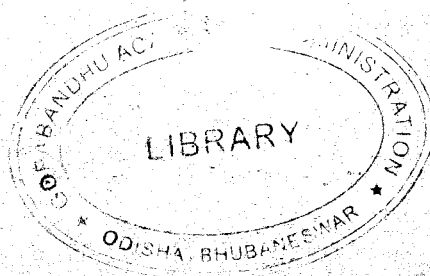




GOVERNMENT OF ORISSA



LAND TENURE AND LAND REFORMS IN ORISSA

1962

BOARD OF REVENUE

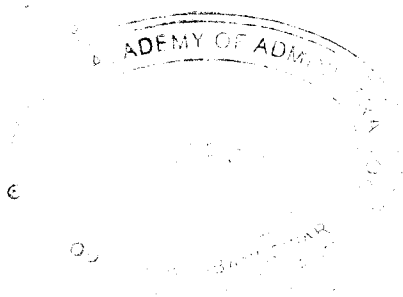
PREFACE

Since 1937 when popular Ministries assumed office, the Government policy has been to make the land more productive, and the rural economy dynamic. With this end in view a number of tenancy and reforms legislations affecting rights in land have been passed. The pattern of agrarian economy and social relationship have been changing somewhat rapidly since 1937 after a long period of stagnation. A number of revolutionary measures of land reforms are now under contemplation. The Province of Orissa was created in the year 1936. Its size was almost doubled by the integration of 24 princely States in 1948 and 1949. Organising a uniform system of revenue administration capable of handling the reforms measures that have been introduced and are yet to be introduced has always been a difficult task because of the multiplicity of tenancy laws in force in different parts of the State. Those who are engaged in the field in the implementation of various reforms measures both administrative and legislative should have knowledge of the background history leading to the existing systems of land tenure so that the implications of these reforms can be better appreciated. This book is an attempt to meet this need.

B. K. MISHRA

Director of Land Records and Surveys, Orissa

CUTTACK
The 8th July 1962.



CONTENTS

CHAPTERS	SUBJECT	PARAGRAPHS
I	Introductory ..	1-2
II	Growth of the zamindari system ..	3—13
III	Brief history of different land revenue systems as they existed in 1937—	
	(a) Bihar and Orissa system—	
	(i) Coastal districts of Cuttack, Puri and Balasore. ..	14—41
	(ii) Districts of Angul and Khondmals ..	42—47
	(iii) Sadar (excluding Mahadevpalli Police-station) and Bargarh sub-division of Sambalpur district	48—68
	(b) Central Provinces system (Mahadevpalli Police-Station of Sadar subdivision of Sambalpur district and Nawapara subdivision of Kalahandi district).	69
	(c) The Madras system—	
	(i) Zamindari tracts ..	70—85
	(ii) Ryotwari tracts ..	86—99
	(iii) Inam lands ..	100—106
	(iv) Agency tracts ..	107—126
	(d) Ex-States ..	127—168
IV	Change in the policy of Land Revenue Administration, 1937—47. ..	169—234
V	On the eve of zamindari abolition, 1948—51. ..	235—265
VI	Abolition of intermediary interests, 1952—62. ..	266—363
VII	Abolition of part-time collection agents, 1952—62 ..	364—371
VIII	Tenancy Reforms, 1952—62 ..	372—377
IX	Comprehensive land reforms ..	378—388
X	Survey Settlement and Land Records ..	389—411

CHAPTER 1

INTRODUCTORY

Prior to 1st April 1936, the date on which the Province of Orissa was created, the districts of Cuttack, Puri, Balasore, Sambalpur and Angul as they existed on the 31st March 1936, formed the Orissa Division of the Province of Bihar and Orissa. Sambalpur had originally been a part of Bengal till 1862 when it was transferred to the Central Provinces. In 1905 it was retransferred to Orissa Division of the then Bengal Presidency. The present districts of Ganjam and Koraput and the Balliguda subdivision of Boudh district which had been a part of the Madras Presidency were transferred to Orissa on the 1st April 1936. Similarly the Khariar ex-Zamindari and the Mahadevpalli Police-station were transferred to Orissa from the Central Provinces and Berar on the 1st April 1936. On the 1st January 1948, 25 princely States (twenty three belonging to the Orissa States Agency and the remaining two, to Chhatishgarh States Agency) were merged in Orissa. Two of them, namely, Seraikella and Kharswan were subsequently transferred to Bihar. The princely State of Mayurbhanj merged in Orissa on the 1st January 1949. The State as it stands now has thirteen districts.

2. Because of the association of different parts of the State with different Provinces when the present administrative set up started growing, different Revenue Laws operate in different parts of the State. This diversity has further been aggravated by the fact that special provision has always been found necessary for the large population of Scheduled Castes and Scheduled Tribes. Each of the princely States had its own system of revenue law, the administration generally depending on its local and financial circumstances. Thus, the districts of Cuttack, Puri and Balasore (excluding the Athgarh, Nayagarh and Nilgiri subdivisions which have been formed of Ex-states only) have the pattern of revenue administration prevalent in Bengal. The districts of Ganjam and Koraput and the Balliguda subdivision of Boudh district have the Madras pattern of administration. The Bargarh and Sadar subdivisions of Sambalpur district (excluding the Mahadevpalli Police Station) have the pattern of administration as was prevalent in the Central Provinces and Berar in 1905. The Khariar ex-Zamindari and the Mahadevpalli Police station have the pattern that was prevalent in the Central Provinces and Berar in 1936. Each Ex-state has its own pattern. The Angul and Khondmals subdivisions each defined as a district in the Angul Laws Regulation, 1936 and Khondmals Laws Regulation, 1936 respectively were partly Excluded Areas under the Government of India Act, 1935 and the system of revenue administration there which is simple, has been defined in the respective Regulations. The "Agency Tracts" in Ganjam, Koraput and Balliguda had a completely different pattern of administration as defined in the Ganjam and Vizagpatam Act, 1839. This was so in view of the fact that the population of these tracts is overwhelmingly tribal and as such the problems were special and peculiar. Thus, there are as many as 32 different laws and administrative systems governing the land rights therein in the State and sometimes even single subdivisions (e.g., Athgarh) which contain more than one ex-state have more than one revenue law. This fact has made the land revenue administration of the State very complicated-perhaps the most complicated in India-especially because, in certain areas like some of the ex-states there is no systematic and codified law to administer and most of the work there is done on conventions and usage. It will be worthwhile to mention briefly the history of some of the more important systems for a proper appreciation of the problems that have confronted the administration in the matter of introducing land reforms.

CHAPTER II

GROWTH OF ZAMINDARY SYSTEM

3. Before attempting to trace the history and development of different revenue systems prevalent in the State, it is necessary to mention, in a nut-shell in this chapter, the growth of Zamindari system. For, this system formed the basis of revenue administration throughout the British period and had so much impact on the agrarian economy of the country that its abolition had always been considered as the largest single and the most urgent item of land reforms of the present century.

4. The Hindu system of revenue administration involved a close scrutiny and local knowledge with its inevitable checks and counter-checks easy to be enforced by a hereditary prince. It had thus little use for an intermediate class of proprietors interposed between the State and the cultivator. The Muslim invasion of India began in the eleventh century and their settlement in this country started in the nature of a military colony. Being foreigners by birth, by religion and by language, and being constantly engaged in war, the Muslim rulers found it impossible to continue a system that demanded close and constant supervision. They naturally preferred a system of intermediate land-holders who having both power and influence, would take the trouble of enforcing the revenue demand against individuals. In the Hindu Officers, they found such a body of persons. Thus, the persons, who under the close watching eye of a Hindu Raja were only public servants acquired under the Muslims a fixity of office and a great degree of power, prestige and independence of action that prepared the way for their development into landed proprietors in the British period. In the upkeep of a magnificent court, the Muslim rulers were perpetually in need of money, with the result that the revenue demand went on increasing so as to meet the increased expenditure of the Sovereign. The newly-created landed proprietors then found it convenient to farm out their entire "estates" or parts thereof—a natural corollary of the system of landed proprietorship—thereby getting rid of the annoying job of enforcing the revenue demand against a large number of cultivators. The Muslim conquest thus led to the system of intermediate land holders and of farmers and renters. At the British conquest, this system was naturally found to be more developed in the areas that had come under the Muslim rule earlier and continued as such for long.

5. The association of the East India Company with the revenue administration of the country began with what is commonly known as the grant of Dewani of Bengal, Bihar and Orissa on 12th August 1765. It must be clarified here that only a part of what is now the Midnapore district of West Bengal constituted the "Orissa" comprehended in this grant, the major portion of Orissa as it stands now coming under British control only in the beginning of the 19th century. And yet, because of its long association with Bengal thereafter, the system of revenue administration in the northern districts was the same as was prevalent in Bengal. It will therefore be worthwhile to briefly mention here the development of Zamindari system in Bengal for a proper appreciation of that system as it prevailed in Orissa.

6. The grant of Dewani was nothing but a grant of right of civil and revenue administration of Bengal, Bihar and "Orissa" in return for an annual payment of Rs. 26 lakhs to the Emperor, Shah Alam. This theoretically meant that the Company became the representative of the Central Government and acquired the right to collect revenue from these provinces though the executive and

judicial administration remained with the Nawab. The Nawab also received an allowance of Rs. 50 lakhs a year as necessary expenses of the administration, and for the maintenance of his position; and the Company had to defray the cost of its military establishment from its general revenues. In fact this arrangement made the Company the virtual ruler of these provinces.

7. For some years the Company maintained the revenue system which it had taken over and continued to collect the revenue through Naib Dewans. This was mainly because the Company's servants had no knowledge or training to run the administration and some breathing time was necessary before any change could be thought of. In 1769, suspecting a defalcation by the Naib-Dewan and his employees, supervisors were appointed for the first time "to compile a summary history of the ancient constitution as compared with the present, and to draw up an exhaustive report on the state, the produce and capacity of lands, to ascertain the amount of revenues, the cesses or arbitrary taxes, and all the demands whatsoever which were made on raiyats; and prepare a rent-roll from the time of Suja Khan onwards". Two councils were appointed to control the work of supervisors, one at Murshidabad for Bengal and the other at Patna for Bihar. The work of the supervisors was very difficult indeed and the disastrous famine of 1770 that is said to have swept away one-third of the population and thrown a large part of the Province out of cultivation added to the difficulty. It was but natural in these circumstances that the supervisors completely failed to make the enquiries expected of them. In 1772, the Court of Directors decided to go in for direct collection by completely eliminating the Naib-Dewan (and naturally all others of the old order) and a Committee of Circuit replacing the supervisors was appointed to tour the Province and make settlements by auction to the highest bidders for a period of five years.

8. This new system of auction to the highest bidders was doubly injurious to those who for generations (since the beginning of Muslim rule which commenced fairly early in Bengal) lived on the land as zamindars and farmers. For, in their anxiety to retain their "Property", they had to bid up to a higher revenue than their estates could bear. Speculators naturally stepped in and in many cases, overbid the existing zamindars and farmers and could only realise the stipulated revenue by squeezing the last pie out of the raiyat. In these circumstances arrears accumulated and the decreasing collection of revenue alarmed the authorities. Passed in this back ground in 1784, the Pitt's India Act, therefore, required the Court of Directors "to give orders for settling and establishing upon principles of toleration and justice, according to the laws and constitution of India, the permanent rules by which the tributes, rents and services of Rajas, Zamindars, Poygars, Talukdars and other native land-lords should be in future rendered and paid to the United Company". In order to carry out the purposes of this provision of the Act, investigation through Collectors were conducted. Because of complete absence of map and records of the areas and rent of individual holdings, it was but natural that such investigation yielded unsatisfactory results. Howsoever sincere an effort might have been, nothing better could perhaps have been possible under the prevailing circumstances. Thus, the essential prerequisites of a raiyatswari settlement being absent, there was the necessity to find out an agency to be entrusted with the collection of revenue on contract or commission. The only practical alternatives were to collect the revenue through the zamindars, who had hereditary connection with particular areas and who had carried out that duty for previous Governments or to appoint an entirely new set of professional tax-collectors. The latter

system had been tried between 1770 and 1775 and had completely failed. Lord Cornwallis and his advisers therefore preferred to entrust the work to the zamindars partly because the Parliament directed that full weight to the claims of proprietary right should be given and partly because they thought that the zamindars would be a more popular and considerate agency on account of their hereditary relations with the cultivators. And once this policy had been decided, the only question was whether there should be a permanent or a temporary settlement. The primary object of the East India Company was to safeguard the punctual receipt of land revenue. For this purpose, expansion of cultivation was indispensable. And it was thought that this object could be achieved only by giving all people interested in the land down to the actual cultivator, a sense of security based on a well-founded belief that it would be they and not their supervisors, whether the State or the landlord, who would reap the benefit of their industry and enterprise. Lord Cornwallis, the Court of Directors and the British Parliament were so much impressed with this idea that they thought of nothing but the Permanent Settlement as the real solution of the problem. And therefore, the Bengal Permanent Settlement Regulation of 1793 was passed and estates were settled with zamindars.

9. The northern districts of Orissa came under the Company's rule only in 1803, and the administration did not wish to rush in for a Permanent Settlement before making a study of the agrarian conditions. And by the time such a study was considered to have been completed, the wisdom of a Permanent Settlement (about which there was never unanimity of opinion among the administrators) was seriously called into question. The temporary settlement therefore took its place in the northern districts of the State. Details about this will be found in the next Chapter.

10. The southern districts of Ganjam and Koraput formed a part of what is known as the "Northern Sirkars" which came under the Muslim rule somewhat earlier than the rest of South India and where it lasted longest. In the whole of South India therefore the zamindari system was best developed in these tracts, and the zamindars here were the most powerful. When therefore the Northern Sirkars came under the dominion of the East India Company it had no other alternative than to continue the *status quo* of these powerful zamindars and formally entrusted the collection of revenue to them by giving leases either for a year or for a term of three or five years. In some cases, particularly in cases of * Haveli lands, farmers were also appointed for collection of revenue.

11. After introduction of the permanent settlement into Bengal, the Government of Madras was asked in 1796 by the Court of Directors to make preliminaries for the introduction of that system in Madras. The suggestion did not however find much favour with the local officers who thought that except with regard to its application to the Northern Sirkars which had long been under the zamindars there was no scope for its application anywhere in Madras. But the Court of Directors were at that time very much in favour of the introduction of this system throughout the Madras Presidency and therefore the Governor-General went so far as to proclaim that any public servant who was unwilling or incapable of carrying out the orders for introduction of Permanent Settlement throughout the Madras Presidency would be removed

* Lands which consisted of the demesne or household lands of the Sovereign and districts near to towns resumed by the Muslim rulers and appropriated to the peculiar support of its garrison and its establishment.

from office. The Madras Permanent Settlement Regulation, 1802, was then passed for carrying out the orders for introduction of permanent settlement and the Northern Sirkars were the first to come under its operation before the system received a set back in 1806.

12. Under the permanent settlement, zamindars and other land-holders having individual claims to their estates were confirmed in their respective possession in perpetuity. Even the lands which were in immediate possession of Government were parcelled out in convenient sizes and were given to the highest bidders in permanent settlement. By this process, the entire district of Koraput and a fairly large portion of the district of Ganjam came under permanent settlement.

