment in the best interests of the welfare and advancement of the scheduled tribes in the State.

It remains to be seen if armed with such vast powers, a Regulation framed in a State, comes up to meet the ends of justice entirely or falls short of the expectations of the makers of the Indian Constitution whereupon still rests the continuation of the Fifth Schedule itself.

TRIBAL LAND LEGISLATION: THE PERSPECTIVE AND AN UPDATE

THE NORTH EAST

The districts of Karbianglong and North Cachar Hills in Assam fall under the Sixth Schedule of the Indian Constitution. Hence, in these districts, land administration comes under the jurisdiction of the

Autonomous District Councils. At present, pattas are given only on Annual Lease which are generally renewed unless the land in question is required for public purpose. The annual leases are converted into periodic leases for 30 years, when the patta holders apply for such conversion and when the lands in question are surveyed areas. In the non-cadastral areas which are subject to Jhuming, each village has a definite boundary and within the boundary the villagers have a right to cultivate. The right of a villager in such land is limited to use and occupancy. In the Jeme Naga community, a family possessing a big area of land (Impua) allows other families to cultivate its land on the realization of nominal rent in the form of crops.

Alienation of tribal lands has always been a sensitive issue. In Meghalaya, the British respected the customary rights of the Khasi ownership of land. The Assam Government prohibited the transfer and alienation of land vide a Notification dated 23rd August, 1948. All rights of any description as acquired by any non-Khasi shall be null and void unless previously sanctioned by the provincial Government. Alienation law on tribal land was made comprehensive by the Government of Meghalaya by the Meghalaya Transfer of Land (Regulation) Act, 1972.

In Manipur, the prosperous tribals apprehend that once survey is completed, they will have to pay land revenue. Then, there is a lurking apprehension that the extension of the MLR & LR Act into hill pockets will only be the beginning of a never-ending non-tribal intrusion.

The Bengal Eastern Frontier Regulation, 1873, is still in force in Nagaland. It prohibits any person not being a native of the State to acquire any interest in land without the sanction of the State Government. The Bengal Eastern Frontier Regulation, 1873

together with the Assam Land and Revenue Regulation, 1886 have clearly amplified the protection of the tribals of Nagaland in the matters of settlement and transaction of land. Similarly, instructions issued by the Government of Assam for the Excluded Area vide Secretariat No. Ex./MISC/133/37 dated 18th June, 1949 which are still in force, clearly show the importance of the Government policy in matters of settlement of land and transfer of land from the tribals to non-tribals. Detailed instructions are reproduced below:

1. No land should henceforth be settled with the non-tribals except with the prior approval of the Government. Tribal people are those who are the indigenous inhabitants of the Frontier Tracts or other Excluded Areas, as for instance Mikirs, Akas, Daflas, Abors, Mishmis, Lushais, Kachanis, etc. Ex-tea garden labourers, Gurkhas retiring from service in the permanent labour corps and the Assam Rifles, other people of a similar category and indigenous Assamese people living in the areas should also be regarded as eligible for settlement.
2. No one should be allowed generally to acquire by settlement or otherwise more land than is necessary to fix as 30 bighas admissible per family.

For the purpose of horticulture, other special cultivation such as sugarcane, barley and wheat of a cooperative society or otherwise in order to grow more food, this limit may be relaxed according to the capacity of the individuals and groups for bringing the land under actual cultivation.

3. Non-tribals who have already obtained the settlement of land within the district or the Frontier Tract but are not permanent residents thereof should not be permitted to acquire any more land by further purchase or otherwise. In such cases, no acquisition in

any form i.e. by settlement, transfer, lease or mortgage, should be permitted without the previous approval of the Government.

4. No land in towns like Sadiya, Pasighat, Lakro, Chardua Kohima, Dimapur, Aijal, Haflong and in other trade centres and areas in their vicinity should be settled without the prior approval of the Government.
5. In cases, where strict adherence to the procedure laid down will cause hardships or where special circumstances exist, full details must be reported to the Government for orders. In no case a deviation from the procedure outlined above be made without the approval of the Government.
6. In the case of settlements already made with the non-tribals on an annual patta basis prior to the issue of these orders, their leases must not be converted into periodic leases without the prior approval of the Government.
7. Although the Assam Land and Revenue Regulation, 1886 is not wholly in force in the Excluded Areas, the spirit of the said Regulations should be followed in affecting settlements and in all other matters relating to lands.

ANDHRA PRADESH

It was out of necessity that the Britishers had undertaken the extensive land survey and settlement activity throughout the country in the early half of the 20th century. This was done for the first time in the coastal belt of Andhra Pradesh. Since Telengana was under the Nizam's rule, the survey settlement activity (in its rural areas) was initiated late by the end of the 19th century. Due to this fact in the tribal areas of Telengana region, the exact boundaries of

individual ownership of plots of agricultural land have been left with no clear-cut legal sanctions. Therefore, prior to the land survey and settlement of the tribal areas, the tribal land holdings by and large remained almost unjuridical in their nature. But soon it took a new turn due to the changing policies of the Nizam Government from time to time with regard to revenue mobilisation and strengthening of the state machinery. As a major part of his revenue policy, the Nizam in the 1920s invited the plainsmen to come over to the tribal areas and settle down there. This actually was the death knell to the tribal existence.

The 'Harraz' method has been again a principle adopted by the State which in turn caused large-scale tribal land alienation. This method was also equally applied by the Britishers in the Northern Circar districts of Srikakulam, Vizianagaram and Vishakhapatnam and forest regions of the Central Coastal districts of East and West Godavari. This activity was very much prevalent during 1940-50. In this activity the "State itself sells the land to the cultivators" or the Nizam grants the power to his administrator to allow the land to be sold to the needy or interested persons.

The methods like unaccountable denudation of forest on a massive scale under the supervision of the land-owning classes could be seen during the past three decades as every year large tracts of forest lands were cleared off and brought under cultivation. This had further widened the gap between the tribal landless and the landed gentry of the non-tribal communities. In the operations of the denudation of forests, tribal labour had been used to a great extent to clear off the forest area and the fresh cultivable lands again went invariably into the hands of the landlords. Thus, the denudation and clearing of the forests was sought as a method by the landlords to alienate tribals even from the forest.

De-scheduling certain tribal areas had invariably posed a threat to the very existence of the tribals and they were left with no other alternative except to migrate from these areas. This would take away their legal right on lands in the Scheduled Areas. The second form of manipulation is the tampering with the revenue records at the local level. A few villages where tribals lived and owned the lands were shown in the records either as deserted or as dwelling places of a majority of the non-tribal cultivators that is to say, when they were asked to put forth the records, the revenue officials invariably manipulated the records in favour of the non-tribals. To further confirm such things, the survey and settlement activity would be undertaken in these villages. This made the real cultivators (tribals) disappear from the scene and whatever the Patwari put forth became final and would be recorded in the survey records which would permanently disable the tribals. In all the cases, the records would show the presence of the non-tribals and their ownership and possession of the lands in the period prior to the promulgation of the protective legislation.

The imposition of heavy taxes on tribals and forcing them to retreat deep into the forest may be another reason for alienation. Many of the peasants say that their forefathers had to relinquish the lands in utter disgust due to the imposition of heavy taxes.

