

Readings in Land Reforms



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About Centre for Rural Studies

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.



**Centre for Rural Studies
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**To Shri Mukund Prasad, IAS (Retd.),
formerly, Chief Secretary, Bihar, presently,
Principal Secretary to Chief Minister, Bihar,
for all his support and guidance.**

C. ASHOKVARDHAN

FOREWORD

Land reforms aims to make a rational re-ordering of the limited and useful land resources by affecting conditions of holdings in order that cultivation can be done in an economic and efficient manner without any waste of labour and capital. Land reforms also serve as a means of re-distributing agricultural land to the under-privileged classes and of improving the terms and conditions on which the land is tenanted to the actual tillers. The recent trends in the working of land, lease and labour markets indicate that the position of lessees are, by and large, becoming increasingly vulnerable and the task of protecting them consequently more difficult. In states where leasing is illegal the lessors change their lessees very frequently lest they claim some right in future. Lessors are averse to the incidents of tenancy being recorded and prefer to keep the land vacant. The area under tenancy as a whole, in consequence of the various tenancy reforms measures, has declined from over one-half of the total operated area to about 15 per cent of the area now. However, the fact remains that tenancy reform has not brought to an end the system of absentee landlordism. Nor has it led to a disappearance of tenancies. Tenancies have instead been pushed underground and most of the tenancies that still exist take the form of informal crop-sharing arrangements.

The recording of tenant's names should not be viewed as a purely juridical-cum-bureaucratic exercise. In view of the organisational weaknesses of the weaker sections in most areas, the restoration and strengthening of the Panchayati Raj institutions appear to be a workable strategy for tenants' mobilisation for struggles against the vested rural interests. The detection of tenancy and recording of tenants in rural areas has always been a difficult problem, to the extent that tenancies represent informal arrangements between lessors and lessees. The possibility of tenancies remaining undetected becomes even higher for the official surveys.

Dr. Ashokvardhan has dealt with some of the major aspects of tenancy reforms as incorporated in the tenancy legislations of different states. Following aspects have been covered in the present volume:

- (i) Security of tenure (touching aspects like termination of tenancy, ejectment, resumption for personal cultivation, and surrender).
- (ii) Regulation of Rent
- (iii) Confirmation of ownership rights.

The failure of land reforms has been attributed to a combination of lack of political will, loopholes in the

legislation itself, delays caused by litigation and the growing political strength of the middle level farmers who have cornered a large portion of the benefits of the post - Independence agricultural and water management policies. Inequalities have increased. On one extreme, there is greater monopolisation of land ownership and on the other, fragmentation of holdings. As a result of the latter, land-holdings of the poor become economically non-viable.

As far as the tribals are concerned, the problem of tribal land alienation persists on account of their weakness and resourcelessness and due to the depletion of the resources they have traditionally depended upon. There has been land loss through displacement by development projects. The tribals are basically forest based people. They had developed a vested interest in the renewability of the forest and had built a whole set of religio-cultural traditions and social control mechanisms to ensure sustenance. With the state taking over this resource their alienation from what was in fact their life support system began. The State ownership of forests became absolute. The assumption was that the forest dwellers were the cause of deforestation and that the forests should be protected from them. Thus emerged a contradiction between the tribals and the forest.

Dr. Ashokvardhan has dealt with the issues relating to tribal land protection in the Vth Schedule States in

detail and has put forth recommendations for legal changes which are worth considering. The review of state specific laws, based as it is on the author's recent coverage of the states concerned and local interaction is fairly elaborate. There is an attempt to glean the best of the provisions which could as well be emulated elsewhere. The legal recommendations have been summed up under the following heads -

1. No time bar on restoration
2. Ban on transfers by all
3. Onus to prove legality of a transfer on the transferees
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, adjudication of such disputes, advocates, registration
8. Summary procedure for restoration
9. A new role for the PRIs
10. Penal provisions.

It was quite an experience going through the land tenure systems in the North-East. I am told Dr. Ashokvardhan had toured the North-East extensively and prepared reports on each one of seven states, under the direct guidance of Shri P. S. Appu, former Director, LBSNAA. Shri Appu remains a legendary figure in land

reforms in the country. The insights developed in the chapter on land ownership patterns in the North-East summarily point to a happy blend between the modern approach to survey and settlement and the preparation of record of rights on the one hand and according due credence to individual, community and mixed ownership of land rights on the other.

Since this book along with the author's earlier book 'Tenancy Reforms Re-visited' (published by the LBSNAA) will serve as a textbook for the Officer Trainees in the Academy, it is to be hoped that successive batches of OTs will acquaint themselves with the subtleties and nuances of land reforms in India through scholarly and yet lucid presentation. I hope that the insights developed in the present volume will be of academic as well as practical worth to our officer trainees, as they equip themselves for field assignments in the days to come.

Dr. Ashokvardhan, even though not being with us formally, has been more than a kin for the Academy family over the last two decades through his academic inputs, presentations and participation in interactive sessions with officer trainees and experts. I must compliment him for presenting intricacies of land reforms issues in an interesting manner. The papers incorporated in this volume are highly informative and represent the author's experiences in and exposure to the land issues in different

states. As a member of several expert groups formed by the Ministry of Rural Development, GOI and the National Commission for Scheduled Castes and Scheduled Tribes, the author has a rare opportunity to cover various states, hold interaction with all concerned in land matters and administration and tell the myth from the reality.

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INTRODUCTION

The author of 'Readings in Land Reforms' needs no introduction. His contribution to the literature on land reforms is noteworthy and he has been associated with the Lal Bahadur Shastri National Academy of Administration. The officer trainees in the Academy at Mussoorie and the state training institutes have enormously benefitted by his presentations, founded as they are on empirical strength and conviction. The Ministry of Rural Development, GOI has also honoured him by inducting him in numerous expert groups on land reforms.

Evidently, tenancy reform measures have not been earnestly enforced. The incidence of tenancy continues to be substantial. The banning of tenancy and various lease restrictions has only pushed the phenomenon underground, rendering the tenants' position even more precarious. As long as a class of land-owners who shun physical labour and a large mass of indigent peasantry co-exist, any legal ban on tenancy will remain only on paper. In states like Kerala where the rural poor are politically conscious and well-organised, many landowners keep their lands fallow or grow only one crop where two crops could be grown. In areas with high productivity, rapid agricultural growth and well developed commercial agriculture, leasing should be freely allowed. Similarly in areas where tenancy reforms have taken place and the old exploitative relations substantially

weakened, such as in the Western states of Rajasthan, Maharashtra, Gujarat and Karnataka, leasing should be allowed without any restrictions. However, in pockets that continue to be feudal with poor agricultural growth and a high degree of inequality, the policy should envisage a rigorous implementation of the existing laws.

In the Bihar plains, the eastern Uttar Pradesh and the delta of the Mahanadi, instead of straightaway legalising tenancy, the first step should be to amend the law as in West Bengal for conferring limited rights on share-croppers. Thereafter, an intensive campaign should be mounted for recording the rights of share-croppers on the lines of West Bengal's Operation Barga.

The chapters on tribal land alienation and forests are one of the finest expositions of the central issues involved. The tribal's illiteracy, lack of knowledge of the subtleties of cash economy, and his subsistence level economy make him highly vulnerable to the exploitative and unscrupulous ingenuity of the non-tribal. The exploiter class has a vested interest in creating and perpetuating this social and economic status of the tribal, which may be characterized by its total absence of bargaining power from the viewpoint of the tribal. 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 late settlers, who came in as money-lenders,

liquor vendors and absentee landlords, have gained economic control of the area by unscrupulous means. The money-lenders use the mechanism of land mortgage to grab tribal lands. A significant portion of the tribal land is lost due to distress sale.

There are pockets, where the tribal dependence on forest is total. While shifting cultivation has had its effect on deforestation, much of the deforestation was caused by contractors illegally. As a result of deforestation, the cycle of shifting cultivation has gone down to 6 years in most areas and in some cases even to 2 to 3 years. Deforestation is not solely caused by population pressure. Several money lenders and middlemen who have appropriated tribal land have settled down in forest villages and have taken to shifting cultivation for growing commercial crop. Firewood contributes proportionately more to the income of lower than higher classes. Their dependence on firewood is now greater than in the past though its accessibility has decreased considerably.

Deforestation for development purposes and displacement has broken the linkages of the tribals with the forest. Dependence on the sale of firewood is only a symptom of a deeper malaise and not of the destructive tendencies of the tribals and other forest dwellers.

The average km. distance covered to collect firewood has increased. Further when they go to the forest they are harassed by the Forest Guards. In view of limited economic alternatives the dependence of the tribals on minor forest produce is total for their survival for at least 3 months in a year.

The earnings of the tribals from minor forest produce has also drastically declined as compared to the past. The middlemen many of whom are also money lenders have been fixing the price of MFP and firewood and have been buying the fruits of the forest dwellers' labour on unfavourable terms. The weaker sections get relatively low price per unit while the middlemen get much higher income. The middlemen have become de-facto agents of the forest development departments though in theory these agencies are to have an independent set of purchase of MFP. Poverty, exploitation and indebtedness are predominant among tribals and as a result the effects of deforestation on the tribals are quite serious.

Dr. Ashokvardhan, after a scrutiny of various state laws, makes numerous suggestions for a legislative change, Tribal friendly legal procedures are the need of the hour. 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. The development strategy should be re-

oriented to restore rights of the tribals over natural resources especially their rights to land and forest enabling them to manage the land and forest resources available. Lastly, the measures enforced to prevent tribal land alienation can succeed only if the oppressed people intended to benefit from these provisions are truly conscientized. They must be made aware of the provisions of the law and the need to make the best use of the same. The detection and restoration of alienated land to the rightful tribal owner requires a mobilisation of the tribals at the grass-root level.

The chapter on the tenurial systems in the North-East is revealing based as it is on the author's on-the-spot study and observation in all the seven sister states. This has been condensed from Dr. C. Ashokvardhan's own book 'Land Records Management in 14 States in India' published by the National Institute of Rural Development, Hyderabad. It remains almost a pioneer in the field.

It is to be hoped that taking a cue from the author's study of the nuances of laws and regions in question, the reader will endeavour to go deep into the labyrinth and develop the themes further in the interests of the downtrodden and the disadvantaged.

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ACKNOWLEDGMENT

It will not be possible to recall or put on record the help received from numerous persons from the academic, administrative or non-Government organisations' circles in the pursuit of this study. The gains are often cumulative, spanning a period of quite a few years. A vivid reminiscence of marathon interactions and also hospitality received at different places, often lurks. Visits to state headquarters and to interior villages comes to the mind. Winds of change perceived in certain areas reappear and leave a thrill. I felt like empowering myself, for instance, in course of my chats with Self Help Groups of Women in the remote areas of Rajnandgaon (Chhattisgarh). It has been a rewarding experience all through but it will be music to ears to hear from a younger colleague, at a later date, the flame survives still, keeping its tryst with heat and light.

Foremost comes Shri B.N. Yugandhar, Chairperson of an expert group formed by the Ministry of Rural Development, GOI on tribal land alienation and restoration. As a member of the group I had to study the nuances of relevant laws and make a presentation under the guidance of Shri Yugandhar.

I have been an "unattached" "dispassionate" witness to Shri Binod Kumar's invaluable contributions to the steady growth of the Lal Bahadur Shastri National Academy of Administration, Mussoorie both as its Joint Director and Director. Successive batches of officer trainees in this premier Institute have had the benefit of his profound experience in the academic and the administrative domain.

Shri Manoj Ahuja is the Coordinator of Centre for Rural Studies persistent endeavor and assistance in the shape of inputs, this book would not have come out in its present form.

I have had a chance of going through Dr. A. P. Singh's articles and survey reports on Land Reforms in various publications and Academy monographs. He is informative and empirical and impresses by his candid analysis. I wish him and his secretarial staff Shri Ramesh Kothari, Shri Deepak Kumar and Shri S.S. Kharola all the best, and convey my thanks in no sheer formality, rather with a feeling that comes from within.

C. ASHOKVARDHAN

CHAPTER – 1

TENURIAL SYSTEMS IN INDIA

The system of tenancy prior to Independence was marked in the main by the existence of a class of intermediaries between the Government and the ryots. There was no security of tenure and rents were exorbitant, as there were innumerable layers of intermediaries.

The post-Independence era is marked by the abolition of intermediary interests, allowing the ex-intermediaries ownership of self-cultivated lands only, and bringing the vast multitudes of ryots into direct contact with the Government. This has led to rent moderation and rationalization. The conferment of ownership rights on tenants has been a part of the schemes in many states. Personal cultivation has been made the main plank of legitimate ownership. While landowners have been allowed to resume a portion of tenanted lands under restrictions and limitations, tenants have been brought into direct contact with the Government. in non-resumable lands in several states.

There is a ban on tenancy in U.P., Orissa, Assam, Karnataka, A.P. (Telengana) and Himachal Pradesh, except with regard to disabled persons. Elsewhere, leasing is permitted, but regulated.

Resumption was allowed in the early phase of tenancy reforms to induce landlords to take up personal cultivation as also to provide to them subsistence holdings, wherever wanting. Care was taken,

nonetheless, to ensure that the tenant too was left with sufficient land. Conditions were laid down for the eviction of a tenant, in order to ensure security of tenure. Surrender of a tenancy is to be verified and accepted by designated revenue/ judicial officers to guard against force and foul play.

The need of the hour is to launch a crash programme for the recording of tenancies on the Operation Barga pattern of West Bengal. By itself it will give a semblance of security to the informal sharecroppers and guarantee fair rent. This will enhance a sense of belongingness which will have a positive impact on productivity as has been shown by West Bengal.

NATIONAL NORMS ON TENANCY

- Security of tenure to cultivators/ share-croppers
- Fair rents for tenants 1/4 to 1/5th of the gross produce.
- Landowners to be permitted to resume land for personal cultivation upto a limited area within a fixed time.
- Surrender of tenancy rights to be strictly regulated.
- In respect of non-resumable areas, landlord-tenant relationship be ended and the cultivators/ share-croppers brought into direct contact with the state.

- Disabled persons and defence personnel be permitted to lease out and resume on the removal of disability.
- A drive to record informal/ concealed tenancies.

ABOLITION OF TENANCY

West Bengal has prohibited lease by raiyat owners, but the cultivation by a bargadar continues. No ownership rights accrue to the bargadar, save by purchase. Bargadar's rights are heritable, but not transferable.

Orissa has prohibited future leases. Past lessees after 1.10.65 (enforcement of the Orissa Land Reforms Act) surrendered 50% of tenanted lands to owners for personal cultivation, and the rest 50% became theirs on payment of compensations. Only persons under disability can lease out.

M.P. has abolished past leases. Only persons under disability can lease out after the enforcement of the M.P. Land Revenue Code, 1959. Other landowners can lease out their lands for one year during a consecutive period of 3 years. In case of violation, the lessee becomes occupancy tenant. His rights are heritable but not transferable. He is entitled to acquire Bhumiswami rights on payment of compensation equal to 15 times the land revenue.

Rajasthan allows khatedars (owners) to lease out for a non-renewable period of 5 years.

In U.P. leases for any period are banned except those by disabled persons.

In A.P. (Andhra Pradesh) leasing is permitted but regulated. In Telengana Area, leasing is prohibited except by disabled persons.

In TN, there is no ban on lease, but once leased out the tenant cannot be evicted (as in WB).

In Karnataka leasing is prohibited except by a soldier or a seaman. If let out, the land vests in the state.

The Assam law makes provisions similar to Karnataka.

RESUMPTION FOR PERSONAL CULTIVATION

Almost all the state tenancy laws permitted landowners to resume lands for personal cultivation within a time limit and upto a certain extent. The tenant was enabled to acquire ownership right in respect of non-resumable lands.

Personal Cultivation

The owner must cultivate by

- himself or
- any member of his family
- servants on wages payable in cash or kind or both, but not in crop-share.
- by hired labour under the personal supervision of the owner or any member of his family.

The national policy on tenancy reforms has added 'residence' as an important ingredient for personal cultivation.

To the above, WB, Rajasthan, Karnataka etc. have added that the principal source of the income should be the produce from the land.

The limits laid upon resumption in terms of area varies from state to state. The same have been expressed in terms of “ceiling area” (different from ceiling law area), “family holding”, “basic holding”, “economic holding” etc.

Regulation of Rent

Ideally a tenant should be obliged to pay 25% of the produce. The straw and bhoosa shall go entirely to the tenant. Except U.P., A.P. (Andhra area), M.P., Punjab/ Haryana, all other states follow the above pattern.

In Punjab/Haryana and AP (Andhra area) rent is slightly higher. In Andhra it is 30% for irrigated land and 20% for other lands. In A.P. (Telengana area), Gujarat/ Karnataka, Maharashtra, M.P. rent is 2 to 5 times of land revenue.

In all states rent is payable in cash, or kind or both. In the Bombay area of Maharashtra, rent is payable only in cash. In West Bengal the rent is payable only in kind.

Period of Lease

Bihar and Orissa have banned all future and past leases, no period of lease has been provided for.

In AP (Andhra area) every lease subsisting on or before 1974 shall be in perpetuity. Every lease after 1974 will be for a period of six years and shall be renewable for a further period of six years at a time.

In A.P. (Telengana Area) leases made within 3 years from the date of the commencement of the Act shall be for 5 years initially and thereafter for a further period of five years in succession.

In Punjab/Haryana the lease period is minimum 3 and maximum 7 years.

In Rajasthan, the lease period is for a non-renewable period of 5 years by a Khatedar tenant and 1 year by a Ghair Khatedar tenant.

Right to Purchase

If a landholder intends to sell the leased out land, he should first offer it to the protected tenant in both Telengana as well as in Andhra areas of A.P.

Similar provisions exist in Maharashtra (Vidarbha and Marathwada regions) and Gujarat with the following conditions-

- (i) If the tenant is landless he can purchase upto 3 family holdings.
- (ii) In case he has some land, the aggregate after the purchase, should not exceed 3 family holdings.

- (iii) The land left with the landlord should not be less than 1 family holding.

In West Bengal and Tamil Nadu, there is no provision for the purchase of ownership rights, as tenancy, once created, is continuous.

In Bihar, an under raiyat with a continuous occupation of 12 years can purchase ownership right on payment of 24 times of land revenue. In Assam, the rate is 50 times of land revenue.

Conferment of Ownership Rights

The ownership rights in tenanted lands are transferred on to the tenants by Government notification in Assam. Under the Bihar (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 every under-raiyat of a raiyat holding land in excess of ceiling area, be deemed to have acquired the status of an occupancy raiyat on payment of a specified amount of compensation to the State Government.

In Kerala, Karnataka and U.P. the State Government is empowered to acquire ownership rights in all tenanted lands on payment of compensation and transfer the same to tenants who have to pay premium for the acquisition of such rights.

Provisions to confer ownership rights on tenants do not exist in the States of A.P. (Andhra Area) Haryana, Tamil Nadu and West Bengal.

Surrender

M.P., Punjab, Haryana, Rajasthan and Tamil Nadu do not have provisions for surrender of tenanted lands.

A.P. (Andhra Area) provides that the surrender is to be accepted by a special officer who is a judicial officer. M.P. provides that surrender should be registered.

Some states such as Gujarat, Himachal Pradesh, Tripura, Karnataka and Kerala allow surrender not in favour of landlords, but in favour of the State Government which may settle the land with any deserving person.

Termination of Tenancy

Evictions are to be made by a decree of a revenue officer. In A.P. (Andhra Area) this power vests in a judicial officer.

Grounds for Evictions

- (i) Failure to pay rent within time
- (ii) Non-agricultural use of the land
- (iii) Making the land unfit for agriculture
- (iv) Failure to cultivate personally
- (v) Sub-letting

- (vi) Legal resumption by the landlord
- (vii) Sub-division of the land.
- (viii) Denial of the landlord's title.

- 2. Fixity of Tenure-past, present and future. Resumption within limits. Heritable & transferable- only heritable in WB/TN
- 3. No ban on lease.

KERALA

Land Tenures in the 3 Areas of Kerala

Travancore	Cochin	Malabar
1. Pattom Proclamation, 1865 Ownership rights on many raiyats on pandaravaka (Govt.) lands. 2. Jenmi Proclamation 1867, Jenmis prevented from evicting tenants. 3. The Prevention of Eviction of Kudikidappukaran Act, 1949.	<ul style="list-style-type: none"> Proclamation of 1905- Ownership right on holders of pandaravaka lands. The Cochin Tenancy Act, 1915. The Cochin Tenancy Act, 1938. Fixity of tenure to kanam tenants. The Travancore-Cochin Prevention of Eviction of Kudikidappukaran Act, 1955. 	RESUMPTION The Malabar Tenancy Act, 1929 The Kerala Agrarian Relations Act, 1960 Qualified fixing of tenure on Verumpattomdars. <ul style="list-style-type: none"> 1. Trustee/place of ownership- for extension if collector certifies. 2. Landlord owning less than 2 acres of paddy land- for residence. Tenant to be left not less than 50 cents. 3. Whole or part of the holding may be resumed if the tenant holds more than the ceiling area. After resumption, the landowner also is to hold within ceiling area. 4. Applications for resumption in respect of tenancies subsisting on the commencement of the Act were to be made within 1 year of such commencement. The right of resumption shall be exercised only once. 5. Compensation to a tenant for improvements made. 6. If within 3 years no use by the landlord, the resumed land will be restored back to the tenant.

CURRENT TENANCY POSITION

The Kerala Land Reforms Act, 1963 (as amended in 1971, 1972, 1973)

Features

- 1. Tenant includes informal share-croppers/occupants/cultivators.

The right of limited resumption has expired in certain areas. Tenants have been conferred permanent, heritable and transferable rights in non-resumable areas.

- 7. Surrender of tenancy- only to the Government.

WEST BENGAL

The Estates Abolition Act, 1954

Raiyats came into direct contact with the Government
Permanent, heritable and transferable rights
Ex-Intermediaries left with Khas lands on payment of rents as raiyats

The West Bengal Land Reforms Act, 1955 **Features**

1. The bargadar will remain so, until his cultivation is terminated under the Act.
2. No acquisition of ownership rights to bargadars by efflux of time or otherwise, unless he purchases raiyati rights from the raiyat.
3. Termination of bargadar's cultivation-
 - Failure to cultivate land
 - No personal cultivation
 - Failure to pay produce rent in full
 - Owner's bonafide need for personal cultivation

Conditions for Resumption

1. **Total land to be resumed- 3 ha including land held already.**
2. Area left with bargadar, minimum 1 ha (aggregate).
3. If no cultivation of resumed land within 2 years or cultivation by some other person, the land shall vest in the State, subject to payment of compensation.
4. Bargadar entitled to a maximum of 4 ha of land.

Rights of Bargadars

1. Personal cultivation.
2. **Heritable not transferable. Lawful heir.**
3. **No provision for mortgage for financial institutions.**
4. **Illegal eviction: a cognizable offence.**
5. **Surrender/ abandonment: Enquiry by SDO regarding bonafides.**
6. **Share of produce- bargadar & landowner- 50:50 if inputs by the landowner. 75:25 (in other cases).**
7. No letting out. Forfeiture. Bargadars allowed.
8. Presumption – Onus to prove 'X' as not being a bargadar on landowner.

MAHARASHTRA

REGIONS & LAWS

Western Maharashtra (old Bombay Area) The Bombay Tenancy & Agricultural Land Act, 1948 (as amended in 1956).	Marathwada (Hyderabad Area) The Hyderabad Tenancy & Agricultural Lands Act, 1950 (as amended till 1954).	Vidarbha Region (Former Central Provinces and Berar Area). The Central Provinces Land Revenue Code, 1954. Replaced by the Bombay Tenancy and Agricultural Lands (Vidarbha Region & Kutch Area) Act, 1958.
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Common Features

1. Fixity of rent & security of tenure to the cultivating tenants.
2. Compulsory transfer of non-resumable lands to the tenants.

3. Even a share-cropper can be a tenant. A tenant is a person who is lawfully cultivating the land of another person.
4. Onus on landlord to disprove a tenant.
5. Personal supervision is common. In Bombay area, residence qualification added indirectly.

Specific Features

1. Bombay Law – Tillers’ Day 1.4.1957

For resumption, notice on the tenant before 31.12.1956
Application for possession to Mamlatdar before 31-3-57

Failure to do so: the tenant cultivating personally on 1-4-57 shall be deemed to have purchased from the landlord ownership rights upto the ceiling area. Balance land to be disposed off as per “Surrender” category.

Purchase price to be determined by the Tribunal. Not more than 6 times land rent for permanent tenant and not less than 20 times for other tenants. Tenant will pay compensation to the landlord in annual rents.

Purchased ownership rights are non-transferable.

After Tillers’ Day also, purchase is possible. Within 1 year of tenancy a tenant can purchase upto his ceiling area.

Resumption	Resumption allowed upto ceiling area. After resumption, the tenant should have half of the area leased to him.	Voluntary Purchase
Surrender	In writing, verified by the Mamlatdar.	

	The landlord to retain upto personal cultivation limits. Rest v sold as per priority list u/s 32
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Tenancy not terminable by efflux of time.

Grounds for Termination

- Rent default
- Damage to land
- Sub-division/sub-letting
- Failure to cultivate personally
- Non-agricultural use
- Resumption

2. Hyderabad Law

- Rent payable is maximum 3 to 5 times of the land revenue.
- ‘Family holding’ not ‘ceiling area’ in resumption.
- Landholder can resume upto 3 family holdings.
- Voluntary as well as compulsory purchase of ownership rights. No Tillers’ Day for compulsory purchase: any day notified by the Government.

1. **Tenant will offer on any day after 4.2.1954 to purchase at a price not exceeding 12 times of land rent.**
2. Tribunal in case landholder refuses. Tribunal declares the tenant a purchaser.
3. Tenant to purchase upto an aggregate area of a family holding.
4. If the landowner does not have more than a basic holding he can resume the entire area leased by him.
5. The landholder (after purchase by tenant) should be left with at least 1 family holding.
Purchased (Ownership) lands- non-transferable.

3. **Vidarbha Region Laws**

The Tahsildar shall prepare a list of persons other than occupancy/ protected tenants already recorded in settlement/ revenue record), who were cultivating the land of other persons.

Rent subject to 3-4 times of land revenue.

The following provisions are similar to the Bombay and Hyderabad laws-

Resumption

Voluntary as well as compulsory purchase of ownership rights.

Voluntary price - 12 times of the rent.

All Tenants Owners

Whether an application for purchase of ownership right has been filed or not w.e.f. 1.4.1961, the ownership of all lands held by tenants stood transferred to and vested in such tenants from that date. All such tenants are deemed to be full owners and shall pay the required purchase price.

TAMIL NADU

The Madras Estates Land Act, 1908

The right of occupancy/ settlement of fair rent provided to the ryot.

Application –

- i. Estate areas of Madras (Zamindari) held by landowners who were intermediaries between the State and the ryot.
- ii. Inam Tenures as Inams were treated as Estates.
- iii. Land not covered by the estate or Inam tenures, were under ryotwari tenure, directly under the Government.

No statutory basis for ryotwari tenure, Board's Standing Orders.

Ryotwari Holding

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Heritability

Transferability

Fixity of Fair &
Equitable rent

Protection against
Eviction

Only a retired military man is entitled to resume land from the cultivating tenant.

The Madras (Abolition and Conversion into Ryotwari) Act, 1948

- Abolition of all Zamindari Estates and Inams.
- Ryotwari pattas to landholders (intermediaries) for self-cultivation (Pannai) lands.
- Ryotwari pattas to all ryots.

The Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1963- to cover the rest of the Inams.

A member of the Armed Forces may sub-let his land.

In Tamil Nadu there is no ban on lease.

For every tenancy agreement, a lease deed has to be executed between a cultivating tenant and a landlord in triplicate in the prescribed form; one of the copies shall be lodged in the taluk office. If the landlord or the tenant refuses to sign or fails to lodge the lease deed in the taluk office, the Revenue Divisional Officer may impose a penalty which may extend to Rs. 50/-

Tenancy Reforms

<u>Regulation of Rent: The Madras Estates Land (Reduction of Rent) Act, 1947</u> Estate land rents matched to adjoining ryotwari land rents and reduced accordingly. The Tamil Nadu Cultivating Tenants' (Payment of Fair Rent) Act, 1956 Amending Act, 17 of 1980. Rent is 25% of the normal gross produce or its values for all classes of land.	<u>Security of Tenure</u> The Tamil Nadu Cultivating ANDHRA PRADESH Tenants' Protection Act, 1955 Protection against unjust evictions. Eviction only at Court orders/decree. Eviction on:- Damage to land Rent default Non-Agricultural uses Denial of landlord's title	<u>Confirmation of Ownership Rights</u> Nil
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No provision for Resumption

The Madras Estates Land Act, 1908 (Andhra Areas excl. Telengana) (a) Applied to the Estate (Zamindari) areas held by intermediaries between the state and the ryot. (b) Applied to Inams (treated as Estates). (c) (d) Lands, not covered by Zamindari or Inam tenure were held under ryotwari tenure directly under the Government. Ryotwari tenure: based not on statutes but on Boards' standing orders.		1. Right of occupancy to the ryot. 2. Settlement of fair and equitable rent.
Intermediaries		Effects of Abolition
Zamindars	Inamdars	1. Ryotwari pattas to ex-intermediaries in home-farm 'self-cultivated' lands. 2. The ryots (but not their tenants) came directly under the State Government.

Abolition of Intermediaries	
Andhra Area	Telengana Area
1. The Andhra Pradesh (Andhra Area) Estates Abolition and Conversion into Ryotwari Act, 1948 2. The Andhra Pradesh (Andhra Area) Inams Abolition and Conversion into Ryotwari Act, 1956	1. The Andhra Pradesh (Telengana Area) Abolition of Inams Act, 1955. The Andhra Pradesh Mahals (applicable only to Mahals in the Scheduled Area of Khammam) Abolition and Conversion into Ryotwari Regulation, 1969

CURRENT STATUS OF TENANCY

	<p>should not exceed 2/3 of the ceiling area</p> <p>left with the tenant</p> <p>protected tenants (Nowhere)</p> <p>6. Right to make improvements and compensation in case of termination</p> <p>7. Right to erect a farm building on tenanted land.</p> <p>Resumption</p> <p>1. The landholder is personally cultivating a holding 2 times the family holding</p> <p>2. The tenant to be left with 1/3 of family holding</p>	<p>application, on the following grounds:</p> <p>* failure to pay rent</p> <p>* injury to land</p> <p>* violation of the conditions of tenancy</p> <p>* before 5 years of resumption.</p> <p>* willful denial of the landholder's title</p> <p>* sub-letting</p> <p>* failure to comply with judicial orders</p> <p>Termination of tenancy either by surrender in good faith or on six months' notice in cases of failure to pay rent, damage to land, sub-lease non-agricultural uses, sub-division.</p> <p>COMMENTS</p> <p>He has held land continuously for a period of not less than 30 years before the commencement of the 1950 Act</p> <p>Tenancy is permitted but no recording, despite the AP Record of Rights in Land (applicable both to the Andhra and Telengana areas)</p> <p>Additional Rights</p> <p>1. Recording in ROR</p> <p>2. He can purchase ownership right of his tenanted land.</p>
<p>The Andhra Pradesh (Andhra Area) Tenancy Act, 1956 (as amended in 1974).</p> <p>Tenancy is not prohibited in the Andhra Area.</p> <p>Tenant holds land under the ryot.</p> <p>Cultivating tenant.</p> <p>Agreement: Express or Implied.</p> <p>Personal cultivation:</p> <p>* Cultivation by own/ family labour.</p> <p>* by servants on wages in cash or kind (but not in crop share)</p> <p>* by hired labour under own/ family supervision.</p> <p>Rent payable to landlord:</p> <p>30% of gross produce in irrigated land</p> <p>25% in case of any other land.</p> <p>Leases prior to 1974 – in perpetuity</p> <p>Leases after the amending Act – 6 years (renewable) in writing and registered</p>	<p>The Andhra Pradesh (Telengana Area) Tenancy & Agricultural Lands Act, 1950</p> <p>Tenancy is prohibited in the Telengana Area except as per Sec.7 of the above Act. A person who holds land equal to or less than 3 times the family holding can lease out land. 5 years and 5 yearly extensions. At least 1 year's notice before termination.</p> <p>Termination of tenancy either by surrender in good faith or on six months' notice in cases of failure to pay rent, damage to land, sub-lease non-agricultural uses, sub-division.</p> <p>PROTECTED TENANTS</p> <p>He has held land continuously for a period of not less than 30 years before the commencement of the 1950 Act</p> <p>Tenancy is permitted but no recording, despite the AP Record of Rights in Land (applicable both to the Andhra and Telengana areas)</p> <p>Additional Rights</p> <p>1. Recording in ROR</p> <p>2. He can purchase ownership right of his tenanted land.</p>	<p>protected tenants (Nowhere)</p> <p>6. Right to make improvements and compensation in case of termination</p> <p>7. Right to erect a farm building on tenanted land.</p> <p>Resumption</p> <p>1. The landholder is personally cultivating a holding 2 times the family holding</p> <p>2. The tenant to be left with 1/3 of family holding</p>
<p>Heritable</p> <p>Non-transferable (except in recovery of public loans)</p> <p>Change in ownership: No effect on tenancy.</p> <p>Resumption by Landlord</p> <p>Landholder's lands after resumption</p>	<p>1/2 of the total land (held prior to the resumption) should be</p> <p>40% that of the landholder.</p> <p>In case of land acquisition, 60% goes to</p>	<p>The U.P. Zamindari Abolition and Land Reform Act, 1950</p> <p>Amending Act 20 of 1954</p> <p>Amending Act 8 of 1977</p> <p>Amending Act 24 of 1986</p> <p>Four Classes of Tenure Holders</p>

The M. P. Land Revenue Code, 1959

Features:

1. One nomenclature for landholders – Bhumiswami. All persons holding land under the ex-intermediaries become Bhumiswamis – only one class of owners.
2. Occupancy tenants under the respective Bhumiswamis, only one class of tenants.
3. A Bhumiswami cannot lease out his land for more than 1 year in 3 consecutive years. Exception, disabled etc.
4. Occupancy tenancy heritable, not transferable.
5. Maximum rent – 2 to 4 times of land revenue.
6. The rent paid in terms of services, labour or crop share can be commuted into cash rent on application to SDO.
7. If the Bhumiswami applies to the SDO within one year of the coming into force of this code, he can resume land for personal cultivation below 25 acres of unirrigated land. After resumption, the occupancy tenant's area should not be below 25 acres of such land.
8. If within 1 year of the coming into force of the code, the Bhumiswami fails to apply (for resumption), Bhumiswami's rights will accrue to his occupancy tenants on payment of certain compensation equal to 15 times the land revenue.

Bhumidars with transferable rights	Bhumidars with non transferable rights Sirdars, Asamis, Adhivasis Tenants holding under ex-intermediaries heritable but non-transferable	Asamis (as in preceding) lessees of Bhumidars or Sirdars	Govt. Lessee: A person to whom Govt. land has been let out
Un-let 'Sir' or 'Khudkasht' lands of ex-intermediaries – permanent, heritable, transferable	Hold land directly under the Government, no further protection is required		
	The Act puts a ban on tenancy. No lease for any period.		

Only those disabled persons can lease out who held land in lieu of maintenance allowance (i.e. all holders of 'Sir' and 'Khudkasht' lands in lieu of maintenance before vesting).

Tenancy is banned in U.P. But there are a large number of tenants in reality who are not recorded/recognized. They are left at the mercy of non-cultivating owners. Terms are unregulated.

M.P.

Abolition of Intermediaries

The M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Land) Act, 1950.	The Madhya Bharat Zamindari Abolition Act, 1951.	The Bindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952.
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Bhumiswami's rights also on the portion remaining with the tenant after resumption by the landholders.

9. Surrender to Bhumiswami by a surrender deed. Surrendered land to the Bhumiswami only to the extent of his right of resumption. Rest will go to the state.

ASSAM

Abolition of Intermediary Rights in Permanently Settled Estates

The Assam Management of Estates Act, 1949 (enforced in 1952-53).	The Assam State Acquisition of Zamindari Act, 1948 (enforced in 1953-54).	The Assam State Acquisition of Lands belonging to Religious and Charitable Institutions of Public Nature Act, 1959 (enforced in 1963).
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Goalpara/ Karimganj Permanently Settled.

All the rest temporarily settled. Not strictly intermediary tenure. Hence no need for abolition.

The erstwhile tenants of Zamindars become landholders within the Assam Land and Revenue Regulation of 1886 (except in Cachar and Karbianglong).

Regulation of Tenancies

(Covering the entire state, including temporarily settled areas)

<p>The Assam (Temporarily Settled Areas) Tenancy Act, 1935.</p> <p>Throughout the former permanently settled areas of Assam.</p> <p>Temporarily settled areas – land under annual lease directly under the Government.</p> <p>Occupancy/ Privileged raiyats could sub-let</p> <p>Right of Occupancy/ Right of non-occupancy</p> <p>Heritable</p> <p>Transferable</p>	<p>The Goalpara Tenancy Act, 1929</p> <p>Former permanently settled areas</p> <p>Goalpara</p>	<p>The Sylhet Tenancy Act, 1939</p> <p>Former permanently settled areas</p> <p>in Karimganj</p>	<p>Features:</p> <ol style="list-style-type: none"> 1. Occupancy tenant, non-occupancy tenant and under tenant. 2. Right of occupancy – continuous possession of 3 years. 3. w.e.f. 10.12.1971 sub-letting banned. <p>Sub-lease prior to 10.12.1971 to continue till acquisition of ownership right. Interest forfeited in case of transfers in violation of law.</p>
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Rights of Share –Croppers (Adhiars)

Assam Adhiars Protection and Regulation Act, 1948

Any share cropper who cultivated in the succeeding year, will do so until he voluntarily relinquishes or is ordered by the Adhi Conciliation Board to do so on condition of personal cultivation by the landlord.

No eviction if the share cropper owns less than 10 bighas or is given alternative land of equal value. The aggregate of the landlord is not to exceed 50 bighas after resumption.