13. It is unnecessary at this distant date to enter into the controversy as to whether the information available at the time of permanent settlement was sufficient to justify the making of such a settlement or whether the settlement was made with right persons. But this much is definite that as much as ten-elevenths of the gross assets of each estate (as could then be ascertained) was fixed as the revenue payable to the Government and that the effect of the settlement was to level, under the same denomination, all classes of persons claiming and believed to have, proprietary right in the soil.

CHAPTER III

BRIEF HISTORY OF DIFFERENT LAND REVENUE SYSTEMS, AS THEY EXISTED IN 1937

(a) The Bihar and Orissa systems

(i) THE COASTAL DISTRICTS OF CUTTACK, PURI AND BALASORE

14. An area of 168 sq. miles at the extreme north end of the Balasore district was originally a part of the district of Midnapore (Bengal) which was ceded to the East India Company as early as 1760 along with Burdwan and Chittagong. This part therefore came under the permanent settlement. The remaining area of the three districts of Cuttack, Puri and Balasore as they stood on the 1st April 1936 (excluding Banki) came under British control in 1803. Banki came under British control in 1840 and has since then been continuing as a Government estate. After 1803 various estates' Regulations were passed by which permanently settled status was granted to the Zamindars of the ancient Killas which lay on the sea coast or bordering on the "Tributary Mahals" (ex-states). More important of these permanently settled estates were Kanika, Aul, Kajang, Harishpur, Manichpur, Darpan, Sukinda and Khurda. The Jagir Mahals including Parikud (situated in the Chilka lake) were also confirmed revenue-free in perpetuity. Khurda was later resumed as a result of the revolution of the Raja and became a Government estate out of which the Ekharajat Mahal, a revenue-free estate covering an area of 105 sq. miles was carved out in pursuance of orders passed in 1858 and 1863 to provide for the up-keep of Shri Jagannath temple at Puri. The rest of the area covered by the three districts (excluding ex-states) was not brought under permanent settlement, but was subjected to annual or triennial settlements until 1822. By then, the idea of permanent settlement had been abandoned. A settlement for five years was therefore made in 1822. This was later extended until the completion of the first detailed revenue settlement of 1834-43 (with a survey and record-of-rights). The revenue was then settled for a period of 30 years from 1837. As the expiry of the term of this settlement coincided with the terrible famine of 1865-66, the settlement was extended for a further period of 30 years.

15. The early Regulations provided for the investigation of all claims to hold land revenue-free. In the settlement of 1834-43 systematic proceedings were undertaken to decide these claims and those found valid were confirmed in perpetuity and came to be known as revenue-free estates. The class of tenants known as Bajyastidars originated in the failure of some of these claims, the land being then resumed and where they were of small extent, placed under the adjoining temporarily settled estates.

16. In Chapter II mention has been made of the investigation into agrarian conditions prior to introduction of permanent settlement. The investigation under the then prevailing circumstances was so perfunctory that it did not supply sufficient information for positive legislation in the matter of protecting the actual cultivators from oppression and in securing for the zamindars sufficient rights for realisation of their legitimate demands. But the Permanent Settlement Regulation, 1793 would have been incomplete without some provision in that regard. It therefore provided in section 7 that the zamindars should "conduct themselves with good faith and moderation towards dependent talukdars and raiyats". In section 8 of the same Regulation, it was provided

that "it being the duty of the ruling power to protect all classes of people and more particularly those who from their situation are most helpless, the Governor-General-in-Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of dependent talukdars and raiyats and other cultivators of the soil". And finally, section 67 of the Bengal Decennial Settlement Regulation, 1793 provided that proprietors should be bound by the restrictions in their *Kabuliyat*, the ninth clause of which was that, "implicit obedience be shown to all Regulations which have been or may be prescribed by Government concerning the rents of the raiyas and the collections from under-tenants and agents of every description as well as from all other persons whatever." Similarly provisions were made in respect of proprietors of temporarily settled estates and commitments secured from them mainly in the *Kabuliyats* executed by them at the time of each settlement. It is these factors that have been the basis of all subsequent tenancy legislation. And it will not be out of place to mention here that all such legislations had two and only two objects in view (as originally contemplated with the idea of permanent settlement—the basis of Zamindari system) and they were protection of the tenants and security of the landlord in enforcing the rent demand.

17. It was originally expected that the aforesaid two objectives could be achieved by exchange of *Pattas*, and *Kabuliyats* between the proprietor and the raiyat. Provisions for such exchange and consolidation of rent demand were made in sections 54, 55 and 59 of the Bengal Decennial Settlement Regulation, 1793. Section 62 of the said Regulation further provided that the proprietors were bound to appoint Patwaris whose duties would be to maintain rent account of raiyats. The hope that this process would result in the creation of a record-of-rights for the proprietor and raiyats was doomed to early disappointment. As early as 1812, it was officially confirmed that these provisions of the Regulation were a dead letter.

18. Though Government depended on the magnanimity of the proprietor for creating a record-of-rights of his raiyats, that is to say, a record of his own obligations, they had passed the Regulation VII of 1799 giving the proprietors practically unrestricted powers to distrain the crop, cattle and other personal property of the raiyat and in certain cases, to arrest him for arrears of rent, without reference to any court. All these drastic powers were given to him perhaps with the presumption that he would use them very sparingly. For, at that time, there was more land than raiyats to cultivate it and nobody could believe that it would pay a proprietor to drive his raiyat to despair. But the actual working of the Regulation in Bengal belied these expectations and therefore Regulation V of 1812 removed the power of arrest, the power of distraint still remaining. The competition in those days was not for land but for persons to cultivate it. Consequently, if the raiyats withheld their rents, the proprietor was unable to pay the revenue equal to ten-elevenths of his total assets. That is how more than half the estates were sold for arrears of revenue, many of the big Zamindaries dismembered, most of the original Zamindars reduced to poverty and many new Zamindars came and these persons—generally speculators having no traditional connection with the raiyats strained these laws to the utmost for timely recovery of their rents. The Orissa Zamindaries and the Orissa raiyats did face similar calamities, but there was no help. And be it mentioned here that the idea of distraint was completely foreign and as the Rent Law Commission of 1880 put it, it was a mere "offset of English Law".

19. A Select Committee appointed by the House of Commons in 1808 to go in to the affairs of the East India Company produced, in 1812, five reports on the subject, the fifth one dealing with the revenue administration of Bengal. In spite of the very unsatisfactory position of the raiyat because of the provisions relating to distraint and arrest, the Committee was of the view that the Zamindari system and the Regulations passed to govern it had been working satisfactorily. This mistake was however realised by the Court of Directors who recorded a despatch in 1819 adding "however well-intentioned for this purpose, our Regulations under the permanent settlement have not been effectual to it. It is clear that the rights which were actually recognised to exist in that class by the enactments of the permanent settlement were not intended to trench upon the rights which were possessed by the raiyats". This view very much influenced the Land Revenue Settlement Regulation VII of 1822 which defined the procedure for making temporary settlements. This Regulation provided for fullest enquiries into the rights and conditions of tenure of the raiyats and therefore when the temporary settlement of the estates (to which the Permanent Settlement Regulation, 1793 was not intended to apply) was taken up between 1834—43, it had to be preceded by a survey and an enquiry as to individual rights. This principle was always followed at every subsequent settlement of temporarily settled estates. To some extent, this provision secured to the raiyats effective enjoyment of their rights. But nothing had yet been done for the raiyats of the permanently settled estates. In 1824, the Court of Directors sanctioned a proposal to make survey and record-of-rights of the permanently settled estates of Bengal as being the only means of defining and maintaining the rights of the raiyats. Another Select Committee set up by the House of Commons in 1830, after going into the details of the case observed that "in the permanently settled districts, nothing is settled, and little is known but the Government assessment", and they ascribed this lack of information to the "error of assuming that the rights of parties claiming an interest in the land were sufficiently established by the custom and usage of the country to enable the Courts to protect individual rights". They pointed out that no measure had been taken to limit or define the demand of the Zamindars on raiyats who possessed a *hereditary right of occupancy* and they made the interesting suggestion that Government might acquire Zamindaries by private or public purchase in order to protect the raiyats' rights provided that the outlay involved was not so great as to prevent the working of the scheme. In spite of this revealing report of such a responsible committee and in spite of the order of the Court of Directors, it took more than sixty years to undertake a survey and record-of-rights operation in the permanently settled estates and the raiyat had to suffer all the time for this inordinate delay.

20. It was but natural in these circumstances that agrarian discontent appeared. In 1857, a Bill was therefore introduced which was originally intended to amend the law relating to the recovery of rent. But during the progress of the Bill, substantial additions were made with the result that the Act which finally emerged—the Rent Act X of 1859—contained for the first time a definition of the right of occupancy, and laid down the law for the landlord and tenant. Until this Act was passed, the raiyats were undoubtedly left to the mercy of the Zamindars and failed to obtain from them any reasonable treatment. As a matter of fact, they had been rack-rented, impoverished and oppressed.

21. Being the first attempt at defining the rights of landlords and tenants, the framers of which did not have sufficient materials at their disposal for the drafting of a law of this type, it was but natural that there were a large number of loopholes in this Act, and judicial decisions on various provisions of the Act, particularly on the right of occupancy, clearly brought out within a few years of the passing of the Act that the benefits it intended to confer were not actually available. Agrarian discontent in Bengal grew serious and for some years, the amendment of the Rent Act became the main subject of discussion and agitation.

22. In 1880, therefore, the Rent Law Commission was appointed. It prepared a draft Tenancy Bill which formed the basis of the Bengal Tenancy Act, 1885. As far as possible, it removed all the defects of the Rent Act known till then, and removed the long-felt need for a self-contained agrarian code for the Province. But curiously enough, this entire Act was not made applicable to the districts of Orissa. The extension of the Act to Orissa was made piece-meal in and after 1891, and therefore, the Rent Act, 1859 so far as it was not inconsistent with these extended provisions of the Bengal Tenancy Act continued to be in force in Orissa.

23. The revenue settled in 1837 was due for a revision in 1897. The settlement operations ordered in 1890 were concluded in 1900. This is generally referred to as the Provincial Settlement, or the Maddox Settlement after Mr. S. L. Maddox, the then Settlement Officer. In course of this Settlement, detailed enquiries about different rights in land were conducted and the effects of the working of the Bengal Tenancy Act certain sections of which had been made applicable to Orissa were carefully gone into. It was then found that a very far reaching change had been effected in the tenancy relations by extension of the principle that the possession of the same land for twelve years should automatically confer a right of occupancy. Though this principle appears to have crept into the Rent Act of 1859 as a mere after-thought, it continued to hold the field in all subsequent legislations. The Bengal Tenancy Act, 1885 extended this principle much further by providing that any person who has continuously held land as a raiyat in any village for twelve years becomes a "settled raiyat" of the village and that every settled raiyat has a right of occupancy in all lands for the time being held by him as a raiyat in that village. This part of the Bengal Tenancy Act was extended to Orissa in 1891. Many of the other important sections of this Act were also extended to Orissa by various Government notifications between 1891 and 1896, that is, during the period in which the Provincial Settlement operation was in progress. Thus, the raiyat obtained, for the first time, the benefits of the statutory recognition regarding accrual of occupancy right : occupancy raiyats were protected from ejectment for arrears of rent and from enhancement of rent beyond certain limits, they were given the right to apply for commutation of produce rents, the rights of non-occupancy raiyats were also placed on a definite footing and the power of landlords to oust them and to enhance their rents was limited, the granting of proper rent receipts was made obligatory and all tenants were given the right to pay rent into Court. In 1906, that is, in the beginning of the Revision Settlement, the sections of the Bengal Tenancy Act about proprietors' private lands and those about appointment of Common Managers were extended to Orissa presumably on the recommendation of the Settlement Officer.

24. Thus the bulk of the substantive law of landlord and tenant applicable to Bengal and Bihar had been extended to Orissa before the Revision Settlement. But some of the provisions of the law introduced were, in certain important respects, ill-adapted to local conditions. For example, there was no recogni-

tion of Bajyafidars and sub-proprietors. In Act X of 1859 and the connected Acts a very large number of defects and omissions had already come to notice. More especially the provisions relating to the sale of tenancies were found to be inadequate. Provisions of law on important subjects like—

- (i) making of improvements,
- (ii) the acquisition by landlord of a portion of a holding for building or other purposes,
- (iii) the surrender and abandonment of holdings, and
- (iv) contract and custom,

either did not exist or were ineffective. All these defects were brought out in the elaborate enquiries that were conducted by Mr. S. L. Maddox during the Provincial Settlement and by Mr. James during the Revision Settlement. The formation of a separate Province of Bihar and Orissa therefore brought into prominence, the need for a self-contained agrarian code for Orissa. The objects and reasons of the Orissa Tenancy Bill were stated as follows :—

- (i) to consolidate, simplify and re-arrange the greater part of the statute law relating to landlord and tenant,
- (ii) to restore to holders of sub-proprietary interests and of resumed (Bajyafiti) revenue-free lands the position which they held for nearly a century before the extension of certain provisions of the Bengal Tenancy Act, 1885 to the said districts (Cuttack, Puri and Balasore),
- (iii) to secure raiyats in the enjoyment of their existing rights, both statutory and customary,
- (iv) to make a definite extension of the area held as private lands by proprietors and sub-proprietors in consideration for the security of tenure to be afforded to their tenants in lands reclaimed from waste,
- (v) to improve the procedure for the recovery of rents due to proprietors and sub-proprietors,
- (vi) to remove ambiguities, defects and anomalies which are known to exist in the present law, and
- (vii) to prevent encroachment of lands over which communal rights exist.

✓ 25. The Orissa Tenancy Act came into force on the 12th September 1913 and clearly defined the rights and obligations of all types of tenants and made more or less complete provisions on all matters governing tenancy relations.

26. At this time the permanently settled as well as the temporarily settled estates other than the Khasmahals (Government Estates) which were very few in number were held in proprietary right by persons other than Government. The main tenure was thus the proprietors known as Zamindars. Under them came the persons who once held villages as village head man, namely the Mukadams, Sarbarakars and Pradhans. These persons were popularly known as sub-proprietors paying their revenue through the Zamindars. They were statutorily recognised for the first time in the Orissa Tenancy Act, 1913.

Act does not contain any provision to govern their relation with Government which is governed by the Settlement Regulations and laws of Bengal and Kabuliyats executed by them at the time of Settlement under the provisions of these laws.

27. The Orissa Tenancy Act, 1913 defines a "tenant" as one "who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person". Following the principles of the Bengal Tenancy Act, it divides tenants into four classes, namely:—

- (i) tenure holders including under-tenure holders,
- (ii) raiyats,
- (iii) under-raiyats, that is to say, tenants holding, whether immediately or mediately under raiyats, and
- (iv) Chandnadars.

The last category of tenants was peculiar to Orissa. It further divides raiyats into the following classes, namely:—

- (a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity, or at a rate of rent fixed in perpetuity,
- (b) occupancy raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and
- (c) non-occupancy raiyats, that is to say, raiyats not having such a right.