The Agency Tracts Interest and Land Transfer Act 1917, provided for the first time that the transfer of immovable property by a member of a hill tribe shall be **void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent**. The agent was empowered to eject anyone holding tribal land in violation of this specific provision of law and restore the land to the transferor or his heirs. It was further stipulated that suits against a member of hill tribes would be instituted in the Agency court alone.

The Andhra Pradesh (Scheduled Areas) Land Transfer Regulation, 1959 provided a comprehensive legal framework and furnished protection to the tribals of both Telengana and the Coastal Andhra regions. The Regulation came into force first in the district of Srikakulam, Vishakhapatnam, East Godavari and West Godavari. It was later extended to cover the Scheduled Areas of Mahboobnagar, Adilabad, Warangal and Khammam districts to bring uniformity in law throughout the Scheduled Areas of the State (Regulation II of 1963).

Two salient features of the Regulation of 1959 come out clearly. One it imposed a total ban on transfers either by a member of the scheduled tribe or by anyone else, unless it is made in favour of a scheduled tribe person or a registered co-operative society composed solely of scheduled tribe members.

Second, the Regulation provided that any person not belonging to the scheduled tribes and yet holding any immovable property in the Agency tracts, **will be presumed** to acquire that land through a transfer made by a member of the scheduled tribes.

The law further explores a situation where in the absence of a tribal buyer, the non-tribal seller is required to approach the agent who will acquire the land in question for the state government on the payment of compensation as per the Ceiling Law.

The Agent, on receipt of the information regarding transfer, from anyone interested, or from a public servant, or on his own, can initiate proceedings, issue notices etc., in the prescribed manner and may restore the alienated land to the transferor or his heirs.

In case the transferor is not willing or available to take back the land alienated and restored, the Agent may sell it to a tribal person or to a registered co-operative society comprising solely tribal members or dispose it off.

Appeals lie to the next up in the hierarchy of competent officers ordering restoration. Appeals against the Agent's orders lie with the state government.

Suits against a member of the Scheduled Tribes are to be instituted in the Agency Courts (similar to the 1917 Act).

The 1959 Regulation is noteworthy for **broad-basing the definition of the word "transfer"**. It includes a sale in the execution of a decree and also a transfer made by a member of the Scheduled Tribe in favour of any other member of a Scheduled Tribe- benami for the benefit of a person who is a non-tribal.

When all said, perhaps, the crowning glory of the 1959 Regulation lies in the fact that **it makes the general limitation provisions subservient to the contents and spirit of the Regulation** and not the vice-versa. The provisions of the Indian Limitation Act, 1908 in so far as they are not inconsistent with the provisions of this Regulation, or the Rules made thereunder, apply to the proceedings under the Regulation.

Through the 'savings' provisions under Section 10 (1) of the 1959 Regulation it comes out that the provisions of this Regulation **retrospectively take into their gamut transfers made between 1917 (The Agency Tracts Interest and Land Transfer Act, 1917) and 1959**. But it does not go prior to 1917. The provisions of the 1959 Regulation shall affect-

- (a) any transfer made or sale effected before commencement of the Agency Tracts Interest and Land Transfer Act, 1947 or
- (b) any transfer made or sale effected in execution of a decree after the commencement of the said Act and before the commencement of this Regulation if such transfer or sale was valid under the provisions of the said Act.

Impliedly, if any transfer or sale was invalid under the provisions of the 1917 Act, the same will come within the restrictive and restorative purview of the 1959 Regulation.

The Regulation of 1959 does not provide any scope or loophole for a 'permitted transfer'. Nonetheless, it stipulates that no relinquishment of a holding by a ryot who is a member of the Scheduled Tribes shall be valid unless the previous sanction of the state government or (in accordance with Rules), the previous consent in writing of the Agent or the competent authority has been obtained.

The spirit of the 1959 Regulation has further been carried forward in the Andhra Pradesh Scheduled Areas Land Transfer (Amendment) Regulation 1 of 1970.

MAHARASHTRA

The practice of raiyatwari settlements was prevalent in the Bombay Province and in most of Maharashtra other than the feudal kingdoms. By the land settlement, the relationship with the land was now mediated through the state and the community ceased to exist in the eyes of law and the courts. The consolidation of the British colonialism was both a cause and the effect of the internal colonialism of the tribal areas by the trader-contractor sections which metamorphosed into landlords. In turn the state turned a blind

eye to the exploitation of the tribals or discreetly condoned it. The community was the bulwark against exploitation. The British destroyed the power of the community in the raiyatwari areas. The trader (sahukar) mediated with the powers of the state in his own self-interest. The outsiders gradually alienated the land and transferred title in their names. Within the short span of each settlement, the tribal lands passed into the hands of the non-tribals, while the tribals were pushed from proprietorship into deprivileged proletariat.

Even in cases where the tribals were able to come into possession of their lands under the tenancy legislation, alienation of tribal lands continued either through illegal entries in the mutation registers or permission given by the Collectors rather freely to land transfers from tribal to non-tribal. As a result, certain restrictions on the transfer of tribal lands were imposed by the Maharashtra Land Revenue code, 1966. Broadly, these provisions prohibited the transfer of tribal land without the permission of the Collector. But such permission appears to have been given as a matter of routine.

Two measures were adopted by the Government of Maharashtra in 1974-75 i.e., (i) The Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 and (ii) The Maharashtra Restoration of Land to the Scheduled Tribes Act, 1975. The Maharashtra Restoration of Land to Scheduled Tribes Act, 1974 came into force with effect from 1st November, 1974 and it provides for the restoration of the following types of lands to the original tribals:

- (a) Lands which have gone into the hands of the non-tribals between the period from 1st April, 1957 to 6th July 1974 as a result of transfers (including exchanges) effected validly; and
- (b) Lands which are purchased or deemed to have been purchased by the non-tribals between the aforesaid dates under the

provisions of the Tenancy Act. (These also include acquisitions of land which have been regularized on payment of penalty under the tenancy law).

Whereas the Maharashtra Land Revenue Code and the Tenancy Laws (Amendment) Act, 1974 enables the tribals to secure **the lands illegally usurped** by the non-tribals, the Maharashtra Restoration of Land to Scheduled Tribes Act, 1974 goes further and provides for the restoration of their **lands acquired by the non-tribals by legal methods**. The provisions of both enactments will not apply to the lands which have been transferred in favour of non-tribals and which have been put to non-agricultural use prior to 6th July, 1974 or lands, which have gone into the hands of third parties. In the case of valid transfers, however, such of the lands which have gone into the hands of third parties after 15th March, 1971, will also come within the purview of this Act.

New Section 36-A inserted in the Maharashtra Land Revenue Code, 1966 by the Maharashtra Land Revenue Code and the Tenancy Laws (Amendment) Act, 1974, imposes stricter restrictions on future alienation of tribal lands to the non-tribal.