Latest Act, repealing all previous Acts

The Assam Temporarily Settled Areas Tenancy Act, 1971

2. Consequences

If transferee is agriculturist, lease land will become his	If transferee is non-agriculturist, he will be D.C. and replaced by any landless agriculturist or occupancy tenant
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4. Conferment of ownership on occupancy tenant/ under tenant

- A. By state Government notification to that effect
- B. Occupancy tenant, sub-tenants to apply to D.C.: Compensation payable at the rate of 50 times of land revenue payable.

5. Rent payable by an occupancy/ non-occupancy tenant

- i. Cash Rent - not more than 3 times the land revenue
- ii. Crop Rent - not more than 1/5 of the produce of the principal crop grown in each agricultural year

6. No ejection save in the execution of a decree. Grounds: rendering land unfit, violation of contract, non-payment of rent; personal cultivation by the landlord.

(a) after ejection, the non-occupancy tenant must have not less than 10 bighas of total land.

(b) if no personal cultivation in one year, restoration to the tenant.

7. Voluntary surrender with prior permission of D.C.

RAJASTHAN

The Rajasthan Tenancy Act, 1955

Class of Tenants

Khatedar Tenants Owners	Maliks	Tenants of Khudkasht Khatedar Tenant	Chair Khatedars Bihar Tenancy Act, 1885 Tenants under the State Government Chotanagpur Tenancy Act, 1908 Rights are heritable Santal Parganas Tenancy Act, 1949 but not transferable – sub-letting for 1 year The Bihar Land Reforms Act, 1950
Ex-Jagirdars holding Khudkasht lands – heritable and transferable – sub-letting for 5 years	Owners Khudkasht lands of Zamindars or Biswedars – sub-letting for 5 years.		

A tenant of Khudkasht or a sub tenant will automatically become Khatedar (owner) –

i. if his name was entered in the Annual Register on 15.10.1955 (commencement of the Act) and is continuously entered till 5.5.1959.

ii. if his name was not so entered, but he was a tenant of Khudkasht or sub-tenant on the date of the commencement of the 1979 Amending Act and had applied for ownership rights within a prescribed time frame.

Grounds for the Eviction of a Tenant

1. Failure to pay arrears of rent
2. Illegal transfer or sub-lease
3. Damage to the land
4. Violation of contract
5. Need of the landholder for personal cultivation
6. Expiry of lease/ sub-lease.

BIHAR/ JHARKHAND

Regulation of the conditions of tenants (under-raiyats/ bataidars) by –

The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961

A. CEILING SURPLUS LAND VESTED IN THE STATE

Under Raiyat: To apply within 3 months from the date on which surplus was declared on payments as per Schedule II of the Act, to become owner (provided the aggregate did not exceed ceiling area) otherwise, he shall be ejected.

B. WITHIN THE CEILING AREA OF THE RAIYAT

Under raiyat holding within the ceiling area can become a raiyat on payments as per Schedule II of the Act, in respect of land not resumed by the owner U/S 13.

C. WITHIN THE CEILING AREA OF THE RAIYAT (who has excess land)

The raiyat could resume from non-occupancy under raiyat (not exceeding ½ of the non-occupancy under raiyats' areas.

JHARKHAND

1. C.N.T. Act, 1908	Lease upto a maximum period of 5 years ST to ST – DC's permission. ST to Non ST for mining/ industrial purpose.
2. S.P.T. Act, 1949	No transfer either by ST or Non ST unless the right to transfer has been recorded in the ROR.

CHAPTER – 2

REGULARIZATION OF ENCROACHMENTS ON FOREST LANDS

Encroachment on forest land has been a nation-wide concern. Persistent diversion of forest lands for non-forestry purposes has led to a steady depletion of forest wealth which, in turn, has had its negative impact on the ecological balance. With regulatory machinery of the forest departments being fragile and far between given the massive expanse of the forest universe, there have as well been instances galore of connivance at local levels. Then there are unscrupulous contractor and mafia elements everywhere in the country without exception. Even in the North-East such elements exercise tremendous influence on the time-honoured decision-making bodies like village councils. There is smuggling and easy money.

Apart from illicit felling we have habitations and institutions coming up on such of forest lands which are rather vulnerable to such encroachments. Hamlets come up and whatever natural vegetation that remains gives way to sustenance agriculture for the settlers. Over and above, we have acquisitions for activities like mining, roads, transmission lines, minor, medium and major irrigation projects, hydel projects, railway lines, location specific installations like microwave stations, auto repeater centres, T.V. towers etc.

The focus of this paper is encroachment of forest land for cultivation, habitation and other purposes. The National Forest Policy, 1988 has also observed the increasing trend in encroachments on forest land and stated that these should not be regularized. Implementation of this pronouncement has been examined by the GOI keeping in view the constraints of various

State Governments some of whom have expressed that they stand committed to regularize encroachments of a period prior to 1980. The issue figured prominently in the Conference of the Forest Ministers held in May, 1989 and was later examined by an inter Ministerial Committee, set up by the Ministry in consultation with the representatives of some of the States keeping in view the recommendations of the Forest Ministers' Conference and the Committee referred to above, and with due approval of the competent authority, certain measures were suggested for the review of the old encroachments and effective implementation of the pronouncement made in this regard in the National Forest Policy, 1988. Statistical information compiled by the Ministry of Agriculture during early 1980s revealed that nearly 7 lakh hectares of forest land was under encroachments in the country about a decade back. This is despite the fact that prior to 1980, a number of States had regularized such encroachments periodically and approximately 43 lakh hectares of forest land was diverted for various purposes between 1951 and 1980, more than half of it for agriculture. The decisions of the State Government to regularize encroachments from time to time seem to have acted as strong inducement for further encroachments in forest areas and the problem remained as elusive as ever for want of effective and concerted drive against this evil practice.

GOVERNMENT OF INDIA GUIDELINES

All the cases of subsisting encroachments where the State Governments stand committed to regularize on account of past commitments were to be submitted to the Ministry of Environment & Forests, Government of India for seeking prior approval under the Forest (Conservation) Act, 1980. Such proposals should invariably conform to the criteria given below:

1. PRE-1980 ENCROACHMENTS WHERE THE STATE GOVERNMENT HAD TAKEN A DECISION BEFORE THE ENACTMENT OF THE FOREST (CONSERVATION) ACT, 1980 TO REGULARIZE 'ELIGIBLE' CATEGORY OF ENCROACHMENTS

Such cases are those where the State Government had evolved certain eligibility criteria in accordance with local needs and conditions and had taken a decision to regularize such encroachments but could not implement the decision either wholly or partially before the enactment of the Forest (Conservation) Act on 25.10.80.

All such cases should be individually reviewed. For this purpose the State Government may appoint a joint team of the Revenue, Forest and Tribal Welfare Department for this work and complete it as a time-bound programme.

In case where proposals are yet to be formulated, the final picture after taking into consideration all the stipulations specified here may be placed before the concerned Gaon Sabha with a view to avoid disputes in future.

All encroached lands proposed for regularization should be properly surveyed.

Encroachments proposed to be regularized must have taken place before 25.10.80. This must be ascertained from the First Offence Report issued under the relevant Forest Act at that point of time.

Encroachments must subsist on the field and the encroached land must be under continuous possession of the encroachers.

The encroacher must be eligible to avail the benefits of regularization as per the eligibility criteria already fixed by the State.

As far as possible scattered encroachments proposed to be regularized should be consolidated/ relocated near the outer boundaries of the forests.

The outer boundaries of the areas to be denotified for regularization of encroachments should be demarcated on the ground with permanent boundary marks.

All the cases proposed to be regularized under this category should be covered in one proposal and it should give district-wise details.

All cases of proposed regularization of encroachments should be accompanied by a proposal for compensatory afforestation as per existing guidelines.

No agricultural practices should be allowed on certain specified slopes.

2. INELIGIBLE CATEGORY OF PRE-1980 ENCROACHMENTS WHERE THE STATE GOVERNMENTS HAD TAKEN A DECISION PRIOR TO THE ENACTMENT OF THE FOREST (CONSERVATION) ACT, 1980

Such cases should be treated at par with post 1980 encroachments and should not be regularized.

3. ENCROACHMENTS THAT TOOK PLACE AFTER 24.10.1980

In no case encroachments which have taken place after 24.10.1980 should be regularized. Immediate action should be taken to evict the encroachers. The State/ UT Government may, however, provide alternate economic base to such persons by associating them collectively in afforestation activities in the manner suggested in the Forest Ministry's letter No.6-21/89-FP dated 1.6.90, but such benefits should not extend to fresh encroachments.

CLARIFICATION

1. A reference is invited to the guidelines issued by the Ministry of Environment and Forests for the regularization of certain cases of forest encroachments reproduced above. The relevant paragraph of the guidelines, which clarifies the encroachments, which subject to specified conditions, would be eligible for regularization is reproduced below:

“Such cases are those where the State Governments had evolved certain eligibility criteria in accordance with local needs and conditions and had taken a decision to regularize such encroachments but could not implement their decisions either wholly or partially before enactment of the Forest (Conservation) Act on 25.10.1980.”

2. Doubts have been raised as to whether all encroachments that had taken place up to 25.10.1980 could be regularized in

accordance with an eligibility formula by which some earlier encroachments were regularized.

3. A perusal of the paragraph reproduced above will make it clear **that there are 2 pre-conditions for any encroachments to be considered for regularization. These are:**
 - (a) **The State Government should have taken the decision on regularization of encroachments before 25.10.1980; and**
 - (b) **that the decision should be with reference to some eligibility criteria (normally expected to be related to social and economic status of encroachers, location and extent of encroachment, cut off date of encroachment, etc.)**
4. It would be seen that the encroachments which are proposed to be considered for regularization, subject to the prescribed conditions, are those which fulfilled the eligibility criteria evolved by the State Government as per decision taken before 25.10.1980 for the regularization of encroachments. The objective is limited to permitting implementation of decisions taken before 25.10.1980 which could not be implemented because the enactment of Forest (Conservation) Act, 1980 intervened. It is, therefore, quite clear that while all encroachments that can be considered as eligible for regularization would have taken place before 25.10.1980, all encroachments that had taken place before 25.10.1980 would not be eligible for regularization – they may be ineligible because either they do not meet the eligibility criteria or are not covered by any decision taken before 25.10.1980. Thus, if the decision on regularization of encroachments in a State covered only encroachments upto a date earlier than 25.10.1980, the guidelines on regularization of encroachments do not envisage that the State Government would now survey encroachments between that date and 25.10.1980 and propose regularization.

The latter encroachments though occurring before 25.10.1980 are not covered by any regularization decision taken prior to that date and hence cannot be considered for regularization at this juncture.

5. Accordingly, the State Governments may take up for implementation only such decision of pre 25.10.1980 period which could not be implemented because of Forest (Conservation) Act, 1980 intervening and propose regularization of encroachments as per those decisions and in accordance with the eligibility criteria laid down in those decisions. No encroachments not covered by any pre -25.10.1980 decisions – even though they might have occurred prior to that date – should now be considered for regularization in terms of GOI guidelines.

CONVERSION OF FOREST LANDS INTO REVENUE VILLAGES AND SETTLEMENT OF OTHER OLD HABITATIONS

The Ministry of Environment and Forests, Government of India letter No. 13-1/90 FP(S) dated 18.9.1990 governs such conversions and settlements.

Forest villages were set up in remote and inaccessible forest areas with a view to provide uninterrupted manpower for forestry options. Of late, they have lost much of their significance owing to improved accessibility of such areas, expansion of human habitations and similar other reasons. Accordingly, some of the states converted forest villages into revenue villages well before 1980. Nevertheless, there still exist between 2500 to 3000 forest villages in the country. Besides, some cases of other types of habitations, e.g., unauthorized houses/ homesteads, dwellings of tribals who have been living in

them in virtually pre agrarian life styles, are suspected to exist in forest lands even though these may not have been recognized either as revenue villages or forest villages.

In March 1984, the then Ministry of Agriculture suggested to the State/ UT Governments that they may confer heritable and inalienable rights on forest villagers if they were in occupation of land for more than 20 years. But this suggestion does not seem to have been fully implemented. Development of forest villages has also been endorsed in the National Forest Policy, 1986 which states that these should be developed at par with revenue villages. This issue was again examined by an inter – Ministerial Committee, set up by the Ministry of Environment and Forests to look into various aspects of tribal-forest-interface, in consultation with the representatives of some of the States.

Although the forest villages have lived in harmony with their surrounding forests and the concept of forest villages proved an effective arrangement for sustained supply of manpower, yet it would not be appropriate to deny them legitimate rights over such land which were allotted to them decades ago for settlement and have been continuously under their occupation since then. Keeping this aspect and the recommendations of the inter-Ministerial Committee, the following measures are suggested to resolve the outstanding issues of forest villages and other types of habitations existing in forest lands.

Forest Villages

Forest villages may be converted into revenue villages after denotifying requisite land as forest. Proposals seeking prior approval of the Government of India for this purpose under the Forest (Conservation) Act, 1980 may be submitted expeditiously.

While converting these villages into Revenue Villages, the following principles may be adhered to:

- (i) the villages are conferred heritable but inalienable right;
- (ii) administration of these and other Revenue Villages enclaved in forest areas should preferably be entrusted to the State Forest Departments.

Other Habitations

(a) Habitations other than forest villages may be grouped into the following categories:

- (I) Cases where dwellings belong to the persons who have encroached on forest land for cultivation;
- (II) Dwellings of other persons who have been living therein since past without encroaching on forest land for cultivation but their habitations are neither recognized as revenue villages nor as forest villages.
- (III) Each case may be examined on its merits.

The Government of India has given the following suggestions with regard to habitations other than forest villages:

- (I) In case of category (a) (I) above encroachments for agricultural cultivation are regularized, the house sites and homesteads – too may be regularized either on site or as near the agricultural field as possible subject to certain safeguards in the interest of forest protection and eligibility criteria as may be evolved by the State Government.

- (II) In case of category (a) (II) above, certain specific habitations, more than 25 years old, involving sizeable group of families, may be examined, case by case on merits for their amicable settlements.
- (III) Scheduled Tribes and rural poor not covered under (I) and (II) above should be resettled in non forest government land.
- (IV) All other unauthorized habitations must be evicted.
- (V) Wherever provisions of the Forest (Conservation) Act, 1980 are attracted, comprehensive proposals may be submitted for seeking prior approval of the Ministry of Environment and Forests. It may be noted that such proposals will be considered only when the State/ UT Government ensures that all the measures are taken simultaneously and effectively and are accompanied by a proposal for compensatory afforestation.

DISPUTES REGARDING PATTAS/LEASES/GRANTS/INVOLVING FOREST LAND

The Ministry of Environment and Forests, Government of India letter No. 13-1/90-fp(3) dated 11.9.1990 covers such disputes involving forest land.

An Inter Ministerial Committee, which was set up by the Ministry to look into various aspects of tribal - forest interface, has pointed out that a number of cases of pattas/ leases/ grants involving forest land in one way or the other, have become contentious issues between different departments of the State/ UT Governments. Such pattas/

leases/ grants are said to have been issued under the proper authority and order of the respective State/ UT Governments and the land in question continues in the possession of the allottees or under their authorized use but its status is under dispute between different departments. Some such cases are listed below for illustration:

1. Protected forests in Madhya Pradesh, termed as Orange Areas which according to the State Government's decision were to be transferred to Revenue Department after demarcation for issuing pattas to the beneficiaries. It is observed that pattas were issued to the individuals but transfer of the land from forest to Revenue Department, which should have preceded allotment of pattas, was not effected.
2. 'Dali' land in Maharashtra which are said to have been leased to the entire village community in the past by the State Government. The assignees continue to make use of these lands for various purposes as per original terms and conditions and, sometimes in accordance with the decision of the village community wherever such leases are for collective use of the community as a whole. But the formal status of these 'dali' lands is not clear.
3. Cases in which land was assigned by the Revenue Department supposedly from revenue lands. But eventually these were found to be notified forest land even though the assignees were not dispossessed of their holdings.
4. Leases granted by the State Governments for cultivation, agro-forestry or tree plantation. The lessees continue to possess the land though these have not been renewed since the enactment of the Forest (Conservation) Act, 1980.

Any ambiguity about the status of the land involved in the type of cases cited above, particularly when the forest land continues under the possession of the assignees, is likely to adversely affect forest protection in these and the neighbouring areas, apart from forcing the lawful assignees to live in a state of uncertainty. Keeping these and similar other aspects in view and after careful consideration of the recommendations of the inter-Ministerial Committee, it has been decided that inter departmental issues related to pattas/ leases/ grants involving forest land should be settled at the earliest. The following steps have been suggested:

All the cases of pattas, leases, grants involving forest land whether by intent, omission, oversight or accident should be reviewed by the State/ UT Government to identify those cases in which the pattas/ leases/ grants were awarded under proper authority. The assignees continue to be in possession of the land and the term of the pattas/ leases/ grants is yet to expire.

In all those cases, where pattas/ leases/ grants were given by the State Government Departments to Scheduled Tribes or rural poor either individually or collectively, such pattas/ leases/ grants should be honoured and inter departmental disputes should not affect the rights of the lessees provided they are in physical possession of the land and the term of the pattas/ lease/ grant has not yet expired. These cases should be examined by district level committees consisting of DFO, SDO(Revenue Department), a representative of the Tribal Welfare Department. The disputes should be resolved at the district level wherever it is possible, or after obtaining suitable orders of the State/ UT Government or the Government of India (if the provisions of the Forest (Conservation) Act, 1980 are attracted), as the cases may be.

Lease of a period prior to 25.10.1980 which were granted to the Scheduled Tribes or other rural poor for agro-forestry, tree

plantation or alike but could not be renewed, despite the State/ UT Governments' intention to do so, on account of enactment of the Forest (Conservation) Act, 1980 should be examined expeditiously. Wherever the State/ UT Governments desire to continue the leases, proposals should be submitted to the Ministry, in the prescribed manner, for seeking prior approval under the Forest (Conservation) Act, 1980. Pending final decision, the lessees should not be dispossessed of the land.

In cases where Forest (Conservation) Act is attracted proposals for denotification of forest land should be accompanied by proposals for compensatory afforestation.

REVIEW OF DISPUTED CLAIMS OVER FOREST LAND ARISING OUT OF FOREST SETTLEMENT

Local inhabitants living in and around forest areas, preferred claims on certain forest lands contending that they were in occupation of such areas prior to the initiation of forest settlements and / or their rights were not enquired and/ or commuted before notifying these lands are forests under respective laws. The claimants had been requesting that the title of such lands should be conferred on them. The GOI felt that even bonafide claims were being overlooked causing widespread discontent among the aggrieved persons. The GOI felt that such instances ultimately eroded the credibility of the forest administration and the sanctity of the forest laws, especially in the tracts inhabited by the tribals.

Seized of its complexities, the issue regarding disputed claims over forest land was got critically examined by the Ministry through an inter-Ministerial Committee. The Committee, after prolonged deliberations and due consultations with representatives of some of the States, stressed the need to resolve such disputes with utmost urgency and suggested the feasible course of action to redress

genuine grievances without jeopardizing the protection of forests and forest land. Keeping in view the recommendation of the said Committee and with due approval of the competent authority, the following course of action is suggested for amicably resolving disputed claims on forest land:

The States/ UTs Administration should review the cases of disputed claims over forest land and identify the following three categories of claims:

- (a) Claims in respect of forest areas notified as 'deemed Reserved Forests' without observing the due process of settlements as provided in Forest Acts provided that these pertain to:
 - (i) tribal areas, or affect a whole cross section of rural poor in non-tribal areas; and
 - (ii) the claimants are in possession of the 'disputed land'.
- (b) Claims in tribal areas wherever there is prima facie evidence that the process of forest settlement has been vitiated by incomplete or incorrect records/ maps or lack of information to the affected persons, as prescribed by law, provided that:
 - (i) Such forest settlements pertain to the period after 1947; and
 - (ii) The claimants are in possession of the 'disputed land'.
- (c) Claims in tribal areas wherever the process of settlement is over but notification under Section 20 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act) is yet to be issued, particularly where considerable delay has occurred in the issue of final notification under Section 20, provided that the claimants are still in possession of 'disputed land'.

After identifying the above three categories of the claims, the State Government/ UT Administration should get these enquired through a committee which should consist of at least the concerned Divisional Forest Officer, Sub-Divisional Officer (Revenue Department) and a representative of the Tribal Welfare Department. The Committee should determine the genuineness of the claims after examining all available evidence to establish that:

- (i) in case of category (a) above the claimant was in possession of the disputed land when the notification declaring 'deemed reserved forests' was issued; and
- (ii) in case of categories (b) and (c) above the claimant was in possession of the disputed land when the notification showing Government intention to declare reserved forest was issued under Section 4 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act) and his rights were not commuted or extinguished in accordance with due process of law.

In no case either the Government or the above Committee shall entertain any claim in which the claimant has not been in possession of the disputed land throughout.

Once the bonafides of the claims are established through proper enquiry, the State/ UT Government may consider the restoration of titles to the claimants. The following aspects should be duly considered:

- (i) As far as possible, restoration to the claimants should not result in honey-combing of forest land. In such cases the possibility of exchange of land near periphery or elsewhere (e.g. non-forest Government land) should be exhausted.

- (ii) The land to be restored to the claimants should be properly demarcated on the ground with permanent boundary marks.

After the State Government/ UT Administration has decided in principle to restore titles to the claimants, proposals may be formulated suitably and submitted for seeking prior approval of the Ministry under the provisions of the Forest (Conservation) Act, 1980, alongwith proposals for compensatory afforestation.

SUPREME COURT RULING ON THE REGULARIZATION OF ENCROACHMENTS

At this juncture a reference may be drawn to a Supreme Court ruling dated 22.9.2000 in I A No. 429 in S.P.No.202/95, which clearly directs that preconditions should be fulfilled first before the regularization of any encroachment.

The following is an extract from the said ruling of the Supreme Court:

Regularization of Encroachment

The learned Amicus Curiae has brought to our notice a request which has been made by the State of Madhya Pradesh to the Central Government for regularization of encroachment. As per the aforesaid minutes dated 11th April 2000 to which the Chief Secretary, Madhya Pradesh was a part, one of the important conditions for regularization of encroachment is the carrying out of compensatory afforestation over the equivalent land. One cannot shut eyes to the fact that there would be encroachment thereafter.

Experience has shown that whenever regularization takes place subject to imposition of conditions such as compensatory afforestation the regularization becomes effective without the conditions ever been fulfilled.

In our opinion, it will be more appropriate that the conditions imposed in relation to regularization are required to be fulfilled first before any regularization is granted. The result of this would be that the regularization would be deferred but the fulfilment of the conditions ensuring inter alia compensatory afforestation would be ensured. This is a matter to be considered by the Central Government.

In other words, the eligibility condition for permission to grant regularization of the encroachments would be the fulfilment before of conditions under the Guidelines, especially in regard to compensatory afforestation.

The request of the State of Madhya Pradesh should be considered by the Ministry of Environment and Forests and a decision taken within eight weeks”.

The decision of the concerning State Government regarding regularization (taken prior to 1980) has to be formal and based on eligibility criteria. The State Government ought to have taken express decision with regard to the encroacher and the extent of encroached land sought to be regularized. Who in a given family is to be allowed what extent of land was to be looked into. Several States formulated eligibility criteria in the post 1980 period even though regularization proposals had been submitted prior to 1980.

In the regularization scheme the concerning State Government had to commit alternative land and afforestation thereon on behalf of the encroacher. Earlier this scheme itself was sufficient enough for the

GOI to allow regularization. But now in the wake of the Supreme Court ruling quoted above it will be incumbent on the part of every State Government to implement its scheme of alternative land and compulsory afforestation prior to receiving GOI nod for regularization. That way it is a landmark Judgement in as much forest interests have got their due weightage and precedence over anything else. A depletion of forest wealth cannot be allowed in the garb of regularization of encroachment without the fulfilment of pre-conditions.

There is a crisis of credibility over a period of time. In the matter of non-encroachment cases, a Supreme Court ruling is on record (Reference Supreme Court order dated 23.11.2001 in IA No.424 in I A No. 695 and 696 in W P (c) No. 202/1995 with W P (c) No. 171/1996 T N Godavarman Thirumalpad, Petitioner Vs. Union of India and others, Respondents) according to which a user agency itself is to raise forests (compensatory), real and concrete. The agency is no longer required to deposit afforestation funds with the State Government which are generally diverted to non-forestry expenses.

The inside story remains that there is an implicit and explicit intention in certain State Governments to retain total control over forests even if it calls for a dilution in the Forest (Conservation) Act, 1980. A similar dilution and self regulation is intended with regard to the Environment (Protection) Act, 1986 as well.

STATE OF ENCROACHMENT PROPOSALS (AS ON 23.11.2001)

The Government of India has not allowed any regularization after 23.11.2001 that being some sort of a cut-off date since a blanket ban imposed by the Supreme Court (until final order).

A status paper as on 23.11.2001 appears at Annexure 1.

An application by the Amicus Curiae was filed in I A No. 703 of 2001 and I A No. 502 in writ petition No. 202 of 1995 in the matter of T N Godavarman Thirumulpad, petitioner Vs. Union of India and others for directions against illegal encroachment of forests. Some of the points and prayers in the said application by Amicus Curiae are as follows:

- (i) Apart from the eco-fragile region of Andaman and Nicobar, it appears that encroachments have been tolerated by the State Government of West Bengal (in Sunderbans area), Karnataka (in evergreen forest of the Western Ghat region), Madhya Pradesh & Chhattisgarh (in the Aravalli & Satpura region) and Tamil Nadu (in the Nilgiris). Similar encroachments are also being tolerated throughout the State of Assam. It is submitted that even if some degree of encroachment on account of growing population is inevitable, the Governments are duty bound to ensure that at least in the eco-fragile areas, dense forests, national parks and sanctuaries, there is no encroachment and/ or in any event no further encroachment, and steps are taken to deal with existing encroachers.
- (ii) The State Governments have permitted further encroachment even after this Hon'ble Court on 12.12.1996 restrained the State Governments from permitting use of any forest land for non-forest activity/ purposes without the prior clearance from the Central Government. It appears that on account of the order of this Hon'ble Court, the Central Government was not in a position to grant regularization of further encroachments and therefore the States have stopped seeking

regularization – there has however been no change in their attitude toward encroachment.

- (iii) Further, it appears that the States are not taking any steps whatsoever for removing the post 1980 encroachments nor are they taking any steps to keep an authentic record of such encroachments – possibly in the hope that some day the encroachment as found at present would be condoned as pre 1980 encroachment and regularization obtained. This it is submitted, would make a complete mockery both of the Forest (Conservation) Act, 1980 and the Forest Policy.
- (iv) It is therefore, submitted that it is necessary to injunct the Union of India, the Administration of Andaman & Nicobar Islands as well as the State of West Bengal, State of Orissa, State of Assam, State of Karnataka, State of Tamil Nadu and State of Madhya Pradesh & Chhattisgarh (i.e., States of the Eastern and Western Ghat as well as Aravalli areas) from permitting any encroachments in the forest land whatsoever. It is submitted, it is also necessary, to set in place a Committee or authority, which should comprise of representatives of the Central Government, State Government and NGOs to inspect the extent of encroachment.
- (v) It is further submitted that it is also necessary for this Hon'ble Court to issue appropriate directions to the aforesaid States to take appropriate steps to evict in phases those who have occupied forest lands which fall in the Western Ghat or Eastern Ghat areas, Nilgiri Hills or Aravalli areas and/ or which fall in the evergreen forest, the Satpura region as well as national parks and sanctuaries.

The Amicus Curiae prayed the Supreme Court to:

- (a) Restrain the Union of India from permitting regularization of any encroachments whatsoever without leave of this Hon'ble Court.
- (b) Direct the Administration of the Union Territory of Andaman & Nicobar Islands to forthwith take such steps as are necessary to prevent any further encroachment of the forest.
- (c) Direct the State of Orissa, State of West Bengal, State of Karnataka, State of Tamil Nadu, State of Assam, State of Maharashtra, State of Madhya Pradesh and the State of Chhattisgarh to prevent further encroachment of forests lands, particularly
- (i) in the forests, situated in the Eastern Ghats region
 - (ii) in the forests, situated in the Western Ghats region
 - (iii) in the forests, situated in the Aravalli and Satpura region
 - (iv) in the forests, situated in the National Parks and Sanctuaries
- (d) Direct the aforesaid State Governments to take steps to clear the encroachments in forests which have taken place after 1980 in the aforesaid areas
- (e) Direct the Union of India to set up in respect of each of the aforesaid States, a committee comprising representatives of the Union of India, the State Governments and NGOs to file a report in the Hon'ble Court as to
- (i) the extent of encroachment in the aforesaid states

- (ii) the steps taken by the aforesaid states to prevent further encroachment
 - (iii) the steps taken by the aforesaid states to remove encroachments which have occurred after 1980; and
- (f) pass any such further orders as this Hon'ble Court may deem fit.

On 23.11.2001, the Supreme Court passed an order in I A No. 520 (for intervention) a portion of which is reproduced below.

“An application has been filed by Id. AMICUS CURIAE in Court against the illegal encroachment of forest land in various States and Union Territories is taken on board. Let the same be registered and numbered. Issue notice to the respondents returnable after six weeks. There will be an interim order in terms of prayer (a)”.

The prayer (a) of Amicus Curiae read as below:

“(a) Restrain the Union of India from permitting regularization of any encroachment whatsoever without leave of this Honourable Court”.

In view of the above, till final orders are passed by the Hon'ble Supreme Court, the Government of India have not been permitting regularization of any encroachment on forest land in the country.

ANNEXURE – I
STATUS OF ENCROACHMENT PROPOSAL (FROM BEGINNING TO 23.11.2001)

Sl. No.	Name of State/ UT	District	Area (Ha.)	Status
1.	Andaman & Nicobar Islands	Andaman	1367	Approved

2.	Andaman & Nicobar Islands	Andaman	89	Rejected for information	for want of				1.1.77 to 6.3.79- A in principle sub
3.	Andaman & Nicobar Islands	Andaman	735	Proposal Additional information from UT Administration	incomplete. information sought				submission of proposal
4.	Arunachal Pradesh	Dibang	10545	Rejected for information on 20.11.01	want of		Dhule	10185.32	Proposal incomplete. Additional information sought from the State.
5.	Arunachal Pradesh	Dibang	13419.29	Approved in principle	Maharashtra		Gadchiroli and other districts	28886.410	Withdrawn
6.	Gujarat	Dang, Panchmahal, Sabarkantha etc.	10900	Approved	16. Maharashtra		4 Divisions	335.65	Proposal incomplete. Additional information sought from the State.
7.	Gujarat	Vadodra, Dang, Surat etc.	39750.59	Approved for	21082.33 ha. 17. Orissa		22 districts	4657.1759	1 district proposal approved 22.11.2001. Decision on district proposals kept till Supreme Court's dated 23.11.01 are not. Other proposals pending want of additional information from the State Government
8.	Karnataka	Bijapur	46.80	Rejected as these were post 1980 encroachments. State has been requested to take action for violation of F (C) Act, 1980					
9.	Karnataka	Chickmagalur, D. Kannada, Mysore and U. Kannada	732.24	Rejected on merit					
10.	Karnataka	19 different districts	17007.2	Approved for 18 divisions of 14848.83 ha.			10 districts	3171.42	Discussed in A Committee on 18.11.01. Additional information from State on 2.12.01. Rejected for want of information
11.	Kerala	Idduki, Ernakulam, Kollam, Thrissur & Pathanamthitta	28588.159	Approved					
12.	Madhya Pradesh	All districts	1.03 lakh	Approved	19. Maharashtra		4 Divisions in 3 districts	952.43	Proposal returned to the Government on 9.8.01.
13.	Madhya Pradesh/ Chhattisgarh	All districts	182889.7	a. Encroachments upto 31.12.76- 64967 ha. approved b. Encroachments between 7.3.79 to 25.10.1980- 11954 ha. rejected c. Encroachments during					

CHAPTER – 3

TRIBAL LAND ALIENATION & RESTORATION

A. APPLICATION

MAHARASHTRA

The Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974 was brought into force with effect from 6th July 1974. This Act provides for the restoration to the tribals of their lands alienated to non-tribals prior to 6th July 1974 in contravention of the provisions of the Land Revenue Code or any other law for the time being in force.

The Maharashtra Restoration of Land to Scheduled Tribes Act, 1974 came into force with effect from 1st November, 1975 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 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 non-tribals between the aforesaid period 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).

The important provisions of the Act are as under:-

- 2) I) 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 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 arrear of land revenue or otherwise under the Maharashtra Cooperative Societies Act, 1960 or any other law.
- 3) 1) Where due to transfer;
 - a) The land of 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. The Collector, either suo-motu at any time, or on the application of a tribal transferor made within three years from the commencement of this Act shall after making such enquiry 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.
- (ii) The land transferred otherwise than by exchange be taken from the possession of non-tribal transferee and restored to the tribal transferor free from all encumbrances.

Where land is transferred by a tribal transferor in favour of a non-tribal transferee before the 6th 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.

- 4) The tribal transferor shall 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 determine.

Whereas the first Act enables the tribals to secure the land illegally usurped by the non-tribals, the second one goes further and provides for the restoration of their lands acquired by the non-tribals by legal methods. The provisions of both the 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 of lands which have gone into the hands of third parties.

Whereas the Maharashtra Land Revenue Code and 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 the 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.

The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 makes provisions regarding the value of improvements made by the transferee on the transferred land.

Where lands are restored 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.

The amount payable by the tribal-transferor for the land restored to him shall consist of an amount equal to 48 times the assessment of the land revenue or the amount of consideration paid by the non-tribal transferee for the 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.

MADHYA PRADESH

CHHATTISGARH

Under Section 170-A of the M.P. Land Revenue Code, 1959, certain transfers are to be set aside. 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, inquire 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 Bhumi Swami 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.

JHARKHAND

Non-Scheduled Areas

The Chotanagpur Tenancy Act, 1908 provides that if the transferee has 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 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:

Where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1969 (President's Act 4 of 1969) he may, notwithstanding any other provisions of this Act, validate such a transfer made in contravention of clause (a) of the second proviso to sub-section (1), if the transferee either makes available to the transferor an alternative holding or portion of a holding, as the case may be, of the equivalent value, in the vicinity or pays adequate compensation to be determined by the Deputy Commissioner for the rehabilitation of the transferor.

In this section substantial structure or building means the structure or building of the value exceeding five thousand rupees on the date of holding enquiry, but it does not include such structure or building of any value the material of which cannot be removed without incurring substantial depreciation in its value.

- (5) Nothing in this section shall affect the validity of any transfer (not otherwise invalid) of a raiyat's right in his holding or any portion thereof made bonafide before the first day of January, 1903 in the Chota Nagpur Division except the district of Manbhum on or before the first day of January, 1909, in the district of Manbhum.

Scheduled Areas

The first proviso to Section 71-A provides 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.

The second proviso to Section 71-A provides 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 the rehabilitation of the transferor.

The third proviso to Section 71-A provides 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 the 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.

In this section substantial structure or building means structure or building the value of which on the day of the initiation of enquiry, was determined by the Deputy Commissioner to exceed Rs.10000/- but does not include structure or building of any value, the material

of which can be removed without substantially impairing the value thereof.

Both in Section 46 and 71-A of the CNT Act 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.

The three provisos to the Santal Parganas (Supplementary Provisions) Act, 1949 delineate the exceptions to the general law (Section 20 (5) ban on transfer).

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 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 the 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.

Coming to the question whether title by adverse possession could be acquired after the 1949 Act came in, it will be useful to refer to Section 42, 64 and 69 of the SPT Act. Section 42 of the Act reads thus:

“42. 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 Santal Parganas.”

The other two sections, namely, Section 64 and 69 of the Act may also be quoted:

64 "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 42”.

“69. Notwithstanding anything contained in any law or anything having the force of law in Santal Parganas, no rights shall accrue to any person in

(a) land held or acquired in contravention of the provisions of Section 20”.

Section 69 (a) has made it clear beyond doubt that notwithstanding anything contained in any law or anything having the force of law in the Santal Parganas, no rights shall accrue to any person in any land held or acquired in contravention of the provisions of Section 20 of the Act. Section 20 prohibits transfer, settlement or lease in any manner unless the right to transfer is recorded in the record of rights, in respect of any raiyati holding. Therefore, although the law of limitation has been made applicable by Section 3 of Regulation III of 1872, which provision has not been repealed by the Act, still Section

69 makes it clear beyond any shadow of doubt that no right will be acquired or accrue in contravention of Section 20 of the Act. The provision in Section 64 is that there will be no period of limitation for filing an application. Section 42 of the Act also seems to achieve the same object.

RAJASTHAN

A special feature of the Rajasthan law lies in the fact that 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 Rajasthan Vs. Neenua & Ors, 1995 RRD 372 at P. 374). If a transfer is made violating the provisions of Section 42, the proper remedy is for the State to proceed U/s 175 of the Rajasthan Tenancy Act and resume the land after necessary legal proceedings. (Kalyanmal V. Surendra Kumar Jain, 1995 RRD 254 at pp 254-255).

B. RESTRICTIONS ON TRANSFERS

MAHARASHTRA

New Section 36-A inserted in the Maharashtra Land Revenue Code, 1966 by the Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act, 1974, imposes

stricter restrictions on the alienation of tribal lands to non-tribals.

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 tribunal or authority), gifts, 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 provided that, 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 situate or within five kilometers thereof is prepared to take the occupancy from the owner on lease, mortgage or by sale or otherwise.

The previous sanction of the Collector may be given in such circumstances and subject to such conditions as may be prescribed.

On the expiry of the period of the lease or, as the case may be, of the mortgage, the Collector may, notwithstanding anything contained in any law for the time being in force or any decree or order of any court or award or order of any Tribunal or authority, either suo-motu

or on application made by the Tribal in that behalf restore possession of the occupancy to the Tribal.

GUJARAT

In the Bombay Land Revenue Code, 1879, Section 73 was inserted by the Bombay Land Revenue (Amendment) Act, 6/1901. 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 Land Revenue Code, 1879 by the Government of Gujarat Act No. 37 of 1980 vide its 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 scheduled tribes in Gujarat will not be transferred to any person, tribal or non-tribal, without prior permission of the Collector and the State Government. This was introduced to prevent

alienation of tribal land and to prevent transfer of land by oral or written sale deeds by tribals and also to check the rise of an exploitation of poorer tribals by more privileged tribal members. Provisions were made for the restoration to original tribal people of lands transferred to non-tribals.

