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Land Tenure & Land Reforms 1962 – 1966

Land Tenure and Land Reforms in Orissa, 1962 · Implementation of Land Reforms — Review by the NDC Committee, Planning Commission, 1966

16

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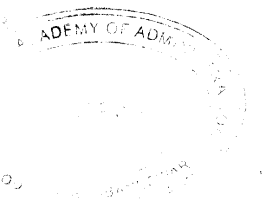
PREFACE

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

B. K. MISHRA

Director of Land Records and Surveys, Orissa

CUTTACK
The 8th July 1962.



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CHAPTER 1

INTRODUCTORY

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

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

CHAPTER II

GROWTH OF ZAMINDARY SYSTEM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER III

BRIEF HISTORY OF DIFFERENT LAND REVENUE SYSTEMS AS THEY EXISTED IN 1957

(a) The Bihar and Orissa system

(i) The Coastal districts of Cuttack, Puri and Balasore

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

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

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

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

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

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

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

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

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

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

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

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

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

(*i*) making of improvements,

(*ii*) the acquisition by landlord of a portion of a holding for building or other purposes,

(*iii*) the surrender and abandonment of holdings, and

(*iv*) contract and custom,

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

(*i*) to consolidate, simplify and re-arrange the greater part of the statute law relating to landlord and tenant,

(*ii*) to restore to holders of sub-proprietory interests and of resumed (Bajyafti) revenue-free lands the position which they held for nearly a century before the extension of certain provisions of the Bengal Tenancy Act, 1885 to the said districts (Cuttack, Puri and Balasore),

(*iii*) to secure raiyats in the enjoyment of their existing rights, both statutory and customary,

(*iv*) to make a definite extension of the area held as private lands by proprietors and sub-proprietors in consideration for the security of tenure to be afforded to their tenants in lands reclaimed from waste,

(*v*) to improve the procedure for the recovery of rents due to proprietors and sub-proprietors,

(*vi*) to remove ambiguities, defects and anomalies which are known to exist in the present law, and

(*vii*) to prevent encroachment of lands over which communal rights exist.

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

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

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

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

(*i*) tenure holders including under-tenure holders,

(*ii*) raiyats,

(*iii*) under-raiyats, that is to say, tenants holding, whether immediately or mediately under raiyats, and

(*iv*) Chandnadars.

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

(*a*) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity, or at a rate of rent fixed in perpetuity,

(*b*) occupancy raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and

(*c*) non-occupancy raiyats, that is to say, raiyats not having such a right.

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

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

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

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

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

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

(*a*) he has used the land comprised in the holding in a manner which rendders it unfit for the purpose of the tenancy, or

(*b*) he has broken a condition consistent with the provisions of the Act and on the breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

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

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

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

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

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

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

These persons were thus treated as temporary lessees having no right worth th

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

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

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

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

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

(*ii*) The districts of Angul and Khondmals

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

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

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

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

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

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

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

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

(*iii*) Sadar (excluding Mahadevpalli P.-S. and Bargarh subdivisions of Sambalpur district (Referred to as Sambalpur district in paragraphs 48—68 below for convenience

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

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

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

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

(*i*) Zamindars,

(*ii*) Malguzars,

(*iii*) Malik-Makbuzas,

(*iv*) Gountias,

(*v*) Bhogra Bhogis, and

(*vi*) Brohmottardars.

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

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

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

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

(*i*) proprietorship over and free right of alienation of home-farm,

(*ii*) the right of management (including collection of rent and payment of Government revnue) over the whole village and undisturbed possession of it so long as the Government revenue was fully and promptly paid, and

(*iii*) as a consequence of the above two rights, the rights of alienation of the whole village or of a share in it if accompanied by a transfer of the home-farm land.