28. The origin of any agricultural tenancy could either be for the purpose of personal cultivation or for the purpose of getting the land cultivated by others. In order to distinguish between these two categories of tenancies, the law more or less repeats the provisions of the Bengal Tenancy Act by laying down that a tenure-holder means primarily a person who or whose predecessor-in-interest has acquired from a proprietor or from another tenure-holder a right to hold land for the purposes of collecting rents or bringing it under cultivation by establishing tenants on it and a raiya means primarily a person who or whose predecessor-in-interest has acquired a right from a proprietor or a tenure-holder to hold land for the purpose of cultivating it by himself or by members of his family or by hired servants, or with the aid of partners. Thus, a person holding land under a proprietor or under a tenure-holder could be either a raiyat or a tenure-holder. The law therefore postulates that such a person holding more than 33 acres of land shall be presumed to be a tenure-holder until the contrary is proved, though in finally deciding the real status of a tenant, local custom, the purpose for which the right of tenancy was originally acquired and the subsequent conduct of the parties would also be relevant. In other words, the law made a presumption that larger holdings were not *prima facie* meant for personal cultivation. This was undoubtedly a correct view of the tenancy system which then suffered from a stagnant agricultural economy coupled with very old agricultural practices. This provision gave substantial rights to the lessees or persons who held large holdings, because these holders could be treated as tenure-holders, and the lessees could then be treated as raiyats and the twelve-year rule would give them the very valuable right of occupancy. This provision which contained the very germs of the present day ideas of "Land to the actual tiller" led to the inevitable result of creating a very large number of subinfeudations under the proprietors and very much complicated the land tenure system in these districts.

29. It is significant to note that a sub-proprietor pays his revenue through another proprietor and as such there is not much distinction between a tenure-holder and a sub-proprietor excepting that a sub-proprietor (if he is not a Tanki Baheldar) could hold private land with the advantage of banning the accrual of occupancy right of any tenant on it. The tenancy of a tenure-holder (including a sub-proprietor) is transferable without landlords consent excepting in case of Sarbarkars and all tenure-holders other than those recorded as Shikimi Kharida, Khardia, Jamabandi and Bajyftidars. A fee is payable to the landlord for recognising the transfer in other cases. In all cases mutation fee is payable for registration of transfer in landlords papers.

30. The provisions of the law left scope for existence of temporary tenure-holders, that is farmers of rent for fixed periods though almost all tenures have in practice, been hereditary. In some cases of Sarbarkar sub-proprietor in Puri it was however being contested as late as 1930 by their proprietors that they were merely temporary in character.

31. Raiyats holding at fixed rates are found either in permanently settled estates or in revenue-free estates. They are treated as tenure-holders for purposes of transfer and succession. Their number is very few.

32. About 90 per cent of the persons holding interest in land are raiyats with right of occupancy. The stagnant agricultural economy had at least one good point in it, namely that it did discourage speculation in land and thereby tended to keep the raiyati interest in the lands of a village limited to inhabitants of that village, thereby giving to the people who actually cultivated the land, the full benefits of the rule that a settled raiyat acquires right of occupancy in all the lands he holds as a raiyat in the village. This rule is not however applicable to lands not included in any revenue village. To acquire right of occupancy over such land, the leasee must hold it under a proprietor or under a tenure-holder for a continuous period of 12 years provided that the accrual of right of occupancy is not barred by any contract. All these provisions were based on similar provisions of the Bengal Tenancy Act and had been extended to Orissa long before the enactment of the Orissa Tenancy Act. There was however one lacuna before the Orissa Tenancy Act came into force. The failure to extend the provisions of the Bengal Tenancy Act relating to prohibition of barring right of occupancy by contract or custom had created an intolerable situation and the landlords were freely adopting the device of getting *Kabuliyats* from their raiyats barring the accrual of such right on all kinds of lands and thus the benefits of the twelve-year rule could not be fully realised by the tenants especially where land-lords were powerful until the Orissa Tenancy Act, section 232 of which made complete and adequate provisions to meet such a situation, came into force. A new provision which was not there in the Bengal Tenancy Act but is in the Orissa Tenancy Act was that the consent of the landlord to the reclamation by a raiyat of any waste land not included in his tenancy is to be presumed if the tenant is in cultivating possession of such land for four continuous years and if in the meantime the landlord has not applied to the Collector for his ejectment. This provision was made in order to safeguard the interests of genuine tenants as it was found in course of the revision settlement operation of 1906—12 that a large majority of landlords was opposing reclamation of waste land by tenants where such reclamation had been made, and were thus endeavouring to deprive the cultivators of the fruits of their labour. The law further provided that such raiyats (who in almost all cases would get right of occupancy in the land so reclaimed by the operation of the twelve-year rule) could approach the Collector for settling a fair rent for the reclaimed land.

33. A raiyat with right of occupancy has to pay rent at fair and equitable rates, the rent paid for the time being being presumed fair and equitable until the contrary is proved. For arrears of rent, the landlord has the power to bring a suit. The rent of an occupancy raiyat can be enhanced by a contract up to 12½ per cent. Once enhanced in this way, it cannot be enhanced again for a period of 15 years. It can also be enhanced by order of a Court on a suit brought by the landlord on the ground of rise in prices or that it is too low or that the productive power of the land has been increased by fluvial action or by improvements effected by the landlord. A reduction can be claimed by the raiyat on the grounds of deterioration of the soil or fall in the price. The raiyat has prior right to effect improvements to his holding in any manner he likes provided that such use does not render the land unfit for the purposes of the tenancy. The landlord can eject an occupancy raiyat from his holding only in execution of a decree passed on the ground that—

- ✓ (a) he has used the land comprised in the holding in a manner which renders it unfit for the purpose of the tenancy, or
- (b) he has broken a condition consistent with the provisions of the Act and on the breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

34. The right of the occupancy raiyat to transfer his holding was clearly defined so far as temporarily settled estates were concerned and the law provided that on payment of 25 per cent of the consideration money to the landlord the transfer could be recognised by him. The case of raiyats in permanently settled estates was excluded from the operation of this provision of the law and was left to the custom. Rights over trees on raiyat's holdings were left undefined and were to be exercised according to the custom. The law also provides for commutation of produce rent either on application of the landlord or the raiyat and defined in some detail the principles to be followed by the Court in desposing of applications for commutation.

35. Raiyats not having a right of occupancy in their holdings are defined as non-occupancy raiyats. Such a raiyat is liable to pay such rent as might have been agreed on between himself and his landlord at the time of his admission as a tenant. The rent can be enhanced by a registered agreement. An ejectment suit can be brought by the landlord for failure of the raiyat to agree to an enhancement of rent and the raiyat can either face the ejectment or agree to the enhancement. He can also be ejected for—

- ✓ (i) failure to pay arrears of rent,
- ✓ (ii) reasons for which an occupancy raiyat can be ejected, and
- ✓ (iii) the reason that the term of the lease (if such lease is registered) has expired.

Harsh as they might appear, these provisions do not affect many people because more than 90 per cent of the land is held by occupancy raiyats.

36. Persons holding lands either mediately or immediately under raiyats are defined as under-raiyats. They usually paid rent in kind. An under-raiyat is not liable to be ejected except—

- (i) on the expiration of the term of the written lease, if there be any, or
- (ii) where holding otherwise than under a written lease, at the end of the agricultural year within which a notice to quit has been served upon him not less than six months before the end of the year.

These persons were thus treated as temporary lessees having no right worth the name.

37. The homestead of agricultural tenants were generally included in their holdings. The non-agriculturists like shop-keepers, agricultural labourers etc., who do not possess any agricultural land are known as Chandnadars from time immemorial. The Bengal Tenancy Act which was essentially a law for defining the rights and liabilities of agricultural tenants did not make any provision for defining the rights and liabilities of the non-agriculturists in their homesteads. Consequently the incidents of these tenants were governed by contract. The Orissa Tenancy Act recognised them as a class of tenants and defined them as persons "holding land which has been recorded as Chandna in course of a settlement of land revenue and for which rent has been fixed for the term of that settlement." A Chandnadar, because of the peculiar nature of this definition, can be found only in a temporarily settled estate and his rent can be altered only in course of a settlement operation. The law, however, left other incidents of Chandnadars to be regulated by local custom and usage. It thus meant that the question whether the tenure of a Chandnadar was permanent or temporary depended on the custom of the locality. The Courts at Jajpur once held that Chandnadars were mere tenants-at-will in certain areas. The position was certainly anomalous and definitely rendered the fixity of rent between settlements completely ineffective.

38. One of the main principles that influenced the framers of the Act was that while the raiyats should be guaranteed security of tenure in ordinary lands including new lands reclaimed from the waste the area protected from the accrual of occupancy right should be extended and should be definitely fixed so as to give a considerable degree of freedom to the proprietors in the matter of cultivation of these lands. The Rent Act X of 1859 had already provided that "Khamar" "Nij-jote" or "Sir" lands belonging to the proprietor of the estate or tenure and let by him on a lease for a term, or year by year should be exempted from the accrual of occupancy right. The Bengal Tenancy Act repeated this provision but applied it only to proprietors and not to tenure-holders. But this chapter of the Bengal Tenancy Act was not extended to Orissa until 1906. At the Provincial Settlement of 1890-1900 the question whether nij-jote of tenure-holders should be recorded as such in the settlement record was discussed and the rights of proprietary tenure-holders to hold "nij-jote" was recognised according to the custom and Act X of 1859. The Calcutta High Court ruled in 1903 that the provisions of Bengal Tenancy Act regarding acquisition of occupancy right having been extended to Orissa and the provisions of the Act regarding protecting a proprietor's private land against acquisition of such right not having been so extended, a raiyat could acquire right of occupancy in 'nij-jote' lands as in other lands. When this was brought to the notice of Government, the provisions of Bengal Tenancy Act relating to proprietor's private lands were extended to Orissa in 1906. In this confused background it was necessary that the Orissa Tenancy Act should clearly define proprietor's private lands. In doing so, it made a distinction between ~~temporarily~~ temporarily settled estates and all other estates. The latter were governed by section 153 which practically reproduced the provisions of the Bengal Tenancy Act while the former were provided for by section 154 according to which a rigid rule was laid down for determining as to what should be regarded as proprietor's private lands. The section also secured to sub-proprietors other than Tanki Baheldars the right to hold private lands. The Act also protected private lands from accrual of occupancy right on the same conditions as before, that is, when held by a tenant on a lease for a term of years or from year to year.

39. The system of giving service lands to village servants such as the barber, the washerman, the potter, etc., still prevailed in Orissa. In addition to these village servants there were persons enjoying jagirs for rendering personal service to the landlords or to institutions maintained by landlords. The law left the incidents of these tenures to be regulated by custom.

40. The law made elaborate provision for enforcement of rights and liabilities of tenants (including recovery of rent) and provided that suits to be instituted in this regard should be cognizable by revenue courts.

41. In order to secure to the landlords and tenants the effective enjoyment of their rights the law borrowed the provisions of the Bengal Tenancy Act and gave powers to Government to order the making of a survey and preparation of a record-of-rights either *suo motu* or on application of parties. The officer preparing the record was to publish it in draft so as to give the parties an opportunity to file objections. After disposal of the objections made to any entry in or omission from the draft record-of-rights the final record-of-rights was to be framed and published. Entries in the final record-of-rights so published were to be presumed to be correct until they were proved by evidence to be incorrect. Any person who still wished to press his objection to any entry in or omission from the final record-of-rights could establish his claim in a revision proceeding of the Board of Revenue, or in the Civil Court. In case of temporarily settled estates the survey, preparation of record-of-rights and settlement of fair and equitable rent for tenants was obligatory with every revision of revenue settlement. In case of other estates, though these operations were not obligatory, but discretionary, yet Government took steps for survey and preparation of record-of-rights and settlement of fair and equitable rent from time to time as early as 1900 the entire area was at least once surveyed and a satisfactory and elaborate record-of-rights for it prepared. This was the most significant factor that was responsible for the effective enjoyment of the tenants' rights in land defined by a formal statute, the intervention of which naturally meant revision of business relations between the landlord and the tenant and in the process of such revision the tenant would have suffered had not there been a record-of-rights.

(ii) THE DISTRICTS OF ANGUL AND KHONDMAIS

42. In 1803, Angul was ceded to the British by the Marahattas but it continued to be a princely State, its chief entering into an agreement with the British undertaking to maintain submission and loyalty to the Government of East India Company and to pay an annual tribute of Rs. 1,250. On charges of defying the British authority and helping the leaders of rebellious Khonds of Ghumsur and other areas, the Raja was captured and was sent as a prisoner to Hazaribag where he remained till his death. The administration of Angul was then taken over by the British and was placed under the Superintendent of Tributary Mahals (Commissioner of Orissa) who administered it through the agency of an officer officially known as Tahsildar until 1891, when it was constituted as a separate district, Khondmals being added to it.

43. Khondmals which adjoin the Agency Tracts of Ganjam district and which is predominantly inhabited by Khonds (a Scheduled Tribe) was a part of the princely State of Baudh at the time of British conquest in 1803. A few years after 1803, serious attempts were made by Government to stop human sacrifice by the Khonds and the help of the Raja of Baudh was sought to do so in the Khondmals. The Raja could not do anything to help the

Government. In 1855, a proclamation was issued by the Government announcing that the Khonds had ceased for some years to be subject of the Raja of Baudh and the Raja himself had admitted it. Government then took over the administration of the area and a Tahsildar was appointed to hold its charge under the control of the Superintendent of the Tributary Mahals. This system continued till 1891 when it was formed a subdivision of Angul district.

44. Owing to successive bad seasons and consequent failure of crops there was a terrible famine in Angul in 1888-89. After visiting the area, the Chief Secretary to Government of Bengal and the Superintendent of Tributary Mahals felt that instead of a mere Tahsildar, an officer as Assistant to the Superintendent of Tributary Mahals should be stationed at Angul who would also supervise the management of neighbouring princely States under Court of Wards. This recommendation was accepted by the Government of Bengal and in the year 1891, Angul with Khondmals was constituted into a district. This having been done, the necessity of providing a complete but simple Code of substantive and procedural law suitable to local conditions was felt. This resulted in the enactment of the Angul District Regulation (I of 1894). This Regulation however did not contain any provision defining the rights and liabilities of persons occupying land excepting that the procedure for recovery of public demands was defined in it.

45. After occupation of Angul by the British, a summary settlement based on the available records was made with the Sarbarakars (the village headmen) who for all purposes were the agents of Government for running day to day revenue and general administration at the village level. The settlement with the Sarbarakars was revised from time to time. For the service they rendered they were allowed a commission on the total rent roll of the village. In the Khondmals the system of general administration was enforced through the traditional headman of the village, the Malik and the Sardar of the Mutha, a group of villages. No land revenue was assessed. In 1875, the Khonds agreed to pay a plough tax (calculated on the number of ploughs) and to the sum so realised Government agreed to add an equal amount, the total constituting the Khondmals Road Fund which was utilised for construction of roads, inspection bungalows, wells etc., for the benefit of the people and of administration. This plough tax was regarded as a voluntary contribution and it was collected voluntarily by the village headman who was not entitled to get any remuneration for his services rendered in collecting this. No formal settlement had therefore been carried on in Khondmals subdivision but alienation of land by the Khonds to non-Khonds used to be duly enquired into from time to time registered and land revenue assessed on it, as the exemption from assessment of land revenue has always been considered purely personal to the Khonds. The last and the most elaborate enquiry for this purpose was conducted between 1920-30. It took the shape of a survey, record-of-rights and settlement operation.