" 73AA. (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 73 AB 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 a 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 successors in interest, as the case may be, shall be deemed to be unauthorisedly occupying the occupancy:

Section 79-A provides for eviction in case of illegal use of land. This provision was also introduced in the year 1901 whereby any person who acquired the possession of land

by wrongful means, the competent authority is empowered to inquire summarily and to evict the person if found in unauthorised possession or use of land. Section 73-A also includes in its purview section 79-A of the Land Revenue Code and empowers the Revenue Court to order eviction in case of transfer by oral or written sale deed, unauthorised land grabbing of tribals. This provision of law was also used to protect the interests of tribals.

The Government of Gujarat again issued notification No. GHM/99/8/M/ADJ/2392/CM/3/J/1 Dt. 18/3/1999 and added Rule 57 (L) (4) and amended the Gujarat Land Revenue Rules. Collector for non scheduled areas and District Panchayat for scheduled areas were authorized to issue sanction for the transfer of occupancy of a tribal to any tribal or non tribal if land is acquired by the tribal from a non tribal through his own means and is not granted to the tribal under any Act or rules. A few years back, the Government made a change in the law on the distance

within which a residing farmer could own lands. Earlier, a farmer could own land within 8 kms. But now, he could own anywhere in Gujarat. This has attracted many non-tribals to come into the Scheduled Areas in the recent years. Due to this, directly or indirectly, land alienation is taking place in the Scheduled Areas.

MADHYA PRADESH

CHHATTISGARH

Sanction 170-B of the M.P. Land Revenue Code, 1959 provides for the reversion of the land of the members of the aboriginal tribe which was transferred by fraud. Every person who on the date of the 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, 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 notify 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.

JHARKHAND

Section 71-A of the Chota Nagpur Tenancy Act, 1908 arms the Deputy Commissioner with the power to restore possession to the 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 land belonging to a raiyat who is a member of the Scheduled Tribes has taken place in contravention of section 46 or any other provision of this Act or by any fraudulent method (including decree 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, re-settle it with another raiyat

belonging to the Scheduled Tribes according to the village custom for the disposal of an abandoned holding.

Section 71-A in a very wide-ranging context talks of transfer alone, while section 5 of the Transfer of Property Act employs the composite term of a 'transfer of property' as a special term import. Equally it has to be borne in mind that the concept of transfer of property is not in the defining section but in a later elaboration for the particular purposes of Section-5 and peculiar to the said statute. It is in this context that the salient warning in *Laurence Arthur Adamson and others V. Milbourne and Metropolitan Board of Works* (AIR 1929 Privy Council 181) has to be recalled that it is unsatisfactory and unsafe to seek a meaning of the word used in the Act in the definition clause of another statute dealing with cognate matter even by the same legislature much more so by another legislature. That view has again been forcefully

reiterated in *Jainarayan V. Motiram Gangaram* (AIR 1949 Nagpur 34).

The Full Bench of Patna High Court has held in *Smt Bina Rani Ghosh V. Commissioner, South Chota Nagpur and others* that on the larger purpose of the statute, and in 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 (1985 BLT (Rep) 279 (FB)).

Sub-section 5 of Section 20 of the Santal Parganas (Supplementary Provisions) Act, 1949 provides that 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 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 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.

RAJASTHAN

The Rajasthan Tenancy Act, 1955 makes the interests of a khatedar tenant transferable, otherwise than by way of sub-lease. However, this is to be noted that the sale, gift or bequest by a khatedar tenant of his interest in the whole or part of his holding will be void, if -

"42 (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".

The Act also prohibits intra-tribal transfers. The sale, gift, or bequest by a member of the Saharia Scheduled Tribe in favour of a person who is not a member of the said Saharia tribe, will be void. (Section 44 bb - Rajasthan Tenancy Act, 1955).

The law also puts a ban on transfers by SCs/ STs to non SCs/ STs by compromise decree. Such a compromise will be hit by the provisions of Section 42 of the Act. On the basis of such a compromise no khatedari rights can be conferred on the defendant who is not a member of the Scheduled Caste/ Scheduled Tribe. Even transfers

through collusive decrees are void ab initio (Hanjaram & Ors. V. Ganpatlal & Ors. 1995 RRD 485 at P. 487).

Section 43 of the Rajasthan Tenancy Act provides for usufructuary mortgage by a khatedar tenant for a period not exceeding five years. Nevertheless, on or after the publication of the Rajasthan Tenancy (Amendment) Act, 1970 in the Official Gazette, no Khatedar tenant being a member of the Scheduled Caste or Scheduled Tribe shall so transfer his rights in his holding, wholly or partly by mortgage to any person, who is not a member of a Scheduled Caste or a Scheduled Tribe (Section 43(2), proviso).

Section 46-A bans letting or sub-letting by members of the Scheduled Castes/ Scheduled Tribes to any person who is not a member of the Scheduled Castes/ Tribes.

C. RESTORATION PROCEDURE

MAHARASHTRA

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 in contravention of sub-section (1), 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 occupancy hold an inquiry in the prescribed manner and decide the matter.

Sub Section (5) Where the Collector decides that any transfer of occupancy has been made in contravention of sub-section (1), he shall declare the transfer to be invalid, and thereupon, 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.

Sub Section (6) 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, then 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.

For the purpose of this section, the expression “economic holding” means 6.48 hectares (16 acres) of jirayat land, or 3.24 hectares (8 acres) of seasonally irrigated land, or paddy or rice land, or 1.62 hectares (4 acres) of perennially irrigated land, and where the land held by any person consists of two or more kinds of land, the economic holding shall be determined on the basis of one hectare of

perennially irrigated land being equal to 2 hectares of seasonally irrigated land or paddy or rice land or 4 hectares of jirayat land.

36B. A non-Tribal who after the occupancy is ordered to be restored under the proviso to sub-section (3) of section 36 or after the occupancy is vested in the State Government (under sub-section (3A) of section 36 or) under sub-section (5) of section 36A continues to be in possession of the occupancy, then the non-Tribal 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 occupancy is or is ordered to be restored to the Tribal or is vested in the State Government as aforesaid) till possession of the occupancy is given to the Tribal or the State Government, such amount for the use and occupation of the occupancy as the Collector may fix in the prescribed manner.

The Government is anxious 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 was suggested to be taken 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 transfers of land from Adivasis to non-Adivasis and to prepare two separate lists.
 - (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.

- (3) In the case of invalid transfers to hold suo-moto enquiries for the restoration of land to Adivasis.

GUJARAT

The Collector shall either suo-moto at any time, or on an application made by the tribal transferor or his successor in 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 the standing crops thereon, if any, shall vest in the State Government free from all encumbrances.

Where an occupancy is vested in the State Government and such occupancy was assessed or held for the purpose of agriculture immediately before its transfer by the tribal transferor, the Collector, shall after taking necessary action under sections 79A 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.

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 (5), 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.

MADHYA PRADESH

CHHATTISGARH

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 transfer was not bonafide, he may notwithstanding anything contained in this Code or any other enactment for the time being in force, -

1 (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.

2 (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.

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 areas 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 Bhumi Swami 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.

Provided that 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.

On receipt of the information the Sub-Divisional Officer shall make such enquiry as may be necessary about all such transactions of transfer and if he finds that the member of an 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 findings pass an order revesting 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 the fixation of price of the land in the Land Acquisition Act, 1984

(No. 1 of 1894) and order the transferee 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 the fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Divisional Officer.

JHARKHAND

Non Scheduled Areas (CNT Act)

The Deputy Commissioner may, of his own motion or on an application filed before him by an occupancy-raiyat who is a member of the Scheduled Tribe, for annulling the transfer hold an inquiry in the prescribed manner.

No such application will be entertained by the Deputy Commissioner unless it is filed by the occupancy tenant within a period of twelve years from the date of transfer of his holding or any portion thereof:

Before passing any order the Deputy Commissioner shall give the parties concerned a reasonable opportunity to be heard in the matter.

If after holding the inquiry the Deputy Commissioner finds that there was no contravention of law in making such transfer, he shall reject the application and may award such costs to the transferee to be paid by the transferor as he may in the circumstances of the case deem fit.

If after holding the inquiry the Deputy Commissioner finds that such transfer was in contravention of law, he shall annul the transfer and eject the transferee from such holding or portion thereof, as the case may be, and put the transferor in possession thereof. The Deputy Commissioner shall be a necessary party in all suits of a civil nature relating to any holding or portion thereof in which one of the parties to the suit is a member of the Scheduled Tribes and the other party is not a member of the Scheduled Tribes.

RAJASTHAN

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 law and the transferee or sub-lessee or the purported transferee or sub-lessee is in possession of such holding or such part in pursuance of such transfer or sub-lease, both the tenant and any person who may have thus obtained or may thus be in possession of the holding or any part of the holding, shall, on the application of the landholder, be liable to ejectment from the area so transferred or sub-let or purported to be transferred or sub-let (Section 175-1).

To every application being made under Section 175, the transferee or the sub-tenant or the purported transferee or the sub-tenant, as the case may be, shall be joined as a party. Show cause will be issued to the opposite party why he should not be ejected from the area so transferred or sub-let or purported to be transferred or sub-let. The court shall, after giving a reasonable opportunity to the party of being heard, conclude the enquiry in a summary manner and pass orders.

As per Section 176, a decree or order under Section 175 may direct the ejectment of a tenant and his transferee or sub-lessee or

purported transferee or sub-lessee from the area transferred or sub-let otherwise than in accordance with the provisions of the Rajasthan Tenancy Act, 1955.

D. APPEALS, REVISION, PLEADERS, AND REGISTRATION

MAHARASHTRA

The Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 makes the following provisions regarding appeal and revision, finality of orders etc.-

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.

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 sections 4, 5, 12 and 14 of the Limitation Act, 1963, shall apply to the filing of such appeal.

In deciding an appeal under sub-section (1), the Maharashtra Revenue Tribunal shall exercise all the powers which a Court has subject to the regulations framed by that Tribunal under the Code and follow the same procedure which a Court follows, in deciding appeals from the decree or order of an original Court under the Code of Civil Procedure, 1908.

Where no appeal has been filed within the period provided by sub-section (2) of section 6, the Commissioner may suo-moto or on the direction of the State Government at any time –

Call for the record of any inquiry or proceeding of any Collector for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Collector, as the case may be, and pass such order thereon as he thinks fit: provided that no such record shall be called for after the expiry of three years from the date of such order except in cases where directions are issued by the State Government; and no order of the Collector shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard.

Notwithstanding anything contained in the Bombay Court-fees Act, 1959, every appeal before the Maharashtra Revenue Tribunal or application under this Act shall bear a court-fee stamp of such value as may be prescribed.

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.

Advocates are barred and the jurisdiction of the Civil Court too is barred.

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 proceeding under this Act before the Collector, the Commissioner or the Maharashtra Revenue Tribunal:

No civil court shall have 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.

Section 36BB of the Maharashtra Land Revenue Code stipulates that 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 section 36, 36A or 36B before the Collector, the Commissioner or the State Government.

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.

Section 36-C of the Maharashtra Land Revenue Code provides that :-

1 – No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under sections 36, 36A or 36B required to be settled, decided or dealt with by the Collector.

For the purpose of this section, a Civil Court shall include a Mamlatdar's Court under the Mamlatdar's Courts Act, 1906.

2 – No Civil Court or authority shall entertain an appeal or application against an order of the Collector under section 36, 36A or 36B unless the appellant or applicant deposits such security as in the opinion of the Court or authority is adequate.

GUJARAT

As per Section-73AD of the Bombay Land Revenue Code, 1879:

(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.
- (c) Nothing in sub-section (a) 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.

As per Section 73 AC of the Bombay Land Revenue Code, 1879,

- (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 73AA 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 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 73AA or section 73AB shall be called in question in any civil or criminal court.

For the purposes of this section, a civil court shall include a Mamlatdar's Court under the Mamlatdar's Court Act, 1906.

MADHYA PRADESH

CHHATTISGARH

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 through 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.

JHARKHAND

Section 20 (2) and (3) of the S.P.T. Act stipulates :

- (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.

RAJASTHAN

The Registration Act of 1976 prevents the registration of documents relating to the transfer of land belonging to SCs or STs in contravention of the provisions of the Rajasthan Tenancy Act, 1955.

E. PENALTY

MAHARASHTRA

As per the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, 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 transferor and 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.

GUJARAT

Where an occupancy is transferred to a non-tribal illegally, 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. However, before levying any such penalty, the non-tribal shall be given a reasonable opportunity of being heard.

The penalty payable if not paid within the time specified by the Collector, be recoverable as an arrear of land revenue.

JHARKHAND

Section 71B of the Chota Nagpur Tenancy Act, 1908 provides for penalties for transferees in illegal possession of tribal land.

If any land is transferred in contravention of section 46 or any other provision of this Act or by fraudulent method and is held or cultivated by any person with the knowledge of such transfer, he shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to one thousand rupees or with both and, in the case of a continuing offence, to a further fine not exceeding fifty rupees for each day during which the offence continues.

JHARKHAND

Under Section-42 of the Santal Parganas (Supplementary Provisions) Act, 1949:

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.

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 42.

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.

RECOMMENDATIONS

1. ‘Alienation’ or ‘Transfer’ for purposes of the Alienation Acts should cover not only transfers by sale to a person not belonging to Scheduled Tribes but all kinds of transfers including benami transfers, 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, declaratory suits, deeds of surrender or abandonment of land executed by a person belonging to Scheduled Tribe in favour of non tribals, encroachments, trespass, forcible dispossession, acquisition with bogus certificates pertaining their status as ‘Scheduled Tribes’, wrong declaration or suppression of information about caste/ tribe and the like.
 2. The Governments may like to ascertain as to what price the well to do tribal purchaser actually paid to the poor seller. As also, whether any 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 in the mire of poverty and to take advantage of their ignorance and other shortcomings.
3. In deciding whether a transfer dates back to a pre-fixed period or not, the courts must not 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.

4. The Madhya Pradesh Land Revenue Code, 1959 (applicable also in Chhattisgarh) introduces an element of presumption. This could find a place in enactments of other states as well.

As per Section 170-B (2), if any person fails to notify 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 is dead, to his legal heirs.

5. Repossession of land by the tribals is another important issue in the implementation of land policy. Though land is restored legally, the non-tribals may not allow the tribals to acquire possession of these lands particularly in view of the poor economic condition, ignorance and inexperience of the tribals and the use of coercion and threats of retaliation by non-tribals. Unless tribals get possession of restored lands, all other efforts will be less than meaningful. Most unfortunate of all is that even if a restoration order is passed it is seldom executed. The buck is passed on to lower administrative units and restoration courts exercise no 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 such exercise carried out seriously in the higher echelons of the administration. 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, continues to remain overawed and speechless as juxtaposed to the transferee who wields power, authority and influence.

6. There is a view that in the interests of overall development, the tribals should be allowed and encouraged to put their agricultural holdings to non-agricultural use. The concept needs a bit of elaboration on the point of uses and details have also to be worked out regarding the non-agricultural use of agricultural holdings either by self or through temporary leases and transfers. Law is silent on these points.
7. It has been noticed in the past that the sub-registrar did not necessarily check whether the land belonged to a tribal or not. As a result of it, the land is alienated at this stage from tribals to non-tribals. It is therefore suggested that suitable instructions may be issued by the Revenue Department that the Sub-Registrar is charged with the responsibility to check whether the property belonged to a tribal. A large number of transfers of tribal land can be stopped at this stage.
8. One of the main reasons, which makes the implementation of the Land Transfer Regulations very difficult, is the filing of a number of cases by non-tribals as and when eviction proceedings are initiated. It is, therefore, suggested that such Acts may be brought under the purview of Schedule IX of the Constitution of the country or the Civil Courts are barred from trying the cases under the Land Transfer Regulations.

Or else, a bar on Civil Courts, pleaders etc. along with a cut on appeals and revisions should be incorporated in the Alienation law itself as is the case in some of the States in the Vth Schedule.

9. Some penalty may be imposed for illegal occupation of tribal lands in the Restoration Act.
10. Self Help Groups of women in Chhattisgarh have made much headway in organizing the members and making them conscious of their rights and obligations. Internal and external lending at differential interest rates has veered them away from the traditional moneylender.
11. A sustained propaganda is necessary in the tribal areas to educate the tribal people on the protective legislation enacted for their benefit and other advantages made available to them by the Government.
12. It has been noticed that Benami transfers in different districts are estimated to be very large in number. Unless Benami transfers are located and covered under illegal transfers the impact of legislation to deal with the problem would hardly touch the tip of the iceberg. Special investigation machinery, if necessary, may be set up for this purpose.

ENJOYMENT SURVEY: A GROUP AND PARTICIPATIVE APPROACH

The officials, non-officials and non-government organisations engaged in the scheduled area for the verification of titles and possession of lands should follow certain guidelines, some of which may be listed as follows:

1. Sufficient dialogue with the tribals to explain to them the purpose and strategy of the proposed verification and the possibility of the lands coming into their possession within an expected time-frame.
2. Collection by all concerned, including some tribal representatives, of relevant documents and information, from official channels, including village map, ROR of the last survey, khatian, list of judgements passed by executive courts in cases involving tribal lands, and the like. The information already available with the NGOs on the status of cases may also be compiled.
3. The survey team comprising officials, organisations, political parties and NGOs is to visit the village and make over the ROR and khatian to the villagers. Both the tribals and the non-tribals have to be kept informed by the beat of the drum before the visit takes place. The non-tribal will be asked to explain his claim over the land. Objections will be called forth from the tribals.
4. A short gap will be provided before the second visit. During the second visit, the team will consider the objections raised by the tribals and the proof of titles produced by the non-tribals. The team will prepare a list of cases in which tribals have been adversely affected by a survey entry or a court order and which should be taken up at the appropriate level and disposed preferably within 3 months. The survey teams will also distinguish title from possession and examine cases where even though the title is not recorded in the name of the tribal, he continues to be in possession. The team will also prepare of a list of illegal occupants/encroachers of tribal lands. The team will also examine if restoration orders have been complied with on the spot or not.

Given the fact that regular survey and settlement proceedings are long drawn out and purely in official hands, the enjoyment survey of the sort proposed here will help in not only ascertaining the current status of tribal land with regard to title and possession but also on setting the ball rolling for opening/re-opening of adjudication at the appropriate forum, in cases, where tribal interests have suffered prima-facie, in violation of the prescriptions of laws/ regulations operative in the Vth Schedule.

CHAPTER – 4

REVENUE ADMINISTRATION AND TENANCY REFORMS IN THE TELENGANA AREA OF ANDHRA PRADESH KHAMMAM DISTRICT: A CASE STUDY

Andhra Pradesh, as formed on November 1, 1956 comprises 23 districts in all which fall under the following three regions:

A. Telengana Region

1. Adilabad
2. Nizamabad
3. Medak
4. Karimnagar
5. Rangareddy
6. Hyderabad
7. Warangal
8. Khammam
9. Nalgonda
10. Mehboobnagar

B. Rayalseema Region

1. Anantpur
2. Kurnool
3. Kadapa
4. Chittoor

C. Coastal Andhra Region

1. Nellore
2. Prakasam
3. Guntur
4. Krishna
5. West Godavari
6. East Godavari
7. Vishakhapatnam
8. Vijayanagaram
9. Srikakulam

Rayalseema and Coastal Andhra form a common unit for revenue purposes and are called as the Andhra area, while Telengana, formerly under Nizam's rule, forms a distinct revenue unit with its legacies and chequered revenue history.

KHAMMAM DISTRICT: GENERAL INTRODUCTION

The district derived its name from Khammam (Khammamett), its headquarters town, which in turn appears to have derived it from a hill known as Stambhadri, located in the heart of the town. As the Stambhams (pillars) capable of supporting the ceilings of temples and Mandapas could be made of the tall stones of this hill, the town was termed variously as Stambhadri, Stambhagiri, Kambagiri and Khammamett, the last of which being a Telugu version of Stambhadri.

Khammam district is bounded on the north by Madhya Pradesh and Orissa states, on the south by Krishna district, on the east by East Godavari and West Godavari districts and on the west by Nalgonda and Warangal districts. Khammam was formerly a district having all the taluqs of the present Warangal district till 1905 when Warangal

was made the district headquarters. To maintain law and order effectively and bring about administrative efficiency, the district of Warangal was bifurcated on October 1, 1953 and Khammam district was created with the taluqs of :

1. Khammam (except Kamepalle and Sirivole villages)
2. Yellandu
3. Madhira
4. Bhoorgampadu, and
5. Palvancha (Paloncha)

The HQ of the district was, however, kept in the ancient town of Khammam. During 1953 itself, the villages of Kamepalle and Sirivole, which were in Khammam taluk, were transferred to Mahbubabad taluk of Warangal district. The most important accession to this district on grounds of geographical contiguity was the transfer of the taluks of Bhadrachalam and Nugur from East Godavari district in 1959.

Land Revenue Administration in Khammam District: A Background

Land revenue in the Diwani (Government) areas of the Nizam's Dominions was collected through contractors called Taluqadars, Deshmukhs and Deshpandya to whom territories were farmed out under two systems known as Taah-hud-dari and the Sarbasta.

TAAH-HUD-DARI- Under this system, the right of collection of revenue was given to men of influence and position living in the Hyderabad city.

SARBASTA- Under this system, the right of revenue collection was allotted to Zamindars.

At times, the districts of the Nizam's dominions were farmed out to more than one person from each of whom a Nazar was collected.

There was also a third system known as Amani under which the Government dealt with the ryots directly.

Taluqadars were appointed for one or more taluks and they were allowed a percentage commission on their collections. The Taluqadars and others who were often required to advance to the Government a considerable portion of the revenue indulged in sub-letting, a practice of leasing out their rights to several men who were in no way responsible to the Government. Each village was assessed as a whole and in case of any deficiency, the cultivators had to redistribute the demand among themselves. Land revenue was collected in kind and crops were not allowed to be harvested till the revenue was paid. The ryots were also subject to much hardship on account of the pernicious effects of several other systems such as Takdema, Battai and Gudem under which they were required to pay in advance a part of the revenue on pain of losing their crops in the event of default. The Government's share of grain was sold to the village Sahukar (banker) at arbitrarily fixed rates. Rack-renting was rife and enhancement of assessment at the time of harvest was quite common. Some of the Taluqadars, who had powerful bodies of retainers, set up claims called Fazilat against the Government i.e. money advanced in excess. In return, they had to face frequently a counter-claim, called Vasilat, i.e. money collected but neither remitted nor accounted for. Attempts made by British residents like Russel and Metcalfe to put down oppression and reform the system of land revenue administration did not succeed. The peasants, unable to bear the tyranny, often abandoned their lands and deserted the villages.

The credit for creating some order out of this chaos and confusion and laying the foundations of a modern administration in all spheres

of the Government goes to Sir Salar Jung I, who became the Prime Minister in 1853. Farming systems were abolished and Taluqadars of the old type were gradually replaced by salaried officials assisted by the requisite staff. A Revenue Board was set up in 1864 and the Diwani territory was divided into fourteen districts and seventy-four taluks. Each district was placed under the charge of a Taluqadar with two Assistant Taluqadars. Tahsildars invested with judicial powers were kept in charge of Tahsils, District and taluk treasuries, in the place of private bankers, were set up and kept under the charge of Taluqadar and Tehsildar respectively.

Divisions consisting of a few districts were formed in 1867 and kept under the charge Sadr-Taluqadars, exercising civil, criminal and revenue powers and supervising the work of Taluqadars.

Khammam (Khammamett) district was included in the Eastern Division alongwith Nalgonda and Nagarkurnool (present Mehboobnagar district).

Obnoxious systems of Takdema, battai and Gudem were abolished and a system of annual jamabandi was introduced. No increase in assessment was permitted except when there was an increase in the area of the holding. Remissions were allowed for uncultivated portions. Relinquishments, when offered, were accepted. A system of ryotwari assessment was instituted and orders were given to measure all holdings possessed by individual cultivators upto 1865-66. Cultivated land was divided into dry and wet. The former was sub-divided into four classes, namely, regar, masab, barad and milon and the latter into three classes, namely garden lands, lands irrigated by tanks and those irrigated by rivers and a separate rate for each was prescribed. A Kistbandi was fixed and an Inam Commission was constituted during 1875-76. These reforms resulted in a steady increase in the extent of occupied land and also revenue. Regular

survey and settlement operations were taken up late in the 19th Century.

The villages of a taluk were divided into groups. The economic condition and the revenue history of the tract were examined, and an aggregate demand for the area in settlement determined. This was distributed over the groups by means of maximum rates for the various classes of lands. The assessment for each field was worked out after taking into consideration the classified value assigned to it and the sanctioned maximum rates.

The results of the initial settlement of Khammam and Yellandu Taluks were announced in 1899-1900, Madhira in 1900-01 and Palvanchu Khalsa in 1903-04. The revisional settlement of Khammam Taluk was done in 1920-21, Yellandu and Madhira in 1926-27 and Palvanchu Khalsa in 1944-45. Separate rates of assessment were prescribed in 1934 for Bhadrachalam Taluk and Nugur sub-taluk, which were transferred to Khammam district later in 1959.

Soon after the merger of the Nizam's State with the Indian Union in 1948, the jagirs were abolished in 1949. The Board of Revenue which was intermittently being abolished and re-established was finally reconstituted. By the Hyderabad District Officers (Change of Designation and Construction of References) Act of 1950, the First Taluqadars came to be known as District Collectors and the Second Taluqadars as Deputy or Assistant Collectors.

After the formation of Andhra Pradesh, a fresh survey of the Telengana districts was found necessary. Consequently, the Andhra Pradesh Survey and Boundaries Act of 1923 (previously known as the Madras Survey and Boundaries Act of 1923) was extended to the Telengana region in 1958. Survey work was completed in due course.

REVENUE ADMINISTRATION IN KHAMMAM TODAY

The year 1985 marks a watershed in the history of revenue administration in Andhra Pradesh. Taluks were abolished and the system of Mandals came into being. Mandals were to be small territorial units with a Mandal Revenue Officer and a Mandal Development Officer and the whole idea was to take administration to the doorstep of the people.

Earlier, Khammam District had the following three Divisions only-

- i. Khammam
- ii. Kothagudem
- iii. Bhadrachalam

Subsequently, in 1987, Paloncha division was carved out of the Kothagudem and Bhadrachalam divisions, taking the total number of divisions to four.

Prior to the introduction of the Mandal system the three divisions, namely, Khammam, Kothagudem and Bhadrachalam consisted of 12 taluks, manned by Tahsildars. The break-up was as follows-

Sl.No.	Division	Taluks
1.	Khammam	1. Khammam 2. Tirmalayapalem 3. Madhira 4. Sathupalli 5. Aswaraopet
2.	Kothagudem	1. Kothagudem 2. Yellandu 3. Sudimalla 4. Burgampad

		5. Mangoor
3.	Bhadrachalam	1. Bhadrachalam 2. Venkatapuram

Currently, there are 46 Mandals in Khammam district. It will be interesting to take note of the same vis-a-vis the 12 Taluks, as aforesaid.

Division	Taluk (Now abolished)	Revenue Mandals falling in the erstwhile Taluk Area.
Khammam	1. Khammam	i. Khammam (Urban) ii. Chintakani iii. Konjella
	2. Tirmalayapalem	i. Tirmalayapalem ii. Kusumanchi iii. Nelakondapalli iv. Mudigonda v. Khammam(Rural)
	3. Madhira	i. Madhira ii. Yerripalam iii. Bonakal iv. Wyrā v. Thallada
	4. Sattupalli	i. Sattupalli ii. Vemsoor iii. Penuballi iv. Kallur
	5. Aswaropet	i. Aswaropet ii. Dammamet iii. Mulkalapalli

2. Kothagudem	1. Kothagudem	1. Kothagudem 2. Chandrugonda 3. Enkoor 4. Julurpad 5. Palwancha	Mandal Revenue Officer is of the rank of Tahsildar in the urban Mandal and of the Deputy Tahsildar rank in the rural Mandals. Each of the 4 Revenue Divisions is headed by a Revenue Divisional Officer who is also ex-officio the Sub-Divisional Magistrate in his Division.
	2. Yellandu	i. Yellandu ii. Kamepalli iii. Singareni	Khammam District has 12 urban Mandals and 34 rural Mandals. There are Village Administrative Officers who are in charge of more than 1 village, grouped together.
	3. Sudimalla	i. Tekulapalli ii. Garla iii. Bayyaram iv. Gundala	EARLIEST ATTEMPTS AT LAND REFORMS The earliest land reform introduced in the Nizam's Dominions was the Prevention of Agricultural Land Alienation Act of 1349 Fasli (1939-40). The Act applied to the non-Diwani territories also and empowered the Government to notify from time to time what was described as the agricultural class. Members of this class were required to take the permission of the Taluqadars to alienate agricultural lands permanently.
	4. Burgampad	i. Burgampad ii. Kukkunoor iii. Veliarpad	
	5. Mangoor	i. Mangoor ii. Aswapuram iii. Pinpaka	The Hyderabad Assami Shikmis Act of 1354 Fasli (1944-45) was enacted on the recommendations of a committee set up earlier.
Bhadrachalam	1. Bhadrachalam	i. Bhadrachalam ii. Kunavaram iii. V.R. Puram iv. Chintoor v. Dummugudem	Tenants who were in continuous possession of lands for a period of six years between 1932 and 1942 and who had personally cultivated the lands during this period were accorded protection by this Act.
	2. Venkatapuram	i. Venkatapuram ii. Cherla iii. Vazedu	These two Acts were, however, not implemented effectively and hence the benefits to be extended under the Acts did not in fact materialise so far as the tenants were concerned and the dichotomy between ownership and cultivation of land became more and more pronounced.

The abolition of jagirs during 1949-50 under the Hyderabad (Jagir Abolition) Regulation was a major reform undertaken by the

Government of Hyderabad. A Jagir Administrator at the State level took over the paighas and big jagirs, while civil administrators took over small jagirs within their district.

The Andhra Pradesh (Telengana Area) Tenancy & Agricultural Lands Act, 1950

This Act was passed by the Hyderabad State under the Chief Ministership of Burgula Rama Krishna Rao. Communists had already made much headway in the Telengana area. Feudalism was rampant and there was a general clamour for lands to be made over to tillers.

One of the most important chapters in the AP(TA) Tenancy and Agricultural Lands Act, 1950 is Chapter IV, dealing with Protected Tenants.

"Section 34. Protected Tenants

1. A person shall, subject to the provisions of sub-section (2) and (3), be deemed to be a Protected Tenant in respect of land if he-

- a. has held such land as a tenant continuously
 - (i) for a period of not less than six years, being a period wholly included in the Fasli years 1342 to 1352 (both years inclusive), or
 - (ii) For a period of not less than six years immediately preceding the 1st day of January 1948, or
 - (iii) for a period of not less than six years commencing not earlier than the 1st day of the Fasli year 1353 (6th

October 1943) and completed before the commencement of this Act, and

(b) "has cultivated such land personally during such period :-----"

Claims regarding being a Protected Tenant are to be decided by the Tahsildar. Collector can be moved on first appeal and the Board of Revenue on second appeal (Section 35). Persons not entitled under Section 34 may also be deemed to be Protected Tenants in certain circumstances under Section 37.

"Section 37 (1) Every person who at the commencement of this Act holds as tenant any land in respect of which no person is deemed to be a protected tenant under Section 34, shall on the expiration of one year from such commencement, or the final rejection of all claims by any other person to be deemed under Section 34 to be a protected tenant in respect of such land, whichever is later, be deemed to be a protected tenant, unless the landholder has before such expiration or final rejection as aforesaid made an application in the prescribed form to the Tahsildar for a declaration that such person is not a protected tenant:....."

Section 38 provides for the right of the protected tenant to purchase landholder's interest in the land, the desirous protected tenant shall make an offer to the landholder stating the price which he is prepared to pay for the land-holder's interest in the land upto 15 times for dry lands or 8 times for wet lands irrigated by wells and six times of wet lands irrigated by other sources, of the rent payable by him. If the land-holder refuses or fails to accept the offer and to execute a sale deed within 3 months from the date of the offer, the protected tenant may apply to the Tribunal for the determination of the reasonable price of the land. The said determination will, then be done by the Tribunal. The protected tenant shall deposit with the

Tribunal the amount of the determined price either in a lumpsum within the period fixed by the Tribunal or in such instalments not exceeding sixteen and at such intervals during a period not exceeding 8 years. On deposit or recovery of the entire amount, the Tribunal shall issue a certificate to the protected tenant, declaring him, conclusively, to be a purchaser and shall also direct the payment of the said price to the landholder.

Section 38(b) provides for the procedure under which the landholder can relinquish his rights in favour of the protected tenant without receiving any consideration.

If the landholder does not hold more than three family holdings, he may terminate the tenancy of the protected tenant. But in the event of the landholder not cultivating the land personally within one year of resuming possession, or discontinuing such possession within 10 years, the land will be restored back to the Protected Tenant (Section 38-c).

The landholder himself may offer to sell his land to a protected tenant (Section 38-D). In case the protected tenant declines, the landholder can sell it to any other person.

The most noteworthy provision is contained in Section 38-E according to which ownership of lands held by protected tenants was to stand transferred to them from the notified date."-----
----- the ownership of all lands held by protected tenants which they are entitled to purchase from their land-holders in such area-----
--shall subject to the condition laid down in sub- section (7) of Section 38, stand transferred to and vest in the protected tenants.....". In a nutshell, Section 38-e makes all protected tenants full owners of such lands. Ownership certificates are to be issued by the Tribunal to every such protected tenant under intimation to the landholder concerned. "Such certificate shall be

conclusive evidence of the protected tenant having become the owner of the land with effect from the date of the certificate as against the landholder....."(Explanation (2) to Section 38(e).

The relevant dates of notifications with reference to Section 38(e) are as follows:

1. 1955 In respect of Khammam District (excluding Bhadrachalam), Mulugu Taluk (Warangal: Hyderabad State) and Jaina Taluk of Aurangabad (Maharashtra State)
2. 1.11.1973 Rest of the districts in the Telengana region of Andhra Pradesh.

Khammam district figures reveal that altogether 14,036 protected tenants had become owners of respective lands as on September 5, 1992. Total area of such ownership comes to 80,577.25 acres.

Nonetheless, such protected tenants still continue who are not entitled to buy. A protected tenant to buy the concerned land has to have less than two family holdings. A landholder to sell has to have less than 3 family holdings. Law should be amended suitably to remove the eligibility criterion.

Patta certificates under Section 38(e) are to be issued only after total payment of land price by the protected tenant.

Reference may be made in passing to some other relevant provisions pertaining to protected tenants. According to Section 40(4) the interest of a protected tenant in the land held by him as a

protected tenant will form sixty percent. Further, all rights of a protected tenant shall be heritable (Section 40(1)).

Section 48-A puts certain restrictions on permanent alienation or transfer of land acquired by the protected tenant.

Section 50(b) of the Act is yet another significant section in as much as it tends to regularise certain unregistered transfers. Purchasers were required to file an application to the Tehsildar who had to issue notice to the seller and to the public at large, invite claims and objections and examine the seller in person. On satisfaction, he ordered the deposit of Registration Fee/Stamp Duty, as prevailing on the date of the sale. The admissible transactions were to be in the period between 1950 (when the Act was enforced) and 1969 (when section 47 was omitted). The last date for filing applications was 31.3.1972. Since then, section 50(b) cannot be invoked to regularize a plain paper transaction.

To sum up, save and except nearly 2% of Protected Tenants, all the rest of them have become full-fledged Pattadars.

THE A.P.(TELENGANA AREA) ABOLITION OF INAMS ACT, 1955

(As Amended by Act 16 of 1986)

Objects:

1. abolition of all inams other than village service inams and inams held by religious and charitable institutions;
2. full assessment being charged for such abolished inams;

3. the retention by the inamdar as well as his tenants of lands under their personal cultivation to the extent of the maximum allowed under the Hyderabad Tenancy and Agricultural Lands Act, 1950.

4. giving adequate compensation for the lands resumed from them.

"Inam" means land held under a gift or a grant made by the Nizam or by any Jagirdar, holder of a Samsthan or other competent grantor, and continued or confirmed by virtue of a muntakhats or other title deed, with or without the condition of service. Such lands or part thereof used to be revenue-free and were entered as such in village records.

No hereditary rights used to accrue on Inam lands. The same were for usufruct during Inamdar's life-time only. Inamdars were generally supposed to render service to the Government and to the village community. After the death of an Inamdar, the Inam lands used to revert back to the ruler who could either re-grant it to the heirs or he could grant it to someone else.

According to the earlier system the following Inamdars used to render services to the Government-

- | | |
|----------------|---|
| A. Sethsindhi- | Collection of land revenue, patrolling, policing, crime-reporting, assisting Patwaris/Patels etc. |
| B. Neeradi- | taking care of water-works, tanks etc. |

The following Inamdars used to render services to the village community: harijans, artisans etc. like potter, carpenter, purohita, barber and the like.

In those days the sole source of state revenue used to be land revenue. In order to augment this source, the Nizam encouraged development of uncultivable land. Certain lands were also given on Makta. As per Izara Kowl, if the grantee brought 1/3 of the grant area under cultivation, he used to get for himself double the area brought under cultivation on payment of only 50% of land revenue.

The Act abolished all Inams except village service Inams and Inams held by charitable endowments. Inams were abolished to confer occupancy rights to Inamdars. Earlier except the Izara Kowl person, Inamdars did not have any occupancy rights.

An Inamdar was not to be registered as an occupant for:

- (a) lands set apart for the village community,
- (b) lands in respect of which any person (other than Inamdar) is entitled to be registered under Section 5,6,7 and 8 of the Act,
- (c) lands upon which some one else owns erected buildings.

