

tracts were placed). To give a statutory recognition to this decision of Government, the Ganjam and Vizagapatam Act, 1839 was passed. Section 2 of the Act provided that "the operation of the rules for the administration of civil and criminal justice, as well as those for the collection of revenue shall cease to have effect, except as herein after mentioned ...". Section 3 provided that the administration of civil and criminal justice including the superintendence of the Police, and the collection and superintendence of revenue of every description in the Agency would vest in the Collector and would be exercised by him as Agent to the Governor. Section 4 authorised the Governor to prescribe such rules as may be deemed proper for the guidance of the Agent and of all officers working in the Agency. In exercise of these powers, rules were framed from time to time and the administration became the special responsibility of the Agent. Though the entire district of Koraput was also an Agency, yet because it had come under the permanent settlement almost all the laws that were in force in the plains for revenue administration were also in force in that district. Excepting for the fact that the area was extremely backward and predominantly inhabited by tribals it had no other similarity with the Ganjam Agency in the matter of revenue administration.

110. The British conquest brought with it certain changes to the hill tracts, the most important of which was the stoppage of human sacrifice. The introduction of an administrative system hitherto unknown in these tracts and the inevitable difficulties however transitory they might have been concomitant therewith added to the dissatisfaction of the tribal population of these hills and the tribals rose in rebellion many a time in the first three quarters of the last century. Therefore, even though the Government could establish a strong and settled administration in the plains, it could not do so in the hills as it remained preoccupied with stamping out rebellions. With meagre facilities of communication and difficult terrain, this in itself kept the administration fully occupied for the first three quarters of the last century.

111. In 1866 the plains portion of the Agency was transferred to the jurisdiction of ordinary revenue, civil and criminal administration. But of these, Karada, Ranaba, Pandakhal and Chakapad of the Ghumsur subdivision were again placed under the Agency Department in 1869. The Chakapad area had in the meantime been surveyed and a light assessment imposed on all ryoti lands at the rate of six annas per acre of dry land and twelve annas per acre of wet land. There was no further transfer from or to the territorial jurisdiction of the Agency thereafter till 1st January 1953 when the Ganjam and Vizagapatam Act, 1839 was repealed and the entire area stood transferred to the jurisdiction of normal civil, criminal and revenue administration.

112. With the passing of the Ganjam and Vizagapatam Act, 1839, the Agency was divided into four administrative units and three officers holding direct charge of three of these units were designated as the Principal, Senior and Special Assistant Agents, the officer holding charge of the fourth was the General Deputy Collector (Subdivisional Officer), Ghumsur. The Senior Assistant Agent's charge consisted of the Parlakimedi Maliahs with an area of 354 square miles. The Principal Assistant Agents' charge consisted of the Jalantara, Budarsingi and Mandasa Maliahs with an area of 50 square miles. The General Deputy Collector, Ghumsur was in charge of the Pandakhal Muttha with an area of 104 square miles and the Adigudi and Minnajodi Mutthas of Sorada Maliahs. The special Assistant Agent's jurisdiction covered the Badakhimedi, Sanakhimedi, Surangi, Ghumsur, Badagada, Katingia and

Sanak Maliahs including the Karada and Ranaba Mutthas, the transfer of the district of Mutthas from the jurisdiction of the General Deputy Collector, Ghumsur having been effected in 1900. This vast jurisdiction was reshuffled on the 1st April 1908 with the creation of Orissa and then again on the 1st January 1948 with the creation of Boudh-Khondmals district, but these changes were not very much relevant for the purpose of revenue administration of the Agency.

113. In 1856 the Kutia Khonds of Sanakhemedi Maliahs rose in a rebellion. The expectation that the Raja of Sankhemedi would ensure that there would be no rebellion was belied by this event. This appears to have been the reason for the decision of Government in 1870 to resume the Sanakhemedi Maliahs and this was done finally in 1872. When Orissa was created, there were thus three Maliahs, namely Parlakhimedi, Sanakhimedi and Ghumsur for which there was no hill zamindar.

114. In 1884, the Raja of Parlakhimedi brought a suit in the Court of the Agent for possession of the Parlakhimedi Maliahs and more especially the forests and waste lands thereof, the management of which had been taken over by Government under a special forest establishment. The suit was decreed in his favour in respect of waste lands and forests only. But the order was reversed by the High Court in October, 1900.

115. In 1874, the Scheduled Districts Act was passed, and the Act enumerated all the Agency tracts as Scheduled Districts to which application of normal laws was barred.

116. By this time, Government had decided that grant of zamindari rights to the hill zamindars was out of question but that they should be formally recognised as service holders and the Maliahs in their possession, as service grants. Between the year 1874 and 1881 Sanads were issued to the Rajas of Badakhemidi, Badagada, Kantingia Mandasa, Jalantar, Budarsingh, Jarada, Karada and Ranaba and they executed *Kabuliyats* in exchange. The Sanads granted to these hill zamindars (or hill chiefs technically known as Muttadars) clearly mentioned that they were to hold the Mutthas as service tenures and on payment of a fixed amount of Nazarana. Under them there were Patras and other heads of Muttas and their sub-ordinates who were service Inamadars. The income of these Muttadars and Muttaheds consisted partly in mamuls (customary prerequisites) in money and in kind and partly in Inam Lands. They were responsible for maintaining peace and order in the Agency though this responsibility was gradually withdrawn from them and was given to the normal administrative machinery.

117. The systems of land revenue administration that thus emerged in the different parts of the Agency by force of historical circumstances were neither uniform nor simple. One point was however definite and that is, Government could be taken as the proprietor of the entire area and there were no estates in the sense which that term usually bears. The largest portion of this area was occupied by the Khond and Savara peasantry who used to pay no rent. In two small tracts below the ghats, namely Pondakhal and Chokapad, and in one village (Balajipuram) in Parlakhimedi Taluk there was ryotwari settlement. In another small area above the ghats, (in G. Udayagiri Taluk) ryotwari settlement was subsequently introduced in respect of lands held by the non-tribals. And finally, there were service tenures of different kinds.

118. For the purpose of describing these different systems, the Ganjam Agency may be divided geographically into the following zones, namely:—

- (i) Ghumsur-Udayagiri taluk and Agency portion of Surada (Tract No. 1)
- (ii) Balliguda and Ramgiri-Udayagiri taluks and a portion of Parla-kimedi Agency (Tract No. 2), and
- (iii) The rest of the Parla-kimedi Agency (Tract No. 3).

Tract No. 1 may be further divided as follows:—

- (a) Khond lands,
- (b) Non-Khond lands,
- (c) Chakpad Khandam, and
- (d) Pondakhal muttha.

119. The Khond lands above the ghats were held for the most part by Khonds free of rent. A proclamation approved by the Government of India in 1846 was issued to the effect that Government did not intend either then or thereafter to impose any tax on the hill races. But in course of time some of these lands passed on to the non-hill people of the plains by process of alienation. To put a stop to such alienation, the Agency Tracts Interest and Land Transfer Act I of 1917 was passed prohibiting all transfers from hillmen to non-hillmen without express permission of authorities. In order No. 2584, dated the 9th July 1918, the Government of Madras directed a survey and settlement operation of all lands alienated before the introduction of the aforesaid Act in this Tract No. 1. The total area surveyed and settled was 6,614 acres and the assessment, Rs. 9,356.

120. The Chakpad Khandam as a whole was surveyed and assessed. The lands were held both by Khonds and non-Khonds. The Bissoyies owned separate lands of their own and also got mamuls from the inhabitants. These Bissoyies used to be appointed and removed by the Agent.

121. The Pondakhal muttha consisting of twentyseven villages was surveyed and settled on ryotwari system. The total area assessed was 8,228 acres.

122. The Tract No. 2 was split up into several Mutthas and each Muttha was in charge of a Muttha head called Patra. Each of the Patras used to pay and still pays to Government a nazarana of Rs. 12 per annum. The Patras were responsible for all public duties, namely, execution of the Agency Civil Works and report of crimes and were the village heads. They owned lands on service tenure in the Agency. The lands in this tract have not been surveyed and settled and bear no assessment, bulk of these lands being in possession and enjoyment of Khonds and Savaras free of rent.

123. The Thumba Agency now attached to Parla-kimedi was held by a Bissoyi. He used to get mamuls from the Muttha, own separate lands and pay to Government annually Rs. 100 as nazarana. This muttha was neither surveyed nor settled.

124. Tract No. 3 is peopled mostly by Savaras and was placed in charge of 10 Bissoyies, who used to pay to Government small amounts as nazarana. These Bissoyies were responsible to Government for all Government work. The Savaras used to pay mamuls to the Bissoyies. No Sanads were issued in the past to these Bissoyies. Only one village (Balajipuram) was surveyed and settled on ryotwari tenure.

125. There were thus five different systems of land administration—namely,

- (i) hill chiefs like those of Karada and Ranaba,
- (ii) Bissoyies of Parlakhimedi
- (iii) Muttha heads in Balliguda and R. Udayagiri,
- (iv) Ryotwari tracts of Chokapad, Pandakhal Baljipuram and non-tribal lands, and
- (v) lands of hill tribes.

It is not difficult to see that in practice the hill chiefs and Bissoyies used to act as intermediaries between Government and the people. There was however no "rent" to be realised from the tribals who used to enjoy and who still enjoy their lands free of assessment. They used to pay some mamuls to the Mutthadars and render Bethi (free labour) to them. The question of mamuls was peculiar to Ganjam Agency and though strictly speaking it was not rent, yet it is inseparably connected with the land and revenue administration

126. The way of life of tribals was entirely different from those living in plains. If the persons dwelling in the plains considered the tribals as turbulent and dangerous neighbours, the tribals in their turn were equally suspicious of the dweller in the plains. Instances were frequent in which the tribal used to be cheated and all his earnings from the poducultivation so dear to his heart and so much connected with his social life—used to be taken away by the man from the plains. And when the tribal thinks that his feelings have been wounded or the fruits of his labour have unjustly been taken away, he used to rise in revolt. In order to avoid this type of trouble and keep peace and order in the area inhabited by the tribals, one of the Rajas of Parlakhemidi granted 24 villages as service jagir to Doras. All these were known as "Doratanam Inams". The Kattubadi payable by the Inamdars to Raja of Parlakhemidi was included in the assets of that estate at the time of Permanent Settlement. After the revelation in the Parlakhemidi Maliahs in 1834, the Government of Madras had already resumed six villages as it had been found that the Doras of these villages had joined with the rebels. As in course of time, it became the responsibility of Government to keep peace and good order throughout the Agency tracts the purpose for which the remaining 18 Doratanam Inams was being enjoyed existed no longer. These 18 villages were therefore ordered to be resumed, and full assessment levied on them, the peshkush of the Parlakhemidi estate being reduced by the amount of Kattubadi payable to the Maharaja by the Doras. The Government subsequently decided that the melvaram right in respect of these villages should be transferred to the Maharaja of Parlakhemidi and the peshkush payable by him increased by an amount equal to 9/10 ths of the assessment of rent in these villages. The transfer of these villages was accordingly effected from 1st July 1930. Government ordered that settlement of rent in respect of these villages should be made under the provisions of the Madras Estates Land Act. Pending assessment of rent, the melvaram of these 18 villages (including the four which after the separation of Orissa were retained in Madras) was provisionally fixed at Rs. 17,400 out of which Rs. 15,700 was added to the peshkush payable by the Maharaja to Government. Government of Madras made it clear that these villages formed part of the zamindary not because they always formed part of it but because they reverted to Government and were made over to the zamindar. These villages therefore formed part of the estate as a temporarily settled zamindary. The rent settlement in these villages under the Madras Estates Land Act was taken up as ordered by Government and it was finalised in 1940.

(d) The Ex-States

127. Mention has already been made of the policy of Muslim rulers to treat the hill zamindars differently from the zamindars in the plains. This policy was followed when in 1803 Orissa was ceded to the British by the Marathas. These hill chiefs entered into agreements with the British undertaking to maintain submission and loyalty to the Government of East India Company and to pay annual tribute. Their "States" were officially termed as "Tributary Mahals" of Orissa. They were not subject to any regular settlement, the Cuttack Land Revenue Regulation XII of 1805 specially exempting them from the operation of Regulations. They continued to be managed by the Political Department and the Commissioner of Orissa was appointed as the Superintendent of these Tributary Mahals. Subsequent political developments in the country improved the position of the hill chiefs and ultimately they were all recognised as rulers in 1888. Finally, they were removed from the jurisdiction of the Commissioner of Orissa and along with the Chhatisgarh states constituted what was known as the Eastern States Agency. The Agency itself was divided into two parts under two Political Agents, one for Chhatisgarh States and the other for Orissa states. The Chhatisgarh Agency contained the two Oriya states, namely Patna and Kalahandi in addition to fourteen Hindi-speaking states. Mayurbhanj was not included in any of these two Agencies.

128. Roughly speaking the 24 states which now form a part of Orissa are contained in the hill area between the great Chhatisgarh plain and the delta of the Mahanadi. This area consists of a mass of hill and jungle and may be regarded as the backwaters of colonisation by the Hindu settlers and, probably was among the latest area in India to be colonised by advanced Hindu settlers. Into the seclusion of the mazes of hill and jungle comprising the area of the states retreated the primitive tribes consisting of Khonds, Savaras, Bhuyans and others before the advancing waves of Hindu colonisation. The fertile Chhatisgarh plain and the Mahanadi Delta were naturally occupied first by these settlers, and the primitive tribes which were not absorbed into the Hindu fold, retreated and settled down in areas least disturbed and least attractive to these early settlers. This was true of practically all these states. Apparently, however, the tribes did not remain undisturbed for long. As the population increased, and probably as the result of changes taking place in Upper India on account of Muslim incursions and changes in kingdoms brought about thereby, a number of soldiers of fortune and princes without thrones who happened to visit Puri on pilgrimage found that these areas were easy to acquire and to hold. The aboriginal Khonds, Savaras and others who inhabited and ruled over these areas, were either driven off or subjugated by these founders of new kingdoms. The early history of many of the states indicates that this is how they came into being. But these petty rulers who hewed out kingdoms for themselves thought they imported a higher civilisation into these backward areas, do not at first seem to have taken any steps to introduce any organised system of management, and it is very likely that the old tribal system of villages, managed almost entirely by village headmen, survived undisturbed for a considerable period. All that the early rulers were interested in was to obtain sufficient revenue for themselves and for the purpose of setting up defences against neighbouring monarchs whose ambition could at any time result in an attempt at enlargement of their territories at the expense of neighbouring princes. It was but natural in these circumstances that the revenue system was simply that of making certain demands upon the village headmen who

were left to distribute the burden of the demand upon the cultivators in their village in any manner they considered suitable, this being more or less on a par with the tokoli or quit-rent payable by zamindars or the tribute paid by the Chiefs to the paramount power, in which a detailed consideration of how the amount was raised does not find place. Thus there was no system of detailed assessment of revenue in these states till about the beginning of British occupation. Even to this day, in the areas where shifting cultivation is practised such as in the Juangpir of Keonjhar, the distribution of the village assessment among the individual cultivators is made by the village headman who makes use of his local knowledge of the ability of each cultivator to pay and, probably, the area of a land, allotted to him for cultivation every year.

129. After the establishment of British rule, development in the states followed to some extent the development in the Province to which they were attached for administrative purposes. This happened to a marked extent in connection with settlement of land revenue. Before the establishment of British rule, it does not appear that any attempts at regular settlements were made in the states though in the plains of Orissa the Moghul system of settlement prevailed. It is practically certain, as already indicated, that rulers were content merely with assessing entire villages to revenue and leaving it to lessees and headmen to make the detailed distribution. So far as records go, attempts at systematic settlement appear to have been made for the first time in the course of the 19th century. In some states, these attempts were made early in the century, and in others, much later. A few had settlements and survey only in the beginning of the present century. By 1936, most of the Orissa states have had detailed traverse and cadastral survey however unsatisfactory but in a number of states like Keonjhar, Bonai, Ranpur and Kalahandi there were large areas inhabited by aboriginal tribes practising shifting cultivation which had not been subjected even to a traverse survey.