46. As communication improved, adventurers and money-lenders were entering into both Angul and Khondmals in increasing numbers and the Government considered it necessary to prevent the transfer of land to outsiders and non-agriculturists. In 1902, Government therefore issued an order that mutation on account of alienation by sale or gift would be withheld unless the applicant could produce a copy of Deputy Commissioner's order sanctioning the transfer. It was also laid down that should any raiyat transfer or mortgage his holding in contravention of this rule, the Deputy Commissioner

would be at liberty to evict the transferee and to resume the holding and settle it with another tenant. As the raiyat held directly under the Government without intervention of any intermediary it was possible to enforce this rule with satisfactory results. It was subsequently felt that this executive order of withholding mutation should be translated into a legislative provision. Accordingly, it was provided in the Regulation that no transfer of any tenure or holding would be valid without the consent of the Deputy Commissioner. The tenants were also protected from ejectment and it was further laid down in the law that the immovable property of a tenant could not be sold without the permission of the Deputy Commissioner. The Angul Laws Regulation, 1913 which repealed the Angul District Regulation, 1894 was a definite improvement on it containing as it did complete though simple provisions of substantive and procedural law including the law regarding the transfer of landed property. These simple provisions were considered sufficient for the purpose because the land tenure was still simple there being only agriculturist raiyats under Government who for all practical purposes were occupancy tenants and private rent-receiving interests were practically unknown.

47. In 1936 when the new Province of Orissa was created and the Khondmals subdivision which was separated from Angul by the princely State of Baudh was attached to the district of Ganjam which adjoined it. The subdivision of Angul which was surrounded by princely States was attached to the Cuttack district at that time. The Angul Laws Regulations, 1913 was repealed by two Regulations, one for Angul and the other for Khondmals each of which was defined as a district in the respective Regulations. The Regulations of 1936 more or less reenacted the same provisions as were contained in the Regulations of 1913 as to the rights and liabilities of tenants in land and continued the protection that there could be no transfer of the holding of a tenant or any part thereof without the previous sanction of the Deputy Commissioner.

(iii) SADAR (EXCLUDING MAHADEVPALE P.-S. AND BARGARH
SUBDIVISIONS OF SAMBALPUR DISTRICT (REFERRED TO AS
SAMBALPUR DISTRICT IN PARAGRAPHS 48—68 BELOW
FOR CONVENIENCE

48. Up to the close of the eighteenth century the Sambalpur district formed one of the cluster of states held by Chauhan Rajputs. It escheated to the British Government in 1849 for failure of direct heir in the ruling family. After the escheat, it was administered by an officer styled as Principal Assistant Agent for the South West Frontier having his headquarters at Ranchi. This arrangement continued till 1860, with of course a change in the designations of the officer, when Sambalpur was transferred to the Orissa Division of Bengal. In 1862 it was transferred to form a part of the newly constituted Central Provinces. In October, 1905 the district was retransferred to the Province of Bengal where it remained until 1912 when the Province of Bihar and Orissa was constituted. It then formed a part of Bihar and Orissa till 1936 when the Province of Orissa was created and it became a part of Orissa.

49. In spite of the fact that the district was affected by so many administrative changes in quick succession or because of this fact, the agrarian laws have not undergone many changes. The Rent Act X of 1859 of Bengal was in force in the district. This Act granted occupancy rights to tenants and imposed limitations on the enhancement of their rent. The Act was however found to be unsuitable to the conditions prevailing in the district. It

is the successive Land Revenue and Tenancy Laws of the Central Provinces enacted subsequent to 1862 (when Sambalpur came under the administration of these Provinces) that have governed the substantive and procedural law relating to land and land revenue in the district. The present position is that the Central Province Land Revenue Act, 1881 and the Central Province Tenancy Act, 1898 are in force in the district. It will be relevant to mention that these Acts were repealed in the Central Provinces shortly after the transfer of the district and their place was taken by the Land Revenue Act of 1917 and the Tenancy Act of 1920.

50. Different proprietary interests in land that existed till recently can be classified as follows :—

- (i) Zamindars,
- (ii) Malguzars,
- (iii) Malik-Makbuzas,
- (iv) Gountias,
- (v) Bhogra Bhogis, and
- (vi) Brohmottardars.

51. The zamindar's tenure was not defined in any Act though it was expressed in the Wazib-ul-urz (administration paper) which was accepted by the zamindars in each settlement. The estate of zamindars was impartible excepting in one case (sub-zamindar of Garh Loising). They were not transferable except to the nearest heir and that too, only with the approval of Government. The zamindars were liable to pay, instead of a Kamil Jama or full assessment, a feudal tribute which ordinarily was much less than a full proprietary assessment. Until comparatively recent years, the zamindars controlled their own police and managed their own excise system and cattle pounds. In the interest of uniform and consistent administration these powers were subsequently withdrawn from them on payment of compensation for the consequent loss of income. The rights and privileges of the zamindars were personal and a condition was imposed in the Wazib-ul-urz that should at any time an estate be transferred otherwise than in accordance with the procedure mentioned in the Wazib-ul-urz, the Government would be at liberty to impose full land revenue and forest assessment and to resume all special zamindary privileges. These zamindari are thus comparable to permanently settled estates of Bengal with certain restrictions.

52. The Malguzars were nothing but full proprietors in villages held by them. They were like ordinary proprietors of Bengal holding land on temporary settlement. A large number of Malguzari villages were however revenue-free.

53. The Gountias were a peculiar class of proprietors in the district of Sambalpur. When the district came under British administration a number of short term settlements were made. Soon after the transfer of the district to the Central Provinces a proclamation was issued in 1862 notifying that proprietary right would be conferred on all Gountias who on enquiry might be found entitled to it and that all Gountias on whom such proprietary rights

would be conferred would be owners of their village and would have a heritable and transferable right in them. But subsequently the policy was changed and by the time the first regular settlement was undertaken it was decided not to grant full proprietary rights to the Gountias but make them proprietors only in respect of thier Bhogra or home farm lands. The rights of Gountias that were recognised thereafter can be summarised as follows :—

- (i) proprietorship over and free right of alienation of home-farm,
- (ii) the right of management (including collection of rent and payment of Government revnue) over the whole village and undisturbed possession of it so long as the Government revenue was fully and promptly paid, and
- (iii) as a consequence of the above two rights, the rights of alienation of the whole village or of a share in it if accompanied by a transfer of the home-farm land.

The Gountias however continued to clamour for getting the right of full proprietorship but the representations made by them from time to time were rejected.

54. The peculiar tenure of Gountias did create serious difficulties in the revenue administration of the district. Only one out of the body of Gountias in a village used to be appointed as lambardar under section 137 of the Central Province Land Revenue Act, 1881 and he alone executed the settlement kabuliyat. The settlement Wajib-ul-urz provided that the lambardar was to be responsible for the management of the village and that he would be the landlord within the meaning of section 2 (6) of the Central Province Tenancy Act, 1898. The Revenue Officers being guided by this provision of the Wajib-ul-urz did not recognise the co-sharer Gountias of the lambardar as landlords in the village. This practice was approved by Government by issue of formal orders to that effect. But the Civil Courts took the view that the co-sharer gountias were also co-sharer landlords in the village and that the lambardar had no statutory power to represent the proprietary body in their relations with the tenants but that he had an implied authority to represent them in their relations with the tenants which authority could be repudiated by any co-sharer at any time after giving due notice. This legal position became the source of much trouble to the tenants. It frequently if not invariably happened that a tenant reclaimed a field from the waste after taking the lambardar's consent and then a co-sharer brought a Civil suit to eject the tenant in respect of his (plaintiff's) share. In spite of this difficulty creating an unenviable situation in case of all new reclamations in a district like Sambalpur (where extensive areas were available for the purpose) the Revenue Officers did not accept the Civil Court ruling and would allow only the lambardar to accept surrender of occupancy holdings and resettle them with other tenants. The Revenue Officers also held that the lambardar as representing the whole body of co-sharers in a Gounti village could not be his own tenant and if therefore he was in cultivating possession of raiyati or broken up waste land he was not a tenant and when he settled the land with another person, whether as a co-sharer on his own behalf or an outsider, that person became an occupancy tenant and not a sub-tenant. This view put the lambardar in a disadvantageous position as compared with his co-sharer. One of the consequences of the Civil Court decision that co-sharer Gountias were also co-sharer landlord of the village tenants was that the tenants inducted by a co-sharer Gountia would also acquire occupancy

right. But the Gountias both lambardar and co-sharers used to claim that the tenant introduced into gounti-raiyati lands would remain a sub-tenant and should not acquire occupancy rights therein and that they themselves were occupancy tenants in respect of their gounti-raiyati lands.

55. A Gounti village could not be legally partitioned though Bhogra lands could be. But the co-sharer Gountia could claim his share of the village profits. This peculiar situation caused many a perpetual quarrel between the lambardar and his co-sharers. In a Malguzari village such a quarrel could be settled by an imperfect partition but this was not legally permissible in a Gounti village. Therefore disputes between the lambardar and his co-sharers went on perpetually from generation to generation and this ultimately affected the tenants seriously and created factions among them. These quarrels having their origin in the jealousy and rivalry between brothers and cousins in the matter of division of lands or of village profits, no improvement in the relations among them was possible and ultimately the tenant suffered. But inspite of all this, the statute was left unamended.

56. Malguzars were proprietors of whole villages and for all practical purposes Gountias were also proprietors of whole villages. Persons having proprietary interests over parcels of land which are not villages were called Bhogra Bhogis and Malik Makbuzas. Bhogra Bhogis related to Gounti villages whereas Malik Makbuzas related to Malguzari villages. There were very few Malik Makbuza plots though the number of Bhogra Bhogi plots were many. The history of the Bhogra Bhogi tenure is this. In course of partition of Bhogra land of Gounti villages which also meant a partition of village profits some of the share-holders usually belonging to junior branch of the family did not want to take the trouble of managing the village. They were satisfied with their share of the Bhogra land and relinquished all claim over village management and that on the other side, the co-sharers retaining right over village management relinquished all the rights to interfere in the disposal of the Bhogra Bhogi lands. The Bhogra Bhogis exercised their right of transfer frequently. They did not pay anything towards the village assessment except a share of the Zapti or excess assessment on the Bhogra imposed in villages where the rent value of the total Bhogra lands was more than 25 per cent of the raiyati rental of the village. The Malik Makbuza tenure in the Malguzari villages has the same history and incidents as the Bhogra Bhogi tenure.

57. Brahmottar lands consisting of small plots granted in perpetuity to Brahmins were too many.

58. In the Zamindaries, many villages were held free of rent by persons who were either relations of the Zamindar or his former servants. They used to be called maufidars. The maufi was against the zamindar and not against the Government. Therefore the maufidars used to pay proportionate share of the land revenue payable by the zamindar to the Government. This was however an amicable arrangement not officially recognised. The maufidars agitated to have absolute right in the villages held by them but as they were creations of the zamindar their true status was something intermediate between the tenat and the zamindar and was thus comparable to that of Thekadars, the only peculiar feature in the incidents of their right being that they held their villages rent-free.

59. The most important feature in the zamindaries was the intermediate status of Thekadars. The Thekadar had the right to collect rent from the tenants of his village, manage the village and enjoy the "sir" (homefarm) land of the village. His liability was to pay the Theka Jama (which was equal to the entire assessment of the village) to the zamindar in time. There were two kinds of Thekadars, namely, ordinary Thekadars and protected Thekadars. Though the Thekdar was liable to pay the total rent he was entitled to collect from the village, he made large profits from the "sir" lands. As a matter of fact, the "sir" lands were the most valuable lands in the village. It was, therefore, a recognised custom in the zamindaries that at each renewal of the Theka lease, the Thekadar was called upon to pay a considerable sum of Nazarana the amount of which generally varied according to the value of the "sir" land. This system led to abuse and some of the zamindars enhanced the Nazarana very excessively which resulted in many aboriginal Thekadars being ousted. In 1888, legislative action was, therefore, taken to protect the Thekadars and protection was granted to all who could prove long possession and fair improvement of the village to their credit. The tenure of a protected Thekadar was made heritable but not transferable. Such Thekadars were not liable to ejection for mere non-payment of Theka Jama. Though the provision made in Central Province Land Revenue Act, 1881 dealt with protection of Thekadars in a summary manner and left scope for considerable dispute between the Thekadar and the zamindar, yet the system worked more or less satisfactorily.

60. The tenure of a protected Thekadar was impartible. It used to devolve only on one member of the Thekadar's family. In practice, however, the homefarm land used to be divided among all member of the Thekadar's family. These non-Thekadars were liable to pay the assessment in respect of "sir" lands in their possession. Usually disputes arose over the apportionment of assessment and the Thekadar as well as the share holders used to apply to the Deputy Commissioner for an order of apportionment, but such applications were invariably rejected on the ground that there was no provision for such apportionment in the Central Province Land Revenue Act of 1881. This created a very difficult situation resulting in frequent quarrels among the Thekadars and the share-holders and ultimately led to situations similar to those obtaining in Gounti villages. Ultimately, it was the tenant who had to suffer from this situation.

61. The Tenancy Act defines that excepting the village service tenants, and servants of zamindars who held land in return for service, all tenants not being sub-tenants had right of occupancy in their holdings. Though the Tenancy Act envisaged two types of occupancy tenants, namely absolute occupancy tenants and ordinary occupancy tenants yet in Sambalpur there was only one class of occupancy tenants, namely ordinary occupancy tenants. The occupancy right was heritable and decended to heirs like any other property subject to the statutory restrictions against transfer, so long as the rent was paid and the land was not diverted to non-agricultural purposes. Till recently occupancy right was transferable only in the following cases, namely :—

- (i) a tenant might sub-let his land for a period not exceeding one year, and
- (ii) he might transfer his right of occupancy to any person who, if he survived the tenant, would inherit the right of occupancy or to any person in favour of whom as a co-sharer the right of

occupancy originally arose or who had become by succession a co-sharer therein. Any transfer made in contravention of the above provisions was not void but voidable at the instance of any such person as would be entitled to inherit his right in the holding in the event of his death without nearer heirs or of the landlord from whom the tenant held the land, on application to a Revenue Officer made within two years from the date on which in pursuance of the transfer the tenant parted with possession of the land. In spite of all these restrictions which *prima facie* appear very rigid, transfers used to be freely made by an indirect method of surrender to the land lord (i.e., Gountia, Thekadar, Malguzar or the Zamindar in villages where there was no Thekadar) and resettlement by him with the transferee. Obviously this method directly benefited the landlord at the cost of the tenant. The landlord used to charge about 25 per cent or sometimes more of the consideration money as premium for becoming a party to this questionable process of getting round the statutory restrictions. Mr. Dewar, who was the Settlement Officer of Sambalpur in 1904-1908 had sufficient knowledge of this undesirable practice inherent in the provisions of the law regarding restriction on transfer of occupancy right the only marketable property of an ordinary agriculturist and opined that if the intention was to prevent the lands from being concentrated in the hands of money-lenders, exploiters and speculators then "this danger did not threaten Sambalpur and the Act has been inoperative to prevent the passing of land from the poor men into the hands of richer and more industrious agriculturists." Khan Bahadur Mahamad Hamid, Settlement Officer of Sambalpur in 1925-1928 also observed, "I think the chief person who is benefited by this provision of the law as it stands is the landlord who generally manages to secure a heavy premium (anything about 25 per cent of the consideration or upwards) on every transfer made by the tenant. This was the chief grievance urged before me by the tenants when I started announcement of the new assessment of rent in the Bargarh Tahsil." Thus the provisions of the law which were intended to benefit the tiller of the soil and the only effect of benefiting the landlord at the cost of the tiller. The framers of the Act perhaps foresaw this type of misuse of these statutory provisions resulting in gross abuse of the landlord's authority to his own benefit and therefore, provided that surrenders to the landlord could be contested by near relatives of the surrendering tenant. But this provision was more or less inoperative because the landlord used to take leading part in all these transactions and it was not generally possible for a poor tenant to go against the landlord. Where, however, it was possible for a person to go against the landlord and challenge the surrender, it was interesting to see how the provisions of the law were strained to the utmost limits for levying a black-mail on the landlord and it will not be out of place to cite a typical case which came before the Financial Commissioner in appeal. The facts of the case were that a tenant surrendered his holding to the Malguzar in consideration of payment of Rs. 1,000. Shortly after the surrender, a minor son of the tenant applied to have the surrender set aside. This application was finally withdrawn on the payment of a further sum of Rs. 500 by the Malguzar.