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

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

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

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

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

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

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

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

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

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

(*i*) a tenant might sub-let his land for a period not exceeding one year, and

(*ii*) he might transfer his right of occupancy to any person who, if he survived the tenant, would inherit the right of occupancy or to any person in favour of whom as a co-sharer the right of

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

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

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

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

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

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

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

(*i*) tenants of Bhogra or "Sir" lands,

(*ii*) sub-tenants, and

(*iii*) village service tenants

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

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

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

(*b*) The Central Provinces system (Mahadeypalli P.S. of Sadar subdivision of Sambalpur district and Nawapara subdivision of Kalahandi district)

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

(*c*) The Madras system

(*i*) THE ZAMINDARY TRACTS

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

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

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

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

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

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

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

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

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

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

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

75. The Bill contained provisions for—

(*a*) abolition of the distinction between "old waste" lands and other waste lands,

(*b*) conferrment of right of occupancy on persons in continuous occupation of ryoti land for a period of 12 years,

(*c*) improvement of the provisions of the Act relating to communal lands and providing a machinery for summary enquiry regarding claims that a particular land was a communal land,

(*d*) acquisition of additional land if found necessary for communal purposes bringing tank beds and bunds of tanks, supply and drainage channels etc., under the machinery relating to communal lands and making the provisions of the Land Encroachment Act applicable for securing the eviction of trespassers from all such land,

(*e*) simplification of the procedure for claiming enhancement or reduction of rent, for commutation and alteration of rent and for seeking these reliefs by filing applications instead of suits,

(*f*) introduction of a new Chapter relating to irrigation works and defining a simple but effective procedure for compelling landholders to execute repairs to irrigation works, imposing restrictions on the increase of ayacut and making provision for reclassification of land,

(*g*) re-arranging the definition of "private lands" and the rules of evidence relating thereto, thereby rendering them more logical,

(*h*) a proper settlement of proclamation and due publication of sales and recognition of the right of the landholder to bid and set off his arrears towards the sale price,

(*i*) making commutation compulsory, and

(*j*) giving powers to Government to direct a settlement of rent on their own motion.

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

76. In 1935 Sri M. G. Pattasi introduced a non-official Bill in the Legislative Council. This was mainly intended to meet the situation caused by the phenomenal fall in the prices of the staple food crops from about the year 1931. The provision for reduction of rent in section 40 (2) (e) did not apply to rents commuted under section 40 or settled under Chapter XI of the Act. It did not apply to cases if the fall in prices was due to temporary causes. The fall in prices that occurred from about the year 1931 was being regarded by Settlement Officers as having been due to temporary causes and therefore while there was actual fall in the prices adversely affecting the ryot the Settlement Officers were fixing rent on the basis of the prices of the previous decennial period and as rent once settled cannot be altered for a period of 20 years to come, this high cash rent in a period of slump was a heavy burden on the agriculturist. To meet this situation the Bill provided that proportionate reduction of rent should be allowed whenever it was found that the average local price of staple food crops in the Taluk or zamindary division were lower by not less than 10 per cent than the average figure of prices on the basis of which rent in regard to any land in an estate was fixed under section 40 or under Chapter XI or otherwise. The Bill which was referred to a Select Committee was ultimately passed into as Act (Madras Act VI of 1936) and came into force in the last week of March, 1936. It introduded a new section, namely, section 39-A which contained provisions for granting proportionate remission of rent in any particular revenue year on application by the royts to the Collector on the ground that the average local prices of staple food crops during the twelve months ending with 31st March of revenue year were lower by not less than 18 3/4 per cent of the average prices on which rent in regard to such land was partly or wholly based. The section also made provisions for the procedure to be followed for disposal of these applications. The majority of ryots in Ganjam and Koraput could not derive much benefits out of this provision because they were paying rent in kind. But the ryots liable to pay cash rents, howsoever small was their number, did take advantage of these provisions and got the necessary relief.

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

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

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

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

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

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

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

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

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

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

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

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

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

(*ii*) The Ryotwari Tracts

86. It has been mentioned in Chapter II that the administrators in Madras were not in favour of the permanent settlement and it was only when they were threatened with the extreme penalty of removal from office that the system was introduced in the Northern Sirkars in 1802. The system received a check in1806 after Lord WilliamBentic bacame the Governor of Madras as his opinion was against the permanent settlement. The opinion in England had at the same time undergone material change. The principles of permanent settlement were called into serious question and were considered to be detrimental to the prosperity of the country and happiness of the people. The Court of Directors thereafter prohibited further extension of permanent settlement to any other part of Madras. Thereafter the system of village settlements was introduced and the areas which had not come under the permanent settlement, were farmed out either to head inhabitants or to the community of the village. The assessment in either case was fixed on the whole village and was calculated on the share of the produce to which the Government was entitled. Finally, in 1812 the Court of Directors ordered that in all areas that had not come under the permanent settlement, the ryotwari system should be introduced and that where rent on any other principle had been fixed, it should be terminated at the end of the term. That is how about half of the area of "Ganjam plains" came under the ryotwari system. As this has been considered to be the best substitute for all other system of land tenure, it is worthwhile to mention in some detail the history of its development.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) INAM LANDS

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

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

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

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

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

(*a*) enfranchised with the rent being commuted or redeemed;

(*b*) enfranchised, but liable to jodi or quit-rent; and

(*c*) still unenfranchised.