130. The existence of headmen in each village in these states has been referred to. This system must, to some extent, have arisen out of the very process of clearing the forest for cultivation. It was probably one settler, or a few settlers, who went and cleared the jungle and created a village by attracting other cultivators or by natural increase of their own numbers. The pioneer among such clearers or the oldest of them must have been looked up to by the other cultivators as a head-man whose instructions they followed. Among the tribes, particularly, the system of a recognised headman is to this day extremely strong, and many tribes are entirely dominated by their own village headmen. It is these headmen whom the rulers found could be conveniently held responsible for the revenue of the village and for controlling the other villagers. When the headmen were recognised by a superior authority such as the ruler, they practically became officials of the ruler. The village headmen were generally the descendants of the original headmen, but, where tribal tradition was not strong and the original founder of the village had been lost sight of, there is reason to believe that the post was often held by a person chosen by the villagers. The practice of allotting large areas of waste land to one individual for the purpose of settling a new village and recognising him as the headmen prevailed till very recently in many states, and obviously this was one of the ways by which a village headmanship could have arisen in many cases. Practically in all the states it was the village headman whether known as the Padhan, Sarbarkar, Thekadar, Gaontia or Ganjhu had the responsibility for payment of the entire village revenue to the State. The cultivators were of course expected to pay the land revenue to him but from the point of

view of the ruler, it mattered little whether, at the time the revenue fell due, all of them had paid the headman or not. This responsibility for the revenue, incidentally, was perhaps a vestige of old times when the ruler did not trouble how the amount assessed on a village was raised so long as it was paid. In view of this responsibility there were many villages in the states without headmen, as the circumstances of the villages were not such as to render feasible the acceptance of the responsibility. Such villages, in the past at least, seem to have started with headmen who were later removed on account of inability to fulfil their pledges in respect of the revenue, or surrendered the village for the same reason, or were removed for other reasons, and a new candidate did not appear on account of the unattractiveness of the village.

131. A significant but common practice in the states that developed in the last century when cultivation became profitable was not to recognise hereditary right to succession as village headman, but to make the lease or Patta of the village terminable after a certain number of years, or at the next settlement. During the currency of a lease the right of the son to succeed was however commonly recognised, but after the expiration of the lease, the ruler or zamindar as the case may be, was at liberty to give it to some one else. In order to keep the headmanship and along with it the valuable service lands attached to it (and in many cases the headmen had no other land), the heirs of the headman had to pay heavy premium and this practice led to the ruin of many families. In order to prevent this, the Political Department pressed the rulers to recognise "protected" status of the village headman if certain minimum conditions (like improvement effected in the villages particularly in the matter of irrigation, faithful performance of service for a minimum period usually twenty years, encouragement to the tenants for extending cultivation) were satisfied. In some states, particularly in those where the village headman had service land, there were rules laying down the conditions under which protected status might be granted to the village headman. Grant of protected status meant a right of the village headman to renew the theka or lease of the village on its expiry and right of his heir if found suitable in other respects (like loyalty to the ruler) to succeed as village headman. Be it said here that only one of the heirs - usually the eldest son - was entitled to such right. This however did not mean that the lease of the un-protected headman was invariably terminated and given to new persons. As a matter of fact, such an occurrence, because of the strong hereditary system in the past, would have caused serious resentment and trouble. But renewal of lease did not, in any case, mean that it was done free. On the contrary, a salami used to be levied, the amount of the salami depending on the value of the Bhogra land (service land attached to the office of the headman) and other relevant considerations, though in case of a headman with protected status, this salami was much less than what it was for an unprotected headman. In spite of this levy of salami, many villages were held for generations in the same family. Where a village headship fell vacant through failure of heirs, removal of the headman for a breach of contract, or surrender of the village by him, or other reason, then only was a new comer ordinarily appointed, though instances of arbitrary removal and resettlement of villages with favourites or persons who offered financial inducement were not uncommon. In many cases, lucrative villages were kept by the rulers for their personal benefit or were given to relatives. There were also villagers with headmen but held by the ruler as his private property or by his relatives or grantees, and where this was on a large-scale, and the grantee had the right to appoint the village headmen, the tenure was analogous to zamindari.

132. In many cases, in addition to the official salami realised for appointment of the village headman, private salami used to be levied by many rulers and this was of fairly common occurrence. In connection with the Gangpur record-of-rights, the Political Agent then wrote : "In Rairakhol indeed, I believe, though I cannot prove it, that already there is a double salami, one of the ruler privately". It is for this reason that rulers always reserved cases of appointment of headmen for themselves and did not leave them even to the Dewan. The Village headmen had many powers of revenue administration like right to settle ryots on waste land on their own terms, take possession of and dispose of surrendered and abandoned holdings, and in some cases, even powers of ejectment and distraint and as they paid salami to get the village, they used to levy salami while exercising the aforesaid powers. But these powers were gradually withdrawn in the beginning of the second quarter of the present century and along with these withdrawals, the office of the village headman became less and less lucrative.

133. As has been mentioned in an earlier paragraph, the common mode of remuneration of headmen was by land incident to the post known as Bhogra or Jagir. These lands were formerly held rent-free and the headman received no other remuneration. Most headmen had powers to reclaim new land and the home-farm was added to by them until it was found that some of them owned a very large proportion of the village area as home-farm. In order to restrict this tendency which, incidentally, resulted in most of the ryots in the village becoming temporary tenants of the headmen, restrictions were imposed in some states on the area a headman might hold as his home-farm, the limit usually being one-fifth of the total cultivated area. In most states, however, a percentage of the total rental of the village was fixed as his remuneration and he received it either in the shape of rent-free home-farm or a "drawback" upon the village rental if the rental of the home-farm was less than the fixed percentage. There was, however, a certain amount of variety, and some headmen got a higher percentage than others. In many cases, it was also found necessary to allow a higher percentage especially where the revenue of the village was small. In a few states the Bhogra lands were all resumed and resettled on ryoti terms, and the headmen were thereafter remunerated only in cash fixed at percentage of the land revenue. The Bhogra (for the sake of brevity all these home-farm lands will be referred to as Bhogra) was always considered to be service land. But usually co-sharers of the headman were in possession of portions of the Bhogra, though this practice was not recognised and these were all liable to be evicted when the headman was removed.

134. The headman was invariably considered as a public servant and the rules on the subject were clear that he was liable to be ejected for misbehaviour, breach of the terms of the lease and other reasons. He was not in any sense a tenure-holder or proprietor though he had in many cases paid a heavy nazrana or premium to be the headman.

135. Subject to the rights of zamindars (who were very few) and similar tenure-holders, the entire area of the state used to be regarded as belonging to the state or ruler (the distinction between the two was practically non-

existent). The various interests in land, apart from the ruler, that existed, may be enumerated as follows :—

- (a) Zamindars including illaqadars or pirpattidars (where they existed)
- (b) holders of grants of whole villages or assignees of revenues of entire villages such as khorphoshdars (maintenance grantees), debottars (temple grants) and numerous others like grants for service rendered or for rendering services, grants to Brahmins and maths, 'favour' grants, etc.,
- (c) grantees of land for the same purposes and reasons as in (b) holding on a quit-rent, and
- (d) the actual cultivating classes.

The incidents of each of these tenures are described briefly in the following paragraphs.

136. Usually the zamindaries were created for military purposes, occasionally a relative of the ruler has obtained this position, and, in most cases, they were of considerable antiquity. At one time the zamindars were for most purposes independent and had their own criminal and civil administration in addition to revenue and forest administration, and used to enjoy powers of levying octroi, ferry dues, cattle pound dues, etc., and maintained their own police as well as warlike levies. But this practice gradually disappeared and by 1920, they were practically non-existent. Zamindary sanads did not exist in all cases and where they did, they were very vaguely worded as to the rights and powers of the zamindars. The chief bone of contention between the zamindars and rulers had always been forest rights and rights to minerals, and in Gangpur only, rights of some zamindars in minerals appeared to have been officially recognized, though the right of granting mining leases and licences was reserved by the state. In respect of forests zamindars in Gangpur, Bonai and Kalahandi had recognised rights, the rights in Kalahandi being wider than in the others. In these states, the zamindars had their own forest staff, though subject to ineffective control of state. Generally speaking, it was the zamindars having forest rights who had enormous powers in revenue matters, practically equal to those of the ruler. The common factor to all zamindaries was the power to appoint and remove village headmen but here again there was some variety. In Kalahandi, one zamindar had a sub-zamindar of his own.

137. There were instances of zamindaries being taken under management by the state for gross mismanagement or incapacity, as in Kalahandi, or on account of minority. The zamindari being mostly very distant and inaccessible, control of the ruler was necessarily slack and where the zamindars considered themselves more or less independent, highly undesirable conditions used to develop from time to time. Such undesirable conditions compelled the Political Department to pass orders divesting the zamindars of powers of direct control over forests. In land revenue matters, the rulers usually had adequate control and settlements used to be made under their authority and land revenue and cesses were naturally imposed on the same principles as in the non-zamindari areas.

138. Generally zamindars had powers to make rent-free grants of their own, but such grants were not allowed to interfere with takoli (revenue payable to the State). While most zamindars had villages with headmen, there were

the grant. Conditions usually concerned the period for which the grants might be enjoyed. There were also certain villages which were not held as rent-free grants but were held in the capacity of a village headman. Usually in khamar villages, cultivation used to be carried on partly by the ruler's servants and partly by tenants without any rights in the land.

147. In a few states like Bamra, Pal-Lahara, Bonai or Patna there was a type of grant, sometimes whole villages, known as babuan jagirs. These babuan jagirs were grants made to relatives of the ruler, either free or on a quit-rent, and where the whole village was a babuan jagir, the resemblance to a brahmottar village was striking. Here also the grant was made originally to one or more grantees to be enjoyed by themselves and their progeny, and the land was subsequently divided among the present descendants of the holders. Such grants were not however absolute and rent-free and a quit-rent used to be paid with liability to enhancement at settlement.

148. Most important of the large number of service grants were those made to the old paiks or khandaits, who constituted the local militia in olden times. They originally held their lands rent-free on the liability of being called up for military service but when this contingency was ruled out because of the political developments in the country the paiks were settled as occupancy ryots.

149. Among other 'service jagirs' were those granted for various purposes such as beating drums on ceremonial occasions, washing cloths, dancing girls, barbers, painters, astrologers and numerous others. During recent times, most of these grants became practically useless or the grantees used to appear on ceremonial occasions only, before the ruler, once or twice a year.

150. Then there were the village servants holding jagirs like barber, dhobi, kumbhar and so on. With the change in the social and economic set up of the community in the beginning of the present century most of these grants became of no use to the community and the services of these jagirdars used to be utilised mainly by officers of the state for their purposes while on tour.

151. The most important among the jagir-holders of the village was the chowkidar and in some states his assistant, known as jhankar. The chowkidar was usually regarded as a police servant and the police were usually consulted at the time of his appointment. In most states the chowkidar was remunerated in shape of jagir land though not always adequate for his maintenance.

152. The enormous alienation of state revenue in the shape of grant was striking. The effect of the grants that increased in number and extent from time to time by fresh grants made by each ruler was particularly adverse on the state revenues. That apart, in most of the states, the tenants under the grantees of even whole villages had no security of tenure and this naturally had a demoralising effect on the tenantry. Finally there were various rulings of Political Agents to the effect that no ruler was bound by the grants made by his predecessors and rulers generally utilised this rule to punish such grantees as used to be considered undesirable. This naturally had a very demoralising effect on the grantees themselves.

2 153. All the states had one common feature namely absence of a properly codified tenancy law. Previous practices, orders passed in individual cases, expedients adopted to handle particular situations or at best fragmentary rules were all that used to control the tenancy rights on these states. There was practically nothing as would help the actual cultivator against the state or whims of the ruler or any of his official. The only security the cultivator enjoyed in respect of his land was therefore the fact that he was a desirable person contributing to the revenue of the state. This innate strength of the ryot must have been a powerful factor in the days when states consisted almost entirely of forest and hill for, without a population, the state could have little revenue, and forests and minerals had little inherent value in those days. Land, unless developed, had no value and large areas could obviously be had for the asking, and it is indeed conceivable that it was the cultivators who had to be bought or induced by one who would start an agricultural colony. Any possibility of harassment must have been therefore remote, and the cultivator was once a favoured individual whose threat to give up cultivation and go elsewhere was not to be taken lightly. As, however, the population increased, and more and more land became cultivated and forests receded, there was a change in the position. The cultivator must have realised this change involving a gradual weakening of his position. No longer was he so much sought after as in the days when cultivation was scanty, and cultivators few. But still then, cultivators could not be harassed or dispensed with whole sale though wholesale desertion of villages occasionally occurred. Individual cultivators could, however, be turned out, or harrassed with comparative impunity, for, there was a demand for land, particularly for land fit for immediate cultivation, and new cultivators could be found with ease. Also, on account of the same factors, it was more difficult for a cultivator to find new land for himself and a position was reached in many places where he would withstand considerable harassment for fear of losing his land. Thus, as the strength of the cultivator declined, the thekedar, the zamindar and the ruler became more and more powerful. Loss of his land became a serious matter for the cultivator and with it the need for rights in the land. This explains as to why the agitation for right in the land was of comparatively recent growth in the states, but none the less, the agitation was strong, definite and broad-based and grew in strength as time proceeded. This situation was recognised in some states quite early, (particularly in the states under the direct administration of the Political Department during minority of the rulers) and definition of rights and liabilities was attempted. The Mayurbhanj Tenancy Regulation, based mainly on certain provisions of the Bengal Tenancy Act, 1885 dates as far back as 1910. In many states, the patta given to the village headman contained some sort of record of tenant's rights, particularly a clause depriving him of powers of ejectment except for non-payment of rents and through the agency of a State Court. All this appears to have been done under the advice of the Political Department. Simultaneously with the conferment of this protection to the ryot against the headman it had also to be recognised that the state or the zamindar should also not eject ryots arbitrarily and in most of the states it became the rule that a ryot would not be ejected so long as he did not make default with his revenue. This however was not actual conferment of any substantial right. In all states the ryot could be ejected without compensation, if the land was required either for a public purpose or for the private purpose of the ruler or relatives. In some states compensation for improvement only (as for example, buildings) were supposed to be payable. The procedure for acquisition in almost all cases was very summary in nature and always caused considerable hardship to the tenants affected.

154. The theory prevalent in the states was rather very peculiar, namely that all land being the property of the Ruler or Durbar, (usually the two things were indistinguishable), the ryots were not entitled to compensation, and compensation, if granted, was largely a matter of favour. Following from this conception, except in a few states like Ranpur, the ryot did not have any transferable rights in the soil. In Ranpur, Athgarh, Bamra and Nilgiri transfer, did not require sanction, but in all the remaining states permission of the State, or headman, or both was required. This did not however mean that the prohibition was effective except to a limited extent. So far as the cultivator was concerned, he always considered that he had a right to the land he was cultivating and wherever the land had some value, he made use of it, either to tide him over a hard time, or to pay his dues, or for other reasons. Thus, transfers in the states in which the ban existed was more or less freely carried out through the collusion of the headman, (who had power to accept the surrender of land, and/or reallocation thereof) by a pre-arranged sale taking shape of surrender to the headman, and reallocation by him to the person who bought the land. The headman of course did this only for a consideration as the Sambalpur Gountia. In places where land had any value, this became a recognised practice in course of time. Ranpur was probably the one case where for a long time the ryots had enjoyed comparatively unrestricted rights of transfer.

155. In the states in which permission to effect a sale was necessary, it was usually obtained on payment of a salami ; in some states the levy was not called a salami but mutation fee or registration fee ; in some others a salami as well as a mutation fee used to be levied. In the state of Sonapur both the headman and the state used to levy salamis and the salamis varied from 10 per cent to 25 per cent of the consideration.

156. In most of the states which permitted transfer, this was subjected to so many conditions that sometimes meant virtual negation of the right. Thus sales by aboriginals were allowed to people of the same class as far as possible. In some states, for example, Bamra sale by members of backward castes was also restricted in the same manner. In a few states transfer was restricted to holdings above four or six acres, and in some others a rental limit was taken for this purpose. A large number of holdings did not satisfy these conditions and thus, transfer was virtually denied in all these cases.

157. One striking similarity about the ryoti tenure was that it was more or less uniform through out the states. In nearly all the states, a ryot acquired rights, such as they were, in land as soon as he started cultivating it and there was no old custom or practice regarding any period after which he acquires rights like the twelve year rule of Orissa Tenancy Act, 1913.

158. Persons who cultivated the land of others on systems of cash rent or share cropping known as sanja etc., did not acquire any rights in the land and were pure tenants-at-will. The rents realised from them were much higher than rents paid by ordinary ryots. Permanent rights were not recognised in the lands held by the ruler in some states though there were instances of cultivators holding for generations.

159. The next kind of land tenure was that referred to as 'chandnadar' in some of the states. This was nothing more than a name given to a person who used to hold a house site but had no cultivation, particularly in the village

of residence. A chandnadar may be described as a person who held only a house site, with perhaps a garden in the village of residence, and was either a non-agriculturist, or cultivates in another village. Thus, non-resident cultivator of one village may be a chandnadar of another village. This type of land tenure existed every where as many non-agriculturists did reside in the villages. In almost all states it was a long standing custom for agriculturists, labourers and village artisans to hold a house site or at least a portion thereof free of charge, though there were variations as regards the maximum area allowed free. A special point about the states lying on the western fringe which were subject to the influence from the Central Provinces was that house sites were not surveyed separately and no individual right on such land was recognised.

160. In all states, the right to make simple improvements by digging wells were recognised only on the thirtees of the present century, though generally improvements like tanks could not be made without permission.