Thereafter a fresh application was put in on behalf of the wife of the surrendering tenant to have the surrender set aside and it was suggested that this application would be withdrawn if a further sum of Rs. 500 was ordered. Thus, because of the peculiar statutory provisions, transfers were going on under a false method of surrender. Almost all persons whose transactions were called in question has to deviate from the truth and in spite of it, the tenant hardly got full return for the land he parted with. On the other hand, the parting tenant could set up his son or any other relative to get back the land for which he had received the agreed consideration. The transferee to get over this difficulty usually resorted to fabricating antedated documents to prove expiry of the period of limitation on the date of application challenging the surrender, or adduced manufactured oral evidence to that effect. There was again another difficulty in the provisions of the law. Under section 47 if an application was not made to a Revenue Officer within two years to set aside a transfer made by a tenant the effect was that the transfer was no longer voidable and the transferee acquired a valid title in respect of the transferred land. But if the value of the property was Rs. 100 or more, a transfer could be effected only by a registered deed though the Tenancy Act itself prohibited the Registering Officer to register a transfer deed in respect of lands where the transfer offended any provision of the law. This provision of the law used to be taken advantage of for avoiding transfers proved to have been made before two years, and there are instances where transfers effected even seven years back could be avoided by this process through the Civil Court. Some tenants with borrowed money used to buy occupancy holdings and to evade the creditor took shelter under the Insolvency Act. These inequities led to litigation generally contested with vigour causing constant flow of wealth from the sweating and labouring interior to the ease-loving towns and dragging the tenant from his field to the Courts where he had to tell lies in order to avoid the law. The villager turned from his natural surroundings and far away from public opinion that weighed with him, felt little or no remorse in telling a few lies acting as it were in a dramatic stage. Thus, all possible fraud was being perpetrated and dubious methods invoked to make the occupancy right marketable and it sounds rather paradoxical that the statute intended to safeguard the various rights in the land was chiefly responsible for this.

62. About 95 per cent of the tenants were occupancy tenants who were thus put to immense difficulty that was inherent in the statutory restriction regarding the transfer of their property and land being more or less the only asset, their capacity to raise a credit in times of need was very much limited. The person who took maximum advantage of this unsatisfactory legal position was the money-lender and the speculator. This explains as to why in the district of Sambalpur where there was a lot of scope for extension of cultivation and where the standard of husbandry is generally high the tenant did not feel encouraged to invest all he could in the extension of cultivation. This unsatisfactory position was clearly appreciated as early as 1904 by Mr. Dewar, the then Settlement Officer of the district but all suggestions for amending the law were turned down till 1953.

63. An occupancy tenant could be ejected for nonpayment of rent. This was too harsh a provision which very much reduced the security of the tenure. However the tenants in the district used to maintain rent receipt books in the prescribed form in two parts first part to show particulars of demand and the second part to show particulars of collection. Entries in the books used to be made by the Circle Patwari, a hereditary Government servant and Revenue Officers were required to inspect the book during their general inspection of the village. This system helped the tenants to some extent in keeping documentary evidence against any false allegation that rent had not been paid.

64. Under the provision of the settlement wazib-ul-urz each cultivator was entitled to a house site free of rent and when he abandoned the holding he lost his right over the house site in the village. He was entitled to dispose of any structure he might have erected on the site provided he did so within one month of the site being allotted to another person by the lambardar and the village Panches. The right of non-agriculturists to house sites occupied by them were regulated by agreement with the lambardar and the village Panches. This is yet another provision which was unsatisfactory from the tenants' point of view as it reduced the value of house sites and left the tenant at the mercy of the landlord for a house site.

65. Right over trees was not very much defined. The settlement wazib-ul-urz mentioned that an occupancy tenant had the right to enjoy fruits and timber of trees whether planted by him or self-grown in his holding. Another provision in the wazib-ul-urz entitled the tenant to plant trees on another tenant's land and to claim fruit and timber thereof. It is difficult to see the wisdom behind this provision as trees do take the fertility of the soil and there was no reason why a tenant should have been made to suffer for another's benefit.

66. The other classes of tenants in the district were—

- (i) tenants of Bhogra or "Sir" lands,
- (ii) sub-tenants, and
- (iii) village service tenants

Tenants of Bhogra and "Sir" lands come under the definition of ordinary tenants as given in the Tenancy Act and are practically tenants-at-will. They have been recorded in the settlement records as sub-tenants. There are instances where such tenants have been existing for generations. But the land continues to be shown as Bhogra or "Sir" and the tenant continues to be a sub-tenant. The statute makes them tenants-at-will.

67. As regards village service tenants, Khan Bahadur Md. Hamid in his settlement report says that "they are merely village service holders and it is dignifying their position unduly to call them village service tenants." They enjoy land in lieu of rendering service to the community. It naturally follows that if for any reason a person ceases to render service, he loses the land.

68. The law made detailed provisions for survey, preparation of record-of-rights and settlement of fair and equitable rent more or less on the lines of the Orissa Tenancy Act. Even before these statutory provisions were available, survey and a rough record-of-rights operation had been undertaken and these records did help to a great extent in ensuring effective enjoyment of different rights in the land.

(b) The Central Provinces system (Mahadevpalli P.S. of Sadar subdivision of Sambalpur district and Nawapara subdivision of Kalanandi district)

69. These two tracts were a part of the Central Provinces and Berar till 1st April 1936 when they were transferred to Orissa on its creation. The C.P. Land Revenue Act, 1917 and the C.P. Tenancy Act, 1920 are in force there. These two tracts were two zamindari and more or less the same provision as were applicable to the zamindari of the old Sambalpur district governed these two areas.

(c) The Madras system

(i) THE ZAMINDARY TRACTS

70. Whether the permanent settlement was advantageous to the zamindar or not may have been a debatable point when it was made. But two aspects of this settlement in its application to Madras were clear namely, it was extremely advantageous from the point of view of revenue collection and even though it was the very basis of permanent settlement that it would in no way affect the rights of raiyats and others interested in land, yet section 2 of the Madras Permanent Settlement Regulation XXV of 1802 which conferred proprietary right in the soil on zamindars could be interpreted to mean that the raiyat was at the mercy of the zamindar for his occupation of land. The Madras Permanent Settlement (Interpretation) Regulation IV of 1822 had therefore to be passed. It made a declaration that the Permanent Settlement Regulation of 1802 was not intended to "define, limit, infringe or destroy the actual right of any description of landholders or tenants." It also prescribed the procedure for recovery of rent from tenants. Regulation V of that year was enacted for the better protection of Ryots. In 1831 an attempt to amend the Regulation V of 1822 proved abortive. The idea to enact a revenue code in 1855 was also given up owing to difficulties connected with it pending the Imperial discussion. It was only when the Act VIII of 1865 was passed that the tenancy rights got specific statutory protection to some extent.

71. The Act VIII of 1865 was enacted "to consolidate and simplify the various laws which have been passed relative to land-holders and their tenants and to provide a uniform process for the recovery of rent." The provision of the Act relating to exchange of pattas and muchilikas had a ruinous effect on the rights of the ryots. The patta which was intended to be a mere memorandum of the extent under cultivation in the year and of the particular crops harvested was interpreted by the High Court in 1871 to be a lease for a year. On this interpretation, it was ruled by the High Court that by the acceptance of the yearly patta, the presumption was that the pattadar was a yearly tenant and no more. This ruling had far-reaching consequences. The zamindars attempted to procure from their ryots pattas in which entered a stereotyped clause that the zamindar was at liberty to lease out the land at his pleasure. These were distributed in thousands in printed forms by the zamindars of Ganjam and Koraput. It was thereafter fairly easy for the zamindars to force up the rents by a threat of eviction from the ancestral property. The zamindars rarely did actually evict and the ryot, so long as he was not actually evicted was more or less prepared to sign anything. The institution of pattas and muchilikas thus not only failed to help the raiyat, but became a legal instrument in the hands of the zamindar to rack-rent him. And yet, no legislative measure was contemplated for about a decade thereafter to put a stop to this undesirable state of things.

72. In 1882, a Bill was drafted for securing occupancy rights to landless ryots, but it was ultimately dropped. The next Bill on the subject drafted in 1884 did not receive a favourable attention and after prolonged amendments and discussion by Select Committees and the Government, a Bill in a very much of altered form was presented to the Government. But the differences that arose on the form of this new Bill led to the dropping of the measure without success. Four years later the question was again taken up and a draft was prepared. This draft was revised from time to time and there after introduced in the Madras Legislative Council in 1905 which ultimately became the Madras Estates Land Act I of 1908. The circumstances leading to the introduction of this Bill and its contents cannot be better expressed than in the excellent summary of it by the Hon'ble Mr. Forbes, in his speech introducing the Bill in Council:

"The ancient zamindars are being displaced by new men who have no traditional connection with the soil and whose action will be guided solely by commercial or selfish motives and who will strain the law to its utmost limits. A law is a bad law which gives opportunities for diverting its power to oppress the poor and weak. The scions too of ancient families in these days of luxury and absenteeism are estranged from their old homes and are, I fear, often actuated by similar motives. Moreover, unless rights are firmly fixed and declared, the slow process of erosion imperceptibly wears them away. The zamindar is the flood stream, the ryot, the river bank. Not only in justice to a weak class who are specially in need of the protection of the strong arm, but on every ground, political and economic, the Government could not sit by impassive.

"Now let us hold the scales evenly, distributing the benefits which the Bill proposes to confer and remembering that the value of a thing to a person does not depend on its intrinsic cost. On the side of the zamindar, if this Bill passes into law, he will be given a right of hypothec over the ryot's holding a first charge indefeasible by any encumbrance; he will be given the right to enhance rent with reference to the rise in prices; he will be empowered to enter and measure the ryot's lands and have the shist altered accordingly, he will have the benefit of survey and a record-of-rights, he may sue on a patta which is substantially correct and the patta may be for more than a year, he can sue for the whole of the recoverable arrears before the Collector without the expense of a Civil suit and last but not least he has been given a ryot who secure in his holding and a free man, will have every encouragement to extend and improve his cultivation and so add to the landholders prosperity. It is a universal proverb in this country that the prosperity of the ryot is the prosperity of the Raja.

"On the other side, the ryot will be confirmed in his ancient rights, he will be secured in the occupancy of his holding from which he cannot be ejected so long as he pays his shist; nor can his shist be enhanced except by suit before the Collector and he is given the right to have the irrigation of his fields secured, to have the communal lands of his village saved from wanton usurpation; the user of his lands has been defined; and his right to make improvements declared.

"Looking at both sides then, I think, this Council will admit that the Government has discharged with equal justice its obligations to safeguard the established rights of both zamindars and ryots in the sense of the old Regulation IV of 1822.

"The intervention of the Government is thus as much to the benefit of the landlord as of the ryot. All that is done for the ryot is to protect him against the horrors of arbitrary eviction, against the oppression of rackrents and to secure to him his right to enjoy his established share of the produce, conditions which are essential to the stability of an agricultural community and the undoubted and ancient right of the Madras ryot."

73. The Act was, in short, the product of the anxiety on the part of the Government to protect the interest of helpless millions of the cultivating population. The Bengal Tenancy Act had almost been the standard for the copy. But the Act took peculiar circumstances in Madras into due consideration, made provision for the same and to that extent differed from the provisions of the Bengal Tenancy Act. For example, the institution of "tenure holders" that plays a very important part in the tenancy system of Bengal did not have any recognition in the Madras Estates Land Act except to the limited extent that a permanent under-tenure under certain circumstances would come within the definition of "estate." Similarly, whereas the Bengal Tenancy Act recognised three kinds of raiyats namely (i) raiyats at fixed rates, (ii) occupancy raiyats and (iii) non-occupancy raiyats, this Act put all raiyats in one class with right of occupancy and to that extent, it confirms more to the ancient ideas of the rights of a raiyat. The idea of a settled raiyat which is definitely foreign to the Indian soil and which crept into the Bengal Act X of 1859 as an after-thought but continued to hold the field in all subsequent tenancy legislations was not to be found in the Madras Estates Land Act. The notorious institution of pattas and muchilikas which had nothing but the merits of its survival over a century continued to be recognised in this Act in spite of the fact that the institution had been utilised to rack-rent the raiyats. There was no recognition of under-raiyats. On the other hand, section 19 of the Act specifically excluded such tenants from the scope of the Act. The Act defined whole villages only the land revenue of which was granted in Inam as "estates", only if such grant was made, confirmed or recognised by the British Government. Other Inams were left out of the scope of the definition of "estate" presumably because the idea of landlord and tenant was opposed to cases where the grant was not of land revenue alone. In respects of other details the Act followed more or less the pattern of the Bengal Tenancy Act.

74. The practical application of the provisions of the Act to the actual means and circumstances was found to have resulted in certain anomalies and it was necessary to remove doubts that had been indicated as to the intention of certain provisions of the Act, to make the provisions clear and to remove a few drafting inconsistencies and accordingly certain amendments were incorporated in it by Act IV of 1909. Since then other defects and difficulties inseparable from a first attempt in the field of land legislation were disclosed by numerous decisions of the Privy Council, High Court and Board of Revenue. In 1913, the Government therefore took up the question of amending the Act and introduced a Bill in the Legislative Council. In 1914, four other private Bills were introduced proposing amendments to the Act. Enquiries were started and all persons interested consulted, but before the Bills could be passed into law, the first world war intervened and their consideration had to be postponed till after its close. After the war ended, the subject was again taken up for consideration. In 1922 and again in 1924 large and representative committees were constituted for considering the amendments necessary to the Act. A Bill prepared by a sub-committee of

the second of the above committees reached the Government in 1928 and the amending Bill ultimately introduced in the Council in 1932 was very largely based on it.

75. The Bill contained provisions for—

- (a) abolition of the distinction between "old waste" lands and other waste lands,
- (b) conferment of right of occupancy on persons in continuous occupation of ryoti land for a period of 12 years,
- (c) improvement of the provisions of the Act relating to communal lands and providing a machinery for summary enquiry regarding claims that a particular land was a communal land,
- (d) acquisition of additional land if found necessary for communal purposes bringing tank beds and bunds of tanks, supply and drainage channels etc., under the machinery relating to communal lands and making the provisions of the Land Encroachment Act applicable for securing the eviction of trespassers from all such land,
- (e) simplification of the procedure for claiming enhancement or reduction of rent, for commutation and alteration of rent and for seeking these reliefs by filing applications instead of suits,
- (f) introduction of a new Chapter relating to irrigation works and defining a simple but effective procedure for compelling landholders to execute repairs to irrigation works, imposing restrictions on the increase of ayacut and making provision for re-classification of land,
- (g) re-arranging the definition of "private lands" and the rules of evidence relating thereto, thereby rendering them more logical,
- (h) a proper settlement of proclamation and due publication of sales and recognition of the right of the landholder to bid and set off his arrears towards the sale price,
- (i) making commutation compulsory, and
- (j) giving powers to Government to direct a settlement of rent on their own motion.