The four sections, as above, make provision for the registration of the following persons (other than Inamdars):

Section 5: Registration of Kabiz-e-Kadim as occupants

Section 6: Registration of permanent tenants as occupants

Section 7: Registration of protected tenants as occupants

Section 8: Registration of non-protected tenants as occupants

The notified date w.e.f. which ownership rights were to accrue was 1.11.1973. People enjoying Inam were:

- i. Inamdar himself
- ii. Kabiz-e-Kadim, i.e. those who were in possession for more than 12 years as on the date of the notification (viz 1.11.1973).
- iii. Permanent tenants on Inam lands created by the Inamdar himself.
- iv. Protected tenants on Inam lands
- v. Ordinary tenants on Inam lands
- vi. Purchasers on Inam lands

Inams were abolished w.e.f. 20.7.1955. Inams held by Sethsindhis, Neeradis and baluthadars (artisans) were not abolished. Full revenue was to be charged on abolished Inams (earlier there used to be concessions). The Inams first vested in the State. Subsequently, Pattas were granted to Inamdars, Kabiz-e-kadim, ordinary tenants and protected tenants. Purchasers of Inam lands were deprived of Patta. These Inamdars were also to pay premium to the Government for availing of occupancy rights. In turn, compensation was to be given to the Inamdars for taking away their Inam rights.

According to Rules, one had to apply to the R.D.O. (Revenue Divisional Officer) for the conferment of occupancy rights. The last date for such application had been 30.9.1989. Those who did not apply could not get occupancy rights. It is suggested that the V.A.O. (Village Administrative Officer) should be required to keep a record of such left out cases as well in Inams Register.

Subsequently, purchasers' rights on Inam lands also had to be recognized. It was contended that there was no provision either in the Act or in the Rules according to which the Government could resume Inam lands, if sold. Second, all Inams were abolished w.e.f. 20.7.1955 while patta rights accrued from the date of the

notification, viz., 1.11.1973. Actually, no Inams existed since 20.7.1955 itself. But the land was there and the Inamdar was there. Hence, at least in the case of such eligible Inamdars who merited for a Patta on 1.11.1973, the Patta rights should actually originate on 20.7.1955 itself. If so, nothing prevents him in selling out Patta rights. A sale will be invalid only when it is prior to 20.7.1955. The Government agreed to protecting the purchasers' interest and Miscellaneous Government Order No.1159, Revenue Department, dated 29.10.1976, disapproving of sale/purchase vis-a-vis Inam lands was withdrawn.

CEILING LEGISLATION

THE A.P. CEILING ON AGRICULTURAL LANDS ACT, 1961

A family unit was to consist of 5 members, viz., husband, wife and unmarried minor children. Every additional member beyond 5 was to be allowed 1/5th of the family holding upto a limit of 2 family holdings (First one, included).

Next, it is to be noted that every family was entitled to an area $4\frac{1}{2}$ times of the family holding. If, for illustration, a 5 member family had under clause-A to have 6 acres of land, it will be entitled actually to 6 acres x $4\frac{1}{2}$ =27 acres of land. Exemptions included grazing land upto a limit of 1/3rd of the Holding Area(after the original area was multiplied by $4\frac{1}{2}$); gardens, orchards etc., cultivable land blocks (to encourage intensive cultivation), etc.

Provisions like arriving at family holding by multiplying specified class area by $4\frac{1}{2}$ and exemptions including those pertaining to cultivable land blocks, gave rather long lease to the big and unscrupulous land-holders to side-track the intent of the law.

THE A.P. AGRICULTURAL LANDS (PROHIBITION OF ALIENATION) ACT, 1972

This Act had to be passed to prevent large-scale transfers as a ceiling legislation more drastic than the 1961 Act was on the anvil. This Act spoke about specified limits. Persons holding lands beyond such specified limits could not transfer their lands. The limits were as follows:

- i. Wet land - 4 Hectares or 10 Acres
- ii. Dry land - 10 Hectares or 25 Acres

Registration Department was not to accept sale/gift etc. executed by landholders holding lands more than the specified limits. The concerned Tehsildars were to issue certificates regarding specified limits.

THE A.P. LAND REFORMS (CEILING ON AGRICULTURAL HOLDINGS) ACT, 1973

This Act came into force from the date of notification viz. 1.1.1975. All such landholders who owned more than 10 acres of wet land and 25 acres of dry land were to file Declarations.

Progress in Land Reforms in Khammam District (as on 31.7.1992)

The total number of declarations filed by the declarants is 15,418, out of which 12,795 were found to be below ceiling limits. Thus the number of surplus cases came actually to 2623 with 2158.52 standard holdings bearing an area of 1,02,529.70 acres. This area was arrived at on the basis of an average 47.50 acres per standard holding ($2158.52 \times 47.50 = 1,02,529.70$). Standard holding was kept by law between 45-50 acres. Average comes to 47.50 acres.

Decided Cases-

490.0458 standard Holdings
bearing an area of 23,277.15 acres.

The progress report refers to deletions as well with respect to 981.2853 standard holdings bearing an area of 46,611.05 acres. Deletions were ordered by various appellate/ Revisional courts. It could have been that certain fact had not been brought before the verification officer/ tribunal. A sale, for instance, might not have been entered into revenue records. Documentary evidence of purchase prior to 1.1.1975 had not been produced before the Verification Officer/ tribunal. Illatom son-in-law as on 1.1.1975 (not later) of any community was to have a family unit. A son becoming major on 1.1.1975 was to have a family unit. Additional family members (beyond 5) were to have shares as per specified limits. Stridhan (if not dowry) was permissible. It meant landed property given to daughters in marriage. The same was to be registered in her name. Then again, one ought to have taken note of validation certificates given by Tahsildars in respect of unregistered transactions pursuant to section 50 (b) of the Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands Act, 1950. Ownership certificates given to protected tenants vide Section 38 (e) of the same Act has also to be considered by deducting such lands from the area held actually by the landholder in question. Same can be said about Bhoodan lands donated by the landholder. Exemptions, in fact, are mentioned in the ceiling law itself in Sections 1 and 4-A.

Thus, in Khammam district, by way of deletions 981.28 standard holdings bearing an area of 46,611.05 acres had to be kept out of consideration while working out ceiling surpluses.

Balance area decided as surplus was as follows:

(a)	Original cases -	1010
(b)	Clubbed cases -	357

In addition, cases pending in litigation:

687.1896 Standard holdings
32,641.10 acres

23,277.15 acres
+32,641.10 acres

55,918.25 acres

Cases in which possession, by the Government, of surplus land has already taken place, are as follows:

(a) Decided Cases - AC. 21143.99
(b) Court Cases - AC. 4499.13

Total 25643.12

Here Court cases mean that after the Government came into possession, the matter became sub-judice, and further action has to be stayed.

Total area in which possession could not take place comes to 30,275.56 acres.

An area of 2163.94 acres has been found unfit for cultivation for various reasons. According to section 14 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 surplus lands are to be distributed to agricultural labourers, village artisans or other poor persons owning no house or house-sites and to other weaker sections of the people dependent on agriculture. The lands may be distributed either as house-sites or for purposes of agriculture. The district administration has sent proposals to the Government for allowing use of 2163.94 acres (unfit for cultivation) for mining,

grazing and horticultural purposes. If necessary, suitable amendments could be mooted out in the relevant provisions of law.

Tribunals

Section 6 of the 1973 Act provides for the constitution of tribunals. At present an Additional Revenue Divisional Officer, functions as a tribunal in Khammam district. An appellate Tribunal under Section 20 of the Act is chaired by a person who holds or has held or is qualified to hold the post of a District Judge. The appellate Tribunal constituted under section 20 disposes off appeals against the decisions of the Tribunal constituted under Section 6 of the Act. Revision lies with the High Court (Section 21).

Special Provisions for Protected Tenants

Section 13 of the 1973 Act provides that "where the holdings of any owner include any land held by a protected tenant, the Tribunal shall, in the first instance, determine whether such land or part thereof stands transferred to the protected tenant under section 38-E of the A.P. (Telengana Area) Tenancy and Agricultural Land Act, 1950 and if so, the extent of the

land so transferred; and such extent of land shall thereupon be excluded from the holding of such owner and included in the holding of such tenant, as if the tenant was the owner of such land for the purposes of this Act.

The Andhra Pradesh Record of Rights in Land and Pattadar Pass Book Act, 1971.

The scheme of statutory preparation and maintenance of Record of Rights in the Telengana area was governed by the AP (Telengana Area) Record of Rights Regulation, 1358 Fasli. There was no such scheme of statutory preparation in the Andhra Area and maintenance of Record of Rights was governed only by executive orders. With a view to having a uniform statutory scheme of Record of Rights for the entire State and to consolidate and amend the law relating to the Record of Rights in land in the State, the A.P. Record of Rights in Land Act, 1971 was enacted. With its enactment the A.P. (T.A.) Record of Rights Regulations 1358 Fasli and all standing orders and other provisions of law relating to Record of Rights have been repealed. Therefore, in the entire State, the provisions of the A.P. Record of Rights in Land and Pattadar Pass Book, Act 1971 as amended by Acts 11/80 and 1/89 prevail for transfer of registry and preparation of Record of Rights. The Record of Rights in Land Act, 1971 came into force from 15.8.1978 and was enforced in the State in different phases.

The 1971 Act was amended by Act 11/80 and Act 1/89. Act 1/89 provides for updating of Record of Rights under Section 3(1) of the Act and for the regularisation of unregistered transfers and alienations under section 5-A of the Act. Because of these amendments the A.P. Record of Rights in land and Pattadar Pass Books Rules, 1989 were issued in supersession of the A.P. Record of Rights in Land Rules, 1978.

The main features of the amended Act and the new rules are as follows-

- (a) a new format for the Pattadar pass book in 4 parts. 2 parts will be printed on white paper, one part will be printed on pink paper and the 4th will be printed on green paper;
- (b) every Pattadar, owner, tenant, mortgagee will get a passbook with his photo affixed on the pass book and attested by the Mandal Revenue Officer (MRO) concerned;
- (c) credit agencies should take cognizance of the entries in the Pattadar pass book and advance loans without insisting on copies of village revenue accounts such as Adangal, Pahani, 10(1) Account/ Chowfasla etc.;
- (d) all loans sanctioned and their repayments will be entered by the credit agencies in the pass book;
- (e) the land revenue payable, paid and the balance will also be noted in the passbook;
- (f) unregistered alienations and transfers can be validated by following the procedure prescribed in Section 5-A of the Act and Rule 22 of the Rules.

Records of Rights are to be prepared or updated with respect to agricultural and horticultural lands alone. Lands belonging to the Central or state Government and lands which are used exclusively for non-agricultural purposes are to be excluded. The Recording Authority, who will be such officer of the Revenue Department not below the rank of the Revenue Inspector as may be notified by the Collector, is entrusted with the functions of preparing or updating the Record of Rights. Collectors can consider,

- (i) notifying the Special Deputy Tahsildar (ROR) as the recording authority for the three/four/five Mandals for which he is appointed;

- (ii) notifying the Special UDRI (ROR) as Recording Authority for the mandal for which he is appointed;
- (iii) notifying the Mandal Revenue Inspector as Recording Authority for his Mandal;
- (iv) notifying the MRO as Recording Authority for his mandal or any combination of the above.

While all the four officers will have concurrent jurisdiction over a Mandal, the District Collector should earmark villages in a Mandal to each of the five officers so that as far as a village is concerned, only one person will deal with it from the commencement of the work till its completion.

The purposes of Act 26 of 1971 are mainly:

- (a) preparation or updating of Record of Rights.
- (b) rectification of Record of Rights prepared under (a) above;
- (c) amendment and maintenance of record of rights.

There has to be a notice to the village concerned declaring intention of the Recording Authority to prepare a Record of Rights, calling for claims, and setting out a date for local enquiry. After the first day of enquiry in a village, it can be adjourned to another date. It should be the aim to complete the enquiry in a village in as short a time as possible.

The object of the enquiry is to

- (i) update land registry
- (ii) split joint pattas
- (iii) collect information to prepare Record of Rights in Form-I.

Enquiries are to be followed by orders. All disputed cases are to be submitted by the Recording Authority to the MRO for a decision. After passing orders, the Recording Authority shall prepare a draft of Rights in land for the village. Claims will be invited and a Gram Sabha will be held. There will be further local enquiries, alterations in the draft and confirmation of the draft R.O.R.

The correctness of the entries in the draft ROR and the confirmed ROR should be tested by the Revenue hierarchy on a percentage visit. Entries in every village should be tested. Mistakes are liable to be corrected. Thereafter, the fact of preparation of ROR for the village or the fact of its updating shall be notified in the District Gazette in Form-IV. Within 15 days of the publication of the Form IV notice, the Recording authority shall hold a Gram Sabha at which the confirmed ROR shall be read out for the information of the persons present.

Within 7 days of the publication of the notification in Form-IV, the Mandal Revenue Officer shall arrange to recast Record of Rights information in Form I and other information available in the Mandal Revenue Office and Registrar's office in Form I-B and authenticate the entries in respect of each person.

After the preparation of the Register in Form I-B the Mandal Revenue Officer shall arrange to get the Pattadar Pass Book prepared with reference to entries in Form I-B and deliver the same to the persons concerned.

Coming to Khammam District, it will be clear in 740 out of 1242 villages in the district Form 1-B has been prepared and the fifth Gram Sabha has been held where the ROR in Form-B has been read out.

The four parts of the Pattadar Pass Book are to deal with the following:

- Part 1 - Ownership
- Part 2 - Owner-cultivator
- Part 3 - Tenant
- Part 4 - Land Revenue

Parts 1 and 2 are given over to the owner cultivator. Part 3 is given over to tenants (left over protected tenants and ordinary tenants) and mortgagees. Part 4 concerns owners and non-cultivators both.

In Khammam district there is full checking instead of test-checking, being done against Record of Rights. Progress-wise, I was told, Khammam ranks third in the State. If we examine progress within the District, Bhadrachalam Division ranks highest as recently (out of 23 districts of A.P.) Bhadrachalam underwent the exercise of re-survey and settlement. Therefore it is not a denovo preparation of ROR there. Certain constraints as well as suggestions were brought to my notice in my interactions with the Khammam officials.

After the passing of the Hindu Succession Andhra Pradesh Amendment Act, 1986, every female gets a right and a share equal to a male member w.e.f. 5.9.1985. If the female member's marriage has been performed prior to 5.9.1985, this Act will not attract. But for marriages from 6.9.1985 onwards, she can claim equal right and share. Parents say they have already given over lands etc. at the time of the marriage. Hence there is a reluctance on their part to get the daughter's name recorded or to call her for deposition. Many of the married daughters might be living far away. Filing of affidavits was mooted out by way of a suggestion, but who will check false affidavits? Unless entries in favour of women getting married after 5.9.1985 are made, record of rights will remain incomplete.

In the case of plain paper/ oral transactions, married daughters are not coming up with registration fees/ stamp duties etc. with respect to lands obtained from parents in gift. This is true particularly of weaker sections. It is to be seen if Integrated Tribal Development Agency can pay on behalf of such (tribal) women.

Absentee landlords frequent the village off and on and sell same lands to more than one person. Rival claimants pose difficulties in recording.

VILLAGE NAGILIGONDA: A NOTE ON THE VISIT

On 7.9.1992 I visited village Nagiligonda in the Chinthakani Mandal of Khammam division and interacted with the assignees of ceiling surplus lands. The break-up of ceiling land distribution is as follows:

Village- Nagiligonda
Mandal- Chinthakani
Division- Khammam

No. of ceiling land beneficiaries- 163

Area assigned 117.04 acres

Caste	Numbers	Area	
		Acres	Cents
S.C.s	91	68	39
S.T.s	3	2	60
B.C.s	58	43	62
Others	11	7	55
	163	117	04

The lands were assigned in 1978 and were dry lands only. With the commissioning of the left canal of the Nagarjuna Sagar Project in 1978-79, Nalgonda, Khammam and Krishna districts started getting water (the first recipient being Guntur district by the right canal in 1967). The village assigned lands are therefore having paddy (September-December). The NSP, in any case, guarantees a single crop command area only. The assignees take, however, black gram as well (January-April). But as the lands are low-lying (subject to water-logging), they cannot take red gram or green gram.

The assignees had taken loans from the Land Mortgage Bank for land development viz, leveling, construction of waterways, bunds, removal of bushes etc. The loans have since been repaid.

Earlier the assignees were landlords. The assignment ranges between half to one acres, hence the incomes are not adequate. They supplement by indulging in agricultural labour. They engage in ploughing, transplantation or harvesting in the same or in the neighbouring villages. In case of a drought or delayed rains, many of them go to Krishna or West Godavari districts. There is assured water in Krishna district on account of the Krishna Water Delta. The distance of Krishna from the village is about 200 kms. and of West Godavari 250 kms. Women also go out, that being an old practice. Such cross-exchanges are frequent. So much so that well off persons from Krishna have bought lands in Khammam and Nalgonda districts and have settled here.

The village has 10 families of big landholders belonging to Reddi and Kamma castes.

Agricultural Labour Rates (Approximate)

(a)	Ploughing	Rs. 20-25 (with landholder's bullocks)
Note:	Rates per acre	Rs. 50 (if own bullocks of the labourer are used)
(b)	Transplantation	90-100 kgs of paddy per acre or Rs. 250 in cash (Mostly done by females)
(c)	Weeding	Rs. 10 per day per female worker.
(d)	Harvesting to threshing-	On contract 90 kgs to 100 kgs of paddy per acres or Rs.250 per acre.

If several persons are engaged in transplantation/ harvesting then the wages, as above, will be distributed. I was told if 20 persons are engaged in harvesting and threshing they will harvest 2 acres, carry to threshing sites on day-2 and thresh on day-3. Each one will be getting about Rs. 20.00 a day.

In lean season, the assignees extend labour to commercial crops. They harvest chillies/maize in the same village or in surrounding villages and earn Rs. 10 to 15 per day per head.

Income from own (ceiling surplus assigned) plots is as follows-

	Per acre	Half acre
(a) Paddy	16 bags	8 bags
(b) Black gram	1-2 bags	1/2-1 bag

1 bag of paddy contains 75 kgs of the grain and fetches Rs. 250. 1 bag of black gram contains 100 kgs of black gram and fetches Rs. 600-700. The grains produced are sold in Khammam markets.

Financial assistance has been received only from the Land Mortgage Bank (now called Agricultural Development Bank). No loans are forthcoming through D.R.D.A./ Scheduled Caste Development Cooperative. While subsidies from the D.R.D.A. and the S.C. Cooperative is no problem, institutional finance is not forthcoming. Some coordination with the banks is, therefore, called for. The village has been adopted by the Vysya Bank.

There is an upper primary school here which boys and girls from assignees' families attend. The High School is 5 kms. away at Pedamunagla in the Konijerda Mandal. Only 10 female students attend that school out of which none comes from the assignees' families.

Average age of the marriage of a female is 15-18 (among SC/BCs) and 18-25 (among others).

Caste-wise distribution of households, approximately, as come out of discussions, came to be as follows-

Caste	No. of the Households
<u>A. Scheduled Castes</u>	
1. Mala	100
2. Madiga (Cobblers)	100
<u>B. Backward Castes</u>	
1. Gowda (toddy tappers)	50
2. Carpenters	6
3. Yadava (shepherds)	25
4. Telaga	10

5. Chakeli (Washerman)	10
6. Barber	1
7. Dudekula (B.C.s from Muslims)	15
8. Mudiras	10
9. Satani	1
<u>C. Other Castes</u>	
1. Reddis	40
2. Kammas	40
3. Brahmins	2
4. Vaishyas	10

Dwelling houses of the assignees are mostly thatched. But their overall condition is good. They are not in rags.

40 acres of land belonging to SC families (non assignees) urgently require a lift irrigation scheme. The case is pending before A.P.S.I.D.C (Andhra Pradesh State Irrigation Development Corporation).

The village has got two tanks:

	Command
(a) VORACHERUVU	92 acres
(b) CHINTALACHERUVU	68 acres

The respective ayacuts being less than 100 acres, both the tanks are looked after by the Panchayati Raj Development Department. Water rate is collected by the Revenue Department. Local cess is also collected @ 0.25 paise per Rupee of the water rate. This 0.25 paise go to local bodies as follows:

Paise

Zila Parishad	0.5
Mandal Praja	0.8
Parishad Gram Panchayat	0.12

	0.25

Regarding use of tank water by our ceiling surplus assignees, I was informed that 4 acres of assignees' lands were getting water from Chintalacheruvu. 10 acres of S.C.s' land (not assignee) are getting water from Voracheruvu. In all, 14 acres of Scheduled Castes lands are getting water from the two tanks. Water from tanks is taken through field channels. No pumping sets are used.

SURPLUS LAND DEVELOPMENT BY THE DISTRICT S.C. COOPERATIVE SOCIETY LTD. KHAMMAM

The scheme aims at providing financial assistance to the land declared as surplus under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and which was allotted to the S.C. beneficiaries. The scheme for the development and cultivation of surplus lands envisages provision of financial assistance to the allottees of this land for the development and cultivation of this land. Land allotted besides being sub-grade is also scattered in pieces ranging from 20 cents +02 Acres. Under the surplus development programme it is proposed to tap all ground water and surface water potential and land reclamation to provide agricultural assistance and the required inputs. A pair of bullocks is also proposed wherever required. The HQ for the District SC Cooperative Society, Khammam is located at Paloncha. I had an occasion to interact with the Project Director, who is an Officer of the Indian Administrative Service.

CONCLUDING REMARKS

1. Apart from the small margin of protected tenants who have not been made pattadars, disguised ordinary tenancy still exists not only in the Telengna area but elsewhere as well. Some landholders are unable to cultivate their lands and give away the same to ordinary tenants on lease for 1 year or more.

The system of crop share militates against the notion of personal cultivation, still it is in vogue. I am told in East Godawari only fodder and no crop share is taken. But in the second crop 60-70% of the crop and fodder goes to the share-cropper. In Krishna, 50% crop goes to the share-cropper. Land revenue and irrigation rates are provided by the landholders.

There is cut throat competition among the landless to get crop-sharing. The land is limited while the landless are over-populated.

A sheer entry in part-3 of the Pattadar Pass Book regarding the tenant's rights or entry in the possession column will not be of much avail unless occupancy rights accrue to them after putting in a certain number of years. In any case lease-holders' and share-croppers' names should at least be entered in Pahani Patrika- Col. 5 where "nature of cultivation" or status of the cultivator is to be recorded.

Names of the remainder of protected tenants should at least be recorded in the Pahani by inserting a Column between Col.1 and 15. This is because Tenants' Register for the protected tenants is no longer in vogue. Law should be amended to remove the eligibility criterion.

The V.A.O. should also maintain an Inams' register to record such Inamdars on whom ownership rights could not be conferred. This

could apply to sale cases as well. Such ownership rights might not have been conferred in the absence of an application by 30.9.1989.

Protected Tenants and other special categories of assignees should not be allowed to transfer lands to safeguard against exploitation.

Collector's active role as a court in deciding ceiling cases, as in some other states, should be considered.

Use of surplus lands for other than agricultural/ house- site purpose should be allowed.

CHAPTER – 5

TRIBAL LAND ALIENATION & RESTORATION IN 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 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 Section 165, 170, 170 -A, 170-B, 170-C, 170-D and 257-A of the MPLRC.

Protection of the Interests of Scheduled Tribes on Lands in the Scheduled Areas- Section 165 (6) (1) provides that

in 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 non Scheduled areas also the land of the tribals shall not be transferred to any non-tribal person without the permission of the District Collector.

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

Acceptance of Registration Document- Section 165 (IV) 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 tribals 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 powers of restoring the possession of land belonging to 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 the 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 the tribals. The offences are non-bailable and cognisable.

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 the land of a tribal- Instructions have been issued on 2-12-1997 that the acquisition of the 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 Patta holders of SC/ST. 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 SC/ST by Patta- As an extension of the Adhikar Abhiyan, the State Government decided to verify possession of 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, verification of the possession of 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 the landless persons of SC/ST- 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 landless persons of SC & ST.

Exemption of Court fee in favour of ST- Tribals do not have to pay any court fee.

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

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

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

Section of the M.P. Land Revenue Code under which the cases were registered.	Number of cases registered	Number of cases decided in favour of the members of ST	Land restored to the 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

2. Janjgir-Chaupa
3. Korba

4. Raigarh

5. Jashpur

Gaurela-1
Gaurela-2
R.N. Mandal Kota

Korba
Katghora
Paudi-Uproda
Pali
Kantola
Kharsia
Gharghor
Tamnar
Lai Lunga
Dharamjaigarh
Jashpur
Manora
Kunkuri
Duldvla

	6. Sarguja	Farsabahar (Tapkara) Bagicha Kansabel Paththalgaon Ambikapur Batoli Udaipur Lakhanpur Sitapur Mainpat Rajpur Surajpur Bhaiyathan Premnagar Ramanujnagar Oragi Pratap Pur Landra Ramchandrapur	Bastar	7. Korla	1. Jagdalpur	Balrampur Wadfanagar Kusmi Shankargarh Bharatpur Baikunthpur Sonhat Manendragarh Kharagwa Jagdalpur Lohandigura Darbha Tekapal Bastanar Bastar Bakawand Kondagaon Farasgaon Keshkal
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	2. Kanker	Makari				Konta
		Bareraajpur				Sukuma
	3. Dantewada	Narayanpur				Chhindgarh
		Orchha.				
		Kanker				
		Charama	The following is a gist of the permissions accorded under section 165 (6) of the M.P. Land Revenue Code regarding the sale of tribals' lands in favour of non - ST.s during the last 3 years.			
		Sarona				
		Bhanupratap				
		Durg Kondal				
		Antagar				
		Koyalibeda	Sl. No	District	No. of cases permitted	Area involved in
		Dantewada	1.	Raipur	111	69.769
		Bhopal Patnam	2.	Durg	97	61.440
		Usoor	3.	Rajnandgaon	7	4.970
		Bijapur	4.	Kawardha	106	66.380
		Bhairamgarh	5.	Mahasamund	69	66.420
		Kuakonda	6.	Dhantari	-	-
		Didan	7.	Bilaspur	33	21,570
		Katekalyan	8.	Jamjir Chaupa	80	41,360
			9.	Korba	-	-

10.	Raigarh	30	23,226	Sl.	District		Cases	Dispose	Balance	Disposed off in	Area
11.	Jaspur	-	-	No			Institute	d off		favour of	restore
12.	Sarguja	-	-				d			tribals	(He)
13.	Koria	-	-	1.	Raipur		208	200	8	160	106.778
14.	Bastar	-	-	2.	Durg		24	17	7	11	6.460
15.	Kanker	-	-	3.	Rajnandgaon		49	45	4	28	24.700
16.	Dantewada	-	-	4.	Kawardha		298	295	3	47	67,238

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

Total cases instituted	4324	5.	Mahasamund		68	58	10	38	25,830
Cases disposed off	3742	6.	Dhantari		16	13	3	3	2,753
Balance to be disposed off	582	7.	Bilaspur		287	268	19	155	63,220
Cases disposed off in favour of the tribals	2224	8.	Janjgir Chaupa		183	183	0	42	16,710
Area of land restored to the tribals (Ha.)	1373.367	9.	Korba		231	222	9	66	40,086
		10.	Raigarh		312	274	38	114	94,329
		11.	Jashpur		155	140	15	129	20,699
		12.	Sarguja		2235	1792	443	1249	759,123
		13.	Koria		142	142	0	121	51,620

District Wise Break-Up of Cases under Section 170 (B)

14.	Bastar	51	33	18	10	15,582
15.	Kanker	62	57	5	48	75,980
16.	Dantewada	3	3	0	3	2,259

		4324	3742	582	2224	1373367
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Details of Tribal Land Acquired for Industrial Purpose

District	Sl. No.	Public Undertaking	Land Acquired No. of S.T.S. Affected	Area (Ha)
Korba	1.	National Thermal Power Corporation	225	21217
	2.	Bharat Aluminium Company	173	82170
	3.	South Eastern Coal Fields Ltd.	3322	4058.166
	4.	Indo-Burma Petroleum Company	16	6278
	5.	Chhattisgarh Electrical Corporation	243	185413
Raigarh	1.	South Eastern Coal Fields Ltd.	-	1072220
Sarguja	1.	Bharat Aluminium Company Ltd.	75	179075
	2.	South Eastern Coal Fields Ltd. Vishrampur	1741	1951501
	3.	South Eastern Coal Fields Ltd.	397	218.287
Koria	1.	South Eastern Coal Fields Ltd.	296	1184206
		G.T.	6488	4959533

The Law and Ground Realities

The law regulating tribal land alienation and restoration in Chhattisgarh does not suffer from any deficiency. Advocates are banned and there is presumption too regarding alienation. The administration too is sensitive enough to chalk out plans for the

improvement and development of the tribal peasants especially, the 'shuddha bhumihin' (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 scheduled areas, clandestine transactions on mutual understanding take place. But the period of the usufructuary 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 alienation. 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 alienation cases 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 compared to some other states, 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

unabetted. 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 a 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 Sabhas would have played a vital role in the identification of land alienation cases. Nonetheless, in view of the fact that even tribal villages are factionally 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 159), 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 cutting, stacking, transport and sale of the trees. The DFO 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 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.

Pre-1980 Regularisation of 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:

1. Category-1

Category-1 includes encroachments in the following areas--

(a)	Forest encroachers	12040.951	7041
	Villages	Ha. area encroached	
(b)	Revenue encroachers	6442.936 Ha.	9442
		area encroached	
(c)	Sanctuaries encroachers	429.838 Ha.	300

area encroached

The GOI intends 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 with the encroachment regulation as per the Hon'ble Supreme Court 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 from 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. This category deals with the encroachments between 7.3.1979 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 encroachments on forest land upto Dec. 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 application for forest land settlement through revenue department. These applications were verified from the Government records and joint spot inspection by Forest and Revenue department officials with 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 the 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 Regularisation

- | | | |
|----|-----------------------------|--------------|
| 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. It is further mentioned that in the year 1999, the State Government got conducted a very intensive 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 Section 170 (A) and 170 (B). Thus as per this 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. Against this 10,152 cases affecting 15,530 persons covering 48,838.861 hectares of land were disposed off. It is also worth-mentioning that 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 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.

In case ST land falls in submergence area, the non-tribal beneficiaries of the irrigation schemes will have to part with their own land to compensate the tribal land losses.

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 minutes books, and take up cudgels against evils like drinking. In village Arjuni in the Rajnandgaon district opening of liquor shops/illicit distilleries was stalled by a SHG called Sharada 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, handpump 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. The kind of consciousness and endeavour for self-dependence that is perceptible in the countryside of Chhattisgarh, is all set to involve the rural masses in the processes of development. The very fact of meeting frequently, holding deliberations on local issues and engaging in creative, economic activities, has given a new twist to the erstwhile aloof, sleeping and non-participating woman power in the villages.

CHAPTER – 6

RECORDING BATAIDARI RIGHTS IN BIHAR DIFFICULTIES & SUGGESTIONS

The Bihar Tenancy Act, 1885 and the Bihar Tenants' Holdings (Maintenance of Records) Act, 1973 are relied upon in the main in this paper.

THE BIHAR TENANCY ACT, 1885

Chapter X of the B.T. Act deals with the preparation of record of rights and settlement of rents. Chapter XIII of the B.T. Act deals with the judicial procedure for the recovery of rent with suit.

While the record of rights as prepared by settlement authorities under Chapter X, remains a sacrosanct document, section 158 in Chapter XIII provides for the filing of applications by tenants for determining the

incidents of tenancy. This section is quite crucial for our discussion and is, therefore, reproduced below:

158. Application to determine incidents of tenancy- (1)
The collector or any revenue officer specially empowered by the State Government in this behalf may, on application of either the landlord or the tenant of the land determine in the prescribed manner all or any of the following matters, namely:

- (a) the situation, area and boundaries of the land.
- (b) the name and description of the tenant.
- (c) the class to which the tenant belongs; that is to say whether he is a raiyat holding at fixed rates, occupancy raiyat, non-occupancy raiyat or under-raiyat with or without occupancy right.
- (d) the rent payable for the land and other incidents of the tenancy.

Provided that

- (a) when an order has been made under section 101 directing the preparation of a record of rights, no such application shall be entertained until five years after the final publication of the record-of- rights.
 - (b) in any proceeding under this section the Collector or the Revenue Officer shall not try any issue which has been, or is directly and substantially an issue between the same parties, or between parties under whom they or any of them claim, any suit, appeal, revision or other proceedings before any Court or before the Board of Revenue or the Collector or any Revenue Officer and has been heard and decided or is pending hearing or decision.
- (2) From the final order passed by the Collector or the Revenue Officer on an application filed under sub-section (1), an appeal shall lie to the prescribed authority and subject only to such decision the order of the Collector or the Revenue Officer, as the case may be, shall be final.

Proviso (a) to section 158 is noteworthy as it puts a ban on the filing of such applications at least in such districts, where the Government has made an order under Section 101 directing the preparation of a record of rights. No

such application is to be entertained until five years after the final publication of the record of rights.

It follows that the entire span of the lengthy and cumbersome process of revisional survey and settlement is to be covered, record of rights has to be finally published and even after that a tenant has to wait for a period of five long years to become eligible to file an application.

In such districts where revisional survey and settlement has already been completed and a minimum waiting period of five years has elapsed, desirous tenants can apply for a determination of the incidents of tenancy. That will take care of such under-tenants as well, whose rights could not be recorded in the finally published record of rights.

It also follows that in the districts where Revisional survey under section 101 has not been ordered, the record of rights as prepared in the last survey will hold good and

the desirous raiyats can apply because the statutory period of five years as per section 158 (substituted by Act 2 of 1965) has long been exhausted.

It is gratifying to note that section 158 stipulates the period of five years as the minimum. That is, there is no time bar prescribed in maximum term as is the case with section 46 in the Chota Nagpur Tenancy Act, where no tribal can pray for relief against alienation, after a lapse of 12 years from the date of alienation.

Proviso (b) to Section 158 creates some more hedges. It says that the collector or the revenue officer shall not try any issue which has been, or is an issue between the same parties, or between parties under whom they or any of them claim, any suit, appeal, revision or other proceedings before any court or before the Board of Revenue or the Collector or any Revenue Officer and has been heard and decided or is pending for hearing and decision.

I do not know if any bataidar in Bihar has ever invoked this provision and sought relief. And I say this because this provision might have remained a dead letter. Thus the provision is not as popularly used as section 46 in the CNT Act in matters of alienation and restoration.

Section 158 does not empower the Collector, unlike section 46 in the CNT Act, to start cases suo moto.

SECTION 158 : SHORTCOMINGS

1. The Collector cannot start a case suo moto at least in matters of bataidari.
2. The basic presumption behind waiting for five years after the final publication of the record of rights, or insisting on the case not having been or being the subject matter of any proceeding, appears to stem from a notion of finality or judicial sanctity that is attached to the settlement and other proceedings. Without casting any aspersions on any such proceeding, it can be pointed out that the section

constricts our vision enormously and that no fresh look is at all possible at the incidents of bataidari based on a drive, field bujharat and special thrust.

3. It would have been better still if provisions in section 158 would have come at the head of Chapter VII of the B.T. Act dealing with under-raiyats. Before Section 48-E (against threatened ejectment) is invoked, there has to be a determination of the incidents of bataidari tenancy.

Preceding section 48-E, Section 48-C deals with the acquisition of rights of occupancy by occupancy under-raiyats. We thus move upwards from occupancy rights to raiyati rights.

It is at this stage that the gist of Section 158 (determination of the incidents of bataidari) should come, for instance, under section 48 C or 48 D. Only after the determination of such incidents that a case under section 48 E be taken up. Tragically, at the moment:

- (a) We are not taking any steps to record occupancy rights of under- raiyats as per Section 48-C;
- (b) We have done nothing to accord raiyati status to under-raiyats as per section 48-D as the manner itself remains to be prescribed;
- (c) We take up ejectment cases straightaway (48-E) without determining the incidents of under-tenancy and no wonder, most of the bataidari cases fail as bataidar's rights as occupancy, non-occupancy raiyat or a full- fledged raiyat as the land-holder are nowhere recorded.

In fact while sections 48-C, 48-D and 158 remain in cold storage, section 48-E is certainly more than often invoked. But the bataidars, for want of a chit of paper fail, and since it is a judicial procedure it goes on to attract proviso (b) to section 158 and no further application can be entertained.

Thus, paradoxically enough, we have put the cart before the horse. Before we could decide on ejectment, we ought to have decided on the bataidari rights, in the first instance. We do not record such rights. Instead we move

on to decide on ejectments. There also we fail because bataidari rights have not been recorded.

That's why the gist of section 158 should come somewhere in the chapter of under-raiyats itself. Rights have to be decided and recorded first. Only then one can embark on preventing ejectments. After all whose ejectment is to be prevented should bother us first. We think of a later fact, viz. ejectment, without giving a chit of paper to the poor and the down-trodden. Golden provisions remain a dead letter reminding us of the proverb: all that glitters is not gold. But for recording in a systematic way, the benefit of section 48-E too, does not accrue to the under- raiyat.

Admittedly, a great percentage of judicial proceedings in bataidari matters, comes under Section 48-E alone. Once we put the horse before the cart, i.e. the determination of rights preceding the question of ejectment, we will remove

the pinch of proviso (b) to section 158 automatically in a big way. In fact, 48-E will then provide an original as well as an appellate forum for a bataidar who failed to get his claim registered.

Thus the proposed structuring of the bataidari provisions will be like this

1. determination of occupancy status of under-raiyats (48-C).
2. determination of raiyati status of occupancy under-raiyats (48-D).
3. recording of the occupancy or non-occupancy status of under-raiyats (new sub-section).
4. appeals against such recording (new sub-section).
5. ejectments and restoration (48-E).

Regarding hedges placed by earlier judicial pronouncement, we must provide that:

- (a) Survey and settlement entries or proceedings will not hold any bar on such recording.

- (b) judicial pronouncements upto the level of a Collector of the district will not hold any bar on such recording.
- (c) Some lease should be given to field functionaries on the basis of latest factum possession, on previous judicial pronouncements, at whatever level, if the recording of under raiyati rights is done on a large scale, on a drive or a thrust basis, under sufficient supervision. If, for instance, in an earlier proceeding a given court did not find a bataidar on spot, but now there are new facts on evidence, that too, on the spot, the local authorities must be given a chance to order fresh recording. Factum possession should be our guidepost, not the tyranny of documentary evidence. There could also be judicial pronouncements, which were not based on local enquiry at all. Local enquiry, if any, might not have been impartial and upto the mark.
- (d) Possession as per Cr. P.C, I.P.C., Ceiling laws and the like should be no bar on a fresh field visit and recording.