161. In most of the states there used to be no rules regarding the conversion of land to non-agricultural purposes such as buliding a house and no attempt was generally made to take even the incerased value. In some states like Nilgiri, conversion was not permitted and presumably conversion was penalised by ejectment or used to be condoned by the levy of a salami.

162. In most of the states ryots had practically no rights in trees on their holdings. But the fruits of trees on holdings could be enjoyed by them.

163. In no state was there any irrigation scheme worth mentioning with the possible exception of Talcher where there were some tanks from which canals led out the water. No charge for irrigation was levied in Talcher or in other states except Nayagarh where a water cess of Re. 1 per acre used to be levied but in most of them, lands favourably situated near tanks and utilising the water thereof or benefiting by percolation were charged higher rates or rent at settlements. Many tanks were recorded in the names of headman who in some cases spent little on the tanks themselves but got them constructed through the labour of the villagers. Tanks constructed by villagers used to be recorded as state tanks in some places.

164. A feature of the cultivator's lot round which much agitation centered from time to time was the liability to forced labour, or rendering of commodities free or at privileged rates, either to the ruler, or to the headman, or to the zamindar or tenure-holder, or similar imposts. In a few states like Bamra forced labour or bethi was largely discontinued or limited during the periods of direct administration by the Political Department, but even in such states considerable bethi was retained. In Patna "rasad cess" was imposed in 1935 and road and other bethi was still retained.

165. In a number of states, a special fee was charged for grazing in forests. In some states there were areas recorded in the settlement records as Gochar but even for grazing there, fees used to be realised in some states. In Sonapur, villages situated more than three miles from village forests were exempt from such fees.

166. In all states the principles that land revenue should not be subjected to fluctuations during the currency of a settlement was generally recognised. But several of the states got round this sound principle by imposing many kinds of cesses, calculated on the land revenue and the rates did fluctuate frequently, thereby bringing a great degree of uncertainty to the entire idea of fixity of land revenue during the currency of the settlement.

167. A rate called a cess but which was really a commutation rate was the forest or nistar cess. This rate was based upon the land revenue in some states and on the acreage of holdings in others. Usually it was not levied on aboriginals in some states like Keonjhar or Kalahandi, in which shifting cultivation was permitted. In several states it was levied at different rates on wet lands and other lands.

168. The system of personal rule characterised the administration of all these states. The control of the Political Department on the administration was very feeble, whatever might have been the reason therefor. That Department never bothered seriously about the internal administration of these states, and consequently did not attempt to tender formal advice to the rulers for organising the land revenue administration on sound and modern lines. It was then no wonder that no effective rights in land were granted, and whenever any was granted, it was not at all guaranteed. On the contrary, the Political Department appears to have indirectly supported the rulers in withholding the granting and guaranteeing of effective rights in land. The ruling of Political Agents that a ruler was not bound by the grants made by his predecessors illustrates the points. Indeed, they could not have chosen a more incorrect point for controlling the activities of rulers. The results were that when the breaking point was reached, there was a great explosion in form of popular movements that took a very serious turn in many of the states finally resulting in the murder of a Political Agent in Ranpur. What happened in the wake of these movements will be mentioned in a subsequent chapter.

CHAPTER IV

CHANGE IN THE POLICY OF LAND REVENUE ADMINISTRATION

1937—1947

169. The Province of Orissa was created in 1936. The first popular ministry assumed office in 1937. The ministry resigned in 1939 and then the Province came under Governor's rules for about two years. Thereafter a popular ministry again assumed office but it went out of office after two years and the Province again came under the Governor's rule till a popular ministry assumed office in 1946.

170. Agrarian reforms in general and ameliorating conditions of tenants and conferring greater rights on them in particular had always been the objective of almost all the political parties of the country. It was therefore natural that when the first popular ministry assumed office, Government laid great emphasis in passing new Acts and amending the existing ones for achieving this objective.

171. The period between 1937 and 1947 represented two phases in the agrarian economy of the country. The first phase, which began about 1930, was a period of great slump and caused very great distress to the agriculturists so much so that in spite of best efforts, most of them were unable to make both ends meet. The price of agricultural commodities was less than the cost of production in many cases. Naturally, the agriculturist had to incur debts and the ultimate result of this indebtedness was loss of landed property. The second phase began with the second world war when the prices of all necessities of life including agricultural commodities gradually rose and the country faced serious food shortage. This resulted in the rehabilitation of agriculturists to a great extent.

172. The country was still in the grip of the great slump when the popular ministry assumed office for the first time in 1937. Naturally immediate attention was focussed on this aspect of the agrarian economy and suitable measures were devised for helping the agriculturists to tide over the serious difficulty that arose out of the slump.

173. The first attempt was to amend the Agriculturists' Loans Act, 1884 by Orissa Act VI of 1937. This Act amended section 4 of the Agriculturists' Loans Act, 1884 to provide that indebtedness of the agriculturist should be a valid ground for obtaining loans under the Act.

174. It was however, clear that it would be impossible for Government to provide all the credit that was required by the agriculturists. The other convenient source of credit, namely, co-operative banks and societies had, therefore, to be geared up to meet the situation. Government thus felt the necessity of establishing a Provincial Co-operative Land Mortgage Bank. The statement of objects and reasons of the Orissa Co-operative Land Mortgage Bank Bill, 1938 explained the situation as follows:—

"Much of the financial embarrassment of the existing Co-operative Banks and Societies is due to their attempt to finance long-term loans with money received for short periods. Land Mortgage Banks have been established in several Provinces of India and it is considered necessary to establish such a Bank in Orissa to relieve rural indebtedness, especially of the middle class. The present Bill aims at facilitating the establishment of such a Bank in this Province.

The Madras Land Mortgage Banks Act (Act X of 1934) was in force in South Orissa before the 1st of April 1936. It was repealed, however, when the Orissa Province was formed because there was actually no Land Mortgage Bank in the area transferred to Orissa. No land Mortgage Bank Act is in force in North Orissa or in the ex-Central Provinces area".

This Bill was passed into Act III of 1938. To some extent, it helped the agriculturists to secure long-term loans on easy terms from the Land Mortgage Bank.

175. The third important measure was the passing of the Orissa Small Holders' Relief Act V of 1938, the intention of which can be best described by the following extract from the statement of objects and reasons of the corresponding Bill, namely:—

"Owing to the continued economic depression, there are indications that the condition of the vast mass of small peasant-proprietors and small agricultural tenants is deteriorating. Government are contemplating taking steps for the introduction of legislation to afford permanent relief to this class of agriculturists. But this requires time and careful consideration. Pending the consideration of such permanent measures of relief, Government are desirous of preventing the eviction of small holders from their lands and also the attachment and sale of their movable property as a result of decrees now pending or that may be obtained during the period for which this Bill will be in force, within which time Government hope to introduce legislation for the permanent relief of this class of agriculturists. This Bill is designed to secure this object".

176. The main source of credit had always been the money-lender and neither Government nor any co-operative organisation had the means to effectively replace him. It was, therefore, necessary to control the activities of money-lenders so as to prevent them from harassing the indebted agriculturists. The statement of objects and reasons of the Orissa Money Lenders' Bill, 1938 clearly explained the necessity of such a legislation in the following terms:—

"There is at present no legal enactment regulating the business of money-lending in Orissa. Very high rates of interest are current in the Province and the Usurious Loans Act, 1918, which controls certain aspects of the transactions of money-lenders, does not give adequate relief to debtors. The need for legislation is felt to be urgent to give some more relief to the large number of people who are at present compelled to pay exorbitant rates of interest. This Bill is intended to ensure that money-lenders register themselves, maintain proper accounts and charge only reasonable rates of interest. It is based on a similar measure introduced in the Bihar Legislative Assembly".

The Bill was passed into Orissa Act III of 1939.

177. The amendment of the Agriculturists' Loans Act, 1884 enabling the agriculturist to take loan from the Government to discharge his debts was of

very little help to the people, presumably because the effect of this new provision of the law was not properly understood by the agriculturists. The Small Holders Relief Act was a temporary law that expired on the 30th June 1939. It provided that proceedings in Civil Courts for the sale of land of a small holder (defined as a person holding lands not exceeding six acres of irrigated land or twelve acres of other land and who cultivates land himself or through farm servants or who depends on agriculture), for the recovery of any debt under a decree would on the application of the small holder be stayed unless the court for reasons to be recorded in writing would decide that this would cause substantial loss to the decree-holder. Neither this Act nor the other two Acts, namely, the Orissa Co-operative Land Mortgage Bank Act, 1938 and the Orissa Money Lenders' Act, 1939 could help the agriculturists to any appreciable extent. The second world war began in 1939 and this caused a change in the agrarian economy in that price of agricultural commodities started rising and the agriculturist gradually found it somewhat possible to make both ends meet without running into debt.

178. Whereas almost all zamindari raiyats in the northern districts had been assessed to cash rent those in the districts of Ganjam and Koraput were still liable to pay half the gross produce as rent. The reasons for the existence of such a high rate of produce rent long after the passing of the Madras Estates Land Act, 1908 giving a statutory recognition of occupancy right and providing for commutation of produce rent have been described in Chapter III. The very basis for effective enjoyment of statutory tenancy rights being a record-of-rights and a satisfactory record of rights having been absent in almost all the zamindaries of these districts, the Government considered it an urgent necessity to undertake a survey and preparation of record-of-rights in these tracts as otherwise any statutory provision improving tenancy conditions could have no effect. The operation was ordered in the year 1938, but it had to be suspended during the war emergency and again revived in 1946. In course of the operation a number of difficulties in implementing the provisions of the Madras Estates Land Act, came to light and they were all removed by amending the Act from time to time. Details of these amendments will be given in subsequent paragraphs.

179. The districts of Koraput, Sambalpur, Angul and Khondmals and the Ganjam Agency tracts were "Partially-Excluded Areas" under the Government of India Act, 1935. Apart from the fact that under the provisions of the Ganjam and Vizagapatam Act, 1839, the Agent in respect of the Koraput district and the Ganjam Agency tracts was very powerful being in charge of civil, revenue and criminal administration, the operation of normal rules or law in these matters was barred in these tracts and this gave added powers to the Agent. The Governor had the discretion to apply or not to apply any particular law to any Partially-Excluded Area. The total area of these tracts was two-thirds of the entire Province and the population, one-third. No development of the Province could, therefore, be expected without the development of these tracts. The system of administration that prevailed in all these tracts was not uniform because of historical reasons. It was, therefore, an extremely difficult task to plan out the development and improvement of these tracts. Government considered it necessary to appoint a Committee to go into the details of the problems of these tracts and suggest remedies for their improvement before undertaking any measure for their improvement. Accordingly, in December 1938, a Committee with Shri A. V. Thakar of Harijan Sevak Sangh as its Chairman and three other members of the Orissa

Legislative Assembly as its members was constituted. This Committee known as the "Partially-Excluded Areas Enquiry Committee, Orissa" had two more members for Koraput only, two more members for Ganjam Agency and Khondmals only and three more members for Angul only. The constitution of the Committee was subsequently modified by inclusion of two more members of Legislative Assembly, three members for Koraput only, one member for Ganjam Agency only, three members for Angul only and two members for Sambalpur only. The scope of the enquiry of this Committee covered a wide field and touched every branch of administration and comprehended the problems of social, moral and economic uplifts of the people inhabiting the area. The areas were not contiguous but lay scattered in three compact blocks extending from the upper reaches of the Mahanadi valley to the Godavari river in its upper part. The different primitive tribes inhabiting the area differed widely in their habits, dress, manners and customs. In making recommendations, the Committee took note of the vastness of the problem of developing these areas as well as the slender resources of the Province. Its recommendations naturally covered a very wide field including reorganisation of the administrative jurisdiction, improvement of zamindari administration, enforcement of prohibition, elimination of podu cultivation, abolition of plough tax, introduction of Indian Forest Act to the ex-Madras areas, strengthening the Veterinary administration, improvement of communication, education, medical and public health, elimination of the toll system and that of double taxation on motor vehicles plying on the inter-State routes, imposition of export tax on forest produce, abolition of Gothi system (by making provision on the lines of Madras Debt Bondage Abolition Regulation), abolition of forced labour, abolition of the Gudam system of purchasing provisions, thatching materials, etc., on payment of, really thrusting on the unwilling seller, a nominal value in advance, encouraging the plantation of coffee, tobacco and sugarcane, taking up agricultural settlement for criminal tribes, etc. It recommended the exclusion of Chakapad Khandam, Pondakhil Muttah and the districts of Sambalpur and Angul from the list of "Partially-Excluded Areas". The Committee submitted its report in September 1940 when the Province was under Governor's rule. The report was printed in November 1940, but because of the war emergency, the Government did not examine the recommendations for implementation. There was thus no improvement or change in the administration of these areas during the period.

180. In addition to all the aforesaid measures of general nature that were considered necessary to improve the economic conditions of the agriculturists and secure to him effective enjoyment of his rights, some of the existing tenancy laws were also amended so as to confer better rights on the cultivator as will be discussed in the paragraphs below.

181. A Bill for amendment of the Orissa Tenancy Act was introduced in the Legislative Assembly in 1937. It was passed into an Act in 1938 (Act VIII of 1938). This was by far the most important amendment to the Orissa Tenancy Act after its passing in 1913 and it is worthwhile to mention its important provisions in detail.

182. Section 6 of the Orissa Tenancy Act, 1913 provided that a Bajyafidar raiyat was to be treated as a tenureholder for the purposes of registration of transfers and division of tenancy. There was no distinction between a Bajyafidar raiyat and an ordinary occupancy raiyat except for the fact that Bajyafli holdings were once claimed to be revenue-free but the claim was disallowed, but in consideration of the fact that these holding had in the past been held

without payment of revenue the initial assessment on them was light, this light assessment continuing, at all subsequent settlements. In view of the fact that the assessment on different raiyati holdings even in the same village was not uniform it was considered that this light assessment on Bajyasti holdings should not be the reason for placing the holder at a disability in the matter of registration of transfers in the landlords' papers or for division of tenancy.

183. Another important provision of the new Act was regarding right of occupancy of raiyats over trees on their holding. The original provision of the Act left the right over trees to be settled according to custom. Thus trees were always a prolific cause of dispute between the landlords and raiyats. The usual but not universal custom was that landlord and the raiyat used to share fruits and sometimes the timbers. There were cases where persons other than the landlord and the raiyat had interest over trees standing on the raiyats' holding. Right over trees was considered to be valuable in the coastal districts to which the Orissa Tenancy Act applied because they were situated at a great distance from the forests. Both the landlord and the raiyat were therefore, interested in having exclusive possession and use of trees. In view of the fact that the raiyat is in physical possession of the holding, he was in a better position to plant more trees in the holding, take proper care of them and make use of them. The practice in Government estates to which the Orissa Tenancy Act also applied was in favour of giving full rights over trees to the raiyats. The Madras Estates Land Act, 1908 also gave similar rights over trees to the raiyats. And there was no reason as to why the statutory provisions of the Orissa Tenancy Act would be different in this regard. Therefore a new section namely, section 27-A was inserted in the Act so as to confer on the occupancy raiyat full rights on trees standing on their holdings. The new section clarified that planting trees on his holding in any manner would not render the raiyat liable to ejectment. It was, however, provided in this section that if there was a specific entry in favour of the landlord in the record-of-rights regarding any trees standing on any occupancy holding the right of the landlord over such trees would be in accordance with such entry or any decision of Civil Court affecting such entry. It was also provided that in such cases the raiyat would have option to purchase the trees on payment to the landlord of such compensation as may be fixed by a competent revenue officer on an application made to him in that behalf.

184. Section 31 of the Orissa Tenancy Act as it originally stood provided that in temporarily settled estates a payment of 25 per cent of the consideration money to the landlord would be necessary for recognition of transfer of occupancy right by him. In respect of other estates there was no specific provision on this point and the matter was left to custom. This provision of the law naturally led to—

- (i) an under-statement of the consideration money by the tenant leading to the imposition of arbitrary charges by the landlords in retaliation ; and
- (ii) the abuse of the power by the landlord in holding up the application for registration beyond the period of limitation.