In introducing the Bill in the Legislative Council, the Hon'ble the Revenue Member stated that "the Bill aims only at removing certain defects which have been found in the working of the existing Act. It does not aim at conferring any new right upon either zamindars or ryots. It does not aim at placing any disability upon either party." However, by an amendment introduced at a later stage of the proceedings, the definition of the term "estate" was intended to be enlarged so as to being within its scope all categories of whole Inam villages whether the grant was of land revenue (melvaram) or both land (kudivaram) and land revenue. The circumstances necessitating this amendment and the history of subsequent legislation will be described while dealing with the case of Inam lands. It is sufficient to mention here that this part of the amending Bill though passed by the legislature was not assented to by Governor and did not therefore become law.

76. In 1935 Sri M. G. Patnaik introduced a non-official Bill in the Legislative Council. This was mainly intended to meet the situation caused by the phenomenal fall in the prices of the staple food crops from about the year 1931. The provision for reduction of rent in section 39 (a) did not apply to rents commuted under section 40 or settled under Chapter XI of the Act. It did not apply to cases if the fall in prices was due to temporary causes. The fall in prices that occurred from about the year 1931 was being regarded by Settlement Officers as having been due to temporary causes and therefore while there was actual fall in the prices adversely affecting the ryot the Settlement Officers were fixing rent on the basis of the prices of the previous decennial period and as rent once settled cannot be altered for a period of 20 years to come, this high cash rent in a period of slump was a heavy burden on the agriculturist. To meet this situation the Bill provided that proportionate reduction of rent should be allowed whenever it was found that the average local price of staple food crops in the Taluk or zamindari division were lower by not less than 10 per cent than the average figure of prices on the basis of which rent in regard to any land in an estate was fixed under section 40 or under Chapter XI or otherwise. The Bill which was referred to a Select Committee was ultimately passed into as Act (Madras Act VI of 1936) and came into force in the last week of March, 1936. It introduced a new section, namely, section 39-A which contained provisions for granting proportionate remission of rent in any particular revenue year on application by the ryots to the Collector on the ground that the average local prices of staple food crops during the twelve months ending with 31st March of revenue year were lower by not less than 18 3/4 per cent of the average prices on which rent in regard to such land was partly or wholly based. The section also made provisions for the procedure to be followed for disposal of these applications. The majority of ryots in Ganjam and Koraput could not derive much benefits out of this provision because they were paying rent in kind. But the ryots liable to pay cash rents, howsoever small was their number, did take advantage of these provisions and got the necessary relief.

77. The Madras Estates Land Act was the first enactment defining the substantive rights and liabilities of land-holders and ryots coming within its scope in the districts of Ganjam and Koraput. It made a general declaration of the existence of occupancy right of the ryot and proceeded on the footing that his title to the land arose from occupation and gave legislative sanction to the ancient Hindu Law Doctrine that Government or its assignee, the zamindar, was entitled only to a share of the produce and not to the possession of cultivated lands. As has been observed in an earlier paragraph the Act made elaborate provisions for enforcement of the rights and in this respect, and more or less followed closely the Bengal Tenancy Act. Similarly its provisions relating to "private lands" of the land-holder were more or less similar to those of the Bengal Tenancy Act. The Act made provision for survey, preparation of record-of-rights and settlement of rent. But these provisions had not been availed in most of the estates till the creation of Orissa. Even where a survey had been made or a record-of-rights prepared or rent settled, the work was generally unsatisfactory. The results of this lacuna in the administration of the Act will be analysed in some of the following paragraphs.

78. The district of Koraput which was constituted on creation of Orissa was a part of the Vizagapatam district till the 31 st March 1936. It comprised four permanently settled estates, namely Jeypore, Kotpad Pargana, Salimi

mutba and Pachipenta. All these were held by a single zamindar the Maharaja of the Jeypore. In consideration of the area of this district (about 10,000 sq. miles) and in consideration of the fact that another big zamindari of the Maharaja of Jeypore (namely Madgul) situated in Madras adjoined this district, the administrative set up of the Maharaja was elaborate and on the whole efficient. As a matter of fact, the district administration depended mainly on the administrative machinery of the Maharaja even for such vital work like conducting the census operation, preparation of voters' list and the like. This practice gave a very great prestige to the Maharaja and his employees and it was very difficult for the ryots to raise their heads against the Maharaja or his employees.

79. The system of rent collection prevalent in the district was locally known as Mustajari. The system envisaged leasing out of villages to individuals known as Mustajari. Their duty was to collect rent from the tenants and deposit it in the estate treasury in time. They were also charged with other miscellaneous administrative work in the village. They were generally remunerated in shape of rent-free service lands. The Mustajars who did not have service lands used to get cash commission calculated as a percentage (usually 10) of the rent demand of the village. Following the rent structure in the Parvatipuram division to which it adjoins and with which it has similarity in many respects, the rents in the Rayagada division of the district were pure cash rents. On the other hand, in the Korpaut and Nowrangpur divisions, the rents were generally mixed in character and used to be recovered both in cash and in kind. And the kind rent was characterised by its variety covering a wide range of commodities, like paddy, wheat, thatching grass, red gram, onions and even ghee and goats. It appears that the system of kind rent was instituted more as a measure of relief to the ryots than as a special advantage to the land-holder. Markets were few and communication facilities meagre in this backward district predominantly inhabited by tribals and a system of cash rent howsoever equitable it might have been would have surely operated harshly against the ryots in those days. But the system had its own draw-backs some of which were very serious. It was but impossible particularly because of the prestige enjoyed by the estate employees to eradicate the evils that were more or less inherent in the system. The estate was not surveyed and there was no record-of-rights and the ryot was completely at the mercy of the estate employees in all important matters of tenancy administration. It was not therefore surprising that in addition to the legally recoverable rent, the ryot was subjected to a number of exactions by the employees of the estate. Similarly, in spite of the clear provision in section 12 of the M. E. L. Act that the ryot had full right over trees standing on his holding, he was called upon to pay royalty to the estate for removing such trees for his use. In fact, provisions of the Madras Estates Lands Act so labouriously framed to protect the interests of the ryots by that enthusiastic supporter of ryots' rights, Mr. Forbes was more or less a dead letter in the district of Koraput till the Province of Orissa was created.

80. The district of Ganjam as it stood transferred to Orissa can be divided into two broad parts, namely plains and hills. The greater part of the plains was covered by private permanently settled estates. These estates were fairly large and generally impartible because of the restrictions imposed by the Madras Impartible Estates Act II of 1904. The zamindars were governed by the law of primogeniture. There was practically no subinfeudation or

fragmentation as in the northern districts of Bengal tradition. The landlords were living in their estates and took active interest in them though they were making heavy demand on them. The absentee landlord who treats his estate more or less as a source of income was almost unknown and commercialised landlordism, that is, the traffic in fragmented portions of the proprietary interest that characterised the zamindari system of Bengal was practically unknown in Ganjam. Thus, landlordism was in an earlier stage here than in the northern districts and the landlord was a real landlord.

81. As in the case of Koraput, the Madras Estates Land Act in its application to these estates was more or less ineffective because there had been no satisfactory survey and settlement. This added with the intimate local knowledge put the zamindar at a very great advantage over his ryots. Mention has been made of the provisions of the Act of 1865 that led to forcing up of rents beyond equitable limits in all these estates. This feature continued to characterise the rent structure in all of them excepting Parlakimedi. Everywhere, the zamindar claimed a right to half of the gross produce of the land as legal rent. It was even asserted that the right to this half share was an essential term of the permanent settlement regarded as a contract and could not be interfered with by Government. Obviously this was not a correct view. In terms of the Estates Land Act and according to any principle for fixation of ~~fair~~ and equitable rent, half the gross produce was definitely more than what the ryot could be made liable to pay as rent. It was not as if the zamindars did not know this position. As a matter of fact, not only did they know this but nowhere their claim to half the gross produce was actually pressed in practice. For example, in Parlakimedi the rents had been commuted as long ago as 1868 and had since then become pure cash rents without any reference to produce. In some villages of the Khallikote and Jarada estates the landlord was demanding considerably more than half as his share. In Backhemedi estate the demand was half the rice crop, two-fifths of the red-gram and Rs. 3 an acre for sugarcane. Generally, however, the system of Khostryani more fully described in the paragraphs below prevailed and whatever the system might have been in theory, it was most certainly not half the gross produce in practice.

82. No doubt, the Khostryani system started on the basis of half the gross produce. About October, the village karanam used to go round and make an estimate of the produce block by block. This used to be called the pachu account and showed the area of the wet (irrigated) rainfed (un-irrigated) land where wet crop can be raised by impounding rain water) and dry lands but the outturn only from wet and rainfed lands. The estate agent used to come thereafter and invariably raised the estimates in annas and the total outturn and converted them into cash at an excessive rate. Thereafter the pachu account used to form the basis of annual haggle. This used to take place when the crop was ready for harvest and reaping was urgent and the land-holder was in the best position to drive a very hard bargain. Some of the ryots or even outsiders then bid for the lease of the village for a year. If an outsider got the lease, it was called mustajari instead of khostryani but in practice it was the same thing. The amount of rent from the whole village was then finally settled, the khost lease executed and the ryots undertook, among other things, that no crop would be removed until the rent was paid.

83. Drastic as the method may appear at first sight, there were mitigating factors. The village karanam more obliged to the villagers than to the zamindar no doubt put the outturn too low and the zamindar's employee put it and

the price thereof too high. But the payment was based on one crop, namely the Kharif paddy grown on wet and rain fed lands. If the ryot could get another crop out of these lands he was not to pay any share of it unless he had taken water for it. Further, no separate rent was chargeable for the dry lands. In the absence of an accurate survey it was more often than not that the true area of rainfed and dry lands were under-estimated. It was this set off against exorbitant demands of the landlords that made the khostrayani system possible and workable. Even where survey had been made, the under-estimation of the true area under rain-fed and dry lands continued to be practised successfully because most of the estate employees were unable to read maps and understand survey records. And even if they were able to do so, they were unwilling to introduce a new system on the basis of these records that might ultimately be objected to by the zamindar and ryots because of its complicity and because of the fact that it was likely to up-set a well established practice.

84. It is relevant to mention here a few words about the produce rent system in general as this system governed the relation between land-lords and ryots in the Ganjam district for more than a century. The produce rent system is generally suitable only to primitive conditions of husbandry where cultivation is light and land is plenty. As the population increases and cultivation becomes more intensive it has to go. Inherent in this system is the idea of partnership between the landlord and the tenant and actual division of the produce is the essential pre-requisite of the system when it is natural. The substitution of appraisement for division of the crop marks an advanced stage of deterioration. Another feature which is not sufficiently realised is that the produce rent system does not contemplate arrears or rent and that once arrears accrue, the system has broken down beyond repairs. Moreover, the system is not really consistent with the recognition of the occupancy right, still less with the statutory right of the tenant to use his land in any way which does not impair its value. A produce rent is a share of what the raiyat grows. If a raiyat does not choose to grow anything on a plot, the landlord can get no rent for it and his only remedy is to find another ryot. When there is an occupancy right in the land, he cannot do this and when the raiyat can grow what he likes or use the land in any way he likes a payment in money must replace a share of the produce. That the produce rent system which is inconsistent with many of the statutory rights of the ryot continued as late as 1936 and even thereafter in Ganjam and Koraput conclusively proves that the statutory provisions were more or less a dead letter. And this was mainly because of the fact that there was no proper survey or record-of-rights clearly defining the rights and liabilities of the parties. With the gradual rise in the price of agricultural commodities in the late thirties of the present century and thereafter, it was but natural for the ryot to assert his rights in the matter of commutation of produce rent rather than part with half the gross produce or value thereof and this situation leading to serious agitation by ryots gave a death blow to the produce rent system in these districts.

85. The Act, even where circumstances were congenial for its full application as in Parlakimedi estate was found to be inconvenient and cumbersome in many respects. The institution of patta and muchilika which had no parallel in any of the tenancy laws in India may be cited as an example on the point. Another example on the point was the process of distriant which was extremely risky for the zamindar where a number of ryots proved recalcitrant at a time. Similar was the case that rent was the first charge on the holding and the produce thereof. But if the produce was removed

elsewhere and got into the hands of a third party (which is easy) the charge had no effect. A competent critic observes about the Act that "being the first attempt at condensation of land-law in this Presidency, the Estates Land Act is a subject worthy of serious study. The importance of the subject has however not had the advantage of lucidity in legislation. To the landholder and the ryots, the Act is but a mirage of benefits. To the student, it is an unreadable code with no felicity in expression or arrangement. To the jurist, it is a spectacle of imperfection in the policy of its legislation and in the method of its operation". Indeed all the tenancy laws in the country could be attacked on similar grounds and the reasons are not far to seek. In an agricultural country like India long standing traditions in development of agriculture, any land-law which is not revolutionary in character cannot afford to be simple and logical. The conflicting interests, vested and growing which it has to recognise and which it seeks to regulate, are too complex and irrational for any simple logical handling. The recognition of proprietary right of the zamindars resulting in perpetual conflict between the zamindar and other rent-receiving interests on the one hand and the tiller of the soil on the other was impossible to control through statutory provisions. It was not surprising that the Select Committee of the House of Commons set up as early as 1830 to go into the agrarian conditions in Bengal recognised this fact and recommended that the only effective method of eliminating this conflict from the agrarian life was through acquisition of zamindaries by the State. This idea did not however find favour with the then Government and it was more than a century after that this recommendation was translated into action. All agrarian legislations during this intervening period were naturally directed to make the system work in spite of these serious conflicts inherent in the system—an attempt which was naturally doomed to failure.

(ii) THE RYOTWARI TRACTS

86. It has been mentioned in Chapter II that the administrators in Madras were not in favour of the permanent settlement and it was only when they were threatened with the extreme penalty of removal from office that the system was introduced in the Northern Sirkars in 1802. The system received a check in 1806 after Lord William Bentinck became the Governor of Madras as his opinion was against the permanent settlement. The opinion in England had at the same time undergone material change. The principles of permanent settlement were called into serious question and were considered to be detrimental to the prosperity of the country and happiness of the people. The Court of Directors thereafter prohibited further extension of permanent settlement to any other part of Madras. Thereafter the system of village settlements was introduced and the areas which had not come under the permanent settlement, were farmed out either to head inhabitants or to the community of the village. The assessment in either case was fixed on the whole village and was calculated on the share of the produce to which the Government was entitled. Finally, in 1812 the Court of Directors ordered that in all areas that had not come under the permanent settlement, the ryotwari system should be introduced and that where rent on any other principle had been fixed, it should be terminated at the end of the term. That is how about half of the area of "Ganjam plains" came under the ryotwari system. As this has been considered to be the best substitute for all other system of land tenure, it is worthwhile to mention in some detail the history of its development.