THE BIHAR TENANTS' HOLDINGS (MAINTENANCE OF RECORDS) ACT, 1973.

We turn now to the B.T.H. Act, 1973 with the specific purpose of examining provisions by relying on which bataidari interests could be recorded. Incidentally, the provisions of this Act have come into force in all the Anchals of Bihar (Ref. S.O. 81, published in the Bihar Gazette extraordinary dated 18.1.1991).

This Act enjoins upon the Anchal Adhikari (Circle Officer) to prepare and maintain a continuous khatiyani and a Tenants' Khata Register for every village on the basis of the entries in the existing Record of Rights for the village, while preparing the continuous khatiyani, the C.O. after local enquiry will also record rights of under-raiyats, if any.

In Chapter 3 of the Rules of the Act, the Halka Karmachari is obliged to visit each and every khesra of every village annually for the purpose of preparing and maintaining continuous khatiyani, Tenants' Khata Register and Village Map. In case a raiyat other than the recorded raiyat is found in possession, the Karmachari will raise a Yaddasht and will hand it over to the Circle Inspector. How the Yaddasht will be disposed off is not clarified in the Rules. This is a major lacuna.

Apparently, the following lacunae appear in the B.T.H. Act:

- (i) The continuous Khatiyani and the Tenants' Khata Register are to be based on entries in the Record of Rights: of Revisional Survey, where RS has been done; of confirmed Records of

Rights of consolidation where consolidation has been done; or of Last Survey (where RS/Consolidation have not been carried out).

It is unimaginable that the LS took account of the class of under-raiyats as we understand and find it today. May be a new set of under-tenants has cropped up in the years following the last survey. May be the RS and consolidation operations did not, on account of vested interests or any other reason, take care of the under-tenants. Does that mean that the C.O.'s hands, as on date, are to be tied to the guidepost of the existing record of rights?

- (ii) The Halka Karmachari is obliged to visit every plot personally. There is an inherent contradiction here. If, on the one hand, the continuous khatiyani and the Tenants' Ledger are to be prepared and maintained on the basis of entries in the existing Record of Rights alone, no useful purpose is served by such annual visits, unless we interpret this restriction as follows (illustratively):
 - (a) that B being the recorded tenant, C is found an under-tenant in course of an annual visit, while B's name will be retained as a tenant, C's name will be entered as an under-tenant in sikmi khata.
 - (b) that plot no. 1076 belongs to B. Subsequently C is found in annual visits having acquired occupancy under-raiyat or raiyati status in due course, Plot No. 1076 will be recorded in the name of C.
 - (c) that the entries against the recorded entries (deleting old names and entering new names) will be made after annual

visits taking due notice of sale deeds, successions, gifts and other transfers, ceiling decrees, and the like.

If the said interpretations are accepted, there will be no contradiction in taking existing record of rights as a referential guidepost on the one hand and findings of annual visits on the other. And I do believe and contend that annual visits are to be with a certain reference, the reference of a given record of rights. But it will be wrong to say that no change in the khatiyani can be made since no departure from the existing entries is allowed.

The very purpose of the B.T.H. Act, 1973 is to keep records upto date. Otherwise, there was hardly any need for having this Act at all. Even when RS takes place, the Amin, Surveyor and others doing kistwar and khatiyani do keep references of the LS records, including LS maps for counterchecking and comparisons. No Revisional Survey is carried out in a blank. We have permanent points of the LS still to enable us to take on with measurements afresh. We have Terij (Abstract of Last Khatiyani) and Plot Indexes to serve as a guidepost. But no bar is put upon creating a fresh record of rights as per existing ground and documentary realities. Similarly, with the coming into force of the B.T.H. Act, 1973, we cannot altogether do away with the existing Record of Rights, something we just cannot.

In fact the B.T.H. Act itself takes due note of contingencies in which a departure from existing record of rights and a change in the Survey Khatiyani is admissible. Sections 4 to 12 of the Act speak of such contingencies. Especially, Section 11 deals with under-raiyats under the Bihar Land Ceiling (Fixation of Ceiling Area and Acquisition of Surplus Land), Act, 1961. We are all aware of Chapter VII of the Bihar Land Ceiling Act (Section 21 and 22) dealing with the acquisition of status of occupancy raiyat by under-raiyat within ceiling area and on the surplus land as vesting in the State.

Some improvement, however, is indeed, called for in the B.T.H. Act, 1973 with regard to anomalies in respect of a raiyat other than the recorded one, found in possession by a Karmachari in his annual plot-to-plot visit. Detailed procedure for disposing off such disputed cases needs be made in the Act as well as in the Rules. Appellate provisions should be added both for the landholder (L.H.) and the bataidar.

PLETHORA OF LAWS AND NEED FOR HARMONIOUS CONSTRUCTION

The following Acts deal with bataidari in one way or the other:

- (i) The B.T. Act, 1885
- (ii) The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956.
- (iii) The Bihar Land Ceiling (Fixation of Ceiling Area and Acquisition of Surplus Land), Act, 1961.
- (iv) The Bihar Tenants' Holding (Maintenance of Records) Act, 1973.

Bataidari and related provisions as in sl. (i), (iii) and (iv) have already been explained in the foregoing. The following is a gist of bataidari provisions in the Bihar Consolidation of Holdings & Prevention of Fragmentation Act, 1956:

Section 9 (d) and (e) deal with the recording of the areas and serial numbers of the plots of land held by under-raiyats having and not having the right of occupancy therein (respectively) in the Register of Lands. Section 13(3) (ii) (b) deals with the final allotment orders for the raiyats and under-raiyats concerned. Section 14(2) deals with the fixation of a date on and after which a raiyat or an under-raiyat shall be entitled to the possession of the plots allotted to him. Section 15(2) speaks about a certificate of transfer to be granted to

every under-raiyat, whether having a right of occupancy or not in any land allotted to him in pursuance of the scheme and the certificate shall be conclusive proof of the title of such under-raiyat to such land and he shall be liable to the payment of such rent and to such person as may be specified in the certificate. Section 16 provides that the confirmed scheme will be treated as finally published record of rights. Rule 9(8) of the Bihar Consolidation of Holdings Rules, 1958 stipulates that as far as practicable the lands held by an under-raiyat shall be consolidated as provided in sub-section 2(g) of section 11. Where such an under-raiyat holds land under more than one raiyat, the total area of the land to be allotted to him should be one block and should be divided into sub-plots according to the proportionate area held under each raiyat. Rule 18 mentions about the Register of Lands of under-raiyats (Form XVIII) in accordance with provisions regarding the Register of Lands under Section 9 and 13.

By harmonious construction I mean the following things:

- (i) None of the four laws indicated above should run at cross-purposes and not one provision should be counter-productive;
- (ii) Care is also to be taken to achieve best results regarding location, identification and recording interests, of the bataidars.
- (iii) A re-setting of existing provisions in a given law, as and where necessary, including amendments, deletions and substitutions that might be called for.
- (iv) Cross-references are to be given in each one of the said Acts to the other Acts to avoid confusion and incorporate clarification.

SUGGESTIONS

1. The Bihar Tenancy Act is the basic and fundamental Act as it bestows tenancy status. Section 158, as explained above, needs restructuring and should be brought in proximity with Section 48-C and 48-D, preceding Section 48-E. Determination of bataidari interests should always precede provisions on ejection.
2. The gist and text of the re-structured and re-set Section 158 should be akin to Section 46 of the C.N.T. Act, where the Deputy Commissioner can suo moto inquire into alienation.
3. There should be no time bar in the filing of an application by the bataidar or in a suo motu inquiry by the Collector (there is no time bar even now).
4. As and when a special bujharat is launched in a given Anchal, the existing Record of Rights should be only of a referential value. There should be no rigidity about toeing and reproducing it in the continuous khatiyani and tenants' ledger as will be annually updated. To that extent a clarification must be inserted in Section 3 and other related provisions should be made to incorporate new facts in the Khatiyani in the light of annual visits. Otherwise, the very purpose of the B.T.H. Act will be defeated.
5. Since factum possession, even though once decided, is subject to reassessment (without casting any aspersion on the findings of any preceding proceeding), if during an annual visit bataidari status is detected by the field staff, there should be no bar on starting a fresh proceeding of a summary character, with, of course, appellate provisions. To that extent, there should be an amendment in Proviso(b) to Section 158 in the B.T. Act.
6. Or else, the Collector should at least be allowed to modify a judicial pronouncement in the light of new facts coming up in the wake of annual visits.
7. Consolidation or no consolidation, the procedure adopted for preparing a Register for bataidars could act as a model for every Halka Karmachari coming across incidents of bataidari in course of his annual visits (Ref. Rule 18: Form XVIII of the Bihar Consolidation Rules, 1958).
8. Already Bihar is having three kinds of districts: survey in progress, districts where RS is concluded and consolidation is in progress.

The question is :

- (a) does the Government intend to rely on the LS records where no RS has been done?
- (b) does the Government have total and unflinching faith on the way RS has been concluded or is in progress?
- (c) similar question could be asked regarding the quality of consolidation work.

Once we take existing record of rights to be only of referential value, our questions are answered. Such records put no bar on an annual visit (as provided in B.T. H. Rules). Nor do they oblige the field staff to ignore ground realities. Nor do they prevent the administration from modifying the khatiyani. The very idea of a continuous khatiyani, a tenants' ledger and an annual plot-to-plot visit, as enshrined in the B.T.H. Act is to be viewed in perfect harmony and correspondence, with the existing record of rights carrying only referential value. There cannot be any other interpretation. In case there is a different interpretation there will be a contradiction between following existing record of rights and making annual visits rendering the B.T.H. Act itself dysfunctional and inoperative.

or non-bataidari. There may not be a chit of paper with a batai claimant. Either we have to call for mass applications on a drive basis or we ourselves have to enter each and every plot. I do not see any other alternative.

CONCLUSION

In a nutshell, while the B.T. Act is to contain fundamentals of tenurial status regarding bataidars, at one place, without unnecessary hedges, the B.T.H. Act has to be made workable by introducing necessary improvements, and clarifications and operational modalities.

Provisions in consolidation and ceiling laws have already been alluded to in the B.T. H. Act in its present shape.

If need be, bataidari provisions in consolidation, ceiling and B.T.H. Act, could find references in the amended and restructured provisions on bataidari in the B.T. Act, which remains the first and last word on tenancy, and is, in the nature of things, the core of the basic Act.

The B.T.H. Act and Rules have to be more operation-oriented than theory-oriented. Operational modalities, guidelines, clarifications, grievance and appellate procedure have to come out more sharply. If an operational enactment itself is vague, ambiguous and subdued, what thrust we expect in the updating and maintenance of land records?

If the Government wants to conduct an exclusive survey of bataidars, the usefulness of the B.T. H. Act might be somewhat questioned. The B.T. H. Act enjoins upon the Halka Karmachari to annually visit each and every plot in each and every village in his Halka. By such an approach he will be visiting both bataidari and non-bataidari tracts. But how do we know if a given tract is bataidari

CHAPTER – 7

GOVERNMENT LAND PROTECTION THROUGH

THE BIHAR LAND REFORMS ACT, 1950

The question of Government land protection hinges, in the main, on the Cadastral Survey entries regarding land typology, on Section 4 (a) automatic liquidation of encumbrances, on Section 4 (h) illegal transfer after 1.1.1946 and on the exemption from vesting of certain categories of lands under Section 5,6 and 7 of the BLR Act, 1950. These exemptions, in turn, hinge on the concept of 'khas possession' i.e. every such retention of land by the ex-intermediary is to be qualified by 'khas possession' and rent assessment as per BLR Rules, failing which land of any nomenclature, whatever, was to vest in the State and recorded as such in the Record of Rights.

It is in this context that an allusion to relevant sections of the BLR Act, 1950 and the BLR Rules, 1951 along with executive instructions becomes necessary.

Lands falling in either Abad Malik or Gair Abad Malik nomenclature could have been held in Khas possession by the intermediary. The categorisation of land in Gair Abad and Abad Malik lands was done in the Cadastral Survey itself. The Cadastral survey spoke of three categories of lands:-

- (a) Gair Abad Malik / Am
- (b) Abad Malik
- (c) Raiyati

In so far as the Abad Malik land is concerned, it was purely a subject matter of the Khewat and may be equated to Bakasht land of the intermediary and may as well be equated to the Pradhani Jote of the Pradhan under the Santhal Parganas Tenancy Act, which accrues to the

Pradhan in lieu of services rendered to the Government in rent collection etc.

The question is: whether the intermediary could have Gair Abad Malik land too in his khas possession. We must here turn to the BLR Act for a definition of khas possession (Section 2-K)

"Khas Possession" used with reference to the possession of a proprietor or tenure holder of any land used for agricultural or horticultural purposes, means the possession of such proprietor or tenure holder by cultivating such land or carrying on horticultural operations thereon himself with his own stock, or by his own hired servants or by hired labour or with hired stock".

Now the question is, if Khas possession can include constructive possession.

Formerly, the view of the Patna High Court as laid down in AIR 1958 PAT 589/ 1958, BLJR 122/ ILR 37/ PAT 339 was that it was meant to apply to proprietor's private or personal lands as distinguished from other land over which he created tenancy rights by way of settlements. It was observed that the effect of the Act was to vest his title in such private or personal lands in the State but his right to possession or for that matter his right to recover possession from any person in whose favour he has created encumbrance remained unaffected by such vesting.

The Supreme Court in several cases held subsequently that such a view was wrong. The court pointed out clearly that as the definition stood, it could only contemplate actual or cultivating possession by the proprietor or tenure holder either by himself or through hired labourers. Any kind of constructive possession is foreign to this definition and cannot help the proprietor to take advantage of section 6 of the Act.

The main plank of Section 6 of the BLR Act is that certain lands in khas possession are to be retained by them on payment of rent as raiyats having occupancy rights. As explained in the foregoing, khas possession means actual and cultivating possession of the intermediary. Any land not possessed as such was to vest in the State.

RETURNS FILED BY THE EX-INTERMEDIARY

Any claim of raiyati settlement of Gair Abad Malik or Abad Malik land made by the ex-intermediary prior to 1.1.1946 is to be matched:

- (a) by the Return filed by the ex-intermediary in the wake of vesting;
- (b) by the village khatians prepared by holding Field Bujharats; and
- (c) by the Roll of Rent Assessment with respect to Gair Abad and Abad Malik lands under Sections 5,6 and 7 of the BLR Act.

GOVERNMENT LAND PROTECTION GUIDELINES FOR PREPARING THE RECORD OF RIGHTS

A perusal of the foregoing details gives rise to the following occasions when a given Abad Malik/ Gair Abad Malik plot has to be recorded in the name of the Government of Bihar.

1. If, and only if, a plot in the Abad Malik Khata or Gair Abad Malik Khata is shown and proved to be in the Khas Possession of the ex-intermediary, it will be recorded in favour of the ex-intermediary, that too, after Rent Assessment in Form "M" under Sections 5,6,7 of the BLR Act and actual payment of rent. These are to be conditions precedent to any disposal of such lands by the ex-intermediary after vesting, but for which, the lands concerned will be deemed to have been vested already in the State.

Thus, in case (i) a given plot from the above khatas is not shown and proved to be in khas possession and (ii) if

no Rent Assessment is done under the Section noted above, the plot will have to be recorded in the name of the Government of Bihar. No sale deed, Jamabandi or raiyati khata against such a plot will be said to be valid.

2. As per Rule 7 (H) of the Bihar Land Reforms Rules, 1951, the khata will be opened in the name of the actual raiyat in possession (as on the date of vesting) not necessarily in the name of the outgoing ex-intermediary, even if it is a land shown under Section 5,6 and 7. Rule 7 (E) speaks about holding of enquiry by the Collector irrespective of any claim or objection and Rule 7 (F) talks about the disposal of claims or objections, if any.

Rule 7 (H) is explicit about cases in which proprietor etc. were not found in possession on the date of vesting.

It is thus evident that the possession of the ex-intermediary has to be a khas possession, failing which

the plot concerned will be recorded in the name of the Government of Bihar.

It is also evident that a proceeding under Sections 5,6 and 7 of the BLR Act, as per relevant rules and an issuance of Form M alone can enable and qualify (not stray Rent Receipts issued by the Halka Karmachari) the ex-intermediary for Rent Assessment failing which the land will be recorded in the name of the Government of Bihar.

3. If the above Abad Malik land has been settled by sale deed by the ex-intermediary, the purchaser need not, after vesting, obtain a Rent Assessment in his name since, in the nature of things, the deed, itself carried an indication of the Rent, which was to be continued as such in the Tenants' ledger after vesting. The sole obligation on the part of the settlee was to ensure entry in Register II soon after vesting. One has to also see if the settlement made by the ex-intermediary was from his own khewat.

The settlee was to have Rent Assessment done through Form M only if a belagaan (Rent Free) land had been settled with him by the ex-intermediary without indicating rent in the deed of settlement.

If a sale deed is executed after 1.1.1946, it will hit section 4 (H) of the BLR Act and will be ipso facto void. In such a situation, the land will have to be recorded in the name of the Government of Bihar.

4. If and only if Gair Abad Malik land too is shown in Form K by the ex-intermediary as Bakasht, the said entry will be enquired with respect to khas possession under Form "L" otherwise, it will be deemed to have been vested in the State.
5. There is a view that a plot if recorded in the Bakasht Khatian right in the Cadastral Survey, it is obligatory on the Government to prepare genealogy irrespective of a Return.

But in my view, there is no such rider to the BLR Act and Rules.

If we accept the above view then we will be bound by Cadastral Survey entries on Bakasht land in such a way that even if there is no Return, or cultivation by khas possession, on enquiry, the land will go to the khewatdar. Such a view appears, prima facie, erroneous.

The rule of the thumb is that whatever that is outside the pale of actual (not constructive) and personal possession, will vest in the State.

6. Settlement by Registered Patta before vesting- Despite patta settlement, the settlee has to pay rent to the Government immediately after vesting (after obtaining khata through Field Bujharat). If this is done, there will be no need for Rent Assessment under Sections 5,6 and 7 since in the patta itself, Zamindari Rent has been indicated and the same will be entered in the Field Bujharat Khatian.

However, in case there is time lag in Register II entry and payment of rent to the Government since the date of vesting, the land settled by patta howsoever old, will vest in the State.

If the registered patta of the Zamindar does not indicate rent / cess payable, then it is an irregular transaction and no raiyati claim over it can be entertained later on.

In a nutshell, if a regular patta has been issued, we need not insist on Zamindar's Returns, provided the settlee produces Rent Receipts issued by the Anchal from a period soon after the date of vesting.

The Zamindar, being the custodian of gair abad malik land, was entitled to compensation against this class of lands as well. But in case of a raiyati settlement of a gair abad malik plot before 1.1.1946 through a registered patta (indicating Rent), the plot concerned ceased to be gair abad malik before vesting itself. Hence no compensation return was to be filed against such settled, gair abad malik plots belonging to the erstwhile gair abad khata. That's why there is no point in asking for Returns against the patta settled plots. In such case, one has only to ask if Register II entries were made during Field Bujharat soon after vesting (Rent Assessment not necessary). Returns are to be asked only to verify and countercheck unregistered settlements by Hukumnama, Raseed etc. to see if the plots concerned are omitted from the compensation roll or not.

Over and above one has to see possession of the claimant as well. If the land is old fallow, ridge, embankment, forest, hilly etc. for instance, the claim, despite, proper documents, is to be rejected.

7. Belagaan (Rent Free) lands:- If we look at terij or L.S. Khatian we will find that some of the lands were belagaan, i.e. no rent had been indicated. If such a plot is settled with a raiyat before 1.1.1946 then soon after vesting the settlee has to get Rent Assessment in his favour under Section 5,6 and 7 otherwise, irrespective of any encumbrance the land will vest in the State.

Even in the khas possession of the Zamindar several plots were belagaan (Rent Free), given over to servants etc. The said servants etc. were obliged to get rent assessed in their favour soon after vesting under sections 5,6, & 7.

8. Plain Paper Hukumnama and Raseedi Bandobasti:

As contrasted with Registered Patta, a settlement of abad and gair abad malik lands even before 1.1.1946, through these unreliable documents must be cross checked with (a) Zamindar's Returns on gair-abad land and with (b) Tenant's ledger.

As said above, the returns were filed for compensation against (unsettled) gair abad malik lands as well.

(a) If, suppose, plot No.1026 (Gair Abad) is settled by the ex-intermediary before 1.1.1946, through unregistered documents, one has to see his returns on gair abad malik land. If plot no.1026 is there against unsettled gair abad malik entries, it will be self evident that the same had not been settled before 1.1.1946. The claim will have to be, therefore, rejected.

(b) The ex-intermediary was not the custodian of raiyati lands. Hence no compensation was due for raiyati Khatiani lands to him. Yet he was supposed to furnish all papers and registers connected with khatiani lands of the raiyats, soon after vesting. If really he had settled a gair abad malik plot, the same would have been mutated by him and entered into tenant's ledger. Even if, no tenant's ledger was filed by him, the field Bujharat had come out with a Tenants' Ledger. Rightly or wrongly, if the name of the claiming raiyat has found an entry into Tenants' Ledger, right in the period of field Bujharat itself, at least a right will accrue by a sheer length of adverse possession, provided possession is proved on the spot as well.

9. In the case of Abad Malik land, if the khewat holder himself or his rightful heirs have sold the land before 1.1.1946, the purchaser need not go in for Rent Assessment under Section 5,6, and 7 (save and except the land is a belagaan land). But the seller

has to fall directly in the genealogical line of the khewat-holder. A sale by his henchmen, benami-khewat relatives is to be held irregular.

10. Extent of Admissibility of Rent Receipts: Sheer Raseedi bandobasti executed by the ex-landlord is to be viewed with suspicion and has not to bear upon our decision unless it conforms to other provisions of the B.L.R. Act.

A Rent Receipt issued by the Anchal Office is without prejudice and cannot and should not be relied as an exclusive evidence unless corroborated by other facts.

In a rare circumstance, an unscrupulous ex-landlord could have settled a gair abad plot by registered patta and yet had indicated the same plot in Compensation Returns to claim compensation. In such a case, as well, the raiyat and gair abad claims over the plot were to be balanced and counterweighed with each other. One has to ask:

- (a) If the ex-landlord obtained Rent Assessment in Form M prior to the raiyat obtaining an entry into Register II in case the said Settlement was unregistered.
- (b) If the raiyat produces continuous rent receipts, issued by the Zamindar before vesting and by the Anchal Office soon after vesting.
- (c) If the raiyat is found in prolonged possession.
- (d) In cases of registered settlement deeds, the chances of the ex-intermediary settling as well as showing the same plot in compensation rolls were minimal.

The bane of survey and settlement in Bihar is that Assistant Settlement Officers bank merely upon a Rent Receipt issued by the Halka Karmachari without looking into the original settlement before vesting, Form M procedure and settlement ordered by competent authority in the post Field -Bujharat period. No reference to connecting records or competent authority allowing settlement are ever entered in Register II. Hence the nuisance and mischief value of the Karmachari is enormous. A settlement officer has always to bear in the mind that he is not a rubber stamp to the District Revenue Administration and that his scrutiny of evidence and judgement is to be independent.

As field Bujharat drew to a close (say by 1960), all Jamabandis opened against Abad Malik/Gair Abad Malik lands, without an order of the then competent authority, are ipso-facto irregular. In Revisional Survey, lands concerned should be put in the Government khata and Jamabandi also should be cancelled, unless there is other satisfactory documentary evidence on record under the BLR Act/Rules.

11. If the nature of the land in question at the time of khamapuri, attestation etc. is old fallow, embankment, ridge, hilly, forest, shrubbery and the like no khata/Jamabandi should be opened in the name of the proprietor/settler/purchaser of khewat interests and the same must be recorded in the name of the Government of Bihar, irrespective of whatsoever genuine documents.

12. A sale deed or successive sale deeds or a sheer rent receipt by itself, does not confer any legal right over abad/ Gair abad malik land, unless the transaction is corroborated by facts and evidence in consonance with the provisions of the BLR Act/Rules. It goes without saying that a rent receipt is issued without prejudice. This disposes the malpractices by which unscrupulous jamabandis against Abad Malik or Gair Abad Malik lands were started in course

of Field Bujharat and which escaped the notice of superior officers at that time. A benefit of adverse possession may, however, be sparingly and selectively conceded to SC/ST raiyats where the length of possession by proper documents and local enquiry are proved, the land is under cultivating possession and the given length of possession is 12 or 30 years, as prescribed for the area concerned.

13. Circumstances when Returns were not filed: A question that is generally asked is what decision is to be taken where Returns have not been filed, Collectors also did not enquire suo-moto, and rent was not assessed in general in Form 'M'.

Field Bujharat comes to our aid to fill in the gaps left in such a situation. That's why considerable length of space has been devoted to Field Bujharat in this presentation.

The fact remains, nonetheless, that Field Bujharat was an administrative action to construct or re-construct records in the post-vesting period for the fixation of compensation and rent collection since several ex-intermediaries had not filed any Returns. This cannot be allowed to override specific provisions of law and Rules.

According to Rule 7-B (ii) of the BLR Rules " an outgoing proprietor or tenure-holder of an estate or tenure vested in the State may, of his own motion and without being so required by the collector by an order referred to in sub-rule (i) above, file such an application before the Collector furnishing the particulars prescribed in Form 'K'.

Thus the onus lies squarely on the ex-intermediary and the settlee as well as the purchaser.

All such undeclared lands, for want of Rent Assessment under Form 'M' and for want of other documents and Returns authenticating a

pre- 1.1.1946 settlement by plain paper hukumnama will have to vest in the state. No advantage under Rule 7 (H) can be derived here by an illegal occupant because he was not found to be in possession by the Collector holding an enquiry under Rule 7-E or 7-F.

The lone benefit of doubt to the illegal occupant (preferably belonging to SC/ST) can be given if Field Bujharat itself had rightly or wrongly, put him in the Anchal's Register II. No recent rent receipt, procured in connivance will enable him to a khata unless the jamabandi was started by competent authority. Thus, the length of adverse possession is to be traced back, not to the date of plain paper, back dated Hukumnama but to Field Bujharat. A perusal of tenants' ledger will be necessary to verify the date of Jamabandi.

Field Bujharat and khewat Bujharat along with an updating of Register C and D were undertaken soon after vesting in order to bring the land records up to date. In Revenue Department letter No. 3354 dated 25th April, 1959 we see how the new continuous khatian was reflective of the last settlement khatas. Thus while superior checks were applied to check entries in Field Bujharat to eliminate corruption, the L.S. village terij which gave the abstract statement of the Bakasht raiyati, Gair Mazarua Khatas held under each Khewat in the last settlement was to be the springing board for fresh updating exercise.

The object of the Field Bujharat had also been to find out the present state of raiyati as well as Gair Mazarua lands. A major task of field bujharat had been to enquire into adverse possession and its period over the GM khas land besides recording intermediary interests, their rents, khas possession lands and GM lands.

If the raiyat claiming a khata by 12/30 years of adverse possession of uninterrupted rent receipts from the date of vesting and the Jamabandi too was opened immediately after the vesting, and the

raiyat is in continuous cultivating possession, a khata may be sparingly and selectively, opened against his name. The sheer fact of length of adverse possession entitles him to this.

However, no such raiyati khata should be opened in cases:

- (a) Where a plain Hukumnama dated long ago is produced without any proof of rent payment to the Anchal soon after vesting.
- (b) Where Jamabandi is recent but rent has been retrospectively collected, one has to verify the actual date of the opening of Jamabandi. A recent Jamabandi with retrospective collection is like an entry through the back door. This will amount to neutralize the dis-advantage of time-lag by paying off costs at a nominal rate and claiming the benefit which can only exceptionally be given on or before the date of vesting, as found out by the Collector (Rule-7-H).

CHAPTER – 8

TENANCY: LEGAL FRAMEWORK & GROUND REALITIES

The desired direction of policy towards tenancy reforms was laid down by the National Commission on Agriculture, 1976 in the following words:

"The principle of abolition of intermediaries having been accepted, the idea of continuance of tenancy under the private land owner is anomalous. Tenancy reforms should be directed to the stage of finally breaking up landlord-tenant nexus. Agriculture should be treated as a family occupation of the peasant cultivator and not as a source of subsidiary unearned income. In a normal peasant proprietor economy there is no place for absentee landlordism, which should be discouraged and ultimately curbed".

(National Commission on Agriculture, 1976, Abridged Report, P. 690)

Tenancy Reforms has the following main objectives:

1. Rent should not exceed the level of one fifth to one fourth of the gross produce.
2. Tenants should be accorded permanent rights in the land that they cultivate, subject to the special rights of resumption to be exercised by the privileged category of landowners.
3. The sub-tenants/under raiyats/ share-croppers should enjoy a degree of permanence in respect of land being cultivated by them.

4. There should be security to the sub-tenants/ under raiyats/ share-croppers against eviction at will.
5. The landlord-tenant relationship, except in the case of the few privileged categories, should end in the conferment of rights upon the tenants.

The magnitude of tenancy in terms of the proportion of leased-in area does not capture the total nuance of tenancy. Even in a narrow economic sense, the same proportion of leased-in area under different terms of tenancy has substantially different implications, both towards agricultural development and the well-being of the tenants. Fixed money, fixed produce and share of produce are the most important tenancy contracts.

Various studies point out the existence of concealed tenancies despite a ban on leasing in some states. It has been found that:

- the average area leased in and operated by the un-recorded tenants is higher than those of the recorded tenants;
- the distribution of tenants by size class of area leased in and operated also points to clear cut edge of the unrecorded over the recorded tenants. Among the unrecorded those operating above five acres are higher than that of the recorded tenants;
- bulk of the area is controlled by those operating above five acres both among the unrecorded and recorded tenants. However, even in this respect, the unrecorded tenants have an edge over the recorded tenants;
- the average area operated by unrecorded tenants is higher than the recorded tenants;

- however, the distribution of tenants by size class of operational holdings does not show any major difference in the class status of recorded and unrecorded tenants. They are distributed as below subsistence and substantial tenants;
- sizable area operated by tenants is irrigated but even here the percentage of irrigated area operated by unrecorded tenants is higher than those of the recorded tenants.

Across different farm categories, the proportion of leased in area is higher among landless, marginal and small households in a majority of states. The notable exceptions are Haryana, Orissa and Punjab, where it is significantly high among semi-medium, medium and large households. More or less similar pattern is discernible in respect of different categories of households engaged in leasing- in except in Andhra Pradesh, Tamil Nadu and Orissa, where a significant proportion of semi-medium, in Punjab and Haryana where medium and large households and in Uttar Pradesh where large households are participating in the lease market as lessees.

An attempt is being made here to examine the tenancy situation in the following states, taking into account the legal myth as well as the field realities:

1. Tamil Nadu
2. Andhra Pradesh
3. Madhya Pradesh
4. Uttar Pradesh
5. Maharashtra
6. Punjab
7. Haryana
8. Orissa
9. Assam

TAMIL NADU

The Tamil Nadu Cultivating Tenants' Protection Act, 1955 provides that no cultivating tenant would be evicted from his tenancy holding except for certain prescribed act: non-payment of rent, doing any act which is injurious to the land or crops thereon, failure to cultivate the land, using the land for any purpose other than agriculture or denial of the title of the landowner to the land.

The Tamil Nadu Cultivating Tenants' (Payment of Fair Rent) Act, 1956 provides that the fair rent payable by the cultivating tenants to the landowner has been fixed as 25% of the gross produce. The landowner pays the land revenue and other dues on the land, while the tenant bears the expenses of cultivation.

The Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, provides for the registration of the names of the persons cultivating the agricultural lands of private landowners and public trusts in the state. This Act has contributed to the security of the tenants in the state. Under this Act, Records of Tenancy Rights have been prepared by entering full details of the registered tenants therein for safeguarding the interests of the tenants. The Taluk Tehsildars are the Record Officers for the purpose of this Act. Significantly, the recording of tenants, under this registration, was not undertaken, in the form of a special drive but more in the routine course.

The recording of tenancy has slowed down considerably in the last few years. There is growing official apathy to seek out and record tenants. Further, due to the protection of the state available to the tenants at large even the non-recorded tenants enjoy similar measures of protection as the recorded tenants. Hence there is little impetus for the unrecorded tenants to get themselves registered. This

is well established in the micro-study of village Kaluneerkulam and Vellakal in Tirunelveli district (Iqbal Singh Dhaliwal, "Study of Land Reforms in Kaluneerkulam and Vellakal Village", LBSNAA,1998).

Table-1 reflects the tenants registered under the Tamil Nadu Record of Tenancy Rights Act, 1969 (Upto 1997-98)

Table-1
TENANTS REGISTERED UNDER THE TAMIL NADU
RECORD OF TENANCY RIGHTS ACT, 1969

Tenants Registered			Registered Area	
Year	Number	% age	Extent	% age
1972-73	388483	78.01	590164	84.92
1973-74	2253	0.45	2519	0.36
1974-75	8614	1.73	11215	1.61
1975-76	3163	0.64	1977	0.28
1976-77	4275	0.86	7595	1.09
1977-78	2358	0.47	2301	0.33
1978-80	25985	5.22	7969	1.15
1980-81	1100	0.22	2271	0.33
1981-82	1866	0.37	8529	1.23
1982-83	977	0.20	1462	0.21
1983-84	417	0.08	563	0.08
1984-85	91	0.02	111	0.02
1985-86	14	0.00	33	0.00
1986-87	16	0.00	46	0.01
1987-97	58388	11.72	58245	8.38
1997-1998	0	0.00	0	0.00
Total	498000	100	695000	100

Even though all the tenants are not recorded and there is a substantial gap between the tenants recorded and the total tenant

households, the mere fact of large scale recording has had its spread effect. The tenant, therefore, enjoys the security of both rent and reasonable produce share. The tenancy on fixed money terms and on fixed produce terms together constitute nearly half of the tenanted lands.

A perusal of NSS figures of 26th and 37th round indicates that 13.7 per cent of the operated area were leased in during 1971-72 and 10.92 per cent during 1981-82. Tamil Nadu was, thus, one of the states which continued to have high area under tenancy.

High incidence of recorded tenants is co-related with wet pockets and high incidence of oral tenants with the dry pockets. High incidence of recorded tenancy can be attributed to the role of peasant militancy in the wet pockets.

Thanjavur is a highly irrigated district and has been the traditional rice bowl of the South. This district was characterized by absentee landlordism, concentration of land in the hands of few landowners with extreme inequality, class polarization as also high incidence of tenancy and agricultural labour. The condition of the tenants was highly exploitative: characterized by rack renting, insecurity of tenure and bondage. The oppressive conditions of the tenants led to massive peasant mobilization since early 1940 in this district which took militant form continuously for three decades. It was, as a result of peasant militancy that various tenancy reforms legislations were enacted in the state during 1950s and 1960s which also culminated in conferring occupancy right to them towards the end of 1960s. The reverberations of peasant struggle in Thanjavur district was also felt in the wet pockets of Tirunelveli, Madurai and South Arcot. The dry areas in the state did not witness peasant militancy. Accordingly, the incidence of recorded tenants was very high in the irrigated pockets of the state which is mostly concentrated in the Cauvery Delta and some parts of Madurai District with Periyar irrigation and in Tirunelveli district in the Thamparapazhani area.

Table-2 reflects district wise registration of tenants as on March 31, 1988.

Table-2
TENANTS REGISTERED AS ON 31ST MARCH, 1988

Sub Zone	District	No. of Tenants registered	Percentage of total registered tenants
North Eastern	Chengai MGR North Arcot	12968	3.05
North Western	Dharmapuri	31660	7.44
Cauvery Dalta	Trichy	59012	13.86
	Thanjavur	141427	33.22
	Pudukkottai	12750	2.99
	South Arcot	14042	3.30
Western	Coimbatore	7234	1.70
	Periyar	8822	2.07
	Salem	8885	2.09
Southern	Ramanathapuram (PTT)	15679	3.68
	Rearranged		16.36
	Tirunelveli-		8.75
	Chidambaranar	69628	
	Madurai Dindigul	37219	
Hilly & Tribal	Anna		
	Niligiris	2089	0.49
High Rainfall	Kanyakumari	4264	1.00
Total		425679	100.00

It would be seen from the above table that the largest number of recorded tenants are from the districts of Thanjavur, Trichy, Tirunelveli, Madurai and Dharmapuri. The large number of recorded

tenancy is thus concentrated in the wet pocket. It is in these districts that the peasant movements were also very strong.

The height of peasants' militancy was between 1951 and 1972. Thanjavur was the epicenter of the tenants' struggle which had reverberations in other wet pockets as well. Major demands of Thanjavur peasants, particularly tenants and agricultural labourers, at the end of 1960s and hence, peasant movement also subsequently. This is also reflected from the figures of the recorded tenants year-wise which would show that the most important period for the recording of tenants was during 1972-73 i.e. during the height of the peasant struggle.

TRENDS

1. In areas with high incidence of unrecorded tenancy, the tenants in general are not aware of the legal provisions of security of tenure and fair rent. In some villages though the tenants are aware of the legal provisions, yet they do not venture to approach the official machinery to record their tenancy rights for fear of eviction. They do not have alternative employment opportunities.
2. The official machinery has been apathetic and slack to record the names of tenants.
3. There is absence of peasant organisations and peasant mobilization in the dry area.

4. Some of the recorded tenants in the dry area no more continue as such. Most of them have disposed off their land due to economic stringency. Even in wet area some of the recorded tenants have subleased their land.

ANDHRA PRADESH

Andhra Pradesh has three distinct regions from the point of view of tenancy reforms legislations. These three distinct regions are:

- a. Telengana Region
- b. Scheduled districts consisting of East Godawari, West Godawari, Visakhapatnam and Srikakulam.
- c. Andhra Regions comprising the remaining areas of Andhra Pradesh.