No occupancy of a tribal shall, after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, be transferred in favour of any non-tribal by way of sale (including sales in execution of a decree of a Civil Court or an award or order of any tribal or authority), gift, exchange, mortgage, lease or otherwise, except on the application of such non-tribal and except with the previous sanction-

(a) in the case of lease or mortgage for a period not exceeding 5 years, of the Collector: and

(b) in all other cases, of the Collector with the previous approval of the State Government:

No such sanction shall be accorded by the Collector unless he is satisfied that no tribal residing in the village in which the occupancy is situated or within five kilometres thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

Section 36-A of the Maharashtra Land Revenue Code, 1966, provides that where, on or after the commencement of the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, it is noticed that any occupancy has been transferred illegally the Collector shall, either suo-motu or on an application of any person interested in such occupancy made within three years from the date of the transfer of the occupancy hold an inquiry in the prescribed manner and decide the matter. Where the Collector decides that any transfer of occupancy has been made illegally he shall declare the transfer to be invalid. The occupancy together with the standing crops thereon, if any, shall vest in the State Government free of all encumbrances and shall be disposed off in such manner as the State Government may, from time to time, direct. Where an occupancy vested in the State Government under sub-section (5) is to be disposed off, the Collector shall give notice in writing to the tribal-transferor requiring him to state within 90 days from the date of receipt of such notice whether or not he is willing to purchase the land. If such tribal-transferor agrees to purchase the occupancy, the occupancy may be granted to him if he pays the prescribed purchase price and undertakes to cultivate the land personally; so however that the total land held by such tribal-transferor, whether as owner or tenant, does not as far as possible exceed an economic holding.

The Government is obliged to see that the implementation of the aforesaid two measures is attended to promptly and that the work of restoring land to the Adivasis is completed expeditiously. Most of the enquiries are to be made suo-motu by the Collectors/ Deputy Collectors because the adivasis, being generally ignorant and illiterate may not come forward to make necessary applications. For this purpose, the following action is required immediately in the districts, where there is a sizable population of Adivasis:

1. To bring the record of rights up-to-date,
2. To collect information regarding the transfers of land from Adivasis to non-Adivasis and to prepare two separate lists.
3. (a) Regarding invalid transfers which would come within the ambit of the Maharashtra Act No. (35) of 1974; and
(b) Regarding valid transfers made between the period from 1.4.1957 to 6.7.1974, which would be covered by this Act.
4. In the case of invalid transfers to hold suo-motu enquiries for the restoration of land to the Adivasis

An appeal against any decision or order passed by the Collector may be made to the Maharashtra Revenue Tribunal constituted under the Code.

Every decision or order passed by the Collector under this Act, subject to an appeal to the Maharashtra Revenue Tribunal, and the decision of the Maharashtra Revenue Tribunal in appeal shall be final and conclusive and shall not be questioned in any suit or proceedings, in any court. Advocates are barred and the jurisdiction of the Civil Court is barred too. No pleader shall be entitled to appear on behalf of any party in any proceedings under this Act before the Collector, the Commissioner or the Maharashtra Revenue Tribunal:

No civil court shall have the jurisdiction to settle, decide or delay any question which under this Act is required to be decided or dealt with by the Collector, the Commissioner; the Maharashtra Revenue Tribunal or the State Government.

Any right, title or interest of the transferor and transferee in an unlawfully transferred land will vest in the state government.

GUJARAT

Until the late 18th century there was not much concentration of the non-tribal communities in the tribal areas of Gujarat. Only in the early 19th century several pockets of non-tribal concentration emerged in the tribals areas. Several towns and big villages having non-tribal concentration sprang up. The history of the growth of these urban centers and big villages is directly related with the process of pauperization of the tribals living in small hamlets. With the coming of non-tribal communities, the process of grabbing the land of the tribals also started in full swing and relentlessly. The new principle of land-ownership adopted by the Britishers after introducing the system of survey settlement endowed the right of the allotment of land to the government. After this, the tribals could not expand their holdings by clearing any strip of forests. The then British Government refused to recognize the right of first clearance of forests and this deprived the tribals of a fundamental right as recognized by the Rajput rulers. In short time, the tribals were reduced to a position of most humiliating economic dependency, the process of which had started soon after the arrival of the Britishers.

In course of the ryotwari settlement, no distinction was drawn between the hereditary owners of land and payers of the revenue.

In this manner, the control of land passed from the indigenous tribals to a group of new-comers. With the increasing pressure on population (more and more non-tribals immigrated on account of the peaceful situation, brought about by the British administration, because of the opening of the major railroads in the tribal regions, and the abundance of land available for agricultural use). The demand for agricultural land gradually increased as large number of non-tribal migrants started settling in the tribal regions.

Before the legislation was passed in 1961 (Notification No. 3961/41509-G dated 4th April, 1961) to check the land alienation, heavy alienation had already occurred. The tribals were reduced to the status of marginal farmers because of the large scale usurpation of their best land. In a survey done in 1956 in Pardi taluka (District Valsad) it was shown on the basis of findings in the five tribal villages that of the total land in those villages, 72.4 per cent of the land was under the possession of the non-tribal Khatedars (A Khatedar is an individual in whose name the land has been entered in the government records) while only 27.6 per cent of the land was owned by the tribals although they constituted more than 65 per cent of the population in the taluka.

In the **Bombay Land Revenue Code, 1879**, Section 73A was inserted by the Bombay Land Revenue Code (Amendment) Act, 6 of 1901. The State Government can, by gazette notification, declare restricted occupancies that cannot be transferred without the previous sanction of the Collector. The famines and plagues at the turn of the century provide the background for this change.

Section 73-AA to 73 AD was introduced in the Land Revenue Code, 1879 by the Government of Gujarat Act No. 37 of 1980/ Notification No. 37 of 1980/ Notification No. GHM/81/22/M/ADJ/1080/3433/A Dt. 29.1.1981 and further

restriction to the effect that agricultural land and non-agricultural land held by the scheduled tribes in Gujarat **will not be transferred to any person, tribal or non-tribal, without the prior permission of the Collector and the State Government.** This was introduced to prevent the alienation of tribal land and to prevent the transfer of land by oral or written sales by the tribals and also to check exploitation of poorer tribals by more privileged members. The noteworthy feature of the new section is the previous sanction of the Collector in order to make a transfer lawful.

Section 79-A provides for eviction in case of illegal use of land. As per section 73AD of the Bombay Land Revenue Code, 1879, the seller of a tribal tenancy has to declare before the registration officer that the transfer of occupancy is made with the previous permission of the Collector under Section 73A or Section 73AA.

No civil court shall have the jurisdiction to settle, decide or deal with any question which is by or under Section 73-A or Section 73A or Section 73AB required to be settled, decided or dealt with by the Collector nor shall the Civil Court have jurisdiction to entertain any suit or application for the grant of injunction (whether temporary or permanent) in relation to such question.

No order of the Collector made under Section 73-A or Section 73AA or Section 73AB shall be called in question in any civil or Criminal Court.

Where any occupancy is transferred to a non-tribal illegally, such non-tribal shall be liable to pay to the State Government, a penalty not exceeding three times the value of the occupancy, such penalty and value to be determined by the Collector, and such determination shall be final.

MADHYA PRADESH / CHHATTISGARH

In Central India, among the significant early protective legislations was the Central Provinces Land Alienation Bill (1 of 1916), which aimed at statutory protection to the aboriginals living in well-defined areas and to restrict alienation of their lands. It placed restriction on the transfer of agricultural land held in proprietary rights by the aboriginals, to the non-aboriginal classes. A number of such laws were passed in the various states which were later merged into the State of Madhya Pradesh.

After the Reorganization of States in 1959, the State of Madhya Pradesh came into being, and the Madhya Pradesh Land Revenue Code (described hereafter as the Code) came into force from 2nd October, 1959. The most important measure in the Code to protect the economic interests of the Scheduled Tribes were Sections 165 (6) and 165 (7) of the Code.