87. The original ryotwari system envisaged the survey of every holding and fixation of assessment based on the productive powers of the soil. Initially, a specific sum of money as the maximum revenue payable for each field was

fixed. This assessment was then subjected to the modification in particular cases not only on such consideration as vicinity to roads, markets and village sites, but also on account of such changing conditions as the personal strength and health of the ryots, his caste, the amount of his stock, and his general reputation for wealth or poverty. The ryot was not regarded as the proprietor of the soil but only as a cultivating tenant from whom was to be realised by Government all that he could afford. While the settlement was made with each ryot for the lands held by him, an element of the village system was introduced by making him liable to pay for the entire demand of the village. The system was open to several objections. By fixing the maximum (and not the actual) demand payable by each ryot, the system introduced a very great element of uncertainty in the amount payable by him, and he did not know what it was until he actually reaped the crops. Obviously, this system was open to fraud and corruption. Moreover the system was based on the footing that the ryot was only a cultivating tenant and the assessment was based on hypothetical data. The assessment was therefore very high. Further, the ryot was made liable for the default of others many of whom he even did not know and for whose introduction he was not responsible. The only redeeming feature of this settlement was that it was said to have been fixed "for ever". Under the revised system still in force which is described in the following paragraphs, these objectionable features were removed while the assessment was declared not to be fixed.

88. The ryotwari system now in force means the division of all arable lands, whether cultivable or waste, into blocks, the assessment on each block at a fixed rate for a term of years and realisation of revenue from each occupant according to the area of land thus assessed. The distinguishing feature of this system is that the state is brought into direct contact with the tiller of the soil and collects its revenue through its own servants without the intervention of an intermediate agent such as the zamindar or farmer, and its object is the creation of peasant proprietors. All the income derived from extended cultivation goes to the state.

89. The intention of the founders of the ryotwari system was to make the assessment on land permanent. Col. Read, who first introduced this system issued a proclamation at the time of its introduction declaring that the assessment was "fixed for ever", and Sir Thomas Munro, one of the staunch supporters of the system once declared that it was "fixed" and "permanent". In this report on the settlement of the ceded districts of Madras on ryotwari principles, Sir Thomas Munro advocated the reduction of the existing assessment by twenty-five per cent and the settlement, in perpetuity, of the assessment, but as the Board of Revenue and the Government were against any reduction, the proposal was dropped. Again, the inquiry of Col. Baird Smith, into the causes of the famine of 1860 led to a proposal to extend the permanent settlement of land revenue to all parts of India, and his proposal was circulated to all the local Governments. The Madras Government in its letter No. 241, dated the 8th February 1862, explained the ryotwari settlement to mean a permanent settlement. "The leading characteristic of ryotwari tenure is the permanency of the assessment." The same view had also been expressed in the minutes of the Board of Revenue dated the 5th January 1818, the Administration Report of 1855-56, and in the Proceedings of the Board of Revenue, dated 15th July 1857. On the 9th July 1862, the then Secretary of State for India, Sir Charles Wood sent out orders that "a full fair and equitable rent must be

imposed on all lands under a temporary settlement", and that, wherever this had been done, a permanent settlement of the revenue might be made. He gave an option to Government "to determine how far any particular district was in a condition to warrant the practical application of the measure." He felt that such a measure, while stimulating or confirming the sentiments of loyalty and attachment to Government by whom so great a boon had been conceded and on whose existence its permanency would depend would also accelerate the resources of India and ensure in the highest degree the welfare and contentment of all classes of people. Regarding the loss of prospective income to the State, he said, "Her Majesty's Government are of opinion that the advantage which may reasonably be expected to accrue not only to those immediately connected with the land, but to the community generally, are sufficiently great to justify them in incurring the risk of some prospective loss of land revenue in order to obtain them." ✓ On the 8th June 1864 the Governor-General-in-Council submitted in reference to the above despatch an account of the steps taken in furtherance of the object in view. On the 24th March 1865, Sir Charles Wood, laid down the rules for the introduction of permanent settlement. He divided the districts into three classes namely (a) districts in which agriculture was backward ; (b) districts in which the estates were fairly cultivated and resources fully developed ; and (c) districts which contained estates fairly cultivated and also estates with resources imperfectly developed. He decided that the permanent settlement should be introduced at once in the second class of districts and refused in the first class. In regard to the third class of districts, his policy was to authorise an immediate settlement in perpetuity after revision, for all estates in which the actual cultivation amounted to eighty per cent of the cultivable or malgoozaree area, and that "estates not so fully cultivated" should be treated in the ordinary manner and settled for a term not exceeding thirty years. The principle of permanence was adhered to by another Secretary of State for India, Earl De Grey and Ripon, and reaffirmed by a third Secretary of State, Sir Stafford Northcote. Sir Stafford Northcote wrote that the Government of England was prepared to sacrifice the prospect of an increase in land revenue "in consideration of the great importance of connecting the interests of the proprietors of the land with the stability of the British Government." He laid down two rules to restrict the permanent settlement in under-developed tracts and estates, namely, (a) "No estate shall be permanently settled in which the actual cultivation amounts to less than eighty per cent of the cultivable or malgoozaree area ; and (b) "permanent settlement shall be concluded for any estate to which canal irrigation is, in the opinion of the Governor-General-in-Council, likely to be extended within the next twenty years, and the existing assets of which would thereby be increased in the proportion of twenty per cent." Subsequently, however, a change of view had come upon the authorities in England arising from the loss of prospective income to the State. In 1869, when the Madras Government solicited orders of the Secretary of State for India to declare the grain valuations imposed by the Settlement department permanent, he refused his sanction on the ground that the scheme involved an unjustifiable sacrifice of the future resources of the State. For a time the idea of permanent settlement was dropped. Finally the Secretary of State in his Despatch No. 24, dated 28th March 1883, decided that, "the policy laid down in 1862 should now be formally abandoned." Sometime after 1910, the Board of Revenue, Madras had occasion to go into the history of the permanent settlement under the ryotwari system and its conclusions were accepted by the Government of Madras an official summary of which was thus given ; "Save for an unauthorised

proclamation issued by the Settlement Officer of the Salem District over 100 years ago, no declaration has been made to the people binding the Government to any permanent settlement. During the discussions which attended the introduction and gradual evolution of the ryotwari settlement, opinions were recorded—in some cases by highly paid officers of Government in favour of the eventual permanency of the settlement, and so late as 1862 a guarded adherence to this view was expressed by the Secretary of State. But whatever weight may at the time have attached to these views, they remained mere expressions of opinion as to the future policy of Government, and were never given practical effect to or adopted as a principle for immediate adoption. The only claim that the ryots of Madras can urge to a permanent settlement rests on the fact that at one time the eventual making of such a settlement was in contemplation, and no rights were affected by the subsequent decision that the time had not come for limiting the maximum amount of land revenue."

90. With the abandonment of the idea of permanency of ryotwari settlement, principles were formulated for the revision of settlements. Such revisions used to take place once in about thirty years. The Government of India in its attempt to minimise the evils incidental to periodical revisions of assessment ruled in 1883 that, in order to eliminate from future settlements the elements of uncertainty and inquisitorial inquiry, and to give to the ryot thereby an assurance of permanence and security, when once the soil had been carefully classified, there should be no revaluation when the assessment was to be revised, while not depriving the State of the power of enhancement of the revenue on defined conditions, that is to say, on such principles and data as would enable any person investing money on landed property or in improvements to land, to forecast with tolerable precision and without official aid, the enhancement of revenue to which he would in future be subject in order that certainty of assessment might become one of the inherent attributes of landed property. The Government of Madras accepted the proposal and ruled that "in district in which the revenue has been adequately revised, the element of price should alone be considered in subsequent revisions, such districts being those duly surveyed and settled". The possibility of making prices alone the basis of assessment was however, negatived by the Secretary of State in his despatch, dated the 8th January 1885. He ruled that prices alone should not be the guiding factor in revisions of assessment, but that increased value of land and the land owners' actual rentals should also be guiding factors, care being taken not to raise the assessment unduly. He also ruled that the repetition of field operations (survey, valuation, minute inquiries into assets, and the like) which are considered inquisitorial and harassing to the people should be, as far as possible, dispensed with, and that improvements made by landowners should not be taken into account, but those made at the cost of the State should be taken into consideration, and also to some extent, increase of cultivation, and declared himself averse to lay down any line of policy binding upon his successors. The Government of India acting under the instructions of the Secretary of State declined to give a pledge against future revisions of classification of land forming the primary basis of assessment but intimated that the existing classification, if found to be generally acceptable, should not, on resettlement, be disturbed. About thirty years thereafter, it had to consider the question in connection with a memorial submitted by certain retired Anglo-Indian high officials to the Secretary of State for India and forwarded by him to the Government of India for consideration. They suggested that in

periodical settlements of revenue there should be no increase of assessment except in cases where the land has increased in value in consequence of improvement in irrigation works carried out at the expense of Government or on account of a rise in the value of produce, based on the average prices of the thirty years next preceding such revision. But the Government of India declined to accept the suggestion and observed that "in these circumstances, to deny the right of the State to a share in any increase of values except those which could be inferred from the general tables of price statistics in itself a most fallacious and partial test would be to surrender to a number of individuals an increment which they had not themselves earned, but which had resulted, partly from the outlay of Government money or great public works, such as canals and railways, partly from general enhancement of values produced by expending resources and a higher standard of civilisation". Thus, the principles of resettlement were not very clear and individual cases of resettlement continued to be treated on an *ad hoc* basis. The last resettlement in Ganjam ryotwari tracts (there was no ryotwari tract in Koraput) was done near about 1910.

91. When a ryot is first put into possession of land he is furnished with a document, called patta which is liable to revision at each annual settlement called jamabandi. But, Government is under no obligation to issue any patta at all to a ryotwari proprietor. The patta is only a mere bill issued to the ryot so that all concerned may know the amount of assessment payable and the instalments by which it is payable and is not, nor does it purport to be, in the nature of a grant or conveyance. It is not evidence of title but only of possession.

92. A registered pattadar may, so far as he is concerned, alienate, sublet, mortgage, sell, bequeath or otherwise dispose of the whole or any portion of his holding. Section 2 of the Madras Land Registration Regulation XXVI of 1802 requires the Collector of each district to keep registers for registering landed property paying revenue to Government and to register all transfers from one proprietor to another and section 3 provides that transfers without such registry are not valid and do not exempt the persons in whose names the estates stand from paying the revenue due from such lands. But as early as 1831, the Sudder Court pointed out that registry by a Collector could not confer a title and that conversely, want of registry does not affect the validity of the sale of land as between the seller and the purchaser and an unregistered transfer is invalid only as against Government. Consequently it has been held that transfers without registry in the Collector's books are valid as between the parties and are invalid only as against Government for the purpose of claiming exemption from liability to revenue. Therefore in the absence of such registry on an alienation, the registered pattadar is liable to be proceeded against under the Revenue Recovery Act for arrears of revenue due even on the lands alienated by him. When a pattadar makes an alienation, and it is registered in the Collector's register the transferee takes the land subject to the payment of arrears of revenue or other legal charges due on it and subject to the same conditions and obligations as the transfer held it under. But sale for arrears of revenue conveys to the purchaser the land free from all prior encumbrances.

93. The pattadar is not liable to pay extra assessment for any increase in produce due on account of improvements made by him but cannot claim, as of right, reduction of assessment on account of the space occupied by such improvement. He is liable to pay the assessment fixed on it whether cultivated or not, waste or fallow.

94. Subject to the payment of revenue, a ryotwari proprietor enjoys an absolute proprietorship over the soil and can deal with or use it in any manner he likes. But When he works mines, he is liable to pay a royalty in addition to the usual assessment for surface cultivation.

95. A pattadar can relinquish the lands in his holding or any portion thereof, provided the relinquished part is accessible and the relinquishment is in writing and made sufficiently early in the season to enable another ryot to commence cultivation upon it. After relinquishment, it becomes the property of Government which it can dispose of in any way it likes.

96. The ryot has no right that water for his lands registered as wet should be supplied to him through a particular source and Government has the right to alter the sources, means, works, etc., from or by which the water for irrigation is supplied to the ryot who is entitled thereto so long as his right to water is not prejudicially affected so as to cause real damage. A ryotwari proprietor whose source of water supply is interfered with by another is entitled to an injunction restraining him from such interference.

97. It has been held that Sovereigns in India have always claimed as one of their prerogatives the right to take a share of the produce of all cultivated lands and also to fix by executive orders that share and its commuted money payment. Civil Courts are prohibited from taking cognizance of suits involving the consideration or decision of any question regarding the rate of land revenue payable to Government or the amount of assessment fixed or to be hereafter fixed. But they have jurisdiction to decide whether or not the land or person is at all under liability to be assessed to land revenue. As the prerogative of the Sovereign is to take only a share of the produce and the prohibition of the jurisdiction of Civil Courts extends only to the rate or share that may be fixed by Government, it follows that that share cannot exceed the produce itself and an assessment which is prohibitive and *prima facie* in excess of what the land may produce or is out of proportion to such produce is ultra vires of Government and such action can be called into question in the Civil Court. In consideration of this legal position and in pursuance of the policy that the ryotwari proprietor must be kept contented and happy in the interest of Government, elaborate instructions were issued by the Government as to how the ryotwari assessment was to be fixed. The more important points in the principle of assessment are mentioned in the following paragraph.

98. The most important was fixation of State's share of the produce. At the time of the organisation of the Settlement Department in 1856, the Madras Government proposed to fix the land revenue at 30 per cent of the gross produce, but the Government in England ruled that the land revenue should represent a fixed proportion of the net and not of the gross produce which was eventually fixed at one-half. The settlement is accordingly based on what is known as the "half net principle". The instructions issued to the Settlement Department required that the net produce of every variety of soil should be ascertained by a large number of actual experiments, and the procedure prescribed was most elaborate. The first process was to divide the soil into certain main classes according to the mechanical composition and chemical properties of the soil dealt with, and there were 14 such classes recognised by the Settlement Department. Each class of soil was then sub-divided, some into 3 and others into 5 sorts with reference to their degrees of fertility and ascertained

by an examination of the constituents of the surface soil and sub-soil, the total varieties of soil dealt with being 66. All lands whether irrigated or unirrigated were classed under these 66 varieties of soil. But, for irrigated lands the classification was still more elaborate and these lands were again sub-divided into a number of groups according to the nature and efficiency of sources of irrigation from which the lands derived their supply of water, and lands falling under each of these groups were classed under the 66 varieties of soil. The second process was to ascertain the grain outturn of the lands irrigated and unirrigated. For this purpose certain prevailing dry crops in the case of dry lands and paddy in the case of wet (irrigated) lands and rainfed lands (that is, lands on which wet crops can be grown by impounding rain water) are taken as standards, and the average outturn, in terms of these crops of every variety of soil was ascertained by actual crop experiments. From the average outturn thus ascertained, a deduction of 15 to 25 per cent was made on account of extraordinary vicissitudes of season and barren patches unavoidably measured with fields. The third process was to find the money value of grain for ascertained and deduction from it 8 to 20 per cent for cartage and merchants' profits, the remainder was taken to represent the ryots' prices and adopted as the commutation rate. The grain outturn was converted into money at this rate. The fourth process was to ascertain by actual enquiries the expenses of cultivation for each kind of soil. The difference between the money value of the grain and the cultivation expenses was taken as the net value of each kind of soil, and half of it was taken to represent the land tax. To correct inequalities arising from the adoption of a single commutation rate for an entire district or other larger tract of country comprising a number of taluks while the prices of grain often differed from village to village according to facilities of communication and proximity to markets and from the adoption of the same values for similar soils whose fertility might be affected by the local circumstances such as vicinity to the sea, rivers or hills, the villages were divided into a number of groups, and the money value applicable to the lands comprised in each group were raised or lowered according to circumstances. Minor differences in the value of lands due to the same causes were allowed by modifying the classification under 'sort' in each group. Thus, fair land in a good situation immediately adjoining the inhabited portion of the villages would be classified in the first sort 'good' while good land at a great distance would be classed as "moderate". In the case of irrigated lands their classification into sorts also was adjusted with reference to their facilities for irrigation owing to their proximity or otherwise to the irrigation source and in the case of rainfed and dry lands, with reference to their proximity to roads and markets.