TELENGANA REGION

Telengana Region was formerly the part of the Hyderabad State and here there was no legislation at all till 1943. A limited set of benefits to which the tenants were entitled was contained in the Land Reforms Act of 1907 which made two categories of tenants, namely, (a) Shikmidars (permanent tenants) and (b) Asami Shikmidars (tenants-at-will). It had the provisions of the conferment of permanent occupancy rights (Shikmidari) on completion of 12 years as tenant. It also had the provisions of restricting the enhancement of rents. However, the provisions of this Act were hardly implemented and so the tenants could not get any benefit under this legislation. Subsequently, the Nizam's Government enacted the Asami Shikmidari Act of 1942 on lines similar to the Tenancy and Agricultural Lands Act, Bombay of 1937. As per this Act, the tenants were categorized into protected tenants and ordinary tenants. Protected tenants were those who had held land continuously for a period of not less than 6 years between 1931 and 1941. This Act also provided for security of tenure by stipulating the period of all future leases at 10 years. Even after the enactment of this Act, the landlords continued the ejectment of the tenants, transferred land

from one tenant to other and increased rents at their pleasure. This led to lot of discontentment among the tenants and was also one of the basic causes of the Telengana armed struggles between 1946 to 1950. In the former Hyderabad State there were several layers of tenancy in both Raiyatwari areas and Jagirdari areas as indicated below:

LAYERS OF TENANCY IN HYDERABAD STATE

Raiyatwari Areas	Jagirdari Areas
Raiyats	Jagirdars and Hissedars
Tenants	Raiyats
Sub-Tenants or	Tenants
Tenants at -will	Sub-tenants or
	Tenants -at-will
Sharecropper	Sharecropper

Though the Act of 1942 had some good provisions it was not implemented at all. According to the Banerjee Commission Report the Jagirdari land tenure comprised 40 to 79 per cent of agricultural lands in different parts of the state and Nizam himself enjoyed 9.9 per cent as Sarat-e-khas lands. As a result of the Jagirdari Act of 1949, 1464 Jagirdaris in the State were abolished.

In order to regulate the conditions of the tenants, the Andhra Pradesh (Telengana Areas) Tenancy and Agricultural Act, 1950 was enacted as Act No. XXI of 1950. This Act came into effect on 10th June, 1950 and subsequently there have been several amendments between 1951 and 1979. The Amendment Act III of 1954 is by far the most drastic; it extended the right of protected tenants to ordinary tenants as well. The Andhra Pradesh (Telengana Areas) Act of 1950 with its subsequent amendments had several important features e.g. regulation of rent, fixity and security of tenure, creation of protected tenants, right of purchase to the protected tenants,

transfer of ownership rights to protected tenants and the extension of the rights of the protected tenants to ordinary tenants. The Act of 1950 did not include the sharecroppers in the definition of tenants which was subsequently incorporated by the amendment of 1951. The Act prohibited the creation of tenancy in future except for certain exceptional categories like the minors, physically and mentally handicapped, members of the armed forces and so on. The Act also provided for the termination of tenancy by the landholder if the tenant failed to pay rent, caused destruction to the land, subdivided or sublet it or used it for non-agricultural purposes. It also provided for termination of tenancy by tenants by surrendering his rights to the landholder at least a month before the commencement of that order. It also had the provision of the resumption of land by the landholder for personal cultivation upto three times of the family holding.

It also defined the rights of the Protected Tenants as enumerated below:

- a. Those who had held land continuously for a period of not less than 6 years; or
- b. If he was a tenant for a period of not less than 6 years preceding 1st January, 1948; or
- c. If he was a tenant for a period of not less than 6 years on 6th October, 1943;
- d. Provided the total area of land owned by the landholder including the land under tenancy cultivation is not more than 3 times the family holding; (Section 37 A (i) of the Hyderabad Tenancy and Agricultural Lands Act, 1955).

- e. A landholder who is having less than 3 family holdings under personal cultivation is entitled to resume land to the extent of 3 family holdings under personal cultivation. However, the landholder should leave an extent of land with the tenant which together with his personal holdings will not be less than a basic holding. In case the tenant has less than a basic holding the land holder can resume only half of the land leased out.

The Act also provides that the protected tenant has the right of mortgaging 60 per cent of the land leased for government loan. It also facilitates the purchase of land by the protected tenant at a cheaper cost and in easy instalments from such landlords who owned land more than 3 family holdings. Every protected tenant is entitled to buy land to the extent of one family holding.

Section 38 E makes an important provision that the ownership of the lands held by protected tenants stands transferred to them and the protected tenants will be deemed as full owners of such land from the date of declaration. The Act fixes the rent ranging from 3 to 5 times the land revenue. All rights of the protected tenants are made heritable and they also have a right to erect a farm house. In case of produce rent, the rent fixed is at 1/4th of the gross produce for irrigated lands and 1/5th in other case.

ANDHRA AREA

Andhra Pradesh was formed as a separate state in 1956 and yet the tenancy legislation in Andhra Region of the Andhra Pradesh state did not fall in line with the tenancy legislation in Telengana areas. Though, such an attempt was made in 1970 yet the attempt of the Andhra Pradesh Government failed to provide unified legislation in the entire state. The state continues to have separate tenancy

legislation for Telengana and Andhra areas even today. The Andhra Tenancy Act of 1956 came into force in 1956 which provided for the regulation of rent, the minimum period for agricultural leases and other connected matters. This Act was further amended in 1970 relating to the provisions of reduction of fair rent, restrictions on termination of tenancy, qualification for resumption and pre-emptive right for tenants. The main provisions of the Andhra Area Act of 1956 (along with its amendments) were as follows:

- a. The rents for the irrigated lands were fixed at 30 per cent of the gross produce and on other lands it was fixed at 25 per cent of the gross produce;
- b. Every lease existing at the commencement of the Andhra Pradesh Tenancy (Amendment) Act 1974 was deemed to be in perpetuity;
- c. Every lease was deemed to be for a period of 6 years which could be further renewed for a period of 6 years;
- d. It also provides for the termination of the tenancy if the tenant fails to pay the rent or endangers the land or sublets it and so on;
- e. There is a provision for the resumption of land by the landlords for personal cultivation to the extent of 2/3rd of the ceiling area but the tenants should be left with at least half the area that he was cultivating under the lease;
- f. It also provides for the termination of tenancy by tenants and surrendering his holding at the end of any agricultural year after notice to the landlord;

- g. It also has the provision that if a landlord wants to sell the leased lands, he should first offer it to the tenant;
- h. The tenant has the right to mortgage his land in favour of the government, a cooperative society or any other institution in consideration of a loan; and
- i. All rights of the cultivated tenants are made heritable.

PROGRESS IN THE IMPLEMENTATION OF TENANCY REFORMS LEGISLATION

TELENGANA

The National Commission on Agriculture reports that after the promulgation of the Telengana Area Act of 1950 with its subsequent amendment, 33000 protected tenants in the Telengana Area held 82000 hectares of land. In Khammam district and Mulung Taluka of Warangal district 12748 protected tenants became owners as a result of the experiment. The provision of the transfer of ownership to the protected tenants which was initially extended to other districts of Telengana with effect from August 16, 1968 was struck down by a division bench of the High Court of Andhra Pradesh and the relevant section 38E was subsequently revalidated through amendment after rectifying the difficulties pointed out by the High Court.

The following points emerge as the major lacunae of the Andhra Pradesh (Telengana Area) Act, 1950:

1. The Act provides for the resumption of land for personal cultivation and the maximum holding a landlord can have.

2. Strong criticism has been raised against the creation of two different classes of tenants, the 'ordinary tenants' and 'protected tenants'. The tenants who were evicted on a large scale by the landlords were not taken into account.
3. Opportunities given to the landlord were so many that tenants could be evicted on any pretext.
4. The general regulations regarding the landlord-tenant relationship are contradictory. Section 8 provides that no tenancies can occur in future. Section 7(1) on the other hand provides that landlords owning three family holdings and less than that may lease their lands for five years. This encourages non-cultivating ownership.
5. There is a basic flaw in terms of minimum and maximum extent of holdings, i.e. basic holding and family holding that can be retained by tenants and the landlord respectively.
6. It is ironical that the extent of three family holdings is considered for an owner as rational but the same rationale is not applied to the tenants.
7. The amendments to the Act in 1954 extended the period of eviction of the tenants for another five years which affected the interest of the tenants adversely.
8. The prices of lands were beyond the reach of protected tenants.
9. Parthasarathy and B. Prasad Rao while appreciating some of the provisions of the legislation, have held that in terms of the working of the Act, the legislation came with a bang but ended with a whimper. They have also pointed out that the maintenance of records in Telengana was not satisfactory owing to various reasons e.g. Pahanis were not maintained properly and the names of the protected tenants were not recorded in Pahanis.
10. The law does not provide for recorded, disguised or oral tenants.
11. The study by A.M. Khusro revealed that a significant degree of eviction was noticeable with the promulgation of the tenancy legislation.
12. The provision of resumption on grounds of personal cultivation and voluntary surrenders diluted the effect of tenancy reforms legislation.
13. The interest of the sub-tenants, sharecroppers and tenants-at-will did not figure in the initial stages.
14. The Hyderabad Land Commission in 1954 also noted the fact of evictions of the protected and the ordinary tenants.
15. The conferment of the status of protected tenants to all ordinary tenants under Section 37 (a) has been a failure.
16. In the area with high incidence of tenancy like the districts of Mahboobnagar, Warangal, Nalgonda, Khammam and Hyderabad only 8.43 per cent of the protected tenants could purchase the right of ownership up to 1964 -65. The purchase of ownership upto 1979 covered 2.82 lakh acres which was only 27.84 per cent of the area held by the protected tenants in 1954-1955.

17. The Act was a total failure as far as the implementation of the general provisions of the conversion of the ordinary tenants into protected tenants are concerned. Out of nearly 3 lakhs of protected tenants created in the Telengana area, only 20 per cent were given possession.
18. The involvement of local peasants was not attempted inspite of the circulars issued to revenue officials to involve non-official agencies.

CRITICAL ANALYSIS OF THE ANDHRA PRADESH TENANCY ACT OF 1956

1. The Tenancy Act of the Andhra Area does not have the provision of conferring ownership rights as in the case of the Telengana Tenancy Act. (Section 38).
2. Both the Andhra and the Telengana Acts have no provisions of conferring occupancy right on the non-occupancy/ oral / concealed tenants.
3. Presently the bulk of the unrecorded tenants have to depend on the moneylenders for loans as they cannot take loans from institutional agencies. Hence, conferring occupancy right on them would free them from dependency on moneylenders. They can take loans from the institutional agency at lower rate of interest.
4. Absence of provision conferring occupancy right on the tenant provides the opportunity to the landowners to frequently change the tenant once in a year or once in 2 years. Hence, the concealed tenants are virtually tenants-at-will and their identity is uncertain after the harvest is over.

The landowners also tend to change the plots leased out to them.

5. There is no enforcement of fair rent provisions by the administrative agency. It is necessary that the tenants should have the right to deposit the rent with the nearest revenue officer and obtain the receipts for the rent. This would ensure not only the right of the tenant to be declared as occupancy tenant but would also provide him the right to claim the fair rent provisions.
6. The present provision is to permit leasing for a period of 6 years which can be extended for a further period of six years if the landowner does not resume the land for ' personal cultivation'. This provision is detrimental to the tenants.
7. The provision of voluntary surrender transfers the lands from tenants to the landowners.

MADHYA PRADESH

Section 168 of the MPLRC, 1959 restricts subletting of land. It provides that no Bhumiswami can lease any land comprised in his holding for more than one year during any consecutive period of three years. There was no restriction on subletting in the M.P. Land Revenue Code, 1954, and the system of farming out land on Batai was very much prevalent. But the restriction put by MPLRC 1959 is not applicable to a Bhumiswami who is :

- i. a widow, or
- ii. an unmarried woman, or
- iii. a married woman who has been deserted by her husband, or

- iv. a minor, or
- v. a person subject to physical or mental disability due to old age or otherwise, or
- vi. a person detained or imprisoned under any process of law, or
- vii. a person in the service of the Armed Forces of the Union, or
- viii. a local authority or cooperative Society.

Section 169 of the Code says that if a Bhumiswami leases out any land in contravention of Sec 168, the rights of an occupancy tenant shall thereupon accrue to the lessee in such land.

The rights of occupancy tenants under sec 169 accrue to a lessee automatically by the force of statute. It requires no declaration from a Revenue Officer that the rights have so accrued. A person acquiring right u/s 169 can apply for mutation. Such persons cannot be ejected, where the land is held by a tenant who acquired occupancy rights. A purchaser from the Bhumswami acquires no rights over the land.

Section 185 defines the occupancy tenant. The object of this section is to give the greatest amount of security to the actual tiller of the soil. There were innumerable classes of tenure holders and tenants in the connecting states of the different regions of the new Madhya Pradesh state. The tenancy law of the erstwhile old Madhya Pradesh, Madhya Bharat and Vindhya Pradesh regrouped them and reduced them into fewer classes conferring better rights on these actual cultivators. In the present Code the various classes of tenants have been done away with and the rights of occupancy tenants have been given a better footing. Every opportunity is given to an

occupancy tenant to become a Bhumiswami in respect of the land held by him, by section 181 or those who do not hold service land or who are not lessees of disabled persons under section 168 (2) are given the status of the occupancy tenants. Section (2) of section 185 explains the real object of the section. It is the actual tiller of the soil and not the subtenant who is recognised by the law.

REGULATION OF RENT

Section 186 of this Code is enacted in order to fix the maximum rent that a Bhumiswami may realise from an occupancy tenant. The maximum rent payable by an occupancy tenant shall not exceed:

1. in the case of any class of irrigated land four times the land revenue assessed on such land;
2. in case of Bandh land in Vindhya Pradesh region three times the land revenue; and
3. in any other case two times the land revenue assessed.

But the Code is silent over the rent payable by the lessees to lessor and it is totally left to the parties for mutual agreement (Section 168). The only restriction is that the lessor can lease land for not more than one year during any consecutive period of three years; otherwise the lessee acquires the rights of an occupancy tenant.

CONFERRING OWNERSHIP RIGHTS

Section 190 of the code deals with the provisions regarding the conferral of Bhumiswami rights. A bare reading of sub-sections (1), (2) and (2a) of section 190 makes it clear that where the conditions mentioned therein exist, the occupancy tenant automatically becomes a Bhumiswami. The question of paying compensation to

the Bhumiswami arises afterwards. The accrual of Bhumiswami rights is not contingent upon the payment of compensation. Nor any application is required to be made for the same. The occupancy tenant, by virtue of these provisions automatically becomes a tenure holder of the state government. He cannot be ejected even under a decree for eviction passed in the status of a former tenant.

Sub Section (3) of section 190 lays down the liability of the occupancy tenant to pay compensation equal to fifteen times the land revenue to the Bhumiswami in five equal annual instalments or in lump sum. Rules made under sub-section (5) required the occupancy tenant to deposit the compensation money with an application. If he deposits it, the Bhumiswami may get it after the formalities are fulfilled or if there is any dispute after it has been decided by the civil court. The Bhumiswami has to make an application under rule 1 of the rules framed under section 155 of the code and get the compensation money recovered as arrears of land revenue.

Madhya Pradesh Government had abolished tenancy except for protected categories as per the Madhya Pradesh Land Revenue Code 1959, yet the incidence of concealed tenancy continued to be widely prevalent. This fact was also emphasized by the National Commission on Agriculture in the context of Madhya Pradesh which reads as follows:

- (1) the law prohibits leasing (except by disabled persons) but in practice, extensive leasing out is going on in the form of crop sharing (Batai) and the sharecroppers are generally unrecorded.
- (2) Since the right of ownership accrued to occupancy tenants automatically, suo moto ancillary action to mutate them was not taken (Report of the "National

Commission on Agriculture" Part XV, Agrarian Reforms, 1976, Ministry of Agriculture and Irrigation, New Delhi, p.124).

UTTAR PRADESH

Looking at changes in leasing over the years, we observe that the pattern of leasing across different size classes remained more or less unchanged over the period 1953-54 and 1971-72. However, between 1971-72 and 1982 we find a sharp decline in the proportion of leased in land in the case of sub-marginal and marginal holdings accompanied by a sharp rise in the area leased in case of large holdings. To some extent the decline in the proportion of leased in area in case of sub-marginal (below 1.0 acre) and marginal holding (1.0-2.5 acres) and the corresponding increase in the proportion of owned area reflects the impact of the land redistribution programme undertaken in the seventies under which 2.36 lakh acres were distributed till September 1982. At the same time it reflects the practice of reverse tenancy which has been strengthened in the wake of the green revolution. In fact one observes a distinct decline in the proportion of sub-marginal holding in total households leasing in as well as in area leased in between 1971-72 and 1982. Sub-marginal holdings account for nearly one-fourth of the holdings reporting leasing out of land.

TERMS OF LEASING

The dominant form of tenancy in UP is share cropping as Sazhedari is permitted under law (Table 3). Only 8.6 per cent of leased in area

in UP is under the term of payment of fixed money, whereas this proportion is 42.1 per cent in Punjab and 24.2 per cent in Haryana.

Table-3 : Distribution of Leased in Area by Terms of Lease in U.P. and the Country, 1982 (Per Cent)

Terms of Lease	Uttar Pradesh	India
For Fixed Money	8.59	10.86
For Fixed Produce	4.88	6.08
For Share Produce	50.10	41.92
Share of Produce with other Terms	3.52	2.79
Under Usufructuary Mortgage	0.49	2.23
Other Terms	7.03	5.45
Not Recorded	25.39	30.78
Total	100.00	133.52

Source: NSS 37th Round, Sarvekshana, October, 1987.

MAHARASHTRA

Permanent tenants and inferior holders were given occupancy right on payment of occupancy price prescribed in the relevant tenure abolition laws. Where no provision was made in laws for conferring occupancy right on ordinary tenants whose possession was not of long duration such tenants got ownership right under the Bombay Tenancy & Agricultural Lands Act, 1948.

The State of Maharashtra came into being as a result of the reorganisation of States on 1st. November, 1956. Later Gujarat area was separated to form a separate State with Kutch and Saurashtra regions on 1st. May 1960. Maharashtra State as it stands now consists of three distinct and different revenue regions, namely, (I) Bombay Area, (ii) Marathwada Area, and (iii) Vidarbha Area.

On 1.11.56, the date of the reorganisation of the States, the tenancies on agricultural lands in different integrating units of Maharashtra were regulated by the following laws:

- (1) **Western Maharashtra (Old Bombay Area)-** The Bombay Tenancy and Agricultural Lands Act, 1948 as amended in 1956 (this Act had come into force on 6.12.48).
- (2) **Marathwada (Hyderabad) Area-** The Hyderabad Tenancy and Agricultural Lands Act, 1950 as amended till 1954 (this Act had come into force on 10.6.50).
- (3) **Vidarbha Region- (Former Central Provinces & Berar Area)-** The Central Provinces Land Revenue Code, 1954. This was replaced by the Bombay Tenancy and Agricultural Lands (Vidarbha Region & Kutch Area) Act, 1958 which came into force on 13.12.58.

Since then several amendments to plug the loopholes in the implementation of the Acts to secure the objectives of Tenancy Reforms have been carried out. The scheme of the three tenancy enactments in force in the three regions of the State is more or less similar. They provide for fixity of rent and security of tenure to the cultivating tenants. They also provide for compulsory transfer of lands to the tenants which were non-resumable by landlords. A person lawfully cultivating any land belonging to another person shall be deemed to be his tenant if such land is not cultivated by the

owner or by any member of his family or servants on wages or by hired labourers under the personal supervision of the owner or any of his family members including a joint family member. Thus, according to this definition of 'tenant' even a sharecropper was deemed to be a tenant and the onus was shifted to the landlord that the cultivator was not a tenant. The term personal supervision is common under all the three laws except for the Bombay area where some amount of residence is indirectly provided for because to include personal supervision the entire area of the land should be situated in a single village or should form a complete block and no piece of land should be separated from another piece for more than 5 miles. A person, therefore, cannot claim that he personally cultivates lands situated far away from each other (this restriction does not apply to disabled persons).

Some of the other main provisions of these Acts concerning tenants' rights are given below:-

All the three Acts conform to the guidelines given in the national policy regarding Tenancy Reforms. The Vidarbha law goes further in providing for quick and summary recording of occupation of all ordinary tenants including the oral/informal tenancies by the Tehsildar to unearth concealed tenancies. But the legislation does not seem to have been followed up by effective implementation as in West Bengal. One remarkable feature in all the three laws is prohibition of sale or mortgage of the land to any person other than an agriculturist or an agricultural labour and the latter can purchase the land at a nominal price (12 times the assessment in Vidarbha and Hyderabad areas and 20 times to 200 times in Bombay area) or at a reasonable price to be fixed by the Tribunal or the Tahsildar as the case may be, in case of dispute. If implemented this will go a long way to curb speculation in prices of agricultural land by the non-agriculturists.

Maharashtra is one of the States which was the earliest to implement the land to the tiller policy by conferring occupancy and ownership rights in the early 50s itself. Most of the work of implementation was over by early 70s. There was differential impact of the implementation in different regions of the State. It was most effective in the Konkan region and least effective in the Vidarbha region. In the entire State of Maharashtra 77546 landlords resumed 1.87 lakh hectares for personal cultivation; 14.47 lakh tenants were declared owners of 13.19 lakh hectares constituting 8 per cent of the gross cropped area. Rs. 56.25 crores was fixed as purchase price for which Rs. 48.29 crores has been recovered. On the whole implementation was relatively successful in the Northern and Western regions of Maharashtra and it was least successful in the Marathwada and Vidarbha regions. In the coastal region of Western Maharashtra 83 per cent of tenancy cases had been decided by 1970 and in the non-coastal region 86 per cent of tenancy cases had been decided. In the coastal region they became owners of nearly 70 per cent of the leased land. 20 per cent of the leased lands reverted to the owners and in 10 per cent of the lands tenants continued as the owners who were of the exempted categories like widows, minors or disabled people. Contrary was the result in non-coastal region. The tenants became owners of only 24 per cent of the leased lands. The landlords got back nearly 56 per cent of the leased lands in respect of which tenancy was terminated. In rest 20 per cent of the leased lands tenancies were continued either because the Tillers' Date was postponed or because lands were under sugarcane farms, trust lands etc. where major provisions of the tenancy Act were not applicable.

The incidence of tenancy is now very low in the State. However, in spite of the abolition of tenancy, incidence of concealed tenancy is noticed. Though the Tenancy Act forbids leasing and ensures that the tenants automatically become owners within the period of one year, these laws were hardly implemented. The Talathis hardly did any crop inspection and invariably it was the name of the landowner

which was entered in the cultivators' column rather than the names of the tenants.

Most of the tenants are at and below subsistence level and only a small proportion among them belong to rich peasants and capitalist farmers' status.

The issues of entitlement to tenants' rights like security of tenure and payment of fair rent are major issues for most of the tenants except for the rich peasants and capitalist farmers.

The form of tenancy is predominantly fixed cash rent followed by low incidence of sharecropping. In both the systems of tenancy it has been noticed that the terms of lease are more exploitative. The tenants are paying much higher than what was prescribed by the statute. Most of the tenants work with the same landowner for relatively longer period of time ensuring some modicum of security. Relationship between the landlord and the tenant is characterised by patron-client relationship. In many cases the tenants are not aware of the provisions of the tenancy reforms laws and even if they are aware, they do not want to take any risk. The tenants have not been able to avail their entitlements in spite of very radical provisions in the tenancy laws. The pure tenants in particular are more dependent on the landowners for loans while the owner-cum-tenants are relatively independent as they borrowed from institutional agencies.

Most of the lands are leased out by middle and large farmers. They retain quite considerable part of the land for their personal cultivation. The main reason for leasing out is that most of the landlords are neo absentee landlords who have a strong foothold in the urban setting.

PUNJAB

In order to root out the intermediary system, which was at the base of the semi feudal tenancy relations, the following legislative enactments were introduced immediately after Independence.

1. The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952.
2. The Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953.
3. Punjab Abolition of Al Malkiyat and Talukdari Rights Act, 1952.
4. The Pepsu Abolition of Al Malkiyat and Talukdari Rights Act, 1954.

As a result of the abolition of the intermediary system, the intermediary rent receiving rights have been extinguished. The Report of the National Commission on Agriculture observes that due to addition of the intermediary system 647740 occupancy tenants acquired proprietary rights over an area of 1.85 million acres and compensation was paid to the landowners. As is already stated, occupancy tenants constituted only 15 per cent of the total tenants and hence, abolition of intermediary rights helped only this category of tenants and tenants-at-will, who constituted 85 per cent of the total tenants, were left high and dry. This was also accompanied by the massive ejection of tenants. As a result the major problems of tenants-at-will with respect to security of tenure, payment of fair rent and conferment of rights remained important questions. Hence, in order to alleviate the conditions of the suffering tenants-at-will, the state had to enact two important tenancy reforms legislations, namely, the Punjab Security of Land Tenure Act, 1953 and Pepsu Tenancy and Agricultural Tenancy Act, 1955. The important

provisions of both the laws were more or less similar as indicated below:-

1. Maximum rent was fixed at 1/3rd of the gross produce or value thereof.
2. Security of tenure to the tenants was conferred in respect of land which was not within the landowner's permissible limit of 30 standard acres. Within the permissible limit, the tenant could be ejected (on the ground of personal cultivation) provided a minimum area of 5 standard acres was left with a tenant until he was provided with an alternative piece of land by the state government.
3. There was a special provision in the Pepsu area for the tenants in continuous possession of land for 12 years. They were given complete security of tenure in an area not exceeding 15 standard acres.
4. There was an optional right of purchase of ownership right by tenants. In Pepsu area compensation was 90 times the land revenue or Rs. 200/- per acre whichever was less. In other areas a tenant in continuous possession of land for 6 years could purchase a non-resumable part; prices were put at 3/4th of the average market value prevailing during the previous 10 years.

These tenancy reforms legislations resulted in large scale eviction of tenants-at-will.

The result is that there has been considerable decline in the area under tenancy as would be noticed from the following figures:

Table-4

Area Cultivated by Owners and Tenants (000 acres) in Punjab.

Category of Cultivation	Percentage of area cultivated			
	1947	1952	1957	1973
Owner	51.4	51.8	66.4	80.7
Tenant	48.6	48.2	33.6	19.3

(Source: Government of Punjab, Land Revenue Administration Report for the Quinquennium ending June, 1975, Chandigarh Revenue Department, n.d. Appendix; quoted in Chadha, G.K. The State and Rural Economic Transformation of Punjab, 1950-85, Sage Publications, New Delhi, 1986, p.220).

The present states of Haryana and Himachal Pradesh were carved out of the Punjab State during 1966 and so the figures of tenancy in the state upto 1970-71 reflect the figures of the combined Punjab State. Hence, it would be useful to understand the incidence of tenancy in the State in two phases, that is, between 1950-51 to 1970-71 and 1970-71 to 1980-81. As per the NSS 8th round and 26th round percentage of operated area leased in during 1953-54 was 39.78 which declined to 28 per cent by 1971-72. According to 37th round of NSS, by 1981-82 it further declined to 16.07 per cent. Thus, inspite of capitalist penetration in agriculture, area under tenancy in the State was one of the highest in the country, only next to Haryana (18.22 per cent) which continues to be an enigma. On the basis of his analysis, Chadha comes to the conclusion that pure tenancy has almost disappeared in Punjab (1986, p.235) However, Chadha observes that the categories of partly owned and partly tenanted holdings are still quite important in the emerging scene in Punjab.

No systematic analysis at empirical level has been undertaken of the persistence of pure tenants during 70s and 80s. This is still an empirical question and it would be difficult to come to a conclusion

that pure tenancy does not exist in Punjab. However, both the secondary evidence and the empirical studies revealed certain important trends in tenancy relations in Punjab in the wake of green revolution and post green revolution.

TRENDS

1. Almost all the farm size categories seem to have leased in area more or less equally between fixed rent tenancy and sharecropping tenancy.
2. The 70s witnessed a relative shift from sharecropping tenancy to fixed rent tenancy.
3. Another important aspect of the tenancy structure in Punjab is middle level holding-fitting- say, between 5 and 25 acres- enjoyed the major share of the leased in area under all tenancy types. In 1971-72, they got about 70 per cent of fixed rent leased in area, about 78 per cent of sharecropping area and 75 per cent of the total leased in area. The corresponding figures for 1980-81, were 66 per cent, 60 per cent and 67.5 per cent respectively.
4. One of the important features is that the large farmers also have a sizable share in the total leased in area. In particular, since 1980-81 the large cultivators (25 to 49.99 acres category) have entered the land lease market in a big way. This is happening more in those parts of Punjab where the new productive technology has had greater impact. This phenomenon is particularly witnessed in Central Punjab where a sizable percentage of tenants are big cultivators with a substantial land area of their own, fully endowed with modern production assets (e.g. tractors, tube wells etc.), entrepreneurial skills, high commercial status and so on.

These capitalist farmers get more land through the lease market primarily to achieve an optimal utilization of their technological assets. In relatively backward villages of foothills of Punjab (which is coterminous with the Northern Punjab), large number of tenants are landless (mostly landless from lower castes) and are economically dominated by the landlords. They cultivate mostly with their own family labour; capital intensity here is fairly low compared to Central Punjab.

HARYANA

Tenancies in Haryana are regulated by the Pepsu Tenancy and Agricultural Land Act, 1955, in the Pepsu area and by the Punjab Security of Tenure Act, 1953, as amended from time to time, in other areas of the State. Both these Acts are broadly similar so far as provisions relating to tenancy are concerned. The main provisions relating to tenancy reforms are as under:

- (i) The maximum rent was fixed at one third of the gross produce or value thereof;
- (ii) Security of tenure was conferred on tenants holding land which was not within the permissible limit of 30 standard acres allowed in respect of the landlord;

Percentage of operated area irrigated by the unrecorded tenants is higher as compared to those of recorded tenants:-

1. The average area leased in and operated by unrecorded tenants is higher than that of recorded tenants.

2. The distribution of tenants by size class of area leased in also points to clear cut edge of the unrecorded over the recorded tenants.
3. Bulk of the area is controlled by those operating above five acres both among the unrecorded and recorded tenants. However, even in this respect, the unrecorded tenants have some edge over the recorded tenants.
4. The average area operated by unrecorded tenants is higher than the recorded tenants.
5. However, distribution of tenants by size class of operational holdings does not point to any major difference in the class status of recorded and unrecorded tenants.
6. Subsistence and substantial tenants are found both among recorded and unrecorded Tenants.

The higher economic status of the recorded tenants as compared to unrecorded ones in Haryana is an interesting feature. It may be pointed that the recorded tenants in the state were conferred the recorded status between 50s and 70s and subsequently there has been hardly any effort by the administration to confer recorded status on the unrecorded tenants.

Hence, most of the tenants since 1970 leased in on informal terms only. Further the recorded tenant in general in Haryana and the unrecorded tenants in particular are not drawn from the extremely impoverished sections as the average area operated by them is economically quite viable for subsistence and is also conducive to efficient cultivation. There is not much difference in the application of modern inputs like HYV, fertilizer and chemicals between the unrecorded and recorded tenants. The marginal and small farmers

leased in for supplementing their subsistence whereas the small and big tenants operating below five acres are below subsistence level and those operating above five acres are not only able to meet their subsistence requirement but some of them are also able to cultivate it for profit. The bulk of the tenants in the State are thus in the better placed category.

ORISSA

After the enforcement of the Orissa Land Reforms Act from 1.10.65, there can be legal tenants only under a person under disability or under a privileged raiyat. His rights are:-

- (a) heritable and not transferable (even to state government/banks/financial institutions by way of mortgage for raising loans);
- (b) maximum rent payable shall not exceed 1/4th of the gross produce of the land or the value thereof, subject to further limitation that it shall in no event exceed 'fair rent' which is defined as 8,6,6 or 2 standard mounds of paddy or the cash equivalent thereof respectively for 1 acre of class I, class II, class III and class IV lands.
- (c) he should not be evicted except on one or more of the following grounds, namely,
 - (i) he has used the land in a manner which renders it unfit for purposes of agriculture or has used it for purposes other than agriculture;
 - (ii) has failed to cultivate the land properly and personally;

- (iii) has failed to pay or deliver to the landlord rent within the period of 2 months from the last date on which it becomes due;
- (d) the tenant shall however, cease to cultivate the land, if the landlord is a person under disability, at the end of the year during which the disability ceases and/or he himself ceases to be the landlord. Similarly if the privileged raiyat ceases to be the landlord, the tenant shall have no right to continue, unless the transfer is made in favour of another 'person under disability' or in favour of another privileged raiyat.
- (e) A standard acre is defined as 1 acre of class I land, 1½ acre of class II land, 3 acres of class- III land and 4½ acres class IV land. Class I land is irrigated land in which two or more crops can be grown in a year and class II land is also an irrigated land in which not more than one crop can be grown in a year, class III land is unirrigated land in which paddy is grown and class IV is any other land.
- (f) A person under disability is (i) a widow or unmarried/divorced or separated woman, (ii) a minor; (iii) a person incapable or cultivating land for reasons of some physical or mental disability; (iv) a serving member of Armed Forces (v) a raiyat the total extent of whose land held in any capacity whatsoever, does not exceed 3 standard acres.
- (g) Personal cultivation is defined as to cultivate on one's own account by one's own labour or by the labour of one's own family members or by servants or hired labourers on wages payable in cash or kind but not in crop-share, under one's personal supervision or the supervision of any member of one's family.

- (h) A 'family' for purposes of personal cultivation means, husband and wife and their children whether minor or major (this definition is different from the 'family' definition in the ceiling chapter).
- (i) A privileged raiyat means a cooperative society, Lord Jagannath, any trust or institution declared as a privileged raiyat under this Act or under the Orissa Estates Abolition Act, 1951 or any other trust which is declared to be a religious or charitable trust of a public nature by the Tribunal constituted under Section 57-A or any public financial institution.

By not recognising 'tenancy', the law has swept the problem of sharecropping under the carpet. No provision has been made or any action taken to unearth and record concealed tenancies. On the other hand, during settlement operation, the names of occupants who are sharecroppers are not being recorded. As a result of this a large section of 'tillers' have been deprived of protective measures under the law although the settlement law enjoins on recording the name of each 'occupant' (whether legal, forcible or otherwise) in the record-of-rights. By including small holders (those owning 3 standard acres or less) under the definition of 'person under disability' which no other State except Andhra Pradesh (Telengana Area) has done, it has deprived a large number of cultivators from acquiring ownership right. The tenants under 'person under disability' have not been given the right to mortgage their lands in favour of Banks, etc. for getting loan for improvements of the land or increasing productivity. The under-raiyats in North Orissa and sub-tenants in western Orissa recorded as such before 1.10.65 and the lessees in the vested Estates should have been allowed to automatically become raiyats (owners) without the paraphernalia of getting that status on application to be filed within a prescribed period. As a result of this, the status of many such persons still

remains unsettled. There is no element of residence of the raiyat or any member of his family in or near the village in which the land is situated to constitute personal cultivation. But its legislation broadly conforms to the national guidelines regarding regulation of rent and security of tenure etc.

Utsa Patnaik has referred to some specific problems that Orissa faces owing to its particular history. First, the agriculturally rich coastal areas of Orissa took part in the decline of rice yields which occurred in the Bengal Presidency between 1912 and 1947. For Greater Bengal the resulting fall in foodgrains output per head of population was quite high, 38% in the inter-war period, and since in Eastern Bengal there was little fall the decline in the rest of the presidency was even larger. To this day neither Bengal nor Orissa have fully recaptured the output per head it enjoyed in 1900 or 1912, although Bengal owing high recent growth has done better than Orissa in this respect. Many reasons have been put forward for the earlier decline, ranging from the diversion of the best lands to exportable crops, to the hypothesis of the 'moribund delta' (viz. the slow, long-term eastward shift of the main channels of the Ganga leaving a dying portion of the delta in W. Bengal); in the case of coastal Orissa the argument has been that yields fell owing additionally to interference with drainage after the construction of the colonial railways, as the embankment runs at right angles to the line of flow of all the major rivers of Orissa. Whatever the validity of these explanations the fact is true that historically there was a legacy of falling yields and stagnant foodgrains production.

Second, in large measure the non-coastal areas remained under highly exploitative and oppressive princely rule. There were also the predominantly tribal areas where princely rule helped to preserve semi-feudal relations and hindered the spread of education, while the incursion of outsider traders led to tribal land alienation and debt bondage. Today it is tribal Orissa which is the poorest part of the

state and Orissa's dismal record of the second highest level of poverty in India (second only to Bihar) derives in large part from its concentration of tribal population. At the all India level the profile of poverty based on the 1987 large NSS sample shows that whereas the rural poor as proportion of rural general population was 39% the poor among the scheduled tribes was 63% of the population of STs and the poor among the Scheduled Castes was 53% of the SC population.

Tribal populations usually live at some distance from centres of governance, their levels of illiteracy and destitution are even higher than that of the general rural population, and their grievances and demands are never adequately articulated. Any programme of lowering rural poverty has to be focussed first and foremost on tribal poverty and this in turn is intrinsically bound up with the production relation in which they are enmeshed. De facto tenancy is very high among tribals as the lands of large numbers have been alienated in the past to non-tribal outsiders and traders. Those who are small owners are enmeshed in debt to traders who have first claim on their crops and who charge a high implicit interest rate through paying a very low purchase price for the crop.

A recent research study on Kalahandi's land relations and output performance has given us some interesting facts. Productivity measured by foodgrains output per head of population has been consistently higher in Kalahandi than both the all-Orissa average and the all-India average. Even in the worst drought years productivity has fallen to only marginally below the all-India average. Yet the bulk of the (mainly tribal) producers, are perennially on the edge of starvation and get easily pushed over the edge in drought years. The reason was found to be that a large share of their gross output is drained out as a combination of rent, interest and traders' commission by the landowners leasing land and by traders lending money and buying the crop. Sometimes the same

person combines both roles. The surplus is drained out of not only the district, but out of the state altogether through the medium of (mainly Marwari) traders. Thus food production per head is more than adequate in Kalahandi but food entitlements of the producers is pushed down owing to the over-exploitative lease and credit relations in which they are enmeshed.