Under Section 170-A of the M.P. Land Revenue Code, 1959, certain transfers are to be set aside. Irrespective of anything contained in the Limitation Act, the sub-divisional officer may, on his own motion or on an application made by a transferor of agricultural land belonging to a tribe which has been declared to be an aboriginal tribe under sub-section (6) of Section 165 on or before the 31st, December, 1978, enquire into a transfer effected by way of sale, or in pursuance of a decree of a court of such land to a person not belonging to such tribe or transfer affected by way of accrual of right of occupancy tenant under section 169 or of Bhumiswami under sub section (2-A) of Section 190 at any time during the period commencing on the 2nd October 1959 and ending on the date of the commencement of the Madhya Pradesh Land Revenue Code (Third Amendment) Act, 1976 to satisfy himself as to the bonafide nature of such transfer.

Section 170-B of the M.P. Land Revenue Code, 1959 provides for the reversion of the land of the members of the aboriginal tribes which was transferred by fraud. Every person who, on the date of commencement of the Madhya Pradesh Land Revenue Code (Amendment) Act, 1980 (hereinafter referred to as the Amendment Act of 1980), is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-Section (6) of Section 165 between the period commencing on the 2nd October, 1959 and ending on the date of the commencement of the Amendment Act, 1980 shall, within (two years) of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.

If any person fails to furnish the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid, revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

Under Section 170-A of the Madhya Pradesh Land Revenue Code, 1959, if the Sub-Divisional Officer on an enquiry and after giving a reasonable opportunity to the persons owning any interest in such land, is satisfied that such a transfer was not bonafide, he may set aside the transfer and restore the land to the transferor.

Section 2-A of Section 170-B also refers to the role of the Gram Sabha in restoration. If a Gram Sabha in the Scheduled Area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a Bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of

such land to that person to whom it originally belonged and if that person is dead, to his legal heirs.

If the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub Divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.

Section 170-C of the M.P. Land Revenue Code bans the appearance of Advocates in proceedings under sections 170-A or 170-B without permission. If permission is granted to one party not belonging to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165, similar assistance shall always be provided to the other party belonging to such tribe at the cost of and through the legal aid agency.

As per section 170-D, no second appeal shall lie against the orders passed on or after the 24th October, 1983 under section 170-A and section 170-B.

There is no permission clause in the Madhya Pradesh Land Revenue Code.

The law in Madhya Pradesh and Chhattisgarh provides a unique example in providing for presumption for transfer. According to this, a non-tribal transferee is required to inform the SDO about his coming into possession of the land. If he fails, it shall be presumed that his possession is unlawful and the land will be restored to the original owner or successors.

JHARKHAND

Two distinct tenancy systems obtain in the Santal Parganas and Chota Nagpur regions of Jharkhand, governed by two different Acts.

Santal Parganas

The insurrection of the Santals (popularly called Hul) in 1855 was the direct reaction of injustice and oppression inflicted upon them. It was an uprising directed more against their oppressors (the major Mahajans and other non-santal settlers) than against the administration. The uprising was easily crushed. But the creation of the district of Santal Parganas was the direct result of the Santal Rebellion of 1855. The scare of a second Santal rebellion in 1871 had a sobering effect on the administration and the result was the Santal Parganas Settlement Regulation III of 1872.

Regulation III of 1872 was further amended by Regulation II of 1904 and Regulation III of 1908. The latter definitely declared the non-transferability of raiyati lands and affirmed the power of the Deputy Commissioner to interfere with the illegal alienation and, generally, to enforce the provisions of the settlement record. In 1949, the tenancy laws of this district were further supplemented by the Bihar Act XIV of 1949, the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949 which placed some of the customary laws of the district on the Statute book, e.g., exchange of raiyati lands, sub-lending the raiyati lands under certain circumstances, rates of landlord's fees or transfer rights of raiyats on trees grown on them etc.

Chota Nagpur

Among the primitive communities of the Mundas and the Oraons, the reclamer of a patch of land in the jungle was regarded as its owner. As the community progressed, he paid a slight tribute or rendered slight service to the village chief, but his status as bhuinhar or pioneer, or descendant of a bhuinhar was always regarded as

vastly higher than that of the latecomers, who had settled on the land when the village was established. The landlords while acknowledging the privileged character of bhuinhari lands were not willing to admit their existence in any but a few of the oldest villages, while the whole body of raiyats, on the other hand, began to advance claims to the privileges of a bhuinhar. Finally, the opposing parties began to dispossess each other by force.

In order to settle these disputes authoritatively and finally, Act II of 1869 was passed by the Bengal Council. Under this Act, Special Commissioners were appointed, who had the power to survey and demarcate the privileged lands of the tenants (bhuinhari) and the landlords (manjhihas). The Special Commissioners had the power to restore to possession persons who had been wrongfully dispossessed of the lands of bhuinhari or manjhihas tenure at any period within twenty years before the passing of the Act, and the record was declared final and conclusive of the incidents of the tenures recorded.

A Bill to consolidate the law of the landlords and the tenants was postponed in 1899, until the survey and settlement operations had thrown some light on agrarian conditions. By the end of the year 1903, the Settlement Officer had collected a considerable amount of data, and the local investigation made in the Munda country was held to justify the necessity of an emergent legislation. One of the main objects of the Amending Act of 1903 was to give finality to the record of rights regarding the incidents of the Mundari Khunt Kattidari tenancies.

The results of the investigations made by the Settlement Officer, regarding the abuses to which the unrestricted sale and transfer of raiyati and other tenancies had led, were held to justify the imposition of restrictions on the right of transfer by the raiyats and the Mundari Khunt Kattidars. The provisions enacted in 1903 are

the same as those, which are contained in Sections 46 to 48 and Section 240 of the present Tenancy Act, with certain modifications. At the same time, provision was made for the summary sale of holdings in the execution of decrees for arrears of rent; and a special procedure was prescribed for the recovery of arrears of rent from the Mundari Khunt Kattidars. The vexed question of the registration of transfer, and successions to, tenures was settled; and all tenures were made saleable for arrears of rent accruing on them.

A new Act (**the Chota Nagpur Tenancy Act, Act VI of 1908**) was framed to include all provisions affirming local customary rights and usages, which the investigations of the Settlement Officers had shown to be necessary, and several provisions of law and procedures, borrowed from the Bengal Tenancy Act, which were in no way inconsistent with local usages and customs and which the experience of the Civil Courts had shown to be essential for the proper administration of the rent law in Bengal.

The law in Jharkhand provides that in case the transferee has, within 30 years from the date of transfer, constructed any building or structure on such holding, or a portion thereof, the Deputy Commissioner shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within 6 months (extendable to 2 years) failing which the Deputy Commissioner will get such a building or structure removed.

However, the three provisos made to Section 20 (5) of the Santal Parganas Tenancy Act and Section 71 (A) of the Chota Nagpur Tenancy Act, make regularizations of pre-1969 transfers possible.

Further, and more astonishingly, the Jharkhand law provides for adverse possession rights to the non-tribal transferees. In case the

tribal wants to take back the lost land, it is for him to pay the compensation.