Various suggestions were made from time to time to improve the situations and Mr. W. W. Dalziel, the Settlement Officer, in his final report on the revision settlement of Orissa (1922—32) suggested that this fee (which he considered as only a mutation fee) should be correlated to the rent of the land transferred

and not to the consideration money as calculating mutation fee on the basis of consideration money had been found to have worked very unsatisfactorily with much annoyance to all concerned and it was but necessary that there should be no scope for any controversy between the landlord and the tenant over this matter of daily occurrence. He was also of the opinion that the imposition of as high as 25 per cent of the consideration money as mutation fee was too much when compared with the service it was supposed to render, namely, to keep the record of the landlord up to date thereby indirectly helping the tenant in having an up-to-date record of title in his favour, but directly helping the landlord in the matter of rent collection. He also mentioned that the mutation fee realised by the landlord was as much as 10 per cent of his total rentals in the average and this appreciable amount of fluctuating income had never been subjected to revenue assessment. It further came out in course of the settlement operation of 1922—1932 that this provision of the law did not conform to the custom of the country. And many estates where the landlords never took any exception to the free transfer of occupancy rights and never charged any fee for mutation of such transfers started charging such fees only after the passing of the Orissa Tenancy Act, 1913. In the permanently settled estates for which the Act did not make any specific provision, a similar tendency was noticed and the landlord taking their cue from section 31 started charging exorbitant mutation fees. In some areas this naturally caused much controversy. For all these reasons, Mr. Dalziel was of the definite opinion that this undesirable state of affairs must be put a stop to as it was creating a lot of bitterness in a matter of daily occurrence. His specific suggestions in this regard were that—

- (i) the mutation fee should be brought down to a nominal sum and should be calculated as a multiple of the rent of the land transferred, the provision applying to all estates, and
- (ii) the amount payable as mutation fee should be considered as fee alone for the specific service of registering the mutation by the landlord in his papers and therefore the landlord should have no rights to hold up or refuse his consent to the transfer.

Put in another form, his suggestion meant that the transfer of occupancy right should have nothing to do with the landlord who should be entitled only to some small fee for effecting mutation of the transfer in his papers. It is relevant to note here that this provision of the Orissa Tenancy Act in the matter of charging mutation fee was never followed in Government estates. Rule 39 of the Bihar and Orissa Government Estates Manual in very clear terms provided that “no fees of any kind are to be levied for mutation, whether reported by the tenants or effected by the staff on their own initiative. Inspecting officers should satisfy themselves from time to time and particularly on their first visit to an estate newly taken over under Government management that this principle is thoroughly understood by the raiyat”. The raiyats in the districts of Ganjam and Koraput had the right of getting the transfer of their rights recognised by the landlord without payment of any fee. In order, therefore, to eliminate friction between the landlord and raiyat in a matter of daily occurrence and to bring about uniformity in this matter throughout the Province the amending Act provided that the occupancy right was transfer-

able without payment of any fee whatsoever to the landlord. Provision necessary for carrying out the mutations in the landlord's papers were also made and it was provided that transfers of occupancy right should be only through a registered instrument excepting in cases of—

(i) sales in execution of—

(a) a decree or,

(b) a certificate under the Bihar and Orissa Public Demands Recovery Act, 1914,

(ii) gifts under the Mahammedan Law, and

(iii) those classes of transfer in any Government estate the rent of which is payable direct to Government as might be prescribed by Government in the rules, and that no instrument purporting to transfer of occupancy right would be acceptable in any registration office unless accompanied by a notice signed by the transferor and the transferee giving detailed particulars of the transfer in the prescribed form and the fee prescribed for the service of such notice on the landlord. It made the responsibility of the Registering Officer to transmit this notice to the landlord through the Collector. It was likewise provided that in case of Court sales and bequests a similar notice would be transmitted by the party interested to the Collector through the Court for service on the landlord concerned.

185. Incidental to the right of free transfer the right to sub-let or mortgage occupancy right was also provided for.

186. The absolute provision of the Act that partition of no tenancy was binding on the landlord unless effected with his written consent (usually such consent had to be purchased) was amended to the effect that transfer of occupancy right effected through sale, exchange, gift and bequest if defined by metes and bounds would mean division of the tenancy and the distribution of rent unless objected to by the landlord before competent authority within a period of six months for equitable distribution of rent.

187. The amending Act made a saving provision in respect of fees payable to landlord for transfers effected before its passing and further provided that the fee would be recoverable within a period of three years from the date of its coming into force or the date of the landlords' knowledge of the transfer, whichever was later.

188. Section 85 of the Act was amended to provide that in respect of an occupancy holding transferred, arrears of rent accruing before the date of transfer should be recoverable from both the transferor and the transferee and should continue to remain as first charge on the holding.

189. In the rules framed for carrying out the purposes of the amending Act, it was provided that in respect of occupancy right in Government estates for which rent was payable direct to Government, cases of transfer for which registration was optional under clause (a) of section 18 of the Indian Regis-

tration Act need not be registered but, in such cases the transferee and transferor were bound to give notice of the transfer in a prescribed form to the appropriate revenue authority within a period of three months of the date of transfer and failure to do so was made liable to a fine. Similar provisions for intimating the landlord of gifts made under the Mahammedan law were also made in the rules.

190. Section 84 of the Act was amended to provide that "all impositions upon a tenant in addition to or in excess of the rent lawfully payable shall be illegal and all stipulations and reservations for the payment thereof shall be void". As a consequence, section 85 was amended to provide for levy of penalty in case of illegal extraction by the landlord or his agent.

191. The rate of interest on arrears of money rent was reduced from $12\frac{1}{2}$ per cent per annum to 6 per cent.

192. These amendments which removed a large number of long-felt grievances of the tenants were very much appreciated when the Act was passed. The facts and circumstances that subsequently came out of these amendments however, indicate that they have not been an unmixed blessing. Some of them are mentioned in the paragraphs below.

193. The facility of purchasing the right of landlord over trees which was expected to be of real help to the raiyats was not exercised to any appreciable extent presumably because the litigation that was inherent in such a proposition was considered costlier than the trees over which the raiyat could acquire the right. Further, in the amending Act, there was no provision for trees belonging to third parties standing on the raiyats' holdings. This became a subject of frequent dispute after the passing of the amending Act.

194. The abolition of mutation fee resulted in a general deterioration in the standard of maintenance of land records. So far as the zamindari areas were concerned, the Government had no responsibility in the matter and it was the landlords who were expected to maintain the records up-to-date in between settlements. Along with the abolition of the mutation fee a provision for maintenance of records was no doubt made in the Act itself but the provision has never been satisfactorily implemented. It is the duty of the parties to a transfer to furnish notice of transfer at the time of registration of the document, the Registration Officer is required to transmit it to the Collector and the Collector is required to transmit it on to the landlord. This circuitous process takes quite sometime before the notice of a transfer reaches the landlord. Both in the Registration Offices and in the Collector's Office these notices are not moved with the necessary promptitude. There is, therefore considerable delay before a notice reaches the landlord. In the process of the transmission from office to office, many notices get lost. Though the situation arising out of this can be eliminated by streamlining the administrative machinery that handles this subject, the real difficulty has been with the landlords. Abolition of the fee meant considerable loss to them (estimated at 10 per cent) and they naturally lost interest in recording mutations. Maintenance of records was never satisfactory with small proprietors and tenureholders whose number was very large but even in case of landlords having established offices and regular staff for recording mutations, the maintenance work was generally neglected after amendment of the Act and some of the zamindars even diverted the staff maintained for mutation for other purposes considered by them to be more productive. This situation created serious difficulties in the administration of estates when they were abolished.

-195. The responsibility cast on the transferor and the transferee to notify transfers to the landlord in cases not compulsorily registrable have not at all worked satisfactorily and a very large number of cases of such transfer have subsequently been found to have remained un-noticed. There was no agency effective enough to detect such cases for imposition of penalty as provided in the rules and to that extent the intention of the legislature has not been reflected in exhibition of a proper sense of responsibility by the citizen.

196. The amending Act providing for notifying transfers to the landlord prescribed a fee for the service of the notice of transfer on him. This was in effect, a new imposition on the raiyats in Government estates where the policy till then was not to charge any kind of fee for recording mutations.

197. This difficulty of the raiyats of Government estates was removed by an amendment of the Act in 1941, which provided that the notice of transfer need not be served by the Collector on the Provincial Government as the landlord of Government estates and that no fee for service of notice should be realised. This Act was passed by the Governor in exercise of his legislative powers under section 93 of the Government of India Act, 1935.

198. Another amending Act was also passed in 1941 by the Governor in exercise of his legislative powers. It provided that the time during which the fees for transfers effected before the passing of the amending Act of 1938 should be payable, should be four years instead of three from coming into force of the amending Act of 1938 or from the date of the landlord's knowledge of the transfer whichever is later. It also carried out certain consequential amendments in section 250 regarding the recovery of this fee. These amendments passed by the Governor in exercise of his legislative powers were due to expire on 23rd November 1943. They were, therefore, made permanent Acts by the passing of Acts III and IV of 1944.

199. Orissa Act X of 1946 amended sections 235 and 236 of the Orissa Tenancy Act. These substantially altered the position in regard to homesteads. Occupancy raiyats had permanent right over homesteads included in their holdings, but there were many persons who had homesteads as service-tenure holders or as under-raiyats or chandnadars. Whereas the law left the relationship between a chandnadar or a service-tenure holder and their landlord to be regulated by custom and usage, it gave no permanent right to the under-raiyat. The amendments were calculated to give security of tenure in all homesteads used for the residence of the tenant. As a corollary to this, the amendments provided that—

- (a) when a service-tenure holder ceases to perform the service, he would be liable to pay rent to the landlord for the homestead ; and
- (b) suits for ejectment of any tenant from his homestead instituted before the commencement of the Act and execution proceedings arising therefrom would be subject to these amendments.

200. These amendments no doubt gave security to those who were under the constant fear of being evicted from their homesteads at the pleasure of the landlord, but it had another adverse effect. The fear of eviction having been removed many service-tenure holders like the village barber or the village washerman (whose holdings generally comprised homesteads only) demanded

higher remunerations for continuing the service and in many places gave up the service for taking up some other avocation. Particularly, religious and charitable institutions were very much affected. By interpreting the provisions of the amending Act that they would have similar rights as occupancy raiyats, many service-tenure holders even sold their homesteads. The purchasers in such cases were under no obligation to perform the service. This created a somewhat unexpected situation by dislocating customary services to which the village community, the landlord and the religious and charitable institutions were entitled. Alternate arrangements had to be made in many cases. The religious and charitable institutions were the worst sufferers as most of them did not have necessary resources to pay for substitutes for these customary services.

201. The next batch of amendments to the provisions of the Orissa Tenancy Act was made by Orissa Act XV of 1947. The most important of them was the one relating to partition of holdings and tenures. It has been mentioned in an earlier paragraph that transfer of any portion of occupancy holding if defined by metes and bounds had the effect of partitioning the holding and distributing the rent. Section 18 of the Act was amended to make a similar provision in respect of tenures. Section 99 of the Act was also amended to provide that partition of a tenure or holding (and distribution of rent) if defined by metes and bounds would be binding on the landlord when he receives a notice of the partition and distribution of rent agreed to by the co-sharers. If the landlord would not agree to the distribution of rent as mentioned in the notice of partition he would be at liberty to apply within a period of six months from the date of receipt of the notice, to the competent revenue authority for just and equitable distribution of the rent. The old provision that partition would require the consent of the landlord or of his authorised agent in writing was retained in respect of all other types of partition. The benefits expected to accrue to the tenants from these amendments do not appear to have actually accrued for the simple reason that the records of the landlords having gone out of date, the question of recording up-to-date facts of partition did not arise.

202. In this amending Act, a specific provision was made that no second appeal would lie in respect of orders or decrees passed under the Act. This was calculated to save both the landlord and the tenant from harassment by the long-drawn process of litigation.

203. Certain provisions in the matter of simplifying and clarifying the provisions relating to sale of holdings and tenures for arrears under decree were also made in this amending Act.

204. Another amending Act (Act XXXII of 1947) was passed in this year and this was to amend the section 236 of the Act. This amendment clarified that a chandnadar would also have the same protection in respect of his homesteads as other tenants but the incidents of his tenancy in respect of that portion of the land on which does not stand the house in which he ordinarily resides would continue to be regulated by local custom or usage. Retrospective application of this protection to the suits of ejectment or execution proceedings arising therefrom was given.

205. When the difficulty faced by the village community and religious and charitable institutions in the matter of securing customary services after amendment of sections 235 and 236, Orissa Tenancy Act came to the notice

of Government, section 235 of the original Act was amended by Orissa Act XVIII of 1950. It provided that if a service-tenure holder ceases to perform the service for any reason he shall have the benefit of getting the service-tenure converted into ordinary occupancy holding on application to a competent revenue authority but such conversion would not affect the person who has already acquired right of permanent tenancy under the service-tenure holders. It also provided that this benefit would not be available to service-tenure holders under Government and under religious and charitable institutions, or liable to render service to the public in general. These provisions were also made applicable to the pending suits for ejectment and execution proceedings arising therefrom. This amendment ensured the continuance of customary services to the community, to the Government, and to the religious and charitable institutions. The intention was clearly to discontinue the arrangements for rendering personal service in lieu of service lands and to give the holders of such service lands the benefit of security of tenure. This naturally created difficulty for those persons who had to find out substitutes on payment of cost. The persons adversely affected by this provision were generally the zamindars, who also occupied a respectable position in the society. The Act had thus the effect of disturbing the social life of a particular class of people in the rural area, but it was nothing new as such disturbances had already taken place in the wake of the second world war that changed the economic set-up of the country.

206. A detailed account of how the intention of Government to bring in all whole Inam villages within the purview of the Madras Estates Land Act remained unimplemented when the Province of Orissa was created has been given in Chapter III. Even the temporary protection given to the tenants inducted in such villages after the first date of November, 1933 (the Bill to put the whole Inam villages in the definition of "estate" was introduced in the legislature about this time) was going to expire on the first day of May, 1936. Pending finalisation of the main question, this temporary protection was continued from time to time till 1st April 1947 by introducing necessary amendments to section 127 of the Madras Estates Land (Amendment) Act VIII of 1934. Along with this temporary protection provision was also made to the effect that—

- (a) suits or proceedings instituted for recovery of rent in a whole Inam village should not be stayed, but a decision in such a suit or proceeding should not be construed to prejudice the decision that might be taken, after the temporary protection for the tenant was over, affecting the right, title and interest in the Kudivaram in such village; and
- (b) a party to any suit or proceeding involving recovery of rent and pending in a Civil Court would have the option of getting such suit or proceeding transferred from the Civil Court to revenue Court having jurisdiction.

These provisions were necessary as it was feared that it would take quite sometime before the intention of Government to bring all whole Inam villages within the purview of the Madras Estates Land Act could be fulfilled and in the intervening period, some quick remedy for recovery of rent from the tenants must be provided as otherwise it would cause considerable hardship to the Inamdars. The Madras Estates Land (Orissa Second Amendment) Act, 1946 (Orissa Act XVI of 1947) achieved the ultimate objective and all whole Inam villages of which "the grant has been made, confirmed and recognised by the British Government" were included in the category of "estates" thereby giving permanent protection to the tenants cultivating the lands

in such of the whole Inam villages as had not come within the original definition of the term "estate". It was clarified in the definition that where a grant as an Inam is expressed to be a named village, the area forming the subject-matter of the Inam should be deemed to be an "estate" notwithstanding that it did not include certain lands of the village of that name which have already been granted on service or other tenure or reserved for communal purposes.

207. In defining the private land for such estates it was provided that—

- (a) any land in possession of the Inamdar would not be treated as his private land unless it was proved that the Kudivaram in the land was acquired before the 1st November 1933 for valuable consideration from a person owning the Kudivaram but not the Melvaram and that the Inamdar has since then retained the Kudivaram and has not converted the land into raiyati land, and
- (b) where the Kudivaram was acquired at a sale for arrears of rent, the land shall not be deemed to be private land unless it is proved to have been cultivated by the Inamdar himself or by his own servants or by hired labour with his own or hired stock for a continuous period of twelve years since the acquisition of the land and before the passing of this Act.

208. It laid a rule of presumption that an Inam village was an estate even before the commencement of this Act.

209. It added an explanation as explanation-2 to sub-section (1) of section 6 which had the effect of conferring right of occupancy on persons in possession of raiyati lands on the 30th June 1934 and persons admitted to possession of raiyati land thereafter. Where, however, before the 1st November 1933 the landholder had obtained a final decree or order from a competent Court in respect of any land in an Inam village which became an estate for the first time by virtue of this Act, no right of occupancy was conferred subsequently, and no tenant had acquired occupancy right therein; the land-holder was given the right to admit persons to possession of such lands on such terms as may be agreed upon for a period of twelve years from the date of commencement of the Act.

210. The rent or rate of rent prevalent in such villages on the first day of November, 1933 was given the benefit of presumption as fair and equitable until the contrary is proved.

211. The rules of evidence contained in section 185 of the Act for providing that any land is private land were also altered and recast and a separate set of rules was laid down for providing as to what lands in estates coming under clause (d) of section 3(2) of the Act are private lands. It was feared that Inamdars might attempt to take advantage of the ignorance of tenants and create evidence in their favour by introducing recitals in pattas and other lease documents that the lands to which they relate are private lands. It was, therefore, provided that any expression in a lease, patta or the like executed or issued on or after the 1st July 1918 (the date of the Privy Council decision) implying that a tenant has no right of occupancy should be rendered inadmissible. It was also provided that any such expression in any such document executed or issued before the 1st July 1918 shall not by itself be sufficient for the purpose of proving that the landholder had the Kudivaram in the land concerned at commencement of the tenancy.