RECOMMENDATIONS

LEGISLATIVE MEASURES:

1. Considering the large scale unrecorded tenancy, it is necessary that the tenants be recorded legally with the ultimate aim of giving them ownership rights and to bring into reality the policy of Land to the Tiller.
2. The definition of 'Personal Cultivation' under Section 2 (2) of the Act should include three factors namely, (a) one's own labour, (b) labour of any family member and (c) servants under one's family. Further, the criterion to test the fact of personal supervision should be the proximity of the owner to the land. Therefore, the new sub clause (d) be added to the effect that the residence of supervising person should not be more than 5 kms. of the land cultivated.
3. The rights of the tenant after his death should devolve only on those legal heirs who should undertake actual personal cultivation.
4. Section 37 (b) talks of ceiling on a raiyat's holdings. There is no ceiling on tenanted lands. The ceiling laws should apply to the aggregate of raiyati and tenanted lands of a raiyat and the totality of lands cultivated by a tenant.
5. The O.L.R. Act provides three grounds for the eviction of a tenant in Section 14, under which sub-clause (b) under clause 1 envisages failure to cultivate the land properly as one of them. As 'properly' has not been defined anywhere, it may give rise to lots of harassment. Therefore, the word 'properly' should be defined with reference to either the practice the tenant has followed over the preceding three years or any improvement thereon.
6. Section 73 of O.L.R. Act makes an exception in respect of land owned by the Bhoodan Yajna Samity. As a result Ceiling Laws are not applicable to allottees of Bhoodan Lands. The inapplicability of the Act to the Orissa Bhoodan and Gramdan Act, 1970 be deleted.
7. The present definition of rent in Section 2 (27) does not include services to Lord Jagannath. Some of the sevayats who render personal service to Lord Jagannath have become raiyats under the State Government in the erstwhile estate of Lord Jagannath. Definition of rent has a relationship between the raiyat and the landlord. Lord Jagannath having ceased to be a landlord, the existing definition may act adversely. Therefore, a proviso be added to item 27 under Section 2 that services to Lord Jagannath shall however be treated as rent payable or paid by the raiyats in respect of Lord Jagannath's erstwhile estate.
8. In the definition of 'agriculture' in item 1 under Section 2 'use of land for forest' if ancillary to agriculture, has been treated as agriculture. Instead the word "plantation" would better substitute the word "forest" in the said definition because the Forest Conservation Act, 1980 prohibits putting any land recorded as forest in whatever form to any non-forest use.

9. There is multiplicity of tenurial rights in different parts of the State. These should be simplified and put into a single Act.

ASSAM

As per the NSS data 6.35 per cent of the operated area was under tenancy in the State during 1981-82. In this state during early 70's a campaign for recording the unrecorded tenants was taken up and the number of tenants recorded in the state was 3.39 lakh acres. Assam also has very favourable tenancy reforms legislation which provides for conferring occupancy right on the tenants if they have worked with the same landowner continuously for a period of three years. The administrative and political will to implement this provision was shown during early 70s.

Nonetheless, a great majority of tenants are concealed tenants. In view of the continued prevalence of the concealed tenants in the state during the end of 80s, it is estimated that the number of tenanted households is 217710 operating 395125 acres. The number of estimated recorded tenant households is 89914 and the unrecorded tenant households 127796. The estimated area operated by the recorded tenant works out to 105498 acres and by the unrecorded tenants to 289627 acres.

The economic status of the tenants indicate that bulk of them are subsistence and below subsistence tenants. Most of them operate only the unirrigated land. The following points emerge with respect to the status of the pure tenants and owner-cum-tenants in the State.

- (a) Bulk of the pure tenants are drawn from all classes of poor and lower middle peasants category but owner-cum-tenants are more from the category of lower and upper middle peasants.

- (b) Persistence of the pure tenants as an important category shows their dependent position in the lease market.
- (c) It is also indicative of stagnant economic condition of the Assam Agriculture.

With respect to the status of the recorded tenants the following points emerge:

- (a) Both in terms of leased in and operated area the unrecorded tenants are placed on equal footing and in some places better than recorded tenants in spite of their lack of legal rights.
- (b) Most of the unrecorded and recorded tenants were of the status of poor peasants and lower middle peasants; only a small fraction among them belong to the status of lower peasants and upper middle peasants.
- (c) The lack of legal rights does not place the unrecorded tenants in an adverse situation with respect to the areas leased in and operated.

In terms of forms of tenancy 62.7 per cent of the tenants and 78.3 per cent of the leased in area was operated under sharecropping terms, 33.6 per cent of the tenants had leased in on fixed cash rent terms and cultivated 16.9 per cent of the leased in areas; the rest 3.7 per cent of the tenants and 4.3 per cent of the operated area were under fixed kind rent terms. There was a close correspondence between sharecropping and unrecorded tenancy.

The terms of lease indicates that under sharecropping the following patterns are prominent:

First Pattern : The sharecropper did not meet the input share and he received

	share of the gross produce	providing that a piece of land is not being cultivated by an unrecorded tenant
Second Pattern:	Both the landowner and the sharecropper shared the gross produce equally	the tenant should rather be on the lessor if the latter wishes to contest that tenant's claim to be registered. Second, the implementation of a reasonable maximum rents is required to avoid the over exploitation to which the tenants are currently subject; the excessive government procurement directly from the producers at fair minimum support prices will help to loosen the stranglehold of private traders as will the extension of institutional credit. At the same time it is necessary to extend the public distribution system in these areas to enable those who remain food-deficit, to access foodgrains at the affordable price.
Third Pattern:	The sharecropper meets the entire cost of cultivation and receives half the share of the gross produce	
Fourth Pattern:	The sharecropper meets the entire input cost and receives one-third share of the gross produce	

The first and fourth patterns are very favourable for the sharecroppers and closely conform to the statutory norms of payment of fair rent and the norms advocated by the Central Government. The second and third patterns are unfavourable to the sharecroppers and they are paying exploitative rents. The fixed cash rent is only three times the land revenue which is only a nominal amount. Most of the unrecorded tenants have shorter duration of working with the same landowner. Thus, the question of conferring legal status of occupancy tenants on the unrecorded ones is an important task of tenancy reforms in the state.

CONCLUSION

Conferment of ownership rights on tenants remains the optimal goal, which does not seem to be achievable in the foreseeable future. What seems feasible, according to Utsa Patnaik even while the existing ownership of land is retained (except for tribal and illegally alienated which must be restored) is to focus first on conferring owner-like security of tenure on the lessees by registering them through a drive to record de facto tenancy in the presence of the village population. This will only succeed if the onus of proving that a piece of land is being cultivated by a tenant does not lie with the tenant, whose declaration that he does so supported by the general body of the cultivators should be deemed sufficient. The onus of

CHAPTER – 9

LAW IN THE Vth SCHEDULE

The colonial past of the country laid bare two broad processes of tribal land alienation. The first process, basically categorized as state enforced land alienation, is best pictured by the brutal suppression of shifting cultivation of the tribal people and state appropriation of community-held, largely forested tribal land, its merger into the reserved forests and its subsequent transfer to timber traders and forest contractors from 'outside', primarily for commercial exploitation. Tribal land alienation took place with the force of law and the praxis of the colonial state with total disregard to the catastrophic effects on the people. As such land alienation was one of the central issues in most of the tribal upsurges against the colonial state in the late 18th and 19th century.

The second process, broadly called state assented tribal land alienation, covers the transfer of tribal lands into the hands of the non-tribals, largely through force or fraud, the use and abuse of law and the legal process by the money-lenders, traders and contractors-turned landlords, with the connivance and collusion of the local revenue functionaries and enforced by the courts. This process began during the period of the British colonialism. The colonial state both directly and indirectly not only condoned but permitted, if not abetted the practice.

There is reason to see the transfer of tribal land to non-tribals in the context of the disruption of the indigenous system of regulation of access to and control and management of land and land revenue resources. Property in land of the members of a clan or a tribe has dual meaning. While devolution is from the community to the individual, the devolution is subject to the control of the community.

It can then be said that it belongs simultaneously to the community and the individual, either alone or in a family group. The British for the first time tried to separate the individual from the community against old traditions.

In the decades following Independence, there was a marked absence of strong interventions on the part of the State to put a check on further deteriorations in the relationship between the tribal and the land. There was no fundamental and substantive break from the basic premises of colonial governance. The laws were a half-way house and ab initio insufficient to address to the problem of tribal land alienation. Reliance was placed on adverse possession of the transferees and mechanical adherence to the general tenets of Limitation precluded any chances whatsoever of the restoration of tribal lands. To crown all, even some of the pro-tribal laws provided for "permitted transfers", that by experience, has proved a backdoor for tribal land alienation. Exemptions and exceptions, inter-woven dexterously with an otherwise sound piece of tribal land legislation, sapped the very life out of it and what we have been carrying since Independence, is an apology for even a basic law.

A rather disastrous fallout of the general tenancy legislation in the post-Independence era had been the ouster of tribal tenants in the eventuality of landlords' resumption of lands from tenants in the name of 'personal cultivation.' Tribal tenancy or for that matter any tenancy subsisting even on non-resumed lands, remained at best a tenancy-at-will, unrecorded and insecure.

In a word, while attempts at a definitive legal change remained a far cry, land reforms legislation, in general, with all the infirmities in approach and implementation, stalled the conferment of occupancy and ownership rights on tenanted lands.

The tribals further lost "documentary connectivity" with their lands under their cultivating possession, as survey and mutation records gave a documentary leverage to the non-tribal incursionists. Tribal interests were either not recorded or else their names continuing since cadastral days had been surreptitiously deleted. The usual devices for a documentary ouster were surrender, abandonment, collusive suits or rent evictions. Legal and quasi-judicial processes were distorted to regularize illegal transfers quoting the half-baked legal framework itself.

Constitutional Safeguards in the Vth Schedule States

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, a 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 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 them by the Governor.

The Fifth Schedule is quite clear on 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 this 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 provision 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 Vth 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.

PROVISIONS IN THE GOI ACT, 1935: A COMPARISON

The Government of India Act, 1935 had put forth the concept of Excluded and Partially Excluded Areas. Section 91 of the 1935 Act empowered the British Government to declare any backward areas as excluded or partially excluded areas, and to alter their status. The object was to retain British control over backward tribes and not to impose on them parliamentary institutions, and the ordinary civil and criminal laws meant for more civilized communities. An excluded area could in course of time be brought under the ordinary administration but any such transfer could only be made by an order in Council which had to obtain the approval of both houses.

A similar provision excluding 'backward tracts' from the operation of the Constitution had been made by section 52A (2) of the Government of India Act, 1919.

According to Section 92(1) of the Government of India Act, 1935:

"The executive authority of a province extends to excluded and partially excluded areas therein, but, notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act, may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions and modifications as he thinks fit.

(2) The Governor may make regulations for the peace and good government of any area, or a partially excluded area, and any

regulations so made may repeal or amend any act of the Federal Legislature or of the Provincial Legislature or any existing Indian Law, which is for the time being applied to the area in question.

Regulations made under this sub section shall be submitted forthwith to the Governor General and until assented to by him in his discretion shall have no effect, and the provisions of this part of the Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the Governor General as they apply in relation to Acts of a Provincial Legislature assented to by him.

(3) The Governor shall, as respects any area in a province which is for the time being an excluded area, exercise his functions in discretion."

On a close scrutiny, the Governor had a far more positive role to play under the 1935 Act in as much as the very application of an Act of the Federal Legislature or of the Provincial Legislature in an excluded or a partially excluded area depended upon a direction of the Governor by public notification. Further while giving such direction, the Governor had to make such exceptions and modifications as he deemed fit.

Conversely under the Vth Schedule of the Constitution of India, the application of any Central or State law in a scheduled area, does not have to await the approval of the Governor, even if with such exceptions and modifications as he deems fit. In other words, even though Governor is empowered to effect exceptions and modifications, his direction on application of such laws as such is not designed as a condition precedent. To that extent, the Governor's powers are fettered in the post-Independence dispensation.

Yet another point emerges, as one examines the Vth Schedule, with regard to the Governor's discretionary authority which ought to be delineated far more explicitly within the framework of the Vth Schedule to allow a correspondence with Article 163 of the Constitution which runs as follows:

"163. Council of Ministers to aid and advise Governor. - (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion."

The only function which the Governor may be called upon in certain circumstances to exercise in his personal discretion are the appointment of the Chief Minister, the dismissal of Ministers and the dissolution of the legislative assembly.

The only cases in which the state Governor is required to exercise his functions under the Constitution in his discretion are para 9(2) and Para 18(3) of the Sixth Schedule to the Constitution regarding the administration of tribal areas in Assam. The only other provision authorizing the Governor to act independently of his Council of Ministers is Article 239(2), i.e. when he is appointed by the President to be the administrator of an adjoining Union Territory. The Governor of Nagaland is given discretion in respect of some matters under Article 371-A(1)(b),(d),2(b) and (f). Implied discretionary powers with the Governor can be read in the second

proviso to Article 200 under which the Governor may reserve a Bill for the consideration of the President and in Article 356(1) under which he may report to the President that the government of the State cannot be run in accordance with the Constitution. Under all these provisions the Governor is supposed to be acting as the representative of the President and not independently.

The Government of India Act, 1935 had specifically provided that the Governor shall exercise his functions in discretion with respect to excluded areas.

TRIBAL LAND LEGISLATION: THE PERSPECTIVE AND AN UPDATE

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 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 at 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 tribal areas, 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 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 Visakapatnam and Forest Regions of 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 forests 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 those operations of denudation of forests, tribal labour had been used to a great extent to clear off the forest area and these 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 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) to 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 imposition of heavy taxes.

The Agency Tracts Interest and Land Transfer Act, 1917 provided for the first time that transfer of immovable property by a member of 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 courts 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 Coastal Andhra regions. The Regulation came into force first in the districts of Srikakulam, Visakapatnam, 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 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 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 bears 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 British colonialism was both a cause and the effect of 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, tribal lands passed into the hands of non-tribals, while the tribals were pushed from proprietorship into depraved 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 **permissions 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, 1975 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 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 non-tribals between the aforesaid period 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 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 uses 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 Tenancy Laws (Amendment) Act, 1974, imposes stricter restrictions on future alienation of tribal lands to 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 a 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 situate 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 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, then 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 Collector/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 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 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 too is barred. 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 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 non-tribal communities in the tribal areas of Gujarat. Only in the early 19th century several pockets of non-tribal concentration emerged in the tribal 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 tribals also started in full swing and relentlessly. The new principle

of land-ownership introduced by the Britishers after introducing the system of survey settlement endowed the right of allotment of land to the government. Now, 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 forest and this deprived the tribals one of the fundamental rights which had been given recognition 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 ryotwari settlement, no distinction was drawn between 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 tribal regions.

Before 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 five tribal villages that of the total land in those villages, 72.4 per cent of the land was under the possession of non-tribal Khatedars (A Khatedar is an individual in whose name the land has been entered in 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 73 A was inserted by the Bombay Land Revenue (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 73AD was introduced in the Land Revenue Code, 1879 by the Government of Gujarat Act No.37 of 1980/Notification No.GHM/81/22/M/ADJ/1080/3433/A dt. 19.1.1981 and there was further restriction to the effect that agricultural land and non-agricultural land held by scheduled tribes in Gujarat **will not be transferred to any person tribal or non-tribal without prior permission of the Collector and the State Government**. This was introduced to prevent alienation of tribal land and to prevent transfer of land by oral or written sale deed by tribals and also to check the rise in an 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 73 AD 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 sanction of the Collector (73A or Section 73AA).

No civil court shall have 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 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 proprietary lands. It placed restrictions on the transfer of agricultural land held in proprietary rights by the aboriginals, to the non-aboriginal classes of the State. A number of such laws were passed in the various states which later were 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 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 tribe which was transferred by fraud. Every person who on the date of the 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 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 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 M.P.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 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 Bihar Act XIV of 1949, the Santal Parganas Tenancy (Supplementary Provisions) Act, 1949 which has 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 Mundas and 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 bhuinhar 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 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 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 landlords and 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 Officers had collected a considerable amount of data, and the local investigation made in the Munda country was held to

justify the necessity of 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 Mundari Khunt Kattidari Tenancies.

The results of the investigation made by the Settlement Officers, 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 raiyats and 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 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 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 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 the Government. Over a period of time there was a mushroom growth of housing cooperative societies, in and around the Ranchi township, composed solely of 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. 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 a 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 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 a state 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 persons.

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 a 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 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.

Penal provisions find a place in the Orissa Regulation.

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, exploitation of 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 (Khatedari) 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 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 rights 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 ploughed were done so rotationally so that there were always lands lying fallow. Lands 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.

Coming to legal provisions, a reference may be made to Sections 42, 43, 46-A, 49-A, 175 and 176 of the Rajasthan Tenancy Act, 1955.

42. The sale, gift or bequest by a Khatedar tenant of his interest in the whole or part of his holding shall be void if it is made by a person belonging to SC/ ST to a person who does not belong to SC/ ST. Section 42 (bb) further adds that such a sale, gift or bequest by a member of the Saharia Scheduled Tribe in favour of a person who is not a member of the said Saharia tribe, shall be void, too.

Evidently, intra-tribal transfers too are banned, especially with reference to the Saharia Scheduled Tribe.

There are court decrees suggesting that there is no period of limitation. 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 Rajasthan Vs. Veenua & Others, 1995 RRD 372, page 374).

43. This section provides for usufructuary mortgage upto a maximum period of five years, by a Khatedari tenant of his interest in the whole or part of usufructuary mortgage.

Nevertheless, there is a proviso to Section-43 which reads as follows –

“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 part of his holding to any person who is not a member of a Scheduled Caste or a Scheduled Tribe”.

46-A. This section makes special provision for letting or sub-letting by the members of the SCs & STs:

“Notwithstanding anything contained in sections 44, 45 and 46, no person who is a member of a Scheduled Caste or a Scheduled Tribe shall let or sub-let the whole or any part of his holding under the said sections to any person who is not a member of a Scheduled Caste or a Scheduled Tribe”.

49-A. This section bans an exchange of holdings between SCs/ STs on the one hand and non-SCs/ non-STs on the other. An application for exchange shall be rejected if it contravenes the provisions of this section.

175. This is an elaborate section providing for the ejectment for illegal transfers or sub-letting. It not only deals with actual transfer or sub-lease but also with purported transfer or purported sub-lease. It further provides both the tenant, illegally transferring the land and the illegal occupant are liable to ejectment from the area so transferred or sub-let or purported to be transferred or sub-let. The transferees or the sub-tenant (actual or purported) shall be made parties on applications made by the land-holder (tehsildar). Notice will be issued to the opposite party to show cause why he should not be ejected from the area so transferred or sub-let or purported to be transferred or sub-let. The court shall, after giving a reasonable opportunity to the parties of being heard, conclude the enquiry in a summary manner and pass order, as far as may be practicable, within a period of 3 months from the date of the appearance of the non-applicants from the area transferred or sub-let contrary to law. 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.

A decree or order under Section 175 may direct the ejectment of a tenant and his transferee or sub-lessee or purported transferee or 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.

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 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 a lease/ mortgage of less than 5 years and that of the Collector with the prior approval of State Government in other cases.

GUJARAT

- Transfers valid with prior permission of the Collector/ State Government.

MADHYA PRADESH/CHHATTISGARH

- Total ban on transfers in 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 notify to 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 contra-indicative.

ORISSA

- Any surrender/ relinquishment amounts to transfer.
- Transfer valid if prior permission of the competent authority obtained.

RAJASTHAN

- ‘Transfer’ includes sale, gift, bequest, mortgage and exchange.
- The landholder is the Tehsildar who files an application for ejectment. Both the tenant and the transferee are made parties and both are liable to ejectment if the transfer is found violative of the Act.
- The law is not clear as to whom the transferred land will revert after the ejectment decree – to the transferor or to the landholder (tehsildar).
- The law takes into account not only a transferor or sub-lessor but also a purported transferor or sub-lessor.
- No limitation.
- Ban on intra-tribal transfers with regard to the Saharia Scheduled Tribe.
- No prior permission clause.

RECOMMENDATIONS ON TRIBAL LAND PROTECTION IN THE FIFTH SCHEDULE STATES LEGAL

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 Vth Schedule States. All legislation aims primarily at a damage control exercise and ensuring security of tenure to the tribal house-hold 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 Vth Schedule States have their own respective strengths and weaknesses. There are points of departure while uniformity eludes. That is to say because diverse political and social realities present the backdrop for tribal land legislation in different states. While we come across 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 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 settlements 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 state laws, and the travesty

of justice in 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 self-help groups and the measurable impact they have made on 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 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 right is so recorded.

The lesson of Gantzer's survey and settlement in Santal Parganas has been that ignoring the ancestral, hereditary rights of Santals, duly recorded in McPherson's and Wood's surveys, Gantzer's survey substituted entries by 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 total ban on transfers in the notified scheduled areas of Madhya Pradesh and Chhattisgarh as well.

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 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 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 Dy. 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 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, **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 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 C.N.T. 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 Scheduled Tribes but all kinds of transfers including benami transfers, 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 a Scheduled Tribe in favour of non-tribals, encroachments, trespass, forcible dispossession, acquisition with bogus certificates pertaining 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 execution of a decree and also a transfer made by a member of the Schedules Tribes in favour of any other member of a Scheduled Tribes – 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 Dy. 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 Dy. Commissioner has been made a necessary party in all suits wherein one of the parties belongs to the scheduled tribes. The Dy. Commissioner thereby emerges as a custodian of tribal interest in much the same way, as he is a custodian of Government lands.

8. Summary Procedure for Restoration

The Scheduled Area Regulation Courts operating in Chota Nagpur (**Jharkhand**) have, with the passage of time, become the citadels of the power elite, be it the fixation of compensation or regularisation. In many cases advocates act as a mediator 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 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 rusted. The Collector has to explore viable alternative systems of communications himself, including 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 by 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.

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 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

CHAPTER -10

TENURIAL SYSTEMS IN THE NORTH-EAST

1. ASSAM

In Assam, the different kinds of estates or interests in land may be considered under the following heads:

1. The Lakhiraj estates held in fee simple, with estate under the special waste land rule.
2. The permanently settled estates of the erstwhile Goalpara District and Karimganj Sub-division of the former Sylhet district.
3. Temporarily settled estates held direct from the Government on periodic lease.
4. Temporarily settled Khiraj estates held direct from the Government on annual lease.

Historically speaking, in the earlier days of the Administration, the owners of each of the above mentioned classes of estates used to be loosely described as 'proprietors' of their lands, or as having 'proprietary rights', but all that was meant by these expressions was that those who held land under temporary settlement from the Government, whether under annual or periodic lease, even when the lease did not expressly confer a permanent, heritable and transferable interest, did in practice enjoy, without interference from the Government, the right of transferring such property in the land as their lease conferred upon them. In effecting the permanent settlement in Bengal, Lord Cornwallis was directed to have regard to the laws and customs of India and to the local system of land rights in Bengal. In Assam, on the other hand, with the exception of the

erstwhile Karimganj sub-division and the permanently settled tracts of the districts of Goalpara the successive conquests of districts or portions of districts, including the hill districts was held to have extinguished all private rights in land previously existing unless they were expressly recognised by the British Government either under standing executive orders or by legal enactment.

The property of the owner of a permanently settled estate was inferior to that of the lakhirajdar, in as much as he was liable to the Government for the payment of a fixed amount of revenue, on failure to pay which, his estate might be put up to sale for the realisation of arrears of revenue and if sold, it was sold free from all encumbrances previously created thereon by any person other than the purchaser, subject to certain exceptions. The owner's property in a permanently settled estate was heritable and transferable in Assam, as it was in Bengal. He could transfer it by sale, mortgage, gift or bequest and grant leases, for the whole or any portion of it for a term of years or in perpetuity. Patni and is- timrari tenures created by the owners of the permanently settled estates were instances of such leases. His power, however, to enhance the rent of his tenants and to eject them was, as in the case of the lakirajdar, limited by law.

The owners of all temporarily settled estates settled for terms of not less than ten years, are under the Land and Revenue Regulations, 1886, styled as 'Landholders' to distinguish them from the owners of revenue free and permanently settled estates. These estates also had a permanent, heritable and transferable property in their lands, called in the Regulations a 'Right of use and occupancy'. This property, however, was inferior to that of the owner of a permanently settled estate, in that the settlement was made (and is still being made) in terms of years only, after which the revenue may be enhanced on resettlement. A landholder has a right of re-settlement on the expiry of his lease, subject to the condition that he accepts the terms of settlement offered to him (vide the Assam Land & Revenue

Regulation, 1886, Section 32(I) and the Settlement Rules). If he refuses the settlement offered, he does not altogether lose his rights, but they are temporarily suspended for the period of the re-settlement, which may be made with any other person who may come forward and accept settlement. An important right conceded to all landholders is that of resigning their holding at any time during the term of a settlement on giving due notice. If, however, a landholder resigns, he loses all his rights in the land resigned (vide the Assam Land & Revenue Regulations, 1886; Section 34 (d), which has been applied to all districts, except the two hill districts where the Regulation is not in force).

The districts of Karbianglong and North Cachar hills fall under the Sixth Schedule of the Indian Constitution. Hence, in these districts, land administration comes under the jurisdiction of the Autonomous District Councils. All matters pertaining to land and revenue are dealt with by the Revenue Department of the Council. It is responsible for the assessment of land revenue and house tax and collection of the same. The allotment of land for various purposes including establishment of villages is also done by this department in accordance with the District Council land distribution policy. Besides these, regular revenue works, assessment and collection of revenue therefrom and similar other subjects are also dealt with by this department.

2. MEGHALAYA

Land Tenure System in Khasi Hills

The land tenure system is quite complex in respect of land. The land is still held according to the customs of the Khasis and usages. The Government of Meghalaya was aware of the problems in the administration of land in the Khasi Hills. In 1973, a Commission was constituted by the Government with Shri R.T. Rymbai, IAS

(Rtd.), Chairman Shri H. Nongrum, MLA, Member and Shri D.D. Lapang, Member to examine all matters relating to the occupation or use and management of land. The terms of reference of the Commission were-

1. To enquire into and examine the land system obtaining in each Syiemship Lyngdohship, Wahadarship, etc., for all classes of land-Ri Kynti-Ri Raid-Ri Kur-Ri Khain- Ri-Seng etc., including changes which have come into being since the advent of the British.
2. To study the difficulties being experienced by the people, the management and the administration at all levels caused by lack of cadastral map and R-o-Rs for each class of land, and to examine the desirability of undertaking a cadastral survey and of preparation of R-o-Rs for all classes of land.
3. To recommend:
 - a. Codification of the customary land laws and usages in the light of the findings on (1) above.
 - b. Remedial measures on the basis of (2) and (3) (a) above as may be considered best to serve the interest and wishes of the people.
 - c. Any other matter connected with and incidental to (a) and (b) above.

The Land Reforms Commission submitted its report on the 10th Nov. 1974. The Commission has done a commendable job in the examination of the land tenure system of Khasis. The need of the hour is to translate the recommendations of the Commission into legislation.

According to the Land Reforms Commission, there are two main classes of land viz. Ri Raid and Ri Kynti land.

Ri Raid lands are lands set apart for the community over which no person has proprietary, heritable or transferable rights excepting the right of use and occupancy, such rights revert to the community when a person ceases to occupy or use the land for a period of three years consecutively. Heritable and transferable rights over Ri Raid lands accrue when the occupant has made permanent improvements on the land. But even these rights lapse if he completely abandons the land over such a period as the Raid Durbar, deems long enough.

Ri Kynti lands are lands set apart from the time of the founding of the elaka for certain clans upon which were bestowed the proprietary, heritable and transferable rights over such lands. They also include any part of Ri Raid lands which at later time were bestowed upon a person or a family or a clan for certain yeoman's service rendered to the elaka. The same rights devolved on Khasis in whose favour such lands are disposed off by the original owners by way of sale or transfer on receipt of full consideration for the same.

All lands in the Khasi Hills belong to the people, families, the clans and the communities —land revenue is unknown and no land tax has ever been levied in the Khasi Hills. Even the British never interfered with the customs of the Khasis. For their needs and requirements of lands, the British went through proper negotiations. The British granted sanads and executed agreements with the Khasi Chiefs. The Khasi Syiems had a status of semi-independent native states.

Alienation of tribal lands has always been a sensitive issue. 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 dtd. 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.

Land Tenure System in Jaintia Hills

The British Government had annexed the entire Jaintia Hills to the British Territories. The British did not seriously introduce a formal Land Revenue Administration in Jaintia Hills nor did they strictly enforce the informal system they chose to follow. The policy left by the Jaintia Rajas was adopted. This was modified to conform to the exercise of the sovereign authority of the British. This became necessary as the Jaintias had led a number of rebellions against the British. The British, henceforth, decided on a policy of taxation which was not followed elsewhere in Khasi hills.

After Jaintia Hills came under the administration of the British, the villages continued to remain under the charge of the Dollois. The Dollois were nominated or elected by the inhabitants of the respective villages and their appointments confirmed by the British. The villages bordering the plains of Sylhet were under the management of the Headmen or Sirdars whose offices were considered hereditary.

During the time of rajas no land revenue was paid by the people. Later the British introduced a rough system of assessment in the form of House Tax @ Rs. 1/- per household. This resulted in a rebellion which was crushed. A second rebellion broke out in 1862 when on the top of the House Tax a Central Income Tax was also levied on the Jaintia Hills. This rebellion too was controlled. Though Income Tax was modified, the House Tax continued to be levied.

The system of land tenure in Jaintia Hills was first enquired into by Mr. Heath, the Sub-divisional Officer of Jaintia Hills in 1882. The report spoke about (1) Hali Land or low lands which were terraced and permanently cultivated with the help of either rain or water brought by channels. The Hali lands were further classified into-

- i. Raj Hali lands, which were private lands of the Jaintia Raja. When the raja was deposed, these lands were declared Government lands irrespective of who possessed the land.
- ii. Buniaz (Private) Hali lands, which were lands granted by the Jaintia Raja or the Dollois or Sirdars in lieu of salary.

2. High land lacking water supply or land not under Hali or permanent terraced cultivation. The high lands were further classified into (I) Government waste lands (ii) private high lands.

The Jhum lands which were recognised by customs belonged to the cultivators. Private rights over these lands including pine and fruit trees were recognised.

The Jhum lands which were recognised by customs belong to the cultivators. Private rights over these lands including pine and fruit trees were recognised.

All other lands were considered Government lands.

Land Revenue in Jaintia Hills

After the report of Mr. Heath, the Government declared the land in the entire Jaintia Hills to be the absolute property of the

Government. Further, the Government decided that the basic tax in Jaintia Hills should be the House Tax and not the land revenue. Everyone was liable to pay the House Tax.

The situation as it ultimately developed was that Land Revenue was assessed by the British on Raj Hali lands. Government waste lands which were classified as high land could be assessed to land revenue if they were brought under permanent cultivation. But, in general high lands were under jhum cultivation and hence not assessed to land revenue. Even the betel nuts and orange groves in the high lands were not assessed.

The Jaintia Hills Autonomous District Council has, however, replaced the old periodic leases over Raj Hali lands by a new form of leases known as 'hot hali'. The 'hot hali' lease confirms the permanent heritable and transferable right of the lease holder on the Raj Hali land covered by the lease. The District Council also issued hot hali lands to the holders of the Buniaz Hali lands.

3. MANIPUR

Chapter-IV of the Manipur Land Revenue and Land Reforms Act, 1960 makes provisions for survey and settlement of land revenue, while chapter V deals with land records. Regarding extent, Section 1(2) of the Act provides that it extends to the whole of the State of Manipur except the hill area thereof; provided that the State Government may, by notification in the official Gazette, extend the whole or any part of any section of this Act to any of the hill areas of Manipur also as may be specified in such notification.

Land Records System in Tribal Districts

There has never been any survey in the hill areas. There prevails the system of household tax in the hill areas under which households are

counted and tax @ Rs. 6.00 is collected by chiefs in Kuki villages and by khulakpas in the Naga villages and the same is deposited in the district revenue offices. Household tax is collected also by Government functionaries called Lambas. No land revenue is charged in the tribal districts.

The kukis have the traditional system of village chiefs who represent the person who had settled originally in the village. All the rest of the villagers (subsequent settlers) became his subjects. The villagers are obliged to pay certain portion of their produce to the chiefs. They are also obliged to present best portion of the meat of the animals they slaughter, to the Chief. They remain in the village and continue to hold lands till the pleasure of the Kuki chief. Entire village land belongs to the Kukis and if consequent upon land acquisition by the Government any compensation is to be paid, the full amount is received by the Kuki chief alone on their behalf.

The Nagas too have chiefs called khulakpas, but in their system individual as well as communal ownership of land is duly recognised.

No documentary proof exists for the land holdings. It is all based on conventional acceptance as such. Since there never has been any survey of the hill areas the Government also does not know the extent and location of Khas land (even) not to talk of Chief's lands or individual or community owned lands. If any road etc. is to be laid out, total confusion prevails as to whom compensation is to be paid. There are claims as well as counterclaims.

Another feature of the tribal land system in Manipur is that a given village can claim title over lands lying hundred kilometres away. Village boundaries are mostly in the shape of streams or nalas etc. But there can't be any limits to staking claims. Deputy Commissioners have the authority to "create" villages. Policy of the

State Government is far from being clear in this respect. This has got an ethnic connotation as well. First, there can be clash of interests within the same village over landholding rights between say, Nagas and kukis, Second, there could be clashes between two tribes over new villages as well.

There has been, over a period of time, some waning down of the influence of the kuki chiefs on their subjects. Gradually their customary rights, too, have been eroded. As a result, and in order to escape from the clutches of the arbitrary rule of the chiefs, several offshoots of Kukis, like Paite, Baite, Hmar etc. have sprung up, who leave the original Kuki villages and set up new villages elsewhere. Nonetheless, despite a waning down in power over subjects and the latter defection, in theory, Kuki lands in traditional Kuki villages, belong to Kuki Chiefs and it is they, who, in person, receive and retain compensation amount from the Government in the event of any land acquired in their village. Splinter Kuki groups do not have chiefs and it is they, who, in person receive and retain compensation amount from the Government in the event of any land acquired in their village. Splinter Kuki groups do not have chief systems. Rather they have village authorities with elected chairmen and rights to individual land holding is duly acknowledged. In several villages of the Churachandpur District, Kuki Chiefs faced with stiff opposition, had to flee away themselves, leaving behind Hmars to take care of their affairs themselves.

4. TRIPURA

Tripura, an erstwhile princely state, acceded to the Indian Union on 15-10-1949. It remained an un-surveyed area till the Tripura Land Revenue & Land Reforms Act was passed by the Indian Parliament (since there was no assembly in Tripura at that time) in 1960. Chapter V of the T.L.R. & L.R. Act deals with land records or Register, in accordance with the rules made under the Act. When a

record of rights has been prepared, the survey officer is required by the Act to publish a draft of the record in such manner and for such period as may be prescribed and shall receive and consider any objections which may be made during the period of such publication, to any entry therein or to any omission therefrom. After the disposal of all the objections, the Survey Officer shall cause the records to be finally published in the prescribed manner. Every entry in the record of rights as finally published, shall, until the contrary is proved, be presumed to be correct.

The first survey in the State began in 1960 with local officers as well as survey personnel drafted on deputation from West Bengal. In the nature of things, the West Bengal system of survey was followed here too. As per the Tripura Land Revenue & Land Reforms Rules, 1961 (Rule 56), the following stages are involved in revenue survey and the preparation of record of rights:

- i. Demarcation of village boundaries
- ii. Traverse Survey
- iii. Cadastral Survey (or Kistwar)
- iv. Preliminary record writing (Khanapuri)
- v. Local explanation (or Bujharat)
- vi. Attestation including determination of rent or revenue of tenancies and holdings (or Jamabandi)
- vii. Publication of the draft record of rights
- viii. Disposal of objections under Sub-section (1)
- ix. Preparation and publication of the final record of rights under sub-section (2) of section 43.

A proviso to Rule 56 stipulates that any of the stages referred to in items (I) to (v) may be omitted or amalgamated with another by an order of the State Government.

By 1968, the entire State was covered by the original survey (beginning in 1960) surplus survey staff was also absorbed in equivalent posts in the district administrative set up. In the years following, with more and more sub-divisions of land taking place and especially in the wake of large scale influx (nearly 1.5 million) of refugees from erstwhile East Pakistan and with the allotment of Khas land to them, a revisional survey was undertaken in selected circles.

5. NAGALAND

A couple of "Traditional Villages" have already been surveyed and RoR prepared. These villages were covered on a pilot basis and but for watering down of enthusiasm of surveying more such villages, by powers that be, could have been trend-setters. It is recommended that additional traditional villages are suitably selected (with no or least potential for anticipated adverse reaction) and surveyed.

There are 200 "new villages" in the State which have come up along foot-hills. The villages are located in Kohima district and in the southern part of Wokha district. The terrain is not entirely flat, but is amenable to surveying. Furthermore, these villages are much more smaller than the traditional villages.

Area specific formats will have to be evolved for the RoR to prepare the same with due consideration to individual, clan and mixed ownership of lands. Out of 49 villages in the Dimapur Mouza only 19 have been notified as Revenue villages. The Government should take necessary steps to notify the rest of the deserving villages too as Revenue Villages and take up survey work there as well.

Since the State does not fall in the Sixth Schedule and since there are no autonomous district councils to vie with the State

Government on subjects including land, onus lies entirely on the State Government officials to push things to a logical conclusion.

6. ARUNACHAL PRADESH

Land ownership pattern in Arunachal Pradesh is closely related with the method of agriculture pursued by the various tribes. In accordance with variation in rainfall and gradient of terrain, agriculture in Arunachal Pradesh falls in three categories: permanent or sedentary, shifting or jhum and mixed, i.e. partly sedentary, partly jhum. Correspondingly, land ownership can also be studied under three categories:

- i. Land owned privately
- ii. Land owned collectively by clan
- iii. Mixed type of ownership, partly private, partly communal

Private Ownership of Lands

Cultivable agricultural land in the Apatani society is completely privately owned. In fact, among all the tribes in Arunachal Pradesh, the Apatanis, who occupy a single valley in the central part of the Subansiri district, almost exclusively pursue sedentary method of agriculture. The valley floor where their rice lands are situated, was possibly a lake in the remote past. With an average annual rainfall of less than 50" the whole area is drained by the kele river meandering through the heart of the valley. The situation is thus ideal for the practice of sedentary form of agriculture.