The Chota Nagpur Tenancy Act, 1908 carried Section 49 which empowered the Dy.Commissioner to allow transfer of lands belonging to a member of the Scheduled Tribes to a non-tribal. The usual procedure followed was a petition by the tribal, desirous of selling his lands to a non-tribal, before the Dy.Commissioner. The law enjoined upon the Dy.Commissioner to ascertain the purposes of the transfer under the following heads-educational, religious, charitable and any public purpose to be notified as such by law. Over a period of time, there was a mushroom growth of housing cooperative societies, in and around the Ranchi Township, composed solely of the non-tribals which came up in permission cases as purchasers. In most cases, the objectives enshrined in law came as a sheer camouflage to the hidden agenda of raising houses in the urban locations of Ranchi. The fact remains that housing has never been notified as a public purpose by the State Government under the CNT Act. Hence, by a gross and wilful misinterpretation of the public purpose clause, transfers were allowed for housing activities. Even otherwise, the stated objectives were shelved in the background and housing was carried out on transferred tribal lands on large scale.

In 1995, the State Government (Bihar) took a bold step to delete the said objectives and restrict permission for industrial and mining purposes alone.

The recent Ranchi muddle remains a sharp pointer to the gross misuse to which a permission clause might be subjected, by promoting and harbouring transfer, far away from the declared objectives, under an officially sponsored scheme of things.

No permission clause exists in the Santal Parganas law.

Further, while the Santal Parganas law puts a ban on all transfers (including one by a non-tribal raiyat subject to certain conditions), the CNT Act is silent over a transfer by a non-scheduled tribe person.

Deputy Commissioners have been empowered to set aside unlawful transfers and restore the lands, so transferred, back to the transferor, in both the tenancy laws. Penal provisions exist in both the Jharkhand laws.

ORISSA

The Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956 govern the issue of tribal land alienation and restoration in Orissa.

Any transfer of immovable property situated within a Scheduled Area, by a member of a Scheduled Tribe shall be absolutely null and void and of no force or effect whatsoever unless made in favour of another member of the Scheduled Tribe or with the previous consent in writing of the competent authority. Where a person is found to be in unauthorized occupation of any immovable property of a member of the Scheduled Tribes by way of trespass or otherwise, the competent authority may, either on application by the owner or any person interested therein, or on his own motion, and after giving the parties concerned an opportunity of being heard, order ejectment of the person so found to be in unauthorized occupation and shall cause the restoration of possession of such property to the said member of the Scheduled Tribes or to his heirs.

The competent authority is empowered to start restoration proceedings either on an application or suo-moto and restore the land transferred illegally to the transferor or his heirs. In case they are not available or willing, he shall settle the said land with any other member of a Scheduled Tribe or with any other person.

An appeal against an order of the Collector lies to the Board of Revenue. In case of any other competent authority, an appeal shall lie to the Collector. The decision of the competent authority shall be final and not challengeable in a court of law.

No registration can take place in Orissa with regard to a transfer in contravention of the provisions of the Regulation.

Any surrender or relinquishment shall be deemed to be a transfer of immovable property within the meaning of the Regulation.

SUMMING UP

The following noteworthy features appear clearly on a comparative examination of the State laws examined heretofore.

ANDHRA PRADESH

- No time bar on restoration
- No permission clause on transfers
- Presumption- Onus on transferee to prove legality
- Agency Tracts- any transfer by any person (including by non-ST) is void
- Acquisition by the State, where no tribal buyer
- Relinquishment of a tribal holding only with the permission of the State Government / Agent / Competent authority

- Transfers between the 1917 Act and the 1959 Regulation to be valid, if valid under the 1917 Act.

MAHARASHTRA

- Restoration not unlimited.
Fixed period for Restoration- 1.4.1957-6.7.1974
- No prior permission clause on transfers.
- Prior permission of the Collector in case of lease/ mortgage of less than 5 years and that of the Collector with the prior approval of the State Government in other cases.

GUJARAT

- Transfer valid with prior permission of the Collector/ State Government.

MADHYA PRADESH/ CHHATTISGARH

- Total ban on transfers in the notified Scheduled Areas.
No permission clause with respect to such areas.
- No limitation
Restoration irrespective of the Limitation Act
- Presumption- Onus lies on the transferee to prove legality.
Every occupant of tribal land to inform the SDO regarding such possession within 2 years of the commencement of the Amending Act of 1980, otherwise presumption of unlawful possession.

JHARKHAND

- Three provisos to the main law on alienation/ restoration are anti-tribal.

ORRISSA

- Any surrender/ relinquishment amounts to transfer.
- Transfer valid if prior permission of the competent authority obtained.

RAJASTHAN

The Rajasthan law provides for summary ejectment of the trespassers of the lands held by a member of a Scheduled Caste or a Scheduled Tribe. A common method to circumvent the law is to obtain a collusive declaration of right over tribal lands. A non-tribal files a suit to the effect that he is in continuous possession of the tribal land which was entered in the name of the member of the SCs/ STs by mistake. The respondent gives his consent to the plaintiff and the declaration is made in favour of the person other than the Scheduled Caste/ Tribe. Invariably the name of the non-tribal in so-called cultivating possession was not there in the Girdawari upto 1961.

RECOMMENDATIONS (LEGAL) ON TRIBAL LAND PROTECTION IN THE FIFTH SCHEDULE STATES

Legislation, by itself, is no final solution for the aberrations of a society. The hiatus between the tribal and his community cannot be removed by a sheer act of law. All legislation in this direction is utmost individual-centric, an attempt to save the forlorn tribal against the machinations of a class of usurpers. Forging links between the individual tribal with his lost community ethos, an empowerment of the community as such, and developing collective self-defence mechanism, remains still a far cry at least in the Fifth Schedule States. All legislation aims primarily at a damage control exercise and

ensuring security of tenure to the tribal household to some extent retrospectively, as also providing safeguards for the future.

Judged in this limited context even though, the laws on the statute book in the Fifth Schedule States have their own respective strengths and weaknesses. There are points of departure while uniformity eludes. That is because diverse political and social realities present the backdrop for the tribal land legislation in different states. While we come across a definite pro-tribal twist in certain states, the stance is lukewarm and self-denying in certain other states. While substantive issues have been surreptitiously shelved below the carpet through provisos, exceptions and exemptions, a lip-service is paid to a procedure, so called open. A long lease has been provided for the blatant regularization of the non-tribal excesses on tribal land retrospectively. Still Government functionaries have been authorized to allow transfers, presuming their integrity and fervour for the tribal cause to be above board. A glance at such patchwork legislation, making no secret of an anti-tribal bias, coupled with surveys and settlement which put an official seal of approval on past alienations, makes us wonder if at all we have come out of the colonial era.

There has been a debate on a central law- a model one, to act as a beacon light. But given the distortions in the state laws, and the travesty of justice in the restoration courts, there are doubts if the much talked about central law will be an effective guide, with teeth, any different from the numerous recommendations of numerous committees, conferences and groups – which have had a backseat in the socio-political medley. In any case the central law will have to be “owned up” by the State Governments in letter and in spirit. It will, hence, be more of a prudent exercise, to make certain suggestions in a certain direction and to identify a set of cardinal tenets for a social philosophy which eventually looks beyond the narrow confines set out by law. This philosophy pins its hope and

faith in the eventual conscientization and organization of the tribal people, with or without the aid of the Government. This philosophy recognizes and gives credit to the bid and struggle of the non-Government bodies to empower the people from below without bringing any rhetoric to the fore. This could as well be a pointer to the self-help groups and the measurable impact they have made on the tribal life in interior Scheduled Areas which had otherwise been areas of inertia and passive submission vis-à-vis forces of exploitation.