212. Provision was made for giving compensation to the land-holder wherever it is proved that he had the Kudivaram interest in raiyati land other than private land as defined in section 3(10) (b) of the Act or other lands referred to in sections 8(4) and 3(5) in respect of which freedom of contract is allowed to the land-holder for a period of twelve years. The land-holder has to apply to such authority as may be notified within two years from the commencement of this amending Act, for a declaration that the Kudivaram interest in such land vested in him on 1st November 1933 and that he has retained the same ever since. For the purpose of determining whether the land-holder has occupancy rights in respect of which he can obtain compensation, a special Tribunal was to be constituted from time to time consisting of three members, one of whom should be a judicial officer eligible for appointment as a Judge of the High Court and another should be an experienced Revenue Officer. The Governor has to appoint one of them as the President. An order passed by this Tribunal or by a majority of the members was to be final. Where the land-holder had obtained a declaration as mentioned above in respect of any land, it is open to the tenant to tender an amount equal to the annual rent payable for the land together with the cost of preparing any instrument required for the purpose and on such tender the holder is bound to confer upon the tenant a permanent right of occupancy in respect of the suit land. Disputes as to the amount of compensation have to be settled by the Collector on application by either party. Where the land-holder fails to confer a permanent right of occupancy within one month after tender it is open to the Collector to confer on him a permanent right of occupancy. The Collector has thereupon to give notice to the land-holder and after due enquiry may himself execute any instrument required for conferring a permanent right of occupancy upon the tenant. Where, however, a tenant makes no application within one year from the date of the declaration that a land-holder has the Kudivaram interest in a particular land or in the event of the tenant not depositing the amount of compensation which is fixed by the Collector while settling the dispute as to the quantum of compensation, the tenant is liable to be ejected on the application of the land-holder to the Collector.

213. These provisions of far-reaching consequence did not, however, evoke much enthusiasm or litigation as by the time the Act was passed, it had more or less become definite that abolition of estates was a matter of few years and litigation was not, therefore, worth the trouble. Moreover, the record-of-rights operation that was in progress included all whole Inam villages in its programme and it was naturally expected by the parties that in course of this operation, the correct legal position would be fully reflected in the record-of-rights, thereby saving them from the botheration of the litigation.

214. The Governor, in exercise of his legislative powers under section 93 of the Government of India Act, 1935, passed an Act (Orissa Act IV of 1940) amending sub-section (4) of section 164. The amendment provided that certified copies of survey records should be furnished to the Karnam of the village and should be available for inspection by the raiyats concerned and where there was no Karnam it should be made available for the inspection of the raiyats in such manner as the Revenue Commissioner may by general or special order direct. A similar provision for inspection of the record-of-rights by the raiyats of a village where there was no Karnam was made by an amendment to sub-section (2-B) of section 166. These temporary amendments were made permanent by Act XI of 1944.

215. Section 172 was amended to provide that revision of the record-of-rights by the Board of Revenue might be directed within a period of four years instead of two. This was intended to have effect for a period of two years commencing from the 18th June 1943. This amendment was necessary as during the statutory period of two years provided in the Act, the revision petitions could not be disposed of by the Revenue Commissioner (exercising the powers of Board of Revenue). This period was subsequently extended to six years by Orissa Act V of 1945 and to eight years by Orissa Act XXVIII of 1947. Provision of the last named Act expired on 18th June 1949.

216. The Orissa Act XI of 1944 which was given retrospective application from 18th June 1943 inserted a new section, namely, 172-A to provide that when the Revenue Commissioner has heard an appeal under section 171, an application for revision under section 172, in the same matter would be heard by a commission consisting of the Revenue Commissioner and two other persons appointed by the Provincial Government. This was found necessary as the Act provided that the revision petition under section 172 was to be heard by the Collective Board if one Member of the Board has already heard an appeal under section 171 in the same matter and there was no Collective Board in Orissa at that time, the Revenue Commissioner functioning as the Board of Revenue.

217. In 1937, a Bill was introduced in the legislature to amend some provisions of the Madras Estates Land Act so as to give relief to the raiyats from the high rates of cash rent fixed in settlement operations or under commutation proceedings. It has been mentioned that when there was a general fall in the agricultural prices in 1936, the Act was amended by inserting section 39-A for reducing the settled and commuted rents by the same proportion as the fall in prices from the average taken for commutation or settlement. The Bill of 1937 sought to grant permanent relief by directing the adoption in estates the rates of assessment prevalent in the neighbouring raiyatwari tracts. This was naturally a highly controversial measure as the zamindars in the districts of Ganjam and Koraput were recovering much more as rent because of the "half gross" formula than the cash rents in the raiyatwari tracts based on the "half net" theory. Arising out of the "half gross" formula the rents commuted or settled under the provisions of the Act before creation of Orissa were also very high compared to the rates prevalent in the raiyatwari tracts. Moreover, in the raiyatwari tracts, even the "half net" formula was not fully applied and whereas Government were entitled to enhance the pre-existing assessment to the extent of 41 per cent because of rise in prices, the enhancement that had actually been effected in the resettlement operations between 1910 and 1920 of the raiyatwari tracts was $18\frac{2}{3}$ per cent in respect of wet lands and $12\frac{1}{2}$ per cent in respect of dry lands. It was, therefore, argued on behalf of the zamindars that the raiyatwari assessment should not be and could not be taken as the standard for fixation of fair and equitable rent in the zamindaries as they were much less than what was actually payable even under the "half net" formula. Further, the Bill provided that the rents commuted under section 40 of the Madras Estates Land Act or settled under Chapter XI of the Act under the old principles should not be held as money rent for the purposes of section 30 of the Act. Section 35 of the Act laid down that the maximum of the rent payable was at the value of the established waram of the village commuted in accordance with the provision of section 40. This was not intended to be amended but it was intended to provide another maximum, namely, the rent or rate of rent for similar lands

with similar advantages in the nearest raiyatwari tracts increased by two annas in the rupee. This naturally made section 35 more or less meaningless. It was considered by the zamindars that the Bill which was not only discarding all the established rules of rent fixation as inequitable but was also providing for drastic reduction of rent was expropriatory in character in the background of permanent settlement. This Bill was passed by the legislature but was vetoed by the Governor-General. In 1945, a similar Bill was brought up and in the Press Communiqué issued to explain the background of the Bill, it was mentioned that—

“It is well known that the rates of rent paid by the raiyats to the landholder in the proprietary estates in the district of Ganjam are high. With a view to bringing down the high incidence of rent a Bill was passed in 1937 in the Orissa Legislative Assembly during the last Congress Ministry which, however, was vetoed by the Governor-General. One of the reasons for which it was vetoed was that the land-holders of the district gave an assurance to reduce rents in their estates. The assurance was implemented in action to certain extent only by the Raja Bahadur of Khallikote and Athgarh. Government have now drafted a Bill to amend the Madras Estates Land Act in its application to Orissa with a view to reducing the existing rates of high rents obtaining in the proprietary estates of the Ganjam district. It is proposed to introduce and pass the Bill in the Legislative Assembly in its next session. It is also proposed to take preliminary action from now to facilitate giving effect to the provisions of the Bill quickly when enacted. When the Bill is enacted into law and given effect to there will be scope for the rent settlement officer for giving reduction in rent on the grounds of cost of cultivation, cartage and merchants' profit and vicissitudes of season as is done in settlements in all other places. It is hoped that the existing rents when revised on the basis of the provisions of the Bill will be considerably reduced and all causes of hardship will be removed.

The proposed Bill is now published for the information of the public. It is hoped that the zamindars who had given an assurance to reduce rents so far back as in 1939 will support this moderate measure”.

This Bill was passed as Orissa Act XIX of 1947.

218. Sub-section (2) of section 168 of Madras Estates Land Act provided that in settling fair and equitable rents the Collector was to presume until the contrary was proved that the existing rent or rate of rent was fair and equitable and should have regard to the provisions of this Act for determining the rates of rent payable by a raiyat. This rule of presumption in respect of rents payable on the basis of half the gross produce or any proportion of the gross produce regardless of the expenses incurred in growing and gathering the crops was withdrawn by adding a proviso to that effect to sub-section (2).

219. A new section 168-A was added for giving powers to Government to authorise the “Collector” with the powers to—

- (a) settle fair and equitable rent in cash, and
- (b) reduce the rent if in his opinion the continuance of the existing rents would, on any ground, whether specified in this Act or not, be unfair and inequitable.

This was a natural corollary of the amendment specified in paragraph 217.

220. The existing section 177 was renumbered as sub-section (1) of the same section and two more sub-sections were added to it which provided that the rent settled under the Act could be given effect to either retrospectively or prospectively at the discretion of the State Government. When retrospective effect to the new rent is given, if the payment already made by a raiyat towards his rent is found more than the rent payable he can have the option to adjust the excess towards the payment of future rent or recover the excess from the land-holder by a suit.

221. Some other minor amendments consequential in nature were also made.

222. The order of Government directing survey, record-of-rights and settlement operations and the amendments made to the Act particularly those relating to reduction of rent created a serious problem on the landlord-tenant relationship in South Orissa. There was no doubt that the landlords were recovering from the raiyats much more than what could be termed as a fair and equitable rent. But as has been pointed out in Chapter III this *prima facie* unfair and inequitable system of high rent was workable because of the absence of a proper survey and record-of-rights or refusal of the estate employees to utilise it where there was one. The intervention of the Settlement Officer to make a survey and prepare a record-of-rights and the legislative measures undertaken for reduction of rent meant complete revision of business relations between landlord and tenants and there was many a friction between them. Coming as it did on the eve of the zamindari abolition, the measure for reduction of rent (which made it impossible for most of the zamindars to adjust to these adverse economic conditions) resulted in the zamindars withholding the payment of revenue, cess and other Government dues and the effect of this was very serious on the District Board which had the cess as its main source of income.

223. At this time payment of rent by raiyats became irregular and arrears accumulated. The landlords had, therefore, to file large number of suits for the recovery of these arrears. It was a difficult job for the administration to handle this unexpected situation with necessary promptitude. The Government took note of this unusual rise in the number of rent suits and interpreted that the accumulation of arrears of rent was due to the inability of the raiyats of small means to pay in view of the high price of consumers goods. Government thought that the rise in the price of rice and other agricultural commodities during the war years and thereafter was generally beneficial to the bigger producers but was of no help to petty cultivators in whose case the all-round rise in price had a very adverse effect. It was considered necessary to give relief to small raiyats and the Ganjam Small Holders Relief Act XXX of 1947 was passed. The main provisions of the Act was that a small holder (defined as a person holding land not exceeding six acres of wet land or twelve acres of other land) would have the benefit that all his rent—

“which has accrued for the fasli year 1354 and prior faslis and which is outstanding at the date of the commencement of this Act shall be deemed to be discharged whether the rent be due as such or whether a decree has been obtained therefor:

Provided that, where the small holder liable to pay rent does not on or before the 31st January 1949, pay up all arrears of rent accrued in respect of any holding for faslis 1355 and 1356 the arrears of rent for fasli 1354 and prior faslis which were outstanding in

respect of the same holding on the date of the commencement of this Act shall be deemed to be discharged only in the same proportion as the rent due for fasls 1355 and 1356 which is paid up by the small holder bears to the rent due for those two faslis:

Provided further that no small holder shall be entitled to the benefit of this section unless he shall have paid in respect of the holding, the rent due for fasli 1356 on or before the 31st January 1948."

224. The effect of this Act was considerable loss to the zamindars and they considered that this was an undue loss that they were made to suffer. This had deep effects on the social life in South Orissa particularly in Ganjam where the landlord and the tenants used to live side by side and their relationship was not limited to that of landlord and tenant only. This, therefore had repercussion on other aspects of life resulting in bitterness and litigation

225. Under the Government of India Act, 1935 the district of Sambalpur was a "Partially-Excluded Area". The people of Sambalpur considered this to be an uncalled for measure and wanted that the normal rules of administration should be applied to Sambalpur in all respects. The main point of dissatisfaction in the agrarian field was that occupancy right in land was not a marketable property and this had not only caused very great hardship to the people but had a great demoralising effect on the society. But, because of the fact that it was a "Partially-Excluded Area" it was not easy to amend the tenancy laws for providing necessary benefits to the tenants. Government, therefore, decided in the month of November, 1937 to appoint a committee to investigate into and report on the nature of the changes that were necessary in the Agrarian Codes of Sambalpur. The appointment of the Committee was announced in February, 1938. The Committee was presided over by Shri B. N. Das, M. L. A., Advocate, Cuttack. There were four other members. The membership was subsequently enlarged by five more. The Committee issued a printed questionnaire in Oriya, Hindi and English in October, 1938 and invited written answers by the 20th November 1938, the time subsequently having been extended to the 10th December 1938. The Committee toured in the district, thereafter took down oral evidence and examined the written answers to the questionnaire received from 1,382 persons comprising of 1,130 tenants, 4 zamindars, 6 Malguzars, 7 Maufidars, 106 Gountias, 12 co-sharees, 28 Sikimi Gountias, 67 Thekadars, 3 Patels and 20 others including officials. Written answers were also received from the District Congress Committee and Krushak Sangh, Sambalpur. The Committee examined 238 witnesses at different centres. Thereafter it formulated its recommendations in November, 1939 and submitted its report in the same month. The report was published in May, 1940. It made a number of recommendations affecting every aspect of the agrarian life but these recommendations could not be taken into consideration due to war emergency. There could, therefore, be no amendment to the land-laws of Sambalpur.

226. Judged from the economic, cultural and linguistic points of view the Orissa Province and the Orissa states were but one. When, therefore, a popular Ministry assumed office in Orissa in 1937, it was natural that people in the states expected a change in the attitude of the rulers and hoped for amelioration of agrarian conditions and improvement of tenancy rights. When this hope did not materialise, there was a great popular rising in many

of these states culminating in the murder of a Political Agent in Ranpur. Thereafter, the Political Department changed its attitude and the rulers hastened up to grant concessions on many matters like the right to transfer riyati right, the abolition of *bethi* (forced labour) by commuting it to a money payment, the grant of right over trees on the tenants' holdings (except for trees of the reserved species), introduction of the spirit of the Land Acquisition Act for payment of compensation in cases of compulsory acquisition of private lands for public purpose and reduction of cess where it was considered abnormal.

227. The report of the Orissa States Enquiry Committee was published in 1939. Following this, an official inquiry into the affairs of these states was conducted by Mr. Bowread. His opinion was that as the quality of administration in the states would invariably depend on the personality of the individual ruler, smaller states had to start with a greater handicap in this regard. He found that the incidence of taxation was not as high as in many Provinces and the general condition of the tenants compared favourably with those in the Provinces. In 1941, Shri R. K. Ramadhyani, I. C. S., was appointed as a Special Officer to examine and report on—

- (a) the revenue history and the existing systems of land tenure from the point of view of cultivators and proprietary interests if any ;
- (b) the existing systems of settlement and the assessment of land revenue on land under cultivation, waste land and land converted for non agricultural purposes ;
- (c) the system of collection of land revenue and village management ;
- (d) the existing revenue and tenancy laws and procedure and
- (e) generally all other matters affecting the interests of agriculturists such as grazing, forests, nistar, etc.

Before taking up the enquiry, Shri Ramadhyani met Sir Francis Wylie, Political Adviser to the Crown Representative who prepared a note for his guidance. His feeling about the states was—

- “(a) that there can be neither contentment nor prosperity in an agricultural community unless rights in the soil are both granted and effectively guaranteed. The expression ‘rights in the soil’ includes of course the fixation of land revenue demand ;
- (b) that in the eastern states, while right in the soil may in some cases have been granted, practically nowhere are they really guaranteed ;
- (c) that by the terms of their sanads the rulers of these states are bound to accept the Crown Representative’s advice ;
- (d) that the necessity of both granting and guaranteeing rights in the soil is so urgent that the Crown Representative would be justified in tendering formal advice to all rulers to put their land revenue administration in order forthwith including the grant of rights in the soil with the necessary concomitant of setting up the administrative machinery required to protect these rights”.

He was of the definite view that sooner or later these states would be absorbed in the neighbouring Provinces and therefore, their administrative reforms should approximate as closely as may be to the system obtaining in the adjoining Provinces. He advised Shri Ramadhyani to suggest measures of reforms from this point of view.