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

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

(a) that of the Sovereign or his representative (Land revenue or *melvaram*) ; and

(b) that of the cultivator (land proper or *Kudivaram*).

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

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

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

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

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

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

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

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

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

(*iv*) AGENCY TRACTS

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

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

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

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 hither to unknown in these tracts and the inevitable difficulties however transitory they might have been concommitant 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 Assistants 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

Sanakhemedi Maliahs including the Karada and Ranaba Mutthas, the transfer of the last named Mutthas from the jurisdiction of the General Deputy Collector, Ghumsur having been effected in 1900. This vast jurisdiction was reshuffled on the 1st April, 1936 with the creation of Orissa and then again on the 1st January 1943 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 Maliah 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 Sankhimedi Maliahs and this was done finally in 1872. When Orissa was created, there were thus three Maliahs, namely Parlakimedi, Sanakhimedi and 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 Parlakimedi 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 zamindary 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 Muthadars) 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 Muttaheads 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 ghtats, (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*) Bellguda and Ramgiri-Udayagiri taluks and a portion of Parlakimedi Agency (Tract No. 2), and

(*iii*) The rest of the Parlakimedi Agency (Tract No. 3).

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

(*a*) Khond lands,

(*b*) Non-Khond lands,

(*c*) Chokapad Khandam, and

(*d*) Pondakhal muttah.

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 3,228 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 Parlakhimedi 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 difficuilt 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 tiribals in their turn were equally supspicious 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 musch 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 Parlakhimedi 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 Parlakemedi 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 manitain 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 inported 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 prurpose of setting up defences against neighbouring monarchs whose ambition could at any time result in an attmept 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 entirley 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 practicaly became officials of the ruler. The village headmen were generally the descendants of the orginal 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 is 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 entires 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 commoonly 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 peroiod usually twenty years, encouragement to the tenants for extending cultiavation) 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, becasuse 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. Inspite 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 favourities 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 zamindary.

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 beacame 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 poweres 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 mis-behaviour, 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 khorposhdars (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 zaminaries 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-zamindary 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 beggining 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 choukidar 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 effecton the grantees themselves.

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 polulation, 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 mainely 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 conferrment 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 conferrment 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 transferrable 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 reallotment thereof) by a pre-arranged sale taking shape of surrender to the headman, and reallotment 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 mutuation fee used to be levied. In the state of Sonepur 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 holidng 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 Sonepur, 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 Dep artment 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 orga nising 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 ill ustrates the points. Indeed, they could not have chosen a more incorrect p oint for controlling the activities of rulers. The results were that when the breaking pointwas 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 necessaries 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 persent 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 ligislation 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 operaion 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 amednding the Act from time to time. Details of these amendments will be given in subsequent praragraphs.

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 cirminal 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. It's recommendations naturally covered a very wide field including reorganisation of the administrative jurisdiction, improvement of zamindary 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, impostion 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, tabacco and sugarcane, taking up agricultural settlement for criminal tribes, etc. It recommended the exclusion of Chakapad Khandam, Pondakhal 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 Bajyaftidar 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 Bajyaftidar raiyat and an ordinary occupancy raiyat except for the fact that Bajyafti 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 Bajyafti 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 satutory 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 arbitary 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 confirm 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 th

Odisha Revenue Laws – Volume 16 · Page 75 ancy 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 tansfers 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 prodvie that in respect of an occupancy holding transferred, arrears of rent accruing before the date of transfer should be recoverable from both the transferror 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 transferror 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 12½ 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 zamindary 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 tenure-holders 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 legistature 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 ragulated 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 serivce 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 temtorary 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 re cognised by the British Government" were included in the category of "estates" thereby giving per ating 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 8(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 whould be fully reflected in the record-of-rights, there by 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 1947. 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 X of 1954 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 $\frac{3}{4}$ 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