CARDINAL TENETS OF LEGISLATIVE CHANGE

1. Alienation: A Continuing Wrong: No Time Bar

The cardinal principle of any ideal prescription or for that matter any model law, shall be, to view alienation as a continuing wrong, irrespective of a time-frame. By a sheer lapse of time, neither this wrong can be condoned nor legitimized.

Hence, no right by adverse possession should accrue to a transferee. The general provision of limitation should be made subservient to the spirit of the restoration to the transferee for improvements made on the land during the length of illegal occupancy. Any piece of ideal legislation as on date today, should encompass in its gamut the transfers made in the past, retrospectively.

There is absolutely no time bar on restoration in **Andhra Pradesh**. In **Maharashtra**, though restoration is not entirely unlimited, the period fixed retrospectively for restoration is 1-4-1957 to 6-7-1974. In a similar vein, transfers between the 1917 Act and the 1959 Regulation in Andhra Pradesh will be rendered invalid if they are not in consonance with the 1917 Act. In **Madhya Pradesh** and

Chhattisgarh, restoration is to be made irrespective of the Limitation Act.

Exemptions granted in the two **Jharkhand** laws are to go as they militate against certain ideal prescriptions in the same laws- rather bring them to a naught. The vision should be clear and not blurred by surreptitious disavowals and second thoughts. There have been Court rulings to suggest that no rights accrue through adverse possession in the special context of the Santal Parganas.

2. Ban on all Transfers

In the Santal Parganas of **Jharkhand** no raiyat (neither a tribal nor a non-tribal) can transfer his right in his holding by any means. The ban is complete and all-encompassing. But there is an exception. There could be a transfer if the right to transfer has been recorded in the record of rights, and then only to the extent to which such a right is so recorded.

The lesson of the Gantzer's survey and settlement in Santal Parganas has been that ignoring the ancestral, hereditary rights of the Santals, duly recorded in the McPherson's and Wood' surveys, the Gantzer's survey substituted entries by the non-tribal incursionists. Whereas, the Santal continued in factum possession the non-Santal got his name entered in the record of rights. The usual devices were rent evictions, collusive suits, surrenders and settlements, abandonments etc. The consequence of basing the right to transfer on such record of rights, based on deceit and foul play, needs no elaboration.

In Agency Tracts in **Andhra Pradesh**, any transfer by **any** person (including a ST as well as a non-ST person) is void. There is a total ban on transfers in the notified Scheduled Areas of **Madhya**

Pradesh and **Chhattisgarh** as well. In **Rajasthan**, even intra-tribal transfers within the Saharia tribes is banned.

3. Onus to Prove Legality on the Transferee

In all laws, dealing with tribal land protection, the law maker should be equally concerned about the centuries old vulnerability and resourcelessness of the tribal, made a victim of the stronger forces of foul play. The law should unequivocally lay the burden of proving the legality of a transfer on the transferee. This will expose the transaction on the one hand and act as a scare-crow against future alienations.

In the **Andhra Pradesh** Regulations, the onus to prove lawful entry into a tribal holding lies on the transferee. Or else, he is guilty of holding a land in contravention of law. Similarly, in the **Madhya Pradesh** and **Chhattisgarh** enactments, through a presumption clause, onus lies on the transferee to prove legality and save himself from eviction. In fact, every occupant of the tribal land has to notify to the SDO regarding such possession within 2 years of the commencement of the Amending Act of 1980, otherwise there will be a presumption of unlawful possession.

Total and all-pervasive ban on transfers in the Scheduled Area, needs be given serious thought by all states concerned.

4. No Permission

Section 49 of the Chota Nagpur Tenancy Act, 1908 in **Jharkhand** had authorized the Deputy Commissioners to permit transfers, from ST to non-ST persons in the name of, besides other things, public purpose notified as such by the State Government. Though housing has never been notified as a public purpose under the CNT Act,

successive permissions have been grossly misused by the non-tribals to raise co-operative societies and houses on tribal lands.

In **Gujarat**, transfers to be valid require the prior permission of the Collector/ State Government. Similar provisions exist in the **Orissa** law.

There is no permission clause in the **Andhra Pradesh** Regulation, the **Maharashtra** Act and the **Madhya Pradesh** Code.

If there is to be a law banning transfers, let its spirit and content not be eroded by the discretion of a Government functionary, which is apt to be misused by the vested interests.

5. Ban on Surrender and Relinquishment

One remarkable feature of the **Orissa** law is that any surrender/relinquishment amounts to transfer. This should be emulated by other states in as much as this is one backdoor through which a transferee can get away.

Surprisingly, the 1959 Regulation of Andhra Pradesh, which is otherwise impeccable, leaves relinquishment of a tribal holding immune once it is done with the prior permission of the State Government/ Agent or Competent Authority. No safeguards can substitute the main burden of law by the discretion of an agent of law.

The Full Bench of Patna High Court has held in *Bina Rani Ghosh vs. Commissioner, South Chota Nagpur* and others that on the larger purpose of the statute and in the CNT Act, a surrender by a scheduled tribe raiyat of his statutory right to hold land would amount to transfer within the meaning of the said section of the Act (1985 BLT (Rep) 279 FB).

6. Broad-basing the Definition of Transfer

Alienation or transfers must cover not only transfers by sale to a person not belonging to the Scheduled Tribes but all kinds of transfers including benami transfers, to wives, ploughmen, servants, adopted sons or daughters, sons or daughters taken in adoption by non-tribal transferees through marriage with tribal women, transfer through consent decree, decree execution sales, declaratory suits, deeds of surrender or abandonment of land executed by a person belonging to the Scheduled Tribe in favour of the non-tribals, encroachments, trespass, forcible dispossession, acquisition with bogus certificates pertaining to their status as scheduled tribes, fraudulent transactions and the like.

The 1959 Regulation of **Andhra Pradesh** has broad – based the definition of the word ‘transfer’ by including a sale in the execution of a decree and also a transfer made by a member of the Scheduled Tribe in favour of any other member of a Scheduled Tribe- benami for the benefit of a person who is non-tribal.

It is with this angle, that the needle of suspicion should fall on section 46 of the CNT Act in **Jharkhand**, whereby a tribal can transfer his land to another tribal with the Deputy Commissioner’s permission. Also, the beneficiaries of such transfers are the neo-rich tribals who purchase lands from poor tribals at throw-away prices, thereby further impoverishing them.

7. Ban on Civil Courts, Advocates, Unlawful Registration

There is welcome unanimity in several states in their approach to putting a bar on Civil Court interventions, which will be dilatory, almost endless, giving a leverage to the transferees. Similarly, since

the tribals can’t afford lawyers, there is as well a ban on the appearance of advocates. The parties are supposed to fend for themselves. Finally, before any document is presented for registration, the seller has to satisfy the authorities concerned that the transaction has not been done in contravention of law.

In the non-Scheduled Areas of Chota Nagpur in **Jharkhand**, the Deputy Commissioner has been made a necessary party in all suits wherein one of the parties belongs to the scheduled tribes. The Deputy Commissioner thereby emerges as a custodian of the tribal interests in much the same way, as he is a custodian of the Government lands.

8. Summary Procedure for Restoration

The Scheduled Area Regulation Courts operating in Chota Nagpur, (**Jharkhand**) have to leave a rather model image either in the fixation of compensation or regularisation. In many cases, there are mediators and couriers for collusive decrees. The tribal is made to acquiesce against monetary considerations and is in a way bought over.