228. Shri Ramadhyani conducted a detailed enquiry in all the 39 states included in the Eastern States Agency Of the Orissa States only Mayurbhanj was not within the scope of his enquiry. His report covered almost all aspects of revenue administration and brought to light many undesirable practices that prevailed in these States. The following extract from his general report is revealing :

"In the past, it was common for a ruler, a zamindar, or even a thekadar, to levy anything from the people at will for almost any purpose, so long as they were powerful enough to do so, and relics of these numerous imposts (mangan, abwab, patta, etc.) are to be seen to-day. The principle of fixity of land revenue during the currency of a settlement is probably regarded as a nuisance and the states endeavour to carry on the old practices by giving them different names such as cesses. (The tendency to call something objectionable by a different name has often caused me amusement in the states). Thus, while nominally fixing the land revenue for a period, the states leave themselves free to impose cesses at any time in spite of the fact that the cess as well as the land revenue had to be paid from the same source of income. The Forest Adviser of the Agency wrote in respect of the forest management of one of the states that the administration was a mere matter of rupees, annas and pies, and this could be said with much greater aptness of the revenue administration of most of the states. If these features are appreciated it will be obvious how urgently necessary proper revenue laws are in order to protect the interests of the cultivators and give them adequate security. At present, orders, if committed to writing at all, are occasionally changed even before they become properly known, and in many places the position is so uncertain and fears of punishment so great, that even if a restriction has been removed, the people often hesitate to avail themselves of a concession for fear of making a mistake. One of the prominent complaints in Dhenkanal and Nilgiri is the frequent change of orders. In Bonai, the ban on bullock carts using the road which was lifted seemed to have been reimposed orally later as the people told me that the previous "hukum" was cancelled and they were told later by the police not to use the roads (the new Dewan was with me at the time). If it is desired to make the ground infertile for agitation, it is essential to see that the numerous irksome restrictions and levies which bring in little revenue and cause a great deal of irritation are removed.

Another important feature of the administration of the states to be borne in mind is that a law or rule can remain in existence only on paper. In fact, in some of the states, many rules and regulations which exist are often not strictly followed. The individual reports will show instances where one thing is written and a quite different thing done in practice. The rules are not regarded as having the inviolability of laws and any deviation can be permitted by the ruler, and is permitted without hesitation often, in circumstances the impropriety of which can scarcely be questioned.

Finally, in all these states the rulers themselves administer the various laws and rules, the administration of which, apart from the strong desirability of an agency not so directly interested in the issues as the ruler, requires special

training and experience. A great deal of improvement has been effected in the last three or four years and the very institution of this enquiry has had a salutary effect in many ways, but I fear that it will be only a passing phase (the ruler of Dhankot told me that all this interference in their affairs caused by Congress agitation would last but a few years), unless steps are taken to provide a regular law and machinery for its proper and efficient administration. These to my mind are the considerations to be borne in mind in tackling the problem of these states".

Shri Ramadhyani's recommendations that covered all aspects of revenue administration virtually meant that the only method of ensuring a modern administration in these states was to adopt the systems of revenue administration prevalent in the neighbouring Provinces. He also suggested a uniform draft revenue law for adoption in all these states. He emphasized that the atmosphere in all the states was already surcharged with tension, that the introduction of agrarian reforms was urgent and that no time should be lost to introduce the reforms so as to bring the states on a par with the neighbouring Provinces as far as it was possible and practicable within the administrative frame work and subject to availability of financial resources.

229. The Political Department perhaps intended to implement some of the recommendations of Shri Ramadhyani after the second World War, but the political situation in the country changed so rapidly after the war that the department had hardly got any time to take up the report into consideration before it was wound up. In the meantime popular agitation in these states grew stronger and with the decision of the British to quit India, the rulers were unable to handle the situation. Ultimately, therefore, they agreed to merge their states with the Province of Orissa and thus ended a long period of personal rule in these states.

230. The Select Committee set up by the House of Commons in 1830 to go into the agrarian conditions in Bengal recommended that the only effective method of ensuring protection of cultivators' rights and a satisfactory land revenue administration would be by acquisition of zamindaries by the State. The Government, however, did not consider this a practicable proposition. The various tenancy laws for regulating different agricultural interests in land passed from time to time never worked satisfactorily and, therefore, almost all the political parties in India were of the definite opinion that the zamindari system that had created a lot of friction in the socie and made the agrarian economy stagnant should be abolished at the earliest opportunity as a preliminary to land reforms and development of agrarian economy. When, therefore the Provinces came under the first popular Ministry in 1937 it was natural that they undertook preliminary measures that were calculated to make the process of abolition of intermediary interest easy. Thus, in 1938 the Government of Bengal set up a Land Revenue Commission with Sir Francis Floud, B. C. B., M. C. M. G., after whom the commission is generally known as the Floud Commission. The terms of reference to the Commission were:

"Generally, to examine the existing land revenue system of Bengal in its various aspects, with special reference to the permanent settlement ; to estimate the effect of the system on the economic and social structure of Bengal ; and its influence on the revenues and administrative machinery of the Provincial Government ; to appraise the advantages and disadvantages of the existing system and to advise what modifications, if any, can and should be made, and in what manner, and in what stages they should be effected."

231. The Commission which went into the details of the history and growth of zamindari system and considered the working of other prevalent land revenue systems in the country, particularly, the ryo wari system came to the conclusion that "whatever may have been the justification for the permanent settlement in 1793, it is no longer suited to the conditions of the present time. A majority of the Commission have also come to the conclusion that the zamindari system has developed so many defects that it has ceased to serve any national interest. No half measures will satisfactorily remedy its defects. Provided that a practicable scheme can be devised to acquire the interests of all classes of rent-receivers on reasonable terms, the policy should be to aim at bringing the actual cultivators into the position of tenants holding directly under Government. We recognise that this proposal involves a fundamental change in the rural economy of Bengal, affecting vitally the whole social and economic structure of the Province, that it can only be carried out gradually over a term of years and that it would be a most formidable administrative undertaking, which will tax to the full all the resources of Government." The recommendation of the Commission was thus to eliminate all grades of rent-receiving interests on payment of compensation. The Commission submitted its report in March, 1940 but consideration of the report had to be postponed till the conclusion of the second worldwar.

232. After the end of the war when popular Ministries again assumed office in 1946, the question of working out the details of a scheme for abolition of zamindaries, payment of compensation therefor and administration of the zamindaries after abolition engaged their attention. Many changes, both economic and political, had occurred after the report of the Flood Commission. Moreover, its recommendations were not suitable in all respects to Orissa conditions. Government, therefore, set up a Committee to go into the question of preparing a scheme for zamindari abolition. Accordingly the Land Revenue and Land Tenure Committee of Orissa was formed under Government Resolution No. 7533R., dated the 15th November 1946. In addition to the question of eliminating intermediary interests the Committee was also entrusted with other matters connected with the land revenue administration. The Committee was expected to frame a scheme—

- “(a) to make the incidence of land revenue or rent, as the case may be, as far as possible, uniform, equitable and elastic in as much as land revenue payable by the raiyat to Government in raiyatwari areas and rent payable to the landlord in non-raiyatwari areas as well as land revenue payable by landlords in different areas very widely;—
- (b) to eliminate, as far as practicable, all intermediary interests that exist at present between the cultivators and the State ;
- (c) to prevent the fragmentation of agricultural holdings and to foster consolidation of holdings or creation of economic holdings;
- (d) to make adequate provision for common lands for pasture and other communal purposes and for their proper administration, and generally ;
- (e) to improve agricultural production and raise the standard of life of the cultivating classes—

“While making its recommendations, the Committee should examine *inter alia* the report of the Bengal Land Revenue Commission (1940), the Madras Estates Land Act Committee (1933) and the Famine Enquiry Commission (1945); and,

"In case the Committee feels called upon to recommend State acquisition of all intermediary interests between the cultivator and the Government, they should report on the financial and administrative implications of such acquisition.

"The Committee shall also recommend interim measures for the improvement of the existing systems, so long as they continue, e.g., the enforcement of a standard of management specially in the matter of adequate maintenance of irrigation and protective works and laying an obligation on landlords to make an annual allocation of funds to be utilised for specific purposes of rural welfare".

The Committee as was originally constituted had fifteen members excluding Shri Nabkrushana Choudhury, the then Revenue Minister who was appointed Chairman *ex-officio*. Though Shri Choudhury resigned from the Ministry in April, 1948 he continued as Chairman under a Government notification. There were some other subsequent changes in the constitution of the Committee. The Committee circulated a questionnaire, examined witnesses both official and non-official and submitted its report in 1949.

233. Its recommendations in regard to zamindari abolition were that an integrated scheme of land reforms of which the first phase would be the elimination of intermediary interests on payment of perpetual Malikana should be introduced. At this phase the land revenue should be de-provincialised and should be given over to a specially constituted local authority to be termed as "Anchal Sasan" which should replace the District Board and take charge of all local development programme.

234. Details of the Scheme for abolition of zamindaries thus having been prepared, the question that remained was to bring up legislation for the purpose. The various legislative measures that were found necessary for the purpose will be discussed in the next chapter.

CHAPTER V

ON THE EVE OF ZAMINDARY ABOLITION 1948—1951

235. When elimination of intermediary interests as a policy was decided it was but natural that there was all-round jubilation among the tenants who expected that with the abolition of intermediary interests many points of annoyance in the matter of land revenue administration would disappear and they could now look forward to the day of plenty and prosperity. The zamindars (and particularly those in South Orissa) who had already been affected adversely by the measures taken since 1937 as well as by the economic and political situation that developed in the country during and after the second world war were very much apprehensive that they might not get a fair deal in the process of zamindari abolition. It was natural for them in these circumstances to extract the maximum possible return from their estates. And it was the duty of the Government to ensure that this attitude of the zamindars did not create any hardship or difficulty either for the tenants or to the estates as such. The country had already achieved independence, the social life had considerably changed and the question of any zamindar extracting from a tenant more than what was legally permissible did not arise. The zamindars had, therefore, one and only one source to utilise for this purpose if they so wanted and it was the estate or to be definite the waste

lands (including communal lands), forests and other lands not yet tenanted or otherwise alienated. Government considered it undesirable to put any restriction on the disposal of waste lands. But certainly they could not afford to be silent spectators in respect of any misuse of the communal lands or forests or lands held by temporary tenants when it became known that there had been cases of misuse. This was how the Act VIII of 1947 and Act I of 1948 were passed.

236. In order to save the private forests from wanton destruction, the Orissa Preservation of Private Forests Ordinance, 1946 was issued. This was subsequently replaced by the Orissa Preservation of Private Forests Act VIII of 1947 which is still in force. It defined "forest" as including communal land containing trees and shrubs and any class of land declared to be a forest by notification of the Provincial Government but does not include a reserve forest or a protected forest. It prohibits the sale, mortgage, lease or alienation in any other form the whole or any portion of a forest by an owner without the previous sanction of the Provincial Government or any officer authorised by them and clarifies that such action shall be null and void. It also prohibits the cutting of trees or anything likely to denude the forest or diminish its utility as forest by the owner or any other person claiming under him whether by virtue of a contract, licence or any other transaction entered into before or after the commencement of the Act. It provides penalties for contravention of its provision. The Act was originally intended to be in force for a period of five years after which it was expected that the problem would no more exist but it has been found necessary to extend the life of the Act from time to time.

237. Act I of 1948 was passed when it came to the notice of Government that landlords were resorting to large-scale alienation and assignment of communal, forest and private lands on receipt of high premium. Alienation of communal and forest lands was very much detrimental to public interest and alienation of private land in favour of persons paying high premium was adversely affecting the existing temporary lessee and creating strained feelings. The Orissa Communal, Forest and Private Lands (Prohibition of Alienation) Act I of 1948 was, therefore, passed and made effective retrospectively from the 1st April 1946. It prohibited the alienation of communal, forest and private lands by any landlord without the previous sanction of the Collector ; but protected all transactions made after the 1st April 1946 but before the passing of the Act if they satisfied certain conditions. Only the district of Sambalpur was excluded from the operation of the Act because there was sufficient protection against such alienation in the Central Provinces Land Revenue Acts in force in the district and the Wazib-ul-urz (which is treated as a record of customary law).

238. All the Orissa States excluding Mayurbhanj merged with Orissa on the 1st January 1948. Mayurbhanj was merged one year after. Of these states two, namely, Seraikela and Kharswan were transferred to Bihar in May, 1948. The administration of these states was taken over under the provisions of the Extra-Provincial Jurisdiction Act, 1947, which was passed by the Constituent Assembly of India to accommodate cases of this type. Sections 3 and 4 of the Act give authority to the Central Government to—

- (a) exercise Extra-Provincial jurisdiction in such manner as it thinks fit ;
- (b) delegate any such jurisdiction as aforesaid to any officer or authority in such manner and to such extent as it thinks fit ; and
- (c) make such order, by notification in the official Gazette, as may seem to it expedient for the effective exercise of any Extra-Provincial jurisdiction of the Central Government.

In exercise of these powers the Central Government delegated to the Government of Orissa its powers to make such orders as may seem to it expedient for the effective exercise of any authority over these areas in respect of matters enumerated in the Provincial list and in the Concurrent list of the 7th Schedule to the Government of India Act, 1935, but this delegation was without prejudice to the powers of the Central Government. The Central Government issued an order, namely, the Orissa States (Application of Laws) Order, 1948 applying a number of enactments on subjects included in Central list. The Orissa Government issued the Administration of Orissa States Order, 1948 for carrying out the administration of these areas in respect of all remaining subjects. Paragraph 4 of the order provided for the extension of a number of Acts relating to these subjects and further provided that to the extent of repugnancy with these laws, the existing laws in force in these states would stand repealed. By an amendment issued in June, 1948, a new paragraph, namely, paragraph 12 was introduced in this Order for clarifying the tenancy laws of the states. This paragraph was subsequently renumbered as paragraph 10 by another amending Order, dated the 15th April 1949. In view of the importance of the rights that were conferred on the tenants by the provisions of this paragraph it is worth while to quote it below :—

- “(a) Notwithstanding anything contained in the Tenancy laws of the states as continued in force under sub-paragraph (b) of paragraph 4, an occupancy tenant shall be entitled—
 - (i) to freely transfer his holding subject to the restriction that no transfer of a holding from a member of an aboriginal tribe to a member of a non-aboriginal tribe shall be valid unless such transfer is made with previous permission of the Sub-divisional Magistrate concerned ;
 - (ii) to have full right over all kinds of trees standing on his holding ;
 - (iii) to use the land comprised in the holding in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy ;
 - (iv) to presume that the rent for the time being payable by him is fair and equitable until the contrary is proved ;
- (b) where the rent of an occupancy tenant is payable in cash, it shall not be liable to be enhanced except in accordance with the tenancy laws continued in force, in the State concerned.
- (c) An occupancy tenant shall not be liable to ejectment from his holding except in execution of a decree for ejectment passed on the ground that—
 - (i) he has used the land comprised in his holding in a manner which renders it unfit for the purpose of the tenancy, or
 - (ii) he has broken a condition consistent with the provisions of the tenancy laws in force in the State concerned and on breach of which he is under the terms of a contract between himself and his landlord liable to be ejected,
- (d) the interests of an occupancy tenant in his holding shall on his death pass by inheritance or survivorship in accordance with his personal law.
- (e) a “ Sukhabasi ” shall be entitled to the rights of an occupancy tenant over his homestead notwithstanding any law or custom to the contrary.

Explanations—(1) An "Occupancy tenant" means a tenant or a raiyat having occupancy right in his holding under the tenancy laws continued in force in the various states under sub-paragraph (b) of paragraph 4.

(2) An "Aboriginal tribe" means any tribe that may from time to time be notified as such by the Provincial Government for the purpose of this Order.

(3) A "Sukhabasi" means any person holding only homestead whether or not recorded in the settlement papers as "Ghar", "Bari" or "Gharabari" or a person who is granted land by the Thekadar or by a competent Revenue Officer for the purpose of using it as homestead.

239. It will be seen that these provisions removed most of the grievances of the tenants relating to their day-to-day activities and brought them on par with the tenants of other areas of the Province. This provision of the Administration of Orissa States Order was subsequently repeated in Orissa Merged States (Laws) Act, 1950.

240. Arising out of the conferment of right over all kinds of trees standing on the raiyats holding was the complicated problem of Kendu leaves. Previously the Kendu trees standing on the raiyat's holding were the property of the State and even where the right over them was granted to the raiyat on paper, this right was generally violated. The past administration in the states, therefore, found no difficulty in leasing out the right to collect and sell the Kendu leaves on a monopoly basis. In some states rates for purchase of leaves by the monopolyist was fixed. Shri Ramadhyani in course of his enquiry found that the monopoly system in the states which was earning quite a sizeable amount for them was working to the extreme disadvantage of tenants. In view of the fact that the Kendu leaf was a valuable commodity and had a good market (it was required for Bidi-making throughout India and Pakistan) the cultivator was naturally interested in getting a reasonable return for this commodity. When, therefore full rights over trees were granted to occupancy raiyats, the monopolyists were faced with an unexpected situation as the cultivators dictated their own rates for their leaves or in the alternative refused to sell the leaves to the monopolyist and threatened to organise their own trade in the commodity. It may be that the monopolyist had not anticipated this change in right over the Kendu leaves standing on the tenants' holdings and therefore was not ready to part with any portion from his profit for this unexpected change. The result was large-scale agitation in states like Rairakhole and Athamallik as the Kendu leaf grown there has a better market and fetches much better price because of its quality. The Kendu leaf was certainly a very valuable commodity in view of its demand throughout India and Pakistan for making Bidis. Government feared that this value of the Kendu leaf would ultimately be lost if they would not interfere in the matter at that stage and provide for a better return to the cultivator while guaranteeing a reasonable profit to those who organise the trade and carry it on. Be it mentioned here that the Kendu leaf trade requires a lot of capital for investment within a short period, as the leaves to be of any use have to be plucked when still tender and have to be properly processed so as to be fit for Bidi-making. The problem was tackled by including Kendu leaves in the list of essential articles of the Orissa Essential Articles Control and Requisitioning (Temporary Powers) Act I of 1947, and then issuing the Orissa Kendu Leaves (Control and Distribution) Order, 1949 for continuing the monopoly in a different form that would ensure reasonable return to both the tenant as well as to the trader. The tenants of western districts (in which Kendu leaf is grown) have always considered this control as unnecessarily interfering with their right and there has always been clamour for withdrawing the order and making the trading in Kendu leaves completely free from the State control.