99. Many important matters (as for example, the question of assessment and remission, including assessment on land put to non-agricultural use, or converted to non-agricultural use, assignment and alienations, relinquishment, recording of mutations, preparation of record-of-rights) governing the agrarian life in ryotwari tracts continued to be conducted by executive orders and Government did not feel it necessary to bring them on a statutory footing. Nor did the ryots feel that the absence of statutory provision in these matters was creating any serious difficulty for them. This was because of the fact that elaborate instructions had been issued by the Board of Revenue, Madras (known as Board's Standing Orders) for the conduct of business in matters relating to all aspects of the agrarian life and defects and deficiencies noticed in them were being removed from time to time very promptly.

(iii) INAM LANDS

100. During the last fifty years or so no land tenure in Madras created so much controversy or gave rise to so many case laws as the 'Inams' which were numerous in the districts of Ganjam and Koraput. The history of origin and development of these Inams is worth studying and a brief account thereof is given below.

101. The origin of the Inam tenure can be traced to grants made by Hindu Rajas for the support of temples and their servants and charitable institutions, for the maintenance of holy and learned men or for rewards for public service. The practice was followed by Muslim rulers and by the British administrators until about a century ago when the practice fell into disuse after the receipt of despatches from the Court of Directors, dated 2nd January 1822 and 27th May 1829 in which they expressed their preference for money pensions to grants of land on all ordinary occasions and directed that grants of land should be restricted to special cases.

102. The permanent settlement having been made exclusive of alienated lands, pre-settlement Inams as they are called, the zamindars' connection with them ceased then. Section 12 of Regulation XXV of 1802 clearly stated that it was not competent to a landholder to resume beneficial grants known as lakhiraj lands. In some cases, however, the jodi or quit-rent payable on certain alienated lands had been included in the assets of the zamindary in fixing its land revenue but in such a case, the zamindar's only connection with them was the collection of the jodi or quit-rent, the right of resuming them being vested in Government. In some other cases, the full rental of the alienated lands was included in the assets in which case the zamindar had the right of resuming them. After the permanent settlement, the zamindar had no right of creating beneficial tenures in favour of religious, charitable or other purposes so as to exempt them from bearing their portion of land revenue without the permission of Government being previously obtained. Any creation of beneficial tenures subsequent to the permanent settlement was really a gift or lease at a favourable rent which did not result in an abatement of the revenue but on the other hand was liable to be proceeded against for default of payment of revenue by the zamindar. But in spite of this legal position, generally in zamindaries held by the successors of ancient Rajas, the practice of granting Inam continued though not enforceable against Government or Government revenue these Inams were considered to affect the revenue in future and to create a difficult situation for the successors-in-interest of the zamindar. In order to prohibit grant of such Inams, the Madras Impartible Estates Act, 1902, and the Madras Impartible Estates Act Continuance Act, 1903 were passed. These Acts were ultimately repealed by the Madras Impartible Estates Act, 1904 which provided that the proprietor of an impartible state would be incapable of alienating or binding his estate or any part thereof beyond his own life time. The list of impartible estates was given in the Act itself and all the estates governed by the law of primogeniture in the districts of Ganjam and Koraput found mention in the list. But in spite of this provision, grant for Inams continued though in a less liberal manner.

103. As early as 1858, the Government of Madras considered it necessary to go into the history of the Inams then existing and appointed a special Inam Commission to deal with the subject. The work of this Commission was to enquire into all claims to hold lands as Inam and to validate and issue title

deeds for Inams lawfully in possession for fifty years or more and in resuming others or commuting them to money pensions. For the purposes of the Commission all kinds of grants were taken into consideration, whether they included any right in land or only the land revenue. Next to validating title was enfranchisement of Inams. Enfranchisement means the conversion of an Inam into private property of the holder on payment of a moderate quit-rent (calculated at a fraction of the normal assessment) fixed for over or a single commutation sum equal to so many years' purchase of the quit-rent. The Commission dealt with about five lakhs of titles in Madras, but the district of Koraput and the hilly tracts of Ganjam were beyond its scope presumably because of their extreme backwardness. It is yet another matter that quite a number of years thereafter (in 1910) a special Deputy Collector was appointed to go in to the case of Inams in Koraput district, completed his enquiry and prepared a report as a preliminary measure to the issue of title-deeds for and enfranchisement of Inams when the Maharaja of Jeypore took exception to this action on the part of Government and on his demand that all Inams in Korput were resumable at his pleasure the report had to be shelved. The work of the Inam Commission as a special organisation came to a close in 1869, but work of the same kind continued under the charge of a Member, Board of Revenue before whom cases of Inams that remained unenfranchised after the Inam Commissioner (especially those relating to village service) used to come from time to time. Taking enfranchisement as the basis of division, the Inams could then be divided into the following three broad categories, namely:—

- (a) enfranchised with the rent being commuted or redeemed;
- (b) enfranchised, but liable to jodi or quit-rent; and
- (c) still unenfranchised.

104. The more interesting division of Inams was into two broad categories namely, major and minor. The major Inams consisted of the grant of whole villages on favourable tenure with or without conditions of service attached to them. These are whole Inam villages. The minor Inams consisted of grants of isolated fields or plots on favourable tenure subject to rendering some service or other in most cases or as a reward for past service. Under the term of the Inam settlement, a large number of minor Inams particularly those that had been granted as personal benefit Inams and Inams granted for past service or those granted for rendering or continuing revenue or police service in the villages were enfranchised. The unenfranchised Inams consisted and still consist largely of religious and charitable service Inams and artisan service Inams (for services to be rendered to the village community by carpenters, blacksmiths, washermen, potters, barbers etc.). In addition to this, there are also public utility Inams. The religious and charitable service Inams and artisan service Inams are held free of assessment on the payment of jodi or kattubadi but they are liable for resumption for breach of conditions of service including alienation of land. The difference between the assessment due from the land and the jodi or kattubadi represents the annual value of the grant made to the Inamdars. In cases of village services or artisan Inams, the rules particularly provide that in case of breach of any of the conditions of service an attempt should be made for the continuance of service as far as possible by a regrant of the resumed Inam to some other artisan willing and capable of rendering the service. The regrant in these cases consist of the net assessment which represents the assessment, if the land was free from any payment and by the difference between the assessment and the jodi or kattubadi payable for the Inam land.

105. According to ancient Hindu law, there are two beneficial interests in land, namely:—

- (a) that of the Sovereign or his representative (Land revenue or *mélva-rani*) ; and
- (b) that of the cultivator (land proper or *Kudivaram*).

The cultivator's right arose from the occupation of land. Thus, the grant of an Inam did not touch and could not have touched the cultivator's right in the land, except in the rare case where the grantor or the grantee was also holding the cultivator's interest or that it was waste at the time of the grant. The Madras Inams Act, VIII of 1869, therefore, provided that the enfranchisement of an Inam or the grant of a title-deed to the Inamdar was not to be deemed to define, limit, infringe, or destroy the rights of any description of holders or occupiers of the lands from which the Inam was derived or to offset the interests of any person other than the Inamdar named in the title-deed or to confer on the Inamdar any rights in the lands which he would not otherwise possess. Thus the right of the Inamdar did not ordinarily extend to the occupancy right of the land especially in the case where the Inam consisted of an entire village. For, it was extremely unlikely that the Inamdar was occupying the whole village as an occupancy ryot at the time of the grant or has lawfully acquired the cultivator's right in the entire village by reclaiming waste lands and growing a village in his holding. In this view of the matter, the Government and Courts had held until 1st July 1918 that there was always a presumption to the effect that all Inams were grants of land revenue only and that the burden of proving that any Inam included grant of land also was on the Inamdar claiming this. But this was definitely upset by a decision of the Privy Council of that date when it was held that no such presumption existed. In 1919, this decision was reiterated in another case. In 1921, a Full Bench of the Madras High Court understood the above two decisions as inferentially establishing a presumption that Inam grants were *prima facie* grants of both land and land revenue. This interpretation completely reversed the law as it had been understood, interpreted and implemented till 1918. But this interpretation of the Madras High Court was over-thrown by the Privy Council in 1922 when it was held that there was no presumption one way or the other and that each case was to be decided on its own merit. Subsequent decisions of the Privy Council introduced a degree of uncertainty into this view and it became difficult for the High Court even to reconcile different decisions of the Privy Council on this point. This uncertain position arising from the reversal of judicial decisions in quick succession did raise many a false hope of vested rights that resulted in rapid growth of litigation which generally ended in disastrous results on either side. It was with a view to put a stop to this unhappy position that the Government decided to clarify the law by amending it so as to remove the effect of the Privy Council decision that was operating very heavily in favour of Inamdars, the ryots having no documents to support their claim, no money to pay for the litigation and no education to appreciate the value of their own rights. That was how the amendment on the point referred to in paragraph 75 was brought up in 1933. The Bill of 1933 with this amendment was passed by the legislature but the Governor did not give his assent to this portion of the Bill. He returned the Bill to the Legislative Council with a message the material portion of which was as follows :

“In view of the complexity of the question involved, which in my opinion requires further consideration by the Council, I think it should be dealt with in a separate Bill which will be introduced by the Government early in the next

session of the Council. At the same time, I consider that the Inamdars should not be permitted to acquire occupancy right after the 1st November 1933 and that all pending proceedings in ejectment should be stayed for a period of two years from that date in view of the proposed legislation".

In pursuance of the said message, Section 127(2) of the Madras Estates Land (Amendment) Act, 1934 (Madras Act VIII of 1934) was inserted. The provision was to the following effect . . .

"No tenant in possession on the 1st day of November 1933, of any land in an Inam village, not being an estate within the meaning of sub-clause (d) of clause (2) of section 3 of the said Act was amended by this Act, or admitted by the Inamdar to possession of any such land subsequent to the said date shall be liable to be ejected and all proceedings in ejectment of any such tenant and all proceedings involving a decision whether or not the Inamdar has the kudivaram right in such land, shall be stayed until the first day of November, 1935 :

Provided that nothing contained in this sub-section shall apply to any land the kudivaram interest in which has been declared or recognised before the first day of November, 1933, to vest in the Inamdar by a decree or order of a competent Court, which has become final".

As recommended by the Governor, a Bill was introduced in the Legislative Council in 1934 and was passed by it. The Bill awaited the assent of the Governor-General. The protection from eviction conferred by Section 127 (2) of Madras Act VIII of 1934 was about to lapse on 1st November, 1935. As the assent of the Governor-General was not received, it was considered necessary to continue such protection for a further period of six months and for this purpose, a Bill was introduced to substitute "1st day of May, 1936" for the "1st day of November, 1935" in section 127 (2). The above Bill became law as Madras Act I of 1936, the Bill having been assented to by the Governor on 26th November 1935 and by the Governor-General on the 16th December 1935. Thus, when the Province of Orissa was created the intention of the Government to put all whole Inam villages in the category of estate still remained to be implemented by an amendment of the Act and the temporary protection given to the tenants against eviction by the Inamdars was due to expire only after a month.

106. While Inams in the district of Ganjam faced this difficulty, those in Koraput fared no better. The Maharaja of Jeypore had not taken kindly the enquiry by a special Deputy Collector into the tenure of Inams in his zamindaries and even though he had succeeded in putting a stop to the enquiry, he perhaps had the fear that any change, especially in the political situation of the country, might revive the enquiry again and it might then be difficult for him to prevent unhappy results flowing therefrom. Between 1930 and 1933, he, therefore started resuming all Inams even those which could be proved to be pre-settlement ones and giving ryoti patta to the erstwhile Inamdars in respect of lands "in their possession". It virtually reduced the pre-existing ryots to the level of tenants-at-will of the Inamdars simultaneously taking away the rights of Inamdars over forest and waste lands included in these erstwhile Inams. Very few Inamdars resisted this and went in for litigation. But litigation against such a powerful person as the Maharaja of Jeypore was certainly difficult for an ordinary Inamdar and almost all the litigations

terminated in compromise, the "Inamdars" ultimately agreeing to the resumption of Inams in exchange of ryoti right over the lands "in their possession".

(iv) AGENCY TRACTS

107. In the Northern Sirkars, the Muslim rulers recognised two classes of zamindars, namely, the hill zamindars occupying the Eastern Ghats and zamindars on the plains. On account of its hilly nature, the unhealthy climate therein and the turbulent nature of the tribals inhabiting it, the hill zamindars had always been treated differently from the zamindars on the plains. Though the general policy of the British Government was to treat all the zamindars alike, they wanted to know more details about the hill zamindari of Ganjam district before going in for a formal settlement of these tracts. In these tracts predominantly inhabited by Khonds and Savars whose way of life was totally different from those in the plains communication facilities were extremely meagre and living difficult. In these circumstances it was extremely difficult and time-taking to find out the facts necessary for bringing it under a regular settlement. A sort of Stand Still Agreement was therefore reached by Government with the hill zamindars making them liable to pay *Peshkush*. With the exception of the hill zamindars of Karada, Ranaba and Kattingia, others had zamindari in the plains also which had already come under the permanent settlement and in the usual course, the hill zamindari would have come under it. But the Ghumsur rebellion turned the course of events.

108. In 1836, disturbances broke out in Ghumsur when the Raja refused to pay *Peshkush*. Mr. Russell, the first Member of the Board of Revenue, was appointed to the supreme control of the affairs. The Raja fled to the Maliahs (hills) and the troops followed him. Thereafter the Khonds became turbulent and it took quite some time before peace was again restored in the area. Ghumsur and Sorada, belonging to the Raja of Ghumsur were forfeited to Government and with them the Ghumsur and Sorada Maliahs. The plain portion of the area were subsequently settled on the ryotwari pattern. The town of Russellkonda, the headquarters of the Ghumsur subdivision which has recently been renamed as Bhanjanagar was named after Mr. Russell.

109. Mr. Russell's report on the Ghumsur rebellion drew attention of Government to the rite of human sacrifice known as "meriah" that commonly prevailed in all the hill tracts inhabited by Khonds. With the Ghumsur and Sorada Maliahs coming directly under the Government, it was considered to be an urgent necessity to stamp out this practice. In order to achieve this objective and for securing better administration of the hill tracts Captain Campbell was appointed as Assistant to the Collector of Ganjam with special Charge over the Khonds of Ghumsur and Sorada. The Ghumsur rebellions clearly brought out that the Khonds were extremely loyal to their zamindars and the zamindars as a class were not to be too much relied upon until the administration was properly organised and the country fully subjugated. To effectively deal with emergencies in these tracts, Government decided to remove the zamindari both in the hills and on the plains from the jurisdiction of normal administration and put them under the special control of the Collector as 'Agent' to the Government with Assistant Agents to help him in administering these areas. Since then, these areas have been termed as "Agency" (derived from the term "Agent" in whose special charge these