While transparency and democratic opportunities of showing cause form the kernel of natural justice, it is to be seen that the tree is not missed for the wood. There is the tyranny of the documentary evidence which fizzles out once the restoration court applies the crux of the restrictive laws and gleans truth lurking somewhere in a heap of make-believe evidence.

While Collectors can act suo-motu in several states, there is a trap. With a machinery outright corrupt and conniving it is not always possible to obtain a feedback from the field. Hence, while no applications are coming from those interested, the own machinery

of the Collector is out of tune. The Collector has to explore viable alternative systems of communications himself, including the NGOs, developing thereby his own internal network, if at all information is to reach him. He can even conduct a possession survey to meet his purposes.

Revisional survey could be one major source of information at the stage of comparing entries with the last survey.

Once the information is received from whatever source, it only remains a determined bid to cut down on avoidable procedure and order restoration.

Restoration often remains on paper only. The Scheduled Area Regulation court comes to the conclusion of the judicial process by ordering eviction and restoration. The file is decently closed. The file should not be closed so long as a delivery of possession report does not reach the Court.

9. A New Role for the PRIs

The **Madhya Pradesh** Code assigns through legal provisions, a limited, yet definite role to the Gram Panchayats in this context. Beyond a threshold point the SDO steps in. The example is worth emulating.

10. Penal Provisions

Penal provisions appear in different laws, including the one de-recognising any right and title in the transferred lands. There could also be imprisonment and fines. However, unless the transgressors of law are actually convicted and punished, penal provisions will remain on paper only. So much so that there is also an idea of compensating the tribal transferor for the losses sustained during the period of the non-tribal occupation.

A Summary of Legal Recommendations

1. No time bar on restoration
2. Ban on transfers by all
3. Onus to prove the legality of a transfer on the transferee
4. Removal of 'permission' clause on transfer
5. Ban on surrender and relinquishment
6. Broad-basing the definition of transfer
7. Bar on civil courts, advocates, unlawful registration
8. Summary procedure for restoration
9. A new role for the PRIs
10. Penal provisions

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3. The Maharashtra Project Affected Persons Rehabilitation Act, 1986.
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6. The Santal Parganas (Supplementary Provisions) Act, 1949.
7. The Bombay Land Revenue Code, 1879 (for Gujarat).
8. The Bombay Tenancy and Agricultural Lands Act, 1948.
9. The Orissa Land Reforms Act.
10. The Orissa Scheduled Areas Transfer of Immovable Property by Scheduled Tribes Regulations, 1956.
11. The Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959.
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15. The Rajasthan Tenancy Act, 1955
16. The Naga Hills Jhumland Regulation, 1946
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18. The Nagaland Forest Act, 1968
19. The Nagaland Land (Requisition and Acquisition) Act, 1965.
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31. The Manipur Land Revenue & Land Reforms Act, 1960.
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3. Report of the Committee of Members of Parliament and Experts constituted to make recommendations on law concerning extension of provisions of the Constitution (Seventy Third Amendment Act, 1992) to Scheduled Areas. Ministry of Rural Development, Government of India, New Delhi, March, 1995.
4. Special Report on Development of Scheduled Castes and Scheduled Tribes – Need to re-focus on land rights – The Bihar Case. National Commission for Scheduled Castes and Scheduled Tribes, New Delhi, March, 2000.
5. Report of the Expert Group on Prevention of Alienation of Tribal Land and its Restoration (Headed by Shri B. N. Yugandhar). Submitted to the Ministry of Rural Development, Government of India, New Delhi, 2003.

D. PROCEEDINGS OF WORKSHOPS/ OCCASIONAL PAPERS

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2. Recommendations of the Workshop on Land Reforms in Andhra Pradesh (Held in Hyderabad from 15th to 17th May, 1992) Land Reforms Unit, LBSNAA, Mussoorie
3. Contributions on Land Reforms in Andhra Pradesh (Presented in Workshop on 'Land Reforms in Andhra Pradesh' held from 15th to 17th May, 1992 in Hyderabad) Land Reforms Unit, LBSNAA, Mussoorie
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1. Land Alienation among the Tribes of Gujarat Tribal Research and Training Institute, Gujarat Vidyapith, Ahmedabad, 1988
2. Land Reforms in Gujarat: An Empirical Study (1988-91) Land Reforms Unit, LBSNAA, Mussoorie, 1994
3. Problems of Land Alienation among Tribes of Gujarat (A Report) Setu, Centre for Social Knowledge and Action, Ahmedabad

Madhya Pradesh

1. Land Reforms in Madhya Pradesh: An Empirical Study (1988-91) Land Reforms Unit, LBSNAA, Mussoorie, 1994
2. Tribal Land Alienation in Madhya Pradesh: A brief Review of Problem and the Efficiency of Legislative Remedies (by Harsh Mander)

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2. Tribal Land and Forest Rights in Orissa (Presented in the workshop on Land Reforms in Orissa at the Gopabandhu Academy of Administration, Bhubaneswar from 4th to 6th February, 1993)

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LBSNAA, Mussoorie

Land Reforms Unit,
LBSNAA, Mussoorie

Rajasthan

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Land Reforms Unit,
LBSNAA, Mussoorie

Tamil Nadu

1. Land Reforms in Tamil Nadu: An Empirical Study (1988-91)
2. Report of the Study on Tribal Land Alienation in the State of Tamil Nadu

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Tamil Nadu, 1998

General

Workshop on Effective
Implementation of Policy on
Checking Tribal Land Alienation
and Restoration of Alienated
Lands

National Institute of
Rural Development,
Rajendranagar,
Hyderabad 500 030,
1989



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M.A. (Political Science)
Patna University: Gold Medalist

Ph.D. Patna University
Subject: Personnel Management and Financial Administration in the Bokaro Steel Plant.

Sahitya Shastri (Sanskrit): Kameshwar Singh Sanskrit University, Darbhanga.

First Class with distinction (fifth position in India) in the **Russian Language Certificate Examination** conducted by the All India Russian Language Institute, New Delhi.

D. Litt. Patna University

Subject: The Concept and Practice of Training and Management Development: A Study of the Bokaro Steel Plant.

Postings: Lecturer, Deptt. of Political Science, Ranchi College, Ranchi: 6.1.1975-26.4.1975; Lecturer, Deptt. of Political Science, Patna College, Patna: 28.4.1975: 13.9.1980: Joined the Indian Administrative Service on 15.9.1980 (Bihar Cadre).