241. The Administration of Orissa States Order, 1948 provided that transfer of raiyati lands was free subject to the conditions that when a transfer is made by an aboriginal to a non-aboriginal it would require the previous permission of the Subdivisional Magistrate concerned. The Order contemplated that a list of aboriginal tribes would be notified by Government from time to time. This provision was also repeated in the Merged States (Laws) Act. But till very recently, there was no Government order defining aboriginal tribes and therefore this provision remained as a dead-letter. But the old practice prevailing in the states, namely, obtaining permission from the revenue authorities for transfer of land by aboriginals continued to be in vogue. The want of statutory protection against such transfers does not appear to have resulted in any adverse situation for the aboriginals.

242. With gradual rise in prices of agricultural commodities, value of land gradually appreciated. Because of the encouragement given to agriculture through the Grow More Food Campaign that was launched during the war years to solve the acute food problems of the country, more and more lands were brought under the plough. Investment in land became profitable and attracted speculators. During the period of great slump that preceded the Second world war many lands had passed into the hands of money-lenders. Thus, more and more people not professionally connected with agriculture got interest in agricultural lands, generally as raiyats. Moreover the economic changes that the second world war brought with it resulted in movement of some of the agricultural population to the towns. Thus grew a new class of population possessing raiyati right and yet letting out the land on produce rent. It is not as if such a class of people had not been known to the society. On the contrary, such a class did always exist. Many religious and charitable institutions did possess land which were being cultivated by the institutions themselves or by tenants on produce rent. Similarly people who suffered from any disability of caste or sex were frequently letting out their lands on produce rent. But these were certainly not cases of speculation. In all such cases, the rent payable by the tenants was a share in the produce—usually half the gross produce or a fixed quantity of the produce. The tenants, usually known as Bhagchasis, were always considered as temporary and their lease was generally for one year. With the entry of speculators in the field and with the value of land appreciating that created a desire in the tenants themselves to own land rather than to cultivate others' lands (with a precarious tenure), there was a significant change in the situation and there was clamour that some protection against arbitrary eviction of these tenants and about the quantum of rent payable by them should be granted.

243. Apart from the temporary tenants paying produce rent, there were also tenants with right of occupancy who were subject to produce rent. Most of the raiyats in the estates of Ganjam and Koraput were of this category. There were also similar tenants though very few in number in other districts also. There was a clamour from all these tenants to fix a maximum limit on the produce rent payable by them.

244. Government took note of these developments and came to a decision that in the changed set-up of agrarian economy in the country, it was necessary to provide against the arbitrary eviction of these tenants and to provide a maximum on the quantum of rent payable by them. It was, however, considered inexpedient to undertake any permanent measure in this regard pending examination of the question by the Land Revenue and Land Tenure Committee. For giving immediate relief, the Orissa Tenants' Protection Act (Orissa Act 3 of 1948) was passed.

245. The Act defined a tenant as a person paying produce rent or a rent fixed on the estimated value of the produce and provided that such a tenant (holding as such on the 1st day of September 1947) would be protected from arbitrary eviction by the landlord and shall not be liable to pay more than 1/3rd of the gross produce of the land or value thereof as rent to his landlord if he is an occupancy raiyat in the northern districts, 1/6th of such produce if he is an occupancy raiyat in the southern districts and 2/5th of the gross produce if he has no right of occupancy in land. The Act exempted landlords who were raiyats having less than 33 acres of land from the operation of the provision relating to protection of tenants from arbitrary eviction. Though Tankibaheldars were sub-proprietors, they were considered as raiyats for the purposes of this Act mainly because of the fact that they were small holders and because of their caste, they generally resorted to the practice of letting out land on produce rent. The Act made all consequential provisions like the place and time of delivery of rent and provided for settlement of disputes between the tenant and landlord by a competent revenue court in respect of all matters relating to payment of rent. It was made applicable retrospectively from 1st September 1947, a few months before the Bill on the subject was introduced in the legislature. This Act was intended to be in force up to the 15th January 1949. But it was extended from time to time till 1955 when it was repealed by the Orissa Tenants Relief Act.

246. This Act caused a lot of friction among the landlords and tenants particularly in the coastal districts of Cuttack, Puri and Balasore and the right conferred by the Act had generally to be enforced through the Court. The result was a lot of commotion in the social life particularly in the districts of Puri and Cuttack where pressure on land was very heavy. Many religious and charitable institutions depending on the produce rent were hard hit by these provisions.

247. Provisions of the Act were extended to all the ex-states but it was contested by some of the Rulers that the Act did not apply to their Khamar lands. The contention was however not accepted in the Courts of law and it was ruled that the Act did apply to all agricultural lands in the areas to which it extended.

248. While protection of temporary tenants paying produce rent was a burning problem in the districts where the pressure on land was heavy, it was an equally urgent problem to secure protection for the raiyats in the Agency tracts of Ganjam and Koraput who faced a serious difficulty in another form. Mention has been made in Chapter III that in order to prevent the lands of tribals from passing into the hands of money-lenders and speculators, the Agency Tracts Interest and Land Transfer Act I of 1917 was passed by the Madras legislature. The provisions of this Act were strained to the maximum and the lacunae therein were fully utilised by speculators and money-lenders when value of land started appreciating during and after the second world war. In order to stop this by removing all the lacunae in the law, a Bill to amend the Agency Tracts Interest and Land Transfer Act, 1917 was brought up. The Bill was passed into Act II of 1948. The provisions of this amendment and purposes for which it was carried out was described in the following words in the statement of objects and the reasons of the Bill that was introduced for amending the Act, namely,—

“the Agency Tracts Interest and Land Transfer Act (Madras Act I of 1917) prohibits the transfer of immovable property situated within the Agency Tracts by a member of the hill-tribe, unless made in favour of another member of a hill-tribe or with the consent of the prescribed officer but allows relinquishment of a holding by a raiyat in favour of the land-holder in accordance

with the provisions of the Madras Estates Land Act, 1908. The latter provision has indirectly frustrated the restriction imposed on the transfer of land by the Act. Hence, the present Bill has been drawn up to amend the Act in order to prevent indirect transfer of land by hillmen to non-hillmen through the landholder, to have stricter control over illegal transfers by authorising prescribed officers to decree ejectment against illegal possession on their own motion and to discourage such transfers by imposing adequate penalty.

249. The institution of Bhag Chasis for cultivating lands belonging to non-cultivating class was not known in the backward areas of the State where a different institution achieved the same objective. The system in force envisaged a labour agreement under which a person entering into an agreement with a land-owner was bound to perform agricultural labour including domestic service. In practice, this system bound a person for a nominal payment received in advance to continue in service of a land-owner, generally a shrewd man, who saw to it that the amount advanced was never settled finally and the labourer continued to serve him. Apart from the fact that the labourer was not getting anything like a reasonable wage for his services and was not free to seek any profitable employment elsewhere, the system had a demoralising effect on the social and economic life of these areas. The Orissa Debt Bondage Abolition Regulation I of 1948 which sought to abolish this system and make the continuance of the system punishable was passed with the view to eradicate this evil. The Regulation applied to the district of Koraput, the Nawapara Subdivision of the district of Sambalpur and the Ganjam Agency tracts and speaking generally, had the desired effect though obviously it did not completely eliminate the system connected as it was with the economic backwardness of the tracts.

250. There was another type of cultivators in the ex-states who required protection. These were persons cultivating Khamar lands of the Rulers and persons holding lands on service-tenure under the rulers or members of their family. Mention has already been made as to how persons cultivating Khamar lands of Rulers even for generations did not have any permanent right. There was no difference between these Khamar tenants and occupancy tenants in these states and there was no reason as to why right of occupancy should be denied to them. Most of the service-tenure-holders were holding the lands from generation to generation and with the end of personal rule in the states, the continuance of personal service was certainly undesirable. And yet, sometime to make necessary adjustments in finding out substitutes for these services was required by the Rulers. Taking into consideration all these facts an amendment to the Administration of Orissa States Order was issued in July, 1948. By this amendment a new paragraph, namely, Paragraph 10-A was inserted in the Order. This new paragraph provided that persons holding land on service-tenure either under the Ruler or any member of his family would no more be liable to render the services required of them, would not be liable to eviction and would, on payment of rent to be assessed by the Provincial Government, acquire right of occupancy in the land. It also provided that persons holding Khamar, Nij-jote or any other private land of a Ruler would not be liable to eviction but would be liable to pay such fair and equitable rent as would be fixed by any competent authority and would, thereupon acquire right of occupancy in the land. It made a saving provision in the matter of service-tenures to the extent that if the Provincial Government on an application of any Ruler affected would so consider and order, a service-tenure would continue. These provisions were subsequently enacted as clauses (g) and (h) of Orissa Merged States (Laws) Act IV of 1950. The

exception relating to the continuance of service-tenures on application from Rulers was also removed by an amendment in 1951.

251. Even though these statutory protections were given, yet the work of assessment of rent proceeded slowly as generally the tenants did not come up with applications for such assessment and there are still many cases in which assessment of fair and equitable rent in respect of Khamar lands and service-tenures has not been taken up. The right which such tenants now enjoy is limited, namely, they are not liable to arbitrary eviction but they are not entitled to any other protection and rights which an occupancy tenant in these states enjoy.

252. Pressure on land being heavy in the districts of Cuttack, Puri and Balasore it was but natural that attempt was always made by both the landlords and tenants to bring every inch of cultivable land under the plough. As early as 1922 this attitude created difficulty in that it was encroaching upon the communal lands of the village. In the settlement operation of 1922—32, attempts were therefore made to record certain lands as Rakhit (protected) and communal and promise was obtained from the landlords that they would not lease out these lands. This was not an effective method of protecting these lands. The position improved to some extent after the passing of the Orissa Communal, Forest and Private Lands (Prohibition of Alienation) Act, 1948, but generally speaking, the extent of land available for communal purposes in the villages was much less than the requirement. A new section, namely, section 95 was, therefore, inserted in the Orissa Tenancy Act, 1913 by Orissa Act XII of 1948. This section gives authority to the Collector to provide sufficient land for communal use in the village by resorting to the provisions of Land Acquisition Act.

253. A very important change in the administration of Khasmahals was brought about in the year 1948. The collection of rent in all the important Khasmahals, namely, Banki, Khurda and Angul used to be the responsibility of Sarbarakars. The Sarbarakars in Khurda had service lands of considerable extent. The Sarbarakars in other two estates used to be remunerated in cash usually a per cent of the land revenue demand of the village. The Sarbarakars were not only responsible for collection of revenue in time but also for all administrative work in the village. Though the Sarbarakar had all along been considered as nothing but a public servant, yet the practice that developed in the Khasmahals was to insist on the Sarbarakar to pay the entire revenue of the village whether or not he has collected it from the tenants. Being a man of the village of which he had the responsibility of collecting revenue the Sarbarakar was to some extent accommodating the tenants and was paying the revenue from his own pocket recovering it from the tenants according to mutual convenience. This system of give and take to which the tenants were used was convenient for the Government also who was assured of timely payment of revenue. Another responsibility of the Sarbarakar was to report about changes in ownership and occupation of land and being a man of the village, he came to know of such changes more or less as and when they occurred. Thus the office of the Sarbarakar was helpful in the matter of keeping the land records up to date. The system had however serious drawbacks in that the post of the Sarbarakar was more or less hereditary and this fact gave a lot of strength and prestige to the office of the Sarbarakar as a result of which instances were not infrequent when Sarbarakars used to misbehave with the tenants. With the development of political institutions and the consequent diminution of Sarbarakar's prestige many of the Sarbarakars could not become as effective as they used to be in the past. Nor did the tenants like one of their villagers to

be so powerful and influential with the revenue authorities. The system, therefore, became more and more ineffective and thus outlived its utility. Government, therefore, decided to abolish it with effect from 1st April 1948, settling the service lands with the outgoing Sarbarakars (up to the extent of 33 acres with each) on raiyati terms, and replace it by a whole-time-salaried agency of Naib-Tahasildars for collection of revenue and for remaining in charge of revenue and administrative matters at the village level.

254. Naib-Tahasildars' circles were organised on the basis of revenue demand of the area and it was expected that these whole time salaried employees would be equally effective as the old time Sarbarakars. But unfortunately the Naib Tahasildars were as ineffective as even the new time Sarbarakars. The result was that the record-of-rights of Khurda and Banki Khasmahals, which was maintained very much up to date when the Sarbarakari system was in vogue got more out of date and became less and less useful. Revenue fell into arrears and instances in which the Naib-Tahsildars defalcated huge amounts collected from the tenants also came to light. The Naib-Tahasildar has the responsibility in the matter of collection of revenue in a number of villages and he fixes specified days for each village. If a tenant fails to pay the rent on the specified date he has to wait for a similar date and it may be that the Naib-Tahsildar may not come to his village again. The tenants who were used to pay rent according to their own convenience when the Sarbarakari system was in vogue considered this to be annoying and the collections naturally fell into arrears. Moreover a whole-time salaried servant like the Naib-Tahsildar requires constant guidance and control at every stage of work which the Sarbarakar did not require and unfortunately such guidance and control was not available to the Naib-Tahsildars when the system was introduced. The result was that in a few years after the introduction of the system it became a problem to collect arrears of revenue and institution of certificate cases for enforcing the revenue demand against individual tenants increased tremendously whereas the necessity for applying the certificate process was felt only in rare occasions when the Sarbarakari system was in vogue. The situation gradually improved only when the people got acquainted with the system.

255. The lambardar and co-sharer Gountias in Khalsa Gounti villages of Sambalpur had the right to lease out waste lands. When land had not much value in Sambalpur, nobody took any land on lease unless it was expected to give him some immediate return. Government was not therefore particular to retain this power with them. Rather, for encouraging cultivation and to bring extensive culturable waste lands of the district under the plough, it was then necessary to give the power to the Gountia, the lowest link in the administrative chain, particularly because he was generally a resident in the village. With the change in the agrarian economy during and after the world war land appreciated in value and it was considered desirable that lease of waste lands should be properly planned. Obviously, this was not possible without withdrawing the powers of the Gountia.

256. The Central Provinces Land Revenue Act, 1881 was, therefore, amended by Orissa Act XIX of 1950 and three new sections, namely, sections 124-B, 124-C and 124-D were inserted therein. Section 124-B provided that notwithstanding anything in the Wazib-ul-uraz, custom, decree, or order no Gountia should henceforward have the right to lease out waste lands, and the right of lambardars and co-sharers to reclaim waste lands should stand extin-

guished. Section 124-C provided that the lambardars and co-sharers might within a period of six months from the date of commencement of the Act apply to the Government for grant of a lease of any waste land and such lease shall be granted provided that the maximum area to be leased out in any village to such a person should not exceed 33 acres including the lands already in possession of the applicant. Section 124-D conferred necessary powers on the Deputy Commissioner to scrutinise the leases granted in any Gounti villages between the first day of April 1950 and 11th October 1950 (the date on which the Act came into force) and set aside such lease if he was satisfied that it was created only to defeat the provisions of this Act.

257. Along with the withdrawal of powers of Gountias of Sambalpur, a similar order was issued withdrawing the powers of Gountias and other village headmen to lease out waste lands in the ex-states.

258. This withdrawal of power of Gountias of ex-states meant appreciable deterioration of their already deteriorating power and prestige. Many village headmen considered that the responsibility which they had to discharge was out of proportion to the benefits that now accrued to them from their office. They naturally neglected their duties and Government considered it necessary to do away with the system altogether.

259. A beginning in abolition of Gounti system was made in Patna ex-state of Bolangir district in 1949. The abolition was done by compromise. That is to say, the Gountia surrendered his office and the Bhogra land attached to his office was settled with him on raiyati tenure, only five acres out of each Bhogra holding being kept out and set apart for the benefit of Grama Panchayats. The abolition was carried on without difficulty and the Naib-Tahsildari system was introduced for collection of rent and for remaining in charge of all revenue and general administrative matters at the village level.