Due to the principle of private ownership of land, and the right of alienation vesting in the owner, great disparity in the material well-being of the people exists. An individual may augment his possessions by acquiring more lands during his life time. The average Apa Tani head of a family inherits some lands for

cultivation, a house site usually located in the residential areas of his own clan and one or more bamboo groves, varying in size, outside but adjacent to the residential areas. Apart from these private lands, an individual may also own plots for growing vegetables, maize and tobacco. These plots may later be converted into house sites for his sons, as need may arise. There is, besides, site for granary on the outskirts of the village lying close to the rice fields, groves and garden plots.

In addition to irrigated rice fields, an average Apa Tani farmer also owns a patch or two of dry land on higher grounds rising from the valley floor. Such plots are used for growing millets, and are valued much cheaper.

The law of inheritance among the Apa Tanis indirectly puts a limit on the concentration of lands in the hands of a few rich. It provides for equal distribution of cultivable lands amongst all the sons. Each son is supposed to get his share even during the life time of his parents when he marries and sets up his own household. A rich man was also under the moral obligation to provide some land for a freed slave.

The Apa Tanis are very meticulous in caring for their lands in marked contrast to tribes among whom land is held in communal possession. Private ownership of land works as a great incentive, boosting up personal effort. But no less important is the fact that land is in limited supply and the nature of sedentary agriculture requires working on the same fields year to year. The lands, therefore, have to be kept in a proper state of fertility. In the shifting method of cultivation, however, lands getting unproductive are abandoned and tracts found.

Communal Ownership of Land

In the shifting cultivation areas, all land belongs, as a matter of principle to the clan or the village. It will be erroneous to think that communal ownership of land does not countenance individual rights of possession. It only means that such rights, when acknowledged, do not run counter to the principle of clan or communal ownership. The individual right of cultivation and possession continues through the cycle of agricultural operations, and remains suspended during fallow periods. All fences are removed during the fallow season and the land is thrown open to pasturage for all village animals. The pattern of individual possession of land, where communal ownership is the rule, also varies from tribe to tribe. In some cases, as with the Gallongs, individual claims to the ownership of different plots of lands revives only when particular areas are taken up for cultivation. Once a family cultivates a plot, it can always claim it as its own.

Among the Padam-Minyongsa, ownership is absolute in the sense that land can be sold, transferred, leased or exchanged, but never outside clan members and the village. Among Daflas and Idu-Mishmis, who have extended families consisting of married sons and other relatives, the land is cultivated jointly.

An Aka can lay claim to a piece of land by the mere fact of having wrested it from the forest. Among the Khamtis, the whole community tills the land on cooperative basis. The chief, who however, in principle, owns the entire land has a portion allotted to him, which could be cultivated by slaves.

The second category of communal land is forest land, it is actually land reserved for future use. While it continues to be treated as such, it can otherwise be used as hunting ground, or for extraction of

forest produce like cane, wood, edible root etc. Here individual ownership is not generally recognised, but separate areas might be assigned to different clans and sub clans, with regard to extraction of forest produce. Rights again vary from tribe to tribe, either on collective or family basis.

The third category of land in the areas of shifting cultivation is the settlement land, which is cleared by communal efforts, and is therefore, clan land in principle. An average family, however, has at least one of each type of lands, a house-site in the village, a site for granary on the outskirts and a small plot serving as kitchen garden. Some communities such as the Adis have clan houses in the form of dormitories for boys and girls in addition to private residential houses.

Mixed Ownership of land

Wherever, mixed type of agricultural practices are in vogue, the pattern of ownership of land also presents two fold aspects. Land under permanent cultivation is owned privately while that under shifting cultivation is communal land.

Among the Sherdukpens and the Monpas of Kameng, the mixed type of agriculture is practiced. In the valleys where annual rainfall measures up to 30" land is under permanent cultivation. On the exposed slopes swept by rain, shifting cultivation is the rule, both among the Monpas, who are more advanced, and the Sherdukpens,

who are relatively poor agriculturists, private lands are tended with greater care. Manuring is resorted to in order to preserve the land in proper state of fertility. Terracing of private lands on the mountain slopes is done with great care to prevent erosion, and to get level patches as far as the life of the land permits.

In areas where land is held in communal ownership the labour and energy devoted to clearing and preparation of land for cultivation vary accordingly as agriculture is fundamental, or only supplementary. Clearing of land is done everywhere on communal basis.

Among Nishi, Bangin, Hill iris, Tangsa and Mishmi Groups, an individual can select any plot of land and clear it for the purpose of shifting or permanent cultivation and for this no permission is necessary from the co-villagers. The site selected must be within the demarcated area of the village. Among the Nocte, Wancho and the Khamtis, where the system of chieftainship is prevalent, the consent of the Chief is necessary. The village chief, in consultation with the village council may allot the land. Among the Adi groups and the Apa Tanis the permission is usually taken from the respective village council. viz. the Kebang and the Buliang.

7. MIZORAM

During the British administration of Lushai Hills District till the abolition of the Chiefship in 1955-56 in pursuance of the Assam Lushai Hills District (Acquisition of Chiefs' Rights) Act, 1954, the land tenure system was basically traditional. There was, however, one important exception. During the pre annexation period, the Chief's area of cultivable land depended upon what he and his followers could hold by force. After annexation, however, the area was clearcut demarcated. The entire area that formed the domain of the chief was known as "Ram". The

land was owned by the entire community. The chief was there in each village, but he was not independent, nor was he, in any way, the land owner. He did not have heritable or transferable rights over the land. For the same reason, nobody got compensation when land was acquired for public purposes, such as construction of roads, schools buildings etc. the rights of user accrued over the plot which was allotted to the cultivator for jhum cultivation, that too, pertaining to the brief period for which that area was cultivated. Jhum cultivation itself was not practised there in isolation. One or two hill slopes were taken up en bloc by the entire community for jhum cultivation and the same was distributed among its members.

For the purposes of land tenure, the land of the state can be broadly divided into three categories:

Hills Land: It forms the bulk of the agricultural land of the State. During chiefship, the Lushai Chief decided as to which part of his "Ram" should be cut and cultivated every year. In this he was assisted by his advisers known as "Ramhual". The agricultural land selected for the year was distributed as follows: the chief got the first choice and selected the land he wanted for his own jhum. The Ramhual thereafter selected separate plots for themselves and had to pay "Fathang" to the chief in proportion to the order in which they had been chosen. The rest of the block went to the rest of the villagers. All cultivators paid some amount of Fathang to the chief. Fathang has been defined as dues payable to a chief by a cultivator in kind or in cash. It was not land revenue, rather a kind of fees paid to the chief in consideration of his exalted position and services rendered by him to the society. The Fathang was considerably reduced by the Lushai Hills District (Reduction of Fathang) Act, 1953. There was no intermediary between the landlord and the tiller and as such the relationship of the landlord and tenant did not exist. With the abolition of chieftainship in 1955 the payment of fathang

for agricultural land was discontinued. A villager was obliged to pay house tax and to contribute his share of unpaid labour for communal works taken up for the benefit of the village, such as path making, line cutting, construction and repair of the chief's house etc.

The Lakhers inhabiting the southern part of the State also followed the same procedure in respect of land tenure. However, there was no Ramhual in the Lakher society. The Chief and his advisers selected the block for the purpose of jhum. Thereafter, the chief allotted different plots of land among the cultivators. The chief was entitled to a share of crop harvested by each villager. Like the Lushais, the lakher also tilled the land by themselves and as such the relationship between the landlord and the tenant did not exist.

2. Flat Land: After annexation, the British authorities introduced wet cultivation in the patches of flat lands by employing Santhal labourers. The Government collected land revenue for the flat land which was allotted by the chief among the cultivators. Outright sale and inheritance of flat land under cultivation was recognised, provided the transferee personally took over cultivation. Keeping flat land uncultivated led to a forfeiture of occupancy rights. The same plot was thereafter allotted by the chief to some other person.

3. Town Land: Some restrictions were imposed by the British authorities in the indiscriminate choice of house sites in Aizawl and Lunglei which were beyond the pale of the traditional chiefs. In these two towns no one was allowed to possess more than one plot of land where the house actually occupied by him stood. A small area around the house was also allotted for the purpose of gardening. The problem of water scarcity, and of housing the officials in the town had been the prime regulator of influx to the town in those days. Nobody could claim the right of inheritance of a house in the town as a matter of right but usually the heir was

allowed to inherit the same if he could occupy the house immediately. Letting and mortgaging land within the town area was illegal. In the event of acquisition of land for public purposes the compensation amounted to the value of the materials of the building which stood on the land, it was after Independence that some special rules were framed in respect of payment of compensation of land for public purpose.

In course of time these restrictions were imposed in the following stations: Demagiri, North Vanlaiphai, Champhai, Kolasib and Sairang. Land revenue was realised only for the land held by the Christian missions.

Current Status of Revenue Administration

For the purpose of land revenue administration, the following legislations enacted by the erstwhile Mizo District Council have been adopted. There has been no new legislation so far in revenue matters except that some amendments of the Acts and Rules have been made by the Government.

1. The Lushai Hills District (House Sites) Act, 1953
2. The Mizo District (Land and Revenue) Act, 1956
3. The Mizo District (Agricultural Land) Act, 1963
4. The Mizo District (Transfer of Land) Act, 1963
5. The Mizo District (Revenue Assessment) Regulation, 1953
6. The Mizo District (Jhuming) Regulation, 1954
7. The Pawi- Lakher Autonomous Region (Agricultural Land) Act, 1960
8. The Pawi- Lakher Autonomous Region (Land and Revenue) Act, 1960
9. The Pawi- Lakher Autonomous Region (Revenue Assessment) Regulation, 1954
10. The Pawi District (Agricultural Land) Regulation, 1979.

11. The Pawi District (Jhum) Regulation, 1983
12. The Pawi District (Revenue Assessment) Regulation, 1975
13. The Lakher District (House sites) Act, 1973
14. The Lakher District (Land & Revenue) Act, 1973
15. The Lakher District (Agricultural Land) Act, 1979
16. The Lakher District (Transfer of Land) Act, 1979
17. The Lakher District (Revenue Assessment) Regulation, 1973
18. The Chakma Autonomous District Council (Agricultural Land) Act, 1983

Evidently, land revenue administration in Mizoram is marked by a plethora of laws and regulations. They often appear like a legal maze. A little scrutiny of the titles would show that the first six Acts are the basic legislations, while the other District Councils or the Regional Councils have passed their own Acts almost under the same titles. The Rules, particularly those under the Land Revenue Act, 1956 and in Agricultural Land Act, 1963 of the Mizo District Council deal with basic and very important matters.

CHAPTER – 11

CONTRACT FARMING: TENANCY IMPLICATIONS

The notion of contract farming is a late emerging trend in the Indian agricultural scenario. Although commercial crops like cotton, sugarcane, tobacco, tea, coffee, rubber and dairy enterprises have always had some element of contract farming, crops like tomato, cucumber, chillies, paprika and to some extent potato and even basmati rice, groundnut etc. have come under contractual arrangements in recent years with some centralised processing and marketing units. Experience has shown that contract farming has improved the yield and income of contract farmers quite significantly. Further, the growth of agro-processing units provides new employment opportunities to the people.

Contract farming is a system of farming in which agro-processing or trading units enter into a contract with farmers to purchase a

specified quantity of any agricultural commodity at pre-agreed prices. Small farmers who are generally capital-starved and left to themselves cannot make major investment in new technical inputs. Contract farming can fill in this gap by making available quality inputs, technical guidance and management skills to the farmers. By entering into a contract, the company reduces the risk of fluctuating market demand and prices of his produce. The land rights of contract farmers remain unaffected and fully protected and judged in this way, contract farming is different from corporate farming.

Some notable centralised processing units under the contract farming system are Hindustan Lever Ltd. in tomato in Punjab (taken over from Pepsico in 1995), Pepsico in basmati rice (Punjab), Maxworth fruits in horticultural crop (Andhra Pradesh), Cadbury in cocoa (Karnataka) and NDDB in banana (Maharashtra). Besides, in the fields of dairy, aquaculture and poultry, several small companies have initiated industry-farmer linkage through some contractual arrangements.

The pepsico set up an agro-processing plant at Zahura (Hoshiarpur dist., Punjab) in 1989 for the processing of tomato into paste. Besides being insufficient even for local needs, the quality produced was not suitable for processing into tomato paste/ketchup. The pepsico, therefore, entered into contracts with about 35 farmers in the periphery of the plant for the production of quality tomato. The number of contract farmers increased to 350 in 1995 with an area of about 2700 acres. However, in 1995, the pepsico sold the tomato processing unit to the Hindustan Lever Ltd. The number of contract farmers for the production of tomato is about 1200 at present. The Company processes the tomato into tomato paste/ketchup and on an average 35,000 tonnes of tomato in a 45 day time-frame get processed. More than 70 percent of the production is exported to Japan, the Middle East and EC, while about 30 per cent gets disposed off through local outlets in the country.

The pepsico has entered into contractual arrangements with about 300 farmers for the export of basmati rice.

The VST Natural Products Ltd. is an agro-processing unit which specialises in the processing of cucumbers and paprika. The Company has got its HQ in Hyderabad. The VST entered into contractual arrangements with about 25 farmers around Rangareddy and Mehboobnagar districts- for the production of cucumber and paprika and the number of contract farmers has now shot up to about 1,600. The company has both local and export market for the processed product. All the contract farmers in this case are small and marginal farmers. The company supplies high quality seeds to contract farmers and also purchases the produce of the contracted crops at pre-agreed price without involving any middlemen.

Normally, the processing industry faces a problem in getting raw material-

- of right quality
- right quantity
- supply at right time
- at right price

The main reason is lack of technology support to the farmers and improved varieties. This ultimately causes unorganised production and thus leads to high fluctuation in prices. Contract farming becomes very important in such a situation. The planting of crop can be spread in such a way that the required quantity of produce is received at the factory as per its daily requirement. This would avoid glut as well as shortage situation. In advanced countries, the processor does the planting of the crops and calculates the date of harvesting taking into consideration the "heat units" for the maturity

of each variety. This helps in deciding the exact date of harvesting of each field.

PUNJAB AGRO

Punjab grows 24% of the country's wheat, 9% of rice and 22% of cotton. When pepsi soft drinks and food processing industry was to be set up in India, their choice for location fell on Punjab. Pepsi thought about the crops which they should go in for agro-processing. They selected potato and tomato. They thought of potato because Punjab was producing one million tonnes of potato every year which is a substantial quantity. But the state was producing only 14,000 tonnes of tomato per year which meant basically for domestic consumption. Pepsi felt that more production could be ensured provided some government agency gets involved as they were new to this country, new to the farmers and new to the agricultural practices. It was here that the Punjab Agro (The Punjab Agro- Industries Corporation) came forward. It introduced an integrated project approach, where we can integrate the use of land, factory and market. Contract farming technique was introduced in co-operation with the Pepsi Foods. About 40 persons were deployed from the Punjab Agro to take care of the production effort. Technologies including seeds, nursery, agronomic practices, inputs were given to the farmers and their produce was purchased at a predetermined price and while doing so, the farmer was assured a minimum return per unit land area grown to tomato or potato, whether the crop was a success or a failure.

In the tomato business, pepsi introduced 7-8 new implements. The agricultural implements were fabricated to their requirements in Punjab itself and that made the going simple. Today we have planters and threshers not only for tomato and potato but also for sunflower in the contract farming area. From 14,000 tonnes per

year, Punjab today produces more than 1 lakh tonnes of tomato. The productivity before Pepsi came into it, was 6 tonnes per acre; today the average is around 25 tonnes/acre. Punjab embraced the contract farming system because the Punjab Agro thought the success of any agro and food processing project was raw material not in terms of quantity alone but also in terms of quality; that is, the processing quality.

In the sunflower project the Punjab Agro told Pepsi that Punjab Agro will take care of all their requirements of sunflower as a raw material and production will be carried out under contract. But Pepsi was urged to extend guidance basically on a good variety of seed, agronomic practices and production technology. Pepsi was as well urged to introduce mechanisation.

Punjab further insisted on diversification. The State wanted to get out of wheat and paddy rotation. They thought of maize and soyabean. Maize used to be one of the very important crops of Punjab, but over the time it went down to smaller acreages due to competition with rice and limited processing facilities in the state.

Punjab Agro then had a dialogue with Bharat Starch & Chemicals in Haryana. Bharat Starch had a very huge requirement of maize. They were getting maize from Bihar, U.P. and far off states. Punjab Agro told them about contract farming projects already introduced in Punjab and expressed their willingness to do the maize sourcing for them even though Bharat Starch had their projects located in Haryana. Bharat Starch were quite enthusiastic. Punjab agro signed a memorandum of understanding with them, whereunder they would be sourcing 50,000 tonnes of maize per annum for Bharat Starch. Bharat Starch, in turn, would be helping the Punjab farmer like what Pepsi did, viz. by providing good quality hybrid variety seeds. Their scientists will be helping the farmers in the adoption of modern high tech agronomy practices. Punjab Agro is now planning and is going

to contract for about 6000 acres of land from where maize will be sourced for Bharat Starch & Chemical for their works in Yamunanagar.

CONTRACT FARMING: THE MODALITY

PROJECT PLANNING

- Name, location, latitude, elevation of potential production sites
- Current quantities, quality, yield per acre, production costs
- Daily maxima and minima temperatures, humidity, rainfall and sunshine
- Frequency of climatic catastrophes, hail, tornado, hurricane, frost, flood, sand storms etc.
- Soils, topography, drainage, fertility, toxicity, and long-term trends
- Diseases of planned crop plants or animals
- Weeds species in fields.
- Other biological problems
- Area of arable land available for crop and total area of potentially arable land.
- Farm sizes, field sizes
- Current crop mix profile and rotations, technology to be adopted
- Existence of any cultural constraint likely to affect planned production
- Availability of various inputs: fertilizers, chemicals, seeds, information
- Planned production technology appropriate for area and project yields
- Farmer organization
- Farmer support services, market coops, supply coops, rental equipment services, specialized task services, labour contractors.
- Availability of capital and working capital interest rates

- Regulatory issues
- Labour availability, quality, work habits, flexibility, diligence, literacy, education level, trainability, sex, permanent or transient distance from farms
- Farmers' quality, education level, acceptance of new ideas
- Communication system with farmers and workers, common language
- General communication system available: telephone, fax, telex
- Transportation system in the region: road, rail, water, air
- Potential for placement of foreign managers and labour
- Utilities available in the region

Contract papers for farming are formulated. While the contracts are initiated we need to gather more information and plan the schedules at the factory end alongwith the following information.

- 1) optimum quantity
- 2) optimum quality
- 3) most economical market price and timing of its availability
- 4) matching the capacity of the factory.

FINANCIAL CONTROLS:

Cost on the activity is a crucial area because unnecessary cost ultimately affects the industry in increasing its cost of output. Proper control through micro detailed budget is required to be made. This budget is required to be made activity wise, sub-activity wise and production wise.

UTILIZATION AND PROCESSING OF MAIZE

Infrastructure

Well trained staff with proper mobility is required to be put on the job. It should be given regular training on advance technology and package of agronomic practices. It must be made knowledgeable so that farmers look at them as knowledge banks.

Sowing Plan

Timely and required quantity of supply will depend upon how the sowing plan is prepared. The sowing plan needs to project the kind of varieties needed which should fit in properly in the crop rotation.

It should also contain

- 1) Area
- 2) Period of sowing
- 3) Period of harvesting
- 4) Tonnage available

The acreage sown is decided according to yields of varieties chosen. This will give the tonnage coming out of the total programme. The tonnage grown should cover up all the risks like fresh market requirement, other competitive industry so that the factory may not run hungry during the processing period. In broader terms no contract farming can run successfully if it does not ensure -

- 1) That the grower gets better returns than before

- 2) The factory gets sufficient produce at normal price.

Farmer Profiles

Contents :

- 1) Farmer bio-data
- 2) Family status
- 3) Financial status
- 4) Area available
- 5) Machinery/equipments available
- 6) Irrigation facility
- 7) Crop rotations
- 8) General reputation in area

IMDA

This is necessary to decide about the commitment level of the farmer. Cultural and emotional behaviour of the farmer plays a dominant role in assured supply of produce to the industry.

We should select the level of the farmers for the crop. The farmers with very low acreage normally do not stick to the commitment during unforeseen fluctuations. On the other hand very big farmers can bargain industry with much strong marketing power. Hence selection of farmer is a process of care and intelligence.

Contracts: Contract form is required to be designed carefully mentioning all the requirements of quality, quantity and price in it.

Route Maps: After the contracts are over, route maps and location maps should be prepared which clearly show the clusters and routes for the mobility of the extension staff.

Growing Crop: Extension staff must very closely monitor the growing part of the crop starting from sowing to harvest. It should keep track of any disease in the fields and immediately take the remedial measures. In case of traditional diseases existing in that area farmers must take "Preventive measures rather than Remedial". Technology transfer to farmers and extension staff must be based on extensive training in the fields.

Yields evaluations: Farm evaluation and yield evaluations are to be made regularly so that fair idea of quantity available from the programme is known to the industry in advance.

Quality control in fields: If the crop quality is monitored in the field itself half of the battle is won. Moreover the factory cannot bear the loss of the crop due to any factor in contract farming system because it becomes dependant on the farm.

Harvest Plan:

Extension staff are to monitor the harvest of the crop and guide the farmer regarding the handling of the crop during post harvest period so that losses during post harvest period could be reduced. A detailed plan of harvesting schedule, storage, transport and payment is prepared farmerwise which keeps a balance between the inventory with the farmer and the factory both and regulates the supply as per need of the factory. Special care for planning remedial actions for sudden eventualities should be taken. These eventualities

include, stoppage of factory, strikes, bandhs and high market price, sudden glut etc.

Contract farming has two objectives. One is to promote agro-based industry and the other is the diversification of crops. Contract farming is useful both for the farmers and the industry because if the growing part is not supported by the industry, higher production will not necessarily mean better market for the grower. Hence the farmer has to look to the industry and the industry has to look to the farmer for raw material.

For contract farming to start, it is not simply that we go to the farmers and ask them to grow more of a particular commodity. Before that a trial project is done. We go in for gathering information on today's soil climatic conditions, insects and pests, farmer's culture and agronomic practices. A lot of data is to be collected and processed to find out the weaknesses and risks involved in going for contract farming on that crop. Further the success of contract farming will depend on the farmers getting better returns. For the consumer too who is in the market, prices have to be stable and optimum. If any one of these aspects is missing, contract farming will be deemed to be a failure.

According to Shri S.S. Bassi of Punjab Agro : "Basically our relations with farmers are very different. We are sourcing fertilizers. We are sourcing pesticides. We are doing contract farming. The farmer gets lots of services from us. He is obliged to us. In one

particular case I remember we started a new variety of a seed we were going to produce in Punjab under contract farming and we started in the winter but unfortunately the seed got infected. We told the company that seed infection is not farmers' fault and we paid to the farmers whatever compensation was adequately due to them. That strengthened our relation with farmers. Now the farmers and the same company are very happy. The farmers came forward to have further contract. When market prices go up, they share 70% crop with the company and take advantage of high market by diverting only 30% of the produce".

CONSTRAINTS IN CONTRACT FARMING

- (i) The existing contract farming arrangements are informal in nature. In case of violation of contract from either side, there is no legal protection.
- (ii) In case of pest attacks and diseases, the contract farmers like all other farmers are often left in the lurch, as the crops are not generally covered by insurance policy.

- (iii) In the absence of adequate access to institutional credit, small and marginal farmers tend to get discouraged to participate in contract farming as their credit needs are not always adequately met by the company.
- (iv) Even though the concerned company tries to ensure the supply of quality seeds to the contract farmers, sometimes the company itself does not have easy access to new technology generated by the agricultural research system, whether ICAR or SAU's. In other words, there is lack of effective linkage between the company and the agricultural research and extension system in matter of technology diffusion. This is crucial for expansion and sustainability of contract farming.
- (v) In some cases, contract farmers seem to have been encouraged to cultivate land much above the ceiling by leasing in land from small farmers. This tends to promote reverse tenancy, thereby alienating the small farmers from land and also preventing them from entering into contract directly with the company.
- (vi) The share croppers and under-ryots who are not generally recognized by the law of most states and do not enjoy security of tenure fail to participate in contract farming. Hence, legalization of tenancy would be necessary for enabling them to participate in contract farming.
- (vii) Unless the small and marginal farmers are organized into self-help groups or co-operatives or associations, their bargaining power vis-a-vis the company will remain weak.

- (viii) Whenever more than one company is involved in contract farming for a particular crop, there is a problem of poaching which affects the smooth functioning of the system.

Policy Recommendations

In view of several observed and perceived benefits of contract farming and the above mentioned constraints, it is necessary to think how such arrangements could be encouraged widely, for different commodities in different regions. The limited commodity - specific experience of contract farming in the country shows that the spread and success of contract farming would require the following conditions to be met:

- i) There should be an institutional arrangement to record/register all contractual arrangements, may be with the local panchayat or some Government machinery. This will promote confidence between the parties and also help solve any dispute, arising out of violation of contract.
- ii) In case of violation of contract from the side of farmers as well as the company, both should be in a position to approach the designated institution, duly empowered by law to mediate and settle the dispute.

- iii) The contract should be managed in a more transparent and participatory manner so that there is greater social consensus in handling contract violation from either side without getting involved in costly as well as lengthy process of litigation. Also the contracts need to be drawn in a more comprehensive and flexible manner.
- iv) The contract farming should have a provision for both forward and backward linkages. Unless both input - supply and market for the produce are assured, small farmers will not be in a position to participate in contract farming.
- v) There should be a bank account for all contract farmers and credit facility should be made available to them. As the payment for contractual produce are made through banks, the recovery of loans will be easier. In fact, there should be a tri-partite agreement between the contract farmers, the company and the bank for this purpose.
- vi) There should be contract farmers' self-help groups or associations or cooperatives at the plant level which will improve their bargaining power vis-a-vis the company and promote equality of partnership for ensuring smooth functioning of any contract farming arrangement. In fact, contract farming may be more beneficial to the farmers if there is farmers' association or cooperative which can even replace the role of middlemen or commission agents who are involved in the marketing of the contract commodities on behalf of the company. The company representatives may also be a member of the executive committee of such cooperatives. In fact, cooperative or joint farming arrangement of small farmers should be encouraged to enable them to reap the advantages of both economies of scale as well as of contract farming.
- vii) The proposed contract crop should have a distinct advantage in terms of relative yield and profit, which will provide higher income to the contract farmers on stable basis.
- viii) The most important thing for the sustainability of contract farming is the selection of appropriate plant variety for cultivation. Unless the plant material is of good quality and high yielding and less prone to pests and diseases, the contract farmers may lose confidence and discontinue the cultivation of the contract crop in question.
- ix) In case of crop loss due to either pests and diseases or adverse weather condition, contract farmers should be adequately covered by crop insurance, for which the premium should be paid equally by the farmers and the company.
- x) There should be a political consensus to promote contract farming. This is particularly necessary for encouraging the multinational companies to enter into contractual arrangements for different agricultural commodities because they often face agitation by some political groups in some parts of the country.
- xi) The Government has to create a conducive policy environment for encouraging national and international companies to promote contract farming by creating an appropriate legal, political and administrative system as well as necessary infrastructure.
- xii) Agro-processing units should be given exemptions or benefit of lower taxes, market fees etc.

- xiii) In order to promote contract farming the Government should identify some commodities in each state for initial exposure and rapid implementation of the concept in collaboration with the participating company.
- xiv) The success of contract farming requires that there should be adequate infrastructure facilities such as roads, public transport, telephones, postal services, stable power and water supplies, godowns, cold storage facilities etc.
- xv) Public research and extension systems would have to be reoriented to cater to the needs of both contract and non-contract farming arrangements. Specifically, the interactive roles of public and private research would be important in developing appropriate crop varieties, cropping patterns and crop rotations in each region, based on agro-climatic considerations.
- xvi) The Government needs to ensure that contract farming, which is generally commodity specific and tends to promote monoculture does not threaten bio-diversity and agriculture ecology in the country. It may, therefore, be necessary to provide necessary guidelines for land use planning in different regions in order to prevent such eventuality.

Contract Farming and Open Lease

The advocates of contract farming have with equal fervour advocated legalization of liberal land leasing on the following grounds-

1. Legalisation of leasing would increase the mobility of people from the rural to the urban areas and improve the availability of land in the lease market, which may improve the poor

people's accessibility to land through leasing. At present legal restrictions discourage the landowners to lease out land (even if there is demand for it) and take up non-farm enterprises which is vital for rural transformation. Legalization of leasing would increase the poor people's accessibility to land, as the large farmers would tend to migrate for taking up non-farm occupation, if there is no risk of losing land because of leasing out.

2. In many areas, restrictive tenancy laws have resulted in landowners leaving their land uncultivated due to the fear that they may lose the land if they lease it out. The lifting of ban on leasing in such cases will result in better utilisation of the available land, fuller absorption of human labour and increased farm output. In addition, it would promote both farm and non-farm development by improving the large landowners' ability and incentive to invest.

The advocates of open lease admit that the legalization of land leasing in areas with poor infrastructure for non-farm development and employment may encourage reverse tenancy, by alienating the marginal farmers from land without having alternative sources of employment and income. It may also lead to the concentration of operational holdings in a few hands, above the ceilings.

The contract farming protagonists recommend:

1. The existing laws governing land leasing in various regions should be reviewed, simplified and liberalized.
2. Land leasing should be made legal in all areas, subject to the provision that the size of operational holding of a farm family should not cross ceiling limits.

3. The clause of adverse possession of land in the land laws of various states should be done away with, as it interferes with the free functioning of land lease market.
4. All cases of land leasing should be properly recorded at the gram panchayat level, which will send details of the lease to local concerned revenue officer for the purpose of record.
5. Leases could be for any duration, namely seasonal, annual or for more years. Also the land owners will have the right of automatic resumption of land after the agreed lease period.
6. All such cultivators who have lease in land even for a season or year should be entitled to access short term bank credit, against pledging of expected output.
7. As far as possible the system of share cropping should be replaced by fixed cash or fixed produce system of leasing which are relatively more efficient.
8. The existing system of regulation of rent by the state should be done away with. In principle the rent should be the market rent, as agreed upon in writing by the lessor and the lessee.

The Tenants' Status

The contract farming version of land-leasing recognises concealed tenants, does not shut its eyes on ground realities and insists on a legalization of tenancy. They are not academics who can afford to shut down to the reality of the share-cropper on the ground. They are fundamentally producers and feeders to processing mills.

They will have to grapple with tenancy once they hit the grounds.

The academic land reformist de-recognises tenancy, in the fair name of personal cultivation and sleeps to the truism of the tenant on the ground. The tenant can be subjected to exploitation and eviction at will but that does not move the academic land reformist, because his book of law does not recognise tenancy. In his zeal to perfect academic notions and first-time goals of self-cultivation, instead of providing safeguards against concealed tenancies and extending same advantages on such tenants as on tenants recorded beforehand, the academic land reformist has played the greatest conceivable bluff on the tenancy question, which is very much alive.

Talking practically, the contract farming champion's urge to get tenancies recorded will fall on deaf ears. Recording is shelved below the carpet in every nook and corner of the country and tenancies remain oral and informal, West Bengal being the lone exception, where too, the recorded tenant will for ever remain short of ownership. Whatever be the apprehensions (loss of ownership or whatever), no body is going to allow the recording of the tenants operating on his lands.

Since recording itself is an impossibility, all the advantages purported to come to contract farming through the recorded channel, will not come. Hence there is no point deliberating on the long list, without any avail. In any case they too do not wish to confer ownership on the tenant. That remains the ground reality in West Bengal but there too contract farming is as yet a non-starter. Hence, where is the guarantee that after liberalizing lease elsewhere, contract farming will usher in?

There are even dangerous signals involved when the contract farm land reformist talks about yearly and seasonal leases on paper and automatic resumption by the land-holder after the agreed lease period. First, no land-holder will agree on recording. Second, this will entitle him to throw away tenants at the expiry of the lease

period officially, curtailing the longer attachment that comes through informal agreements.

How the contract farming community, agro-corporations and multi-nationals are going to deal with the tenants/ share-croppers, has nowhere been clearly or even remotely laid down. Unless it is done, no comments can be made on the role of the tenant in contract farming areas. So much of lecturing on liberalisation and legalisation of the land lease market, and yet, no word on the role and placement and profit-sharing of the share-cropper vis-a-vis the contract between the owner, the agro-corporation and the processing industry.

All this points to some hidden agenda. To avoid opposition from the tenant, there is the advocacy of legalising the tenancy, replacing produce rent by cash-rent (payable, perhaps, by the land-owner out of his profit in contract), providing short term credit to the tenant, and the like. No specific role has been ascribed to the share-cropper in production against a contract, utilization of inputs/ technology provided by the industry, sales and profit-sharing. A sheer recording of tenants, officially, might as well lead to an official ouster, later. Unless the sharing of responsibility and profits is defined in the contract, the share cropper will have to content himself with the charities given by the land-owner.

It is here that contract farming has failed. Either it has to come out openly on the issue of the sharing of responsibilities and profits both by the landowner and tenants, all talk of lease liberalisation will remain a hoax. Second, they may attempt recording of tenants on a limited scale, in the proposed contract area, with the consent of all concerned for contract purposes, till the contract's duration. They should not try to become revolutionary enough to liberalise lease everywhere in the country.

Contract farming, as I see it, is a sharing of profits through a networking of mutual commitments, in pursuit of defined, timed goals. It can succeed in the following farm sectors well:-

- (i) Reverse tenancy areas where large farmers lease in from small farmers.
- (ii) Medium to large plots, not necessarily leasing in from lesser farmers.
- (iii) Farmers with share-croppers, where amicable settlement is to be reached between the share-cropper and the landowner to interact vis-a-vis the industry. Since the contract farming protagonists have already recognised the existence of tenancy as a ground reality, let them draw up a contract, in which a place of pride will be accorded to the tenant along with the landowner - protecting the interests of both reasonably well.

Beyond this starts the dense jungle of land reforms in which the contract farmer theorists need not venture unnecessarily. It will be all the more imprudent on their part if they tie up the success of contract farming on their version of tenancy reforms. If they do so neither they will achieve tenancy reforms, nor contract farming.

BIO DATA

DR. C. ASHOKVARDHAN, IAS



Educational Qualifications

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 (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 to date
- xvi. Secretary, Department of Raj Bhasha, Govt. of Bihar, Patna - 29.1.2002 to 7.1.2003
- xvii. Secretary, Department of Rajbhasha, Govt. of Bihar, Patna- 12.4.2003 to date.

Govt. of India Assignments

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)

- i. Appointed Member of the 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 Deptt. 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.

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

Contributed paper entitled
**"Continuity & Change in Tribal
 Tenancy Laws in Bihar: A
 Review of Transfer Provisions"**.

April, 2000, under the
 Chairmanship of Shri B.N.
 Yugandhar, IAS(Retd.).

- 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"**.

- 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

PUBLICATIONS

A: Books in English

Sl. No.	Title of the Book	Publishers	Year
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	Steel Authority of India Ltd. Bokaro	1987

	Development in Steel Plant		
	Bokaro Steel Plant		
5.	Beyond Survey	Survey & 1987 Settlement Office, Dhanbad	
6.	Political Legacy of the Rigveda	Bharati Prakashan, 1987 Varanasi	
7.	Land Reforms in Kerala: the Myth and the Reality	National Institute 1992 of Rural Development, Hyderabad	
8.	Land Records Management in 14 States of India	- do - 1998	
9.	Tenancy Reforms Re-visited	LBS National 2000 Academy of Administration,	

		Mussoorie	
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.	Readings in Land Reforms	Centre for Rural Studies, LBS NAA, Mussoorie	2003

B. Books in Hindi

1.	cksdkjks bLikr la;a= esa ekuo lalk/ku fodkl	LVhy vkWFkksfjVh vkWQ bafM;k fy-] cksdkjks bLikr la;a=	1990
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- 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 Prize in IIPA Essay Competition, received from Dr. Shankar Dayal Sharma, the then Hon'ble Vice President of India	1989
3.	cksdkjks bLikr la;a= esa ekuo lalk/ku fodkl ¼iqLrd½	Rs. 10,000/-	LVhy vkWFkksfjVh vkWQ bafM;k fy-cksdkjks bLikr la;a=	1990

4.	rFkSo	Rs. 7,000/-	dkfeZd] yksd f'kdk;r ,oa isa'ku ea=ky; ds iz'kkIfud lq/kkj vkSj yksd f'kdk;r foHkkx }kjk yksd iz'kklu vkSj izcU/ku foKku vkfn fo"k;ksa ij fy[kh xbZ ewy iqLrdksa ds fy, ljdkj cYyHk HkkbZ iVs iqjLdkj ;kstuk ds vUrxZr	1992		¼x`g ea=ky;½ Hkkjr ljdkj ¼ia- xksfoUn cYyHk iar iqjLdkj ;kstuk ds vUrxZr½	
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6.	iqfyl nkf;Ro ,oa ukxfjd tkx:drk	Rs. 10,000/-	iqfyl vuqla/kku ,oa fodkl C;wjks	1995		iz'kkIfud lq/kkj vkSj yksd f'kdk;r foHkkx] Hkkjr ldkj dh ljdkj cYyHk HkkbZ iVs iqjLdkj ;kstuk ds vUrxZr ¼1994 ds fy,½	1996
7.	State Papers on Manipur and Tripura	Rs. 15,000/-					
8.	iqfyl iz'kklu esa xq.kkRed lq/kkj	Rs. 5,000/-					
9.	Continuity and Change in Tribal Tenancy Laws in Bihar: A Review of Transfer Provisions	Rs. 10,000/-				Department of Rural Development (Ministry of Rural Areas & Employment) Govt. of India, Nirman Bhawan, New Delhi	1997
10.	mRrj iwohZ	Rs. 15000/-				- do -	2001

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