Postings in the IAS

- i. S.D.O., Godda – 7.11.82 - 14.6.84
- ii. Dy. Development Commissioner, Saharsa – 19.6.84 - 21.12.85
- iii. Vice Chairman, Ranchi Regional Development Authority, Ranchi – 9.12.85 - 12.3.86
- iv. Settlement Officer, Dhanbad – 21.2.86 - 20.11.90
- v. District Magistrate & Collector, Sitamarhi – 23.9.90 - 3.11.92
- vi. Additional Secretary, Deptt. of Revenue & Land Reforms, Govt. of Bihar, Patna – 27.11.92 - 2.1.94
- vii. Special Secretary, Deptt. of Revenue & Land Reforms, Govt. of Bihar, Patna – 3.1.94 - 24.9.97
- viii. Director, Land Records & Survey, Bihar (Additional Charge) – 22.3.94 - 7.7.94
- ix. Director, Consolidation, Bihar (Additional Charge) – 23.2.96 - 9.7.96
- x. Additional Member, Board of Revenue, Bihar, Patna – 23.8.97 - 12.6.98
- xi. Secretary, Deptt. of Parliamentary Affairs, Govt. of Bihar, Patna – 12.6.98 - 30.11.2000.
- xii. Administrator, Bihar State Scheduled Castes Cooperative Development Corporation, Patna (Additional Charge) – 21.5.99 - 19.6.2000.
- xiii. Managing Director, Bihar State Backward Classes Finance & Development Corporation, Patna (Additional Charge) – 26.5.99 - 19.6.2000.
- xiv. Secretary, Department of Secondary Education, Govt. of Bihar, Patna – 28.11.2000 - 1.12.2001.
- xv. Additional Member, Board of Revenue, Bihar, Patna – 1.12.2001 – 18.8.2004
- xvi. Secretary, Department of Rajbhasha, Govt. of Bihar, Patna – 29.1.2002 - 7.1.2003
- xvii. Secretary, Department of Rajbhasha, Govt. of Bihar, Patna – 12.4.2003 - 7.11.2003
- xviii. Secretary, Dept. of Minority Welfare, Govt. of Bihar, Patna – 1.3.2004 - 9.8.2004
- xix. Secretary, Dept. of Relief & Rehabilitation (Disaster Management), Govt. of Bihar, Patna – 24.2.2004 - 29.3.2005.
- xx. Additional Member, Board of Revenue, Bihar, Patna – 28.3.2005 to date.

Foreign Tours

1. Visited Thailand, China and Hongkong in 1992 on a study tour sponsored by the MHRD Govt. of India and the UNICEF
2. Underwent training with International Training Service, London (organised by the British Council) in London and other places in the UK on the Management of Change in Government (28.9.1996-10.10.1996)

v. Appointed Member of a National Level Committee on Consolidation of Land Holdings, formed by the Ministry of Rural Development, Govt. of India, in 1999.

vi. Appointed Member of a National Level Committee on Tribal Land Alienation and its Restoration, formed by the Ministry of Rural Development, Govt. of India, in April, 2000, under the Chairmanship of Shri B.N. Yugandhar, IAS (Retd.).

Govt. of India Assignments

- i. Appointed Member of a Committee on the Revitalisation of Land Revenue & Land Records Administration in India (Ministry of Rural Development, Govt. of India) in 1994 and covered 14 States in the country. Submitted State Papers - the Committee was headed by Shri P.S. Appu, IAS (Retd.).
- ii. Prepared State Papers on Manipur-Tripura on an assignment given by the LBS National Academy of Administration, Mussoorie in 1994-95.
- iii. Appointed Member of an Expert Group, formed by the Dept. of Rural Development (Ministry of Rural Areas & Employment), Govt. of India in 1997. Assigned with the task of studying tribal land alienation and formulating a model law on the subject. Contributed paper entitled "**Continuity & Change in Tribal Tenancy Laws in Bihar: A Review of Transfer Provisions**".
- iv. Served as a member of an Expert Group set up by the National Commission for SCs and STs (GOI) to study issues pertaining to Land Rights (1999). Contributed paper entitled "**New Policy Options for Tenancy Reforms in Bihar**".

PUBLICATIONS

Sl. No.	Title of the Book	Publishers	Year
A. BOOKS IN ENGLISH			
1.	Arrah Goes to Polls	Shri Jagdish Niketan, New Sheoganj, Arrah	1972
2.	The Conversion (Poetry)	Bharati Prakashan, Varanasi	1985
3.	Active Ingredients of Rural Development	District Rural Development Agency, Saharsa	1985
4.	Human Resources Development in Bokaro Steel Plant	Steel Authority of India Ltd. Bokaro Steel Plant	1987
5.	Beyond Survey	Survey & Settlement Office, Dhanbad	1987
6.	Political Legacy of the Rigveda	Bharati Prakashan, Varanasi	1987
7.	Land Reforms in Kerala: the Myth and the Reality	National Institute of Rural Development, Hyderabad	1992

8.	Land Records Management in 14 States of India	- do -	1998
9.	Tenancy Reforms Re-visited	LBS National Academy of Administration, Mussoorie	2000
10.	Reach out to me, yourself (A Collection of 101 Poems)	Chandravindu Prakashan, Shri Jagdish Niketan, New Sheoganj, Arrah	2000
11.	Fallen Leaves (A Collection of 178 Poems)	- do -	2001
12.	Socio-Economic Profile of Rural India (Vol. 2) North-East India (ed.)	Concept Publishing Company, New Delhi	2002
13.	Readings in Land Reforms	Centre for Rural Studies, LBS NAA, Mussoorie	2003
14.	Studies on Ceiling Laws	LBS National Academy of Administration, Mussoorie	2004
15.	Ceiling Laws in India	-do-	2005
16.	Studies in the Jharkhand Tenancy Laws	-do-	2005
17.	Iceberg (A Collection of 137 Poems)	Chandravindu Prakashan, Shri Jagdish Niketan, New Sheoganj, Arrah	2006
B. BOOKS IN HINDI			
1.	cksdkjks bLlkr la;a= esa ekuo	LVhy vkWFkksfjVh vkWQ bafM;k fy-] cksdkjks	1990

2.	cksdkjks bLlkr la;a= esa izf'k{k.k ,oa izcU/ku fodkl	bLlkr la;a= pUnzfcUnq izdk'ku] Jh txnh'k fudsru] u;k f'koxat vkjk	1993
3.	iqfyl nkf;Ro ,oa ukxfjd tkx:drk	C;wjks vkWQ iqfyl fjlPZ ,.M MsoyiesUV] x`g ea=ky;] Hkkjr ljdkj	1997
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5.	mRRkj&iwohZ jkT;ksa esa Hkw&vfHkys[k la/kkj.k	&rnSo&	2003

ARTICLES/PAPERS

Nearly 50 articles/research papers published in standard journals.

AWARDS/HONORARIA

Sl. No.	Book/Paper	Amount of Award/Honorarium	Received from	Year
1.	Human Resources Development in Bokaro Steel Plant (Book)	Rs. 10,000/-	Steel Authority of India Ltd. Bokaro Steel Plant	1987
2.	People's Participation in Planning (Article)	Rs. 2,000/-	Indian Institute of Public Administration, New Delhi. First	1989

				Prize in IIPA Essay Competition, received from Dr. Shankar Dayal Sharma, the then Hon'ble Vice President of India	
3.	cksdkjks la;a= esa lalk/ku ¼iqLrd½	bLikr ekuo fodkl	Rs. 10,000/-	LVhy vkWfKksfjVh vkWQ bafM;k fy- cksdkjks bLikr la;a=	1990
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7.	State Papers on Manipur and Tripura		Rs. 15,000/-	LBS National Academy of Administration, Mussoorie (Govt. of India)	1996
8.	iqfyl iz'kklu esa xq.kkRed lq/kkj		Rs. 5,000/-	iz'kklfud lq/kkj vkSj yksd f'kdk;r foHkkx] Hkkjr ljdkj dh ldkj cYyHk HkkbZ iVsy iqjLdkj ;kstuk	1996

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10.	mRrj iwohZ jkT;ksa esa Hkw&vfHkys[k la/kkj.k	Rs. 15,000/-	- do -	2001
11.	Socio-Economic Profile of Rural India (Vol. 2) North-East India (ed.)	Rs.5,000/-	LBS National Academy of Administration, Mussoorie (Govt. of India)	2004