260 The Naib-Tahsildari system exhibited many of the defects it exhibited in Kanhurda and other Khasmahals. It was, however, readily accepted by the people and was, therefore, more effective.

261. While attention was devoted to improvement of tenancy conditions and of administrative machinery in the Khasmahals, the question of zamindari abolition was also under active consideration. The Orissa Estates Abolition Bill providing for the abolition of all intermediary interests in the State was introduced in the Legislature on 17th January, 1950. The Bill was referred to a Select Committee on the 3rd August 1950. The Committee while submitting its report mentioned :—

“In view of the far-reaching and momentous nature of the enactment by which we are attempting to fulfil a long-cherished dream and hope of the mass of tiller of the soil without causing a total upheaval in the economic structure of the country and community and unnecessary hardship to individuals, we gave our anxious thought and consideration to this Bill. We have endeavoured in our deliberations to meet all angles of vision and different interests that are going to be affected and we hope that our labour will be of some help to the Legislature in its deliberations.”

After preliminary discussions in the Legislative Assembly, the Bill was recommitted to the same Select Committee on certain specific points. The Committee submitted its report in August, 1951. The Bill was thereafter.

discussed in the Legislative Assembly for a number of days and was ultimately passed on the 28th September 1951. It ultimately became Orissa Act I of 1952 after receiving assent of the President.

262. Chapter I of the Act defines certain important terms in the Act. Chapter II relates to vesting of estates and consequences thereof. Chapter III relates to management of vested estates. Chapter IV makes provision for settlement of claims relating to certain debts of intermediaries and to the claims of maintenance-holders in estates. Chapters V and VI provide for assessment and payment of compensation and Chapter VII relates to miscellaneous provisions like bar to jurisdiction of Civil Courts, procedural matters, power of State Government to make rules under the Act and remove difficulties for carrying out the purposes of the Act.

263. The question that received active consideration after all preliminary action for abolition of estates was completed was comprehensive agrarian reforms and development of agricultural economy. Specific action in this regard was first taken in 1948 by the Indian National Congress by setting up the Congress Agrarian Reforms Committee with Shri J.C. Kumarappa as its Chairman. The terms of reference to the Committee were "to examine and make recommendations about agrarian reforms arising out of the abolition of zamindari system in the light of conditions prevailing in the different Provinces. The Committee will consider and report on co-operative farming and methods of improving agricultural production, position of small holdings, sub-tenants, landless labourers and generally on improving the conditions of agricultural rural population."

The Committee submitted its report on 9th July 1949. It made recommendations on co-operative farming, machinery for land management, agricultural indebtedness, finance and marketing, agricultural labour, stabilisation of agricultural prices and crop insurance, agricultural improvements, agro-industries and rural welfare.

264. When the report of this Committee was published, the State Governments naturally considered legislative measures for implementing such of the recommendations as were considered for immediate implementation. The Orissa Agriculture Act XVI of 1952, was intended to give a statutory basis for implementation of some of these recommendations. The background of this law and the provisions it makes will be clear from the following extract from the statement of objects and reasons of the Orissa Agriculture Bill 1957.

"The Orissa Agriculture Bill, 1951 is designed to give legislative effect to the State policy, laid down as a fundamental directive principle in the Constitution of India, that the State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines. The proposed enactment specifically provides for legal sanctions and statutory authority for the State to initiate the necessary measures—

- (a) to secure balanced and economic utilisation of land and water in Orissa ;
- (b) to improve agriculture and animal husbandry in Orissa on modern and scientific lines ;
- (c) to promote and maintain a stable and efficient agricultural industry in Orissa capable of producing such part of the Nation's food, fibre, fodder and other agricultural products as in the national interest it is desirable to produce ;

- (d) to ensure that proprietors of agricultural land fulfil their responsibilities to manage the land in accordance with the rules of good estate management ; and
- (e) to ensure that tenants of agricultural land fulfil their responsibilities to farm the land in accordance with the rules of good husbandry.

The basic principle involved in this legislation is a recognition of the fundamental maxim that land is a social asset and that all private rights in land should be held subject to the overriding interest of the Community. The interest of the Community which the State has to safeguard relates to improvement of agriculture and the utilisation of the agricultural resources in the State for the maximum collective advantage. The idea of any right of ownership in land which entitles the owner to use or misuse the land as he likes is incompatible with the economic and social needs of our times.

The nature of rights and obligations as between different parties having interest in the land in our country is the result of a long evolution determined by geographical, economic, social and political conditions. The whole complex of land tenure and Tenancy Laws is the outcome of this process. The history of the origin and development of proprietary and tenancy rights in land and the extent to which individual rights on land were recognised as subordinate to the larger interest of the community may certainly admit of divergence of opinion. But, since the earliest times, recorded history has clearly recognised two basic principles in regard to the management and use of land; namely :—

- (i) The right and duty of the King (or the State) to regulate the management and use of land in the larger interests of the community ; and
- (ii) the duty and obligation of proprietors and tenants in the exercise of their individual rights in land to manage or cultivate land subject to the observance of certain rules of good management and good husbandry.

These principles were kept in view in all the early legislative endeavours with regard to land by the British in India but in the actual operation of the land systems got up by them, no attempt was made to enforce these principles. The Orissa Land Revenue and Land Tenure Committee have rightly observed that “We find clear traces of the above principles that the valuable rights enjoyed by the private proprietors of land were always related to, if not actually dependent upon, the discharge of certain duties and responsibilities towards the community”. In fact in the *Kabuliyat* executed under the Permanent Settlement Regulations, the Zamindar of Sukinda undertakes :—

“.....that I will keep the raiyats prosperous and contented, and exert myself to improve the land so that they will bring forth more crops than they did before. That I shall not allow an inch of cultivated land to fall waste. That I will never allow the growing of inferior crops in superior land.....”

(Report of the Orissa Land Revenue and Land Tenure Committee, Chapter II Paragraph 8, page 10.)

Gradually, however, during the past century, this basic principle receded to the background and all subsequent legislation laid greater emphasis only on the rights of the respective parties and obligations in regard to payment and collection of revenue, rent, cess, etc., but neglected all reference to the duties and obligations in regard to the improvement of agriculture. In fact, all the Tenancy Laws now in operation concern themselves with the right of proprietors

to collect rent and to the grant of rights to tenants in respect of fixity of tenure, fixity of rent, freedom to transfer, etc. No duties or obligations on either proprietors to manage their estates according to rules of good estate management or on tenants to cultivate land in accordance with the rules of good husbandry has been statutorily laid down in any of the Tenancy Laws. This is a grave omission which has contributed largely to the gradual deterioration in agricultural efficiency and decrease in agricultural production.

Although the State depends for its prosperity on the improvement of agriculture, no legislation to enforce the liability of proprietors and tenants to undertake the utilisation of land resources under their control in the best interests of the community has till now been undertaken. The problem received considerable attention only during and since the last great war when shortages of food and other agricultural product became chronic and wide spread. Even in other countries like Great Britain, previous laws relating to agricultural holdings or the tenancies did not recognise the need for any legislation to enforce the responsibilities inherent in the enjoyment of proprietary rights in lands. The Government in Great Britain took in 1939 wide powers of control over agriculture as an emergency measure during the war. These powers included the right to regulate cultivation, management and use of agricultural land to prevent agricultural land from being used for other purposes and to terminate any tenancy or take possession of any land if it was not cultivated in accordance with certain prescribed standards of good husbandry. This measure tacitly recognised the power of the State to interfere with the land system for better land utilisation. Subsequently, further progress has been made in Great Britain in enforcing legislation for the purpose of promoting a stable and efficient agricultural industry in the country. The Agricultural Act of 1947 in Great Britain is an important land mark in the economic history of that country. By this Act, the State took wide powers to promote stability and efficiency in agriculture. The need for similar legislation in this country cannot be over emphasised. It is the duty of the State to ensure that agriculture attains the highest possible degree of efficiency. It is not merely a duty but also a right of the State to see that the necessary steps are taken to this end. No doubt one of the most important methods of promoting efficiency in agriculture is to ensure that the tenants have made available to them the benefits of modern agricultural research and knowledge of up to date methods of farming. This means that the State has to promote research and teaching in agriculture and also provide a machinery to afford necessary technical advice and services to every individual farmer. Some progress is already being made in this direction. Nevertheless, it is necessary for the State to have powers to exercise necessary control measures to ensure that all agricultural land is managed and cultivated efficiently. It is also necessary to lay down as a statutory duty and obligation on the part of proprietors to undertake management of their estates with a view to improve agricultural efficiency and also for tenants to farm the lands to achieve maximum agricultural production subject to the extreme penalty of dispossession. The Congress Agrarian Committee have also aptly observed—

“The cultivator will enjoy the right in land only so long as he satisfies the test of good husbandry. Land is a social asset. The cultivator is more or less a trustee of the social asset. If he fails to discharge the obligation of the trust it is only reasonable that he should be divested of the trust.

“An indifferent tiller has no place in the agrarian economy of the country. Because he is a tiller, he must stay in land is no social justice. Manu enjoins

upon the king to inflict penalties upon a cultivator who fails to maintain the standard of efficiency of cultivation."

(Report of the Congress Agrarian Reforms Committee, Chapter II, Paragraph 35, page 41.)

The proposed legislation has not been made sufficiently comprehensive in the sense that it does not provide for the regulation and control of agricultural prices and wages, which are economic factors profoundly affecting stability in agriculture. The legislation may, therefore, be treated only as complementary to the Orissa Tenancy Act, or other similar Tenancy Laws in operation in the other parts of the State since it provides for the enforcement of the obligations and duties of proprietors and tenants whereas the Tenancy Laws provide for the rights of those parties. Secondly, the present legislation also provides for a suitable machinery for the enforcement of the very wide powers which are proposed to be vested in the State. Lastly the present legislation seeks to invest the State with the power to ensure that the cultivator or the proprietor will enjoy his rights in respect of land only so long as he satisfies the test of improving agricultural efficiency. Very wide powers are thus being conferred in view of the supreme national importance of agricultural development but the elaborate machinery provided for the enforcement of these powers will, it is hoped, ensure proper checks and balances against their misuse. Matters incidental to the development of agriculture, animal husbandry and pisciculture, such as balanced land utilisation, co-operative or joint farming, consolidation of holding, cultivation of fallow land, reclamation of lands considered fit for agricultural use, etc. are also brought within the provisions of the Act.

The Bill seeks to get up at the top a high powered body known as Board of Agriculture with the Minister-in-charge of the department of Agriculture and Forestry as its ex-officio Chairman and with eight officials and eight non officials. It seeks to create at District and Thana or Taluk levels predominantly non official bodies known as District Agricultural Executive Committee and Krushi Samities who shall invariably be consulted. By the Board of Agriculture and through whose agency and co operation schemes for better management of estates and better farming of land may be executed. The Bill also seeks to make provision for the execution of bigger improvement schemes including protective and preventive schemes calculated to bring over permanent improvement in agriculture and also for consolidation and prevention of fragmentation of holdings which is the greatest impediment now to improve any scientific exploitation of land. It seeks to create at District level Judicial bodies known as District Land Tribunal to whom all disputes about compensation will be referred with provision of an appeal to the Board. While the Bill seeks to impose restriction on the proprietors and tenants in their management and farming of land and makes it obligatory on them to obey the directions issued by the Board and District Agricultural Executive Committees, issued with the object of ensuring better management and better farming of land with the provision for their temporary dispossession in case of their persistent default, to carry out directions, yet it has been provided in the most democratic line in the sense that no action under the Act will be possible except with the active support and cooperation of the predominantly non-official bodies at District and Taluk or Thana levels, through whom alone the powers of the Board can be exercised.

This legislation will, it is earnestly hoped, provide the necessary legal sanctions and authority and a suitable permanent machinery which will function from day to day like the judicial or Revenue administrations to ensure the development of agriculture and animal husbandry in the State."

265 The Act which has been amended in 1952, 1953 and 1956 has not yet been brought into force mainly because of the fact that development of agriculture has been the main object of the Community Development programme that was initiated in 1953 and the necessity for enforcing it has not yet been felt.

CHAPTER VI

ABOLITION OF INTERMEDIARY INTERESTS

1952—1962

266. After the passing of the Orissa Estates Abolition Act I of 1952, administrative measures preliminary to abolition of estates had to be taken. It was discovered at this stage that certain minor amendments to the provisions of the Act would be necessary for its smooth functioning. Accordingly, Orissa Act XVIII of 1952 effecting the necessary amendments was passed. Section 3 of the Act authorises the State Government to issue notifications from time to time declaring that any estate has passed to and become vested in the State free from all encumbrances. Section 4 of the Act gives authority to the State Government to invite intermediaries as are proprietors of permanently-settled estates and intermediaries governed by the law of primogeniture to give proposals for surrender of their respective estates to be received within a period of one month from the date of the notification inviting such proposals. The proposals are required to be in writing and are to contain specific terms and conditions on which the surrender is proposed to be made. Thereupon, the State Government has to intimate their decision to the said intermediaries, within a month from the date of receipt of the said proposals, whether their proposals shall be taken into consideration or not by the State Government. A notification was accordingly issued inviting proposals, but no estate was taken over under the provisions of this section. Thereafter the powers conferred by section 3 were invoked for the vesting of estates. On the 27th November 1952 the first batch of notifications vesting a large number of big zamindari estates was issued. The estate of Kanika situated in the districts of Cuttack and Balasore and the permanently-settled estates of the districts of Ganjam and Koraput were significant omissions.

267. Some of the zamindars of Ganjam had filed petitions before the High Court under Article 226 of the Constitution of India for issue of mandatory writs against the State of Orissa restraining them from issuing any notification or taking any other steps under the Orissa Estates Abolition Act I of 1952 in respect of their estates. All the applications were made on identical grounds the more important of which were—

- (a) the Orissa Estates Abolition Act was *ultra vires* of the Constitution ;
- (b) the provisions of the Act as regards certain specific items comprised in the estates, such as private lands, waste lands, mines and minerals and buildings were unconstitutional,
- (c) provisions which entered into the calculation of compensation such as the stipulation for deduction on account of Agricultural Income tax were invalid ; and
- (d) certain provisions of the Madras Estates Land (Orissa Amendment) Act, 1947 and the steps taken by the State Government thereunder in respect of certain estates (commutation of produce rent and settlement of fair and equitable rent) were invalid as they had the effect of reducing the compensation and the Orissa Estates Abolition Act basing the calculation of compensation on these provisions was therefore invalid.

The applications were heard together in October, 1952 and the hearings continued from time to time till the 15th December 1952. On the 30th January 1953, they were dismissed, each party bearing its own cost. The conclusions which their Lordships reached after hearing both the sides can be summarised as follows:—

(a) the Orissa Estates Abolition Act I of 1952 taken in its wholesale aspect, was valid and not open to any of the constitutional objections raised thereto ;

(b) the acquisition under the said Act of various individual items thereof namely, private lands, personal service Inams, waste lands, forests, etc., was also valid ;

(c) the acquisition of buildings situated within the orbit of the estate was valid in so far as such buildings were primarily office and estate building in possession of the intermediary by the date of vesting. The validity of the vesting of the buildings other than office and estate buildings in so far as it might result from the relevant provisions of the Act was left open including buildings which might have been used as office buildings or estate buildings, but were primarily homesteads or personal buildings ;

(d) the validity of the provisions of sections 5 (i), 6 (2) and 7 (2) was left open to be raised by the appropriate persons at the appropriate stage ;

(e) both the Orissa Agricultural Income-tax (Amendment) Act of 1950 (Orissa Act XV of 1950) and section 27 (1) (b) of the Orissa Estates Abolition Act providing for deduction of Agricultural Income-tax from gross assets were, individually as well as taken together, valid and not open to any constitutional objection ; and

(f) section 168-A and section 177(2) inserted into the Madras Estates Land Act, 1908 by the Act XIX of 1947 were valid and not open to any constitutional objections. But the question as regards the validity of the actual exercise of the powers thereunder was left open and would be considered on fresh applications being filed by the petitioners raising these points.

268. The zamindars chose to file an appeal in the Supreme Court. Government had to wait till the disposal of the appeal and that is how vesting of these estates was delayed until the 1st June 1953. The four estates of the Maharaja of Jeypore comprising the Koraput district were, however, notified for vesting on the 29th December 1952 as the Maharaja did not challenge the validity of the Act.

269. The Zamindar of Madhupur filed a petition under Article 226 of the Constitution of India on the 26th November 1952 in the High Court challenging the validity of the Act. He also filed a separate petition for stay of the issue of notification under section 3 of the Act in respect of his estate till the disposal of the petition. The Court issued an interim injunction order on the 27th November 1952. Accordingly the possession of the estate could not be taken over even though the notification under section 3 of the Act was published in the official gazette on the same date. Pending disposal of the petition, the High Court appointed the Anchal Adhikari of Darpan as Receiver from the 6th December 1952 and the Anchal Adhikari took charge